

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF:)
)
HEALTH SYSTEMS DESIGN) CAB No. P-642
Under Solicitation No. RM-01-NS-0073-LR)

For the Protester: Stephen LaViolette of Health Systems Design. For the Government: Warren J. Nash and Howard Schwartz, Assistants Corporation Counsel, D.C.

Opinion by Lorilyn E. Simkins, Chief Administrative Judge, with Jonathan D. Zischkau and Matthew S. Watson, Administrative Judges, concurring.

OPINION

Health Systems Design (HSD), a Perot Systems company, filed the subject protest alleging that the District improperly rejected its bid because it failed to provide firm, fixed prices for all items of work. According to HSD, based on discussions with the contract personnel for the Commission on Mental Health Services, it believed that it would be allowed to bid custom development of certain interfaces, rather than firm, fixed prices. We find that the Contracting Officer properly rejected HSD's proposal as non-responsive for failure to provide firm, fixed prices for all items of work as required by the solicitation. The protest is denied.

BACKGROUND

On December 7, 2000, the District issued in the open market Request for Proposals ("RFP") RM-01-NS-0073-LR, seeking a turnkey information system for the design, implementation, training, and ongoing support for a Contract Management System for the Commission on Mental Health Services ("CMHS"). (Exhibit 1). The RFP informed offerors that CMHS required commercial information technology equipment, materials and support services to develop, install, configure, test and implement a provider contract management and claims submissions, adjudication, and payment system. The RFP also required offerors to design a system capable of providing timely and accurate medicaid eligibility and benefits determinations, comprehensive decision support for operational and administrative analysis, provider certification, customer service functions, and management and oversight of accounting processes and reporting for CMHS. (Exhibit 1). As a result of questions raised during the December 20, 2000, pre-proposal conference, the District issued Amendment No. 1 consisting of answers to 31 questions which had been asked. None of the questions or answers relate to conversion of the contract from a fixed price contract to another contract type. Proposals were due on January 8, 2001.

The RFP contains several references to the fact that the District was seeking firm, fixed prices. Section B1.4 of the RFP required offerors to submit fixed prices for 19 line items of specific supplies and services in conformance with the terms and conditions of the RFP. Section C.4 of the solicitation, Scope

of Work, contemplates a fixed price contract. Section L.17 of the solicitation contemplates the award of "a firm fixed-price contract ... with a cost reimbursable portion for task orders specifying enhancements, maintenance, and modifications."¹ Finally, in section M, Price Criteria, offerors are informed that the offeror with the lowest firm, fixed-price will receive the maximum 15 points. (Exhibit 1).

On January 8, 2001, the following five offerors submitted proposals: McKesson/HBOC; HSE; CMHC Systems, Inc.; Anasazi Software; and InfoMc, Inc. (Exhibit 3). The Technical Evaluation Panel ("TEP") completed its initial review on January 16, 2001. (Exhibit 3). On January 23, 2001, the Contracting Officer signed a "Determination of Competitive Range" (Exhibit 4), and on that date also informed McKesson/HBOC and Anasazi Software that their proposals were technically unacceptable and outside the competitive range. (Exhibit 5). On January 30, 2001, the TEP prepared a proposed price analysis of the remaining three offerors. (Exhibit 6). The TEP noted that the HSD lacked price quotes for Custom Software, Individual Recovery Plan, and Medicaid Billing and FFP Process. (Exhibit 6).

By letter dated February 8, 2001, the Contracting Officer informed the three remaining offerors, including HSD that their proposals had been determined to be technically acceptable, but that several areas of their proposals required clarification and correction of deficiencies. (Exhibit 8). An enclosure to the letter sent to HSD asked it to provide the cost of line items that did not contain specific prices. By letter dated February 19, 2001, HSD responded to the request for specific costs by stating that it could not "commit to a cost for developing interfaces without gaining more specific information." HSD provided a cost range of \$10,000 to \$30,000 for developing each interface, with a monthly support fee of approximately \$400. HSD stated that it could "bid an exact price for interfaces after further due diligence." On February 22, 2001, telephonic negotiations were held between CMHS and HSD. The Contract Specialist made handwritten notes on the last page of HSD's February 19 letter apparently during the telephonic negotiations. Her notes state: "BAFO must have prices listed--will not accept price modification after contract award." (Exhibit 8).

By letter dated February 23, 2001, the Contracting Officer requested Best and Final Offers ("BAFOs") from all three offerors by March 2, 2001. (Exhibit 9). HSD submitted its BAFO on March 2, 2001, without specific prices for several line items. The BAFO also states for each of those items which HSD did not offer specific prices: "This cost will be estimated upon completion of a Project Definition Assessment." (Exhibit 11).

By memorandum dated April 2, 2001, the Contract Specialist informed the Contracting Officer of the results of the BAFOs. Among the three offers, HSD's proposal received the highest technical and cost

¹The District asserts that references in § L.17 to cost reimbursement refers only to change orders and modifications and is not relevant to the fixed price requirements for each line item. The protester did not dispute the District's interpretation.

scores.² (Exhibit 12). A tentative offer was given to HSD on April 12, 2001, pending the submission of additional information to clarify the BAFO. However, the Contract Specialist in a memorandum for the record, dated April 30, 2001, noted that the offer still failed to provide specific prices on two line items which HSD stated it would not calculate until after contract award. (Exhibit 13 and 15).

On May 1, 2001, the Contracting Officer and Contract Specialist informed HSD during a telephone call that the District could not lawfully enter into a contract with HSD because of the lack of a fixed price offer. (Exhibit 15). On May 3, 2001, the Contracting Officer and Martha Knisley, Director of the Department of Mental Health, signed a "Determination and Findings for Rejection of Individual Bid" rejecting the HSD proposal for incomplete pricing. (Exhibit 16).

HDS filed its protest with the Board on May 15, 2001. On May 25, 2001, the District filed its "Determination and Finding to Proceed with Contract Award After Filing of a Protest by Health Systems Design." On June 5, 2001, the District filed its Agency Report, and on June 11, 2001 filed a Supplement to its Agency Report. HSD failed to respond to any of the District's filings.

DISCUSSION

HSD asserts that based on conversations with District officials it understood that it would be permitted to bid custom development of interfaces on a time and materials basis after the award of the contract, as opposed to a firm fixed price as required by the RFP. HSD also asserts that it provided all written pricing information regarding custom development of interfaces on a fixed cost of resources plus material basis, and described that it would need to complete a project assessment before a fixed cost could be submitted.

HSD allegation that the contracting staff orally authorized it to provide specific pricing for certain items after contract award, thereby changing the terms of the RFP, is contradicted by several documents in the records. (See Exhibits 8, 13, 14, 15, and 16). Each of those documents refers to the Contracting Officer or Contract Specialist informing HSD that its offer would be rejected if it made an offer without firm fixed prices for all line items, and demonstrates the District's repeated attempts to get HSD to provide pricing information. Even without the substantial amount of documentary evidence contradicting HSD's assertion, the Board would still find HSD's position to be without merit, because the RFP requires that all substantive changes to its terms be made in writing. Section L.4, entitled, "Explanation to Prospective Offerors" states:

Any substantive information given to a prospective offeror concerning a solicitation will be furnished promptly to all prospective Offerors as an amendment to the solicitation. Oral

²It is unclear how the TEP arrived at a total cost for HSD's proposal since several line items were not bid.

explanations or instructions given before the award of the contract will not be binding.

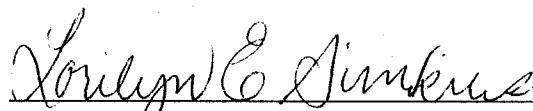
(Exhibit 1).

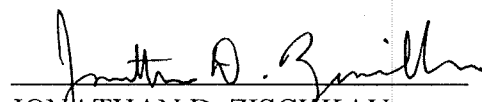
The Contracting Officer properly rejected HSD's offer as non-responsive. To be responsive, an offer, as submitted, must unequivocally promise to provide the requested items and meet the material specifications without varying from the terms and conditions of the solicitation. An offeror who limits the firm's contractual obligations or does not offer to perform at a firm, fixed price where a firm-fixed price contract is contemplated must be rejected as non-responsive. *Turbine Engine Servs.-- Recon.*, 64 Comp. Gen. 639 (1985), 85-1 CPD ¶ 721. We find that HDS's failure to offer firm, fixed prices in accordance with the terms of the RFP rendered its offer non-responsive.


Accordingly, the protest is **DENIED**.

SO ORDERED.

DATE: July 20, 2001


LORILYNE E. SIMKINS
Chief Administrative Judge


JONATHAN D. ZISCHKAU
Administrative Judge


MATTHEW S. WATSON
Administrative Judge