

**May 4, 1994**

**P.S. Protest No. 94-10**

## **ANCHORAGE TELEPHONE UTILITY**

**Solicitation No. 072368-93-A-0762**

### **DIGEST**

Protest against award of contract for telephone system is denied where protester fails to establish the inconsistency of the award with the solicitation's evaluation scheme.

### **DECISION**

Anchorage Telephone Utility (ATU) protests the award of a contract for a telephone system for the Anchorage, AK, post office, to Winter Telecom, Inc. (Wintercom).

Solicitation No. 072368-93-A-0762 for the purchase or lease of the telephone system was issued on August 13, 1993, by the Denver Purchasing Service Center. The solicitation sought separate electronic private automatic branch exchanges and accompanying station equipment for three Anchorage postal buildings; the General Mail Facility, the Calais building, and the District Office. Provision M.2 of the solicitation, Contract Award and Proposal Evaluation, provided in part:

- a. Award will be made to the responsible offeror whose proposal offers the best value to the Postal Service (i.e., a combination of price, price-related factors, and/or other factors). The primary areas to be used in determining which proposal offers the best value to the Postal Service are listed below in descending order of importance:

Price Related Factors  
Including Service Cost over 10 year period

Technical Evaluation  
Including the following:<sup>[1]</sup>

<sup>1</sup> Provision M.6, Evaluation of Technical/Management Proposal (Telephone System), assigned the

Approach to meeting technical requirements of the specifications	[35 points]
Maintenance and support plan.	[30 points]
System installation plan and schedule.	[20 points]
Offeror's organization, personnel, qualifications, and experience.	[15 points]

- b. Cost/price will be considered in the award decision, although the award may not necessarily be made to that offeror submitting the lowest price.

Provision M.3, Evaluation of Pricing Proposal (Large Telephone System), provided that prices would be evaluated on the basis of the net present value of the installation and on the projected service costs for a ten-year period. The specification incorporated into the solicitation provided further requirements concerning the submission of price proposals.

Six offers were received in response to the solicitation, and each was reviewed for technical acceptability. Each offer was found to be technically acceptable and within the competitive range. Written discussions were conducted with each offeror, and each offeror was requested to submit a best and final offer. The best and final offers were technically evaluated and their costs were calculated. ATU had the highest technical score, followed closely by Wintercom. Wintercom's evaluated cost, however, was substantially lower than ATU's. The contracting officer states that he determined that the price advantage of the Wintercom proposal outweighed the technical advantages of the ATU proposal. Award was made to Wintercom on February 23, 1994, and the other offerors were informed of the award by letters of that date. ATU's protest was received by the contracting officer on March 8.

The protest refers to the "minimal information" provided in the letter advising offerors of the award and the "wide price variance" between Wintercom's proposal and ATU's,<sup>2</sup> and expresses concern "that award . . . is not being made to the most responsive and compliant proposal which offers the best value to the Postal Service." ATU notes that it spent considerable time and effort on its proposal, which it asserts "adopted an extremely competitive price attitude." The protest requests that the "final award" be delayed, and that ATU be provided with copies of all vendor's proposals and the Postal Service's technical evaluations of those proposals.<sup>3</sup>

bracketed total possible points to the four evaluation factors.

<sup>2</sup> The protest recites the \$286,612 figure which the notice of award stated was the value of Winter Telecom's award "for all equipment and installation," and contrasts that to ATU's price, which is said to be \$401,758. The contracting officer's statement puts ATU's price for equipment and installation at \$392,918, but does not explain the discrepancy.

<sup>3</sup> The contracting officer treated ATU's request for the proposals and technical evaluations as a request under the Freedom of Information Act, and denied it on the basis that the requested matter was exempt from disclosure.

Responding to the protest, the contracting officer sets out the history of the procurement as recited above. Replying to ATU's specific concerns, he notes that the notice of award was consistent with the requirements of the Procurement Manual (PM),<sup>4</sup> except that it failed to recite the number of proposals received, an omission which his statement corrects. With respect to the award decision, the contracting officer notes that the solicitation established price factors as more significant than technical factors, and explains his award decision as follows:

In making a determination to award to Winter Telecom, Inc., I made a trade-off between the price of the slightly higher ranked Technical/Management proposal of Anchorage Telephone Utility at a significantly higher evaluated price and the slightly lower ranked Technical/ Management proposal of Winter Telecom, Inc.[,] at a significantly lower evaluated price.

The protester comments on the contracting officer's statement in a letter which asserts that it was unable to substantiate its concern that Wintercom's proposal could not have complied with the solicitation's technical requirements because the contracting officer failed to provide it with Wintercom's proposal. The protester states, however, that:

[B]ased upon the fact that Wintercom's proposal was more than \$115,000 less than ATU's (almost 30 percent less) and the fact that ATU's proposal contained a very modest profit margin, ATU finds it extremely difficult to believe that Wintercom could have complied with the U.S.P.S. technical requirements at the price it bid. Unfortunately, until ATU receives the proposal of Wintercom for review and study, ATU is unable to specifically set forth any deficiencies that may be contained in the Wintercom proposal which could render it nonresponsive.

The remainder of ATU's comments comprise an appeal of the contracting officer's determination to deny ATU's Freedom of Information Act request for the competing proposals. That appeal was referred to the portion of the General Counsel's office which deals with such appeals.

## **DISCUSSION**

Our review of the technical evaluation of proposals in negotiated procurements is limited and we will not substitute our judgment for that of the technical evaluators or disturb the evaluation unless it is shown to be arbitrary, capricious, or in violation of procurement regulations. Generally, the contracting officer's determination will be upheld unless it is arbitrary, capricious, or unsupported by substantial evidence.

<sup>4</sup> Although the contracting officer does not recite the PM requirement to which he refers, the applicable provision is 4.1.5 i.1., which provides that the notification of award must include the number of proposals received, the name and address of the awardee, the "items, quantities, and unit prices of each award, or the total of estimated cost and fee for cost-reimbursement contracts," a statement that award was made without discussion, if that was the case, and "[a] brief statement of the basis for the selection decision."

*Comcraft, Inc.*, P.S. Protest No. 92-20, May 28, 1992 (citations and internal quotations omitted). Further, the burden is on the protester to establish that the technical evaluation was unreasonable. *Cabletron Systems, Inc.*, P.S. Protest No. 93-23, December 23, 1993. Here, ATU has offered nothing other than surmise that the award decision was inappropriate.<sup>5</sup> The contracting officer, on the other hand, has indicated that the award was made on the basis of price to the lowest-priced offeror, which was second-ranked technically. The decision to do so was fully consistent with the evaluation scheme set out in the solicitation.

We agree with the protester, however, that the letter notifying the other offerors of the award could well have conveyed more useful information about the basis for the award. As noted above, PM 4.1.5 i.1. requires the notice to include a statement of the basis for the selection decision. In that respect, the notice of award stated only that "[a]ward of this requirement, based on a combination of price, price-related factor[s], and/or other factors, was made to Winter Telecom," a formulation which provides no meaningful information on the basis for award. A statement such as the following, which actually sets out the basis of the award, would have been preferable:

Award was made to Winter Telecom, Inc., which offered the lowest evaluated price and the second-highest scored technical proposal, which was closely ranked to the highest-scored technical proposal. The award was consistent with the solicitation's evaluation scheme, which placed more emphasis on price than on technical factors.

The protest is denied.

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Contract Protests and Policies

<sup>5</sup> The contracting officer's failure to make information available to the protester which would provide a basis for its protest does not require a different result. This office does not resolve conflicts between protesters and contracting officers under the Freedom of Information Act *Federal Properties of R.I., Inc.*, P.S. Protest No. 93-02, May 20, 1993, nor is it our practice to suspend protests awaiting the results of a Freedom of Information Act appeal. *Jindal Builders and Restoration Corporation*, P.S. Protest No. 90-10, April 19, 1990.