



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

240102

Decision

Matter of: Lucas Aerospace Communications & Electronics, Inc.

File: B-255186

Date: February 10, 1994

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Devorah S. Mayman, Esq., and Paul Shnitzer, Esq., Crowell & Moring, for Litton Applied Technology Division, an interested party.
Josie C. Serracin, Esq., and David H. Beck, Department of the Navy, for the agency.
John L. Formica, Esq., Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably determined that a proposal for active electronic buoys was technically unacceptable because it lacked technical detail with regard to the protester's approach to system design, and did not propose an acceptable approach to satisfy one of the buoy's subsystems.
2. Protester was provided meaningful discussions where it was reasonably led into the deficient areas of its proposals that were found deficient due to lack of technical detail or unacceptable technical approach.

DECISION

Lucas Aerospace Communications & Electronics, Inc. protests the elimination of its proposal from the competitive range and the award of a contract to Litton Applied Technology Division, under request for proposals (RFP) No. N00024-93-R-5425, issued by the Department of the Navy for active electronic buoys.¹ Lucas contends that meaningful discussions were not conducted and that the agency's determination to eliminate its proposal from the competitive range was unreasonable.

¹The active electronic buoys are ship or air launched expendable decoys which protect Navy ships by providing an alternate target to enemy radar and missile systems.

We deny the protest.

The RFP contemplated the award of a fixed-price incentive contract for five first article buoys, and upon satisfactory completion of first article tests (FAT), 180 production buoys with an option for an 20 additional units. The solicitation stated that award would be made to the responsible offerer whose offer was determined most advantageous to the government, price and other factors considered, and listed the following evaluation factors and subfactors, in descending order of importance:²

- (1) Technical Capability
 - (a) Technical Approach
 - (b) Producibility (of proposed design)
- (2) Manufacturing Capability
- (3) Management Capability

The solicitation, while stating that discussions would be held if necessary, encouraged offerers to submit their best offers in their initial proposals because the agency intended to make award on the basis of initial proposals without discussions.

Detailed proposal preparation instructions were provided that, in part, tracked the stated evaluation factors and subfactors. For example, for the most important evaluation factor, technical capability, offerors were required under the "systems design" subsection to "summarize the technical approach and methodology used in achieving the overall system requirements." This subsection further requested that offerors "include a concise summary of the offeror's technical approach to each subsystem and its relationship to the overall system," and show "a comprehensive understanding of the performance, physical, reliability, and environmental characteristics (of the buoy)." The RFP noted here that a

²The subfactors within the manufacturing capability and management capability evaluation factors have not been included here as they are not relevant to the resolution of the protest.

"level 2 drawing package"³ was available "for information purposes only."⁴

Under the "subassemblies" subsection, offerors were provided with a list of the buoy's subassemblies, and required to describe their "design approach and capability for design, manufacturing, test, and delivery" of the buoys. With respect to each of the buoy's subsystems, offerors were required to address, among other things, the engineering analysis and trade-off studies that resulted in the selection of the proposed subsystem design; the physical, functional, and technical characteristics of the proposed subsystem design; and the perceived risks in the proposed design.

The agency received three proposals, including Lucas's and Litton's, by the March 29, 1993, closing date. The proposals were evaluated by the technical evaluation review panel (TERP) and the price evaluation panel (PEP), and the results of the TERP's and PEP's evaluations were reviewed by the contract award review panel (CARP).

With regard to Lucas's proposal, the technical evaluators found the proposal to be technically unacceptable because, among other things, it did not contain any information setting forth Lucas's approach to system design. Lucas addressed its approach to system design in a classified supplement to its proposal,⁵ which was received by the

³Drawings are generally categorized as level 1, 2, or 3, under Department of Defense standards. The level relates to the maturity of the item or program. For example, level 1 drawings represent an experimental product, while level 2 drawings are general purpose shop drawings and contain dimensions, but are prepared prior to approval of any first article and are subject to change depending on any equipment modification, vendor changes, or material substitution resulting from FAT. Level 3 drawings are prepared after FAT is completed; reflect the final modifications, vendor selections, and materials used for production items; and can be used to manufacture an identical or interchangeable item.

⁴The agency informed prospective offerors prior to the closing date for receipt of proposals that the available level 2 drawings "are not complete and do not represent a build-to-print package."

⁵This portion of Lucas's proposal, classified by Lucas as SECRET, and a Weapons Specification describing the buoy that was made available to the offerors, and classified by the agency as SECRET, were provided to our Office for our in (continued...)

agency after the RFP's closing date and was not considered by the agency.⁶ The evaluators also determined Lucas's technical proposal unacceptable with regard to the buoy's high voltage power supply (HVPS) subsystem. The evaluators found that Lucas, rather than setting forth its approach to "modularizing" and "productizing" the HVPS subsystem as required by the RFP, stated that it would "closely follow the existing design" as reflected in the level 2 drawings made available by the agency.⁷

The CARP determined, consistent with the findings of the TERP, that all three proposals received were technically unacceptable as submitted, but were susceptible to being made acceptable. The CARP recommended that the contracting officer hold discussions with all three offerors, including Lucas, and solicit revised proposals.

Discussions were conducted, and the offerors' responses evaluated by the agency. The TERP determined, and the CARP

⁵(...continued)

camera review. Because these documents are classified as SECRET, we will not describe or specifically refer in any way to the contents of either document. Also, a protective order was issued pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.3(d)(1) (1993), and the protester's and interested party's counsel were provided with complete access to relevant procurement documents, with the exception of the classified documents. Our discussion of the protest issues that are based upon protected, confidential information is necessarily general. In any event, we have reviewed and considered the entire record, including the classified portions, in reaching our decision.

⁶The RFP referenced the standard "Late Submissions, Modifications, and Withdrawals of Proposals" clause set forth at Federal Acquisition Regulation (FAR) § 52.215-10. That clause provides, with limited exceptions not applicable here, that proposals or portions of proposals received by the agency after the time and date specified for submission of proposals will not be considered. See Inland Service Corp., Inc., B-252947.4, Nov. 4, 1993, 93-2 CPD ¶ 266.

⁷According to the agency, "[m]odularizing' requires the contractor to develop a system into individual detachable units/modules each having a specific purpose or function," with the buoy system here being comprised of the aggregate of the modules proposed. "Productizing" as explained by the agency "is an engineering term of art which means to design/improve the system to simplify the production process, thereby making the system more reliable and cost effective to produce."

concurred, that Lucas's proposal remained technically unacceptable, primarily because of Lucas's deficient technical approach to system design and the HVPS subsystem. The agency found that Lucas's approach to system design relied heavily on the existing buoy design as reflected in the level 2 drawings provided by the agency. In the agency's view, Lucas's reliance on the drawings to describe its system design reflected Lucas's "limited technical understanding of the [buoy] system and subsystems," and failure to understand that design effort was necessary in order to develop a buoy capable of passing FAT and make the transition from first article to production. Regarding Lucas's approach to the HVPS subsystem, Lucas's proposal was also found to be very general in nature and to address product improvements in only the mechanical, as opposed to the electrical, aspects of the HVPS subsystem.

The CARP thus determined that Lucas's proposal, which it characterized as a "build-to-print" approach, was no longer in the competitive range because it did not have a reasonable chance of being selected for award, and that best and final offers (BAFO) should be requested from only Litton and Metric. The agency informed Lucas of its exclusion from the competitive range, and requested BAFOs from Litton and Metric. Award was made to Litton, and this protest followed.

Lucas protests that the evaluation of its proposal was unreasonable. Lucas contends that its proposal cannot properly be characterized as a "build-to-print" approach, because in Lucas's view, its proposal addressed the "design activities called for in the statement of work." The protester explains that it interpreted the RFP as soliciting a "manufacturing job requiring a design effort that was strictly limited."

Because agencies are responsible for defining their needs and 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 the discretion of the contracting agency. Paragon Imaging, Inc., B-249632, Nov. 18, 1992, 92-2 CPD ¶ 356. In reviewing an agency's technical evaluation, we will not reevaluate the technical proposals but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria. MAR, Inc., B-246889, Apr. 14, 1992, 92-1 CPD ¶ 367. The offeror has the burden of submitting an adequately written proposal, Caldwell Consulting Assocs., B-242767; B-242767.2, June 5, 1991, 91-1 CPL ¶ 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.

As noted above, the agency found Lucas's proposal, as revised during discussions, to be technically unacceptable primarily because of Lucas's technical approach to system design and the HVPS subsystem. In response to the agency's discussion question concerning its system design, Lucas resubmitted its two page classified proposal supplement that was previously not considered by the agency. This supplement sets forth, on one of its two pages, Lucas's approach to system design for this project. The agency found that Lucas's proposed system design was "a playback of existing documentation" made available by the agency, and that "Lucas's lack of technical detail in describing its technical approach . . . clearly indicates that Lucas does not have an adequate technical understanding of the [buoy]." The agency noted that "Lucas failed to provide a concise summary of each subsystem" or "elaborate on actual experience with materials, components, and design features that could adversely impact reliability [and] performance" as required by the RFP. From our review of the record, including our in camera review of the classified portion of Lucas's proposal addressing its proposed system design, we find reasonable the agency's conclusions, particularly given the information requested by the RFP which Lucas failed to provide.

We also find reasonable the agency's conclusions regarding Lucas's approach to the HVPS subsystem. The agency determined that Lucas, in response to a specific discussion question concerning Lucas's approach to modularizing and productizing the HVPS, addressed only the mechanical aspects of this subsystem and did not indicate any product improvements to its electrical design. The evaluators also found Lucas's proposal deficient here because it described the HVPS in only general terms, and did not, as required by the RFP, address engineering analysis or trade-off studies completed, the physical, functional, and technical characteristics of the proposed HVPS design, or Lucas's perceived degree of technical risk involved in its design.

Lucas's unsupported argument that its general description of the HVPS "should have communicated to the reader [Lucas's] experience with modularizing and productizing techniques" is no more than mere disagreement with the agency's conclusion and does not show the agency's determination to be unreasonable. Realty Executives, supra. Specifically, Lucas fails to point out where in its proposal it addresses the electrical design of the HVPS, the engineering analysis or trade-off studies which resulted in its selection of its proposed HVPS design, the specific characteristics of its proposed HVPS design, or its perceived risk in its design.

approach. Based on our review, we find reasonable the agency's determination that Lucas's proposal was deficient with regard to the HVPS subsystem.³

Lucas also protests that the agency failed to conduct meaningful discussions with Lucas because the agency "failed to alert [Lucas] to perceived deficiencies in its proposal." In support of this contention, Lucas notes that the agency's July 26 letter providing 13 discussion questions and 4 sub-questions, informed Lucas that these questions set forth "[t]he areas of your proposal which need clarification, supporting detail, or revision in order to conform with the solicitation." Lucas argues that the use of the term "clarification" in the letter misled it into believing that its proposal required only clarifications, and was not deficient in any way. The protester also contends that the particular questions asked concerning the primary deficiencies in Lucas's proposal--Lucas's approach to system design and the HVPS subsystem--did not adequately convey the agency's concerns.

In order for discussions to be meaningful, agencies generally must point out weaknesses, excesses, or deficiencies in proposals, unless doing so would result in disclosure of one offeror's technical approach to another offeror or in technical leveling. Marine Animal Productions International, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 15. Agencies, however, are not required to describe deficiencies in such detail that there could be no doubt as to their identity and nature; rather, agencies are only required to reasonably lead offerors into the areas of their proposals which require amplification or correction. Son's Quality Food Co., B-244528.2, Nov. 4, 1991, 91-2 CPD ¶ 424. Accordingly, agencies are not obligated to "spoon-feed" offerors as to what factors must be addressed in an acceptable proposal or to conduct all-encompassing discussions. Institute for Human Resources, B-246893, Apr. 12, 1992, 92-1 CPD ¶ 360.

We fail to see how Lucas could have been reasonably misled into believing that its initial proposal did not contain any deficiencies by the agency's use of the term "clarification" in the July 26 letter. The identification of a discussion question as a clarification rather than a deficiency does not in itself provide any basis for protest, in the absence of a showing that the offeror was not reasonably led into

³Because we find reasonable the agency's evaluation of Lucas's proposal and determination to eliminate Lucas from the competitive range, the propriety of the agency's characterization of Lucas's proposal as a "build-to-print" approach is immaterial.

the areas of its proposal requiring amplification or correction. See Beneco Enterprises, Inc., 70 Comp. Gen. 574 (1991), 91-1 CPD ¶ 595. Furthermore, here, the term "clarification" appeared, as set forth above, in a sentence stating that the 13 discussion questions included in the letter represented "[t]he areas of your proposal which need clarification, supporting detail, or revision in order to conform with the solicitation." (Emphasis added.) This sentence, considered alone and/or in conjunction with the two pages of discussion questions that followed (which are discussed in part below), reasonably informed Lucas that its proposal required more than just "clarification."

We also find that Lucas was reasonably led into the areas of its proposal requiring amplification. Regarding its approach to system design, Lucas was asked to "[a]ddress system design relative to [the RFP]." While conceding that it was aware of the agency's rejection of the classified supplement addressing Lucas's approach to system design as a late submission, Lucas complains that the question "was inappropriate as a notice of any perceived deficiency in [Lucas's] proposal." We disagree. This question clearly conveyed to Lucas that a perceived deficiency in its initial proposal was its failure to properly provide for evaluation purposes its approach to system design. To the extent that the protester believes that the agency should have pointed out specific deficiencies in Lucas's proposed approach to system design during discussions, we note that it was impossible for the agency to do so, because the agency had properly not evaluated this late submitted section of Lucas's initial proposal.

Regarding Lucas's approach to the HVPS subsystem, Lucas's initial proposed approach to the HVPS subsystem was, as noted above, evaluated as deficient because Lucas proposed to "closely follow the existing design," rather than to modularize and productize the HVPS as required by the RFP. This deficiency was specifically addressed in the discussions conducted with Lucas as follows: "where in the proposal does Lucas discuss the Statement of Work requirement to modularize and productize the High Voltage Power Supply?" While not every concern the agency had with Lucas's approach to the HVPS subsystem, as described in the evaluators' reports, was detailed to Lucas, the agency imparted sufficient information to lead Lucas into the area of its proposal addressing its approach to the HVPS subsystem, and conveyed to Lucas that this area of its proposal required amplification or correction. See Institute for Human Resources, supra.

In sum, we conclude that Lucas was accorded meaningful discussions and that the record supports the agency's evaluation of Lucas's proposal as technically unacceptable. Thus, the Navy reasonably eliminated Lucas's proposal from the competitive range.

The protest is denied.

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Acting General Counsel