

**DECISION**



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

**FILE:** B-218270; B-218270.2 **DATE:** June 28, 1985

**MATTER OF:** Eastern Computers, Inc.; Compucorp, Inc.

**DIGEST:**

1. An offeror may be eliminated from consideration for award after the submission of a best and final offer where the agency determines that the best and final offer is technically unacceptable.
2. Discussions between an agency and an offeror are meaningful where the offeror is made aware of deficiencies in its proposal, even though the agency merely indicates that certain aspects of a proposal are undesirable and not that they constitute grounds for rejecting the proposal if not corrected.
3. When an offeror concedes that proposed equipment has malfunctioned during demonstrations intended to show its operational capability, and the agency has stressed throughout the procurement that it requires a reliable system, the offeror should realize that the malfunctions are serious. GAO therefore will deny a protest alleging that the agency did not conduct meaningful discussions because it did not specifically advise the offeror that its proposal might be rejected due to the malfunctions.

Eastern Computers, Inc. and Compucorp, Inc. protest the rejection, after best and final offers, of proposals submitted in response to request for proposals (RFP) No. 53-24-4-PG, issued by the United States Information Agency (USIA). The agency sought a multilingual word and data processing system to be used by the Voice of America for creation and distribution of radio broadcast scripts.

The primary basis of both protests is that USIA failed to conduct meaningful discussions.

We deny the protests.

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## Background

In a solicitation issued on March 23, 1984, USIA requested proposals for the lease and/or purchase of a word and data processing system that ultimately will incorporate 42 different languages. The system is intended to aid both English and foreign language broadcasters employed by the Voice of America's international radio network in the preparation of daily programs. The Voice of America staff will use the system to create scripts for broadcast, to distribute scripts produced in English throughout the Voice of America radio network, and to maintain correspondent reports, reference files, and other information.

The solicitation required offerors to propose a system that would create and display text in 15 languages, including languages using the Arabic, Cyrillic, and Latin alphabets. The USIA intends to expand the system to accommodate an additional 27 languages, many with unique alphabets, and gave offerors credit during proposal evaluation for each additional language.

Following submission of initial proposals on July 23, 1984, the USIA requested both Eastern Computers and Compucorp, along with other offerors, to participate in a two-phase Operational Capability Demonstration of their proposed systems. The demonstration was intended to provide a first-hand confirmation that each proposal satisfied the minimum requirements set forth in the solicitation and to assist in the evaluation of the proposals. During the first phase of the demonstration, which lasted for 2 days, each offeror trained USIA staff in the use of its system, performed a writing and editing simulation, briefed the evaluation team on various aspects of the system, and demonstrated central script retrieval, the broadcast contents software, and other capabilities of the system. During the second phase of the demonstration, Voice of America foreign language broadcast staff members determined the quality of each system's text editing and character set capabilities for all mandatory and optional languages.

Following the demonstrations and discussions with each offeror, the agency requested best and final offers, which were submitted on February 13, 1985. On February 21, the USIA informed Eastern Computers and Compucorp that their proposals had been determined to be no longer within the "technically acceptable competitive range" and would no longer be considered for award.

Eastern Computer's Protest

Eastern Computers contends that the solicitation provisions do not support the rejection of its proposal for several reasons. First, the protester maintains that the USIA failed to set forth the criteria on which proposals were to be evaluated. The RFP stated that award would be made to the responsible offeror whose proposal met the mandatory requirements listed in the RFP and was determined to be most advantageous to the government, "price and other factors considered." Eastern Computers contends that USIA did not define the term "other factors."

We find, however, that following the general reference to "other factors," the RFP listed the factors that would be considered and for which points would be awarded. These were cost, technical features, and optional languages included in the proposal. "Technical features" were divided into 8 subfeatures, including productivity, ease of operation, and system reliability, diagnostics and maintenance. Each of these was described in detail and assigned a number of possible points to be awarded. Clearly, the term "other factors" refers to those technical features and optional languages described in the solicitation. See Lockheed Corp., B-199741.2, July 31, 1981, 81-2 CPD ¶ 71.

Eastern Computers also contends that the USIA failed to inform offerors in the RFP that a competitive range would be established to qualify offerors for further discussions and/or contract award, and that the RFP did not define the term "technically acceptable competitive range."

When an agency acquires goods or services by means of negotiation, the Federal Procurement Regulations (FPR) generally require the agency to conduct written or oral discussions with all responsible offerors within a competitive range before awarding a contract. 41 C.F.R. § 1-3.805-1(a) (1984).<sup>1/</sup> The competitive range consists of those offers that either are acceptable under the terms of the solicitation's evaluation criteria or are reasonably susceptible to being made acceptable through discussions. Self-Powered Lighting, Ltd., 59 Comp. Gen. 298, 303 (1980), 80-1 CPD ¶ 195. Here, the RFP advised that proposals, "to

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<sup>1/</sup> The Federal Procurement Regulations are applicable to this procurement because the RFP was issued on March 23, 1984, before the April 1 effective date of the Federal Acquisition Regulation, 48 C.F.R. Chapter 1 (1984).

be acceptable and eligible for evaluation," must comply with the solicitation's instructions and meet the mandatory requirements listed in two sections of the RFP. Even though the RFP did not define a technically acceptable competitive range, we believe that it adequately advised offerors of the requirements for a proposal to be acceptable for further discussions and/or contract award. See Systec, Inc., B-205107, May 28, 1982, 82-1 CPD ¶ 502.

Eastern Computers further contends that it was not told that offerors that had passed the operational capability demonstration could subsequently be disqualified. The protester states that in the usual case, offerors that are asked to submit a best and final offer have already been judged technically acceptable, and their best and final offers are evaluated on price only.

The record does not establish that as a result of the demonstrations, the USIA considered the Eastern Computers proposal to be technically acceptable. Following the first phase of the demonstration, the USIA believed that the system offered by Eastern Computers did not meet certain mandatory requirements; however it did not reject Eastern Computers' offer at that time because the agency considered it to have the potential to become acceptable and competitive. After the second phase of the demonstration, the USIA provided the firm with a written list of technical concerns about the proposed system; it also discussed these items during a meeting with Eastern Computers on January 25. Among the technical concerns listed by the USIA were an "extremely undesirable" text editing software and operation of this software on a central minicomputer, rather than on individual workstations.

In addition, Eastern Computers at first had been unable to demonstrate communications between English and foreign language workstations because of the late arrival of necessary software. A second operational capability demonstration was scheduled for this purpose. At this, Eastern Computers sought to demonstrate new text editing software, as well as software to provide communications between English and foreign language workstations. The text editing software could not be fully evaluated because Eastern Computers' representatives had no operator's manual or other necessary information. The firm was unable to explain how the new software would be integrated with other aspects of the system. Also, the software for

communications between English and the foreign language workstations required communication through the central minicomputer.

On February 20, after reviewing Eastern Computers' best and final offer, the USIA concluded that the proposed system did not successfully integrate the minicomputer, the individual workstations and the local area network; that the offeror had not established its capability to accomplish the integration; and that, therefore, the Eastern Computers proposal did not meet the mandatory message and data exchange requirements of the RFP.

As indicated above, the USIA was not required to determine that the Eastern Computers' initial proposal was technically acceptable before including it in the competitive range; it could also have included it if there was a reasonable chance that it would become acceptable. However, a proposal that has not been made technically acceptable after discussions may properly be rejected after best and final offers. Lanier Business Products of Western Maryland, Inc., B-214468, July 23, 1984, 84-2 CPD ¶ 85. Technically unacceptable proposals may not be considered for an award irrespective of their proposed prices. The Management and Technical Service Co., a subsidiary of General Electric Co., B-209513, Dec. 23, 1982, 82-2 CPD ¶ 571 at 17. We find that in this case, the USIA properly eliminated the Eastern Computers proposal from consideration for award after best and final offers, since it was not technically acceptable at that time.

Finally, Eastern Computers contends that, although the USIA's basis for rejecting its proposal was readily apparent during the first phase of the operational capability demonstration, during the entire evaluation process the agency never informed it that its proposal was not technically acceptable. According to the protester, deficiencies pointed out by the USIA were merely characterized as being undesirable. To have conducted meaningful discussions, Eastern Computers believes that the USIA was required to describe the deficiencies as significant flaws requiring correction, and to have done so at the completion of the first demonstration.

As discussed above, agencies generally must conduct written or oral discussions with all responsible offerors within a competitive range. This requirement can be satisfied only when discussions are meaningful, TRS Design & Consulting Services, B-214011, May 29, 1984, 84-1 CPD ¶ 578,

which means that negotiators should be as specific as practical considerations will permit. Tracor Marine Inc., B-207285, June 6, 1983, 83-1 CPD ¶ 604; 52 Comp. Gen. 466 (1973). The degree of specificity required in conducting discussions is not constant, however, and is primarily a matter for the procuring agency to determine. Broomall Industries, Inc., B-193166, June 28, 1979, 79-1 CPD ¶ 467.

The requirement for meaningful discussions dictates only that the agency proceed in a manner that alerts offerors to perceived weaknesses in their proposals. Agency statements made during discussions that lead offerors into particular areas of their proposals are sufficient to put them on notice that their proposals may be technically unacceptable in those areas. CRC Systems, Inc., B-207847, May 2, 1983, 83-1 CPD ¶ 462. The procuring agency then must afford all offerors a reasonable opportunity to revise their proposals to satisfy the requirements of the solicitation. See 41 C.F.R. § 1-3.805-1(b).

In this case, we believe that the USIA's characterization of the deficiencies in the Eastern Computers proposal as undesirable was sufficient to make the discussions meaningful. Eastern Computers' protest is therefore denied.

#### Compucorp's Protest

Compucorp also contends that the USIA failed to conduct meaningful discussions after its initial proposal was included within the competitive range.

The record indicates that Compucorp's offer was rejected because of the USIA's concern over the reliability of its hardware and software. Compucorp has provided an interim word processing system for the Voice of America central news department that will be replaced by the system acquired in this procurement. The USIA states that the components of the interim system that Compucorp included in its proposal have had substantial reliability problems and that during the operational capability demonstration, the system offered by Compucorp suffered repeated breakdowns. In its best and final offer, Compucorp modified its proposal to include an improved plan for maintenance of its system, but did not otherwise address questions of reliability.

While Compucorp concedes that its equipment malfunctioned during both phases of the demonstration, it contends that the USIA did not conduct meaningful discussions because the firm was not told that the

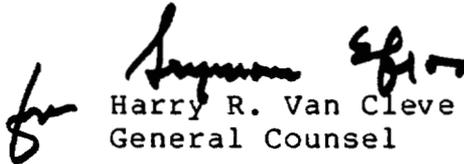
malfunctions of its system during the demonstration were considered serious enough to raise questions as to the reliability of the proposed system. It contends that the problems experienced were minor and that USIA officials expressed satisfaction with how quickly the system was repaired during the demonstrations.

On the other hand, the USIA states that during the demonstration the technical evaluation team informed Compucorp's representatives that the observed hardware and software failures raised grave doubts about the company's design, manufacturing, and quality control procedures. The USIA reports that Compucorp responded by offering to improve maintenance practices, and that a large portion of the 2-day session was devoted to discussing the defects in Compucorp's system and Compucorp's response. Neither party asserts that the system malfunctions were discussed at other times, although the USIA states that some additional breakdowns occurred during the second phase of the demonstration.

Regardless of the magnitude of these malfunctions, clearly Compucorp was aware that its system exhibited defects during both phases of the demonstration. Moreover, Compucorp should have realized the significance of these breakdowns, as USIA had stressed through the procurement process its requirements for a reliable system. Therefore, we conclude that the demonstration of the imperfections in Compucorp's equipment during the performance of the two phases of the demonstration was sufficient to put it on notice of the deficiencies in its proposed system and consequently, was sufficient to satisfy the requirements for discussions. See Centennial Computer Products, Inc., B-212979, Sept. 17, 1984, 84-2 CPD ¶ 295.

In any event, we think Compucorp was aware that a reliable system had to be offered, and it cannot blame USIA officials because its system exhibited defects during the 2-day session.

We also deny Compucorp's protest.

  
Harry R. Van Cleve  
General Counsel