



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Applied Companies

File: B-279811

Date: July 24, 1998

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DIGEST

1. Agency properly excluded protester's two proposals from the competitive range where protester's responses to discussion questions (especially regarding ability to comply with system capacity requirements, which was identified as a proposal deficiency) lacked sufficient detail to satisfy agency's concerns about feasibility of approach and protester's understanding of requirements, and where record shows that, as a result, protester's proposals no longer had a reasonable chance for award.
2. Contracting agencies are not obligated to afford all-encompassing discussions that "spoon-feed" an offeror each item that must be addressed to improve a proposal; agencies are only required to lead offerors into the areas of their proposals considered deficient and requiring amplification.

DECISION

Applied Companies protests the exclusion of its two proposals from the competitive range under request for proposals (RFP) No. DAAB07-97-R-E341, issued by the U.S. Army Communications-Electronics Command (CECOM). Applied challenges the agency's evaluation of its proposals and contends that the agency failed to conduct meaningful discussions with the firm.

We deny the protest.

The RFP, as amended, contemplated the award of a fixed-price contract for 42 split-pack air conditioners (referred to as Environmental Control Units (ECU)), capable of producing a normal cooling capacity of 24,000 (24K) British Thermal Units per Hour (BTUH) and a normal heating capacity of 30,000 BTUH; these ECUs

will replace current 18,000 (18K) BTUH units used in Patriot Missile shelters.¹ RFP, § B, at 4. Offerors were to submit detailed technical proposals for the design and development of the ECUs in accordance with the statement of work and purchase description specifications included in the RFP.² Section L of the RFP advised offerors that the "technical proposal should demonstrate a clear understanding of all the features involved in solving the problems and meeting the technical requirements." RFP § L, ¶ 3.0, at 58. Each offeror was to describe how it would meet the performance requirements and schedule. The offeror was to submit "drawings, sketches, graphs, special analyses (e.g., model test results), calculation, design data, supporting narrative and/or other technical information outlining the proposed air conditioner design and performance characteristics." RFP § L, ¶ 3.1, at 59.

Award was to be made to the offeror submitting the proposal determined to offer the government the best value, considering the following evaluation factors: technical; performance risk; and price (the technical factor was slightly more important than performance risk, which was slightly more important than price). RFP § M-4, ¶ 1.0, at 62. The technical factor included the following equally-weighted subfactors: 24K split-pack design; capabilities, plans, personnel, and

¹The agency reports that a Patriot Missile shelter's ECU is critical to the successful operation of the missile system, because it protects the soldiers operating the system, as well as the sensitive computer support equipment, from harsh environmental conditions including extreme temperatures. The agency explains that the split-pack design refers to operating configurations where the ECU's evaporator and condenser sections are separated, compared to where they are connected in one horizontal unit; the 24K BTUH unit is to fit in the shelter space previously used by the smaller capacity 18K BTUH unit. U.S. Army Materiel Command Legal Memorandum, May 18, 1998, at 2.

²The contracting officer explains that the refrigeration cycle for an ECU unit involves a compressor that pumps hot refrigerant (raising the pressure of the refrigerant gas) to the condenser coil where the vapor condenses to a liquid (releasing energy in the form of heat); the refrigerant (at reduced pressure) in the connecting expansion valve is fed through the system to the evaporator coil where the liquid refrigerant (at lower pressure) expands and evaporates, absorbing heat and lowering the temperature of the evaporator ambient air. As the contracting officer points out, the "performance of the refrigerant cycle is dependent upon the interaction of all the components." Contracting Officer Statement at 6.

facilities; test and evaluation; and contract master schedule.³ RFP § M-4, ¶ 2.0, at 62.

Offerors were advised that each technical proposal would be "evaluated to determine the extent to which the technical requirements have been addressed and understood . . . [and that mere] statements of compliance or repetition of the technical requirements without an intelligent, complete discussion and analysis are unsatisfactory." RFP, amend. 0008, § M-4, ¶ 3.1(a), at 2. As to the 24K split-pack design subfactor of the technical factor, offerors were expressly notified that the agency's evaluation of the "feasibility of approach" would involve the agency's "level of confidence" in the proposal and the "completeness, feasibility, soundness of approach, potential risk, and amount and quality of supporting technical analysis" of the proposal. Id. ¶ 3.1(b).

Four proposals, including two from Applied, were received by the closing date of October 15, 1997. Each of Applied's proposals offered a different electrical power source technology--one proposed using the [deleted] generator, and the other proposal offered the [deleted] (MPI). Both of Applied's initial proposals were found to be susceptible to being made acceptable, and each was rated as having a moderate performance risk. One of the other two offerors' proposals was rated as technically acceptable, the other was considered to be susceptible to being made acceptable, and both were rated as having low performance risk. Applied's proposals (at \$[deleted] for the [deleted] proposal, and \$[deleted] for the MPI proposal) were lower-priced than the others (at \$[deleted] and \$[deleted], respectively). All four initial proposals were included in the competitive range.

Discussions were conducted through the issuance, on December 23, of written items for negotiations (IFN) for each proposal. CECOM issued 52 IFNs to Applied regarding its [deleted] proposal, and 41 IFNs for its MPI proposal. The cover letter transmitted with the IFNs advised that the requested information was necessary "to more fully evaluate [its] proposal" and that its answers must "clearly and fully respond to each IFN . . . [since the failure] to rectify these deficiencies may result in [its] proposal being found to be unacceptable." Each IFN referenced relevant RFP requirements and Applied's associated proposal sections; and each IFN contained one or more questions, or requests for additional information, related to a proposal weakness or deficiency.

The most significant IFN for purposes of this protest was No. C014, issued to Applied for its [deleted] proposal (which generally mirrored a separate IFN also issued to the firm for its MPI proposal). The IFN included the RFP reference for

³A fifth, lower-weighted subfactor, small business and small disadvantaged business subcontracting plan, was not part of the evaluation, since all the proposals were submitted by small businesses.

the design and layout of the proposed technical approach (RFP § L, ¶ 3.1.A.1(a)) and the relevant portion (volume II) of the protester's proposal, and informed Applied that its "[deleted]. How will the system capacity of 24,000 BTUH be met?"

Applied submitted its IFN responses by the January 7, 1998 deadline set for all offerors' responses; this date reflected a 1-day extension granted in response to Applied's request for additional time in light of the firm's holiday closure earlier that week.⁴ In response to IFN No. C014 (and a substantially similar IFN for its other proposal), Applied only generally stated that [deleted], and that, although [deleted], Applied was unable, given the time allowed, to identify the claimed incorrect input data. In this regard, Applied stated in its response that if CECOM had been more specific in identifying the exact data perceived to be incorrect, it could have assessed whether it agreed that the data were incorrect. Applied then stated that it had checked with the [deleted] that had prepared the questioned data, who confirmed the accuracy of the data; the [deleted] also added that if data report changes were necessary they "can be done in a matter of seconds."

The agency found that Applied's IFN responses, primarily regarding the [deleted] deficiency raised in IFN No. C014, failed to raise the agency's low level of confidence in the feasibility of the protester's proposed approach, and similarly failed to cure the agency's concerns about the offeror's apparent lack of demonstrated understanding of the critical system capacity requirements. After evaluation of the IFN responses, the agency determined that Applied's two proposals were technically unacceptable under the 24K split-pack design subfactor, and that major revision to the proposals would be necessary to make them acceptable. Since the proposals received only [deleted] (which ratings the protester does not challenge), both proposals were determined to be unacceptable overall for

⁴On December 29, Applied requested information from the agency regarding the role of the IFNs in the procurement process and their effect on the award determination. In that request, Applied acknowledged that, given the timing of the proceedings, the firm understood that answers to some of its questions may not be issued until after award. Although Applied had not received any response from the agency regarding its procedural questions, the protester submitted its IFN responses on January 7. Applied now contends that if it had known the IFN responses would be important to the evaluation of proposals for award, it would have submitted additional information. We simply cannot see how Applied was, as it alleges, misled by the role of the IFN questions and responses, or how it was reasonably prejudiced by the agency's failure to respond to its questions prior to the submission of its IFN responses. The IFN cover sheet clearly set forth that the IFN responses were to be used in the evaluation of proposals and that noted proposal deficiencies were to be rectified in the IFN responses. Further, to the extent Applied contends that it had insufficient time to prepare more detailed IFN responses, the challenge is untimely. 4 C.F.R. § 21.2(a)(1) (1998).

the technical factor. Technical Factor Evaluation Final Report, February 9, 1998. Consequently, the Applied proposals were excluded from the competitive range, due to the agency's determination that they no longer had a chance of being selected for award when compared to the two remaining lower-risk, higher technically rated proposals (one rated as good, and at only a slightly higher price than Applied's proposals, and the other rated acceptable). Interim Competitive Range Memorandum, February 9, 1998, at 2.

The protester alleges that during its debriefing, it first learned that the agency's claimed [deleted] involved the protester's proposed system's liquid temperature at the evaporator ([deleted]), which the agency believed was too low to reach system capacity with the evaporator coil proposed. Applied filed an agency-level protest on March 7, challenging the exclusion of its proposals from the competitive range, since the agency, according to Applied, had failed to conduct proper discussions with the firm. The agency denied that protest by decision of April 7. This protest followed.

Applied protests the propriety of the agency's technical evaluation of its ECU design proposals, and the exclusion of those proposals from the competitive range after discussions.⁵ The competitive range consists of all proposals that have a reasonable chance of being selected for award. Intown Properties, Inc., B-250392, Jan. 28, 1993, 93-1 CPD ¶ 73 at 3. In reviewing a determination to exclude a proposal from the competitive range, we first review the agency's evaluation of the proposal; 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. Labat-Anderson Inc., B-246071.4, Oct. 9, 1992, 92-2 CPD ¶ 244 at 6. The offeror has the burden of submitting an adequately written proposal and proposal revisions for the agency to evaluate, and an offeror's disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. Id. If the agency's evaluation is reasonable, there is nothing improper in an agency's making more than one competitive range determination and dropping a firm from further consideration once it becomes evident that the offeror no longer has a reasonable chance of receiving the award. Este Medical Servs., Inc., B-261845.2, Sept. 29, 1995, 95-2 CPD ¶ 240 at 4; Johnston Communications, B-221346, Feb. 28, 1986, 86-1 CPD ¶ 211 at 4.

⁵In its protest of April 14, Applied also challenged the agency's determinations regarding some of the additional major and minor disadvantages found in the Applied technical proposals, as well as the agency's alleged failure to meaningfully discuss those problems with the firm. The protester, however, failed to pursue these contentions in its comments in response to the agency's explanation of its evaluation determinations; we therefore consider them abandoned. See The Big Picture Co., Inc., B-220859.2, Mar. 4, 1986, 86-1 CPD ¶ 218 at 5.

In its IFN response, Applied basically asserted that its ECU design proposals were technically acceptable because [deleted]--and Applied basically stated that its data were accurate because its [deleted] stated that they were accurate. The RFP provided, however, that general statements of compliance were unacceptable; as the agency points out, what the protester failed to adequately do in its proposal, and in its IFN response to the question ("How will the system capacity of 24,000 BTUH be met?") was to sufficiently describe how the proposed overall system would accomplish the requisite cooling levels. The record shows that liquid refrigerant temperature at the evaporator is just one factor in the proposed ECU's overall operation and compliance with RFP capacity requirements. Here, it is the [deleted] (and related data) proposed, including the [deleted] units, which the agency needed the protester to more fully describe in order to evaluate the acceptability of the proposed approach for system capacity, as well as the protester's understanding of the requirement, but which the protester failed to sufficiently detail.

The contracting officer explains that the conclusion that Applied's proposed evaporator coil was undersized for system capacity was not based solely on the [deleted], but on Applied's [deleted] of the required evaporator capacity, since, for instance, the proposal failed to allow [deleted]. Contracting Officer Statement at 12. The agency points out that the other offerors provided for these allowances by proposing [deleted], and presented data indicating [deleted] than Applied's system.

Our review of the protest record shows that Applied has not refuted the reasonable bases upon which the agency questioned the capacity of its proposed systems. Rather, the firm continues to contend that the agency was wrong to downgrade and exclude its proposals, since Applied is an experienced contractor that could revise its proposals to provide for "further subcooling" to meet the agency's concerns, and because its [deleted] have been confirmed as sufficient by the [deleted] that prepared them. Protest at 9; Protester's Comments at 8. These responses, however, are not persuasive, since neither the additional [deleted] approach nor the [deleted] post-protest documentation was included in Applied's proposals or IFN submission for proper, timely evaluation. The time period following an offeror's proposal's exclusion from the competitive range, including the protest process, is not the time for an offeror to submit new or more detailed proposal information for evaluation to satisfy RFP requirements or attempt to demonstrate an ability to meet those requirements.⁶

⁶In any event, the agency evaluators report that this untimely submitted technical data also fail to relieve their concerns about the protester's proposed design and understanding of the overall RFP requirements, since the BTUH capacity claimed by the protester, unlike the [deleted] capacities offered by its competitors' systems, does not allow for additional [deleted] requirements relating to heat generated by the evaporator motor and other components; also, [deleted], which was not fully
(continued...)

The RFP, as stated above, specifically advised offerors that their proposals had to demonstrate an understanding of the requirements and advised that the proposed design would be evaluated for "completeness, feasibility, soundness of approach, potential risk, and amount and quality of supporting technical analysis." RFP, amend. 0008, § M-4, ¶ 3.1(b), at 2. In our view, the protester's mere general statements of compliance, even after discussions which included the agency's request for information regarding system capacity and related data, provided a reasonable basis for the agency's substantial downgrade of the proposals under the relevant design factor. The overall low technical rating assigned to the proposals is further supported, we believe, by the fact that the protester does not challenge the numerous other weaknesses and disadvantages cited in its proposals which, in our view, reasonably support its lower technical ratings and higher associated risk. Moreover, we think the agency's concerns about the protester's failure to convincingly detail the feasibility of its technical approach for the ECU units are also reasonably supported by the minimal allowance here, if any, for performance failure of any sort, given the critical role of a properly functioning ECU in the successful operation of the Patriot Missile systems, and the protection of the agency's personnel and critical missile-related computer operations.

In sum, based upon our review of the record, we conclude that the agency reasonably determined that Applied's proposals no longer had a reasonable chance for award. Accordingly, there is no basis for us to question the propriety of the agency's determination to exclude its proposals from the competitive range after discussions.

Applied protests that its proposal problems, if any, were the result of the agency's failure to conduct meaningful discussions with the firm. In particular, Applied states that the agency misled it in discussions by mentioning, in IFN No. C014, incorrect input data (without identifying exact [deleted] information being questioned), when the agency later explained that it was fundamentally concerned with whether system capacity requirements would be met. We disagree. The record is clear that Applied's proposals at all times gave the agency substantial

⁶(...continued)

addressed by Applied, raised concerns of possible [deleted]. Contracting Officer Statement at 12; Draft Government Replies to Applied's Correspondence of Mar. 2, 4, and 5, 1998. The record also refutes Applied's contention that other offerors were found acceptable with similar or less acceptable input data. Those offerors proposed different coils, with different (higher-rated) capacities, and, despite the claim of less data having been presented by another offeror, the record reasonably shows the agency had no reason to question the technical acceptability of the data presented, since the higher temperatures and capacities offered by the offeror fell within expected parameters supported by the agency's experience, where Applied's proposal information did not.

concern as to the firm's actual understanding of the critical system requirements under the RFP; in particular, the agency was concerned with how Applied proposed to meet system capacity requirements, which were paramount to successful performance. Applied was specifically told that the [deleted] was considered deficient, and that a complete and detailed response was required from the firm before its technical proposals could be found acceptable. The record speaks for itself--the agency directly and meaningfully discussed this concern by raising the IFN No. C014 bottom-line question: "How will the system capacity of 24,000 BTUH be met?" In our view, the agency's mention of perceived incorrect data was not misleading, since the clear message of the IFN involved how the offeror proposed to meet the system capacity requirements (in order to evaluate the proposals' compliance with RFP requirements and the offeror's understanding of those requirements). The IFN clearly necessitated sufficient discussion from Applied explaining the proposed system, including related data, which Applied failed to provide.

While agencies generally are required to conduct meaningful discussions by leading offerors into the areas of their proposals requiring amplification, this does not mean that an agency must "spoon-feed" an offeror as to each and every item that must be revised or otherwise addressed to improve a proposal. LaBarge Elecs., B-266210, Feb. 9, 1996, 96-1 CPD ¶ 58 at 6; Estes Medical Servs., Inc., supra, at 5. Given the RFP and IFN instructions for detailed explanations of an offeror's proposed approach to system capacity requirements, it is clear that IFN No. C014, calling for an explanation of how the system capacity requirements would be met by Applied, reasonably led the firm into the area of its proposals identified as a deficiency and in need of amplification or correction. The protester was reasonably on notice that its proposals in this area were not adequate to meet RFP requirements, and simply failed to respond with the specificity requested and required.

The protest is denied.

Comptroller General
of the United States