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DECISION



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

FILE: B-209102

DATE: July 15, 1983

MATTER OF: Cadillac Gage Company

DIGEST:

1. Protest alleging that there were a number of irregularities in prototype testing phase of two-phase procurement is dismissed as untimely under § 21.2(b)(2) of GAO Bid Protest Procedures which states that protest must be filed no later than 10 days after basis for protest is known or should have been known. Protester's representatives were present during all phases of testing, and deficiency reports were given to protester's representatives during testing. Protester should have known bases for protest at time of testing but waited almost 4 months after testing was completed to protest. In such circumstances, protester has waived its right to protest.
2. Protest alleging that contracting agencies' personnel which tested products and completed evaluation questionnaires and agencies' personnel which evaluated those questionnaires were not qualified is denied. Agency technical personnel are entitled to presumption that they are qualified, and record shows that they were selected for their special expertise in this case. Protester has provided no evidence other than its unsubstantiated allegation to overcome presumption and has not carried its burden of proof.
3. Protest alleging that prototype testing is not valid because no final operational test report was issued before awardee was selected is denied. Nothing in the RFP required final operational test report and results of testing were made available to source selection officials before selection was made.

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4. Protest alleging that protester's vehicles were tested at higher speeds than awardee's vehicles and without regular scheduled maintenance is denied. Army denies both allegations, and GAO cannot reconstruct what actually occurred during testing from record. Therefore, protester, which bears the burden of proof, has not proved its case.
5. Protest alleging that prototype testing was fatally flawed because no reliability data was collected on turret subsystem is denied since record clearly shows that turret reliability data was collected. Furthermore, protester's charge that its turret subsystem was superior to awardee's turret subsystem is not supported by the record.
6. Protest charging that Army/Marine Corps improperly failed to give protester credit for modifications proposed to correct perceived turret subsystem deficiencies is denied. Record supports Army/Marine Corps' test and evaluation results and shows that there was a reasonable basis for conclusion that modifications to design of turret probably could not be completed within contract schedule and, therefore, this was a weakness in protester's proposal.
7. Protest alleging that repeated requests for best and final offers amounted to improper auction technique is denied because each request was based upon substantial changes to quantity and program requirements required in basic and option periods of contract. There is no evidence to support protester's speculation that agencies' personnel told awardee price it should offer to be considered for award, and record shows that awardee actually increased its price between first and third best and final offers.

8. Protest charging that Army/Marine Corps should have eliminated the effects of any Canadian subsidy to awardee is denied, because solicitation did not contain any indication that subsidies would be eliminated, and GAO is unaware of any statute or regulation which requires such treatment of foreign government subsidies. Moreover, contracts between United States defense agencies and Canadian firms are specifically encouraged under a Memorandum of Understanding between the United States Department of Defense and the Canadian Department of Defence Production which has been implemented in Defense Acquisition Regulation § 6, part 5 (1976 ed.) which contains no provision for offsetting Canadian Government subsidies in evaluation of proposals.
9. Protest alleging that evaluation of reliability test data was arbitrary and that awardee's test vehicle was scored using a different, more lenient standard is denied. Record reveals protester's vehicle's malfunctions were considered to be more serious than awardee's because they generally had a greater impact upon vehicle mission; protester's proposed modifications were not credited because they were not installed early enough in testing to be properly evaluated as to whether they significantly improved performance, and therefore, GAO concludes that evaluation was fair and reasonably based.
10. Protest alleging that evaluation of reliability growth potential of vehicles was improper because it did not include calculation of separate growth rates based upon each vehicle failure and contractor's proposed corrective action is denied. Army correctly points out that methodology proposed by protester would result in overly optimistic forecast. Growth rate used was primarily based upon maturity of contractors' programs, and a relatively low figure was used because vehicles offered were essentially off-the-shelf, nondevelopmental

items, and protester has not proved that agencies' method was illogical.

11. Protest contending that evaluation was contrary to RFP scheme because past performance was not considered is denied because record reveals that protester's relevant prior experience was considered in evaluation.
12. Protester's numerous disagreements with agencies' technical evaluation of proposals and conclusion that awardee's offer was "substantially and significantly technically superior" to other candidates' offers do not provide basis to find evaluation is without reasonable basis.
13. Unsuccessful offeror's protest that it should have been selected for award because it proposed the lowest cost is denied since agency has reasonably justified award to technically superior, higher cost offeror as providing the Government the "greatest value."

Cadillac Gage Company (Cadillac Gage) protests the Army's award of two contracts to the Canadian Commercial Corporation/Diesel Division, General Motors of Canada, Ltd. (GM of Canada) pursuant to request for proposals (RFP) No. DAAE07-82-R-4007 issued by the United States Army Tank-Automotive Command under the Army's Light Armored Vehicle (LAV) Program. The protester alleges numerous deficiencies in the conduct of this procurement which it contends invalidate the award to GM of Canada.

This procurement represents the second phase of a two-phase program. During Phase I, four contracts were competitively awarded to three firms so that the Army/Marine Corps could acquire, test and evaluate four different types of light armored combat vehicles. Cadillac Gage was awarded two Phase I contracts--for its V-150 model and V-300 model. The test and evaluation data collected during Phase I were to be considered in the evaluation conducted under Phase II.

the present procurement. Testing was conducted under Phase I between November 1981 and May 1982. While testing was being conducted, on December 1, 1981, the present RFP was issued to the three Phase I contractors; this RFP provided for the acquisition of various LAVs by the Army and the Marine Corps over a 5-year period. The RFP contemplated award of two contracts to the successful offeror. Part I of the RFP provided for a multi-year contract for acquisition of production quantities of the light assault, mobile protected gun near term, light armored squad carrier, and maintenance/recovery LAVs and contained options for other versions; Part II provided for development of other mission-role vehicles for both the Army and Marine Corps.

As specified in section M of the RFP, evaluation was to include evaluation of the offerors' proposals, the results of Phase I testing, and the offerors' assessments of test failures and proposed corrective actions. Evaluation was conducted utilizing a formal source selection process. Initial proposals were submitted by April 1, 1982, and Phase I testing was concluded on May 27, 1982. All three offerors timely submitted initial best and final proposals by the June 21 closing date, and subsequent best and finals on August 9, 1982, and September 8, 1982, due to program changes and additional quantities.

On September 17, Cadillac Gage filed the first of several protest letters in our Office. On September 27, the Army made award to GM of Canada prior to resolution of the protest, and on October 8, Cadillac Gage was debriefed by the Army.

Cadillac Gage alleges numerous improprieties in the Phase I testing procedures, in the Phase II evaluation, and in the procedures leading to award to GM of Canada.

We deny the protest in part and dismiss it in part.

Phase I Testing

Under their Phase I contracts, each offeror provided the Army/Marine Corps with LAV-type vehicles for operational testing and evaluation in eight specific areas. Of these, the most important assessment was of each vehicle's reliability, availability, maintainability-durability (hereinafter referred to as RAM-D). The testing criteria were set

forth in the Phase I contracts. The RFP for the Phase II contracts specifically stated that the results of Phase I testing were to be considered in the evaluation of the "Technical/Performance" area of each offeror's proposal under the Phase II RFP. The Phase II RFP also stated that "Technical/Performance," "Cost," and "Management/Other Support" were the areas to be evaluated to determine the awardee and indicated that "Technical/ Performance" and "Cost" were approximately equal in importance and were individually worth more than the "Management/Other Support" area of evaluation.

Cadillac Gage contends that the Phase II technical evaluation of all vehicles was invalid because it was based, in part, upon the Phase I test results in the area of automotive reliability which were critically flawed by improper, uncontrolled testing procedures and inconsistent application of the test evaluation criteria. Specifically, Cadillac Gage criticizes the manner in which vehicles were tested because it alleges that: (1) vehicle speeds were not controlled through the use of tachographs nor did the Army/Marine Corps maintain maximum speed limit signs along the test courses; (2) test courses were designed to be operated in only one direction, but some test vehicles were run in the opposite direction; (3) some vehicles were tested by being operated on the same 50-mile course four times for a total of 200 miles rather than the 200-mile course just once; (4) the test course terrain was not maintained in its original condition so that LAVs on later tests no longer encountered the same virgin terrain, shrubs and other vegetation as LAVs which were tested earlier; and (5) some of the tests were conducted with 2-man crews, rather than 3-man crews which were necessary to test the vehicles' operational capabilities fully. The protester also charges that the Army/Marine Corps' assessment of the "fightability" of vehicles consisted primarily of questionnaires completed by the operational test crews which crews were not rotated among the vehicles tested in order to eliminate the effects of potential biases of each crew. Cadillac Gage also complains about the length of time it took for Army/Marine Corps personnel to install modifications proposed by Cadillac Gage to correct deficiencies in the V-150 and V-300 models which became evident due to mission failures during Phase I testing.

In our opinion, the above-listed allegations concerning Phase I testing deficiencies are untimely. The record reflects that Cadillac Gage had at least one on-site representative at the test site throughout the entire test period and that Equipment Operational Failure Reports were promptly made available to Cadillac Gage representatives at the test site. There is no evidence that Cadillac Gage protested or otherwise complained to Army/Marine Corps officials concerning the above-listed allegations at any time during the testing or within a reasonable time thereafter. Operational testing was concluded on May 27, 1982. Cadillac Gage's protest of these alleged deficiencies was filed in our Office on September 17, 1982, or almost 4 months after the end of Phase I testing. Under section 21.2(b)(2) of our Bid Protest Procedures, 4 C.F.R. part 21 (1983), a protest must be filed no later than 10 days after the basis for protest is known or should have been known. A protester also has a duty to diligently pursue a protest by seeking within a reasonable time information which reveals the basis for protest. See National Systems Management Corporation, B-198811, October 10, 1980, 80-2 CPD 268. The Cadillac Gage representative should have known that these alleged improper testing procedures were taking place or, at least, that representative should have diligently pursued the information which would have revealed these bases for protest. In effect, Cadillac Gage chose to undergo the full Phase I testing procedures even though those procedures were allegedly flawed and knowing that the results of the RAM-D tests would be used in Phase II evaluation in an attempt to win the Phase II competition. In such circumstances, Cadillac Gage may properly be considered to have waived its right to object to the Phase I test procedures. See Self-Powered Lighting, Ltd., B-195935, March 13, 1980, 80-1 CPD 195; see also Airco, Inc. v. Energy Research and Development Administration, 528 F.2d 1294 (7th Cir. 1975).

"Fightability," the second most important subcategory of the "Technical/Performance" category after RAM-D, was described in the Executive Summary portion of the RFP as "the overall assessment of the system, its ease of use in accomplishing the mission, and its effectiveness in each major mission role." The Executive Summary stated that this subelement would be evaluated by the crew or those in command of a unit of LAVs. Crew questionnaires were used by

the Army/Marine Corps to gather information on fightability. Cadillac Gage does not question the validity of using questionnaires to obtain this type of information, but Cadillac Gage does charge that the test and evaluation of fightability were flawed in two important respects. First, the protester alleges that the crew members who completed the questionnaires were not adequately trained in their use and in the items to be evaluated. Second, the protester contends that the people who evaluated the questionnaires and prepared test reports on them lacked detailed technical knowledge of the LAVs being evaluated.

As a general rule, our Office will not become involved in appraising the qualifications of contracting agency personnel involved in the technical evaluation of offers. See Ads Audio Visual Productions, Inc., B-190760, March 15, 1978, 78-1 CPD 206. Here, the questionnaires were relatively simple to understand, and the Army reports that trained, experienced help was on hand at all times to assist test crew members when necessary and that those persons who analyzed the questionnaires were well trained, competent people who were selected for their specialized expertise. We note that the three Phase I contractors were required to train test crew operators, test supervisors, and maintenance personnel. We believe that agency technical personnel are entitled to the presumption that they are qualified and that, in the present circumstances, the agencies involved have made a prima facie case that their testers/evaluators were adequately trained. Since the protester has provided no evidence other than its unsubstantiated allegation to overcome the presumption that the contracting personnel were qualified, the protester has not carried its burden of proof on this allegation. ADS Audio Visual Productions, Inc., supra; see also ACMAT Corporation, B-197589, March 18, 1981, 81-1 CPD 206. Accordingly, the protest is denied on this point.

Cadillac Gage next charges that the Army/Marine Corps should have published a final operational test report reflecting Phase I test results before selecting the awardee. Because no final operational test report was issued, Cadillac Gage regards the validity of the source selection decision as questionable. We do not agree. There was no requirement for a final operational test report in the RFP's evaluation section. The results of the testing

were available to and were considered by the source selection officials as part of the source selection process. Furthermore, vehicle failures and deficiencies discovered during Phase I testing were reported to contractors which were then given opportunities to propose vehicle modifications to correct deficiencies. Therefore, the protester's allegation provides no basis to question the validity of the selection procedure, and the protest is denied on this point.

The protester alleges that its vehicles were tested at significantly higher average speeds than the GM of Canada vehicle and, as a result, its vehicles (in particular, the V-150 model) incurred significantly more wear and tear and dynamic stress which caused it to receive low reliability and "human factors" evaluations. The protester also alleges that the Government failed during Phase I testing to perform routine preventive maintenance on its V-150 model and on GM of Canada's LAV as required in both firms' maintenance manuals; Cadillac Gage cites a RAM incident report which shows that Cadillac Gage's V-150 received only 27 percent of the required maintenance services while GM of Canada's LAV received 60 percent of its required maintenance services.

The Army originally reported to our Office that automotive subsystem reliability was to be tested at an average speed of 20 miles per hour based upon total engine running time and that Cadillac Gage's V-150 averaged 23.8 miles per hour while its V-300 averaged 19.6 miles per hour based on figures recorded for 15 sample runs. Cadillac Gage used figures contained in the RAM-D scoring conference report to arrive at an average test speed of 20.2 miles per hour for the V-150 and 14.4 miles per hour for GM of Canada's vehicle, including "halt" times. The Army argued that average speed based upon total engine running time was not accurate since it would include times that the engine was run during test runs, during maintenance, or when the engine was run for any other reason. The Army claims that, when "halt" time is excluded, GM of Canada's vehicle was actually tested at an average speed of 30.1 miles per hour but has not calculated an average test speed using this methodology for either of Cadillac Gage's vehicles. The Army also asserts that all maintenance was performed as scheduled in the contractor's maintenance manuals and that the RAM incident report cited by the protester contains some, but not all, maintenance which was actually performed.

According to the Army, much scheduled maintenance was performed when a vehicle was down for unscheduled maintenance and, therefore, does not appear in the cited RAM incident report.

We find it impossible to reconstruct what actually occurred during Phase I testing from the record presented. While the Army and the protester purport to be able to figure out average test speeds, we cannot make an accurate calculation of average test speed. This is because engines were apparently run when the vehicles were not moving for a number of reasons. Moreover, there is no complete record of when scheduled maintenance was performed. While this is unfortunate, we have no reason to suspect that the tests were not run properly and in good faith by Army/Marine Corps personnel or that the tests were conducted in a manner which would favor GM of Canada over Cadillac Gage. Where, as here, there is no substantive evidence to support the protester's assertions and all we have are the conflicting statements of the protester and agency, the protester has not proved its case. See Fire & Technical Equipment Corp., B-191766, June 6, 1978, 78-1 CPD 415. Moreover, here, the protester has alleged, but not shown, that its vehicles suffered any unusual wear and tear or dynamic stress, even if its assertions as to speed and maintenance are true. ACMAT Corporation, supra. In these circumstances, we cannot find that the protester's assertions justify invalidating the award to GM of Canada. Therefore, this portion of the protest is denied.

Turret Reliability: Test and Evaluation

Cadillac Gage also charges that the Phase I testing was fatally flawed because no reliability data was collected on the turret subsystem which was the most important and heavily weighted element in the "Technical/Performance" category for Phase II evaluation purposes. Cadillac Gage argues that its turret was significantly superior to the GM of Canada turret which allegedly never demonstrated adequate turret controls. In particular, the protester contends that GM of Canada's turret had problems with a locking valve which made it necessary to park GM of Canada's vehicles at night with the gun tubes at the highest elevation to prevent them from drifting down during the night.

It is neither our function nor practice to conduct a de novo review of technical proposals and make an independent determination of their acceptability or relative merit. The evaluation of proposals is the function of the procuring agency, requiring the exercise of informed judgment and discretion. Our review is limited to examining whether the agency's evaluation was fair and reasonable and consistent with the stated evaluation criteria. We will question contracting officials' determinations concerning the technical merits of proposals only upon a clear showing of unreasonableness, abuse of discretion or violation of procurement statutes or regulations. KET, Inc., B-190983, December 21, 1979, 79-2 CPD 429. Moreover, while the record in this protest is voluminous with detailed comments relating to a great number of technical issues, we do not find it necessary to discuss all of these issues to resolve the protest. We will, however, examine the record in light of all of the protest allegations to see if the contracting agencies' judgments were reasonable. Texstar Plastics, Inc., B-201105, September 18, 1981, 81-2 CPD 223.

The record shows that the Army/Marine Corps collected data on all offerors' proposed turrets and found that both GM of Canada and Cadillac Gage had significant problems in this area of testing. Both offerors were informed of the mission failures that had occurred and were given opportunities to propose corrections. The Army reports that, even though Cadillac Gage was given opportunities to respond to deficiencies, in most instances Cadillac Gage did not respond. As for the turret stabilization problem encountered by GM of Canada, the Army reports that it was corrected early in Phase I testing by replacement of a defective servo mechanism. Moreover, the Army reports that GM of Canada changed subcontractors during testing which resulted in significant improvement in its turret reliability. Our examination of the reliability data reveals that GM of Canada and Cadillac Gage turrets met the desired turret reliability in terms of hours between mission failures, while the other two offerors were deficient in this regard. Contrary to the protester's assertion, the GM of Canada turret was rated as better than the Cadillac Gage turret. However, since turret usage meters were not used to evaluate turret reliability, the Army/Marine Corps had to calculate hours of turret usage by dividing the number of vehicle miles traveled by average vehicle speed. This would

tend to inflate turret reliability results because turrets were not always in use. Therefore, to this extent the turret reliability results were justified. In any event, all offerors' results were subject to the same inflated reliability results and there was no prejudice to any particular offeror. In other words, the Army/Marine Corps source selection officials effectively gave all offerors the benefit of any doubt in meeting this requirement.

The protester also argues that the Army/Marine Corps' evaluation of Phase I testing of the turret lacked a reasonable basis because the Army/Marine Corps downgraded the Cadillac Gage turret for major technical problems which the Army/Marine Corps concluded could not be corrected within the contract delivery schedule. This is particularly unfair, according to Cadillac Gage, since its turret was the most accurate and it was the only competitor to have achieved the desired reliability and stabilization.

As indicated above, both GM of Canada and Cadillac Gage turrets met the required level of reliability. Moreover, the Army reports that both offerors' turrets met the accuracy requirement. As far as the major technical problems which the Army/Marine Corps concluded that Cadillac Gage could not resolve within the contract schedule, these were problems related to "human factors." "Human factors" problems were derived from crew questionnaires used to assess, among other things, crew comfort and fightability. The Army reports that Cadillac Gage's turret was deficient in several areas including, but not limited to: (1) leg room was insufficient; (2) the commander's periscope was located such that stabilized on-the-move firing could not be accomplished; (3) the commander's night sight elbow was improperly positioned and had to be removed from the commander's periscope during daylight operations, and its proximity to the commander's face made it hazardous; (4) the commander's machine gun elevation hand crank was positioned so that it could not be used while the night sight was in place; and (5) the commander's and gunner's seats did not have sufficient vertical travel necessary for use in open hatch operations, nor could the commander reach the weapons control panel when operating in the open hatch mode. When these and other "human factors" problems were presented to Cadillac Gage, for the most part, Cadillac Gage responded that it would redesign the problem item where necessary.

The Army/Marine Corps believed that these design problems were so serious that there was a high risk that the technical problems could not be overcome within the contract schedule. This was especially so since Cadillac Gage's response to these deficiencies was not detailed, nor did they contain sufficient supporting rationale.

Based upon the above, we cannot conclude that the Army/Marine Corps' testing and evaluation of competing turrets were unreasonable. Turrets were tested, Cadillac Gage was given a chance to respond and to cure deficiencies, and the Army/Marine Corps had a rational basis for their conclusions that Cadillac Gage's turret represented a weakness in the Cadillac Gage proposal. Therefore, this basis for protest is denied.

Repeated Requests for Best and Final Offers

Cadillac Gage contends that the repeated requests for revisions to best and final offers led to prohibited auction techniques which allowed GM of Canada to lower its price sufficiently to get the award. Cadillac Gage argues that award should have been made to it on the basis of the first best and final offer before GM of Canada had a chance to lower its price enough to be considered "affordable" by the Army/Marine Corps. The protester also alleges that GM of Canada was advised of what price it had to propose in order to win the competition.

The Defense Acquisition Regulation (DAR) states that:

"Auction techniques are strictly prohibited; an example would be indicating to an offeror a price which must be met to obtain further consideration, or informing him that his price is not low in relation to another offeror." DAR § 3-805.3(c) (1976 ed.).

The Army categorically denies that GM of Canada was informed of what price it had to propose in order to be considered affordable and to be awarded the contract.

Concerning the alleged auction, the record shows that each successive request for revisions to best and final offers was based upon substantive changes to the Army/Marine

Corps' program requirements. Each new request for best and final offers contained a number of modifications to the RFP which affected both the type of LAVs required and the quantities of each type of LAV to be delivered under the basic contract and options. These modifications were communicated in writing to all three offerors, and a new deadline was set for receipt of the revised best and final offers. Since each request for revised best and final offers was based upon substantial changes to the quantity and type of LAVs to be produced and all offerors were treated fairly, we do not find that the Army/Marine Corps' actions were unreasonable. Bell Aerospace Company, 55 Comp. Gen. 244 (1975), 75-2 CPD 168; Patty Precision Products Company, B-182861, May 8, 1975, 75-1 CPD 286. Furthermore, the record reflects that GM of Canada actually increased its price per vehicle overall while Cadillac Gage reduced its price between the first and third best and final offers. The protest is denied on this issue.

Canadian Subsidy

Cadillac Gage alleges that GM of Canada's offer was subsidized by the Government of Canada. According to the protester, such subsidy should have been considered during source selection so that GM of Canada's "unfair competitive advantage" could have been eliminated.

The RFP contained a very detailed statement of the factors which would be considered for award but did not mention evaluation of potential foreign government subsidies. Insofar as Cadillac Gage's protest can be interpreted as charging that this factor should have been made a part of the RFP's evaluation scheme, the protest is untimely under § 21.2(b)(1) which requires filing of protests based upon alleged solicitation defects before the closing date for initial proposals. 4 C.F.R. part 21 (1983). System Development Corporation and International Business Machines, B-204672, March 9, 1982, 82-1 CPD 218. In this connection, since this procurement represented the second phase of a 2-phase procurement, Cadillac Gage should have been aware that its competitors were foreign firms.

Insofar as Cadillac Gage is alleging that the Army/Marine Corps' evaluation of proposals should have considered and eliminated the effects of any Canadian subsidy, the protest is denied. It is a fundamental principle of Federal

procurement law that the solicitation must inform all offerors of all evaluation factors to be used so that all offerors are treated equally and are provided a common basis for submission of proposals. Data 100 Corporation, B-194924, December 19, 1979, 79-2 CPD 416. Thus, it would have been improper for the Army/Marine Corps to have considered the amount of any Canadian subsidy in the evaluation process since nothing to that effect was stated in the RFP's evaluation section. System Development Corporation and International Business Machines, supra.

Finally, contracts between our defense agencies and Canadian firms (through the Canadian Commercial Corporation) are specifically encouraged under a Memorandum of Understanding between the United States Department of Defense and the Canadian Department of Defence Production which has been implemented in Defense Acquisition Regulation section 6, part 5 (1976 ed.) and contains no provision for offsetting Canadian Government subsidies in the evaluation of proposals.

Cadillac Gage alleges that the price offered by GM of Canada is so low that it might be substantially lower than cost and that this below-cost offer was subsidized by the Canadian Government. In support of this allegation, Cadillac Gage argues that GM of Canada sold a simpler version of its LAV which did not contain a turret to the Government of Egypt. Because of the more stringent Army/Marine Corps' requirements, Cadillac Gage believes that the price per vehicle in the present procurement should be substantially higher than the price per vehicle in the Egyptian procurement. The protester charges that the Army/Marine Corps should have done a "should cost" analysis to determine the cost realism of GM of Canada's offer and requests that our Office now perform a "should cost" analysis.

As previously stated, we find nothing improper in the fact that the Army/Marine Corps did not evaluate proposals in a manner which would eliminate any Canadian subsidy. Furthermore, the allegation that there has been a below-cost offer or "buy-in" by GM of Canada provides no basis for invalidating the award to that firm. See Fermont Division, Dynamics Corporation of America; Onan Corporation, 58 Comp. Gen. 533 (1980), 80-1 CPD 438. The Army reports the Egyptian contract cited as support by the protester was totally unlike the GM of Canada contract because, among

other things, the Egyptian contract prices were in Canadian dollars, quantities were much smaller, finance charges were included and the Egyptian contract was on a fixed-price (without escalation) basis. Since the Egyptian contract was different from the present procurement, we believe that the prices in the Egyptian sale are irrelevant to the present protest.

Evaluation of Proposals

Generally, Cadillac Gage contends that the Army/Marine Corps did not evaluate proposals in accordance with the evaluation scheme set forth in the RFP. Cadillac Gage argues that the Army/Marine Corps did not properly evaluate the results of the Phase I testing which was an integral part of the "Technical/Performance" evaluation. The protester also argues that his V-150 vehicle was substantially lower in price than the vehicle purchased from GM of Canada and that, since the RFP indicated that "Technical/Performance" and "Cost" were to be given approximately equal weight in evaluation, it should have been selected for award on the basis of its lower price. Cadillac Gage also charges that the evaluation of proposals did not take into account all aspects of Cadillac Gage's proposal, particularly data concerning past performance, in contravention of the RFP evaluation scheme.

As previously stated, we do not conduct a de novo review of proposals and make an independent determination of their relative merit since that is a function for the contracting agency; our review is limited to determining whether the contracting agency's evaluation was fair and reasonable and consistent with the RFP's evaluation criteria. KET, Inc., supra. Since the Army has denied Cadillac Gage access to much of the source selection material, we have reviewed the material in camera in light of the protest. Due to the nature of the material, our discussion is necessarily limited.

In section M.4, the solicitation set forth an evaluation formula which stated, in pertinent part, that:

"A. Selection of the successful offeror shall be made utilizing the criteria herein-after set forth. However, any final negotiated

proposal which is unrealistic in terms of technical or schedule commitments, or unrealistically low or high in cost, will be deemed reflective of an inherent lack of technical competence or indicative of a failure to comprehend the complexity and risks of the Government's requirements as set forth in this solicitation and may be grounds for rejection of the proposal. The decision as to which offeror best meets the LAV program requirements, at an affordable cost, will follow a comprehensive evaluation of all proposals. The evaluation areas are Technical/Performance, Cost and Management/Other Support. Technical/Performance and Cost are approximately equal in importance and are individually worth more than Management/Other Support. The data used for evaluation will be that which is required to be furnished by the contractor as set forth in Section L, and has application as hereinafter set forth in this Section M, and the results of testing from Phase I of the program, and the contractor's assessment of failures which may occur and proposed corrective action to be accomplished and incorporated on production vehicles to prevent recurrence of the test failure incident which data apply to evaluation of the Tech/Perf area. Past performance will also be a criterion against which all elements within the three major areas will be evaluated.

"B. The Technical/Performance area for both Part I Production and Part II R&D will be evaluated using the following elements which are shown in descending order of importance and weighting.

1. RAM-D
2. Fightability
3. Human Factors/Safety
4. Survivability
5. Mobility
6. Transportability
7. Configuration/Firepower
8. Environmental

* * * * *

During Phase I testing, the Government recorded any "incidents" that occurred in which the vehicles failed to perform properly for any reason. The Phase I contracts contained a "Failure Definition and Scoring Criteria" which was to be used to grade or evaluate incidents to determine which incidents were serious enough to be considered "mission failures." The number of mission failures was divided into the total number of miles traveled by a vehicle to calculate the mean miles between mission failures (MMBMF) which was used as a measure of the reliability of the vehicle. A series of four scoring and assessment conferences were held during Phase I testing to evaluate the reported incidents and ultimately to compute reliability test scores. Each contractor was given copies of all test incidents to be scored at the next scoring conference 1 to 2 weeks before the conference. Contractors were allowed to review the incidents and to comment thereon, including their own scoring of reliability and supporting rationale. At a scoring conference, the eight conferees, representing both Army and Marine Corps users, development testers, operational testers, and material developers, voted to determine whether an incident was serious enough to be considered a mission failure to be counted against a vehicle's reliability score.

The Army reports that only the GM of Canada vehicle met the reliability requirement of 1250 MMBMF. GM of Canada's vehicle achieved a score of 1449 MMBMF while Cadillac Gage's V-150 model was scored at 398 MMBMF, and Cadillac Gage's V-300 model was scored at 158 MMBMF.

Cadillac Gage strongly disagrees with the Army/Marine Corps' scoring results. Of the 380 recorded incidents reported for the Cadillac Gage V-150, the scoring conferences resulted in a determination that 61 were serious enough to be considered mission failures. Cadillac Gage has rescored the reported incidents and concludes that only 19 were properly charged as mission failures. Thus, Cadillac Gage charges that the MMBMF score for the V-150 model should really have been 1,279 MMBMF. Cadillac Gage believes that the number of properly chargeable mission failures should be reduced from 61 to 19 because 24 incidents were improperly scored as mission failures in the first instance and 18 incidents which were originally properly considered mission

failures should have been deleted as the result of modifications proposed by Cadillac Gage which would prevent such failures from recurring. Cadillac Gage charges that it was given no credit for modifications it proposed whereas GM of Canada was given credit for proposed modifications which increased the GM of Canada score to 1718 MMBMF. Cadillac Gage also contends that the Army/Marine Corps charged incidents on a different, more lenient basis for the GM of Canada vehicle because reported incidents of similar nature resulted in charging Cadillac Gage's V-150 with a mission failure while GM of Canada's vehicle was not charged.

We have examined the reliability scoring in light of the allegations made by Cadillac Gage, and cannot conclude that the scoring of mission failures and overall reliability of vehicles was unreasonable or contrary to the RFP's stated criteria.

As previously stated, we will not question the qualifications of contracting agency personnel involved in the technical evaluation of offers. See Ads Audio Visual Productions, Inc., supra. Moreover, our review of the record shows no evidence of any bias, and we have no basis to question the integrity of the evaluators. Cadillac Gage was given ample opportunity to review the test incidents reported and to participate in scoring conferences by commenting upon reported incidents and proposing modifications prior to any final determination as to whether a mission failure should be charged. We find no inherent impropriety or bias against Cadillac Gage in this procedure.

Attachment 10 to each contractor's Phase I contract contains the "Failure Definition & Scoring Criteria" which was used as the basis for scoring test incidents and vehicle reliability. This document states that "The scoring criteria contained herein consists of guidelines for consistent classification of test results." A "mission failure" is defined in paragraph 1.4.1 as any incident which:

"(1) results in the inability to begin or complete a prescribed mission, (2) degrades mission performance or (3) presents a critical or catastrophic hazard to personnel or equipment as defined by MIL-STD-882A (28 June 1977)."

As with any guidelines, the evaluators must be afforded discretion in the application of the definition of mission failure to the actual incidents which occurred. In the present procurement, due in part to the limited time in which the testing had to be accomplished, testing personnel decided to repair vehicles during testing when incidents occurred rather than allowing them to continue their mission. The repairs were made to prevent possible damage to the test vehicles which might eliminate a vehicle from further testing and to avoid disrupting the test schedule. Therefore, scorers had to exercise a great amount of judgment in applying the definition of mission failure to determine whether the mission could have been completed or the extent to which a mission performance would have been degraded without the preventive maintenance/repairs.

Regarding the Army/Marine Corps' failure to give Cadillac Gage credit for modifications it proposed, the Army reports that the scoring conferences did not credit proposed modifications unless the modifications were actually made to test vehicles and enough test miles were logged after the modifications were installed to determine whether the vehicle's performance was significantly improved by the modification. The Army reports that modifications were made during testing to permit continued testing within the limits of the stringent test schedule, and all modifications were either installed by the contractor's representatives or Government personnel under the supervision of the contractor's representative. The Army further contends that modifications were made as early as possible without interfering with other critical testing. The scoring conferees determined that certain modifications proposed by Cadillac Gage were installed so late in the testing that a determination could not be made as to whether such modifications significantly improved the V-150's performance and justified deleting previously scored mission failures. There is no evidence that GM of Canada received credit for untested modifications. In these circumstances, we do not find unreasonable the evaluators' determinations not to credit Cadillac Gage for proposed modifications.

Regarding Cadillac Gage's argument that 24 of the mission failures charged to the V-150 model should not have been charged under the definition of mission failure set forth in its Phase I contract, we have examined the scoring

conference results and do not find that the scoring committee erred.

Cadillac Gage has cited portions of the "Failure Definition & Scoring Criteria" document as support for its contention that 24 of the reported incidents were improperly charged as mission failures. We have reviewed this document, and we find the Army/Marine Corps reasonably interpreted the "Failure Definition & Scoring Criteria" as allowing them to weigh the seriousness of a reported incident. In fact, it appears that some type of weighing had to be done in order to determine the degree to which a mission was degraded or the seriousness of a hazard in order to categorize an incident as a mission failure under the definition set forth in paragraph 1.4.1, entitled "Mission Failure, quoted above."

We have reviewed the mission incidents which Cadillac Gage alleges should not have been considered mission failures and the Army's response to this argument. The incidents charged to Cadillac Gage's V-150 as failures are too numerous to list here, but they include such incidents as loss of brakes, loss of fire protection system in the crew compartment, punctures to tires which could not be plugged by the operating crew, overheating, failure to start, and inability to shift from 2-wheel to 4-wheel drive, to list a representative sampling. We find that under the definition of mission failure in paragraph 1.4.1, quoted above, it was reasonable for the scoring conferees to charge such incidents as mission failures because they were such that they could have prevented a mission from beginning or from being completed, or degraded mission performance, or were hazardous to crew members.

Cadillac Gage argues that GM of Canada's vehicle was scored using different, more lenient criteria. In part, this charge is based upon the fact that the number of incidents reported during testing was relatively equal (277 for the GM of Canada vehicle and 283 for the Cadillac Gage V-150) while the number of mission failures charged is not (16 for the GM of Canada vehicle and 61 for the Cadillac Gage V-150). Cadillac Gage also gives a multitude of examples which it contends support its claim that GM of Canada was not charged with mission failures for which Cadillac Gage's V-150 was charged.

The Army reports that the reason for the "drastic difference in number of combat mission failures is that when an incident occurred on the V-150, it was more often a catastrophic mission aborting failure rather than a nuisance type unscheduled maintenance action as occurred on the GM of Canada vehicle." We have reviewed the incidents which Cadillac Gage cites to show the unequal treatment of offerors in the scoring of mission failures and the Army's responses thereto. We cannot agree that mission failures were graded more leniently in the case of GM of Canada's vehicle. While the protester has cited a multitude of incidents in support of its charge of unfair treatment, we will only describe a couple of examples here.

Cadillac Gage alleges that tire failures were an area where unequal scoring was particularly prevalent. The GM of Canada vehicle had a total of 42 incidents while the V-150 only had 15; however, GM of Canada's vehicle was only charged with 3 mission failures while the V-150 was charged with 8. Cadillac Gage contends that its vehicle was charged a mission failure each time a tire had to be replaced while GM of Canada's vehicle was not. The Army points out that the GM of Canada vehicle is an 8-wheel vehicle and the V-150 is only a 4-wheel vehicle. Thus, it could be expected that the GM of Canada LAV would suffer more flat tires. However, with double tires on each side of the vehicle, the GM of Canada vehicle could operate efficiently if only one of a set of two tires was punctured. For example, operators reported they could steer and maneuver the GM of Canada LAV without difficulty even though one of the four front tires went flat. On the other hand, the V-150 became unstable when one of the two front tires went flat. Also, the V-150 tires generally could not be plugged by operators because they separated from the rim when flat; on the other hand, GM of Canada's LAV contained an on-board compressor with which tires could be plugged and refilled while on a mission. Therefore, the mission impact of a flat tire was more serious with the V-150 and resulted in more mission failures being charged.

Another example cited by Cadillac Gage is a mission failure charged to its V-150 when a preoperational inspection revealed a low fluid level in the V-150's radiator. When the crew added fluid, it was discovered that the radiator had a hole which caused the fluid to "gush" from the radiator. A mission failure was charged.

The allegedly similar incident with the GM of Canada LAV was also discovered during a preoperational inspection. It involved a slight bend in the filler neck of the surge tank which prevented the cap from fitting properly and resulted in a minor fluid leak during operation. The resulting minor leak was judged to have little impact on the mission and no failure was charged.

Cadillac Gage also alleges that the scoring conference members could not have given sufficient consideration to each reported incident because, according to the protester's calculations, only 2 minutes could have been allotted by the conference to consideration of each incident. The Army responds that incident listings were provided to conferees 1 to 2 weeks before each conference. In our view, this allegation, even if true, does not justify a finding that the evaluators gave insufficient consideration to scoring mission failures.

Accordingly, we conclude that scoring of the RAM-D portion of the evaluation was reasonably based and that the protester and awardee were treated equally. Therefore, this portion of the protest provides no basis to invalidate the award to GM of Canada.

Cadillac Gage also charges that the Army/Marine Corps improperly evaluated the growth potential of the V-150 model because the Army/Marine Corps simply multiplied the demonstrated mean miles between mission failures (MMBMF) by a growth potential percentage to arrive at a calculated 479 MMBMF for the Cadillac Gage V-150 which was still well below the required 1,250 MMBMF. Cadillac Gage contends that growth potential should have been calculated by assigning growth potential percentages to specific areas in which mission failures had occurred based upon an assessment of how likely those type of mission failures were to occur again in view of the modifications proposed by the contractor.

The Army responds that the percentage growth rate it applied to each contractor's tested reliability rating to calculate the potential reliability of the product offered was primarily based upon the maturity of each contractor's RAM program. Therefore, it appears that a relatively low growth rate was chosen because the vehicles offered were essentially off-the-shelf, nondevelopmental items.

Further, the Army contends that using the method proposed by the protester--listing failure incidents and then determining a separate growth rate for each by taking into account proposed modifications for each--would be overly optimistic. This is because such a method would give a high growth potential for failures which had occurred during testing but would not account for failures which might occur during the life of the vehicle even though they did not occur during testing.

There is merit to the Army's arguments. The method proposed by the protester would, in reality, reward contractors for product failures and proposed modifications without taking into account potential failures in the future. The source selection officials actually concluded that GM of Canada's growth potential was greater than Cadillac Gage's, but for evaluation purposes, they were rated equal. Furthermore, the protester's automotive reliability rating was so low after Phase I testing that we doubt that it could have met the required 1250 MMBMF rate even if growth potential were evaluated in the manner proposed by Cadillac Gage. Since the protester must bear the burden of proving its case and the protester has not shown that the Army/Marine Corps' methodology was illogical, we conclude that Cadillac Gage has not carried its burden here. See ACMAT Corporation, supra. Therefore, we cannot find that the Army/Marine Corps' evaluation of reliability growth potential was unreasonable.

Cadillac Gage contends that, despite the statement in section M.4 to the effect that past performance would be a criterion against which all elements within the three major evaluation areas would be evaluated, the Army/Marine Corps source selection officials did not consider Cadillac Gage's prior experience in evaluating its proposal. In particular, Cadillac Gage alleges that the source selection officials did not consider information submitted in Cadillac Gage's proposal which showed that the protester had sold approximately 1000 LAVs to Saudi Arabia nor an article from Armor magazine which showed that the V-150 had a mean miles between failure rating of 2200 miles.

The Army argues that it did not have to consider the Armor magazine article because it did not consider the information to have any validity in regard to the current testing. The Army points out that, among other things, the

definition of mean miles between failure could have been different than the definition of mission failure in the present procurement. In essence, the Army/Marine Corps evaluators considered the Armor report but rejected it as invalid for evaluation purposes because they did not consider the performance, vehicle configurations, or mission roles to be comparable. We cannot find that this view was unreasonable. Furthermore, our review of the evaluation materials shows that the Saudi Arabian sale and other Cadillac Gage experience was indeed considered by the evaluators. Therefore, this portion of the protest is without merit.

Cadillac Gage disagrees with the Source Selection Authority's finding that GM of Canada's vehicle was "substantially and significantly technically superior to all other candidates." Generally, Cadillac Gage has gone through all of the subfactors listed as elements of the "Technical/Performance" area of the evaluation formula and determined that only in the "automotive reliability" area of the Phase I testing was GM of Canada's vehicle rated as superior to the V-150. We have examined the record in light of this allegation and numerous technical arguments made by the protester. While we are unable to discuss with specificity the qualitative assessments contained in the Source Selection Evaluation Board's reports and sample crew questionnaires because of the confidential nature of such material, we are able to conclude that the Source Selection Authority's decision regarding the technical superiority of the GM of Canada vehicle over either of Cadillac Gage's proposed vehicles has a rationale basis and is based upon the Phase I test results and offerors' proposals in accord with the evaluation criteria set forth in the RFP. Therefore, we cannot find that the source selection evaluation and determination concerning Technical/Performance are without a reasonable basis.

Finally, Cadillac Gage argues that, since the price proposed for its V-150 model was substantially lower than the price proposed for the GM of Canada vehicle, under the RFP evaluation scheme which stated that Technical/Performance and Cost were approximately equal in importance, Cadillac Gage should have been awarded the contract. Cadillac Gage submits that the results of the Technical/Technical/Performance evaluation could not have justified rejecting Cadillac Gage's extremely low priced V-150 vehicle.

Thus, the protester concludes that cost was not afforded equal weight with technical factors as required in the RFP.

The Army reports that the source selection decision was made in accordance with the evaluation scheme set forth in the RFP. The Army points out that the evaluation scheme can only be interpreted properly by reading section M.4.A as a whole and not by taking the portion which indicates that Technical/Performance and Cost will be weighted equally out of context as the protester has done. The Army also points out that Cost was only to be a controlling factor where two or more proposals were adjudged to be otherwise equal or where a technically superior proposal was at a cost the Government could not afford. The Army contends that "full consideration was given to cost and to the technical advantage of the GM of Canada vehicle * * * and provided the valid bases for the award to General Motors of Canada as the contractor that in fact 'best met the Government's requirements at an affordable cost'" as provided in section M.1.2 of the RFP.

In a negotiated procurement, award selection may properly consider factors other than price--for example, technical superiority. See Automated Systems Corporation, B-184835, February 23, 1976, 76-1 CPD 124. Cost/Technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the established evaluation factors. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD 325. The determining element is the considered judgment of the procuring agency concerning the significance of the difference in technical merit among the offerors. 52 Comp. Gen. 358, at 365 (1972). We have upheld awards to higher rated offerors with significantly higher proposed costs because it was determined that the cost premium involved was justified considering the significant technical superiority of the awardee's proposal. Riggins & Williamson Machine Company, Incorporated, et al., 54 Comp. Gen. 783 (1975), 75-1 CPD 168.

We find that the Army has considered the trade-off between GM of Canada's technical superiority and Cadillac Gage's lower price (for the V-150, in particular). The Army has justified the award in its reports to our Office on this protest, and there are documents in the source selection file which support the Army's contention that the technical

superiority of GM of Canada's offer was worth the price difference. In this regard, it does not matter that the Army's justification was prepared after award, nor does it affect the validity of award, as long as the record reflects that a proper basis for the award existed upon which the source selection was made. See Automated Systems Corporation, supra.

The Source Selection Evaluation Board's qualitative reports on the Technical/Performance areas show that GM of Canada's vehicle was higher rated than either of Cadillac Gage's vehicles in most areas of evaluation. From these reports, the contractors' proposals, Phase I test results, and proposed corrective actions, the Source Selection Authority (SSA) determined that GM of Canada's vehicle was "substantially and significantly technically superior to all other candidates." The SSA also stated that:

"The vehicles proposed by other offerors in material respects are considered to have major deficiencies and marginal characteristics. The General Motors of Canada vehicle on the other hand offers technical superiority in material respects. These significant differences relate to technical evaluation criteria which are high in the relative order of importance. The acquisition can be accomplished at an affordable cost and within planned and programmed resources."

The Army points out that Cadillac Gage's vehicles were deficient in the area of automotive reliability where they achieved scores of 398 MMBMF (for the V-150) and 158 MMBMF (for the V-300) and could not meet the requirement of 1250 MMBMF. The Army also points out that the SSA included with his determination summaries of the evaluations which listed the strengths and weaknesses of each offer and showed that Cadillac Gage's V-150 had almost four times as many technical weaknesses as the GM of Canada vehicle while the V-300 had almost twice as many. According to the summaries, Cadillac Gage also had more Management/Other Support weaknesses than GM of Canada. Moreover, the summaries show that the Cost Realism and Cost Thoroughness factors for the Cadillac Gage vehicles were rated as only "marginal" in comparison to GM of Canada's rating of "good." Based upon the superiority of the GM of Canada vehicle, the Army

contends that GM of Canada was properly chosen on an overall basis, including cost as a factor, and provided the Government "the greatest value based upon the [RFP] criteria." Based upon these justifications, we cannot find that the source selection was not made in accord with the RFP's evaluation criteria nor supported by the record.

For the above reasons, we find that the evaluation of proposals and decision to award to GM of Canada were rationally based and were in accord with the award criteria stated in the RFP. Therefore, these protest allegations are without merit.

Conclusion

Accordingly, we find that the protester's arguments do not warrant overturning the award to GM of Canada. We, therefore, deny in part and dismiss in part the protest.

for Harry R. Van Cleave
Comptroller General
of the United States