32595 Fitzmaurice PC-II

DECISION

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

FILE: B-219420 **DATE:** October 28, 1985

MATTER OF: S&Q Corporation

DIGEST:

1. Procurement regulations do not require an agency to debrief unsuccessful offerors until after contract award.

2. Competition in Contracting Act of 1984 requires agencies to release to an interested party relevant documents that would not give the party a competitive advantage and that the party is authorized by law to receive. Under the Act, agencies are primarily responsible for determining whether to release certain documents. Nevertheless, decisions on bid protests are based on the entire record, and not merely on those portions that have been released to the protester and interested parties.

3. Protest that agency failed to evaluate an offeror's alternative proposals in accord with the evaluation scheme set forth in the solicitation is without merit where the procurement record establishes that the agency evaluated proposals in accord with established evaluation criteria.

4. Elimination of the protester's proposals from the competitive range is not questioned where the evaluation was in accord with the solicitation evaluation scheme and the procurement record does not establish that it was unreasonable or in violation of procurement statutes and regulations.

S&Q Corporation protests the rejection of two proposals that it submitted in response to request for proposals (RFP) No. DACA63-85-R-0042, issued on January 10, 1985 by the Fort Worth District of the United States Army Corps of Engineers. The protester alleges that its proposals were improperly excluded from the competition.

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We deny the protest.

BACKGROUND

The RFP solicited offers for the design and construction of vacuum chamber facilities at White Sands Missile Range, New Mexico. Three offerors responded, with S&O submitting alternative proposals.

The Corps' evaluation team concluded that both S&O proposals were technically unacceptable and not susceptible of being made acceptable. The contracting officer adopted this assessment and, in a letter dated June 7, notified S&O that its proposals would not be considered further. Among the general reasons cited were failure to substantiate S&O's capability in design engineering and construction management and insufficient design calculations and details.

S&O initially protested to the agency and requested a debriefing, which the contracting officer declined to provide until after contract award (which has not yet been made). S&O then protested to our Office, arguing not only that the agency had improperly refused to provide a complete debriefing, but also that its proposals had not been evaluated in accord with the RFP's stated evaluation scheme. The firm also believes that it may have been discriminated against because it is a small business concern. S&O requests an independent technical evaluation of its proposals and an explanation of why its proposals were rejected.

THRESHOLD ISSUES

A. Access to Procurement Information

The Federal Acquisition Regulation (FAR) requires that agencies provide a detailed debriefing--one that will identify the significant weaknesses and deficiencies in a proposal--upon the request of an unsuccessful offeror. Such a debriefing, however, is to be provided after contract award, not before. FAR, 48 C.F.R. § 15.1003 (1984). Thus, we do not consider the contracting officer's refusal to provide S&O with a debriefing at this stage of the procurement to be improper. See Pan Am World Services, Inc., B-215308.5, Dec. 10, 1984, 84-2 CPD ¶ 641.

S&O also complains that the agency has withheld from it portions of the procurement record provided to our Office with the administrative report. Under the Competition in

Contracting Act of 1984, 31 U.S.C.A. § 3553(f) (West Supp. 1985), agencies are required to release to an interested party relevant documents that would not give the party a competitive advantage and that the party is authorized by law to receive. The Act gives agencies primary responsibility for determining whether to release certain documents. Nevertheless, consistent with our practice, we have reviewed and base our decision on the entire record, not merely those portions that have been provided to the protester.

B. Standard of Review

In reviewing complaints about the reasonableness of the evaluation of technical proposals, we do not reevaluate proposals or make our own determinations about their merits. Rather, our review is limited to an examination of whether the agency's evaluation was fair, reasonable, and consistent with stated evaluation criteria. We will question a contracting official's determination concerning the technical merit of proposals only if it is unreasonable or otherwise in violation of procurement statutes or regulations. Aurora Films, B-216706, Jan. 22, 1985, 85-1 CPD ¶ 81; Essex Electro Engineers Inc., et al., B-211053.2, et al., Jan. 17, 1984, 84-1 CPD ¶ 74. In evaluating proposals, agencies may reasonably exclude a proposal from the competitive range for informational deficiencies that are so material that major revisions and additions would be required to make the proposal acceptable. ASEA Inc., B-216886, Feb. 27, 1985, 85-1 CPD ¶ 247.

With this in mind, we now turn to S&Q's specific arguments.

ALLEGEDLY IMPROPER EVALUATION

S&Q's primary contention is that the Corps failed to follow the evaluation criteria that are set out in appendix "A" of the RFP. Appendix "A" lists 10 major evaluation factors and a total of 72 subfactors, each of which is accorded a maximum and minimum number of points. The RFP also included the worksheets to be used by the evaluation team in scoring technical proposals, so that offerors could annotate the page and/or drawing number in their proposals that correspond to each subfactor. S&Q notes that appendix "A" establishes clear procedures for eliminating nonconforming proposals from the competition before the evaluation team's full technical review. Since S&Q's proposals passed

the preliminary "Review for General Conformity" and the "Technical Review for Conformity with Mandatory Requirements," the protester argues that it was improper for the Corps to eliminate it from competition before evaluating and scoring the two proposals.

In addition to the general deficiencies noted above, the contracting officer stated in his June 7 letter to S&Q that he was unable to evaluate the proposals "at their current technical level." This statement apparently led S&Q to believe that its proposals had not been fully evaluated. The record, however, reveals that both proposals were numerically scored and fully evaluated in accord with appendix "A." The notes of the evaluation team from which the contracting officer drafted his letter do not state that the proposals were not evaluated, but that "at their current technical level," they represent an unacceptable risk to the government.

The protester also argues that since appendix "A" makes no reference to a competitive range determination, the Corps is required to keep S&Q in the competition until an awardee is selected. In the alternative, the protester argues that the S&Q proposals would have been in the competitive range had they been properly evaluated. The protester points out that its proposals were a major investment for the firm, including more than 800 pages of material, and concludes that the agency therefore must not have given them the full and equal consideration required by appendix "A" and applicable procurement regulations.

The purpose of a competitive range determination is to select those offerors with whom the contracting agency will hold written or oral discussions. FAR, 48 C.F.R. § 15.609(a). Proposals generally are considered to be within the competitive range if the agency determines that they have a reasonable chance of being selected for the award. Id; D-K Associates, Inc., B-213417, Apr. 9, 1984, 84-1 CPD ¶ 396. However, a proposal that is technically acceptable or susceptible of being made acceptable may be excluded from the competitive range if, relative to all proposals received, it does not stand a real chance of receiving the award. Hittman Associates, Inc., 60 Comp. Gen. 120 (1980), 80-2 CPD ¶ 437. In this case, we do not find anything in the RFP, including the initial proposal screening evaluations described in appendix "A," that is inconsistent with establishment of a competitive range.

As for the actual evaluation of S&Q's proposals, the evaluation team gave them scores substantially below those of the other two offerors. Based on the scores, the Corps considered S&Q's proposals to be technically unacceptable. The evaluation team then examined the specific deficiencies in the two proposals to determine if they were susceptible of being made acceptable. These deficiencies included the failure to provide "draft partial design analyses," including design calculations, on specific elements such as the vacuum chamber shell, foundations, access doors, and vacuum systems. Design analyses were required by the Instructions to Bidders portion of the RFP, as well as paragraph 2.2.1.1(h) and exhibit 5.1.4 of the RFP technical requirements. Other deficiencies included the failure to select either a stiffened or unstiffened shell for the vacuum chamber1/ and inadequate design efforts regarding the facility enclosure, mechanical system, and electric tug.

The Army evaluation team concluded that the deficiencies were so significant that it would require a substantial rewriting of the proposals to bring them up to the necessary technical level. The evaluation team also believed that making the proposals acceptable would require technical leveling--helping an offeror to bring its proposal up to the level of others by successive rounds of discussions in which weaknesses resulting from a lack of diligence, competence, or inventiveness are pointed out. Technical leveling is proscribed by the FAR, 48 C.F.R. § 15-610(d)(1). Therefore, as noted above, the evaluation team recommended that both S&Q proposals be eliminated from the competitive range, and the contracting officer adopted this recommendation.

S&Q's failure to specify whether the vacuum chamber shell would be stiffened or unstiffened was cited as a major deficiency in the portion of the administrative report disclosed to the protester. According to the protester, the RFP required no more detail than it provided on the

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1/ A stiffened shell includes a network of I-beams or other structural members around and supporting a chamber shell of relatively thin plates of metal. An unstiffened shell uses relatively thick plates without additional support to prevent collapse from the difference in pressure within and without the vacuum chamber.

subject. S&Q also responds that in its proposals, it identified the choice between a stiffened and unstiffened shell as being "a fundamental concern," indicated its preliminary determination on the choice, and clearly prescribed the method for making a final determination, i.e., a finite-element structural analysis. We disagree with S&Q's account of the RFP requirements, as well as with its description of how its proposals addressed the subject.

The RFP requires offerors to submit a draft partial design analysis on the vacuum chambers, following the content and format for the final design analysis that must be prepared under the contract. As described in the RFP, at a minimum, this analysis requires a selection of materials accompanied by design calculations for such aspects as loading, stress and stability. Selection of materials and finish of the vacuum chamber shell were listed as specific areas for evaluation in appendix "A." Thus, while the RFP did not specifically direct offerors to specify the use of a stiffened or unstiffened shell, offerors could not provide the necessary design anaylsis or selection of materials unless one or the other method of construction was chosen.

S&Q's proposals did not provide design calculations for the vacuum chamber shell or specify materials to be used in construction. Even materials specifically required by the solicitation for surfaces of the shell exposed to a vacuum, type 304 or 304L stainless steel, were described by S&Q as "the most likely materials." Contrary to the protester's assertion, the proposals did not identify the choice between a stiffened and unstiffened shell as a fundamental concern, but merely stated that a final choice would be made based upon consideration of the potential benefits of a stiffened shell. The proposals noted that the preliminary design was based upon an unstiffened shell, with no indication of why this was the case, and without addressing the methods for making a final determination. S&Q proposed a finite-element analysis only as a "final check" on the design of the basic vacuum chamber to verify or improve its integrity, not as the method for determining if a stiffened shell was preferable.

We agree with the Corps that S&Q's failure to select a stiffened or unstiffened shell was a major deficiency, raising questions regarding the offeror's understanding of the required work and the realism of its proposed costs. In addition to considering S&Q's views regarding this omission,

we have reviewed the Army's account of other major deficiencies it found in the S&Q proposals, which generally involve failures to provide information required by the RFP. The Corps considered the omitted information necessary to establish S&Q's understanding of the work and believed that major revisions and additions to the proposals were required.

Based upon our review of the procurement record provided by the Army, we cannot say that the evaluation of S&Q's proposals was unreasonable or in violation of applicable statutes and regulations, or that it was not in accord with the RFP's evaluation scheme. Nor do we find any evidence that the evaluators based their decision on S&Q's small business status. Therefore, we have no grounds for questioning the agency's decision to eliminate the S&Q proposals from the competitive range. Robert Wehrli, B-216789, Jan. 16, 1985, 85-1 CPD ¶ 43.

Accordingly, we deny the protest.

for Seymour Efros
Harry R. Van Cleve
General Counsel