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**DECISION**



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

**FILE:** B-194631

**DATE:** August 13, 1979

**MATTER OF:** MAR, Incorporated

*[Protest of Determination That Proposal Was Not Within Competitive Range]*

**DIGEST:**

1. Request for documentation from offerors constituted discussions rather than mere clarification where data submitted was necessary to determine technical acceptability of proposals.
2. Message from procuring activity to all offerors requesting documentation regarding proposals did not constitute meaningful discussions because areas where proposals were deficient were not clearly pointed out and offerors were left to guess as to what information procuring activity required. Recommendation is made that negotiations be reopened with all offerors.

*DLG 02568*

*ACC 00 017*

MAR, Incorporated (MAR), has protested the finding by the Naval Surface Weapons Center (NSWC), White Oak Laboratory, Silver Spring, Maryland, that MAR's proposal submitted in response to solicitation No. N60921-79-R-0028 was not within the competitive range.

The solicitation was for ocean engineering and technical services in the Fort Lauderdale, Florida, area. MAR's proposal and two other proposals were received by the closing date for receipt of initial proposals, February 14, 1979. On February 15, the proposals were given to the technical evaluators for evaluation and on February 27, 1979, the numerical scores for the three proposals were given to the contracting officer. These scores, based on a maximum 1,010 points, were:

Offeror B	932
Offeror C	889
MAR	790

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On March 16, 1979, the following message was sent to all three offerors:

"1. PAGE 17 SECTION D ITEMS 2.0 AND 3.0 OF THE SUBJECT REQUEST FOR PROPOSAL STATE THAT ALL PROSPECTIVE OFFERORS WILL BE EVALUATED AS TO WHETHER THEY CAN PROVIDE THE PERSONNEL SERVICES, FACILITIES AND EQUIPMENT CALLED OUT IN THE SCHEDULE. THEREFORE, YOU ARE REQUESTED TO PROVIDE THIS OFFICE WITH DOCUMENTATION TO SUBSTANTIATE THAT YOUR FIRM HAS THE CAPABILITY TO PROVIDE, DURING THE TOTAL LIFE OF THE CONTRACT INCLUDING THE OPTION YEAR, THE PERSONNEL SERVICES, FACILITIES AND EQUIPMENT THAT HAVE BEEN OFFERED IN YOUR PROPOSAL. IF SUBCONTRACTING FOR THESE REQUIREMENTS WILL BE REQUIRED, YOUR DOCUMENTATION SHOULD INCLUDE LETTERS OF FIRM COMMITMENT FROM YOUR SUBCONTRACTORS FOR THE ENTIRE LIFE OF THE CONTRACT. THIS SHALL INCLUDE THE OPTION YEAR IF IT IS PICKED UP IN ACCORDANCE WITH SECTION J OF THE SUBJECT REQUEST FOR PROPOSAL. YOUR DOCUMENTATION IS REQUESTED WITHIN 10 DAYS OF RECEIPT OF THIS MESSAGE.

"2. IN ADDITION, YOU ARE ADVISED THAT THE CONTRACTING OFFICER IS PLANNING TO MAKE AN ON-SITE VISIT TO ALL THE PROPOSED PRIME CONTRACTORS AND THEIR SUBCONTRACTORS. THE DEFENSE CONTRACT ADMINISTRATION SERVICES MANAGEMENT AREA WILL BE REQUESTED TO ATTEND THESE ON-SITE VISITS. HOWEVER, YOU ARE ADVISED THAT AN ON-SITE VISIT TO YOUR FACILITY DOES NOT MEAN THAT A DECISION HAS BEEN MADE TO AWARD TO YOUR FIRM. YOU WILL BE ADVISED OF THE DATE OF THESE VISITS AT A LATER TIME."

On March 23, 1979, the technical evaluation team submitted to the contracting officer the narrative evaluation to substantiate the previously noted numerical scores. The additional documentation was submitted by the offerors on March 30, 1979. After reviewing the technical evaluation and the additional documentation, the contracting officer determined that MAR's proposal was not in the competitive range.

MAR's protest is based initially on the allegation that the March 16 request for documentation constituted discussions under past decisions of our Office and, therefore, MAR must have been determined to have been in the competitive range in order to be included in the discussions. Moreover, as the technical evaluation report noted that all three offerors were qualified and that any of the three could provide the services, MAR argues that its proposal must have been found technically acceptable and exclusion from further consideration was improper.

NSWC has responded to the protest by stating that the March 16 message was merely a request for clarification, not rising to the level of discussions, and, further, the determination as to the evaluation and inclusion of proposals in the competitive range is within the discretion of the agency.

Whether discussions have been held in a given procurement is a matter to be determined upon the basis of the particular actions of the parties and not merely the characterizations placed thereon by the contracting officer. Food Science Associates, Inc., B-183054, April 30, 1975, 75-1 CPD 269. The test of whether discussions have been held is whether it can be said that an offeror was provided the opportunity to revise or modify its proposal. The Human Resources Company, B-187153, November 30, 1976, 76-2 CPD 459.

While NSWC argues that offerors were not given the opportunity to revise or modify their proposals, but merely requested to furnish documentation to support what was already in the proposals, we do not find this argument convincing. We note from a review of the evaluation report that all three offerors were downgraded during the evaluation process because of the lack of discussion or documentation relating to the prior experience or capabilities of the proposed subcontractors.

Therefore, it is clear that the information requested in the March 16 message was necessary to determine the acceptability of the proposals. We have held that this type of information request constitutes discussions rather than clarifications where it has a substantial effect on the Government's determination of acceptability. New Hampshire-Vermont Health Service, 57 Comp. Gen. 347 (1978), 78-1 CPD 202.

Also, we note that the evaluation team's memorandum of February 27, 1979, advised the contracting officer that it "has concluded that all three bidders are qualified and that any of the three could provide the personnel, services, facilities and equipment specified in the solicitation." The memorandum continued by requesting that the Supply Department proceed with award to the lowest priced offeror. Further, the contracting officer sent all three offerors the same request on March 16, 1979. While the contracting officer determined on April 9, 1979, in a Determination and Findings entitled "Authority to Exclude an Offeror from the Competitive Range," to exclude MAR from the competitive range, we believe the above actions show that MAR was considered to be acceptable and was treated equally with the other offerors and, therefore, at least initially and informally, was determined to be in the competitive range.

Written or oral discussions in a negotiated procurement must be meaningful, and to that end the Government must usually furnish information to offerors as to the areas in which their proposals are deficient. Piaseck Aircraft Corporation, B-190178, July 6, 1978, 78-2 CPD 10.

Here, we believe NSWC should have been more exact in its request for substantiation and documentation. From the evaluation team's report, it is clear that concerns existed regarding the lack of information on subcontractors for all three proposals. However, the March 16 message was in general rather than specific terms. NSWC should have worded its request for information more carefully so that offerors would not have to guess as to what was required to meet the Government's needs and clearly pointed out the areas in which the proposals were deficient.

This lack of clarity is highlighted by the fact that MAR contacted the contracting officer by telephone to ascertain exactly what was required from the offerors to respond to the March 16 message. MAR argues that it was informed by the contracting officer that letters of commitment from the subcontractors were all that were needed. The Navy has not denied the above, but concludes that MAR should not have relied upon oral advice in the face of the March 16 message, the meaning of which was clear according to the Navy.

Therefore, we believe the March 16 message to the offerors did not constitute "meaningful" discussions and that it is now necessary for NWSC to correct this deficiency.

Accordingly, the protest is sustained and negotiations should be reopened with all offerors and the deficiencies in each proposal discussed prior to the submission of best and final offers.



Acting Comptroller General  
of the United States