

Power

118531

DECISION



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

FILE: B-205107 **DATE:** May 28, 1982
MATTER OF: Systec, Inc.

DIGEST:

1. Protest alleging deficiencies in the evaluation criteria of an RFP is untimely and will not be considered on the merits where the protest was not filed until after the closing date for submission of proposals.
2. An agency is not required to refer a firm's acceptability to the Small Business Administration for a certificate of competency determination where the firm's proposal was found to be technically unacceptable and therefore not within the competitive range, and the firm thus was not precluded from award based on a determination of nonresponsibility.
3. An agency's determination to exclude a proposal from the competitive range is primarily a matter of administrative discretion, which GAO will not disturb if supported by a reasonable basis.
4. The low cost of a particular proposal is irrelevant to the selection of the awardee where that proposal has been found to be technically unacceptable.

Systec, Inc. protests the award of a contract to Vion Corporation under request for proposals (RFP) No. 6585, issued by the Department of the Interior, United States Geological Survey (USGS). The contract is to maintain Government-owned disk drives, disk controllers and channel switches. We dismiss the protest in part and deny it in part.

USGS received three proposals in response to the RFP. The contracting officer found that Vion Corporation's proposal was technically acceptable, Systec's and the other proposal, however, were judged not technically acceptable, but susceptible of being made acceptable pending correction of certain deficiencies.

USGS then requested initial technical clarifications in writing from all three firms. In its letter to Systec, USGS advised the firm that it had found a number of deficiencies in Systec's proposal, and asked Systec to submit specific written clarifications to cure those deficiencies. Systec responded to the questions posed, but USGS concluded that Systec's responses did not adequately clarify the issues in question. As a result, further clarifications (essentially dealing with the same points) orally were requested from Systec.

The agency then conducted a technical evaluation of all proposals and clarifications. On the basis of that evaluation, the contracting officer determined that only Vion Corporation's proposal was technically acceptable, and the others therefore were excluded from the final competitive range for the purpose of conducting negotiations. USGS subsequently awarded the contract to Vion Corporation.

Systec alleges that there were improprieties in both the solicitation and the pre-award process. The firm complains that the RFP did not adequately define the parameters of evaluation to be used by USGS in its award determination. Systec also alleges that USGS should have referred the firm's acceptability to the Small Business Administration (SBA) for a certificate of competency determination before it could properly reject the firm's proposal. Furthermore, Systec complains that the RFP did not define the "competitive range" from which Systec was excluded, nor did USGS offer any explanation of how that range was determined. Finally, Systec maintains that in making an award to Vion Corporation, USGS improperly ignored a savings of \$187,486.80 that would have been realized had Systec's proposal been accepted.

Evaluation criteria

Our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1981), require that protests based on alleged improprieties in a solicitation be filed prior to an agency's

receipt of initial proposals, Umpqua Research Company, B-199044, April 3, 1981, 81-1 CPD 254. Systec's objection to the detail of the RFP's evaluation criteria was made only after the firm's offer was rejected. Accordingly, Systec's objection is untimely, and we will not consider it on the merits.

Rejection of Systec's offer without referral to SBA

As specified in the RFP, the responding firms were given both a technical score (with a maximum of 150 points available) and a cost score (with a maximum of 100 points available). Technical evaluations were conducted in accordance with the three technical evaluation criteria listed in the RFP: maintenance programs, personnel, and past experience and performance. The RFP provided that the factors would be weighted equally.

The technical rating assigned to Systec (which submitted the lowest cost proposal) was significantly lower than the rating assigned to Vion Corporation. Systec's low technical rating was based largely on the following deficiencies in its proposal.

1. Systec appeared to lack experience in maintaining Intel disk drives.
2. Systec did not provide USGS with adequate information concerning its agreement with the original equipment manufacturer, even when asked to clarify its position. Furthermore, the agreement provided by Systec appeared to be outdated, and did not provide information on important issues such as call service or other service agreements.
3. One reference gave a very negative report, citing the firm's lack of trained personnel and its reluctance to call the original equipment manufacturer for service.
4. A second reference reported that the quality of Systec's service depends on the amount of equipment maintained; a small site was alleged to receive poor service.

After evaluation, only Vion Corporation's proposal was found to be both technically acceptable and within the final competitive range. Systec received 56 out of

150 technical points, and the maximum 100 points for its low cost proposal, for a total of 156 points. Vion Corporation received 148 technical points and 67 points for cost, for a total of 215 points.

In its protest, Systec does not take issue with USGS's findings relative to the firm's technical proposal. In this respect, an agency's determination that an offer is technically unacceptable and therefore should be excluded from the competitive range, either after initial evaluation or after evaluation following discussions, is primarily a matter of administrative discretion, which we will not question unless the excluded firm shows that the agency did not have a reasonable basis for its decision. Compu-Serve Data Systems, Inc., B-195982.2, May 14, 1981, 81-1 CPD 374; Deqilog, B-198614, September 3, 1980, 80-2 CPD 169. Instead, Systec simply argues that USGS should not have rejected the firm's offer as technically unacceptable without first referring the matter to the SBA.

We find no legal merit to this argument. While no small business may be precluded from award because of nonresponsibility without referral of the matter to the SBA for a final determination, Reuben Garment International Co., Inc., B-198923, September 11, 1980, 80-2 CPD 191, Systec was not found nonresponsible, that is, incapable of meeting the obligations that it would incur if awarded the contract. Rather, Systec's proposal was found to be technically unacceptable when evaluated under the criteria specified in the RFP. As stated above, those criteria were maintenance programs, personnel, and past experience and performance, all weighted equally. Even assuming that those factors are related to responsibility, we have held that a proposal from a small business concern may be rejected as technically unacceptable even when based in part on responsibility-type considerations without referral of the question to the SBA for the possible issuance of a certificate of competency. See Electrospace Systems, Inc., 58 Comp. Gen. 415, 425 (1979), 79-1 CPD 264. The certificate of competency procedure does not apply in determining whether a small business is technically acceptable and should be included in the competitive range for a given procurement.

Competitive range definition

Systec argues that USGS erred in its failure to define in the RFP, or subsequently to explain, the competitive range established in this case.

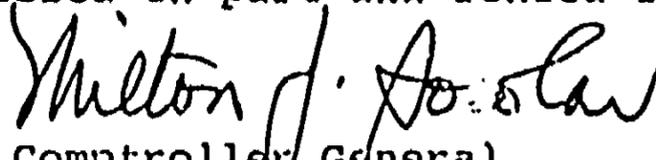
The general definition of "competitive range" is those offers that are acceptable under the terms of the solicitation's evaluation criteria, or are reasonably susceptible of being made acceptable through discussions. Self-Powered Lighting, Ltd., 59 Comp. Gen. 298, 303 (1980), 80-1 CPD 195. Here, the RFP's evaluation section advised that proposals, "to be acceptable and eligible for evaluation," must comply with the solicitation's instructions and meet the mandatory requirements listed in the RFP; award then would be made to the firm with the highest combined technical and cost scores (unless the technical proposals were essentially equal, in which case the contract would be awarded to the lowest-priced offeror). Also, the RFP detailed the items that had to be discussed in a technical proposal relative to each evaluation factor in order to avoid rejection of the proposal. We believe that the RFP adequately advised offerors of the requirements for an acceptable proposal.

Moreover, pursuant to the RFP, Systec's proposal was evaluated and ultimately found to be unacceptable. USGS advised Systec of the reasons why the firm was found unacceptable in a post-award debriefing, and has reiterated them in its report in this protest. As stated above, Systec has proffered no evidence to show that USGS's decision to exclude Systec, after giving Systec the opportunity to correct deficiencies in its initial proposal, was unreasonable.

Award price

Systec argues that the USGS might have saved \$187,486.80 had the firm's proposal been accepted. Where an offeror's proposal properly is found to be technically unacceptable, however, its lower cost is irrelevant. Logicon, Inc., B-196105, March 25, 1980, 80-1 CPD 218. A proposal that is unacceptable from an overall technical standpoint is of no value to the Government regardless of the lower price associated with it. Duroyd Manufacturing Company, Inc., B-195762, November 16, 1979, 79-2 CPD 359.

The protest is dismissed in part and denied in part.

for 
Comptroller General
of the United States