



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Pacific Computer Corporation

File: B-224518.2

Date: March 17, 1987

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### DIGEST

1. Protester's contention, that its elimination from the competitive range will result in a de facto sole-source award to another firm, is without merit where the final competitive range actually contains more than one offer.
2. Protester's contention, that the agency improperly eliminated it from the competitive range based on requirements not stated in the solicitation, is without merit where the protester either was on actual notice of the agency's requirements or has misinterpreted the agency's reasons for finding that the offer was technically unacceptable.
3. Where protester in fact was advised of deficiencies in its proposal and given an opportunity to correct them, there is no merit to its contention that it should have been included in the competitive range because all of the deficiencies in its proposal could have been resolved through discussions.
4. Where a small business offer was found unacceptable under the evaluation criteria in the solicitation, the matter is one of technical acceptability rather than responsibility, and there is no requirement for referral to the Small Business Administration under the certificate of competency program.

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### DECISION

Pacific Computer Corporation (PCC) protests the Department of the Interior's rejection of its proposal under request for proposals (RFP) No. 7176 for maintenance of government-owned automated data processing equipment. PCC primarily contends that Interior improperly eliminated PCC's proposal from the competitive range based on requirements that were not stated

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in the RFP, and that this will result in a de facto sole-source award to the original equipment manufacturer. We deny the protest.

#### BACKGROUND

The agency received four offers in response to the RFP, which provided for award to the low cost, technically acceptable offeror. After an initial technical evaluation, PCC's proposal was rated as conditionally acceptable. The evaluators formulated a list of eight questions and comments designed to point out the major deficiencies in PCC's proposal and forwarded them to the firm by mail. After receiving and evaluating PCC's response to these questions, the evaluators determined that PCC's proposal was unacceptable. The basis for this determination included inadequate parts availability and lack of more than one engineer with experience on the type of equipment to be maintained. The evaluators also found that PCC's maintenance plan was inadequate, and that the proposal generally was incomplete.

Subsequently, the contracting officer called PCC and requested further clarification of its proposal. PCC's response again was forwarded to the evaluators, who again determined that the proposal was unacceptable. The contracting officer then notified PCC that it had been eliminated from the competition. This protest followed. The agency is withholding contract award pending our decision.

PCC questions the evaluator's conclusions that the firm's parts availability and maintenance plan were inadequate and that it lacked a sufficient number of experienced engineers. Generally, PCC alleges that in evaluating these aspects of its proposal, the agency imposed requirements that were not included in the solicitation. In this connection, PCC does not dispute the agency's contention that the evaluation factors listed in the RFP included the proposed maintenance plan, spare parts availability, and experience of the proposed personnel. Rather, PCC asserts that these aspects of its proposal met the requirements stated in the RFP and that in rejecting the firm's proposal, the agency unreasonably imposed additional requirements in order to eliminate PCC from the competition and make award to the original equipment manufacturer.

#### MERITS

At the outset, we find no merit to PCC's contention that its elimination from the competition necessarily will result in a de facto sole-source award to the original equipment

manufacturer (which had performed the solicited maintenance services on a sole-source basis prior to the present procurement). In fact, the record shows that the final competitive range established by the evaluators included more than one proposal. Accordingly, we reject the protester's assertion that this is a de facto sole-source procurement. See Bell Atlantic Mobile Systems, B-219468, Sept. 25, 1985, 85-2 CPD ¶ 337.

We turn then to the propriety of the evaluation of PCC's technical proposal, and the elimination of the proposal from the competitive range. The evaluation of proposals and resulting determination as to whether an offeror is in the competitive range are matters within the discretion of the contracting agency, as it is responsible for defining its needs and the best methods of accommodating them. Harbert International, Inc., B-222472, July 15, 1986, 86-2 CPD ¶ 67. Our review of an agency's technical evaluation is limited to considering whether the evaluation was fair and reasonable and consistent with the evaluation criteria set forth in the RFP. Ametek, Stroza Division, B-220384, Feb. 11, 1986, 86-1 CPD ¶ 149. Further, our Office will not disturb a determination to exclude a proposal from the competitive range unless the determination is shown to be unreasonable or in violation of procurement law or regulation. Metric Systems Corp., B-218275, June 13, 1985, 85-1 CPD ¶ 682.

The first major deficiency identified by the evaluators in PCC's proposal was that the firm's remedial maintenance plan was unacceptable. Specifically, the evaluators found unacceptable PCC's offer to meet with the agency to decide what further action should be taken if the system had been down for more than 12 hours and PCC still had been unable to resolve the problem. The evaluators stated that PCC should have an agreement with the original equipment manufacturer to supply assistance if PCC could not correct the problem. This deficiency was among those pointed out to PCC in the letter sent to the firm after the initial proposal evaluation. In its reply to the agency's letter, PCC essentially repeated its offer to meet with the agency if the problem had not been resolved in 12 hours, and listed options that could be discussed then, such as having additional specialists come on-site. The evaluators again concluded that this approach was unacceptable.

PCC asserts that there was no requirement in the RFP that offerors have an agreement with the original equipment manufacturer like the one the evaluators suggested. PCC also argues that its remedial maintenance plan will work and should be considered acceptable.

We agree that the RFP did not require an agreement with the original equipment manufacturer for assistance. However, the RFP did clearly indicate that length of system downtime was a major concern. For example, the RFP provided for credits to the agency if the system was down for more than 12 hours, and stated that excessive downtime (which also was defined) would be sufficient cause for termination for default.

Furthermore, the agency's letter to PCC specifically identified the lack of any agreement with the original equipment manufacturer for assistance as a deficiency in PCC's proposal. We have held that when an offeror is informed of an agency's requirement during negotiations, notwithstanding its absence in the solicitation, the offeror is on notice of the requirement. Centennial Computer Products, Inc., B-212979, Sept. 17, 1984, 84-2 CPD ¶ 295. Moreover, an offeror may not disregard information provided by the agency even though it may be absent from, or not clearly stated in, the solicitation. Southwest Marine, Inc., B-219423, Sept. 23, 1985, 85-2 CPD ¶ 321. Here, PCC clearly received actual notice that the agency considered an agreement with the original equipment manufacturer to be necessary. We therefore find no merit to PCC's complaint that the evaluation was improper because the solicitation did not specifically require such an agreement.

We also find that the agency reasonably determined that PCC's remedial maintenance plan was unacceptable. We base this conclusion on the fact that despite having been informed that this aspect of its proposal was deficient, PCC's response contained no indication that it had made any attempt to secure the desired agreement with the original equipment manufacturer. Nor did it suggest any other alternative to its original offer to meet with the agency to discuss the situation if the system remained down for more than 12 hours. Accordingly, we find no merit to PCC's contention that the evaluation of this aspect of its proposal was unreasonable.

A second major deficiency identified by the evaluators in PCC's proposal was inadequate spare parts availability. The evaluators found that PCC's plan to provide spare parts by purchasing and stripping used equipment was unacceptable. This was the subject of the contracting officer's phone call to PCC, which was placed after the agency had received PCC's response to the letter identifying the deficiencies in the firm's initial proposal. Although the letter had contained some indication that this was a concern, the contracting officer felt that it could have been more clear, and phoned

both PCC and another offeror to give them an additional chance to respond to the evaluator's concerns. In his conversation with each of the firms, the contracting officer clearly informed them that the agency considered lack of spare parts availability to be a major concern. Further, he asked each firm to certify that spare parts would be new or refurbished as good as new, including the most recent original equipment manufacturer changes. In addition, he asked each offeror to identify the alternative sources it would utilize in the event that a needed part was unavailable in the local parts depot, including any agreement with the original equipment manufacturer.

PCC responded and certified that any replacement parts would be new, or parts of equal quality, and would be current. It also explained that it would keep frequently used parts stocked on-site, and would have an adequate supply of spare parts in stock at its local warehouse. Further, PCC stated that in the unlikely event that a part was not available locally, it would be acquired from one of several other company warehouses throughout the United States, depending on which location could provide the earliest delivery. The evaluators considered this plan to be unacceptable because PCC had no agreement with the original equipment manufacturer or any other firm for spare parts. They noted that PCC did not currently own used equipment to satisfy all the parts requirements, although it planned to purchase one machine of each type it would be required to maintain, for this purpose.

PCC asserts that the RFP did not require an offeror to have an agreement with the original equipment manufacturer for spare parts, and argues that its plan to provide spare parts was more than adequate. PCC notes that it currently successfully maintains similar equipment for other federal agencies with used spare parts which have been refurbished, and that it included this information in its proposal. The firm also asserts that the original equipment manufacturer will not agree to supply it with spare parts, and therefore that the agency is asking it to do the impossible.

We believe that PCC has misinterpreted the agency's basis for finding this aspect of the firm's proposal unacceptable. The basis for this determination was not that PCC lacked an agreement with the original equipment manufacturer for spare parts, but rather that it lacked an agreement with any firm for spare parts, in the event they were unavailable from PCC's own stocks. In this connection, we note that at least one other offeror, whose proposal was included in the final competitive range, in fact did secure an agreement with

another firm to serve as an alternative source for spare parts. Both this offeror and its alternative source for spares acquire them in the same way PCC does--they depend on used equipment for the parts.

Thus, the agency did not impose a requirement that offerors have an agreement with the original equipment manufacturer for spare parts. Nor did it reject PCC's offer because the firm proposed to supply used parts that had been refurbished. Rather, it simply found that PCC's plan to provide spare parts exclusively from its own stock was inadequate, particularly in view of the questionable sufficiency of that stock. PCC has not shown that this conclusion was unreasonable, and the mere fact that PCC disagrees with the conclusion does not make it unreasonable. See Harbert International, Inc., B-222472, supra, 86-2 CPD ¶ 67. We therefore find that this aspect of the protest lacks merit.

The third major deficiency found by the evaluators in PCC's proposal relates to the experience of its personnel. The evaluators noted that the solicitation required that all services be performed by personnel with experience on the specific equipment to be maintained, and that PCC had proposed only one engineer with experience on one of the major types of equipment covered by the RFP. The evaluators considered this to be inadequate. PCC disputes this determination and argues that the engineer with the relevant experience will supervise the others working on the equipment, each of whom have experience on similar equipment. PCC also notes that in their evaluation memorandum to the contracting officer, the evaluators stated that at least three engineers with the relevant experience were required. PCC asserts that there was no such requirement in the RFP.

The determination of an agency's minimum personnel needs is primarily the responsibility of the procuring agency. Logistic Services International, Inc., B-218570, Aug. 15, 1985, 85-2 CPD ¶ 173. Thus, the fact that PCC believes its proposed personnel were adequate to meet the agency's requirements does not make the evaluation improper. In addition, while the solicitation did not require a minimum of three engineers with each type of relevant experience, it did provide that the work must be performed by personnel with such experience. The real basis for the finding of technical unacceptability here was not PCC's failure to propose exactly three experienced engineers, but rather that the number of

engineers it did propose with the required relevant experience (one) was inadequate. We do not find any basis to conclude that this determination was unreasonable.

While PCC points out that the RFP permitted work to be performed by trainees under the supervision of experienced personnel, we do not agree with PCC's suggestion that the agency therefore was required to consider acceptable the performance of work by personnel without the relevant experience, who were supervised by an employee with the relevant experience. In fact, the solicitation provided that in no case would the government pay for trainee costs. Thus, while the agency was willing to accommodate trainees, it was not willing to pay them. The agency therefore in no way indicated that it considered trainees, or any other inexperienced personnel, adequate substitutes for experienced personnel simply because they were supervised by experienced personnel.

PCC also argues that it should have been included in the competitive range because of its low cost, and because all of the deficiencies in its proposal could have been resolved through discussions. It is well-established, however, that where a proposal is properly rejected as technically unacceptable, the cost proposed by the offeror is irrelevant as the proposal is ineligible for award. Advanced Technology Systems, B-221068, Mar. 17, 1986, 86-1 CPD ¶ 260. Further, we note that PCC in fact was notified of the deficiencies in its proposal, and was given an opportunity to correct them. Although the agency has characterized this as a "clarification" process conducted prior to establishing the competitive range, it nevertheless served the same function as discussions since it afforded PCC an opportunity to revise or modify its offer and was essential for determining the acceptability of the firm's proposal. See Greenleaf Distribution Services, Inc., B-221335, Apr. 30, 1986, 86-1 CPD ¶ 422. Accordingly, we find that PCC was given an adequate opportunity to correct the deficiencies in its proposal and that its failure to do so, as previously discussed, provided a reasonable basis for its exclusion from the competition.

In addition, PCC contends that its elimination from the competition as technically unacceptable was in reality a finding of nonresponsibility which should have been referred to the Small Business Administration (SBA) under the certification of competency program, since PCC is a small business. PCC asserts that every alleged deficiency in its proposal

actually pertains to the firms capability to perform, and thus relates to its responsibility rather than its technical acceptability. We find no merit to this contention.

The deficiencies identified in PCC's offer in fact related to specific and identified evaluation factors set forth in the RFP. These included maintenance plans, spare parts availability, and past experience of individuals proposed to perform the work. Where an offer is found deficient when evaluated under the criteria specified in an RFP, the matter is one of technical acceptability, not responsibility.

Johnston Communications, B-221346, Feb. 28, 1986, 86-1 CPD ¶ 211. Moreover, in negotiated procurements, traditional responsibility factors may be used as technical evaluation criteria, and if a small business is found to be deficient in those areas, referral to SBA is not required. Essex Electro Engineers, Inc. et al., B-211053.2 et al., Jan. 17, 1984, 84-1 CPD ¶ 74.

#### CONCLUSION

We find no merit to the protester's contentions that its proposal was improperly eliminated from the competitive range based on requirements not stated in the RFP, and that the procurement will result in a de facto sole source award to the original equipment manufacturer. We also find reasonable the agency's conclusion that the proposal was technically unacceptable.

The protest is denied.

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