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DECISION



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

FILE: B-217284, B-217284.2 **DATE:** April 16, 1985
MATTER OF: ALM, Incorporated; Technology Incorporated

DIGEST:

1. Determination of whether a proposal should be included in the competitive range is a matter primarily within the contracting agency's discretion. Allegation that agency's decision to exclude protesters from the competitive range was unreasonable is denied where agency's technical evaluation is not shown unreasonable and agency determined that proposals had no reasonable chance of being selected for award.
2. Agency is not required to conduct discussions with an offeror whose technical proposal does not stand a real chance of being selected for award.
3. Protest that agency failed to inform offerors of all deficiencies in their proposals after initial technical evaluation is denied where information solicited from protesters and other offerors was not intended to be all inclusive, but rather part of ongoing process to determine technical acceptability.
4. GAO will not question agency decision to make award prior to resolution of protest where decision to do so was made in accordance with applicable regulations.
5. The protester has the burden of proving bias or favoritism on the part of the procuring agency. Where written record fails to demonstrate bias, the protester's allegations are to be regarded as mere speculation.

ALM, Incorporated, and Technology Incorporated protest their exclusion from the competitive range and the award of a contract to Electrospace Systems, Inc.

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(ESI), under request for proposals (RFP) No. N00189-84-R-0159 issued by the Department of the Navy for engineering support services and materials in support of the C-130 aircraft modification program.

We deny the protests in part and dismiss them in part.

The RFP provided that proposals would be evaluated based on their technical approach, management approach and cost. Offerors were advised that the technical factors were weighted approximately 80 percent of the overall evaluation, with the technical approach being three times more important than the management approach. The RFP stated that cost was not expected to be the controlling factor, although its importance was expected to increase with the degree of technical equality between proposals.

Under the evaluation scheme, the technical approach and management approach were broken down into subcategories and the subcategories were further broken down into various factors. For each factor, the technical evaluators would assign a point score from 0 to 3--with 0 being unacceptable and 3 above average. The raw scores for each factor were multiplied by the weight assigned to that factor and a weighted score was obtained. The technical score was then combined with each offeror's price score to obtain an overall score for each proposal.

The Navy reports that four proposals were received. After an initial review, it was concluded that additional information was necessary before the technical evaluation could be completed. The Navy states that, with only slight variation, all four offerors were requested to provide additional information in five specific areas. Thereafter, the technical evaluation and cost analysis were completed. The results were as follows:

	Technical Score	Price Score	Total Score
ESI	80	11.2	91.2
Dynalectron	61.6	20	81.6
Technology	55.1	13.5	68.5
ALM	48.9	16.4	65.3
Maximum	80	20	100

Although the technical evaluators had not expressly found the proposals submitted by ALM or Technology to be technically unacceptable, the contracting officer determined that neither proposal was reasonably susceptible of being made competitive with the proposals of ESI and Dynalectron. With respect to ALM, the Navy states that the technical proposal was found unacceptable in 25 percent of the factors evaluated. Also, the Navy states that most of the technically deficient factors were found within the two most heavily weighted technical evaluation areas. Technology was determined to be deficient in nearly half of the technical factors evaluated. The Navy states that its technical proposal was vague and that the firm lacked experience in preparing the Air Frame Changes and Engineering Change Proposals which constitute a central part of the work required under the RFP. The Navy states that there was no reasonable expectation that either proposal could be made competitive and, as a result, both firms were excluded from the competitive range. Subsequently, the Navy awarded the contract to ESI.

Both ALM and Technology disagree with the Navy's assessment that their proposals had no reasonable chance of being selected. Technology and ALM contend that many of the areas evaluated as deficient could easily have been revised to acceptable levels had the firms been given the opportunity to submit a best and final offer. The protesters argue that in view of the large cost differential between their proposals and that of ESI, the Navy should have provided them an opportunity to submit a best and final offer.

In addition, both firms contend that the Navy failed to conduct meaningful discussions. The protesters complain that the Navy's initial request for additional information did not solicit any information in those areas which the Navy found most deficient. Technology argues that the questions which were asked were inconsequential compared to those that were not asked.

The protesters also raise several other issues. Both firms allege that the procurement was not fairly conducted and that the Navy had no intention of awarding the contract to anyone other than ESI. Technology argues that the RFP's page limitation severely restricted the ability of offerors to submit adequate proposals. ALM questions the weight which the Navy placed on technical factors and also argues that the Navy acted improperly in not notifying ALM in a more timely fashion that it was excluded from the

competitive range and in awarding the contract to ESI while the protest was pending with our Office. Finally, ALM contends that the award price to ESI was excessively high.

It is well established that the determination of whether a proposal should be included in the competitive range is a matter primarily within the contracting agency's discretion. Our Office will not disturb such a determination unless it is shown to be unreasonable or in violation of procurement laws or regulations. Leo Kanner Associates, B-213520, Mar. 13, 1984, 84-1 CPD ¶ 299.

Generally, proposals that are to be considered within the competitive range are those which are technically acceptable or reasonably susceptible of being made acceptable through discussions--that is, proposals which have a reasonable chance of being selected for award. D-K Associates, Inc., B-213417, April 9, 1984, 84-1 CPD ¶ 396. However, even a proposal which is technically acceptable or susceptible of being made acceptable may be excluded from the competitive range if, based upon the array of scores actually obtained by the offerors, the proposal does not stand a real chance of being selected for award. Marvin Engineering Co., Inc., B-214889, July 3, 1984, 84-2 CPD ¶ 15; Leo Kanner Associates, B-213520, supra, 84-1 CPD ¶ 299 at 6.

Based on the record, we cannot conclude that the Navy's determination to exclude ALM or Technology from the competitive range was unreasonable. Although the protesters argue that the deficiencies in their proposals could easily have been rectified, the agency's technical evaluation is dependent upon the information furnished in the proposal and the burden is clearly upon the offeror to submit an initial proposal that is adequately written. Marvin Engineering Co., Inc., supra, 84-2 CPD ¶ 15. Here, the Navy found both proposals so deficient that a major revision would be necessary to make them competitive. Under these circumstances, there is no requirement that an agency permit an offeror to revise an initial proposal. Conwal Incorporated, B-210443, Aug. 8, 1983, 83-2 CPD ¶ 176.

In addition, we find that neither ALM nor Technology has offered any evidence which shows that their proposals were excluded as a result of anything other than the

reasonable judgment of the Navy's technical evaluators. Contracting officers are given a considerable range of judgment and discretion in carrying out a technical evaluation, and the protester's mere disagreement with the agency's evaluation does not meet the protester's burden of showing that the evaluation was unreasonable. Spectrum Leasing Corporation, B-205781, Apr. 26, 1982, 82-1 CPD ¶ 383. We note that it is not the function of our Office to rescore proposals nor will we make independent judgments as to the numerical scores which should have been assigned. Blurton, Banks and Associates, Inc., B-206429, Sept. 20, 1982, 82-2 CPD ¶ 238. Our review of the record indicates that the Navy followed the evaluation scheme set forth in the RFP and, while the protesters disagree with the scoring of their proposals in some areas, we cannot conclude that the evaluation lacked a reasonable basis.

Furthermore, the fact that ALM's and Technology's offered prices were much lower than ESI's does not require that the Navy include them in subsequent negotiations. The purpose in having price as an evaluation factor in a negotiated procurement is to ensure that the prices proposed by qualified offerors which submit acceptable proposals will be taken into account prior to the making of awards to higher priced offerors on the basis of technical superiority consideration alone. That purpose does not extend to considering the offered prices of firms whose proposals are unacceptable. See Marine Engineering Co., Inc., B-214889, supra, 84-2 CPD ¶ 16 at 6.

With respect to the protesters' arguments that the Navy should have conducted meaningful discussions with the firms, we note that there is no requirement that an agency hold meaningful discussions with an offeror where that offeror has not yet been determined to be within the competitive range. Auto Paint Specialist, Inc., dba K & K Truck Painting, B-205513, Jan. 21, 1982, 82-1 CPD ¶ 609. The Navy's letter requesting that all offerors provide additional information in five specific areas was not intended to be all-inclusive, but was part of the ongoing evaluation process to determine which offerors were within the competitive range. All offerors were requested to provide similar information and all were given the same opportunity to modify their proposals. After these discussions, the agency determined that neither ALM nor Technology had a reasonable chance for award. We find nothing unfair in this process; nor do we find that the

agency had any obligation to enter into further discussions with the firms. Informatics General Corporation--Request for Reconsideration, B-210709.2, Nov. 18, 1983, 83-2 CPD ¶ 580.

Turning to the protesters' remaining allegations, we also find them without merit. Technology's protest concerning the RFP's page limitation and ALM's contention that the RFP placed too great an emphasis on technical considerations are untimely. These allegations concern alleged solicitation improprieties and, under our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1984), protests raising these issues are required to be filed prior to the closing date for receipt of initial proposals. Crown Point Coachworks and R&D Composite Structures, North American Racing Company, B-208694, B-208694.2, Sept. 29, 1983, 83-2 CPD ¶ 386. In addition, ALM's allegation that it was not timely notified of its exclusion from the competitive range raises a procedural issue which does not affect the validity of the award to ESI. In this regard, we note that ALM was not prejudiced in any way in pursuing this protest with our Office by the Navy's alleged failure to notify ALM of its exclusion at an earlier date. Trellclean, U.S.A., Inc., B-213227.2, June 25, 1984, 84-1 CPD ¶ 661.

Also, ALM's objection to the award of the contract notwithstanding a protest is denied. Since the Navy determined that an award must be made promptly and the determination was approved at a higher level than the contracting officer, in accordance with applicable regulations, it is not subject to question by our Office. Vi Mil Inc., B-208012, Sept. 20, 1982, 82-2 CPD ¶ 244. With respect to the allegation that the contract awarded to ESI was at too "high" a price in view of the costs proposed by the protesters, we have held that the costs proposed by an offeror are irrelevant where that offer is no longer within the competitive range and cannot be considered for the award. Logicon, Inc., B-196105, March 25, 1980, 80-1 CPD ¶ 218. Therefore, since we have concluded that the Navy acted properly in excluding ALM and Technology from the competitive range, the allegedly lower costs that the firms might have offered are of no consequence. To the extent the the protesters are contending that the Navy acted improperly in accepting ESI's offer, we note that neither protester would be in line for award even if we were to find that their allegations were correct. As a result, we find the protesters do not possess the requisite "interest"

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under our Bid Protest Procedures to raise this issue. 4
C.F.R. § 21.1(a). ASEA Inc., B-216886, Feb. 27, 1985, 85-1
CPD ¶ 247. Accordingly, we will not consider the
protesters' allegations regarding the ESI offer.

Finally, we find no evidence, other than the
protester's bare allegations, that the Navy was biased in
its evaluation of the proposals submitted by ALM and
Technology. The protester has the burden of affirmatively
proving its case and unfair or prejudicial motives will not
be attributed to procurement officials on the basis of
inference or supposition. Mechanical Equipment Company,
Inc., B-213236, Sept. 5, 1984, 84-2 CPD ¶ 256.

The protests are denied in part and dismissed in part.

for *Lezmon Spoo*
Harry R. Van Cleve
General Counsel