Comptroller General
of the United States

Washington, D.C. 20548

Decision

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Matter of: Input/Output Technology, Inc.

File: B-280585; B-280585.2

Date: October 21, 1998

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Joshua A. Kranzberg, Esq., and Robert A. Russo, Esq., Army Materiel Command, for the agency.
David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that price evaluation was improperly based on methodology set out in unnumbered solicitation pages and was inconsistent with approach agency allegedly conveyed orally to protester, is denied where evaluation was consistent with approach set forth in the solicitation, and record shows protester was on notice of agency's intended evaluation approach; although pages setting forth the approach were unnumbered and not marked with solicitation number and were, apparently for that reason, overlooked by protester, the pages were included in copy of solicitation downloaded from the Internet and printed by protester.

DECISION

Input/Output Technology, Inc. protests the award of a contract by the Army Materiel Command, Communications-Electronics Command (CECOM), to Honeywell, Inc., under request for proposals (RFP) No. DAAB07-98-R-B258, for the repair and retrofit of AN/APN-209 Line Replaceable Units (LRU). Input/Output raises several challenges to the selection process, including the evaluation of price and technical proposals.

We deny the protest.

The solicitation provided for award of a 5-year indefinite-delivery, indefinite-quantity contract to repair and retrofit two receiver/transmitter LRUs in the AN/APN-209 Radar Altimeter Set, which is used to measure altitude in fixed-wing and rotary aircraft. Award was to be made "based on the best overall (i.e., best value)

proposal that is determined to be the most beneficial to the Government" under the following three evaluation factors: (1) technical, including subfactors for repair/retrofit and test plans, key personnel, quality assurance plan, warranty, schedule, and small business/small disadvantaged business utilization plan; (2) performance risk, as indicated by the offeror's record of past performance; and (3) price. RFP § M-4. The technical factor was "slightly more important" than either performance risk or price; performance risk and price were of equal importance and combined were more important than the technical factor. Id.

The Army received proposals from Input/Output and Honeywell--the original equipment manufacturer (OEM) for the AN/APN-209--by the closing time; both were included in the competitive range. At the conclusion of written and oral discussions, the agency requested final proposal revisions. Based on the final evaluation, the contracting officer determined that Honeywell had submitted the best overall proposal. Both Honeywell's and Input/Output's proposals were evaluated as outstanding under the technical factor--both proposals received outstanding ratings under the two most important technical subfactors (repair/retrofit and test plans and key personnel), and Honeywell's also received an outstanding rating for its small business/small disadvantaged business utilization plan. Likewise, both proposals were evaluated as offering low performance risk. However, the price of Honeywell's proposal ($[DELETED] with first article test (FAT) and $[DELETED] without FAT) was significantly lower than the price of Input/Output's ($[DELETED] with FAT and $[DELETED] without FAT). Award was made to Honeywell based on price.

PRICE EVALUATION

The solicitation requested unit prices for each year of the contract for four stepladder quantities (1 to 50, 51 to 100, 101 to 200, and 201 to 300 units) of various repair, test and retrofit processes. Input/Output argues that CECOM misled it during negotiations as to the agency's intended approach to evaluating stepladder prices.

The solicitation included pages consecutively numbered 1 through 56, several attachments, and 4 pages that were unnumbered and not identified with the solicitation number. Two of the unnumbered pages followed page 55 of the solicitation and completed section L-7, Proposal Submission, by setting forth the required contents of proposal Volume I, Technical (as they related to the last three of the six subfactors under that factor), Volume II, Performance Risk, and Volume III, Price. (On page 55, a requirement for three proposal volumes was established and the required contents of Volume I as they related to the first three of the six subfactors under the technical factor were set forth.) The other two unnumbered pages followed page 56 of the solicitation and completed section M-4, Basis for Award, by describing evaluation Factor II, Performance Risk, and Factor III, Price.

(On page 56, offerors were advised that the agency would evaluate proposals using three factors--technical, performance risk and price--and the subfactors under the technical factor were listed.) The solicitation provided on these latter two unnumbered pages that the evaluated price was to be the sum of the line item prices, and that where stepladder ("range quantity") prices were requested, the evaluated line or subline item price was to be the product of the weighted average unit price--derived from the unit prices for the stepladder quantities--multiplied by the maximum quantity that can be ordered under that line or subline item.

Input/Output essentially argues that it reasonably overlooked the unnumbered and unidentified pages included in section M of the solicitation which set forth a weighted average approach to evaluating stepladder quantity prices because they were unnumbered and unidentified. Although the record indicates that Input/Output downloaded and printed a complete copy of the solicitation, Input/Output states that its president

> does not know what happened to these four unnumbered and unmarked pages after he printed the solicitation, however, he presumes they were discarded by his staff, who had no way of knowing that the unnumbered and unmarked pages were related to the solicitation. Indeed, as [the president] stated, he printed the solicitation on a batch printer used by several other personnel, so it would have been common for other non-relevant pages to be printed by the same printer.

Input/Output Comments, Sept. 10, 1998, at 2. Further, Input/Output maintains, but the contract specialist denies, that in a telephone call inquiring as to what to enter for the total contract value on the solicitation's Small and Small Disadvantaged Business Participation information certificate, the specialist advised that the "[t]otal contract evaluated price is to be calculated by taking the highest quantity for each [subline item] and multiplying it by its unit cost." Input/Output Protest, July 13, 1998, Declaration of Input/Output's President, at 5; Input/Output Comments, Sept. 10, 1998, at 4; CECOM Comments, Sept. 10, 1998, at 2. Input/Output claims that, because it understood that the evaluated price would be based on the prices for the highest quantities, it proposed substantially higher prices for the lower quantities than it would have, if it had known that they would be evaluated, thus raising its overall evaluated price, under the methodology set out in the unnumbered solicitation pages and actually used by the agency, by approximately $[DELETED]. Input/Output Comments, Sept. 10, 1998, at 4-5. The protester contends that it thus was misled, and that it should be given an opportunity to prepare its proposal based on the actual evaluation approach.

We find that Input/Output was on notice of the intended evaluation approach. Having downloaded, stored on its computer and printed the entire solicitation,

Input/Output was in possession of the unnumbered pages setting forth the weighted average approach to evaluating stepladder prices. Its failure to read all of the downloaded pages in no way translates into some impropriety on the agency's part. Moreover, while the agency's failure to number and identify all of the solicitation pages may have created some confusion in this regard, Input/Output should have been aware that additional pages existed. In this regard, as noted above, the discussion of the evaluation factors on solicitation page 56, the last numbered page, was incomplete, ending before performance risk and price were addressed. Indeed, Input/Output was aware that the solicitation, as comprised of the consecutively numbered pages, was incomplete. According to the protester:

> During discussions with CECOM concerning this procurement, [Input/Output] realized that several pages of the Solicitation appeared to be missing from its version of the document. Specifically, the version of the RFP in [Input/Output's] possession contained no description of the requirements for the Performance Risk portion of the proposal and Section L. Also, the Section M in [Input/Output's] RFP gave no description of how the offerors' price proposals were to be constructed and evaluated other than the fact that award would be based on the best value to the Government and that between technically equal offerors, price would be the determining factor.

Input/Output Protest, July 13, 1998, Declaration of Input/Output's President, at 4-5.

Further, Input/Output became aware during discussions that there were unnumbered pages in the RFP and was able to obtain a missing unnumbered page from its computer file containing the downloaded RFP. Specifically, in response to the contract specialist's advising that the protester had failed to provide the required Small and Small Disadvantaged Business Participation information certificate, the protester obtained the missing unnumbered page containing the certificate by printing out the section L computer file, which it previously had downloaded (as part of the whole RFP) from the Internet. Input/Output Comments, Sept. 10, 1998, at 2-3; CECOM Comments, Sept. 10, 1998, at 1.

We conclude that Input/Output was on notice of the intended evaluation approach--it downloaded the entire RFP, including the two unnumbered pages following page 56, into a computer file, and thus was in possession of the provisions establishing the weighted average approach to evaluating stepladder prices.[1] As for

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[1]The agency contract specialist also reports that he faxed all four unnumbered pages to Input/Output during discussions. Input/Output maintains that it did not receive this fax. CECOM Comments, Sept. 10, 1998, at 1; Input/Output Comments, Sept. 10, 1998, at 3.

its reliance on the alleged contrary advice of the contract specialist, such oral advice by representatives of the contracting officer is not binding on the government and a bidder relies on oral explanations of the solicitation at its own risk. SAF Eng'g Assocs., Inc., B-275740, Mar. 19, 1997, 97-1 CPD ¶ 118 at 3 n.1; Adrian Supply Co., B-251886.2, June 7, 1993, 93-1 CPD ¶ 435 at 5 n.1.

FIRST ARTICLE TEST WAIVER

The solicitation's Schedule of Supplies/Services included a subline item (0001AA) for FAT units, but also provided that "[t]he Government may waive the requirement for first article approval test where supplies identical or similar to those called for in the schedule have been previously furnished by the Offeror/Contractor and have been accepted by the Government." RFP § I-2(i). CECOM waived FAT for both Input/Output and Honeywell. Input/Output objects to the waiver for Honeywell on the ground that Honeywell had not previously satisfied the latest version (MIL-L-85762A, the version applicable here) of the agency's standard for cockpit lighting compatibility with the Aviator's Night Vision Imaging System (ANVIS).

A contracting agency's responsibility for determining its actual needs includes determining the type and amount of testing necessary to ensure product compliance with specifications. Lunn Indus., Inc., B-210747, Oct. 25, 1983, 83-2 CPD ¶ 491 at 3. Our review of an agency's decision to waive FAT for a particular offeror is limited to determining whether it was reasonable. Durodyne, Inc., B-243382.3, Oct. 29, 1991, 91-2 CPD ¶ 388 at 4; Whittaker Tech. Prods., Inc., B-239428, Aug. 29, 1990, 90-2 CPD ¶ 174 at 3.

CECOM's waiver of FAT for Honeywell was unobjectionable. Although Honeywell was not producing AN/APN-209s to the ANVIS compatibility standard applicable here, it was the OEM for the entire AN/APN-209, including the LRUs.[2] Further, Honeywell was producing AN/APN-209s to the previous ANVIS compatibility standard, and the agency's engineer concluded that the changes required in

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[2]The AN/APN-209 Radar Altimeter Set is comprised of four components which are deployed in various combinations: (1) the RT-1411 receiver-transmitter, which receives and transmits radar signals that are used to determine altitude; (2) the ID-1917 remote indicator, which has digital and analog displays indicating the altitude to the pilot and also includes high/low warning lights; (3) the RT-1115, which combines a receiver-transmitter with an indicator; and (4) two antennas. The LRUs to be repaired under the contemplated contract are RT-1411 and RT-1115 receiver-transmitters. Only the RT-1115, which includes the display indicator, is to be retrofitted and upgraded to the MIL-L-85762A ANVIS compatibility standard. CECOM Comments, Oct. 2, 1998, at 2; Input/Output Comments, Oct. 2, 1998, at 5-7; Honeywell Comments, Sept. 14, 1998, at 8-9.

upgrading to the applicable, more stringent standard were minor. Honeywell Comments, Sept. 10, 1998, at 8; Input/Output Comments, Sept. 10, 1998, at 7; CECOM Comments, Sept. 10, 1998, at 3. This conclusion--and the resulting decision to waive FAT--was reasonable in light of Honeywell's approximately 25 years experience as the OEM for the AN/APN-209, its current experience meeting the ANVIS compatibility standard under the production contract, and its evaluated outstanding repair/retrofit and test plans and key personnel.

GOVERNMENT-FURNISHED MATERIALS

Input/Output asserts that Honeywell's lower price reflected the improper use of government-furnished material (GFM)--spare parts--from its current production contract. According to the protester, use of this GFM was inconsistent with the agency's representations during discussions, in response to Input/Output's questions, that the existing government-owned AN/APN-209 spare parts inventory from Honeywell's production contract would not be available to Honeywell for use in the repair and retrofit contract.

In its proposal, Honeywell discussed using both existing spare parts and existing equipment. For example, Honeywell stated in its proposal that "[DELETED]." Honeywell Proposal at I-1. In addition, the proposal stated that "[DELETED]." Honeywell Proposal at I-12. In its final proposal, Honeywell acknowledged that CECOM had cautioned it during discussions that the agency "would not be providing authorization for use of Government-furnished equipment (GFE) in the performance of the pending APN-209 repair and retrofit (R&R) program with the exception of the height indicators identified in the solicitation." Honeywell Final Proposal, June 8, 1998. Honeywell also agreed in its final proposal that "only two indicators, furnished as GFE" would be available for use in the repair/retrofit contract. Id.

Input/Output asserts that, because the statements in Honeywell's final proposal did not specifically address the matter of Honeywell's government-owned spare parts inventory, it appears that Honeywell was proposing to use those parts in performing the current contract.

There is no basis in the record for Input/Output's position that Honeywell was proposing to use government-owned spare parts. Honeywell's proposal, while referring to a "[DELETED]," did not indicate that it was referring to government-owned parts; CECOM interpreted the language as referring to Honeywell-owned parts; and Honeywell has submitted a declaration from its AN/APN-209 program manager confirming that the "[DELETED]" referred to in the proposal was [DELETED], and stating that all material required for performance of the repair/retrofit contract would be supplied from Honeywell-owned stock or procured

by Honeywell.[3] CECOM Comments, Oct. 2, 1998, at 1; Honeywell Comments, Oct. 2, 1998, Declaration of Honeywell AN/APN-209 Program Manager, at 2-3. Although CECOM and Honeywell confirm that Honeywell does maintain GFM--with a value of $[DELETED] as of July 17, 1998--for use in a 1997 AN/APN-209 overhaul and repair contract, they report that such material is maintained at a "bonded" storage facility, which is housed at a Honeywell site, but under the control and ownership of the government, and that Honeywell has neither requested nor been authorized to use the GFM in performing this contract. CECOM Comments, Oct. 2, 1998, at 1-2; Honeywell Comments, Oct. 2, 1998, Declaration of Honeywell AN/APN-209 Program Manager at 3-5. Further, we note that CECOM's and Honeywell's assertions in this regard are consistent with Honeywell's 1997 contract (DAAB07-97-D-B008), which generally provides for the contractor to return government-furnished property not later than completion of contract deliveries or contract termination. CECOM Comments, Sept. 11, 1998, at 3; Honeywell Comments, Oct. 5, 1998, Attachment 1.

BURN-IN

Input/Output argues that burn-in testing of repaired and retrofitted units was required by the solicitation and that Honeywell's proposal was unacceptable because it did not provide for the burn-in of all units.[4] CECOM and Honeywell deny that the solicitation required burn-in testing of repaired and retrofitted units.

We need not determine whether Input/Output's interpretation of the solicitation is reasonable, since it is clear from the record that Input/Output did not suffer competitive prejudice as a result of the alleged waiver of a burn-in requirement. In this regard, our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a

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[3]Input/Output cites other provisions of Honeywell's proposal in support of its position, but none of these establishes that Honeywell's proposal was based on the use of government-owned spare parts. For example, Input/Output cites the portion of Honeywell's quality program plan where Honeywell discusses its procedures for the control, storage, and maintenance of "customer-supplied product provided for incorporation into the supplies or for related activities." Honeywell Proposal at I-49. However, Honeywell explains that these procedures are necessary to account for any government-furnished property in Honeywell's control--including the two GFE indicators identified in the solicitation and any LRUs furnished for repair and retrofit--and we find no basis to question this explanation.

[4]Burn-in, as applied to production units, is a 24-hour test designed to expose the AN/APN-209 unit to extremes of temperature and vibration during operation. CECOM Administrative Report, Aug. 21, 1998, at 3 n.2.

substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996). Input/Output's technical proposal was rated as equal to Honeywell's based in part on its being credited with a major relative advantage for offering burn-in for every unit; the price of Input/Output's proposal was approximately $[DELETED] higher than the price of Honeywell's; and the protester has stated that the perceived requirement to perform burn-in added only an additional $[DELETED] to its price. Input/Output Protest, July 13, 1998, at 17. Thus, had Input/Output been advised of the agency's interpretation of the solicitation, and as a result not offered burn-in, Input/Output's technical proposal rating would have been adversely affected, and its price still would have been approximately $[DELETED] higher than Honeywell's. This argument therefore provides no basis for disturbing the award.

The protest is denied.

Comptroller General
of the United States