



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: HITCO
File: B-232093
Date: October 11, 1988

DIGEST

It is an offeror's responsibility to furnish all of the information required by the request for proposals, and an agency therefore properly may exclude from the competitive range an offer with significant informational deficiencies.

DECISION

HITCO protests its elimination from the competitive range in a procurement conducted by the Naval Sea Systems Command under request for proposals (RFP) No. N00024-88-R-6019(S). We deny the protest.

The Navy issued the RFP in March of 1988 to acquire "Sonar Dome Rubber Windows" (SDRWs), with related equipment and services. Essentially, SDRWs are large rubber coverings to protect the underwater sonar domes on surface ships with material providing an acceptable degree of acoustic transparency.

The RFP required offerors to provide several rubber samples for the conduct of specified tests, and to furnish technical and cost proposals. The RFP stipulated that only those offerors whose samples passed the qualifying tests and whose technical proposals were acceptable would have their cost proposals evaluated. The RFP also required that technical proposals contain discussion in sufficient detail to demonstrate the offeror's total comprehension of the technical and management requirements including, specifically, the offeror's technical approach, assembly and test procedures, critical processes and procedures, production reliability, quality assurance program, program plan, key personnel, organization, facilities, and other aspects of SDRW manufacture, as well as requiring explicitly that an offeror explain and justify proposed changes to the SDRW specifications. Award was to be made to the lowest cost offeror submitting an acceptable technical proposal.

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One of the three offerors was eliminated when its samples failed the required tests. The Navy eliminated HITCO because the Navy found numerous technical deficiencies and omissions in HITCO's proposal, leaving only B.F. Goodrich (BFG), the Navy's long-term incumbent supplier of SDRWs, in the competitive range. The Navy awarded the contract to BFG on July 6, 1988, and in a debriefing on July 15 advised HITCO of the 47 deficiencies that the Navy found in HITCO's proposal. HITCO protested to our Office on July 26.

HITCO contends that the Navy's finding of technical unacceptability was unreasonable. In support of this position, HITCO initially argued that the Navy identified only four significant deficiencies in HITCO's proposal, attributable to HITCO's failure to describe intended product improvements fully, and argued that the Navy was either wrong or simply was noting places where the Navy might want additional information on the remaining 43 deficiencies allegedly found in HITCO's proposal. HITCO contended that all of these deficiencies were easily correctable and asserted that its exclusion from the competitive range therefore was improper. In its final comments on the protest, submitted after a conference held in our Office, HITCO provided a matrix, encompassing all of the statements in the Navy's technical evaluation report on HITCO's proposal, on the basis of which HITCO asserts that 59 percent of the comments in the technical evaluation report represent "subjective requests for more information" and adds the charge that the Navy evaluated HITCO's proposal on the basis of criteria either not contained in, or contrary to, the RFP.

In view of the importance of achieving full and open competition in government procurements, we closely scrutinize any evaluation that leaves only one offeror in the competitive range. Coopers & Lybrand, B-224213, Jan. 30, 1987, 66 Comp. Gen. ____, 87-1 CPD ¶ 100. In doing so, however, we recognize that contracting officials have a reasonable degree of discretion in the evaluation of proposals to determine their acceptability, and we therefore will not disturb an agency's determination that a proposal is not in the competitive range absent clear and convincing evidence that the determination lacked a reasonable basis. CSP Associates, Inc., B-228229, Jan. 29, 1988, 67 Comp. Gen. ____, 88-1 CPD ¶ 87. Moreover, although the Federal Acquisition Regulation (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, FAR § 15.609(a) (FAC 84-16), a contracting agency is not required to permit an offeror to

revise an unacceptable initial proposal where the deficiencies are so material that major revisions would be required to make the proposal acceptable. DBA Systems, Inc., B-228509, Jan. 26, 1988, 88-1 CPD ¶ 78.

As a threshold matter, we point out that what HITCO characterizes as the Navy's merely noting places where it might want additional information were, from the government's perspective, recitations of informational deficiencies in HITCO's proposal. This aspect of HITCO's protest ignores the fundamental precept that it was HITCO's responsibility to furnish all of the information required by the RFP, see DAVSAM International, Inc., B-228429.5, Mar. 11, 1988, 88-1 CPD ¶ 252, and we consider HITCO's own characterization of these deficiencies, without challenge except in one instance, to amount to the concession of numerous inadequacies and omissions in its proposal.

Agencies may exclude proposals with significant informational deficiencies from further consideration. Imagineering Systems Corp., B-229434.2, Feb. 4, 1988, 88-1 CPD ¶ 109. This is true whether the deficiencies are attributable to either omitted or merely inadequate discussion of fundamental factors. John W. Gracey, B-228540, Feb. 26, 1988, 88-1 CPD ¶ 199; American Optical Corp., B-228535, Feb. 9, 1988, 88-1 CPD ¶ 127. Here, for instance, the Navy noted that HITCO's proposal did not discuss the properties of the wire cord HITCO was proposing to use to strengthen the rubber or how the wire would be tensioned during assembly of the rubber plies. Similarly, the Navy found that HITCO failed to describe adequately the properties of the rubber to be used or its manufacture; did not describe fully how surface contact and patterns would be employed to control stress at the joint between the two halves of the SDRW; failed to explain or justify the use of an added layer of anti-fouling rubber over the splice between the SDRW halves; and failed to provide adequate discussion of HITCO's proposed program plan and the division of responsibilities between HITCO and its subcontractor.

On the basis of these and other deficiencies the Navy found in HITCO's proposal, the Navy's technical review panel unanimously concluded that HITCO's proposed technical approach, assembly, inspection and test procedures, and organization were unacceptable. HITCO's suggestion that the majority of the deficiencies underlying these findings were merely notations as to places where the Navy might like additional information is not persuasive that these deficiencies were not serious. In these circumstances, we cannot conclude that the Navy was unreasonable in deciding that the

cumulative effect was to render HITCO's proposal unacceptable, and we find no basis upon which to object to the Navy's elimination of HITCO from the competitive range.

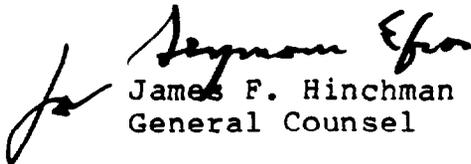
There are several aspects to HITCO's contention that the Navy evaluated its proposal using criteria other than those in the RFP. In the first of these, HITCO contends that the Navy observed certain anomalies in the samples HITCO provided for testing that were beyond the bounds of the tests specified in the RFP, and that the Navy considered these problems as deficiencies in evaluating HITCO's proposal. HITCO contends that the matters the Navy noted could have been explained and that, in any case, the use of the samples for anything beyond the performance of the specified tests violated the terms of the RFP. The RFP, however, specifically advised offerors that the technical proposals and the samples submitted for testing would be the sole bases for evaluating the technical merits of what was offered and the ability of the offeror to perform in accordance with the requirements. In our view, this language was sufficiently broad to accommodate the Navy's assessment of the samples for purposes other than the specific tests identified in the RFP. Moreover, we do not think the Navy reasonably could be expected to ignore unexplained and obvious anomalies such as delaminations of the rubber layers.

In the second group of specific complaints within this general category, HITCO appears to suggest that the Navy applied criteria not part of the RFP and found deficiencies in HITCO's proposal for failing to provide information not required by the RFP. In one such instance, for example, HITCO challenges the Navy's concern that HITCO failed to identify the properties of an epoxy filler that HITCO proposed to use in the event HITCO could not obtain the filler used by the incumbent, because the RFP did not specify the type of filler required. In another instance, HITCO objects to the Navy's concern about HITCO's proposed use of corrosion-resistant steel cable for the SDRW bead cable; HITCO contends that the RFP did not require any particular steel cable for the bead and asserts that its proposal therefore complied with the requirements of the RFP.

We find no legal merit in this aspect of HITCO's protest. The RFP explicitly required special attention in proposals to critical materials and components that could adversely affect SDRW performance. In our view, the Navy's negative assessments of HITCO's failures to provide information, or adequate information, regarding HITCO's proposed filler and bead cables were attributable to this clearly stated requirement rather than to the application of criteria not reflected in the RFP. The same is true of HITCO's other contentions of this nature.

HITCO also contends that, in some instances, the Navy evaluated its proposal against the incumbent's manufacturing practices, rather than against RFP criteria. The Navy's technical review report does, in fact, evidence at least two instances in which it appears that individual evaluators applied their knowledge of the incumbent's procedures to their assessment of HITCO's proposal, i.e., HITCO was downgraded because it did not propose to do certain things the same way the incumbent did them. Given the aggregation of omissions and inadequacies in HITCO's proposal, however, there is no evidence that elimination of the perception of these deficiencies would have enhanced the likelihood of HITCO's inclusion in the competitive range. Therefore, we do not believe HITCO was prejudiced in this regard.

The protest is denied.


James F. Hinchman
General Counsel