

DECISION



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

FILE: B-185018

DATE: July 13, 1976

MATTER OF: Energy Research Corporation

DIGEST:

1. Rejection of proposal as technically unacceptable was proper where offeror failed to provide in its proposal an adequate discussion of technical areas involved in advanced development program. Agency is not required to engage in competitive range discussions with offeror submitting unacceptable proposal.
2. While RFP indicated that "cost realism" would be considered in evaluating proposals, cost factor need not be considered in case of technically unacceptable proposal.
3. Protest regarding failure of RFP to adequately indicate relative weights of evaluation criteria is untimely since alleged defect was apparent from solicitation but protest was first filed after closing date for receipt of proposals.

Energy Research Corporation (ERC) protests the determination of the Air Force Systems Command (AFSC) that its proposal submitted in response to request for proposals (RFP) F33615-75-R-2049 was technically unacceptable.

The RFP issued March 27, 1975, called for the award of a cost-plus-fixed-fee contract for the development and demonstration of prototype nickel-hydrogen technology capable of providing a specified battery energy density and a 1 year life in low orbit satellites. Offerors were requested to submit separate technical and cost proposals so that each respective technical proposal could be evaluated solely on the basis of its engineering merit, independent of dollar values. The closing date for submission of proposals was set for April 25, 1975, and ERC, along with three other concerns, submitted a proposal.

The AFSC technical review panel evaluated the technical proposals on the basis of the following criteria listed in descending order of importance: (1) soundness of approach; (2) understanding

of the problem; (3) compliance with requirements; and (4) special technical factors. While the solicitation indicated that cost realism would also be considered only the four evaluation areas listed above were assigned numerical weighing factors with corresponding adjective ratings for purposes of arriving at an overall evaluation score for each proposal's technical approach.

On May 19, 1975, the evaluation panel concluded that three of the four proposals were technically acceptable. Only the technical proposal submitted by ERC was found to be unacceptable. ERC's total score for its proposal's technical approach was considerably below the scores of the three other proposals. Its proposal was rated only "average" for three of the areas and "poor" for category (3), compliance with requirements, while the other proposals were mostly rated "very good" or better for those same criteria. The contracting officer concluded that any attempt to upgrade the ERC technical proposal to an acceptable level would require an unreasonable and unfair degree of assistance on the part of the Government, not just the submission of additional clarifying or supplementing information. Further discussions have been held with the remaining offerors, and the Air Force is withholding award to one of these offerors pending resolution of the protest.

ERC believes that it submitted a technically acceptable proposal and contends there is no reasonable basis for its exclusion from the competitive range discussions. It contends that:

- "A. The proposal contains sufficient information to clearly demonstrate an understanding of all aspects of the problem and that an advanced level of technology already exists within ERC and the Martin Marietta Company. (ERC proposed to subcontract certain portions of the nickel hydrogen advanced development program to Martin Marietta Company.)
- "B. The proposal is fully responsive to all aspects of the statement of work and clearly defines a plan to achieve the objectives and goals of the program.

- "C. ERC and the Martin Marietta Company have all the capabilities and facilities required to perform on all aspects of the program.
- "D. The personnel to be assigned to the program have a demonstrated record of high caliber performance and pertinent experience.
- "E. The organizations involved, ERC and the Martin Marietta Company, have a long history of successful participation in programs similar in nature to that required in this program."

In response, the Air Force has furnished a detailed summary of the technical panel's evaluation of the ERC proposal, which indicates that ERC's proposal lacked specificity and depth of discussion.

While the Air Force recognizes that ERC is acknowledged to have extensive capability in battery cell design and manufacture, its proposed treatment of the critical technical areas of packaging and inclusion of the cells into a battery for spacecraft use and installation for use aboard an operational spacecraft was considered to be very general and extremely weak. Throughout the technical panel's evaluation summary of ERC's technical approach, reference is made to ERC's inadequate discussion of the supporting technology and a persistent failure to provide the requisite information that one would expect to be contained in such an advanced development proposal. Although ERC's proposal contained statements to the effect that the offeror would comply with the stated requirements, the major criticism of the technical personnel was that the proposal was critically short on a technical discussion on exactly how ERC would in fact meet the Government's need.

The evaluators noted, for example, that ERC's proposed baseline cell design was new and attractive "from a thermal standpoint because it increases the area of the stock available for heat rejection to the pressure vessel wall." In spite of the conceptual attractiveness of the ERC approach, they felt the

newness of the design represented an "unusual risk" for an advanced development program in that the program schedule "will allow minimal opportunity to complete and evaluate the design before committing to construction of 200 cells for evaluation, qualification and life tests." Yet, the evaluators found that ERC's discussion of the evaluation tests and the qualification and life tests were "limited - concentrating mostly on an enumeration of the tests but omitting details of methodology, test conditions, tolerances, plans and records." The Air Force points out in this respect that information was lacking on test conditions for the voltage current/efficiency tests at various states of charge, the overstress tests and the thermal tests, and that information was lacking on recharge ratios, charge and discharge termination criteria, rates on all except the capacity tests, and environmental temperatures on all except the capacity and charge retention tests, as well as other tests.

ERC insists that the Air Force is incorrect in this respect. It points to section 3.4 of its technical proposal, entitled "TASK 4- EVALUATION TESTING", and states that a discussion is given to the "test conditions and data to be taken for the evaluation testing, environmental and electrical tests, component tests, and section 3.5 details the qualification and Life Testing."

The Air Force maintains, however, that its evaluators are correct. It states as follows:

"Starting with ERC's first reference (Section 3.4) in support of their position we find mention of five acceptance test cycles. What are the charge-discharge rates? What is the environmental temperature? What are the criteria for acceptability? ERC says the details of the acceptance test procedure will be prepared in Task 3. True--but the evaluators are entitled to enough of a preview to enable them to evaluate the likelihood that the bidder can do an acceptable job. ERC continues 'It is anticipated that all cells fabricated for

the evaluation testing will incorporate some form of pressure and temperature readout the details of which will be selected in Task 3.' What form of readout? How will it be it be done? What is the merit of various approaches? The next sentence... 'For the acceptance testing the cells will be placed in an appropriate thermal mounting bracket and charged and discharged on conditions to be established.' What is appropriate? What will the conditions be? It should not be necessary to belabor the point further--these examples capture the essence of the problem. As stated in the evaluation--'ERC says they will comply, but in important areas of the proposal they fail to say how they will comply.' An enumeration of activities that matches RFP requirements and a statement that all activities will be accomplished does not in itself make a technically acceptable proposal.

In addition, ERC was rated poor on compliance with requirements. While ERC stated that it would comply with the requirements, evaluators found that in important areas of the proposal a discussion of how ERC would comply was missing. ERC's discussion of battery design, charge control approaches, potential thermal or structural approaches for cell integration, and of strain gages, pressure transducers, and bypass electronics, are among the examples cited by the evaluators.

ERC takes issue with the evaluators regarding these examples. On battery design ERC cites the discussion in various portions of its proposal. As for charge control approaches, ERC admits to a limited discussion but insists that the approaches mentioned in its proposal "are standard approaches that are used in conventional secondary power systems and any one knowledgeable in the field would know and understand what these mean." Similarly, it insists that strain gages and pressure transducers are standard commercial components, but acknowledges that the bypass electronics is not.

In its May 13, 1976, supplemental report the Air Force cites bypass electronics as an important aspect of battery protection since the nickel-hydrogen cell has a potential for hydrogen gas leakage, and it notes that "[t]he ERC proposal was extremely deficient in their discussion of bypass electronics." With regard to battery design, the Air Force states that ERC presents limited specific summary estimates of battery weight power, and electrical characteristics and that battery thermal, structural, dimensional, and layout aspects are not described.

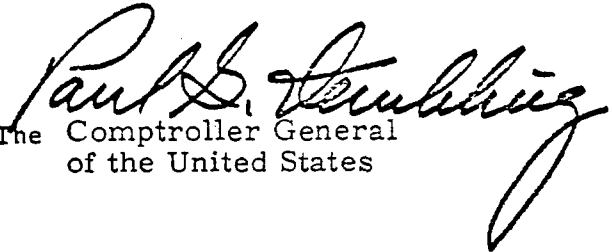
We believe that the record does support the Air Force's position. This procurement requires the development of a new type of electro-chemical cell to be used as an onboard spacecraft energy storage battery. The Air Force states that the packaging and inclusion of these cells into a battery for spacecraft use and its installation and use aboard an operational spacecraft are critical technical areas. Therefore, what was required of offerors was an in-depth technical discussion of the special problems involved in adapting this new type of electro-chemical cell to spacecraft use. The Air Force technical evaluators found ERC's proposal to be unacceptable for its failure to provide such discussion. As stated by the Air Force, "The primary and basic reason for the non-selection of ERC is due to their inability to convey to the evaluators the means whereby the offered cell would adapt to spacecraft orbital use." From the record before us, we do not find the Air Force's determination of unacceptability to be unreasonable.

It may be, as urged by ERC, that many of the informational deficiencies could have been corrected through the discussion process, since it is conceded that the protester has capability in battery cell design and manufacture. However, the Air Force technical staff determined that "the deficiencies were so extensive that a major, complete and extensive revision would be required to bring the ERC technical proposal into the competitive range." In such circumstances, the contracting agency is not required to engage in discussions with the offeror. 52 Comp. Gen. 865 (1973). Competitive range discussions need only be held with offerors initially determined to be within the competitive range, including offerors that have submitted marginally acceptable proposals. Armed Services Procurement Regulation 3-805.2(a) (1975 ed.). Since the ERC proposal was determined to be unacceptable, the Air Force was not required to conduct competitive range discussions with the protester in order to correct deficiencies in its proposal.

ERC contends, nevertheless, that the Air Force's failure to consider "cost realism" in the evaluation of ERC's technical proposal invalidated its determination. However, once the Air Force determined that ERC's proposal was technically unacceptable and outside the competitive range for purposes of negotiation, it concluded that no useful purpose would be served by assessing whether ERC's estimated costs of performance and proposed fees were realistic in terms of its unacceptable technical approach. This is consistent with our position that when an offeror submits an unacceptable technical proposal, such offeror may be excluded from the competitive range without regard to its proposed costs. National Designers, Inc., B-181741, December 6, 1974, 74-2 CPD 316; Pacific Training & Technical Assistance Corp, B-182742, July 9, 1975, 75-2 CPD 22.

Finally, ERC contends that the RFP is defective in that the Air Force did not adequately disclose the relative weight of the evaluation factors and that offerors were not advised of the relative importance of cost. However, under our Bid Protest Procedures, protests involving alleged improprieties contained in a solicitation apparent upon the face of the RFP must be filed prior to the closing date for receipt of proposals. 4 C.F.R. § 20.2(b)(1) (1976). In the instant protest, ERC raised these allegations after the closing date of receipt of proposals; therefore, these allegations are untimely and will not be considered on the merits.

For the above reasons, the protest of ERC is denied.


For The Comptroller General
of the United States