

DECISION

118565
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-205025

DATE: June 2, 1982

MATTER OF: A. T. Kearney, Inc.

DIGEST:

1. While agencies are required to identify the major evaluation factors applicable to a procurement, they need not explicitly identify the various aspects of each which must be taken into account. All that is required is that those aspects not identified be logically and reasonably related to the stated evaluation factors. GAO finds that level of contract effort evaluation factor was reasonably included in solicitation's specified prime evaluation factor of offeror proposed methodology.
2. A determination that proposal is in the competitive range for discussion does not necessarily mean that the proposal is acceptable, but may indicate only that there is a real possibility that it can be improved without major revisions to the point where it becomes most acceptable. The record shows that the agency never considered the protester's initial proposal acceptable because of lowness of the protester's proposed level of effort. Moreover, although the protester increased effort slightly in its best and final offer, effort was still significantly below solicitation's estimate.
3. Protester's claim for proposal preparation costs is denied because there is no evidence in the record supporting a finding of arbitrary action by the agency with respect to the protester's proposal.

A. T. Kearney, Inc. (Kearney), protests the award of a contract to Economic Consulting Services, Inc. (ECS), under request for proposals (RFP) No. SA-RSB-81-0033 issued by the Department of Commerce. The RFP called for a fixed-price, level-of-effort contract for the preparation of reports and briefings for Commerce on the export development potential of certain selected United States industries.

Kearney raises the following grounds of protest:

(1) the evaluation and ranking of proposals was made on a basis that was inconsistent with the evaluation factors set forth in the RFP; and

(2) the contract was awarded to ECS at a substantially higher price than Kearney's despite the fact that in accordance with the RFP's evaluation scheme Kearney had submitted the lowest offer at a firm, fixed price.

In addition, Kearney contends that, because Commerce has delayed in taking effective action on the protest, the agency has used the information, data, and organization in Kearney's proposal as though it were the agency's own property. Consequently, Kearney argues that Commerce should be required to purchase Kearney's proposal and that the purchase price be Kearney's cost of preparation and negotiation of the proposal.

For the reasons set forth below, we deny the protest.

Background

Seven proposals were received by Commerce in response to the RFP. After initial technical evaluations, five proposals, including Kearney's, were determined to be conditionally acceptable because they required further clarification and negotiation. Written discussions were then conducted with the five offerors. Following receipt of best and final offers, Kearney's proposal was found to be technically unacceptable because of the company's failure to sufficiently upgrade its proposed level of effort as requested by Commerce during discussions. At that time, only two

firms remained technically acceptable and still within the competitive range. Of these two firms, ECS was the lowest priced and, because the firms were essentially equal technically, ECS was awarded the contract.

Upon receiving written notification from Commerce that it was technically unacceptable, Kearney filed a protest with this Office.

Evaluation Factors

Kearney contends that level of effort which Commerce used to find its proposal technically unacceptable should not have been an evaluation criterion. Kearney points out that level of effort was not specifically stated in the RFP as an evaluation factor.

Commerce states that an offeror's proposed level of effort was crucial to its determination whether the offeror could reasonably accomplish the contract work. Commerce further emphasizes that an offeror's understanding of the breadth and complexity of the RFP's requirements was also an important concern. Commerce notes that, in written discussions with Kearney and again in its request for best and final offers, it had cautioned Kearney regarding the amount of effort the company proposed to use to complete the RFP's export development project.

We disagree with Kearney's contention that level of effort should not have been an evaluation factor. While agencies are required to identify the major evaluation factors applicable to a procurement, they need not explicitly identify the various aspects of each which might be taken into account. All that is required is that those aspects not identified be logically and reasonably related to or encompassed by the stated evaluation factors. Buffalo Organization for Social and Technological Innovation, Inc., B-196279, February 7, 1980, 80-1 CPD 107.

The RFP listed the following prime technical evaluation factors for determining the competitive range in descending order of importance:

1. Methodology (as reflected in proposal's detailed specifications based on the statement of work).

2. Qualifications of offeror's personnel (as reflected in proposal's detailed description of qualifications of professional and clerical personnel to be assigned to the project).

3. Qualifications of offeror as an organization (as reflected in the proposal's detailed description of offeror's corporate capabilities). We find that level of effort was reasonably included within the offeror's proposed methodology for accomplishing the work. Under the evaluation factor of methodology was approach to project management, method of analyzing an industry's potential for expanding exports and method for assessing an industry's needs for new export programs. Moreover, we note that Kearney admits that level of effort was "technically significant" to the evaluation of an offeror's methodology at least insofar as it involved types and quantities of export potential surveys and interviews.

Contract Award

Kearney contends that Commerce's actions in conducting written discussions with it and in requesting a best and final offer from it clearly indicated that Commerce had determined that Kearney had submitted a technically acceptable proposal. Kearney argues that technically unacceptable offerors could not properly have been included in the competitive range. According to Kearney, once its proposal was placed in the competitive range, it could no longer be found to be unacceptable.

As to the criteria for award to one of the technically acceptable offerors in the competitive range, Kearney asserts that the RFP made cost the most important evaluation criterion. In Kearney's opinion, this meant that the RFP envisioned a price competition among the technically acceptable offerors. Kearney goes on to argue that the only area under the RFP where an offeror could have eliminated costs and still have assumed an appropriate portion of the contract risk was either in profit or in level of effort. Kearney alleges that, because it felt so strongly that a low total price was all that was necessary to win the award, it increased its level of effort during discussions only in direct proportion to a decrease

in its proposed profit. Consequently, Kearney takes the position that it should have been awarded the contract since its price of \$105,000 was lower than ECS's price of \$145,000.

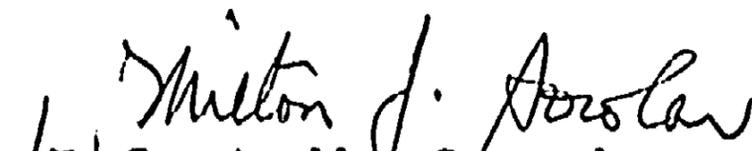
Commerce states that Kearney was technically acceptable subject to a demonstration by the company to Commerce's satisfaction that Kearney's proposed level of effort was appropriate for accomplishing the project. Commerce further states that, despite its best efforts to keep Kearney "viable" and in the competitive range, the company was "dropped" after the submission of best and final offers because the agency's technical evaluators found Kearney's proposed level of effort to be unacceptable.

A determination that a proposal is in the competitive range for purposes of discussion does not necessarily mean that the proposal is acceptable as initially submitted, but may indicate only that there is a real possibility that it can be improved without major revisions to the point where it becomes most acceptable. Proprietary Computer Systems, Inc., B-191731, September 20, 1978, 78-2, CPD 212. The record shows that Commerce never considered Kearney's initial proposal technically acceptable because of Kearney's proposed level of effort. The record further shows that, following discussions, Kearney had the lowest technical score of the five companies then in the competitive range. In its best and final offer, Kearney did increase its level of effort by 16 staff-days. However, in reviewing Kearney's best and final offer, Commerce's technical evaluators found that, even with the increase, Kearney's total of 10.3 staff-months fell far short of the 18 staff-months suggested in the RFP. Therefore, we conclude that, after reviewing Kearney's best and final offer, Commerce properly determined that it was technically unacceptable and, thus, no longer in the competitive range. In that regard, we have held that a proposal initially determined to be in the competitive range may be excluded from the competitive range later where it is found to be technically unacceptable after discussions. 52 Comp. Gen. 198 (1972).

Since the RFP provided that award would be made to the offeror whose proposal was technically acceptable and whose technical/cost relationship was most advantageous to the Government, it is clear that, once Kearney's offer was found technically unacceptable, Kearney was no longer in consideration for award. We note that Kearney argues that the RFP did allow offerors to "deviate" from the suggested level of effort of 18 staff-months. Nevertheless, while the RFP indicated that 18 staff-months was an estimate, not a firm figure, and that an offeror could depart from this figure as he believed appropriate for the work to be accomplished, we find that the degree to which Kearney departed from the the estimated level of effort reasonably led Commerce to determine that Kearney's level of effort was insufficient. In this regard, the record shows that Commerce's technical evaluators found that Kearney's proposal did not include personnel of unusually high industry expertise to compensate for the company's extremely low proposed level of effort.

Proposal Preparation Costs

Proposal preparation costs can be recovered only if the Government acts in an arbitrary and capricious manner with respect to a proposal. Spacesaver Systems, Inc., B-127174, August 25, 1980, 80-2 CPD 146. Since we find no evidence supporting a finding of arbitrary action on Commerce's part, we deny Kearney's claim for proposal preparation costs.

for 
Comptroller General
of the United States