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**Comptroller General
of the United States**

**United States Government Accountability Office
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Decision

Matter of: CliniComp, International

File: B-294059; B-294059.2

Date: July 26, 2004

L. James D'Agostino, Esq., Richard L. Moorhouse, Esq., David T. Hickey, Esq., and Natalia W. Geren, Esq., Greenberg Traurig, for the protester.
Judith A. Bonner, Esq., General Services Administration, for the agency.
Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's contention that its proposal was improperly excluded from the competitive range is denied where the decision to exclude the proposal from further consideration was based on findings that the proposal was technically unacceptable, and where the protester has not shown that those findings were unreasonable or inconsistent with stated evaluation criteria.

DECISION

CliniComp, International (CCI) protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. GS03T03R0022, issued by the General Services Administration (GSA) for commercial off-the-shelf pharmacy software (abbreviated in the record as RxCOTS) for the Department of Defense's (DOD) TRICARE Management Activity, with separate options for purchase by the Department of Veterans Affairs (VA) and the United States Coast Guard. CCI argues that its exclusion from the competitive range was improper because the agency reached unreasonable conclusions about several technical issues, miscalculated its past performance, and gave an unfair competitive advantage to a company that had participated in an earlier feasibility study.

We deny the protest.

The RFP here was issued on November 12, 2003, and sought offers of commercial off-the-shelf software to be integrated with an existing TRICARE medical software system called the Composite Health Care System II (CHCS II), which currently provides pharmacy capabilities for DOD. DOD and GSA anticipate that the RxCOTS

product purchased here will provide a single pharmacy system for all of DOD that will replace the multiple stand-alone systems currently in operation.

The RFP anticipated award of a fixed-price indefinite-delivery/indefinite-quantity contract, for a 1-year base period followed by up to nine 1-year options, to the offeror whose proposal presents the best value after evaluation in accordance with the stated factors. RFP, amend. 6, at 130. The stated technical evaluation factors were: technical approach, past performance, management approach, corporate experience, and personnel resources. The combined technical evaluation factors were considered “significantly more important than price.” *Id.* at 131.

Four firms, including the protester, submitted proposals by the due date of January 26, 2004, and all four proposals were evaluated by a technical evaluation team (TET). At the conclusion of the initial evaluation, the TET provided, by letter dated March 9, a nine-page analysis of perceived weaknesses or deficiencies in CCI’s proposal; this analysis identified 42 separate areas where the proposal either lacked sufficient information, or was unacceptable as written. Agency Report (AR), Tab 12. On March 17 and 19, the agency conducted negotiations with CCI, and the company was invited to submit a revised proposal, which it did on March 26.

Upon evaluation of CCI’s revised proposal, the agency concluded that the proposal remained unacceptable in three technical areas, as well as in the area of past performance, and offered an extremely high price in comparison with other offers. By letter dated April 29, GSA advised CCI that its proposal was being excluded from the competitive range. AR, Tab 21. This protest followed.

In challenging its exclusion from the competitive range, CCI argues that the agency reached unreasonable conclusions about its technical approach and past performance, and contends that the agency provided an unfair competitive advantage to an offeror who had participated in an earlier feasibility study.

The determination of whether a proposal is in the competitive range is principally a matter within the reasonable exercise of discretion of the procuring agency. In reviewing an agency’s evaluation of proposals and subsequent competitive range determination, we will not evaluate the proposals anew in order to make our own determination as to their acceptability or relative merits; rather, we will examine the record to determine whether the documented evaluation was fair, reasonable, and consistent with the evaluation criteria. *Ervin & Assocs., Inc.*, B-280993, Dec. 17, 1998, 98-2 CPD ¶ 151 at 3. As with any evaluation review, our chief concern is whether the record supports the evaluators’ conclusions. *Innovative Logistics Techniques, Inc.*, B-275786.2, Apr. 2, 1997, 97-1 CPD ¶ 144 at 9.

With respect to the three technical areas where its proposal was deemed unacceptable, CCI mounts a detailed challenge in each area. We have reviewed CCI’s arguments in each of these areas, and the agency’s responses--as well as the

underlying record—and we find no basis for concluding that any of the agency’s evaluation assessments were unreasonable. We set forth below, as an example, a discussion of one of the areas where CCI’s proposal was found unacceptable.

One of the most important technical requirements in this solicitation was that each offeror’s commercially-available software use an Oracle database. See RFP, amend. 5, at 91 (§ C.4.7.1).¹ In this regard, the RFP expressly identified gradations of importance for the technical requirements. Specifically, the RFP identified both functional requirements (§ C.4.6) and systems requirements (§ C.4.7) for the software, and divided both the functional and systems requirements into three groups, with Group I being more important than Group II, and Group II being more important than Group III. In addition to these groupings, the RFP identified certain requirements—spread across the groups—as critical. Critical requirements were identified on the solicitation’s Requirements Overview Form, referenced in section J (RFP, amend. 5, at 118) as Attachment 1 to the solicitation.² The requirement that each offeror’s RxCOTS software use an Oracle database was identified as a Group I functional requirement, and as a critical requirement on the Requirements Overview Form.

CCI’s initial proposal stated that its product “supports Oracle RDBMS version 9i through a CORBA interface,” AR, Tab 9, at 65, and also stated that the Oracle release date for its product was March 31. These statements led the evaluators to conclude that CCI’s proposal was inconsistent about whether or not it met the requirement. As a result, the agency advised CCI of the perceived inconsistency, and asked the company what database its commercially available product was using as of the January 26 proposal due date. AR, Tab 12, attach. at 6.

In answer, CCI’s revised technical proposal, submitted March 26, removed both the statement regarding the use of an interface to use Oracle, and the statement regarding the March 31 date. Instead, the revised proposal explained that its Oracle

¹ In section C of the RFP, the requirement at § 4.7.1 was stated as follows: “The RxCOTS product shall utilize an open database. DOD requires the RxCOTS to have an Oracle RDBMS.” The second amendment to the RFP included a question from a potential offeror asking the agency what it meant by “having an Oracle RDBMS.” In answer, the agency explained that “[t]he Government requires the RxCOTS product to use an Oracle database.” RFP, amend. 2, at 1 (emphasis added). For purposes of this decision, we will describe the requirement the same way as the agency did—i.e., that the system must use an Oracle database.

² Section L of the RFP also explained that “[a]ny proposal not meeting the requirements designated to be critical as part of their commercially offered product at the due date of the proposal may be rated unacceptable and may not be considered for award.” RFP, amend. 5, at 130.

product “has now reached the Alpha testing stage with the Beta to be complete by the timeframes indicated in the [RFP].” AR, Tab 16, at § C.4.7.1. Given this answer, the agency concluded that an Oracle database for CCI’s product was still in the testing phase and was not yet offered as part of its commercially-available product. Thus, the TET concluded that the proposal was unacceptable in this area.

In our view, the facts above speak for themselves. The RFP expressly advised that proposals of commercially-offered products must meet critical requirements to be found acceptable. RFP, amend. 5, at 130. CCI’s explanation that its Oracle-based product was still in testing was reasonably viewed as not meeting this requirement. In its arguments, CCI raises a number of challenges that in no way refute these facts, or establish that the agency’s conclusions about the facts were unreasonable.

For example, CCI argues that the agency wrongly concluded that offerors had to meet the requirement by the initial proposal due date, and urges that the date revised proposals were submitted should control. Even if we accept CCI’s contention—and we do not—the facts show that the company still had no commercially-available Oracle database by the March 26 due date for revised proposals. CCI also argues that as long as its product uses Oracle by the time of performance, its proposal should have been found acceptable. Again, we disagree. As the agency explained in its letter advising the company of its exclusion from further consideration for award, CCI’s failure to meet this requirement creates a high risk for the government. One of the purposes of government purchases of commercially-available equipment is to avoid the risks associated with buying applications that have not yet been tested by the rigors of the open market. Chant Eng’g Co., Inc., B-281521, Feb. 22, 1999, 99-1 CPD ¶ 45 at 4. In short, we see nothing about the agency’s conclusion in this area that was unreasonable.

Since we conclude that the agency reasonably found CCI’s proposal unacceptable for its failure to meet the technical requirements set out in the RFP, we need not address CCI’s challenge to the agency’s assessment of its past performance. Instead, we turn to CCI’s allegation that one of the other offerors had an unfair competitive advantage.

In a supplemental protest filed after receipt of the agency report, CCI argues that the outcome of the competition here shows that one offeror, GE Medical Systems (GE), had an unfair competitive advantage in this procurement as a result of its role in a Proof of Concept demonstration conducted to determine whether a commercially-available pharmacy software product could be successfully integrated with the existing CHCS II system. In support of its argument, CCI points to the fact that an RxCOTS product developed by BDM (which was subsequently acquired by GE Medical Systems) was used in this Proof of Concept demonstration, and that this procurement was initiated after the success of that testing. CCI argues that the evidence of an unfair competitive advantage is that only GE’s proposal remains in

the competitive range, that it was the only offeror whose proposal was found acceptable, and that it had the lowest pricing of the four offerors.

In our view, any challenge to GE's participation in this procurement should have been raised prior to the time set for the receipt of initial proposals, as required by the timeliness rules of our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(1) (2004). The record here shows that the impact of the earlier Proof of Concept demonstration on this competition was discussed at great length by the offerors and the agency. Specifically, a total of 11 questions and answers—questions 9, 22, 25, 26, 39, 40, 41, 42, 43, 44, and 46—dealing with whether GE/BDM would have an unfair advantage in this competition were set forth in amendment 5 to this RFP. The agency expressly advised potential offerors that GE would be allowed to participate in the competition (questions 22, 41), and that it had determined that GE would not have an unfair competitive advantage as a result of the prior demonstration (questions 25, 26, 39). Given that the agency clearly disclosed that GE would be allowed to compete, and would not be viewed as having an unfair competitive advantage, CCI was required to raise any challenge related to an unfair benefit accruing to GE by virtue of its prior participation before the time proposals were submitted. Central Texas College, B-245233.4, Jan. 29, 1992, 92-1 CPD ¶ 121 at 7-8.

To the extent that CCI is arguing that GE was given an unfair advantage during the evaluation—as opposed to arguing that it should not have been allowed to compete at all—the record does not support these contentions. Although the protester correctly points out that only GE's proposal remains in the competitive range, we note that all four offerors' proposals were included in the initial competitive range; all four were given the benefit of written and face-to-face discussions based on their initial proposals, and all four were allowed to submit revised proposals. It was only after evaluation of the second round of proposals that GE's proposal alone remained in the competitive range.

Also, despite its counsel's access to the evaluation materials pursuant to a GAO protective order, CCI has not shown that the evaluation conclusions here—which resulted in the inclusion of only GE's proposal in the competitive range—were unreasonable. After concluding that the deficiencies in the proposals of CCI and another offeror were so substantial that they could not be corrected, AR, Tab 20 at 11, the agency considered whether to seek a second round of revised technical proposals from a third offeror and GE. In making the determination to leave only GE's proposal in the revised competitive range, the agency did consider the fact that GE's prior experience in the earlier feasibility study meant there might be less performance risk to the government. Based on this conclusion, together with several other detailed reasons, the agency decided not to seek a second revised proposal from the third offeror. Id. at 12-13. In our view, the agency's limited consideration of GE's role in the earlier feasibility study as part of its assessment of performance risk as between GE and the third offeror in no way demonstrates that the evaluation was unreasonable. Finally, our review does not support CCI's suggestion that only GE

was in a position to offer reasonable prices. In fact, in several instances, other offerors proposed prices not significantly different from the prices offered by GE.³

The protest is denied.

Anthony H. Gamboa
General Counsel

³ Offerors were asked to calculate four separate prices for providing their RxCOTS product: one for providing the product to all three agencies; and three other prices for providing the product separately to DOD, VA, and the Coast Guard. For the record, under three of these scenarios, CCI's price was significantly higher than that of the other offerors; in one of them, CCI was more expensive than the lowest-priced offeror by a factor of 10. In the one instance where CCI was not the highest-priced offeror, it was the second highest-priced offeror.