

Roberts
PK 2

21658

118237

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-205781

DATE: April 26, 1982

MATTER OF: Spectrum Leasing Corporation

DIGEST:

1. Elimination of a proposal from the competitive range, thereby leaving a competitive range of one, is proper where the record shows that the agency reasonably found technical and informational deficiencies in the proposal which were so material that major revisions and additions to the proposal would have been required to make it acceptable.
2. A protester's mere disagreement with the agency's technical evaluation of its proposal does not meet the protester's burden of showing the evaluation is unreasonable.

Spectrum Leasing Corporation protests its exclusion from the competitive range under Department of Health and Human Services (HHS) request for proposals (RFP) No. HCFA-81-BSS-56/BI for programmable magnetic tape terminals. We deny the protest.

Spectrum contends that it submitted a proposal which offered technically responsive hardware and operating systems software. It concedes that it omitted responses to certain sections of the RFP, but argues that these proposal deficiencies could have been remedied during negotiations.

HHS reports that Spectrum's proposal was technically as well as informationally deficient in many areas which, when viewed in their totality, made it clear that Spectrum's proposal was so defective as to make discussions fruitless. In this regard, HHS notes that (1) Spectrum did not respond to four sections of the RFP, (2) Spectrum did not address 92, or approximately 40 percent, of the mandatory requirements, and (3) responses to 41 of the mandatory requirements that Spectrum did address in its proposal were technically inadequate.

Due to the technical and informational defects in Spectrum's proposal, the HHS evaluation board determined that a full and thorough technical evaluation of the proposal was not possible without a "major rewrite" of the proposal. HHS therefore found Spectrum's proposal unacceptable and eliminated it from further consideration.

A proposal properly may be excluded from the competitive range for deficiencies which are so material that major revisions and additions would be required to make it acceptable; there is no requirement that an agency permit an offeror to revise an initial proposal when such a revision would be tantamount to the submission of another proposal. Decilog, B-198614, September 3, 1980, 80-2 CPD 169. In determining whether deficiencies in a submitted proposal are of such nature that an agency, within the reasonable exercise of its discretion, may exclude that proposal from the competitive range, our Office will consider the following factors: (1) how definitely the RFP called for the detailed information, the omission of which was relied on by the agency for excluding a proposal from the competitive range, (2) the nature of the deficiencies, that is, whether they tended to show that the offeror did not understand what it was required to do under the contract, or whether they merely made the proposal inferior but not unacceptable, (3) whether deficiencies were so extensive that the offeror essentially would have to rewrite its proposal to correct them, (4) whether only one offeror was found to be in the competitive range, and (5) whether the deficient proposal represented a significant cost savings. PRC Computer Center, Inc., et al., 55 Comp. Gen. 60 (1975), 75-2 CPD 35.

Applying these factors to the instant evaluation of Spectrum's proposal, we believe the agency decision to exclude Spectrum from the competitive range was reasonable. In this respect, the determination of whether a proposal is in the competitive range, particularly with respect to technical considerations, is primarily a matter for the contracting officials. See 48 Comp. Gen. 314 (1968). Therefore, and since it is not our function to evaluate proposals anew, we will not disturb a competitive range determination absent a showing that it lacked a reasonable basis. METIS Corporation, 54 Comp. Gen. 612 (1975), 75-1 CPD 44; 48 Comp. Gen. 314, supra.

The RFP expressly placed potential offerors on notice that omission of satisfactory responses involving mandatory requirements would render a proposal technically unacceptable.

The RFP's "Evaluation of Proposals" clause is clear in this regard. Paragraph IV,3, states:

"Proposals to be acceptable and eligible for evaluation must be prepared in accordance with and comply to the instructions given in * * * the Solicitation Document and must meet all mandatory requirements."

We believe that the RFP thus clearly informed offerors that an evaluation penalty would be assessed for incomplete responses to the mandatory requirements. Under such circumstances, we have held that penalizing an offeror for gross informational deficiencies is reasonable, even if the offeror thereby is eliminated from the competitive range. PRC Computer Center, Inc., et al., supra. Moreover, we think that HHS reasonably considered Spectrum's failure to provide a large quantity of mandatory information as an indication of a lack of understanding by Spectrum of the work to be performed. In this regard, HHS specifically notes that two major areas of the RFP involving software development and maintenance support were totally ignored by Spectrum.

HHS also found the areas covered by Spectrum's proposal to be poor in technical quality and content. The HHS evaluation board concluded:

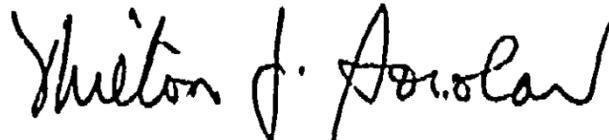
"For those mandatory requirements which the offeror did address, the technical proposal contains a brief statement of response and a reference to the technical literature. The Board found that in some cases the referenced technical literature did not contain appropriate information or did not provide any information at all pertaining to the mandatory requirements. In a number of cases, the offeror's brief statement of response did not specifically state compliance, noncompliance or exception taken as required by the RFP."

Spectrum's only rebuttal to HHS's assessment of the overall poor technical quality of its offer is a general statement that although through "administrative error" it submitted an incomplete proposal, what it did submit was "technically responsive," and that it therefore disagrees with HHS's technical evaluation. However, because contracting officials are given a considerable range of judgment and discretion in carrying out a technical evaluation, the protester's mere disagreement with the agency's evaluation does not meet the protester's

burden of showing that the evaluation was unreasonable, Virginia State University, B-202502, August 12, 1981, 81-2 CPD 129. Moreover, based on our review of Spectrum's proposal and the HHS evaluation comments on it, we believe HHS's determination to eliminate Spectrum's proposal from the competitive range had a reasonable basis.

With the elimination of Spectrum, only one firm, Sigma Data Computing Corporation, remained in the competitive range. In such circumstances, we closely scrutinize contracting agency determinations and consider whether there is a close question of acceptability; whether the excluded offer presents an opportunity for significant cost savings; whether inadequacies in the solicitation may have contributed to the technical deficiencies of the rejected proposal; and whether any informational deficiencies reasonably could be corrected by relatively limited discussions. Comten-Comress, B-183379, June 30, 1975, 75-1 CPD 400. As discussed above, there was no close question as to the technical acceptability of Spectrum's proposal; there were no RFP deficiencies which contributed to the technical inadequacies of Spectrum's proposal; and informational deficiencies in Spectrum's proposal could not be easily or quickly corrected. With regard to cost, Sigma Data's initial proposal was approximately 33 percent less than Spectrum's. Therefore, Spectrum's proposal offered no opportunity for cost savings. Consequently, we are unable to state from our review that any condition existed so as to vitiate HHS's determination which effectively limited the competitive range to one firm.

The protest is denied.

for 
Comptroller General
of the United States