

This equipment is intended for use in monitoring and data reduction functions during the continuous development of functional software programs for air traffic control system requirements. Since this is a negotiated procurement and award is being

Comten-Comress (Comress) has protested the rejection of its proposal for a computer system performance monitor (CSPM) in response to the Federal Aviation Administration (FAA) request for proposals No. W45M-4-5204. The Comress proposal was rejected as technically unacceptable. Consequently, FAA refused Comress' many requests to provide additional information.

3. Technical evaluation is properly predicated on proposal as submitted and proposer is not justified in assuming information not submitted with or incorporated by reference into proposal would be considered, even though such information had been available to agency until just prior to receipt of proposals.

2. Where only one proposal is in competitive range, agency technical evaluation will be scrutinized to determine if (1) there is close question of acceptability; (2) there is opportunity for significant cost savings; (3) proposal deficiency is attributable to inadequacies of solicitation; and (4) deficiency is informational and could reasonably be corrected by limited discussion. Since none of above conditions are present, agency determination to exclude protester's proposal from competitive range is not questioned.

1. Agency does not violate regulatory requirement to conduct discussions with all proposers in competitive range where proposal, in response to RFP warning that failure to specifically discuss evaluation criteria might result in elimination from further consideration, was excluded from competitive range for substantial informational deficiencies and mere "parroting" of functional specifications so that evaluators could not analyze what was being proposed without requesting major revisions or additions to proposal.

DIGEST:

MATTER OF: Comten-Comress

FILE: B-183379

DATE: June 30, 1975

97136

no 69 number.

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



DECISION

withheld pending our decision, we are restricted in our factual recitation. Federal Procurement Regulations (FPR) § 1-3.103(b) (June 1964, Circ. 1).

Note 1 of the Notice to Offerors advised that proposers--

"* * * must discuss each [evaluation] criterion and the specifics under each * * * for the failure to do so may result in your proposal being eliminated from further consideration. It is suggested that the specifics thereunder be discussed separately in order to facilitate evaluation."

The stated evaluation scheme was on an item-by-item basis for four major items--I - CSPM; II - Installation and Checkout; III - Training; and IV - Documentation. The RFP cautioned that for each item * * * all requirements of the functional description must be satisfied." The order of importance of the criteria and subcriteria was:

"* * * Item I is weighted considerably higher than Items II, III, and IV combined and items II through IV are weighted equally.

"Item I is weighted as follows in descending order of importance: Item IA is most significant. Items IC, IE, IF, and IH are weighted equally but each is less than IC, IE, IF or IH."

Item IA concerned general aspects of the proposed system. Items C, E, F and H are respectively the counter module, controller module, distributor module and DR software. The RFP also contained a CSPM functional description with certain minimum requirements.

The FAA evaluation team concluded that Congress' proposal was unacceptable. The evaluation team prepared a contemporaneous report on the Congress proposal. While FAA has restricted dissemination of the report, we have a copy of it and have considered its contents in arriving at our conclusion. The report states that the biggest problem in evaluating the proposal is that the informational deficiencies are so serious that the evaluation team is unable to determine what has been proposed. Further, the proposal describes the counter module (IC) and controller module (IE), but provides no

detail as to how the modules will be used to satisfy the map generation function requirement. Scant detail is offered concerning how or if the functional requirements can or will be met. Various modules have been included in Compress' system block diagram that are not explained further in terms of function or characteristics. Further, 13 specific examples are cited where the only information in the proposal concerning the functional requirements were verbatim quotes from the RFP.

The total characterization by the evaluation team of the foregoing was that the proposal was so deficient that meaningful negotiations to upgrade Compress' proposal to an acceptable level could only have been accomplished through a submission of supplemental information so massive as to constitute a major revision of the proposal. Therefore, the proposal was excluded from further consideration.

FAA was required by Federal Property Management Regulations 101-32.1402-3 (1964 ed. amend. E-131) to coordinate the results of its technical evaluation with the Federal Computer Performance Evaluation and Simulation Center, Department of the Air Force (FEDSIM), for its concurrence to proceed with the procurement. This concurrence was forwarded to FAA and reads in part as follows:

"FEDSIM has reviewed the subject evaluation report, in which the COMRESS proposal was found to be incomplete and judged technically nonresponsive. FEDSIM concurs with this finding and judgment: The COMRESS proposal provides little information upon which to base an intelligent technical evaluation."

Compress contends that FAA's refusal to accept further clarifications of Compress' proposal and the resultant exclusion from the competitive range violates FPR § 1-3.101(d) (1964 ed. amend. 95) which requires that "negotiated procurements shall be on a competitive basis to the maximum practical extent." Compress also relies on FPR § 1-3.805-1(a) (1964 ed. amend. 118) for the proposition that FAA was required to conduct discussions with Compress. Compress stresses that since it believes there was only one other proposal submitted under this RFP, FAA's refusal to discuss Compress' proposal forecloses any competition on this procurement and renders FAA's actions erroneous. Compress requests that it be afforded the opportunity to clarify its proposal. Compress states that any additional clarifying information (a manual) needed was in FAA's possession for 8 months preceding the specified date for

receipt of proposals. Therefore, in effect, the Air Force concurrence in FAA's decision is as subject to question as the FAA decision itself.

From the record it appears the deficiencies in Compress proposal were not technical in nature, but rather were informational in character. Generally, discussions only need be conducted with offerors whose proposals are deemed by the contracting agency to be within a competitive range, price and other factors considered. FPR § 1-3.805-1(a) (1964 ed. amend. 118). In view of the regulatory preference for competition, we have held that a proposal must be considered to be within the competitive range so as to require discussions unless the proposal is so technically inferior or out of line as to price as to render any discussions meaningless. 53 Comp. Gen. 1 (1973). We recognize that the determination whether a proposal falls within the competitive range is primarily a matter of administrative discretion which we will not question unless it is clear that discretion was exercised without a reasonable basis. 48 Comp. Gen. 314 (1968). A contracting agency may exclude a proposal as submitted from the competitive range for "informational" deficiencies so material as to preclude any possibility of upgrading the proposal, except through major revisions and additions, which would be tantamount to the submission of another proposal. 53 Comp. Gen., supra; 52 Fed. Reg. 865 (1973); 52 Fed. Reg. 382 (1972). In our review of whether the agency has reasonably excluded a proposal from the competitive range for "informational" deficiencies, we will consider the impact of how detailed a submission was mandated by the RFP (53 Comp. Gen., supra); the nature of the deficiencies (B-173176, December 7, 1971); the scope of the deficiency (Moxon, Incorporated/SRC Division, B-179160, March 13, 1974); whether only one offeror was found to be in the competitive range (52 Comp. Gen. 718 (1973)); and whether reasonable efforts at clarification would result in significant cost savings (47 Comp. Gen. 29 (1967)).

Under the foregoing standard, we cannot conclude that FAA acted unreasonably in determining the Compress proposal to be outside of the competitive range.

The above-quoted evaluation provisions of the RFP were clear that any proposal submitted was required to discuss in detail each criterion. The penalty for noncompliance with those provisions was possible elimination from further consideration. Thus, Compress' failure to discuss, for example, how the various modules would be

utilized to satisfy the requirements, while, in nature, an informational deficiency, precluded FAA's analysis of whether the equipment in the proposed configuration could meet the stated functional requirement. The bare claim of ability to satisfy the requirements is an insufficient response to the RFP. Further, the "parroting" of the functional specifications may not be viewed as an adequate indication of how those requirements will be met, Moxon, Incorporated/SRC Division, supra, particularly where, as here, the proposer was on actual notice that FAA expected and needed detailed and complete information.

With respect to the Comress belief that its exclusion from the competitive range improperly resulted in only one firm remaining within the competitive range, we have reviewed representative decisions in this area and find them distinguishable from the present case. In B-167291, December 1, 1969, the lower of two offerors was excluded from the competitive range because informational deficiencies kept the agency from determining the technical acceptability of the offered item. The technical question was whether the drawings submitted indicated that the offered motor conformed to the specifications. We concluded that the agency's action was not clearly arbitrary, but definitely was not conducive to obtaining the maximum competition. We took note of the fact that the rejected proposal offered substantial cost savings. Further, the deficiency was concerned solely with the inability of the agency to determine acceptability from the only two drawings required to be submitted. The informational deficiency there clearly was not massive and the clarification envisioned could not have been characterized a major revision.

In 47 Comp. Gen., supra, only one firm, competing to supply the Government's needs for electronic data processing equipment, passed the specified benchmark test and was included in the competitive range, although some firms were close. The closeness of those several firms to passing the test was a factor in our recommending an expansion of the competitive range. In 50 Comp. Gen. 670 (1971), the RFP called for operation and maintenance services at United States facilities in Thailand. All four low offerors were determined to be outside the competitive range for alleged deficient salary levels and failure to meet resource levels prescribed by a document unincorporated in the RFP. While the exigency of the procurement precluded our recommending termination of the contract, we stated that, where the inadequacies of the solicitation contribute to elimination of all but one proposal, further

discussions are required. In Comress' case, there is no allegation that the solicitation was defective.

Determinations by contracting agencies that leave only one proposal within the competitive range are closely scrutinized by our Office. If there is a close question of acceptability; if there is an opportunity for significant cost savings; if the inadequacies of the solicitation contributed to the technical deficiency of the proposal; if the informational deficiency could be reasonably corrected by relatively limited discussions, then inclusion of the proposal in the competitive range and discussions are in order. However, we are unable to state from our review that any of these conditions existed so as to vitiate FAA's determination.

Comress further contends that its responses were as specific as the RFP. Therefore, the failure, or inability, as the case may be, of FAA to discern the function of the modules proposed in the block diagram submitted with its proposal is evidence of the fact that FAA did not expend the necessary effort to fairly and fully consider Comress' proposal. A similar contention was raised in Moxon, Incorporated/SRC Division, supra. The ultimate conclusion in that case is opposite to the one reached herein because the RFP there did not call for the details required in this RFP and mere acceptance of the specifications was a sufficient response. However, as mentioned above, since the instant RFP required precise details in the proposal, Comress' mere acceptance of the functional requirements did not evidence Comress' ability to achieve those requirements.


Finally, Comress maintains that all of the clarification that was necessary was contained in documentation of Comress' system that was in FAA's possession for approximately 8 months. The record indicates that Comress' Dynaprobe user's manual was furnished to the chairman of the technical evaluation panel. The manual was in the chairman's possession until December 10, 1974, when he returned it to Comress. This date is before the date proposals were received, but after the date the RFP was issued. The documentation was not submitted by Comress with the proposal or incorporated therein by reference.

The technical evaluation is made on the basis of the proposal as submitted. Phelps Protective Systems, Inc., B-181148, November 7, 1974. Here, the RFP cautioned that the details of the proposed

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system needed to be furnished and discussed in the proposal. While Comress was, of course, aware that the chairman of the technical evaluation panel possessed the information for his edification on the subject, Comress is not justified in assuming that the chairman disseminated the confidential information or otherwise duplicated it for later use without first obtaining permission. Without incorporating the information in its proposal after it had been returned, Comress was not justified in assuming that its contents would be somehow appended for use in the evaluation process. 52 Comp. Gen. 718 (1973); B-174056, June 1, 1972.

In view of the foregoing, the protest is denied.


Deputy Comptroller General
of the United States