



The Comptroller General
of the United States

Washington, D.C. 20548

Melody

Decision

Matter of: American Development Corporation

File: B-224842

Date: January 7, 1987

DIGEST

1. Protester fails to show that contracting agency's technical evaluation of its proposal lacked a reasonable basis where protester concedes its proposal contained certain miscalculations identified by the agency and the only evidence offered to support the protester's position are conclusory statements, without further elaboration or support, disagreeing with the agency's technical assumptions and conclusion.

2. Even accepting the protester's version on a disputed factual issue--whether contracting officer at oral discussions told protester its proposal was technically acceptable--protester was not deprived of the full benefit of meaningful discussions since it was not reasonable for the protester to conclude, based solely on the contracting officer's remarks, that no further revisions to its technical proposal should be attempted.

DECISION

American Development Corporation (Adcor) protests the rejection of its offer as technically unacceptable under request for proposals (RFP) No. DAAB07-86-R-J010, issued by the Army for communications systems control elements. Adcor's principal contentions are that the Army's technical evaluation of its proposal was improper and that the Army failed to conduct meaningful discussions with Adcor. We deny the protest.

The RFP, issued on May 21, 1986, called for fixed-price offers to provide ranged quantities of equipment for the communications systems control elements (CSCEs), described as equipment shelters containing a suite of computer equipment, communications equipment and other items. The RFP represented the Army's first effort to procure the CSCEs.

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Section M.55 of the RFP provided that award would be made to the firm submitting the conforming offer representing the best value to the government. Further, to be considered for award, proposals had to be rated at least acceptable in the four evaluation factors, listed in descending order of importance as follows:

"1. Factor I - Technical. This factor consists of the following subfactors listed in descending order of importance. To receive consideration for award, a rating of no less than acceptable must be achieved for each of the three subfactors listed.

- a. System Performance (Subfactor)
- b. Operational Suitability (Subfactor)
- c. Production Readiness (Subfactor)

"2. Factor II - Cost/Price.

3. Factor III - Logistics.

4. Factor IV - Management." (Emphasis added.)

Proposals were received by the July 7 due date from three firms, Adcor, Telecommunications Specialists, Inc., and Electrospace Systems, Inc. An initial evaluation of the technical proposals then was conducted, using adjectival ratings ("superior", "good", "acceptable", "reasonably susceptible to being made acceptable" and "unacceptable") under the three noncost categories. Adcor's proposal was rated "reasonably susceptible to being made acceptable" in all three categories (technical, logistics, and management).

The Army then devised questions for each offeror addressing the weaknesses and deficiencies in their proposals. By letter dated July 21, the contracting officer sent Adcor a list of 113 questions, covering 38 weaknesses and 27 deficiencies identified in Adcor's proposal by the Army's initial evaluation. Adcor responded by the August 6 due date with revisions and clarifications to its proposal. Oral discussions then were held with the offerors on August 11 and 12, followed by a request for best and final offers. On August 15, each offeror submitted proposal revisions based on the oral discussions. Best and final offers then were submitted on August 25. The Army's final evaluation found Adcor unacceptable under the technical category and acceptable in the other two noncost categories, logistics and management.

Award was made to Electrospace on September 25. By letter of the same date, Adcor was notified that its proposal had been found technically unacceptable. Adcor then filed its protest on October 1.

Technical evaluation

Adcor's first contention is that its proposal was improperly found unacceptable under the technical evaluation factor. We find this argument to be without merit.

As discussed above, section M.55 of the RFP stated that offerors had to achieve no less than an acceptable rating under each of the three subfactors comprising the overall technical category in order to be considered for award. In its final evaluation, the Army found the Adcor proposal unacceptable under the first of the three technical subfactors, system performance. As a result, Adcor was rated unacceptable under the overall technical category and thus ineligible for award. The Army's finding of unacceptability under the system performance subfactor was based on Adcor's failure to resolve several weaknesses and deficiencies in its proposal.

In its report on the protest, the Army identified three deficiencies which in its view were critical to the unacceptability finding; specifically, Adcor failed to show that (1) the environmental control unit, or air conditioner, proposed had sufficient cooling capacity to meet the RFP temperature requirements; (2) the proposed uninterrupted power supply had sufficient capacity for the required electrical load; and (3) the estimated weight of its proposed equipment was less than 7000 lbs., as required by the RFP. Adcor disputes the Army's conclusions in these three areas, as well as each other weakness and deficiency identified by the Army.^{1/}

^{1/} Adcor has not challenged the Army's characterization of these three subfactors as critical to the system performance subfactor. Adcor does argue that the Army's insistence on strict compliance with these requirements is inconsistent with the nature of the RFP, which, according to Adcor, called for offerors to submit a design approach for the CSCEs rather than a final design. We disagree. Paragraphs 2.1 and 3.2.1 of the statement of work in the RFP specifically provide that an offeror's proposed system is to comply with the requirements in the RFP purchase description. While the RFP provides for periodic review sessions between the contractor and the Army regarding the overall design, there is no indication in the RFP that the components proposed by the offerors did not have to conform to the requirements in the statement of work and purchase description.

In reviewing challenges to a contracting agency's technical evaluation, we examine whether the evaluation was fair, reasonable, and consistent with the evaluation criteria. S.C. Jones Services, Inc., B-223155, Aug. 5, 1986, 86-2 CPD ¶ 158. Here, as discussed further below, we conclude that Adcor has not shown that the Army's evaluation was unreasonable in the three areas critical to the unacceptability rating; thus, there is no basis to disturb the Army's determination that Adcor's proposal was technically unacceptable.

Cooling capacity of environmental control unit

Paragraphs 3.2.5.1.1 and 3.2.2.1.6 of the purchase description in the RFP required offerors to provide two environmental control units (ECUs) capable of maintaining the temperature inside the equipment shelter at the specified levels. Adcor estimated the total cooling capacity required for its equipment to be 17,431 Btu/Hr, and proposed an ECU with a capacity of 18,500 Btu/Hr.

According to the Army, however, only that portion of the ECU's capacity called the "sensible cooling rate" is relevant for determining its heat reduction capacity; the remaining portion of the rating, called "the latent heat cooling," relates to reducing the humidity. The Army states that the sensible cooling rate of Adcor's ECU is only 14,000 Btu/Hr, an insufficient rating to meet the 17,431 Btu/Hr cooling capacity Adcor estimated is required. In addition, the Army found that Adcor's calculation of the required cooling capacity failed to take into account the effect on the shelter's temperature of heat gained through the shelter floor and solar heat. With regard to managing the solar heat load, Adcor proposed to use a solar shade on the shelter which Adcor assumed to have an effectiveness rate of 100 percent. The Army, noting that the solar shade covered only the top of the shelter, found that Adcor had not adequately supported its assumption that the solar shade would be 100 percent effective.

In responding to the Army's findings, Adcor first states that its proposal contained two miscalculations; according to Adcor, its proposal overestimated the required cooling capacity (which should be 15,156 rather than 17,431 Btu/Hr), and underestimated the cooling capacity of its proposed ECU (which should be 19,500 instead of 18,500 Btu/Hr). Using either these amended figures or the original figures, Adcor maintains that it proposed an adequate ECU, stating that the Army's reliance on the ECU's "sensible cooling rate" alone is a "baseless conclusion" and a "simplistic" method of

determining cooling capacity. Adcor's support for its assertion is an appendix to its protest submission which sets out scientific formulas and mathematical calculations Adcor used to arrive at its estimates.

Adcor also concedes that it failed to address the impact of the heat gain through the shelter floor, although Adcor contends, again without elaboration, that any such gain would account for 756 Btu/Hr and thus is "negligible." Finally, with regard to its proposed solar shade, Adcor states only that the Army is aware that the shade is 95 percent effective, and cites various studies of solar shade effectiveness. Adcor does not explain how either of these assertions support the assumption used in its proposal of 100 percent effectiveness.

In reviewing contracting agency technical determinations, we do not conduct an independent evaluation of the proposal's technical merits. A&A Realty, Inc., B-222139, June 20, 1986, 86-1 CPD ¶ 575. In addition, a protester's mere disagreement with the agency's conclusions does not establish that the evaluation was unreasonable. Kollmorgen Corp., B-221709.5, June 24, 1986, 86-1 CPD ¶ 580. Here, Adcor's effort to refute the Army's findings regarding its ECU consists solely of conclusory statements and a highly technical analysis of cooling requirements submitted without any useful explanation. In addition, Adcor itself states that its proposal contained miscalculations and omitted at least one relevant factor, heat gain through the shelter floor. Under these circumstances, Adcor simply has failed to provide any reliable evidence that the Army's technical assumptions and conclusions lacked a reasonable basis.

Uninterrupted Power Supply

Paragraph 3.2.1.1.3.2 of the purchase description in the RFP required offerors to provide an uninterrupted power supply (UPS) to the CSCE for 10 minutes when the main power fails. Adcor estimated that the UPS would have to support a total electrical load of 3.25 KW for its proposed equipment. The Army disagreed with Adcor's estimate, finding the electrical load to be 4.5 KW; as a result, Adcor's proposed UPS was found insufficient.

Adcor now argues that, even accepting the Army's higher estimate of the required electrical load, the UPS battery pack it proposed had sufficient power to meet the RFP requirement for a 10-minute power supply. Adcor's argument is based on its assertion that its proposed battery provides a total of 220 amperes hours; Adcor's August 6 response to

the Army's question regarding its UPS, however, states that its battery provides only 55 amperes hours. Under the formula Adcor itself used in its August 6 submission for calculating the power requirements, a battery providing 55 amperes hours would be insufficient to maintain the 4.5 KW load estimated by the Army.^{2/}

In submitting a proposal it is the offeror's duty to include sufficiently detailed information to establish that the equipment offered will meet the solicitation requirements. Johnston Communications, B-221346, Feb. 28, 1986, 86-1 CPD ¶ 211. Since Adcor has offered no evidence to support either its 3.25 KW estimate of the total electrical load or its assertion that its battery provides 220 rather than 55 amperes hours as stated in its August 6 submission,^{3/} we see no basis on which to challenge the Army's determination that the proposed UPS was inadequate to meet the 10-minute power supply requirement.

Equipment weight

Paragraph 3.2.2.1.1 of the purchase description in the RFP requires the estimated weight of the equipment to be less than 7000 lbs. Adcor's August 6 submission to the Army estimated the weight of its equipment at 4290 lbs. The Army concluded that Adcor's estimate was unrealistic since there was no indication that all the required equipment had been included and the Army itself estimated that Adcor's proposed equipment would weigh at least 6000 lbs.

^{2/} Under Adcor's formula, a power supply of 62.5 amperes hours would be required to support a 4.5 KW load for 10 minutes:

$$\begin{array}{r} 4500 \text{ watts (4.5 KW)} \\ \text{-----} \\ 12 \text{ volts} \end{array} = 375 \text{ amps}$$

375 amps x 1/6 hr. = 62.5 amps/Hr.
required.

^{3/} In its protest, Adcor states generally that a "battery pack" providing 220 amperes hours was listed in the bill of materials included in its initial proposal. The only reference we found in the bill of materials was to an item described as "battery, 12 v, 55 amp. hr., 3 ea." Adcor points to nothing else in its proposal to support its current argument that it proposed a UPS providing 220 amperes hours, presumably using four 55 amp/Hr batteries.

In its protest submission, Adcor concedes that its initial estimate of 4290 lbs. was too low because it did not include all the required equipment. Adcor now estimates the weight at 6200 lbs., which would satisfy the 7000 lbs. weight ceiling in the RFP.

In our view, the Army reasonably concluded that Adcor had not fulfilled its burden of showing compliance with the weight requirement. Adcor's protest submission confirms the Army's initial conclusion that Adcor's estimate was too low and did not include all the required equipment, and thus that the Army had a reasonable basis to question the estimate. Adcor argues that any miscalculation on its part was not significant since the Army's own estimate of the weight was below 7000 lbs.; in fact, the Army stated only that it estimated the Adcor equipment to weigh at least 6000 lbs. Under these circumstances, we believe it was reasonable for the Army to question Adcor's compliance with the weight ceiling.

Since Adcor has failed to show that the Army lacked a reasonable basis for its determination that Adcor's proposal was unacceptable in three critical areas under the system performance subfactor of the RFP, the Army properly rejected the proposal as technically unacceptable, as provided in the evaluation scheme.

Oral discussions

Adcor next asserts that during oral discussions with Adcor on August 11, the contracting officer stated that Adcor's proposal was technically acceptable. As a result, Adcor argues, it was persuaded not to revise its technical proposal further, and thus was deprived of the full benefit of meaningful discussions. We find Adcor's argument to be without merit.

In support of its assertion, Adcor submitted affidavits from seven Adcor employees who attended the August 11 discussions. According to the affidavits, one of the Adcor employees asked the contracting officer at the beginning of the meeting whether the Adcor proposal was "satisfactory" and "clearly in the competitive range." The contracting officer is said to have responded that, "if [Adcor's] proposal was not satisfactory and technically acceptable, [Adcor] would not be here today engaged in these discussions."^{4/} In addition, the

^{4/} Two of the seven affidavits do not specifically address this issue. In addition, one of the five affidavits that discuss this issue describes the contracting officer's reply in less certain terms, stating that the contracting officer told Adcor its proposal was technically acceptable "or words to that effect."

affidavits state that the contracting officer later said that best and final offers would be received only from those offerors found technically acceptable. According to Adcor, this statement confirmed Adcor's belief that its proposal had been found technically acceptable, since the Army invited Adcor to submit a best and final offer.

The Army submitted affidavits from the Army personnel who attended the meeting, except the contracting officer, which dispute Adcor's description of the contracting officer's remarks.^{5/} According to the Army affidavits, the contracting officer, in response to a question from Adcor, stated that Adcor's proposal was in the competitive range, or it would not have been invited to participate in the August 11 discussions; the affidavits state that the contracting officer did not advise Adcor that its proposal was technically acceptable, however.

Here, the only evidence on this disputed issue of fact about which the parties have equal knowledge are statements by the protester which conflict with the contracting officials' statements. We need not, however, resolve the conflict because even accepting Adcor's version of the contracting officer's remarks, we do not believe it was reasonable for Adcor to rely on those statements to make no further revisions to its technical proposal.

As noted above, the initial question Adcor posed to the contracting officer concerned whether Adcor's proposal was in the competitive range. Since the competitive range includes both proposals which are technically acceptable and those considered reasonably susceptible to being made acceptable, it would not have been inconsistent for the contracting officer to tell Adcor that it had been included in the competitive range, without also meaning that its proposal had been found technically acceptable. Even if Adcor understood the contracting officer to be referring to technical

^{5/} The Army does not explain why an affidavit from the contracting officer was not submitted. The record indicates that the contracting officer was reassigned after the protest was filed, but the Army does not state whether the decision not to submit an affidavit from the contracting officer was related to the reassignment. In addition, the Army affidavits were not timely submitted, since they were not filed with our Office until almost 2 weeks after the parties' conference comments were due. We did not exclude the affidavits from the record, however, since, as discussed further above, we deny the protest on this ground even under Adcor's version of the facts.

acceptability, however, it was not reasonable for Adcor to assume, based solely on the contracting officer's general remarks at oral discussions, that no revisions to its complex and lengthy technical proposal should be attempted. First, Adcor's contention that it did not wish to jeopardize its technically acceptable rating by further revisions to its proposal simply is not reasonable under these circumstances, since, unlike solicitations where award is to be made to the lowest priced technically acceptable offeror, the RFP here provided that the greatest weight would be given to technical factors; technical acceptability thus represented satisfaction of a minimum standard only. In addition, Adcor's belief that its proposal had been found technically acceptable was contradicted by the fact, undisputed by Adcor, that at least one of the three deficiencies raised in the agency's July 21 letter and later identified as critical to the Army's finding of technical acceptability was raised at the August 11 discussions.^{6/} At a minimum, Adcor should have been alerted to a possible misunderstanding and sought clarification of the contracting officer's remarks.

In this regard, the cases Adcor relies on are distinguishable since the protesters there were misled into believing that problem areas had been resolved as a result of the contracting agency's clear failure to put them on notice of specific deficiencies in their proposals. In Dynalectron Corp., et al., B-193604, July 24, 1979, 79-2 CPD ¶ 50, for example, the protester was given a document prepared by the contracting agency which showed that several specific deficiencies in the protester's proposal, on which the agency later relied to downgrade the proposal, had been resolved. In Tracor Marine, Inc., B-207285, June 5, 1983, 83-1 CPD ¶ 604, the contracting agency failed to provide any notice to the protester of a significant deficiency in its proposal. Here, in contrast, Adcor does not dispute that the Army fully raised the problem areas with its proposal and gave Adcor repeated opportunities to respond, first with the detailed list of questions, followed by oral discussions, another written submission, and a best and final offer. In our view, it was not reasonable for Adcor to conclude, without further confirmation, that the Army's continuing efforts to resolve questions about Adcor's

^{6/} The Army's record of the discussions, which sets forth the basic areas covered based on a stenographer's notes, indicates that the Army's question regarding Adcor's uninterrupted power supply was raised.

proposals were cut short by the contracting officer's remarks at the August 11 discussions. As a result, we see no basis on which to question the adequacy of the discussions.

The protest is denied.

for *Seymour S. Gross*
Harry R. Van Cleve
General Counsel