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DECISION

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

FILE: B-220521 DATE: January 13, 1986

MATTER OF: Sperry Corporation

DIGEST:

1. Although an award properly may be made on the basis of initial proposals without discussions in certain circumstances, under the Competition in Contracting Act the award must result in the lowest overall cost to the government and, in fact, must have been made in the absence of any discussions. Thus, where the agency awards a contract to a higher-priced offeror and also holds price discussions, the award is not made on an initial proposal basis consistent with the statutory and regulatory requirements.

2. Since, as a general rule, contracting agencies must hold discussions with all responsible offerors for a negotiated procurement whose proposals are within the competitive range, an agency acts improperly by not conducting technical discussions and by requesting best and final offers expressly limited to revisions in price proposals only where overall technical considerations were assigned much greater weight than price in the evaluation scheme and the deficiencies noted in the initial technical proposals were suitable for correction through discussions.

Sperry Corporation protests the award of a contract to AAI Corporation under request for proposals (RFP) No. F41608-85-R-4352, issued by the Department of the Air Force. The procurement is for the acquisition of standardized automatic test equipment for testing the radar, avionics, and electro-optical systems for the B-52 bomber. Sperry essentially complains that the award was improper due

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to the Air Force's failure to conduct technical discussions during the source selection process. We sustain the protest.

Background

The RFP contemplated the award of a firm-fixed-price contract with options and provided that the award would be made to the offeror obtaining the highest total weighted score as the result of the price and technical evaluations. The evaluation criteria to be utilized in the source selection process were listed in the RFP as follows, in descending order of importance: (1) technical approach; (2) price; (3) probability/manufacturing capability; (4) life cycle cost management; (5) logistics supportability; and (6) management. (Although not announced in the RFP, the Air Force assigned respective weights of 30, 20, 19, 16, 10, and 5 percent to these criteria.)

Nine proposals were submitted in response to the RFP, and Sperry's initial technical proposal received the fifth highest technical point score. AAI's proposal received the second highest technical point score. Sperry's initial proposed price was the lowest and was significantly lower than AAI's in comparison.

Subsequent to this initial evaluation, the Air Force determined that the funds available were insufficient to award the contract as originally contemplated. Accordingly, the Air Force decided to redesignate certain items in the RFP as option items instead of "initial buy" items. An amendment was issued to this effect, and discussions were then held to give the offerors the opportunity to restructure their price proposals in order to effect these changes. Best and final offers were requested specifically limited to revisions in the price proposals; the Air Force advised all offerors that the technical proposals had been evaluated and rated as originally submitted, and that it did not plan to hold any technical discussions.

Upon reevaluation, Sperry's best and final price remained low, and was lower than AAI's by some 17 percent. Accordingly, Sperry received the maximum possible weighted score for price, but since price was only weighted 20 percent, this advantage did not offset the firm's relatively low combined weighted technical score (technical approach, logistics supportability, etc.). In terms of total weighted score, Sperry was fourth highest among the offerors. Although AAI's best and final price was higher than

Sperry's, it was not the highest, and, therefore, the firm was able to obtain the highest total weighted score:

	AAI	Harris	Boeing	Sperry	Westinghouse
Combined Weighted Tech. Score	74.61	76.40	71.11	67.12	70.93
Weighted Price Score	16.60	12.60	16.40	20.00	8.40
Total Weighted Score	91.21	89.00	87.51	87.12	79.33

Accordingly, the Air Force awarded the contract to AAI pursuant to the RFP's established evaluation and source selection scheme which provided that the award would be made to the offeror with the highest total weighted score.

Sperry protests the award on the principal ground that the agency's failure to conduct technical, as well as price, discussions was a clear violation of the Federal Acquisition Regulation (FAR), which provides, with limited exceptions, that the contracting agency shall conduct written or oral discussions with all responsible offerors for a negotiated procurement who submit proposals within the competitive range. FAR, 48 C.F.R. § 15.610(b) (1984). Sperry argues that since its proposal was determined to be technically acceptable by the Air Force's evaluators and, hence, within the competitive range[1/], the agency's failure to afford the firm the opportunity to submit a revised technical proposal was inherently prejudicial with regard to the firm's competitive standing among the offerors. We believe the protest has merit.

Analysis

At the outset, we note that the Air Force argues that the award is not subject to challenge because it was consistent with the RFP's established evaluation and source selection scheme. In this regard, it is well-settled that where, as here, an RFP contains a precise numerical formula

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[1/]Generally, offers that are technically unacceptable as submitted and would require major revisions to become acceptable are not for inclusion in the competitive range. Ameriko Maintenance Co., Inc., B-216406, Mar. 1, 1985, 85-1 CPD ¶ 255.

including cost/price and states that award will be made to the highest point scored offeror, then the award must be made to the offeror obtaining the highest total score as the result of the cost/price and technical evaluations unless the source selection authority determines that the difference among technical scores does not, in actuality, represent any significant difference in technical merit. Harrison Systems Ltd., 63 Comp. Gen. 379 (1984), 84-1 CPD ¶ 572. Since the record in this case establishes that the Air Force determined that the five top-scoring technical proposals were not in fact essentially equal, the Air Force's argument that the award was unobjectionable is valid to this limited extent.

However, the real issue involved in this matter is not whether the source selection decision was consistent with the scheme set forth in the RFP, but whether the Air Force acted properly in using only the initial technical scores in formulating the overall competitive ranking among the offerors.

The Air Force asserts that it was proper not to conduct technical discussions where its evaluators determined that the government could accept any of the five top-scoring initial technical proposals without the need for such discussions, since all of these proposals, although not essentially equal, were technically acceptable. As the underlying basis for this assertion, the Air Force relies upon the FAR, 48 C.F.R. § 52.215-16, as incorporated into the RFP, which provides at paragraph (c) that the government may award a contract on the basis of initial offers received, without discussions. We believe that the Air Force's reliance is misplaced.

FAR, 48 C.F.R. § 52.215-16(c), reflects the major exception to the general requirement that an agency must conduct written or oral discussions with all responsible offerors whose proposals are within the competitive range. In this regard, FAR § 15.610(a)(3) (Federal Acquisition Circular 84-5, Apr. 1, 1985) provides that discussions are not required when it can be clearly demonstrated from the existence of full and open competition or accurate prior cost experience that acceptance of the most favorable initial proposal without discussions would result in the lowest overall cost to the government at a fair and

reasonable price, provided that the solicitation advised offerors of this possibility and that no discussions are in fact held.2/

In the present matter, we believe that this exception allowing for award on the basis of initial proposals is inapplicable and in any event would have been improper since the award to AAI has not resulted in the lowest overall cost to the government. In fact, the award to AAI was not made on the basis of initial proposals without discussions since the agency held price discussions and requested best and final offers to allow for price revisions. See Decision Sciences Corp., B-196100, May 23, 1980, 80-1 CPD ¶ 357. The exception allowing for award on an initial proposal basis is always conditioned by the complete absence of any written or oral discussions with any offeror. FAR § 15.610(a)(3)(ii) (FAC 84-5); see also Technical Services Corp., 64 Comp. Gen. 245 (1985), 85-1 CPD ¶ 152.

Accordingly, we believe the only matter for resolution is whether the Air Force properly limited its request for best and final offers to revisions in the price proposals only without also affording the offerors the opportunity to submit revised technical proposals as well. Generally, this Office considers that discussions have taken place if an offeror is given the opportunity to revise its initial proposal, either in terms of price or technical approach,

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2/The regulatory provision that award on the basis of initial proposals result in the lowest overall cost to the government reflects an express statutory requirement of the Competition in Contracting Act of 1984 (CICA), Pub. L. No. 98-369, 98 Stat. 1175. See 10 U.S.C.A. § 2305(b)(4)(A)(ii) (West Supp. 1985), as added by section 2723(b) of the CICA, which specifically provides that an agency may award a contract without discussions "when it can be clearly demonstrated from the existence of full and open competition or accurate prior cost experience with the product or service that acceptance of an initial proposal without discussions would result in the lowest overall cost to the United States." The previous statutory language did not require that the award result in the lowest overall cost to the government. See 10 U.S.C. § 2304(g) (1982); Shapell Government Housing, Inc., 55 Comp. Gen. 839 (1976), 76-1 CPD ¶ 161; Frank E. Basil, Inc.; Jet Services, Inc., B-208133, Jan. 25, 1983, 83-1 CPD ¶ 91.

The Aerial Image Corp., Comcorps, B-219174, Sept. 23, 1985, 85-2 CPD ¶ 319, and we have held in this regard that an agency's decision not to engage in technical discussions is unobjectionable where a proposal contains no technical uncertainties. Weinschel Engineering Co., Inc., B-217202, May 21, 1985, 64 Comp. Gen. ___, 85-1 CPD ¶ 574; Information Management, Inc., B-212358, Jan. 17, 1984, 84-1 CPD ¶ 76. Therefore, the Air Force's decision to request best and final offers on the basis of price revisions alone would not be subject to question if in fact the initial technical proposals contained no uncertainties or deficiencies. We believe this is not the case.

The essential purpose of discussions is to furnish offerors with information concerning deficiencies in their proposals and to give them an opportunity for revision. Technical Services Corp., B-216408.2, June 5, 1985, 85-1 CPD ¶ 640. Although agencies are not obligated to conduct all-encompassing discussions, that is, to discuss all inferior or inadequate aspects of a proposal, agencies still generally must lead offerors into the areas of their proposals which require amplification. Id.; Dynalectron Corp.--Pac Ord, Inc., B-217472, Mar. 18, 1985, 85-1 CPD ¶ 321. This is the essence of the long-standing requirement that meaningful discussions be held. See Raytheon Company, 54 Comp. Gen. 169 (1974), 74-2 CPD ¶ 137. One purpose of meaningful discussions is to advise offerors within the competitive range of informational deficiencies in their proposals so that they can be given an opportunity to satisfy the government's requirements. FAR, 48 C.F.R. § 15.610(b).

In this regard, our examination of the source selection documents shows that both the AAI and Sperry initial technical proposals (the only proposals that have been furnished as part of the agency's administrative report), although determined to be technically acceptable, nonetheless contained certain informational deficiencies or omissions which should have been resolved through technical discussions, since the discussions would not have resulted in technical leveling or technical transfusion.

We note that AAI's proposal, which in fact was selected for the award, was evaluated as deficient in several areas for either not containing the requested information or failing to discuss fully all elements. Accordingly, AAI's proposal received few or no technical evaluation points in

these areas out of the total number of points possible. The same holds true with regard to the evaluation of Sperry's proposal, which was perceived to have omissions or deficiencies in numerous areas. Most strikingly, Sperry received no points in two specific subcriteria areas out of a respective 10 and 20 possible points because the firm had not provided adequate information in its proposal and had failed to state its intent to comply with a requirement. Consequently, although it is impossible to ascertain what the competitive ranking of offerors would have been if the firms had been given the opportunity to submit revised technical, as well as price, proposals, we conclude that the omissions and deficiencies noted by the evaluators[3/] were, in large part, suitable for correction, thus mandating that technical discussions be held. See Decision Sciences Corp., B-196100, supra.

With regard to Sperry's initial technical proposal, we cannot find that the proposal was deficient to the extent that, even if discussions had been held to allow for the correction of individual deficiencies, the firm had no chance of being selected for the award. See Marvin Engineering Co., Inc., B-214889, July 3, 1984, 84-2 CPD ¶ 15. Although Sperry ranked fifth in terms of initial technical proposals, there was only a difference of 7.49 weighted technical points between its proposal and AAI's, and its best and final price was substantially lower. Hence, considering the RFP's stated basis for award, we believe that Sperry conceivably might have been able to obtain the highest total weighted score (given the 80 percent weight assigned to overall technical factors) if the firm had been afforded the opportunity to submit a revised technical proposal.

Although we sustain the protest, we note that the Air Force has advised this Office that a preaward survey to establish Sperry's responsibility as a prospective contractor has resulted in a recommendation that no award be made to the firm because of certain concerns regarding the adequacy of the firm's software quality assurance plan.

[3/]We do not expressly identify the omissions and noted deficiencies in the proposals because of our following recommendation that discussions be reopened. Moreover, such identification would be inconsistent with our in camera review of the source selection documents as requested by the Air Force.

Nonetheless, by separate letter of today, we are recommending to the Secretary of the Air Force that negotiations be reopened with all competitive range offerors to allow for the submission of new best and final offers encompassing both technical and price revisions. If AAI is not in line for award as a result of these negotiations, we further recommend the present contract with AAI be terminated for the convenience of the government.

The protest is sustained.

for Shelton J. Bowen
Comptroller General
of the United States