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DECISION



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

FILE: B-219643 **DATE:** November 18, 1985
MATTER OF: RCA Service Company

DIGEST:

1. Although the deficiencies that the protester's best and final offer introduces into its proposal may be largely "informational" in nature, when their number and variety are great, it is not unreasonable for a contracting agency to conclude that they cannot be corrected by means of "clarifications," but require the reopening of discussions.
2. Contracting agency acts reasonably in refusing to reopen discussions with the protester after the receipt of best and final offers, even though the protester's proposal offers an apparent saving of \$4 million, when the best and final introduces numerous deficiencies into a previously acceptable proposal and raises questions concerning the protester's ability to meet solicitation requirements.

RCA Service Company protests the award of a contract to the Dynalectron Corporation under request for proposals (RFP) No. DAAD07-84-R-0031, issued by the U.S. Army White Sands Missile Range, New Mexico. RCA argues that the Army should not have rejected its best and final offer, which was approximately \$4 million less than the awardee's, without seeking clarification as to proposed reductions in cost.

We deny the protest.

BACKGROUND

The RFP was issued on September 14, 1984, to 90 potential contractors, soliciting offers for a 5-year, cost-plus-award-fee contract for electronic data collection services. Only two companies, RCA and Dynalectron (the incumbent contractor), submitted proposals. After evaluating these two proposals, the contracting officer

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determined that RCA did not have a reasonable chance of being selected for the award and therefore should not be in the competitive range. The bases for this determination included a number of deficiencies in RCA's technical proposal, the superiority of Dynalelectron's technical and management proposals, and the fact that RCA's initial offer was approximately \$4 million more than Dynalelectron's.

The contracting officer notified RCA by letter dated February 26, 1985 that it was outside the competitive range. This letter included information concerning the difference in price between the RCA offer and the low offer, as well as the results of the Defense Contract Audit Agency field report and the findings of the Army's Proposal Evaluation Board as to weaknesses and deficiencies in the RCA proposal.

Before the contracting officer could make the award to Dynalelectron on an initial proposal basis, however, higher Army officials requested that the contracting officer hold discussions with RCA to try to increase competition for a job that Dynalelectron had performed exclusively for the past 25 years. The contracting officer agreed to the request and notified RCA in writing that the letter of February 26 was withdrawn; on April 15 and 16, 1985, the Army held discussions with both offerors and requested best and final offers. According to the Army, in its best and final offer, RCA cut its proposed cost by approximately \$8 million to \$69,865,624, compared with Dynalelectron's relatively unchanged final cost of \$73,900,655.^{1/} (Both figures include a maximum proposed award fee.)

While RCA's best and final offer was thus more than \$4 million less than Dynalelectron's, the Proposal Evaluation Board nevertheless recommended that RCA's proposal be rejected without further consideration. This was primarily because the board considered RCA's large cost reductions unrealistic and unsupported. In the board's opinion, RCA had failed to provide an adequate explanation of how the "arbitrary" \$8 million reduction would affect its technical and management proposals.

^{1/} RCA's protest states that its best and final offer was \$69,866,424. While the \$800 discrepancy between this and the Army's figure is not explained by the record, it is not relevant to our decision.

Agreeing that RCA's proposal should be rejected, the contracting officer awarded the contract to Dynalectron and notified RCA by letter dated July 26, 1985. In pointing out that the reductions that RCA had made in its best and final offer had not been explained and had therefore created an inconsistency between the company's technical proposal and its cost proposal, the contracting officer listed six specific examples:

(a) RCA had reduced payroll/overhead loadings by \$1.5 million for no apparent reason;

(b) RCA had eliminated either 17 or 19 supervisory personnel (the exact number could not be determined from the proposal) without explanation;

(c) RCA had also eliminated 12 administrative personnel without any explanation of how the total workload would be accomplished;

(d) RCA had not explained reductions in skill levels in the Support Services Department;

(e) RCA had reduced some job elements and salaries in the Pan Am World Services, Inc., subcontract proposal, also without explanation; and

(f) RCA had reclassified some labor categories and reduced hourly rates without explanation.

RCA alleges that these reasons for rejecting its proposal are "disquietly thin" in view of its considerably lower cost. Therefore, shortly after receiving the contracting officer's letter, the company protested to our Office.

RCA PROTEST

RCA believes that the Army's decision to reject its proposal is entirely unjustified. In the protester's opinion, every one of the agency's concerns could have been cleared up through either a more careful evaluation of the RCA best and final offer or by requesting clarifications from the company.

For example, RCA points out that the elimination in its best and final offer of 9 supervisory personnel and 21 other personnel, plus some "slight additional changes in the skill mix in the technical support area," reflected projected increases in efficiency in the later years of the contract and were presented in the same format as the staffing plan in its initial proposal. Since the Army had found the original method of describing the company's personnel mix comprehensible, RCA states that it does not see how the agency can now claim that it cannot understand, and therefore cannot evaluate, changes in the best and final offer. Even if the Army was in fact confused by the changes, RCA maintains, this confusion could have been cleared up quickly if the contracting officer had sought clarifications.

In RCA's opinion, the alleged deficiency with regard to reductions in personnel and all the others that the Army has cited are nothing more than "informational" deficiencies that should not have eliminated the company from the competition. According to the protester, not one of the items that the Army has pointed out as a major weakness in the RCA best and final offer requires that discussions be reopened. The protester believes that the Army should allow it to explain any item in its best and final offer that the agency finds troublesome and then, in view of the \$4 million cost saving, the Army should terminate the contract with Dynallectron for the convenience of the government and award a new contract to RCA.

GAO ANALYSIS

At the outset, we note that the contracting officer did not adhere to the applicable regulations when initially notifying RCA that it was not in the competitive range. The Federal Acquisition Regulation (FAR) requires a contracting officer to notify an unsuccessful offeror in writing at the earliest practicable time that its proposal is no longer eligible for award. FAR, 48 C.F.R. § 15.609(c) (1984). This notification should not be so specific that it discloses information that, if the offeror had remained in the competition, it would not have been entitled to know; the FAR contemplates that a preaward notice will provide the unsuccessful offeror with only general information concerning the reasons behind the rejection of its proposal. FAR, 48 C.F.R. § 15.1001(b). A more detailed explanation must wait until after the award has been made. Id. § 15.1001(c). At that point, the contracting officer

can conduct a formal debriefing of the unsuccessful offeror. Even debriefings may not provide a point-by-point comparison of various offerors' proposals, reveal the relative merits of the proposals, or release any confidential business or financial information not otherwise releasable under the Freedom of Information Act. Id. § 15.1002(b). In general, a debriefing should focus on pointing out the significant weaknesses or deficiencies in the unsuccessful offeror's proposal.

Here, the Army's letter of February 26, 1985, which was later withdrawn, informing RCA that its proposal had been eliminated from the competitive range, was extremely specific. As noted above, this letter told RCA that its proposed price was "in excess of \$4 million higher than the lowest price offered." It also provided data from the field audit that informed RCA of the exact amounts by which the Army believed the company had either overestimated or underestimated certain cost items. It appears that RCA's reduction of \$8 million in its best and final offer can be linked directly to the information it received from this letter.

The merits of RCA's protest hinge on whether the Army was required to seek clarification from RCA concerning the alleged deficiencies in the best and final offer or, in the alternative, to reopen discussions in view of the potential cost saving.

In evaluating proposals, including best and finals, agencies may reasonably reject a proposal for "informational" deficiencies if these are so material that major revisions and additions would be required to make the proposal acceptable. ASEA, Inc., B-216886, Feb. 27, 1985, 85-1 CPD ¶ 247. As RCA points out, contracting agencies can allow offerors to explain apparent defects in their proposals and thus remain in the competition. However, in such situations, a distinction must be made between "clarifications" and "discussions." We have held that clarifications are inquiries to eliminate minor uncertainties or irregularities, while discussions occur if an offeror is afforded an opportunity to revise or modify its proposal or when the information requested and provided is essential for determining the acceptability of the proposal. If, as here, best and final offers have already been received, the contracting agency may request clarifications from just one offeror, but if the agency decides to conduct discussions with that offeror, it must do so with all offerors in the competitive range. Alchemy, Inc., B-207338, June 8, 1983, 83-1 CPD ¶ 621.

In RCA's opinion, the deficiencies that the Army has identified in its proposal are "informational" only, are relatively minor, and can be corrected by means of clarification. Yet, where one or more deficiencies may not, of themselves, be sufficient reason for rejecting a proposal, it is possible that as a totality, they can justify a contracting agency's conclusion that the proposal is so materially deficient that major revisions and additions would be required to make it acceptable. ASEA, Inc., supra. This is what the Army argues, and after reviewing the record, we cannot say that the agency's conclusion is unreasonable.

We have looked at the six deficiencies the Army originally cited, as well as additional ones found by evaluators but not specifically mentioned to RCA, and we find that overall, further discussions with RCA would have been required before the agency could have determined whether the RCA proposal was acceptable. For example, in the company's quality assurance plan, in its best and final offer RCA dropped the number of inspectors from 3 to 2, without providing any reason. As the Army has pointed out, there were many similar cuts, such as the elimination of an optics system supervisor, an employee relations representative, and various clerk typists, for which RCA's explanations were sketchy at best. Likewise, RCA substituted one type of worker for another--such as an automotive serviceman for an automotive mechanic--without really explaining the impact of such a change.

RCA believes that all these personnel changes are either self-explanatory or could have been easily clarified upon request. Individually, this might be so, but because of the number and variety of these changes, RCA has in fact placed a heavy burden on the procuring agency to decipher exactly what it is proposing to do. In our opinion, the agency is not required to go to such lengths to keep RCA in the competition.

In addition, our review of the protest record reveals that RCA reduced the ceiling on its proposed award fee by an amount that the Army considered "drastic." The Army believed that the dollar amount of RCA's finally-proposed maximum award fee was so low that it would provide no incentive for high performance. When the Army considered this in connection with the deletion of personnel, reduction of skill levels, and reduction in hourly rates, the record indicates, officials believed that they would be required to

make assumptions as to cost and performance tradeoffs that would be required during performance in order to achieve a satisfactory level of service. The Army determined that it was not in a position to make such assumptions.

In view of the total number of changes RCA made in its best and final offer, we cannot say that the Army was unreasonable in concluding that taken as a whole, they were so material that only the reopening of discussions with RCA could bring about the major revisions needed to make the RCA proposal acceptable.

RCA believes that the potential saving offered by its proposal leaves the Army no other choice but to reopen discussions. It points out that the FAR, 48 C.F.R. § 15.611(c), states that discussions should not be reopened after the receipt of best and final offers "unless it is clearly in the government's interest to do so." In RCA's opinion, it is "clearly in the government's interest" to reopen negotiations to save approximately \$4 million.

It is well established that an agency has no obligation to reopen negotiations so that an offeror may remedy defects introduced into a previously acceptable proposal by a best and final offer. The offeror assumes the risk that changes in its final offer might raise questions about its ability to meet the requirements of the solicitation and thus result in the rejection of its proposal. Xerox Special Information Systems, B-215557, Feb. 13, 1985, 85-1 CPD ¶ 192. Moreover, section M of the RFP, entitled "Evaluation Factors for Award," indicates that cost is a less important factor than technical and management in the selection of an awardee. In fact, technical excellence is stated to be four times as important as cost. Thus, whatever cost savings RCA's proposal offers is not as critical a factor under the RFP as the existence of so many deficiencies in other areas of the RCA proposal.

Under these circumstances, then, we cannot say that it was unreasonable for the Army to conclude that RCA's lower proposed cost was not a compelling reason to reopen discussions. By its own actions, RCA raised doubts as to its ability to meet the solicitation's requirements, and it cannot complain at this stage because the agency will not give it another opportunity to make its proposal acceptable.

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Xerox Special Information Systems, supra.

Protest denied.

for *Raymond E. Efron*
Harry R. Van Cleve
General Counsel