

DECISION



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

FILE: B-220384 **DATE:** February 11, 1986
MATTER OF: Ametek, Straza Division

DIGEST:

1. Agency decision to award to higher cost, technically superior proposal is proper so long as it is consistent with stated evaluation criteria and rationally based.
2. Agency determination that offeror's lack of an existing software package to operate with a particular computer is a technical weakness is reasonable where the solicitation identified compatible software as desirable and listed proven technology as an evaluation factor.
3. Agency's downgrading of proposal in which costs of developing software are not specified is reasonable where the protester does not indicate anywhere in its proposal that it intends to absorb such costs itself.

Ametek, Straza Division, protests the award of a contract to RD Instruments under request for proposals (RFP) No. WASC-85-00260 issued by the National Oceanic and Atmospheric Administration (NOAA), Department of Commerce. The solicitation called for an Acoustic Doppler Current Profiler, a system that measures water velocity from a moving ship through use of sonar echoes and provides data processing and display.

We deny the protest.

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The RFP, issued on August 5, 1985, was for a fixed-price contract for one system, with an optional second system. It required a system comprised of commercially available, off the shelf, hardware and stated that the manufacturer must have manufactured this type of equipment and demonstrated performance in actual field applications. The system was to consist of, among other items, a data acquisition logging system with software and display. The solicitation noted that it was "desirable" that the data acquisition system and software be compatible with an International Business Machines (IBM) PC/XT, and that it was "highly desirable" that software be capable of real time, simultaneous data acquisition, processing and display compatible with an IBM PC/XT with floppy disk and/or streaming tape drive. The data acquisition system was required to be capable of transferring data to an IBM PC/XT. The solicitation also required hardware and software costs to be detailed separately.

The RFP provided for evaluation of technical proposals in three areas, in descending order of importance: (1) meets requirements; (2) technical approach; and (3) proven technology. Price proposals were evaluated separately on the basis of each offeror's total proposed price as compared to other technically qualified offerors. Technical factors were accorded a 60 percent total evaluation weight, and cost 40 percent. The solicitation further stated that award would not necessarily be made to the lowest priced offeror.

NOAA received proposals from two firms, Ametek and RD Instruments. Of 1,500 available points, the committee evaluating the technical proposals gave Ametek a score approximately 200 points less than RD Instruments. Ametek received all the available points in the cost evaluation. As a result, Ametek's final score was, out of a total of 2,500 points, 138 points lower than that of RD Instruments. The source selection official determined that because the RD Instruments proposal was technically superior and had received the higher overall point score, award to that firm was in the best interest of the government.

Ametek alleges that NOAA did not follow the RFP selection criteria in evaluating the technical aspects of its proposal and improperly awarded the contract to an offeror with a higher proposed cost. Specifically, Ametek challenges NOAA's determination with regard to Ametek's lack of an existing software package to operate with the IBM PC/XT computer and its failure to identify the cost of development of the software in its cost breakdown. The

protester also asserts that although NOAA awarded the contract on September 30, the agency did not send Ametek a debriefing letter detailing the reasons for its rejection until October 10, thereby preventing Ametek from protesting the award in time to stay performance of the contract. Since Ametek did not file its protest until October 23, NOAA had proceeded with performance.

Ametek now argues that the solicitation required off-the-shelf hardware, not software, and that it was merely "desirable" that software be IBM PC/XT compatible. The firm's offer was for off-the-shelf hardware. Therefore, according to the protester, NOAA improperly penalized it for not having an off-the-shelf software package. Ametek states that it has had a working software package for some time, and that this software merely requires translation into the IBM/PC format. In addition, Ametek complains that it deliberately did not identify the cost of development of the software because it intended to absorb these costs, not pass them on to NOAA. Moreover, Ametek asserts that since the contract was to be awarded on a fixed-price basis, NOAA should have assumed its proposal was complete, rather than improperly penalizing it for not allocating funds to development of the software package in its cost proposal.

NOAA responds that the solicitation called for a field-tested, off-the-shelf system with software compatible with the IBM PC/XT, which Ametek admitted it had not yet developed, and that, consequently, proven technology was the evaluation factor on which Ametek was weakest. NOAA also points out that the RFP required a separate cost breakdown for hardware and software and that Ametek's failure to articulate its intention to absorb the cost of software development, combined with its unrealistically low price for the data acquisition system hardware, and by implication, software development, led the agency to question Ametek's understanding of solicitation requirements.

In considering the propriety of NOAA's technical evaluation, our function is not to evaluate the proposals anew and make our own determinations as to their acceptability or relative merits. The determination of the relative desirability of proposals, particularly with respect to technical considerations, is primarily a matter for judgment of the contracting officials. Skyways, Inc., B-201541, June 2, 1981, 81-1 CPD ¶ 439. Our review of NOAA's technical evaluation is limited to considering whether the evaluation was fair and reasonable and consistent with the evaluation criteria set forth in the RFP. See Deuel and Assocs., Inc., B-212962, Apr. 25, 1984, 84-1 CPD ¶ 477.

The solicitation here clearly required a data acquisition system with software and display that was capable of transferring data to an IBM PC/XT. Ametek has not questioned the agency's statements that it desired compatibility with the IBM PC/XT to assure the timely processing of data and preferred a system that could do so simultaneously with data acquisition. Of the three evaluation criteria, "proven technology," in our opinion, revealed NOAA's intent to evaluate the scope and quality of offerors' past experience with similar systems and equipment. The procurement record demonstrates that the technical evaluation committee scored Ametek's proposal 10, 13, and 20 percent lower, respectively, on the evaluation factors "meets requirements," "technical approach," and "proven technology." Ametek acknowledged in its proposal that it had yet to develop the required software, and nowhere in its submission did it refer to the cost of software development, either as a budgeted item or as a "no cost" item. Accordingly, we find reasonable NOAA's view that the combination of Ametek's lack of an existing IBM PC/XT compatible software package and the conspicuous absence of funds for the development of such software indicated a lack of understanding of the scope and cost of the work involved.

Ametek also complains that NOAA improperly accepted an offer with a higher cost than it proposed. We do not agree. NOAA's award to a higher cost, higher technically rated offeror was consistent with the evaluation criteria set forth in the RFP. In a negotiated procurement, there is no requirement that award be made on the basis of lowest cost unless the solicitation so provides. Henderson Aerial Surveys, Inc., B-215175, Feb. 6, 1985, 85-1 CPD ¶ 145. The RFP here indicated the relative importance of cost versus technical criteria and stated that award was not necessarily to be made to the lowest priced offeror. We have consistently upheld awards to offerors with higher technical scores and higher costs, so long as the result is consistent with the evaluation criteria and the procuring agency had determined that the technical difference is sufficiently significant to outweigh the cost difference. Kelsey-Seybold Clinic, P.A., B-217246, July 26, 1985, 85-2 CPD ¶ 90.

In this case, the source selection official concluded that the higher cost of the RD Instruments proposal resulted primarily from the existence of compatible software, and that the performance of the existing RD Instruments system in actual field applications justified this higher cost, particularly since Ametek's proposal did not reflect any

software development costs. We do not find unreasonable his conclusion that RD Instruments' proposal was the most advantageous to the government.

In view of this conclusion, we need not consider Ametek's additional protest issue regarding NOAA's alleged delay in sending the debriefing letter and its decision to proceed with performance.

We deny the protest.

for Seymour S. Fros
Harry R. Van Cleve
General Counsel