



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: The Associated Corporation
File: B-225562
Date: April 24, 1987

DIGEST

1. General Accounting Office denies a protest against award of a contract while an agency-level protest was pending where the agency failed to make certain determinations required by regulation, because the agency's alleged actions are unrelated to the validity of the selection decision.

2. Agency's decision to exclude protester's proposal from the competitive range, based upon major deficiencies in personnel experience and management planning and reporting, weaknesses in other areas of the proposal, and a total evaluation score about 43 percent less than that of the other offeror was not unreasonable or otherwise in violation of applicable statutes and regulations.

DECISION

The Associated Corporation (TAC) protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. N00032-86-R-1632, issued by the Joint Cruise Missiles Project, Department of the Navy. TAC argues that the agency improperly evaluated its proposal and that the firm should have had an opportunity to discuss the deficiencies and submit revisions.

We deny the protest in part and dismiss it in part.

BACKGROUND

The solicitation, issued on August 13, 1986, sought a 2-year contract to analyze and test the Tomahawk cruise missile combat control system used on submarines for compliance with nuclear safety standards. The RFP stated that proposals would be evaluated in three areas: technical, management, and cost. The technical and management areas were to be "significantly more important than the cost area." The RFP listed several technical and management evaluation factors and numerous subfactors under each.

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The Navy received proposals from TAC and the incumbent contractor, Logicon, Inc., by the September 12 closing date. The technical evaluation team, using a 10,000-point scale, gave the technical area a maximum of 5,000 points, the management area 4,000 points, and cost (cost realism and the lowest cost to the government) 1,000 points. The two offerors scored as follows:

| Technical | <u>TAC</u> | <u>Logicon</u> | <u>Possible Score</u> |
|---|------------|----------------|-----------------------|
| 1.1 Understanding of the Nuclear Safety and Certification Process | 1370 | 1920 | 2000 |
| 1.2 Understanding Requirements of the Statement of Work | 997.5 | 1477.5 | 1500 |
| 1.3 Understanding the Scope of Nuclear Safety Analyses | 1203 | 1449 | 1500 |
| Management | | | |
| 2.1 Personnel Experience | 150 | 1488.75 | 1500 |
| 2.2 Planning and Reporting | 217.5 | 1000 | 1000 |
| 2.3 Transition and Continuity Approach | 187.5 | 727.5 | 750 |
| 2.4 Corporate Experience | 390 | 735 | 750 |
| Cost | | | |
| 3.1 Cost Realism | 500 | 500 | 500 |
| 3.2 Lowest Cost | <u>500</u> | <u>370</u> | <u>500</u> |
| TOTAL | 5515.5 | 9667.75 | 10,000 |

The scores for cost resulted from both firms receiving the maximum for cost realism and TAC's estimated cost being substantially less than Logicon's.

The technical evaluation team generally gave TAC scores that equated to descriptive ratings of either "outstanding"

or "satisfactory" for the factors and subfactors in the technical area. Under management, however, it rated TAC "unacceptable" for three out of four factors (personnel experience, management planning and reporting, and transition and continuity approach) and "poor" for the fourth factor (corporate experience).

On October 14, the agency's contract award panel decided to eliminate TAC's proposal from the competitive range because it was unacceptable and did not have a reasonable chance of being selected for award. After the contracting officer notified TAC of this decision on November 3, the firm protested to the agency, which denied the protest on November 26. Instead of awarding a contract under the RFP, the Navy elected to cancel it and exercise an option for an additional year under Logicon's then-current contract for the same services. The contracting officer concluded that the option represented a lower cost to the government than Logicon's proposal under the RFP. On December 15, TAC protested to our Office.

ANALYSIS

TAC initially complains that the Navy improperly exercised the option while its agency-level protest, dated November 5, was pending, without making certain determinations required by the Federal Acquisition Regulation (FAR), 48 C.F.R. § 33.103 (1986). The Navy responds that the envelope containing the protest was not properly addressed, so that the document was not delivered to the contracting officer until November 7, the day after it was received by the agency. The contracting officer states that in accord with her normal practice, she opened her mail at the end of the day, following execution of the option earlier on November 7.

Irrespective of the merits of TAC's argument, any failure by the Navy to follow the regulations in making an award while the protest was pending does not affect the validity of the award and does not provide a basis for us to sustain the protest. Carolina Waste Systems, Inc., B-215689.3, Jan. 7, 1985, 85-1 CPD ¶ 22. Consequently, we dismiss this ground for the protest.

The protester's primary basis for protest concerns exclusion of its proposal from the competitive range. TAC argues that the major deficiencies cited by the Navy to justify the exclusion either resulted from a misreading of the proposal or are informational or minor in nature, so that they could easily be remedied during discussions. The protester also contends that the contracting officer

applied the wrong legal standard and improperly considered certain matters in determining the competitive range.

The Competition in Contracting Act of 1984 requires that if an agency conducts discussions, it must do so with all responsible offerors within the competitive range. 41 U.S.C. § 253b(d)(2) (Supp. III 1985). The FAR provides that the competitive range must include all proposals that have a "reasonable chance of being selected for award," and that any doubt as to whether a proposal is in the competitive range should be resolved by inclusion. 48 C.F.R. § 15.609(a). In view of the importance of achieving full and open competition in government procurement, we closely scrutinize any evaluation that results in only one offeror being included in the competitive range. Coopers & Lybrand, B-224213, Jan. 30, 1987, 87-1 CPD ¶ ____.

Personnel Experience

The most important evaluation factor in the management area was personnel experience, worth 15 percent of all available points. Under this factor the RFP listed four subcontractors describing expertise in relevant subjects such as "expertise in nuclear missile systems" and "expertise in the nuclear safety and certification process." As noted above, the Navy found TAC's proposal "unacceptable" under this factor.

The RFP contemplated a cost-plus-fixed-fee-contract for fiscal year 1987, with an option for fiscal year 1988. It estimated that 52,000 man-hours would be required for each year. TAC proposed that 46,473 of the hours in the first year would be provided by the technical and senior technical staff. The firm stated that the great majority of this effort (33,153 hours) would be performed by employees to be recruited by TAC. The protester only identified 3 full-time senior technical staff members, 1 part-time senior technical staff member, and 9 other technical staff members who would provide a total of 13,320 hours during the first year; only 4 of these proposed staff members are currently employed by TAC. The firm's employment plans, as described in the proposal, provide for new staff members to have at least a recent technical degree or to be working toward one, and to be "literate in at least one high-order language or equivalent skills in DoD processes." Thus, the new staff members would not necessarily have experience in nuclear systems or the other relevant subjects listed in the RFP. Seven out of the nine proposed technical staff members who were identified were college students who would work for one-fourth or one-half of the year. While the students' resumes establish that they may have some relevant experience, the Navy concluded

that the resumes were insufficiently detailed to evaluate that experience.

The Navy concluded that TAC's staffing plan presented a substantial risk. In light of the number of inexperienced new employees and part-time students that TAC proposed, the evaluation team considered experience of TAC's proposed staff to be very low for each of the four subfactors evaluated; it pointed out that two individuals with relevant experience were not current employees and that TAC had not submitted a letter of commitment from them as required by the RFP. For one of the evaluation subfactors, "expertise in the nuclear safety and certification process," the Navy found that only one current employee proposed as a full-time staff member had knowledge and experience, while only three or four had expertise encompassed by the other listed subfactors.

TAC responds that the RFP did not require that each staff member have expertise in each of the subjects described by the subfactors under personnel experience. According to the protester, the technical staff members to be employed will have the computer language skills necessary to perform their tasks as supervised and checked by the senior technical staff. The protester also argues that it proposed individuals with substantially the same skills and experience in an earlier procurement for the same services and that this was "entirely satisfactory" to the Navy at that time. TAC further argues that the Navy failed to evaluate the overall expertise of its proposed staff, and by focusing exclusively on the qualifications of future employees, the agency deviated from the evaluation scheme. The protester also asserts that offerors were required to obtain letters of commitment for proposed employees, but were not required to include them with their proposals.

We find that the Navy did consider TAC's entire proposed staff, and that it did not establish a requirement that new employees have a certain level of experience unrelated to the work they would perform. Rather, the agency reasonably questioned the protester's ability to perform the contract successfully with a very small core of experienced individuals relative to the entire contractual effort. We are unable to evaluate TAC's assertion that individuals with similar skills and experience were previously acceptable to the Navy, since TAC has not provided supporting evidence such as resumes and other relevant portions of its previous proposal and the solicitation for that procurement. While we disagree with the protester's assertion that letters of commitment were not required to be included with proposals, this was a deficiency that could readily be

remedied. See Falcon Systems, Inc., B-213661, June 22, 1984, 84-1 CPD ¶ 658. On the whole, however, we find the Navy's conclusion that TAC's proposal was seriously deficient in experience of personnel and unacceptable without a major revision was reasonable.

Management Planning and Reporting

The Navy also found TAC's proposal to be "unacceptable" under the management planning and reporting factor, which included such subfactors as "proposed scheduling of the performance of tasks . . . to meet program requirements" and "proposed management plan for staffing . . . tasks with dedicated personnel to ensure program continuity." TAC received no evaluation points with respect to one subfactor, "proposed progress and financial tracking and reporting." The Navy found that TAC did not describe procedures and methodologies for how and when budgets for tasks would be developed and how and when progress against the budgets would be reviewed.

The protester cites a few general statements in its proposal that refer to monitoring of progress, such as "the project manager has direct control of the assigned workforce against a planned budget of man-hours by task and individual assignment." TAC also complains that the RFP imposed a 50-page limit for proposals; asserts that the Navy should have focused upon TAC's staff distribution by skill-level for each fiscal year and other information, rather than on budgeting procedures and methodologies; and states that when TAC provided the same services under an earlier contract, the Navy asked the firm to reduce the amount of information in its monthly status report.

None of these arguments contradict what is clear from reading TAC's proposal: the firm did not address management of "proposed progress and financial tracking and reporting." TAC's receipt of no points for this subfactor was appropriate. With respect to the 50-page limit on proposals, we note that within the page limit, Logicon discussed in detail how it planned to develop task plans and budgets and to monitor progress and expenditures. We have no reason to question TAC's rating of unacceptable under the management planning and reporting factor.

Understanding the Requirements of the Statement of Work

The Navy did not find TAC's proposal to be "unacceptable" in the technical area; however, it identified a number of technical weaknesses that it considered in making the competitive range determination. The technical evaluation team rated TAC "poor" under a subfactor for "understanding

of software tools and test facilities requirements." The evaluation team rated TAC barely satisfactory for its "understanding of technical reporting and system review requirements," considering TAC's proposal weak in this area.

TAC contends that its understanding of software tools and test facilities requirements was established by its reference in its proposal to two government-furnished software tools and a statement concerning approximately when and how long TAC would require use of test facilities at the Naval Underwater Systems Center. The protester also argues that the Navy ignored portions of its proposal in concluding that TAC's understanding of technical reporting and system review requirements were weak.

We find that the Navy properly evaluated TAC's proposal with regard to technical factors. A reference to two general software tools in one sentence does not evidence an understanding of the requirement for software tools. Logicon, for example, proposed the use of 5 government-furnished software tools and 12 contractor-furnished software tools, summarized their functions and applications, and provided additional information. The technical evaluation team criticized TAC's reference in its proposal to a software tool called the "Software Inspector," since the tool was under development. TAC states that it only referred to the "Software Inspector" and its planned completion in 1986 to show experience in independent research and development. We believe that in the absence of a comprehensive discussion in TAC's proposal of the software tools requirement, the Navy properly believed that TAC contemplated some role for the "Software Inspector" during contract performance, and reasonably took this into account in the evaluation.

We find that TAC's summary statements in its proposal regarding the need to use government facilities and its plans for technical reporting and system review also do not evidence more than a weak understanding. For example, in its proposal TAC devoted four sentences to technical reporting and system review, including the following:

"The project management staff maintains a computer data base of all schedules and [contract data] delivery requirements, updates these schedules as the program changes and notifies the project manager of all changes. The project manager in regular meetings with corporate management provides progress and changes requiring management or contractual action."

This level of detail does not establish the understanding required; as the agency reports, there is no indication of when the staff would update delivery requirements, how and when the staff would notify the project manager of changes, how often "regular" meetings would be held with corporate management, and whether corporate management would have independent methods to monitor progress or verify reports. Here, too, TAC's complaint that it was handicapped by the 50-page limit is refuted by Logicon's detailed and comprehensive discussions in these areas.

Competitive Range Determination

TAC contends that many of the deficiencies in its proposal are informational in nature and do not warrant exclusion from the competitive range. We disagree. While we can identify some deficiencies that could readily be remedied by additional information during discussions, such as the omission of letters of commitment discussed above, most of the deficiencies relate to a lack of understanding of requirements to perform the work satisfactorily, a lack of diligence in preparing the proposal, or a lack of corporate or individual capabilities that, in total, would require substantial revisions to correct.

Agencies are not required to permit an offeror to revise an unacceptable initial proposal where the deficiencies are so material that major revisions are required to make the proposal acceptable. ASEA Inc., B-216886, Feb. 27, 1985, 85-1 CPD ¶ 247. Here, TAC's proposal in the management area contains substantial deficiencies that would require submission of virtually a new proposal, and, we believe, support the Navy's judgment that the proposal did not have reasonable chance for award. See Falcon Systems Inc., supra.

Finally, the protester claims that the following statement by the contracting officer indicates that she entertained improper considerations:

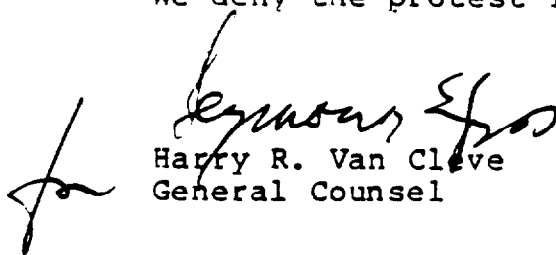
"I also determined that a best and final offer request would be unfair to Logicon because the nature and extent of TAC's deficiencies would, essentially, give TAC the opportunity to re-propose. The nature of the deficiencies in the TAC proposal resulted from lack of diligence in reading the proposal instructions and evaluation criteria. I also saw no reason to have TAC spend additional money and manhours on a best and final offer when I could not foresee TAC

coming up to the technical level of Logicon without a commensurate increase in costs."

TAC argues that consideration of fairness to Logicon was improper. On the contrary, we believe that the contracting officer was merely stating one of the reasons for the rule applied in this case--including an offeror in the competitive range whose proposal is so seriously deficient that it will require essentially a new proposal would be unfair to offerors submitting acceptable proposals in the first place, and to do so would undermine the integrity of the procurement process. Similarly, including a proposal in the competitive range that does not have a reasonable chance for award is not fair to the offeror who will incur needless expenditures of time and money persisting in the procurement.

TAC also complains that the contracting officer improperly "speculated" that an improvement in TAC's technical proposal would result in a commensurate cost increase. TAC believes that the cost impact of a revised proposal should only be determined by obtaining a best and final offer. We believe that the contracting officer was merely pointing out another rationale for her belief that TAC had no reasonable chance for award--the firm would lose its initial cost advantage if it cured the deficiencies in its proposal. An opportunity to obtain lower costs is a reasonable consideration in competitive range determinations, PRC Computer Center, Inc. et al., 55 Comp. Gen. 60 (1975), 75-2 CPD ¶ 35, and we cannot object to the contracting officer's belief that TAC's proposal did not actually represent an opportunity for the Navy to obtain acceptable services for a lower cost.

We deny the protest in part and dismiss it in part.



Harry R. Van Cleve
General Counsel