

DECISION



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

FILE: B-216886

DATE: February 27, 1985

MATTER OF: ASEA Inc.

DIGEST:

1. Offer was properly excluded from competitive range for informational deficiencies so material that major revisions and additions would be required to make offer acceptable.
2. GAO will not consider issue raised by a party that would not be in line for award even if it were to prevail on the issue and that is not otherwise an interested party under Bid Protest Procedures.

ASEA Inc. protests the award of a contract to Vaisala, Inc., under request for proposals (RFP) No. NA-84-DGS-00165, issued by the Department of Commerce. ASEA contends that its proposal was improperly excluded from consideration and that Vaisala's offer failed to comply with the requirements of the RFP.

We deny the protest in part and dismiss it in part.

The RFP sought offers for the supply of laser ceilometers required for use by the National Weather Service in measuring cloud base heights. Five companies submitted proposals. The Commerce Department determined that three proposals, including the one submitted by ASEA, were technically unacceptable, and the agency eliminated those proposals from further consideration. Best and final offers were requested from the two remaining offerors, and an award was made to Vaisala.

The RFP required that technical proposals address each specification requirement, include a statement of compliance with each requirement, and include analyses of design/capability and compliance with federal safety requirements for laser products, as follows:

"(1) Proposal Format. The proposal shall be prepared in the format of the specification in such a manner that it sequentially, paragraph by paragraph, addresses itself to all requirements in the specification, and describes in detail the methods and approaches the offeror will utilize to satisfy the specification and RFP requirements. In addition, a statement of compliance with each specification requirement shall be included.

(2) Technical Information. The offeror shall include in his proposal his own, or his proposed vendor's specifications describing in detail how each item meets or exceeds the applicable requirements of the specification. In particular, the offeror shall provide:

a) A thorough signal and noise analysis of the projector/receiver design, demonstrating the capability of detecting cloud base heights to at least 12,000 feet.

b) A rigorous analysis demonstrating that the laser ceilometer fully complies with Federal Performance Standards for Laser Products, 21 CFR 1040.1, for a Class 1 device. . . . The offeror shall demonstrate full compliance to all aspects of 21 CFR 1040.1." (Emphasis supplied.)

In his notification to ASEA that the company's proposal was technically unacceptable, the contracting officer stated that ASEA had not described its "methods and approaches" for meeting each specification requirement or included statements of compliance with each requirement. The contracting officer also stated that ASEA had failed to provide either the capability/design analysis for the 12,000 feet capability or the Federal Performance Standard compliance analysis specifically required by the RFP.

ASEA contends that the contracting officer did not have a reasonable basis for excluding its proposal from consideration. The protester argues that virtually all of the information claimed to be absent from the proposal was actually included in a product bulletin and technical manual submitted as a separately bound portion of the proposal.

In reviewing complaints about the evaluation of technical proposals, and the resulting determination of whether a proposal is within the competitive range, our own function is not to reevaluate the proposal and to make our determination about their merits. That determination is the responsibility of the contracting agency, which is most familiar with its needs and must bear the burden of any difficulties resulting from a defective evaluation. We will not question the decision of procuring officials in evaluating proposals unless it is shown to be arbitrary or in violation of the procurement laws and regulations. Essex Electro Engineers Inc.; ACL-Filco Corporation, B-211053.2; B-211053.3, Jan. 17, 1984, 84-1 C.P.D. ¶ 74. In evaluating proposals agencies may reasonably exclude a proposal from the competitive range for "informational" deficiencies which are so material that major revisions and additions would be required to make the proposal acceptable. PRC Computer Center, Inc., et al., 55 Comp. Gen. 60 (1975), 75-2 C.P.D. ¶ 35.

The RFP specifies that offered laser ceilometers must be capable of measuring cloud base heights up to 12,000 feet. ASEA offered a laser ceilometer which currently measures cloud base heights to 10,000 feet, with a proposed modification intended to increase the range of the ceilometer to 12,000 feet. ASEA attached in a separate volume of its proposal, labeled "Standard Installation, Start Up and Maintenance," technical literature and manuals on its ceilometer with a range of 10,000 feet. The only discussions in the ASEA technical proposal describing the proposed modification to ASEA's standard ceilometer or discussing its capability of detecting cloud base heights to 12,000 feet consists of a one page exhibit entitled "Probability Analysis of Measuring up to 12,000 Feet with the QL1212 Cloud Ceilometer." In conclusory terms, the exhibit states that, by increasing the power output from

15 watts to 18 watts and doubling the laser impulse duration, the range of the ceilometer will extend to 12,000 feet. We agree with the contracting officer that the one page "Probability Analysis" and technical literature about ASEA's current ceilometer model do not meet the RFP requirement for a "thorough signal and noise analysis of the projector/receiver design, demonstrating the capability of detecting cloud base heights to at least 12,000 feet."

ASEA also provided no "rigorous analysis" demonstrating that the ceilometer will fully comply with federal performance standards. The protester claims that it is possible to determine compliance using information contained in the technical manual for its current model ceilometer. ASEA states that it accidentally omitted calculations based on the information about its current model which would demonstrate compliance. After receiving notice that its proposal was not being considered, ASEA provided a 5-page mathematical analysis to the contracting officer. While ASEA calls this omission minor, the analysis was identified in the RFP as an important requirement and the five pages of calculations submitted by ASEA show that this was far from a minor matter. Even if it were possible for someone in the agency to demonstrate the safety of the ceilometer that ASEA intended to manufacturer by extrapolating from data on the current model, this was clearly and properly the responsibility of the protester under the RFP. The Commerce Department was not obligated, in effect, to draft a major portion of ASEA's proposal and to assume the risk that its own projection of the safety of a proposed new ceilometer was accurate.

The ASEA proposal did not contain a statement of compliance with each specification requirement as called for by the RFP. In its proposal, ASEA listed the paragraph numbers of the specification and the company's corresponding comments. ASEA's comments on a few paragraphs of the specification can be interpreted as statements of compliance and, for a few paragraphs, ASEA stated that it took exception to the requirement. For most paragraphs, however, ASEA only noted "No Comment." ASEA argues that its notations of "no comment" with respect to most specification requirements were, in effect, statements

of compliance, since the company stated in the cover letter to its proposal that "ASEA has a ceilometer that now meets your performance specifications" and indicated that all exceptions to the specifications had been noted. We share the contracting officer's view that a statement of "no comment" does not meet the RFP requirement for "a statement of compliance with each specification requirement."

Further, ASEA contends that the agency erroneously concluded that ASEA had not described in detail its "methods and approaches" for meeting each specification requirement. According to ASEA, the required information can be found in the 257-page technical manual, the technical description and the product bulletin on ASEA's standard model ceilometer with a range of 10,000 feet. The ASEA proposal, however, does not state which of the components in the ceilometer will be changed to extend its range to 12,000 feet, or which performance characteristics will change in addition to power output and laser impulse duration. Consequently, the Commerce Department could not rely on technical descriptions of the unmodified ceilometer to establish a modified ceilometer's compliance with specification requirements. We do not agree with ASEA's view that it was penalized merely for its failure to follow a narrow reading of the format requirements of the RFP. It is an offeror's obligation to establish that what it proposes will meet the government's needs. Texas Medical Instruments, B-206405, Aug. 20, 1982, 82-2 C.P.D. ¶ 122. We believe that it was reasonable for the agency to find ASEA's proposal substantially deficient for failing to describe in detail the manner in which ASEA would comply with the specification requirements.

The protester asserts that each of the deficiencies in its proposal is minor, and each would have been quickly remedied had the company been notified. While some of the deficiencies may not in isolation have been sufficient reason for excluding ASEA from the competitive range, as a totality they justify the Commerce Department's conclusion that the proposal was so materially deficient that major

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revisions and additions, tantamount to a new proposal, were required to make it acceptable. The agency did not eliminate competition by excluding ASEA from further consideration since two offerors were determined to be in the competitive range. Also, ASEA proposed the highest price of all five initial offerors, and its price was almost double the initial price offered by Vaisala. Thus, it does not appear that eliminating ASEA, from the competitive range deprived the agency of the opportunity to obtain significant cost savings.

ASEA contends that the agency improperly accepted the Vaisala offer which allegedly did not comply with an RFP provision that, according to ASEA, required that any ceilometer submitted for evaluation be manufactured by the offeror. In the alternative, ASEA argues that acceptance of the Vaisala offer was, in effect, a change in the RFP requirements and, as such, ASEA should have been informed of the change and permitted to restructure its proposal by submitting more extensive explanatory material.

ASEA would not be in line for an award even if its contention regarding the Vaisala offer is correct. ASEA was properly excluded from the competitive range and there is a second offeror in the competitive range whose offer ASEA has not challenged. As a result, we do not consider ASEA to be a party "interested" in the issue under the Bid Protest Procedures which govern this protest. 4 C.F.R. § 21.1(a)(1984). See D-K Associates, Inc., B-213417, Apr. 9, 1984, 84-1 C.P.D. ¶ 396. Therefore, we will not consider ASEA's allegation regarding the Vaisala offer.

Moreover, we find ASEA's argument that it would have submitted a more extensively explained proposal had it known that the agency would accept proposals from firms other than manufacturers to be unconvincing. As a manufacturer of ceilometers, ASEA should have an advantage over offerors which are not. We fail to see how the knowledge that such firms might compete would inspire ASEA to submit a more comprehensive proposal.

The protest is denied in part and dismissed in part.

for Seymour Egan
Comptroller General
of the United States