



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

# Decision

**Matter of:** Paragon Imaging, Inc.

**File:** B-249632

**Date:** November 18, 1992

Jay P. Urwitz, Esq., Hale and Dorr, for the protester.  
Floyd C. Stilley, Esq., Mandex, Inc., an interested party.  
Lori S. Chofnas, Esq., Department of the Navy, for the  
agency.  
Daniel I. Gordon, Esq., Glenn G. Wolcott, Esq., and  
Paul Lieberman, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

## DIGEST

Protest that agency improperly eliminated proposal from competitive range as technically unacceptable is denied where record shows that agency reasonably concluded that the proposal demonstrated a complete lack of understanding of the solicitation requirements.

## DECISION

Paragon Imaging, Inc. protests the elimination of its proposal from the competitive range under request for proposals (RFP) No. N00140-92-R-AD16, issued by the Department of the Navy. Paragon contends that the agency improperly eliminated the proposal from the competitive range merely because it proposed the use of commercially available products.

We deny the protest.

The RFP was issued on January 2, 1992, seeking imagery engineering and technical support services in support of the Naval Electronic Systems Engineering Activity. The RFP's Statement of Work (SOW) divided the services requested into three broad areas: assessment of new technologies; testing, verification, and validation of government-specified software; and translation and development of software. The SOW subdivided each of these broadly defined services into a series of more specific tasks. The RFP also required offerors to demonstrate their management plan approach by addressing a substantial number of specified criteria. Technical proposals were not to exceed 120 pages.

The RFP's evaluation criteria established technical factors as more important than cost. Among the five technical factors, four were of equal importance: technical approach, personnel resources, management plan approach, and corporate experience. The fifth technical factor, facilities, was described as considerably less important than the others.

The source selection plan for the procurement stated that, in the evaluation of proposals, each technical factor was to be assigned one of the following ratings: highly acceptable; acceptable; unacceptable (a), meaning that deficiencies are considered correctable as a result of discussions and without extensive changes; and unacceptable (b), meaning that the proposal fails to meet explicit RFP requirements, is not capable of correction through discussions without submission of an essentially entirely new proposal, and has no reasonable chance of being selected for award.

Six proposals were received, including Paragon's. Paragon's technical proposal totaled 38 pages; excluding 12 pages devoted to resumés, 2 pages for the cover sheet and table of contents, and 3 pages which appeared twice in the document, Paragon's entire technical proposal consisted of 21 pages.

In the evaluation of Paragon's technical proposal, the agency rated the least important technical factor, facilities, acceptable. In the four other technical factors (all of which, as noted above, were of equal weight), Paragon's proposal was rated acceptable for personnel resources but unacceptable (b) for technical approach, management approach, and corporate experience. That is, for the latter three technical factors, the agency concluded that Paragon's technical proposal failed to meet explicit RFP requirements and was not capable of correction through discussions, so that the proposal had no reasonable chance of being selected for award.

In the view of the agency's evaluators, Paragon was proposing little more than to replace the Navy's existing imaging software with Paragon's ELT/2 software. According to the agency, Paragon's proposal offered to supply a product (Paragon's software), not the services sought by the RFP: it failed to address the SOW requirement for support services for digital imaging systems; did not adequately address or demonstrate an understanding of verification and validation of software; and did not adequately address the translation of existing Navy software.

Accordingly, the agency downgraded Paragon's proposal in each of the three task areas called out in the SOW. One of those areas, assessment of new technologies, is illustrative of the weakness perceived by the agency; our review

indicates that Paragon's approach in the other two areas was similar. Concerning the assessment of new technologies, Paragon's proposal consisted of one and one-half pages focusing on Paragon's software product, not the technology assessment services sought by the RFP. The proposal's discussion of those services consisted primarily of a description of Paragon's ELT/2 software intermingled with brief statements to the effect that Paragon has in the past had success in performing contracts (in work whose similarity, if any, to the task area is not clearly explained), and that the company assigns individuals to particular tasks based on their experience. Of the eight services (i.e., the subtasks) listed in the SOW in this area, Paragon's proposal mentioned only five. Several sentences appear unconnected to what precedes or follows them and unrelated to the area that the proposal purports to address. For example, in the section addressing the subtask of investigation of potential solutions to project-related problems in technology areas assigned by the government, Paragon states that its software supports labels of a particular size and with required background colors. Even if such a feature is somehow relevant to the area that was to be addressed, Paragon's proposal fails to explain the relevance.

In light of Paragon's failure to address required tasks and its incoherent and irrelevant statements in the areas it did address, the agency concluded that Paragon's proposal was not capable of correction through discussions and had no reasonable chance of being selected for award without submission of what would amount to an entirely new proposal. Accordingly, the contracting officer eliminated Paragon's proposal from the competitive range. All other proposals submitted were determined to be within the competitive range.

Paragon contends that the agency acted improperly in eliminating the protester's proposal from the competitive range. Specifically, Paragon argues that the agency should have retained the proposal in the competitive range because Paragon was proposing something which was "functionally equivalent" to the services sought in the RFP, even if different from what the government expected to be offered. In Paragon's view, its proposal offered a "complete solution" to the agency's functional needs, "needs which Paragon submitted could best be met through a commercially available product."

The purpose of a competitive range determination is to select those offerors with which the contracting agency will hold written or oral discussions. Federal Acquisition Regulation (FAR) § 15.609(a). The competitive range is to include all proposals that have a reasonable chance of being

selected for award; in case of doubt, a proposal should be included in the competitive range. Id. However, even where a proposal is fully acceptable technically (or could be rendered so through discussions), it may be excluded from the competitive range if, in light of the competing proposals, the contracting officer determines that the proposal has no reasonable chance of award. Wordpro, Inc., B-242100.2, Apr. 24, 1991, 91-1 CPD ¶ 404.

Since agencies are responsible for defining their needs and for deciding the best method of accommodating those needs, the evaluation of proposals and the resulting determination of whether an offer is in the competitive range are matters within a contracting agency's discretion. Advanced Sys. Technology, Inc.; Engineering and Professional Servs., Inc., B-241530; B-241530.2, Feb. 12, 1991, 91-1 CPD ¶ 153. In reviewing an agency's technical evaluation, we do not perform a de novo reevaluation of proposals; instead, we examine the record to ensure that the agency's evaluation was reasonable, in accord with stated evaluation criteria, and not in violation of procurement laws and regulations. Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203. The offeror has the burden of submitting an adequately written proposal, Caldwell Consulting Assocs., B-242767; B-242767.2, June 5, 1991, 91-1 CPD ¶ 530; and an offeror's mere disagreement with the agency's judgment concerning the adequacy of the proposal is not sufficient to establish that the agency acted unreasonably. Realty Executives, B-237537, Feb. 16, 1990, 90-1 CPD ¶ 288.

Here, the record substantiates that the agency had a reasonable basis to find that Paragon's proposal failed to address adequately (in many instances, failed to address at all) specific task requirements set forth in the RFP. We find reasonable the agency's conclusion that these failures demonstrated that Paragon's proposal evidenced the lack of even a rudimentary understanding of the RFP requirements.

Two specific examples demonstrate the reasonableness of the agency's conclusion that Paragon showed a lack of understanding of the RFP requirements. In attempting to justify its proposal's focus on replacing the agency's current software rather than providing services, Paragon claims that the SOW suggested, in ¶ 3.2.5, that proposing such replacement software was permissible. In fact, that SOW provision simply stated that, as to the software testing, verification, and validation tasks described in section 3.2, the software which the government might specify for such testing, verification, and validation will include, but not be limited to, the software currently used by the agency (which is not Paragon's software). Paragon's assertion to the contrary notwithstanding, nothing in

¶ 3.2.5 can reasonably be read to encourage or permit an offeror to submit a proposal for replacement software as the functional equivalent of the testing, verification, and validation services which were explicitly requested.

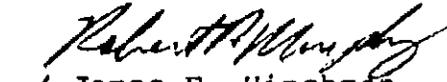
A second example; Paragon claims that it offered training responsive to the training requirements of ¶ 3.3.9 of the SQW, which indicated that one contract task would be to "[p]rovide user training for government-specified software to include text, audio/visual aids, computer software packages, and classroom lectures at contractor or government facilities." Paragon's nine-line discussion of training (1) stated in a conclusory way that Paragon uses qualified staff for training; (2) briefly stated how often Paragon currently conducts training sessions in different geographical areas, with no indication of how often Paragon proposed to conduct training for this procurement; and (3) indicated that Paragon's software is user-friendly. No reference is made to training for any software the government might specify other than Paragon's software; no mention is made of text or audio/visual aids; and no evidence is offered to demonstrate understanding of the agency's training requirements. Indeed, nothing in Paragon's cursory discussion could reasonably be characterized as a proposal for training.

The record provides no basis for Paragon's thesis that this is a case of an agency improperly failing to consider the possibility of using commercial products and interpreting a solicitation in an overly rigid fashion. The agency did not reject Paragon's proposal because it relied on a commercially available product (although the agency did reasonably downgrade Paragon for, in many areas, doing little more than describing its commercial software rather than addressing the tasks called out in the RFP). The agency also did not demonstrate inflexibility or unreasonableness in evaluating Paragon's proposal.

On the contrary, the agency reasonably concluded that Paragon's proposal demonstrated a lack of understanding of the RFP requirements. As noted above, in numerous areas the proposal failed to mention specific matters which the RFP required offerors to address. In some of the areas which the proposal did purport to address, it simply offered comments about Paragon's software and the company's experience--comments whose relevance, if any, to the areas under discussion was not explained. In short, to become technically acceptable the Paragon proposal would have required complete rewriting or replacement with an entirely new proposal. In light of the agency's having received a

number of other proposals which received higher technical ratings (and which had no cost disadvantage relative to Paragon's proposal), we find no basis to question the reasonableness of the agency's exclusion of Paragon's proposal from the competitive range.<sup>1</sup>

The protest is denied.

  
James F. Hinchman  
General Counsel

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<sup>1</sup>Paragon's reliance on our decision in United Tel. Co. of the Northwest, B-246977, Apr. 20, 1992, 92-1 CPD ¶ 374, is misplaced. Paragon cites that decision to support its contention that a proposal meeting the functional requirements of a solicitation should not be excluded from the competitive range. In United, the protester challenged award by arguing that the solicitation's specifications no longer reflected the agency's needs. (We note in passing that such a post-award challenge to the solicitation was timely only because of a unique factual context, set forth at length in our decision.) We sustained the protest and recommended that the competition be reopened after the solicitation had been amended to eliminate the superseded specifications. We see no relevance to the instant protest of our decision in United, which did not concern competitive range determinations and did not discuss (much less find permissible) an offeror's failure to comply with a solicitation requirement that proposals address stated tasks and other items. To the extent that the decision in United is germane here, it could only be for the principle that, if an offeror believes that a solicitation does not accurately state an agency's needs, the offeror must protest that alleged defect in the solicitation; it cannot simply ignore the solicitation's terms and submit a proposal based on its view of the agency's needs, as Paragon appears to have done.