

Protest of)
LAZERDATA CORPORATION) Date: September 29, 1989
Solicitation No. 104230-89-A-0143) P.S. Protest No. 89-60

Decision

LazerData Corporation ("LazerData") timely protests the rejection of its proposal under Solicitation No. 104230-89-A-0143 as technically unacceptable. Solicitation No. 104230-89-A-0143 for 347 Sack Sorter Bar Code Scanning Systems ("SSBCSS") was issued on June 9, 1989, by the Office of Procurement, Washington, D.C., with an offer due date of July 10. Amendment A01, issued June 23, clarified some minor technical questions, but did not extend the offer due date.

Background

Section J.10 of the solicitation, INSTRUCTIONS FOR THE PREPARATION OF TECHNICAL AND BUSINESS PROPOSALS, stated that "[t]he proposal must clearly describe the approach the offeror will follow in achieving the project's objectives and must list all deliverables the offeror will provide." Section J.11, SUBMISSION OF PROPOSALS, indicated that the offeror was to submit a technical proposal, a business proposal that included a cost proposal, and a management proposal as well as the offer and award form and solicitation.

The project's objectives were outlined in Attachment 1, Statement of Work ("SOW"), and contained: a description of the system; a list of the applicable documents; a detailed description of the work to be performed; the performance requirements of the SSBCSS; warranty support information; logistical support requirements; and other requirements. Attachment 2, the technical specifications, contained the requirements for the five major components of the SSBCSS.

Section M.3, CONTRACT AWARD & PROPOSAL EVALUATION, stated that award would be made to the responsible offeror submitting the best combination of technical, business, and management proposals. The evaluation factors, listed in descending order of importance, were: 1) demonstrated product experience; 2) adequacy of manufacturing and quality organization and test facilities; 3) compliance with the technical specification; 4) program plan, production delivery schedule, and warranty support; and 5) adequacy of documentation deliverables and other relevant factors.

Under the contract contemplated by the solicitation, the systems were to be delivered f.o.b. destination to twenty-three postal facilities throughout the United States. Under

the contract's two year warranty, all items were to be repaired within thirty days of the return of the item to the contractor, who was to bear "all costs of transportation and . . . risk of loss in transit."

LazerData's technical proposal consisted of five pages. The first page listed the equipment LazerData proposed to supply. The second page contained a blanket statement of compliance as follows: "LazerData Corporation unequivocally states no exceptions will be taken with Attachments 1, 2 and 3 of Solicitation Number 104230-89-A-0143. The LazerData Corporation will meet the requested technical specifications without any exceptions."^{1/} The next two pages and the last page, a diagram entitled "Design Parameters: System Configuration/Features", gave some additional description of the offered system.

LazerData also submitted a nine page business/management proposal which included an offer to supply the SSBCSS on an f.o.b. origin basis. It offered to provide a two year warranty service as required, except for the laser and the laser power supply, for which it offered a twelve-month warranty. It also offered either to repair the equipment or to refund the purchase price upon return of the product. The refund offer applied only if the defective products were returned to LazerData freight prepaid. LazerData's proposal also contained a section entitled "Attachment B; LazerData Project Plan," a four page computer flow chart outlining the project schedule.

On July 24, the contracting officer notified LazerData that its proposal was technically unacceptable because it did not "reasonably address the essential requirements of the subject solicitation." The proposal was faulted because it "did not describe in any way the approach that LazerData would follow to achieve the Postal Service's technical specifications and requirements" and the technical specifications contained major omissions.

In a July 25 letter, LazerData requested clarification of the exclusion of its proposal from the competitive range. On July 27, the contracting officer responded, stating that a second review by the technical evaluators showed the deficiencies in LazerData's proposal to be so extensive that they could not be corrected without the submission of a "completely separate proposal." LazerData filed its protest on August 4.

The Protest

LazerData states three grounds for its protest: 1) that its offer was unreasonably rated as technically unacceptable, 2) that the technical evaluation was inconsistent with the evaluation factors, and 3) that it was arbitrarily and unreasonably excluded from the competitive range.

LazerData first asserts that its offer included the required technical proposal and that the proposed equipment was adequately described therein. LazerData takes the contracting officer's statement that LazerData's proposal "did not describe in any way

^{1/}Attachments 1 and 2 were the SOW and the technical specifications. Attachment 3 was the bar coded sack label specification.

the approach that LazerData would follow to achieve the Postal Service's technical specifications and requirements" to indicate that the evaluation committee did not consider the information in the project plan, Attachment B of its proposal. It contends that where a solicitation's specifications "are sufficiently detailed and the RFP does not require offerors to explain their proposals in detail, a statement of intent to comply with these requirements is adequate to meet the RFP's requirements," citing a 1974 Comptroller General decision.^{1/} It maintains that the SSBCSS solicitation did not require detailed technical proposals, a conclusion based on its interpretation of the solicitation requirements and on a statement made to LazerData by the contract specialist.^{1/} LazerData contends that its blanket compliance statement suffices to satisfy the solicitation requirements.

LazerData next comments on the contracting officer's statement that LazerData's proposal contained "major omissions in the technical specifications submitted on the proposed LazerData equipment." LazerData asserts that the solicitation did not require it to include technical specifications of its proposed equipment, but that the information would have been supplied had LazerData known that it was to be included in the evaluation. It argues that since all proposals must be evaluated according to the evaluation factors in the solicitation, its exclusion based on the omission of technical specifications is improper.

Finally, LazerData contends that even if its proposal was incomplete, it was merely technically inferior, not technically unacceptable and should have been included in the competitive range. It asserts that if the contracting officer had considered the factors which are used to determine whether a proposal is properly excluded from the competitive range, as set out in Dwight Foote, Inc., P.S. Protest No. 87-90, September 28, 1987, its proposal would be found to be susceptible of being made acceptable through discussions.^{1/} LazerData reiterates that the solicitation did not require detailed proposals and that the contents of its proposal indicate that LazerData understood the requirements of the solicitation. A major rewrite is unnecessary, as discussions would easily clarify any deficiencies, and since price was not considered in the initial evaluation, the evaluation committee could not have considered the possible cost savings of LazerData's proposal. It also reasons, citing Loral EOS/STS, Inc., Comp. Gen. Dec. B-230013, May 18, 1988, 88-1 CPD & 467, that even if a complete re-write were required, the better practice would be to include the proposal in the competitive range. Therefore, it maintains that its exclusion from the

^{2/}Moxon, Inc., B-179160, March 13, 1974. [hereinafter Moxon.]

^{3/}LazerData states that before it submitted its proposal, it asked the contract specialist whether its proposal should track the Request For Proposals ("RFP") line for line. The protester states that the contract specialist indicated that a "line by line" tracking of the RFP was neither necessary nor desired.

^{4/}Dwight Foote set forth the factors as: "the extent to which the RFP called for detailed information, whether the deficiencies indicate a lack of understanding of the solicitation requirements, whether curing the deficiencies would require an entirely new proposal, the number of offerors remaining in the competitive range, and the cost savings afforded by the rejected proposal." Dwight Foote, supra (footnote omitted.)

competitive range was arbitrary and unreasonable.

LazerData requests that award be delayed pending resolution of this protest and that the contracting officer re-examine its proposal, conduct discussions with it, and provide it a reasonable opportunity to submit technical revisions. In the alternative, LazerData requests that the contracting officer cancel the solicitation and resolicit after amending it to reflect more detailed requirements.

The contracting officer states that LazerData's proposal was properly determined to be unacceptable on the basis of its score in the technical evaluation. LazerData scored 24 out of a possible 115 points. The proposals found to be technically acceptable had significantly higher scores. The contracting officer maintains that LazerData's proposal contained major deficiencies because it did not, as ' J.10 mandated, "clearly describe" the approach it would take to meet the project's objectives, as they were outlined in the SOW. The SOW required, among other things, a system that was electrically quiet, environmentally sound, buffered against shock, tested, documented, warranted, and reliable. The contracting officer maintains that LazerData did not adequately describe how it would meet these objectives. To illustrate, the contracting officer states that LazerData made no mention of how it would meet the quality control standards, and provided no information on total system reliability. Unlike the other offerors who submitted significant supporting documentation for their proposals,^{1/} in comparison, LazerData did not even submit specific product experience information, related to the most important evaluation criterion.

The contracting officer does not dispute LazerData's account of what it was told in its telephone conversation with the contract specialist. However, the fact that the Postal Service did not require a "line by line" tracking of the solicitation does not mean that detailed proposals were not required. The contracting officer asserts that LazerData's blanket statement of compliance was insufficient to meet the requirements of the solicitation, and, in any event, was contradicted in the proposal. For example, LazerData's warranty proposal conflicted with the warranty required by the solicitation and its f.o.b. origin offer disagreed with the solicitation's f.o.b. destination requirement. As a result of these and other contradictions, the evaluation committee disregarded LazerData's statement that it would comply with the SOW and the technical specifications with no exceptions.

The contracting officer outlines the procedures that were followed by the evaluation committee, made up of four postal employees, one from the Quality Assurance Branch, one from the Office of Maintenance Management, one from the Engineering Development Center, and the chairman from the Office of Operational Requirements. The committee reviewed the evaluation criteria and made sure they were consistent with the solicitation. The committee established a system for scoring the evaluation factors^{1/} in accordance with their descending order of importance, as defined in the

^{5/}The types of information supplied by other offerors included: specification sheets of proposed or like equipment; samples of handbooks as representative of the documentation deliverables; sales volumes of proposed or like equipment; and lists of government or commercial purchasers of proposed or like equipment.

^{6/}"[T]he assignment of numerical scores or ratings to a proposal is an attempt to quantify what is

solicitation. The contracting officer asserts that the committee properly evaluated all the proposals according to the established evaluation criteria.

Finally, the contracting officer states that LazerData's proposal was properly eliminated from the competitive range and fails under the Dwight Foote test. He asserts that: the solicitation called for a greater degree of specificity than provided by the protester; the significant lack of information upon which its proposal could be evaluated indicated a lack of understanding of the requirements of the solicitation; curing the deficiencies would require a major rewrite; an adequate number of competitors remained in the competitive range; and the initial evaluation was properly made without consideration of the price.

In its response to the contracting officer's statement, LazerData disputes the deficiencies enumerated by the contracting officer. It cites specific sections of its project plan flow chart to demonstrate that LazerData did respond to the requirements found by the contracting officer to be deficient. It maintains that by listing the normal operating life of its helium-neon laser light assembly in its technical proposal, it has responded to the "total system reliability" requirement.^{1/}

LazerData further states that its "no exceptions" compliance statement applied to the SOW and technical specifications only, making it inappropriate for the contracting officer to base his determination to disregard the statement on unrelated factors found elsewhere in its proposal. LazerData contends that those factors were not relevant to a finding of technical unacceptability and that, in any event, uncertainties presented by its proposal should have resulted in discussions, not a finding of technical unacceptability.

Next, LazerData alleges that the determination by the contracting officer that correction of its proposal would require the submission of an entirely new proposal is unsubstantiated. It objects to the comparison of the material in its proposal to that of other offerors, stating that none of the listed examples were required by the solicitation and were, therefore, "irrelevant to the issue of whether LazerData complied with the RFP's requirements." It contends that, in any event, its proposal either contained similar information to that of the other proposals, or the information was readily available. Finally, LazerData maintains that discussions should have been held, citing, in addition to Loral, supra, the Postal Service Procurement Manual ("PM") and Procurement Handbook ("PH") to support this contention.

The contracting officer submitted rebuttal remarks to LazerData's supplemental comments. In particular, he noted that some of the technical information in the protester's comments had not been submitted with its original proposal and, therefore, could not have been evaluated.

essentially a subjective judgment. This is an accepted procedure." Management Concepts, Inc., P.S. Protest No. 86-29, July 10, 1986, quoting Book Fare, Inc., P.S. Protest No. 80-29, July 3, 1980.

^{1/}LazerData also submitted an attachment to its comments in which it matches specific sections of its technical proposal to specific sections of the SOW and technical specifications.

Discussion

At the outset, we note the standard of our review. This office will not substitute its judgment for that of the technical evaluators, nor will we disturb the evaluation unless it is shown to be "arbitrary or in violation of procurement regulations." Computer Systems & Resources, Inc., P.S. Protest No. 86-4, March 27, 1986; Amdahl Corporation, P.S. Protest No. 81-34, September 29, 1981.

The determination of the relative merits of technical proposals is the responsibility of the contracting office, which has considerable discretion in making that determination. It is not the function of our office to evaluate technical proposals or resolve disputes on the scoring of technical proposals. In reviewing a technical evaluation, we will not evaluate the proposal de novo, but instead will only examine the contracting officer's evaluation to ensure that it had a reasonable basis. The protester bears the burden of showing that the technical evaluation was unreasonable.

Computer Systems & Resources, Inc., supra, (citations omitted).

LazerData relies on Moxon, supra, fn. 2, for its conclusion that its proposal adequately satisfied the requirements of the solicitation. The facts here differ from those in Moxon. Moxon held that where a negotiated Air Force solicitation did not require detailed information and the technical specifications were very explicit, a blanket statement of compliance sufficed to meet the solicitation requirements. In that case, the technical specifications were described as requiring the offeror to supply an item meeting such precise design and performance characteristics that they appeared "adequate for specifications in an advertised procurement." Additionally, the offerors were not requested to explain their proposals in detail, but were required to "design and deliver an acceptable contract end item that complied with the technical exhibit." The Comptroller General found other irregularities in the evaluation procedures used in the Air Force solicitation, such as failure to state the relative importance of the evaluation criteria, and improper use of a pre-determined score. We have found no other cases conforming to LazerData's interpretation of Moxon, which appears to be limited to its facts.

The more common rule is that proposals which are generally verbatim restatements of solicitation requirements are not acceptable. Data Switch Corporation, Falcon Systems, Inc., P.S. Protests No. 85-4; 85-5, April 29, 1985. In deciding whether an agency reasonably exercised its discretion in finding a proposal technically unacceptable, significant factors which need to be considered are how definitely the solicitation called for detailed information, as well as the nature and extent of the deficiencies. Computer Systems & Resources, Inc., supra; see GTE Business Communication Systems, Inc., P.S. Protest No. 83-79, February 8, 1984; PRC Computer Center, Inc. et al, 55 Comp. Gen. 60, July 15, 1975.

While offerors may not have been required to respond to the solicitation requirements "line by line," the solicitation did require more detail than LazerData provided. Section J.10 required that the offerors "clearly describe the approach the offeror will follow in achieving the project's objectives" The objectives were delineated in the SOW,

which incorporated by reference the technical specifications. The protester knew that its proposal would be evaluated according to the listed evaluation criteria, of which one was "[c]ompliance with the technical specification." In view of this, LazerData's statement that it would comply with the SOW and the technical specifications does not satisfy the requirement that it clearly describe how it would meet those requirements. Computer Systems & Resources, Inc, supra.

With respect to the nature of the deficiencies, our review of the evaluation committee's report establishes that the contracting officer's judgment had a reasonable basis. "An agency's technical evaluation is dependent on the information furnished in the proposal and the burden is upon the offeror to submit an initial proposal that is adequately written." Computer Systems & Resources, Inc., supra, citing Digital Radio Corporation, Comp. Gen. Dec. B-216441, May 10, 1985, 85-1 CPD & 526; see also Centurion Films, Inc., B-205570, March 25, 1982, 82-1 CPD & 285. All the evaluators were consistent in finding a lack of information so significant as to prohibit them from doing more than scoring LazerData's proposal minimally. The evaluation committee did not overlook the proposal's project plan in Attachment B, as LazerData has suggested, but scored it as it related to the fourth evaluation criterion, "[p]rogram plan," and also extracted technical information contained in it to augment the evaluation of the third criterion, "[c]ompliance with the technical specification." LazerData scored 24 out of a possible 115 points and there was a significant difference between LazerData's score and the lowest-scored technically acceptable proposal.

In an effort to allow its proposal to be eligible for improvement through discussions, LazerData suggests that its proposal was susceptible of being made acceptable. There is no requirement for discussions to be held with an offeror whose proposal is technically unacceptable or is not within a competitive range. Management Concepts, Inc., P.S. Protest No. 86-29, July 10, 1986; Inforex Corporation et al., P.S. Protest No. 78-12, June 26, 1978. However, discussions are required with offerors whose proposals are reasonably susceptible of being made technically acceptable. GTE Business Communication Systems, Inc, supra. Although some of the deficiencies in LazerData's proposal, such as the f.o.b. and warranty issues, might have been remedied through discussions, the contracting officer was justified in finding that the proposal, taken as a whole, could not be made acceptable without major revisions. Computer Services, supra, citing Ensign-Bickford Company, Comp. Gen. Dec. B-211790, April 18, 1984, 84-1 CPD & 439. A proper finding of technical unacceptability, such as this, makes it unnecessary to consider LazerData's proposal under the Dwight Foote factors. Nevertheless, we find no evidence to overturn the contracting officer's determination that LazerData's proposal fails under that test.

Finally, we disagree that discussions should be held even where a major re-write would be necessary to correct the deficiencies in its proposal. In Loral, supra, relied upon by the protester, the Comptroller General found that the significant deficiency in that proposal did not support the agency's view that a major re-write was necessary, as much of the information was already contained in the proposal. That is not the case here. The conclusion of the evaluation committee of the magnitude of the deficiencies in LazerData's proposal provided a reasonable basis for the contracting officer's concluding that there was "no doubt as to whether [the] proposal [was] in the competitive range." PM 4.1.5g.2. LazerData's recitation of the portions of its proposal

allegedly supplying the information found to be deficient by the evaluation committee, merely shows that LazerData disagrees with the results of the evaluation of its proposal. This disagreement is insufficient to meet the protester's burden of showing that the technical evaluation was unreasonable. Computer Systems, *supra*, citing Digital Radio Corporation, Comp. Gen. Dec. B-216441, May 10, 1985, 85-1 CPD & 526. There is ample evidence to support a finding that the contracting officer's judgment had a reasonable basis, and no evidence to support a finding that the evaluation was arbitrary. Computer Systems & Resources, Inc., *supra*.

It remains to determine whether the evaluation was in violation of procurement regulations. The PM governs here, specifically, sections 4.1.4a and c and 2.1.6a. LazerData is correct when it states that technical specifications of its proposed equipment were not required by the solicitation. If the determination of technical unacceptability had been made based on the omission of technical specifications, LazerData also would be correct in concluding that the governing regulations had been violated. Review of the evaluation establishes, however, that the evaluation committee did not base its findings on any lack of technical specifications on the part of the protester. Rather, it based its evaluation on the significant lack of information in LazerData's technical proposal. Evidence establishes that the evaluation procedure was in accordance with the regulations, offering no basis upon which to overturn the contracting officer's finding of technical unacceptability. Accordingly, we will not disturb it. Computer Systems & Resources, Inc., *supra*.

This protest is denied.

William J. Jones
Associate General Counsel
Office of Contracts and Property Law

[checked against original JLS 5/25/93]