



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: TLC Systems
File: B-243220
Date: July 9, 1991

Sidney Earley for the protester, Frederick M. Lewis, Esq., and Herbert F. Kolly, Esq., Department of the Army, 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.

BIGGEST

Agency properly excluded the protester's proposal from the competitive range where the protester did not provide required information under two of the solicitation's four evaluation factors.

DECISION

TLC Systems protests the rejection of its proposal under request for proposals (RFP) No. DAKF23-90-R-0318, issued by the Department of the Army, Fort Campbell, Kentucky, for a fire alarm reporting system. TLC contends that its proposal was improperly excluded from the competitive range.

We deny the protest.

The RFP was issued on July 19, 1990, to obtain a radio-computer type fire alarm reporting system for the fire department at Fort Campbell, including necessary equipment, tools, materials, and personnel to furnish, install, and test a commercially available system. The RFP provided that award would be made to the responsible offeror whose offer was most advantageous to the government, cost or price and other factors considered. In descending order of importance, the RFP listed the following factors for determining the most advantageous offer: (1) Technical; (2) Comprehension of Requirements; (3) Management; and (4) Price. The Technical factor was accorded the greatest weight under the RFP's evaluation scheme; this factor was slightly more important than the other factors, which were of equal value.

On September 20, the Army received six proposals, including a proposal from TLC. After evaluating proposals, the Army included three of the proposals in the competitive range, TLC's proposal was eliminated as technically unacceptable because it failed to adequately address the "Comprehension of Requirements" and "Management" evaluation factors, and this failure could not be corrected without a major rewrite of TLC's proposal. On January 28, 1991, the Army notified TLC that it had been eliminated from the competitive range. TLC filed this protest on March 8, after the agency denied TLC's agency-level protest.

TLC essentially argues that the Army's action in excluding its proposal from the competitive range, without providing TLC with the opportunity for discussions, violated the Competition in Contracting Act of 1984, and reflected bias on the Army's part. TLC alleges that since its equipment met the RFP specifications and has been installed in other military facilities, the Army lacked specific knowledge of its equipment and this was the reason its proposal was rejected. TLC also argues that certain ambiguous provisions in the RFP contributed to the manner in which it responded to the evaluation factors leading to the rejection of its proposal.

In reviewing protests of allegedly improper evaluations, we will not reevaluate proposals, but instead will examine the record to determine whether the evaluators' judgments were reasonable and in accord with the listed criteria. See Interceptor Group Ltd., Inc., B-239490.3, Dec. 4, 1990, 90-2 CPD ¶ 451. The evaluation of proposals and the resulting determination as to whether a proposal is in the competitive range is within the discretion of the contracting agency, since it is responsible for defining its needs and for deciding on the best method of accommodating these needs. Smith Bright Assocs., B-240317, Nov. 9, 1990, 90-2 CPD ¶ 382. Proposals that are technically unacceptable as submitted and would require major revisions to become acceptable are not required to be included in the competitive range. See Interceptor Group Ltd., Inc., B-239490.3, supra.

Here, the Army found that TLC's proposal did not adequately address the "Comprehension of Requirements" and "Management" evaluation factors because the proposal did not contain the minimum information which the RFP requested under these factors. Under "Comprehension of the Requirements," the RFP advised offerors to discuss in detail in their proposals specific information relating to the "Scope of Work, Quality Control, Staffing, Training, and Personnel Certification." Under the "Management" factor, offerors were required to discuss specific aspects of management control, the measures to be taken to ensure accurate connection wiring diagrams and control diagrams of the system and warranty.

TLC's proposal under "Comprehension of Requirements" and "Management" only contained several terse blanket statements of compliance, rather than the required detailed information. For example, under the "Scope of Work" subfactor, TLC only stated that the project would be completed as per the specifications and that it would provide the necessary personnel, and did not address the specific information requested for this subfactor.^{1/} TLC repeated this pattern of either not providing the specifically requested information or doing so in a very general manner in response to all subfactors of these two major evaluation factors. Since the RFP's criteria specifically requested this information and TLC failed to provide the information in its proposal, we find that the Army reasonably determined that TLC's proposal was technically unacceptable and that it could only be made acceptable if major revisions were made, and excluded it from the competitive range. See Data Controls/North Inc., B-233628.4, Apr. 5, 1989, 89-1 CPD ¶ 354.

TLC argues that certain provisions contained elsewhere in the RFP were ambiguous, and misled it to believe that the information requested under these evaluation factors could be furnished after the award. In this regard, TLC references the standard admonition against submitting unnecessarily elaborate proposals and several specifications requiring the contractor to make submittals after the award of the contract. However, none of these provisions can be read to obviate the clearly expressed requirements to submit specified information with the proposal.^{2/}

Further, TLC argues that the Army should have afforded it discussions, particularly since it had proposed the lowest price. While a technically acceptable offer may not be

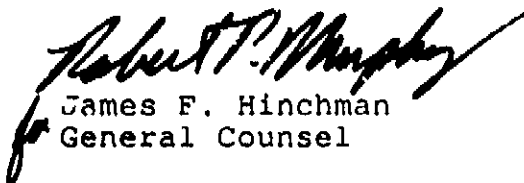
^{1/} For the "Scope of Work" subfactor, offerors were requested to provide a detailed description of the delivery/work scheduling, transition plans to ensure minimal downtime of existing system and methods of testing proposed. None of these items were expressly addressed.

^{2/} To the extent that TLC is now objecting to these portions of the RFP, this aspect of its protest is untimely. Our Bid Protest Regulations require protests based upon alleged improprieties in an RFP which are apparent prior to the closing date for receipt of initial proposals to be filed prior to that date. 4 C.F.R. § 21.2(a) (1991).

eliminated without considering price, a technically unacceptable-offer can be excluded from the competitive range irrespective of its lower offered price. See American Technical & Analytical Servs., Inc., B-240144, Oct. 26, 1990, 90-2 CPD ¶ 337. Moreover, an agency need not conduct discussions with a technically unacceptable offeror. Id.

Finally, there is no evidence that substantiates the protester's allegation of bias in the evaluation. TLC has produced no evidence to support this contention and we will not attribute bias in the evaluation of proposals on the basis of inference or supposition. See Smith Bright Assocs., B-240317, supra. The record establishes TLC's proposal was rejected not because of bias but rather due to its failure to provide required information.

The protest is denied.


for James F. Hinchman
General Counsel