



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: TRS Research

File: B-274845

Date: January 7, 1997

Robert G. Fryling, Esq., and Edward J. Hoffman, Esq., Blank Rome Comisky & McCauley, for the protester.

Johnny Litman III, Esq., United States Marine Corps, for the agency.

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DIGEST

Protest that agency improperly rejected proposal as technically unacceptable and failed to conduct meaningful discussions with the protester is denied where discussion question reasonably apprised protester of its proposal's technical deficiency, and protester failed to correct the deficiency unambiguously in its best and final offer.

DECISION

TRS Research (TRS) protests the rejection of its proposal as technically unacceptable under request for proposals (RFP) No. M67004-96-R-0031, issued by the United States Marine Corps for collapsible flatrack containers to be used on shipboard to hold expeditionary airfield modules. TRS alleges that the agency failed to conduct meaningful discussions and improperly determined that its proposal was technically noncompliant.

We deny the protest.

The RFP was issued on June 6, 1996, with an original closing date of July 7. Award was to be made to the responsible offeror submitting the lowest priced technically acceptable offer. Section 3.0 of the statement of work (SOW) provided that the minimum "clear loading" dimensions for the containers were 224.5 inches in length, 95.5 inches in width, and 89.79 inches in height. Section 3.3 of the SOW required offerors to submit two complete sets of blueprint/design drawings indicating the container measurements in U.S. measures and bearing the stamped approval of an internationally recognized agency such as the American Bureau of Shipping or Lloyds Register of Industrial Services.

Amendment No. 0001 was issued on July 1, making certain changes to the SOW (but not to the dimensions or the drawing requirements) and further defining what "clear loading" meant. The amendment also stressed the need to submit approved drawings stating that they were "necessary to evaluate vendors' proposals," and extended the closing date until July 17.

On July 12, TRS' president contacted the agency contracting specialist by telephone to discuss the amendment because he was concerned that the changes would require the firm to obtain revised drawings, which the protester believed could not be accomplished before the new closing date. According to the president's account of the conversation, the contracting specialist "advised me at that time that it was not necessary to send in revised drawings." TRS' president also states that he confirmed the conversation the same day by fax indicating that the firm would provide drawings and specifications if it was deemed necessary by the government.

According to the contracting specialist's account of the conversation, TRS' president "asked me if I would extend the closing date . . . because his drawings did not meet the specifications . . . and that he would not have time to get new drawings from the manufacturer in Italy and have them approved . . . before the 17th of July." Her statement continues:

"I told him we could not extend the closing date because we had to make award by 30 September 1996 or we would lose the money. I told him that we evaluate all proposals and hold written discussions with the offerors in the competitive range. If he was in the competitive range he would have a chance to submit revised drawings that would comply with the specifications required by amendment 0001. I never told [him] that he did not need to submit revised drawings. At the time of the conversation, I had not seen [his] drawings and would not have told him that he didn't have to submit revised drawings. That would be tantamount to saying that he didn't need to submit drawings at all."

Eight offers were received by July 17. TRS' offer contained a narrative and approved drawings which stated loading dimensions in metric terms which, when converted to U.S. measurements, did not comply with the minimum clear loading requirements of the RFP. On July 31, written discussions were conducted, and the contracting officer indicated the following deficiency to the firm:

"3.0 Weight, Ratings, and Dimensions. Weights, ratings and dimensions are not in U.S. measurements. Conversion from metric to U.S. measurements indicates container does not meet specifications for minimum clear loading dimensions."

In the text of its best and final offer (BAFO), TRS agreed to meet the dimensional requirements of the specification and repeated the clear loading dimensions set forth in the SOW in U.S. measurements; attached to the text was a proposed manufacturer's specification sheet with the same U.S. measurements; however, no reference was made to modifying the earlier submitted drawings, and no new drawings were submitted in the BAFO. TRS' BAFO was rejected as technically unacceptable because its text in U.S. measurements was in conflict with the unamended, nonconforming drawing which was submitted with the initial proposal.

We think the record reasonably supports the agency's actions here. First, under the circumstances we find the agency's version of the July 12 conversation more plausible than TRS' version. However, even if we were to accept the protester's version, the solicitation clearly required the submission of compliant blueprint/design drawings, and the necessity for submitting such drawings was reemphasized in the amendment which indicated that they were to be the principal evaluation tool used by the agency. Oral advice contrary to the terms of a solicitation does not bind the government, and an offeror relies on such advice at its own risk. Systems 4, Inc., B-270543, Dec. 21, 1995, 95-2 CPD ¶ 281. Accordingly, we find without merit TRS' argument that the requirement for submitting compliant drawings had essentially been waived.

TRS' argument that the July 31 written discussions were inadequate because TRS was not specifically advised that its drawings were unacceptable is also unpersuasive. The requirement for discussions does not mean that agencies must conduct all-encompassing discussions; rather, agencies are only required to lead offerors into those areas of their proposals needing amplification given the context of the procurement. Creative Management Technology, Inc., B-266299, Feb. 9, 1996, 96-1 CPD ¶ 61. Here, the solicitation as amended emphasized the importance of the drawings with certified dimensions for evaluation purposes, and the discussion question specifically focused on the need to correct these dimensions to conform to the solicitation's requirements; thus, discussions were adequate.

Moreover, it is evident that TRS understood the problem the agency had with its proposal but created an ambiguity in its BAFO by failing to submit supporting drawings, electing instead to provide a blanket promise to comply with the specifications.

It is the offeror's duty to include sufficiently detailed information in its proposal to establish that the equipment offered will meet the solicitation requirements and blanket statements of full compliance are insufficient to fulfill this obligation. AZTEK, B-229525, Mar. 2, 1988, 88-1 CPD ¶ 218. Where a proposal contains a blanket offer of compliance to meet specifications and also contains conflicting provisions which call that offer of compliance into question, the offer is ambiguous and may properly be rejected as technically unacceptable.

Although the narrative in TRS' and the supporting manufacturer's statement contained compliant loading dimensions, these dimensions were in clear conflict with the dimensions set forth in TRS' required blueprint/design drawings. Under these circumstances, the agency had a reasonable basis for its determination that the protester's proposal was technically unacceptable. Id.

Finally, as to TRS' suggestion that its failure to submit revised drawings could be waived as a minor informality, Federal Acquisition Regulation (FAR) §§ 15.607 and 14.405 permit the waiver of minor informalities but define such informalities as those having, e.g., a negligible effect on quality. Insofar as the containers are intended to store modules of a given dimension, it is simply incorrect to assert that a failure to accommodate these necessary dimensions can be viewed as having a negligible effect on quality. Since the failure to submit drawings indicating compliance with critical dimensional requirements had a significant impact on quality, it was material and could not be waived.

The protest is denied.

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