

DECISION



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

FILE: B-221814

DATE: April 24, 1986

MATTER OF: Furuno U.S.A., Inc.

DIGEST:

Contracting agencies generally must hold discussions with all responsible offerors for a negotiated procurement whose proposals are within the competitive range. An agency acted improperly by not advising a competitive range offeror that its proposal, which otherwise received relatively strong technical scores and was much lower in cost, contained informational deficiencies which were the proper subject for resolution through discussions, since the discussions would not have resulted in prohibited technical leveling or technical transfusion.

Furuno U.S.A., Inc., protests the proposed award of a contract to Raytheon Marine Company under request for proposals (RFP) No. N00024-85-R-7028(Q), issued by the Department of the Navy. The procurement is for the acquisition of class B2 radar units for use in small Navy boats. Furuno essentially complains that the Navy acted improperly in selecting Raytheon Marine as the successful offeror for final award consideration. We sustain the protest.

Background

The RFP provided that offered radar equipment would be evaluated by means of a multiphase process. Under phase IA, submitted proposals would be evaluated on a pass/fail basis to determine if they met or exceeded minimum technical requirements and delivery schedules. Qualifying proposals would then be evaluated during phase IB under the stated criteria of: (1) suitability; (2) technical; and (3) cost. Offerors were advised that suitability would be weighted "slightly higher" than technical, which, in turn, would be weighted "slightly higher" than cost. As a result of the phase IB evaluation, up to five offerors obtaining the highest combined weighted scores would then have their proposed radars tested under phase II.

Phase II of the Navy's source selection process contemplated a land-based test of the radars to address technical performance, verification of minimum specification requirements, reliability during testing, electrical and mechanical design and construction, and other considerations. A secondary objective of the land-based test was to verify the results of the phase IB proposal evaluation. The land-based test was to be conducted under the same criteria of suitability, technical, and cost as utilized during phase IB, and the single offeror obtaining the highest total weighted score combining the phase IB and phase II evaluation scores would then proceed to phase III, formal at-sea testing. Phase III would be comprised of a technical evaluation ("Techeval") followed by an operational evaluation ("Opeval"), successful completion of these final steps resulting in a recommendation for approval for full production (AFP). A contract would only be awarded if an AFP were granted; otherwise, the solicitation would be canceled.

The RFP was issued on January 4, 1985, with an amended closing date of February 19. Proposals were received from Furuno, Raytheon Marine, S.M.A. and WesMar. Furuno proposed two radar units, hereinafter referred to as its 3 KW and 10 KW models. WesMar's proposal was eliminated during the phase IA pass/fail evaluation. Furuno, Raytheon Marine, and S.M.A. then proceeded to the phase IB evaluation. During this stage of the source selection process, the Navy gave Furuno's proposal very low scores^{1/} under the suitability criterion. The evaluators determined that Furuno's proposal did not address many matters required by applicable provisions of the RFP.

However, Furuno's proposal received relatively strong scores during phase IB under the technical criterion. Furuno's weighted scores for this criterion for both the 3 KW and 10 KW models were higher than S.M.A.'s score and only slightly lower than Raytheon Marine's score. In addition, Furuno's initial proposed costs for both models were substantially lower than both Raytheon Marine's and S.M.A.'s proposed costs. (S.M.A.'s proposed cost was the highest.)

All three offerors then proceeded to phase II, land-based testing of their radars. During this stage of the source selection process, both of Furuno's radar models

^{1/} Because the Navy has requested our in camera review of the source selection documents, this decision will not set forth the specific scoring of the proposals.

received weighted scores under the suitability criterion which were identical to the weighted score received by Raytheon Marine and which were significantly higher than S.M.A.'s score. Moreover, under the technical criterion, Furuno's weighted score for its model 3 KW was insignificantly less than Raytheon Marine's score, and its weighted score for its model 10 KW was, in fact, identical to Raytheon Marine's score. S.M.A.'s weighted score under the technical criterion was slightly lower than that of either Furuno or Raytheon Marine.

At the conclusion of the phase II evaluation, the Navy determined that certain changes were required in the training courses to be offered by the eventual contractor, which, accordingly, would have an impact upon the offerors' cost proposals. An amendment was issued to this effect, and the three offerors were requested to submit best and final offers. In their best and final offers, Furuno and S.M.A. reduced their radar unit prices, while Raytheon Marine offered no such reduction.

The Navy then assigned weights to the cost proposals, and these scores were then combined with the weighted scores from both the phase IB proposal evaluation and phase II equipment evaluation to determine the total combined weighted scores for each offer. Because S.M.A.'s proposal was determined no longer to have a reasonable chance of being selected for award,^{2/} S.M.A. was eliminated from further award consideration. Furuno's best and final cost offer was significantly lower than Raytheon Marine's for both its 3 KW and 10 KW models. However, because cost was weighted less than the suitability and technical criteria, Furuno did not receive the highest total combined weighted score. Furuno's total combined weighted score for its model 3 KW was somewhat lower than that for Raytheon Marine's proposed radar, and its score for model 10 KW was similarly somewhat lower.

As provided in the RFP, the Navy would at this point have selected only Raytheon Marine for formal at-sea testing of its offered radar under phase III. However, because the Navy was apparently still evaluating Furuno's proposal to determine whether the noted deficiencies under the suitability criterion could be offset by Furuno's lower cost and because the ships to be utilized for the at-sea tests were presently available, the Navy decided to conduct

^{2/} S.M.A.'s cost remained the highest even after its offered unit price reduction, and its total combined weighted score under the suitability and technical criteria as the result of the phase IB and phase II evaluations was the lowest.

at-sea testing of both the Furuno and Raytheon Marine radars upon the agreement of both firms. Furuno's proposal continued to be evaluated while the at-sea tests were being conducted. The Navy ultimately concluded that Furuno's proposal was weak in critical areas of equipment supportability and, consequently, determined that acceptance of Raytheon Marine's proposal, albeit higher in cost, would be in the best interest of the government. Accordingly, Furuno was advised that its offered equipment was no longer under award consideration, and the Navy continued further at-sea testing of only the Raytheon Marine radar. No award has been made pending Raytheon Marine's successful completion of the "Opeval" portion of the phase III at-sea testing.

Furuno principally contends that the Navy acted improperly by placing undue emphasis on "paperwork" considerations, i.e., documentation of suitability during the phase IB evaluation, rather than on technical performance and lower cost.

Analysis

It is clear from our in camera review of the record that the Navy never advised Furuno at the conclusion of the phase IB evaluation that its proposal was notably weak under the suitability criterion. Rather, the Navy's subsequent request for best and final offers seemingly contemplated only revisions in the offerors' cost proposals to reflect the Navy's announced change in certain training requirements. Thus, we believe the only matter for resolution is whether the Navy was obligated to point out deficiencies in the proposals through discussions before proceeding with the phase II land-based test.

It is a general requirement that discussions, either written or oral, shall be conducted with all responsible offerors who submit proposals within the competitive range. Federal Acquisition Regulation (FAR), § 15.610(b) (FAC 84-5, Apr. 1, 1985). Ordinarily, this Office considers that discussions have taken place if an offeror is given the opportunity to revise its initial proposal, either in terms

of cost/price or technical approach. The Aerial Image Corp., Comcorps, B-219174, Sept. 23, 1985, 85-2 CPD ¶ 319. Thus, we have held that an agency's decision not to engage in technical discussions is unobjectionable where a proposal contains no technical uncertainties. Weinschel Engineering Co., Inc., 64 Comp. Gen. 524 (1985), 85-1 CPD ¶ 574; Information Management, Inc., B-212358, Jan. 17, 1984, 84-1 CPD ¶ 76. However, we believe that holding is inapplicable here because, although the offerors were afforded a limited opportunity to revise their costs, it is clear that Furuno's proposal contained informational deficiencies under the suitability criterion which were the proper subject for resolution through discussions, as we see nothing to indicate that such discussions would have resulted in prohibited technical leveling or technical transfusion. Sperry Corp., B-220521, Jan. 13, 1986, 65 Comp. Gen. ____, 86-1 CPD ¶ 28.

Where discussions with offerors are required, their purpose is to advise offerors of deficiencies in their proposals and to provide 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 address in express detail 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.--PacOrd, Inc., B-217472, Mar. 18, 1985, 85-1 CPD ¶ 321. Accordingly, one purpose of 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, § 15.610(c)(2) (FAC 84-5, Apr. 1, 1985); Sperry Corp., 65 Comp. Gen. at ____, 86-1 CPD ¶ 28 at 6, supra.

Because Furuno was never advised through discussions that its proposal was informationally deficient during phase IB, the very low scores the proposal received for suitability at that early stage of the Navy's complex source selection process continued to have a negative impact on Furuno's competitive standing throughout the rest of the procurement. Therefore, even though its proposal received scores virtually identical to Raytheon Marine's for both suitability and technical as the result of the phase II

equipment evaluation and its best and final costs were markedly lower, the Navy's failure to afford it the opportunity to correct the informational deficiencies found during phase IB may have precluded it from having its proposal fairly evaluated. Sperry Corp., 65 Comp. Gen. at ___, 86-1 CPD ¶ 28 at 7, supra. In this regard, the difference between Furuno's total combined weighted scores and Raytheon Marine's total combined weighted score is almost entirely attributable to the fact that Furuno's phase IB suitability scores were so low.^{3/}

What we find to be troublesome about the conduct of this procurement is the fact that the Navy's administrative report does not support its conclusion that Raytheon Marine's radar is so clearly technically superior to Furuno's as to justify the substantial cost premium involved in making an award to Raytheon Marine. See Riggins & Williamson Machine Co., Inc., et al., 54 Comp. Gen. 783 (1975), 75-1 CPD ¶ 168. As we have noted, the phase II land-based test evaluation results indicate no such superiority and the Navy's report is silent as to the results of the phase III at-sea testing.^{4/} Rather, it is our view that the Navy's potential source selection is flawed because it is based almost entirely upon the fact that Furuno submitted insufficient documentary material with its initial proposal, informational deficiencies which we believe

^{3/} We question why Furuno's weighted scores for suitability under the phase II equipment evaluation were identical to Raytheon Marine's, since a secondary objective of the land-based test was to verify the results of the phase IB proposal evaluation, under which Raytheon Marine received much higher suitability scores.

^{4/} The Navy apparently takes the position that the phase III at-sea testing is irrelevant to its selection of Raytheon Marine as the successful offeror because the RFP contemplated that only the firm with the highest total combined weighted score from the phase IB and phase II evaluations would undergo phase III testing. However, we do not agree with that position because the Navy, with the agreement of both Furuno and Raytheon Marine, deviated from its original source selection plan by testing both firms' radar under phase III. Thus, we think the phase III results necessarily would have a direct bearing upon the ultimate source selection.

reasonably could have been resolved through meaningful discussions at the conclusion of phase IB. Although Furuno certainly had the burden to submit an adequately written proposal, we cannot view its omission of suitability documentation from its initial proposal to have been material to the extent that discussions were not required in this instance. Cf. Marvin Engineering Co., Inc., B-214889, July 3, 1984, 84-2 CPD ¶ 15 (discussions not required where proposal as submitted is so informationally deficient that it is initially excluded from the competitive range). Unlike the situation in Marvin, Furuno remained within the competitive range into the Navy's phase III at-sea evaluation, thus mandating that the informational deficiencies in its proposal be brought to its attention through meaningful discussions so as to allow for proposal revision.^{5/} Sperry Corp., 65 Comp. Gen. at _____, 86-1 CPD ¶ 28 at 7, supra.

Accordingly, by separate letter of today, we are recommending to the Secretary of the Navy that the agency presently cease any further phase III testing of Raytheon Marine's radar and reopen competitive range negotiations (phase IB) with Furuno and Raytheon Marine to allow the firms to submit another round of best and final offers. If Furuno's offer should obtain the highest total combined weighted score^{6/} under the criteria of suitability, technical and cost upon reevaluation, then, in accordance with the RFP's original selection plan, Furuno's radars alone should be subject to whatever phase III at-sea testing is necessary for final award consideration.

^{5/} Although the Navy estimates that it would cost Furuno a substantial sum to correct the overall deficiencies in its proposal, this is not germane to the issue of whether the firm should be afforded the opportunity to do so.

^{6/} As noted earlier, the RFP provided that suitability would be weighted "slightly higher" than technical, which would be weighted "slightly higher" than cost. With regard to the actual weights utilized by the Navy during the evaluation process, we must point out that, although the percentage assigned to suitability is, in fact, only a few points higher than that assigned to technical, the technical percentage point weight is more than twice that assigned to cost. This is not consistent with the statement that it would be weighted "slightly higher" and represents a deviation from stated provisions of the RFP that may have tainted the evaluation results. In conducting further discussions, it is incumbent upon the Navy to clarify the true relationship among cost and the other evaluation factors.

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The protest is sustained.

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