Protest of	)	Date: June 30, 1988
	)	
APEC TECHNOLOGY LIMITED	)	
	)	
Solicitation No. 104230-87-B-0077	)	P.S. Protest No. 88-23

DECISION

APEC Technology Limited (APEC) timely protests the award of a contract to Votrax, Incorporated (Votrax), for 50 Postal Answer Line Multifunction Voice Response Systems (MVRS) under Solicitation No. 104230-87-B-0077.[1/] The protester contends that the MVRS offered by Votrax does not meet the mandatory requirements of the solicitation, and that Votrax' proposal should have been rejected as technically unacceptable.

Request for Proposals (RFP) 104230-87-B-0077 was issued by the Office of Procurement, Headquarters, on June 11, 1987, with an offer due date of September 4 as extended by Amendment A04. It sought proposals for the delivery, installation, and maintenance of 50 MVRS' with an option for an additional 30 systems. The RFP requested both technical and price proposals. It provided, in Section B, Evaluation and Award Factors, page 13, that proposals which fail to address all mandatory requirements adequately would be considered technically unacceptable.

Section B.3.1.3.6.1, Availability, also stated that:

> All of the hardware and software proposed by the offeror shall be commercially available off the shelf.

The mandatory requirements for the MVRS, set forth at Section C.5, Purchase Description and Specification - Mandatory, stated, in pertinent part:

> C.5.1.a., paragraph 4: Each system shall be capable of call-forwarding any caller to any telephone number in the United States.

[1/] The MVRS is an integrated telephone answering system which allows callers to receive recorded messages regarding various postal products and services without the intervention of an operator.

> C.5.1.a., paragraph 6: A single system shall be capable of accommodating up to fifty telephone lines.
>
> C.5.1.a., paragraph 7: Each system shall be capable of providing a minimum of ten hours of audio storage, expandable to thirty hours of storage on a single system.
>
> C.5.1.b., paragraph 2(b): A caller must be able to select from messages based on DTMF [dual tone multi- frequency] signaling which varies from one to twelve digits in length.
>
> C.5.1.b., paragraph 2(f): An operator at the locally attached interactive terminal shall be able to change the flow of messages or programming logic of any application while the system is responding to calls on other lines.
>
> C.5.1.c., paragraph 7: The system shall be capable of simultaneous performance of at least two of the following seven operations: printing statistics, supporting an interactive terminal, message playback to callers, recording messages left by callers, transcribing messages left by callers, communicating with a remote computer, and updating or adding new messages for playback to callers.
>
> C.5.1.c., paragraph 12: The system shall be capable of simultaneously running up to fifteen applications; the limiting factors as to the number of applications shall be the number of telephone lines and the amount of storage.

Section J.4.1.4., paragraph a, Offeror Business Experience, stated:

> The offeror shall be able to identify and verify an installed customer base of similar systems over a period of three (3) years or longer.

Seven proposals were received and reviewed by an evaluation committee. Six, including the proposals of both Votrax and APEC, were found technically acceptable. Following the receipt of best and final offers, award was made to Votrax on March 28, 1988. This protest followed.

APEC raises three arguments against the award to Votrax:

1) The system offered by Votrax does not comply with Sections B.3.1.3.6.1 (off the shelf availability of hardware and software) and J.4.1.4., paragraph a (three-year customer base of similar systems).

2) Votrax and all other firms whose prices were lower than that of APEC have offered voice response systems based on "microcomputer" technology. Systems based on such technology cannot meet the mandatory requirements of the RFP. The system APEC proposes is based on "minicomputer" technology.

3) The technical evaluation of Votrax' proposal was improper and in violation of postal procurement regulations; the proposal should have been rejected as technically unacceptable.

On April 22, APEC filed a supplement to its protest, stating that under an agreement with Votrax, it had been permitted access to Votrax' technical proposal.[1/] Based on that review, APEC claims that the product offered by Votrax will not meet the requirements of Section C.5.1.a, paragraphs 4, 6, and 7; Section C.5.1.b., paragraphs 2(b) and 2(f); and Section C.5.1.c, paragraphs 7 and 12. A summary of these contentions, in functional terms, follows.[1/]

1) Votrax' system, the V5000, cannot meet the call-forwarding requirements of Section C.5.1.a., paragraph 4, and Section C.5.1.b., paragraph 2(b), since the controlling software is incapable of generating more than ten dual tone multi-frequency signaling tones.

2) The V5000 will not meet the requirements of Section C.5.1.a., paragraph 6, because the system's chassis is incapable of supporting the number of line cards necessary for fifty lines and for the attachments required to permit an operator to change the flow of messages or programming logic of an application while that application is running, required by Section C.5.1.b., paragraph 2(f).

3) The disk drive capacity (disk storage) of the V5000 is insufficient to support the ten hour (expandable to thirty hours) audio storage requirement of Section C.5.1.a, paragraph 7.

4) Votrax' VAST software will not permit a change in the mode of operation (e.g., a change to a recorded message) to be implemented at any time, as required by Section C.5.1.c., paragraph 7. Rather, the operation of the entire system must be suspended with a "pause" command before the mode of operation of any telephone line may be changed.

5) The V5000 also will not meet the fifteen applications requirement of C.5.1.c., paragraph 12; specifically, Votrax' software is incapable of supporting multi-tasking.

With respect to the evaluation of Votrax's proposal, APEC contends that the contracting officer should have found Votrax' proposal technically unacceptable; the proposal should not have been included in the competitive range.

[2/] In a separate agreement with APEC, the Postal Service agreed to suspend performance of the contract pending resolution of this protest.

[3/] Here, APEC's arguments include technical details relative to the precise design or configuration of Votrax' system. However, counsel for both parties have requested that we not disclose such data, since they are subject to a confidentiality agreement. We find that disclosure of the precise details of Votrax' voice system is not necessary. APEC's April 22 letter also includes a detailed discussion of the voice system it proposes under the RFP. Since the capability of APEC's MVRS is not in issue, we need not describe its system. Another issue which does not require discussion is APEC's initial contention that Votrax proposed to furnish systems incorporating IBM's discontinued AT personal computer. APEC withdrew this claim in its final submission.

In her report to this office, the contracting officer states that APEC's assertions in its protest and April 22 letter are simply incorrect, as Votrax' V5000 is technically compliant. She asserts that the Votrax product meets the off-the-shelf requirement as there are many commercially available sources for the system's components. Concerning experience, at least three references furnished by Votrax under Section J.4.1.4, paragraph a, were contacted; these customers stated that Votrax had installed similar systems over a period of at least three years with functional requirements equivalent to those contained in the RFP. At least two were said to be using the same basic system proposed.

Concerning the microcomputer/minicomputer issue, the contracting officer states that the RFP does not indicate which type of computer is required; rather, it merely provides that the vendor furnish a system meeting all the stated requirements. Furthermore, under APEC's own definitions of microcomputers and minicomputers (supplied in its April 22 supplement), its system is a microcomputer which uses a single sixteen-bit microprocessor. She notes that the technical evaluators consider the MVRS offered by APEC to be in the microcomputer family.

The contracting officer also asserts that Votrax' technical proposal was evaluated consistent with the evaluation criteria. Votrax met each of the specification's Section C requirements; she attached specific pages of Votrax's proposal as evidence of Votrax' direct responses to each requirement referred to by the protester in its protest and April 22 supplement. She asks that the protest be denied.

In a submission opposing the protest, Votrax, through counsel, contends that the distinction between minicomputers and microcomputers is pointless, since the RFP uses neither term and, more importantly, the terminology is irrelevant in today's automation market. Moreover, APEC's proposed system is based on a sixteen-bit processing card, the Motorola 68000 or 68010, and Votrax' system is also based on a sixteen-bit processor, the Intel 80286. Thus, APEC has established no basis for concluding that the Votrax system has a "smaller engine." APEC's contentions concerning the specific mandatory requirements noted in its protest and in its April 22 submission are said to be factually incorrect. Votrax gave specific responses in its proposal to every mandatory requirement, indicating how each would be met. At the time of award there was no information before the contracting officer suggestive of noncompliance. Votrax states that "[i]t is permissible, indeed inevitable," for the Postal Service to rely on an offeror's proposal in determining technical compliance, rather than seeking independent verification.

APEC and Votrax each submitted additional comments in response to the contracting officer's report. Counsel for both firms participated in an oral protest conference with this office pursuant to Postal Contracting Manual (PCM) 2-407.8 f (6). Summaries of these further explanations follow.

The protester asserts that the microcomputer/minicomputer distinction cannot be made simply by looking at the capacity of the central processing unit -- microcomputers may use eight, sixteen, or thirty-two bit microprocessors and minicomputers may use sixteen or thirty-two bit microprocessors. The distinctions APEC asserts in its protest concerning multi-tasking represent the proper differentiating means between the two

types of computers. APEC claims, however, that the central point of its protest is not microcomputer versus minicomputer. Rather, its main concern is said to be the contracting officer's selection of Votrax despite its technical proposal having failed to address sufficiently the mandatory requirements of the solicitation.

Votrax asserts that the system it proposes meets all mandatory requirements and that this will be demonstrated at the first article test, and urges that the protest be denied.

Discussion

APEC's protest essentially asserts that Votrax' MVRS is technically noncompliant, and that its proposal should be rejected as technically unacceptable. We will address the second issue first.

As a preliminary matter, as stated in Cohlmia Airline, Inc., P.S. Protest No. 87-118, April 13, 1988:

> Our bid protest forum, unlike a judicial one, is ill-suited to resolving factual disputes, as we cannot conduct adversary functions to any significant extent or degree. International Mailing Systems, Inc., P.S. Protest No. 84-13, April 27, 1984; Southern California Copico, Inc., P.S. Protest No. 83-76, March 5, 1984. In a factual dispute we adopt the contracting officer's position, absent sufficient evidence to overcome the presumption of correctness which attaches to the contracting officer's action. Harper's Ferry Properties, Inc., P.S. Protest No. 76-67, November 8, 1976; Alta Construction Co., P.S. Protest No. 85-2, February 26, 1985; Edsal Machine Products, Inc., P.S. Protest No. 85-84, January 29, 1986.

It is also well settled that the evaluation or scoring of proposals is the procuring activity's responsibility, and procuring officials have a reasonable degree of discretion in that regard. Cohlmia Airline, Inc., supra; See also Falcon Systems, Inc., et al., P.S. Protest Nos. 86-31, 86-33, and 86-35, July 25, 1986; F.R. and Lee Mackercher, P.S. Protest No. 85-45, September 17, 1985; Bray Studios, Inc., Comp. Gen. Decs. B-207723, B-207746, October 27, 1982, 82-2 CPD & 373. Our review of the technical evaluation of proposals is limited, Computer Systems & Resources, Inc, P.S. Protest No. 86-4, March 27, 1986; Chamberlain Manufacturing Corporation, P.S. Protest No. 85-83, February 14, 1986, and this office will not substitute its judgment for that of the evaluators or disturb the evaluation unless it is shown to be arbitrary or in violation of procurement regulations. H & B Telephone Systems, P.S. Protest No. 83-61, February 6, 1984. The protester bears the burden of proof in this regard. Cohlmia Airline, Inc., supra. Unsupported allegations or mere disagreement with the technical evaluators do not amount to evidence necessary to sustain a protest. See Concepts Office Furnishings, Inc., P.S. Protest No. 85-59, November 18, 1985; Garden State Copy Company, P.S. Protest No. 84-31, July 5, 1984.

APEC claims that Votrax' proposal fails to sufficiently address the Section C.5 requirements, specifically Sections C.5.1.a., paragraphs 4, 6, and 7, C.5.1 b., paragraph 2(b) and C.5.1.c., paragraph 7, and therefore should not have been included

within the competition range. We disagree.

Votrax' response to Section C.5.1.a, paragraph 4, states that its system is capable of call forwarding with CENTREX or an equivalent exchange and that call forwarding can occur at any time with a pre-defined tone input. Its response to Section C.5.1.b paragraph 2 (b), states that its application software includes the capability to permit "the caller to select from messages based on signaling varying from 1 to 12 digits in length," and details the means with which this is accomplished. These responses are sufficiently complete to manifest Votrax' compliance with these requirements.

Votrax' responses to Sections C.5.1.a, paragraphs 6 and 7, provide, in pertinent part, that the V5000 is capable of handling from two to fifty telephone lines simultaneously; that the line cards include four ports/line; that line expansion is in incumbents of two by means of a plug-in electronic board; that the V5000 has 160 megabytes of disc storage; and that the disk drive supports up to fifteen hours of audio storage. These responses reflect an understanding of the nature and scope of the technical requirements and obligate Votrax to furnish a product that complies with the cited provisions. Although it has been held that proposals which are verbatim restatements of solicitation requirements are unacceptable, see H & B Telephone Systems, supra, citing Roach Manufacturing Corp., Comp. Gen. Dec. B-208574, May 23, 1983, 83-1 CPD & 547, Votrax has responded to each requirement and has not simply stated that its product meets the specifications. See Carini's Inc., P.S. Protest No. 83-65, December 13, 1983.

Votrax' response to Section C.5.1.c., paragraph 7, is also sufficiently complete to manifest its compliance. The file indicates that Votrax' proposal was downgraded in a number of the areas objected to by the protester. The contracting officer and her technical staff determined, however, that Votrax' proposal was technically acceptable,[1/] and written discussions were held with Votrax in which several uncertainties, such as those involving the capabilities of the line cards, were resolved to the satisfaction of the contracting officer and the technical evaluators. We are unable to conclude that the determinations of the contracting officer were unreasonable or lacked a rational basis.

Concerning the technical noncompliance issue, on the record before us, APEC has also failed to establish that Votrax' voice response system cannot meet the technical requirements of the RFP. APEC's assertion that the system offered by Votrax does not meet the commercially available, off-the-shelf requirement has been sufficiently rebutted. The evidence reasonably establishes that the various components of the V5000 are off-the-shelf, commercially available items. The contracting officer has also stated that the responses from the references supplied by Votrax have shown that this firm meets the three-year customer base requirement of Section J.4.1.4., paragraph a. A protester has the affirmative burden of proving its allegations, and mere assertions, as here, will not satisfy this burden. CompuCom Security, P.S. Protest No. 86-20, May 9, 1986; Liberty Carton Company, P.S. Protest No. 85-35, July 30, 1985; NGC

[4/] As a general rule, the competitive range in a negotiated procurement consists of all proposals having a reasonable chance of being selected for award, including deficient proposals that are reasonably susceptible of being made acceptable through negotiations. Dwight Foote, Inc., P.S. Protest No. 87-90, September 28, 1987.

Investment & Development Corporation, d.b.a. Nieman Glass & Paint, Comp. Gen. Dec. B-194523, August 2, 1979, 79-2 CPD & 76; Rolair Systems, Inc., Comp. Gen. Dec. B-193405, November 9, 1979, CPD 79-2 & 345.

APEC's allegations concerning microcomputer versus minicomputer capabilities are not persuasive. The RFP does not require the use of any given computer or system configuration; rather, it states the requirements in functional terms.

APEC urges that Votrax' V5000 is incapable of multi-tasking, and so cannot run up to fifteen different operations simultaneously as required by Section C.5.1.c., paragraph 12. The explanations supplied by Votrax in its technical proposal and in the submissions filed during the course of the protest support its position, which is accepted by the contracting officer and the technical evaluators, that the V5000 is capable of accomplishing the simultaneous operations required by the specifications. This dispute is essentially a factual one encompassing the presumptions in favor of the contracting officer which the protester has failed to overcome. Cohlmia Airline, Inc., supra.

APEC also has not met its burden of proof with respect to its specific contentions concerning the Section C.5 requirements:

1) Sections C.5.1.a., paragraph 4, and C.5.1.b., paragraph 2(b). The protester claims that Votrax' system cannot meet the call forwarding requirement, because the system is incapable of generating twelve tones. The contracting officer and Votrax assert that this is not the case. APEC's assertions appear to be based, at least in part, on Votrax' descriptive literature for a voice response system other than the V5000. During discussions, the contracting officer asked Votrax to explain this matter. Votrax responded that it had supplied the other descriptive literature because literature for the V5000 was out of print, but that its proposal clearly described the V5000 and its adequate tone-generating capabilities, an explanation accepted by the contracting officer.

2) Section C.5.1.a., paragraph 6. The protester asserts that the line cards offered by Votrax are technically deficient in a number of respects. The basis of this dispute is whether the system chassis includes sufficient space (slots) for the cards. Based on our understanding of the documents and exhibits furnished by the contracting officer and Votrax, sufficient space is available. In any event, the protestor's unsupported claims do not establish that the alleged deficiencies exist. Cf. H & B Telephone Systems, supra.

3) Sections C.5.1.b., paragraph 2(f), and C.5.1.c., paragraph 7. These sections require the use of an operator terminal (e.g., for making changes to the recorded messages) while the system is active, and list seven functions which the system must be able to perform simultaneously. The gravamen of the protester's assertions in this regard is that Votrax' system must be placed in a "pause" mode for editing applications, as the program cannot be edited while the system continues to answer and process calls. The contracting officer and Votrax dispute these contentions. Again, the protester's claims and technical arguments are insufficient; Votrax' proposal and supporting documentation tend to support its contention that the V5000 will not require the use of the "pause" mode for editing applications, as changes to the messages can

be made while the system continues to process calls.
4) Section C.5.1.c., paragraph 7. The dispute with respect to this requirement (simultaneous operation of fifteen applications) involves the capabilities of a microcomputer compared to those of a minicomputer. The record before us is insufficient to support the protester's claim that Votrax' system will not perform the multi-tasking requirements of the RFP. Rather, based on the documentation supplied, Votrax' equipment appears to include the necessary hardware configuration and software capabilities to permit the simultaneous operation of various applications.

The protest is denied.

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

[checked against original JLS 2/24/93]