The Comptroller General
of the United States

Washington, D.C. 20548

# Decision

Matter of: Computervision Corporation

File: B-224198

Date: November 28, 1986

## DIGEST

Although procuring agencies generally must conduct meaningful discussions with all offerors whose proposals are in the competitive range in order to point out weaknesses or deficiencies in the proposals and to allow an opportunity for proposal revision, this requirement does not extend to an explicit exception taken by an offeror to a material solicitation requirement. Therefore, where a proposal was ultimately rejected as technically unacceptable because of the protester's expressed intent not to comply with a clear requirement to provide full software maintenance, the fact that the agency may not have conducted comprehensive discussions with regard to the exception taken did not unreasonably exclude the protester from the procurement.

## DECISION

Computervision Corporation protests the award of a contract to Auto-trol Technology Corporation under request for proposals (RFP) No. F42650-86-R-3072, issued by the Department of the Air Force. The procurement was for the acquisition of a computer-aided design/computer-aided manufacturing (CAD/CAM) system to facilitate automation of the contracting activity's spare parts reverse engineering capability. Computervision complains that the agency failed to conduct meaningful discussions with the firm and thereby deprived it of an award to which it was otherwise entitled as the low offeror.

We deny the protest.

BACKGROUND

The RFP specifically provided that the award would be made to the offeror whose proposal met all requirements of the solicitation and was lowest in price upon a successful test demonstration of the offeror's proposed system. Among other

things, the RFP required the contractor to provide maintenance for the CAD/CAM software, expressly including:

> ". . . all operating systems software, design and drafting software, all specialized software packages, and all software added to the CAD/CAM during the contract period."

Computervision took exception to this overall requirement by stating in its initial technical proposal:

> "Since the Word Perfect software and the FORTRAN Compiler are provided through a third party source and are not subject to monthly use fees, software maintenance is not provided under this proposal." (Emphasis added.)

The agency received five proposals in response to the RFP and conducted oral discussions with the offerors to point out various weaknesses and deficiencies in the initial proposals. (At principal issue in this case, Computervision alleges that although the Air Force at that time discussed several deficient areas of its proposal, which it then corrected, the agency never specifically advised the firm that its intent not to provide complete third-party software maintenance would be reason to reject its offer.)

Best and final offers (BAFOs) were then requested and evaluated. Because the Air Force decided that certain requirements were no longer needed, an amendment to that effect was issued, negotiations were reopened, and a second round of BAFOs was requested and evaluated. At this point, Computervision became the low offeror and, hence, in line for award under the terms of the RFP. However, the Air Force determined that the firm's second BAFO took exception to the software maintenance requirement. The agency contacted Computervision for clarification as to its position on third-party software maintenance, and Computervision confirmed that its proposal did not include such maintenance for all third-party software. Accordingly, the agency rejected Computervision's offer as unacceptable for failure to meet a material solicitation requirement and awarded the contract to Autotrol, the second low offeror.

PROTEST POSITION

Computervision's single ground of protest is that the agency failed to conduct meaningful discussions with the firm as required by the applicable regulations. Computervision asserts that the Air Force never advised the firm during

initial discussions that its position with regard to the provision of third-party software maintenance was of material concern, and, that if this concern had been voiced, the firm would have made the necessary changes in its proposal to satisfy fully the solicitation requirements. Rather, Computervision urges that the record in this matter shows that the Air Force took no notice of any perceived problem in this area until its evaluation of the firm's second BAFO, at which point the agency should have reopened negotiations and have requested a further round of BAFOs in order to give the firm the opportunity to modify its proposal. Accordingly, Computervision asserts that the agency improperly rejected its proposal without discussions, thereby depriving it of an award to which it was otherwise entitled as the low offeror.

ANALYSIS

The Federal Acquisition Regulation (FAR), 48 C.F.R. 15.610(b) (1985), requires that written or oral discussions be held with all responsible sources whose proposals are within the competitive range. Price Waterhouse, 65 Comp. Gen. 205 (1986), 86-1 CPD ¶ 54, aff'd on reconsideration, B-220049.2, Apr. 7, 1986, 86-1 CPD ¶ 333. This fundamental requirement includes advising offerors of deficiencies in their proposals and affording them the opportunity to satisfy the government's requirements through the submission of a revised proposal. FAR, 48 C.F.R. § 15.610(c)(2) and (5); Furuno U.S.A., Inc., B-221814, Apr. 24, 1986, 86-1 CPD ¶ 400, aff'd on reconsideration, B-221814.2, June 10, 1986, 86-1 CPD ¶ 540. Thus, it is well settled that for competitive range discussions to be meaningful, agencies must point out weaknesses, deficiencies, or excesses in proposals unless doing so would result in disclosure of one offeror's approach to another--technical transfusion--or would result in technical leveling when the weakness or deficiency was inherent in the proposed approach or caused by a lack of diligence or competence. Price Waterhouse, B-222562, Aug. 18, 1986, 86-2 CPD ¶ 190.

Although agencies are not obligated to afford offerors all-encompassing discussions, Training and Management Resources, Inc., B-220965, Mar. 12, 1986, 86-1 CPD ¶ 244, they still generally must lead offerors into the areas of their proposals which require amplification. Furuno U.S.A., Inc., B-221814, supra; Technical Services Corp., B-216408.2, June 5, 1985, 85-1 CPD ¶ 640. In short, discussions should be as specific as practical considerations will permit in advising offerors of the deficiencies in their proposals. Price Waterhouse, B-222562, supra, 86-2 CPD ¶ 190 at 5.

Accordingly, we have found a failure to conduct meaningful discussions where the agency did not advise a viable offeror that the firm had not provided adequate information in certain proposal areas and had failed to state its intent to comply with a particular requirement, Sperry Corp., 65 Comp. Gen. 195 (1986), 86-1 CPD ¶ 28; where the agency allowed the protester to proceed to the final evaluation stage without indicating that its proposal initially had been found to be informationally deficient in one area so as to prejudice its competitive standing throughout the course of the procurement, Furuno U.S.A., Inc., B-221814, supra; and where the agency asked identical technical and cost questions of all competitive range offerors which were unrelated to perceived areas of weakness or deficiency existing in the protester's initial proposal. Price Waterhouse, B-222562, supra.

In the present matter, the administrative record, including the agency's own internal memoranda and affidavits from the contracting personnel involved, fails to establish that specific, express advice was given to Computervision during initial discussions that its proposal would be rejected as unacceptable if full software maintenance were not provided. Indeed, we believe the record fairly suggests that the agency did not become fully cognizant of Computervision's intent not to comply with the third-party software maintenance requirement until the evaluation of the firm's second BAFO. In this regard, the contract negotiator has stated in a memorandum to the administrative file that:

> ". . . I realize this non-responsiveness should have been found before this [that is, prior to the second BAFO evaluation], however, it was found prior to contract award."

Nevertheless, we do not believe this provides a basis upon which to sustain the protest and to recommend that corrective action be taken.

An informational or technical deficiency in a proposal is the proper subject for discussions and reasonably must be brought to the attention of the offeror involved to allow for proposal revision because this action will give the firm an opportunity to satisfy the government's requirements. FAR, 48 C.F.R. § 15.610(c)(2), supra. The essence of this principle is that it would be unfair to an offeror and detrimental to full and open competition for a procuring agency to

downgrade or reject a proposal which otherwise would have a reasonable chance of being selected for award but for a deficient aspect of the proposal of which the offeror is legitimately unaware. See Price Waterhouse, B-222562, supra.

Conversely, we do not believe that an explicit exception taken by an offeror in its proposal to a solicitation requirement represents a deficiency that must be addressed through discussions. In other words, an offeror should know, without confirmation from the agency, that its action in taking exception to a solicitation requirement likely may have a decided impact upon the acceptability of its proposal. Here, Computervision has not argued that complete software maintenance was not a minimum need of the agency, or that the RFP permitted proposal approaches which deviated from that requirement. The firm, moreover, has not contended that the statement made in its initial proposal and retained through two rounds of BAFOs with regard to third-party software maintenance was other than an expression of its prospective noncompliance with the requirement. Cf. Sperry Corp., 65 Comp. Gen. 195, supra (where an offeror was not advised that it had failed to state its intent to comply with a requirement). Finally, irrespective of what may have been the agency's lack of an expression of specific concern in this area during initial discussions, Computervision does not dispute the contracting officer's statement that, during the course of these discussions:

> ". . . each vendor was informed that if any exceptions to our requirements were taken, their proposal would be considered nonresponsive."

Hence, even if the agency did not recognize a material exception in Computervision's proposal to the requirement for complete software maintenance until the final stage of the procurement, we believe the firm clearly was on notice, without the necessity for comprehensive discussions, that its continued nonconformity with the requirement might well result in the rejection of its proposal as technically unacceptable. Since Computervision's proposal was ultimately rejected because of an exception taken to a material solicitation requirement, and not because of a significant informational or technical deficiency not brought to its attention,

we cannot find that any lack of discussions on that particular point unreasonably excluded the firm from the procurement. See Action Manufacturing Co., B-222151, June 12, 1986, 86-1 CPD ¶ 546.

The protest is denied.

for Seymour Efros
Harry R. Van Cleve
General Counsel