



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Dynamic Marketing Services, Inc.

File: B-279697

Date: July 13, 1998

David M. Nadler, Esq., Robert J. Moss, Esq., and William M. Rosen, Esq., Dickstein Shapiro Morin & Oshinsky, for the protester.

Gilbert J. Ginsburg, Esq; and Daniel B. Abrahams, Esq., and Raymond Fioravanti, Esq., Epstein, Becker & Green; for Aspen Systems Corporation, an intervenor.

Jeffrey C. Morhardt, Esq., and Edmund J. Trepacz, Esq., Department of Education, for the agency.

Glenn G. Wolcott, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's proposal was properly excluded from the competitive range where the proposal contained numerous weaknesses and deficiencies under each of the five technical evaluation factors and would have required major revisions in order to become technically acceptable.

DECISION

Dynamic Marketing Services, Inc. (DMSI) protests the Department of Education's exclusion of its proposal from the competitive range and the subsequent award of a contract to Aspen Systems Corporation under request for proposals (RFP)

No. 98-001. The solicitation sought proposals to operate a "state of the art one-stop center" for distribution of the agency's various publications. Dynamic asserts that the agency improperly evaluated its proposal as technically unacceptable and contends that the proposal should have been included in the competitive range.

We deny the protest.

The Department of Education yearly creates hundreds of information products, including reports, fliers, videos, brochures and posters, which are distributed to the public upon request. For several years, DMSI has performed as a subcontractor under another Department of Education contract for some of these product distribution services.

On April 17, 1997, the agency issued the solicitation at issue, seeking fixed-price proposals to operate a "state of the art" distribution center. In a cover letter accompanying the solicitation, the agency explained that this procurement was significantly different from prior product distribution contracts, stating:

This contract is significant because the U.S. Department of Education (ED) will be for the first time centralizing their dissemination function for all of its principal offices. Key features of the One Pubs center will be an 800 line from which customers can request any ED publication, a state of the [art] inventory system, data base searches, publication storage, effective mail handling, referral capabilities, and maintenance of mailing lists.

Previously the Government acquired much of its support services on a cost reimbursable basis using for the most part cost plus fixed fee contracts. In many cases this was simply a level of effort contract in which the contractor was paid for hours incurred

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The One Pubs contract contains a performance based statement of work, a sophisticated surveillance plan, and incentive and deduct provisions written into the performance requirement summary. The Department with this performance based methodology is anticipating the contractor will come forth with creative ideas to improve ED's information product distribution efficiency. We expect that One Pubs will be a state of the art, one stop information products center.

Among other things, the RFP's statement of work (SOW) contained requirements that the contractor use computer technology for a variety of functions in operating the new, centralized distribution center. In addition to stating that "[t]he purpose of this contract is to support principal offices throughout the [agency] by providing a state of the art one-stop center," the SOW required that, "[t]he [c]ontractor shall accept and process on-line requests . . . (phone, TDD, fax, letters, Internet, e-mail, electronic orders, on line forms) for information products"; required that the contractor be responsible for production of publications in alternative formats, including computer diskettes; and required that the contractor "shall deliver electronic versions of education information products . . . over electronic networks such as the Internet via electronic mail." SOW §§ 100.3, 200.2, 200.3.

Section M of the solicitation provided that proposals would be evaluated on the basis of technical merit, past performance, and price, stated that technical merit and past performance were "significantly more important than cost or price," and established the five following technical evaluation factors: quality of technical

approach; facilities, staff experience and capability; corporate capability; understanding the project; and sample questions. RFP §§ M.1 (A), (C).

Finally, section L of the RFP advised offerors that proposals which failed to demonstrate a thorough understanding of the contract requirements would be unacceptable, stating:

You must submit an explanation of the proposed technical approach in conjunction with the tasks to be performed in achieving the project objectives.

A detailed work plan must be submitted indicating how each aspect of the statement of work is to be accomplished.¹

Three offerors, including DMSI, submitted proposals by the June 23, 1997 closing date and were subsequently evaluated. DMSI proposed the lowest price of \$15,324,755. However, the agency found numerous weaknesses and deficiencies in DMSI's technical proposal and concluded that it failed to provide the required details regarding its technical approach to the various required tasks. Overall, DMSI's proposal received the lowest technical score--638 points out of a possible 1,050 points--and was determined to be technically unacceptable and not capable of being made acceptable without major revisions.

The weaknesses and deficiencies in DMSI's proposal were pervasive under each of the five evaluation factors. Specifically, under the first evaluation factor, "quality of technical approach," DMSI's proposal received a score of 328 out of a possible 525 points. Under this factor, the RFP listed several subfactors and provided for evaluation regarding the "reasonability and feasibility of the approach; staff quality and level of effort devoted." Under the first subfactor, "database management and management information systems," DMSI's proposal was downgraded for being understaffed. The agency specifically criticized DMSI's proposal that its system administrator and database administrator would devote only 40 and 80 percent of their time, respectively, to performance of this contract. DMSI's proposal was also downgraded for proposing outdated computer workstations and an underpowered Internet server.² Under another subfactor, "customer service, including enhanced

¹Section L.3 of the RFP also advised offerors that proposals which merely repeated the RFP requirements would not be eligible for award, and that technical proposals must reflect a clear understanding of the contract requirements.

²One evaluator explained: "The 386 processor supplied for the initial installation of the Definity ECS is two generations old, therefore susceptible to malfunction due to age and underpowered to handle all the communications needs anticipated. No
(continued...)

user survey instruments," DMSI's proposal was downgraded for failing to provide any details regarding its proposed approach to meeting the RFP requirement that the Internet be used to process on-line customer requests and for maintaining an on-line user survey. Under another subfactor, "dissemination functions, distribution and warehouse, [and] marketing," DMSI's proposal was downgraded for failing to provide details responding to the RFP requirement that the contractor actively market the agency's information products and the distribution center.

Under the second evaluation factor, "facilities, staff experience and capability," DMSI's proposal received a score of 92 out of a possible 150 points. Among other things, DMSI's proposal was downgraded for proposing that its project manager would spend only 50 percent of her time performing this contract. DMSI's proposal was also downgraded for failing to address the RFP requirement that "at least one employee shall be fluent in Spanish." Finally, the proposal was downgraded because the proposed systems supervisor did not hold clearinghouse or mail room experience, the proposed production supervisor had only 4 months of production supervisory experience, and neither the proposed project manager nor the assistant project manager had relevant computer skills or background in computer operations.

Under the third evaluation factor, "corporate capability," DMSI's proposal received a score of 84 out of 150 points. Under this factor, the RFP stated that proposals would be evaluated with regard to the offeror's demonstrated experience in similar contracts of comparable technical complexity, and also on the basis of the "quality of the organization and writing of the proposal." DMSI's proposal was downgraded because it primarily reflected DMSI's bulk mailing experience,³ and did not demonstrate experience performing contracts with the level of technological complexities anticipated here. Additionally, DMSI's proposal was downgraded under this evaluation factor for its poor organization and the fact that it contained spelling and grammatical errors which reflected poorly on DMSI's corporate capability.

²(...continued)

upgrade configuration or plans are presented." With regard to the proposed Internet server, an evaluator explained: "A DX100 server will not be satisfactory to sustain a proper website serving all of ED and ED customers. Concurrent users from public sector, plus ED staff usage of website, search and ordering systems is very likely to exceed DX100 server capacities."

³DMSI describes the services it has performed as "essentially stor[ing] Education's information products in a warehouse, receiv[ing] and record[ing] orders for those information products, and then mail[ing] out the requested products to the customer."

Under the fourth evaluation factor, "understanding the project," DMSI's proposal received a score of 59 out of a possible 100 points. The RFP stated that, under this factor, proposals would be evaluated to assess the offerors' "understanding the needs of the U.S. Department of Education in information products dissemination and a one stop center." DMSI's proposal was downgraded on the basis that it placed no emphasis on future technology, was "more reactive than proactive," and that the proposal "fail[ed] to explain how the technical challenge involved in merging the response center, online, letter, fax and administrative dissemination facilities will be met."

Finally, under the fifth evaluation factor, "questions," offerors were presented with various questions, including "What creative and innovative approaches and cost savings techniques will you use . . .?" and "What state of the art equipment would be used that would enhance ED's dissemination strategies . . . ?" DMSI's proposal received a score of 74 out of 125 points, and was downgraded for, among other things, failing to propose state of the art equipment and for failing to propose "anything creative or innovative."

In summarizing the evaluation of DMSI's proposal, the agency stated:

The DMSI proposal simply conveyed no forward thinking or vision for this project. Some significant weaknesses noted were: DMSI was insufficient in its Internet and electronic capabilities, showed inadequate staffing plans, included minimal or no information on their marketing plan, alternate formats and the fee for service option, and showed no experience in call center operations. Other significant weaknesses noted in this proposal were DMSI's lack of emphasis on exceptional customer service as well as cost savings ideas. The fact that the Project Manager could only devote 50% of her time to this project was also noted as a major weakness.

On the basis of this evaluation, the agency concluded that DMSI's proposal was unacceptable without major revisions and, therefore, eliminated it from the competitive range.⁴ DMSI was subsequently advised of its exclusion; this protest followed.

DMSI protests that it was unreasonable for the agency to evaluate its proposal as so technically deficient as to warrant exclusion from the competitive range. DMSI primarily expresses disagreement with the agency regarding the bases for the

⁴Aspen Systems Corporation's proposal, offering a price of \$20,500,668 and receiving a technical score of 944 points, was included in the competitive range. The third offeror's proposal, offering a price of \$45,180,951 and receiving a technical score of 760 points, was also excluded from the competitive range.

evaluated weaknesses and deficiencies and argues that, in any event, its proposal could have been made acceptable through discussions.⁵

An offeror must submit an initial proposal that is adequately written and that affirmatively presents its merits, or run the risk of having its proposal rejected as technically unacceptable. Defense Group, Inc., B-253795, Oct. 25, 1993, 94-1 CPD ¶ 196 at 5. Generally, offers that are technically unacceptable as submitted and would require major revisions to become acceptable are not required to be included in the competitive range. Engineering & Computation, Inc., B-258728, Jan. 31, 1995, 95-1 CPD ¶ 155 at 3. Procuring agencies may reasonably find a proposal to be unacceptable based on the offerors' generalized statements that it will comply with those requirements rather than providing a sufficiently detailed explanation of how the requirements will be performed. Tri-Services, Inc., B-256196.4, Sept. 30, 1994, 94-2 CPD ¶ 121 at 4. In reviewing whether a proposal was properly rejected as technically unacceptable for information deficiencies, we examine the record to determine, among other things, whether the RFP called for detailed information and the nature of the informational deficiencies--for example, whether the deficiencies tend to show that the offeror did not understand what it would be required to do under the contract. Engineering & Computation, Inc., *supra*. Although we will closely scrutinize an agency's decision, such as this one, which results in a competitive range of one, we will not disturb such a determination absent a clear showing that it was unreasonable. Native Am. Consultants, Inc.; ACKCO, Inc., B-241531, B-241531.2, Feb. 6, 1991, 91-1 CPD ¶ 129 at 5-6.

The agency position is that, throughout DMSI's proposal, the agency found numerous instances, discussed above, where DMSI's proposal failed to meet the RFP requirements, including the specific RFP § L.3 requirement that offerors "must submit an explanation of the proposed technical approach in conjunction with the tasks to be performed," as well as a "detailed work plan . . . indicating how each aspect of the statement of work is to be accomplished." The agency concluded that DMSI failed to grasp the fundamental concept that the work to be performed under this solicitation differed significantly from subcontract work that DMSI had previously performed.

⁵DMSI's protest also asserts that, "on information and belief, Aspen's proposal was technically unacceptable and should not have been considered for award." DMSI's comments following receipt of the agency report, which included Aspen's proposal and the agency's evaluation documents regarding that proposal, do not further discuss this allegation. Accordingly, we view the issue as abandoned. Appalachian Council, Inc., B-256179, May 20, 1994, 94-1 CPD ¶ 319 at 8 n.8.

Although DMSI expresses disagreement with the agency's technical evaluation, it offers no persuasive arguments that the agency materially erred in this evaluation.⁶ Further, in its submissions under this protest, DMSI confirms the agency's perception that DMSI failed to understand the differences between the requirements in this solicitation and those that DMSI has performed as a subcontractor under prior contracts. Specifically, in its comments responding to the agency report, DMSI states:

The One Pubs project [solicited here] is a straightforward clearinghouse operation. The successful offeror will essentially store Education's information products in a warehouse, receive and record orders for those information products, and then mail out the requested products to the customer. These functions are precisely the same functions that DMSI has been performing for Education in an exemplary manner for the past ten years.⁷

It is clear from the record that the solicitation adequately advised offerors of substantial new requirements, including reliance on "state of the art" technology, and that the agency reasonably concluded that DMSI failed to understand those requirements. Apparently as a result of this lack of understanding, as outlined above, DMSI's proposal contained a broad range of significant deficiencies, as a result of which the agency reasonably concluded that correction of these deficiencies would require major revisions to the proposal. Accordingly, the agency reasonably eliminated DMSI's proposal from the competitive range.

The protest is denied.

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⁶In its comments, DMSI notes that one of the evaluators may have misunderstood the physical location of DMSI's proposed call center. Even if DMSI were correct, we do not view this as a material error.

⁷DMSI's comments also assert that reliance on "state of the art" technology was not critical to contract performance under this solicitation.