

DECISION



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

FILE: B-186316

DATE: September 2, 1976

MATTER OF: Raycomm Industries, Inc.

61440
U98082/98082

DIGEST:

1. Protest after evaluation and selection decision that delivery schedule set forth in solicitation was impossible to meet is not for consideration on merits because under 4 CFR 20, GAO Bid Protest Procedures, protests based on alleged improprieties in solicitation which are apparent prior to closing date for receipt of proposals must be filed prior thereto, and alleged improprieties which are incorporated in initial solicitation must be protested no later than the closing date for receipt of proposals following the incorporation.
2. Protest by unsuccessful offeror that evaluation of proposals was tainted by double standard of measurement favoring successful offeror is not substantiated where record shows that evaluation was conducted in good faith and proposals were evaluated on same performance criteria. Agency determination of relative desirability and technical adequacy of proposals will be questioned by our Office only upon a clear showing of unreasonableness, an arbitrary abuse of discretion, or violation of procurement statutes and regulations.

Request for Quotation (RFQ) DAAB07-76-Q-00013 was issued by the U.S. Army Electronics Command (Army), Fort Monmouth, New Jersey, for documentation and training necessary to provide logistic support for the Digital Communications Subsystem (DCSS). The RFQ called for approximately 120 man-months of technical engineering and clerical effort over a 12-month period commencing on award of contract. In addition, the RFQ requested an option for a second year of effort utilizing 72 man-months of effort. The DCSS documentation and training required by the RFQ depended on rack level design and subsystem level design originating at Tobyhanna Army Depot, Tobyhanna, Pennsylvania. A number of contract data requirement items were keyed into the anticipated availability date (June 15, 1976) of the first DCSS assembled by Tobyhanna. Due to the nature of the procurement and to assure greater understanding by the offerors, a preproposal conference was held on October 9, 1975. Each offeror was afforded the opportunity to have a private conference

with the contracting officer and technical personnel immediately following the conference. The basic solicitation was supplemented by Amendment 0001 and Amendment 0002.

On or before the October 28, 1975, closing date, eight proposals were received including offers from Raycomm Industries, Inc. (Raycomm) and Harris Corporation, Electronics System Division (Harris). As a result of material in the initial proposals, the Army realized that certain of the data items could not be keyed to equipment delivery. Instead, schedules would have to be keyed to the anticipated sequence of the work and the necessary time to complete this work. Therefore, a general clarification to the solicitation and an overall program schedule for the deliverables required by the solicitation were forwarded on November 21, 1975, to all offerors as Amendment 0003. Shortly thereafter, specific clarification questions were forwarded to each offeror. The program schedule overrode all of the original delivery dates for the documentation. Each offeror was requested to answer the specific clarification questions as well as to explain in detail how the revised schedule would be met. This explanation was to include a description of impacts on their previously submitted proposals including the cost, management, and technical areas.

Based on its December 4, 1975, response to Amendment 0003 and the evaluation of its original proposal, Raycomm was rated technically unqualified with specific areas of nonacceptability being documentation approach and experience and training approach. Raycomm's proposal was considered so materially deficient as to require a major revision to achieve acceptability.

Based on this technical evaluation a competitive range was established consisting of Harris and four other offerors. On January 13, 1976, negotiations were conducted with the five offerors in the competitive range, and on January 23, 1976, best and final offers were received. Harris was rated technically superior based on a January 29, 1976, evaluation of best and final offers. By letters dated February 4, 1976, the offerors rated technically unqualified including Raycomm were so advised. The proposals submitted by the remaining offerors were then evaluated with respect to the factors of cost and management. Since Harris submitted the lowest acceptable proposal and the only proposal rated technically superior, award was made to Harris on March 4, 1976.

By letter dated March 11, 1976, Raycomm replied to Army's letter of February 4. Raycomm criticized inconsistencies in the "original schedule," and requested details of its rating pursuant to the Freedom of Information Act. Raycomm indicated that it would protest in the event a changed delivery schedule was negotiated with any other offeror.

By letter dated March 11, 1976, Harris pointed out a discrepancy in the program schedule carried over from Amendment 0003 to the contract as Attachment J. The program schedule established in Amendment 0003 clearly indicated that it was predicated on a contract award estimate of January 15, 1976. Section E called for the contract effort to start on date of award. However, the award date estimate of January 15, 1976, should have been converted to firm contract award date of March 4, 1976. The monthly lettering across the top of the program schedule was converted incorrectly. August was shown as the first month in the calendar year 1976, and July as the last. August did not appear as a start date in the solicitation as amended or in negotiations. Since the contract called for 12 months of effort beginning on date of award, the Army felt that the clerical error pointed out by Harris was obvious and could be corrected by a contract modification at no change in price.

On April 2, 1976, the Army sent Raycomm the details of its rating, and on April 5, 1976, Raycomm was sent the details of the Army's technical evaluation of Harris' proposal and the proposal itself. However, Harris' cost proposal was not disclosed since cost data is exempt from disclosure under the Freedom of Information Act and may not be furnished to anyone outside the Government.

By mailgram dated April 13, 1976, and letter dated April 29, 1976, Raycomm protested to this Office the award of the contract to Harris. Raycomm contended that the RFQ specified a delivery schedule that was impossible to perform, and that the Army showed favoritism in selecting Harris for the award.

Raycomm alleged that the delivery schedule set forth in the solicitation was impossible to meet given an award date of March 4, 1976. The protester stated its belief that the solicitation required training materials to be delivered on January 15, 1976, and a training course to be conducted on March 15, 1976. Raycomm also contended

that the solicitation allotted insufficient time for source data collection and manual preparation. The protester pointed out that the delivery schedule was not discussed or even addressed during negotiations. Raycomm alleges that the Army entered into the contract knowing that contract delivery schedules could not be met and that as a result, subsequent changes would be required extending deliveries and increasing the contract price.

The Army maintains the required delivery schedule was not impossible to meet and that Raycomm lacked a fundamental understanding of the work schedule mainly because it overlooked the significance of Amendment 0003. That amendment sets out the required dates and superseded previous dates for data collection. In Raycomm's response of December 4, 1975, it stated that Amendment 0003 would cause an adjustment of event interrelationships, however, it also stated that "Raycomm does not find the suggested schedules totally unfeasible." Since no offeror expressed a problem with the delivery schedule after Amendment 0003 was issued, the contracting officer did not address the delivery schedule again during the negotiation period. The error in the contract pointed out by Harris did not call for an increase in price.

Raycomm's protest concerning the delivery schedule is untimely and therefore not for consideration on the merits. The alleged impossibilities in the schedule should have been apparent to Raycomm on or before January 23, 1976, when best and final offers were due. Section 20.2(b) of our Bid Protest Procedures, 4 CFR Part 20 (1976), provides that protests based upon alleged improprieties in a solicitation which are apparent prior to closing date for receipt of initial proposals must be filed prior to such date. It further provides that "alleged improprieties" which do not exist in the initial solicitation but which are subsequently incorporated therein must be protested not later than the next closing date for receipt of proposals following the incorporation. Since the protester believed course material was due on January 15, 1976, the alleged impossibility should have been apparent to him before best and final offers were due.

Raycomm further protests on the grounds that the evaluation of the proposals was tainted with a double standard of measurement

favoring Harris. The protester contends that Harris failed to produce required information, did not address some areas in depth, and, provided excessive filler material. Raycomm also contends that the consideration of Harris' manufacturing experience on related DCSS equipment was unreasonable and not in accordance with the announced evaluation factors. Raycomm contends that the Army's evaluation of its own proposal was unfair.

Initially, it must be recognized that as a general rule, the determination of whether a proposal is technically acceptable is a matter of administrative discretion which will not be disturbed absent a clear showing that the determination was arbitrary or unreasonable. See Pacific Training and Technical Assistance Corporation, B-182742, July 9, 1975, 75-2 CPD 22. The record in the instant case indicates that Raycomm's proposal was carefully considered and the deficiencies therein were documented in detail by the evaluation personnel. Although we have considered the statements made by Raycomm in rebuttal to the Army's position in the matter, we cannot conclude the evaluators were unreasonable.

The Army has responded in detail to Raycomm's allegations that the technical evaluation of Harris' proposal was erroneous. The Army maintains that Harris, unlike Raycomm, showed a thorough understanding of the delivery schedule and data required. It should be emphasized that it is not the function of our Office to evaluate proposals and we will not substitute our judgment for that of the contracting officials by making an independent determination as to which offeror in a negotiated protest should be rated first and thereby receive an award. The overall determination of the relative desirability of proposals will be questioned by our Office only upon a clear showing of unreasonableness, an arbitrary abuse of discretion, or a violation of the procurement statutes and regulations. See Riggins & Williamson Machine Company, Inc.; ENSEC Service Corporation, 54 Comp. Gen. 783, 790 (1975), 75-1 CPD 168.

We have reviewed the record supporting the Army's technical evaluation of Harris' proposal and we are unable to conclude that there has been a clear showing that the Army evaluation was arbitrary or unreasonable. Rather, it appears to us that the evaluation was conducted in good faith and the proposals were evaluated on the same performance criteria.

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For example, Raycomm alleges that Harris received a disproportionately high score because it was a manufacturer of related DCSS equipment. However, the solicitation advised offerors that of the evaluation criteria, the "technical" area was the most important and was of greater weight than the "cost" and "management" criteria combined. Furthermore, of the four "technical" subcriteria, "Technical Engineering Experience" was the most important. In view thereof, we do not believe emphasis upon Harris' manufacturing experience was unreasonable.

For the foregoing reasons, Raycomm's protest is denied.

R. F. K. 114
Acting Comptroller General
of the United States