



United States General Accounting Office
Washington, DC 20548

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: B. E. Meyers & Company, Inc.

File: B-283796

Date: December 14, 1999

D. William Toone, Esq., Miller, Nash, Wiener, Hager, & Carlsen, and Thomas W. Winland, Esq., Finnegan, Henderson, Farabow, Garrett & Dunner, for the protester. D. Susan Spiegelman-Boyd, Esq., Department of the Navy, for the agency. Peter A. Iannicelli, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Exclusion of protester's proposal from the competitive range was not improper where the agency reasonably concluded that there were significant deficiencies in the protester's proposal which made it technically unacceptable as submitted and that major revisions would have been required to make it acceptable.

DECISION

B. E. Meyers & Company, Inc. (Meyers) protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. N00164-99-R-0122, issued by the Department of the Navy for the purchase of two different types of weapons sights--the night vision crew-served weapon sight (NVCSWS) and the submersible night vision individual weapon sight.¹

We deny the protest.

Issued on July 13, 1999, the RFP called for the supply of up to 1,600 fixed-price NVCSWS units over a 5-year period. The units were to be manufactured in accordance with the RFP's statement of work (SOW), performance specifications, and drawings that were incorporated by reference. The pertinent performance

¹ The protest concerns only line items for the supply of the NVCSWS and related warranties and data. Therefore, we will discuss only procurement actions related to those line items in this decision.

specification stated that each NVCSWS would consist of an objective lens assembly, a battery housing, an image intensifier tube, a biocular eyepiece, a mounting system, a daylight cover, two batteries, a lens cleaning kit, a carrying bag, a shipping/storage case, and a reticle. RFP, attach. 3, §§ 3.1, 3.3.2. The RFP stated that the contract would be awarded to the offeror whose proposal represented the best value after evaluation of technical, past performance, and price factors.

The RFP directed offerors to submit technical and past performance proposals for evaluation; offerors were allowed a total of 68 pages for the executive summary and technical proposals combined. RFP, Federal Acquisition Regulation (FAR) § 52.212-1 Addendum, at 16-19, and amend. 1, at 2. The RFP required that “[e]ach technical proposal shall be specific, detailed, and complete as to clearly and fully demonstrate that the prospective contractor has a thorough knowledge and understanding of the requirements” RFP, FAR § 52.212-1 Addendum, at 17. The RFP stated that “[t]he Offeror shall provide detailed answers to demonstrate that their proposed units meet the requirements of the Performance Specification and SOW.” Id. The RFP also specified that offers should reply to each RFP requirement and should include references to commercially available technical literature, or include sufficient technical detail, to substantiate the offeror’s reply to each requirement. Id. The RFP specifically required that “[e]ach response shall describe the system(s) characteristics and performance with respect to the requirements specified in each paragraph of the applicable Performance Specification.” Id.

Initial proposals for the NVCSWS were received from two offerors--Litton Electro-Optical Systems (Litton) and Meyers. The entire Meyers technical proposal consisted of three pages (one of which dealt exclusively with warranties). Agency Report, Tab 5, Meyers Technical Proposal, at 3-5. The proposal included a picture of the proposed biocular eyepiece but did not include any technical literature, references to commercially available technical literature, or detailed discussion of the technical specifications of the offered components to demonstrate that the protester’s proposed system would meet the RFP’s numerous requirements. Significantly, the Meyers proposal stated that it was offering to replace the specified biocular eyepiece with its own product, and specifically stated that the required image intensifier tube and mounting systems were not included. Id. at 3-4. Additionally, as the agency points out, Meyers did not propose to supply the required battery housing design and eyeshield assembly. Agency Report at 6.

Based upon the lack of any technical data to support the components that were proposed and the fact that Meyers was proposing to supply only part of the required system, the agency’s technical evaluators determined that the proposal did not meet or address many of the RFP’s minimum requirements and that it had no strengths, but contained [deleted] major weaknesses and [deleted] major deficiencies. Agency Report, Tab 7, Technical Evaluation, at 31. In fact, the evaluators found that Meyers proposed to provide only approximately 20 percent of the RFP’s required major

system components. Agency Report at 6. As a result, the evaluators concluded that the Meyers technical proposal was “unacceptable” and represented an “unacceptably high technical risk.” Agency Report, Tab 7, Technical Evaluation, at 31.

The contracting officer nonetheless called Meyers for clarification of its proposal; Meyers confirmed that it was offering to supply the agency with some but not all of the required components of the NVCSWS system. Agency Report, Tab 8, Meyers Clarifications Memorandum, at 1. Meyers also clarified that it would assemble the entire system if the agency would purchase the other components (*i.e.*, those that Meyers was not offering to supply) from another supplier and provide them to Meyers as government furnished equipment. Agency Report at 6.

After obtaining this clarification, the contracting officer determined that the Meyers proposal represented an unacceptably high risk and excluded the proposal from the competitive range. *Id.* at 7; Agency Report, Tab 10, Competitive Range Determination, at 3-4. The contracting officer noted that the protester’s lower proposed price could not properly be compared with Litton’s price because Meyers was offering only part of the complete system. Agency Report, Tab 10, Competitive Range Determination, at 2-3. Meyers was notified of its exclusion from the competitive range and filed this protest shortly thereafter. The agency has informed our Office that it will not proceed with award of the contract for the NVCSWS and related items pending resolution of the protest. Agency Report at 7.

Basically, Meyers states that it designed a night vision device that is “nearly identical” to the NVCSWS, that it is an expert in the field of laser-illuminated night vision devices, and that it has a superior past performance history and generally lower prices than those of an unnamed “insider” company to which the agency allegedly was trying to direct award of this contract. On this basis, Meyers contends that its proposal should have been included in the competitive range.² Protest at 2-4. In reviewing challenges to an agency’s competitive range determination, we will not independently reevaluate proposals; rather, we examine the evaluation only to determine whether it was reasonable and consistent with the RFP. United Housing Servs., Inc., B-281352.14, May 7, 1999, 99-1 CPD ¶ 80 at 3. The technical evaluation of a proposal is based on information submitted in it, and an offeror runs the risk of having its proposal downgraded and rejected if the proposal submitted inadequately

² Initially, the protester alleged that its rejection was part of an agency scheme to route awards for this type of item to an “insider” firm that currently is supplying a similar item to the Navy. Protest at 2. The Navy reported that the unnamed supplier to which Meyers referred was Insight Technologies. Since Insight Technologies did not submit a proposal in this procurement, the Navy argued that the allegation of a scheme to direct award to it was without any factual foundation. Agency Report at 8, 13. Meyers did not reply to the agency’s response. We therefore consider the allegation abandoned. Trijicon, Inc., B-244546, Oct. 25, 1991, 91-2 CPD ¶ 375 at 4 n.3.

addresses the RFP requirements. Id. Here, the record shows that the evaluation and decision to exclude the Meyers proposal from the competitive range were reasonable and consistent with the RFP.

We have reviewed the protester's proposal in light of the RFP requirements, and we conclude that the contracting officer reasonably determined that the protester's proposal was unacceptable as submitted and that Meyers would have had to submit "what would amount to an entirely new proposal . . . to correct the technical deficiencies." Agency Report, Tab 10, Competitive Range Determination, at 2-3. Indeed, the protester does not deny that it did not propose an entire system, as required by the RFP.³ Accordingly, we have no basis to find improper the contracting officer's determination to eliminate the Meyers proposal from the competitive range.

The protest is denied.

Comptroller General
of the United States.

³ To the extent that Meyers argues that the RFP should have allowed offers of a part of the system with the government furnishing the other components necessary for assembly by the winning contractor, or that the RFP should have allowed Meyers to substitute a different eyepiece for the one required by the RFP, the protest is untimely. Protests alleging solicitation improprieties must be filed before the closing date for receipt of initial proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1999).