



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Evaluation Technology, Inc.
File: B-232054
Date: November 15, 1988

DIGEST

1. Where a protester alleges that the contracting agency improperly established a competitive range of one firm, the incumbent, by eliminating the protester from the competition, the time for filing a protest runs from when the protester first learns that only one firm remained in the competitive range after its elimination, and not from when the protester learns the technical basis for its elimination.

2. Although the General Accounting Office closely scrutinizes agency decisions that limit the competitive range to one proposal, an initial proposal was properly excluded from the competitive range where it was reasonably found to be so technically deficient that major revisions would have been required to make it acceptable.

DECISION

Evaluation Technology, Inc. (ETI), protests the Department of the Army's exclusion of ETI's proposal from the competitive range under request for proposals (RFP) No. DABT56-88-R-0006, issued by the United States Army Engineer Center for research support services. The research centers on Army efforts to improve combat training by computerizing the observation and evaluation of war games conducted at various combat training centers (CTCs). The research consists of five tasks: (1) establishing procedures for managing an existing archival data base of war game records; (2) upgrading (major redesign and expansion) and standardizing an existing archival data base of war game records as well as improving Army-wide access to the data base; (3) enhancement

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of the Army's unit performance measurement system^{1/};
(4) work in the areas of artificial intelligence/expert systems to determine how tactical experts conceptualize and interpret the dynamics of ongoing battles; and (5) use of the results of the above research to develop research products. ETI is one of two firms responding to the RFP. We deny the protest.

The RFP, which called for award of a cost-plus-fixed-fee contract, required offerors to submit technical proposals describing their approaches to the research, their organization and management, and the qualifications of their proposed personnel. The RFP stated that proposals would be evaluated under five evaluation factors in descending order of importance: (1) personnel qualifications and experience; (2) technical adequacy of the approach; (3) organizational capabilities; (4) understanding of the problem; and (5) cost. Proposals were submitted by two offerors, ETI and BDM Corporation, the incumbent contractor. In making its competitive range determination, the Army numerically scored the two proposals received on the first four factors. Overall the awardee was rated approximately 30 percent higher than the protester.^{2/} The Army concluded that the initial evaluation showed ETI's proposal was technically unacceptable and did not have a reasonable chance of being selected for award. On this basis, the agency eliminated ETI from the competitive range.

The Army notified ETI of the technical unacceptability determination by letter dated May 10, 1988, providing the following reasons: under evaluation factor 1, the training and experience of key personnel, including top management, are not entirely relevant to this research; under factor 2, the proposal did not demonstrate the company's ability to convert general approaches into concrete solutions; under factor 3, the project management structure was not described in sufficient detail and the relationship with the subcontractor was unclear; and under factor 4, the proposal represented a limited understanding of the details of the current

^{1/} The measurements are designed to disclose why some units prevail in combat exercises by tracking factors such as mission, enemy, troops, terrain and time.

^{2/} The Army reports that the awardee significantly outscored the protester in all areas--the awardee's scores were 28 percent higher under factor (1), 27 percent higher under factor (2), 46 percent higher under factor (3), and 22 percent higher under factor (4).

problems as related to Army directives and strategies. The Army reports that it viewed these deficiencies as major weaknesses that were not susceptible to correction without major revisions to ETI's proposal. The letter concluded with the statement that a debriefing would be provided upon written request.

On May 17, ETI requested a debriefing which the Army scheduled for June 22. (On June 21, the Army awarded the contract to the incumbent.) At the debriefing, ETI asked how many firms were in the competitive range. The Army refused to answer the question, stating that ETI would have to file a Freedom of Information Act (FOIA) request before the information would be disclosed. ETI filed its FOIA request the same day and was subsequently advised that the competitive range consisted of a single firm. On June 27, ETI filed an agency-level protest which was denied on July 11. ETI then filed its protest with our Office on July 22.

The gist of ETI's protest is that the Army excluded ETI's proposal from the competitive range not because of technical deficiencies, but, rather, because of the agency's desire to afford the incumbent contractor preferable treatment. ETI contends that its exclusion was improper because its proposal was as good as the incumbent's and offered a lower cost (10 percent under the incumbent's proposed cost). ETI urges that the Army should have included it in the competitive range and sought clarification of its proposal, rather than establishing a competitive range consisting of only one firm, BDM.

As a preliminary matter, the Army urges dismissal of ETI's protest as untimely filed. The Army contends that ETI should have received the May 10 letter advising of its elimination from the competitive range no later than May 17. Consequently, the protester knew the basis of its protest as early as May 17, and therefore should have filed its protest within 10 days thereafter. See Bid Protest Regulations, 4 C.F.R. §§ 21.2(a)(2), (3) (1988). Since ETI did not file its agency-level protest until June 27, the Army argues that that protest and the subsequent protest to our Office are untimely. See 4 C.F.R. § 21.2(a)(3).

The Army's argument is premised upon the assumption that the protester is merely challenging the evaluation of its proposal. In our view, however, the protest focuses on the propriety of the Army's decision to establish a competitive range of only one firm, the incumbent, by eliminating ETI from the competition. ETI did not learn this basis of protest until sometime after the June 22 debriefing when it

received the response to its FOIA request. Therefore, we find both ETI's June 27 agency-level protest and its subsequent July 22 protest to our Office, filed within 10 days after the Army's denial of the agency-level protest, to be timely. Even if we view ETI's protest as a challenge to the evaluation of its proposal, we believe the protest was timely. ETI received the letter of rejection of its proposal on May 17, 1988, and pursuant to the advice therein, immediately scheduled a debriefing. The debriefing was conducted on June 22 and ETI filed its agency-level protest on June 27, 1988, within 10 days of the debriefing.

ETI challenges the Army's evaluation by citing portions of its technical proposal that, in its opinion, show that the proposal adequately addressed the required technical areas. Thus, ETI argues that its proposal: (1) addressed areas that the incumbent's proposal failed to cover such as General Accounting Office reports critical of Army practices; (2) offered innovative methods for data management and research as evidenced by its proposed provision of an augmentation team of computer experts supplementing its own staff; and (3) offered personnel with educations, military operations and training backgrounds, and research records superior to the incumbent's personnel. As discussed in detail below, we see no basis to object to the Army's evaluation of ETI's proposal.

In view of the importance of achieving full and open competition in government procurement, we closely scrutinize an agency decision which results, as here, in a competitive range of one. The Associated Corp., B-225562, Apr. 24, 1987, 87-1 CPD ¶ 436. Nevertheless, we will not disturb such a decision absent a clear showing that it was unreasonable, because an agency is not required to permit an offeror to revise an unacceptable initial proposal when the revisions required are of such a magnitude as to be tantamount to the submission of a new proposal. CSP Associates, Inc., B-228229, Jan. 29, 1988, 67 Comp. Gen. ____, 88-1 CPD ¶ 87.

An agency properly may determine whether or not to include a proposal within the competitive range by comparing the initial proposal evaluation scores and the offeror's relative standing among its competitors. Joule Engineering Corp.--Reconsideration, 64 Comp. Gen. 540 (1985), 85-1 CPD ¶ 589. This "relative" approach to determining the competitive range may be used even where the result is a competitive range of one. Systems Integrated, B-225055, Feb. 4, 1987, 87-1 CPD ¶ 114.

Here, the agency characterizes the procurement as primarily a research and development project utilizing current computer systems technology. Therefore, the agency's concerns that ETI's proposed project manager and other key on-site personnel lack relevant computer project experience clearly were warranted. For example, ETI's proposed project manager is a retired Marine officer with extensive command and staff experience and an expertise in artillery but no evident project experience in the areas of computer science, data base operations, or quantitative analysis.

The record also shows that only two of the six members of ETI's proposed on-site team claim both computer science and data base system experience. In addition to the on-site team, ETI proposed use of a 16-member expert "augmentation team" drawn from the staffs of several organizations^{3/} which would "review progress of the on-site team . . . identify and plan technology insertion into on-site efforts, and . . . provide technical guidance, suggestions, and research consultations to the on-site team" once a month on a "non-interference basis." Of the 16-member augmentation team, only 1 member claims expertise in both computer science and data base systems, while 5 members claim only computer science experience and another 5 claim only data base systems experience. In comparison, the awardee's project manager and three other members of its proposed nine-member staff (a senior computer analyst, a data base programmer and a consulting scientist) claim both computer science and data base systems experience directly applicable to the proposed research.

The agency also was concerned by the protester's proposed approach to the required research since in its view ETI's proposal failed to clearly demonstrate an ability to convert general approaches into concrete solutions, lacked sufficient detail, and proposed schedules too general to evaluate the sequence of activities. Our review of ETI's proposal supports the Army's analysis. For example, ETI's approach to Task 2, upgrading and standardizing the existing archival data base, begins with general statements about how the ETI/Honeywell team "will . . . develop and implement a system design that can be extended gracefully as data base requirements evolve and new technologies emerge," and "will draw on their system analysis and data base design expertise

^{3/} Honeywell furnished seven members, ETI provided five members (three officers, an engineer, and a consultant), two members came from Vreuls Research Corporation, one from the Navy post graduate school, and one from an organization called T&CSD.

to develop a structured methodology to enhance the current system," and ends with a statement that the details of the methodology will be developed and furnished within 60 days of contract award.

In the area of organizational capabilities, the agency scored the protester 46 percent below the awardee on the ground that ETI failed to adequately describe its project management structure or its relationship with the augmentation team, and that the augmentation team's allocated hours were too few and too fragmented to be useful. We think these concerns are well-founded since the resumes accompanying ETI's proposal show several organizations contributing personnel to the augmentation team, but failed to show who had authority to allocate team resources beyond the monthly meetings. Thus, even though the augmentation team included top ETI management, there was no indication of the extent to which they exercised control over the non-ETI personnel.

Finally, under the last technical evaluation criterion, "understanding the problem," even though the agency found that the protester understood most of the critical issues, it remained concerned with ETI's lack of understanding of the details of current problems as they relate to Army strategy and the protester's limited experience with Army training and CTCs. It appears from the record that ETI viewed its prior work with the Navy and Marine Corps in the areas of training and evaluation as readily transferable to the Army's requirements and, recognizing the need for computer expertise, entered into the teaming arrangement with Honeywell and other firms. In our view, however, the RFP reflects the Army's intent to procure computer research specifically directed toward land warfare in the light of Army tactical doctrine and strategy. Thus, Task 3 required each offeror to show its ability to perform research directed toward: (1) the modification and refinement of the present prototype mission/task analysis emphasizing battalion task force staff and mechanized infantry and armor maneuver elements; (2) expansion of the analysis to cover combat support and combat service support elements; and (3) development of an expanded mission/task analysis to cover brigade operations. However, ETI's proposal addresses these requirements in general terms only, promising that its augmentation team would provide "highly relevant expertise." As a result, we see no basis to object to the agency's evaluation of ETI's proposal in this area.

Although the protester may have offered to perform the contract at the lowest cost to the government, it also submitted what the agency reasonably determined was a technically unacceptable proposal. In this respect, once a proposal is properly determined to be outside the competitive range as a result of the technical evaluation, the offeror's potentially lower price is irrelevant since an offer not within the competitive range cannot be considered for award. Emprise Corp., B-225385, Feb. 26, 1987, 87-1 CPD ¶ 223, aff'd on reconsideration, B-225385.2, July 23, 1987, 87-2 CPD ¶ 75. Accordingly, the Army was not required to include ETI in the competitive range simply because it proposed a lower cost than BDM.

Finally, ETI contends that the Army improperly released sensitive information concerning the status of its protest to the awardee. ETI claims to have received two telephone calls from the awardee. The first call was received within hours of ETI's June 27 filing of its agency-level protest. The second call, advising that the agency would deny the protest, was received on July 7, 4 days before the date on the agency letter denying the protest. ETI contends that these calls were based on information received from the agency by BDM and reflect the agency's desire to retain the incumbent contractor. We find this argument to be without merit.

The awardee admits making two calls and that it told the protester that its protest would be denied; however, the awardee states that they occurred at different times than claimed by ETI and that its statement concerning the denial of the protest was mere speculation. According to the awardee, the first call was made on July 5, after it learned on July 1 from the agency that a protest was filed, and the second call was made on July 12, after it learned on July 8 that the agency was responding to the protest. The Army states that it advised BDM that an agency-level protest had been filed, but denies discussing the disposition of the protest with BDM or any other party.

Unfair motives will not be attributed to government procurement officials on the basis of inference or supposition. Consolidated Group, B-220050, Jan. 9, 1986, 86-1 CPD ¶ 21. Here, beyond ETI's speculation that some information regarding its protest was improperly disclosed to BDM--a contention which both BDM and the Army dispute--there is no support in the record for ETI's position that the Army's selection decision was improperly motivated by its desire to retain BDM as the contractor regardless of technical merit. On the contrary, as discussed above, the record shows that

the Army reasonably concluded that ETI's proposal was so technically deficient that it should be excluded from the competitive range.

The protest is denied.

for *James F. Hinchman*
James F. Hinchman
General Counsel