



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Comarco, Inc.
File: B-225504, B-225504.2
Date: March 18, 1987

DIGEST

1. In assessing the relative desirability of proposals and determining which offer should be accepted for award, contracting officers enjoy a reasonable range of discretion and we will not question such a determination unless there is a clear showing of unreasonableness, abuse of discretion, or a violation of the procurement statutes or regulations.
2. An agency must notify an offeror of the central weakness of its offer, but does not have to discuss every element of a technically acceptable competitive range proposal that has received less than the maximum possible score.
3. An agency has no obligation to reopen negotiations so that an offeror may remedy defects introduced into a previously acceptable proposal by a best and final offer as the offeror assumes the risk that changes in its final offer might raise questions about its ability to meet the requirements of the solicitation.

DECISION

Comarco, Inc., protests the award of a contract to Arinc Research Corporation (Arinc) under request for proposals (RFP) No. N66001-86-R-0030, issued by the Naval Ocean Systems Center (NOSC), San Diego, California, for product assurance services.

The protest is denied.

Comarco states that there was insufficient technical variation between its proposal and that of Arinc's to justify making an award to Arinc for \$600,000 more than Comarco's cost. Comarco also contends that its proposal was improperly found to have deficiencies based upon what Comarco might do after award. Comarco alleges that NOSC improperly eliminated certain qualified staff persons from Comarco's proposed work

force, improperly downgraded Comarco's "Personnel Qualifications" score, and failed to allow it to submit supplemental data to clarify its proposal in this area. Comarco also contends that meaningful discussions were not held, inasmuch as the clarifications asked for in the request for best and final offers (BAFO) only amounted to 10 to 15 percent of the total score and, therefore, Comarco could not increase its score enough to win an award because its other weaknesses were not pointed out.

The Navy contends that Comarco did not timely protest the alleged improprieties in the BAFO request letter. However, the Navy misconstrues Comarco's protest. Comarco's protest concerns the evaluation of its proposal and the alleged failure to conduct meaningful discussions. Since it was filed within 10 working days of when it was apprised of the award, it is timely filed under our Office's Bid Protest Regulations. 4 C.F.R. § 21.2 (1986).

The solicitation required that proposals be evaluated under four primary factors: (1) Personnel Qualifications, (2) Company Experience, (3) Cost, and (4) Management and Facilities. The factors are listed in descending order of importance with Company Experience and Cost being of equal importance. After initial proposals were received and evaluated, Comarco was included in the competitive range along with two other offerors. Discussions were conducted with and BAFOs requested from these offerors. In the letter requesting Comarco's BAFO, NOSC stated its concerns that (1) Comarco had no San Diego facility; (2) Comarco's management relationship with its subcontractor, Research Analysis Corporation (RAC), was somewhat cumbersome and could result in inefficiency and high cost; and (3) Comarco's proposed staff might be changed soon after contract award.

Comarco changed its proposal in its BAFO and indicated that it had a San Diego facility. As a result, Comarco's "Facilities" score was raised by NOSC. NOSC also raised Comarco's "Management" score since Comarco lowered the planned amount of RAC's subcontract hours. The DOSC evaluation panel felt that although Comarco strengthened its management plan by assuming a stronger technical and management leadership role, in using its own employees it weakened its proposed "Personnel Qualifications." NOSC downgraded Comarco's "Personnel Qualifications" score because NOSC read Comarco's BAFO as removing from the proposal RAC personnel whom NOSC felt were highly qualified. In addition, in making its personnel changes, Comarco did not submit a new matrix chart showing the specific personnel who would be performing under the various technical labor categories. Inasmuch as the

solicitation requires such a matrix chart, NOSC downgraded Comarco's "Personnel Qualifications" score. Also, although Comarco gave assurances in the BAFO that it was committing its proposed personnel to this contract, NOSC further downgraded Comarco in the "Personnel Qualifications" area since it lacked confidence that Comarco's proposed personnel were committed to this contract. Comarco reduced its cost in its BAFO, becoming the second low offeror, but its combined technical and cost score was third.

Comarco contends that it did not offer new or different personnel in its BAFO from those offered in its initial proposal. Rather, it states that it merely shifted more of the work to its Comarco work force, all of whom had been previously identified in its initial proposal to NOSC. Comarco's BAFO showed that it greatly reduced its subcontract personnel hours with RAC. Comarco contends that this change merely reflects a different utilization of personnel assigned to the contract. Comarco also contends that no new personnel matrix was provided because the personnel matrix is contained in the Personnel Qualifications section, not in the Facilities and Management area which was the subject of NOSC's concern as expressed in its BAFO request. Comarco finally contends that it is unreasonable to downgrade its proposal based upon unfounded speculation that proposed personnel may be shifted from the contract shortly after award.

It is not our function to reevaluate Comarco's technical proposal, inasmuch as the determination of the government's needs and the best method of accommodating those needs is primarily the responsibility of the procuring agency. In assessing the relative desirability of proposals and determining which offer should be accepted for award, contracting agencies enjoy a reasonable range of discretion and our Office will not question such a determination unless there is a showing of unreasonableness, abuse of discretion, or a violation of the procurement statutes or regulations. IBI Security Service, Inc., B-216799, July 25, 1985, 85-2 C.P.D. ¶ 85 at 4.

We find that NOSC's interpretation and evaluation of Comarco's BAFO was reasonable. In its BAFO, Comarco drastically reduced the use of the highly qualified RAC personnel and totally eliminated RAC's involvement in all but two of the 14 labor categories. It was reasonable for NOSC to expect that a new personnel matrix should have been provided showing how Comarco personnel would be utilized after Comarco

so restructured its proposal. Lacking a new personnel matrix NOSC had a reasonable basis to doubt the quality of Comarco's staffing plan, since it did not know which Comarco personnel would perform the function that RAC personnel were going to provide.

Also, as noted, NOSC's concern about the lack of commitment of Comarco's proposed personnel was brought to Comarco's attention during discussions and in the BAFO request. This concern arose from a paragraph in Comarco's initial proposal which implied that proposed personnel would be changed shortly after contract award. In its BAFO, Comarco responded to this concern by stating that its personnel will be committed to the contract and by providing letters of commitment from five of its proposed personnel. However, since letters of commitment were not provided for the large majority of proposed personnel, NOSC evaluators still had doubts as to the continued availability of the originally proposed personnel. In evaluating proposals, an agency reasonably may consider whether an offeror has provided sufficient assurance to give the agency confidence that proposed personnel are firmly committed to the offeror and the contract. See Logistics Service International, Inc., B-218570, Aug. 15, 1985, 85-2 C.P.D. ¶ 173. In this case, we find that NOSC's concern about Comarco's proposed personnel was reasonably based. --

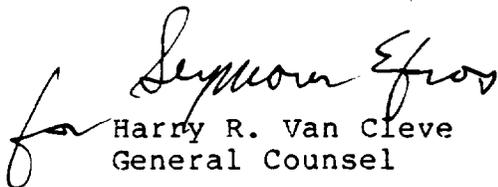
In response to Comarco's contention that meaningful discussions were not held, the Navy contends, and the record supports, that NOSC discussed all significant deficiencies with Comarco. We have held that when an agency fails to notify an offeror of the central weakness of an offer, it has failed to hold meaningful discussions. E. H. Pechan & Associates, Inc., B-221058, Mar. 20, 1986, 86-1 C.P.D. ¶ 278 at 7. However, agencies do not have to discuss every element of a technically acceptable competitive range proposal that has received less than the maximum possible score. Bauer of America Corp. & Raymond International Builders, Inc., A Joint Venture, B-219343.3, Oct. 4, 1985, 85-2 C.P.D. ¶ 380. Here, NOSC informed Comarco of its major weaknesses; NOSC did not have to discuss other areas where Comarco was in fact highly rated.

As noted, Comarco raised its "Management and Facilities" score by responding to NOSC's concerns expressed in the BAFO. However, NOSC found that Comarco had weakened the "Personnel Qualifications" area as a result of its BAFO changes and Comarco was downgraded accordingly. However, an agency has no obligation to reopen negotiations so that an offeror may remedy defects introduced into a previously

acceptable proposal by a best and final offer. Xerox Special Information Systems, B-215557, Feb. 13, 1985, 85-1 C.P.D. ¶ 192. The offeror assumes the risk that changes in its final offer might raise questions about its ability to meet the requirements of the solicitation and, thus, result in the rejection of its proposal. RCA Service Company, B-219643, Nov. 18, 1985, 85-2 C.P.D. ¶ 563 at 7. Consequently, we find that meaningful discussions were conducted with Comarco.

Comarco claims that because of its lower cost proposal it should have received the award. However, under this solicitation the technical score was assigned a weight of 80 percent and the proposed cost score a weight of 20 percent. In negotiated procurements, unless the solicitation so specifies, there is no requirement that award be based on lowest price or cost. See Litton Systems, Inc., Electron Tube Division, 63 Comp. Gen. 385 (1984), 84-2 C.P.D. ¶ 317; Service Ventures, Inc., B-221261, Apr. 16, 1986, 86-1 C.P.D. ¶ 371. Even though Arinc's evaluated cost was \$600,000 more than Comarco's cost, Arinc received a higher total score than Comarco when the weighted technical and cost scores were combined because Arinc's technical proposal was rated higher. Since the cost/technical tradeoff was rational and consistent with the solicitation's evaluation factors, the agency had a reasonable basis for selecting Arinc. Chemonics International, B-222793, Aug. 6, 1986, 86-2 C.P.D. ¶ 161 at 8; Service Ventures, Inc., B-221261, supra, at 7.

The protest is denied.


Harry R. Van Cleave
General Counsel