



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: International Imaging Systems
File: B-224401
Date: September 15, 1986

DIGEST

1. An agency is not required to reopen discussions after receipt of best and final offers to cure deficiencies first introduced in a revised proposal submitted with the best and final offer.
2. Where firm's offer for a digital analysis imaging system is not low, the firm has not been prejudiced by award to a firm that offered a technically higher rated and lower-priced system.
3. Protest that the price of an extra item in a proposal should have been deducted by the agency to enable the protester to become the low-priced offeror is denied since there is no evidence in the record to support its position that the item was not in fact required by the Request for Proposals.
4. Allegation that agency failed to notify protester in writing of the award to a competitor does not form a basis for protest since this is a procedural matter which does not affect the validity of the award. Moreover, protester was orally advised of the award and therefore was not prejudiced by the lack of a written notice.

DECISION

International Imaging Systems (IIS) protests the award of two delivery orders to Digital Equipment Corporation (DEC) and Gould, Inc. following evaluation of proposals submitted in response to request for proposals (RFP) No. N00228-86-R-3031, issued by the Naval Supply Center, Oakland, California for a

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digital image analysis system for the Navy Postgraduate School.^{1/} IIS principally contends that the Navy improperly determined its system to be technically unacceptable, failed to conduct meaningful discussions, and changed its requirements without notifying the firm by awarding the delivery orders for a system different from that required by the RFP.

We deny the protest.

The solicitation, as amended, listed the following evaluation criteria in descending order of importance: technical approach and configuration, cost, technical experience and performance, and maintainability and reliability. Award was to be made based on the proposal that was "most advantageous to the government." The solicitation also established a closing date of November 27, 1985. Two proposals were received, including a proposal from IIS and a combined proposal from DEC/Gould. The Navy evaluated the proposals and found three "major weaknesses" in the IIS proposal. First, the Navy found that the system proposed by IIS lacked adequate expandability inasmuch as future expansion of the IIS system would require reconfiguration and also reorganization of the system management structure. Second, the Navy found that IIS offered two different models of image analysis user workstations (a total of four was required by the specifications) which the Navy considered unacceptable because this "lack of symmetry" posed software maintenance problems. Third, the Navy found that the speed of the tape drive proposed by IIS was less than 75 inches/second, an RFP requirement, and, since the tape drive speed was "critical" to the whole system operation, the Navy also considered this unacceptable. Other technical areas in the IIS proposal were acceptable.

On March 21, 1986, the Navy sent a letter to IIS which contained a listing of the major weaknesses of its proposal, and also requested best and final offers. Upon receipt of this letter, IIS requested a meeting with the Navy; the meeting was held on March 31. A number of technical areas

^{1/} The digital image analysis system is comprised of a computer subsystem and an image analysis subsystem and is used for analyzing satellite and other "remote sensing" data with applications in oceanography and meteorology. The Navy made separate awards to DEC and Gould for the two subsystems which were available from these firms under nonmandatory General Services Administration Federal Supply Schedule (FSS) contracts. However, the delivery orders, although issued by the Navy under the FSS, followed a competitive negotiated procurement which was not limited to schedule contractors.

were discussed at this meeting, including the three major weaknesses found by the Navy. Best and final offers were received by April 7, 1986.

After evaluation of best and final offers, the Navy rejected the IIS proposal because the Navy found that proposed system did not include an "ULTRIX" operating system which is critical for use of existing software packages; that the proposed system lacked "CPU power" to support instructional laboratory activities and "real time data ingest" simultaneously; and that certain degradation of performance would occur in the IIS system during "heavy imaging manipulation tasks."

IIS argues that its proposal should have been determined to be technically acceptable and that the Navy failed to conduct meaningful discussions because the reasons identified by the Navy for rejection of its proposal were "completely different" from the deficiencies in the proposal identified by the Navy during discussions.

In its report, the Navy argues that the specifications required a "Unix (Ultrix)"^{2/} operating system but that IIS failed to provide such an operating system in its best and final offer except as an option with the following disclaimer: "[IIS] assumes no responsibility for the operation of the hardware and software as an integrated system when operating under Ultrix." The Navy states that this qualification was totally unacceptable. The Navy also argues that the IIS system did not have sufficient "CPU power" to support instructional laboratory activities and "real time data ingest" simultaneously, and also would suffer degradation of performance when processing "heavy image manipulation tasks."

Aside from its bare assertion that its system was "fully responsive" to the solicitation's specifications, IIS has presented no evidence or explanation rebutting the Navy's specific technical findings of system shortcomings. The protester has the burden of affirmatively proving its case, and a protester's unsupported technical disagreement with the evaluation of its proposal does not satisfy the requirement. See A.B. Dick Co., B-211119.3, Sept. 22, 1983, 83-2 CPD ¶ 360. We think that where an agency offers specific technical reasons in its report for the rejection of a proposal as technically unacceptable, the protester must present

^{2/} The Navy explained to IIS during discussions that "Ultrix" is DEC's name for the Unix operating system required by the solicitation's specifications and that Unix (Ultrix) is an "absolute necessity" for the using activity.

evidence, including technical arguments, why the agency's position is incorrect. The protester here has failed to do this and has thus failed to carry its burden of proof. In any event, it is clear from the record that the DEC/Gould proposal was rated significantly higher technically than the protester's proposal and that the Navy found the DEC/Gould proposal to be an "excellent solution" to the using activity's needs. Moreover, since Navy reports that the DEC/Gould proposal for the system was lower in price than the protester's (based on a comparable system including some optional features of the protester's system), we cannot conclude that the agency erred in selecting the DEC/Gould proposal as the most advantageous to the government.

Similarly, concerning the protester's contentions that meaningful discussions were not conducted by the Navy, it appears from the record that at least some of these deficiencies cited by the Navy (including a disclaimer on the operation of the hardware and software as an integrated system when operating under Ultrix) in rejecting the proposal were first introduced by the protester in its best and final offer. An agency is not required to reopen discussions when a deficiency is first introduced in a best and final offer in order to provide a firm with an opportunity to revise its proposal. See Varian Assocs., Inc., B-209658, June 15, 1983, 83-1 CPD ¶ 658. Accordingly, we find no merit to this portion of the protest.

Next, IIS alleges that the award of the two delivery orders to DEC and Gould was for a system that was materially different from the requirements of the RFP because DEC offered a second computer in its proposed configuration for the computer subsystem that IIS contends was not required by the RFP. Specifically, this allegation by IIS apparently refers to a statement by the Navy during discussions with DEC that an additional "MicroVAX" computer should be included in its proposed configuration to obviate future expansion problems; DEC complied. (IIS chose instead to offer a more powerful CPU to satisfy this requirement but which the Navy subsequently found to be inadequate.) Thus, it appears that this allegation by IIS is based on the fact that DEC offered a different configuration for the computer subsystem than that proposed by the protester. We find no merit to this allegation since we find no evidence in the record that the system offered by DEC/Gould was materially different from the requirements of the RFP. We note that the RFP contained performance specifications and the fact that DEC/Gould

offered a different proposed configuration does not establish that the system as a whole deviated from the RFP's requirements. Accordingly, we deny this protest ground.^{3/}

Additionally, IIS contends that since the Navy's technical reasons for rejection of its proposal related to the computer subsystem, it should nevertheless have received the award for its image analysis subsystem as the Navy could and did make multiple awards. According to the Navy, the IIS image analysis subsystem was priced at \$198,125, while the DEC/Gould subsystem was priced at \$157,803. Nevertheless, IIS argues, among other things, that if the price of a fifth "extra workstation," allegedly not required by the RFP, were removed from the IIS proposal, then IIS would have been the low offeror for the imaging subsystem. The Navy required that the image analysis subsystem accommodate four users with expansion capability to 12 users. In its best and final offer, IIS proposed 4 single user workstations and a "Model 75 Image Processor" as a sharable processing resource which could also be used as a fifth workstation when not supporting other functions. Here again, the protester has not explained or presented any evidence to indicate how its proposed configuration would function with, for example, the Model 75 processor removed or whether the Model 75 and three single workstations would function adequately and "symmetrically" as required by the Navy. In any event, an agency is not required to "recraft" a proposal to make it lower-priced. We therefore deny this protest ground.

Finally, IIS complains that the Navy did not notify the firm of the award in writing so that IIS could take advantage of the requirement that an agency direct the contractor to cease performance if it receives notice of a protest within 10 days of the date of contract award. See 4 C.F.R. § 21.4(b) (1986). However, this matter is generally procedural in nature and does not affect the validity of the contract award. See Employment Perspectives, B-218338, June 24, 1985, 85-1 CPD ¶ 715 at 19. Moreover, the record shows that IIS was orally informed in a timely manner (before award) of the rejection of its proposal and the contemplated award of the delivery orders to DEC and Gould. Accordingly, we also find no prejudice to have resulted from this procedural error by the Navy.

^{3/} Similarly, IIS also alleges that discussions "obviously" took place between the Navy and DEC/Gould after receipt of best and final offers on April 7, 1986, which resulted in significant alterations to the terms of the solicitation. The Navy flatly denies this allegation and there is no evidence whatsoever in the record to support this contention.

IIS has requested reimbursement for the costs it incurred in preparing its proposal and pursuing this protest. Such costs are not recoverable where there has been no procurement impropriety. Feinstein Construction, Inc., B-218317, June 6, 1985, 85-1 CPD ¶ 648.

The protest is denied.


fn/ Harry R. Van Cleave
General Counsel