



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Techniarts Engineering

File: B-271509

Date: July 1, 1996

William E. Moore for the protester.

John W. Fowler, Jr., Esq., Blank Rome Comisky & McCauley, for Peirce-Phelps, Inc., an intervenor.

Kathryn E. Simmons, Defense Logistics Agency, for the agency.

Linda C. Glass, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, Participated in the preparation of the decision.

DIGEST

1. Contracting agency reasonably eliminated protester's technically acceptable proposal from the competitive range where the protester's experience properly was evaluated as relatively weak and the agency had received several superior proposals at lower prices, as a result of which the protester's proposal had no reasonable chance of being selected for award.
2. Agency was not required to conduct discussions with the protester concerning its corporate experience where the protester's experience was evaluated as acceptable, but not as strong as that of several other offerors, the information in question was explicitly required by the solicitation, and the agency had no reason to believe the protester had not provided all of the relevant specific past performance information which was requested.

DECISION

Techniarts Engineering protests the exclusion of its proposal from the competitive range under request for proposal (RFP) No. TASA12-95-R-0025, issued by the Defense Logistics Agency, Television-Audio Support Activity (T-ASA) for Shipboard Audio Entertainment Systems (SAES).

We deny the protest.

The RFP, issued on July 20, 1995, contemplated the award of a fixed-price requirements contract for a base period with four 1-year options. The RFP stated that award would be made to a single offeror who submitted the "best overall proposal" considering the stated evaluation factors. The RFP contained two

evaluation factors: (1) merit and (2) cost, which was of lesser importance. The merit factor had two subfactors, listed in descending order of importance: (1) Technical Approach (consisting of five elements) and (2) Corporate/Program Management (consisting of four elements). Under the Corporate/Program Management factor, the most important element was identified as follows:

"(i) Past performance on similar, or related corporate experience in the production fielding and servicing of entertainment systems in a maritime environment. Experience may be in either commercial or Department of Defense type environments, or both."

Several proposals were received by October 6, 1995, the amended date for receipt of initial proposals. The proposals were evaluated by a technical evaluation team (TET), whose initial evaluation revealed that none of the proposals was completely technically compliant and that the majority of them contained substantial deficiencies. Techniarts's proposal was one of those identified by the TET as containing major design and/or management deficiencies and recommended for exclusion from further consideration. Nonetheless, the contracting officer (who was the designated source selection authority) decided to provide all offers an opportunity to remedy deficiencies before excluding any offerors from the competitive range.

In a December 28 letter, Techniarts was informed of numerous deficiencies in its technical approach and of deficiencies under the corporate and program management subfactor. Among other things, Techniarts was advised that its proposal failed to provide information needed to make a performance risk assessment because "[I]nsufficient information was provided to evaluate your corporate structure, subcontractor, maintenance or quality assurance procedures."

Revised proposals were received and evaluated by the TET. Techniarts's revised proposal contained several technical enhancements which cured the technical deficiencies and, as a result, was considered technically acceptable. However, Techniarts's proposal evaluation was rated lower than several other offers with regard to both technical approach and corporate/program management. With respect to Techniarts's submission regarding past performance, the TET made the following observation:

"While the contracts included several highly visible projects, all appeared to be a single event, one-of-a-kind systems in nature. They did not indicate any experience in the production and fielding of multiple units, nor with the shipboard environments. The technical aspects of this proposal are all

acceptable, but this lack of experience in production, long-term contract administration, and shipboard environment is considered a weakness."

The contracting officer believed that Techniarts's lower rating in the corporate and program management evaluation factors represented a high performance risk and determined that Techniarts's proposal did not have a reasonable chance of being selected for award; he therefore excluded it from the competitive range. Techniarts was advised that while its proposal was found to minimally meet the government's requirements, it was insufficient in depth of experience and expertise.

By letter to the contracting officer dated March 5, 1996, Techniarts complained that it was improper to exclude its proposal from the competitive range based on "insufficient depth of experience and expertise" since the issue of experience was not raised during discussions. The contracting officer responded by explaining to Techniarts that its proposal contained more than sufficient experience/past performance information for the evaluation team to evaluate, and therefore it was not necessary to include this area as a discussion issue. The contracting officer also pointed out that the RFP specifically provided that offerors would be evaluated on experience in ". . . production, fielding and servicing of entertainment systems in a maritime environment," and advised Techniarts that while it demonstrated extensive experience in engineering, furnishing and installing entertainment systems, it did not demonstrate extensive experience in production in a maritime environment. This protest followed.

Techniarts does not directly challenge or rebut the agency's substantive findings about its lack of experience in production, fielding and servicing of entertainment systems in a maritime environment. Rather, Techniarts argues that it was improper to reject its otherwise acceptable proposal on the basis of an issue not raised during discussions.

Our examination of an agency's decision to exclude a proposal from the competitive range begins with the agency's evaluation of proposals. Labat-Anderson, Inc., B-246071.4, Oct. 9, 1992, 92-2 CPD ¶ 244. In reviewing an agency's technical evaluation, we will not reevaluate the proposal but will examine the record of the agency's evaluation to ensure that it was reasonable and in accord with stated evaluation criteria, and not in violation of procurement laws and regulations. Id. The competitive range consists of all proposals that have a reasonable chance of being selected for award, generally including proposals that are technically acceptable or reasonably susceptible of being made acceptable through discussions. Intown Properties, Inc., B-250392, Jan. 28, 1993, 93-1 CPD ¶ 73. However, a technically acceptable proposal may be eliminated where it is relatively weaker than other competitive range proposals such that it does not have a reasonable chance

for award. See Coe-Truman Technologies, Inc., B-257480, Sept. 12, 1994, 94-2 CPD ¶ 136. Moreover, if the agency's evaluation of proposals is reasonable, there is nothing improper in an agency's making more than one competitive range determination and dropping a firm from further consideration. Labat-Anderson, Inc., supra.

Here, while the agency found Techniarts's proposal technically acceptable, there were other proposals which were rated higher than the protester's, and all but one of those offerors proposed a lower price than the protester. The protester has not submitted any substantive evidence rebutting the agency finding that Techniarts's revised proposal, although technically acceptable, was inferior to other higher-rated proposals, especially with respect to experience. Nor does the protester argue that it actually possesses more relevant experience and that, if requested, it could have provided the agency with additional information on this factor. In fact, the protester's proposal contained an extensive discussion of its experience. More than 30 contracts were listed and summarized, none of which demonstrated experience in the production of SAES in a maritime environment as explicitly called for by the RFP. Under these circumstances, we conclude that the agency's technical evaluation and findings and its determination to exclude Techniarts's proposal from the competitive range were reasonable.

With respect to the protester's allegation that the agency failed to conduct meaningful discussions, agencies are not obligated to afford all-encompassing discussions or discuss every element of a competitive range proposal; agencies are only required to lead offerors into the areas of their proposals considered deficient. See donald clark Assocs., B-253387, Sept. 15, 1993, 93-2 CPD ¶ 168. Here, we see no reason why the agency was obligated to raise the issue of the protester's experience during discussions. Techniarts had provided an extensive description of its experience in its proposal, and while its proposal was relatively weak with respect to the maritime environment experience explicitly called for under the RFP, its proposal was considered acceptable in this regard.

Prior experience is an aspect of a proposal that is generally not subject to improvement (although sometimes experience may be appropriately supplemented through additional personnel, subcontracting, or additional detail about experience described in the proposal). See AWD Technologies, Inc., B-250081.2; B-250081.3, Feb. 1, 1993, 93-1 CPD ¶ 83. Consequently, agencies are not always obligated to discuss weaknesses identified in prior experience. Here, in view of the RFP requirement for information about each offeror's relevant experience, including maritime environment experience, and Techniarts's extensive listing of its experience, the agency could reasonably assume that the protester had presented its most relevant prior experience--and that the failure to provide evidence of

production of an SAES in a maritime environment demonstrated that the firm lacked such experience. Accordingly, we find unobjectionable the fact that the agency did not raise Techniarts's relative experience weaknesses during discussions.

The protest is denied.

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