

**DECISION**

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

**FILE:** B-209910**DATE:** June 13, 1983**MATTER OF:** Pettibone Texas Corporation**DIGEST:**

Based on review of record, GAO is unable to say that there was no rational basis for procuring agency's ultimate decision which excluded protester's proposal from competitive range for "container and trailer handling vehicles." Protester did no more than state its intention to provide required equipment feature even after being requested to provide a more complete description of its proposed equipment; however, mere statement of intention was unacceptable response. Agency request was in accord with request for proposals which specifically required all offerors to provide "detailed specifications with illustrated literature" concerning the proposed equipment.

Pettibone Texas Corporation (Pettibone) protests the award of a negotiated contract for purchase of two new "container and trailer handling vehicles" by the Alaska Railroad, Federal Railroad Administration, Department of Transportation (FRA), pursuant to request for proposals (RFP) No. DTFR54-82-R-00050. The contract was awarded to LeTourneau Railroad Services, Inc. (LeTourneau). Pettibone essentially claims that its proposal for the vehicles was improperly determined to be outside the competitive range for the procurement.

We deny the protest.

The Alaska Railroad issued the RFP for the vehicles on August 25, 1982, with a closing date of September 22, 1982, for receipt of proposals. The RFP provided the vehicles were to have a "bottom lift" capability for "handling all highway trailers" and that an offeror's "detailed specifications with illustrated literature shall accompany each proposal." Proposals were received from LeTourneau, Pettibone, and Mijack Products.

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FRA explains the circumstances surrounding the rejection of Pettibone's proposal as follows:

"Although the Pettibone proposal did not provide for the bottom lift capability needed to accommodate trailers as required by the RFP, all proposals including Pettibone's proposal were submitted to the evaluation committee for its consideration. Discussions were held with each offeror to clarify its proposal. \* \* \* Pettibone was specifically queried as to the lack of bottom lift capability of the Pettibone vehicle (TEU 1000). Pettibone orally responded that while its TEU 1000 had not been used with a multipurpose spreader with bottom lift capability, a bottom lift spreader was available that could be adapted [emphasis supplied] to the TEU 1000. Upon the request of the evaluation committee, each offeror was given the opportunity to provide, in writing, a more complete description of its proposed vehicle in its proposal and to state how it met each specification in the RFP.

"A detailed record of the meeting of the evaluation committee on October 21, 1982, was not made. It is evident, however, that the committee did go through the mechanics of conducting a numerical evaluation of the proposals. Notwithstanding this evaluation, the committee determined that the failure of Pettibone to provide an adequate description of its prototype vehicle (TEU 1000) to include bottom lift capability was sufficient to reject the Pettibone proposal, i.e., to eliminate Pettibone's proposal from the competitive range. The committee then recommended the selection of LeTourneau's proposal from the remaining two contenders.

"\* \* \* We believe that Pettibone's initial proposal of a prototype vehicle without bottom lift capability could and perhaps should have been determined to be outside the competitive

range. Surely after discussions with Pettibone pointing out this deficiency and after being given the opportunity to submit a more detailed description of its proposed vehicle, the failure of Pettibone to do so justified the rejection of its proposal."

Pettibone interprets the discussions related by FRA as evidence of FRA's knowledge of the bottom lift capabilities of the Pettibone vehicle and emphasizes that, because the RFP included bottom lift in the specifications and because Pettibone had taken no exceptions to the specifications, "there is no question that Pettibone intended to supply a vehicle with bottom lift capability."

Unfortunately, there is no written record of the discussion in question. However, drawing on a common sense interpretation of the conversation as described, it is evident from the language "could be adapted" that Pettibone was offering to modify its proposed vehicle to accommodate the inquiries of the contracting officer regarding bottom lift. Therefore, the agency's dissatisfaction with Pettibone's failure to substantiate its verbal offer to clarify the bottom lift issue through its later submission was understandable.

Pettibone's argument that, because it submitted a proposal without exception under an RFP that included the bottom lift feature, its proposed vehicle necessarily offered that feature is without merit. The requirement that a proposal contain "detailed specifications with illustrated literature" made it clear that merely "parroting" back or generally responding to the RFP requirements with no details of how the requirement would be met would not be a satisfactory response.

With respect to procurements of highly technical equipment, competitive range determinations are primarily a matter of administrative discretion and ordinarily will be accepted by this Office absent a clear showing of unreasonableness. Broomall Industries, Inc., B-193166, June 28, 1979, 79-1 CPD 467. For a technical evaluation to be deemed unreasonable, it must clearly appear from the record that

there was no rational basis for the evaluation. Joanell Laboratories, Inc., 56 Comp. Gen. 291 (1977), 77-1 CPD 51.

Moreover, a procuring agency may revise its competitive range determination, eliminating from the range a proposal formerly considered to be within it (SDC Integrated Services, Inc., B-195624, January 15, 1980, 80-1 CPD 44), if discussions reveal that the proposal no longer has a reasonable chance of acceptance. In this event, the offeror submitting the proposal need not be provided an opportunity to submit a revised proposal. CompuServe Data Systems, Inc., 60 Comp. Gen. 468 (1981), 81-1 CPD 374.

Based on our review of the record, we are unable to say that there was no rational basis for the ultimate decision which excluded Pettibone's proposal from the competitive range. Although Pettibone's overall score after initial discussions was only two points less than that of the ultimate awardee's overall score, on the factor entitled "Equipment Features," Pettibone's proposal was rated "least desirable" and the ultimate awardee's proposal was scored "most desirable." The "bottom lift" feature was, on the basis of the record before us, absolutely required; moreover, Pettibone did no more than state its intention to provide this feature even after being asked to provide a "more complete description." Thus, we cannot question the exclusion of Pettibone's proposal from the competitive range notwithstanding its lower price (approximately 10 percent less than the awardee's price).

Although we cannot question Pettibone's exclusion, there is no evidence that Pettibone was informed that its proposal had been determined to be noncompetitive. Cf. Federal Procurement Regulations § 1-3.802-2(g) (1964 ed., amend 118), which provides that "all offerors shall be notified \* \* \* whether their proposals are within the competitive range." We trust that FRA will ensure compliance with this requirement in the future.

Pettibone also contends that FRA unreasonably delayed in submitting its report and that this delay was prejudicial to Pettibone. Our Bid Protest Procedures require agencies

to submit reports "as expeditiously as possible (generally within 25 working days)." 4 C.F.R. § 21.3(c) (1983). However, the late receipt of an agency report does not provide a basis for disregarding the substantive information contained in the record or for sustaining the protest on an inadequate record. Armider, Ltd., B-205890, July 27, 1982, 82-2 CPD 83. In this case, we requested the report on November 24, 1982. An extension was granted on January 12, 1983, until January 18, 1983, and the report was submitted on that date. Thus, the agency was not unreasonably dilatory in its response and, given that our Office considered and denied the protest on the merits, no prejudice to Pettibone resulted.

*for Milton J. Jordan*  
Comptroller General  
of the United States