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Decision

Matter of: Columbia Research Corporation

File: B-284157

Date: February 28, 2000

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DIGEST

Protest that agency improperly eliminated protester's proposal from competitive range is sustained where record shows that protester's proposal was broadly comparable to the competitive range proposals from a technical standpoint, and agency improperly failed to consider protester's cost advantage in making its competitive range determination.

DECISION

Columbia Research Corporation (CRC) protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. N61331-99-R-0002, issued by the Coastal Systems Station, Naval Surface Warfare Center, for technical and specialty engineering support services for Naval Special Warfare development and acquisition programs and life cycle sustainment management for various Navy systems. CRC asserts that the agency improperly eliminated its proposal from the competitive range.

We sustain the protest.

The RFP contemplated the award of a cost-plus-fixed-fee, indefinite-quantity contract for 5 years. RFP at 50. The RFP required offerors to submit technical, management and cost proposal volumes, RFP § L.1.1(a), and contained detailed instructions on the type, comprehensiveness, and structure of the information to be contained in each volume. RFP § L, at 38-48. Section M of the RFP stated:

Proposals will be evaluated for the degree of understanding demonstrated, the technical excellence or lack thereof within the factors, and the level of competence proposed within each factor where appropriate. Risk assessments will be performed as to the risk of successful performance within each factor. The factors for evaluation are as follows:

Technical Factors

Factor 1.0--Quantity and Quality of Technical Personnel

Factor 2.0--Understanding of the Requirement and Technical Approach to Supporting the [Statement of Work] Functional Task Areas

Factor 3.0--Sample Problems

Factor 4.0--Past Performance and Sample Products

Management Factors

Factor 1.0--Management/Admin Organization

Factor 2.0--Current Manning and Peak Load Capability, Facilities, Phase-in Plan, and Subcontracting plan

RFP § M.1.0, Evaluation of Volumes I and II--Technical and Management Proposals.

In the technical area, factors 1, 2, and 4 were considered equal and each was significantly more important than factor 3; within the management area, factors 1 and 2 were equal. The technical and management factors together were considered significantly more important than cost; the technical factors were four times more important than the management factors. RFP § M.1.0. Award was to be made to the responsible offeror whose proposal was deemed most advantageous to the government. RFP § M.3.0, at 53.

Four proposals were received. Members of a technical evaluation review panel (TERP) evaluated the initial proposals by assigning each an adjectival (unacceptable, acceptable, excellent, or outstanding) and risk (low, moderate, or high) rating under each technical and management factor. Each TERP member also provided narrative explanations for the ratings given. The TERP chairperson then first converted the adjectival and risk ratings to numerical ratings in accordance with a predetermined formula to arrive at a total technical score, and then calculated a total normalized numerical rating for each proposal. The cost proposals then were subjected to a cost realism analysis. The following table shows the results of the technical evaluation and evaluated costs for the four proposals the agency received:

Offeror	Raw/Normalized Tech. Scores	Evaluated Cost
C	86.9/100	\$21,938,257
D	73.5/85	20,047,448
CRC	68.2/78	18,044,218
B	46.3/53	18,297,915

Agency Report (AR), exh. O, Pre-Negotiation Business Clearance Memorandum, Oct. 20, 1999, at 7.

The TERP chairperson prepared a consolidated report based on the results of the evaluation and forwarded it to a contract award review person (CARP). The TERP report contained the average adjectival and risk ratings calculated under each factor for all proposals, as well as the evaluators' narrative comments in support of the assigned ratings. Based on his review of the TERP reports, the CARP recommended to the contract specialist that only the proposals of offerors C and D be retained in the competitive range. AR, exh. J, CARP Report, Oct. 14, 1999, at 1. The CARP specifically represented, on the basis of the evaluation results, that, even if given an opportunity to correct deficiencies, there was only a remote possibility that the proposals submitted by CRC and offeror B could be improved sufficiently to surpass the scores earned by the remaining two proposals. Id.

The contract specialist agreed with the CARP's recommendation, finding that the only way that CRC's proposal could earn a technical score sufficiently high to be included in the competitive range would be with a "complete rewrite of [CRC's] proposal." AR, exh. N, Competitive Range Determination, Oct. 26, 1999. The contracting officer concurred with that conclusion, id., and the contract specialist prepared a pre-negotiation business clearance memorandum for a contract review board (CRB), which approved the recommendation that CRC's and offeror B's proposals be excluded from the competition. AR, exh. O, Pre-Negotiation Business Clearance Memorandum, Oct. 20, 1999, at 7, and exh. P, CRB Approval Record. By facsimile transmission dated November 4, the agency notified CRC that its proposal had been excluded from the competitive range.

CRC asserts that, contrary to the agency's conclusions, the weaknesses identified in its proposal are comparable in nature to those identified in the competitive range proposals, and its proposal is essentially comparable overall to the competitive range proposals. CRC concludes that there was no reasonable basis for the agency to find that its proposal would require a major rewrite in order to have a reasonable chance for award, and that its proposal therefore should have been included in the competitive range.

In establishing a competitive range, agencies are required to include all of the most highly rated proposals (unless they decide to further limit the range for purposes of efficiency). Federal Acquisition Regulation (FAR) § 15.306(c). Under the regulation, agencies properly may eliminate proposals that are deemed to have no realistic prospect for award. SDS Petroleum Prods., Inc., B-280430, Sept. 1, 1998, 98-2 CPD ¶ 59 at 5. However, judgments regarding which proposals are included in a competitive range must be made in a relatively equal manner. An agency, therefore, cannot reasonably exclude a proposal from the competitive range where the strengths and weaknesses found in that proposal are similar to those found in proposals included in the competitive range. Nations, Inc., B-280048, Aug. 24, 1998, 99-2 CPD ¶ 94 at 4-5.

On the basis of the record before us, we find that the Navy unreasonably excluded CRC's proposal from the competitive range because: (1) there is no material distinction between it and the proposals in the competitive range from a technical standpoint, and (2) the agency failed to consider cost in excluding CRC's technically acceptable proposal from the competitive range.

First, the record shows that, compared to offeror D's competitive range proposal, the CRC proposal was found technically superior and lower in risk under two of the four technical evaluation criteria (factors 2 and 4, which, under the terms of the RFP, were more important than factor 3), and essentially equal under one of the two management evaluation criteria. AR, exh. J, CARP Report, Oct. 14, 1999. (CRC's management proposal was also found to offer an overall lower risk than offeror D's management proposal. Id.) The aggregate scores of CRC's and offeror D's proposals were relatively close--68.21 versus 73.47 raw points. Id.

The TERP's narrative statements describing the relative strengths of the protester's and competitive range offerors' proposals also are broadly similar. For example, under technical factor 1, quantity and quality of technical personnel, CRC's and the two competitive range proposals were found to include strong resumes reflecting special operations forces experience. AR, exhs. F, H, I, Consensus Evaluation Reports. Similarly, both the protester's and offeror C's proposals were found, under technical evaluation factor 4, past performance and sample products, to show strong experience in the 'spec war' programs. AR, exhs. F, H, Consensus Evaluation Reports. While the evaluation narratives for the three proposals obviously are not identical, and all three proposals had particular areas where they were considered stronger than the others, the evaluation materials, when read as a whole, suggest a

broad similarity at least between CRC's and offeror D's proposals, and nothing in the evaluation narratives suggests that either competitive range proposal was somehow fundamentally stronger than the protester's.

Examining the issue from another perspective, the deficiencies identified in the three proposals appear similar, such that nothing in the evaluation materials suggests that the protester's proposal will require fundamentally greater revision than the competitive range proposals. Ten weaknesses were noted in CRC's proposal,¹ compared to 12 for offeror D and 7 for offeror C. AR, exh. O, Pre-Negotiation Business Clearance Memorandum, Oct. 20, 1999, at 17-18, attachs. 23 and 24. These deficiencies appear to be similar in nature and magnitude. For example, CRC failed to address the solicitation's requirement for engineers qualified in the area of human factors engineering and acoustical and signature reduction technology. Both competitive range proposals had similar personnel deficiencies--offeror C failed to include a required computer programmer or adequate trades personnel, AR, exh. O, Pre-Negotiation Business Clearance Memorandum, Oct. 20, 1999, at attach. 23, while offeror D did not include personnel with adequate knowledge of maritime special operations forces (as opposed to airborne special operations forces). Id. at attach. 24. Another of the cited deficiencies in CRC's proposal was the failure to provide a phase-in plan detailing how out-of-town proposed personnel would be relocated. AR, exh. O, Pre-Negotiation Business Clearance Memorandum, Oct. 20, 1999, at 17. Similarly, the agency included in offeror D's discussion materials a request for information detailing how several out-of-town proposed key employees would be moved to the place of performance. Id. at attach. 24.

The record also shows the agency found that both competitive range offerors' proposals failed to demonstrate an adequate understanding of at least one (and in some cases more than one) major area of the requirements. Offeror C failed to demonstrate an understanding of the use of the agency's so-called 3M failure data collection and analysis reporting system, and did not demonstrate an adequate fabrication capability to meet the RFP requirement to fabricate and maintain specialized equipment such as the SEAL delivery vehicle (essentially a small submersible device used to deliver personnel behind enemy lines). AR, exh. O, Pre-Negotiation Business Clearance Memorandum, Oct. 20, 1999, at attach. 23. Offeror D failed to describe how it would perform specific tasks in at least five areas under the solicitation, with the agency noting that the proposal had a tendency to just state that the offeror knew what needed to be done but failed to state how the tasks would be accomplished. Id. at attach. 24. These failures to comprehensively

¹ The pre-negotiation business clearance memorandum identifies eight numbered weaknesses, but materials subsequently prepared by the agency identify a total of 11 weaknesses; of these 11, the agency acknowledges that one was incorrect.

address some aspect of the requirement are similar to those identified in the CRC proposal; the protester's proposal was found, for example, to have inadequately demonstrated its understanding of the agency's special warfare data base system. Id. at 17.

We conclude that the evaluation record does not show that there was a material difference--in terms of quantity or magnitude--in the weaknesses identified in CRC's and the competitive range offerors' proposals, and that the agency has failed to establish in its response to the protest that there was such a difference.

We are also concerned that the record indicates that the Navy failed to consider cost in making its competitive range determination. Agencies may not eliminate a technically acceptable proposal from the competitive range without taking into consideration the relative cost or price of that proposal to the government. Kathpal Techs., Inc.; Computer & Hi-Tech Management, Inc., B-283137.3 et al., Dec. 30, 1999, 2000 CPD ¶ __ at 9.

It appears that the competitive range determination here turned solely on the agency's conclusion that CRC and the other offeror eliminated from the competitive range would have to completely rewrite their proposals to achieve a technical score high enough to be in line for award. In this regard, the agency's decision document states as follows:

Columbia Research Corporation (CRC) and [offeror B] were found outside the competitive range because of their lower technical scores. The lower cost and technical scores for CRC and [offeror B] reflect their proposal strategy of having a lower level manning mix. The only way they could achieve a technical score high enough to be placed in the position of award would be a complete rewrite of their proposals.

AR, exh. N, Competitive Range Determination, Oct. 26, 1999. CRC enjoyed an evaluated cost advantage of approximately 21 percent over offeror C's highest-rated technical proposal, and 11 percent over offeror D's second-rated technical proposal.² Given the magnitude of CRC's cost advantage and the closeness of CRC's proposal's technical ranking to that of the competitive range proposals (even without considering the apparent substantive similarity of the proposals, as discussed

² This 11-percent cost advantage may be understated. As discussed below, offeror D's proposal reflected a relatively low-level staffing mix, which obviously gave the firm an advantage in preparing its cost proposal. In addition, the record shows that offeror D did not include any general and administrative overhead or materials handling charges in its cost proposal; the addition of these cost elements will also necessarily affect its overall evaluated cost.

above), the agency could not eliminate CRC's proposal from further consideration without evaluating the relative value of those cost savings to the government.

We note that, to the extent the quoted reference to CRC's lower-level staffing mix arguably indicates that the agency gave some consideration to cost, the agency's conclusion is not supported by the record. None of the technical or cost evaluation materials prepared in connection with the agency's review of the CRC proposal reflect such an observation, and staffing mix was not included in the list of weaknesses in CRC's proposal. On the other hand, the record does include such a finding with respect to offeror D's proposal. Specifically, the record states as follows (regarding a review by an individual in the activity's engineering branch):

He reviewed the cost proposals for realism based on Labor Mix and compatibility with the corresponding technical proposals and found three (3) acceptable as submitted. One of the proposals [offeror D's] reflects a greater level of support at the Mid and Junior levels than the Government estimate, which would result in a lower overall proposed cost than would be expected if the labor mix were more in line with the Government estimate. The technical evaluation should address the relative strength or weakness of this mix.

AR, exh. O, Pre-Negotiation Business Clearance Memorandum, Oct. 20, 1999, attach., Cost Realism Analysis Memorandum, Sept. 9, 1999, at 2. Offeror D's labor mix also was designated as an area for discussions. AR, exh. O, Pre-Negotiation Business Clearance Memorandum, Oct. 20, 1999, at attach. 24.³ Thus, to the extent cost was considered at all in connection with the agency's competitive range determination, any such consideration was based on an erroneous assessment, and improperly reflected negatively on CRC's proposal.⁴

³ We point out as well that the technical evaluation materials prepared for offeror D do not show that the evaluators took cognizance of this relative weakness in the firm's proposal; this leads us to question further the validity of the agency's having ranked offeror D's proposal ahead of CRC's in the initial evaluation, which was relied upon to eliminate the CRC proposal from the competitive range.

⁴ CRC also challenges the technical evaluation on several grounds and alleges that the evaluation materials reflect bias on the part of the evaluators. Given our recommendation that CRC's proposal be included in the competitive range for the reasons discussed, CRC's allegations relating to the technical evaluation are academic, and there is no basis in the current record to suggest that the evaluators will act in a biased manner in reevaluating the revised proposals.

In view of the foregoing, we sustain CRC's protest. We recommend that the Navy include CRC's proposal in the competitive range and that the firm be given an opportunity to revise its proposal pursuant to meaningful discussions with the agency. We further recommend that the Navy reimburse CRC the reasonable costs associated with filing and pursuing its bid protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1) (1999). CRC's certified claim for costs, detailing the time spent and the costs incurred must be submitted to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

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of the United States