



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Comptek Research, Inc.
File: B-232017
Date: November 25, 1988

DIGEST

1. Recompensation of procurement is not required despite evidence that agency official, following evaluation of initial proposals, may have disclosed confidential source selection information to one firm participating in procurement, where there is no evidence of misconduct affecting the evaluation, and record indicates that competitive range determination and other source selection decisions were based entirely on appropriate considerations.
2. Exclusion from competitive range of technically unacceptable proposal not susceptible to being made acceptable without complete revision, and which thus has no reasonable chance of being selected for award, is proper.

DECISION

Comptek Research, Inc., protests the impending award of a contract to either one of two firms remaining in the competition, namely LTV Aerospace and Defense Company or Grumman Data Systems Corporation, under request for proposals (RFP) No. N0039-87-R-0275(Q), issued by the Space and Naval Warfare Systems Command (SPAWAR), Department of the Navy. Comptek, which was excluded from the competitive range, contends that the existence of improprieties and illegal activities on the part of an agency official in the conduct of this procurement should render invalid any contract awarded under the subject solicitation. Comptek asks that the requirement be recompeted and that it be reimbursed its proposal preparation and protest costs.

We deny the protest and the claim for costs.

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BACKGROUND

The solicitation requested offers for the prototype development and production of the Advanced Tactical Air Command Central (ATACC), and provided that the source selection decision would be made based on four major evaluation areas, listed in descending order of importance: cost, technical, integrated logistics support (ILS), and management/experience. The solicitation further specified that cost was the most important criterion, that both cost and technical were significantly more important than ILS, and that ILS was significantly more important than management. Although not disclosed in the solicitation, the evaluation factor weights assigned to the criteria were: cost/42, technical/40, ILS/15, and management/3.

In accordance with a source selection plan adopted for this procurement, a technical evaluation board was convened to evaluate the merits of the offerors' technical, ILS and management proposals. The board's findings, together with a summary report prepared by the board's chairman, were to be submitted to a Contract Award Review Panel (CARP), also formed pursuant to the source selection plan, which was responsible for reviewing and evaluating the proposals (with the technical assistance of the board), presenting a recommendation to the source selection authority concerning the offerors to be included in the competitive range, and developing an award recommendation to the source selection authority.

Ten firms responded to the RFP. The board, in its report issued to the CARP, noted that all of the proposals had technical deficiencies, but that those submitted by LTV and Grumman nevertheless convincingly demonstrated their potential capabilities to deliver a prototype and production model. The board thus recommended that these two firms be included in the competitive range. The remainder of the firms, including Comptek, were found to have technical deficiencies so significant that their inclusion in the competitive range could not be recommended.

The board chairman, in his summary technical report, concurred with the board's competitive range recommendation with respect to all of the offerors except for United Technologies Norden Systems; he found that Norden also had demonstrated a technically acceptable and sound approach of low to moderate risk to the government and should be included in the range. The chairman emphasized the consensus of the board with respect to each offeror's prototype technical approach, *i.e.*, the software approaches proposed to meet the specified ATACC functions; LTV, Grumman and

Norden were found to have demonstrated an understanding of the critical software requirements of ATACC. Two other firms were rated poor for this element, and the remaining firms including Comptek were found unacceptable.

The CARP reviewed and accepted the board's findings and used them to derive weighted evaluated scores for each proposal. (The board had rated the proposals by awarding raw points for each specified evaluation criterion; the precise numerical weights accorded to each was not disclosed to the board.) In addition, the CARP point-scored the offerors' cost proposals for the purpose of calculating total weighted scores for each offeror. These scores ranged from the two highest of 64.20 and 62.41, to a low of 30.44. Comptek's score of 36.07 was the sixth highest, while Norden's score of 34.90 was seventh. On the basis of these scores, the CARP recommended to the source selection official that both LTV and Grumman be included in the competitive range (along with another offeror that rated fifth overall but whose technical approach was considered superior to the third and fourth rated offerors).

The source selection official accepted the CARP's recommendation, but also decided to include Norden in the competitive range for the same reasons cited by the board chairman. The source selection official found these four offerors, which received the four highest technical scores, to be the only offerors having a reasonable chance of being selected for award.

Discussions were held with each of the four offerors and each was requested to respond to numerous written questions and to solve a sample software problem. Based on their responses, the source selection official, as advised by both the board and the CARP, revised the competitive range to include only LTV, Grumman and Norden. These three remaining competitors were then asked to submit best and final offers (BAFOs). LTV and Grumman timely complied with this request. Norden, however, declined and instead formally withdrew from the competition, citing an ongoing procurement fraud investigation being conducted by several government agencies of alleged fraudulent conduct on the part of current and former employees of the Department of Defense (DOD), consultants and defense contractors in the ATACC as well as other procurements.

Following Norden's withdrawal from the competition, two affidavits prepared in furtherance of this ongoing investigation by Federal Bureau of Investigation (FBI) special agents were unsealed by the United States District Court for the Northern District of Texas. These affidavits

revealed that both the FBI and the Naval Investigative Service indeed were conducting an investigation of fraud in the procurement and the award of contracts by DOD. Specifically, and of particular importance to this procurement, one affidavit chronicled a series of meetings and telephone conversations between a SPAWAR employee and two consultants, which suggested that Norden was the recipient of confidential information on the ATACC procurement, including the board's evaluation of initial proposals and pricing data. Information contained in these affidavits, including references to alleged misconduct in the ATACC procurement, was subsequently reported in the July 1, 1988 edition of the Washington Post; Comptek's protest to our Office was filed shortly after the appearance of newspaper accounts of the investigation.

ALLEGATION

In view of the information contained in the unsealed affidavits, Comptek contends that all decisions made with respect to the ATACC procurement by SPAWAR cannot be considered fair and objective. Specifically, Comptek maintains that the alleged ground for exclusion of Comptek's offer from the competitive range (technical insufficiency) cannot be viewed as legitimate since the entire deliberative process was tainted by the named official's alleged illegal conduct. While acknowledging it lacks specific evidence that the SPAWAR official's conduct competitively prejudiced Comptek, the protester points to the official's supervisory authority over the board chairman and the source selection official, and his access to and knowledge of source selection information, as a sufficient basis for assuming such prejudice under the circumstances here. Accordingly, Comptek requests that we direct SPAWAR to recompute the ATACC procurement and that it be allowed to recover its proposal preparation costs and the costs of filing and pursuing this protest.

DISCUSSION

While the record here indeed contains evidence of the possible disclosure of source selection information by a SPAWAR official, we do not consider this alleged illegal activity^{1/} alone, which the record indicates benefited only Norden, as casting doubt on the propriety of the rejection of Comptek's proposal. There is no evidence suggesting that

^{1/} It is important to note that the government official who is cited in the unsealed affidavits has not been found guilty so far of any of the alleged illegal actions.

the official who allegedly disclosed the information either influenced or otherwise exercised control over this aspect of the source selection process. While this official had supervisory authority over the source selection official, the record demonstrates that the source selection official exercised his own independent judgment in making his competitive range determinations based primarily on the board's evaluation of proposals. Moreover, there is no evidence that any board members had any contact with, or were influenced by the official allegedly engaged in the misconduct; indeed, the board was responsible for Norden's low rating and actually recommended against including Norden in the competitive range.

Not only is there no evidence of misconduct affecting Comptek's evaluation, but our review indicates that the board's evaluation was based on a careful review of the proposal consistent with the RFP's evaluation scheme.

The board rated Comptek's proposal poor or unacceptable for each of the three evaluation criteria (technical, ILS and management). As stated in the board chairman's summary report, Comptek's proposed non-development software and its software for this procurement were found not to meet the system requirements for ATACC. For example, the board found that contrary to the specific requirements set forth in the RFP, Comptek's proposal transferred the major program risks to the government by virtue of its proposed use of government furnished computers and software. Further, it found that the non-development software items proposed were obsolete and not compatible with each other and the computer architecture proposed was inadequate and would not meet the specified 50 percent reserve capacity requirement. Additionally, the board, as stated in the chairman's report, found numerous other deficiencies in Comptek's proposal such as inadequate documentation for its proposed software as well as for its integrated software engineering plan, and also an unacceptable hardware approach. These conclusions were accepted by the CARP and eventually adopted by the source selection official.


Comptek, other than briefly questioning the solicitation's requirements regarding the use of government-furnished property (the RFP expressly provided that except for several enumerated items no other property would be furnished), has not challenged the reasonableness of any of these findings (even after discussions of each deficiency with the board chairman at the bid protest conference held in this matter); the possibility, as Comptek argues, that Norden was improperly included in the competitive range based on improper action by an agency official, provides no basis by itself to

question the reasonableness of the decision to exclude Comptek from the competition. Thus, given the magnitude of the defects found in Comptek's proposal, which placed Comptek's evaluation score significantly below other offerors' scores, the source selection official had sufficient justification to exclude Comptek from the competitive range. See DDD Co., B-228850, Nov. 23, 1987, 87-2 CPD ¶ 508; Emprise Corp.--Request for Reconsideration, B-225385.2, July 23, 1987, 87-2 CPD ¶ 75.

The seriousness of the alleged impropriety here cannot be overstated; fraudulent conduct on the part of government officials undermines public confidence in the integrity of the procurement system. As discussed above, however, there simply is no evidence that this alleged misconduct affected the evaluation of Comptek's proposal; in fact, the only evidence in the record indicates that Comptek's proposal was properly evaluated and that its exclusion from the competitive range was justified. We therefore find no basis for sustaining Comptek's protest. The further question of whether it is sound for the Navy to proceed with this procurement prior to the completion of the ongoing investigations is for the Navy to decide. In any event, our decision is not intended to preclude Comptek or any other offeror from seeking appropriate corrective action in the event that the ongoing investigations uncover additional evidence that improprieties on the part of government officials prevented fair consideration of their proposals.

Comptek argues that, notwithstanding a finding by our Office that its proposal was properly excluded from the competitive range, it nevertheless should be awarded protest and bid preparation costs in view of the illicit activities which allegedly occurred in the conduct of this procurement. In view of our finding that Comptek's proposal was properly excluded from the competitive range, and that the alleged improper agency action does not warrant corrective action, we find that Comptek is not entitled to recover its costs. See Loral TerraCom--Request for Costs, B-224908.6, Sept. 15, 1987, 87-2 CPD ¶ 250 (request for costs denied where, although there were other improprieties in the evaluation, protester was reasonably excluded from the competitive range).

The protest and the claim are denied.


James F. Hinchman
General Counsel