

**DECISION**



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

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**FILE:** B-211012

**DATE:** October 12, 1983

**MATTER OF:** Kappa Systems, Inc.

**DIGEST:**

Request for proposals that did not explicitly state relative importance of cost and technical factors was defective. However, protest of that defect not raised until after closing date for receipt of initial proposals is untimely. Nevertheless, defect did not prejudice protester, since award was made on basis of technical scores and cost comparison that would be acceptable even under protester's reading of evaluation criteria.

Kappa Systems, Inc. (Kappa), protests the award of a time and materials contract to Computer Data Systems, Inc. (CDSI), for analysis and programming services for the National Accident Sampling System, under request for proposals, No. DTNH22-82-R-07008, issued by the National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

Kappa argues that the solicitation did not adequately inform potential offerors of the relative importance of technical and cost factors in determining the awardee. Kappa also argues that in evaluating proposals NHTSA assigned greater significance to cost factors than the solicitation led offerors to believe would be the case.

We dismiss the first allegation as untimely and deny the second allegation on the merits.

Under the general heading "Evaluation Factors," the solicitation provides that proposals will be evaluated in the following manner: (1) all offers are to be evaluated technically; (2) a competitive range based on technical and cost factors is to be determined; (3) cost and technical discussions will be conducted with those offerors in the competitive range; (4) best and final offers will

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be requested, and (5) "[t]he contract will be awarded to that responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered."

The solicitation further provided that the government might award a contract based on initial offers, so offerors should submit the best possible offer from both a price and technical perspective. The solicitation also stated that the government reserved the right to award to other than the low offeror.

The solicitation also contained a section entitled "Technical Proposal Evaluation," which provided a general discussion of technical proposal evaluation, and a section entitled "Criteria," which provided detailed criteria for technical proposal evaluation.

NHTSA received 29 proposals, four of which were considered completely acceptable technically, with reasonable prices. Based on initial offers, NHTSA awarded the contract to CDSI, the second highest technically rated, lowest cost offeror of those four offerors. CDSI's technical score was approximately 0.05 percent lower than Kappa's, but its cost was approximately 36 percent lower.

Kappa states that, based on its past experience as the incumbent and the stated evaluation scheme, it reasonably believed that technical factors were far more important than cost and, therefore, stressed those factors in preparing its offer. Kappa now contends that the solicitation was defective in not clearly stating the relative importance of cost and technical factors. Kappa also argues that to the extent that the solicitation did state the relative importance of those factors, it implied that technical factors were far more important than cost. Kappa cites the more lengthy and detailed technical evaluation criteria as evidence supporting that argument. Therefore, Kappa contends, the award to the lower cost, lower technically rated offeror is not in accordance with the solicitation's stated criteria.

NHTSA's position regarding the technical and cost factors is somewhat unclear. While NHTSA argues that the solicitation clearly states the relative importance of

technical and cost factors, NHTSA does not state which it thinks is more important. NHTSA further contends that where, presumably as here, a solicitation does not state the relative importance of cost and technical factors, offerors should assume that the factors are of equal importance. Finally, NHTSA cites cases that hold that when proposals are essentially equal technically or the technical difference is not worth the higher cost, award to the lower cost, lower technical rated offeror is proper.

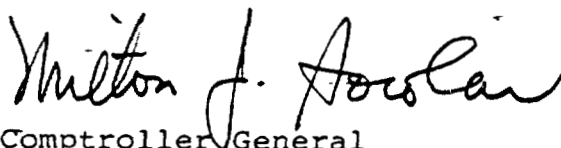
To the extent that Kappa's protest is that the solicitation was defective because it failed to clearly apprise offerors of the relative importance of cost and technical factors, it is untimely. GAO Bid Protest Procedures require that apparent-alleged solicitation improprieties be protested prior to the closing date for receipt of offers. 4 C.F.R. § 21.2(b)(1) (1983). This is an alleged apparent solicitation defect, and it was not protested until well after the closing date. If Kappa could not prepare an intelligent offer based on the solicitation as written, it should have protested in sufficient time to permit clarification of the solicitation.

Notwithstanding the untimeliness of Kappa's argument, we agree that the solicitation was not clear as to the relative importance of cost and technical factors, a requirement for negotiated solicitations. Nothing in the solicitation explicitly set forth the relative importance, and mere length or detail of description is not sufficient to signify importance. While, as NHTSA argues, we have held that price and technical factors are considered of equal importance where the solicitation does not explicitly state their relative importance, that is not a favored method of disclosing their relative importance. See, e.g., University Research Corporation, B-196246, January 28, 1981, 81-1 CPD 50. Therefore, we recommend that in future solicitations, NHTSA explicitly state the relative importance of cost and technical factors.

We do not find, however, that Kappa was prejudiced by this solicitation defect and, consequently, we find that the award to CDSI was proper. The award to CDSI was consistent with both Kappa's and NHTSA's readings of the solicitation. Kappa's contention that award was made solely on the basis of lower cost is simply not correct.

In fact, award was made to a very slightly lower technically scored proposal (0.05 percent) at a significantly lower cost (36 percent). If one assumes that technical and cost factors are of equal importance, then award must surely be made to CDSI under these circumstances. Even assuming that technical factors are significantly more important than cost, as Kappa apparently believed, it is certainly within the government's discretion to determine that the small technical difference is not worth the large cost differential and to award to CDSI. See, e.g., Grey Advertising, Inc., B-184825, May 14, 1976, 76-1 CPD 325.

Protest denied.

*for*   
Comptroller General  
of the United States