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United States General Accounting Office
Washington, DC 20548

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Decision

Matter of: SWR Inc.

File: B-286161.2

Date: January 24, 2001

Benjamin M. Bowden, Esq., Albrittons, Clifton, Alverson & Moody, for the protester.
Robert A. Lincoln, Esq., Library of Congress, for the agency.
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DIGEST

Rejection of protester's proposal as unacceptable because it allegedly did not show specific required experience was unreasonable, where the proposal specifically represented that it had the required experience, the basis for the rejection was the omission of information concerning this experience in documents that were provided by the protester to the agency at a site visit for another purpose and which did not reasonably establish that the protester did not have the experience required, and the alleged deficiency was not identified to the protester during discussions.

DECISION

SWR, Inc. protests the rejection of its proposal and the award of a contract to Telex Communications, Inc. under request for proposals (RFP) No. S-LC00018, issued by the Library of Congress for the repair of talking book machines. SWR contends that the Library's evaluation of its proposal was unreasonable.

We sustain the protest.

The RFP provided for the award of a fixed-unit-price, indefinite-delivery/indefinite-quantity contract for the repair of talking book machines owned by the National Library Service for the Blind and Physically Handicapped for a base year with four 1-year options. The talking book machines, which were manufactured by Telex, are four-track, microprocessor-controlled, audio-cassette tape players that provide fully automatic playback of cassettes recorded using the Library's special track format. RFP § J.3, Service Manual. Offerors were informed that the Library estimated that 3,000 machines would be repaired and tested each year. RFP § C.3.1. Performance, design, and test requirements for the machines were also provided. RFP § J.1, Specification #102.

Offerors were also informed that an initial lot of machines would be delivered to the contractor within 30 days of contract award and that the contractor was required to deliver to the agency two "preproduction samples" of repaired machines along with quality assurance test procedures within 60 calendar days of receipt of the initial lot. After the agency's approval of the preproduction samples, machines needing repairs would be delivered to the contractor, which was expected to repair and ship machines "at a rate of approximately 300-400 [machines] per thirty (30) calendar days after receipt." RFP §§ F.3, F.4.

The RFP provided for award on the basis of a cost/technical tradeoff and informed offerors that the technical factors were more important than cost/price. The following technical evaluation factors were listed in descending order of importance:

Factor 1	Demonstrated ability to perform timely repairs in accordance with specifications as evidenced by successful past performance in component level repair of complex microprocessor-controlled electromechanical systems, including established quality control practices and procedures.
Factor 2	Adequacy of plant facilities, parts acquisition and control, storage capacity, and equipment, including test equipment and ESD control facilities.[1]
Factor 3	Managerial and/or corporate experience and qualifications of production personnel.

RFP § M. Instructions for the preparation of proposals were provided. Among other things, offerors were directed to describe their previous experience with component-level repair of complex microprocessor-controlled electromechanical systems, their quality control practices and procedures, their proposed repair facilities, and their complete list of equipment. RFP § L.7.

The Library received four offers, including SWR's offer of $[DELETED] million and Telex's offer of $2.21 million. SWR proposed to perform the contract at a dedicated facility it would set up at its company's headquarters with the proposed primary technical staff and equipment being totally dedicated to contract performance. SWR's Technical Proposal at 66-68. SWR's proposal specifically discussed its corporate and staff component-level repair experience. Id. at 11, 15-17, 19-22, 31-42.

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[1] "ESD control facilities" was not defined or discussed in the RFP, so the agency did not evaluate ESD compliance. Technical Evaluation Memorandum (Sept. 7, 2000) at 2.

Telex, the incumbent contractor, proposed to perform the contract using the production line and technical staff that originally built the machines. Telex's Proposal at 1.

SWR's initial technical proposal received [DELETED] of 240 possible points and was determined to be unacceptable but capable of being made acceptable through discussions. Specific evaluation concerns with SWR's proposal included the lack of detail in its quality assurance practices; an inadequate description of its proposed production facility; and insufficient details in its resumes concerning the employment history of proposed staff, including how long the staff had been with SWR. Technical Evaluation Memorandum (Sept. 7, 2000) at 2-3.

Telex's proposal received [DELETED] of 240 points and was determined to be acceptable. The evaluators noted Telex's successful past performance of the contract services and that Telex was proposing to continue contract performance at the same facility with the same personnel who had experience in the manufacture and repair of the machines. Id. at 1-2.

Discussions were conducted and revised proposals received. The Library then conducted on-site visits of the offerors' facilities. SWR was informed that the agenda for its site visit would include examining its proposed repair/test facility and "a current copy of your Quality Control Documentation (records of labor, parts used, test data certification) of equipment for servicing from incoming inspection to delivery/packaging/shipping. Equipment repair tracking log." Hearing exh. No. 6, Site Visit Topics; Hearing Video Transcript (VT) at 11:36. The contracting officer and the chair of the Library's evaluation board conducted the site visit at SWR's facility. At the site visit, SWR provided to the agency documents evidencing its current quality control system, as well as letters of intent for the staff it intended to employ and agreements for the purchase of equipment. Hearing exh. No. 7, SWR Documents.

After the site visit, the evaluators met to evaluate the proposal revisions. The evaluators concluded that SWR's revised proposal was not technically acceptable, primarily because the evaluators found that the documentation provided by SWR at the site visit (and in response to the agency's agenda) did not specifically show past performance of component-level repair of complex, microprocessor-controlled, electromechanical systems. VT at 16:17-18. The agency concluded that the "extent of the repair services provided [by SWR] were limited to board level and module swap repairs e.g. replacing computer mother boards, installing disk drives, and performing electromechanical adjustments such as mechanical switches and replacing belts." Technical Evaluation Memorandum (Sept. 25, 2000) at 1. The evaluators also expressed concern with SWR's quality control practices and procedures, noting that SWR does not have, nor does it plan to have, an [DELETED], and that SWR did not yet have in place a "production line repair facility" for the machines, noting that the absence of a "production infrastructure" created a risk of

service disruption. Id. at 1-2. SWR's proposal was thus found technically unacceptable, and award was made to Telex based upon that firm's technically acceptable offer. Id. at 2. This protest followed.[2]

SWR complains that the Library's evaluation and rejection of its technical proposal are unreasonable. Specifically regarding component-level repair experience, SWR argues that the Library misread the information provided by SWR at the site visit and ignored specific proposal language to improperly find that SWR did not have component-level repair experience. In this regard, SWR complains that the Library never identified its concerns with SWR's component-level repair at the site visit or during discussions. VT at 17:10-11. SWR contends that, if the Library had asked, it would have provided additional information showing its component-level repair experience. See VT at 17:04-10, 17:36-37 (testimony of SWR's vice president).

The Library disagrees that it ignored SWR's proposal representations regarding component-level repair experience, but states that based upon the documentation provided by SWR at the site visit the agency found SWR's proposal representations to be not credible. Specifically, the agency stated that SWR provided the Library with copies of work orders it had performed and that these work orders were for module replacement and not component-level repair work. Agency's Post-Hearing Comments at 3.

In reviewing protests challenging the evaluation of proposals, we do not conduct a new evaluation or substitute our judgment for that of the agency but examine the record to determine whether the agency's judgment was reasonable and in accord with the RFP evaluation criteria. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. In performing this review, we do not limit our review to contemporaneous evidence, but consider all the information provided, including the parties' arguments, explanations, and hearing testimony. Southwest Marine, Inc.; American Sys. Eng'g Corp., B-265865.3, B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56 at 10. However, although we consider the entire record, including the parties' later explanations and arguments, we accord greater weight to contemporaneous evaluation and source selection material than to arguments and documentation prepared in response to protest contentions. Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15.

Here, we do not find the Library's determination that SWR's proposal was unacceptable to be supported by the record or reasonable. As noted above, the primary basis for the agency's unacceptability determination was the Library's conclusion that SWR did not show experience in component-level repair of complex

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[2] Performance of Telex's contract was not stayed based upon the agency's written determination that urgent and compelling circumstances and the best interests of the government would not permit the agency to await our decision.

microprocessor-controlled electromechanical systems. See VT at 14:57, 16:17-18; Technical Evaluation Memorandum (Sept. 25, 2000) at 1-2. However, as argued by the protester, SWR's initial proposal represented that the firm and its proposed staff had significant component-level repair experience. For example, SWR identified a contract it had performed for the Department of the Army at Fort Jackson, South Carolina, under which it had performed component-level repair of automated data processing equipment. SWR Technical Proposal at 31. SWR also identified proposed staff with component-level repair experience. Id. at 18-22, 40-42. The record shows that the agency's evaluation committee accepted these representations, finding in its initial evaluation that SWR had sufficient component-level repair experience.[3] VT at 11:14-16, 11:54, 15:10-11, 15:28, 15:45, 16:07. In fact, the evaluation committee chair testified that he had no doubt that SWR's proposed staff could do the component-level repair work but that the site visit documents did not show component-level repair work.[4] VT at 12:15-17, 12:20.

The record establishes that the sole basis for the agency's decision not to accept SWR's proposal representations regarding its component-level repair experience of microprocessor-controlled electromechanical systems is that the documents provided by SWR at the site visit allegedly did not show this experience.[5]

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[3] The chair of the evaluation committee suggested at one point in his hearing testimony that the evaluators were always "concerned" with SWR's asserted component-level repair experience. VT at 11:11, 11:18. However, this concern was not documented in the evaluators' individual scoring sheets or the consensus initial proposal evaluation report, and another evaluator testified that he did not recall this concern arising at the time of the evaluation of initial proposals. VT at 15:09. The chair also admitted that SWR was not asked about its component-level repair experience during discussions. VT at 11:53-54. At another point in the chair's testimony, he stated that he and the other evaluators accepted SWR's representations and that this alleged deficiency was perceived as a result of the site visit. VT at 11:14-16, 11:49.

[4] Some of SWR's proposed technical staff with component-level repair experience were employed elsewhere and were proposed under letters of intent to accept employment with SWR, if SWR was awarded the contract. SWR states that if the Library had asked, it could have provided documentation from these proposed persons establishing their component-level repair experience.

[5] In response to the protest, the agency also provided a memorandum from its evaluators, asserting that the representations in SWR's initial proposal of component-level repair experience were implausible for a variety of reasons. See Memorandum of Technical Evaluation Committee (Oct. 30, 2000). This document, which was prepared in response to the protest, is not consistent with the contemporaneous evaluation record, which indicated no such reservations. All of the reasons given for the evaluators' conclusions would have existed prior to the site

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VT at 11:06-09, 12:10, 13:13-14, 15:45. SWR disagrees that these documents indicate a lack of component-level repair experience and points to several records it asserts involved component-level repair. See Hearing exh. 7, Tab 7, at 4, 7, 21; VT at 12:03-07. In this regard, the chair of the evaluation committee admitted that the documents were subject to some interpretation. VT at 12:03-04, 12:06. Apart from the parties' disagreement, we view as significant that these documents were not intended to show SWR's component-level repair experience, but were provided in response to the agency's request that SWR provide at the site visit "a current copy of [its] Quality Control Documentation." Hearing exh. No. 6, Site Visit Topics. The documents provided were copies of quality control inspection forms, service call logs, and customer questionnaires for past work SWR had performed at other places. The agency did not ask to see documents showing component-level repair, and there was no discussion at the on-site visit concerning SWR's component-level repair experience.[6] VT at 11:43, 11:57, 11:59-12:00.

Reading the record most favorably to the agency, we do not think that the documents provided at the site visit could alone form the basis for the rejection of SWR's proposal. Even assuming, arguendo, that the documents do not clearly show component-level repair experience, this does not demonstrate that SWR does not have the experience explicitly asserted in its proposal, given the purpose for which the documents were requested. While we think that the omission of this experience in the documents could properly raise concerns that the agency was entitled to consider, the agency should have raised this concern in discussions with SWR to ascertain whether the firm had the experience represented in its proposal.[7] See AAA Eng'g & Drafting, Inc., B-250323, Jan. 26, 1993, 93-1 CPD ¶ 287 at 6-7.

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visit, but the contemporaneous record and hearing testimony establish that the evaluators were not concerned with SWR's component-level repair experience until after the site visit. Thus, we give little weight to this post-protest evaluation, which was prepared in the heat of the adversarial process and may not reflect the fair and considered judgment of the agency. See Boeing Sikorsky Aircraft Support, supra, at 15.

[6] Present at the site visit were three proposed SWR staff members, including the project manager for this contract, whose resumes in the technical proposal indicated they had component-level repair experience; the agency admitted that it did not ask any of these individuals about their experience. VT at 12:00, 12:07, 12:27-28. The evaluation committee chair testified that he did not do so because he had "already seen their resumes." VT at 12:00-01.

[7] In defending the protest, the Library argues that a very general question asked during written discussion regarding SWR's past performance should have led SWR to provide the agency with more information concerning the firm's component-level repair experience. As noted above, however, SWR's component-level repair
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We also find unreasonable a number of the other reasons (which, in any event, the evaluators did not cite as primary reasons) asserted by the Library in support of its determination that SWR's proposal was technically unacceptable. Specifically, the evaluators expressed concern with SWR's quality control plan, noting that SWR had not proposed a [DELETED].[8] See Technical Evaluation Memorandum (Sept. 25, 2000) at 2; VT at 14:58. At the hearing, however, the chair of the evaluation committee and the other evaluator who testified stated that the RFP did not require a [DELETED], and that SWR's quality control plan was acceptable. See VT at 10:31, 12:45, 12:50-51, 15:00-03, 15:24, 16:09. In fact, the evaluator (who was identified by the committee chair as the quality control expert on the evaluation committee) stated that the lack of an [DELETED] was not a deficiency, but a weakness that would not disqualify SWR, and that this was "not a big deal." VT at 14:41-42, 15:03, 15:24, 15:43.

The evaluators also noted that SWR did not have an existing production line for the repair of the machines, which would prevent the firm from meeting the contract delivery requirements.[9] See Technical Evaluation Memorandum (Sept. 25, 2000) at 2.

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experience only became a concern to the evaluators after the site visit. Thus, this question could not have been intended to elicit information from SWR concerning its component-level repair experience. Moreover, the question is so general that it could not reasonably apprise SWR that it needed to provide further information regarding this aspect of its claimed experience. In this regard, discussions should be as specific as practical considerations will permit. See Biospherics, Inc., B-278278, Jan. 14, 1998, 98-1 CPD ¶ 161 at 6.

[8] The evaluation committee chair also expressed concern that, although SWR prepared an acceptable quality control plan custom-tailored to the repair of the machines, it was not a previously existing plan for an existing production line facility. VT at 10:23-24, 10:30, 13:02. The RFP, however, did not require offerors to have previously existing quality control plans to be considered acceptable, although the reasonable risks associated with a new quality control plan could properly be considered in the evaluation.

[9] There are other weaknesses listed in the agency's final consensus evaluation of SWR's proposal, for example, that the equipment proposed by SWR was sufficient to operate [DELETED]. The record does not establish that these other weaknesses would result in SWR's proposal being determined to be unacceptable. In this regard, the hearing testimony showed that the number of test stations necessary to perform the contract was dependent upon a particular offeror's approach, and the record does not contain a reasoned analysis as to whether SWR could perform with [DELETED]; in any event, this was stated to be a weakness in SWR's proposal and not a deficiency. VT at 15:31-33, 15:56.

As admitted by the evaluation committee chair and the other evaluator who testified, the RFP does not require an existing production line or that an offeror already have the equipment necessary to perform the contract. See VT at 12:35, 12:43, 13:12, 15:33. Rather, the RFP provided for the evaluation of offerors' proposals to provide production facilities. Here, SWR proposed existing dedicated space for the production facility and provided agreements it had with vendors to obtain required equipment. Although the agency suggests that SWR cannot establish its production line in sufficient time to satisfy the solicitation's delivery requirements, the record does not show that the agency reasonably analyzed during its evaluation whether SWR could establish its proposed production line facility in time to meet the required delivery schedule. Moreover, it was evident from the testimony provided by the evaluation committee chair that he did not know what schedule was required to meet the contract delivery requirements.[10] VT at 13.29.

In sum, we do not find that the agency has supported its determination that SWR's lower-priced proposal was technically unacceptable. Given [DELETED], we cannot say that SWR's proposal, if acceptable, would not be selected for award as a result of a reasonable cost/technical tradeoff. Accordingly, we sustain the protest.

We recommend that the agency reopen negotiations with the offerors, obtain revised proposals, and reevaluate proposals. If as a result of this new evaluation a firm other than Telex is selected for award, the contract awarded to Telex should be terminated and award made to that other firm. We also recommend that the protester be reimbursed the reasonable costs of filing and pursuing the protest, including attorney's fees. 4 C.F.R. § 21.8(d)(1) (2000). The protester should submit its certified claim for such costs, detailing the time expended and the costs incurred, directly to the contracting agency within 60 days after receipt of this decision.

Anthony H. Gamboa
Acting General Counsel

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[10] Evidence provided at the hearing belied other conclusions made by the agency concerning SWR's proposed facility. For example, the evaluators concluded from the site visit that SWR proposed to house the production line in a facility without climate control. See Technical Evaluation Memorandum (Sept. 25, 2000) at 2. SWR was not asked about the climate control at the firm's proposed facility, and, in any event, its proposed facility has a central heating and air conditioning system that has existed since the original construction of the building. VT at 17:15-16, 17:23-24; Hearing exh. 12, Pictures of SWR's Proposed Facility.