



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: S & G Industries, Inc.
File: B-255263
Date: February 1, 1994

Jerome Schaeffer for the protester,
Gweyn Colaherdino, Esq., Defense Logistics Agency, for the
agency.
Barbara C. Coles, Esq., and Ralph O. White, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Agency properly excluded proposal from the competitive range where the agency reasonably concluded that the offeror had no chance of award because of numerous deficiencies in its product demonstration model.

DECISION

S & G Industries, Inc. protests the rejection of its proposal from the competitive range under request for proposals (RFP) No. DLA100-93-R-0163, issued by the Defense Personnel Support Center, Defense Logistics Agency (DLA), for coats. S & G contends that the agency improperly determined that its proposal was technically unacceptable.

We deny the protest.

The RFP, issued on May 7, 1993, contemplated the award of a firm, fixed-price contract for coats. The RFP stated that the award would be made to the responsible offeror whose proposal was the most advantageous to the government, considering price and other factors. The RFP contained the following technical evaluation factors, listed in descending order of importance: (1) product demonstration models (PDM), i.e., a sample coat; (2) the offeror's commitment to customer satisfaction and product support; and (3) past performance. The RFP specifically advised offerors that the agency would evaluate the PDMs to determine quality of construction and workmanship as well as conformance to the visual and dimensional requirements set forth in the solicitation. For each evaluation factor, an offeror could receive an adjectival rating of "highly acceptable," "acceptable," "marginally acceptable," or "unacceptable."

The RFP stated that technical quality was more important than price.

Four firms, including S & G, submitted technical proposals, as well as PDMs, by the closing date for receipt of initial proposals. The contracting officer evaluated the technical proposals and a technical specialist evaluated the PDMs. After reviewing the technical specialist's comments and recommendations, the contracting officer assigned each proposal an overall adjectival rating. Although S & G received acceptable ratings under the customer satisfaction and past performance factors, the firm received an overall unacceptable rating because there were numerous construction and workmanship defects found in its PDM. In addition to several minor defects, the agency discovered the following major defects: (1) misplacement of the elbow pad on the top of the sleeve, as opposed to the underside of the sleeve; (2) failure to sew the shoulder pads to the coat's seam; and (3) failure to cover the pads with cotton duck material. By letter dated September 16, the agency informed S & G that its proposal was excluded from the competitive range. S & G's protest to our Office followed.

S & G first contends that the agency improperly excluded its proposal from the competitive range because the alleged defects in S & G's PDM resulted from inadequate time given offerors to design the PDM. As a preliminary matter, the protester's contention that it had inadequate time to prepare a PDM is an untimely challenge to the solicitation requirements. Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing time for receipt of initial proposals must be filed prior to the closing time. 4 C.F.R. § 21.2(a)(1) (1993). Since the RFP specifically required offerors to submit PDMs with their technical proposals and advised them that the agency's evaluation would include an examination of the PDMs, the protester should have raised this issue prior to the time set for receipt of initial proposals. Kenneth L. Latham, B-245137, Dec. 18, 1991, 91-2 CPD ¶ 559.

S & G argues that its proposal should have been included in the competitive range because it is the "best source" for award given its low-priced offer and its experience. The protester also argues that the agency's assessment of the deficiencies in the PDM submitted by S & G was improper. While the protester concedes that some of the deficiencies were present, it claims that they did not warrant rejection of its proposal, since the deficiencies were either correctable or are typically accepted by contracting agencies in PDM evaluations.

The evaluation of proposals and the resulting determination as to whether a proposal is within the competitive range is primarily a matter of agency discretion. We will review these determinations only to ascertain whether they are reasonable and consistent with the RFP's evaluation criteria. Ronnoc, Inc., B-243729, Aug. 19, 1991, 91-2 CPD ¶ 163. A protester's mere disagreement with the evaluation does not establish that it was unreasonable. United Healthserv. Inc., B-232640 et al., Jan. 18, 1989, 89-1 CPD ¶ 43. Based on our review of the evaluation documents and S & G's PDM, we find no basis to object to DLA's evaluation of S & G's proposal or to DLA's resulting decision to exclude the proposal from the competitive range.

As discussed above, the technical specialist identified several defects in S & G's PDM, the most important evaluation area. The contracting officer subsequently determined that at least two of these defects were major and that they demonstrated that S & G lacked a clear understanding of the solicitation requirements. For example, the elbow pad on S & G's PDM was sewn on the top of the sleeve rather than the underside of the sleeve. Clearly, the placement of an elbow pad in the front of the elbow interferes with unrestricted use of the arm and defeats the purpose of an elbow pad, that is, to cushion and reinforce the elbow. The technical specialist also concluded that the protester's failure to stitch the shoulder pads at the coat's seam presented a safety hazard to the user because the pads were not secure and there were openings and gaps which could snag on machinery. This requirement, contrary to the protester's suggestion, was not simply one of design, but was directly related to safety considerations. Given the protester's failure to submit a model that satisfied these material requirements, we think the agency reasonably determined that the protester's nonconforming model indicated that it failed to understand the solicitation's requirements.

The record also shows, and the protester concedes, that S & G's coat did not conform to two other solicitation requirements. Specifically, the pads, which consisted of different fabrics and shades, were not covered with cotton duck material, and the thread on the pads were two different colors. S & G argues the agency should have overlooked these defects or conclude they were minor or correctable because "the use of different thread or cloth components at the PDM stage is acceptable practice and (are) not indicative of deficiency[ies]."

The fact that S & G previously may have submitted nonconforming PDMs that were found acceptable by DLA or other government agencies is irrelevant. Each procurement action is a separate transaction and the fact that a PDM may

have been acceptable under one procurement does not affect the rejection of an unacceptable PDM under another procurement. See PFC, Inc., B-243195, July 5, 1991, 91-2 CPD ¶ 24; Warrensville File and Knife, Inc., B-241805, Mar. 1, 1991, 91-1 CPD ¶ 236. Rather, the issue is whether the evaluation is consistent with the evaluation criteria in the solicitation. Here, the solicitation specifically advised offerors that the "[f]ailure of models to conform to all requirements of specification or commercial product description may result in an unfavorable evaluation." [Emphasis added.] Consequently, we believe that the agency reasonably evaluated S & G's PDM in these areas and properly determined that S & G's proposal was technically unacceptable based on these defects.

The record does not support the protester's argument that the rejection of its proposal was improper in light of its experience and the fact that S & G currently has a subcontract to deliver this item. A procuring agency's technical evaluation is dependent upon the information furnished in the offeror's proposal. Computerized Project Mgmt. Plus, B-247063, Apr. 28, 1992, 92-1 CPD ¶ 401; All Star Maintenance, Inc., B-244143, Sept. 26, 1991, 91-2 CPD ¶ 294. There is no legal basis for an agency to overlook a flawed proposal and a flawed sample on the basis of the offeror's prior performance; on the contrary, all offerors must demonstrate their capabilities in their proposals. Id.

While the protester clearly disagrees with the agency's assessment of its PDM, it has failed to point to any evidence to substantiate its claim that the agency unreasonably determined that the nonconforming model was technically unacceptable. Based on our review of S & G's PDM,¹ focusing particularly on the cited deficiencies, we do not believe that the agency's conclusion was unreasonable. Rather, we think that the deficiencies in S & G's PDM support the agency's exclusion of the firm's proposal from the competitive range.

Finally, with respect to S & G's contention that it should receive the award because it submitted the lowest price, we note that S & G's low price cannot overcome the fact

¹DLA submitted S & G's PDM for our review in connection with this protest, while S & G submitted a sample coat that it now furnishes under another government subcontract. As stated above, our review of S & G's PDM leads us to conclude that it was reasonable to exclude S & G's proposal from the competitive range. We did not base our review on the sample S & G provided to our Office since the protester concedes that the sample is not the same as the coat it submitted under the subject procurement.

that its proposal was found technically unacceptable.
See International Sales Ltd., B-253646, Sept. 7, 1993,
93-2 CPD ¶ 146.

The protest is denied.

Ronald Berger
for Robert P. Murphy
Acting General Counsel