

Matter of: Compliance Corporation

File: B-254429; B-254429.2

Date: December 15, 1993

Kathleen Little, Esq., Nancy L. Boughton, Esq., and Alice M. Crook, Esq., Howrey & Simon, for the protester. Virginia D. Green, Esq., Sara M. McWilliams, Esq., and James K. Kearney, Esq., Reed Smith Shaw & McClay, for Materials, Communication and Computers, Inc., the interested party. Daniel A. Laguaite, Esq., Department of the Navy, for the agency. Stephen J. Gary, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's proposal for technical support of aviation maintenance programs reasonably was found to be technically unacceptable where, for the first time in its best and final offer (BAFO), protester substituted two key individuals whose personnel data forms--unlike those of the individuals they replaced--failed to demonstrate the minimum experience and qualifications required by the solicitation.
2. Protest that agency improperly failed to reopen negotiations after finding protester's best and final offer (BAFO) technically unacceptable is denied where (1) BAFO was downgraded based on changes introduced for the first time in BAFO, and (2) it was not clearly in government's interest to reopen negotiations, since technical factors were most important and, even disregarding the BAFO modifications, awardee's proposal was technically superior to protester's.

DECISION

Compliance Corporation protests the award of a contract to Materials, Communication and Computers, Inc. (MATCOM) under request for proposals (RFP) No. N00421-92-R-0016, issued by the Department of the Navy for technical support of aviation maintenance programs. Compliance, the incumbent contractor, contends that the award was based on an improper cost and technical evaluation.

We deny the protest.

BACKGROUND

The solicitation, issued in July 1992, contemplated the award of a cost-plus-fixed-fee contract for a base period and 4 option years. The RFP provided that award would be made to the responsible offeror proposing "the greatest value to the Government, cost and other factors considered." Cost was to be evaluated for realism, and the solicitation specifically advised that unrealistically low labor rates could result in a reduced technical score. The RFP also provided, however, that "technical factors are considered significantly more important than evaluated costs." In that regard, the solicitation provided for the evaluation of technical proposals in five areas, of which personnel and technical approach--equally important--were to be given the most weight. Management approach and corporate experience, equal in weight, were the second most important factors; facilities was the least important.

In the personnel area, the RFP designated certain positions--including 17 maintenance analysts, at issue here--as key employee positions. For each such position, offerors were to provide a Personnel Data Form (PDF) relating in detail the proposed employee's experience and qualifications to the requirements of the RFP. Maintenance analysts, according to the solicitation, would gather and evaluate data related to maintenance functions, manage maintenance and integrated logistics support operations (including maintenance tracking systems), and conduct training. The minimum experience and qualification requirements for the maintenance analyst positions--as specified in the RFP--included 8 years of relevant experience in naval aviation programs, including maintenance management, and a demonstrated knowledge of airframes, power plants, hydraulics, pneumatics, avionics, survival equipment, or weapons delivery systems. The RFP required that such experience include 3 years in aircraft systems/components data analysis and 2 years of direct experience with aircraft or engine component tracking systems.

Six proposals were submitted. After an initial evaluation, the Navy determined that only two of the proposals--those of Compliance and MATCOM--should be included in the competitive range as susceptible of being made acceptable through discussions. In discussions with Compliance, the Navy raised one technical question concerning the matrix format Compliance had used to display its proposed personnel. In addition, the agency asked several questions relating to cost realism (discussed at length below). In response, Compliance submitted a revised cost proposal and addressed

the Navy's technical question by proposing its personnel on a contract line item basis. Based on these revisions, the agency rated Compliance's technical proposal average in personnel. Thereafter, the Navy notified Compliance that its proposal remained in the competitive range and requested Compliance to submit its best and final offer (BAFO). Since the agency no longer had concerns about technical matters, the BAFO request did not include any questions about the technical proposal; however, the Navy again requested that Compliance justify certain of its proposed costs in its BAFO.

In response, Compliance's BAFO included a new cost narrative to justify its proposed cost of \$8,549,417. On its own initiative, Compliance also revised its technical proposal, by substituting new individuals for 2 of the 17 individuals initially proposed as maintenance analysts. After evaluating Compliance's BAFO, the Navy determined that the PDFs submitted for the two substitute analysts--unlike those initially submitted--did not demonstrate compliance with the minimum experience and qualification requirements of the solicitation. The Navy concluded that Compliance's BAFO was technically unacceptable for failure to meet a material requirement of the solicitation. Based primarily on the Navy's technical evaluation and, to a lesser extent, on the agency's continuing concerns about the realism of Compliance's cost proposal, the agency awarded a contract to MATCOM; Compliance's protest followed. Performance of the contract by MATCOM has been suspended pending resolution of this protest.

TECHNICAL EVALUATION

Compliance contends that the agency lacked a proper basis for finding the two substitute key individuals technically unacceptable. The protester maintains that, with respect to experience requirements, the allegedly unacceptable PDFs provided the same level of detail as the other PDFs it submitted, which had been found acceptable. Consequently, Compliance argues, the agency either should have found the substitute PDFs acceptable or advised the firm in discussions that the PDFs initially submitted were deficient.

In reviewing protests of an evaluation, we will examine the evaluation to ensure that it was reasonable. Tate-Griffin Joint Venture, B-241377.2, Jan. 7, 1992, 92-1 CPD ¶ 29.

We find nothing unreasonable in the evaluation here. First, Compliance's position that the unacceptable PDFs contained the same information as the PDFs the agency found acceptable is simply incorrect. The record shows that all 17 of Compliance's PDFs the Navy initially found acceptable

demonstrated at least 2 years of relevant experience with aircraft or engine component tracking systems, and included detailed statements of the experience gained in previously held positions--not merely a listing of those positions--which showed compliance with solicitation requirements. For example, the PDF initially submitted for one of the original management analysts who later was replaced demonstrated more than 2 years of relevant experience that included the processing of maintenance action forms, which were the source documents for the agency's maintenance material management (3-M) system--the basic maintenance data collection system used by the Navy to keep track of assets, record maintenance and supply actions, and to measure aircraft readiness. The agency concluded that the described experience actually exceeded the minimum requirements of the RFP and clearly demonstrated an understanding of tracking inspections and life management of critical parts.

The two substitute PDFs, on the other hand, did not demonstrate the required 2 years' direct experience in maintenance tracking systems required by the RFP. For example, while one of the substitute PDFs indicated that the individual had performed duties related to a naval maintenance tracking system, the PDF showed that he had performed such duties for only little more than 1 year, not for the 2-year minimum period required by the solicitation. Similarly, the second individual's PDF showed only 1 year of experience in performing duties related to the tracking system. Based on the clear disparity in the length of experience in the PDFs initially submitted and those substituted later, the Navy had a reasonable basis for determining that Compliance's BAFO, unlike its initial proposal, failed to meet the minimum requirements of the solicitation. Further, since the PDFs in Compliance's initial proposal satisfied all RFP requirements, there were no deficiencies in this area for the agency to raise during discussions; Compliance's allegation that the agency failed to provide meaningful discussions therefore also is without merit. See generally Centex Constr. Co., Inc., B-238777, June 14, 1990, 90-1 CPD ¶ 566.

¹Among other things, this individual's PDF also indicated that he generated correspondence and submitted numerous reports on the status and activity of the aircraft in the squadron, which involved the reporting of flight hours and the operational status of aircraft to avoid exceeding the life limits of critical parts. In addition, the individual's PDF specifically referred to experience with aircraft engine management systems which showed familiarity with parts life management issues.

Compliance argues that, even if the substitute individuals' specific experience was not set forth as fully as in the original PDFs, the evaluators should have been able to ascertain--based on their own knowledge and experience--that the substitute individuals had the requisite experience from the PDFs' listing of the jobs they had held previously. This contention is without merit. It is an offeror's responsibility to prepare an adequately written proposal which can be evaluated in accordance with the criteria set forth in the solicitation; an offeror runs the risk of being rejected if it does not submit an adequately written proposal. See Picker Int'l Inc., 68 Comp. Gen. 265 (1989), 89-1 CPD ¶ 188. Since Compliance has not shown that the information included in the substitute PDFs demonstrated compliance with the experience and qualification requirements of the RFP--as noted above, we have determined that they did not--there is no basis for the contention that agency evaluators should have supplied the missing information based on their own knowledge and experience. Id.

Compliance maintains that any deficiencies in the PDFs were minor and should not have resulted in a determination that the proposal as a whole was unacceptable. In support of this claim the protester notes that, aside from the personnel area, though the adjectival ratings given Compliance's proposal were somewhat lower than those assigned to MATCOM's, the difference in overall ratings was not large. Evaluation scores notwithstanding, however, an otherwise acceptable proposal properly may be rejected where the proposal fails to comply with material solicitation requirements. See J.G. Van Dyke & Assocs., B-248981; B-248981.2, Oct. 14, 1992, 92-2 CPD ¶ 245. As noted above, the RFP designated these positions as "key" and explicitly set forth their minimum experience requirements; the record shows that, in view of the critical importance of these positions to the proper maintenance and safety of the fleet, the Navy viewed these requirements as material to an acceptable level of contractor performance. Compliance does not dispute the agency's position regarding the importance of the positions. Under these circumstances, the nonconforming PDFs reasonably were viewed as rendering Compliance's proposal technically unacceptable. See Picker Int'l Inc., supra (proposal failing to conform to material solicitation requirement is unacceptable and may not form the basis for award).

Compliance argues in the alternative that, after determining that the firm's BAFO was technically unacceptable, the Navy should have provided Compliance a further opportunity to revise its proposal by reopening negotiations. This argument, too, is without merit. As a general rule, BAFOs are intended to be the final submission from offerors prior

to an agency's selection of an awardee. See Federal Acquisition Regulation (FAR) Subpart 15.6; Mine Safety Appliances Co., B-242379.5, Aug. 6, 1992, 92-2 CPD ¶ 76. Once BAFOs have been submitted, contracting officers generally are advised not to reopen discussions "unless it is clearly in the Government's interest to do so (e.g., it is clear that information available at that time is inadequate to reasonably justify contractor selection and award based on the [BAFOs] received)." Id.; FAR § 15.611(c).

There is no basis for concluding that it was "clearly in the government's interest" to reopen negotiations here. To the contrary, the record indicates that further negotiation was not required for the agency to reach an award decision, and would not have affected its decision to award the contract to MATCOM in any case. In this regard, based on the perceived technical superiority of MATCOM's proposal, the agency concluded that correction of the technical deficiencies concerning the substituted PDFs was "not anticipated to change the award decision"; although both proposals were highly rated, MATCOM's was rated superior overall. For example, both proposals were rated excellent in the technical area, but the evaluators concluded that MATCOM's technical strategy was more desirable and would yield more improvements than Compliance's. They noted, for example, MATCOM's "in depth knowledge of the support needed," its "capability to accomplish the task," the firm's "superior method to accomplish the effort," and MATCOM's ability "to provide comprehensive support while improving the process in several areas." On the other hand, the agency viewed the technical methods proposed by Compliance, the incumbent contractor, as being not "as extensive as the methods proposed by MATCOM." We conclude that there was no clear advantage to be derived from reopening negotiations, and that the agency reasonably decided not to do so.

²Because an agency generally is not required to reopen negotiations after BAFOs are submitted, an offeror that revises its proposal in its BAFO generally assumes the risk that the proposal will be rejected as unacceptable without further discussions. GRD, Inc., B-251926, May 14, 1993, 93-1 CPD ¶ 383. Here, when the Navy requested a BAFO from Compliance it explicitly placed Compliance on notice that discussions had been concluded. This notice notwithstanding, Compliance chose to make substitutions in its proposed key personnel, and thereby accepted the risk that its proposal would be rejected based on these changes.

Cost Evaluation

Compliance asserts that the Navy, in its cost-realism analysis, made unwarranted upward adjustments to Compliance's proposed indirect rates, such as those for fringe benefits, general and administrative expenses (G&A), and overhead, and that its cost advantage therefore should have been greater (Compliance's evaluated cost was \$9,613,722, compared to MATCOM's \$10,059,710). In addition, although the agency did not make an upward adjustment to Compliance's direct labor rates, Compliance maintains that the Navy improperly downgraded its technical proposal based on the agency's perception that those rates were unrealistically low. The agency's improper cost evaluation, Compliance concludes, precluded a proper "greatest-value" award decision.

These arguments are without merit. First, since Compliance's proposal properly was rejected as technically unacceptable (as discussed above), the issue of the propriety of the realism analysis of Compliance's proposed costs is academic; Compliance would not move into line for the award even if it were correct. In any case, the cost realism evaluation was reasonable. The Navy was concerned with Compliance's indirect rates because they were approximately half the comparable rates under Compliance's current contract, and with the direct labor rates because of the possibility that such low rates would affect Compliance's ability to retain a stable work force. The Navy thus asked Compliance during discussions to explain in detail how the agency's concerns would be overcome. Absent an adequate explanation, the Navy further stated, it would adjust those costs upward; even if a reasonable explanation were provided, moreover, the Navy stated its intention to place a cap on the proposed indirect rates and to allow direct costs to increase only to the extent of the escalation factors included in Compliance's proposal.

Compliance responded in its BAFO that it would not accept a rate cap and, by way of justifying the proposed rates, explained that its indirect rates had remained stable for the past several years and could be expected to continue to do so; that its proposed G&A rate reflected its budgeting of current and future expected revenues over the life of the proposed contract; that, as indicated in discussions, the budgets had been submitted to the DCAA and were available in that agency's files; and that DCAA had taken no exception to the forecasted indirect rates. The Navy was unpersuaded by

³Compliance does not question the agency's evaluation of MATCOM's proposed costs, which both the Defense Contract Audit Agency (DCAA) and the Navy concluded were realistic.

the protester's explanation. Based on Compliance's reference to budgetary information on file with DCAA, the Navy contacted that agency to verify the realism of the proposed rates. In response, DCAA recommended that a ceiling or cap be placed on the proposed rates--which, it confirmed, were substantially lower than historical rates. The Navy viewed this as support for its determination that the proposed rates were unrealistic and concluded that Compliance had not adequately supported the realism of the proposed rates.

There is no basis for taking exception to the Navy's conclusions and resulting upward adjustment of Compliance's indirect rates. While Compliance explained the assumptions underlying its proposed indirect rates, we see nothing in that explanation that clearly establishes that the proposed rates likely would be experienced if Compliance were awarded the contract. Rather, it appears that Compliance's proposed rates represented an attempt to shift to the Navy the risk that the actual rates would be higher; the Navy was not required to accept this risk. The Navy's position was all the more reasonable in light of DCAA's similar conclusions.

We also reject Compliance's argument that the Navy improperly downgraded Compliance's technical proposal--rather than adjust the firm's direct labor cost upward--based on a concern that the labor rates were unrealistic. As noted above, the RFP specifically provided that unrealistically low labor rates might adversely affect an offeror's technical rating. As discussed above, the Navy concludes that Compliance's proposed rates were sufficiently low to entail a risk that Compliance would not be able to maintain a stable work force; there thus was nothing improper in the agency's downgrading of Compliance's technical proposal on that basis. On the other hand, the record shows that the Navy accepted the proposed rates for purposes of cost realism (and did not adjust them upward) because they were basically the rates actually experienced by Compliance, the incumbent, under its current contract. We find nothing unreasonable in the Navy's conclusions.

The protest is denied.

James F. Hinchman
General Counsel