

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

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**FILE:** B-211053.2; B-211053.3      **DATE:** January 17, 1984**MATTER OF:** Essex Electro Engineers,  
Inc.;**DIGEST:** ACL-Filco Corporation

1. Agency decision to exclude offeror from competitive range is proper where offeror's technical proposal was unacceptable and so deficient as to require major revisions before it could be made acceptable.
2. Agency properly removed offeror from competitive range where, after discussions, its proposal was found to be technically unacceptable.
3. Discussions were meaningful where agency asked questions which led offeror to the deficient areas of its proposal and provided offeror an opportunity to revise proposal in response to discussions.
4. Protester has not carried burden of proving that agency leaked confidential source of supply for component where protester has provided only circumstantial evidence and agency has conducted investigation in which all personnel have denied leaking information.

Essex Electro Engineers, Inc. (Essex), and ACL-Filco Corporation (ACL) protest the rejection of their proposals under request for quotations (RFQ) DAAK51-83-Q-0006 for Aviation Ground Power Units (AGPU), issued by the Applied Technology Laboratory, United States Army Research and Technology Laboratories (Army), Fort Eustis, Virginia.

We deny both protests.

The RFQ sought a compact AGPU capable of providing hydraulic, pneumatic and electric power simultaneously to aircraft. Basically, the AGPU consists of a combination of components such as the turbine engine, hydraulic pump, generator and undercarriage, all of which are proven and exist in the Army or Department of Defense inventory. The RFQ provided a functional description of the AGPU, giving

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basic performance and design requirements. Each offeror, however, was free to meet the requirements with its own unique design and combination of components. The RFQ states that the offeror shall provide a detailed design of the AGPU completely defining the configuration.

The solicitation provided that award would be made to the offeror whose proposal offers the best approach for satisfying the government's requirements, considering cost/price, technical and other factors. Additionally, cost/price was considered of paramount importance after a determination of technical acceptability. Technical proposals were evaluated in four areas: Design, Test, Manufacturing and Logistics. Design was substantially more important than the other areas, which were of approximately equal value.

The Army received eight proposals in response to the RFQ. After technical evaluation of the proposals, the Army found that three proposals, including Essex's proposal, were technically unacceptable and so deficient that discussions could not cure the deficiencies without major proposal revisions. These proposals were not included in the competitive range for discussions. Two other proposals were excluded from the competitive range due to a combination of technical deficiencies and high prices. Three proposals, including ACL's, were included in the competitive range. ACL's proposal was not found to be technically acceptable, but was considered to be reasonably susceptible to being made acceptable. After discussions and proposal revision, the Army found that ACL's proposal had not become technically acceptable and it was removed from the competitive range.

#### Essex Protest

The Army advised Essex, by letter, that its proposal was evaluated in accordance with the evaluation criteria stated in the RFQ and that its proposal was rejected because it did not offer the best approach for satisfying the government's requirements.

Essex initially argued that the language of the letter indicated that the Army did not evaluate the technical proposals in accordance with the stated criteria, but rather used the method of award clause to evaluate proposals. The protester asserts that such action was improper because proposals must be evaluated on the basis stated in the

solicitation. Further, Essex contends that the letter did not provide the detailed statement of reasons for rejection of its proposal required by Defense Acquisition Regulation (DAR) §§ 3-508.1 and 3-508.2 (Defense Acquisition Circular No. 76-40, November 26, 1982).

The Army's report on the protest stated that the evaluation was performed in accordance with the stated evaluation criteria and Essex submitted an extremely weak proposal which could not have been made acceptable without major revisions. In many areas of its proposal, Essex merely "parroted" the RFQ requirements. In other areas, Essex stated that it would comply with the requirements, but provided little detail showing how it would comply. The Army found Essex's proposal to have four deficiencies and 14 weaknesses in the design area, three deficiencies and two weaknesses in the manufacturing area, one deficiency and four weaknesses in the test area, and three deficiencies and two weaknesses in the logistics area. Essex's proposal was ranked sixth out of eight proposals. The Army provided Essex with an edited version of the technical evaluation of its proposal.

Regarding the notice of unacceptability, the Army states that Essex was not provided a detailed statement of the reasons for rejection of its proposal because the procurement was in a preaward status at the time and Essex would have been provided a full debriefing after contract award.

In its response to the Army's report, Essex responded to each of the deficiencies found by the Army, arguing that the alleged deficiencies were either illusory or were easily cured by discussions and the Army should have included Essex in the competitive range.

The evaluation of technical proposals and the resulting determination of whether an offeror is in the competitive range is a matter within the discretion of the contracting activity, since it is responsible for defining its needs and the best method for accommodating them. Texas Medical Instruments, B-206405, August 10, 1982, 82-2 CPD 122; Health Management Systems, B-200775, April 3, 1981, 81-1 CPD 255. Generally, offers that are technically unacceptable as submitted and would require major revisions to become acceptable are not for inclusion in the competitive range. Coherent Laser Systems, Inc., B-204701, June 2, 1982, 82-1 CPD 517. In reviewing an agency's

technical evaluation, we will not evaluate the proposal de novo, but will only examine the agency's evaluation to ensure that it had a reasonable basis. Auto Paint Specialist, Inc. aka K & K Truck Painting, B-205513, June 21, 1982, 82-1 CPD 609. Additionally, the protester has the burden of showing that the agency's evaluation was not reasonable. Coherent Laser Systems, Inc., supra.

We find that the technical evaluation of Essex's proposal and exclusion of it from the competitive range was reasonable. We have examined the entire record of the technical evaluation and find that it was performed in accordance with the evaluation criteria in the RFQ. Also, we agree with the Army's assessment that the Essex proposal is so weak that it would require major revisions to become technically acceptable. Some parts of the proposal merely repeat RFQ requirements. This is generally not an acceptable means of demonstrating compliance with the requirements. Roach Manufacturing Corp., B-208574, May 23, 1983, 83-1 CPD 547. Additionally, other parts of the proposal provide only sketchy information as to how Essex intended to meet the RFQ requirements.

While we have examined all of the disputed deficiencies in Essex's proposal in reaching this result, we will discuss only a few examples.

The RFQ states that proposals will be evaluated for "an understanding of interface design issues necessary to achieve satisfactory operation with aircraft subsystems." The RFQ also states that proposals shall substantiate that the proposed design meets the subsystem requirements of aircraft that it is intended to support. The Army found Essex's proposal deficient in this area; Essex argues that it met the requirement. We agree with the Army's evaluation. Essex's proposal did no more than repeat verbatim the specific RFQ requirements for receptacles, power cables, wiring, air ducts, and hydraulic hoses.

The Army found that the manufacturing portion of Essex's technical proposal was deficient because it did not address specific work machine requirements or personnel skill needs, nor did it define production layouts. Essex contends that the RFQ does not require an offeror to address those matters and also they concern matters of responsibility which must be referred to the Small Business Administration in the event of a negative determination by the Army. Additionally, Essex points to portions of its proposal which, it argues, address those points.

Again, we find the Army's evaluation to be reasonable. Contrary to Essex's assertion, the RFQ specifically provides that proposals will be evaluated for adequacy of substantiation of production layout, work station identification, processes, materials, tools and machines, and personnel skill requirements. While these factors are traditionally matters of responsibility, we have held that in negotiated procurements, traditional responsibility factors may be used as technical evaluation criteria, and that if a small business is found to be deficient in those areas, there is no requirement for referral to the Small Business Administration. Anderson Engineering and Testing Company, B-208632, January 31, 1983, 83-1 CPD 99. We have examined Essex's responses to these areas and find the Army's conclusion that Essex's proposal was deficient to be reasonable. The responses are brief, vague and general.

Concerning Essex's argument that the notice of rejection of its proposal was deficient, we have held that prior to award, an offeror whose proposal is excluded from the competitive range is entitled to only a general explanation of the basis for rejection. Enviro Control, Inc., B-205722, April 12, 1982, 82-1 CPD 333.

We deny Essex's protest.

#### ACL Protest

ACL argues that the deficiencies cited by the Army in finding its proposal technically unacceptable were not deficiencies at all--that its proposal was acceptable in those areas. ACL also argues that the discussions did not adequately notify it that the Army considered its proposal deficient in those areas and, in fact, the Army led it to believe that its proposal was acceptable by conducting a preaward survey. ACL also alleges that a competitor in this procurement gained access to the identity of a component supplier that ACL claims to have discovered and kept confidential, and the only logical way for the competitor to have learned of the supplier's identity was from Army procurement personnel. According to ACL, it was prejudiced by the alleged leak because the supplier's component was substantially lower priced than equivalent components used by ACL's competitors.

The Army states that ACL's proposal was technically unacceptable as submitted, but that the Army felt that through discussions, the proposal might be made acceptable.

Consequently, it was initially included in the competitive range. According to the Army, it discussed each area of deficiency with ACL and provided ACL an opportunity to revise its proposal to cure the deficiencies. The Army found that the revised ACL proposal did not cure the deficiencies and, in fact, evidenced even more deficiencies than were found initially. Consequently, the Army removed ACL's proposal from the competitive range.

The Army asserts that it advised ACL that the preaward survey was being performed prior to a finding of technical acceptability due to the tight timeframe of the procurement, and that ACL should not consider it to be a determination that its proposal was technically acceptable.

Finally, the Army conducted an investigation into the alleged leak of ACL's confidential source and concluded that there was no evidence of Army personnel leaking the source. The Army points out that the source, in fact, was listed in the "Business Yellow Pages" of the telephone directory and was generally known to businesses using the component it produces.

ACL labeled as proprietary the portions of its protest letters which discussed the alleged deficiencies and the discussions concerning them. ACL has requested that they not be released outside GAO or the Army. Consequently, our discussion of the technical evaluation and discussion can be only in the most general terms. In reaching our decision, we have, however, carefully examined ACL's initial and revised proposals, the entire record of technical evaluations, and the record of discussions, as well as the proprietary aspects of the protest letters.

The Army rejected ACL's proposal because of three deficiencies in the design area of one specific component and deficiency in the area of testing. We have examined each deficiency and find, in applying the above-stated standard of review, that ACL has not carried its burden of proving the Army's determination to be without a reasonable basis. For certain of the deficiencies, ACL argues that the RFQ did not specifically require what was found to be a deficiency. However, we find that the RFQ requirements were broad enough to encompass the Army's concerns. Also, with regard to certain deficiencies, ACL argues that its proposal clearly satisfied the alleged deficiency. We find that ACL's proposal and explanatory arguments do not answer the Army's actual concerns, but rather attempt to answer its mischaracterization of the concerns.

Concerning the adequacy of discussion, we have held that, while discussions must be "meaningful," the extent of discussions necessary to satisfy that requirement is a matter of judgment primarily for determination by procuring officials and is not subject to question by our Office unless shown to be clearly without a reasonable basis. Health Management Systems, B-200775, April 3, 1981, 81-1 CPD 255. The essence of meaningful discussions is that the agency point out the offeror's deficiencies and permit it to revise its proposal to attempt to correct those deficiencies. Concerning the agency's duty to point out deficiencies in offeror's proposals, we have held that requests for clarifications or amplifications which lead offerors to areas of their proposals that are deficient are sufficient to put them on notice of the deficiencies. System Sciences Incorporated, B-205279, July 19, 1982, 82-2 CPD 53; Health Management Systems, supra; Serv-Air, Inc., 57 Comp. Gen. 827, (1978), 78-2 CPD 223.

As we stated above, we have examined the record of discussions in this case and find that the Army fulfilled the legal requirement for meaningful discussions. The Army asked questions which were sufficient to lead ACL to the deficient areas of its proposal, and the Army provided ACL the opportunity to revise its proposal. This is reinforced by the fact that ACL revised the areas of its proposal that the Army questioned and which were eventually found to be deficient. The Army was not required to bring ACL's proposal up to an acceptable level through successive rounds of discussions. Serv-Air, Inc., supra.

Concerning the allegation that the Army leaked ACL's confidential source, ACL has provided only speculation and circumstantial evidence. When investigated, the involved personnel all denied that any leak occurred. We find that ACL has not carried its burden of proof concerning this allegation. See, e.g., Essex Electro Engineers, Inc., B-206012.3, October 4, 1982, 82-2 CPD 307. In any event, since ACL's proposal was found to be technically unacceptable, it could not have been prejudiced on this procurement.

We deny ACL's protest.

One final procedural issue which has no bearing on the outcome of the protest must be discussed. In ACL's initial protest letter it restricted release of certain proprietary

information. This restriction was stated in the body of the letter in a paragraph on the second page. The Army, in complying with our Bid Protest Procedures, 4 C.F.R. § 21.3(a) (1983), inadvertently sent the entire letter, with the proprietary information included, to the interested parties. The Army points out that 4 C.F.R. § 21.3(b) states that if a protester considers that its protest contains material which should be withheld from release, it must affix a statement to that effect to the front page of the protest and it must identify the information wherever it appears. While the Army should have been more careful in reading ACL's protest letter before releasing it, if ACL had complied with those procedures, it is unlikely that this unfortunate incident would have occurred. An additional safeguard would be for protesters to provide a "sanitized" copy of documents containing proprietary material for release to interested parties.



Acting Comptroller General  
of the United States