

M. Y. Wilcox



**Comptroller General  
of the United States**

Washington, D.C. 20548

**Decision**

**Matter of:** Femme Comp Incorporated

**File:** B-239192

**Date:** August 13, 1990

Maureen P. Wilcox, for the protester.  
Charles A. Walden, Esq., and John W. Godbey, Defense  
Communications Agency, for the agency.  
Charles W. Morrow, Esq., and James A. Spangenberg, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

**DIGEST**

1. Contracting agency reasonably rejected proposal as technically unacceptable without discussions where the proposal contained several deficiencies and weaknesses which would have required major revisions to the proposal.
2. Contracting agency may reasonably withdraw a small business set-aside, and resolicit the requirement on an unrestricted basis, where the only proposal received was properly determined to be technically unacceptable.

**DECISION**

Femme Comp Incorporated protests the rejection of its proposal by the Defense Communications Agency (DCA) under request for proposals (RFP) No. DCA100-90-R-0007, for systems engineering and technical assistance (SETA), and the decision to withdraw the total small business set-aside and resolicit on an unrestricted basis. Femme Comp contends that DCA improperly determined its proposal to be technically unacceptable in order to effect the withdrawal of the small business set-aside.

We deny the protest.

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DCA issued this RFP on October 13, 1989, as a total small business set-aside, to procure SETA on a cost-plus-award-fee basis in support of the Defense Satellite Communications System (DSCS).<sup>1/</sup> The RFP described 13 specific major SETA tasks and report deliverables that the contractor was required to perform in support of the satellite system, which involved assisting DCA in performing DSCS system engineering, developing system design and engineering performance specifications, and performing system integration, tests, and evaluations.

The RFP provided for award to the offeror with the best technical and management proposals. Cost was to be considered of less importance than either technical or management. The technical and management proposals were evaluated against the RFP's stated factors. In descending order of importance, these major factors were listed as follows: (1) understanding the problem and technical approach for each task statement; (2) specific related experience with regard to each task statement; (3) general quality and responsiveness; (4) management, personnel and facility; and (5) demonstration of compliance with requirements for each task statement.

As initially issued, the RFP was set-side for small businesses meeting standard industrial classification (SIC) code No. 4813,<sup>2/</sup> which would have limited the competition to businesses with less than 1,500 employees. However, Femme Comp, the incumbent contractor, appealed DCA's decision to classify these services under this SIC code to the Small Business Administration (SBA), which granted the appeal and caused DCA to reclassify these services under SIC code No. 8711, which has a size standard of 13.5 million in

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<sup>1/</sup> DSCS is the key Department of Defense (DOD) world-wide high capacity transmission system which provides critical connectivity for the National Command Authorities, Joint Chiefs of Staff, unified and specified commands, DOD agencies, the Department of State, and by resource agreement, the United Kingdom and NATO.

<sup>2/</sup> This industrial code is used to classify the size standard of establishments primarily engaged in furnishing telephone voice and data communications, except radio-telephone and telephone answering services.

annual sales.<sup>3/</sup> Therefore, by amendment dated November 16, 1989, DCA modified the SIC code and extended the initial closing date to January 2, 1990.

On January 16 after further extending the closing date, DCA received one proposal from Femme Comp in response to the RFP. Femme Comp's proposal was evaluated by a five member proposal evaluation board (PEB), which determined the proposal to be technically unacceptable and recommended resoliciting the requirement on an unrestricted basis. DCA notified Femme Comp of the rejection of its offer as technically unacceptable on February 21, whereupon Femme Comp requested and was granted a debriefing.<sup>4/</sup> DCA informed the protester that it planned to procure these services on an unrestricted basis. Femme Comp then protested its rejection to the agency and, after denial of the agency level protest, to our Office.

Femme Comp contends that DCA's action in determining its proposal to be technically unacceptable was arbitrary and capricious, and based upon invalid and erroneous assumptions and subjective factors not encompassed in the evaluation criteria. Therefore, Femme Comp argues that resoliciting on an unrestricted basis would be improper.

A contracting officer is authorized to withdraw a small business set-aside if he determines that an award to a small business concern would be "detrimental to the public interest." Federal Acquisition Regulation (FAR) § 19.506 (FAC 84-48). We regard the withdrawal of a set-aside as a business judgment which should not be disturbed unless the contracting officer abused his discretion. SEAVAC Int'l, Inc., B-231016, B-231457, Aug. 11, 1988, 88-2 CPD ¶ 134. It

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<sup>3/</sup> SBA determined that the services were more accurately described by SIC Code No. 8711 which is the industrial and size standard classification for establishments primarily engaged in providing professional engineering services.

<sup>4/</sup> Femme Comp argues that DCA failed to provide an adequate debriefing. However, our review indicates that DCA did advise Femme Comp of the major deficiencies in its proposal. In any event, the adequacy of a debriefing is a procedural matter which has no effect on the evaluation of proposals. Senior Communications Servs., B-233173, Jan. 13, 1989, 89-1 CPD ¶ 37.

is within the contracting officer's discretion to remove the set-aside restriction where all small business technical proposals received are technically unacceptable. ESC Corp., B-232037, Nov. 23, 1988, 88-2 CPD ¶ 507; Electronic Warfare Assocs., B-224504, B-223938, Nov. 3, 1986, 86-2 CPD ¶ 514.

As far as the actual evaluation of the proposal is concerned, our review of an allegedly improper technical evaluation is to determine whether the agency's evaluation was fair and reasonable and consistent with the evaluation criteria.<sup>5/</sup> Sach Sinha & Assocs., Inc., B-236911, Jan. 12, 1990, 90-1 CPD ¶ 50. Under the PEB's rating scheme<sup>6/</sup>, Femme Comp's technical proposal received a total average weighted technical score of 4.48, which translated into an unacceptable rating. The PEB determined that the proposal contained major deficiencies and weaknesses which would have required a major revision in order for the proposal to be made acceptable.

First, the PEB found Femme Comp's technical approach to the task descriptions was verbose, lacking in technical depth and often parroted back statements from the RFP. The PEB found that even though the proposal addressed every requirement, most of the task discussions did not give the details of how Femme Comp intended to resolve specific problems.

Second, the PEB found that Femme Comp's proposed personnel and subcontractors lacked the necessary experience to properly perform the contract. The PEB determined that although Femme Comp is the incumbent contractor, the proposed team was not the same team that had carried out the previous contract. The previous subcontractors which had performed the majority of complex tasks were not a part of

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<sup>5/</sup> We note that this is an ongoing procurement. Therefore, our discussion of the documentation furnished by the parties in light of the protest issues raised is necessarily limited. See Raytheon Ocean Sys. Co., B-218620.2, Feb. 6, 1986, 86-1 CPD ¶ 134.

<sup>6/</sup> Each PEB member rated Femme Comp's proposal based upon the major evaluation factors and subfactors for each specific task statement using a 10 point numerical rating system. Numerical scores of 8 through 10 resulted in an adjectival rating of outstanding, 5 through 7, acceptable, and 0 through 4, unacceptable.

the proposal. The proposed new subcontractors were experienced in commercial satellite communications systems but lacked experience with SHF (Super High Frequency) military satellites and had limited directly applicable DSCS experience. Further, the PEB found that Femme Comp's proposed staff had a minimum of specific related DSCS experience.

Third and most critical, the PEB found 11 of Femme Comp's 16 proposed personnel are key personnel working full-time on other DCA contracts recently awarded to Femme Comp, and, of these 11, 2 also were working on a second contract with DCA recently awarded to Femme Comp. Also, the PEB found that one of Femme Comp's proposed task leaders no longer was employed by Femme Comp. Moreover, the PEB found that the project manager has so many particular task responsibilities as to negatively reflect on Femme Comp's management structure and approaches to those tasks.

Based upon our examination of Femme Comp's technical proposal, the PEB report, as supported by the individual member's evaluation narratives, and the submissions of the parties, we do not find that the evaluation of Femme Comp's proposal was unreasonable. While Femme Comp has submitted a detailed response to the PEB's evaluation of its protest, we find it mostly reflects its difference of opinion with regard to the information contained in the proposal.<sup>7/</sup>

Specifically, our review indicates that Femme Comp's technical proposal does reflect that it devoted considerable effort to repeating the RFP requirements with respect to many of the task statements, and that certain discussions did not identify specific problems in the DSCS system. In this regard, the RFP required the technical proposal to discuss the offeror's views regarding the feasibility of complying with the requirements and an outline of the major problems anticipated in meeting those requirements.

Further, Femme Comp admits that its proposed subcontractors, and some of its proposed personnel, lacked DSCS specific experience. It argues, however, that it was improper for DCA to downgrade its proposal for lack of specific DSCS experience because the RFP did not require such specific

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<sup>7/</sup> For example, Femme Comp furnished the opinion of an expert consultant who stated that its proposal was responsive to the RFP. However, we are not persuaded that this establishes that DCA's evaluation was unjustified.

experience, but merely prior related experience. Under the experience evaluation factor, subfactor (b) specifically asked the offeror if it had limited previous experience in the task area, to state what arrangements it would make to acquire the required expertise. Subfactor (c) asked "[h]as the offeror participated in similar efforts so that he may perform adequately on this effort without an unduly long learning period?" Based upon these subfactors, we find that it was reasonable for DCA to downgrade Femme Comp's proposed personnel and subcontractors for lack of specific DSCS experience. See Sach Sinha Assocs., Inc., B-236911, supra; SelectTech Servs. Corp., B-229851, Apr. 18, 1988, 88-1 CPD ¶ 375.

Femme Comp argues that DCA was unjustified in evaluating the availability of Femme Comp's personnel without discussions because a letter accompanying its proposal affirmed its commitment to furnish the proposed personnel. However, the RFP required offerors proposing to use technical personnel already assigned to other contracts to identify such personnel and fully substantiate their ability to satisfy the requirements of the contract. Here, DCA was concerned about the availability of 11 of Femme Comp's proposed personnel that were working on other contracts, but the letter cited by Femme Comp only explains how two of those would meet the RFP requirements. One of the evaluation subfactors asked whether the offeror could undertake work on all the task areas. Therefore, we find that it was not unreasonable or inappropriate for DCA to consider the availability of Femme Comp's staff and to have downgraded the proposal because it proposed personnel committed to other DCA contracts.

Femme Comp also argues that DCA improperly elected to reject its proposal without conducting discussions. Generally, if an offer, as submitted, is technically unacceptable or so deficient in information required by the solicitation that it would necessitate major revisions to become technically acceptable, the contracting agency is not obligated to conduct discussions with that offeror concerning the inadequacies of its offer. ESC Corp., B-232037, supra. Here, we do not find that DCA's decision not to conduct discussions with Femme Comp was unreasonable since the totality of the evaluated deficiencies in its proposal made its proposal unacceptable without a complete revision.

Femme Comp alleges that DCA improperly determined its proposal to be technically unacceptable as reprisal for its challenge of the original SIC code because DCA only had the

intention of procuring the requirement from a large business. In this regard, Femme Comp argues that DCA intentionally created the circumstances which resulted in DCA receiving only one proposal in order to require withdrawal of the set-aside by electing to modify the SIC code by amendment rather than by resoliciting the requirement. For example, Femme Comp notes that one other small business, which has indicated interest in the reprocurement, had requested an extension of the closing date in order to submit a proposal but DCA denied this request.<sup>8/</sup>

Interested offerors were provided a 45-day response time to compete on the RFP. Moreover, the record supports the agency's determination that Femme Comp was unacceptable, and we find no evidence that the rejection of the proposal was in reprisal for Femme Comp's SBA protest. The fact that DCA denied an extension of the closing date to one potential small business offeror does not establish that DCA manipulated a withdrawal of the set-aside because DCA would have had no way of knowing that it would only receive one proposal.<sup>9/</sup> Consequently, we find no evidence that DCA manipulated this procurement to effect a withdrawal of the set-aside and assure award to a large business.

Finally, Femme Comp complains that DCA and this Office have denied it access to sufficient documentation concerning the evaluation and that it therefore has been hindered in its attempt to address the protest. However, after the intervention of our Office, see 4 C.F.R. § 21.3(f) (1990), Femme Comp was provided with the PEB report that detailed the reasons Femme Comp's proposal was unacceptable. We did not release individual evaluators' narratives in this particular case because the PEB report contains the complete basis for the rejection of Femme Comp's proposal. Moreover, we found these documents were not necessary to give Femme

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<sup>8/</sup> Femme Comp also alleges that there were other small businesses that were capable of competing but has furnished no evidence to support this claim.

<sup>9/</sup> Indeed, Femme Comp claims that several other qualified small business concerns would have submitted proposals. See infra footnote 8.

Comp a meaningful opportunity to pursue its protest. Cf., Validity Corp., B-233832, Apr. 19, 1989, 89-1 CPD ¶ 389. In any case, our Office examined the entire record, including the evaluators' narrative comments, in reaching our decision in this matter.

The protest is denied.



James F. Hinchman  
General Counsel