



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Textron-Diehl Track Co.

File: B-230608; B-230609

Date: July 6, 1988

DIGEST

1. Where protester orally complained during discussions in November 1987 that its competitors replaceable pad tracks for the M1 Abrams Tank were being evaluated only on the average mileage obtained from one of two proving ground test sites and the Army explained its evaluation basis, protest that the evaluation was insufficient, filed after award in March 1988, is untimely.

2. Protest that Army failed to provide computer program to protester showing weights and values of inputs evaluated for life cycle cost is denied since the solicitation advised offerors of the broad scheme of scoring to be employed and gave reasonably definite information concerning the relative importance of evaluation factors. The precise numerical weight to be used in evaluation need not be disclosed.

DECISION

Textron-Diehl Track Co. (TDTC) protests the award of a contract to FMC Corporation under request for proposals (RFP) DAAE07-87-R-R014, issued by the Department of the Army's Tank-Automotive Command (TACOM) for a 5-year contract for the production of track shoe assemblies and components for the M1 Main Battle Tank (Abrams Tank). TDTC protests the lack of factual support for the Army's determination that the proposal submitted by FMC offers the best value to the government. TDTC also protests the failure of the Army to comply with applicable procurement regulations during the procurement process.

The protest is dismissed in part and denied in part.

This procurement is the result of actions initiated in fiscal year 1982 by TACOM to improve the existing T-156 track for the Abrams Tank. The goal of the program was to effect significant savings (at least 10 percent) in track life-cycle costs (LCC). In late 1983, as a result of

unsolicited proposals from both FMC and Diehl, GmbH and Company (a West German company), the Army tested and evaluated the different track designs proposed by the two companies. The purpose was to determine if either of the two designs provided improved performance as well as reduced LCC when compared to the existing T-156 track. As a result of the comparative testing of the three tracks, FMC's, Diehl's and the T-156, concluded in March 1987, the Army determined that both FMC's and Diehl's replaceable pad track designs were technically acceptable.

On July 28, 1987, the Army issued different RFPs to FMC and to Diehl, each requesting proposals for the replaceable pad tracks. In accordance with 10 U.S.C. § 2304(f)(1) (Supp. IV 1986), a justification and approval had been issued on April 29, 1987, for use of other than full and open competitive procedures due to availability only from a limited number of responsible sources. The RFPs differed in relation to the unique designs and places of manufacture of the two different tracks. The Army points out that the quantities, line items, packaging, and delivery were unique to each offeror due to the differences in track life and track design. The Diehl RFP required production in the continental United States (CONUS) of all CONUS requirements within 18 months of award to assure a CONUS production base. The FMC RFP required all CONUS production.

The Army states that since extensive testing for both tracks, conducted over a period of 2 years, was adequate to minimize the risk of receiving unacceptable production track, no first article test was required for either offeror. However, a first article requirement was included for the CONUS source required to be established by Diehl because of the high risk associated with transferring German technology to a new U.S. facility.

The Diehl RFP required delivery of a competitive technical data package (TDP) to provide for future competitive procurement. There was no such requirement in FMC's RFP since the government already owned the TDP for the FMC design as it was developed under an earlier contract. The FMC RFP required conduct of a physical configuration audit to verify that the production track was identical to the government-owned TDP and represented the configuration tested as of March 1987. Finally, the durability guarantee clauses in the RFPs differed. The durability to be guaranteed was determined from the test results of the two different tracks, and the unique components required by each track.

The two RFP's were identical, however, with respect to the four evaluation areas, LCC, performance, quality and supportability and to the relative weight each of the areas received. The Army states that two RFP's were used only for administrative convenience and clarity so that the offerors would not have to sort out the specific provisions which pertained to them exclusively, and differed only with respect to the unique configurations or production facilities of the two offerors.

Proposals were received on October 5, 1987, (the Diehl track proposal being submitted by Textron-Diehl Track Company (TDTC) a partnership) and were evaluated by the source selection evaluation board in accordance with the source selection plan. Discussions were then held and a revised durability guarantee was developed and negotiated with both offerors. The Army states that both offerors were repeatedly advised that the purpose of the durability guarantee was to assure that the LCC, upon which selection was to be based, was actually obtained. Therefore, the Army advised both offerors that any reduction in either the durability guaranteed or the degree of liability accepted would be considered in computing the LCC. Army states that despite these warnings, in its best and final offer (BAFO) TDTC reduced its liability under the durability guarantee. As a result, TDTC's LCC was increased and TDTC's proposal was significantly less cost effective than the FMC proposal. FMC was awarded a contract and TDTC filed this protest.

TDTC initially protested that the Army both overstated FMC's guaranteed durability to more than 2,600 miles and improperly reduced TDTC's guaranteed durability to 4,845 miles. TDTC also contended that the Army failed to apply the RFPs' maintenance burden evaluation factor which artificially lowered FMC's LCC per mile. TDTC also alleged that FMC failed to meet the RFP's performance criterion of 2,500 miles for its track, that TDTC's track design was frozen as of March 1987 but FMC's was not, and that identical information was not furnished to the prospective offerors. TDTC's protest that the Army failed to evaluate maintenance burden was withdrawn at the conference held on this protest and, the Army's report addressed the rest of the above allegations. Since TDTC did not pursue them any further in its written comments on the Army's report, we consider these protest issues to have been abandoned.

TDTC's first remaining protest issue is that the Army's calculation of FMC's LCC per mile was not based on the demonstrated durability of FMC's track and is therefore fundamentally flawed. TDTC's and FMC's tracks were tested for durability mileage at both the Aberdeen Proving Ground (Aberdeen) and the Yuma Proving Ground (Yuma). The Army's

durability test plan was initially weighted 70 percent for the Aberdeen durability mileage average and 30 percent for the Yuma durability mileage average, to calculate average durability mileage. TDTC contends that although its track was evaluated along these lines, the 2,100 mile durability of FMC's track was based solely on its Yuma demonstrated average mileage and FMC's demonstrated average of 1,306 miles at Aberdeen was not considered.

TDTC argues that had FMC's track been evaluated as TDTC's was, based on both Aberdeen and Yuma test results, FMC's measured track durability would have been substantially lower than the 2,100 miles the Army used to evaluate FMC's LCC. Accordingly, TDTC contends that the LCC per mile of FMC's track would be higher than TDTC's.

FMC and TDTC were issued copies of both RFPs prior to proposal submissions. Paragraph H.1.1. of FMC's solicitation gave the durability guarantee for FMC's track shoe assembly as 2,100 miles. Further, during discussions between the Army and TDTC on November 18 and 19, 1987, TDTC representatives questioned FMC's 2,100 mile durability guarantee and raised the fact that only FMC's Yuma average mileage was used to calculate FMC's track durability. At that time the Army explained to TDTC that it considered FMC's Aberdeen mileage to be an aberration caused by the use of rebuilt rubber track pads which had caused premature failure. Since the rebuilt track pad, obtained on short notice for testing, would not be procured under this contract, the Army decided that it was unreasonable to use FMC's Aberdeen mileage in computing its durability.

Under our Bid Protest Regulations, protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals shall be filed prior to the closing date for receipt of initial proposals. In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing date for receipt of proposals following the incorporation. 4 C.F.R. § 21.2(a)(1) (1988). In cases other than those covered above, protests shall be filed not later than 10 days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2).

TDTC argues that while it was advised in November that FMC's Aberdeen mileage would be eliminated, it did not know the consequences of that elimination until February 24, 1988, when the award and the Army's explanation of the track evaluation was issued. TDTC contends that only upon

receiving the Army's memorandum explaining the award was TDTC aware that the track was evaluated by application of a performance weighting scheme in which no weights of any kind were applied to FMC's track. TDTC argues that since it protested on March 4, within 10 days of the receipt of the Army's memorandum, its protest is timely filed.

We agree with the Army that TDTC's protest of this issue is untimely. In November, TDTC knew that its track's durability was evaluated, by combining a 70 percent weight to its Aberdeen average with a 30 percent weight for its Yuma average, and that FMC's track durability was only based on its Yuma average. At that time it complained orally of the stated durability of FMC's track and the failure to factor in the Aberdeen mileage and the Army explained its decision to FMC. However, TDTC did not protest this issue to our Office until more than 3 months later, after it learned it had not been awarded the contract. TDTC's protest is untimely because it knew the basis of its protest in November but did not protest until March.

TDTC contends that even if its protest of this issue is untimely, we should nevertheless consider the protest because it raises issues significant to the procurement system. 4 C.F.R. § 21.2(b). This exception to our timeliness requirements, which we construe strictly, is limited to untimely protests that raise issues of widespread interest to the procurement community which have not been considered on the merits by this Office in a previous decision. Singapore Aircraft Industries, B-229751, Dec. 30, 1987, 87-2 CPD ¶ 647. We have previously considered the question of the propriety of a contracting agency using differing testing in evaluating the products of competing offerors, and we have held that such an approach is permissible as long as the testing is reasonably comparable. Corvus Systems, Inc., B-211082.3, Feb. 11, 1985, 85-1 CPD ¶ 173. Accordingly, we do not find this a significant issue within the meaning of the significant issue exception.

TDTC also contends that the Army failed to define or provide a description to TDTC of the LCC model it used and accordingly TDTC had an insufficient understanding of what costs or values were contained in the model. TDTC does not dispute that the Army identified in the RFPs the primary elements of the LCC methodology and that on numerous occasions the Army provided the offerors with narrative descriptions of the methodology. These efforts, TDTC contends, were nevertheless insufficient to permit a meaningful understanding of the methodology. TDTC contends that since the LCC methodology is a computer model, regardless of the narrative descriptions provided about the functioning of the model, the methodology cannot be meaningfully understood without

actually testing the model. TDTC argues that only by obtaining the computer program to run the model could TDTC determine the impact that the LCC methodology had on its proposal and since the Army failed to provide either offeror with the computer program, neither offeror was able to intelligently evaluate its proposal.

The Army denies that TDTC had insufficient information and states that it held many briefings to explain the LCC methodology. The Army states that the majority of the inputs used in the LCC analysis were taken from test results and the BAFOs and costs not identified in these documents were discussed with the offeror, and if actual input values could not be provided due to the nature of the value, such as classified deployment schedules, percentage approximations were provided the offerors. The Army states there were no weighting factors used in the LCC analysis and all inputs were treated equally among the different alternatives and within each LCC analysis. The Army contends that with the information it provided, TDTC could calculate its LCC to within 0.2 percent of the required 10 percent savings threshold. In fact, the Army states that both offerors using the unique inputs peculiar to their own tracks, and projecting a total LCC for their tracks over a 20 year period, met the RFP's 10-percent cost saving threshold exactly. The Army contends that this shows that TDTC did have a very good understanding of the LCC model.

Further, the Army points out that section M.3.3 of the RFPs identified the four areas of the evaluation, and stated that the LCC was more important than the other three areas combined. There were three stated elements of LCC, LCC/mile, follow-on competition and growth potential with LCC/mile significantly more important than the other elements. The RFPs stated that LCC/mile analysis included "consideration of all relevant factors where data is reasonably available, including but not limited to costs of hardware, POL [Petroleum Oil & Lubricants], transportation, maintenance burden, replenishment spares, initial/provisioning, conversion costs, scrap, data rights and/or licensing costs, and any necessary Government test costs."

The Federal Acquisition Regulation (FAR) provides that:

"The solicitation shall clearly state the evaluation factors, including price or cost and any significant subfactor, that will be considered in making the source selection and their selective importance . . . Numerical weights, which may be employed in the evaluation of proposals, need not be

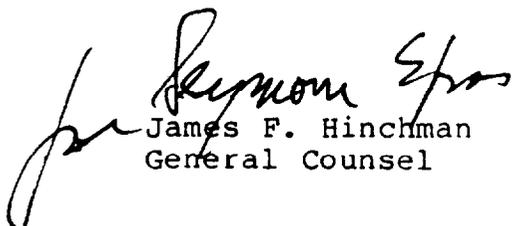
disclosed in solicitations. The solicitation shall inform offerors of minimum requirements that apply to particular evaluation factors and significant sub-factors. FAR 15.605(e) (FAC 84-16)."

We have held that although a solicitation must advise offerors of the broad scheme of scoring to be employed and give reasonably definite information concerning the relative importance of the evaluation factors, the precise numerical weight to be used in evaluation need not be disclosed. Technical Services Corp., 64 Comp. Gen. 245, 253 (1985) 85-1 CPD ¶ 152. Here, both RFPs identically indicated the relative importance of the evaluation factors by listing the technical factors in descending order of relative importance. As indicated above, TDTC was provided with sufficient information to know what the evaluation factors and subfactors were and how its proposal would be evaluated. We do not think the Army was required to go further and provide the offeror with its computer program on LCC methodology. This aspect of TDTC's protest is denied.

Finally, in its post-conference comments, TDTC contends that the Army failed to apply the third evaluation factor, quality, to the warranty provision offered by FMC. TDTC arrives at this conclusion based on its understanding of a comment a representative of the Army made at the bid protest conference, that, as to the method used to evaluate the warranty, the Army considered this merely "a matter of dollars and cents." TDTC states that this is contrary to the evaluation criteria because the Army accepted FMC's warranty proposal alone as being sufficient to reflect a commitment to production of a quality product.

Our review of the Army's evaluation of FMC's proposal shows that contrary to TDTC's understanding, the Army did examine the various aspects of FMC's proposed inspection system plan, its quality plan, including statistical process control and quality history, and the Army did not merely accept FMC's warranty proposal alone in evaluating this factor. Accordingly, this allegation has no basis in fact and is denied.

The protest is dismissed in part and denied in part.


James F. Hinchman
General Counsel