



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Automation Management Consultants Incorporated
File: B-231978
Date: November 8, 1988

DIGEST

1. Where procuring agency presented the protester with several specific questions concerning deficiencies in its proposal during discussions and later rejected the proposal because the protester did not adequately answer these questions in its best and final offer, procuring agency conducted meaningful discussions. Agency properly led the protester into the areas of its proposal needing amplification, and is not required to conduct all-encompassing negotiations or provide preferred approach.
2. Procuring agency's decision to reject the protester's proposal as technically unacceptable was reasonable where the proposal did not meet several of the solicitation requirements. General Accounting Office will not substitute its evaluation of the proposal for the agency's, but rather will examine the agency's evaluation to ensure that it was reasonable and consistent with the evaluation criteria and procurement laws and regulations.
3. The United States Department of Agriculture Graduate School may compete in competitive procurements because of its unique status as a nonappropriated fund instrumentality.

DECISION

Automation Management Consultants Incorporated (AMCI) protests the award of a contract to the United States Department of Agriculture Graduate School (USDAGS), under request for proposals (RFP) No. RS-PER-88-364, issued by the Nuclear Regulatory Commission (NRC), for operation and maintenance of NRC's Information Technology Services Training Laboratory. AMCI contends that NRC did not conduct

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meaningful discussions, did not properly evaluate the merits of its proposal, and improperly awarded the contract to a federal agency at a substantially higher price than AMCI proposed.

We deny the protest.

NRC issued the RFP on February 22, 1988, to procure automated data processing training for its employees. The RFP specified evaluation factors and advised that award would be made to the responsible offeror whose technically acceptable proposal presented the most advantageous technical/cost relationship to the government. The RFP further advised that technical merit would be more significant than cost and reserved the right to accept other than the lowest offer.

On the March 30, 1988, closing date for the receipt of initial proposals, NRC received eight proposals. The contracting officer adopted the competitive range recommendation of the Source Selection Evaluation Panel (SEP), which evaluated proposals according to the RFP's evaluation criteria and determined that three proposals were technically unacceptable. The remaining five proposals, including AMCI's, were included in the competitive range. While AMCI's proposal was determined unacceptable as submitted, it was considered susceptible of being made acceptable through discussions.

NRC notified each offeror of the results of the initial evaluation by letter dated May 13, 1988 and for three offerors in the competitive range, specific questions concerning their technical proposals were included, establishing the basis for oral discussions. Discussions were held on May 19 and best and final offers (BAFO) were requested no later than May 26. All five offerors submitted BAFOs which were evaluated by the SEP on June 7. NRC conducted cost discussions with offerors on June 9 and requested a second round of BAFOs which were submitted on June 10. On June 13, the SEP recommended award to USDAGS as the only offeror determined to be technically acceptable. On June 17, NRC awarded the contract to USDAGS. NRC notified AMCI of the award and of the reasons why its proposal was not accepted by letter dated June 29.

AMCI contends that NRC did not conduct meaningful discussions because it failed to advise AMCI of the deficiencies which resulted in rejection of its proposal. We have held that the requirement for discussions with all responsible offerors whose proposals are in the competitive range includes advising offerors of deficiencies in their

proposals and affording them the opportunity to satisfy the government's requirements through the submission of revised proposals. Federal Acquisition Regulation §§ 15.610(c)(2) and (5) (FAC 84-16); Furno U.S.A., Inc., B-221814, Apr. 24, 1986, 86-1 CPD ¶ 400. However, we have rejected the notion that agencies are obligated to afford all-encompassing negotiations. All that is necessary is that agencies lead offerors into areas of their proposals needing amplification. See Jonathan Corp., B-230971, Aug. 11, 1988, 88-2 CPD ¶ 133.

NRC rejected AMCI's proposal as technically unacceptable because AMCI did not adequately address the RFP requirements for IDMS/R and RAMIS II Reporter (type of software) experience. AMCI's initial proposal indicated the qualifications of its proposed instructors in IDMS/R software by the insertion of an "x" on a skills matrix beside the proposed instructor's name. However, the section in the proposal designated for discussing instructors' experience did not discuss any experience in the software. Moreover, experience with the RAMIS II Reporter system and in IBM OS/MVS mainframes, also requirement under the RFP, were not marked on the matrix. Further, AMCI's proposal did not address the RFP requirements for experience in publishing a newsletter, nor did it provide a detailed plan for course modifications and development, which were the other reasons that NRC eventually rejected the proposal as technically unacceptable.

With respect to these deficiencies in AMCI's initial proposal, the contracting officer May 13 letter to AMCI included the following questions/comments for discussion:

- "(1) Who will be teaching each of the courses listed in section B.1 of the RFP and what are their experience and qualifications for doing so;
- (2) Please provide clarification regarding your qualifications for publishing a newsletter; and
- (3) Please indicate who will do course development and modification."

Thus, while AMCI argues that NRC did not advise it of the deficiencies in its proposal, these questions apprised AMCI of those weaknesses in its proposal which ultimately led to the rejection of its proposal. Therefore, we do not find that NRC failed to conduct meaningful discussions.

AMCI also argues that NRC did not properly evaluate the merits of its proposal in accordance with the RFP's listed

evaluation criteria. AMCI states that it proposed four instructors that were qualified to teach IDMS/R and RAMIS, and that each of these instructors possessed more than adequate experience and qualifications to teach NRC's mainframe classes. Further, AMCI contends that its proposed project manager was capable of publishing a quarterly newsletter, as was evidenced by the sample newsletter articles which it provided in answer to NRC's questions. AMCI further contends that it provided more than adequate information and support concerning who would perform course revisions by proposing that individual instructors would be responsible for making minor modifications during their non-teaching hours.

In reviewing an agency's technical evaluation, we will not substitute our evaluation of the proposal for the agency's; rather, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the evaluation criteria in the solicitation and the procurement laws and regulations. Moreover, the protester bears the burden of establishing that the evaluation was unreasonable, which is not met by merely disagreeing with the agency's judgment. See MacManus Security Systems, B-231105, July 21, 1988, 67 Comp. Gen. ____, 88-2 CPD ¶ 68.

AMCI's BAFO essentially repeated the format of its initial proposal and failed to identify any relevant experience with IDMS/R, IBM OS/MVS mainframes and the RAMIS II Reporter. Since the RFP specifically called for technical experience in IDMS/R, IBM and compatible microcomputers, and IBM OS/MVS mainframes, AMCI was properly downgraded for this deficiency.

AMCI indicated in its BAFO that the proposed project manager had the relevant experience and training in publishing a newsletter and furnished a two page publication as a sample. However, the SEP determined that the project manager's experience was minimal and, more significantly, that because AMCI proposed that the project manager would spend only approximately 5 percent of her time on the newsletter, the bulk of the task would be performed by individuals that were not designated in the proposal as having publishing experience. Thus, NRC reasonably gave AMCI a slightly improved but still low score in this area. Regarding course revisions, NRC reports that the SEP determined that AMCI had failed to adequately address the question of who would do course modifications and revision because AMCI only replied that its individual instructors would do minor course revisions, when not engaged in teaching. NRC states that because AMCI failed to state which instructor would be teaching which course, there was no way for the evaluators

to determine which instructor would revise which course, and whether that person was qualified to do so. Further, NRC contends that there is no reason to believe that an individual is fully qualified to prepare course revisions simply because the individual is teaching a course, and that a more senior person or specialist in the organization may be better qualified.

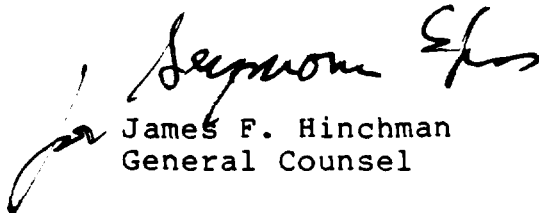
We do not find that NRC unreasonably evaluated AMCI's proposal. Although AMCI argues that its matrix identified the courses that each individual instructor was qualified to teach, and that it provided specific names and titles of hardware and software that each was experienced to teach, AMCI's proposal did not show that any of its proposed instructors were experienced in IDMS/R, IBM OS/MVS, and RAMIS II. In this connection, NRC reports that the degree of skill needed to master mainframe database management system software is appreciably greater than that needed to master off-the-shelf microcomputer programs, and therefore it did not regard AMCI's microcomputer experience as a satisfactory substitute.^{1/} AMCI has not established that NRC's evaluation of its proposal was unreasonable or improper, and we find that NRC properly rejected AMCI's proposal as technically unacceptable.

AMCI also argues that the award to USDAGS was improper because it is a federal agency, and that award was made at an excessive price, since AMCI's price was 34 percent lower. USDAGS is a nonappropriated fund instrumentality (NAFI), not a government agency. See 64 Comp. Gen. 610 (1984). NAFI's are generally recognized as being associated with and generally supervised by their respective government entities, here the Department of Agriculture. However, NAFI's operate without appropriated funds and are not paid by a government agency. USDAGS is not part of the Department of Agriculture, or any other federal agency, and it is

^{1/} AMCI also argues that IDMS/R was not listed as a teaching requirement or as a previously taught course contained in the RFP, and that of the 570 courses taught at the laboratory in the previous 4 years mainframes constituted only 2.3 percent. Thus, AMCI contends that NRC gave undue weight to the requirement for mainframe experience in the evaluation. We find no basis in the scoring to conclude that the SEP unreasonably evaluated this experience. Moreover, the RFP evaluation criteria specifically stated that this kind of experience would be evaluated. Therefore, to the extent that AMCI is challenging NRC's decision to evaluate mainframe experience, we find that the argument is untimely. See 4 C.F.R. § 21.2(a)(1) (1988).

funded through proceeds derived from its training courses and student tuition. Accordingly, we have concluded that obtaining services from USDAGS is tantamount to obtaining services from nongovernment commercial sources and, therefore, USDAGS may submit proposals under competitive procurements. University Research Corp., B-228895, Dec. 29, 1987, 87-2 CPD ¶ 636. Regarding USDAGS price relative to AMCI's price, since NRC properly concluded that AMCI's proposal was technically unacceptable, the fact that it was lower in cost is irrelevant. HSQ Technology, B-227935, Oct. 2, 1987, 87-2 CPD ¶ 329.

The protest is denied.



James F. Hinchman
General Counsel