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DECISION

THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-208882 **DATE:** March 31, 1983

MATTER OF: Syscon Corporation

DIGEST:

Protest of exclusion of proposal from the competitive range is denied where protester has not shown that technical evaluation finding protester's proposal technically unacceptable was unreasonable.

Syscon Corporation (Syscon) protests the Department of the Air Force's (Air Force) determination to exclude its proposal from the competitive range as technically unacceptable under request for proposals (RFP) No. 77-82-064, for software and hardware for a Missile Warning Monitoring System.

We deny the protest.

The RFP advised offerors that award would be made based on the lowest priced, technically acceptable offer. Offerors were admonished to submit technical proposals that required no additional information or explanation, as the Air Force may determine technical acceptability solely on the basis of initial proposals. Technical acceptability was to be determined by evaluating proposals against the requirements of the specifications and statement of work.

A site visit and preproposal conference were held, and minutes of those events, plus questions and answers arising from them, were added to the solicitation by amendment.

A number of proposals were received and evaluated. Several, including Syscon's, were found to be technically unacceptable and those offerors were so notified. The remainder were found to be reasonably susceptible of being made acceptable. Discussions were conducted and all revised proposals were found to be acceptable.

When Syscon received notice that its proposal was technically unacceptable with a summary of deficiencies, it prepared and submitted a revised proposal which the Air Force refused to consider. Syscon protested to the Air Force and, when that protest was denied, protested to GAO.

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Initially, Syscon contends that the Air Force's notice of technical unacceptability did not make it clear that the Air Force would not consider a revised proposal from Syscon. We find that the notice adequately informed Syscon that it was no longer in competition for the award of a contract on this procurement and that proposal revisions would not be acceptable. The notice stated that the proposal had been reviewed and found to be unacceptable, no technical discussions or negotiations would be conducted and that Syscon was not eligible for award.

While the notice did not specifically state that proposal revisions would not be considered, we think that any reasonable reading of the notice requires the conclusion that there would be no further consideration of Syscon during this procurement, whether based on its initial proposal or a revised proposal.

The Air Force found Syscon's proposal technically unacceptable based on 14 deficiencies, eight of which were considered major. The Air Force contends that Syscon's proposal would have required major revisions in order to be made acceptable. Syscon, on the other hand, contends that its proposal was at least reasonably susceptible of being made acceptable and that the deficiencies are minor. According to Syscon, many of the deficiencies were really expressions of Air Force preferences that went beyond the RFP or were based on misreadings of Syscon's proposal and none required redesign or reengineering of Syscon's proposed system.

The evaluation of technical proposals and the resulting determination of whether an offeror is in the competitive range is a matter within the discretion of the contracting activity, since it is responsible for defining its needs and the best method for accommodating them. Texas Medical Instruments, B-206405, August 10, 1982, 82-2 CPD 122; Health Management Systems, B-200775, April 3, 1981, 81-1 CPD 255. Generally, offers that are technically unacceptable as submitted and would require major revisions to become acceptable are not for inclusion in the competitive range. Coherent Laser Systems, Inc., B-204701, June 2, 1982, 82-1 CPD 517. In reviewing an agency's technical evaluation, we will not evaluate the proposal de novo, but will only examine the agency's evaluation to ensure that it had a reasonable basis. Auto Paint Specialist, Inc. dba K & K Truck Painting, B-205513, June 21, 1982, 82-1 CPD 609.

Additionally, the protester has the burden of showing that the agency's evaluation was not reasonable. Coherent Laser Systems, Inc., supra.

As stated above, the Air Force characterizes all 14 deficiencies as significant, with eight being characterized as major. Five of the eight major deficiencies were found by the Air Force to require redesigning or reengineering of Syscon's proposed system in order to meet Air Force requirements.

Syscon dismisses the six nonmajor deficiencies as minor and having no impact on the acceptability of its proposal. According to Syscon, the Air Force assertion that five of the eight deficiencies require redesign or reengineering is nonsensical, since the contract is for the design and engineering of a system. Any proposed approach must be flexible and could not possibly involve redesign or reengineering at the proposal stage in order to meet RFP requirements. Also, Syscon argues that all eight of the major deficiencies resulted from either Syscon deviations from unexpressed Air Force preferences or interpretations of specifications and not from the specifications themselves, or from Air Force misreading or misinterpretation of Syscon's proposal. These so-called deficiencies could easily have been resolved through discussions, Syscon asserts.

Concerning Syscon's general argument that a proposal for a contract for design and engineering of a system could not reasonably be said to require redesign or reengineering in order to meet solicitation requirements, we disagree. The RFP requires proposals that specifically show how detailed specifications will be met by the proposed system. While proposals may present a flexible approach to comply with the agency's requirements, the systems must be initially judged against the specifications, or determinations concerning technical merit would nearly be impossible to make. See, e.g., Coherent Laser Systems, Inc., supra. Consequently, where a proposed system does not meet a specification, it is reasonable to characterize the proposed system as one requiring redesign or reengineering.

One of the major deficiencies noted by the Air Force involves the requirement that the proposed system be able to process messages at line rates of 75 baud to 9600 bits per

second (BPS). Syscon's proposal stated that "to exceed the currently used 2400 BPS will require changeout of certain interfacing equipment." The Air Force considered this a statement that, as proposed, the system would not meet the requirement for line speeds in excess of 2400 BPS. According to Syscon, what limited the line speed in its proposal was the addition in Syscon's proposal of a protective device not required by the Air Force. Moving to higher line speeds would require upgrading or removal of the device, according to Syscon.

Essentially, Syscon admits that, as proposed, its system does not meet the required line speeds. Syscon chose to limit the line speeds by including a nonrequired device. We find that the Air Force's determination that Syscon's proposal did not meet this requirement and that the deficiency was major was not unreasonable.

Two other major deficiencies involve maintenance for the missile warning monitoring system. The solicitation required all maintenance to be provided by the contractor and also required that both the system at the installation site and the system at the offsite test facility have an operational availability of 99 percent. As part of its maintenance plan, Syscon's proposal provided for the Government system operator to perform emergency repairs to return a system to operation quickly after an outage. Syscon also proposed a scheme for reducing the number of spare parts required to be on hand. This involved cannibalization of the offsite test facility system for parts to repair the installation system. The offsite test facility would then be repaired later. Syscon felt that this would be acceptable so long as it met the required maintenance response times of 1 hour for the installation and 24 to 72 hours for the offsite test facility.

The Air Force found that the provision for emergency intervention by Government personnel contravened the requirement that all maintenance be performed by the contractor and that the cannibalization of the offsite test facility for spare parts was an unacceptable concept because it could increase the amount of down time at the offsite test facility beyond the permitted 1 percent.

We conclude that the Air Force was reasonable in finding these aspects of Syscon's maintenance plan to be deficient in comparison to the solicitation requirements. The RFP clearly stated that all maintenance must be performed by the contractor. Even though Syscon's use of

Air Force personnel is purportedly for quick reaction in emergency situations, its proposed maintenance concept indicates that the Government operator would be doing the kinds of things--preliminary diagnosis and quick fix--that the contractor is expected to do under the terms of the solicitation. Although Syscon's proposal did state that it would respond in the required hour, under its proposal some of the necessary repair work could already have been performed by the operator. The Air Force did not want operators involved in maintenance and Syscon's proposal contravenes that requirement. Concerning Syscon's proposed cannibalization of the offsite test facility, we conclude that the Air Force was reasonable in finding that this scheme could have an adverse impact on the required 99 percent availability of the offsite system. Under this scheme, the offsite system would be unavailable both when it suffers equipment failure and every time the installation system has an equipment failure. While Syscon characterizes these problems as minor and easily cured, we think that the Air Force was justified in treating them as major deficiencies in light of the clear solicitation requirements.

Another major deficiency found by the Air Force is that Syscon's proposal does not provide for operator notification in the event of overload or overflow of mass storage, as required by the solicitation. Syscon contends that its system does not need this feature because the hardware and the amount of mass storage provided by Syscon render overload or overflow unlikely. Syscon's proposal stated that the feature could be added if the Air Force desired it.

The Air Force states that the RFP-required operator notification is necessary regardless of the hardware and mass storage proposed. Syscon should have proposed that feature in its initial proposal and, by not doing so, it took the chance that the Air Force would not concur in Syscon's opinion concerning the necessity of the feature. Consequently, we find that the Air Force was reasonable in downgrading Syscon's proposal for this omission.

We have also examined the four remaining major deficiencies found by the Air Force and find that the Air Force technical evaluation was reasonable. Syscon has not challenged the other six deficiencies except to allege they are minor and, thus, we must assume they were correctly considered deficiencies. Based on our review of the record, we cannot conclude that the Air Force's technical evaluation and decision to exclude Syscon from the competitive range were unreasonable.

Even if, as Syscon contends, its proposal could have been made acceptable by the additional information submitted in its revised proposal, the Air Force decision to exclude the proposal from the competitive range was proper. An offeror must demonstrate affirmatively the merits of its proposal and it runs the risk of proposal rejection if it fails to do so clearly. Centurion Films, Inc., B-205570, March 25, 1982, 82-1 CPD 285. Offerors were so warned in the solicitation. Also, even if the deficiencies are informational in nature, a proposal may properly be excluded from the competitive range on that basis. See, e.g., PRC Computer Center, Inc., et al., 55 Comp. Gen. 60 (1975), 75-2 CPD 35.

We deny the protest.

for Milton J. Socolar
Comptroller General
of the United States