



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Spectrum Sciences & Software

File: B-280700

Date: November 9, 1998

Hoke Smith, III, Esq., Powell & Strom, for the protester.
Lt. Col. Kevin J. Corcoran, Department of the Air Force, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Exclusion of proposal from the competitive range is improper where the determination to exclude the proposal was based upon an admitted defective evaluation and it is not possible to determine that the proposal without the defective evaluation would not have been among the most highly rated proposals.

DECISION

Spectrum Sciences and Software, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. F02604-98-R-0001, a total small business set-aside, issued by the Department of Air Force, Luke Air Force Base, Arizona, for operation and maintenance of Gila Bend Air Force Auxiliary Field and Barry M. Goldwater Range Complex. Spectrum contends that the Air Force improperly evaluated its proposal, which resulted in its elimination from the competitive range.

We sustain the protest.

The RFP was issued on February 6, 1998, to obtain operations and maintenance services under a fixed-price contract for a 12-month base period with four 12-month options. The services to be performed at Gila Bend field and Goldwater range complex include range operations, civil engineering, fire protection, security forces, logistics, lodging, air traffic control, meteorological, custodial, trash and refuse collection, environmental engineering, and range maintenance and communication-electronics. RFP, Performance Work Statement § 1.1.

The RFP provided for the award to "be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for non-cost factors." RFP § M-999(a). Technical acceptability was to be measured under the

following criteria: Acknowledgement and Understanding of Contract Requirements, Past Performance History and Experience with Government Contracts of this Type and Magnitude, Contract Management, Management Plans and Programs, and Subcontracting Plan. RFP § M-16C(a)(i).

Nine proposals, including Spectrum's, were received in response to the RFP. [DELETED]. A 21-member technical evaluation team (TET) evaluated the proposals using an adjectival rating scale.¹ The TET determined the five lowest-priced proposals, including Spectrum's, were susceptible to being made technically acceptable.² Technical Evaluation Summary at 1-2. The TET also determined that the next three highest-priced proposals "could have been susceptible to being made technically acceptable with major proposal revisions," such that their prices would become even higher, and that the remaining proposal was unacceptable, and that all of these proposals were outside of the competitive range. Id. at 2.

Before making a competitive range determination, the Air Force conducted exchanges with the two [DELETED] offerors, including Spectrum because they "had a lot of" clarification requests (CR) and deficiency requests (DR), [DELETED].³ Id. Each of these offerors was sent a list of clarification requests (CR) and deficiency requests (DR) related to their technical proposals. Spectrum received 28 CRs and 9 DRs. In evaluating these responses, the Air Force determined that Spectrum answered only 20 of the CRs and 3 of the DRs "well enough to demonstrate understanding." Id. The agency found:

Manning shortages in the range tracking, security forces and fire department functions are recurring areas of concern for the Air Force. In their clarifications, Spectrum maintained the contention that they

¹The possible ratings were acceptable, unacceptable, and susceptible to being made acceptable.

²This rating is defined in the technical evaluation plan as follows: "[f]ails to meet minimum evaluation standards. Deficiencies require minor revisions to the proposal to be made acceptable."

³Pursuant to Federal Acquisition Regulation (FAR) § 15.306(b) (FAC 97-02), an agency may communicate with offerors, which are defined as exchanges between the government and offerors, after receipt of proposals, leading to establishment of the competitive range. These communications may enhance the government's understanding of the proposal but may not be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal. FAR § 15.306(b)(2).

were staffed well enough. However, Air Force technical experts are able to demonstrate where manning is deficient when they account for scheduled and unscheduled leaves, travel times to the manned ranges, and protection of aircraft on the ramp. At no point in the clarifications did the offeror acknowledge the possible need to increase manning or allude to the resulting price adjustments an increase would necessitate.

Id.

The record further shows that other areas of concern with regard to Spectrum's proposal included its staffing for vehicle maintenance and its trash disposal approach. Contracting Officer's Statement at 2. Spectrum's proposal was thus determined to be technically unacceptable and excluded from the competitive range on July 15. Id. at 1. The [DELETED] proposal was similarly found unacceptable after the exchanges and excluded from the competitive range. Preliminary Narration of Contract Action at 6.

The competitive range was comprised of the three remaining proposals, which had been found susceptible to being made acceptable. The Air Force sent each of the competitive range offerors a list of CRs and DRs related to their proposals, and conducted discussions with these offerors between July 17 and 20. Following discussions and the receipt of revised proposals, the TET determined each competitive range proposal to be technically acceptable. Id. 6-7.

Meanwhile, Spectrum requested a pre-award debriefing that was held on July 22. During the debriefing, the Air Force admitted that several of the areas of concern with regard to Spectrum's manning (e.g., in range tracking and vehicle maintenance) in fact met the contract requirements and that Spectrum's proposal should be considered acceptable in those areas. Contracting Officer's Statement at 2. Nevertheless, the Air Force advised that the proposal failed to address the security requirement to provide a two-member alarm response team which rendered the proposal unacceptable. The record evidences that this is the sole remaining reason that Spectrum's proposal should be considered unacceptable and excluded from the competitive range. Contracting Officer's Statement at 3-5; Agency Memorandum of Law at 7-10.

Spectrum protests that the Air Force improperly excluded the proposal from the competitive range based upon the Air Force's admitted defective evaluation of its proposal.⁴ Spectrum claims that the remaining evaluated proposal deficiency resulted from a miscalculation of its security manning and that in any case this was relatively a minor problem that could be easily addressed in discussions.

⁴The agency has withheld performance pending disposition of this protest.

FAR § 15.306(c) provides that:

Agencies shall evaluate all proposals . . . and, if discussions are to be conducted, establish the competitive range. Based on the ratings of each proposal against all evaluation criteria, the contracting officer shall establish a competitive range comprised of all the most highly rated proposals, unless the range is further reduced for purposes of efficiency

The determination of whether a proposal is in the competitive range is principally a matter within the reasonable exercise of discretion of the procuring agency, and in considering an agency's evaluation of proposals and subsequent competitive range determination we will not evaluate the proposals anew in order to make our own determination as to their acceptability or relative merits. However, we will examine the record to determine whether the agency's evaluation was fair and reasonable and consistent with the evaluation criteria, and in particular, consider whether the documentation and analysis supports the agency's technical conclusions. See Dynalantic Corp., B-274944.2, Feb. 25, 1997, 97-1 CPD ¶ 101 at 4.

The record indicates that the agency established the competitive range on the basis that the three proposals included in the competitive range were considered the most highly rated proposals and that Spectrum's proposal was evaluated as unacceptable and therefore not among the most highly rated proposals. The record shows that at the time of this evaluation, the TET determined a variety of areas in Spectrum's proposal that were unacceptable primarily because of perceived manning shortages. The agency now admits that its evaluation of Spectrum's proposal that served as the basis for the competitive range determination was defective because several of concurrently stated reasons for finding Spectrum's proposal unacceptable were unsupported, and that only the security aspect of Spectrum's proposal is now regarded as unacceptable. None of the proposals included in the competitive range was found to be technically acceptable, but all were rated susceptible of being made acceptable (the same rating that was initially assigned to Spectrum's proposal). Thus, we cannot find from this record that Spectrum would not have been among the most highly rated proposals on the procurement, which contemplated award to the low-priced acceptable offeror. [DELETED].

The Air Force nevertheless argues that the security deficiency contained in Spectrum's proposal, including its answer during exchanges, would have required a major revision to the proposal in order for it to be considered acceptable. Agency's Memorandum of Law at 5-6. The agency asserts that Spectrum did not recognize or understand that it was required to provide a two-person external security response team unit that could respond within 5 minutes to priority emergencies, as well as a two-person internal alarm response team dedicated to a restricted area to respond, within 5 minutes, to alarms or incidents within the restricted area. Contracting

Officer's Statement at 3-4. Spectrum responds that, although it believes that its proposal was acceptable with regard to the security area, to address the agency's evaluated security requirements would only have required an increase of 2 staff personnel to its current 22-member security force to perform the restricted area security in addition to the roving external security team, and this cannot reasonably be considered a major revision or rewrite of its proposal. Protester's Opposition to the Memorandum of Law at 1-3. Based on our review, it is not apparent that Spectrum's satisfactory addressing of the security problem in its proposal required a major revision or rewrite.⁵ In any case, as indicated, we cannot determine on this record that Spectrum's proposal would not have been among the most highly rated proposals had it been properly evaluated.

We recommend that the agency make a new competitive range determination that includes Spectrum's proposal. We also recommend that Spectrum be reimbursed the cost of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. 21.8(d)(1) (1998). The protester should submit its certified claim for such costs, detailing the time expended and the costs incurred, directly to the contracting agency within 60 days of receiving this decision.

The protest is sustained.

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⁵We note that the argument that this deficiency would have required a major revision to the proposal is one the agency developed to defend excluding the proposal from the competitive range at the debriefing and in response to the protest. There is no contemporaneous evaluation documentation that supports a determination that this evaluated deficiency in Spectrum's proposal was, in itself, so significant as to justify Spectrum's elimination from the competitive range. While we consider the entire record, including statements and arguments made in response to a protest in determining whether an agency's procurement action is supportable, we accord greater weight to contemporaneous source selection materials rather than judgments made in response to protest contentions. Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15.