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DECISION



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

John Carter

PL I

FILE: B-188997

DATE: November 23, 1977

MATTER OF: Logic Systems

DIGEST:

1. Allegation that agency evaluators failed to consider blanket offer of compliance with specifications in evaluation of protester's proposal is not persuasive evidence of bias where request for proposals states that such blanket offers would be considered inadequate.
2. Technical clarification questions to offerors in competitive range do not provide evidence of bias in evaluation where most questions are substantially similar and those questions which are different relate to deficiencies noted in individual proposals.
3. Protest of relative weight given to evaluation factors made after receipt of initial proposals and award is timely where protester was not advised of relative weight until receipt of documents from agency and protest was made within 10 working days thereafter.
4. Evaluation of offeror's understanding of a procurement based on proposal's response, or lack thereof, to each of the requirements set forth in the specification and the nature of that response, e.g., whether a specific technical approach was proposed or merely an offer of compliance without detail, is not so inherently subjective as to be arbitrary.
5. Contracting agency has the responsibility of determining the relative merit of proposals. GAO will not question such a determination absent a clear showing on the record that it is unreasonable, e.g., has no rational basis. Mere allegation of prejudice is not sufficient showing. Where protester is unable to meet its burden of affirmatively showing bias and unreasonable evaluation, protest is denied.

Logic Systems (Logic) protests the award of a contract to Zeta Research, Inc. (Zeta), under request for proposals (RFP) No. N00421-76-R-0275 issued by the Naval Air Station (NAS), Patuxent River, Maryland. Logic's protest is premised on contentions that the evaluation of proposals was prejudiced and that Logic was denied an equal opportunity for its technical presentation.

The RFP in question sought technical and price proposals for the furnishing of a quantity of large and small X-Y plotters and advised that technical factors would be weighted three times as important as price. Proposals were submitted by four companies, one of which was eliminated from the competitive range after the initial technical review. Technical discussions were held with the three remaining offerors on November 16-18, 1976, and each of the offerors was given an opportunity to clarify its proposal in writing. The initial technical review was completed on December 20, 1976, with Zeta and Logic receiving scores of 98.3 percent and 78.1 percent, respectively. The RFP was amended on January 28, 1977, to correct certain specification errors in the initial solicitation and to increase the quantity of plotters to 5 large and 18 small devices. Offerors were given until February 17, 1977, to submit revised offers. Logic also was requested to clarify some minor points which, in the agency's words, "apparently had been overlooked during the meeting of November 17, 1976." The final scores and prices for Zeta and Logic were as follows:

| | Price | Score |
|-------|--------------|-------|
| Zeta | \$247,229.84 | 98.3% |
| Logic | 172,934.00 | 79.7% |

The agency employed the following "best buy" computation in making its source selection:

$$\text{Technical score} \times .75 + \frac{\text{Government Costs Estimate}}{\text{Contractor Price}} \times .25 = \text{Best Buy}$$

The Government cost estimate was \$151,000. The "best buy" scores for Zeta and Logic were .89 and .81, respectively. The contract was awarded to Zeta on March 29, 1977.

There are three fundamental premises underlying Logic's contentions of bias in the technical evaluation. First, Logic contends that the evaluators ignored statements in its initial proposal (1) expressing unconditional acceptance and conformance to all points of the specifications not specifically discussed in Logic's proposal and (2) indicating that a modified standard commercial plotter was to be furnished. The statements to which Logic refers were as follows:

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"The following information discusses only those paragraphs that the LOGIC SYSTEMS plotter does not meet or exceed specifications or that additional information is necessary."

- and -

"This bid is based on an existing plotter design. Only minor changes are required to meet this specification."

Logic asserts that the procuring activity failed to consider the first of these phrases as evidence of compliance with the specification and points to a remark that Logic "proposed a standard commercial unit with no modification" in a technical activity memorandum dated December 20, 1976, as evidence that its proposal was not carefully read by the evaluator, contending that this conclusion is contrary to the intent expressed in the second set of phrases above.

Proposals were required to be prepared in accordance with the general guidelines for content and format set out on page 10 of the RFP. These guidelines stress that the purpose of the proposal is to provide the basis for sound technical judgments and state specifically that "statements that the offeror understands, can or will comply with the specifications and statements paraphrasing the specification or parts thereof are considered inadequate." We note also that Logic's initial proposal does not describe or otherwise provide any evidence of the modifications apparently contemplated by Logic to meet the specifications. In these circumstances, we do not consider the evaluation of Logic's proposal to be unreasonable.

Secondly, Logic contends that the written technical clarification questions provided to it in discussions at the November 17 meeting were superficial when compared to the technical questions asked of Zeta. Logic argues that this is evidence that the party or parties formulating these questions were already biased in favor of Zeta's offered product. We do not agree.

We note particularly that the majority of the questions asked of both Zeta and Logic refer to three common areas of concern: operating life and design derating criteria; operating noise level and sound suppression; and availability and types of pens and paper. The balance of the questions refers to deficiencies or exceptions noted in each offeror's particular proposal. While we recognize that the particular phrasing of the questions differs, we do not consider the common questions so substantively different as to evidence prejudice and we would expect that clarification questions concerning deficiencies unique to one proposal would differ from those of another proposal. We do not consider the record here to afford persuasive evidence of bias.

Lastly, Logic states the technical evaluation was based primarily on factors relating to the quality of the proposal rather than the offered equipment. In support of this argument, Logic points out that two proposal-related factors, completeness and thoroughness of the proposal and the offeror's grasp of the problem accounted for 6 out of 11 final evaluation points. Logic asserts that these factors are inherently subjective and arbitrary and objects to their relative weight.

The agency contends that this part of Logic's protest is untimely under our Bid Protest Procedures, 4 C.F.R. § 20 (1976), which require that protests of improprieties apparent on the face of a solicitation be raised prior to the date for opening of bids or receipt of initial proposals. 4 C.F.R. § 20.2(b)(1). As we noted above, however, Logic is not protesting the evaluation criteria but their relative weight. We note also that the relative importance of these criteria is not apparent on the face of the solicitation, and that Logic did not have notice of the actual weight accorded each criterion until its receipt on May 23, 1977, of materials furnished by NAS. Logic's protest of the relative weights of the criteria, received in this Office on May 31, 1977, is therefore timely.

We do not agree, however, with Logic's assessment of the evaluation factors. The evaluation and award criteria set forth in the RFP for the measurement of technical capability are divided into only two major elements: understanding of the requirement and technical approach. The RFP lists 13 subelements, such as operational capability, system capability, reliability, etc. under the technical approach heading; none are listed under the understanding of the requirement heading. Logic states that this listing led it to believe that technical approach was the more important factor.

The general guidelines for content and format of the technical proposal appearing on page 10 of the solicitation stress the importance of the proposal and its reflection of the offeror's understanding of the procurement in the following language:

"The Technical Proposal shall be such as to enable management/engineering oriented personnel to make a thorough evaluation and arrive at a sound determination as to whether the proposal meets the requirements of the Government. To this end, the Technical Proposal should be so specific, detailed and complete as to clearly and fully demonstrate that the offeror has a thorough understanding of the requirements of the Government and the contents of the attached specifications."

We consider this clear evidence of the importance that the evaluating activity attached to proposal factors.

Neither do we consider the evaluation criteria in question to be inherently so subjective as to be arbitrary. The record here indicates that proposals were evaluated for understanding of the problem on the basis of their completeness and thoroughness as well as the offerors' grasp of the problem. The narrative summaries supporting each evaluation indicate that emphasis was placed on the offeror's response, or lack thereof, to each of the requirements set forth in the solicitation and the nature of that response, e.g., whether a specific technical approach was proposed or merely a blanket offer of compliance without supporting detail. We find no persuasive evidence that this standard was not applied equally to all proposals.

It is our view that the determination of the relative merits of proposals is the responsibility of the contracting agency since it must bear the burden of any difficulties incurred because of a defective evaluation. Boyle Engineering Corporation, B-183355, June 10, 1975, 75-1 CPD 354; Hansa Engineering Corporation, B-187675, June 13, 1977, 77-1 CPD 423. We will question contracting officials' determinations concerning the technical merits of proposals only upon a clear showing of unreasonableness, abuse of discretion, or violation of procurement statutes or regulations. See, e.g., Executive Management Services, Inc., B-187052, February 15, 1977, 77-1 CPD 110; Joanell Laboratories, Incorporated, 56 Comp. Gen. 291 (1977), 77-1 CPD 51; Group Operation, Inc., 55 Comp. Gen. 1315 (1976), 76-2 CPD 79; Applied System Corporation, B-181696, October 8, 1974, 74-2 CPD 195. We will not consider a technical evaluation to be unreasonable merely because there is substantial disagreement between the contracting agency and the offeror or because bias has been alleged; it must be demonstrated clearly on the record that there is no rational basis for the evaluation for it to be considered unreasonable. See Joanell Laboratories, Incorporated, *supra*, and cases cited therein; Optimum Systems, Inc., B-187560, August 31, 1977, 77-2 CPD 165.

In consideration of the above, we are of the opinion that Logic has provided no substantial evidence of prejudice in the evaluation of its proposal. Since we find no impropriety in the evaluation of proposals, we cannot consider that protester has met its burden of affirmatively proving its allegation. See Hansa Engineering Corporation, *supra*.

Accordingly, the protest is denied.

Deputy

R. F. Korman
Comptroller General
of the United States