



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Validity Corporation

File: B-233832

Date: April 19, 1989

DIGEST

Where offeror fails to furnish sufficient information in its proposal to determine its technical acceptability, an agency can reasonably conclude that the offer is technically unacceptable and exclude it from the competitive range.

DECISION

Validity Corporation protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. DTFA03-88-R-80015, issued by the Federal Aviation Administration (FAA), Technical Center, Department of Transportation, for a target generation facility. Validity disputes the FAA's evaluation of its proposal and alleges that the agency discriminated against it and provided other offerors with an unfair competitive advantage.

We deny the protest.

The RFP requested proposals for a target generation facility to be designed, developed, installed and maintained at the Atlantic City International Airport, New Jersey. This facility is to provide radar data simulation capability to support the testing and evaluation of advanced air traffic control systems and functions. The RFP required technical and business management proposals and gave detailed instructions on the content of these proposals. The technical proposal was to address the system design, software, test and evaluation, and maintenance and operation of the facility.

Prior to submission of initial proposals, several prospective offerors, the protester included, requested clarifications and additional information on the RFP requirements. Each requester received private written responses from the agency. Proposals were submitted by the closing date of September 7, 1988.

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As a result of the initial evaluation of the proposals, the Source Evaluation Board (SEB) established a preliminary competitive range eliminating from further competition two proposals, one of which was submitted by Validity. The decision to eliminate these two proposals was approved by the Source Selection Official (SSO) on November 23, and the offerors were notified on November 28 that their proposals were rejected because they were technically unacceptable and not susceptible of being made acceptable.

Validity requested a debriefing to determine why it had been eliminated from the competitive range. The agency denied this request for debriefing prior to award of a contract but did provide a general explanation of the basis for Validity's exclusion from the competitive range.

Validity requested that the FAA or our Office release documents associated with the decision to eliminate Validity's proposal from the competitive range, as well as the names, titles, and office addresses of all those involved in the selection, and a list of sources remaining in the competition. The FAA denied access to all of these documents and argued that the release of the requested information may be prejudicial to other offerors, given the on-going competition, and would impede the integrity of the acquisition process. In this regard, the FAA references Federal Acquisition Regulation (FAR) § 15.413-1(b) (FAC 84-42) which prohibits furnishing information to a prospective contractor which may afford it an advantage over others.

Pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.3(f) (1988), we released certain documents pertaining to the evaluation of Validity's proposal. We agreed with the agency's decision not to release the names of the evaluators or the list of companies remaining in the competitive range because that information was not essential for Validity to meaningfully pursue its protest. On the other hand, we released to Validity the documentation concerning its own evaluation because it was relevant and necessary to give it a meaningful opportunity to pursue its protest challenging its elimination from the competitive range. See G. Marine Diesel; Phillyship, B-232619, B-232619.2, Jan. 27, 1989, 89-1 CPD ¶ 90. In the context of this procurement, we saw no reason why disclosure of this information about Validity's own evaluation would offer it an unfair competitive advantage. Id.

In its protest, Validity contends that its proposal was improperly excluded from the competitive range. In this regard, Validity contends that its technical proposal

substantially addressed FAA's essential requirements and all identified weaknesses were readily capable of being corrected through meaningful discussions.^{1/}

The evaluation of proposals and the resulting determination whether an offeror is in the competitive range are matters within the discretion of the contracting activity, since it is responsible for defining its needs and for deciding the best method of accommodating them. Electronet Information Systems, Inc., B-233102, Jan. 24, 1989, 89-1 CPD ¶ 68. In reviewing an agency's evaluation, therefore, we will not reevaluate the technical proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and in accordance with the RFP evaluation criteria. Rainbow Technology, Inc., B-232589, Jan. 24, 1989, 89-1 CPD ¶ 66. Where an agency reasonably determines that a proposal is unacceptable as submitted and would require major revisions to be made acceptable, it is generally proper to exclude that proposal from the competitive range. Electronet Information Systems, Inc., B-233102, supra.

The protester claims that it prepared a very detailed proposal, with "the level of detail provided on each point vary(ing) depending on solicitation requirements and our assessment of the importance of each technical point." (emphasis added.) Validity also stresses that the RFP page limitation on proposals kept it from providing anymore detail as its proposal was 290 pages with the maximum number of pages being 300.

In this case, not only did Validity receive the lowest point score in both the technical and business management evaluations, but also, the record indicates that this low point score was substantially caused by Validity's failure to follow the instructions for preparation of the technical proposal.

^{1/} Validity also argues that the RFP contained "conflicting specifications and evaluation criteria which render competitive bidding and evaluation for bids on an equal basis impossible." This protest basis concerns an alleged solicitation defect and is untimely filed under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1), since it was not filed prior to the closing date for receipt of proposals. Consequently, this contention will not be considered further.

The SEB found that Validity's proposal contained major deficiencies in the system design and that Validity did not provide detail, substantiate criteria or supply justification for the hardware, language or processing resources selection. Validity's proposal was found to be very general, almost textbook in nature, and it implied that the requirements were understood and would be addressed, but failed to provide any reasonable assurance to support these assertions. The SEB concluded that based on the lack of supporting data and any indication that Validity understood and could fulfill the requirements of the RFP, Validity's proposal posed a very high risk and as such should not be included in the competitive range. In this regard, the SEB found that Validity's proposal could only be made acceptable if substantially rewritten. Further, the agency notes that the 290 page length of Validity's proposal does not indicate that it specifically addressed the RFP requirements. Finally, Validity has not even responded to the agency determination that its business management proposal was unacceptable.

Although Validity contends that the RFP did not require justification or analysis, and therefore its proposal should not have been found deficient for failure to include such information, the RFP instructions for preparation of the technical proposal state in relevant part as follows:

"Paraphrases of the requirements, phrases such as 'standard procedures will be used' or 'well known techniques will be utilized,' generalities of text book theories and techniques, or statements to the effect that the offeror understands or that it can or will comply with the requirements, will not constitute compliance with these requirements and may be cause for rejection of the proposal."

Moreover, the RFP clearly indicates that a proposal that includes thorough analyses and justifications for proposing methods and systems will score the highest. The RFP also evidences the agency concern with determining whether the offerors had fully analyzed the requirements and the ramifications that may result from utilization of their proposed systems.

The FAA determination that both Validity's technical and business management proposals were so deficient as to necessitate a complete rewrite in order to make them

acceptable are supported by the record. Consequently, we find that the FAA's elimination of Validity's proposal from the competitive range to be reasonable.^{2/}

The protester argues that it was unequally treated and competitively prejudiced in that the agency provided only poor or non-informational responses to its request for clarifications and provided other offerors with better information in private responses. Specifically, Validity alleges that the FAA directed, by privately-answered letters, at least two offerors to include a data item, the system specification, as an attachment to the technical proposal, and that this item was not required by the RFP. Validity argues that it did not submit a system specification because it did not interpret the RFP as requiring one to be submitted with the initial proposal. Validity contends that not only was the submission requirement an amendment which the FAA was required to provide to all prospective offerors, but also that most of the deficiencies found in Validity's proposal were the result of not including the additional information contained in the system specification.

In response, the agency asserts that it provided Validity with timely responses to its questions and treated all offerors equally. The FAA contends that the system specification was specifically required in the RFP and points to paragraph 3.2.1 of the Statement of Work of the RFP which states: "The Contractor shall update, as required, the system specification provided with the proposal." (Emphasis added.) The FAA argues that Validity, as well as all other offerors, had at their disposal this information contained in the Statement of Work and since Validity did not request clarification on this point, as did two other offerors, no clarification was provided, and that there was no change in the RFP necessitating issuance of an amendment. Furthermore, the agency notes that the assumption that the other offerors that requested the clarification received a higher score because they

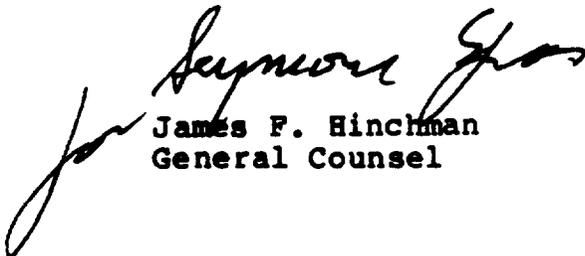
^{2/} Validity also argues that the FAA's request for an audit of Validity's cost proposal was tantamount to including it in the competitive range. We disagree. Since cost was an evaluation factor an agency could institute an audit to fulfill its obligation to evaluate cost without obligating itself to conduct discussions or include all offerors in the competitive range.

provided the system specification is unsupported by the record; indeed one of those companies also was eliminated from the competitive range.

The record does not support Validity's contention that it was unfairly provided less information than other prospective offerors, nor was Validity prejudiced in this case by FAA's private responses. While it is not good procurement practice to provide such responses to pre-proposal questions, the protester's contention that the agency's clarifications to the two offerors constituted an amendment is unfounded. In this regard, it is quite clear that delivery of a system specification with the initial proposal was required by the RFP as originally issued. In this regard, the RFP proposal instructions require offerors to propose a system architecture design, including specific system characteristics and hardware and software specifications.

Finally, Validity notes that at the pre-proposal conference it observed several incumbent contractor personnel wearing FAA badges which indicated to Validity that they were being afforded an unfair advantage in obtaining additional information. Since Validity has not supported this speculation with any evidence, we have no basis to hypothesize that any offeror has been given an unfair competitive advantage. In any case, to the extent that Validity argues that incumbent contractors had an unfair competitive advantage, we have consistently held that the government has no obligation to equalize a competitive advantage that a potential offeror may enjoy as a result of a prior government contract unless the advantage resulted from unfair motives or action by the contracting agency. Target Financial Corporation, B-228131, Nov. 23, 1987, 87-2 CPD ¶ 506. This has not been shown here.

The protest is denied.



James F. Hinchman
General Counsel