



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Network System Solutions, Inc.

File: B-249733

Date: December 14, 1992

Eric M. Lins for the protester.
Don G. Bush, National Aeronautics and Space Administration,
for the agency.
Scott H. Riback, Esq., and John M. Melody, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

LEGIST

Protest that agency improperly eliminated firm's proposal from the competitive range after initial review of technical proposal is denied where record shows that agency reasonably determined that protester had no reasonable chance of receiving award because technical deficiencies in proposal could not be remedied without substantial rewrite of proposal.

DECISION

Network System Solutions, Inc. (NSSI) protests the elimination of its proposal from the competitive range under request for technical proposals (RFTP) No. 2-34965 (DAK), issued by the National Aeronautics and Space Administration (NASA) to acquire a digital voice communication system to support flight operations at the Dryden Western Aeronautical Test Range. NSSI argues that its proposal met the "essential requirements" of the solicitation's statement of work and was thus improperly eliminated from the competitive range.

We deny the protest.

The RFTP was issued to obtain technical proposals in connection with the first step of a two-step sealed bidding procurement. Offerors were to submit only technical proposals for this phase of the acquisition; those firms found technically acceptable on the basis of their initial offers, or as a result of discussions, would be afforded an opportunity to submit bids. The RFTP required offerors to submit detailed proposals outlining their technical approach and demonstrating compliance with the solicitation's specifications. As part of their proposals, firms were

required to provide a specific statement of compliance as to each of the paragraphs of the statement of work. Where the statement of work specified values, dimensions, quantities or performance levels, offerors were required to affirmatively demonstrate that their proposed equipment met the requirement.

There were five technical evaluation factors. Two of these, understanding of the requirement and previous experience in performing similar requirements, were to be applied by the agency in an integrated assessment of each offeror's overall proposal. In addition, the specified proposal format called for the proposals to be divided into three sections which corresponded to the three remaining evaluation criteria. Section one of each firm's proposal was to provide information on the offeror's overall design approach, and was to be evaluated by giving consideration to the offeror's design philosophy, system integration and operational capability and enhancement. Section two of each firm's proposal was to provide information on the offeror's overall manufacturing approach, and was to be evaluated by giving consideration to the offeror's methods for procuring and fabricating components, its approach to meeting the RFTP's reliability/maintainability and quality assurance requirements, and its approach to providing system support. Section three of each firm's proposal was to provide information concerning the offeror's system installation approach, and was to be evaluated by giving consideration to the firm's methods for installation of the proposed equipment. The evaluation portion of the RFTP contained a 100-point scale which was divided among the evaluation criteria in order to show the relative importance of each evaluation factor and subfactor.

NASA received six technical proposals. In reviewing the proposals, NASA's evaluators did not assign point scores, but instead used an evaluation method provided for in the agency's Source Evaluation Board Handbook, reviewing offers for strengths, weaknesses and technical questions. The evaluation team then rated the proposals as either acceptable, susceptible of being made acceptable or unacceptable. Three of the six proposals, including NSSI's, were determined to be unacceptable. On the basis of this finding, the contracting officer eliminated the three proposals from the competitive range.

In a letter to NSSI advising the firm of this determination, NASA provided a sample listing of four of the identified weaknesses. Thereafter, by letter to the contracting officer, NSSI questioned the specified weaknesses, arguing that they were either improperly identified by the technical evaluation team or were minor issues that should have been the subject of clarifications or discussions. NASA

responded to NSSI's letter, stating that it would not change its determination. NSSI then protested to our Office.

NSSI argues that the agency improperly eliminated its proposal from the competitive range because its proposal complied with the "essential requirements" of the solicitation. According to the protester, the fact that certain minor weaknesses may have existed in its initial offer should not have been a basis for eliminating it from the competitive range, because these matters could easily have been resolved through discussions. In this connection, NSSI maintains that the weaknesses were either nonexistent, subject to interpretation, or the result of typographical errors. NSSI also argues that the agency erred in failing to point-score the proposals because the solicitation provided that the 100-point scale outlined in the RFTP would be used in evaluating proposals.¹

NASA responds that it properly eliminated NSSI from the competitive range because of the nature and extent of the weaknesses identified in the firm's proposal. In this regard, NASA states that NSSI's proposal contained so many weaknesses--there were others in addition to the sample weaknesses in the rejection letter--that it would have required a major rewriting before it could be considered technically acceptable.

In addition to these specific weaknesses, NASA found the NSSI proposal virtually indecipherable because the firm's proposal format and "cross-reference matrix" (which allegedly correlated portions of the firm's proposal with particular paragraphs of the specifications) bore no apparent relation to the RFTP's specifications. As a consequence, NASA's evaluators were in many instances unable to relate the requirements of the solicitation to NSSI's

¹NSSI also alleged in its letter of protest that the agency performed only an "initial" review of its proposal, maintaining that this initial review was inadequate for gaining a comprehensive understanding of its proposal. This allegation apparently relates to the wording contained in NASA's proposal disqualification letter to NSSI, where NASA stated that after "initial review" the proposal was found to be unacceptable. In its comments on the agency report, NSSI infers that the agency performed an additional review of its proposal while preparing its report, and contends that this was improper. This allegation is without merit. The record shows that NASA performed a thorough review of the NSSI proposal before eliminating the proposal from the competitive range, and nothing in the record shows that a supplemental, post-protest evaluation was performed.

proposal. NASA concludes that it reasonably eliminated the protester's proposal from the competitive range.

The evaluation of proposals and resulting determination as to whether a particular offer is in the competitive range are matters within the discretion of the contracting agency, since it is responsible for defining its needs and determining the best method of accommodating them. Smith Bright Assocs., B-240317, Nov. 9, 1990, 90-2 CPD ¶ 382. A procuring agency is not required to include a technically unacceptable proposal in the competitive range where deficiencies in the proposal are so material that major revisions would be necessary to make the proposal technically acceptable. Ebasco Constructors, Inc. et al., B-244406 et al., Oct. 16, 1991, 91-2 CPD ¶ 341. In reviewing challenges to an agency's competitive range determination, our Office does not independently reevaluate proposals; rather, we examine the evaluation to determine whether it is reasonable. Delta Ventures, B-238655, June 25, 1990, 90-1 CPD ¶ 588.

We conclude on the basis of the record in this case that NASA reasonably eliminated NSSI's proposal from the competitive range because the proposal contained a large number of weaknesses which rendered it technically unacceptable. These weaknesses, when viewed in the aggregate, could only have been remedied through substantial revisions to the NSSI proposal. For example, NSSI's proposal failed to meet the RFTP's requirements relating to the quantities of equipment called for, including 36 communication stations (NSSI offered only 26) and four 30-key communication panels (NSSI offered 11 "slave jack" stations and 2 "jack" panels instead of the required equipment). NSSI does not dispute NASA's finding that its proposal did not comply with these requirements; it merely attributes noncompliance to its computer-assisted drawing operator's having incorrectly copied the government's schematic detailing the equipment. Notwithstanding the reason for this proposal deficiency, NSSI's proposal clearly was noncompliant to these requirements.

NSSI's proposal also did not satisfy the RFTP's spare parts requirements, which called for spare replacement parts for all "line replaceable" units which are critical to the system's operation. Again, NSSI does not dispute this deficiency, and states only that it eliminated its spare parts list from its proposal due to page limitations and intended to submit the list during negotiations. Its proposal therefore contained only a brief statement to the effect that "NASA intends to purchase system spare parts under a separate contract."

NSSI's proposal also did not meet the requirement that the system have a minimum of 16,000 hours mean time between failure (MTTF). NSSI's proposal stated that its offered system has a MTTF of only 2,500 hours. NSSI maintains that this was simply a typographical error which should have been apparent to the agency. However, the proposal contained no other information which would have led the evaluators to conclude that the firm was offering to meet the requirement and that this was a typographical error.

Finally, we agree with NASA that the NSSI "cross-reference matrix" appears to bear little relationship to the format of the specifications, an error apparently resulting from NSSI's misunderstanding of the solicitation's instructions. For example, individual paragraphs of the specifications were cross referenced to large portions of NSSI's offer, in some cases the entire proposal. In other instances, NSSI's proposal did not reflect the solicitation's paragraph numbering system even though its "cross-reference matrix" contained a complete outline of the RFTP's paragraph numbering scheme. This deficiency led the evaluators to have further difficulty in interpreting and understanding the NSSI proposal.


In light of these and the other deficiencies identified by NASA, and despite NSSI's position that it should have been given an opportunity to clarify its proposal, we conclude that the agency reasonably determined that NSSI's proposal as submitted was technically unacceptable and that the number and magnitude of the deficiencies warranted eliminating the proposal from the competitive range. NSSI was advised by the RFTP's instructions to offerors to submit an acceptable initial proposal and the firm, in preparing its offer, should not have assumed that it would be afforded an opportunity to make further clarifications.

NSSI's objection to the agency's decision not to point score the proposals also is without merit. Even where point scores are used, they are only guidelines for intelligent decision making, and other methods for rating proposals are acceptable so long as the method chosen enables the agency's contracting officials to gain a clear understanding of the relative merits of competing proposals. Able-One Refrigeration, Inc., B-244695, Oct. 28, 1991, 91-2 CPD ¶ 384.

The record shows that NASA's technical evaluators carefully reviewed the proposals, preparing detailed narrative statements regarding the relative merit of each offer. Nothing in the record suggests that the evaluators did not adequately examine the proposals, or that their evaluations did not accurately reflect the merits of the proposals. This being the case, and since NSSI has not indicated how it

was prejudiced by the agency's failure to use point scoring,
we have no basis for objecting to the proposal evaluation
method.²

The protest is denied.


for James F. Hinchman
General Counsel

²In any case, it appears to us that, by stating that the assigned numeric point distribution would be applied to the evaluation factors and subfactors, the RFTP was merely advising offerors of the relative weights assigned to the evaluation factors, and not stating how the evaluation actually would be conducted.