



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Cache Box, Inc.

File: B-279892

Date: July 29, 1998

Steven L. Briggerman, Esq., Grace Bateman, Esq., and Adria Benner, Esq., Seyfarth, Shaw, Fairweather & Geraldson, for the protester.

John E. Lariccia, Esq., Department of the Air Force, for the agency.

David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly eliminated proposal from competitive range as technically unacceptable where it did not include sufficiently detailed information to establish that offered reservations management software will meet the solicitation requirements, and instead included conflicting provisions which called general offer of compliance into question, such that the proposal was at best ambiguous.

DECISION

Cache Box, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. F41691-97-R0016, issued by the Department of the Air Force for reservations management software. Cache Box challenges the agency's determination that its proposal was technically unacceptable.

We deny the protest.

BACKGROUND

The solicitation provided for award of a fixed-price requirements contract to furnish commercially available software to control reservations at approximately 250 Air Force, Navy and Marine Corps lodging facilities world-wide. The overall required system was comprised of three components: (1) a property management system that enables lodging personnel to create and cancel reservations, check guests in or out, create accounting entries and reports, and create other management reports; (2) a web reservation module that enables travelers to directly access the property management system at a specific location and make reservations; and (3) corporate headquarters systems that enable service

headquarters to retrieve occupancy information and merge data into consolidated reports.

Offerors were required to furnish "descriptive literature such as cut sheets, illustrations, drawings, brochures or any narrative descriptions deemed necessary to establish for the purpose of evaluation and award, the details of the product pertaining to significant elements such as design, materials, components, or performance characteristics which fully support the requirements in the Statement of Need (SON)." RFP, amend. 0006, Addendum to [Federal Acquisition Regulation] 52.212-1 Instructions to Offerors--Commercial Items, (b) Submission of Offers, Vol. 2, at 109. Award was to be made "to the responsible offeror whose offer, conforming to the solicitation, provides the best value and will be most advantageous to the Government" under the following three evaluation criteria, listed in descending order of importance: (1) technical capability, as established in the written proposal and "through a visit to the Contractor's facility for a Live Test Demonstration [LTD] of the functional capabilities of the Offeror's software"; (2) past performance; and (3) price. Id., Statement of Evaluation Criteria, at 111-114.

The Air Force received proposals from eight offerors by closing time on February 20, 1998; Cache Box's and five other offerors' proposals were included in an initial competitive range. The agency then advised the competitive range offerors of the "areas [which] need to be clarified during the [LTD]," and directed that "[i]n addition to the answers given at the [LTD], the questions presented above and any additional questions identified during the [LTD] must be answered in writing within 10 days following the demonstration." Air Force Letter to Cache Box dated March 19, 1998.

Based upon evaluation of Cache Box's written proposal, the results of the LTD conducted on March 24, and Cache Box's April 2 response to the agency's questions, the Air Force determined that Cache Box's proposal was technically unacceptable because it failed to demonstrate compliance with the specifications in nine areas. The agency therefore excluded Cache Box's proposal from the revised competitive range (comprised of three proposals). The agency advised Cache Box by letter dated April 10 that its proposal had been rejected and set forth the specific deficiencies that led to the rejection. Following a debriefing on April 20, Cache Box filed this protest.

Cache Box challenges the exclusion of its proposal from the competitive range, primarily arguing that the proposal indicated compliance with the specifications and was not technically unacceptable.

Where a protester challenges an agency's elimination of its proposal from the competitive range, our review is limited to considering whether the competitive range determination was reasonable and in accordance with the terms of the RFP

and applicable regulations and statutes. Loral Sys. Co., B-270755, Apr. 17, 1996, 96-1 CPD ¶ 241 at 7; Cyber Digital, Inc., B-255225, Feb. 18, 1994, 94-1 CPD ¶ 123 at 2-3. In this regard, it is the offeror's duty to include sufficiently detailed information in its proposal to establish that the equipment offered will meet the solicitation requirements, and blanket statements of full compliance are insufficient to fulfill this obligation. TRS Research, B-274845, Jan. 7, 1997, 97-1 CPD ¶ 6 at 3. Where a proposal contains a blanket offer of compliance to meet specifications and also contains conflicting provisions which call that offer of compliance into question, the offer is ambiguous and properly may be rejected as technically unacceptable. Id.

Based upon our review of the record, we conclude that, although Cache Box's proposal included general statements of compliance with each of the specification requirements, it failed to establish compliance with material specification requirements. We discuss two of the requirements below.

OPERATING SYSTEM

Specification (Statement of Need) paragraph 3.1.2.6.2, "Operating System," provided that "[t]he server software must function on either Microsoft NT Advanced Server release 4.0 or higher or non public domain Unix." Cache Box generally stated in its proposal that "[t]he system's server software functions on Microsoft NT Advanced Server 4.0 or higher," Vol. 2, Tab 5, at 10, and it included a price "As Needed" for "[Microsoft] NT Server ver 4.0" in a table entitled "Property Management System, Ba-Table, Implementation Options," in the section B schedule of prices. Vol. 4. However, Cache Box's "Implementation Options" pricing table also included a price for a "[DELETED]," and Cache Box's proposal stated that its proposed property management software ([DELETED]):

operates in a [DELETED] environment. [DELETED] provides the capability to operate what is known as a "thin client." Thin clients are PCs or Network PCs which run a [DELETED] client application to gain access to the Windows NT server. The hardware requirements for [DELETED] client PCs are considerably less than that of traditional networked PCs.

Vol. 2, Tab 5, at 108. Further, in the slide demonstration at the LTD, Cache Box described its "Proposed System Architecture" as based on a "[DELETED] architecture," which would permit use of the agency's existing Intel 486 and

Pentium processor computers. Likewise, in its subsequent response to the agency's clarification questions, Cache Box stated that:

the system will be running [DELETED]. [DELETED] provides a fully integrated client-server environment where the database engine and [DELETED] applications run entirely on the server. The [DELETED] client runs a front end which provides connectivity to the host server.

Cache Box letter of April 2, 1998, at 1.

The Air Force determined that Cache Box's proposal's references to [DELETED] indicated noncompliance with Windows compatibility requirements of the specifications. This is because, as the Air Force reports and the record (including the information on [DELETED]'s web site) confirms, the commercially available [DELETED] software is based on Microsoft Windows NT version 3.5.1, and not version 4.0 or higher as specifically required. Indeed, as acknowledged by the protester in its comments on the agency report, "everyone in the industry knew that [DELETED] was based on an earlier version of Windows NT, in this case NT 3.5.1. This could not possibly work in new systems that were designed around Windows NT 4.0." Comments of June 8, 1998, at 21. In this regard, the record (including information from a representative of Cache Box's software supplier provided during a telephone conference conducted by our Office) shows that [DELETED] modifies an existing operating system, such as Windows NT, by overwriting/replacing operating system files. As a result, updates/upgrades of the operating system become more difficult. The agency found that this was inconsistent with the requirement that the software "function on . . . Microsoft NT Advanced Server release 4.0 or higher." Specification ¶ 3.1.2.6.2 (emphasis added).

Cache Box maintains that the Air Force was "mistaken [in its] belief that Cache Box's system includes [DELETED], software that functions on Microsoft NT 3.5.1, but cannot function on Microsoft NT 4.0, as required in the solicitation." Comments of July 14, 1998, at 4. According to the protester, at the time it submitted its proposal, Microsoft was in the process of incorporating [DELETED] technology into its NT 4.0 system, resulting in a product later named [DELETED], but which had not yet been named at the time of proposal submission. Thus, argues Cache Box, it could refer to its intended software only by reference to [DELETED], and its intention to offer compliant software that functions on NT 4.0 should have been clear from other references to NT 4.0 in its submissions to the agency--e.g., "[DELETED]" and "[DELETED]"--and its reference to a "[DELETED]." Cache Box letter of April 2, 1998, at 1; Vol. 2, Tab 5, at 10; "Property Management System, Ba-Table, Implementation Options," Vol. 4.

Cache Box's position is without merit. The Air Force reports, and Cache Box has made no showing to the contrary, that at the time of the LTD on March 24, the only commercially available product known as [DELETED] was the [DELETED] product

based on NT 3.5.1, that is, the product which both the agency and the protester agree is unacceptable. Further, we note that trade literature indicates that even before Cache Box submitted its proposal on February 20, and, indeed, by the end of 1997, Microsoft's new NT 4.0 product incorporating [DELETED] technology was known both by its code name of [DELETED], and also as [DELETED]; similarly the [DELETED] product that was to work with the new Microsoft NT 4.0-based product (as an add-on) was being referred to as [DELETED]. See, e.g., "[DELETED]," InfoWorld, [DELETED]; "[DELETED]," LAN Times, [DELETED]; "[DELETED]," PC Week, [DELETED]. Given this availability of specific terminology specifying compliant products, and absent some express indication in Cache Box's proposal that the [DELETED] references were intended to refer to a not-yet released compliant product, we think the agency reasonably could conclude that the [DELETED] references were referring to the currently available, noncompliant [DELETED] product or that, at best, the proposal was ambiguous on the point. We conclude that the agency reasonably determined that the proposal did not establish compliance with the Windows compatibility requirement.¹

¹Cache Box also disputes the agency's determination that it failed to demonstrate compliance with the Windows compatibility requirement at the LTD. The record indicates that during the LTD, Cache Box presented slides and demonstrated capabilities of its proposed property management software ([DELETED]) for the assembled government evaluators using a personal computer running the Microsoft Windows 95 operating system. In addition to this formal presentation to the government evaluators, there were several computers set up at the other end of the demonstration room. Cache Box asserts that these computers were linked in a network in which the server was running [DELETED]. Cache Box claims that unnamed government personnel sat down at these computers during the course of the day. However, three government evaluators who were at the LTD and participated in the telephone conference conducted by our Office stated that they were unaware of what software was on these latter computers, and that they did not see any presentation by Cache Box using these computers. We need not resolve this dispute since, irrespective of the software on these latter computers, Cache Box rendered its obligation to meet the requirement ambiguous by referring in its proposal--both before and after the LTD--to an unacceptable product ([DELETED]).

REPORT REQUIREMENT

It is undisputed that Cache Box failed to demonstrate at the LTD compliance with the requirements that the corporate headquarters systems enable service headquarters to retrieve occupancy information and merge data into consolidated reports. Specification ¶¶ 6.1.3 through 6.1.8.3. Cache Box argues that it was not required to demonstrate this capability, citing specification paragraph 2.1.6, which provides that "[t]he Contractor shall meet with the Joint Service Contracting Officer Representatives . . . to design all the system screens and reports within forty-five (45) days after contract award." According to the protester, it could not demonstrate compliance in this area because the agency had not yet provided details on the type of desired calculations and summarizations.

This argument is without merit. In its March 19 notice scheduling the LTD, the agency specifically cautioned Cache Box that "[y]ou will be expected to demonstrate the capabilities of your software to meet the requirements of the solicitation beginning at paragraph 2.1 of the Statement of Need and proceeding through paragraph 9.1.3." This encompasses the paragraphs in question. Cache Box therefore was on notice that it was expected to demonstrate compliance with the requirement. While Cache Box and other offerors may not have been able to determine the report format desired by the agency, the agency reasonably could expect them to demonstrate the general capability to enable service headquarters to retrieve the occupancy information and merge it into reports. The agency thus reasonably found Cache Box's proposal technically unacceptable in this regard.²

²In its comments filed on July 15, Cache Box for the first time argues that the agency improperly failed to conduct meaningful discussions with respect to perceived deficiencies in its proposal regarding the Windows compatibility and corporate headquarters systems requirements. Under our Bid Protest Regulations, a protest based on other than alleged improprieties in a solicitation generally must be filed not later than 10 calendar days after the protester knew, or should have known, the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1998). Cache Box's protest in this regard, filed approximately 3 months after it learned of the specific bases for the exclusion of its proposal (in the agency's April 10 letter and again at the April 20 debriefing) does not meet this standard.

Given the totality of the deficiencies which the Air Force found in Cache Box's proposal, we find reasonable the agency's determination that the proposal would require major revision--"complete revision," Contracting Officer's Statement of Facts, May 27, 1998, at 18--in order to become acceptable and its consequent elimination of the proposal from the competitive range.³

The protest is denied.

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³Cache Box argues that the Air Force improperly based its competitive range determination on Federal Acquisition Regulation (FAR) §§ 15.306(c)(1), (2) (FAC 97-02), which provides for "a competitive range comprised of all of the most highly rated proposals," unless the number is limited for purposes of efficiency. According to the protester, since the solicitation was issued prior to the October 10, 1997 effective date for this FAR provision, the prior version of the provision, at FAR § 15.609(a) (June 1997), applied; that section provides for a competitive range of "all proposals that have a reasonable chance of being selected for award." This argument is without merit; given the agency's reasonable determination that Cache Box's proposal did not meet several material RFP requirements, it did not have a reasonable chance for award and thus could be eliminated from the competitive range under either version of the regulation.