

**DECISION**



13225 PK-I  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

*[Protest of Army Contract Award]*  
**FILE:** B-196105 **DATE:** March 25, 1980

**MATTER OF:** Logicon, Inc.

**DIGEST:**

1. GAO will not question contracting agency's decision to reject protester's proposal because protester's best and final offer included revision of technical proposal concerning significant solicitation requirement that agency reasonably believed was not adequately explained or documented.
2. GAO will not conduct investigation to establish validity of protester's speculative allegations concerning conflict of interest between members of evaluation panel and successful offeror. Where protester has no other proof to offer than bare allegations, protester has failed to carry burden of affirmatively proving case.
3. Protester's allegedly lower cost is not basis to consider its technically unacceptable proposal since once offer is properly eliminated from competitive range it is irrelevant whether offer might provide lower cost.
4. Questions concerning successful offeror's compliance with contract requirements are matters of contract administration and not for consideration under GAO's Bid Protest Procedures.

Logicon, Inc. (Logicon), protests the award of a contract to Command Control and Communications Corporation (4C) under request for quotations (RFQ) No. DAAK80-79-Q-1773 issued by the United States Army, Communications Research and Development Command (Army), Fort Monmouth, New Jersey.

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The RFQ solicited offers for a Joint Interface Test System (JITS) with ancillary data items, and training, configuration management, and preventive and corrective maintenance. Logicon's proposed system contemplated the use of multiple computers with one of the computers dedicated to the Data Base Management System (DBMS). In its best and final offer, Logicon proposed a change in the initial proposal's operating system (OS) for implementing the DBMS. The Army found this to be a significant change to Logicon's technically acceptable proposal which created an ambiguity because Logicon did not adequately explain or provide sufficient supporting data to allow the evaluation team to determine what effect it would have on the proposal's technical acceptability. Consequently, the Army notified Logicon that its proposal was rejected and later awarded the contract to 4C.

Logicon principally argues that its technical revision was properly supported and did not constitute a significant change to its technical proposal. However, for the reasons indicated below, we find no basis to question the Army's decision in this matter.

#### Significance of Technical Revision

In the original proposal, Logicon indicated that it would provide the DBMS by converting it from the UNIX Operating System (Version 6), under which the DBMS was developed, to the Perkin-Elmer Operating System (OS-32). Logicon later learned that a version of UNIX (Version 7) had been implemented for the Perkin-Elmer 3220 computer. According to Logicon, the availability of a UNIX Operating System for that computer which it proposed to use meant that it would not have to undertake an expensive conversion process for the DBMS. Therefore, in the best and final offer, Logicon proposed that UNIX (Version 7) be used to save the DBMS conversion cost.

In Logicon's opinion, the DBMS is not a major item of the procurement. It states that the JITS can carry out all of its required functions without a DBMS. Accordingly, it argues that using a new operating system for the DBMS was a fairly trivial technical change which

reduced cost and risk. In support of this position, Logicon has included as part of its comments on the Army's report certain published articles which it believes prove the value and practicality of using UNIX (Version 7) as the DBMS operating system. In addition, Logicon cites our decision of John Fluke Manufacturing Company, Inc., B-195091, November 20, 1979, 79-2 CPD 367, for the rule that a contracting agency can make inquiries of an offeror after the submission of best and final offers which will not require the reopening of discussions with all offerors so long as the sole purpose for such inquiries is to eliminate minor uncertainties or irregularities. According to Logicon, its change in the DBMS operating system was so minor that all the Army had to do was seek a clarification. The Army's failure to do so, Logicon argues, was so unreasonable as to constitute arbitrary and capricious action and a basis for our Office to recommend cancellation of the 4C contract.

The Army argues that the Logicon best and final offer does not indicate whether the UNIX (Version 7) is a replacement for the originally proposed operating system or whether it is to be used in conjunction therewith. Also, the Army maintains that the operating system implementing the DBMS is an integral part of the procurement. The Army argues that Logicon's change was a major technical revision, affecting not only the DBMS, but a significant portion of Logicon's original technical proposal. This cast doubt on the acceptability of the entire system because such a change could materially affect the compatibility of the multicomputer system.

The Army does not claim, however, that the use of UNIX (Version 7) was unacceptable even assuming its use alone was clear. Rather, Logicon did not submit sufficient supporting data for the evaluators to determine the full impact of the change on Logicon's proposal. In addition, the Army notes that UNIX (Version 7) is a recently developed operating system, the details of which are not as well known or generally available as for previous versions. Further, the agency was unaware of the two articles that Logicon relies on until after the filing of the protest.

In this connection, the Army also notes that paragraph B.24 of the RFQ, "REQUEST FOR 'BEST AND FINAL' OFFERS," provides in pertinent part:

"Major revisions are not expected, but should you revise your offer in any way, complete and detailed support for the revision and any other affected part of your proposal must accompany the revision.

\* \* \* \* \*

"The Government reserves the right to reject any proposal if data specified above is not submitted with a revision or, if submitted, is inadequate to establish the acceptability of the revised offer."

Therefore, since Logicon failed to furnish the supporting data called for by this paragraph, the Army was justified in rejecting the offer.

As a final point, the Army maintains that, because the impact of the revision was material, it could not have requested clarification from Logicon; rather, it would have been necessary to reopen negotiations. The Army, however, was not required to do this and believes that its handling of the matter was reasonable.

We have held that procuring officials enjoy a reasonable degree of discretion in the evaluation of proposals and such discretion will not be questioned unless clearly shown to be unreasonable. Industrial Technological Associates, Inc., B-194398.1, July 23, 1979, 79-2 CPD 47; John M. Cockerham & Associates, Inc.; Decision Planning Corporation, B-193124, March 14, 1979, 79-1 CPD 180. We have further held that when a request for best and final offers clearly warns offerors to substantiate any changes made in their proposals, and an offeror submits a revised proposal without such substantiation, the contracting officer is not required to reopen negotiations and may reject the proposal if the unsupported changes render the proposal unacceptable. See, Electronic Communications, Inc., B-183677, January 9, 1976, 76-1

CPD 15; cf. Analysis & Computer Systems, Inc., B-188787, January 31, 1978, 78-1 CPD 75. The burden is on the offeror to clearly demonstrate the merits of its proposal, or run the risk of having the proposal rejected. Analysis & Computer Systems, Inc., supra; Continental Electronics Corp., B-183891, June 23, 1976, 76-1 CPD 399.

Logicon has not convincingly rebutted the Army conclusion that the operating system was a significant requirement of the procurement. Further, we can understand the reason the Army could not determine if the proposal remained acceptable. In this regard, we note that the Logicon change did not clearly indicate whether a substitution or other arrangement was intended, and the change contained virtually no explanation as to its impact. The published articles do not clearly demonstrate Logicon's position and, in any event, were not made a part of the proposal to permit evaluation. Our overall view of the matter is that Logicon's interests would have been better served if its protest arguments had been used in its best and final offer to explain the change. We do not believe that Logicon has made a clear showing that the Army acted unreasonably, and the failure of the Army to permit Logicon a chance to explain the material change was justifiable.

#### Conflict of Interest

Logicon has also argued that a conflict of interest, or at least the appearance of one, exists because 4C and its subcontractors have support contracts which allow them direct access to the Army's decision-making personnel on a routine basis. The Army, however, denies that 4C or its subcontractors had access to any confidential information or that the contractors in any way participated in the evaluation process. In the Army's opinion, there is no evidence that 4C received any unfair competitive advantage.

It is well established that the protester has the burden of affirmatively proving its case. Rolair Systems, Inc., B-193405, November 9, 1979, 79-2 CPD 345. The mere fact that the above relationship exists does not create a conflict of interest, per se.

Logicon's claim of conflict of interest is no more than conjecture; it offers no proof that 4C or its subcontractors influenced the evaluators in any way. In light of this, we find no basis to conclude that 4C received an unfair competitive advantage during the evaluation of proposals.

#### Monetary Savings to Government

Logicon contends that, since the Government would have realized an estimated savings of \$1.75 million if Logicon received the award, the Army should have allowed Logicon to clarify the alleged traceable and minor change and remain in the competition.

The Army report expressed doubt on the savings estimated by Logicon. In any event, as the Army points out, we have held that once an offer is properly determined to be technically unacceptable, a potentially lower price which that offer might provide is irrelevant since that offer is no longer within the competitive range and cannot be considered for the award. Century Brass Products, Inc., B-190313, April 17, 1978, 78-1 CPD 291. Therefore, since we have already concluded that it was within the agency's discretion to reject Logicon's proposal because of the significant uncertainty created by its best and final offer, the allegedly lower cost that Logicon might offer is of no consequence.


#### Contract Performance

Logicon argues that after the contract had been awarded "serious design defects" were discovered in 4C's system approach. As a result, there will be a 1-year delay in turning over testing to the appropriate command. Further, the programming language which 4C intends to use allegedly is not an approved Department of Defense language. The Army denies these allegations. Questions such as these concerning compliance with contract requirements are matters of contract administration and are not for consideration under our Bid Protest Procedures, 4 C.F.R. Part 20 (1979). See, Applied Financial Analysis, Ltd., B-194388.2, August 10, 1979, 79-2 CPD 113; Aerosonic Corporation, B-193469, January 19, 1979, 79-1 CPD 35.

Conclusion

Based on the reasons detailed above, we find no basis to disturb the contract that the Army has awarded to 4C.

Protest denied.

  
For the Comptroller General  
of the United States