



Comptroller General
of the United States

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Washington, D.C. 20548

REDACTED VERSION!!

Decision

Matter of: Trimble Navigation Limited

File: B-258672

Date: January 30, 1995

Richard O. Duvall, Esq., Dorn C. McGrath III, Esq., and Richard L. Moorhouse, Esq., Holland & Knight, for the protester.

James J. Regan, Esq., and John E. McCarthy, Jr., Esq., Crowell & Moring, for Ashtec, Inc., an interested party. Nilza F. Velazquez, Esq., United States Coast Guard, for the agency.

Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Generally, where a dispute exists as to the actual meaning of solicitation requirements, the General Accounting Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all provisions in the solicitation; to be reasonable, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner.

2. Blanket statements of compliance are generally not sufficient to demonstrate technical acceptability; rather, an offeror must affirmatively establish compliance with solicitation requirements.

DECISION

Trimble Navigation Limited protests the award of a fixed-price contract to Ashtec, Inc. under request for proposal (RFP) No. DTCG23-94-R-TZ046, issued by the United States Coast Guard, for Differential Global Positioning System (DGPS) Reference Stations and systems life

The decision issued January 30, 1995, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[DELETED]."

maintenance.¹ Trimble argues that the agency failed to evaluate proposals in accordance with the terms of the RFP inasmuch as it did not provide Trimble with the opportunity of repairing a test sample unit (TSU) which the agency used, in part, to evaluate technical proposals; that the agency's "best value analysis" was based on a flawed technical evaluation of Trimble's unrepaired TSU; that the agency failed to conduct meaningful discussions with Trimble; that the agency failed to consider the relative quality of each offeror's past performance in its technical evaluation; and that one of the agency's evaluators had an actual or apparent conflict of interest or bias which influenced the contract award.

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

BACKGROUND

The RFP was issued on January 14, 1994, and contemplated acquiring a Non-Developmental Item (NDI) design. The RFP stated that award would be made to the responsible offeror, whose offer, conforming to the solicitation, was determined to be the "most advantageous to the government, cost and other factors considered, including past performance on similar projects." The RFP required offerors to submit their proposals in three volumes: technical proposal, cost proposal, and relevant past performance data. The RFP stated that technical factors were considered more important than evaluated costs. The RFP contained the following technical evaluation factors:

1. Baseline Characterization--The proposal would be evaluated on how well it conveys to the government that the offeror has a basically suitable baseline NDI design.
 - A. Soundness of Approach
 - B. Compliance with Requirements
2. Modification Requirements--The proposal would be evaluated on the offeror's approach and method

¹The DGPS Reference Station is an electronic aid to navigation; users of the Reference Station can, among other things, ascertain precise and accurate global positioning of vessels, perform harbor approach services, and permit the positioning of other aids to navigation. The Reference Station relies on satellite signals from the Department of Defense Global Positioning System. The Reference Station, in turn, generates signals to the end user to determine navigational positional data with precise accuracy.

of modifying and upgrading the NDI baseline design, as necessary.

- A. Ability to Meet Schedule
- B. Soundness of Approach
- C. Compliance with Requirements

3. Support/Maintainability--The proposal would be evaluated based upon the offeror's proposed ability to support Reference Stations, from each unit's delivery through any subsequent follow-on maintenance options.

- A. Soundness of Approach
- B. Compliance with Requirements

4. Verification/Manufacturing--The proposal would be evaluated based upon the offeror's proposed approach and ability to manufacture and deliver high quality Reference Stations

- A. Ability to Meet Schedule
- B. Soundness of Approach
- C. Compliance with Requirements

In addition, listing these technical evaluation factors, the RFP required the submission of four TSUs which would be tested concurrently by the Department of the Navy (in its satellite-simulator laboratory) and by the Coast Guard (which would perform field testing). The RFP stated that results obtained from these TSU tests would "be factored into the overall assessment of the offeror's written proposal."² Concerning evaluation of each offeror's TSU, the RFP also stated as follows:

"M.3 Offerors are advised that, for technical sample units undergoing Government testing, the inability of a technical sample unit to fully check-out upon initial set-up by the offeror shall count as a failure unless attributable to Government test equipment malfunction. Due to test schedule limitations, the Government requests that offerors correct identified failures within seven (7) calendar days following receipt of

²The RFP required each offeror under the Baseline Characterization factor to provide a "brief summary checklist" in which the offeror compared its TSU or NDI baseline design with the technical requirements. Individual design characteristics were required to be identified as "Does not meet spec.," "Marginal," "Meets spec.," or "Exceeds spec."

notification from the Government of such failure. This seven day request also applies to multiple failures reported under the same Government notification. Within seven (7) days following each repair, offerors shall provide . . . a written failure report detailing the cause of the malfunction and the corrective action taken"

Concerning the TSU, the RFP also stated as follows:

"L.10 It is anticipated that it will take the Government approximately one month to complete [testing of the TSU]. . . . The Government may authorize unit-under-test repairs as required. Once testing has begun, there will be no hardware or software configuration design changes in the Reference Station technical samples. Repairs, however, may only be authorized under supervision of government representatives." (Emphasis supplied.)

Concerning price, the RFP stated that price was not the most important evaluation factor but would not be ignored and that the degree of its importance would increase commensurately with the degree of equality among technical proposals. Price would also be evaluated for reasonableness and "congruence between the price and technical proposals."

The agency received two offers (from Trimble and Ashtec) on March 11, 1994, the closing date for receipt of initial proposals. Both offerors' TSU were tested by the Navy and the Coast Guard; test results were given to the agency's technical evaluation team (TET) which also evaluated the written proposals of the offerors. The technical evaluation report was completed on May 31 with the following results:³

<u>Factor</u>	<u>Ashtec</u>	<u>Trimble</u>
Baseline Design	[DELETED]	[DELETED]
Modifications Required	[DELETED]	[DELETED]
Support/Maintainability	[DELETED]	[DELETED]
Verification/Manufacturing	[DELETED]	[DELETED]
Overall	[DELETED]	[DELETED] ⁴

³The agency employed a color/adjectival rating scheme. A color rating of blue was exceptional; green was acceptable; yellow was marginal; and red was unacceptable.

⁴With regard to evaluated prices, the agency found that Ashtec's total offered price was approximately [DELETED], while Trimble's was [DELETED].

Briefly, the agency evaluators found that Ashtec submitted a [DELETED] Ashtec's proposal, in the agency's view, represented [DELETED] since the [DELETED]. Concerning Trimble's offer, the agency found [DELETED] during the testing of Trimble's TSU that was not identified by Trimble in its written proposal: "[DELETED]."⁵ The agency viewed [DELETED]."

The agency sent the following written discussion question concerning the technical area of baseline design to Trimble on July 8:

"1. Spec. 3.1.2.1.: Fails to meet the specifications [DELETED]. How do you propose to meet this specification?"

Best and final offers (BAFO) were subsequently received on July 29. Concerning the major technical weakness identified by the agency [DELETED], Trimble, in its BAFO merely stated as follows:

"[DELETED]

"[DELETED]

"[DELETED]

"[DELETED]

"[DELETED]

"[DELETED]."

⁵The RFP specified the signal power levels required in specification Section 3.1.2.1 and, as eventually amended on July 22, this specification stated that these levels would "apply to satellites which have been tracked for at least 120 seconds."

BAFOs were evaluated by the TET with the following results:⁶

<u>Factor</u>	<u>Ashtec</u>	<u>Trimble</u>
Baseline Design	[DELETED]	[DELETED]
Modifications Required	[DELETED]	[DELETED]
Support/Maintainability	[DELETED]	[DELETED]
Verification/Manufacturing	[DELETED]	[DELETED]
Overall	[DELETED]	[DELETED] ⁷

Once again, the agency evaluators found that the Ashtec proposal represented an "exceptionally capable technical solution, as demonstrated in the technical sample and verified through government testing, that is capable of fulfilling operational requirements of the specifications." Concerning Trimble's BAFO, the agency again identified a [DELETED].

On September 14, the agency determined that the price offered by Ashtec was fair and reasonable and also determined that Ashtec's proposal was the most advantageous to the government. Award was made to Ashtec; this protest followed. The agency has proceeded with contract performance after making a determination of urgency.

ANALYSIS

As the agency states, most of the protester's allegations are based on only one contention: that the Coast Guard improperly did not afford the firm the opportunity to repair a "failure" of its TSU as "required" by the RFP.⁸ We agree

⁶Trimble also submitted an alternate proposal with its BAFO which we do not discuss since it is not relevant to the resolution of this protest.

⁷Concerning price, Ashtec offered to perform the work at [DELETED]; Trimble offered [DELETED].

⁸Specifically, in its initial protest, Trimble argued that the agency failed to adhere to the RFP evaluation methodology because the agency should have notified and permitted Trimble to exercise the 7-day failure/test/repair as provided by section M.3 of the RFP after the agency allegedly identified a "failure" in Trimble's TSU; that the agency's "best value" evaluation was invalid because it was allegedly based on a faulty technical evaluation--the agency's disregard of the RFP's 7-day failure/test/repair mechanism; and that the agency failed to conduct meaningful discussions because the agency failed to "provide

(continued...)

with the agency that this underlying contention by Trimble is based on a misreading of the RFP.

Generally, where a dispute exists as to the actual meaning of solicitation requirements, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all provisions in the solicitation. To be reasonable, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. See Air Prep Technology, Inc., B-252833, June 14, 1993, 93-1 CPD ¶ 459.

Trimble essentially argues that it should have been permitted to make software design changes to its TSU during the agency's testing of the equipment; in this regard, the protester does not dispute that its proposed "correction" or "repair" to the unit would have been software design changes. However, we agree with the agency that the only reasonable reading of RFP section M.3, quoted above, is that the term "failure" of a TSU during testing referred to a malfunction or other inoperative condition of the unit that prevented its testing. This is because under section L.10, the RFP prohibited hardware or software configuration design changes to be made in any offeror's TSU once testing had begun.⁹ The record shows that Trimble's TSU did not fail or become inoperable during testing. Rather, the technical performance parameters of Trimble's TSU, while fully operable and functioning, did not reach the required RFP levels during testing because of alleged software reasons. This was simply not a "failure" of the TSU permitting or requiring "repair" within the meaning of the relevant RFP provisions. Accordingly, we conclude that Trimble was properly not given the opportunity by the agency to make "repairs" to its TSU.

⁹(...continued)
notification of a 'failure' within the meaning of Section M.3." All of these allegations by Trimble are based on the single contention that Trimble was entitled by the RFP to "repair" its TSU which had allegedly experienced a "failure" during agency testing.

⁹In its comments, the protester contends that if the RFP provisions are read as precluding retesting the TSU, they are "inappropriate and inimical to full and open competition." We think the meaning and effect of these provisions, reasonably read, were apparent on the face of the solicitation. Thus, a protest alleging an impropriety in these terms was required to be filed prior to the closing date of initial proposals. Trimble did not do so; its protest is therefore untimely. 4 C.F.R. § 21.2(a)(1) (1994).

In its comments on the agency report, the protester argues that even if the TSU did not experience a "failure," the agency unfairly downgraded Trimble's technical solution (its proposed software changes in its BAFO) by the agency concluding that the Trimble unit's inability to acquire GPS remained a high risk because the BAFO failed to present any detailed rationale or "fix" for the problem.¹⁰

We think the agency's downgrading of Trimble's proposal was reasonable. In our view, the Trimble BAFO's proposed technical solution was very general in nature and essentially amounted to a blanket offer of compliance--promising unspecified software changes to be made in the future, without providing any detailed technical justification. It is well established that blanket statements of compliance are generally not sufficient to demonstrate technical acceptability; rather, an offeror must affirmatively establish compliance with the requirements. See generally Infrared Technologies Corp., B-255709, Mar. 23, 1994, 94-1 CPD ¶ 212.¹¹

Trimble also argues that the agency failed to evaluate past performance on a relative basis during the technical evaluation but used each offeror's past performance data solely for responsibility purposes. While the RFP did state that past performance would be among the factors considered during evaluation, the RFP, at the same time, failed to list any past performance factor or factors. In any event, we need not decide this issue because we have already found that the magnitude of the technical risk posed by Trimble's proposal as compared with Ashtec's proposal warranted a serious technical downgrade; there is nothing in the record to suggest that a relatively advantageous past performance rating for Trimble would have altered the source selection

¹⁰The protester also argues in its comments that it was "incumbent upon the Coast Guard to conduct post-BAFO discussions" once the agency realized that Trimble's BAFO was inadequate. We know of no such requirement imposed on an agency by any law or regulation.

¹¹Since we find reasonable the agency's determination that Trimble's proposed solution was "high risk," we have no basis to disagree with the agency that this same technical weakness also placed the delivery schedule at risk with a possible increase in potential vessel/cargo damages caused by the resulting delay.

decision in any way. We therefore think that this contention is academic in light of the major uncorrected technical weakness contained in Trimble's offer.¹²

The protest is dismissed in part and denied in part.

Robert P. Murphy
General Counsel

¹²The protester also alleges that a certain individual who was a source selection board or team member, was previously employed by Ashtec and possessed a bias in favor of that firm. We find the protester's allegation to be factually erroneous. The agency reports that this individual is a government employee who had worked for Ashtec 5 years ago and had been considered to serve as a member of the TET for this procurement; however, the agency decided not to do so, and this individual did not serve as an evaluator. As an employee of the National Geodetic Survey (NGS), this individual was orally consulted by the agency because of his technical expertise; his advice did not include decision-making. Also consulted, among many other people, was the Marketing Manager for Landing and Tracking Systems, Trimble Navigation Limited. There is nothing in the record to suggest that the NGS employee's advice had even a minimal impact on the selection process or the selection decision.