



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Yankee Machine, Inc.

File: B-249183

Date: October 29, 1992

Philip N. Hanson, Jr., for the protester.
Robin B. Teichman, Esq., Department of the Navy, for the agency.
Robert J. Heitzman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's decision to reject protester's proposal as technically unacceptable and therefore not within the competitive range was reasonable where the proposal contained significant deficiencies which would have required major revisions to correct. Contracting agency is not required to conduct discussions with offerors whose proposals are outside the competitive range.
2. Agency was not required to refer rejection of protester's offer as technically unacceptable to Small Business Administration for certificate of competency determination where rejection was based on a proper technical evaluation and did not involve a responsibility determination.

DECISION

Yankee Machine, Inc. protests the rejection of its proposal from the competitive range under request for proposal (RFP) No. N00039-91-R-0163(Q), issued by the Department of the Navy, Space and Naval Warfare Systems Command (SPAWAR), Washington, D.C., for a high frequency (HF) coaxial switching system. Yankee contends that it was improperly excluded from consideration in the review process and that it did not receive an objective evaluation. Yankee also contends that any questions concerning its ability to perform the contract should have been submitted to the Small Business Administration (SBA) for a certificate of competency determination. Finally, Yankee contends that the Navy was biased in favor of the other offeror on the solicitation.

We deny the protest in part and dismiss it in part.

The HF Coaxial Switching System is an automated remotely or locally controlled antenna switching system that provides the mechanism to connect or switch any one of a number of transmitters to any one of a number of antennas at shore communications stations. The RFP provided for the purchase of a combined total of up to 65 HF Coaxial Switching Systems of various types, and associated equipment, first article testing, documentation and depot maintenance, to satisfy program requirements of fiscal years 1992 through 1996. This procurement was a 100 percent set-aside for small businesses.

The RFP instructed offerors to provide separate price, technical, and management proposals.¹ As to their technical proposals, offerors were instructed to provide sufficient detailed information to enable the agency's engineering personnel to "arrive at a sound determination as to whether or not the proposal meets the requirements of the technical description." The technical evaluation criteria consisted of four elements, listed in descending order of importance as follows:

- a. Compliance with the Technical Description.
- b. Degree of Technical Risk.
- c. Statement of Work.
- d. Technical Data.

The management criteria, listed in descending order of importance, were:

- a. Delivery schedule.
- b. Record of Past Performance.
- c. Personnel.
- d. Management.
- e. Facilities.

Two offerors, including Yankee, submitted proposals by the October 30, 1991, closing date. A technical evaluation board (TEB) determined that Yankee's proposal was unacceptable and that the other offeror, Delta Electronics,

¹According to the Navy, YANKEE's initially offered price was over \$2 million higher than the other offeror's price. However, YANKEE's price was not evaluated because its proposal was eliminated as technically unacceptable.

adequately addressed all the requirements of the RFP. On March 11, 1992, the agency informed Yankee by letter that its proposal was determined to be unacceptable because the deficiencies noted would require a total rewrite of the proposal. Yankee was informed that its proposal had been eliminated from the competition.

Yankee requested a debriefing and on March 31, 1992, the agency stated that, following contract award, the SPAWAR technical/contract personnel would be available to discuss its proposal. Yankee was notified of the contract award on May 27, 1992. A debriefing was held on June 10, 1992. On June 15, 1992, Yankee filed a protest with this Office.²

Yankee, in its protest, has stated its disagreement with the Navy's evaluation in general terms and suggested that many of the matters could have been clarified by discussions. The Navy, on the other hand, in response to Yankee's protest, has prepared a detailed explanation of the deficiencies in the proposal.

In reviewing protests of allegedly improper evaluations, we will not reevaluate proposals, but instead will examine the record to determine whether the evaluators' judgments were reasonable and in accord with the listed criteria. See TLC Systems, B-243220, July 9, 1991, 91-2 CPD ¶ 37. The evaluation of proposals and the resulting determination as to whether a proposal is in the competitive range is within the discretion of the contracting agency, since it is responsible for defining its needs and for deciding on the best method of accommodating these needs. Electronic Systems USA, Inc., B-246110, Feb. 14, 1992, 92-1 CPD ¶ 190. Further, offers that are technically unacceptable as submitted and would require major revisions to become acceptable are not required to be included in the competitive range. Id.; M.C. Dean Electrical Contracting, Inc., B-246193, Feb. 24, 1992, 92-1 CPD ¶ 219.

Our review of the record supports the Navy's evaluation as shown by the following examples under the two categories of Technical Proposals and Management Proposals.

²The Navy has raised the issue of timeliness of the protest since YANKEE was advised of the fact that its proposal was unacceptable in March 1992. However, we consider the protest to be timely since it was filed within 10 days from the date on which SPAWAR conducted a debriefing with the protester, and detailed to the protester the reasons its proposal was found unacceptable. See Data Express--Recon., B-241001.2, Jan. 3, 1991, 91-1 CPD ¶ 6.

TECHNICAL PROPOSALS

Compliance with the Technical Description

Section M of the RFP stipulated that the evaluation would be based upon the degree to which the offeror demonstrated an understanding of the government requirements; the offeror's level of innovation and technical competence; and the probability of the offeror's meeting the government requirements, supported through appropriate plans, approaches, analyses, and results of previous tests performed on units of similar design or on scale models of the proposed units.

The TEB evaluators found that Yankee's proposal did not provide a detailed description of the proposed equipment; explanation of the switches operation was missing; details of the control system were not discussed at all; details on remote operation were missing; and the specifications listed were a mere repetition of the technical description specifications.

Yankee admits that its proposal did use much of the same language that was used in the solicitation and specification, but contends that many of the technical points are straightforward statements of an operational parameter, and thus do not lend themselves to new and creative wording.

We agree with the Navy's technical judgment that the narrative of the protester's compliance with the technical description requirement was unacceptable. For example, in furnishing reliability information, Yankee indicated only that its proposal "complies" with the specifications without explaining the basis for deriving that conclusion. Moreover, Yankee expressed its compliance with the RFP's specified "mean time between failure" in terms of "not to exceed" rather than "not less than" as required. Similarly, Yankee's proposal lacked detail and merely repeated the RFP language with respect to other elements of this aspect of the evaluation.

An offeror is responsible for demonstrating affirmatively the merits of its proposal and runs the risk of rejection if it fails to do so. Microwave Solutions, Inc., B-245963, Feb. 10, 1992, 92-1 CPD ¶ 169. Further, no matter how competent a contractor may be, a technical evaluation must be based on information in, or submitted with, the proposal. Watson Industries, Inc., B-238309, Apr. 5, 1990, 90-1 CPD ¶ 371. The Yankee proposal has not met these standards.

Degree of Technical Risk

The RFP required each offeror to describe the extent to which its design, fabrication, and building concepts and

processes have been successfully implemented in the past. The offeror was also instructed to describe the availability of resources, such as materials, components, personnel, facilities, etc., required to perform within the proposed schedule.

Yankee provided no discussion at all of technical risk. The protester does not dispute that it had no separate section or discussion of technical risk, but asserts that the proposal throughout addresses the level of risk and the prior history and adds that "minor questions of technical verbosity should have been referred back to us in discussions."

We find no merit to Yankee's assertion. It is clear from the RFP that the offeror was required to provide a detailed discussion of technical risk. Yankee's proposal was lacking in this respect.

MANAGEMENT PROPOSALS

Under Record of Past Performance, the RFP required each proposal to show that assigned key personnel possessed the experience, educational background, and record of past accomplishment appropriate to the scope of the acquisition. In addition, no less than three contracts comparable in technology and scope to the acquisition were to be selected for self-assessment.

The Navy found that the three contracts chosen by Yankee for self-assessment were for spare parts for mechanical devices installed on ships and that no contracts were offered to show that Yankee had any experience in design and manufacture of electronic/electrical equipment associated with coaxial switching system control units.

Yankee's response does not address this critical finding, and it is clear that the three contracts offered do not represent the level of complexity comparable to what is called for by this RFP. Thus, the Navy could reasonably view Yankee's proposal as not showing a meaningful history of electrical systems work.

The TEB also found that the personnel listed by Yankee have no experience in the design and manufacture of electronic or electrical systems. Yankee responded that it was licensed by Dielectric Communications, a major equipment manufacturer and supplier, to produce the switches. We note that Yankee proposed to furnish switching systems "under license to Dielectric Communications" and submitted the resumes of two consultants, one a mechanical engineer and one a management consultant, identified as being associated with Dielectric. However, Yankee did not explain what role, if any,

Dielectric would play in the performance of the contract. On this record, we find no basis to question the Navy's low evaluation of Yankee's proposal in this area.

CONCLUSION

For the foregoing reasons, we find that Yankee's proposal could not be made acceptable without major revision and that the Navy's determination to eliminate it from the competitive range was reasonable. See generally Vista Videocassette Services, Inc., B-230699, July 15, 1988, 88-2 CPD ¶ 55.

As for Yankee's contention that the agency acted improperly in not discussing its proposal deficiencies, discussions need not be held with offerors whose proposals are technically unacceptable and not in the competitive range. Id.; TLC Systems, supra.

We also find no merit in Yankee's contention that questions as to its ability to perform the work should have been referred to the SBA. Yankee was not found nonresponsible, that is, incapable of meeting the obligation that it would incur if awarded the contract. Rather, its proposal was determined to be technically unacceptable when evaluated under the criteria specified in the RFP. In this circumstance, a proposal from a small business, such as Yankee, may be rejected as technically unacceptable even when based in part on responsibility-type considerations without referral of the question to the SBA for possible issuance of a certificate of competency. VR Environmental Services, 71 Comp. Gen. 354 (1992), 92-1 CPD ¶ 370; Pais Janitorial Service & Supplies, Inc., 70 Comp. Gen. 570 (1991), 91-1 CPD ¶ 581.

Finally, in its rebuttal letter to the Navy's administrative report, Yankee alleges for the first time that the Navy had a decided preference toward Delta, the incumbent offeror, and slanted its specifications and its evaluation to favor Delta.

To the extent that Yankee objects to the specifications, the allegation is untimely because it should have been raised prior to the time for submission of proposals. 4 C.F.R. § 21.2(a)(1) (1992). As for Yankee's allegation regarding bias in the evaluation, this allegation is also untimely because it was raised for the first time in comments on the agency report. It should have been raised when the protest

was initially filed. Telephonics Corp., B-246016, Jan. 30, 1992, 92-1 CPD § 130. MRK Incineration/IDM Corp., B-244406.5, B-244406.6, Jan. 16, 1992, 92-1 CPD § 77. In any event, we do not find any evidence of bias.

The protest is denied in part and dismissed in part.

JF *Seymour E. Hinchman*
James F. Hinchman
General Counsel