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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Battelle Memorial Institute

File: B-299533

Date: May 14, 2007

Richard B. Oliver, Esq., and David J. Ginsberg, Esq., McKenna Long & Aldridge LLP, for the protester.

Scott C. Briles, Esq., and Elise Harris, Esq., Department of Health & Human Services, for the agency.

Sharon L. Larkin, Esq., Guy. R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's decision to exclude protester's proposal from competition for failing to include option year pricing was reasonable, where the solicitation required that proposals contain this pricing and provided for award without discussions; agency was not required to allow protester to correct mistake because, although the omission was evident on the face of the proposal, the protester's intended pricing for the option years was not apparent.

DECISION

Battelle Memorial Institute protests the exclusion of its proposal from the competition under request for proposal (RFP) No. 2006-N-08556, issued by the Department of Health and Human Services (HHS) for comprehensive technical, scientific, research, and public health support for the National Center on Birth Defects and Developmental Disabilities. Battelle contends that the agency improperly rejected its proposal for omitting option year pricing and that the agency should have, instead, allowed the firm to correct the omission.

We deny the protest.

The RFP provided for either a single award or multiple awards of fixed-price indefinite-delivery/indefinite-quantity (ID/IQ) contracts with cost-plus-fixed-fee task orders. RFP at 67-68. Each ID/IQ contract award was to be for a 12-month base period with nine 1-year options, and the maximum value for each awarded contract was stated to be \$92 million. *Id.* at 2-3.

The RFP required offerors to provide two technical proposals: one was to address the RFP, and the other was in response to a “request for task order proposal” (RFTP) that was attached to the solicitation. Id. at 70-72; RFTP at 1. In addition to the technical proposals, offerors were required to submit a “business proposal,” that is, a cost proposal, based on the RFTP. This proposal was to be “supported by detailed cost data” and was to include, among other things, the “total proposed amount of the RFTP, including all phases, options or segments.” RFP at 66. The RFTP included a discussion of the base and option period requirements and required that offerors “identify each labor category, labor hours by category, indirect cost rates and respective allocation bases, other direct costs including travel costs for each of the performance periods as well as a summary for all performance periods,” and to provide a “full budget justification” for costs including cost differences from period to period.” Id., RFTP at 1. The RFP also required that “the estimated cost of each phase, option or segment of the offered work for the RFTP shall be itemized.” RFP at 66.

The RFP contemplated a “two-step” evaluation process. In the first step, the agency was to evaluate technical proposals for the RFP (not the RFTP) and “[a]s a result of the RFP technical proposal evaluation, a competitive range will be established.” In the second step, the agency was to evaluate RFTP proposals and cost proposals and make award of one or more ID/IQ contracts and one task order award. Id. at 73. The RFP stated that the government intended to make award without discussions, but also that the government reserved the right to conduct discussions with those offerors in the competitive range “if the Contracting Officer later determines them to be necessary.” Id. at 63, 73.

Battelle and eight other offerors submitted technical and business proposals by the November 29, 2006 closing date. Battelle’s business proposal omitted the pricing for all of the option years.¹ In early December, the contracting officer reviewed proposals for compliance with the RFP and excluded Battelle’s proposal from further consideration “due to noncompliance with the requirements of the RFP,” specifically the requirement to itemize the costs for the option years.² Contracting Officer’s Statement at 2; Agency Report, Tab B, Letter from HHS to Battelle (Jan. 9, 2007), at 1.

After receiving notice from the agency that its proposal was excluded from the competition, Battelle filed a timely agency-level protest. Battelle argued that its omission was a “mistake,” which Federal Acquisition Regulation (FAR) permits to be

¹ Battelle’s proposal references “inflation adjustment[s],” but provided no details that would allow the agency to calculate Battelle’s option year pricing.

² Two other offerors’ proposals were also excluded for failing to comply with RFP requirements.

corrected at any time up until award, and that the agency should have brought this mistake to Battelle's attention and allowed Battelle to make the correction. Battelle attached to its agency-level protest 24 pages of detailed spreadsheets itemizing the costs for the 9 option years, along with additional proposal pages that modified the narrative portion of the business proposal to include a discussion of the option years. Agency Report, Tab C, Agency-Level Protest, attach. D. HHS denied the agency-level protest, and Battelle protested to our Office.³

Battelle argues that the agency improperly rejected its initial proposal based on Battelle's omission of the option year pricing. Battelle contends that the agency should have suspected that Battelle had made a "mistake or clerical error" in its proposal and had a "duty to verify" Battelle's proposal and conduct "clarifications" to allow Battelle to correct the omission. Protest at 3-4, 6-8. In support of its argument, Battelle cites FAR § 15.306(a)(2), which permits clarifications to "resolve minor or clerical errors," and FAR § 15.306(b)(3)(i), which permits communications before the establishment of the competitive range to address proposal ambiguities such as "errors, omissions, or mistakes."

An offeror bears the burden of submitting and adequately written proposal that contains all of the information required under a solicitation, Sam Facility Mgmt, Inc., B-292237, July 22, 2003, 2003 CPD ¶ 147 at 5, and an agency may reject a proposal that omits required pricing. Joint Venture Penaullie Italia S.p.A; Cofathec S.p.A; SEB.CO S.a.s; CO.PEL.S.a.s., B-298865, B-298865.2, Jan. 3, 2007, 2007 CPD ¶ 7 at 6.⁴ Although, in an appropriate case, an agency may allow an offeror to correct a mistake or clerical error in a cost or price proposal through clarifications (as opposed to discussions), when it does so, both the existence of the mistake or error and the amount intended by the offeror must be apparent from the face of the proposal. Id. at 8. Here, although the existence of Battelle's error was clear from the face of its proposal, it was not obvious what pricing Battelle intended to propose for the missing option years. Although, as Battelle points out, the initial proposal referred to "inflation adjustment[s]" in the narrative portion of the proposal, these vague references do not explain Battelle's intended pricing for the option years. That is, Battelle's option year pricing, as reflected in the 24 pages of pricing spreadsheets and additional narrative that Battelle provided to the agency in its agency protest, could not be gleaned from Battelle's references to inflation adjustments in the initial proposal submission, and did not constitute "minor or clerical errors" as contemplated by the FAR. Thus, we find that the omission of Battelle's option year pricing could not be corrected through clarification or

³ The agency advises that it has not established a competitive range or held discussions with any of the offerors.

⁴ Battelle's attempts to distinguish Joint Venture Penaullie, supra, are unpersuasive.

verification. See University of Dayton Research Inst., B-296946.6, June 15, 2006, 2006 CPD ¶ 102 at 8.

Regarding Battelle's argument that "errors, omissions, or mistakes" can be corrected by communications before the establishment of the competitive range, FAR § 15.306(b)(2) specifically provides that communications under this section "shall not be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal." See also FAR § 15.306(b)(3) ("communications shall not provide an opportunity for the offeror to revise its proposal"). Again, we agree with the agency that Battelle's omission of the option year pricing is material, given the RFP's requirements to provide detailed option year pricing for evaluation, and any attempt to cure this omission would necessitate submission of a revised proposal and would constitute discussions.⁵ See Joint Venture Penaullie, supra, at 8.

Finally, Battelle contends that the agency's decision to eliminate its proposal from further competition was inconsistent with the RFP. According to Battelle, since the RFP provides that the competitive range will be established based only on the evaluation of technical proposals, see RFP at 73, the elimination of Battelle's proposal based on a cost issue was premature and its pricing omissions should have been addressed after establishment of the competitive range and through discussions. However, unless the agency decides to establish a competitive range, the RFP provision referenced by Battelle does not apply, and it does not require the agency to conduct discussions. As noted, the agency has not yet decided to establish a competitive range and to conduct discussions. Rather, the agency rejected Battelle's proposal (along with two others), after inspecting proposals for completeness, for not containing all of the information required by the RFP, a decision which, as discussed above, was reasonable. Consistent with the RFP, if the agency makes award based on initial proposals, then Battelle's proposal cannot be considered for award. If, on the other hand, the agency decides to conduct discussions, we expect that the agency then will have to decide whether or not to include Battelle's proposal in the competitive range. See FAR § 15.306(c)(1).

The protest is denied.

Gary L. Kepplinger
General Counsel

⁵ Battelle also contends that it should have been permitted to correct its mistake through a "proposal modification," which FAR § 15.001 defines as "a change made to a proposal . . . to correct a mistake at any time before award." As noted above, we find that the exchanges that would occur here to allow the correction of Battelle's mistake would constitute discussions, and such exchanges are governed by FAR § 15.306.