The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: A.R.E. Manufacturing Co., Inc.

File: B-224086

Date: October 6, 1986

DIGEST

Protester's technical proposal under step one of two-step sealed bids improperly was rejected without the opportunity for revision where several of the evaluated deficiencies were in error and the actual design and informational deficiencies may not have been such that the proposal failed to meet the solicitation's essential requirements. A contracting agency generally must make reasonable efforts to qualify as many technical proposals as possible under step one in order to obtain full and open price competition under step two.

DECISION

A.R.E. Manufacturing Co., Inc. protests the rejection of its technical proposal under letter request for technical proposals (LRFTP) No. N00104-86-R-ZU62, issued by the Department of the Navy, Navy Ships Parts Control Center, Mechanicsburg, Pennsylvania. The RFTP initiated step 1 of two-step sealed bids to supply an estimated 2550 shipboard self-contained air conditioners (in sizes of 3, 5 and 7.5 tons). The air conditioners are essential to maintain the operation of ships' computer and electronics systems and also are important for the welfare of ships' personnel.

We sustain the protest.

Two-step sealed bids is a hybrid method of procurement that combines the benefits of sealed bids with the flexibility of negotiations. Step one is similar to a negotiated procurement in that the agency requests technical proposals, without prices, and may conduct discussions. Step two consists of a price competition conducted in accordance with sealed bid procedures, except that the competition is limited to those firms which submitted acceptable proposals under step one. Midcoast Aviation, Inc., B-223103, June 23, 1986, 86-1 CPD ¶ 577.

The LRFTP initiating step one contained more than 60 pages of technical specifications (including quality assurance provisions), referenced more than 30 Department of Defense specifications and standards, and further referenced various standards of trade associations and a testing laboratory. Offerors were advised that technical proposals must be sufficiently complete to demonstrate an understanding of and the ability to comply with all requirements. The LRFTP further advised offerors to structure proposals to correspond to the LRFTP's numbering sequence prescribed for proposal format, and warned that responses in one paragraph might not serve as adequate responses to information required in others. The LRFTP stated that the technical evaluation factors and weights would be design (60 percent), contractor capability (33 percent) and quality assurance (7 percent).

The Navy received seven timely proposals. Three proposals were determined to be unacceptable but susceptible of being made acceptable through reasonable discussions, while four proposals--including A.R.E.'s proposal--were deemed unacceptable and rejected. In general terms, the Navy determined that A.R.E.'s proposal failed to conform to essential LRFTP requirements and would require such extensive revisions to conform to minimum design and performance requirements that the proposal was not susceptible of being made acceptable except through the submission of an essentially new proposal.

Specifically, the Navy determined that A.R.E.'s proposed condenser design did not comply with the requirements for condenser head depth nor wall tubing thickness, and did not specify certain zinc components as required by the LRFTP. The Navy also evaluated the proposed design as not providing sufficient access for cleaning and maintenance of the condenser notwithstanding the proposal's statement that cleaning and maintenance could be accomplished as required by the LRFTP.

Other design deficiencies cited by the Navy were: 1) the location of a monitoring device for the water-regulating valve, which modulates the flow of water needed by the condenser, was improper, and the proposed valve had a flat-disc design as opposed to the required tapered-disc design; 2) the protester proposed to continuously energize the crankcase heater, to provide required heating of compressor oil, in violation of the LRFTP; 3) no provision was made for stopping the compressor upon interruption of the fan circuit; 4) the proposed design for draining condensate did not meet LRFTP requirements for drainage during cyclical inclinations of 45 degrees, and included threaded fittings prohibited by

the LRFTP; and 5) the proposed thermal expansion valve's inlet and outlet connections were brazed to the valve in violation of the LRFTP's requirement that they be cast or forged with the valve body.

In addition, the Navy cited numerous informational deficiencies in A.R.E.'s proposal. One significant instance involved an amendment that changed the LRFTP from originally requiring compliance with high impact shock tests specified in MIL-S-901 for Grade B Class I equipment, to requiring compliance with the more stringent tests specified for Grade B, deck mounted, Class II, medium weight, Type A equipment. Discussion of how the shock standards would be met was required and was considered essential by Navy evaluators since in combat situations ships are consistently subject to shock. According to the Navy, the A.R.E. proposal failed to address the amended requirements.

Among other cited informational deficiencies, A.R.E. included performance data for a cooling coil with different sized fins than those actually proposed, failed to provide information showing how its materials would be fabricated to resist corrosion, and failed to include required power consumption plots and compressor motor torques.

The protester contends that its proposal complied with the stated LRFTP design requirements except that the condenser heads for the 7.5-ton units did not meet the depth requirement. The protester contends that this deficiency and any informational deficiencies in its proposal can be modified by minor revisions to the proposal.

The regulations prescribing the procedures for two-step sealed bids provide that if there are sufficient acceptable proposals to ensure adequate price competition under step two, and further time and effort to make additional proposals acceptable would not be in the government's best interest, the contracting officer may proceed directly to step two; otherwise, as here, the contracting officer must identify the nature of deficiencies and request additional information from offerors of proposals that may be made acceptable. Federal Acquisition Regulation, 48 C.F.R. § 14.503-1(f)(1) (1985). In this regard, we have held that an agency must make reasonable efforts to qualify as many technical proposals as is possible for the purpose of obtaining maximum practicable competition (now full and open competition) under step two. Angstrom, Inc., 59 Comp. Gen. 588 (1980), 80-2 CPD 20; Wiltron Co., B-213135, Sept. 14, 1984, 84-2 CPD ¶ 293.

A proposal need only comply with the essential requirements, but not all the details of the specifications, to be considered reasonably susceptible of being made acceptable. See Angstrom, Inc., supra; Midcoast Aviation, Inc., B-223103, June 23, 1986, 86-1 CPD ¶ 577. The contracting agency nonetheless may reject a proposal under step one where the agency reasonably evaluates the proposal as not meeting essential requirements or where the proposal can be made acceptable only through extensive revisions. Midcoast Aviation, Inc., supra. In order to reject a proposal for technical deficiencies alone, however, the agency must find the proposal to be more than technically inferior--it must be unacceptable in relation to the agency's requirements or so deficient that essentially an entirely new proposal would be needed. See 52 Comp. Gen. 382 (1972); Raytheon Co., B-218408, July 15, 1985, 85-2 CPD ¶ 51.

Regarding informational deficiencies, several factors are considered in determining whether informational deficiencies are material enough to warrant rejecting a proposal without the opportunity for revision. Those are: the extent to which the solicitation required detailed information; the nature of the deficiencies, e.g., whether they indicated that the offeror did not understand the specifications, or merely made the proposal inferior but not unacceptable; the scope of the deficiencies, i.e., whether major revisions would be necessary to correct them; the number of other proposals in the competitive range; and (in negotiated procurements) the potential cost savings offered by the proposal. See PRC Computer Center, Inc. et al., 55 Comp. Gen. 60 (1975), 75-2 CPD ¶ 35; Shaw Food Servs. Co., B-219415.2, Sept. 23, 1985, 85-2 CPD ¶ 320.

Our review of A.R.E.'s proposal indicates that the proposal included drawings, submitted in response to requirements for design detail, that showed the required wall tubing thickness (on page 112), described the components for the condensers in the same language as the RFP (on page 111) and also indicated an air-flow switch to stop the compressor upon interruption of the fan circuit (on pages 68, 147 and 150). The proposal also clearly detailed a method of draining condensate during cyclical inclinations of 45 degrees (on page 186). The proposal (on page 176) additionally addressed and offered to comply with the more stringent shock tests added to the LRFTP by amendment, although the proposals did state that A.R.E. might request an extension for the testing of the 3 and 5-ton units.

We further find that the specifications do not prohibit the crankcase heater from being continuously energized and do not expressly state that the thermal expansion valve's inlet and

outlet connections must be cast or forged with the valve's body, but state only that the connections must be "an integral part of the valve body." Thus, in the absence of any indication that the proposed crankcase heater and thermal expansion valve designs were unworkable, they could not be found deficient properly without clarification or revision to the specifications. Cf. Arthur Young & Co., B-216643, May 24, 1985, 85-1 CPD ¶ 598 (rejection of a proposal based on the agency's interpretation of a requirement, where the protester's interpretation also was reasonable, resulted in unfair and unequal competition).

Through its own technical analysis, the Navy apparently found deficiencies in A.R.E.'s proposal notwithstanding the proposal's language purporting to comply with the specifications. For example, the Navy independently determined that A.R.E.'s design did not permit access to both condensers for cleaning after removing one head as required by the RFP, and that the sea water flow rate through the condenser exceeded a stipulated maximum rate of 6.0 feet per second, whereas A.R.E.'s proposal stated that the condensers were accessible for cleaning by removing one head and specified a flow rate for each size of air conditioner that was less than 6.0 feet per second. The Navy has not explained how or why it reached the conclusions it did, and we therefore cannot corroborate the reasonableness of its position. We note, however, that the alleged maximum sea water flow rate through the condenser was included in the LRFTP as a parameter for calculating whether the air conditioners achieved a minimum performance factor of 10 Btu per hour per watt, and not expressly as a maximum limitation.

The remaining cited deficiencies are more or less supported by the record. We therefore view the issue here to be whether the actual design deficiencies (the nonconforming condenser head depth, and the incorrectly located monitor and improperly designed disc for the water-regulating valve) and the actual informational deficiencies provided a sufficient basis for rejecting A.R.E.'s proposal.

On this record, we must conclude that they did not. First, there is nothing indicating that the deficiencies involving the condenser head depth and the water-regulating valve were of such a nature, relative to the overall requirements, as to render the proposal unacceptable. We recognize that these deficiencies could be serious ones--the record shows that the LRFTP was amended to require a larger head depth in order to protect the tube sheets beneath it, and required the tapered disc for the water-regulating valve to assure operability over a wide seawater temperature range in both tropic and arctic

conditions. On the other hand, whether these two deficiencies can be corrected by a minor engineering effort confined only to redesigning the condenser head and the water-regulating valve disc is not addressed by the Navy and is not clear from A.R.E.'s proposal. If the deficiencies could be corrected without a significant impact on other aspects of A.R.E.'s proposal and without a major engineering effort, as the protester contends, A.R.E.'s design as a whole would be susceptible of being made acceptable.

Second, the informational deficiencies involve only a lack of supporting documentation and detail that should be readily available or easily generated if the protester performed a reasonably thorough design analysis. For example, while A.R.E.'s proposal provided data for cooling coils with thinner fins than actually proposed, we see no reason why A.R.E., upon request, could not have been expected to quickly provide data for the thicker fins (which should be more efficient than the thinner ones which themselves met the specifications). Further, the compressor motor torques appear to be available from the source of those motors, which originally refused to disclose the information.

In light of the scope of the overall requirements, we do not believe that the cumulative effect of the informational deficiencies and the few design deficiencies by themselves indicated that the proposal was so deficient as to show a lack of understanding of the essential requirements or to require a major rewrite. Even the Navy's determination of unacceptability was based on additional perceived deficiencies that we find were unfounded.

Given the agency's obligation to take reasonable steps to qualify as many proposals as possible, we find that the Navy should have advised A.R.E. of the deficiencies and requested revisions, or, at the very least, requested clarification from A.R.E. concerning the deficiencies to ascertain whether the deficiencies were reasonably susceptible to correction. An agency may issue requests for information necessary to complete a technical evaluation. See, e.g., Datron Sys. Inc., B-220423 et al., Mar. 18, 1986, 86-1 CPD ¶ 264. Accordingly, we conclude that the Navy unreasonably rejected A.R.E.'s substantial proposal as technically unacceptable, based predominantly on informational deficiencies and a few design deficiencies, without affording A.R.E. at least the opportunity to clarify its proposal.

The protest is sustained. We understand that the Navy advised each offeror that had submitted a proposal susceptible of

being made acceptable of the deficiencies in its proposal and requested revised proposals. We further understand that the Navy invited all three offerors to submit bids and proceeded with bid opening under step two. We therefore are recommending that the Navy reevaluate A.R.E.'s proposal after appropriate action has been taken to clarify the proposal. If the Navy ultimately finds that A.R.E.'s proposal is acceptable, the agency should resolicit bids and include A.R.E. in step two.

Shelton J. Jordan

for Comptroller General
of the United States