

Shanks



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Personnel Decisions Research Institute  
File: B-225357.2  
Date: March 10, 1987

### DIGEST

1. An agency's determination of whether proposal is in the competitive range is a matter of agency discretion which the General Accounting Office will not disturb absent a clear showing that agency's determination lacked a reasonable basis. Proposal which was reasonably found to be so deficient in its technical adequacy--the most heavily weighted evaluation criterion--that major revisions would have been required to make it acceptable was properly excluded from the competitive range.

2. Protest that agency improperly evaluated proposal on basis of levels of agency standards not stated in the request for proposals (RFP) is denied since there is no requirement that RFP precisely specify acceptable level of effort and manner of performance where solicitation calls for a performance oriented research and analysis project which, by its nature, lends itself to individual standards of quality and competitiveness.

### DECISION

Personnel Decisions Research Institute (PDRI) protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. MDA903-86-R-0214 issued by the Department of the Army, Defense Supply Service - Washington (DSS-W). The RFP was for a cost-plus-fixed-fee contract for a job analysis study of Army military and civilian comptroller jobs. PDRI contends that its proposal was improperly and unfairly evaluated. The protester requests relief in the form of the termination of the contract and award instead to PDRI and/or award of the costs of preparing its proposal and filing and pursuing this protest. Alternatively, PDRI requests that the procurement be recompeted under a solicitation revised for clarity.

We deny the protest.

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Under the terms of the RFP, technical proposals were to be evaluated in the following three categories, in descending order of relative importance: technical adequacy, personnel qualifications, and organizational experience. The RFP does not state the maximum point scores to be allocated for each of the three areas of evaluation; however, it does state that technical adequacy is the most important factor, but personnel qualifications and organizational experience together will receive greater weight than technical adequacy. The solicitation also provides that cost proposals will be subordinate to technical considerations and evaluated separately from technical proposals but will not be assigned numerical weights.

According to the RFP statement of work, the analysis of military and civilian jobs in the comptroller field in the Army is the objective of the work called for by this solicitation. The RFP sets forth as one of the essential purposes of the study the examination of whether, as thought by the Army, its civilian and military comptrollers perform essentially identical work and, therefore, that the civilian and military comptroller jobs are interchangeable. The RFP further states that due to funding considerations the basic job analysis contract must be for civilian personnel, with an option for the job analysis of military personnel--that option to be exercised within 1 year of award of the basic contract, although the option would "probably run concurrently with the basic contract." In view of the somewhat complex variables necessitated by these funding considerations, the statement of work states that proposals are to "describe how the work would be accomplished if the two job analyses [civilian and military] occur concurrently or consecutively" and provide the cost of a combined offer, i.e., for the basic contract and the option, in addition to the cost of separate offers for the basic contract to be followed by the option contract. To facilitate the provision of this information, the statement of work provided data on the geographical locations of civilian and military comptrollers as well as their job series and ranks.

The work required by the RFP included determining the tasks to be included in the comptroller job inventory and interviewing a sampling of job incumbents. The sampling size and makeup were "to be determined by the contractor . . . subject to [the Army Civilian Personnel Center] CIVPERCEN approval." Using the geographic distribution for the civilian and military comptroller populations provided in the solicitation, offerors were to develop a preliminary sampling plan to be included in their proposals.

Of the 11 proposals received in response to the solicitation, the three-member evaluation panel determined that two proposals were in the competitive range. The evaluation panel rejected the proposal of PDRI, the third ranked offeror, as technically unacceptable, having no reasonable chance for award, because major revisions would have been necessary to make the proposal acceptable. The agency made award to the highest-ranked offeror, whose proposed cost was less than that of the second-ranked firm.

Subsequent to the agency debriefing concerning the technical evaluation of its proposal, PDRI filed its protest alleging, generally, that: (1) certain criteria against which its proposal was evaluated were "either stated unclearly and vaguely or not specified at all in the solicitation" and, therefore, its proposal may not have been evaluated by the same criteria as were all other proposals; (2) unknown to it until the debriefing, certain evaluation criteria under which its proposal was excluded were unreasonable or unduly restrictive; and (3) some of the evaluation panel's conclusions regarding PDRI's proposal were "simply untrue."

It appears to us that PDRI was provided a rather thorough debriefing of the weaknesses the panel perceived in its proposal in all three rating categories, and PDRI has taken issue with every one of them. The points of contention are numerous, vary widely in their significance, sometimes reflect misunderstandings of the evaluators' conclusions, in some instances consist of differences in opinion among professionals as to what constitutes "good science," and were not always rebutted by PDRI following its receipt of the agency report. We have considered all these contentions and conclude that, on the whole, they do not show PDRI to have been the victim of arbitrary conduct, and that it is not necessary for us to discuss all of them in order to arrive at a decision, particularly with regard to the "Personnel Qualifications" and "Organizational Experience" criteria as to which PDRI's point score ranking placed it in the midst of the two firms in the competitive range, nor even with regard to most deficiencies identified by the evaluation panel under the single most important criterion--"Technical Adequacy"--because two fundamental deficiencies in PDRI's proposal related to that criterion are dispositive of the protest. These deficiencies concern the protester's failure to provide the computer hardware and software resources necessary to performance of the contract and deficiencies in its interview sampling plan.

## COMPUTER HARDWARE AND SOFTWARE

The RFP required that the contractor "provide computer hardware and software" to analyze job analysis responses using the task inventory/Comprehensive Occupational Data Analysis Package (CODAP) methodology. In its offer PDRI stated that it:

". . . had made tentative arrangements with the U.S. Air Force Human Resources Laboratory (AFHRL) to use their computer system with the latest version of CODAP. We will, however, require an official communication from CIVPERCEN to AFHRL requesting this use."

In the Army's view, PDRI's proposal failed to meet the RFP requirement that the contractor was to provide computer hardware and software since it proposed to use government resources--specifically, Air Force hardware and software--over which, according to the Army, neither PDRI nor the Army has control. The evaluation panel, therefore, concluded that the protester's proposal was "not technically adequate" in this major respect.

In its protest, PDRI states it was informed at the debriefing that its failure to provide hardware and software but to use government equipment to conduct the CODAP analysis was the major weakness of its proposal, and that "the reviewer implied strongly that the contractor was to own the hardware and software." (Emphasis in original.) The protester argues that the alleged requirement that the offeror "own" the hardware and software it proposes to use was, on one hand, not clearly stated in the solicitation, and on the other hand, was an unreasonable and unnecessarily restrictive requirement. The protester defends the arrangement it proposed for the use of computer equipment by stating that in a telephone conversation with an AFHRL official prior to submitting its proposal, it received the agreement of that official that PDRI would be given access to the AFHRL system "upon written request from CIVPERCEN." The protester further defends its proposed arrangement by maintaining, in essence, that AFHRL's computer is the only computer on which the most recent version of CODAP (ASC II) is currently installed and that the use of this most recent version is necessary in order to achieve the "best possible data analysis."

The agency first unequivocally denies that PDRI was penalized or faulted because it did not own the computer equipment or software it proposed to use, and denies that it established

an undisclosed restrictive or additional ownership requirement. Rather, the Army emphasizes that the RFP contained the more general requirement that the contractor "provide" these resources. (That this was the Army's interpretation is supported by our in camera examination of the proposals included in the competitive range, which indicates that those offerors do not own the nongovernment computer equipment they proposed to use.) In responding to PDRI's arguments, the chairman of the evaluation panel indicated that during the evaluation of the protester's proposal he inquired of the AFHRL official, who PDRI says agreed to its proposed use of Air Force equipment, as to whether the firm had "requested free computer support as stated in their . . . proposal." According to the panel chairman, the official responded in the negative.<sup>1/</sup> The agency further states that many computers are capable of running CODAP and many universities and private companies are experienced in using that program. The Army also indicates it was aware of the AFHRL computer equipment and its capability prior to the issuance of the solicitation and that it considered and rejected the prospect of providing government computer equipment for the project. For that reason, the AFHRL resources were not listed in the RFP as among the government-furnished supplies or services to be provided to the contractor.

The technical evaluation panel thus determined that the protester failed to comply with the requirement that it provide the computer equipment to run CODAP and states that this deficiency was "so serious that it almost considered PDRI's proposal nonresponsive for this reason alone." PDRI maintains that "the Agency alleges this technical deficiency as a strategy for unfairly and unreasonably asserting that PDRI 'had no reasonable chance for award.'" The protester further expresses the view that the Army has chosen for award a proposal which offers a technically inferior data analysis, whereas it proposed the best possible data analysis procedure.

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<sup>1/</sup> While the protester does not state that it requested "free" computer support of AFHRL, we note that in its comments on the agency report on this point, the protester only reaffirms that it received the AFHRL official's agreement by telephone and offers no proof of any kind of commitment for the use of the Air Force's computer equipment. The protester also states that it is a not-for-profit organization, and asserts that as such, it may under certain AFHRL provisions use the computer equipment in question without charge.

Since the contracting agency is responsible for defining its needs and the best methods of accommodating them, the evaluation of proposals and the determination of competitive range is a matter primarily within the discretion of the procuring agency, and we will not overturn that determination in the absence of clear evidence that it had no reasonable basis or is in violation of federal procurement laws or regulations. Proffitt and Fowler, B-219917, Nov. 19, 1985, 85-2 C.P.D. ¶ 566 at 4; Maxima Corp., B-220072, Dec. 24, 1985, 85-2 C.P.D. ¶ 708 at 3. Offers which are technically unacceptable as submitted and would require major revisions to be made acceptable should not be included in the competitive range. Harbert International, Inc., B-222472, July 15, 1986, 86-2 C.P.D. ¶ 67.

The evaluation score sheets indicate that because PDRI assumed that the Army would request the use of Air Force equipment and offered no alternative for the provision of computer equipment, the proposal, in the first instance, was adjudged technically unacceptable in the manner it proposed to carry out the job analysis, per se.

One dispositive consideration in the determination as to whether the Army's evaluation was reasonable with respect to this aspect of the protester's proposal is the fact that PDRI's proposal to "provide" the computer equipment was, as it specifically stated, conditioned upon the Army's request for the use of Air Force equipment. In view of such a conditional offer without an alternative means of providing the equipment, as required by the RFP, we find that the proposal did not conform to that requirement. Moreover, while the protester maintains that it received an oral conditional agreement from an AFHRL official, it produced no evidence either to the contracting agency or to our Office that AFHRL did, in fact, agree to the arrangement it proposed. Thus, exclusion of the proposal from the competitive range on this basis was not improper since it would have required major revisions to be made acceptable in this area. Forecasting International Ltd., B-220622.3, Apr. 1, 1986, 86-1 C.P.D. ¶ 306; Micronesia Media Distributors, Inc., B-222443, July 16, 1986, 86-2 C.P.D. ¶ 72 at 3.

PDRI also implies that it had a reasonable expectation that the Army would find its proposed computer hardware and software arrangement acceptable because the agency previously accepted a similar proposal in which the protester was awarded a contract for a job analysis using CODAP. The Army indicates, however, that in the situation to which PDRI

refers, the Army chose not to request the use of AFHRL equipment, but because the proposal contained an alternative means of providing the equipment required, PDRI was awarded the contract. The Army further states (and PDRI unpersuasively contests the Army's account) that its previous request for the use of AFHRL equipment in connection with that prior contract was authorized only when, during the performance of the contract, the agency learned that--contrary to its proposal--PDRI had failed to budget properly for the alternative plan (which the Army had accepted), and thus the timely execution of the contract was jeopardized.

Notwithstanding the validity or merits of these arguments and defenses raised by the protester and the agency, the fact that the agency previously authorized or cooperated with a proposed performance procedure which was not contemplated by the RFP in some other procurement does not justify a proposal offering less than what the subject RFP requires, because each procurement must stand upon its own proprieties. See Discount Machinery & Equipment, Inc., B-223547, Aug. 29, 1986, 86-2 C.P.D. ¶ 242. Here, the RFP expressly stated that it was the contractor's responsibility to "provide" the computer resources necessary for the performance of this contract, which resources, the record shows, are readily available in the commercial marketplace. PDRI did not offer to provide these resources. It proposed that the government provide these resources, apparently at no cost to PDRI but not at no cost to the government. There may be instances where the government decides that it is in its interest to make government-owned resources available to a contractor and advises all competitors for the contract of that fact in the solicitation. This is not such a case; in fact, the record shows that the Army considered and rejected that alternative before the RFP was issued. Under these circumstances, we do not think it unreasonable for the evaluation panel to have concluded that it was a major deficiency in PDRI's proposal for it not to have included the provision of the computer resources essential to the performance of the contract.

If PDRI believed (as it seems to suggest) that the only method of providing the government's actual needs was through AFHRL, that judgment would necessitate the conclusion that the RFP was defective in that it did not provide for, or require such use--a matter which, in order to have been timely considered, should have been raised prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1986).

## Interview Sampling Plan

PDRI proposed an interview sample consisting of approximately 250 civilian and 50 military personnel out of a total of 9,119 and 1,217, respectively; it proposed to conduct interviews at five civilian locations and one military location out of 168 total locations.<sup>2/</sup> The Army states that PDRI's sampling plan for the selection of employees to be interviewed to develop the task inventory was unacceptable because the number of interviews proposed was insufficient to cover adequately the comptroller function and, therefore, to accomplish the RFP objective.

In its protest PDRI states that it learned at the debriefing that the evaluation panel considered its sampling plan deficient because (1) "any proposed interview sample of less than 500 individuals was considered too small due to the 'complex' nature of the career program"; (2) a proposal to visit less than 20 sites was unacceptable; and (3) PDRI did not propose to visit "major commands" that were considered to be required interview locations. The protester expresses the view that if there were fixed thresholds of 500 interviewees and 20 interview sites, that information should have been stated in the solicitation so that all offerors would be "on an equal footing with respect to these fixed requirements and thus make the award more competitive."

The Army states that it had an estimate of the number of samples which it considered necessary for a properly designed task inventory, but that its estimate was not designed to constitute a required number of interview sites to be visited in order to successfully accomplish the RFP objective. The agency further states that it did not object to the number of interview sites proposed by PDRI, but it objected to the selection of sites PDRI proposed because the selection showed that the protester did not consider relevant variables such as "overseas sites where most of the military population resides, . . . small comptroller shops where work may be performed quite differently" than at larger shops, and other locations which would assure the inclusion of certain comptroller jobs excluded in PDRI's proposed sampling. Although the protester argues that it chose interview sites on the basis of locations having the largest concentration of comptrollers, the Army states that the basis of its evaluation of the sampling plan was whether the plan adequately covered the study population set forth in the RFP.

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<sup>2/</sup> The protester proposed to interview at one military site if the option for the military comptroller job analysis were exercised concurrently with that for civilian personnel.

Further, in regard to the adequacy of its sampling plan, PDRI makes the similar contention that it was unfair of the evaluation team to negatively evaluate its proposal on the basis that PDRI did not include any European locations and two specific Corps of Engineers locations among the sites it would visit, because, if offers were to be judged on the basis of whether they proposed travel to specific locations, including European sites, that should have been stated in the RFP.

The Army maintains that the desirability of conducting interviews at European sites was implicit in the RFP by virtue of the exclusion from this solicitation of a prohibition against travel outside the continental United States and the inclusion of information showing a major presence of military finance officers (military occupational speciality (MOS) 44s) and comptrollers (MOS 45s) in Europe.

Where, as in this case, a solicitation calls for the conduct of a performance oriented research and analysis project, there is no requirement that the manner in which offerors are to fulfill the required tasks be specified in the RFP, and the fact that an offeror's response in certain areas of evaluation differs from the expectations of the contracting agency does not render the RFP's requirements vague or ambiguous. See Digital Radio Corp., B-216441, May 10, 1985, 85-1 C.P.D. ¶ 526 at 6. Accordingly, we do not consider that the RFP was defective for failure to contain information necessary for the proper preparation of proposals on the basis that it did not specify numerical criteria that would be deemed to constitute successful interview sampling proposals. See Intelcom Support Services, B-222547, Aug. 1, 1986, 86-2 C.P.D. ¶ 135 at 4.

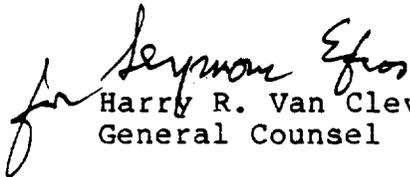
The protester further argues concerning its sampling plan that it proposed to interview a relatively low number of military comptrollers because of the statement in the RFP statement of work that "the Department of the Army believes that its civilian and military comptrollers perform essentially identical work." Although this statement does appear in the RFP statement of work, the solicitation also specifically provides that one essential purpose of the comptroller job analysis is to determine whether, as thought by the Army, the military and civilian comptroller jobs are, in fact, interchangeable. In other words, when the Army's statement of its view concerning military and civilian jobs is read in context, it is clear that the question of the interchangeability of the jobs is one matter to be resolved through the study solicited. Thus, to the extent that PDRI limited the number of military comptrollers it proposed to interview because of

the referenced statement, its proposed interview sampling was based on a misinterpretation of the statement of work, the meaning of which should have been clear from the context of the statement, as well as from all the information in the RFP, taken as a whole.

#### CONCLUSION

It is apparent that the most serious deficiencies in the protester's proposal were in the category of technical adequacy, the most heavily weighted of the three evaluation categories. In view of the technical deficiencies discussed, as well as the nature and extent thereof, we agree with the agency's determination that the proposal would have required major revisions in order to be made technically acceptable. Our review of the record provides no basis to conclude that, as a general matter, the Army's exclusion of PDRI's proposal from the competitive range was arbitrary or unreasonable, since in our view, the technical inadequacies alone support the agency's decision.

The protest is denied. In view of this result, the protester's claims for the costs of preparing its proposal and filing the protest are denied. Forecasting International Ltd., B-220622.3, supra, 86-1 C.P.D. ¶ 306 at 7.

  
Harry R. Van Cleve  
General Counsel