

6052

J. Helopoulos

PL II

DECISION



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

FILE: E-190313

DATE: April 17, 1978

MATTER OF: Century Brass Products, Inc.

DIGEST:

1. Where request for proposals requires technical proposals to be sufficiently detailed to demonstrate offeror's thorough understanding of contemplated effort, proposal is properly rejected as technically unacceptable where offeror fails to cure, after written and oral discussions, material informational deficiencies indicating offeror's lack of understanding of scope of work.
2. Written and oral discussions were both meaningful and legally sufficient where informational deficiencies in proposal were indicated to protester with specificity, and protester was afforded opportunity to cure deficiencies through submission of revised proposal.
3. Low price proposed by offeror is not for consideration when proposal is technically unacceptable.
4. Requirement that agency provide prompt post-award notification to unsuccessful offerors of reasons for rejection of their proposals, is procedural in nature and a failure to comply with requirement does not affect validity of award.
5. Protest contention regarding alleged pricing deficiency in successful offeror's proposal is untimely and not for consideration since it was not filed within 10 working days from time basis for allegations should have been known.
6. Objection to an affirmative determination of responsibility will not be considered since neither fraud nor noncompliance with definitive criteria are alleged.

B-190313

Century Brass Products, Inc. (Century) has protested the award of a contract by the U.S. Army Armament Materiel Readiness Command (ARRCOM) to Polaron Products of Pennsylvania, Inc. (Polaron) under request for proposals (RFP) No. DAAA09-77-R-0062. Century contends that the rejection of its lower-priced proposal was improper and not in the best interests of the Government.

The RFP contemplated the award, on or before October 30, 1977, of a firm-fixed price contract, with provision for Economic Price Adjustment, to establish a base for production of M42/M46 Grenade Part Body Assemblies, for the 155mm, M483 and 8" M509 Projectile, within 21 months after award, with delivery of first articles and a prove-out production quantity required six months thereafter. Offerors were requested to propose prices on increments of 500,000 assembly capacity per month, to total capacity of 3 million per month, with the Government reserving the right to make one or more awards. The RFP specified that award(s) would be made on the basis of the lowest overall cost to the Government, considering the cost of the facility and the grenades.

Offerors were required to submit technical proposals "sufficiently detailed and complete so as to demonstrate that this offeror has a thorough understanding of the requirements and the Scope of Work." The RFP instructed that proposals would first be evaluated from a technical standpoint without regard to proposed costs. Those proposals which were considered to be technically acceptable or susceptible to clarification by further negotiation would then be evaluated on the basis of offered prices for various specified contract line items, and would be further evaluated on the bases of other specified factors relating primarily to an offeror's capacity (in terms of equipment, facilities, manpower and financial strength) to perform the contemplated effort.

By August 29, 1977, the closing date for receipt of proposals, twelve proposals had been received. Two offerors withdrew their proposals and one was declared ineligible because it proposed use of GOCC (government-owned, contractor-operator) facilities which was not permitted by the solicitation. After conducting an

B-190313

initial technical evaluation of the nine remaining proposals, AARCOM, by TLX message dated September 7, 1977, requested all nine offerors to clarify their proposals.

The message to Century advised that its proposal lacked various information required by the RFP including:

- (1) expected scrap rate
- (2) average time between failures
- (3) average repair time
- (4) process inspection plan and plans for tool and gage controls

The message further advised of the opportunity for discussions; that negotiations would be closed on September 21, 1977; and that best and final offers, including any revisions to the initial offer, must be submitted by that date. The deficiencies ascertained in Century's initial proposal were also discussed during a conference call on September 9, 1977, between AARCOM and Century personnel.

Century submitted a timely best and final offer which was technically evaluated during September 22-23, 1977, and determined to be materially deficient as follows:

* * * * Expected Scrap Rate - Provided as 1.5% for entire line. This was not broken out on an operation basis as required by the solicitation. In addition, it seems extremely low.

"Average Time Between Failures - Not Provided
Average Repair Time - Not Provided
Process Inspection Plan - Not Adequate - No specifics provided on types of inspection (in-process) that will be performed and the type of gages that will be used.

* * * * *

"Based on the information provided by the bidder (basic & supplement), it is apparent that the bidder did not comply with or understand the solicitation. Therefore the proposal is unacceptable."

As a result of that technical evaluation Century's proposal was not further considered in the ensuing price evaluation, which was limited to those remaining proposals found to be technically acceptable. It was determined that a single award to Poloron for the full three million per month capacity represented the lowest total offer to the Government, and award was made to that firm on September 30, 1977.

Century argues that the asserted deficiencies in its proposal in fact did not exist, but that if ARRCOM believed the deficiencies were present, further discussions should have been conducted so that Century could cure them. Century asserts that ARRCOM conducted a hasty evaluation and only abbreviated discussions so that it could make award prior to the end of the fiscal year, with the result that a proposal much more costly than Century's was accepted.

Century also asserts that (1) ARRCOM did not provide it with proper notice of the rejection of its proposal; (2) there are pricing deficiencies in Poloron's proposal; and (3) ARRCOM erred in finding Poloron to be a responsible offeror.

With respect to the proposal deficiencies, Century contends that there was no requirement in the TLX of September 7 that the projected scrap rate be broken out on an operation basis; rather, Century states it understood that the submission of an overall average would be acceptable and therefore provided an overall average of 1.5 percent. Century further contends that ARRCOM's view of the 1.5 percent rate as too low was based on ARRCOM's own "unrealistic" estimate of 3-7 percent, which Century states was based on experience with manufacturers using old, depreciated equipment whereas Century would be using new equipment.

Century further states that its submission of a "65 percent overall efficiency rate in the manufacturing of the grenade bodies" was a sufficient response to the

requirement that it furnish average time between failures and an average repair time. It states that to break down projected repair time on an operation-by-operation basis would be futile since it was impossible to predict with any real accuracy which machine would break down and for how long.

As to the process inspection plan, Century alleges that by proposing to establish a Reliability and Maintainability (RAM) program that would meet or exceed the requirements of enumerated military standards, and agreeing to be bound by all Armed Services Procurement Regulation (ASPR) requirements for inspection and other inspection criteria in the RFP, as well as warranty provisions therein, it was committed to full and complete inspection at every step of production, with its inspection gages subject to Government specification or approval. Century contends that if, in the face of these stringent inspection requirements, the Army needed further specifics regarding the types of gages that would be used or other similar technical information, it should have conducted further discussions regarding all of these matters rather than make award to a higher-priced offeror.

In reviewing the rejection of proposals as technically unacceptable for discerned informational deficiencies, this Office examines the record to determine, inter alia, how definitely the RFP called for the detailed information, and the nature of the informational deficiencies, e.g., whether they tended to show that the offeror did not understand what it was required to do under the contract. PRC Computer Center, Inc; On - Line Systems, Inc; Remote Computing Corporation; Optimum Systems, Inc., 55 Comp. Gen. 60 (1975), 75-2 CPD 35; Essex Electro Engineers, Inc., B-186107, August 19, 1976, 76-2 CPD 176; Servrite International, Ltd., B-187197, October 8, 1976, 76-2 CPD 325, and cases cited therein.

In this regard, we have examined the RFP and Century's responses thereto. Page 1 of Attachment C

of the RFP specifically required at paragraph IIC that an offeror's proposal set forth, "[f]or each operation, the * * * expected scrap rate, average time between failures, average repair time and required labor * * *. A detailed Process Inspection Plan and plans for tool and gage controls shall be included."

The record clearly shows that Century failed to furnish, for each operation, expected scrap rate, an average time between failures, an average repair time, or plans for tool and gage controls, either with its initial proposal or with its best and final offer. Instead, Century furnished overall scrap efficiency rates and Century concededly did not provide plans for tool and gage controls.

We note an affidavit from Century's Government Contracts Manager stating that it was his assumption, on the basis of the conference call, that the submission of repair time on an overall average, rather than on an individual operation basis, would be acceptable in the absence of any specific objections by ARRCOM personnel.

As indicated above, however, the RFP required the information on an operation basis. Moreover, according to a memorandum dated September 12, 1977, prepared by ARRCOM's contract specialist, who participated in the conference call, Century's Government Contracts Manager was specifically advised that:

"* * * We need i.e., Scrap rates by operation on a % basis. Average time between failures by operation * * *." (Emphasis added.)

In view thereof, we find no basis in the record to warrant the assumption that the required information could be provided on an "overall" basis.

The significance of these deficiencies is indicated in affidavits from the six member evaluation team.

One evaluator states that accurate knowledge of the scrap rate would permit the designer of the production facility to construct a balanced line (by

providing a greater production capability for the first operations in the line to account for products lost at various stations along the line) and that by indicating scrap rates for individual operations, Century could have demonstrated whether it understood which operations were the difficult ones and thus provide some confidence in its ability to produce at the proper rate and quality level. Another evaluator doubted Century's familiarity with the operating characteristics of the proposed manufacturing line in view of the absence of information concerning average time between failures and average repair time. The evaluator believed that by submitting a 65 percent efficiency estimate, Century was implying that every piece of equipment has the same operating characteristics, whereas the variety of equipment proposed for the effort indicated the contrary.

With regard to the process inspection plan, another evaluator states:

"* * * By not addressing specifically and in detail what inspection would be done and what type of equipment would be used, this showed a lack of familiarity or understanding of the item TDP. One area that provided some specifics was at Operation 16, Heat Treatment. Here the bidder made an error. He indicated that a random Eddy Current and Ultrasonic Test would check the output. The required test per item TDP is a longitudinal and transverse crush test. The item acceptance is based on this test. It is critical that the grenade meet the TDP strength requirements, otherwise the lives of an entire gun crew could be jeopardized. The Eddy Current and Ultrasonic Test will not determine this. Using an unacceptable inspection technique at this operation and failure to indicate knowledge of the required technique shows that the bidder does not understand the requirements of the item TDP.

* * * * *

"In the evaluation of the process and quantity of equipment (this area includes process drawings and production rates) it was noted that on Operation 10 (Size-Form-Stamp-Pierce-Chamfer), the bidder was attempting to accomplish what is normally referred to as 'Resize-Restrike.' Examination of the process drawing and narrative description for this operation failed to shed any light as to how this was being done. It was not possible to determine what percent reduction of the closed end of the grenade was obtained at station 1 prior to going to the 'Restrike' at station 2. Insufficient reduction of part diameter at station 1 will cause cracking of the part at station 2, and it will not be possible to move sufficient metal into the 'hat' area of the grenade to meet the drawing (TDP) dimensions. Again, the bidder failed to convince me that he could do the job, that is, make an acceptable part."

In short, while different evaluators expressed a variety of concerns regarding Century's proposal, the evaluators were unanimous in their conclusion that the cumulative effect of the informational deficiencies indicated a lack of understanding on Century's part of critical processes which presented the potential for failure in the performance of the contemplated effort. While Century may not agree with the evaluators' conclusion, we find nothing in the record to indicate that the conclusion is arbitrary or was not arrived at in good faith. Accordingly, we find no basis to object to the evaluation. See, e.g., Joanell Laboratories, Inc., 56 Comp. Gen. 291 (1977), 77-1 CPD 51.

With regard to Century's allegations that the discussions conducted by ARRCOM were inadequate or not meaningful, we have held that discussions are meaningful if offerors are furnished notification of the deficiencies in their proposals and are provided with an opportunity to correct or resolve the deficiencies through the submission of revised proposals. RAI Research Corporation, B-184315, February 13, 1976, 76-1 CPD 99; Group Operations, Incorporated, 55 Comp. Gen. 1315 (1976), 76-2 CPD 79. The fact that an offeror

does not avail itself of the opportunity does not impact on the propriety of the discussions which we believe were meaningful under the above standard. United Southeastern Tribes, Inc., B-185659, November 2, 1976, 76-2 CPD 375. Moreover, once discussions have taken place and revised proposals have been received, there is no requirement that the negotiation process be extended to permit an offeror to further revise its proposal. Genessee Computer Center, Inc., B-188797, September 28, 1977, 77-2 CPD 234; Bell Aerospace Company; Computer Sciences Corporation, 54 Comp. Gen. 352 (1974), 74-2 CPD 248.

The record in the instant case clearly shows that the deficiencies in Century's proposal were discussed both in writing (by the TLX) and orally (by the conference call) and that Century was afforded an opportunity to submit a best and final offer correcting those informational deficiencies. Accordingly, we cannot say that ARRCOM did not conduct meaningful discussions or that it should have reopened discussions to enable Century to revise its proposal a second time.

Consequently, in view of our findings that both the evaluation of technical proposals and the conduct of discussions were proper, we cannot object to the exclusion of Century from consideration for award notwithstanding its lower price. In this connection, we have held that an offeror's low cost is irrelevant where the offer has been found technically unacceptable. Pacific Training and Technical Assistance Corporation, B-182742, July 9, 1975, 75-2 CPD 23; National Designers, Inc., B-181741, December 6, 1974, 74-2 CPD 316; PRC Computer Center, et al., supra. The reason, of course, is that an unacceptable proposal technically is of no value to the Government regardless of the lower price tag associated with it. See 52 Comp. Gen. 382 (1972).

With regard to the notification given Century regarding rejection of its proposal, the Army concedes that it did not fully comply with ASPR 3-508.3, which requires that "promptly" after making of awards the contracting officer shall provide unsuccessful offerors notification that their proposals were not accepted, including various information such as, inter alia, the reasons in general terms why the offeror's proposal

was not accepted. Such post-award notification requirements are procedural in nature, however, and a failure to comply with them provides no legal basis for disturbing an otherwise valid award. See Wakmann Watch Company, Inc., B-187335, January 28, 1977, 77-1 CPD 72.

Century's concern with the pricing aspects of the Poloron proposal stems from Poloron's proposal statements that its price did not include any "non-recurring costs" and that Poloron did not intend to absorb such costs. Century regards this as a "gaping hole" in the Poloron proposal and points out that because of this the gap between Century's price and Poloron's might widen further.

The Army points out that offerors were requested to estimate anticipated non-recurring costs and to indicate the percentage of such costs included in the proposed price in order "to preclude a later double charge" to the Government. Poloron provided that information and thus there was no deficiency in its proposal concerning non-recurring costs. In any event, Century's allegation in this regard is untimely since it was first filed on January 31, 1978, significantly more than 10 days after Century's December 16, 1977 receipt of a copy of Poloron's proposal, when Century should have learned of the alleged defect. See 4 C.F.R. 20.2(b)(2) (1977). Accordingly, it will not be considered further.

Century's final contention is that Poloron lacked the necessary organization, technical skills, experience and financial resources to be a "responsible" contractor as required by ASPR 1-900 et seq.

This Office will consider a protest concerning a determination of nonresponsibility in order to provide assurance to the protester against the arbitrary rejection of its bid. [See, for example, Leasco Information Products, Inc., et al., 53 Comp. Gen. 932 (1974), 74-1 CPD 314.] As a general rule, however, we do not consider protests concerning a determination that a prospective contractor is responsible. See Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64. Affirmative determinations of responsibility are largely a matter of subjective judgment

within the sound discretion of contracting agency officials, who must bear the brunt of any difficulties experienced by reason of a contractor's inability to perform. 39 Comp. Gen. 705 (1960). We will review such determinations only in certain limited circumstances--if there is a showing of fraud by the agency, or if it is alleged that definitive responsibility criteria set forth in the solicitation were not properly applied by the agency. See Data Test Corp., 54 Comp. Gen. 499 (1974), 74-2 CPD 365. [Definitive responsibility criteria involve specific and objective factors, such as a requirement that a contractor possess a particular certification (M & M Welding and Fabricators, Inc., B-187573, January 17, 1977, 77-1 CPD 35), a requirement for a security clearance (ENSEC Service Corporation, 55 Comp. Gen. 494 (1975), 75-2 CPD 341), or requirements that contractors have various types of experience (Haughton Elevator Division, Reliance Electric Company, 55 Comp. Gen. 1051 (1976), 76-1 CPD 294; Yardney Electric Corporation, 54 Comp. Gen. 509 (1974), 74-2 CPD 376).]

Award was made to Poloron after the contracting officer, acting on the basis of a favorable pre-award survey report, determined Poloron to be a responsible prospective contractor. Since that determination is not challenged on the basis of fraud or alleged misapplication of definitive responsibility criteria, the protester's objection to the affirmative determination of responsibility will not be considered.

In view of all of the above, we find nothing legally objectionable regarding the Army's actions, and find no basis for concluding that the Army acted improperly because of any undue haste to award a contract.

The protest is denied.

Deputy

R. F. K...
Comptroller General
of the United States



J. Notopolous
COMPTROLLER GENERAL OF THE UNITED STATES PL II
WASHINGTON, D.C. 20548

IN REPLY REFER TO: B-190313

April 17, 1978

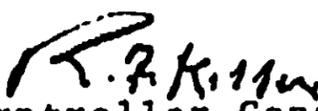
The Honorable Lowell Weicker
United States Senate

Dear Senator Weicker:

Pursuant to your interest in the protest of Century Brass Products, Inc., Waterbury, Connecticut, under Request for Proposals (RFP) No. DAAA09-77-R-0062, issued by the U.S. Army Armament Materiel Readiness Command, enclosed is a copy of our decision of today, setting forth our conclusions on the matter.

Sincerely yours,

Deputy


Comptroller General
of the United States

Enclosure



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

J. Notopolous
PL II

B-190313

April 17, 1978

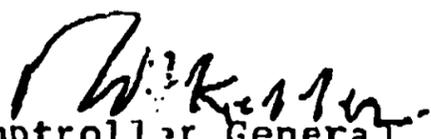
The Honorable Ronald A. Sarasin
House of Representatives

Dear Mr. Sarasin:

Pursuant to your interest in the protest of Century Brass Products, Inc., Waterbury, Connecticut, under Request for Proposals (RFP) No. DAAA09-77-R-0062, issued by the U.S. Army Armament Materiel Readiness Command, enclosed is a copy of our decision of today, setting forth our conclusions on the matter.

Sincerely yours,

Deputy


Comptroller General
of the United States

Enclosure



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

J. Notopoulos
PL II

B-190313

April 17, 1978

The Honorable Abraham Ribicoff
United States Senate

Dear Senator Ribicoff:

Pursuant to your interest in the protest of
Century Brass Products, Inc., Waterbury, Connecticut,
under Request for Proposals (RFP) No. DAAA09-77-R-0062,
issued by the U.S. Army Armament Materiel Readiness
Command, enclosed is a copy of our decision of today,
setting forth our conclusions on the matter.

Sincerely yours,

R. A. K. 11/14
Deputy Comptroller General
of the United States

Enclosure



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

J. Notopoulos
PL II

B-190313

April 17, 1978

The Honorable Robert N. Giaimo
House of Representatives

Dear Mr. Giaimo:

Pursuant to your interest in the protest of
Century Brass Products, Inc., Waterbury, Connecticut,
under Request for Proposals (RFP) No. DAAA09-77-R-0062,
issued by the U.S. Army Armament Materiel Readiness
Command, enclosed is a copy of our decision of today,
setting forth our conclusions on the matter.

Sincerely yours,

Deputy

R. F. Keston
Comptroller General
of the United States

Enclosure