

DECISION



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

FILE: B-210714

DATE: March 26, 1984

MATTER OF: PRI, Inc.

DIGEST:

1. Where record indicates that evaluation of protester's proposal was in accordance with established criteria set forth in solicitation and the evaluation was reasonable, protest based on offeror's disagreement with the evaluation is denied.
2. Where agency questions offeror's overall approach to a particular task during the course of oral discussions in procurement involving specialized technical services, protest that discussions were too generalized is denied because, as the solicitation advised, proposals were evaluated primarily upon the basis of the offeror's demonstrated knowledge and understanding of the services to be provided. Consequently, because the offeror's understanding of the work was to be evaluated, not the procuring agency's, the agency was not required to provide detailed guidance on how proposals could be upgraded.
3. Protest alleging that the procuring agency failed to indicate the seriousness of the deficiencies noted in the protester's proposal during discussions is denied where the record shows that the agency asked the offeror to clarify its understanding of the level of effort required and its proposed approach to four of the seven areas evaluated. Such fundamental questioning of the proposal meaningfully conveyed the seriousness of the deficiencies indicated.
4. Protest that award to selected contractor will create an organizational conflict of

interest is denied where alleged conflicts pertain to overlapping roles in support of different organizational elements within the same agency, and agency states that it will monitor the placing of task orders to avoid such conflict as exists.

5. Bare allegation that the procuring agency fabricated procurement records after the fact to justify its position is denied as pure speculation.

PRI, Inc. protests award under request for proposals No. M00027-82-R-0022 seeking support services for the Materiel Division, Headquarters, U.S. Marine Corps. PRI contends that the Marine Corps erred in rating its proposal as technically unacceptable; that the Marine Corps failed to conduct meaningful discussions; and that the procurement was deficient in numerous other respects. We deny the protest.

The solicitation sought contractors to provide engineering and other specified services to support named organizations within the Materiel Division. These organizational elements were broken down into three groups and were identified as separate items in the scope of work. These three items were, for all practical purposes, handled as separate procurements, with separate proposals evaluated by different boards and independently selected. The solicitation contemplated separate indefinite quantity contracts for each item, subject to delivery orders to be issued for individual tasks on either a firm fixed-price or time and materials basis. Each contract limited the government's obligation to \$200,000 per year and contemplated a 1-year term plus 2 option years.

Six proposals were received in response to the item here in question, which sought the services of engineers, ground ammunition support analysts, logistics analysts, draftsmen, and technicians to support the Weapons Branch and the Ammunition and Missile Branch of the Materiel Division.

The Source Selection Evaluation Board concluded that all six technical proposals were susceptible to upgrading to acceptability and then evaluated the offerors' price and past performance. Based upon the pre-established weighting ratio of 60 for technical, 35 for price and 5 for past performance, total scores were calculated as follows:

<u>Firm</u>	<u>Technical Score</u>	<u>Prices</u>	<u>Total Score</u>
AdTech	55	\$1,734,657.60	88.7
McAuto	58	\$2,587,332.80	81.2
PRI	38	\$1,338,729.60	78.1
Asset	40	\$2,210,748.80	67.75
Kappa	40	\$2,872,604.80	62.35
Columbia	32	\$2,173,912.00	58.45

Discussions were held with all offerors on November 10, 1982 by telephone, which were confirmed by letter of that same date, and best and final offers were invited. Proposals were then reevaluated as to price and past experience and total scores re-computed, as follows:

<u>Firm</u>	<u>Technical Score</u>	<u>Prices</u>	<u>Total Score</u>
AdTech	88	\$1,506,419.20	93.7
McAuto	98	\$2,587,332.80	83.
Asset	45.2	\$1,508,873.60	*
Kappa	44	\$2,217,862.40	*
PRI	38	\$1,268,654.40	*
Columbia	32	\$1,761,281.60	*

Based on its review of the final submissions, the evaluation board concluded that only the proposals submitted by the two top-ranked firms, McAuto and AdTech, were technically acceptable. AdTech was selected for award and the unsuccessful offerors were so notified by letter.

PRI contends that the procurement process was deliberately distorted in order to eliminate PRI's low cost, technically acceptable offer and thereby clear the way for award to AdTech without the necessity for justifying its higher cost. To this end, PRI believes that its proposal was criticized for alleged deficiencies in areas where AdTech's proposal contained similar or even more serious deficiencies. The protester also lists a number of examples of the evaluators' criticisms of AdTech's proposal that are, in its opinion, as serious as those noted for PRI's proposal.

The determination of the relative desirability of proposals, particularly with respect to technical considerations, is primarily a matter for judgment of the

* No score due to technically unacceptable proposal.

contracting officials. Skyways, Inc., B-201541, June 2, 1981, 81-1 CPD 439. Our function is not to evaluate proposals anew and make our own determinations as to their acceptability or relative merits, but to examine the record and apply a standard of reasonableness to the contracting officer's determination. The fact that the protester does not agree with an agency's evaluation of its proposal does not render the evaluation unreasonable. Decilog, B-198614, September 3, 1980, 80-2 CPD 169.

The solicitation stated that technical proposals would be evaluated in accordance with the following criteria:

- "a. Knowledge of Combat Vehicles and Engines
- b. Ability of the proposed approach to identify trade-off potential among different types of ammunition, depending on relative cost and effectiveness
- c. Knowledge of DOD Acquisition Process
- d. Test and Evaluation
- e. Management Plan
- f. Experience and qualifications of the proposer in developing mathematical models or simulation which can be used to forecast resource requirements, given estimates of parameters which affects the consumption of those resources.
- g. Response Time
- h. Production and Fielding
- i. Academic qualifications of personnel employed by the proposer."

The evaluators found that for four of these seven criteria--knowledge of combat vehicles; trade off analysis for ammunition; test and evaluation; and production and fielding--PRI's proposal was unsatisfactory. In the opinion of the evaluators, PRI's proposal was fundamentally deficient in these areas, such that the evaluators prepared

a deficiency notice for each in accordance with the Source Selection Evaluation Guide procedures. For example, in the area of test and evaluation, the evaluators concluded that PRI's "[a]ddressal of this factor was substantially deficient . . ." such that PRI had not "demonstrated an understanding or capability in this area."

On the other hand, the evaluators noted no concerns warranting a deficiency notice in AdTech's case, but simply requested clarification of its management plan and certain aspects of its proposed test and evaluation methods.

The fact that the minor concerns noted by the evaluators in the AdTech proposal sometimes touch upon the same broad areas of concern noted in the PRI proposal and that the evaluators had relatively the same overall number of concerns relating to both proposals is not determinative, because the evaluators considered the deficiencies in the PRI proposal to be substantial and those in the AdTech proposal to be minor.

In summary, the Marine Corps reports that the AdTech proposal consistently reflects a more thorough, precise understanding of the operating environment, methods and problems encountered by the Weapons Branch and the Ammunition and Missile Branch of the Materiel Division. Our review of the record indicates that this conclusion is not unreasonable. AdTech's apparently more complete knowledge of the work may well be attributable to its prior work under another Marine Corps support service contract, which PRI describes as so directly related to the present contract that AdTech was "virtually an incumbent contractor when it competed." While it has not been argued, the competitive advantage of incumbency on a similar contract is not normally considered unfair. See Romar Consultants, Inc., B-206489, October 15, 1982, 82-2 CPD 339.

PRI also states that it proposed 34 individuals with undeniable expertise in combat operations, logistics and a number of other pertinent areas. However, as compared to the even more pertinent experience of AdTech's personnel, we cannot say that the evaluators' criticism of PRI's personnel qualifications was unreasonable. For example, in the ammunition area, AdTech proposed the individual who devised the current methodology used by the Marine Corps to determine inventories of its most expensive munitions and another who previously headed the ammunition branch. In comparison, the experience of PRI's employees was more generalized. With regard to the Ammunition and Missiles

Branch, the evaluators felt that PRI's proposed personnel did not have adequate experience in the specific area of providing engineering support for the production and fielding of combat vehicles and for the test and evaluation of such vehicles. Apparently the evaluators did not view experience in supporting, maintaining or using combat vehicles, or analyzing their use, or providing comparable support for other types of military equipment, as equivalent to the specific experience desired. We see no basis to question the reasonableness of such a judgment.

PRI also contends that the Marine Corps failed to engage in meaningful discussions during its November 10 telephone conversation, as confirmed by letter of that same date. According to PRI, because of the total absence of specificity in the four generic areas identified in these discussions, and because of the use of the word "clarification" rather than words like "weakness" or "deficiency," PRI reasonably believed that there was no serious weakness in its proposal. PRI questions whether discussions could have been meaningful in any event, since they were conducted by a contract negotiator rather than a qualified technical representative.

With certain exceptions not relevant here, 10 U.S.C. 2304(g) (1982) and its implementing regulation, Defense Acquisition Regulation (DAR) § 3-805.1, require the conduct of written or oral discussions with all responsible offerors who submit proposals within a competitive range. While neither the statute nor the regulation outlines the extent of such discussions, other than to require that offerors be given a reasonable opportunity to correct or resolve deficiencies noted by the procuring agency, it has been our position that these discussions must be "meaningful." The word "meaningful" is a flexible concept that must relate to the specific procurement involved, and what are meaningful discussions in one procurement may not be considered meaningful in the context of another. Set Corporation, B-207936, April 15, 1983, 83-1 CPD 409. In this respect, we recognize that, as in the evaluation of proposals, the extent of discussions necessary to be considered meaningful is essentially a matter of the negotiator's judgment which we will not question unless we find the judgment to have been unreasonable. Id. Thus, for example, we have held that agency statements made during discussions that lead offerors into particular areas of their proposals are sufficient to put them on notice that their proposals are deficient in those areas. CRC Systems, Inc., B-207847, May 2, 1983, 83-1 CPD 462. We think that the discussions here have satisfied this test.

The telephone discussion appears to have consisted of the contract negotiator reading the letter of November 10 to PRI's representative, which letter states, in entirety with regard to PRI's technical proposal, the following:

"During those discussions you were advised that the following discrepancies exist in your proposal submission:

"TECHNICAL

1. Clarification of proposer's own understanding of the level of effort and the proposed approach to support the following tasks areas:

- a. Trade-off analysis for ammunition
- b. Engineering support for Combat Weapon Systems
- c. Test and Evaluation
- d. Production and fielding"

As noted previously, the evaluators had major concerns regarding those four areas, such that they prepared deficiency notices for each. For example, for test and evaluation, the evaluators summarized PRI's proposed approach as substantially deficient because PRI had failed to demonstrate its understanding or capability. The evaluators' concerns regarding the other factors given deficiency notices were similarly broad in scope, raising questions as to whether PRI had demonstrated an adequate understanding of the area, rather than citing specific problems, inconsistencies, and the like.

It is undoubtedly true that the Marine Corps could have expanded its generalized statements of concern into point-by-point analyses of the various shortcomings of PRI's proposal. However, such a detailed critique would have been inconsistent with the basic purpose of the evaluation, which was to ascertain the extent of the offeror's knowledge of the various disciplines required as they applied to the specific organizational elements to be supported under this procurement. In this regard, both the evaluation criteria and the narrative explanations following them repeatedly state that the offeror must demonstrate its knowledge and understanding of the Marine Corps activities in question. In the context of this procurement, which sought specialized engineering and support services for organizations having narrowly defined functions, we

believe that the Marine Corps had a reasonable basis for phrasing the deficiencies in a generalized manner, leaving it to the offeror to further clarify its knowledge and understanding of those activities when its understanding was criticized. See Set Corporation, supra.

As to whether the Marine Corps sufficiently communicated the seriousness of the evaluators' concerns, we believe that the terminology used, asking for a clarification of PRI's "own understanding of the level of effort and proposed approach" needed to support the task conveyed the serious nature of the Marine Corps' concerns in a meaningful, albeit minimal, manner. In this regard, PRI was asked, in effect, to review its entire approach to the task in question, rather than clarify one or more specific points.

With respect to the contract negotiator's ability to conduct meaningful discussions, the fact that the Marine Corps used this individual rather than a technically qualified representative to conduct discussions was undoubtedly known to PRI at the time discussions were held, on November 10, 1982. Any protest of this action should have been filed within 10 working days and was therefore untimely when received by our Office on February 4, 1983. 4 C.F.R. § 21.2(b)(2) (1983). In any event, DAR § 3-805.3 requires only that offerors be advised of deficiencies in their proposals. The contract negotiator did this, relying on the synopsis of deficiencies conveyed to him by the Source Selection Evaluation Board's memorandum.

To recapitulate, the record supports both the Marine Corps' determination that PRI's initial proposal was technically unacceptable but susceptible of upgrading to acceptability and the adequacy of the Marine Corps' conduct of written and oral discussions with PRI. Consequently, the Marine Corps had a reasonable basis for eliminating PRI's proposal from the competitive range as technically unacceptable when PRI's best and final offer failed to significantly improve its technical proposal. This being the case, PRI's allegations concerning the evaluation of its price proposal and past experience are essentially academic, since PRI's technically unacceptable proposal was no longer a candidate for award in any event.

PRI further contends that AdTech had no intention of assigning its proposed personnel to the contract to be awarded, alleging that one particular AdTech employee is committed full time to another contract awarded through the

Navy. The Marine Corps replies that the individual in question is no longer utilized full time under the other contract. In view of these conflicting statements, PRI has not carried the burden of affirmatively proving its case as to this issue. The FMI-Hammer Joint Venture, B-206665, August 20, 1982, 82-2 CPD 160. Moreover, as the Marine Corps points out, because the contract is for support services, not personal services, AdTech is only required to furnish personnel with experience and qualifications comparable to those individuals identified in its proposal, rather than specific individuals, should it be issued a delivery order covering services of the type performed by the named individuals.

Further, PRI contends that award to AdTech creates an organizational conflict of interest with regard to its undertakings under other contracts in support of the Marine Corps. In essence, PRI argues that AdTech provides support services for a number of Marine Corps elements that deal with the same issues or subjects, so that its roles would overlap, i.e., it would be reviewing or commenting upon documents in behalf of one organizational element that it prepared for another organizational element. The Marine Corps responds that it recognizes the possibility of conflicting roles and that it will avoid such occurrences by monitoring the task orders issued to AdTech.

It is not clear that the possibility of overlapping support services roles should be viewed as conflicting, since no identifiable financial advantage would accrue to the contractor in these circumstances. Nevertheless, the Marine Corps states that it will avoid overlapping roles for AdTech by policing its delivery orders which should avoid whatever conflict that may be said to exist. The actual assignment of delivery orders is, of course, a matter of contract administration which this Office will not review.

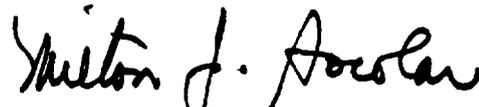
Finally, PRI alleges that certain documents in the procurement file, which have not been released to PRI, were "written after PRI's February 10, 1983 initial debriefing session as a result of PRI's questions regarding the specific bases for rejection of its proposal" in order to justify the Marine Corps' position. We have explained to PRI that the documents in question consist of two memoranda dated September 2 and November 20, 1982 from the Chairman of the Source Selection Evaluation Board to the Director of the Contracts Division reporting the results of the Board's initial and final evaluations, that they are

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more than 50 pages long and that there is absolutely no evidence in the record which in any manner corroborates PRI's accusation. In view of the lack of any evidence in the record to support PRI's allegation, we consider it speculative and without merit. Consolidated Services, Inc., B-206413.3, February 28, 1983, 83-1 CPD 192.

The protest is denied.

for 
Comptroller General
of the United States