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DECISION



THE COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D. C. 20548

82-1cpd 333



FILE: B-205722

DATE: April 12, 1982

MATTER OF: Enviro Control, Inc.

DIGEST:

1. Protest against exclusion of proposal from the competitive range on the basis of cost factors, which were the least important evaluation criterion, is denied. Exclusion was proper where the contracting agency determined, based on the proposal's marginal technical merit and high price, that the cost disparity between the protester and other offerors made it highly unlikely that discussions would result in the protester having a reasonable chance of award. Where the solicitation warned offerors that award could be made on initial proposals, the protester assumed the risk of being excluded from the competitive range by not presenting its best proposal price in its initial proposal.

2. Contention that notice stating proposal was excluded from the competitive range on the basis of cost, rather than cost and technical factors, indicates improper proposal evaluation is denied. Prior to award an offeror whose proposal is excluded from the competitive range is entitled to only a general explanation of the basis for the range determination, not to a debriefing. Where the agency has a valid basis for excluding the proposal, the fact that it initially states that basis incorrectly or incompletely does not affect the propriety of the evaluation.

Enviro Control, Inc. (ECI), protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. DAAD10-81-R-0102 issued by the Department of the Army, Aberdeen Proving Ground, for range testing support services at Dugway Proving Ground, Utah.

The protester contends that despite allegedly superior technical and management features, its proposal was rejected on the basis of cost, which the RFP specified as a much less important evaluation criterion.

We find the protest to be without merit.

ECI asserts that because the RFP provides that cost factors represent only 14 to 17 percent of the total criteria to be considered in evaluating proposals, the Army's competitive range determination was not made in accordance with the evaluation criteria specified in the RFP. ECI insists that its initial proposal rates were competitive and that, given the opportunity to participate in negotiations, its best and final offer would be fully cost competitive. ECI further claims that in its report on the protest, the Army changed the basis upon which its proposal was rejected and now asserts that it was excluded due to technical deficiencies. The protester contends that the conflicting reasons given for excluding the proposal indicate that it was not properly evaluated. Finally, ECI complains that the Army's refusal to furnish information concerning the technical evaluation places ECI at an unfair disadvantage in assessing the propriety of the rejection and pursuing its protest.

The Army states that pursuant to the terms of the RFP, initial proposals were numerically scored by the proposal evaluation board. ECI's proposal was excluded from the competitive range because, based on its marginal technical acceptability and relative high cost, it was not considered to have a reasonable chance of being selected for award. See Defense Acquisition Regulation (DAR) § 3-805.2(a) (Defense Procurement Circular No. 76-7, April 29, 1977). Because the RFP contemplates award of a cost-plus-fixed-fee contract and the requirements are labor intensive with a specified level of effort, the Army concluded that appreciable cost variation during negotiations was not likely and that negotiations with ECI would not result in cost changes sufficient to affect the wide price disparity between ECI and other offerors. The Army suggests that negotiations aimed at price reduction would jeopardize ECI's already marginally acceptable technical proposal, while negotiations to upgrade the technical proposal would result in inflating the already high proposal cost.

Although cost factors were not the paramount criterion in the evaluation scheme, the Army emphasizes that the RFP did advise offerors that the agency had the right to consider initial proposals as the offerors' best prices. The agency asserts that it properly excluded ECI's proposal from the competitive range on the basis of price, notwithstanding that it was not specified as the most important evaluation criterion, citing United Computing Systems, Inc., B-204045, September 23, 1981, 81-2 CPD 247. The Army concludes that ECI has presented no evidence to show that its proposal was excluded as the result of anything other than the reasonable judgment of the Army's technical experts.

We agree with the Army. The determination of whether a proposal is within the competitive range, particularly with respect to technical considerations, is primarily a matter of administrative discretion. Therefore, in reviewing a protest against such a determination, our function is not to reevaluate the relative technical merit or acceptability of the proposals, but to examine the record to ascertain whether the contracting agency's determination was reasonable. In so doing, we also consider whether that determination resulted in a competitive range of only one proposal. Decilog, B-198614, September 3, 1980, 80-2 CPD 169.

Regarding the Army's refusal to provide detailed information concerning the evaluation of its proposal, we have held that prior to award an offeror whose proposal is excluded from the competitive range is entitled to only a general explanation of the basis for the competitive range determination rather than a debriefing. SES, Inc., B-205961, March 4, 1982, 82-1 CPD ____; see DAR § 3-508.2(a) (Defense Acquisition Circular (DAC) No. 76-28, July 15, 1981). During the preaward period, the contracting agency is prohibited from disclosing proposal information and the number or identity of the offerors. DAR § 3-507.2(a) (DAC No. 76-28, July 15, 1981). However, where an agency denies relevant documents to a protester, our Office does review such materials in camera in considering the protest. Radiation Systems Inc., B-194492.2, July 3, 1979, 79-2 CPD 6.

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From our review of the record, we cannot conclude that the Army's determination was unreasonable or that ECI's proposal was not evaluated in accordance with the terms of the RFP. Contrary to ECI's assertions, the evaluation board did numerically score initial proposals in accordance with the scoring system established at the time the RFP was issued. That system does provide that technical/management factors are significantly more important than cost factors, consistent with the evaluation criteria stated in the RFP. Although the evaluation scores were furnished to us in camera, we feel it necessary to state that the maximum possible score for cost factors was 10 percent of the entire evaluation score possible.

Notwithstanding the fact that ECI's proposal received the median average evaluation score, ECI submitted the second highest proposal price. The technical scores of the proposals included in the competitive range are significantly higher than ECI's and are closely grouped and the competitive range offerors' proposal prices are considerably lower than that of the protester. Therefore, we find ECI was properly excluded from the competitive range based on the array of scores, both from a technical and cost standpoint. We also note that ECI's exclusion did not result in a competitive range of only one proposal.

The proposal evaluation board's numerical evaluation is further supported by its narrative evaluation of ECI's proposal. The narrative explains that the protester's technical proposal was deficient because it failed to indicate personnel experience in executing the tests required by the Army, the contractor's main function under the RFP. In addition, the narrative states that ECI's management proposal was deemed marginally acceptable because ECI chose to centralize its organizational structure 85 miles away from Dugway Proving Ground, despite the fact that the RFP provides that the Army anticipates that all contract work will be performed at Dugway Proving Ground.

Although the Army initially advised ECI that its proposal did not fall within the competitive range from a cost/price standpoint, the fact that the contracting agency's notice to ECI was incorrect or incomplete does

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not affect the propriety of the proposal evaluation. Where the agency has a valid basis for excluding a proposal from the competitive range, the fact that the original reason provided to the offeror for its exclusion was incomplete does not render the agency's determination improper. See Bow Industries, Inc., B-196667, March 25, 1980, 80-1 CPD 219.

We deny the protest.

Milton J. Fowler
for Comptroller General
of the United States