



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Micronesia Media Distributors, Inc.

File: B-222443

Date: July 16, 1986

DIGEST

1. Agency properly rejected proposal because of failure to propose adequate staffing since curing the deficiency would have required a major rewrite of the proposal.
2. Since the agency's technical evaluation in a negotiated procurement is based upon information submitted with the proposal, the burden is on the offeror to submit an adequately-written proposal from the outset.

DECISION

Micronesia Media Distributors, Inc. (MMD), protests the rejection of its proposal under request for proposals (RFP) No. F64719-85-R-0082, issued by the Air Force Contracting Center, Clark Air Base, Republic of the Philippines, for the distribution and sale of the Pacific Stars and Stripes (PSS) newspaper and PSS-selected books/periodicals in the Philippines, Thailand, Indonesia, and Diego Garcia.^{1/} MMD's offer was rejected for failure to: (1) provide adequate staffing; (2) indicate the required experience in periodical/bookstore operation; and (3) adequately address proposed operating expenses. MMD complains that it was unfairly evaluated in each of those respects.

We deny the protest.

The RFP sought a contractor, on a firm, fixed-price basis, to operate and maintain a far flung publications distribution network, 7 days a week, for PSS. The contractor is responsible for a large inventory of PSS publications, facilities, property, equipment and vehicles. The contractor also must promote the sale of PSS publications.

The RFP, as amended, provided for a joint Air Force/PSS evaluation of the offers on the basis of three technical factors, in descending order of importance: experience, organization, and operation. Offerors were

^{1/} The Air Force is conducting this procurement on behalf of PSS, a nonappropriated fund instrumentality. Our Office has jurisdiction to decide such protests under section 2741 of the Competition in Contracting Act of 1984, 31 U.S.C. § 3552 (Supp. II 1984). Artisan Builders, B-220804, Jan. 24, 1986, 65 Comp. Gen. _____, 86-1 C.P.D. ¶ 85.

advised to address each of the three technical factors in their proposals by submitting (1) a detailed narrative of prior business experience; (2) a detailed organizational plan listing employees for each function at each location, employee experience levels, and anticipated salary levels; and (3) a detailed marketing plan showing innovation, practicality and consideration of market environment, regulations and resources.

The RFP provided for award to the technically acceptable, responsible offeror with the lowest evaluated price. Also, the RFP urged offerors to inspect the sites where the services were to be performed.

The Air Force itself initially evaluated MMD's proposal, which offered the lowest price of the three received, and had serious concerns about MMD's proposed levels of manning and pay. The Air Force was fearful that MMD's proposed field operations would not have sufficient personnel to handle the volume of business anticipated. Nevertheless, the Air Force contemplated an award to MMD on the basis of its lowest overall price. PSS, however, did not agree with the Air Force conclusion and argued that MMD was technically incapable of performing the required services. Upon considering PSS's objections and in view of its own initial concerns, the Air Force rejected MMD's offer.

We first note that the Air Force uses the concept of nonresponsibility as well as that of technical acceptability in describing why it rejected MMD's offer, and MMD accordingly does the same in its protest. Responsibility involves capability to perform the work. Federal Acquisition Regulation, 48 C.F.R. § 9.1039(b) (1984). A determination as to technical acceptability, however, involves the graded assessment of the relative merits of individual proposals, see Sea-Land Service, Inc., B-219665, et al., Dec. 17, 1985, 85-2 C.P.D. ¶ 677, although technical evaluation criteria may include what otherwise would be traditional responsibility factors. See Wickman Spacecraft & Propulsion Co., B-219675, Dec. 20, 1985, 85-2 C.P.D. ¶ 690. Responsibility arises only after the evaluation of proposals is completed and the prospective contractor is selected. Marine Design Technologies, Inc., B-221897, May 29, 1986, 86-1 C.P.D. ¶ 502. It is clear from the protest record that MMD's offer was found technically unacceptable.

MMD raises several objections to the rejection of its offer stressing that it submitted the lowest price. We need only discuss what MMD admits was the primary basis for its exclusion--failure to understand the number of personnel required--since it is dispositive of the protest.

MMD concedes that it proposed insufficient personnel. MMD contends, however, that the manning problems and shortage reflected in its offer resulted from the Air Force's failure to fulfill an alleged oral promise, made after MMD initially submitted its offer, to provide a tour of all of the sites where the contract would be performed. MMD argues that it cured the deficiency when it then promised that it would use the same level of staffing as the incumbent contractor, until it could study the matter. MMD argues that it was entitled to resolve this, and any other

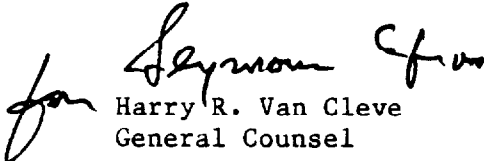
deficiencies, through further negotiations and the submission of a best and final offer.

Proposal evaluation is a matter within the contracting agency's discretion, because it is that agency that is responsible for identifying its needs and the best methods of accommodating them. Joule Technical Corp., B-197249, Sept. 30, 1980, 80-2 C.P.D. ¶ 231. Our Office therefore will not question the contracting agency's evaluation of a proposal absent a showing that the agency's determination was unreasonable. Ecological Consulting, Inc., B-208539, Feb. 14, 1983, 83-1 C.P.D. ¶ 151.

We see nothing improper in the rejection of the protester's offer. The RFP clearly provided for a joint Air Force/PSS evaluation of proposals. While the Air Force alone initially found MMD's proposal acceptable, despite certain concerns, this was not the result of a joint evaluation, and PSS took strong exception to the Air Force determination. As indicated above, MMD's proposal was rejected primarily for its failure to provide adequate staffing, and MMD, in the protest, admits that the proposal was deficient in that respect. Since curing the deficiency would have required a major rewrite of MMD's proposal--which MMD claims it cannot undertake until it has studied the matter further--the offer properly was rejected. See Potomac Scheduling Co.; Axxa Corp., B-213927, et al., Aug. 13, 1984, 84-2 C.P.D. ¶ 162. Moreover, once an offer properly warrants being rejected, the contracting agency has no duty to conduct further negotiations with the firm, including requesting a best and final offer. Science Applications, Inc., B-193229, May 23, 1979, 79-1 C.P.D. ¶ 369.

We also find no merit in MMD's contention that the inadequacies in its proposal were the result of the Air Force's failure to fulfill an alleged oral promise, made to MMD before PSS's input into the evaluation, to provide a tour of all of the sites where the contract would be performed. The RFP expressly stated that offerors were urged and expected to undertake site visits, yet MMD chose to submit its proposal having visited only one of the numerous sites covered by the contract. In a negotiated procurement the burden is on the offeror from the outset to submit an offer that is acceptable on its face, or reasonably susceptible of being made acceptable. Marvin Engineering Co., Inc., B-214889, July 3, 1984, 84-2 C.P.D. ¶ 15. The fact that the Air Force may have intimated to MMD, at a point after the firm submitted its initial offer, that sites still could be visited does not excuse MMD's submission of what, on further government evaluation, was found not to be an adequately written initial proposal because MMD did not really understand the government's staffing requirements.

The protest is denied.


Harry R. Van Cleve
General Counsel