



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: GTE Government Systems Corporation

File: 8-222587

Date: September 9, 1986

DIGEST

1. When a procuring agency, seeking nondevelopmental equipment that has been tested under government supervision and control, reasonably determines that proposed equipment is based upon other equipment that has neither been fully developed nor tested, the agency need not include the proposal in a revised competitive range or select the offeror for final negotiations, since the proposal has no reasonable chance for award.
2. Test reports, submitted as part of the protest record, that were not previously available or listed in an offeror's technical proposal, do not provide a basis for questioning an agency's evaluation, since this must be based on information submitted with the proposal.
3. When procuring agency presents an offeror with a list of 89 questions indicating its concerns regarding the developmental nature of proposed equipment and the lack of demonstrated compliance with specifications, and provides the offeror with an opportunity to revise its proposal, protest that discussions were not meaningful is without merit.
4. When offeror has had an opportunity to review a solicitation that the agency originally intended to issue on a sole source basis, and to suggest selection criteria and other changes that the agency subsequently incorporates into a competitive solicitation, protest that agency acted in bad faith in opening up the competition is not supported.

DECISION

GTE Government Systems Corporation protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. N00039-84-R-0532(S), issued by the Department of the Navy, Space and Naval Warfare Systems Command, for the acquisition of "unit level" circuit switches. The switches are intended to provide highly mobile telephone switching service to military units such as divisions and brigades. GTE

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contends that the Navy improperly evaluated its proposal as developmental, failed to engage in meaningful discussions, and did not conduct a good faith competition. We deny the protest.

BACKGROUND

The Navy is procuring two types of unit level circuit switches for use by the Air Force, Marine Corps, and Navy. The larger AN/TTC-42 is a vehicle-transportable telephone central office that provides automatic switching service and subscriber service functions--such as conferencing, abbreviated dialing and preemption--to digital voice telephones and trunk lines, as well as automatic switching service for analog lines. The switch can accommodate up to 150 lines. The smaller SB-3865 is a team-(two man) transportable telephone switchboard that provides automatic switching service and subscriber service functions. This switch can accommodate up to 30 lines.

In August 1977, the Navy competitively awarded a contract to International Telephone and Telegraph Corporation (ITT) for full scale engineering development of the unit level circuit switches. The switches produced by ITT were subjected to testing over a period of 2-1/2 years. In June 1984, ITT was awarded a follow-on contract for continued development, and in September 1984, the Navy issued the current RFP for a production contract. The agency intended to negotiate only with ITT because it believed that technical data necessary for competition was not available and that only ITT would be able to manufacture the switches in a timely manner. The Navy amended the solicitation in April and again in June 1985 to incorporate requirements emerging from ITT's work under its follow-on contract.

While ITT was developing the unit level circuit switch, however, GTE was developing for the Army the AN/TTC-39 switch, a 300- or 600-line switch for use at echelons above corps level. GTE subsequently received the production contract to manufacture the AN/TTC-39. In addition, GTE was awarded a contract in August 1984 to produce the AN/TTC-39A, which the firm describes as a "major upgrade" of the AN/TTC-39. GTE, in conjunction with Thomson-CSF of France, has also been awarded a contract under the Mobile Subscriber Equipment (MSE) program to provide the Army with a system serving both wire and radio subscribers. GTE is developing for the MSE program a derivative of the AN/TTC-39 and a digitally-enhanced derivative of the currently-deployed 30-line SB-3614 automatic analog switch.

GTE obtained a copy of the Navy solicitation in June and expressed its intent to submit a proposal. The Navy asked GTE to review the RFP and to propose source selection criteria and any other necessary clarifications and modifications. On July 12, the Navy modified the RFP to incorporate the evaluation criteria required for a competitive procurement, as well as some of GTE's requested changes. Both GTE and ITT submitted proposals by the August 5 closing date.

Navy technical evaluators found both proposals to be unacceptable, but considered only ITT's proposal to be reasonably susceptible to being made acceptable. GTE's technical score was less than 50 percent of ITT's score, primarily because the Navy concluded that GTE had proposed developmental equipment entailing substantial risk to the government. Nevertheless, the Navy initially included both firms in the competitive range and, in December 1985, provided each offeror with questions identifying weaknesses and deficiencies in its proposal. As a result of the responses, technical evaluators found ITT's proposal to be acceptable. They continued to consider GTE's unacceptable, believing that GTE's responses confirmed the developmental nature of its proposed switches.

The Navy requested and received revised proposals from both firms on April 21, 1986. Again, the technical evaluators found ITT's proposal to be responsive to the solicitation requirements in all areas; they determined that GTE's proposal was unacceptable. Contracting officials agreed with this assessment, concluding that GTE's proposal was so "technically deficient as to render it outside the competitive range." Accordingly, the Navy requested a best and final offer from ITT, but has withheld award pending our decision on the protest.

GTE argues that Navy evaluators wrongly considered the firm's switches to be developmental items and did not apply the evaluation criteria equally to GTE and ITT. The protester contends that its proposal meets the "functional" requirements of the solicitation, and should not have been excluded from the competitive range. GTE seeks either award or reinstatement in the competition.

The Navy responds that the switches are urgently needed to replace outdated equipment and, as it has throughout the protest, argues that the RFP clearly reflects a preference for nondevelopmental equipment that has been tested and verified, so as to assure timely delivery without substantial risk to the government. The Navy does not believe that GTE's switches meet these requirements.

SOLICITATION REQUIREMENTS

Our review of the solicitation confirms the Navy's view of what the solicitation required. The RFP specifically provided that proposals would be evaluated to determine the extent to which the possible risks during production had been minimized, assessing "tested performance versus predicted paper design." The most important evaluation criterion, "Technical Operational - Requirements Compliance," involved an assessment of the offeror's compliance with the specifications in the statement of work and the extent to which compliance had been "demonstrated." The RFP defined "demonstrated" to mean "tested and reported under government supervision and control and officially witnessed or conducted by government personnel, with appropriate documented results."

EVALUATION OF PROPOSALS

Although not stated in the RFP, in scoring proposals the agency allocated 55 of 100 available points for the "Technical Operational-Requirements Compliance" criterion. It allocated 15 points to the offeror's proposed schedule, including critical milestones, delivery rates and dates, and production acceptance test and control procedures. Of the remaining available points, a maximum of 25 could be earned for cost and 5 for management. The solicitation stated that a major deficiency in any evaluation criterion could result in the proposal being found unacceptable, regardless of whether it was otherwise rated as acceptable.

GTE's Proposal

GTE proposed a scaled-down version of the AN/TTC-39A switch to meet the AN/TTC-42 requirements. GTE also proposed an SB-3685 switch that would be a derivative of the SB-3614 automatic analog switch that GTE currently produces and is modifying for the Army.

Evaluation Results

In evaluating revised proposals, the Navy gave ITT a final score of 56.73 out of a possible 70 points for "Technical Operational - Requirements Compliance" and "Schedule." GTE received only 21.56 points for these two criteria. This large disparity resulted primarily from the agency's determination, as noted above, that GTE had proposed developmental equipment involving significant technical risk and from the fact that GTE had not adequately demonstrated compliance with many of the specifications in tests under government supervision and control. These factors led the Navy to conclude that GTE would be unable to meet the required delivery schedule and, ultimately, to its decision to eliminate GTE from the competitive range.

Analysis

As a general rule, the competitive range in a negotiated procurement consists of all proposals that have a reasonable chance of being selected for award, including deficient proposals that are reasonably susceptible to being made acceptable through discussions. Even if a proposal is technically acceptable or capable of being made so, however, it need not be included in the competitive range or selected for final negotiations when the agency determines that it has no reasonable chance for award. Information Systems & Networks Corp., B-220661, Jan. 13, 1986, 86-1 CPD ¶ 30.

Moreover, the evaluation of technical proposals and the resulting determination of whether an offeror is in the competitive range is primarily the responsibility of the contracting agency, since it is

responsible for defining its needs and the best method of accommodating them, and it must bear the burden of any difficulties resulting from a defective evaluation. Health Management Assocs. of America, Inc., B-220295, Jan. 10, 1986, 86-1 CPD ¶ 26. Accordingly, our Office does not make an independent determination of the merits of technical proposals; rather, we examine the agency's evaluation to ensure that it is reasonable and consistent with stated evaluation criteria and applicable statutes and regulations. The protester bears the burden of showing that the evaluation is unreasonable, and the fact that it disagrees with the agency does not itself render the evaluation unreasonable. Consolidated Group, B-220050, Jan. 9, 1986, 86-1 CPD ¶ 21. A clear showing of unreasonableness is particularly necessary where the agency is procuring sophisticated technical hardware. See Ionics Inc., B-211180, Mar. 13, 1984, 84-1 CPD ¶ 290.

1. Development and Testing Deficiencies

In our opinion, GTE has not shown that the Navy's judgment is unreasonable. GTE's proposed unit level circuit switches are to be based on switches that are themselves not finally developed. According to the Navy, the modifications required will be substantial, particularly in the case of the smaller SB-3865. While it is impractical to discuss here all of the aspects of GTE's proposal that were considered deficient, we will review several of the most significant, which themselves provide a reasonable basis for the agency's decision to eliminate GTE's proposal without requesting a best and final offer.

The specifications for the larger AN/TTC-42 being procured by the Navy require that the switch be capable of the following:

- (1) operation in the EMP (electromagnetic pulse) emergency mode, in which the switch shuts down the communications system when it senses the presence of an electromagnetic pulse generated by a nuclear explosion, and starts the system up again when the pulse has diminished; and
- (2) control and routing as a "parent" switch for up to 16 subordinate SB-3865 switches and as an "alternate parent" for up to 16 of these switches that are normally controlled by other switches.

The specifications for the smaller SB-3865 switches require digital processing software. Agency evaluators found that providing these capabilities would necessitate extensive development and testing on GTE's part.

With regard to EMP emergency mode and "alternate parent" capabilities, GTE contends that adding these features will involve only minor changes to the software for the AN/TTC-39A switch that it is developing for the Army. GTE also claims that it has completed government-witnessed testing of the AN/TTC-39A software. GTE states that it has converted the SB-3614

switch that it currently produces for the Army to a digital switchboard, and that the software and hardware have been fully designed and tested. The protester, however, admits that it lacks any government-witnessed test data to verify this.

We find that GTE's responses conflict with its statement to the Navy during discussions that two "significant [required] software features not already included in the AN/TTC-39A baseline are the . . . emergency mode and alternate parent operation." Regardless of how much of a change in existing software will be required, as the Navy points out, the software must be integrated within existing software modules. The Navy notes that all of the modules must be tested and the complete system must be subjected to testing, since a change in one module may affect any or all other software modules. Although GTE considers the testing to be low risk, it does not challenge the need for it. In our view, GTE has not shown that the Navy's concern about the developmental nature of the software and the risk inherent in GTE's switches with regard to emergency and parent switch capability for the AN/TTC-42 and digital processing software for the SB-3865 is unreasonable.

In their evaluation of GTE's proposal, the technical evaluators also emphasized the number of requirements for which GTE either indicated that there had been no tests under government supervision and control or referred to tests of equipment different from that required here. The solicitation required offerors to submit a matrix that demonstrated compliance with each numbered paragraph of the specifications. With respect to the smaller SB-3865 switch, the evaluators found that GTE attempted to establish compliance with approximately 13 percent of the paragraphs through documentation or analysis, rather than by testing, and with another 33 percent by future testing. For the larger AN/TTC-42 switch GTE indicated compliance with approximately 30 percent of the paragraphs through documentation or analysis, with another 6 percent to be shown by future testing.

GTE argues that these figures are not meaningful, and that if functions themselves are considered, 90 percent of those for the AN/TTC-42 and 73 percent of those for the SB-3865 have been tested. GTE suggests that measuring the percentage of software tested would be even more meaningful, alleging that 89 percent of the AN/TTC-42 software has been tested as part of the AN/TTC-39 and 97 percent has been tested in connection with the AN/TTC-39A. GTE asserts that 67 percent of the SB-3865 software has been subject to government-witnessed testing in connection with its SB-3614 switch.

We believe that the Navy's use of the individual paragraphs to measure GTE's demonstrated compliance with specifications is reasonable. GTE's own measures indicate that only 67 percent of the software and 73 percent of the functions of its SB-3865 have been tested, and it admits that

there is no government witnessed test demonstrating that its SB-3614 has been converted to a digital switchboard. GTE has submitted to our Office a revised matrix for the AN/TTC-42 dated July 1, 1986, in which the firm reports some government witnessed tests demonstrating compliance with specifications in addition to those previously reported to the Navy. To the extent that GTE's claims are based upon test results not previously available or listed in GTE's proposal, they do not provide a basis for questioning the agency's evaluation, since a technical evaluation must be based upon the information submitted with a proposal. See Health Management Assocs., supra; Joseph L. DeClerk and Assocs. of America Inc., B-220142, Nov. 19, 1985, 85-2 CPD ¶ 567.

We cannot conclude that the Navy lacked a reasonable basis for its determination that GTE has not adequately demonstrated compliance with a substantial number of specification requirements and that this failure represents a significant technical risk to the government.

2. Other Deficiencies

The Navy reports other significant deficiencies or weaknesses in GTE's proposal. Evaluators found almost "no similarity, exchangeability or commonality" between the larger and smaller GTE switches, which neither share common software nor use the same programming language. While GTE contends that the specifications do not require the use of the same programming language, the solicitation expressly provides for evaluation of the extent of "interchangeability, modularity, and commonality" between the two switches.

The specifications also require the smaller SB-3865 to be a team-transportable switchboard configured into 2 modules, i.e., a switch module weighing no more than 99 pounds and a power module of 105 pounds. Together they cannot exceed 204 pounds. GTE, however, proposed to supply an SB-3865 configured in 3 modules, weighing a total of 198 pounds. The Navy reports that the Marine Corps, which will receive most of the switches, does not plan to mount the SB-3865, and states that the addition of the extra module would necessitate the use of six men—two per module—to carry all the modules at once. In contrast, the two modules supplied by ITT would only require four men to carry them. The Navy also states that cables in tactical communication systems that are frequently connected and disconnected represent a weak link, and the necessity for extra cables to connect GTE's additional module will increase the likelihood of failure.

GTE contends that the average number of moves the smaller SB-3865 switch can be expected to make per day in a moving battlefield scenario makes vehicle mounting a very practical solution; it argues that the Army rarely "dismounts" its tactical switches. This is in essence a challenge to the Navy's determination of its minimum needs, and it is therefore untimely, since the requirement that the smaller switch be

team-transportable was an alleged deficiency apparent on the face of the RFP. 4 C.F.R. § 21.2 (1986); Thomas Engineering Co., B-220393, Jan. 14, 1986, 86-1 CPD ¶ 36.

We believe that the deficiencies found in GTE's demonstrated compliance with the specifications, the commonality of its switches, and its failure to propose a two-module SB-3865 provided a reasonable basis for the Navy to eliminate GTE from the competitive range, and we deny the protest based upon the allegedly improper evaluation of GTE's proposal.

3. Alleged Deficiencies in ITT's Proposal

GTE also questions the Navy's evaluation of ITT's demonstrated compliance with the specifications. The protester points out that the Marine Corps Operational Test and Evaluation Activity recommended in a March 1985 report that the larger AN/TTC-42 switch should not be produced until additional testing verified correction of reported reliability and maintainability deficiencies. GTE also states that a January 1986 Department of Defense report to Congress indicated that certain deficiencies in the power supply for this switch would not be corrected before contract award. We note, however, that the March 1985 report recommended approval of initial production of the smaller SB-3865 switch. With respect to the larger switch, the Navy believes that the reliability problems are offset by other aspects of ITT's design. Although our review of the record shows that evaluators recognized weaknesses in the ITT switch, GTE has provided no basis for us to question Navy's finding of a substantial disparity between the demonstrated compliance of ITT's and GTE's switches.

DISCUSSIONS

GTE alleges that the Navy failed to conduct meaningful discussions with it. The protester argues that the list of 89 questions that it received from the Navy in December 1985 were for clarification only, with no deficiencies cited.

When an agency acquires goods or services by means of negotiation, the Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.610 (1985), generally requires written or oral discussions with all responsible offerors whose proposals are within the competitive range. This requirement can be satisfied only when discussions are meaningful, which means that negotiators should be as specific as practical considerations will permit. Negotiators must apprise offerors of the the areas in which their proposals are believed to be deficient, so that the offerors have an opportunity to fully satisfy the government's requirements. E.H. Pechan and Assocs., Inc., B-221058, Mar. 20, 1986, 86-1 CPD ¶ 278.

We believe that the Navy met this standard. With respect to some of the deficiencies in GTE's proposal discussed above, the Navy submitted to GTE such requests and questions as:

"Please identify the existing and/or new software modules providing . . . EMP recovery functions and describe the functions executed by each

"Please identify the contracts, the milestones for contract completion, design completion, contractor completion, government testing and fielding, and the technical scope of the upgrades listed for the AN/TTC-39 which will also apply to the ULCS [unit level circuit switch] program.

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"Your proposal indicates that performance was validated during AN/TTC-39 [testing]. Please confirm that you have made all applicable documentation available that verifies testing performed as well as the results of the testing as required in . . . the RFP.

"Please clarify what you mean by the statements 'by inspection' and 'by analysis' as used in your RIM [Requirements Traceability Matrix]. Include in this clarification who, when, where, and how it is verified

"Please provide schedule, narrative and diagrams of your implementation of the parent/alternate parent switch functions to include description of the software/hardware changes necessary to implement this function.

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"What portion of the SB-3865 software described in your proposal is currently developed, coded, and tested?

"Your proposal indicates that 'the AN/TTC-42 uses the exact software package as developed for the AN/TTC-39 and the AN/TTC-39A circuit switches.' Please clarify how you intend to implement the AN/TTC-42 requirements not currently performed by the AN/TTC-39."

Each request or question included a reference to the appropriate section of GTE's proposal and the specifications.

We conclude that these questions put GTE on notice of the Navy's concern that GTE's proposed switches either required significant further

development and modification to meet the specifications or that GTE had not adequately demonstrated compliance with many of the specifications, and we deny the protest as to the adequacy of discussions.

BAD FAITH

Finally, GTE argues that contracting officials acted in bad faith in first admitting it into the competition and then rejecting its offer. GTE contends that since the procuring activity knew what GTE intended to propose, and also knew that it would not find technically acceptable any switch that was not "uniquely" Marine Corps, the agency should not have gone through the motions of opening the solicitation to competition.

The protester has a heavy burden in proving bias on the part of contracting officials, and we will not attribute unfair or prejudicial motives to them on the basis of inference or supposition. See Consolidated Group, supra. GTE's allegations are not supported by the record here. The weaknesses and deficiencies in GTE's proposal provided a reasonable basis for its elimination from the competitive range, and there is no indication the Navy did not seriously consider its proposal. If GTE believed that the evaluation criteria or specifications themselves were unfair, it should have suggested changes in response to the agency's initial request that GTE review the solicitation and protested any refusal by the Navy to make changes before the August 1985 closing date for receipt of initial proposals. Thomas Engineering Co., supra.

The protest is denied.



Harry R. Van Cleve
General Counsel