



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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December 11, 1973

Data Dynamics, Incorporated  
13135 Ventura Boulevard  
Studio City, California 91604

Attention: Mr. M.P. Hayman, Manager  
Western Operations

Gentlemen:

We refer to your letter dated October 16, 1973, and prior correspondence, protesting against the award of a contract under request for proposals (RFP) No. DAAH01-73-R-1052, issued by the United States Army Missile Command (MICOH), Redstone Arsenal, Alabama, to any firm other than Data Dynamics. For reasons discussed hereinafter, your protest is denied.

The RFP was issued on April 27, 1973, to seven prospective offerors for procurement of documentation of the Tactical Air Defense Computerized Operational Simulation (TACOS) Model II.5. The required documentation consisted of an Executive Summary, a Programmer/Analyst Manual, and a User/Planner Manual. Four firms submitted firm fixed-price offers on or before the closing date of May 11, 1973, as follows:

Braddock, Dum and McDonald (BDM)	\$158,603.00
Armanent Systems, Inc. (AST)	298,834.00
Data Dynamics, Inc. (DDI)	71,166.00
Software Research (SR)	24,468.75

On May 18, 1973, the Technical Evaluation Committee began evaluating the proposals and returned its findings to the contracting officer on May 25, 1973. The proposals submitted by BDM and ASI were found to be technically acceptable, while the proposals submitted by SR and DDI were found to be technically unacceptable. However, negotiations were conducted with all offerors on June 4 and 5, 1973. The contracting officer advised DDI of the deficiencies and, according to the administrative report, went "into great detail to make the protestant understand the requirements of the Technical

[Protest of Technical Proposal Evaluation]  
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B-179118

Requirement." The contracting officer then gave DDI an opportunity to revise its proposal so that it might meet the technical requirements.

In submitting its best and final offer on June 12, 1973, DDI included revisions to its initial technical proposal. However, the Technical Evaluation Committee again concluded that the proposal was still technically unacceptable. Upon completion of the technical and cost analysis, BDM was awarded a contract.

First, you assert that you did submit a technically acceptable proposal and that since your offer was \$67,377,00 less than BDM's offer, your firm should have received the award. You state that your proposal should have been acceptable since you discussed each of the items required in the RFP "in more than sufficient detail to assure the reader" that you intended to satisfy the requirements.

In this regard, the Army states in a supplemental report dated October 1, 1973, as follows:

"1. When the protestant finally addressed the requirements of the Technical Requirement, after having had the deficiencies of his initial proposal pointed out during negotiation, he proposed to the requirement for an English Language Detailed Description of each Computer Program, Subprogram, or Manual Procedure representing a Military Action or Interaction, by stating that he would provide English Language Detailed Description of the 'more important' simulation models, thereby reserving unto himself the right to determine which requirements were more important, which he would deliver, and which he would exclude. This proposal, had it been accepted, would have usurped the Government's right to determine its own requirements. In its revised and final proposal to the documentation requirement for each subroutine, paragraph 2.1.2(n), there is no direct or indirect offer to provide the requirements of the above cited paragraph.

"2. The protestant's final offer wholly failed to treat or to state that it would provide a description of the different ways in which the model treats and handles input variables as a function as to: (1) fully passive air defense system; (2) command guided air defense system; and (3) semi-active air defense systems. The protestant's proposal was completely silent in these areas."

B-179118

You state that you offered, "in a unique way," to meet the English language detailed description of the technical requirement and you set forth this method in your letter of August 3, 1973, to our Office. You state further that you "find it hard to believe" that this method did not satisfy the requirement. However, while MICOM admits that you were the only competing firm that proposed such a concept, it states that your method "in no way relates to the English Language Detailed Description for Each Program, Subprogram, or subroutine, and Manual Procedure representing a Military Action or Interaction."

You also state that your treatment of the program inputs, by including a description of each subroutine, was thorough and that MICOM's conclusion that your proposal was completely silent in these areas is erroneous. In this regard, MICOM states that the description list did identify all the input variables; however, it completely failed, as required, to describe the different ways in which the model treats and handles the pertinent input variables.

We have consistently held that a determination of whether a proposal is technically acceptable is a matter of administrative judgment which we will not disturb absent a clear showing that the agency acted arbitrarily or unreasonably. 52 Comp. Gen. 382 (1972); 48 Comp. Gen. 314 (1968). Since it appears from the record that in your final proposal you reserved the right to exclude certain requirements which you considered not to be important, and since, in addition, the evaluators found that your proposal did not address certain specific requirements of the specifications, we cannot conclude that the evaluation of your proposal was arbitrary or unreasonable. Although you strongly dispute the conclusions with regard to these deficiencies, we see no basis for finding them erroneous.

You also contend that the contracting officer failed to provide equal information to all offerors, as required by the RFP. You state that BDM had in its possession TACOS documentation which you requested but were told did not exist. Therefore you conclude that the procurement must be cancelled.

While MICOM acknowledges that it had in its possession certain reports which dealt with TACOS it states that these reports would have been of no benefit to the prospective offerors since they

B-179118

pertained to other TACOS models, not the TACOS II.5, which is the model with which the instant procurement is concerned. Furthermore, it is reported that the information which you state was in BDM's possession was generated by BDM, at its own expense, not under a Government contract, and dealt solely with the TACOS II.4 model.

Consequently, we cannot conclude that MICOM was arbitrary in refusing to distribute certain reports which it considered to be useless information to prospective offerors or that all offerors were not provided by MICOM with equal information relative to the TACOS II.5. While BDM undoubtedly had documentation not possessed by the other offerors, this resulted from its performance of previous TACOS contracts and not from any preferential treatment by the Government.

You also contend that the MICOM failed to comply with Section D, Evaluation and Award Factors, paragraph 3, of the RFP. That section referred to the selection guidelines set forth in the Armed Services Procurement Regulation (ASPR), sections 3-805.2 and 4-106.4. You state that MICOM's reference to ASPR 3-805.2 was erroneous since it pertains solely to cost-reimbursement type contracts and not to the type of contract in question.

MICOM admits it erred by including the reference to ASPR 3-805.2 in the solicitation. However, we agree with the legal analysis MICOM submitted to our Office which states that "There is no way in which the protestant could have been misled by the inclusion of ASPR 3-805.2 \* \* \* to their detriment \* \* \* " since the solicitation showed clearly the evaluation factors to be used and their relative weights as follows:

"3. The factors to be considered in evaluating the offerors' proposals are set forth below in descending order of importance. It should be emphasized that this action is strictly a research and development program and the anticipated end item is the obtaining of the most advanced scientific technology and highest competence in this field. Under these circumstances and considering the guidelines described in ASPR 3-805.2 and 4-106.4, it is necessary that the foremost consideration be given to the technical aspects rather than other

B-179118

factors in the selection of the contractor. The scoring system which has been established for evaluating responsive offers is such that the number of points an offer must earn to be considered acceptable is greater for 'Technical Considerations' than for 'Organization, Personnel, and Facilities Considerations' or 'Cost Considerations.' In the same manner, the minimum score for 'Organization, Personnel, and Facilities' is greater than that for 'Cost Considerations.' However, although 'Cost Considerations' is of less significance than the other two factors, it is essential that the offeror supply a proposal which is based on credible cost information."

Finally, you state that the award to BDM appears to violate ASPR 4-106.4, which provides in part that " \* \* \* awards should not be made for research or development capabilities that exceed those needed for the successful completion of the work." You further state that the dollar difference between DDI's proposed price and the contract price is sufficient evidence of this apparent violation. We disagree.

While the fact that BDM's proposed price was much greater than DDI's may suggest that MICOM purchased excess capabilities, it may also suggest that DDI's proposal was completely inadequate and unacceptable. It certainly is not conclusive evidence of either. Furthermore, the RFP specifically stated that the Army wanted to obtain "the most advanced scientific technology and highest competence in this field." Although you state, "Documentation is largely a mechanical task and should not require the 'highest competence in this field,' \* \* \* ", we believe that the necessary degree of competence and technology is to be best determined by the Army and not by our Office.

Accordingly, there is no basis for our Office to disturb the award to BDM.

Sincerely yours,

Paul G. Daubling

For the

Comptroller General  
of the United States