

PUBLIC VERSION
Office of Dispute Resolution for Acquisition
Federal Aviation Administration
Washington, D.C.

FINDINGS AND RECOMMENDATIONS

Matter: **Protest of PCS**
 Under Solicitation No. DTFA01-01-R-00022

Docket No.: **01-ODRA-00184**

Appearances:

For the Protester, PCS: Mark Cimino, Esq.

For the Agency Product Team: Diana R. Rabinowitz, Esq., FAA Office of Chief Counsel

I. Introduction

This Protest by PCS, filed with the Office of Dispute Resolution for Acquisition (“ODRA”) on April 30, 2001, challenges its downselection from the first phase of a three-phase procurement for replacement of Automated Flight Service Station Voice Switches (“AFSSVS”). The AFSSVS procurement is to replace all integrated communications switching systems with digital voice switching systems that have communications offloading capability. The Screening Information Request (“SIR”), issued on February 28, 2001, provided in Section M that downselect decisions could be made at any point during the evaluation process if the FAA concludes that the Offeror does not have a reasonable chance of receiving the award. On April 20, 2001, PCS was

informed that it had not been selected to proceed to Phase II of the procurement. PCS subsequently filed the subject Protest with the ODRA on April 27, 2001.

PCS' Protest asserts that (1) the SIR issued by the Agency Product Team on February 28, 2001 was deficient; and (2) that the Product Team's decision to downselect PCS from the competition lacked a rational basis, was arbitrary and capricious and not supported by substantial evidence. PCS also complained that the Product Team improperly refused to disclose to PCS source selection-sensitive information, *i.e.*, the names and submissions of all offerors responding to the SIR.

With respect to alleged deficiencies in the SIR, during the initial telephone scheduling conference held with counsel for the parties on May 7, 2001, the Director of the ODRA, on his own initiative, raised the issue of whether the PCS Protest was timely in accordance with ODRA Procedural Regulations 14 C.F.R. Section 17.1. Counsel for PCS was directed to show cause by no later than May 14, 2001, why that portion of the Protest challenging the SIR should not be dismissed as untimely. PCS filed its response on May 14, 2001. The Product Team filed its Agency Response to PCS' Protest on May 21, 2001, which included a reply to the objections raised by PCS. PCS' Comments to the Agency Response, filed on May 29, 2001, for the most part, objected to "numerous redactions and omitted material" from the Agency Response.¹

In light of PCS' objections, the ODRA, on its own initiative, issued a Protective Order on May 31, 2001, and provided PCS an opportunity to obtain access to that information. The ODRA directed PCS to the ODRA Procedural Regulation, at 14 C.F.R § 17.9, which sets forth the process under which a party may obtain access to protected information,

¹ As counsel for the Product Team correctly pointed out, the disclosure of this information generally is prohibited by the Procurement Integrity Act, 41 U.S.C. §423, the Freedom of Information Act, 5 U.S.C. §552, and the Trade Secrets Act 18 U.S.C. §1905. There is an established procedure for obtaining this type of material, namely by requesting and obtaining admission to a protective order issued by the ODRA. Without compliance with this procedure, PCS is entitled only to information relating to the evaluation of its own proposal, and none other. *See, e.g., Pikes Peak Family Housing v. United States*, 40 Fed. Cl. 673 (1998).

e.g., proprietary, confidential, or source-selection-sensitive material.² PCS did not apply for admission to the Protective Order by the date specified or subsequently. However, based on a review of the record, the ODRA found that pages 002186 – 002187 of Exhibit 17 and page 002196 of Exhibit 18 of the Agency Report should have been provided to PCS, since these pages contain information related solely and specifically to the evaluation of PCS’ own proposal. On June 8, 2001, the ODRA directed the Product Team to provide PCS with copies of the above-referenced pages. PCS submitted its comments with respect to those pages on June 15, 2001³, and the record in this matter then was closed.

For the reasons discussed herein, the ODRA finds any and all PCS Protest grounds challenging the adequacy of the February 28, 2001 SIR to be untimely and recommends that they be dismissed in accordance with 14 C.F.R. §17. The Protest ground that the Product Team’s decision to downselect PCS from the competition lacked a rational basis, was arbitrary and capricious and not supported by substantial evidence, similarly lacks merit. The ODRA therefore recommends that the Protest be denied.

² With respect to obtaining materials under a Protective Order, § 17.9(c) of the Procedural Regulation provides:

After a protective order has been issued, counsel ... appearing on behalf of a party may apply for access to the material under the order by submitting an application to the Office of Dispute Resolution for Acquisition, with copies furnished simultaneously to all parties. The application shall establish that the applicant is not involved in competitive decisionmaking for any firm that could gain a competitive advantage from access to the protected information and that the applicant will diligently protect any protected information received from inadvertent disclosure

Forms for applying for admission can be found on the ODRA website at <http://www.faa.gov/agc>.

³ The comments submitted by PCS stated no additional arguments or authorities in support of its position. Rather, PCS chose to rely on its previous comments and referenced alleged outstanding discovery requests. However, in the absence of admission to the existing protective order, PCS cannot, for the reasons stated herein, obtain “discovery” of proprietary, competition-sensitive or source selection information concerning its competitors.

I. Findings of Fact

1. The SIR for the AFSSVS procurement was issued by the FAA Product Team (“Product Team”) on February 28, 2001. The FAA contemplates an award of an Indefinite Delivery/Indefinite Quantity (IDIQ) contract. The duration of the AFSSVS contract was to be for ten years, consisting of two base years and four two-year option periods. AR, Exh. 12.

2. The AFSSVS procurement is being conducted through the following three-phase source selection process, intended to measure the capability of each Offeror to perform the effort required by the SIR:

Phase I:

- Formal evaluation of Technical and Management information, pre-existing product information and verification of record of sales.

Phase II:

- Formal evaluation of the Offeror’s Technical Proposal, Management Proposal and Subcontracting Plan and Past Performance Proposal.
- Formal evaluation of the Offeror’s Cost/Price Proposal.

Phase III:

- Formal assessment of the Offeror’s product during Operational Capabilities Testing.

AR, Exh. 12, L.4.0

3. The SIR advised Offerors that downselect decisions would be made based on those proposals deemed most likely to receive contract award and contract award would be made to the Offeror whose proposal provides the overall best value to the Government. Exhibit 12, SIR Cover letter and Section L.4.0. The cover letter to the SIR also notified Offerors that an amendment to the SIR was planned to incorporate an update to the System Specification. This update would address the Automatic Call Director

(ACD) requirements, which were in the process of being finalized.⁴ The cover letter also provided Offerors with a diagram of the AFSSVS Contract Award Schedule, describing Phase I as commencing with the SIR Release, followed by the receipt of Phase I packages, followed by the Phase I evaluation, and ending with the determination of which vendors would proceed to Phase II. AR, Exh. 12.

4. The SIR generally cautioned Offerors that:

Proposals must contain comprehensive, concise, factual information General statements that the Offeror understands the requirements of the work to be performed, or simple rephrasing or restating of the Government's requirements will not be considered adequate. Similarly, submittals containing omissions or incomplete responses to the requirements of this SIR, or that merely paraphrase the Statement of Work, or that use nonspecific phrases such as "in accordance with standard procedures" or "well-known techniques" will also be considered inadequate. Deficiencies of this kind will render the proposal non-responsive and may be cause for rejection of the offer.

AR, Exh. 12, L.11.0

5. With respect to Phase I, the SIR instructed Offerors to submit a package consisting of:

- An Executive Summary, Technical and Management Information proposal that addresses the areas outlined in paragraph L13.4, Part 3.
- Pre-existing documentation/brochures describing the product the Offeror intends to propose.
- Any "record of sales" that support the presence of the Offeror's product in the marketplace. System unit prices are required as part of this submittal. The government intends to verify this data.

⁴ The ACD requirements were not part of the evaluation criteria for Phase I of the procurement.

AR, Exh. 12, Section L12.0.

6. Offerors were further instructed to submit Phase I materials in a single Volume in accordance with the following table:

PART	CONTENTS	PAGE LIMITS
	Table of Contents	Not Restricted
Part 1	Executive Summary	2 pages
Part 2	Supporting Material – Product Information	Not Restricted
Part 3	Technical and Management Information	25 pages
Part 4	Record of Sales	Not Restricted

AR, Exh. 12, L12.2.

7. The SIR provided the following instructions for Phase I submittal:

L13.1 Table of Contents

Each Offeror shall provide within this volume a table of contents depicting what is contained in the volume as well as a listing of all acronyms used and a glossary of terms.

L13.2 Part 1: Executive Summary

Provide a concise narrative summary of the Phase I submittal, including significant risks, and a highlight of any key capabilities or unique features. Also describe how your offer provides benefits to the Government. Benefits are the advantages of the technical products and capabilities being proposed, with consideration given to the risk associated with the approach. You may identify specific proven capabilities that your organization brings to the AFSSVS effort by citing other projects or activities that have demonstrated your ability to perform.

L13.3 Part 2: Pre-Existing Product Information

Each Offeror shall provide within the Phase I volume pre-existing brochures and documentation that adequately describes the proposed product capabilities and applications.

L13.4 Part 3: Technical and Management Information

Each Offeror shall provide within this volume responses to the following areas of interest:

Product Capability

- System Overview – Provide a general overview of your voice switch and how the FAA could benefit from employing your voice switch.
- Operations – Describe the capabilities and attributes of your switch to support the requirements of this SIR, as outlined in the SOW and Specification, and how these features could be applied to the AFSS environment.

Production Capability

- Describe the management organization you intend to employ to implement the AFSSVS program. If possible, identify any intended key personnel such as the Program Manager.
- Production and Installation – Describe your production capacity and installation capability to produce and install your proposed product.

Life Cycle Support

- Supply Support – Describe your Supply Support capability including depot operations to support your product in an operational environment.

L13.5 Part 4: Record Of Sales

Each Offeror shall provide within this volume any “record of sales” that supports the presence of the Offeror’s proposed product in the marketplace. System unit prices are required as part of this Submittal. Provide three (3) references that the FAA can contact to verify sales and performance of the product. The Government reserves the right to verify this information.

8. Section M of the SIR entitled “Evaluation Factors for Award,” provided that advancement through the three phase source selection process would be based on an evaluation of all factors in relation to the stated evaluation criteria and that Offerors who did not proceed beyond Phase I as a result

of the evaluation proceedings would not be eligible to participate in Phase II. AR, Exh. 12, M1.0.

9. The SIR further advised Offerors that the FAA reserved the right to make down select decisions, based on the likelihood of receiving award, prior to an award decision and that these decisions would be made after receipt and evaluation of responses to the SIR. AR, Exh. 12, M2.2.

10. The evaluation process for Phase I is described as follows:

The Offeror's Phase I submittal will be evaluated based on the Offeror's proposed approach, understanding of the requirements and the proposed product's feasibility to meet the FAA's requirements. Based on this assessment, an adjectival rating will be derived for each of the factors specified below. Each factor will be rated as delimited in paragraph M4.0. An overall adjectival rating will be given to the Phase I submittal based on resulting factor evaluations. Judgment will be applied in the evaluation to derive the overall rating. Those Offerors whose submittals are rated as demonstrating a product and a capability that could most likely lead to a contract award will advance to Phase II.

AR, Exh. 12, M3.1

11. The following Phase I Evaluation Factors ("Areas of Interest") roughly track the items contained in the submittal instructions for Phase I (see paragraphs L13.4 and L13.5 above):

Product Capability

- System Overview – Degree to which employment of the Offeror's voice switch could benefit the FAA.
- Operations – Degree to which the Offeror's voice switch functionality could support the SOW and Specification requirements of this SIR and how these features could be applied to the AFSS environment.

Production Capability

- Degree to which the Offeror's proposed management organization has the potential to successfully manage all facets of the program.
- Production and Installation – Degree to which the Offeror's production capacity and installation capability could successfully meet the FAA's potential implementation schedule.

Life Cycle Support

- Supply Support – Degree to which the Offeror's Supply Support capability, including depot operations, could successfully support its product over its life cycle.

Record of Sales

- Degree to which the Offeror's product sales indicate acceptable product performance and maturity in the marketplace.

AR, Exh. 12, M3.1.1.

12. The SIR advises Offerors that the following adjectival ratings will be used in the evaluation process for Phase I:

RATING	DESCRIPTION
Excellent	The Offeror's response to the topic is comprehensive and demonstrates a thorough understanding of the full range of requirements and work effort. Few, if any, areas for improvement can be cited, all of which are minor. All aspects are addressed in a highly competent and logical fashion. The Offeror demonstrates that they exceed the stated requirements.
Good	The Offeror's response to the topic is fully acceptable and appropriately responds to the full range of requirements and work effort. The Offeror's response exceeds the requirements for the Satisfactory rating but does not quite meet the standards for the Excellent rating. A few minor deficiencies are noted and the level of detail, while acceptable, does not provide a comprehensive response.

Satisfactory	The Offeror's response to the topic is appropriate and addresses adequately the full range of requirements and work effort and, although there may be some areas for improvement, these areas are offset by strengths in other areas.
Marginal	The Offeror's response does not provide all requested information nor does the Offeror respond adequately to the full range of requirements and work efforts. The Offeror does not meet the requirements of the Satisfactory rating. Offeror's response is deficient in several areas with no corresponding offset in other areas.
Unsatisfactory	The Offeror's response to the topic is inadequate and does not demonstrate a satisfactory understanding of the requirements and work efforts and the proposal does not demonstrate the capability to support the Government's needs.

AR, Exh. 12, M4.0.

13. The adjectival rating scheme in Section M.4 of the SIR is detailed further in the Evaluation Plan so as to specifically apply to the "Area of Interest" being evaluated. [Deleted]. AR, Exh. 16.

14. PCS submitted its Phase I proposal by the due date of March 20, 2001. PCS's proposal for Phase I was evaluated by the Phase I Evaluation Team and received a rating of "[Deleted]" for each and every one of the evaluation's "Areas of Interest." The Team's evaluation of PCS' Phase I proposal is consistent with the Evaluation Plan's adjectival rating scheme. The Evaluation Team's findings are set forth below.

Areas of Interest	Evaluation
System Overview – Degree to which employment of the Offeror's voice switch could benefit the FAA.	[Deleted]
Operations – Degree to which the Offeror's voice switch	[Deleted]

functionality could support the SOW and Specification requirements of this SIR and how these features could be applied to the AFSS environment.	
Management Organization – Degree to which the Offeror’s proposed management organization has the potential to successfully manage all facets of the program.	[Deleted]
Production and Installation – Degree to which the Offeror’s production capacity and installation capability could successfully meet the FAA’s potential implementation schedule.	[Deleted]
Supply Support – Degree to which the Offeror’s Supply Support capability, including depot operations, could successfully support its product over its life cycle.	[Deleted]
Record of Sales – Degree to which the Offeror’s product sales indicate acceptable product performance and maturity in the marketplace.	[Deleted]

15. After being briefed by the Phase I Evaluation Team, the Source Evaluation Board recommended to the Source Selection Official that PCS be downselected from the competition. The SSO concurred with that recommendation. Subsequently, on April 20, 2001, by letter, the Contracting Officer informed PCS that it had not been selected to proceed

to Phase II of the procurement. The letter outlined the Evaluation Team's findings above and advised PCS that, taken in the aggregate, they indicated that PCS was not most likely to receive an award. AR, Exh. 19 - 21.

III. Discussion

1. Deficiencies In The SIR

The ODR Procedural Rules provide that protests based upon alleged improprieties in a SIR that are apparent prior to the time set for receipt of initial proposals shall be filed prior to the time set for receipt of initial proposals. 14 C.F. R. § 17.15(a) (1). PCS alleges that the SIR was incomplete and failed to include a "number of requirements" of the AFFVS. Protest ¶ 8. PCS also argues that no decision as to Phase I evaluation could be made if the SIR was not complete. Protest ¶ 10 and ¶ 25. Although the SIR did not state the requirements for ACD, the omission of these requirements was evident on the face of the SIR, and was mentioned in the cover letter transmitting the SIR. Finding of Fact ("FF") 3. PCS therefore was required to protest this issue prior to the due date for Phase I proposals.⁵ It failed to do so, opting instead to respond to a SIR that it now alleges was defective.

PCS further contends that the SIR failed to set forth sufficient objective criteria by which the Phase I submission would be evaluated. Protest ¶¶ 26, 27, and 28. The SIR clearly identified the evaluation criteria to be used in evaluating Phase I proposals. FF 11 and 12. To the extent that PCS perceived that the Phase I evaluation criteria lacked objectivity, that fact also would have been evident on the face of the SIR and could only have been protested before the date when proposals were due. Again PCS failed to timely protest this alleged defect.

⁵ The ability of Offerors to satisfy the ACD requirements was not evaluated in Phase I of the procurement. FF 3, 5, 7, 11 and 14.

Accordingly, PCS' Protest grounds that the SIR was deficient, *i.e.*, that the SIR was incomplete and the evaluation criteria lacked objectivity, are untimely and must be dismissed. *See Protest of Bel-Air Electric Construction, Inc.* 98-ODRA-00084; *Protest of Raisbeck Commercial Air Group, Inc.*, 99-ODRA-00123; *Protest of Aviation Research Group/U.S., Inc.*, 99-ODRA-00141 (time limits for filing a protest are strictly enforced).

2. Downselection Of PCS

In accordance with the ODRA Procedural Regulation, 14 C.F.R. Part 17, and the AMS, in the context of resolving bid protests, the ODRA will not recommend that the Administrator overturn Agency actions that have a rational basis, are neither arbitrary, capricious, nor an abuse of discretion, and are supported by substantial evidence. *Protest of Computer Associates International, Inc.*, 00-ODRA-00173, citing *Protests of Information Systems & Networks Corporation*, 98-ODRA-00095 and 99-ODRA-00116, *aff'd* 203 F.3d 52 (D.C. Cir. 1999); and *Protests of Camber Corporation and Information Systems & Networks, Inc.*, 98-ODRA-00079 and 98-ODRA-00080 (Consolidated). If FAA Product Teams in "best value" procurements make source selection decisions in consonance with the FAA's Acquisition Management System ("AMS") and specified Solicitation evaluation and award criteria, the ODRA will not substitute its judgment for theirs. *See Protest of Information Systems & Networks Corporation*, 99-ODRA-00116.

PCS generally alleged that the actions of the Product Team did not have a rational basis, were arbitrary, capricious, or unreasonable and constituted an abuse of discretion. Protest ¶¶ 31, 32, and 33. However, during the course of the Protest proceedings, PCS did not substantively attack the facts material to the Product Team's downselection decision or its rationale. PCS utterly has failed to meet its burden of proof in this case. The Product Team's rationale for the downselection

of PCS is well articulated, highly rational, and bears no arbitrary or capricious characteristics.

In its Protest, PCS alleges that in Phase I Offerors were to provide a “summary description of capabilities.” Protest ¶ 5. The record shows that with respect to this “summary description of capabilities”, the SIR clearly identified the information to be provided and how that information would be evaluated. FF 7, 11 and 12. The SIR also advised Offerors that they could be subject to a downselection decision if they failed to provide a comprehensive and complete proposal fully addressing the requirements for the Phase I proposal. FF 3 and 4. In particular, for Phase I proposals, the SIR specifically instructed Offerors to demonstrate how their proposed product could benefit the FAA, support the requirements of the SIR and apply in the AFSS environment. FF 7. The SIR instructed Offerors to describe in the Phase I proposal their management organization, production capacity and installation capability with respect to the proposed product. The SIR also requested that Phase I proposals demonstrate the presence of the proposed product in the marketplace by providing a record of sales. FF 11.

PCS’ Phase I proposal provided in many instances [Deleted] responses in response to the evaluation topics identified in Section L.13 of the SIR. AR, Exh. 14; FF 14. The Evaluation Team found, *inter alia*, that PCS’ proposal [Deleted]. FF 14.

The ODRA finds that the Evaluation Team’s conclusions were drawn directly and rationally from the contents of PCS’ proposal and made in accordance with the stated evaluation criteria in the SIR and Evaluation Plan. FF 14. The downselection decision, which was based on the evaluation results, likewise was rational, particularly in light of the fact that PCS was the only Offeror that received a rating of [Deleted] for every evaluation “area of interest,” and, as such, was not likely to receive an award. FF 9. Accordingly, the ODRA finds meritless

PCS' allegations that the actions of the Product Team lacked a rational basis, were arbitrary, capricious, or unreasonable or constituted an abuse of discretion.

IV. Conclusion

For the reasons set forth above, the ODRA recommends that PCS' first ground of Protest be dismissed and that its second ground of Protest be denied.

/s/

Marie A. Collins
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Office of Dispute Resolution for Acquisition

APPROVED:

/s/

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