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United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Cybernet Systems Corporation

File: B-292600

Date: September 30, 2003

Charles J. Jacobus for the protester.
Dinah Stevens, Esq., Administrative Office of the United States Courts, for the agency.
Linda S. Lebowitz, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably rejected the protester's proposal as technically unacceptable where the firm failed to provide in its proposal required hardware and third-party software certifications.

DECISION

Cybernet Systems Corporation protests the rejection of its proposal as technically unacceptable under request for proposals (RFP) No. USCA-03-R-0045, issued by the Administrative Office of the United States Courts for Linux operating system and associated software (referred to as "Linux distribution," RFP § C.4, at 4) and technical assistance and support. Cybernet argues that its proposal was unreasonably rejected as technically unacceptable.

We deny the protest.

The RFP was issued on May 21, 2003, and contemplated the award of an indefinite-delivery/indefinite-quantity contract for the base period and six 1-year option periods. The RFP contained requirements for hardware and third-party software certifications. With respect to the hardware certification, the RFP stated that the

> Linux distribution supported by this contract will be run on hardware
> procured via a separate procurement vehicle. The Contractor must
> certify that HP [Hewlett Packard] supports the Contractor's Linux
> distribution on the following [six identified] platforms . . . .

The Contractor shall also support these platforms and configurations on the offered Linux distribution.

HP-Contractor support of the Linux distribution in this context means that the Linux distributor has made reciprocal arrangements with HP so that the Linux distributor and HP will work together to resolve any operating system/hardware problems.

RFP § C.4.1.3.1, at 5-6.

With respect to third-party software certifications, the RFP stated that the

applications developed by the Judiciary depend on several third-party products. The Contractor shall demonstrate that the following list of [eight] independent software vendors have obtained certifications for, and support their products under, the Linux distribution being offered.

RFP § C.4.1.3.2, at 6.

The RFP instructed that an offeror "shall provide [in its proposal] the certifications required in Section C.4.1.3." RFP § L.3, at 37.[1] The RFP further stated that proposals would be evaluated for technical compliance, technical excellence, and price. As relevant here, under the technical compliance evaluation factor, the RFP provided that an offeror's proposal would be evaluated for full compliance with the RFP's minimum mandatory requirements; for a proposal to be considered technically compliant, the RFP mandated that the offeror provide in its proposal all required certifications. RFP § M.1, at 43.

Cybernet proposed a "[specific name omitted] Linux operating system product (software distribution) with updates and technical support . . . meeting all of [the agency's] requirements." Cybernet Technical Proposal at 3. Regarding the RFP's hardware certification, Cybernet stated that the

Linux distribution supported by this contract will be certified by Cybernet to run on hardware procured via a separate procurement vehicle. Cybernet certifies that HP . . . models [as listed in the RFP] support the [Cybernet proposed] Linux distribution . . . .

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[1] Amendment No. 2 permitted an offeror up to 2 weeks from the proposal closing time to submit any third-party software certifications not in its possession at the closing time. To the extent Cybernet believes that this amendment, for example, gave an unfair competitive advantage to any particular competitor, there is no evidence in the record to support Cybernet's speculation.

[Cybernet's proposed Linux operating system] will be fully tested and supported on these platforms and configurations.

A Cybernet--HP reciprocal arrangement will ensure that [Cybernet's proposed Linux operating system] and HP work together to resolve any operating system/hardware problems.

Id. at 8, 17.

Regarding the RFP's third-party software certifications, Cybernet stated that it

has made arrangements with an Ann Arbor local teammate, [Company A], to support the third party middleware products called for in the [RFP]. [Company A] is partnered with [12 specified vendors] for enterprise web-based applications. Furthermore, Cybernet has direct relationships with [4 specified vendors] to support their products on [the specific type of] platforms [proposed by Cybernet] and to assure that [Cybernet's proposed Linux operating system] works smoothly with these vendors' products. Cybernet will leverage [Company A's] relationships with [5 specified vendors] to support these products.

Id. at 9, 17.

The agency evaluated Cybernet's proposal as technically noncompliant, i.e., technically unacceptable, for failing to provide the certifications required by the RFP, as described above. In this respect, while Cybernet self-certified and/or offered to certify that the specified HP hardware supports its proposed Linux operating system, Cybernet did not demonstrate in its proposal that it had made any reciprocal arrangement with HP as required by the RFP. Furthermore, while Cybernet offered assurances that it and its teammate, Company A, have relationships with the specified third-party software vendors, Cybernet did not demonstrate, as required by the RFP, that these vendors have obtained certifications for, and support their products under, the particular Linux operating system proposed by Cybernet. For these reasons, the agency rejected Cybernet's proposal as technically unacceptable, advising the firm that its proposal would no longer be considered in this competition.

Cybernet challenges the evaluation and subsequent rejection of its proposal as technically unacceptable.

In reviewing an agency's decision to exclude a proposal from further competition, we review the agency's evaluation of proposals to determine whether the evaluation was reasonable and consistent with the terms of the solicitation. Essex Electro Eng'rs, Inc., B-284149, B-284149.2, Feb. 28, 2000, 2000 CPD ¶ 72 at 6. An offeror must submit an initial proposal that is adequately written and that establishes its merits, or run the risk of having its proposal rejected as technically unacceptable. An agency

may exclude a proposal with significant informational deficiencies from further consideration whether the deficiencies are attributable to omitted or merely inadequate information addressing fundamental factors. Generally, a proposal that is technically unacceptable as submitted and would require major revisions to become acceptable is not required to be further included in the competitive selection process. LaBarge Prods., Inc., B-287841, B-287841.2, Aug. 20, 2001, 2001 CPD ¶ 177 at 2.

Here, in order for a proposal to be evaluated as technically compliant, the RFP mandated that an offeror provide in its proposal the hardware and third-party software certifications as described in the RFP. With respect to the hardware certification, Cybernet does not dispute that its proposal lacked the reciprocal arrangement with HP as called for by the RFP. As a result, and consistent with the terms of the RFP, this omission reasonably rendered Cybernet's proposal technically noncompliant with the terms of the RFP. To the extent Cybernet points to language in its proposal where it self-certifies or "guarantees" compliance with the RFP's technical requirements, we note that this language basically reflects a "parroting" back of the RFP language itself, which does not comport with the RFP's specific requirement for a reciprocal arrangement with HP. With respect to the third-party software certifications, by amendment, the agency permitted an offeror to submit these required certifications up to 2 weeks after the proposal closing time. Cybernet does not dispute that while it discussed in its proposal the relationships that it and its teammate have with specified third-party software vendors, Cybernet did not furnish the requisite software certifications as called for by the RFP and the amendment. Again, consistent with the terms of the RFP, Cybernet's failure in this regard reasonably rendered its proposal technically noncompliant. For these reasons, we have no basis to object to the reasonableness of the agency's rejection of Cybernet's proposal as technically unacceptable.

Finally, for the first time in its submissions filed with our Office, Cybernet references various websites and printouts for HP and the software vendors as evidence that its proposed Linux operating system will comply with the requirements of the RFP. Even assuming, arguendo, that these items support Cybernet's position of compliance, this information was not included within the four corners of Cybernet's proposal and, as a result, was not evaluated by the agency. Because Cybernet did not furnish in its proposal all of the information required by the RFP, Cybernet must suffer the consequences of its failure in this regard, that being the agency's determination to reject its proposal as technically unacceptable. Chek F. Tan & Co., B-277163, Sept. 8, 1997, 97-2 CPD ¶ 66 at 5.

The protest is denied.

Anthony H. Gamboa
General Counsel