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DECISION



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

FILE: B-198614

DATE: September 3, 1980

MATTER OF: Decilog

DIGEST:

1. Determination that proposal is technically unacceptable and therefore not within competitive range is within contracting agency's discretion and will not be disturbed absent clear showing that it was unreasonable. Agency properly excluded proposal from competitive range for informational and other deficiencies when those deficiencies were so material as to preclude upgrading proposal to acceptable level except through major revision.
2. Offeror's arguments concerning RFP disclosure of method of evaluation are untimely when filed well after closing date for receipt of proposals. Protests alleging patent solicitation improprieties must be filed before closing date for receipt of initial proposals.

Decilog ^{Against Bid} [protest] exclusion from the competitive range of its proposal for Helicopter Operations Development Program Technical Support submitted in response to request for proposals (RFP) No. DTFA01-79-R-15652, issued by the Federal Aviation Administration (FAA). The RFP prescribed three evaluation factors: (1) technical, (2) business management, and (3) cost. Technical considerations were to be paramount in the evaluation.

FAA reports that its Source Evaluation Board considered Decilog's proposal, which was ranked last among the four proposals submitted, to be technically unacceptable. The other three offerors received substantially higher weighted technical scores and Decilog's was approximately one-half that of the next lowest rated

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offeror. Also, Decilog's business management scores were the lowest. Decilog's proposed cost was the highest submitted.

FAA found that the proposal's deficiencies reflected an inadequate understanding of the solicitation and a lack of technical qualification to perform satisfactorily as a support contractor. FAA considered the deficiencies to be so "significant that a major effort would be required to remove the weaknesses." It therefore excluded the proposal from the competitive range.

Decilog alleges that the deficiencies cited by the FAA were minor and correctable and that its proposal was sufficiently meritorious for inclusion in the competitive range.

The determination of whether a proposal is within the competitive range, particularly with respect to technical considerations, is primarily a matter of administrative discretion. Dynamic Science, Inc., B-188472, July 20, 1977, 77-2 CPD 39. Our function is not to evaluate anew proposals submitted and make our own determinations as to their acceptability or relative merits, but to examine the record and apply a standard of a clear showing of reasonableness to determinations of the contracting agency. See Joseph Legat Architects, B-187160, December 13, 1977, 77-2 CPD 458; Houston Films, Inc. (Reconsideration), B-184402, June 16, 1976, 76-1 CPD 380. The fact that the protester does not agree with the agency's evaluation of its proposal does not render the evaluation unreasonable. Kaman Sciences Corporation, B-190143, February 10, 1978, 78-1 CPD 117. We have held that a contracting agency may exclude a proposal, as submitted, from the competitive range for informational deficiencies when those deficiencies are so material as to preclude any possibility of upgrading the proposal to an acceptable level except through major revisions and additions which would be tantamount to the submission of another proposal. Environmental Science and Engineering, Inc., B-189172, December 15, 1977, 77-2 CPD 465.

With these principles in mind, we have carefully reviewed the record in this case. While the record evidences disagreement between FAA and Decilog, we cannot conclude that the FAA evaluation was unreasonable.

Some areas of disagreement involve the exercise of technical judgment with respect to the desirability or efficiency of a particular approach or system. For example, a major deficiency cited by FAA is Decilog's failure to include in its discussion of air traffic control systems an analysis of the LORAN-C navigation system. Decilog contends that an analysis of LORAN is unnecessary because OMEGA, a system Decilog discussed extensively in its proposal, is to replace the LORAN network. FAA asserts that, although LORAN-A is being phased out, use of LORAN-C, a system which is more cost-efficient than OMEGA, is expanding. On these facts, we are unable to find unreasonable FAA's conclusion that the omission indicates a fundamental lack of understanding.

FAA and Decilog also differ on whether certain issues were addressed with sufficient depth and specificity. For example, FAA found Decilog's discussion of landing systems to lack sufficient depth and thoroughness to demonstrate complete knowledge of the technology involved. Decilog simply responds that the discussion could "hardly be considered limited." We reiterate that it is not GAO's function to make independent judgments as to the technical merits of proposals. It does appear that the FAA could have reasonably evaluated the proposal as it did.

Next, Decilog disputes a number of findings of deficiency by asserting that it cannot be faulted for lack of information which was not explicitly requested in the RFP. In reviewing allegations of this nature, we consider a variety of factors, including how definitely the RFP called for omitted information, whether only one proposal was found to be within the competitive range and the scope and range of informational deficiencies. PRC Computer Center, Inc., et al., 55 Comp. Gen. 60 (1975), 75-2 CPD 35; Burroughs Corporation, B-194168, November 28, 1979, 79-2 CPD 376.

The RFP instructs offerors to include in their technical proposals a discussion of "technical issues, both explicit and implicit, related to the Task Areas contained in the Statement of Work." The Statement of Work (SOW) sets forth a number of specific objectives and requirements for each task area. The RFP additionally discloses that the most heavily weighted consideration in the evaluation of the technical proposal is a demonstration of an understanding of the requirements for all task areas. The RFP also provides in pertinent part that a "technical proposal which fails to address the requirements of article I (SOW) and which the FAA considers grossly deficient to the extent that correction would involve significant and major rewriting of the proposal will result in rejection of the proposal." These provisions make clear that offerors are required to discuss each issue explicitly or impliedly raised in the SOW to the extent necessary to demonstrate an understanding of the requirements. We believe that these RFP provisions were sufficient to put prospective offerors on notice that an incomplete proposal would be excluded from the competition.

As an example, Decilog alleges that the FAA was unjustified in penalizing Decilog's failure to discuss thoroughly Federal Aviation Regulations (FAR) in connection with weather observation and forecasting services since there is no explicit requirement in the RFP or SOW that the FAR be discussed. With respect to this, the RFP called for a technical discussion relating to weather observation and forecasting requirements for efficient helicopter operations. In our view, this implicitly would put offerors on notice to discuss the appropriate regulations. We observe here that as the significantly higher technical rankings of the other offerors show, the other offerors apparently had no difficulty discerning from the RFP the significant matters that were required to be discussed in detail.

In determining the scope and nature of the deficiencies, we consider whether they tended to show that the offeror did not understand what it would be required to do under the contemplated contract and whether the offeror essentially had to

rewrite its proposal to correct the deficiencies. PRC Computer Center, Inc., et al., supra. We have carefully examined the deficiencies enumerated by FAA and Decilog's responses thereto. We find that the informational deficiencies were of such a nature that the FAA could have reasonably determined that Decilog did not understand the contract requirements. Although each individual deficiency in itself may have been insufficient to support exclusion, we cannot say that the FAA acted unreasonably in determining that the deficiencies, taken as a whole, were of such a scope that the proposal could not have been corrected without substantial revision. In sum, we find that Decilog failed to translate its knowledge and capabilities into the initial proposal.

It is also significant that the exclusion of Decilog's proposal did not leave only one offeror within the competitive range since, as noted above, of the four offerors, Decilog was the only one excluded.

Decilog alleges that FAA applied evaluation criteria different from those in the RFP. FAA, however, appears to have evaluated Decilog's proposal in complete accordance with those criteria. We find no factual basis in the record for Decilog's assertion to the contrary.

Finally, Decilog alleges that the RFP failed to disclose the exact level of understanding which FAA would require in a successful proposal. Decilog further complains that the RFP did not divide task areas "into score elements." These assertions are untimely since the method of evaluation was readily apparent from the RFP. Protests alleging patent solicitation improprieties must be filed before the closing date for receipt of initial proposals. See 4 C.F.R. § 20.2(b)(1) (1980); Robinson Industries, Inc., B-194157, January 8, 1980, 80-1 CPD 20. Here, the deadline for receipt of proposals was November 30, 1979. Decilog did not protest to the agency or our Office until well after the closing date.

Accordingly, the protest is denied in part and dismissed in part.

Harry R. Van Cleave

For the Comptroller General
of the United States