



United States General Accounting Office
Washington, DC 20548

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: PeopleSoft USA, Inc.

File: B-283497

Date: November 30, 1999

Alan M. Grayson, Esq., Ira E. Hoffman, Esq., and Brian T. Scher, Esq., Grayson & Associates, for the protester.

David S. Cohen, Esq., and John J. O'Brien, Esq., Cohen Mohr, for SAP Public Sector and Education, Inc., an intervenor.

Ruth L. Ramsey, Esq., Peace Corps, for the agency.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency met its obligation to conduct meaningful discussions where record shows that it put protester on notice of its principal concern with the protester's proposal, namely, the fact that certain of the functionality required by the solicitation was not yet available, since the protester's offered software had not yet been released.

DECISION

PeopleSoft USA, Inc. protests the elimination of its proposal from the competitive range under letter of interest (LOI) No. PCORPS-99-R-1023, issued by the Peace Corps for financial management software. PeopleSoft asserts that the agency improperly failed to conduct meaningful discussions with it before eliminating its proposal from further consideration.¹

¹ PeopleSoft's initial protest also alleged that the agency had improperly evaluated proposals using an unstated evaluation criterion, and that one of the other competitors in the acquisition had an improper organizational conflict of interest; the protester expressly withdrew these bases for protest in its comments responding to the agency report.

We deny the protest.

The LOI sought information for purposes of issuing a master delivery order under one of the eligible vendors' Financial Management Systems Software multiple award schedule (FMSS MAS) contracts to provide financial management software. The agency's requirements were spelled out in great detail in section J of the LOI, which included extensive narrative descriptions of some 580 functional and technical requirements.² The solicitation further provided that the functional and technical considerations were significantly more important than price. LOI § M.1. Each of the 580 functional and technical requirements were designated as either "mandatory," "critical" or "desirable," LOI § J, at v, and these requirements were specified as either Peace Corps specific, or as arising from Joint Financial Management Improvement Program (JFMIP) requirements.³ LOI § J.

In response to the solicitation, the Peace Corps received several offers, including the protester's. The evaluators rated all proposals except the protester's as "more than satisfactory," and rated the protester's proposal "satisfactory." Agency Report at 187.⁴ PeopleSoft offered an as yet unreleased version of its software (version 7.5) and supported its proposal with literature relating to the previous version (version 7.0) as well as "pre release notices" prepared for version 7.5. Protest at 4 & n.3. PeopleSoft further represented that its version 7.5 software was scheduled for release in the summer 1999 timeframe. PeopleSoft Proposal, Pre-release Notes, at 2. The evaluators specifically found that, to the extent that PeopleSoft was proposing to meet the federal functionality called for under the solicitation, it had done so only by offering the version 7.5 of its software that had not yet been released. Agency Report at 195. The evaluators also were concerned that PeopleSoft's proposed software used "non-federal" terminology (essentially because it had been developed for non-federal users), and that this problem required satisfactory resolution in order to meet the agency's needs. *Id.* at 157. Finally, the evaluators were concerned about an exception in PeopleSoft's proposal, *id.* at 125, which stated:

² When acquiring financial management software, executive agencies must generally meet their requirements through the FMSS MAS program. Federal Acquisition Regulation (FAR) subpart 8.9; see also OMB Circular No. A-127, revised July 23, 1993.

³ The JFMIP is a program designed to establish uniformity in financial management software among federal agencies.

⁴ The agency uses a numbering system to index its report; all of the pages in the report documents except the LOI and the protester's proposal are numbered sequentially using this system, which we use in this decision.

Future Functionality

Where PeopleSoft has described features or functionality that it anticipates will be included in future releases of the applications, PeopleSoft is not making a contractual offer to provide the features or functionality. Descriptions of future features or functionality and estimates of their availability represent PeopleSoft's good faith estimates. PeopleSoft does not make contractual commitments regarding timing or delivery of features or functionality that are not currently available. PeopleSoft ascribes no value to such features or functionality, as it is not committing to delivering them. The Peace Corps' evaluators should understand that their selection of PeopleSoft as their software vendor should rely on the functionality provided today in the software.

PeopleSoft Initial Proposal at 10-1.

The agency then engaged in discussions with PeopleSoft and the other offerors. As for the protester, the agency's discussion questions focused on the issues identified above, namely, the progress PeopleSoft was making in terms of releasing version 7.5 of its software (as well as how the firm would handle bugs in the new release) and the firm's proposed solution to the lack of federal terminology. Agency Report at 157. The firm also was asked about the exception quoted above, and specifically requested to provide adequate assurances that the functionality promised with the release of version 7.5 of its software would be available by the time specified in the solicitation.⁵ *Id.* at 125.

After receiving responses to the discussion questions, the evaluators concluded that PeopleSoft did not have a reasonable chance of receiving award, primarily because of the current lack of functionality noted initially, coupled with the firm's reliance on its pre-release notices to show that it met the solicitation's requirements in this respect. Agency Report at 202-03. Accordingly, PeopleSoft's proposal was eliminated from the competitive range. In this respect, the agency advised PeopleSoft that its proposal had been eliminated from further consideration because it was judged to be relatively weak in the functional areas, particularly the general

⁵ PeopleSoft was also asked numerous other questions that are not germane to the issues in this protest. For example, it was asked to explain its proposed solution for integrating various third-party software into its proposed "suite" of programs, and was also asked several questions relating to its proposed staffing.

ledger, funds management, cash management and payment management functions specified in the solicitation.⁶

PeopleSoft maintains that the agency improperly failed to engage in meaningful discussions. PeopleSoft principally argues that the agency failed to identify those areas where its functionality was considered weak, specifically, the general ledger, funds management, cash management and payment management functions. PeopleSoft asserts that, if given an opportunity to respond to the agency's specific concerns, it could have resolved the alleged weaknesses.

When discussions are conducted with offerors, the discussions must be meaningful; that is, agencies are required to lead offerors generally into those areas of their proposals requiring amplification or revision. Du & Assocs., Inc., B-280283.3, Dec. 22, 1998, 98-2 CPD ¶ 156 at 7-8.

We find that the Peace Corps met this standard. While PeopleSoft frames its argument in terms of the specific functional areas identified in the agency's notice of elimination, as discussed, the agency's overriding concern relating to the PeopleSoft proposal was the lack of existing functionality generally, and the firm's express refusal to obligate itself contractually to provide software that met all of the solicitation's specifications. In this regard, the record shows that the reasons for the evaluators' concerns in the specific areas cited by PeopleSoft were directly related to the fact that those functions were incorporated in as yet unreleased software. For example, in the general ledger evaluation, the concern was stated as follows:

PeopleSoft's CURRENT documentation shows little Federal Government general ledger management capabilities. This functionality is in a new release and will be ready for Peace Corps at the time of implementation.

Agency Report at 213. Similarly, the initial evaluation materials state that "[f]unctionality not there yet for federal financial operations," and note further that "much depends on software promised but not yet released." Id. at 195. In addition, as noted above, the evaluators had a related concern about the functionality of PeopleSoft's proposed software in that it did not employ federal terminology as required by the solicitation.

Although the agency did not specifically identify all of the functional areas affected by the prerelease status of PeopleSoft's software, it clearly expressed its principal concern by means of questions presented on two different occasions. First, the

⁶ The agency's initial letter also represented that PeopleSoft had been found technically unacceptable, a representation the agency states--and the record shows--was incorrect.

agency provided PeopleSoft a list of clarification questions. Among other matters, the Peace Corps raised the following concern: “You have responded to numerous requirements . . . that certain functionality will be available in [PeopleSoft’s] next release due out in the ‘summer of 1999.’ Is this new version on schedule and what is the current date of release.” Agency Report at 125. The Peace Corps followed up its initial discussion questions with a list of discussion topics to be addressed during PeopleSoft’s oral discussions meeting. Included in that list were three relevant questions: (1) “We would like to know more about how your federal release is progressing”; (2) “What is your procedure for handling bugs in new releases?”; and (3) “There is concern that the terminology used is not federal. A crosswalk will not suffice.” Id. at 157. Related to these concerns was the Peace Corps’s reservation about the “exception” taken by PeopleSoft in its initial proposal quoted above; in essence, PeopleSoft had declined to assume any contractual liability for its proposed--but as yet unavailable--functionality. The agency specifically queried PeopleSoft about this exception, stating:

[I]n regard to this new release, in the Exceptions section of your proposal, you have stated in 10.2 that the functionality that is anticipated may or may not be available and that the Peace Corps evaluations should rely on the functionality provided today and not in the future release. An equitable Peace Corps evaluation is dependent upon the functionality proposed. Can you provide us further assurance that the functionality [your] proposal promises with this new version will be provided by initial production?⁷

Id. at 125.⁸

⁷ We note that the wording of this question, which asks PeopleSoft to assure the Peace Corps that its new release will be ‘provided by initial production’ essentially disproves an assertion by PeopleSoft that the agency required the revised functionality as of the time of discussions rather than at the time for award. We point out as well that there is no evidence in the evaluation record to show that PeopleSoft’s proposal was downgraded because of the timing of its new release.

⁸ In its response to the discussion question, PeopleSoft continued to decline to assure the agency that its proposed software would meet all functionality identified in the solicitation. PeopleSoft revised the exception language in its initial proposal, but still offered to assure the functionality of its software only as it related to the “mandatory” and “critical” requirements outlined in the solicitation; PeopleSoft declined to assure the functionality of its software as it related to the numerous “desirable” requirements stated in the solicitation, whereas the other firms took no such exception. PeopleSoft Revised Proposal at 10-1.

Since these questions all related directly to the agency's concern that certain of the required functionality was not yet available, they clearly were sufficient to put the protester on notice of the agency's reservations about its proposal. It follows that discussions with the firm were adequate.

The protest is denied.

Comptroller General
of the United States