

2000



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Loral Electronics Systems

File: B-224540

Date: February 10, 1987

## DIGEST

1. Protester's proposal was properly rejected as unacceptable even though proposal initially was found acceptable, where protester made significant cost reductions in its best and final offer and, despite express solicitation warnings, failed to submit detailed explanation of the impact of the reduction on aspects of the technical proposal; agency therefore was left with no basis for concluding that the price reduction would have no effect on technical acceptability.

2. There is no requirement that agency reopen discussions solely to afford offeror an opportunity to furnish detailed information already specifically required in solicitation and best and final offer request.

## DECISION

Loral Electronics Systems protests the award of a contract to Dalmo Victor Division of the Singer Company under request for proposals No. DAAB07-86-R-S005, issued by the Army Communications Electronics Command, Fort Monmouth, New Jersey, for 20 research and development models, technical data and drawings, for a helicopter-mounted radar warning receiver. Loral alleges that the Army abused its discretion in finding Loral's best and final offer (BAFO) unacceptable, thereby leaving only one offeror in the competitive range. Loral also objects to the Army's acceptance of a firm, fixed-price offer from Dalmo, since the solicitation called for a fixed-price-incentive contract.

We deny the protest.

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## BACKGROUND

The RFP provided that a fixed-price-incentive contract would be awarded to the lowest priced offeror, with technical, management and cost factors, including cost realism, considered. The RFP also provided that, in order for an offeror to be acceptable, its design-to-unit production cost had to be within the ceiling cost of \$75,000 after being evaluated for cost realism. A rating of unacceptable in any factor, subfactor, or element would make a proposal unacceptable.

Dalmo and Loral were the only two offerors. Both offerors were found acceptable and thus within the competitive range for discussion purposes. Following discussions, the Army requested both offerors to submit best and final offers (BAFO). The BAFO request specifically cautioned offerors that major revisions were not expected, but that if revisions were made, complete and detailed support for the revisions and any other affected part of the proposal was required. The request also specifically stated that, in the case of a price revision, a complete cost breakdown and the basis for the revision must be submitted with the revised offer. The Army reserved the right to reject any proposal if the required information was not submitted with the revisions or if the information was inadequate to establish the acceptability of the revised offer.

Both offerors submitted BAFOs. Dalmo presented a best and final fixed-price-incentive offer with a target price of \$7,950,367 and, as an alternative, a firm, fixed-price offer at the same price. This offer represented a reduction of approximately \$4,500,000 from its previous offer due to a management decision to reduce profit to zero percent and a commitment of company resources to the program such that certain labor intensive tasks would be accomplished at a reduced cost.

Loral's BAFO presented a fixed-price-incentive offer with a target price of \$6,793,000 and a ceiling price of \$7,900,000. Loral proposed to assume 100 percent of potential cost increases up to \$7,020,000 and to absorb 30 percent of any cost increase up to the ceiling price. Loral's offer represented a reduction of \$8,279,950 from its previous offer due in part to a decision to establish a new, self-contained, low-cost, product development center, the consequent reduction in design-to-unit production cost, and reductions made in manhour estimates for the production of certain drawings. Loral also reduced its proposed design-to-unit production cost from \$74,186 to \$58,922.

The Army found Dalmo's BAFO acceptable in the areas of technical, management and cost. The Army determined Loral's BAFO to be unacceptable in all three areas, however, because the agency found that Loral did not provide adequate supporting documentation for the critical changes made to its previously-acceptable proposal.

Specifically, the Army found that Loral's BAFO did not provide the cost or pricing data necessary for a cost realism analysis of the overhead rate structure of the new low cost center, did not discuss the cost impact of the new cost center on other work of the contractor, and did not provide information on personnel and location, all of which, the Army asserts, had an impact on the technical and management areas of Loral's proposal. The Army also found that Loral's reduction in its design-to-unit production cost could not be verified since Loral provided no explanation of the reduction beyond attributing it to the reduced overhead rates in the new cost center, a decrease in production technique cost, and a 15 percent reduction in the cost of materials (instead of a government-recommended 7 percent material reduction rate). This price reduction, without explanatory information, also had a negative impact on Loral's technical rating. Third, the Army found that Loral's reduced manhour estimate for producing "Level III" drawings was not supported by adequate data. The government estimate for this effort was 8,000 to 10,000 hours, and Loral reduced its estimate, without explanation, from 9,625 to 4,801 hours. The Army states that since the requirement for complete and detailed Level III drawings is critical, Loral's failure to bid the minimum required number of hours for those drawings would have an adverse impact on the Army's ability to enter the production phase of the devices in question in a timely fashion. Accordingly, the Army determined that only Dalmo's proposal remained acceptable, and thus awarded Dalmo a firm, fixed-price contract for \$7,950,367.

#### TECHNICAL ACCEPTABILITY

Loral argues that the Army abused its discretion in finding Loral's BAFO unacceptable. Loral first explains that it did not address the impact of the new cost center on other aspects of its proposal and operations because the cost center would have no impact on the offer's technical or management areas. The only change, according to Loral, was in the establishment of the low cost center to be located in an existing building at a Loral facility. Moreover, Loral claims that its submission did identify the elements of its cost submittal, accompanied by cost breakdowns, which were affected by the creation of the low cost facility, and

specified the dollar amounts attributable to those changes. Loral also asserts that the Army's rejection of Loral's reduced design-to-unit production cost of \$58,992 was not warranted, explaining that the reduction in unit price reflected the use of the new low cost facility, a small decrease in the cost of production techniques, and an estimated aggregate material cost reduction of 15 percent. Finally, Loral asserts that the reduction in its manhour estimate for the Level III drawings was merely a correction of an overstatement of these hours in its original proposal. Loral explains that it reduced the hours specifically allotted for Level III drawings to account for the 3,452 hours of drafting time already attributed to the general labor category "draftsmen." These two categories total 8,253 hours, a number within the government estimate of 8,000 to 10,000.

Based on our examination of the record, including Loral's BAFO, we find that the Army's rejection of Loral's proposal was reasonable. In addition to the warnings in the BAFO request regarding substantiation of revisions, Section M of the solicitation provided that any inconsistency between promised performance and cost had to be explained in the proposal for purposes of a proper cost realism analysis. The solicitation further stated:

"any significant inconsistency, if unexplained, raises a fundamental issue of the offeror's understanding of the nature and scope of work and/or his financial ability to perform the contract, and may be grounds for rejection of the proposal. The burden of proof as to cost credibility rests with the offeror."

In the face of this emphasis on substantiation of the impact of cost on performance, Loral's BAFO contained a one-page statement of the new overhead rates associated with the new low cost center and a one-page summary of the resulting price reductions. No more detailed information was furnished to illustrate the impact of the new cost center. The Army explains that it was unable, based on these summary statements, to determine precisely what effect the cost reduction would have on Loral's ability to perform, as judged from its initial proposal. The Army states that since Loral did not introduce the new cost center concept in its initial proposal, or even during discussions, and did not explain in the BAFO how a major cost reduction could have no significant impact on performance, there was no basis for conclusively finding that there would be no impact. We agree.

Where an offeror introduces significant proposal changes in its BAFO, the burden is on the offeror to establish the acceptability of these changes, or risk having the offer rejected. Logicon, Inc., B-196105, Mar. 25, 1980, 80-1 C.P.D. ¶ 218. Although Loral argues that no technical changes resulted from the cost reduction that resulted from its new cost center approach, where, as here, the RFP clearly expresses the agency's concern with the relationship between an offeror's proposed cost and promised performance, we think offerors are on notice that a significant price reduction will be viewed as having an impact on performance. It is reasonable for an agency to take this view and, thus, to reject a proposal where the impact--or non-impact--of a significant BAFO price reduction is not spelled out in the BAFO.

Our conclusion is the same regarding the reduction of Loral's Level III drawing manhours. While Loral characterizes the change as a correction of an error in its initial proposal, Loral did not explain in its BAFO that 3,452 draftsmen manhours should be added to the 4,801 hours listed for the drawing effort to raise the total to within the acceptable government estimate. Only during the protest process did Loral provide this explanation. Thus, when the Army evaluated Loral's BAFO, it saw only an unacceptable reduction of effort, without any explanation. Similarly, since Loral did not furnish a detailed explanation of its reduced design-to-unit production cost, the Army was unable to confirm that performance at the reduced cost would be at the acceptable level established in the original proposal.

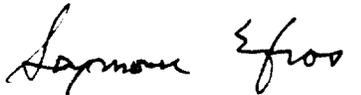
Loral argues that its cost changes were substantiated in cost data it furnished to the Defense Contract Audit Agency (DCAA), and that the Army could have requested that Loral submit this or any other data once it was found to be necessary. Such explanatory information was specifically required to be submitted with the BAFO, however, and the Army was not required to reopen discussions to afford Loral an additional opportunity to satisfy this requirement. Xerox Special Information Systems, B-215557, Feb. 13, 1985, 85-1 C.P.D. ¶ 192. Contrary to Loral's assertion, furthermore, the record indicates DCAA advised the contracting officer that while it met with Loral to discuss "accounting changes," Loral never furnished DCAA with any documentation which would enable the agency to confirm that the new cost center would have no impact on Loral's technical proposal. Rather, Loral stated it would submit such documentation if requested by any government agency or department.

FIRM, FIXED-PRICE CONTRACT AWARD

Loral's allegation that it was improper for the Army to accept a firm, fixed-price offer from Dalmo, where the solicitation called for a fixed-price-incentive contract, is without merit. The Army states that it informed both offerors before the closing date for receipt of best and final offers that the submission of a firm, fixed-price proposal would be acceptable. Loral's version is that the contracting officer stated only that he "believed" such a proposal "would probably be acceptable," and that Loral interpreted this statement to mean that only a proposal in accordance with the solicitation, a fixed-price-incentive proposal, would be acceptable.

Loral's interpretation of the contracting officer's statement was unreasonable. Even accepting Loral's version of the statement, the contracting officer's intention to accept firm, fixed-price offers was at least clear enough to warrant submission of an alternate fixed-price proposal, as Dalmo did. If Loral considered the statement too ambiguous to act upon, it should have immediately requested clarification; it did not do so, however. In any event, since Loral's proposal was rejected as unacceptable, Loral would not have received the award on any basis,

The protest is denied.

*for*   
Harry R. Van Cleve  
General Counsel