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DECISION



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

FILE: B-218408 **DATE:** July 15, 1985
MATTER OF: Raytheon Company

DIGEST:

The rejection of the protester's proposal was unreasonable where (1) the agency improperly evaluated the proposed equipment's ability to meet one performance requirement based on the actual performance of different equipment previously supplied by the protester; and (2) the technical deficiencies were minor in relation to the scope of work and the revisions necessary to correct them.

Raytheon Company protests the Air Force's rejection of the firm's proposal, under request for proposals (RFP) No. F04606-85-R-0221, to supply quantities of an upgraded "AN/MPN-14 Landing Control Central" (MPN-14). The MPN-14 consists of three radar systems for air traffic control. The RFP required that the contractor replace the old electronic equipment with solid-state equipment and modify the trailers containing the equipment to permit transport in C-130 aircraft. Offerors were to submit fixed unit prices for the MPN-14's, and award was to be made to the responsive, responsible offeror submitting the lowest evaluated offer. Notwithstanding this provision, the Air Force decided to reject Raytheon's proposal, which was more than \$50 million lower in price than the only other proposal submitted, because cumulative deficiencies in Raytheon's technical proposal made the proposal unacceptable to the agency. Raytheon, in addition to taking issue with some of the noted deficiencies, admits that it made some mistakes in its technical presentation, but contends that they were minor and, therefore, did not provide an adequate basis for the rejection of its proposal.

We sustain the protest.

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Background

The Air Force originally initiated a two-step procurement for this requirement, under which offerors submit technical proposals without prices in step one, and in step two those offerors who submitted acceptable technical proposals then submit price proposals. Only Raytheon and ITT Corporation, Gilfillan Division, submitted technical proposals in response to the Air Force's request for technical proposals (solicitation No. FD2050-84-25906) under step one. ITT Gilfillan had developed and produced a prototype upgraded MPN-14 under a sole-source contract awarded by the Air Force in 1983.

After receiving initial technical proposals from Raytheon and ITT Gilfillan, the Air Force determined that it needed to expedite the procurement process by soliciting price proposals at the same time technical evaluations and discussions were taking place. The Air Force therefore sent both offerors a letter dated December 5, 1984, canceling the two-step procurement and enclosing the current RFP, which was issued only to the two offerors. The letter made it clear that the Air Force was considering, under the new RFP, the technical proposals that had been submitted under the two-step procurement. The Air Force stated in the letter that it had not determined whether the proposals were technically acceptable or unacceptable, and that additional information clarifying or supplementing, but not changing the basic proposal, was required to evaluate areas of the proposal where deficiencies existed. Each offeror's letter included a set of questions concerning the areas of perceived deficiencies, and also included an amendment substantively changing the specifications; offerors were told to make the changes needed to respond to the amendment and the questions. The closing date for submitting price proposals and responses to the amendment was set for January 4, 1985.

Both offerors timely submitted their price proposals, revised technical proposals, and answers to the Air Force's technical questions. Two weeks later, the Air Force's technical evaluation team, to which the offerors' price proposals were not made available, completed its evaluation and found ITT Gilfillan acceptable, while finding Raytheon technically unacceptable. The noted deficiencies in Raytheon's proposal basically are as follows:

- (1) concerning transportability, the proposal showed a lack of understanding of the hazards associated with loading the MPN-14 into the C-130 aircraft;
- (2) in the area of operability, the proposal failed to provide a workable solution to the specification's performance requirement that the operations trailer (where the controllers are located) be capable of autonomous operation; and
- (3) also concerning operability, the proposal failed to provide an adequate number of communications jacks to meet the specification requirement that two controllers be able to operate simultaneously from a particular console.

Since Raytheon's price proposal was significantly lower than ITT Gilfillan's, and because the rejection of one proposal would have eliminated any competition, the Air Force decided to conduct a further, extended review of Raytheon's proposal. For this purpose, the Air Force asked for more technical information and also requested both offerors to submit limited cost and pricing data to evaluate the reasonableness of proposed prices. This review endorsed the evaluation team's finding that Raytheon's proposal was deficient in the three areas identified above and also added two more reasons for rejecting Raytheon's proposal. These are as follows and comprise the fourth and fifth reasons the Air Force currently puts forth to justify the decision to reject Raytheon's proposal:

- (4) past experience with similar Raytheon equipment indicated that the offeror would have been unable to meet the specification's requirement that the MPN-14 have a minimum mean time between corrective maintenance (MTBM) of 168 hours; and
- (5) Raytheon's proposed equipment layout for the operations trailer failed to fit within the dimensions of the trailer as listed in the RFP.

While the Air Force was conducting its extended review, ITT Gilfillan advised the agency that it anticipated being able to make substantial price reductions in future negotiations. By telegram dated March 25, the Air Force requested a revised proposal from ITT Gilfillan incorporating such

reductions, while, by a letter of the same date, the agency notified Raytheon that its proposal was found technically unacceptable.

The letter to Raytheon stated that the Air Force's finding was based on its evaluation that Raytheon's equipment could not meet the MTBM requirement. The letter pointed out that the proposal also contained serious deficiencies in the areas of transportability, operability and equipment layout. After receiving this letter, Raytheon timely filed its protest with this Office.

Protest Grounds

The protester makes several arguments, the most basic of which are that the Air Force's evaluation was unreasonable because the deficiencies were inaccurate or minor, and that, in any event, the Air Force failed to conduct adequate discussions since the questions given to Raytheon did not specify the perceived deficiencies. The protester argues that the Air Force had a duty to make reasonable efforts to qualify Raytheon's proposal since the cost savings attributable to Raytheon's proposal were significant and because rejecting the proposal effectively resulted in the elimination of competition.

Regarding the merits of the particular deficiencies, the protester admits its offer was deficient concerning certain aspects of its proposed autonomous power sources for the operations trailer (deficiency No. 2 above) and the requirement that the operations trailer provide communications capability for two controllers to operate simultaneously from a particular console (deficiency No. 3). In this last respect, the protester admits that it intended one controller to utilize a spare jack at another console, but suggests that this approach appears to meet the specification requirement since both controllers would still operate at the console. The protester points out that, in any event, an extra jack easily could be installed directly in the console. The protester also concedes it mistakenly proposed an equipment layout that exceeded the operations trailer's dimension (deficiency No. 5). The protester complains, however, that the Air Force's questions did not specify these deficiencies, which Raytheon argues it could have corrected easily at little or no expense.

The protester vigorously disagrees with the Air Force's technical evaluation of transportability and MTBM (Nos. 1 and 4), however. Raytheon argues that its approach to loading and unloading the MPN-14s utilizes procedures that are standard within the Air Force itself and, therefore, the approach cannot be unacceptable. To the extent that particular aspects of the approach might have been unsatisfactory, the protester complains that the Air Force failed to identify them. Regarding MTBM, the protester argues that the Air Force unreasonably evaluated the MTBM of the proposed MPN-14 based on the actual MTBM of an outmoded predecessor system.

Analysis

It is well established that the evaluation of proposals and the determination of whether a proposal is technically acceptable are matters within the discretion of the contracting agency, whose decisions this Office will review only to ensure that they have a reasonable basis and otherwise comply with applicable procurement statutes and regulations. See Automated Datatron, Inc.; California Image Media, Inc., B-215399; B-215399.2, Dec. 26, 1984, 84-2 C.P.D. ¶ 700. In reviewing the present procurement, we recognize that we lack the Air Force's understanding of its needs and the technical intricacies of the two proposals. Nevertheless, and giving all due respect to the Air Force's expertise in these areas, we believe that several circumstances exist that render the decision to reject Raytheon's proposal unreasonable. Those are, as separately discussed below, that: (a) the evaluation of MTBM was not reasonably supported and was inconsistent with the RFP's evaluation criteria; and (b) the deficiencies appear minor, relative to the scope of work and the changes that would be needed to correct them, and their cumulative effect does not seem to warrant rejection, particularly in light of the potential significant cost savings afforded by Raytheon's proposal.

A. Unreasonable MTBM Evaluation

The Air Force's evaluation of MTBM, which from the Air Force's December 5 letter appears to be, ultimately, the major reason why Raytheon's proposal is viewed as being technically unacceptable, was not based on the equipment proposed by Raytheon, but on an antedated system that

Raytheon delivered to the Air Force in 1976. The protester asserts that while the proposed system was developed from the earlier one, more than 1,300 engineering changes have been made with a resulting improvement in performance. The Air Force response is that Raytheon proposed to supply five receivers, out of the six receivers contained in one of the three radar systems comprising an MPN-14, that were the same as those contained in the previously delivered system. According to the Air Force, these receivers had an actual MTBM of 3,124 hours, as compared to the 13,596 hours Raytheon indicated in its proposal. The Air Force argues that the difference, although not enough to render the proposed MPN-14 noncompliant with the RFP's MTBM requirement of 168 hours for the whole system, substantiates the Air Force's overall concerns regarding the protester's ability to comply with the requirement.

Although Raytheon's initial proposal did identify the receivers as being the same as those in the earlier system, its response to the December 5 amendment, which apparently affected the receivers, stated that the receivers would be "derived" from the earlier system. Furthermore, in a February 22, 1985, letter responding to oral questions by the Air Force, Raytheon explained that the new receiver "was based on" the antedated system's receivers, as updated by a recent contract and including a further improvement. Also, in response to the Air Force's report on the protest, Raytheon states that the proposed receivers included 36 engineering changes, and that the West German Air Force currently has a system equipped with the new receivers, for which the MTBM is more than 10 times better than reported by the Air Force for the receivers delivered in 1976.

The Air Force responds that the proposal did not identify the engineering changes, and that the alleged MTBM experienced by West Germany is inappropriate for consideration since it is not known how that country's Air Force defines equipment failures. Be that as it may, Raytheon's proposal clearly stated that substantial differences existed between its proposed system, including the receivers, and the earlier system from which the Air Force derived its MTBM figures. Because Raytheon's proposal clearly indicated that the systems were substantially different, we believe that the Air Force lacked a reasonable basis for projecting that the proposed system would have the same or a similar MTBM as the proposed system.

We further note that the agency's actual evaluation of whether Raytheon's predicted MTBM could be reliably demonstrated appears to depart from the evaluation scheme set forth in the RFP. The RFP essentially provided that an award would be made on the basis of price to the responsible offeror whose proposal was "responsive" to the RFP. The concept of responsiveness is not literally applicable to a negotiated procurement, but may be used to express the notion that certain of the solicitation's terms are material and that a proposal that fails to conform to them may be rejected as being technically unacceptable. See Applied Research, Inc., B-214738, Aug. 23, 1984, 84-2 C.P.D. ¶ 220. The RFP's term regarding MTBM stated only that "the minimum acceptable MTBM shall be 168 hours based on system operating hours" and, thus, imposed only a requirement to be met prospectively, during the contractor's performance. Notwithstanding the Air Force's doubts and speculation regarding Raytheon's predictions, Raytheon's proposal did not take exception to this term, but predicted a better system MTBM (186.2 hours as last proposed). If the Air Force also had advised offerors that the demonstrated reliability of MTBM predictions would be an important evaluation factor, or requested offerors to submit data demonstrating the reliability of MTBM predictions, perhaps Raytheon would have done so.

B. Minor Nature of Deficiencies

We believe the deficiencies that the Air Force attributes to Raytheon's proposal are relatively minor, both individually and collectively, in relation to the scope of work and the extent of revisions necessary to correct them. The perceived MTBM deficiency really involves a lack of supporting data for Raytheon's proposed system, and not a deficiency in the system itself as would require any rewrite to correct. As previously discussed, the Air Force failed to advise Raytheon of the necessity for submitting such data, and improperly used data not reasonably related to the offeror's proposed system. While we recognize that generating appropriate data could demand some effort from Raytheon, giving Raytheon an opportunity merely to present information to support its proposed system clearly would not entail a change to the proposed system at all. Considering the vast scope of the specifications concerning the system, we believe that the perceived deficiency, and any necessary revisions, should be viewed as minor.

Aside from MTBM, the other deficiencies (regarding equipment layout, transportability, the autonomous power source for the operations trailer, and the location of the communication jacks for one console) also were relatively minor in relation to the scope of work and the extent of revisions necessary to correct them. It appears from the record that the deficiency involving the operations trailer's equipment layout exceeding the trailer's dimensions easily can be remedied by moving some equipment to the radar trailer without diminishing the operators' ability to control air traffic. The other two deficiencies obviously are minor in relation to the many technical systems comprising the MPN-14. Furthermore, we do not believe it reasonably can be said, on the basis of the present record, that the cumulative effect of the individual deficiencies renders the proposed MPN-14s totally unacceptable unless major revisions are allowed. The MPN-14s being procured here are highly complex, and there is no indication that Raytheon's proposal was deficient regarding the vast majority of the extensive specifications.

The protester points out that there exists authority for the position that the Air Force therefore was unreasonable in rejecting Raytheon's proposal while conducting negotiations with ITT Gilfillan. Rockwell International Corp. v. United States, 4 Cl. Ct. 1 (1983). In Rockwell, the Claims Court, citing decisions by our Office, held that even though a proposal still had several deficiencies, after the offeror had the opportunity to revise its proposal in response to written questions from the contracting agency, the agency acted unreasonably by eliminating the offeror from the competitive range where the deficiencies could have been made acceptable through relatively minor revisions, as opposed to a major rewrite; only one firm remained in the competitive range; and the agency conducted further negotiations with that firm.

We agree those factors basically are present in this case. In order to reject a proposal for technical deficiencies alone, without regard to other factors, the technical portion of the proposal must be more than technically inferior; it must be unacceptable in relation to the agency's requirements or so deficient that an entirely new proposal would be needed. See 52 Comp. Gen. 389 (1972). Otherwise, the extent of both the technical and any

potential cost savings generally should be factors in a competitive range determination. Id.; see also Marvin Engineering, B-214889, July 3, 1984, 84-2 C.P.D. ¶ 15.

Conclusion and Recommendation

We sustain the protest. By separate letter, we are recommending that the Air Force reopen discussions, advising Raytheon of the deficiencies in its proposal and giving both competitors an opportunity to submit further offers.

for Milton J. Fowler
Comptroller General
of the United States