



Comptroller General
of the United States

Washington, D.C. 20548

145945

Decision

Matter of: Communications International Inc.

File: B-246076

Date: February 18, 1992

Timothy B. Mills, Esq., and Mary Beth Bosco, Esq., Patton, Boggs & Blow, for the protester.
David R. Smith, Esq., Reed, Smith, Shaw & McClay, for Texcom, Inc., an interested party.
Capt. Duncan R. Butts and Roger J. McAvoy, Esq., Department of the Air Force, for the agency.
David Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in preparation of the decision.

DIGEST

1. Agency reasonably evaluated proposal as high risk where offeror during negotiations demonstrated a lack of a complete understanding of specification requirements for voice communications subsystem and of the relevant technology; although offeror ultimately satisfied specification requirements by proposing subsystem supplied under prior contract by another offeror, agency properly gave greater weight to offeror's initial approach in evaluating its limited technical understanding and the consequent risk to the agency.
2. Agency was not required to again raise in request for best and final offers offeror's lack of a complete technical understanding of specification requirements and relevant technology where the offeror's limited understanding had been repeatedly demonstrated during the prior negotiations and the matter by its nature was not subject to correction through the discussion process.
3. Although solicitation specifically included as part of the evaluation consideration of risk based upon offeror's past and present performance, and did not otherwise enumerate risk as an evaluation factor, agency was not thereby precluded from also considering any risk arising from the offeror's approach or demonstrated lack of a complete understanding since the consideration of the risk involved with respect to an offeror's proposal and approach is inherent in the evaluation of technical proposals.

4. Contracting agency did not abuse its discretion when it determined that it was not clearly in the government's best interest to reopen discussions after best and final offers so as to permit high risk, technically inferior offeror to correct deficiency in price proposal--failure to reconcile various price and cost formats--which had previously been brought to offeror's attention during negotiations.

DECISION

Communications International, Inc. (CII) protests the Department of the Air Force's award of a contract to Texcom, Inc., under request for proposals (RFP) No. F19628-90-R-0064, for construction of the Caribbean Basin Radar Network-Extension. CII contends that the Air Force failed to conduct meaningful discussions and questions the evaluation of technical and price/cost proposals.

We deny the protest.

The RFP, issued as a competitive procurement under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988); see Federal Acquisition Regulation (FAR) § 19.805 (FAC 90-8), solicited proposals for a predominantly fixed-price contract to extend the current 8-radar-site Caribbean Basin Radar Network; it provided for construction of a radar site on a mountain-top in Costa Rica and included options for four additional radar sites in the Caribbean. The solicitation required the contractor to furnish the sites on a "turn-key basis," including necessary equipment, site preparation, fabrication, installation, integration and qualification testing, and also included options for operation and maintenance of the sites. Each site was to include a radar, radar tower and radome, ground-air-ground radios and antennas, a satellite earth station, central building, cooling and power generation equipment, and a security fence. The solicitation required initial operational capability for the first site to be achieved no later than 12 months after contract award and full operational capability no later than 15 months after award.

The RFP provided for award to be made on the basis of the proposal most advantageous to the government, price and other factors considered. It listed four technical evaluation criteria, including: (1) reliability, maintainability, and availability; (2) system design and performance; (3) test and evaluation; and (4) management. Under the solicitation, the first two criteria were of equal importance while the remaining two criteria, listed in descending order of importance, had less weight. Price/cost was less important than the technical area, but still was significant. The RFP provided for the evaluation of price/cost based on: (1) the total evaluated price,

calculated by adding the total price for all options to the total price for the basic requirement; (2) the life cycle cost, which the source selection plan stated would be calculated based on the cost of operating and maintaining the radar sites over their projected life; and (3) price/cost realism. Offerors were required to furnish prices in more than a dozen different formats, including, among others: (1) contract line item numbers in the schedule of supplies and services in section B of the solicitation; (2) special pricing tables for particular equipment and services in section B; (3) Standard Form (SF) 1411, "Contract Pricing Proposal Cover Sheet," Federal Acquisition Regulation (FAR) § 53.301-1411; (4) Cost Format B, "Contract Line Item Summary by Offeror Fiscal Year"; (5) Cost Format C, "WBS (Work Breakdown Structure) Level 2 Summary Total Program"; and (6) Cost Format D, "Work Breakdown Structure Level 3 Summary." The evaluation also included a performance risk assessment based on the offeror's past and present performances as it related to the probability of successfully accomplishing the proposed effort.

Seven proposals were received by the closing date for receipt of initial proposals and four were included in the competitive range. The Air Force conducted written and oral discussions with the offerors in the competitive range to advise them of perceived deficiencies and areas in their proposals requiring clarification. Among the deficiencies discussed with offerors was their failure to reconcile the pricing and cost data in the various price/cost formats and to fully and correctly complete all formats. In addition to raising this matter during written discussions, the agency conducted a special, 4-hour tutorial for the offerors to explain how to complete the price/cost formats. At the conclusion of discussions, the agency requested best and final offers (BAFO).

As set forth below, the agency assigned each proposal both an overall color evaluation rating--e.g., "blue" (exceptional), or "green" (acceptable)--and a risk assessment under each technical criterion. In addition, since all of the offerors had again failed to reconcile prices and costs among the various price/cost formats, and agency price/cost evaluators had calculated differing operation and maintenance life cycle costs for each proposal, the briefing by the agency source selection advisory council to the source selection authority (SSA) included a range of figures for both the total evaluated price and the life cycle cost. The evaluation results were as follows:

	<u>Texcom</u>	<u>CII</u>
Technical Reliability, Maintainability, and Availability (risk)	Acceptable (low)	Acceptable (low)
System Design and Performance (risk)	Exceptional (low)	Acceptable (high)
Test and Evaluation (risk)	Acceptable (low)	Acceptable (low)
Management (risk)	Acceptable (low)	Acceptable (high)
Technical Summary (risk)	Acceptable (low)	Acceptable (high)
Price/ Cost (millions)		
Schedule B	\$107.666	\$114.441
SF-1411 ¹	\$107.480	\$101.881
Format B	\$107.480	\$101.881
Operation and Maintenance Life Cycle Cost (millions)		
High	\$280.5	\$230.9
Low	\$158.1	\$152.5

Based upon the evaluation of BAFOs, the SSA determined that Texcom had submitted the most advantageous offer. Specifically, the SSA noted, under the criterion for reliability, maintainability, and availability, that Texcom had proposed a greater than required mean-time-between-critical-failure and back-up site availability. The SSA also considered it a strength, with respect to system design

¹Although CII's SF-1411 listed its total price as \$101,881,077, the SF-1411 price reported to the SSA was \$101.887 million.

and performance, that Texcom had included with its emergency generator an auto-interlock system that would "lock out" the return of commercial power in the event of a power interruption until preparation could be made to protect the radar from a power surge. The SSA noted that, in contrast, CII's proposal was found to be high risk under this criterion because of a perceived failure to completely understand the solicitation requirements for the voice communications subsystem. Similarly, the SSA noted that CII's proposal was found to be high risk under the management criterion because of a perceived failure to allocate sufficient time in its proposed schedule for obtaining order long-lead-time equipment (e.g., the radar) and for installation and check-out. With respect to price/cost, the SSA took into consideration the highest total evaluated price and the lowest calculated life cycle cost for each proposal. Based upon these figures, the SSA concluded that Texcom had proposed the lowest evaluated price, and that "any life cycle cost advantages associated with the CII proposal are considered more than off-set by the comparative technical and cost/price advantages associated with Texcom's proposal." Upon learning of the resulting award to Texcom, CII filed this protest with our Office.

VOICE COMMUNICATIONS SUBSYSTEM

CII first questions the Air Force's evaluation of its proposed voice communications subsystem. During negotiations, the agency advised CII that it had failed to adequately explain how its proposed voice communications subsystem would satisfy voice quality, radio coverage, compatibility, and other specification requirements. After the agency twice advised CII that its responses to the requests for clarification provided insufficient substantiation for its proposed approach, CII, 6 weeks prior to the agency's request for BAFOs, proposed a new configuration (and equipment), which it described as "very similar" to that furnished by another contractor under the prior contract for the initial Caribbean Basin Radar Network sites. Although the agency concluded that the new design satisfied the specification requirements, it nevertheless assessed CII's proposal as high risk under the system design and performance criterion because CII had difficulty during negotiations answering questions concerning its previously proposed design and had demonstrated a lack of a complete understanding of the specification requirements concerning the voice communications subsystem. The Air Force, however, did not advise CII of the perceived weakness in this regard when it requested BAFOs.

CII maintains that the Air Force's consideration of its voice communications subsystem was improper. According to

the protester, since the solicitation provided for a performance risk assessment based on past and present performance, it was improper for the agency also to consider risk under the evaluation criterion for system design and performance. CII further argues that the Air Force's failure to advise the firm of the agency's continuing concern in this area violated its obligation to conduct meaningful discussions.

We disagree. First, we find no basis upon which to question the agency's evaluation under the system design criterion. In our view, the Air Force reasonably concluded that CII had demonstrated during discussions a lack of a complete understanding of the specification's voice communications requirements and the technology required to satisfy them such that there existed a high risk of significant disruption of schedule or degradation of performance. Although CII subsequently modified its initial design, adopting the approach of the prior contractor, the Air Force properly gave greater weight to CII's initial approach in judging its understanding and the consequent risk to the agency from its limited understanding. See Beneco Enters., Inc., 70 Comp. Gen. 574 (1991), 91-1 CPD ¶ 595. Furthermore, while the solicitation included as part of the evaluation the consideration of risk based on an offeror's past and present performance, and did not otherwise enumerate risk as an evaluation factor, the agency was not thereby precluded from also considering any risk arising from the offeror's approach or demonstrated lack of understanding. As we have previously recognized, consideration of the risk involved with respect to an offeror's proposal and approach is inherent in the evaluation of technical proposals. See Advanced Sys. Technology, Inc.; Eng'g and Professional Servs., Inc., B-241530; B-241530.2, Feb. 12, 1991, 91-1 CPD ¶ 153; Honeywell, Inc., B-238184, Apr. 30, 1990, 90-1 CPD ¶ 435.

With respect to the conduct of negotiations, we note that the statutory mandate for meaningful discussions with offerors in the competitive range is satisfied by advising them of weaknesses, excesses, or deficiencies in their proposals and affording them an opportunity to satisfy the government's requirements through the submission of revised proposals. See Technical and Mgmt. Servs. Corp., B-242836.3, July 30, 1991, 91-2 CPD ¶ 101; Sletten Constr. Co., B-242615, May 24, 1991, 91-1 CPD ¶ 506. Agencies need not afford offerors all encompassing discussions or discuss every element of an acceptable competitive range proposal that has received less than the maximum score. The Scientex Corp., B-238689, June 29, 1990, 90-1 CPD ¶ 597. Furthermore, an agency generally need not discuss matters with offerors which, by their nature, generally are not subject to correction through the discussion process.

Transact Int'l, Inc., B-241589, Feb. 21, 1991, 91-1 CPD ¶ 196; see Sletten Constr. Co., supra.

We do not think the Air Force was obligated to raise the question of CII's understanding in the request for BAFOs. In view of its repeated inability to demonstrate a complete understanding of the solicitation requirements and the relevant technology, it does not appear that CII's weakness in this regard was susceptible of correction during further negotiations. In any case, having previously raised the matter during discussions, the agency was not again required to question CII's understanding; an agency is not required to help an offeror, through a series of negotiations, to improve its technical rating until it equals that of other offerors. Aydin Vector Div. of Aydin Corp., B-229569, Mar. 11, 1988, 88-1 CPD ¶ 253.

SCHEDULE

CII further argues that the Air Force failed to conduct meaningful discussions with respect to its proposed schedule. The solicitation required initial operational capability (IOC)--including basic operation for 84 hours per week--for the first site within 12 months of award and full operational capability (FOC) within 15 months. Texcom, which proposed IOC in 12 months and FOC in 15 months, included in its schedule a period of approximately 3 months prior to the required IOC for installation at the site, integration, and checkout of equipment. In contrast, although CII proposed IOC in 12 months and FOC in 13 months, it only proposed to complete the site facilities 10 months after award, and its test schedule provided for installation of the radar to begin 11 months after award, thereby allowing only 1 month prior to the required IOC date for installation, checkout, and completion of qualification testing. The Air Force found CII's schedule unrealistic. Noting that the radar is the most critical, long-lead item, as acknowledged by CII in its proposal, the agency questioned CII's failure to provide in its schedule for the inaccessibility of the remote site, weather-related delays in transportation to the site, facilities completion and testing, damage or loss of equipment during transit, and late delivery of equipment due to Costa Rican customs. The agency concluded that, as a result, there was significant doubt as to CII's ability to satisfy either the solicitation requirement for IOC in 12 months or the proposed goal of FOC in 13 months.

CII does not challenge the agency's assessment; instead, it contends that the Air Force failed to adequately advise it of the perceived weakness. Again, we disagree. The agency requested CII to provide a master integrated test schedule which covered integration and checkout. In addition, it

specifically advised CII that it viewed the proposed schedule for on-site system integration as "brief." In our view, this information reasonably communicated the nature and gravity of the agency's concerns, thereby affording CII a fair and reasonable opportunity in the context of the procurement to identify and correct the perceived weakness with respect to its proposed schedule, that is, the inadequate time allowed for integration and achieving operational capability. See Creativision, Inc., 66 Comp. Gen. 585 (1987), 87-2 CPD ¶ 78; Minigraph, Inc., B-237873.2, May 14, 1990, 90-1 CPD ¶ 470;.

PRICE

CII also contends that the Air Force miscalculated its BAFO price by improperly adding \$12,559,923 to its intended BAFO price of \$101,881,077, for a total evaluated price of \$114,441,000. CII explains that in completing the special pricing tables in section B of the solicitation it transposed data between the tables and failed to fully take into account updated subcontractor prices that were taken into account in calculating the prices elsewhere in its proposal. As a result, while CII's prices in section B totaled \$114,441 million, its BAFO transmittal letter, BAFO cover sheet, SF 1411, and Certificate of Compliance with Limitations on Subcontracting stated a total price of \$101,881,077 and, as noted by the agency, its prices in the various formats likewise indicated or were consistent with a total price of \$101,881,077. CII argues that the mistake in completing section B amounted to no more than an obvious clerical error and that an intended price of \$101,881,077 was apparent on the face of its proposal; CII contends that the agency therefore should have sought clarification and permitted correction of the proposal.

The Air Force maintains that to correct the discrepancies in CII's proposal would have required discussions, not clarification. It argues that it had no obligation to reopen discussions after receipt of BAFOs for the purpose of resolving ambiguities which first became apparent in the BAFO.

We agree with the Air Force that correction of the discrepancies in CII's proposal would have required reopening discussions with all offerors in the competitive range. When a mistake is suspected or alleged before award in a negotiated procurement, the FAR contemplates that the mistake will be resolved through clarification or discussions. See FAR § 15.607(b)(4) (FAC 90-7). The thrust of the regulation is that correction of a mistake, without conducting discussions with all offerors, is appropriate only where the existence of the mistake and the proposal actually intended can be clearly and convincingly

ascertained from the RFP and the proposal itself, Contact Int'l Corp., B-237122.2, May 17, 1990, 90-1 CPD ¶ 481; Stacor Corp., B-231095, July 5, 1988, 88-2 CPD ¶ 9, and the resulting correction does not prejudice the interests of other offerors. ALM, Inc., 65 Comp. Gen. 405 (1986), 86-1 CPD ¶ 240.

We have found such prejudice where an agency communication with the offeror selected for award results in the proposal price being increased by a significant amount. ALM, Inc., supra (the communication prejudices the interests of other offerors and constitutes discussions, not clarification; it requires discussions with all offerors in the competitive range). Under this rationale, permitting CII to correct its price would have constituted discussions: the requested reduction in CII's price for purposes of evaluation would be significant (approximately 11 percent of the evaluated price) and would displace Texcom as the low priced offeror, and thus would prejudice the interests of other offerors.


Furthermore, we find that the Air Force was not required to reopen discussions to allow CII to clarify its price. As a general matter, agencies may, but are not required to, reopen negotiations where a mistake is discovered after the receipt of BAFOs and provide the offeror with an opportunity to discuss the matter. David Grimaldi Co., 69 Comp. Gen. 634 (1990), 90-2 CPD ¶ 57. Under FAR § 15.611(c), after the receipt of BAFOs, the contracting officer should not reopen discussions unless it is clearly in the government's best interest to do so. We will review the agency's determination in this regard to determine whether it abused this discretion. Id.

Here, the Air Force advised offerors during negotiations of the requirement to reconcile their prices and conducted a tutorial in which it explained the various pricing formats. While no offeror completely succeeded in reconciling its prices, the pricing discrepancy in Texcom's BAFO (approximately \$186,000) amounted to less than two-tenths of 1 percent of its total price (\$107.666 million). In contrast, CII significantly deviated from the requirement to reconcile its prices, offering total prices more than \$12.5 million apart. Even when evaluated at its lower price (\$101.881), however, its price was only 9.5 percent less than Texcom's. (As for relative operation and maintenance life cycle costs, CII does not question the SSA's decision to evaluate at the low end of the range, and CII's cost there was only 9.6 percent less than Texcom's.)

Although not an insubstantial amount, the difference in price was less significant here, where the solicitation stated that price/cost was less important than the technical area, and Texcom submitted a technically superior proposal.

Again, while Texcom's proposal was evaluated as exceptional under the system design and performance criterion and low risk overall, CII's proposal was evaluated as high risk because CII's inability to completely understand the solicitation requirements and relevant technology for the voice communications subsystem and its inadequate performance schedule called into question its ability to meet the solicitation requirements in a timely manner. In these circumstances, having already brought the question of price and cost discrepancies to CII's attention during negotiations, we do not believe the Air Force abused its discretion in concluding that it was not clearly in the government's best interests to reopen discussions so as to permit a high risk, technically inferior offeror to correct a major deficiency in its price proposal.

The protest is denied.


for James F. Hinchman
General Counsel