



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: L&M Technologies, Inc.

File: B-278044.5

Date: May 8, 1998

Antonio R. Montoya for the protester.

William W. Goodrich, Jr., Esq., and Alison Micheli, Esq., Arent Fox Kintner Plotkin & Kahn, for Advanced Integrated Management Services, Inc., an intervenor. Gena E. Cadieux, Esq., and John D. Bremer, Esq., Department of Energy, for the agency.

Paul E. Jordan, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Challenge to exclusion of proposal from competitive range on the basis that offeror was not provided opportunity to make an additional oral presentation is denied where the request for proposal revisions did not provide for an oral presentation. Proposal was properly excluded from the competitive range notwithstanding an improved technical score where the agency reasonably concluded that the offeror had no reasonable chance for award in view of the significantly higher technical evaluations of the proposals which were included in the competitive range.

DECISION

L&M Technologies, Inc. protests the award of a contract to Advanced Integrated Management Services, Inc., (AIMSI) under request for proposals (RFP) No. DE-RP65-97WA14007, issued by the Western Area Power Administration (Western), Department of Energy (DOE) for technical support services. L&M challenges the agency's elimination of its proposal from the competitive range. We deny the protest.

This procurement is to acquire technical support services for Western's Corporate Services Office (CSO) in Golden, Colorado. These services include realty management, power system training and video production, engineering support, and three information services support tasks: CSO support, corporate applications, and Financial Management System Transition support. The procurement consolidates four existing support services contracts and aligns them with changes in Western's organization that have occurred during the past 3 years. The solicitation, which was issued as a total small business set-aside, contemplated the award of a cost-plus-fixed-fee contract for a base year with 4 option years.

Section L of the RFP advised offerors that their proposals would consist of an oral presentation of delineated technical information, supplemented by written documentation (e.g., reference information, experience matrix, and summary of exceptions and deviations). Section M stated that technical proposals would be evaluated on the basis of three technical criteria: project management (50 percent), past performance (25 percent), and understanding and approach (25 percent). Cost, while not scored, was used in determining an offeror's understanding of the requirements, in assessing the validity of the offeror's approach to managing and performing the work, and in determining the best overall value to the government. The RFP advised that the proposed cost estimate would not be controlling and that proposals would be evaluated on the basis of the government's estimate of the most probable cost (MPC).

While technical factors were more important than cost, the RFP advised that "apparent technical advantages will be weighed against the evaluated price" and "[a]n offer exceeding technical requirements will have an advantage over offers which meet requirements with lower cost, only insofar as the offer exceeding technical requirements is considered to be worth the price differential, if any." Award was to be made on the basis of the offer providing the best overall value to the government.

Twelve proposals, including those of L&M and AIMSI, were submitted by the May 20, 1997 closing date. After initial review, the source selection official (SSO) determined to exclude certain offers (not including the protester's) from the competitive range. The remaining offerors, including the protester, made oral presentations between July 8 and July 18, 1997. The technical evaluation panel (TEP) evaluated the oral presentations and written proposals and conducted oral discussions with each offeror immediately following its oral presentation. The cost analyst reviewed proposed costs and made adjustments in calculating an MPC for each offer. The agency requested and obtained best and final offers (BAFO) from the offerors in the competitive range. In that evaluation, AIMSI's proposal received a score of 825 points with an MPC of \$16.9 million and L&M's proposal received a score of 665 points with an MPC of \$16.4 million.

Based on this evaluation, the SSO agreed with the TEP's recommendation to award the contract to AIMSI. After receiving notice of the selection decision and a debriefing, L&M filed a protest with our Office (B-278044.2), challenging the agency's evaluation of L&M's technical proposal and the decision to award the contract at a higher cost than that offered by L&M. Because of a protest from another offeror, DOE took corrective action and our Office dismissed both protests

as academic.¹ In response to a subsequent protest challenging the agency's decision to limit discussions (B-278044.3), DOE took further corrective action. Our Office dismissed this protest as academic when the agency decided to allow offerors to completely revise their proposals and/or BAFOs.

L&M, AIMSI, and the other original competitive range offerors submitted revised proposals in the form of BAFOs. After evaluating these submissions, the TEP increased L&M's proposal score to 720 points, but determined that its proposal, along with certain other proposals, should be eliminated from the competitive range. The SSO subsequently awarded AIMSI the contract at \$17,097,042 after determining that AIMSI's superior technical score more than outweighed the associated cost premium. After receiving notice of the elimination of its proposal, and a post-award debriefing, L&M filed this protest challenging its exclusion from the competitive range.

The competitive range consists of all proposals that have a reasonable chance of being selected for award. Information Sys. & Networks Corp., B-237687, Feb. 22, 1990, 90-1 CPD ¶ 203 at 4. The determination of whether a proposal is in the competitive range is principally a matter within the contracting agency's discretion, since agencies are responsible for defining their needs and for deciding the best method of meeting them. Engineering & Env't, Inc., B-271868.3, Sept. 3, 1996, 96-2 CPD ¶ 182 at 3. In determining the competitive range, it is an acceptable practice to compare the evaluation scores and consider an offeror's relative standing among its competitors, and to exclude a proposal that is technically acceptable, when, relative to other acceptable offers, it is determined to have no reasonable chance of being selected for award. Information Sys. & Networks Corp., *supra*. A protester's mere disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably in this regard. Delta Ventures, B-238655, June 25, 1990, 90-1 CPD ¶ 588 at 4.

L&M does not challenge the accuracy of the agency's evaluation of weaknesses in L&M's technical proposal or the technical score its proposal received. Instead, L&M argues that the agency improperly failed to provide L&M with an adequate opportunity to revise its proposal. In this regard, L&M observes that the original technical proposal consisted of an oral presentation, supplemented by written documentation. Since the agency did not provide an opportunity for a second oral presentation of the proposal revisions, L&M argues that it did not have an opportunity to improve its "technical proposal." It also argues that it did not have an opportunity to resolve the agency's misunderstandings concerning L&M's past performance. L&M's position is factually misplaced.

¹Source One Management, Inc. (SOM) also filed a protest challenging the agency's evaluation. SOM has filed two subsequent protests (B-278044.4 and B-278044.6) which will be addressed in a separate decision.

In taking corrective action in response to the previous protests, DOE provided all offerors in the original competitive range, including L&M, with the opportunity to revise their technical and cost proposals. In this regard, by letter of December 19, 1997, Western notified L&M of its right to submit "a complete revised proposal [which would] be evaluated and if no further discussions are required, award [would] be made." The letter continued, "Include with your revised proposal all information, not previously provided to Western, which would be necessary for full evaluation. The submittal should be considered a second best and final offer." This letter did not provide for, or even mention, any additional oral presentation, and L&M's revised proposal also clearly indicated that it did not believe it had the right to such a presentation. Its BAFO cover letter conceded that any additional oral presentations would be at Western's "discretion." It also is clear from the record that none of the offerors was provided an opportunity for a second oral presentation in response to this request.

In response to the agency's provision of an opportunity to submit a new BAFO, L&M included new information in the form of revisions to the majority of the original oral presentation slides which had comprised its technical proposal. L&M also made revisions to its past performance information. In its reevaluation, the TEP increased L&M's proposal score from 665 points to 720 points which included improvements in L&M's project management and past performance scores. Thus, L&M was offered, took advantage of, and benefited from, the same opportunity to revise its proposal that was afforded to all other offerors in the competitive range. L&M's complaints to the contrary are simply unfounded.

L&M also argues that the agency failed to consider L&M's lower cost in the competitive range determination. Again, L&M is incorrect. The record establishes that the agency considered L&M's improved score and relative MPC in determining the final competitive range. While L&M's MPC was lower than that proposed by AIMSI, it was higher than that of two other offerors which were eliminated from the competitive range and that of one offeror which was included in the final competitive range, all of which had significantly higher technical scores than L&M. Weighing the relative technical and MPC differences among the proposals, the SSO appropriately concluded that L&M had no reasonable chance for award. The mere fact that L&M's estimated cost was less than the cost proposed by the ultimate awardee does not require that L&M's proposal be included in the competitive range. Intown Properties, Inc., B-250232, Jan. 14, 1993, 93-1 CPD ¶ 43 at 6.

The protest is denied.

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