

Ms. Glass



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: C3, Inc.

File: B-241983.2

Date: March 13, 1991

Richard J. Conway, Esq., and Kathryn A. Good, Esq., Dickstein, Shapiro & Morin, for the protester.
Richard Pandolfi for Miltope Corporation, Victor M. Riehl, Esq., for Librascope Corporation, Wendell G. Seay for Group Technologies Corporation, and Karen S. Allen for SAI Technology, interested parties.
Jeffrey I. Kessler, Esq., and Howard J. Bookman, Esq., Department of the Army, for the agency.
Linda C. Glass, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that solicitation provisions specifying "desired" requirements for Lightweight Computer Unit are vague and ambiguous is denied where solicitation provides offerors sufficient detail to enable them to compete intelligently and on an equal basis.

DECISION

C3, Inc. protests the terms of request for proposals (RFP) No. DAAB07-90-R-L100, issued by the U.S. Army-Communications Electronics Command (CECOM) for the Lightweight Computer Unit (LCU) Program. C3 argues that the solicitation evaluation criteria relating to certain stated "desired" requirements are ambiguous and improper. C3 also argues that the solicitation fails to define the level of acceptability which must be met to satisfy the mandatory requirement to supply a Pre-Planned Product Improvement (P3I) proposal.^{1/}

We deny the protest.

^{1/} The RFP required a P3I proposal containing product enhancements for a 12-month period following award. The intent of the agency was to obtain the latest technological improvements for the LCU and to avoid obsolescence.

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The RFP is for nondevelopmental items of computer hardware, computer software, technical assistance, and logistics support. The LCU is a small laptop lightweight portable computer. The Army's intent is to procure commercially available LCUs and compatible peripheral devices. The LCU and its peripherals are to be available in two versions: a V1 version that is commercial grade and a V2 version that is ruggedized.

The RFP, as amended, called for the submission of initial offers on November 13, 1990. Firms submitting proposals were required to do so on a firm, fixed-price basis. Award was to be made based on the best overall proposal. The RFP listed the following major factors: (1) technical (with eight subfactors, including V1 and V2 hardware); (2) price; (3) management (with two subfactors); (4) manprint (with three subfactors); and (5) Random Access Memory (RAM)/Integrated Logistics Support (ILS) (with two subfactors). The technical and price factors were of equal weight. The rest of the factors were listed in descending order of importance. Technical and price combined were more important than the other three factors combined. The price factor was not to be rated for acceptability, but rather evaluated for an overall offered price for the items and services being procured. The criteria used for the evaluation of all factors and subfactors, except price, were adequacy of response and feasibility of approach. A rating of acceptable had to be achieved for each factor and subfactor except price.

The solicitation, in addition to specifying a minimum capability which must be met, identified certain requirements as being "desired." The solicitation provided that "[p]roposing these desired capabilities, or approaching these desired capabilities may result in that area of the proposal being considered as offering a significant advantage to the government." For example, under the V2 hardware technical subfactor, the solicitation required that the standard configuration not exceed 20 pounds although 15 pounds was desired. Also, under the V1 hardware subfactor, color was listed as desired for the internal display.

C3 filed this protest on November 9. Several proposals, including one from C3, were received by the closing date. Only C3 objects to the evaluation criteria and the P3I requirement.

C3 argues that the evaluation criteria regarding the proposed desired requirements are vague and ambiguous. The protester maintains that the solicitation does not indicate how much credit (if any) may or will be given to an offeror who proposes to meet (or proposes to "approach") a desired requirement. The protester argues that the Army's use of the

term "may" gives the Army unfettered discretion to determine whether any evaluation credit will be given, even if the desired requirement is proposed. Further, C3 contends that the use of the term "approaching" makes it unclear whether the offeror will obtain a significant advantage for proposing to meet the desired requirements or just approaching them. Finally, the protester maintains that the desired requirements involve a more technically sophisticated item with associated increased costs, but the solicitation fails to indicate whether or how the additional cost resulting from the inclusion of a desired requirement will be factored into the evaluation process.

The agency points out that the "desired" requirements are identified and inserted in that applicable portion of the statement of work (SOW) where the minimum capability is described. The agency maintains that where and how each "desired" feature will be evaluated is detailed in the solicitation. According to the agency, the solicitation provides that if a "desired" requirement is proposed as part of the basic offering, the appropriate technical subfactor under which it will be evaluated is the same as the technical subfactor under which the minimum requirement would have been evaluated (if only the minimum were proposed); and this is most readily discernible from where the requirement is in the SOW. Likewise, the agency states that if "desired" requirements are proposed as P3I, they will be evaluated under that appropriate subfactor. The agency maintains that all factors and subfactors are identified and the relative importance of those factors and subfactors is fully described in the solicitation. The agency further maintains the solicitation clearly describes the price evaluation.

As a general rule, the contracting agency must give offerors sufficient detail in a solicitation to enable them to compete intelligently and on a relatively equal basis. Klein-Sieb Advertising and Pub. Relations, Inc., B-200399, Sept. 28, 1981, 81-2 CPD ¶ 251. It is also fundamental that offerors should be advised of the basis on which their proposals will be evaluated. Union Natural Gas Co., B-225519.4, June 5, 1987, 87-1 CPD ¶ 572. The Competition in Contracting Act of 1984, 10 U.S.C. §§ 2305(a)(2)(A)(i) and (ii) (1988), as applicable to this acquisition, required contracting agencies to set forth in a solicitation all significant evaluation factors and their relative importance.

We have reviewed the evaluation criteria in conjunction with the SOW and do not find them to be vague or ambiguous. Our review shows that where the solicitation specified a certain minimum requirement, the "desired" requirement relating to the identified minimum requirement was identified in the same area of the SOW. In fact, the solicitation specifically

required offerors to indicate in their proposals where they exceeded certain minimum requirements. For example, under the V2 hardware technical subfactor, the solicitation required that the LCU operate at a minimum of 4 mips (million instructions per second) but stated that 8 mips was desired. As stated above, under the V2 hardware technical subfactor, the solicitation required that the standard configuration not exceed 20 pounds although 15 pounds was desired and under the V1 hardware subfactor, color was listed as desired for the internal display. Clearly, the desired requirements were listed under and related to the appropriate technical subfactor. The RFP therefore reasonably advised offerors that the desired requirement will be evaluated in accordance with the weight to be given the particular technical subfactor as set forth in the solicitation.

Generally, an agency may properly take into account specific albeit not expressly identified matters that are related to the evaluation criteria. Systems & Processes Eng'g Corp., B-234142, May 10, 1989, 89-1 CPD ¶ 441. The solicitation here set out minimum requirements and advised offerors that additional credit would be given for meeting certain designated desired requirements. We agree with the agency that how much credit would be given depended on what desired requirements were being offered under what particular technical subfactor and the weight to be given that subfactor. Accordingly, we think that the solicitation reasonably provided all offerors a general basis for how their proposals would be evaluated. We further do not see how ranking the "desired" requirements by importance, as suggested by the protester, was necessary since these requirements were part of technical subfactors that were in fact ranked in order of importance. An agency need not "spoon feed" offerors by explaining in minute detail every proposal component necessary to ensure a high score in the evaluation. See generally John W. Gracey, B-228540, Feb. 26, 1988, 88-1 CPD ¶ 199.

To the extent C3 is arguing that not knowing the specific weight the agency will give a particular "desired" requirement makes it more difficult to determine whether offering a "desired" requirement at the additional expense would be advantageous, we are not persuaded by that argument. Risks are inherent in procurements, and offerors are expected to use their professional expertise and business judgment in taking these risks into account in deciding what technical approaches and solutions and at what cost should be proposed. See McDermott Shipyards Div. of McDermott, Inc., B-237049, Jan. 29, 1990, 90-1 CPD ¶ 121.

We further find unreasonable C3's argument that the evaluation criteria is written in such a manner that it gives the agency "unfettered" discretion not to even evaluate proposed

"desired" requirements. We find it clear that an offeror which proposed to provide an LCU meeting all the minimum requirements and also proposed to provide a color display, 8 mips and the desired weight would, under the appropriate technical subfactors, receive additional credit.

With respect to the price evaluation, the solicitation stated that price would be evaluated based on the total price offered. The evaluated hardware price would be the summation of all calculated prices for all hardware for 5 years. Similarly, the price evaluation for the software, engineering support, and like items would be based on what is actually being offered. The price evaluation, therefore, is to reflect what is actually offered in each proposal, which would reasonably include the cost associated with any desired requirements proposed.

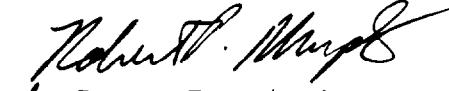
Next, C3 objects to the agency's requirement for a P3I proposal. C3 contends that the solicitation does not describe what type of proposal is contemplated, what must be included within the P3I or what level of P3I is below the level of acceptability.

The solicitation required offerors to submit a P3I proposal containing 12-month pre-priced product enhancements to the LCU. Product enhancements were defined as any improvement in processing speed, equipment weight, battery life, mass storage capacity, RAM capacity, software performance, or any other LCU characteristics. Any P3I proposed could not increase weight or reduce functionality or compromise environmental requirements. Moreover, versions of the LCU after P3I were to be fully compatible with the hardware and software before the P3I. As part of any P3I, the offeror was to maintain configuration management, identify and minimize logistics impacts, and update logistics data.

The P3I subfactor was next to the least important subfactor under the technical factor. The agency states that its use of P3I is an attempt to maintain its LCU needs as current as possible. It is not the agency's intent to force offerors into research and development efforts by describing requirements that are outside of their normal new product enhancement programs. We understand that, as a system integrator and not a manufacturer, it may be more difficult for C3 to propose product enhancements for a 12-month period. However, that does not make the requirements vague. The solicitation advises offerors on how to prepare P3I, what general areas of enhancements the agency is interested in, and how it will be evaluated in the technical and price factors. Again, what to

propose as P3I involves a business judgment to be made by the individual offerors, but we think the RFP reasonably advised offerors of the agency's P3I requirements.

The protest is denied.


for James F. Hinchman
General Counsel