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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: MAR Incorporated

File: B-246889

Date: April 14, 1992

Paul Shnitzer, Esq., Crowell & Moring, for the protester.
Robert B. Ledoux, Esq., for Planning Systems Incorporated,
an interested party.
Armand R.R. Beede, Esq., Department of the Navy, for the
agency.
Guy R. Petrovito, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Protest that agency unreasonably evaluated the protester's technical proposal and excluded it from the competitive range, after discussions, is denied where the agency reasonably determined that the protester's proposal no longer had a reasonable chance of being selected for award because the protester's proposal was higher in cost and contained numerous deficiencies and the awardee's low cost proposal was rated technically superior.

DECISION

MAR Incorporated protests the exclusion of its proposal from the competitive range and award of a contract to Planning Systems Incorporated (PSI), under request for proposals (RFP) No. N00014-90-R-6038, issued by the Naval Oceanographic and Atmospheric Research Laboratory (NOARL), Department of the Navy, for basic and applied research and development services in naval mapping, charting and geodesy.¹

We deny the protest.

The RFP contemplated the award of a cost-plus-fixed-fee contract for a base and 4 option years for research and development services in support of NOARL's naval mapping,

¹"Geodesy" is a branch of applied mathematics concerned with the determination of the size and shape of the earth, and the exact position of points on its surface and with the description of variations of its gravity field.

Noted by [unclear] [unclear] [unclear] [unclear] [unclear]

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charting, and geodesy mission. Proposals were solicited to perform four tasks:² (1) computer hardware and software system support; (2) design, or redesign, and fabrication of new and/or existing ocean sensor systems, and related hardware and software; (3) research and development in the analysis, measurement, and model development of geophysical, hydrographic, and oceanographic data; and (4) development, evaluation and validation of mapping, charting, and geodesy products. Estimated minimum and maximum levels of effort to perform the stated tasks were provided for the base and option years.

The RFP stated that award would be made to the responsible offeror whose conforming offer was determined to be the most advantageous to the government, cost and other factors considered. The following evaluation factors were set forth in the RFP:³

1. Technical (60 total points)
 - a. Personnel Qualifications and Experience and Corporate Experience and Resources (40 pts)
 - b. Technical and Management Approach (20 pts)
2. Cost⁴ (40 total points)

Technical factors were said to be more important than cost.

The RFP provided detailed instructions for the preparation of technical proposals. Offerors were informed of specific hardware and software systems and subject matter specialties that offerors were to address in demonstrating their qualifications and experience to perform the contract work.

NOARL received three offers, including those of MAR and PSI. MAR's initial technical proposal received 39 of 60 possible technical points and was rated marginal overall, while PSI's proposal received 50 points and was rated good overall. MAR's proposed costs were higher than PSI's, but both offerors' proposed costs were determined to be realistic. MAR's and PSI's proposals were included in the initial

²The four tasks are oriented towards modeling and algorithms, image processing, geophysical data base management, and research and development.

³The agency's specific numerical weighing of the evaluation factors was not disclosed in the RFP.

⁴Total costs were calculated by adding the total cost for all options to the proposed cost for the base year.

competitive range, while the proposal of the third offeror was excluded as technically unacceptable.

Technical and cost discussions were conducted with MAR and PSI, and revised proposals received. The offerors' revised proposals were evaluated as follows:

	<u>PSI</u>	<u>MAR</u>
TECHNICAL (60 pts)	51	38
Qualifications	32	26
Approach	19	12
COST (40 pts)	\$7,999,766/ 40	\$8,542,543/ 38
TOTAL	91	76

PSI's overall superior rating reflected PSI's over 4 years of direct experience supporting the agency's mapping, charting, and geodesy hardware/software development and PSI's detailed technical approach that demonstrated the firm's complete understanding of the RFP requirements. MAR's lower, marginal technical rating reflected NOARL's determination that, while MAR improved its technical proposal in some areas in response to discussions, the firm's proposal still contained numerous deficiencies.

NOARL determined, given PSI's superior technical rating and lower cost,⁵ that MAR no longer had a reasonable chance of receiving award and eliminated MAR from the revised competitive range. The agency conducted no further technical discussions, but requested a best and final offer (BAFO) from only PSI. PSI, in its BAFO, reduced its proposed cost to \$7,698,692. Award was made to PSI on December 5, and this protest followed.

The crux of MAR's protest is that the Navy failed to properly evaluate its revised technical proposal and that therefore the firm's elimination from the revised competitive range based upon the agency's evaluation, was unreasonable.⁶ Specifically, MAR argues that many of the

⁵The offerors' proposed costs were again determined to be realistic; the protester does not challenge the agency's cost realism determination.

⁶A protective order was issued pursuant to our Bid Protest Regulations, 56 Fed. Reg. 3759 (1991) (to be codified at 4 C.F.R. § 21.3(d)(1)). Counsel for the protester was

deficiencies identified by the Navy were adequately dealt with in its proposal and that other deficiencies were not "sufficiently material to warrant exclusion from consideration for award."⁷

The evaluation of proposals and the resulting determination as to 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 on the best methods of accommodating them. Abt Assocs. Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223. In reviewing an agency's evaluation, 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 criteria. Id. A protester's mere disagreement with the agency does not render the evaluation unreasonable, particularly where the procurement concerns sophisticated technical hardware or services. DBA Sys., Inc., B-241048, Jan. 15, 1991, 91-1 CPD ¶ 36.

NOARL evaluated MAR's proposal as containing numerous deficiencies and found it to be significantly technically inferior to PSI's. The protester lists 14 areas where it asserts that its proposal was unreasonably found deficient and identifies where its proposal "implicitly" and/or "essentially" satisfied the RFP requirements in these areas. The agency, in its report on the protest, responded in detail to each of the protester's arguments concerning MAR's evaluated deficiencies. The protester, in its comments, did not substantively respond to, or rebut in any way, the agency's persuasive explanation of its evaluation, other than to state that it would rely upon its protest contentions. The agency's detailed explanations--which, as discussed below, were reasonable on their face--and our review of MAR's proposal and the evaluation documentation indicates the agency evaluation was reasonable. Under the circumstances, MAR's objection to the agency's evaluation constitutes no more than mere disagreement with the evaluation results, which does not demonstrate that the agency's technical evaluation was unreasonable. See DBA Sys., Inc., supra; Atmospheric Research Sys., Inc., B-240187, Oct. 26, 1990, 90-2 CPD ¶ 338.

admitted under this protective order and received a complete, unredacted copy of the agency's report, including MAR's and PSI's proposals and the complete evaluation documentation. Our discussion of the protest issues, which is based upon protected, confidential information, is necessarily general.

⁷MAR does not challenge the Navy's evaluation of PSI's proposal or PSI's technically superior ranking.

Specifically, MAR was downgraded under the most important technical evaluation subfactor addressing personnel and corporate qualifications and experience, because its proposal failed to demonstrate that it offered the necessary personnel or corporate experience required by the RFP. For example, the RFP required programming and system analyst experience for various computer hardware used by the NOARL, such as Silicon Graphics 3030 and 4-D workstations (UNIX) and Matrox and Imagraph image boards. MAR's proposal, while identifying experience on a different computer system not used by NOARL, did not show experienced personnel for the Silicon Graphics and Matrox and Imagraph image board systems.

MAR, in its protest letter, argued that all of the RFP computer systems and the other system on which it demonstrated its experience are "so closely related that they would represent no problem for MAR computer people." The agency, in its report on the protest (to which the protester did not substantively respond), replied that there were basic architectural, operating system and software differences between the computer system on which MAR bases its experience and qualifications and those specified by the RFP. Moreover, the contract work would require the contractor to develop algorithms and complex models that are optimized for a particular computer architecture, and such optimization requires the contractor to possess detailed knowledge of the computer systems' operating environment, programming language compilers, and system-specific parameters. Under the circumstances, the agency's downgrading of MAR's proposal in this area seems reasonable.

The RFP also required offerors to demonstrate programming and processing experience with SEAPAK image processing software, which is used for algorithm development and data handling.⁸ NOARL downgraded MAR's proposal as not demonstrating sufficient experience with the SEAPAK software. MAR argues that "SEAPAK is one of 19 closely related packages . . . [and that] these packages are so closely related that anyone familiar with some can readily operate the others." NOARL's evaluators were concerned that performance of the contract's research work would require full understanding of not only the implementation of the software package but of the underlying algorithms for ocean color/laser technology. MAR's argument--that it could learn to operate the software--does not demonstrate that it had

⁸The agency states that SEAPAK software is extensively used by the agency in ocean color research and provides an atmospheric correction process that is critical to research involving ocean colors.

the necessary experience with this software to successfully perform the RFP's required research and development work.

MAR's proposal was rated marginal under the technical approach subfactor because the firm's discussion of databases did not demonstrate an understanding of database structures,⁹ and since the firm's revised proposal introduced new subcontractors, which the agency concluded were knowledgeable regarding many areas of the RFP work, but for which MAR failed to show that it was aware of the subcontractor's resources or to demonstrate how it would manage its subcontractors. MAR did not protest the agency's negative evaluation of MAR's subcontractor management, nor substantively question the agency's concerns about its understanding of database structures. Under the circumstances, MAR's "marginal" rating for technical approach appears to be reasonable.

MAR alleges that some of the deficiencies, for which it was eliminated from the competitive range, were not identified during discussions, and therefore its proposal, which was included in the initial competitive range, must have adequately dealt with these deficiencies.¹⁰ MAR informed us, in response to our inquiry, that it is not arguing that NOARL failed to conduct meaningful discussions with MAR.¹¹ Rather, the protester asserts that the failure to mention these deficiencies in discussions establishes that the deficiencies do not exist. MAR's collateral attack on the

⁹Specifically, the agency found that MAR's proposal demonstrated limited knowledge in object-oriented or relational databases, database layers for oceanographic and sea floor databases, database structures currently used by Defense Mapping Agency, tilting schemes, military standards, storage media, database structures, formats, organization or data models, fractal geometric-based bathymetric databases, and bathymetric gridding techniques.

¹⁰Of MAR's 17 evaluated deficiencies, MAR contends that only 5 deficiencies were not identified during discussions.

¹¹The documents upon which MAR bases its argument that some of the firm's evaluated deficiencies were not the subject of discussions were in MAR's possession prior to its filing of its protest. MAR's allegations concerning the agency's failure to identify these deficiencies during discussions were not raised until it filed its comments on the agency's report. Thus, an allegation that NOARL failed to conduct meaningful discussions, which was raised more than 10 days after MAR had learned the basis of this allegation, would be untimely under our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(2).

agency's evaluation does not demonstrate that the specific deficiencies identified by the agency do not exist. Rather, as noted above, the agency detailed explanations in support of its evaluation are reasonable on their face and the protester has failed to respond or rebut them. Under the circumstances, we have no basis to find unreasonable the agency's evaluation. DBA Sys., Inc., supra; Atmospheric Research Sys., Inc., supra.

In conclusion, we find NOARL's decision to exclude MAR's proposal from the competitive range to be reasonable. In determining the competitive range, it is an acceptable practice to compare the evaluation scores and to exclude a proposal that is technically acceptable when, relative to other acceptable offers, it has no reasonable chance of being selected for award. Information Sys. & Networks Corp., 69 Comp. Gen. 239 (1990), 90-1 CPD ¶ 203. The fact that a proposal was initially included in the competitive range does not preclude the agency from later excluding it. Scientific Mgmt. Assocs., Inc., B-238913, July 12, 1990, 90-2 CPD ¶ 27. MAR's proposal was rated significantly technically inferior to PSI's proposal. MAR does not challenge the evaluation of PSI's proposal, which the agency found solidly demonstrated PSI's ability to perform the contract work, and, as noted above, the agency's evaluation of MAR's proposal as technically marginal seems reasonable. Given PSI's much superior technical scores and lower cost, we have no basis to challenge the agency's conclusion that MAR's proposal had no reasonable chance of being determined to be the most advantageous to the government. Stated another way, NOARL reasonably determined that MAR's proposal did not have a reasonable chance of being selected for award and its proposal was properly excluded from the competitive range.

The protest is denied.


for James F. Hinchman
General Counsel