

**DECISION**



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

**FILE:** B-207096.2

**DATE:** August 8, 1983

**MATTER OF:** Los Angeles Community College District

**DIGEST:**

1. Protest that agency failed to consider factors other than price in evaluating proposals for a fixed-price contract is denied, where the record shows that the agency did evaluate offerors for acceptability under each RFP evaluation factor and, in conformance with RFP selection criterion, awarded the contract to the technically acceptable offeror proposing the lowest firm fixed-price contract.
2. An agency need not analyze the realism of an offeror's expected costs in connection with a firm fixed-price contract where the prime concern is cost quantum.
3. In a negotiated procurement, a nonconforming initial proposal need not be rejected if it is reasonably susceptible to being made acceptable through negotiations. Such normal revisions as ensue thus are not considered late proposals or late modifications to proposals.

Los Angeles Community College District (LACCD) protests the award of a contract to Central Texas College (CTC) under request for proposals No. DABT03-82-R-3044 issued by the Department of the Army for various educational services at military installations throughout the Republic of Korea. LACCD alleges that the Army failed to consider factors other than price in evaluating proposals; that the Army failed to evaluate the realism of CTC's offered price; and that CTC's proposal was "nonresponsive." We deny the protest.

### BACKGROUND

LACCD and CTC were the only institutions that responded to the RFP. LACCD's initial proposed total price for the base and 2 option years (option prices were to be evaluated in selecting a contractor) was \$4,298,805.00. CTC's initial proposed total price was \$3,613,485.30.

The contracting officer forwarded both proposals to an evaluation board which then requested that the contracting officer obtain clarifications of certain items in both the LACCD and CTC proposals. After negotiations, the evaluation board found that both proposals were technically acceptable. The contracting officer then requested best and final offers, and LACCD lowered its total price to \$3,568,510.00, while CTC lowered its total price to \$3,479,463.30. The contracting officer awarded the contract to CTC.

### ISSUES

#### (1) Failure To Consider Factors Other Than Price

Section M of the solicitation stated that award would be based on the most advantageous offer, price and other factors considered, and set forth five criteria that would be used to determine the technical acceptability of proposals:

- a. the offeror's understanding, approach, methods and ability to satisfy all requirements of the solicitation;
- b. the ease by which servicemen could obtain a high school diploma;
- c. the offeror's past experience with similar programs on overseas military installations;
- d. the offeror's proposed manning tables, resumes, position descriptions, personnel recruitment and organizations; and
- e. the offeror's proposed implementation of a phase-in/phase-out schedule for all personnel and functions.

The evaluators judged proposals as either acceptable or unacceptable under each criterion, eventually finding both proposals to be fully acceptable.

LACCD alleges that the contracting officer improperly failed to consider the criteria listed above in making the award. The protester also complains that because no particular grading system was assigned to those criteria, other than acceptable/unacceptable, a technically superior proposal could not be found to be more advantageous than an inferior, albeit acceptable, proposal, as long as the inferior proposal was lower-priced. In this respect, LACCD suggests that the evaluation board actually found LACCD's proposal technically superior to that of CTC. We find no merit to the argument.

In reviewing protests against allegedly improper evaluations, we will not substitute our judgment for that of evaluation boards, which have wide discretion. Rather, we will examine the record to determine whether the evaluators' judgment was reasonable and in accord with listed criteria, and whether there were any violations of procurement statutes and regulations. Blurton, Banks and Associates, B-205865, August 10, 1982, 82-2 CPD 121.

Here, we see nothing to indicate that the evaluation board did not follow the evaluation criteria of section M of the solicitation. Rather, the fact is that both proposals were judged to be acceptable for each criterion. In any event, the record refutes LACCD's contention that the evaluation board found its proposal to be technically superior. The board merely stated that "[after clarifications], the evaluation committee found that both CTC and LACCD had submitted acceptable proposals," which supports the Army's position that both proposals were judged to be equally acceptable.

LACCD also urges that the five criteria of section M should have been graded in some fashion. The RFP, however, did not provide that offers would be evaluated for relative technical superiority, but only indicated, by simply establishing "price and other factors" as the selection criterion, that the contract would be awarded to the lowest-priced firm whose proposal was acceptable under the five evaluation factors. CEL-U-DEX Corporation, B-195012, February 7, 1980, 80-1 CPD 102.

(2) Failure To Consider Cost Realism

LACCD contends that in making its evaluation the Army did not follow paragraph 2 of section M of the solicitation which provides that "[c]ost realism will be an important factor in cost evaluation." LACCD argues that CTC proposed substantially less than its actual cost for the defensive driving program component of the solicitation, and that CTC's prices for the 2 option years, which are the same as the first year's price, indicate that its proposal was unrealistic as to anticipated cost-of-living increases. LACCD alleges that CTC in all probability will approach the Army for cost adjustments during the life of the contract.

There is no merit to LACCD's position. As the Army points out, the contract in issue was a fixed-price type, not a cost-reimbursement type, despite the use of the word "cost" in section M, which the Army admits was inappropriate. Cost realism bears little relationship to a fixed-price contract, where the prime concern is cost quantum (although in some instances an agency may seek to evaluate fixed-priced proposals in terms of cost realism in order to measure offeror understanding). Umpqua Research Company, B-199014, April 3, 1981, 81-1 CPD 254. As to LACCD's suggestion that CTC may request contract price adjustments after award, a firm fixed-price contract is not subject to adjustment based on the contractor's cost experience during performance, and thus places full responsibility, in terms of profits or losses for costs above or below the fixed price, directly upon the successful offeror. See National Veterans Law Center, 60 Comp. Gen. 223 (1981), 81-1 CPD 58. In any event, to the extent that LACCD implies that CTC attempted to "buy in" by submitting a below-cost proposal, we have held that a below-cost proposal provides no basis to challenge an award as long as the contracting officer finds the offeror "buying in" to be responsible, a finding made here. Fresh Flavor Meals, Inc., B-208965, October 4, 1982, 82-2 CPD 310.

(3) Allegation That CTC's Proposal Was Not "Responsive"

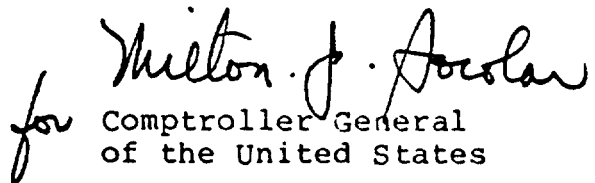
In general, the term "responsive," meaning a firm's expressed intent to meet the exact terms of the solicitation, is not applicable to a negotiated procurement. However, it may be used, as we feel LACCD intends here, to

indicate that certain solicitation terms and conditions are material and that a proposal that fails to conform to them may be considered unacceptable. See, e.g., Computer Machinery Company, 55 Comp. Gen. 1151 (1976), 76-1 CPD 358. Essentially, LACCD argues that the items of CTC's initial proposal that needed clarification went beyond matters of technical interpretation and were material to the "responsiveness" of the proposal itself. As a result, LACCD contends, CTC's responses, especially the addition of one Carnegie Unit to the proposed Graduate Equivalency Degree Program, constituted improper modifications of CTC's initial proposal after the due date for receipt of initial proposals. The allegation is without foundation.

Although wholesale modifications that essentially result in completely new proposals are prohibited, clarifications or normal revisions to proposals are not considered as late proposals or late modifications to proposals. RAM Enterprises, Inc., B-209455, June 13, 1983, 83-1 CPD 467. There is nothing improper in requesting clarification of an initial proposal where the desired information does not result in material changes to an offer. See Informatics General Corporation, B-210709, June 30, 1983, 83-1 CPD . . . . Moreover, in negotiated procurements a nonconforming initial proposal need not be rejected if it is reasonably susceptible to being made acceptable through normal revisions. See Executone of Redding, Inc., B-199931, February 10, 1981, 81-1 CPD 86. Discussions simply must be conducted with all offerors in the competitive range, so that each has an opportunity to improve its offer. 51 Comp. Gen. 479 (1972).

We have examined the record and find nothing to indicate that the clarifications in issue were not properly characterized as such by the Army. Even if CTC's addition of one Carnegie Unit, for example, was a proposal revision needed to make the firm's offer acceptable, LACCD was given an equal opportunity to clarify and modify its initial proposal. Under the circumstances, we find no merit to this aspect of the protest.

The protest is denied.

for  Milton J. Fowler  
Comptroller General  
of the United States