

Protest of) Date: July 22, 1992
CRANE NATIONAL VENDORS)
Solicitation No. 104230-90-A-0047) P.S. Protest No. 92-12

DECISION

Crane National Vendors ("Crane") timely protests the evaluation of its technical proposal, its exclusion from the competitive range, and the communications that have taken place with the offerors who are still in the competitive range.

Solicitation No. 104230-90-A-0047 was issued by the Office of Procurement, Washington, D.C. on January 18, 1991, soliciting offers for the production of 5,000 Postal Booklet Stamp Machines, model PBSM-624,^{1/} along with ancillary spare parts, test/repair equipment, supplemental developmental system hardware, training, and technical data.^{1/} The solicitation did not contain a closing date. Instead, the solicitation provided offerors with an opportunity to submit comments, views and questions regarding the requirement until February 6. The cover page of the solicitation, paragraph 6, advised offerors that "[a]fter review of [the] offerors['] comments, Amendment 01 to the solicitat[i]o[n] will be issued establishing the firm requirements, delivery schedule and closing date for receipt of proposals."

^{1/} The Postal Booklet and Stamp Machine ("PBSM") is a self-service vending machine which dispenses stamp booklets as well as individual stamps.

^{2/} The solicitation provided several options which would allow the Postal Service to purchase up to 4,570 additional PBSMs if all options were exercised.

Section M.1 of the solicitation described the method for evaluation of proposals as follows:

1. BASIS FOR AWARD

Any award to be made will be based on the best overall proposal with appropriate consideration given to the major factors: Technical, Price, and Management. The best overall proposal is considered to be one which has the lowest risk and highest degree of credibility among the Technical, Price and Management factors. Of these three factors, Technical is the most important, and is of greater weight than the other two factors combined. . . . To receive consideration for award, a rating of not less than "acceptable" must be achieved in each of the factors and subfactors.

2. FACTORS AND SUBFACTORS TO BE EVALUATED

Factors and subfactors to be evaluated are listed below. The factors are listed in descending order of importance. Of the technical subfactors, "general approach["] and "specific approach", are of greater weight than all other technical subfactors combined. With the exception of past performance, (see M.2) the management subfactors are of equal weight.

a. TECHNICAL FACTOR

- (1) General Approach
- (2) Specific Approach
- (3) Technical Understanding
- (4) Production Engineering
- (5) Production Capability
- (6) Quality Assurance

b. PRICE FACTOR

Total price, including options.

c. MANAGEMENT FACTOR

- (1) Management Approach
- (2) Manpower/Qualifications
- (3) Schedules and Controls
- (4) Past Performance

Section J.5 further specified what type of information was to be included in the proposal for each of the subfactors. Of particular relevance is section J.5 C.4 of the solicitation which described what information should be included in addressing the "Technical Understanding" subfactor. It stated:

4. Technical Understanding: The offeror shall provide a comprehensive discussion of his technical understanding of production of PBSM-624's

demonstrating a thorough knowledge of the technical requirements, technical issues, and potential problem areas attendant to this production project

(a) Vending Equipment Technology:

Offeror shall describe its detailed, in-depth knowledge of vending equipment technology. This discussion should indicate that the offeror has sufficient comprehension of the technical issues involved with vending equipment to propose feasible, realistic implementation of a production line capable of producing acceptable PBSM-624s that meet all of the specified technical requirements within the indicated schedule constraints.

With respect to the number of awards that would be made, Section A.1 stated that:

The solicitation will be via competitive negotiation and will result in DUAL CONTRACT AWARDS to two (2) competing firm[s]. Each award will be a combination fixed price incentive/firm fixed price contract which will include two phases: Phase I (fixed price incentive) and Phase II (firm fixed price). Phase II will be the production effort priced as an OPTION PHASE. It is planned that the OPTION PHASE II will be exercised with only one (1) of the two competing contractors."

The contracting officer issued five amendments to the solicitation. Amendment A01 and Amendment A02, issued on April 3 and May 15, respectively, provided answers to offerors' questions, made several changes to the solicitation and set out a proposal due date of June 12. The contracting officer received technical and price proposals from five offerors: Crane, Westinghouse Electric Corp. ("Westinghouse"), ElectroCom Automation, Inc. ("ECA"), Rowe International, Inc. ("Rowe") and GFI Genfare ("Genfare").

After reviewing the price and technical proposals but prior to rating them, the requiring activity and the contracting officer determined that several changes had to be made to the solicitation in order to meet the Postal Service's funding constraints. Amendment A03, issued on September 16^{3/}, revised the purchase description, changed the number of awards that would be made^{1/} and asked offerors to submit their revised proposals by October 23. Amendments A04 and A05 made further revisions to the purchase descriptions and extended the due date for revised proposals to October 30 for technical proposals and November 20 for price proposals.

The five offerors submitted revised proposals by the October 30 closing date. The technical evaluation committee reviewed the technical proposals and rated them in accordance with the "Instructions for Evaluation of Technical Proposals" which the contracting officer had provided. The instructions asked the evaluators to analyze and document all the strong points, weak points, and deficiencies that they found in each

^{3/} Specifically, Amendment A03 advised offerors that "only one award, consisting of Phase I and an Option Phase II [would] be awarded under this solicitation." (emphasis omitted).

individual proposal and to assess the risks associated with each offeror's proposal. The instructions categorized and defined the different levels of risk as follows:

HIGH. A minimal expectation of successful performance. Quality, schedule or cost likely to be unacceptable even with special efforts by the contractor and unusually intense contract administration by the Postal Service.

MODERATE. A reasonable expectation of success with some potential for unacceptable quality, schedule, and/or cost performance by the contractor. However, special efforts by the contractor and close Postal Service monitoring can overcome these difficulties.

LOW. Little potential for failure in quality, schedule, or cost performance. High probability of success. Normal contractor effort and Postal Service contract administration can overcome any difficulties.

The instructions also directed the evaluators to use the following adjectives in evaluating the technical proposals:

Superior - An approach which satisfies all USPS requirements with extensive detail to indicate how the approach is not only feasible but desirable and which shows a thorough understanding of the problem with minimal risk in meeting Postal requirements.

Acceptable - An approach which satisfies all USPS requirements with adequate or minimum detail to indicate feasibility of the approach/solution and an understanding of the problem (or task), and with a moderate degree of risk in meeting Postal requirements.

Susceptible to being made Acceptable - An approach which as initially proposed can not be rated "acceptable" because of minor errors, omissions, or deficiencies, and which are considered capable of being corrected without a major rewrite or revision of the proposal.

Unacceptable - Major errors, omissions, or deficiencies which indicate a lack of understanding of the problems; a proposed approach based on untried and unproven devices or techniques; or an approach which cannot be expected to meet requirements or involves a high risk and none of these conditions can be corrected without a major rewrite or revision of the proposal.

The instructions further directed the evaluators to write down any questions they had relating to the contents of a proposal. These questions would form the basis for discussions with offerors who were determined to be in the competitive range.

On December 13, the evaluation committee informed the contracting officer that evaluations of the technical proposals were complete and that the offerors had received the following ratings:

<u>ment</u>	<u>Offeror</u>	<u>Technical Rating</u>	<u>Risk Assess-</u>
	Crane	Acceptable	Low Risk
	ECA	Acceptable	Low Risk
	Westinghouse	Potentially Acceptable ^{1/}	Low Risk
	Rowe	Acceptable	No Risk
	Genfare	Acceptable	Low Risk

At the time set for submission of revised price proposals, Westinghouse notified the contracting officer that it was withdrawing its proposal. Based on the recommendation of the technical evaluation committee, the contracting officer established an initial competitive range which included all the proposals. By letter dated December 30, the contracting officer transmitted written discussion questions to all offerors and requested that they submit their responses, along with their best and final offers ("BAFO"), by January 21, 1992.

After reviewing the offerors' responses to the discussion questions, the technical evaluation committee reevaluated the proposals and assigned the following ratings:

<u>Offeror</u>	<u>Technical Rating</u>	<u>Risk Assessment</u>
Crane	Acceptable	Low Risk
ECA	Acceptable	Moderate Risk
Rowe	Acceptable (Plus) ^{1/}	No Risk
Genfare	Superior	No Risk

In March, the contracting officer determined, given Rowe and Genfare's higher technical rating and lower cost,^{1/} that Crane and ECA no longer had a reasonable chance of receiving award and eliminated them from the competitive range. By letter dated March 9, the contracting officer advised Crane that "[w]hile [its] proposal presented a good approach to the PBSM-624 production, it did not provide the most advantageous offer to the Postal Service, price and other factors considered."^{1/} The

^{4/} This apparently means "susceptible to being made acceptable."

^{5/} This apparently means above acceptable but less than superior.

^{6/} The prices offered in their BAFOs were as follows:

<u>Offeror</u>	<u>Prices</u>
Crane	\$ 71.8 million
ECA	49.9 million
Rowe	57.5 million
Genfare	54.6 million

^{7/} Although it appears that the contracting officer intended this letter to serve as the notification to Crane, required by PM 4.1.5 g.2 (c), that it had been excluded from the competitive range, the letter did not clearly convey that point. It is evident from Crane's protest that it did not understand the intent of the

protester was further advised that additional information regarding the subject solicitation would be provided after award, if a debriefing was requested.¹⁷ Crane's protest was received by this office on March 12. On July 6, the contracting officer awarded a contract to Genfare for \$29,890,546.72. This office received notification of award, in accordance with Procurement Manual ("PM") 4.5.5 a., on July 13.

The Protest

Crane's protest has two main grounds. First, Crane is concerned that while the Postal Service continued to conduct discussions with Crane's competitors, it ceased conducting a similar degree of discussions with Crane. Second, Crane is concerned that the Postal Service did not evaluate the proposals in accordance with the stated evaluation factors.

With respect to discussions, the protester states that according to PM section 4.1.5 (g)(2)(a), the Postal Service is supposed to hold discussions "equally among all contractors considered to be within the competitive range." Crane claims that while the Postal Service is engaging in extensive discussions, which it describes as "pre-award audits," with Crane's competitors, there are no discussions taking place with Crane. The protester alleges that this is unfair because "the audit process, when undertaken before an award decision is made, allows the contractor being audited to refine, enhance and elaborate upon its proposals while its competitors cannot do the same."

As to its second point, Crane alleges that the Postal Service departed from the evaluation criteria set out in the solicitation. Crane alleges that in reliance on section M.1, which states that the technical evaluation factor is most important, it emphasized technical factors in its proposal at the expense, in some cases, of price. Crane asserts that the fact that the Postal Service "has now excluded Crane's proposal, despite determining that Crane is within the competitive range, suggests that the technical superiority of Crane's proposal has now been ignored in favor of its competitors' lower prices." Crane further maintains that excluding it at this stage of the competition is inconsistent with PM 4.1.5 (g)(4)(c).¹⁸

Prior to receiving the contracting officer's statement, Crane submitted comments supplementing its protest. In these comments, Crane alleges that its competitors have submitted unreasonably low priced offers, with an expectation of recovering losses on the contracts at a later time. According to Crane, the Postal Service can expect to receive from these offerors "lots of change orders, requests for equitable adjustments,

March 9 letter in this respect.

¹⁷ A letter containing identical language was also provided to ECA.

¹⁸ PM 4.1.5 g.4(c) states:

After receipt of best and final offers, the contracting officer must not reopen discussions unless it is clearly necessary in the Postal Service's interest to do so, as when information available does not provide adequate basis for contractor selection and award. If discussions are reopened, the contracting officer must issue an additional request for best and final offers to all offerors still within the competitive range.

and other efforts to increase the contract price." Crane urges the Postal Service to audit the cost basis for the offers submitted by these companies. Crane further claims that "certain of the remaining contractors competing for this procurement are up for sale" and may be offering a low price for this procurement in order to get award and be able to represent themselves as having significant "contract back-orders." Crane asserts that the real victim here will be the Postal Service since these contractors will have no interest "in the actual ability to perform at the price of the contract knowing that difficulties will occur in the future . . . under someone else's watch."

Crane also objects to the Postal Service's decision to exclude it, arguing that it is a recognized leader in the vending machine industry and is a current supplier to the Postal Service of vending machines similar to the ones being purchased under this solicitation. Crane argues that the praise it has received from the Postal Service for "the quality of Crane's product, the expertise of its staff, and its responsiveness to the Postal Service's needs, speak highly of Crane's outstanding qualifications." Crane argues that ignoring the advantages of its proposal for a lower priced offer "is inconsistent with the solicitation and not in the agency's interests."

The Contracting Officer's Statement

The contracting officer disagrees with the protester's characterization of the pre-award audits as "discussions." The contracting officer claims that a pre-award audit is not a process that allows an offeror to refine, enhance and elaborate upon its proposal, as the protester contends. Rather, according to the contracting officer, it is "a process of cost analysis during which an evaluation of the offeror's cost or pricing data is reviewed and evaluated for the purpose of forming an opinion on the degree to which the proposed costs represent what the contract should cost, assuming reasonable economy and efficiency." Quoting several sentences from section 5.3.3 a. of the PM,^{10/} the contracting officer asserts that the audits do not form a part of any negotiations or discussions, but instead are used in making her determination as to whether a price is fair and reasonable.

In response to Crane's assertion that its technical superiority has been ignored in the evaluation process, the contracting officer states that she eliminated Crane from the revised competitive range because Rowe and Genfare achieved better technical ratings on their proposals. The contracting officer claims that while Crane's price was considered, she concluded that even if negotiations with Crane could result in a \$14 to \$17 million reduction in price, the higher technical merit found in Rowe's and Genfare's proposals "would still negate consideration of an award to C[rane]." The contracting officer asserts that her conclusion that Crane's proposal had no real chance of selection for award is supported "by both the technical evaluation of the respective offerors and the substantial price differential." The contracting officer also claims that

^{10/} PM 5.3.3 a. states, in relevant part:

The contracting officer, exercising sole responsibility for the final pricing decision, must obtain advice and assistance appropriate to the complexity and dollar value of the proposals to be analyzed. As circumstances warrant, the contracting officer must obtain and evaluate the advice of specialists in contracting, finance, law, contract audit, . . . coordinating the team effort involved.

Crane's inclusion in the initial competitive range does not undermine the correctness of her subsequent determination to exclude Crane's BAFO from further consideration.

The Protester's Response

Crane claims that the contracting officer's argument that she is engaged in cost analysis, not in discussions, "reveals a fatal flaw in the way this procurement is being managed." According to Crane, the contracting officer lacks regulatory authority to engage in cost analysis or price negotiations in this procurement. Crane argues that according to PM 5.3.3 d., "cost analysis is normally appropriate only when there is not adequate price competition and no method of price analysis will ensure a fair and reasonable price." Crane asserts that in this case there is adequate price competition, "as is evident by the close prices of the bidders and the extremely close prices of the two favored contractors." Therefore, there is no need for cost analysis.^{11/}

In the alternative, Crane argues that if the contracting officer's communications with the remaining offerors do not constitute "cost analysis," they must be discussions that allow for the revision and clarification of proposals. These discussions, according to Crane, "can only come to 'closure' when the contracting officer again requests [BAFOs]." Crane argues that if it had been kept in the competitive range, as it should have been, it would have had the opportunity to compete in this upcoming round of BAFOs.

With respect to the evaluation of its proposal, Crane argues that its price appears high because it has included a large number of spare components of significant value in its offer. Crane states that based on its experience, it understands the Postal Service's need for spares, while its competitors may not have this same understanding. Crane also disputes the "low risk" rating it received. According to Crane, the expertise Crane has developed in performing under a Postal Service contract, as well as Crane's position as the nation's pre-eminent vending machine manufacturer, "make it clear that any technical evaluation finding risk in Crane's proposal must be flawed."

Finally, Crane reasserts its claim that one of the remaining offerors is a business entity which is currently for sale and is seeking to make itself more attractive to buyers by obtaining this contract. Crane's counsel also requests access to the evaluation materials generated in relation to Crane's proposal, offering to review these materials under a protective order.^{12/}

^{11/} We note that the protester's position here is inconsistent with the statements it made in its supplementary comments. In those comments, the protester stated that the remaining offerors had submitted unreasonably low priced offers and that the "Postal Service should aggressively audit the cost basis for the bids submitted by these companies."

^{12/} We note that our office does not have authority to grant a protective order under the regulations that govern the bid protest procedure. See PM 4.5. The protester's counsel may, however, make a request for the documents he desires in accordance with the Freedom of Information Act. Such requests for information are properly directed to the records custodian, who in this case is the contracting officer. See Dataware Systems Lease, Inc., P.S. Protest No. 91-41, October 10, 1991.

The Contracting Officer's Reply

Replying in comments which predated the award, the contracting officer states that the protester has misinterpreted the PM sections dealing with cost analysis, reading them in isolation without considering other pertinent references to the subject. The contracting officer explains that since technical factors were emphasized in this solicitation, a selection decision based solely on a price analysis done in accordance with PM 5.3.3 b.2^{13/} would be improper and unfair because each offeror's price was a reflection of its own unique technical approach. The contracting officer states that she decided that in order to have "a proper and a fair assessment of each offeror's price reasonableness . . . cost analysis was [also] necessary"

The contracting officer reasserts her contention that there have been no "discussions," as defined in PM 4.1.5 a.3,^{14/} with Rowe and Genfare since receipt of their BAFOs, only "negotiations" as defined by PM 4.1.5 a.4.^{15/} The contracting officer further asserts that a second round of BAFOs was required "only because of [her] decision to conduct negotiations with both firms in order to better decide which firm offered the best value to the Postal Service." (emphasis in original). In response to Crane's argument that its price was high because it included a large number of spares, the contracting officer asserts that since each offeror was asked "to quote their recommended level of spares," she deleted the price quoted for line item no. 16, Spare Parts Kits, when she reviewed the offerors' proposals in order to get "a true reflection of each offeror's price . . ." (emphasis in original). The contracting officer states that as a result, Crane "was not penalized because of the quantity or price of the spares they proposed."

Concerning Crane's assertions about its experience and expertise, the contracting officer states that Crane's satisfactory performance on other Postal Service contracts does not automatically make them eligible for award in subsequent solicitations. According to the contracting officer, "[i]n general, Crane's proposal did not reflect the level of excellence that they have brought to previous Postal Service contracts"

^{13/} PM 5.3.3 b.2 states that the "contracting officer is responsible for selecting and using whatever price analysis techniques will ensure a fair and reasonable price. One or more of the following techniques may be used to perform price analysis:

- (a) Comparison of proposed prices received in response
- (b) Comparison of prior proposed prices and contract
- (c) Application of rough yardsticks . . . to highlight significant inconsistencies that warrant additional pricing inquiry.
- (d) Comparison with competitive published catalogs or lists, published market prices or commodities, similar indexes, and discount or rebate arrangements.
- (e) Comparison of proposed prices with independent Postal Service cost estimates (see 2.1.5).
- (f) Ascertaining that the price is set by law or regulation."

^{14/} PM 4.1.5 a.3. defines discussion as "[a]ny oral or written communication between the Postal Service and an offeror (other than communications conducted for the purpose of clarification) that is initiated by the Postal Service and (a) involves information essential for determining the acceptability of a proposal or (b) provides the officer an opportunity to revise its proposal."

^{15/} PM 4.1.5 a.4 defines negotiation as "[t]he process of reaching agreement on final contract terms and conditions with the offeror selected."

She notes that her evaluation must be based on Crane's proposal as submitted, rather than on other extrinsic factors, as required by section M.1.3 of the solicitation.^{17/} The contracting officer adds that although Crane's failure to cite any of their specific vending experience either from the commercial sector or from their past Postal Service contracts as requested under subfactor 4.a, Vending Equipment Technology, is not the reason for Crane's "low risk" assessment, "this omission could be attributed to Crane's own 'pre-eminence' self-appraisal."

The contracting officer further asserts that Crane's "low risk" rating was not the basis for its elimination from the revised competitive range, since this rating "does not impart a significant concern regarding performance." She explains that although Crane's proposal earned twelve strong points,^{17/} "on a comparative basis, the strong points earned by [Rowe and Genfare] were considered more meritorious than those earned by Crane." The contracting officer maintains that Crane's rank in the technical area "simply put the probability of [it] receiving award out of the realm of consideration."

Concerning Crane's allegations that one of the offerors is underbidding in order to get the contract and make itself more attractive to buyers, the contracting officer states that she has no knowledge of either Rowe or Genfare being for sale. She notes, however, that one of the offerors is currently undergoing a reorganization and will have to meet the Postal Service's financial qualification requirements.^{17/} The contracting officer adds that based on the cost analysis and the audits that have been performed, she does not agree that either offeror has underbid. As a last point, the contracting officer requests that we deny Crane's request to review the evaluation materials since this would jeopardize the integrity of the selection process. She also asks us not to allow Crane to re-enter the competition, arguing that this would be prejudicial to other offerors and could result in an auction.

The Protester's Further Response

Crane maintains that significant mistakes were made in the technical analysis of Crane's proposal. According to Crane, the contracting officer's assertion that Crane failed to cite specific vending experience is false. Crane states that Crane discussed its past experience with the USPS and its vending products in general in sections F and G of its management proposal which was included with its initial proposal. Crane expresses its concerns about other mistakes that might have been made in its evaluation.

^{16/} Section M.1.3 a. states, in pertinent part:

Each proposal will be evaluated strictly in accordance with its written content. The evaluation team will not assume that the offeror's performance will include any areas of fabrication, assembly, inspection and test not specified in the written proposal.

^{17/} A "strong point" is defined in the instructions provided to the evaluation committee as an area "where a proposal either exceed[s] the technical requirements or offer[s] a unique approach which satisfies all of the requirements."

^{18/} After award was made, the contracting officer advised us that it was Rowe, not Genfare, who was undergoing a reorganization.

Crane further asserts that from the information it has reviewed, it is unclear whether its price including spares is being compared to the price of other offers which are also loaded with spares. Crane claims that a proper price comparison "might be much more favorable to Crane than the one provided by the contracting officer." Finally, Crane states that it does not understand how Crane's proposal obtained a "low risk" rating even though its proposal received twelve strong points. Crane questions what the risk in its proposal was.

Discussion

The crux of Crane's protest is that the Postal Service failed to evaluate properly its technical proposal and that therefore its elimination from the revised competitive range was unreasonable. Specifically, Crane argues that it doesn't understand how it could have received a "low risk" rating on its technical proposal instead of a "no risk" rating when it is a recognized leader in the vending machine industry and has received praise from the Postal Service for its performance under a similar contract. Crane also questions how it could have received a "low risk" rating even though its technical proposal received twelve strong points.

The evaluation of technical proposals and the resulting determination as to whether an offer is in the competitive range is a matter within the discretion of the contracting activity, since it is responsible for defining its needs and for deciding on the best methods of accommodating them. See DBA Systems, Inc., Comp. Gen. Dec. B-241048, 91-1 CPD & 36, January 15, 1991; General Exhibits, Inc., P.S. Protest No. 85-77, December 5, 1985. We will not disturb a contracting officer's decision to exclude a firm from the competitive range unless this determination was unreasonable. See Scientific Management Associates, Inc., Comp. Gen. Dec. B-238913, 90-2 CPD & 27, July 12, 1990. A protester has the burden of proving that the contracting officer's evaluation was unreasonable. Intraspace Corporation, Comp. Gen. Dec. B-237853, 90-1 CPD & 327, March 23, 1990. In reviewing the contracting officer's decision, we will not reevaluate technical proposals but instead will examine the committee's evaluation to ensure that it was not arbitrary or in violation of procurement laws and regulations. IRT Corp., Comp. Gen. Dec. B-227963, 87-2 CPD & 411, October 28, 1987, General Exhibits, Inc., supra.

After examining the evaluation record, we could not determine why Crane received a "low risk" rating rather than a "no risk" rating since this aspect of its evaluation was not well documented. However, the lack of documentation does not necessarily signify that the technical evaluation committee lacked a reasonable basis for making this determination. Moreover, even if we accepted the protester's contention that its proposal should have received a "no risk" rating, it would not change our conclusion that the contracting officer did not act arbitrarily in excluding Crane from the revised competitive range. As the contracting officer points out, Crane's low risk rating was not the basis for its elimination from the revised competitive range. Rather, it was the "acceptable" rating it received for the degree of credibility in its technical proposal.

With respect to the "acceptable" rating, we note that the solicitation specifically advised offerors in Section M.1 that award would be based on the best overall proposal and that the best overall proposal "is considered to be one which has the lowest risk and highest

degree of credibility." Therefore, even if Crane's proposal had received a "no risk" rating, the "acceptable" rating it received for the degree of credibility in its proposal, when compared to the "acceptable plus" and "superior" ratings received by Rowe and Genfare, would have still placed Crane's proposal out of the realm of consideration. In determining the competitive range, "it is an acceptable practice to compare the evaluation scores and an offeror's standing among its competitors and to exclude a proposal that is technically acceptable or capable of being made so when, relative to other acceptable offers, it has no reasonable chance of being selected for award." Scientific Management Associates, Inc., *supra*; *see also* Ameriko Maintenance Co., Inc., Comp. Gen. Dec. B-216406, 85-1 CPD & 255, March 1, 1985. In addition, "the fact that a proposal was initially included in the competitive range does not preclude the [contracting officer] from later excluding it" from further consideration where there is no reasonable chance that it will be selected for award. MAR Incorporated, Comp. Gen. Dec B-246889, 92-1 CPD & 367, April 14, 1992; *see also* Korby Construction Company, P.S. Protest No. 89-79, February 2, 1990.

In this case, the contracting officer recognized that Crane's proposal had earned twelve strong points, but determined that "on a comparative basis, the strong points earned by [Rowe and Genfare] were considered more meritorious than those earned by Crane." Our *in camera* review of the comments submitted by the technical evaluation committee reveals that it was reasonable for the contracting officer to conclude based on this information that Crane's technical proposal was less favorable than the proposals presented by Rowe and Genfare and that it had no reasonable chance of being selected for award. The fact that the protester disagrees with the determination does not render the evaluation unreasonable. *See* Intraspace Corporation, *supra*.

Crane argues that the contracting officer's assertion that Crane failed to cite specific vending experience is false and is indicative of mistakes that were made in the technical analysis of Crane's proposal. We reviewed the contracting officer's statement and found that it did not state that Crane failed to cite specific vending experience *anywhere* in its proposal, only that it failed to cite specific contract information in its technical proposal in response to section J.5 C.4 (a) of the solicitation. In this respect, the contracting officer's statement is correct. Although Crane set out specific contract information in its management proposal, it did not do so in its technical proposal under the "technical understanding" subfactor.

We note, however, that section J.5 C.4 (a) of the solicitation did not require offerors to cite specific vending experience in the technical proposal. Although providing this information would have been a good way for an offeror to indicate that it "has sufficient comprehension of the technical issues involved with vending equipment," section J.5 C.4 (a) did not specifically request that offerors provide this information. Even though it was improper for the technical evaluation committee to discount Crane's proposal for failing to cite specific vending experience, this error did not result in any prejudice to Crane. Even if Crane had received a higher technical rating, it would not have received award as a result of the awardee's demonstrated superiority in other important technical areas and Crane's significantly higher price. TRW Financial Systems, Inc., P.S. Protest No. 91-19, May 29, 1991 (no prejudice to protester where the contracting officer improperly looked at factors not listed in the solicitation since the protester's relative standing with respect to the awardee would remain unchanged); Huff & Huff Service Corporation, Comp. Gen. Dec. B-235419, 89-2 CPD & 55, July 17, 1989 (no

prejudice to protester where the agency failed to discuss the protester's deficiencies in one area since even if the protester had received the additional points available in this area, its competitive position with respect to the awardee would not have changed).

With respect to the issue of price, Crane is concerned that its price proposal may not have been evaluated in the most favorable manner if it was compared to the prices submitted by other offerors whose proposals were not loaded with spares. We need not determine whether Crane's allegation is meritorious since the contracting officer has stated that even if Crane's price was \$14 to \$17 million lower and competitive with the prices of Rowe and Genfare, the higher technical merit found in Rowe's and Genfare's proposals would still negate further consideration of award to Crane. Since the solicitation advised offerors that technical merit was more important than the price and management factors combined, we find that it was reasonable for the contracting officer to come to this conclusion and to exclude Crane from the revised competitive range.

Crane also alleges that the contracting officer improperly held discussions with Rowe and Genfare, but not with Crane, after BAFOs had been submitted. The protester is not an interested party to protest the propriety of these communications. A party is not an interested party for the purpose of raising an issue unless it would be in line for award if its protest is sustained. Cook Travel, Comp. Gen Dec. B-238527, 90-1 CPD & 571, June 13, 1990. "Once an offeror is properly found to be outside of the competitive range, it cannot be in line for award." Id. Since Crane was properly found to be outside of the revised competitive range, it is not an interested party to challenge the communications between the contracting officer and the offerors who are still in the competitive range. See John W. Gracey -- Request for Reconsideration, Comp. Gen. Dec. B-228540.2, 88-1 CPD & 508, May 31, 1988. This portion of the protest is therefore dismissed.

Finally, with respect to Crane's allegation that one of the two offerors who is still in the competitive range is underbidding this contract because it is for sale, we note that this issue was rendered moot when the contracting officer awarded the contract to Genfare, since it was Rowe that was the subject of Crane's concern. Accordingly, we need not address this issue.

The protest is denied in part and dismissed in part.

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Office of Contracts and Property Law