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DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

40978

FILE: B-180690 DATE: July 26,1974

MATTER OF: Austin Electronics B-5738

DIGEST: 1. GAO does not believe agency acted unreasonably in pointing out by letter 24 deficiencies in proveaver's technical proposal rather than conducting "give and take" oral negotiations, or in failing to negotiate further when revised proposal was also considered deficient, as there is no inflexible rule used in construing the requirement in 10 U.S.C. 2304(g) for written or oral discussions, rather extent and content of discussions is primarily for agency determination. Furthermore, it would be unfair for agency to help one offeror through successive rounds of discussions to bring its proposal up to level of other adequate proposals where offeror's revised proposal contains large number of uncorrected deficiencies resulting from offeror's lack of competence, diligence or inventiveness.

2. Rejection of revised proposal is not improper since determination as to whether proposal is technically acceptable is primarily matter for administrative discretion and record does not show agency conclusion that protester's proposed approach contains deficiencies which present unacceptable risk that proposed system would not meet desired standards is unreasonable.

[Protest Involving Procurement on a Cost-Plus-Fixed Fee Basis]

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3. Although GAO recognizes that cost should be considered in determining most advantageous proposal in negotiated procurement, protester's proposal was properly rejected as technically unacceptable even though proposed cost was low.

On August 20, 1973, request for proposals (RFP) No. N61339-74-R-0002 was issued by the Naval Training Equipment Center, Orlando, Florida for the procurement on a cost-plus-a-fixed-fee basis of one Aviation Wide Angle Visual System with related data and support items. The system is to be integrated with an existing aircraft simulator. It will present the image of an aircraft carrier and respond to inputs from an instructor and a pilot.

Proposals were received from four firms and opened on the amended closing date of October 12, 1973. The initial technical evaluation of proposals resulted in a determination that Austin's and one other proposal were unacceptable because major systems modification would be required. Nevertheless, the Procurement Advisory Board determined that the two unacceptable offerors should be permitted the opportunity to correct their deficiencies. Accordingly, by letter dated December 19, 1973, the agency pointed out 24 areas considered deficient in Austin's technical proposal. Austin submitted a portion of its proposal revisions by letter dated January 7, 1974, while the remainder were submitted via telecopier on January 24, 1974. The revised technical proposals of all offerors were evaluated and by letter dated February 13, 1974, Austin was informed that its proposal as revised was considered technically unacceptable. At the request of Austin a debriefing conference was held on February 26, 1974, during which the reasons for determining Austin's proposal unacceptable were discussed in depth.

Briefly stated, it is Austin's position that had the Navy clearly and completely pointed out the technical deficiencies in Austin's proposal during negotiations, that firm would have been able to bring its proposal up to an acceptable level. Austin insists that its proposal, which it states offers the lowest cost estimate, was rejected for deficiencies which are either the result of misunderstandings between Austin and the Navy or which can be easily remedied with only an inconsequential impact on its cost proposal.

For reasons discussed below the protest is denied.

The Navy's rejection letter lists six main areas in which Austin's revised proposal was considered technically unacceptable. Although there are additional areas of alleged technical shortcomings in the revised proposal, the dispute concerning the Navy's negotiation techniques and the agency's rejection of the Austin proposal is focused mainly on these six major areas. The first three areas of dispute are concerned primarily with Austin's contention that the agency failed to conduct meaningful negotiations, while the remaining three areas are mainly concerned with the propriety of Navy's technical evaluation of the Austin proposal.

The first area of dispute concerns the Navy's conclusion that: "Target image generation system cannot provide nearly infinite target rotation rates required to simulate bolter near center of carrier model rotation." Austin concedes that its proposed camera gantry design approach, which is based on polar coordinates, is not in accordance with the Navy's design conception which is based on cartesion coordinates. However, Austin insists that had the Navy established meaningful discussions with Austin, it would have been able to convince the agency of the superiority of its polar coordinate design approach. In any event, Austin contends that its design could be easily modified with the addition of one more "servo", to conform to the Navy's requirements.

The agency disagrees with Austin on both counts. It is the Navy's position that protracted discussions with Austin would not have induced it to drop the cartesion coordinate system, which it insists has been proven to be both cost effective and reliable through years of use by commercial airlines. The Navy also feels that Austin's system as proposed would "not work in practice." Concerning the modifications necessary to transform Austin's proposed system to an acceptable one, the Navy argues that Austin's proposed additional "servo" is not a simple modification but would necessitate added complexity in the mechanical structure of the gantry and the computer program.

The next two areas of dispute concern the Navy's second and third reasons for disqualifying the Austin proposal, which are as follows: (2) "Non-linear mapping function of background projection lens would distort insetting hole such that registration of target image with insetting hole would not be possible", and (3) "Background projection lens would distort and compress the carrier wake image out of tolerance near the edge of projection field."

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Austin insists that had the Navy specifically pointed out these problems during negotiations it could have easily provided their solution. In fact, Austin contends that the information needed to answer the first problem area was already included in its initial proposal. Austin also notes that "a few minutes dialog" could have eliminated the second problem area.

The Navy counters that these two "disqualifications" relate directly to question No. 12 of its negotiation letter, which provides as follows: "Compliance is not shown for the display of special effects, such as a band of fog with the specified background distortion tolerance." The agency explains that the two "disqualifications" and question No. 12 are three manifestations of the same problem. Specifically, it is argued that Austin failed to propose a means to compensate for background image distortion, which the Navy reports is inherent in the non-linear mapping function of the background projection lens. The record indicates that Austin has proposed to project special effects, the insetting hole, and the carrier wake image through the distorted field of the background projection lens. The agency argues that all three areas would require the same type of correction since they are projected through the same lens.

Although, as Austin argues, it is possible that it would have benefited if these deficient areas were the subject of a "give and take" oral negotiation session, we do not believe the Navy's failure to engage in this method of negotiation was an abuse of discretion. Section 2304(g) of title 10 of the United States Code requires that written or oral discussions be held with all responsible offerors determined to be within the competitive range, price and other factors considered. We have held that in order to have meaningful discussions within the intent of 2304(g), generally, offerors should be advised of the areas in which their proposals have been judged deficient so that they may have the opportunity to satisfy the Government's requirements and the Government may thereby obtain the full benefits of competition. 47 Comp. Gen. 29 (1967); id. 336 (1967); 51 Comp. Gen. 431 (1972); 52 Comp. Gen. 466 (1973). At the same time we have recognized that there is no fixed, inflexible rule concerning the requirement for written or oral discussions; rather the content and extent of discussions needed to meet the requirement is a matter of judgment primarily for determination by the procuring agency, and such determination is not subject to question by our Office unless clearly without a reasonable basis. 51 Comp. Gen. 621 (1972). There is no requirement that negotiations be conducted in a "give and take" oral session so long as they are otherwise meaningful. Furthermore, we believe it would be unfair for an agency to help one offeror through successive rounds of

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discussions to bring its proposal up to the level of other adequate proposals where that offeror has been given the opportunity to correct a large number of deficiencies and such revisions as are made still leave a number of uncorrected deficiencies as a result of the offeror's lack of competence, diligence, or inventiveness. 51 Comp. Gen. 621 (1972). In the circumstances reported here, we are unable to conclude that the negotiations were not "meaningful" within the contemplation of the applicable statute.

Austin also argues that it was not allowed sufficient time in which to prepare its responses to the Navy negotiation letter, and insists that Navy technical personnel were unavailable to clarify alleged "abstractions" in certain of the Navy's questions.

In this connection, all offerors were notified by letter dated December 19, 1973, of deficiencies in their respective proposals and given until January 8, 1974, to make any revisions. In addition, agency personnel did provide Austin with oral clarifications concerning the computer portion of the proposal when requested and permitted Austin to submit additional proposal revisions. In these circumstances, we do not believe it may properly be said that Austin was deprived of an equitable opportunity to revise its proposal.

Austin points out that the Navy erroneously concluded that its proposal states that it will "use existing spare TRADEC digital-to-synchro converters." Therefore, Austin argues that the Navy had no justification to downgrade the Austin proposal because of the alleged lack of "TRADEC digital-to-synchro converters."

Page 2-72, paragraph 2.11.2, of the Austin proposal provides that "a count of the I/O requirements shows that the existing spares in the TRADEC computing system will be adequate to cover the needs of AWAVS. A list of the AWAVS interface assignments and the TRADEC spare capacity follows this page." The referenced list shows a requirement for "6 D/S". This was interpreted by the agency to mean digital-to- synchro converters. The record indicates that at the debriefing Austin stated that the number "six" did not refer to digital-to-synchro converters but to digital-to-synchro channels. The Navy concludes that since each synchro channel requires two analog channels, the approach Austin proposed at the debriefing exceeds the available spare TRADEC digital-to-analog channels. Therefore, it is the Navy's position that regardless of the interpretation placed on the symbol "D/S" in the Austin proposal the TRADEC spare capacity is

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exceeded. There is no evidence in the record which indicates that the Navy's position is erroneous in this regard.

The Navy's rejection letter cites as one of the six major reasons for rejection of Austin's proposal its conclusion that Austin's computer timing and executive scheduling concept is not feasible. We are informed that at the debriefing the Navy admitted that its wording of this deficiency was faulty and that it did not consider Austin's computer timing to be unfeasible. However, we understand that the agency does question the capability of Austin's proposed executive program to provide the required synchronization between the two computers. Austin asserts that during the debriefing the Navy indicated that its objection to this portion of the proposal was that Austin merely listed interprocessor interrupt equipment in its equipment list without specifying its particular function in the proposed system. Austin notes that in its response to the Navy negotiation letter it indicated that synchronization is to be accomplished by means of the interprocessor. The agency continues to insist that Austin's response is inadequate because, although Austin indicated the general function of the interprocessor, it never specified how the equipment would provide synchronization. We are unable to conclude that the agency's position in this regard is unreasonable or erroneous.

Further, it is Austin's position that in general the six disqualification areas provide little foundation for the rejection of the proposal. The record indicates that Austin's proposal was rejected for several interrelated reasons, "abstraction where detail was required; failure to recognize and/or provide acceptable approaches in certain critical areas; demonstrating originally, and not later adequately curing, many proposal deficiencies". It may be true that one of the areas of disqualification, standing alone would not justify rejection of Austin's proposal; however, it is clear from the record that Austin's proposed approach contained deficiencies which in the Navy's opinion presented an unacceptable risk that Austin's proposed system would meet the desired performance standards. For example, the final proposal evaluation report shows that agency technical personnel concluded that Austin's proposal was unacceptable in the computer area because the Austin proposal indicated that it had not "performed the required analysis to the detail required to clearly indicate the computer capabilities". Further, the report states, "it is apparent they do not fully comprehend the magnitude or the complexity of the AWAVS system". In addition to expressing dissatisfaction with the Austin proposal in such diverse areas as, "Installation Requirements","Simulation

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Requirements", "Special Effects", "Display Screen" and "Cockpit", the report indicates that the Navy evaluators did not believe that most of Austin's responses to the 24 questions raised in the negotiation letter were acceptable and, therefore, major system redesign and equipment additions would have been required to correct technical deficiencies.

It is not our function to resolve technical disputes of this nature. We have held that the determination as to whether a proposal is technically acceptable is primarily a matter of administrative discretion which will not be disturbed by our Office in the absence of a clear showing that such determination was unreasonable. 52 Comp. Gen. 382 (1973); 49 Comp. Gen. 309 (1969). Furthermore, where a proposal is so materially deficient that it could not be made acceptable without major revisions, there is no requirement that discussions be conducted with the offeror. 52 Comp. Gen. 865 (1973). We have also recognized that even though a proposal is initially considered within the competitive range, subsequent revisions of that proposal may result in a determination, as in the instant case, that such a proposal is no longer technically acceptable and therefore no longer within the competitive range. 52 Comp. Gen. 198, 208 (1972). Here, although Austin's initial proposal was determined technically unacceptable discussions were conducted with Austin pursuant to ASPR 3-805.2(a) (DPC #110) which provides that when there is doubt as to whether a proposal is within the competitive range that doubt shall be resolved by including it. Austin's proposal revisions submitted as a result of discussions failed to resolve the Navy's initial doubts. It is our view that the evaluation record contains sufficient evidence to reasonably support the Navy's determination that Austin's revised proposal was technically unacceptable.

Throughout Austin's argument it has emphasized the point that the agency exercised "poor business judgment" in ignoring the cost savings inherent in Austin's allegedly lower cost estimate. Although we recognize that cost should be considered in determining the most advantageous proposal for the Government, we have held that a proposal properly may be considered unacceptable solely because of technical unacceptability even though the rejected offeror's proposed costs are lowest. B-176598, December 11, 1972.

We have carefully reviewed the entire record, including Austin's "Deficiency Summary Chart" which summarizes Austin's position in regard to each of the 24 deficiencies cited by the

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Navy negotiation letter, and the Navy's evaluation reports, and we are unable to conclude that the rejection of Austin's proposal was unreasonable or the result of inadequate negotiation techniques on the part of the agency. The protest is therefore denied.

Deputy Comptroller General
of the United States