



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Millar Elevator Industries, Inc.

File: B-250992.2

Date: March 8, 1993

Laurence Schor, Esq., and David A. Cole, Esq., for the protester,
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Lionel G. Batley, Jr., Esq., General Services Administration, for the agency.
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DIGEST

Agency decision to eliminate offeror's proposal from award consideration was reasonable where the offeror's proposal did not provide much of the information specifically requested in the solicitation and during discussions.

DECISION

Millar Elevator Industries, Inc. protests an award to Armor Elevator Company, Inc. under request for proposals (RFP) No. GS02P91CUC0078(N), issued by the General Services Administration (GSA) for the design, construction and maintenance involved in the modernization of elevators at the Jacob K. Javits Federal Building and U.S. Court of International Trade, New York, New York. Millar challenges GSA's evaluation of its proposal.

We deny the protest.

On September 18, 1991, GSA issued the RFP contemplating the award of a firm, fixed-price contract. The contract was to modernize the elevators in the building complex,¹ including both design and construction services. The contract also requires the maintenance of all elevators until completion

¹The building complex has a total of 53 passenger and freight elevators.

of the modernization project² and provides for two following option periods of 3 years each for maintenance of elevators. GSA expressly advised offerors that they were expected to design, as well as construct and maintain, a refurbished, automated elevator system that would be the state of the art.³

The RFP instructed offerors to submit cost and technical proposals, which would be evaluated separately. The RFP provided that award would be made to the responsible offeror whose offer met all solicitation requirements and was most advantageous to the government, price and technical factors considered. The RFP stated that technical factors were more important than price, and listed the following weighted technical factors in descending order of importance:⁴ (1) experience on similar projects (existing buildings); (2) design approach/management of construction; and (3) key personnel (management; design; modernization). The RFP provided detailed proposal submission requirements instructing prospective offerors what information to include in their proposals and, with regard to the technical proposal, to present this information "in the exact order and format specified," as well as to address each technical factor in a separate section of its technical proposal.

GSA received five proposals by the December 5 closing date for receipt of initial proposals. GSA evaluated the proposals and rejected one as technically unacceptable. The remaining four proposals were evaluated as follows:

<u>Offeror</u>	<u>Technical Score</u>	<u>Price</u>
Firm A	919.9	\$16,247,452
Armor	902.5	17,920,548
Firm B	865.8	17,509,953
Millar	508.3	13,653,882

²During the modernization phase, the contractor is only permitted to modernize one elevator at a time in each bank of elevators so as not to unduly disrupt use of the building by its tenants. Therefore, throughout the modernization period, the contractor would have to maintain a varying number of existing and refurbished elevators until all elevators were refurbished.

³The pre-proposal conference, which the protester attended, addressed this expectation as GSA explained its reasons for issuing this solicitation as a design-build contract instead of a typical construction contract.

⁴In addition, past performance on similar projects (existing buildings) was evaluated on a go/no-go basis. This criterion was not point scored.

GSA generally found that Millar's proposal did not conform to the format outlined in the RFP, was generalized and not tailored to this specific project, and did not identify the benefits or technical advantages of its proposal. Although GSA found Millar's proposal lacking in significant information, GSA nevertheless included it in the competitive range due to its low price, believing that Millar could improve its proposal through discussions.

GSA conducted discussions with all offerors whose proposals were in the competitive range. During discussions with Millar, GSA advised Millar that its technical proposal was generalized and was not tailored to the project solicited. After discussions were concluded, GSA amended the RFP to include, among other things, a tripartite pricing structure so that it could compare proposals on the basis of low, medium and high quality elevator cab interiors. GSA requested the offerors to submit best and final offers (BAFO) by May 18, 1992, which were evaluated as follows:

<u>Firm</u>	<u>Technical Score</u>	<u>Price</u>		
		<u>Low Quality</u>	<u>Medium Quality</u>	<u>High Quality</u>
Armor	967.05	\$17,696,259	\$17,966,739	\$18,352,614
Firm B	934.0	17,250,223	17,793,404	18,095,171
Firm A	925.8	14,269,066	14,516,574	14,922,137
Millar	774.9	13,368,591	13,570,618	13,962,619

Once again, GSA found that Millar's proposal contained primarily generalized information not specifically addressed to this project, notwithstanding GSA's discussion advice.

As a result of evaluations and further clarifications, GSA found it necessary to amend the solicitation to specify the size of the maintenance crew. GSA conducted a second round of discussions with all four offerors and requested submission of revised BAFOs to be submitted by August 31. According to GSA, during these discussions, Millar was again requested to provide further technical details and was advised that the information previously provided was still generalized and lacked structure. The results of GSA's evaluation appear below:

<u>Firm</u>	<u>Technical Score</u>	<u>Price</u>		
		<u>Low Quality</u>	<u>Medium Quality</u>	<u>High Quality</u>
Armor	967.1	\$13,745,700	\$14,252,509	\$14,402,055
Firm A	828.3	12,936,394	13,196,840	13,623,868
Firm B	707.4	13,639,481	14,285,492	14,574,535
Millar	680.0	11,502,222	11,704,249	12,096,378

Although Millar had submitted some additional information, GSA found that its revised BAFO was still largely generalized and not tailored to the project. GSA considered the technical scores of Millar's and Firm B's revised BAFOs to be so far below the technical scores of the revised BAFOs submitted by Armor and Firm A that the offers of the two former firms would not be advantageous to the government. In making its source selection decision, GSA determined that Armor's revised BAFO was the most advantageous offer to the government, price and technical factors considered, and awarded a contract to Armor on September 30.

On October 16, GSA debriefed Millar. GSA explained its evaluation of Millar's proposal, describing Millar's failure to provide all the information requested in the RFP and to tailor its proposal specifically to the project solicited. GSA described techniques for organizing proposals used by offerors on prior procurements to prepare proposals with sufficient information and tailored to the solicitation.

On October 23, Millar filed a protest in our Office alleging that GSA based its award on evaluation factors not announced in the RFP. Specifically, Millar refers to the debriefing meeting where GSA allegedly told Millar that its "presentation" did not meet GSA standards. Millar argues that, since "presentation" was not an evaluation factor in the RFP, GSA improperly evaluated its proposal.

Since an agency's technical evaluation is dependent upon the information furnished in a proposal, the burden is clearly upon the offeror to submit a proposal that is adequately written. Marvin Eng'g Co., Inc., B-214889, July 3, 1984, 84-2 CPD ¶ 15. An offeror which submits an inadequately written proposal, no matter how capable that offeror may be, runs the risk of having its proposal eliminated from consideration for award. KCI, Inc., B-244690, Oct. 29, 1991, 91-2 CPD ¶ 395; Aqua-Tech, Inc., B-210593, July 14, 1983, 83-2 CPD ¶ 91. It is not our function to evaluate proposals and we will not substitute our judgment for that of the procuring agency which eliminated a proposal from consideration for award where the proposal lacks information specifically requested by the solicitation and the missing information is important. Electrospace Sys., Inc., 59 Comp. Gen. 415 (1979), 79-1 CPD ¶ 264; Transact Int'l, Inc., B-241589, Feb. 21, 1991, 91-1 CPD ¶ 196.

Here, the RFP required offerors to submit detailed technical proposals, specifying the information required and providing detailed instructions on what information to present in each section of its technical proposal. The technical proposal was to be provided in sections, one for each technical evaluation factor.

Under the RFP, one section of the proposal was to address the experience technical factor. The RFP provided the following instructions for this factor:

"Provide written answers to the following based on actual experiences. Replies should be detailed and informative, and cover all facets of the topics.

"Innovation. Discuss and give examples of your familiarity, involvement, and application of the following techniques or systems:

- Design
- Elevator installation
- Construction supervision
- Project management
- Estimating
- Building systems
- Energy conservation
- Environmental Control
- Maintenance

"General. Provide the following information on each completed project:

- Name and location
- Description
- Design cost
- Construction cost
- Design start and completion dates
- Construction start and completion dates
- Maintenance start and completion dates"

Evaluation of experience was to be first on a "go/no-go" basis and then a score given for quality in excess of the stated minimum requirements. The RFP stated the following minimum requirements for experience:

"The offeror must demonstrate that it has successfully completed at least three (3) projects requiring the installation of high speed (not less than 500 feet per minute) elevators in multiple banks of 10 (to) 12 stories or greater in existing high-rise buildings designed for a population of not less than 6,000 people. In addition, such offeror must have been in business not less than 5 years."

GSA found that Millar's initial proposal provided insufficient information to justify a higher than minimum rating. Although Millar subsequently submitted additional information pertaining to this factor, GSA found that this information did not fully describe the nature or scope of its experience. GSA gave Millar the lowest score among all offerors for this factor; that score was substantially lower than Armor's score.

Our review of the record confirms that this section of Millar's proposal was indeed relatively minimal. In its initial proposal Millar only discussed two prior contracts, whereas the RFP required a minimum of three. Although Millar subsequently revised its proposal to discuss three additional contracts, GSA found much of the submitted information was "unexplained, untailored or irrelevant." Our review indicates that Millar's descriptions of its experience do not fully address the "innovation" techniques or systems, or other general information requested by the RFP. For example, Millar did not address estimating, energy conservation, design costs and construction costs.⁵ Even where Millar's proposal apparently addresses some of the requested "innovation" techniques or systems, the discussion is brief and does not clearly identify which technique or system it is intended to address. Since this solicitation is for a large elevator modernization and maintenance contract, the requested specific information on similar experience is important for GSA to be able to evaluate the extent and applicability of Millar's experience. Millar's significant failure to respond in accordance with the RFP instructions for preparing this section of the technical proposal justified a low score for this technical factor.

Another section of the technical proposal was to be dedicated to the design approach/management of construction evaluation factor, for which the RFP provided the following instructions:

"The offeror shall submit with the proposal, design intent drawings which best meet the project needs and goals, and the technical excellence necessary to realize the design and elevator modernization in its optimum sense. A full written description of the mechanical, electrical, structural and architectural systems is required as well as proposed materials. The proposal shall address building efficiency, energy conservation,

⁵Millar did list the contract price for one of these five contracts, but even then it did not identify the design costs and construction costs.

sequencing, functionality, aesthetics, quality, durability and flexibility.

"The offeror shall also submit a management plan for the construction phase of the project and related contract administration. The plan shall address the following:

"Cost Control: Explain how costs will be controlled internally and how payment requisitions will be generated.

"Schedule Control: Describe the methods you will establish to monitor and control the various phases of the work in order to meet the contract completion date.

"Coordination of Team Members: Show how the team members will work together to provide a unified Design/Build approach to all elements of the work. Show the interrelationships among the [g]overnment, . . . and the [c]ontractor.

"Organizational Structure: Present an organizational chart that clearly reveals a structure which will facilitate the execution of all phases of the project.

"Maintenance Plan: Explain your plan to ensure satisfactory maintenance for the optimum life of the contract."

GSA found that this section of Millar's proposal, even as amended in its BAFOs, lacked the structure and information requested by the RFP. Instead, Millar's proposal included a large amount of standard commercial literature that were not specifically annotated to the RFP requirements. GSA also found that the proposal did not include a management plan, and did not address energy conservation, building efficiency and sequencing. As a result, GSA scored this section of Millar's revised BAFO substantially lower than the revised BAFOs of two of the other offerors.⁶

⁶After the initial proposal evaluation, Millar's score on this section was substantially lower than that of the other offerors. Millar's score rose only slightly as a result of its proposal revisions. The reason that its revised BAFO score for this section was not the lowest among all four offerors was that one of the offerors' revised BAFO included numerous exceptions to the RFP.

The record confirms that the overwhelming bulk of Millar's proposal was standard commercial literature such as manufacturers' sales literature, technical and repair manuals, and Millar's own newsletter and preventative maintenance guidebook. It appears that only the design intent drawings, a model of a proposed cab interior and three narrative pages of Millar's initial proposal were prepared specifically for the design-approach/management-of-construction aspect of the project solicited. Although some of the commercial literature that Millar did submit related to the information requested, such generalized literature does not constitute a proposal which responds to the detailed request of this RFP for proposals to design, construct and maintain this unique and technologically advanced project. See Supreme Automation Corp.; Clay Bernard Sys. Int'l, B-224158; B-224158.2, Jan. 23, 1987, 87-1 CPD ¶ 83 (general response to detailed RFP requirement does not satisfy offeror's duty to affirmatively demonstrate the merits of its proposal).

After discussions, Millar revised its initial proposal by adding information, such as a few pages discussing the elevator management system commands and describing the display codes indicating elevator car status, a chart showing the expected schedule for modernizing each elevator and an organizational chart for the personnel proposed to perform the contract. However, despite being advised of its dearth of details during discussions, Millar's revised BAFO was still severely deficient in the information which was clearly requested in the RFP. For example, while Millar provided a chart proposing a schedule for performing the contract, it did not explain the procedures it would use to monitor and control costs and time of performance. This information is critical to the required management plan. Indeed, the required management plan is noticeably absent from Millar's proposal, even though the RFP described in detail the contents of the plan. This plan is an important requirement because the contract was expected to span a number of years and the contractor's management responsibilities under this design-build contract were complex and extensive. In sum, the low score in this section that was awarded to Millar is reasonable in light of the magnitude of Millar's failures to address the specific requests for information contained in the RFP, despite being advised of this problem during discussions.

Another section of the technical proposal was reserved for the key personnel technical factor, for which the RFP included the following instructions:

"Identify project team key personnel . . .

"A resume must be submitted for each named individual. A statement should accompany the resume of each person defining the extent of availability and corporate commitment of that key person for the proposed position.

"Each resume shall include a description of the duties performed by and the responsibilities assigned to the individual on the last three (3) similar projects on which he/she was employed and the duties to be performed on this project. It should also show the training each individual has received and what license(s) [are] possess[ed] by each individual."

GSA found that Millar's initial proposal inadequately addressed the RFP requirements for this section because the proposal did not identify the specific responsibilities that each named individual would be assigned, nor did it state the extent of availability and commitment for each of these persons. The resumes provided did not sufficiently detail the named individuals' prior duties/responsibilities on the last three similar projects to which each was assigned. Also, although the proposal named individuals to elevator modernization teams, it did not provide resumes for these individuals. Our review of the record shows that the resume deficiencies cited by GSA were present in Millar's initial proposal and were never corrected in Millar's subsequent BAFO or revised BAFO.⁷ Our review shows that GSA reasonably allocated a low score to Millar for this evaluation factor based on Millar's failure to provide the requested information pertaining the key personnel.⁸

In short, based on our review, we find that GSA reasonably found Millar's proposal was technically deficient, particularly when compared to the other proposals received, and

⁷Contrary to Millar's contentions, GSA considered information on an organizational chart submitted by Millar in revising its proposal, and indeed increased Millar's score somewhat as a result of this information.

⁸For this section also, Millar's score was the lowest of the four offerors.

properly eliminated Millar's proposal from award consideration, notwithstanding its low price.⁹ See Lithos Restoration, Ltd., 71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 379. While Millar asserts that its proposal exceeds RFP requirements and that it is entitled to the award because it offers the lowest price, Millar misstates the RFP evaluation criteria, which give primary weight to technical factors. For the reasons stated above, the record shows that Millar's proposal was significantly technically inferior to the other competitive range proposals and it was properly eliminated from award consideration because, given its proposal inadequacies, it was reasonably found not to be most advantageous to the government under the RFP evaluation criteria. Id.

There is no evidence in the record to support Millar's claim that GSA applied an unannounced evaluation factor in considering its proposal. Millar submitted an inadequately written proposal at each and every stage of this procurement despite the detailed submission instructions stated in the RFP and being advised that further details were required. While Millar asserts that it "had the right to submit a proposal in accordance with elevator industry standards accepted in the New York City area," it is the RFP proposal instructions and evaluation criteria that govern the submission and evaluation of proposals on federal procurements. Poor technical evaluation scores resulting from inadequately prepared proposals are proper and do not indicate a hidden evaluation factor.¹⁰ See KCI, Inc., supra; Aqua-Tech, Inc., supra.

⁹Millar also asserts that GSA's evaluators did not have sufficient experience to evaluate the technical aspects of its proposal. Evaluator qualifications are within the contracting agency's sound discretion and do not give rise to review by our Office unless there is a showing of possible abuse of that discretion. Cajar Def. Support Co., B-239490.2, Oct. 30, 1990, 90-2 CPD ¶ 346. In view of our conclusion that GSA reasonably eliminated Millar's proposal from consideration for award, we do not find that Millar has shown any abuse of the agency's discretion in this matter. See id.

¹⁰In the October 16 debriefing with Millar, GSA explained the magnitude of Millar's proposal inadequacies and the negative impact it had on Millar's technical score. Millar appears to have misinterpreted the contracting officer's candid assessment of Millar's proposal and his suggestions for improving the firm's future proposals on federal procurements as an indication that GSA rated each firm's presentation style. We find nothing in the record of the evaluation, nor in the record of the debriefing, to support this interpretation.

Millar's protest submissions do not successfully refute the basic inadequacy of its proposal, as described here and in the agency report. Instead, the protester primarily alleges a number of errors from which it concludes that GSA's evaluation of its proposal was unreasonable; however, these alleged deficiencies, even if true, would not justify Millar's proposal receiving the substantially higher technical score that it would need to be in line for award. Many of these alleged errors can largely be attributed to Millar's failure to submit an adequately written proposal, rather than agency oversight or error. We examine a couple examples of these alleged errors below to illustrate their lack of merit and insignificance of these allegations on the reasonableness of the overall evaluation.

Millar describes the "most flagrant example" demonstrating the unreasonableness of the evaluation as GSA's interpretation of Millar's requirement for "a non-disclosure agreement and a letter of understanding that outlines the proprietary nature of the software" that it offered to provide under the RFP, a requirement that Millar included for the first time in its revised BAFO. In its report on the protest, GSA states that Millar's requirement apparently conflicted with the RFP requirement that all diagnostic tools be the property of the government, which it states includes applicable software. GSA's concerns about this uncertain restriction, first included in Millar's revised BAFO without sufficient explanation of its intended scope and purpose, seem reasonable, since the RFP clearly envisioned that the contract give the agency title to the diagnostic tools needed to maintain and repair the elevators; at best, Millar introduced doubt as to whether its proposal offered to comply with the RFP requirements.¹¹ It was Millar's responsibility to submit a BAFO, which was not dependent on further explanation to ensure that it met the RFP requirements and GSA could legitimately downgrade Millar's proposal for introducing this uncertain restriction in its revised BAFO. See Labat-Anderson Inc., B-246071.4, Oct. 9, 1992, 92-2 CPD ¶ 244; Motorola, Inc., B-235599, Sept. 20, 1989, 89-2 CPD ¶ 252.¹² In any event, while it is apparent that Millar

¹¹From our review, it is unclear whether Millar's requirement for a non-disclosure agreement would place limitations on the government's ownership of or use of the diagnostic tools, which the government was to acquire under the contract.

¹²Although Millar asserts that GSA could have requested clarification of the meaning of the non-disclosure requirement, it appears that such communications would constitute discussions since it would enable GSA to determine Millar's

(continued...)

was downgraded for introducing this condition in its revised BAFO, Millar's proposal was found otherwise significantly deficient in the design approach/management of construction section of its proposal--a finding that Millar's protest submissions do not refute. The majority of these deficiencies related to Millar's failure to submit an adequately written proposal, which is the primary reason for Millar's low technical rating.

Another example of Millar's attack on the evaluation is GSA's alleged failure to include in its report on this protest two pages--a chart of the proposed modernization schedule and an organizational chart--from Millar's proposal. Millar claims that this shows that GSA did not consider all of Millar's submissions in its evaluation of Millar's proposal. GSA states that these charts were unintentionally omitted from its report; GSA supplemented its report to include these pages. GSA states that it considered these charts in the evaluation of Millar's proposal. The record confirms that GSA did consider these materials and even awarded Millar additional points as a result. In any case, as discussed above, even considering these materials, which are only components of the management plan required to be submitted by the RFP, Millar's proposal failed to include the required management plan; therefore, the consideration of these aspects of the required management plan do not materially impact on the overall evaluation of Millar's otherwise inadequate response to the design approach/management of construction section of its proposal.

As indicated above, Millar cites a variety of other alleged discrepancies in the GSA evaluation, which, even if true, would not result in Millar receiving a significantly higher technical score, but basically does not contest that it failed to provide the required proposal details despite being requested to do so. See Research Analysis and Maintenance, Inc., B-242836.4, Oct. 29, 1991, 91-2 CPD ¶ 387. Under the circumstances, Millar has not shown that

¹²(...continued)

compliance with the RFP requirements. See Motorola, Inc., supra. In this regard, an agency has no legal duty to reopen the competition to permit a single offeror to submit a revised proposal. Id.

its relatively poor evaluation or its failure to receive award were unreasonable or improper. Id.; Lithos Restoration, Ltd., supra.

The protest is denied.¹³


James F. Hinchman
General Counsel

¹³Millar also protests the award to Armor alleging that Armor's proposal violates the Buy American Act. There is no evidence to support this allegation. See New York Elevator Co., Inc., B-250992, Mar. 3, 1993, 93-1 CPD ¶ _____, which dismissed the protest of another competitor on this RFP, which also alleged, in more depth, that Armor's proposal violates the Buy American Act.