



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: United Telecontrol Electronics, Inc.
File: B-235774.2
Date: November 7, 1989

DIGEST

1. Discussions were meaningful where agency imparted sufficient information to protester to afford it a fair and reasonable opportunity in the context of the procurement to identify and correct any deficiencies in its proposal.
2. Contracting officer properly decided to award a firm, fixed-price contract to the offeror of the higher rated, higher priced proposal, where: (1) the solicitation stated that technical factors would be considered significantly more important than price; (2) the awardee's proposal was rated higher than the protester's in every technical evaluation factor; and (3) the awardee's proposal received a higher overall evaluation score when the weighted technical and price evaluation scores were combined.

DECISION

United Telecontrol Electronics, Inc. (UTE), protests the Navy's award of a contract for production of the AN/APX-100(V) Identification Friend or Foe Transponder^{1/} and related items to Allied-Signal Inc. pursuant to request for proposals (RFP) No. N00019-88-R-0131, issued by the Naval Air Systems Command (NAVAIR). UTE alleges that the Navy did not conduct adequate discussions with it, denying the firm an opportunity to correct perceived deficiencies in its technical proposal. The protester also alleges that the Navy's evaluation of its proposal was unfair and arbitrary and deviated from the RFP's stated evaluation scheme.

^{1/} The AN/APX-100(V) transponder is a multi-service, multi-platform receiver-transmitter which provides flight information for the civilian and military air traffic control radar system. Its primary military purpose is to identify aircraft as being a friend or foe when approaching or traversing a defended zone.

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We deny the protest.

Issued on October 20, 1988, the RFP requested proposals for production of certain firm quantities during the base contract year and contained options for additional quantities over the next 5 years. The contract was to be awarded on a firm, fixed-price basis. The RFP stated that offers would be evaluated on the basis of both technical and price factors with technical factors being significantly more important than price. The RFP explained that proposals would be evaluated on five technical factors, listed in descending order of importance, as: Engineering, quality assurance, manufacturing, logistics, and management/relevant past experience. NAVAIR actually evaluated proposals on a total of 31 technical subfactors within the 5 evaluation factors. The RFP also advised that for evaluation purposes price would be "the sum of the prices proposed for the firm and most likely option quantities that will be exercised under the contract."

Fifty-two sources were solicited, and offers were received from 3 firms (Stewart-Warner, Allied-Signal, and UTE) by the December 29 closing date. After evaluation of initial proposals by a procurement review board, all three offers were determined to be in the competitive range. In February 1989, NAVAIR officials conducted on-site visits at each offeror's facilities. NAVAIR adjusted the evaluation scores given the initial technical proposals where appropriate based upon the observations of its representatives during the site visits.

NAVAIR's technical evaluation team identified deficiencies in each proposal and developed questions/comments for discussions with each offeror based upon its evaluation of initial proposals and the on-site inspections. Written discussions were initiated in March when each offeror was provided a list of perceived deficiencies and was given an opportunity "to confirm, revise, correct, support or supplement" their initial proposals. Offerors submitted responses to the discussions questions by March 29. Best and final offers (BAFOs) were requested and were received from all three offerors by April 7.

BAFOs were evaluated regarding price and technical merit. Allied-Signal's BAFO was rated highest in technical merit and was also the highest priced offer. Stewart-Warner's BAFO was rated second-highest on technical merit and its total evaluated price was second-highest. UTE's BAFO was the lowest priced offer, but it also received the lowest score for technical merit. The procurement review board

determined that Allied-Signal's proposal was superior to the other two firms' proposals and recommended that the contract be awarded to Allied-Signal. The contracting officer concurred in the procurement review board's recommendation, concluding that the advantages inherent in the extra technical merit of Allied-Signal's proposal outweighed the lower prices of the other two offers. Accordingly, on May 16, 1989, the contracting officer awarded the contract to Allied-Signal. A debriefing conference was held with UTE on June 21, and the firm filed its protest in our Office on July 6.2/

The protester charges that NAVAIR's written discussions were inadequate and did not put UTE on notice of the perceived deficiencies the evaluators believed were present in the firm's technical proposal. UTE states that "NAVAIR clearly failed to conduct meaningful discussions with UTE in more than half of the areas in which NAVAIR found deficiencies in UTE's proposal." Consequently, UTE also argues that NAVAIR's technical evaluation was arbitrary and unfair, because the evaluators considered perceived deficiencies and weaknesses that were not discussed with UTE and which UTE was never given an opportunity to correct or explain in its BAFO. The protester concludes that the Navy's failure to conduct meaningful discussions was particularly objectionable here because UTE offered lower prices than did Allied-Signal.

The Competition in Contracting Act of 1984, 10 U.S.C. § 2305(b)(4)(B) (1988), as implemented in Federal Acquisition Regulation § 15.610(b), requires that written or oral discussions be held with all responsible offerors whose proposals are in the competitive range. For competitive range discussions to be meaningful, agencies must point out deficiencies in proposals unless doing so would result in technical transfusion or leveling. URS Int'l, Inc., and Fischer Eng'g & Maintenance Co., Inc., et al., B-232500 et al., Jan 10, 1989, 89-1 CPD ¶ 21.

2/ Stewart-Warner had previously protested to our Office on June 6, alleging, among other things, that the discussions conducted by NAVAIR were not adequate. We denied Stewart-Warner's protest in Stewart-Warner Corp., B-235774, Oct. 5, 1989, 89-2 CPD ¶ ____. Subsequently, by letter of August 15, 1989, Stewart-Warner filed another protest alleging that NAVAIR's evaluation of proposals was not in accord with the RFP's evaluation scheme; we are currently considering Stewart-Warner's second protest.

Although agencies are not obligated to afford offerors all-encompassing discussions, or to discuss every element of a technically acceptable proposal that received less than the maximum possible score, they still generally must lead offerors into the areas of their proposals which require amplification. Id. Discussions should be as specific as practical considerations will permit in advising offerors of the deficiencies in their proposals. Id. The actual content and extent of discussions are matters of judgment primarily for determination by the agency involved, and our Office will review the agency's judgments only to determine if they are reasonable. Technical Servs. Corp., B-216408.2, June 5, 1985, 85-1 CPD ¶ 640.

The record shows that, by letter of March 10, 1989, the Navy opened discussions with UTE. The Navy's letter listed 29 areas of UTE's proposal that NAVAIR considered deficient or which reflected uncertainties that needed to be resolved. Under the heading "Technical Areas of Concern," NAVAIR set forth 23 questions or comments that it wanted UTE to respond to in its BAFO. UTE argues that these discussion questions or comments did not accurately identify the Navy evaluators' real concerns so that UTE could revise and improve its technical proposal accordingly.

The protester has raised a multitude of arguments in its attempt to show that the discussions were not meaningful. We have examined the discussion questions and evaluation documents in light of the protester's arguments; however, we will discuss only a few examples drawn from the protester's arguments in the following analysis. Based upon our examination of the record, we find that NAVAIR generally did direct UTE to those areas of its proposal that the evaluators perceived as deficient and that the discussions with UTE were, therefore, meaningful.

UTE first argues that the discussions were inadequate and that its proposal was improperly evaluated under the manufacturing evaluation factor. Under that factor, NAVAIR evaluated offers on nine subfactors, and UTE's proposal was rated as marginal (i.e., less than satisfactory) on five of the subfactors. Therefore, the first illustration will be drawn from the manufacturing evaluation factor.

The first example involves the critical components sub-factor. The RFP provided:

"The offerors shall identify critical components (i.e., those materials/items which because of cost, availability, or long lead times represent a potential for serious risk to the program schedule)

and the lead time associated with each. The offerors shall identify the critical components and the vendor, as well as outline the efforts to be taken to ensure the availability of these parts to meet the proposed schedule."

UTE's proposal was rated as marginal with medium risk, because: (1) the proposal lacked detail in identifying critical components that might affect the overall program schedule; (2) only first article requirements were addressed; and (3) no detail was provided on risk reduction.

The discussions letter contained two relevant questions/comments:

"[Area of concern No. 8.] Are those items identified in the proposal as long lead items and critical components for First Articles the same as the long lead items and critical components for production deliverables?

"[Area of concern No. 9.] Provide more detail on proposed risk reduction for the acquisition of long lead items and critical components, other than what was submitted in the proposal."

The protester states that NAVAIR informed UTE at the debriefing conference that the evaluators found UTE's proposal to be deficient because the list of long lead items was incomplete. UTE complains that not one of the discussions questions alerted UTE to the fact that NAVAIR considered its list to be inadequate. The Navy report confirms that the evaluators were concerned because UTE's list of long lead items did not include connectors, which are known in the industry as a component with a long lead time.

We agree with UTE that the discussions questions did not inform UTE that its list of long lead items was considered deficient. However, even though the Navy reports that this was a concern of the evaluators, the evaluation documents do not show that the omission of connectors from UTE's list was considered a serious deficiency or caused UTE's proposal to be given a lower technical evaluation score. At most, the difference of opinion between UTE and the evaluators as to whether connectors were required to be on the list appears to have been a minor discrepancy that had little or no effect on the outcome of the evaluation.

The Navy also reported that the evaluators were troubled, because UTE had not demonstrated how it planned to reduce

the risks associated with acquisition of long lead items and critical components. The evaluation documents reveal that this was considered a significant deficiency. NAVAIR was concerned because the risk of delay to its program schedule was greatly dependent upon availability of these items and wanted to know how UTE would limit the risk of such delay.

While UTE did respond to the above discussions questions/comments, NAVAIR was not satisfied with the answer to question No. 9 and considered it to be ambiguous regarding risk reduction. In particular, the evaluators could not determine the number of sources UTE had developed for the listed items, and the evaluators felt that UTE's proposal did not demonstrate how lead times could be reduced in view of UTE's plan to subcontract out the device screening process.

Essentially, UTE does not agree with NAVAIR's assessment that the revisions UTE provided lacked sufficient detail. However, the fact that UTE disagrees with NAVAIR's evaluation of its revised proposal is not sufficient to find the evaluation to be unreasonable or otherwise improper. See The Int'l Ass'n of Fire Fighters, B-224324, Jan. 16, 1987, 87-1 CPD ¶ 64.

The next example of allegedly inadequate discussions is in the subcontractor/vendor selection subfactor of the manufacturing evaluation factor. The RFP stated:

"The offeror shall provide evidence of ability to manage subcontractors/vendors. This requires that the offeror: (1) explain source selection procedures as to the type and extent of survey; (2) explain controls over subcontractors/vendors to ensure receipt of items consistent with cost, quality, schedule, and technical standards."

The evaluators rated UTE's initial proposal as marginal with medium risk on the subcontractor/vendor selection subfactor. The evaluators acknowledged that UTE had described a source selection plan that was compliant with MIL-STD-1535A, Supplier Quality Assurance Program, but were concerned that there was an overall lack of detail in the selection plan described, that UTE's proposal did not discuss a supplier quality control plan, and that the vendor rating system and monitoring system did not demonstrate a "responsible risk attitude."

The discussions letter contained four questions/comments related to this deficiency:

"[Area of concern No. 3.] Provide details on component screening and rescreening program. What percentage will be contracted out? How will the subcontract be monitored? How will the intrinsic delays associated with subcontracting this type of effort be minimized? If rescreening is subcontracted, how will risks to delivery schedule be identified due to the subcontracting of rescreening? Provide details on how these risks will be reduced.

"[Area of concern No. 4.] Describe the relationship between incoming inspection/component rescreening and engineering failure analysis. Describe your plans for component failure analysis subcontract. How will the subcontract be monitored? Identify all risks associated with subcontracting failure analysis. How will risks be minimized?

"[Area of concern No. 5.] Will you perform failure analysis on components which fail as a result of rescreening? If so, how will risk be minimized if both rescreening and failure analysis are subcontracted?

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"[Area of concern No. 10.] Describe, in detail, plans and schedule for the implementation of a compliant MIL-STD-1535A, Supplier Quality Assurance Program, in particular the supplier quality control plan."

The evaluation reports show that the evaluators' concern arose out of the fact that UTE proposed to subcontract major portions of the tasks necessary to perform the contract requirements. Among other things, UTE proposed to subcontract the integrated logistics support services, component screening and rescreening, failure analysis, and portions of the environmental first article tests.

The Navy was very apprehensive about UTE's ability to perform the work required under the contract and, in particular, about UTE's ability to select, monitor, and manage subcontractors and suppliers. The Navy's site visit to UTE's facility did little to ease the Navy's apprehensions about UTE's ability to do the work properly and in a timely manner. In fact, NAVAIR downgraded UTE's initial evaluation score in several factors after having visited UTE's plant. Overall, the Navy believed that UTE's approach, which relied heavily on the use of subcontractors, was very risky. Therefore, NAVAIR wanted more detailed

information regarding how UTE would reduce that risk and especially regarding how UTE would select, monitor, and manage suppliers in accord with MIL-STD-1535A.

The protester argues that the instructions for preparation of proposals contained in the RFP did not even mention MIL-STD-1535A and did not require offerors to submit a plan for implementing a MIL-STD-1535A system. Furthermore, UTE states that it has had a fully compliant MIL-STD-1535A program in place since 1986, and that this program was approved by the Defense Logistics Agency (DLA). The protester further contends that, as it already had a compliant program in place, the RFP did not require it to submit a detailed plan for compliance with MIL-STD-1535A.

The RFP specified that:

"The offeror shall provide a matrix of Quality Programs indicating areas fully developed and/or to be developed for each paragraph of . . . MIL-STD-1535A For each program the offeror shall describe in detail the structure of the respective quality system which ensures compliance with the corresponding program. If a compliant program and system is not in place, the offeror must provide a schedule, and a detailed explanation on how the program will be developed, implemented and maintained."

Thus, it was a clear requirement that an offeror either show in detail that its quality assurance program was in compliance with MIL-STD-1535A, or explain in detail how it would develop, implement and maintain such a program.

While UTE did provide responses to the above-quoted discussions comments/questions, the Navy generally was not satisfied with the responses given; the evaluators were still apprehensive about UTE's scheme to subcontract a major portion of the work and that UTE had not developed a feasible plan to reduce the additional risks inherent in subcontracting. Furthermore, the Navy wanted UTE to describe in detail its quality assurance program so that NAVAIR experts could scrutinize the program to ascertain whether it would be in compliance with MIL-STD-1535A, rather than relying on UTE's statements that the DLA had already certified its quality assurance plan as being in compliance with the standard.

In our opinion, the Navy's concerns were clearly related to requirements that were set forth in the RFP and the discussions comments/questions reasonably should have led

the protester into the areas of its proposal that required amplification or that otherwise were considered deficient by the evaluators. In view of the criticality of many components that would have to be purchased from vendors and in view of UTE's heavy reliance on subcontractors, we think the Navy's discussions comments/questions concerning quality control and vendor selection were especially appropriate.

We also find reasonable NAVAIR's request that UTE provide more detail regarding its quality assurance program even though UTE argues that such information was unnecessary because DLA had already approved its in-place program. Again, while the protester disagrees with the Navy's evaluation of its responses to the discussions comments/questions, that alone is not sufficient to find the Navy's evaluation unreasonable. Id.

The last example we have drawn from the protester's voluminous arguments relates to the integrated logistics support (ILS) subfactor within the management/past experience evaluation factor. The RFP provided:

"The offeror shall describe the ILS organizational structure, functional interfaces, relative position (particularly between the ILS Manager and the Project Engineer) and subcontractor ILS requirements, which will be implemented to meet the requirements of this RFP."

The RFP also indicated that offerors should provide resumes of key personnel and that resumes should include information on education and relevant past experience.

The evaluators rated UTE's initial proposal as marginal with a medium risk. UTE had proposed to subcontract the entire ILS effort. The Navy contends that UTE's proposal did not show that UTE fully understood the risks involved. Furthermore, the evaluators were concerned because the resume that UTE had submitted for its ILS manager did not reflect any ILS experience.

The Navy commented as follows in its discussions letter:

"[Area of Concern No. 20.] Elaborate on your plan to subcontract Integrated Logistics Support. Identify areas of risk and risk reduction."

The Navy reports that UTE's response to this question did not provide further support to establish the qualifications

of the proposed ILS manager. Therefore, UTE's evaluation score was not upgraded on this subfactor.

The protester argues that the discussion comment on this subfactor did not reveal that its ILS manager's qualifications were being questioned. Clearly, NAVAIR could have told UTE the exact information it needed to know regarding the qualifications of the ILS manager. However, the RFP was very precise in requesting resumes of key personnel and in directing that resumes provided should show "relevant past experience." In view of the RFP's specific requirement, we believe that any offeror should have understood that the resume of the proposed ILS manager had to include ILS-type experience. Accordingly, in the context of the RFP's specific direction, we do not believe that the discussions comment was unnecessarily general, as the protester asserts.

One of the basic functions of discussions is to disclose deficiencies. In evaluating whether there has been sufficient disclosure of deficiencies, the focus is not on whether the agency described deficiencies in such detail that there could be no doubt as to their identification and nature, but whether the agency imparted enough information to the offeror to afford it a fair and reasonable opportunity in the context of the procurement to identify and correct deficiencies in its proposal. See Eagan, McAllister Assocs., Inc., B-231983, Oct. 28, 1988, 88-2 CPD ¶ 405. The degree of specificity necessary in disclosing deficiencies to meet the requirement for meaningful discussions is not a constant, but, rather, varies according to the degree of specificity of the solicitation. Id. Therefore, where a solicitation sets forth in great detail what is required of an offeror, discussions may be more general and still give an offeror a fair and reasonable opportunity to identify and correct deficiencies. Id.

In our view, the present record supports a finding that the Navy held meaningful discussions with UTE. While in some instances the written discussions were rather general in nature, there is nothing inherently improper in the agency's use of general statements as long as the discussions were designed to guide offerors to those portions of their proposals that required clarification or modification.

Moreover, the above examples were taken from the protester's communications and, therefore, are among the illustrations that are most favorable to the protester. Nonetheless, the examples generally show that the Navy's written discussions reasonably should have led UTE into the areas of its proposal that were in need of revision or amplification. This is especially so because the RFP was very specific in

describing exactly what offerors were expected to provide in their proposals in each area of the statement of work. See Joule Technical Corp., B-197249, Sept. 30, 1980, 80-2 CPD ¶ 231. Accordingly, we conclude that NAVAIR's discussions with UTE generally were meaningful.

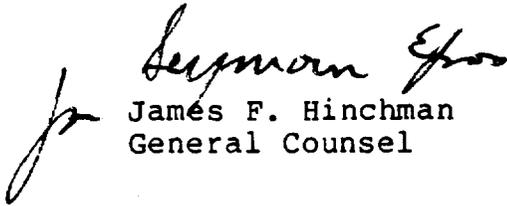
We also want to point out that Allied-Signal's initial technical proposal was evaluated as so far superior to UTE's initial technical proposal that, even assuming there were some instances where NAVAIR should have been more specific in pointing out weaknesses to UTE, we do not believe that UTE was competitively prejudiced as a result. Allied-Signal's initial proposal was rated higher than UTE's in four of the five technical evaluation factors. Moreover, Allied-Signal received scores of highly satisfactory or better in 21 of the evaluation subfactors, while UTE received a score of highly satisfactory in only 1 subfactor. Furthermore, Allied-Signal's initial proposal was considered to be satisfactory with low risk in every evaluation subfactor, while UTE's proposal received a marginal rating in a high proportion of the subfactors and was considered to be a fairly risky approach to the work requirement. In our opinion, any minor deficiencies in the discussions phase of the procurement were inconsequential in terms of influencing the outcome of the competition when the great disparity between the quality of the awardee's and the protester's technical proposals is considered.

Finally, the protester asserts that the evaluation and award decision were not conducted in accord with the RFP's stated evaluation scheme. In view of the protester's allegation, and because Allied-Signal's evaluated total price was significantly higher than UTE's evaluated total price, we have closely examined the evaluation documents to see if the evaluation criteria were followed. We conclude that they were.

In negotiated procurements, unless the RFP so specifies, there is no requirement that award be based on lowest cost. Comarco, Inc., B-225504 et al., Mar. 18, 1987, 87-1 CPD ¶ 305. A procuring agency has the discretion to select a more highly rated technical proposal if doing so is reasonable and is consistent with the evaluation scheme set forth in the RFP. Id. We have upheld awards to higher rated offerors with significantly higher proposed costs where it was determined that the cost premium was justified considering the significant technical superiority of the selected offeror's proposal. See BDM Management Servs. Co., B-228287, Feb. 1, 1988, 88-1 CPD ¶ 93.

Here, the RFP specifically stated that technical factors would be considered significantly more important than price. Our in camera review of the evaluation documents shows that NAVAIR gave the evaluation factors a total weight of 60 percent in the evaluation scheme while price was given a weight of 40 percent. The record reveals that Allied-Signal's BAFO was rated as significantly technically superior to UTE's BAFO. In fact, Allied-Signal's BAFO received a higher score than UTE's in every technical evaluation factor. Even though the Navy credited UTE with the maximum possible score for its lower price, Allied-Signal's BAFO received the highest overall score when the weighted price and technical scores were combined. Therefore, the Navy determined that it was in the government's best interest to award the contract to Allied-Signal. In our view, the cost/technical tradeoff was rational and consistent with the RFP's evaluation criteria, and, thus, the contracting officer had a reasonable basis for awarding the contract to Allied-Signal. See JWK Int'l Corp., B-234994.2, Oct. 17, 1989, 89-2 CPD ¶ ____.

The protest is denied.

 James F. Hinchman
General Counsel