

DECISION

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

FILE:

B-223103

DATE: June 23, 1986**MATTER OF:**

Midcoast Aviation, Inc.

DIGEST:

1. There is no requirement that an agency conduct discussions with an offeror whose technical proposal under step one of a two-step sealed bid acquisition is informationally deficient to the extent that it cannot be made acceptable without a major rewriting of the proposal.
2. Although step one of a two-step sealed bid acquisition contemplates the qualification of as many technical proposals as possible through negotiation procedures in order to maximize competition, an unacceptable step one proposal properly may be rejected without discussions where a sufficient number of acceptable proposals are received to ensure adequate price competition under step two, and the agency's evaluation of the proposal as not meeting essential informational requirements as submitted is reasonable and in accordance with the specifications and stated evaluation criteria.

Midcoast Aviation, Inc. (Midcoast) protests the rejection of its proposal as technically unacceptable under a request for technical proposals (RFTP) issued as step one of invitation for bids No. N68520-86-B-0001, a two-step sealed bid acquisition conducted by the Naval Aviation Logistics Center. The procurement is for the acquisition of Standard Depot Level Maintenance (SDLM) to support the Navy's A-4 and TA-4 aircraft. Midcoast asserts that the Navy improperly determined that its proposal was technically unacceptable, without affording the firm an opportunity to correct any perceived deficiencies through meaningful discussions, so as to exclude it from further competition under step two. We deny the protest.

Background

As provided in the Federal Acquisition Regulation (FAR), § 14.501 et seq. (FAC 84-5, Apr. 1, 1985), the two-

step process is a hybrid method of procurement combining the benefits of sealed bids with the flexibility of negotiation. The step one procedure is similar to a negotiated procurement in that the agency requests technical proposals and any needed clarifications. After evaluation, discussions may be held, and revised proposals may be submitted. Step two is conducted in accordance with sealed bid procedures, with the exception that the competition is limited to only those firms that submitted acceptable proposals under step one. See Datron Systems, Inc., B-220423 et al., Mar. 18, 1986, 86-1 CPD ¶ 264.

The Navy received nine proposals in response to the RFTP and, upon evaluation, determined that three proposals were technically unacceptable as submitted. The Navy's evaluators noted various major informational deficiencies in Midcoast's proposal, among other things: (1) the failure to provide engineering coordination with the appropriate field activity for the approval of non-standard repairs; (2) the lack of a demonstrated capability to analyze unprogrammed failures or to develop repair procedures for unusual structural problems not covered by the aircraft structural repair manual; (3) the failure to provide flow-days or man-hours for each operation; (4) the lack of procedures for the control of liquid oxygen (LOX) to prevent contamination; and (5) the failure to demonstrate an established program for the removal, handling, and storage of explosive materials.

The Navy determined that the deficiencies in the proposal reflected Midcoast's insufficient understanding of the work required. Moreover, the Navy felt that these deficiencies were significant enough to impact potentially upon the safety of the aircraft and their operational crews. Although the Navy regarded certain of these deficient proposal areas as susceptible to being made acceptable through discussions, the agency's position was that the proposal, as a whole, could not be made acceptable without significant changes in Midcoast's proposed method of performing the SDLM effort and an attendant major rewriting of the proposal.

Midcoast then protested the rejection of its proposal to this Office. During the protest resolution process, Midcoast submitted additional material to the Navy in an effort to satisfy the agency's concerns and to establish the acceptability of its proposal. However, the Navy determined that this information "is a restatement of the material included in the original proposal and does not change [the] conclusion that Midcoast is technically unacceptable to perform A-4/TA-4 SDLM."

Analysis

Under step one of a two-step sealed bid acquisition, once an offeror's proposal is found deficient to the extent that it is not reasonably susceptible of being made acceptable, there is no requirement that the agency conduct discussions to afford the offeror an opportunity for revision. Datron Systems, Inc., B-220423 et al., supra; Anchor Conveyors, Inc. et al., B-215624 et al., Oct. 23, 1984, 84-2 CPD ¶ 451. Thus, the contracting officer may proceed directly with step two if there are sufficient acceptable proposals to ensure adequate price competition under step two, and if further time, effort, and delay to make additional proposals acceptable and thereby increase competition would not be in the government's interest. FAR, § 14.503-1(f)(1).

Generally, we have held that initial technical proposals submitted in step one of a two-step sealed bid acquisition need comply only with the basic or essential requirements, but not all of the details of the specifications. Lockheed California Co., B-218143, June 12, 1985, 85-1 CPD ¶ 676. However, although step one contemplates the qualification of as many technical proposals as possible under negotiation procedures in order to maximize competition, and, therefore, requires that an agency make reasonable efforts to bring step one proposals to an acceptable status, Wiltron Co., B-213135, Sept. 14, 1984, 84-2 CPD ¶ 293, unacceptable proposals nonetheless may be rejected in step one where the agency's evaluation of the proposal as not meeting essential requirements absent extensive revision is reasonable and in accordance with the specifications and stated evaluation criteria. Lockheed California Co., B-218143, supra.

We do not find that the Navy acted unreasonably in determining Midcoast's proposal to be technically unacceptable as submitted. For decision purposes we will focus our discussion upon the five areas of perceived deficiency noted earlier.

The RFTP required offerors to submit a plan demonstrating the methodology to be used in evaluating typical engineering problems and further emphasized that coordination between the contractor and the "cognizant field activity" was necessary for the approval of repairs of a major nature not covered by the aircraft structural repair manual. Although Midcoast's proposal indicated its plan "for solving typical engineering problems," we find no reference to procedures for the coordination of non-standard repairs with the field activity. Despite Midcoast's assertion to the contrary, we do not believe the fact that it provided a methodology to evaluate and resolve

engineering problems encountered on previous contracts and the resumes of qualified engineering personnel necessarily met the specific requirement of the solicitation with regard to unanticipated structural repairs. Accordingly, there is no basis to question the Navy's conclusion that the proposal was deficient in this area.

Similarly, the RFTP required offerors to submit details of their capabilities to minimize or resolve high technical production risks in the area of aircraft deterioration. The applicable section of Midcoast's proposal set forth the firm's corporate and personnel expertise and experience in major aircraft rework, and further provided that it had a consulting arrangement with the original aircraft manufacturer, but made no reference to unprogrammed failure analysis capability or the development of procedures for the repair of unusual structural problems. In our view, the Navy did not unreasonably conclude that the lack of details in the proposal regarding the firm's capabilities to minimize or resolve unusual technical problems was not offset by the firm's reference to proposed qualified personnel and the availability of assistance from the original manufacturer.

Further, the RFTP required offerors to submit a production flow chart showing man-hours and a flow-day outline for the accomplishment of standard maintenance for each type, model, and series of aircraft. Midcoast did provide a general outline of man-hours and flow-days for each aircraft, but did not furnish specific details for each particular maintenance operation, apparently in the belief that pricing information could have been inferred from this.^{1/} We fail to see how the provision of man-hours and flow-days for each operation would have resulted in the effective disclosure of pricing information, since there would have been no indication of the costs of these elements. In any event, the Navy cannot be faulted for determining that the proposal did not demonstrate Midcoast's clear understanding of the work where the firm admittedly failed to furnish specific details for this critical aspect of production planning, as required by the RFTP.

The RFTP also required offerors (1) to answer "yes" or "no" as to whether they presently had qualified personnel and facilities for the storage and handling of LOX and (2) to provide procedures for the control and surveillance of

^{1/}The RFTP cautioned offerors to avoid all pricing information, or inferences from which such pricing information could be drawn, in their step one technical proposals. See the Federal Acquisition Regulation, § 14.501(a) (FAC 84-5, Apr. 1, 1985)

LOX to prevent contamination. According to the Navy's technical evaluation plan, which was not disclosed to the offerors, a proposal would be deemed acceptable in this area when the offeror answered in the affirmative to the first question and then demonstrated appropriate contamination prevention procedures. In its proposal, Midcoast stated that it presently did not have qualified personnel or approved facilities for LOX storage, but that it would provide the necessary facilities and properly trained and qualified personnel upon award of the contract. Midcoast argues that it was improper for the Navy to determine that its proposal was unacceptable in this area as it reads the requirement for LOX storage to be a post-award condition of acceptable contract performance, and not a criterion of proposal acceptability.

Clearly, the RFTP did not state that present LOX storage capability was a material condition of proposal acceptability, and Midcoast in fact did set forth in its proposal the steps it would take to satisfy the requirement upon award of the contract. Therefore, the firm's position might have merit if the Navy had determined the firm's proposal unacceptable in this area on the basis of what, arguably, was an undisclosed evaluation factor. However, the Navy's administrative report specifically states that the proposal was informationally deficient for failure to address the second key element of the requirement--the provision of procedures for the control and surveillance of LOX to prevent contamination. In this regard, Midcoast merely stated in its proposal that, "All oxygen handling equipment will be kept clean, dry, and free of oil or grease." It is our view that such a generalized statement fails to equate with a detailed plan for the avoidance of LOX contamination. Accordingly, we do not find that the Navy improperly determined that the proposal was inadequately detailed with regard to this aspect of the overall requirement.

Moreover, the RFTP required offerors to submit safety procedures to be used in the removal, handling, and storage of explosive materials and explosive-activated devices in accordance with cited Navy and Department of Defense published standards for the handling of ammunition and explosives. In its proposal, Midcoast recognized the importance of precautions in this area and stated that, "[B]efore attempting any work on the aircraft all hazardous equipment will be made safe in accordance with applicable technical publications." Although Midcoast arguably evidenced its intent to meet the requirement, its proposal in this area constituted less than a page of what reasonably may be regarded as a cursory response, in contrast to other safety-related areas in the proposal, such as materials

handling and aircraft hangering, in which the firm provided comprehensive operational procedures. Therefore, we do not believe the Navy improperly determined the proposal to be informationally deficient in this area.

We have carefully reviewed Midcoast's proposal and the Navy's stated rationale for rejecting it as technically unacceptable. It is conceivable that the informational deficiencies in the proposal could have been resolved through discussions so as to make it acceptable, but we agree with the Navy that this would have involved a significant rewriting of the proposal. We have held that an agency should not permit an offeror to remedy major proposal defects when the only manner of cure is by means of such an extensive revision. Angstrom, Inc., 59 Comp. Gen. 588 (1980), 80-2 CPD ¶ 20; Radiation Systems, Inc., B-211732, Oct. 11, 1983, 83-2 CPD ¶ 434. Where a solicitation requires detailed information, it is the responsibility of the offeror to submit an adequately written proposal. Marvin Engineering Co., Inc., B-214889, July 3, 1984, 84-2 CPD ¶ 15. Thus, while individual deficiencies may be amenable to correction, the aggregate of many such deficiencies may preclude the agency from making an intelligent evaluation, and the agency is not required to allow an offeror the opportunity to rewrite its proposal. Radiation Systems, Inc., B-211732, supra.

The RFTP clearly indicated to the offerors the urgent nature of the requirement as critical to the Navy's overall mission. Offerors were also cautioned:

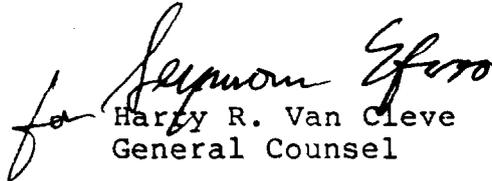
". . . to submit proposals which are fully and clearly acceptable without additional explanation or information, since the Government may make a final determination as to whether proposals are acceptable or unacceptable solely on the basis of the proposals as submitted, and proceed with the second step without requesting further information from any proposer."

This provision in the RFTP, included pursuant to the general step one procedures delineated in the FAR, § 14.503-1(a)(8), reflected the discretion afforded to the contracting officer to proceed directly with step two if, in the presence of sufficient acceptable proposals, the time needed to make additional proposals acceptable would not be in the government's interest. FAR, § 14.503-1(f)(1), supra.

In these circumstances, we do not find that it was improper for the Navy to reject Midcoast's proposal without conducting discussions with the firm. Cf. Wiltron Co., B-213135, supra. Midcoast cannot now reasonably complain

that its lack of diligence in preparing an informationally adequate proposal has resulted in its exclusion from further competition under step two. Unlike the situation in Wiltron, in which the rejection of the protester's step one proposal without discussions would have resulted in a de facto sole-source procurement, the Navy here has found six of the nine submitted proposals to be technically acceptable, thus, ensuring adequate price competition under step two. In addition, we believe it is significant again to note that the Navy considered supplemental information furnished by Midcoast during the protest resolution process. We have also reviewed that information, and we agree with the Navy that it was little more than a restatement of the material contained in the firm's original proposal. Accordingly, to the extent Midcoast argues that the Navy's failure to conduct discussions was prejudicial, we find the argument to be without merit where the firm effectively was afforded an opportunity to address the deficiencies in its proposal. See Lockheed California Co., B-218143, supra, 85-1 CPD ¶ 676 at 5.

The protest is denied.


Harry R. Van Cleve
General Counsel