S. Gary

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: GeoMet Data Services, Inc.

File: B-242914.4

Date: March 4, 1992

Cyrus E. Phillips, IV, Esq., Keck, Mahin & Cate, for the protester.
Jacob B. Pompan, Esq., Pompan, Ruffner & Bass, for Atmospheric Research Systems, Inc., an interested party.
Steven Carrara, Esq., Department of Commerce, for the agency.
Stephen J. Gary, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of this decision.

DIGEST

1. In a procurement for the acquisition of lightning data, agency properly excluded protester from competitive range where it reasonably determined that pricing and technical deficiencies in protester's initial alternate proposals, which had been pointed out in discussions, had not been eliminated in protester's revised proposal.

2. Where agency had reasonable basis for concluding that protester had no chance for award, exclusion of protester from further consideration was proper, notwithstanding that as a consequence only one firm remained in competitive range.

3. Discussions concerning price were meaningful, and thus unobjectionable, where, after evaluation of initial alternate proposals, agency advised protester that its prices exceeded the government estimate and provided it an opportunity to submit revised proposals. There is no merit to protester's allegation that agency also was required to disclose protester's relative price standing, which agencies generally are prohibited from disclosing during discussions.

DECISION

GeoMet Data Services, Inc. (GDS) protests its exclusion from the competitive range under request for proposals (RFP) No. 52-DDNW-1-00012, issued by the National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, for the acquisition of lightning data. GDS contends that

the agency had no basis for rejecting its technical proposal, and improperly failed to advise it of perceived pricing deficiencies during discussions.

We deny the protest.

BACKGROUND

The solicitation called for the provision of lightning data for use by NOAA's National Weather Service (NWS) and other federal agencies. The RFP required offerors to propose communications hardware and software to display certain lightning characteristics and to provide a digital stream of data. The solicitation further stated that data acquired by the contractor would be used in government operations at receiving and transmitting sites, and would be used in the production and distribution of NWS and Federal Aviation Administration (FAA) graphic products and storm warnings. The RFP also required the contractor to maintain, or permit the government to maintain, an archive of data collected under the contract, for use by several government agencies. At the time of award, the contractor would be required to provide lightning data coverage for 60 percent of the coterminous United States and an area extending up to 250 kilometers beyond U.S. borders; 80 percent coverage of that area by January 1992; and 100 percent coverage by April. Award was to be based on an integrated assessment of technical and cost proposals, with the offeror's technical approach twice as important as its qualifications, and the combination of those two factors more important than cost.

GDS submitted a primary proposal and an alternate proposal. On August 12, the agency advised GDS in a formal deficiency letter that the prices of both proposals were "substantially higher than the government's estimate." The letter also stated that, although GDS' primary proposal was unacceptable as submitted, both it and the alternate proposal were considered susceptible to being made acceptable through discussions. Accordingly, NOAA advised GDS that both proposals were being included in the initial competitive range, subject to the elimination of deficiencies identified in the letter and in oral discussions, which were held on August 16.

Aside from GDS, the competitive range consisted of one other offeror, Atmospheric Research Systems, Inc. (ARSI), which submitted four different proposals. Of the four, NOAA found one unacceptable. The other three, like GDS', were considered to be susceptible to being made acceptable and were retained in the initial competitive range for discussions.

On August 29, following the written and oral discussions, GDS submitted a single revised proposal, which incorporated elements of each of its initial proposals. After evaluating this revised proposal, NOAA advised GDS on October 18 that it had been eliminated from the revised competitive range. NOAA explained in part that GDS' "proposed costs were significantly higher than those of other competing offerors," and that "several of the mandatory requirement deficiencies previously identified in your initial . . . proposal[s] . . . have not been corrected and still exist in your revised proposal."[1]

TECHNICAL PROPOSALS

GDS asserts that the agency had no basis for finding that either its initial primary proposal or its revised proposal failed to meet the mandatory requirements of the solicitation. GDS argues that the rejection of its revised proposal was particularly objectionable because, as a consequence, only one firm remained in the competitive range. This being the case, GDS argues, NOAA's evaluation should have been aimed at including GDS in the competitive range rather than excluding it.

Specifically, the protester alleges that NOAA improperly downgraded the proposals because of their partial reliance on government-furnished data, from networks belonging to the Bureau of Land Management (BLM) and the National Severe Storms Laboratory (NSSL), to meet RFP requirements for national coverage. According to GDS, contrary to NOAA's apparent interpretation,[2] the solicitation did not preclude offerors from submitting proposals based in part on the use of such government-furnished data, provided only that the data was from government sources other than the National Weather Service (NWS). Consequently, the protester asserts that its proposed use of these non-NWS networks to supplement its own dedicated network did not, as NOAA determined, constitute a deficiency in its proposals.

The evaluation of technical proposals and the resulting determination of whether a proposal is in the competitive range are matters within the contracting agency's discretion. Native Am. Consultants, Inc.; ACKCO, Inc., B-241531; B-241531.2, Feb. 6, 1991, 91-1 CPD ¶ 129. In reviewing an agency's technical judgment, we will not

---

[1]Three revised proposals submitted by ARSI were found acceptable, and were retained in the revised competitive range for further discussions.

[2]GDS was provided the record of NOAA's evaluation of its proposals in connection with this protest.

reevaluate the proposal; rather, we will examine the evaluation to ensure that it was not arbitrary or in violation of procurement laws and regulations. Id. Although we will closely scrutinize an agency's decision that results in a competitive range of one, we will not disturb such a determination absent a showing that it was unreasonable. Id.; StaffAll, B-233205, Feb. 23, 1989, 89-1 CPD ¶ 195.

In this case, our review of the evaluation record shows there was a reasonable basis for NOAA's determinations. The issue of government-furnished data was raised by the agency in its August deficiency letter, which posed the following question:

> "The government has stated in . . . [the RFP] that 'No material, labor or facilities will be furnished by the government unless otherwise provided for in the solicitation'. In light of this how does the offeror propose to access the BLM and NSSL data? In addition, what arrangements are proposed to effect necessary changes to those systems to assure [that they meet] the availability, reliability, status, and other mandatory requirements . . . [of the RFP]? Please provide copies of any agreements, etc."

As this question indicates, the agency did not find the use of government networks, as proposed by GDS, to be unacceptable per se. NOAA merely determined, and pointed out to GDS, that since the RFP did not contemplate reliance on government-furnished data, GDS would have to demonstrate the feasibility of this approach by providing supporting documentation. Thus, the issue was not whether GDS could or could not use data from other government agencies, but instead, having chosen to rely on such data, whether GDS could adequately demonstrate its ability to satisfy mandatory RFP requirements using that approach.

Concerning this issue, the protester and NOAA disagree. The agency concluded that GDS did not make the requisite showing, based on its failure to provide signed agreements or other documentation of its capability to assure system reliability and availability, as requested in the question quoted above. GDS, on the other hand, challenges this conclusion by pointing to a memorandum of understanding between BLM and the Bonneville Power Administration (BPA), which it submitted with its revised proposal. According to GDS, this memorandum, under which BPA would be given access to BLM's lightning data, should have demonstrated to NOAA that GDS had the continuing capability to obtain government-furnished data, since GDS obtained lightning data from BLM as a contractor for BPA.

We are not persuaded that NOAA's conclusion was unreasonable. This memorandum did not mention GDS at all and, although signed by a representative of BPA, was not signed by BLM. We therefore question the responsiveness of this document to NOAA's request for firm assurances concerning the availability and reliability of networks to be used by GDS. Second, and more fundamentally, GDS has not indicated where or how its proposal addressed the specific questions asked by NOAA: "how does the offeror propose to access the BLM and NSSL data . . ., what arrangements are proposed to effect necessary changes to those systems to assure [that they meet] the availability, reliability, status, and other mandatory requirements . . . [of the RFP]?" (Emphasis added.) The memorandum of understanding submitted by GDS, even if it had been signed, did not indicate how GDS would accomplish these specific tasks. In fact, GDS' proposal appeared to confirm the agency's concerns: in a response to one of NOAA's technical questions, GDS stated that since "the BLM network is owned and operated by a government agency whose own mission determines its maintenance practices, GDS is not in a position to ensure a rapid response to BLM sensor failures." This statement, which describes GDS' lack of control over a non-dedicated network, reflects exactly the kind of concerns the agency had in mind when it requested assurances from the protester. We therefore conclude that, in the specific area challenged by GDS, the protester has not demonstrated that NOAA's evaluation was unreasonable.

In other areas not specifically questioned by the protester, moreover, the record supports NOAA's conclusion that GDS failed to satisfy mandatory solicitation requirements. For instance, in August NOAA advised GDS that restrictions the firm had placed on redistribution of acquired data were contrary to solicitation requirements. NOAA pointed out that, although "many of the lightning products such as . . . NWS . . . graphics and text products and the planned FAA thunderstorm report are now, and will be in the future, widely distributed to both government and non-government users," GDS appeared to be restricting the dissemination of such products. NOAA asked GDS to eliminate the unacceptable restrictions. Despite this request, NOAA found that GDS' revised proposal continued to restrict the use of data products. GDS has not attempted to show that this finding was unreasonable, and we find nothing in the record that would call it into question.

Similarly, NOAA found that GDS' proposed coverage of offshore and trans-border areas was marginal, with no coverage at all for parts of Texas and Maine. GDS stated in its proposal that it would be willing to provide additional coverage in Texas and Maine should this be required by NWS:

> "This would address these deficiencies, assuring compliance. However, our quoted fees and monthly prices did not anticipate the additional cost of these . . . sensors. We are in a position to cover half of the equipment and installation costs . . ., as well as all continuing operating, communications, and maintenance costs. Do we have the latitude to increase the first year access fee to reflect a portion of these costs?"

Based on this response, NOAA concluded that the only solution that GDS was offering to the problem of inadequate coverage was the unacceptable one of negotiating necessary improvements some time in the future, at additional cost to the government--despite the fact that GDS' proposed prices already were considerably higher than the government estimate and the other offeror's proposed prices.[3] Again, GDS has not argued that this conclusion was unreasonable.

As noted above, GDS argues that since the exclusion of its proposal from further consideration resulted in a competitive range of one, the proposal should have been evaluated more favorably. Where, as in this case, an agency's evaluation of a proposal is reasonable, there is nothing objectionable in the circumstance that exclusion of that proposal leaves only one offeror in the competitive range. See Native Am. Consultants, Inc., supra.

DISCUSSIONS

Although GDS does not challenge the agency's determination that its proposed prices were significantly higher than those of other offerors, it asserts that it was improperly denied an opportunity to make its prices more competitive due to NOAA's failure to provide meaningful price discussions. GDS states that it learned for the first time on October 18 that NOAA considered its initial proposed prices too high relative to the prices of the other offerors, since NOAA's statement during discussions that its prices were high relative to the government's estimate did not alert GDS to the fact that its prices were too high with respect to other offerors. According to GDS, NOAA's August statement did not necessarily mean that GDS' prices were too high; it could simply have meant that the government's estimate was too low. Consequently, GDS argues that NOAA failed to provide meaningful discussions with regard to the

[3]ARSI's proposed prices (it submitted several proposals) ranged from approximately $672,000 to $967,000, while GDS's prices ranged from approximately $2,900,000 to $3,700,000. The government estimate was $1,907,000.

perceived pricing deficiency, which GDS states it could have corrected.

Contracting agencies are required to hold written or oral discussions with all responsible sources whose proposals are within the competitive range. The Faxon Co., 67 Comp. Gen. 39 (1987), 87-2 CPD ¶ 425. Such discussions must be meaningful. Id. In order for discussions to be meaningful, agencies must furnish information to all offerors in the competitive range as to areas in which their proposals are believed to be deficient, so that offerors may have an opportunity to revise their proposals to fully satisfy the agency's requirements. See Federal Acquisition Regulation (FAR) § 15.610(c) (FAC 84-16); Chadwick-Helmuth Co., Inc., 70 Comp. Gen. 88 (1990), 90-2 ¶ 400. However, the actual content and extent of discussions are matters of judgment primarily for determination by the agency involved, and we generally limit our review of the agency's judgments to a determination of whether they are reasonable. Chadwick-Helmuth Co., Inc., supra.

We find that NOAA's advice to GDS that its prices were higher than the government's estimate satisfied the requirement for meaningful discussions. We have specifically held that if an agency "had simply informed the offerors that their cost proposals were either too high or in excess of the government's estimate, then [the agency] would have met the requirement for meaningful discussions by alerting the offerors to a perceived weakness in their proposals." Northwest Regional Educ. Laboratory, B-213464, Mar. 27, 1984, 84-1 ¶ 357. Furthermore, although GDS argues that NOAA's reference to the government's estimate was ambiguous, we disagree. Since the statement was made in the course of advising GDS of proposal deficiencies, it should have been clear to GDS that NOAA meant that GDS' prices were too high, not that the government's estimate was too low.

Lastly, the type of disclosure that GDS argues should have been made by NOAA is generally prohibited by the FAR. GDS asserts that our Office should not sanction "the elimination of an offeror from the competitive range whose price is deemed too high, when that offeror has not received explicit notice that its price is not in line with the other price proposals that have been submitted." That type of disclosure, however, is generally prohibited by FAR § 15.610(d)(3). See Warren Elec. Constr. Corp., B-236173.4; B-236173.5, July 16, 1990, 90-2 CPD ¶ 34 (contracting agency prohibited from informing the protester that its price was too high in relation to another offeror's price).

Consequently, we find no merit to GDS' contention that NOAA failed to hold meaningful price discussions because it did not advise GDS that its prices were higher than the prices of competing proposals.

The protest is denied.

for James F. Hinchman
General Counsel