



Comptroller General  
of the United States

227:92

Washington, D.C. 20548

## Decision

**Matter of:** Cyber Digital, Inc.

**File:** B-255225

**Date:** February 18, 1994

J. C. Chatpar for the protester.  
David P. Andross, Esq., Department of the Navy, for the agency.  
C. Douglas McArthur, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Agency properly eliminated proposal from consideration for award where proposal did not include price of spares in maintenance prices as required by solicitation, did not clearly indicate the protester's intention to provide spares, and failed to explain how the protester planned to meet requirement for abbreviated dialing for sets currently in use.
2. Offeror whose proposal was properly found to be unacceptable is not an interested party to protest the acceptability of the awardee's proposal where there is another, technically acceptable, offer in line for award if the protest were sustained.

### DECISION

Cyber Digital, Inc. protests the rejection of its proposal under request for proposals (RFP) No. N66032-93-R-0018, issued by the Information Technology Acquisition Center, Department of the Navy, for a consolidated telecommunications system at the Navy's Seal Beach Complex. This complex consists of three sites--Seal Beach, Corona, and Fallbrook--located between Los Angeles and San Diego, California. Cyber contends that the Navy did not properly evaluate its proposal but improperly made award to an offeror, Bell Atlantic Network Services, Inc., whose proposal did not meet solicitation requirements.

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

On May 3, 1993, the agency issued the solicitation for a fixed-price, indefinite quantity, indefinite delivery contract for a base year, followed by six 1-year options, to install and maintain telecommunications systems at the three sites. The solicitation also required a 1-year warranty period plus yearly maintenance thereafter. The solicitation contained the standard clause at Federal Acquisition Regulation § 52.215-16, Alternate III, advising of the Navy's intention to make award without discussions to the offeror submitting a technically acceptable proposal with the lowest validated systems life cost.

The solicitation advised offerors that the agency would evaluate proposals for compliance with the statement of work and compare the proposals to technical literature submitted by the offerors. The statement of work consisted of four sections: section C.1, containing general specifications for naval base communications systems; and sections C.2 through C.4, containing the site specific statements of work, the performance work statement, and site specific drawings, respectively. The RFP required offerors to demonstrate their understanding of the site specific statements of work, and directed offerors to provide a detailed response "in strictest possible sequential/numeric paragraph order," and a cross-reference between each statement of work requirement and any supporting technical literature.

The Navy evaluated the five proposals submitted on August 6, and found the lowest cost proposal, submitted by Cyber, to be technically unacceptable as submitted, although susceptible to correction through discussions. The Navy determined that the second and third low proposals--i.e., those submitted by Bell Atlantic and WilTel Communications Systems--were technically acceptable, and, on September 23, the Navy awarded a contract without discussions to Bell Atlantic, the lowest-priced technically acceptable offeror. This protest followed.

The Navy found Cyber's proposal noncompliant in four areas: spare parts, automated dialing, automatic number identification, and Integrated Services Digital Network demonstration facility. Cyber contends that its proposal complied with the RFP and addressed all elements of the statement of work.

In reviewing protests against an agency's technical evaluation and decision to eliminate a proposal from consideration for award, we review the record to determine whether the agency's judgments were reasonable and in accordance with the listed evaluation criteria and whether there were any violations of procurement statutes or

regulations. CTA, Inc., B-244475.2, Oct. 23, 1991, 91-2 CPD ¶ 360. For the reasons set forth below, we find that the agency's technical evaluation in this case was reasonable and consistent with the evaluation criteria, and we conclude that the agency's determination to eliminate the protester's proposal from further consideration was reasonable.

Cyber first argues that the Navy unreasonably concluded that Cyber's proposal did not clearly show that it would provide required spare parts. The site specific statement of work for each of the three locations here<sup>1</sup> required contractors to "provide all parts/spare parts, test equipment, and labor associated with the maintenance of the system." RFP § C.2.A paragraph 10.15. While Cyber indicated that it would comply with this requirement, its maintenance plan stated that the agency would have to purchase parts required for emergency or routine maintenance prior to cutover of the system. Also, the Executive Summary portion of Cyber's proposal indicated that the protester would provide a comprehensive list of recommended spare parts for purchase "as soon as possible," with Cyber providing circuit cards and other hardware on a consignment basis. The Navy interpreted this response as a proposal to establish, in essence, a convenience store at which the government could shop for spares, as opposed to including the price of spare parts in monthly maintenance prices as required by the solicitation.

Cyber complains that the Navy misread its proposal and explains that it indicated its commitment to provide spare parts at exhibit C. In this exhibit, offerors were required to provide a price breakdown for parts so that the Navy could compare commercial and Federal Supply Schedule (FSS) pricing with prices offered in the proposal. Cyber's exhibit consists of 11 columns, listing parts and services referenced by each contract line item number (CLIN), and providing the corresponding FSS price, commercial price, and bid price for 12 pages of items.

Certain items in Cyber's exhibit carry the notation "SP" after the part description.<sup>2</sup> According to Cyber, the "SP" notation indicated that a spare part would be provided as

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<sup>1</sup>The site specific statements of work contain identical language regarding all four requirements that the Navy found Cyber's proposal did not meet.

<sup>2</sup>For example, the third item on Cyber's list, a direct current power supply, is described as "DC PS SP-1." The first page of Cyber's exhibit lists 34 items, ten of which carry the "SP" notation. This notation appears in the same format throughout the exhibit and nowhere is the notation defined.

part of the price of initial installation. Cyber argues that if the Navy had examined its exhibit, the Navy would have recognized Cyber's commitment to provide spares.

We note that Cyber does not explain its "SP" designation in its proposal and first provides an explanation in its agency-level protest, filed 4 days after award. The Navy now acknowledges that Cyber was apparently using exhibit C to provide a price breakdown by CLIN, and that Cyber apparently included the cost of spare parts under CLINs 0001, 0005, and 0009, for initial installation and maintenance during the warranty period, rather than under CLINs 0014-0016 for maintenance after expiration of the 1-year warranty period, as required by the solicitation. Since Cyber did not explain its approach in its proposal--other than by the "SP" notation, which itself was not explained--the Navy was unable to ascertain Cyber's intention from the face of its proposal. Further, the Navy responds that even if it accepts Cyber's explanation, the proposal's unclear prices for spares do not assure that Cyber will provide spares over the 7-year life of the contract. According to the Navy, the proposal appears to require the Navy to purchase additional spares after the initial supply is depleted.

We agree with the agency that Cyber's proposal does not clearly indicate that Cyber was agreeing to pay for spare parts, as required by the RFP. An offeror has an obligation to submit a proposal which fully demonstrates that it meets solicitation requirements. Discount Mach. & Equip. Inc., B-253094, Aug. 2, 1993, 93-2 CPD ¶ 68. Cyber asserts that its proposal should be interpreted merely as suggesting that the agency purchase some additional spare parts at the beginning of contract performance and that its general promise to provide spare parts should be given greater weight than the contrary statements elsewhere in its proposal. Since we agree that the proposal was ambiguous regarding Cyber's commitment to provide spare parts, we find reasonable the agency's concerns about whether the proposal offered to meet this requirement.

The RFP also required offerors to provide abbreviated dialing capability, so that frequently dialed telephone numbers could be accessed with a few digits instead of the entire telephone number. Since the Navy anticipated using some of the telephone sets from its current system, the RFP required the contractor to provide the abbreviated dialing capability at the switch level, rather than in individual sets, so that all users would have this capability. In this regard, Cyber's proposal stated only that the telephone sets and single line feature phones it provided would have this feature, and indicated that it would provide commercially available abbreviated dialing, if required, for other sets.

The agency noted that Cyber did not propose to have the capability resident in the switch as required by the RFP, but rather in the individual sets; that Cyber did not explain how it proposed to provide abbreviated dialing to the older sets; that Cyber did not provide a price for the commercially available services it proposed; and that the qualification "if required" raised a concern about whether Cyber understood the requirement, which, in the Navy's view, was plainly stated.

Cyber essentially responds that abbreviated dialing is so common a feature that it did not bother to mention in its technical proposal that its system had the capability. Rather, Cyber refers to its technical literature, which describes abbreviated dialing, as evidence that it can provide this capability. We agree with the Navy's reply that Cyber's technical proposal should have referenced those portions of Cyber's technical literature that discussed abbreviated dialing capability. Under the RFP here, the purpose of such literature was to amplify the proposal, not to set forth capabilities not identified elsewhere. In addition, since the proposal provided no price for such commercially available services, we find that the Navy reasonably concluded that Cyber's proposal failed to address the abbreviated dialing requirements for the older sets.

Since we conclude that the Navy properly decided that Cyber's proposal was unacceptable for failing to demonstrate it could meet the requirement for abbreviated dialing capability or fulfill the obligation to provide spare parts, there is no need to address whether the agency properly found the proposal unacceptable in other areas.

Environmental Technologies Group, Inc., 69 Comp. Gen. 193 (1990). 90-1 CPD ¶ 101.

With respect to whether the Navy should have held discussions here rather than make award on initial proposals, the RFP specifically advised offerors of the Navy's intention to award a contract without discussions. Therefore, offerors bore the risk of proposal rejection if they did not submit a technically acceptable proposal--the agency undertook no obligation to conduct discussions to allow a vendor to improve its proposal to the point where it would be acceptable. Accordingly, there is no basis to object to the Navy's award without discussions.

Cyber also challenges the acceptability of Bell Atlantic's proposal; however, since the agency properly found Cyber's proposal unacceptable, and since there is another technically acceptable proposal in line for award, Cyber

is not an interested party for purposes of challenging the Navy's evaluation of Bell Atlantic's proposal, Hughes Technical Servs. Co., B-245546.3, Feb. 12, 1992, 92-1 CPD ¶ 179.

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

*Ronald Berger*

Robert P. Murphy  
Acting General Counsel