



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: PacOrd, Inc.
File: B-224249
Date: January 5, 1987

DIGEST

1. Where agency specifically rebuts issues raised in the initial protest and protester fails to address the agency's rebuttal in its comments on the agency's report, the issues are deemed abandoned.
2. Post-award protest challenging experience requirements for technical and engineering personnel in solicitation for technical services is untimely where the basis of protest was evident from the face of the solicitation and the protest was not filed before the closing date for receipt of initial proposals.
3. The determination of the relative merits of an offeror's technical proposal is primarily the responsibility of the procuring agency and will be questioned only upon a showing of unreasonableness or that the procuring agency otherwise violated procurement statutes or regulations. Protest is denied where the record shows a reasonable basis for the procuring agency's evaluation of the protester's technical proposal as unacceptable.

DECISION

PacOrd, Inc., protests the award of a cost-plus-fixed-fee level of effort contract to Tracor Applied Sciences, Inc. (Tracor), under request for proposals (RFP) No. N00421-86-R-0100 issued by the Department of the Navy. The contract is for technical services to support certain data transmission systems used by the Navy for shore and ship based landings of military aircraft, and to support combat information centers and naval weapons systems. We dismiss the protest in part and we deny it in part.

The RFP set forth four major technical evaluation factors:
(1) technical approach and knowledge of the program;

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(2) related technical experience and competence of proposed personnel; (3) demonstrated technical expertise and capability relating to similar systems and equipment; and (4) management plan. Cost was stated to be less important than technical capability, and award was to be made to the offeror whose proposal exhibited the greatest value in terms of technical and cost considerations.

The Navy solicited offers from 51 firms, but only PacOrd and Tracor submitted proposals. Tracor, the contractor providing the required technical services since 1978, was found to have submitted a technically acceptable proposal. PacOrd submitted a substantially lower rated proposal that contained an inappropriate management plan for field support and contractor teams, and unqualified engineering and technical personnel. While the Navy found PacOrd's proposal unacceptable, the agency determined that it was capable of being made acceptable and thus included PacOrd in the competitive range.

Following discussions, both PacOrd and Tracor were requested in writing to submit best and final offers incorporating their responses to the Navy's discussion questions about each company's proposal. After evaluating the best and final offers, the Navy determined that Tracor's proposal remained technically acceptable but that PacOrd's proposal was technically unacceptable and not capable of being made acceptable without being rewritten substantially. The Navy downgraded PacOrd's proposal from the rating it initially received because the company still proposed an inappropriate management plan for field support, an inappropriate management plan for contractor teams, and unqualified engineering and technical personnel. Additionally, the Navy found that PacOrd lacked the necessary depth of corporate experience to perform some of the services required by the RFP and that PacOrd had failed to demonstrate an adequate understanding of the overall nature of the work to be performed.

Immediately upon being notified that its proposal was determined technically unacceptable and not capable of being made acceptable and that an award was being made to Tracor, PacOrd filed the instant protest with our Office.

Initially, we note that during the course of the protest PacOrd abandoned certain issues it raised in its original protest letter. In the letter, PacOrd made broad, unsupported allegations that the solicitation's evaluation factors and award criteria were too vague and that the Navy had improperly used the procedure for obtaining best and final offers to change the RFP's requirements materially. In addition, PacOrd charged that the reasons for rejecting its

proposal and for the award to Tracor were based on inadequate and inaccurate factual data. In the report on PacOrd's protest, the Navy responded in detail concerning the above allegations, and PacOrd, in commenting on the report, did not even attempt to rebut any of the Navy's responses. Where an agency specifically addresses issues raised by the protester in the initial protest letter and the protester fails to rebut the agency's responses in its comments, we consider these issues to have been abandoned by the protester. Radionic Hi-Tech, Inc., B-219116, Aug. 26, 1985, 85-2 C.P.D. ¶ 230.

PacOrd does argue that the Navy, because it has been satisfied with the services provided by Tracor, clearly desired to continue the operation using Tracor. In particular, PacOrd asserts that the RFP requirements, especially in the area of experience for engineering and technical personnel, were extremely restrictive, thereby limiting competition. According to PacOrd, the first solicitation that had been issued by the Navy for the services contained no personnel experience requirements. As Tracor became more experienced over the years as the incumbent, however, the solicitation requirements that engineering and technical personnel have more direct experience in providing the precise services needed changed correspondingly. PacOrd takes the position that the solicitation's experience requirements thus were written to insure award to Tracor.

We will not consider PacOrd's arguments. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1986), a protest based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of proposals must be filed before that time. The alleged restrictiveness of the RFP's personnel experience requirements was apparent from the face of the solicitation, so that PacOrd should have protested the matter before submitting its offer.

PacOrd also contends that there are some inconsistencies in the Navy's findings regarding its proposal. PacOrd alleges that a number of evaluation documents in the agency's protest report show that its proposal was considered "average," yet the Navy notified the firm that both the initial proposal and best and final offer were technically unacceptable. PacOrd questions why its proposal was determined to be unacceptable if, in fact, it was evaluated as being average.

More specifically, PacOrd complains that the Navy improperly downgraded its proposal because the company's plan to perform its field support services from a network of facilities located on both the east and the west coasts was contrary to

the RFP's statement of work. According to PacOrd, its plan was not contrary to the RFP because the solicitation did not limit the location of the facilities to support these services to either coast.

In reviewing an agency's technical evaluation, we will not independently determine the relative merit of an offeror's technical proposal, but will only examine the agency's evaluation to insure that it had a reasonable basis. SETAC, Inc., 62 Comp. Gen. 577 (1983), 83-2 C.P.D. ¶ 121. Moreover, the protester has the burden of showing that the agency's evaluation was not reasonable. See Coherent Laser Systems, Inc., B-204701, June 2, 1982, 82-1 C.P.D. ¶ 517.

PacOrd has provided nothing to establish that the technical evaluation of PacOrd's proposal and its exclusion from the competitive range after the submission of best and final offers were unreasonable. As to the firm's question about the proposal being rated unacceptable despite it being considered "average," the record is clear that while certain evaluation documents do characterize the offer as "average" in some respects, that characterization generally was meant as a criticism. For example, PacOrd's technical approach was "rated average due to the lack of detail in the proposal." More importantly, in many other respects the offer was found inadequate and unacceptable, as noted above. In these circumstances, we see no inconsistency between the "average" comments and the overall rating of PacOrd's offer.

With regard to PacOrd's specific point about its plan to provide a network of facilities located on both coasts, the record shows the Navy was concerned that PacOrd's proposed plan could result in a loss of control over tasks and too much dispersal of spare parts for the repair of data transmission equipment. Moreover, the RFP expressly notes the agency's general concern with control and parts availability in the statement of work. Even if PacOrd is correct that the RFP did not actually preclude its approach, the firm simply gives us no reason to believe the Navy's concern was unreasonable.

Finally, PacOrd objects to the fact the head of the Navy's technical evaluation panel also performed a cost analysis on PacOrd's proposal and added costs to the company's proposal that had not been questioned by the Defense Contract Audit Agency. In PacOrd's view, this dual role raises questions regarding the propriety of the same person analyzing both the technical and cost aspects of an offeror's proposal. The protester, however, has the burden of proving bias or prejudice, and unfair or prejudicial motives will not be attributed to procurement officials on the basis of inference

or supposition. See Martin-Miser Associates, B-208147,
Apr. 8, 1983, 83-1 C.P.D. ¶ 373.

In sum, PacOrd untimely protests the RFP's experience requirements; does not challenge or rebut the Navy's judgment with respect to the majority of the technical problems and deficiencies that caused the rejection of the offer; and has not proven unreasonable those aspects of the evaluation it does challenge. The protest is dismissed in part and denied in part.

for *Seymour Efron*
Harry R. Van Cleve
General Counsel