

(CUSAff)



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: McDonnell Douglas Electronic Systems Company
File: B-236988; B-236988.2
Date: January 25, 1990

DIGEST

1. Contrary to the protester's speculation otherwise, record reflects that competing system designs were evaluated using the same standard to determine whether they would degrade "operational missions" of an existing central processing unit--even under the protester's interpretation of the term "degrade."
2. Protester was not prejudiced by agency not disclosing government-rights software used by the awardee in its proposal since solicitation encouraged offerors to use such software, all offerors used it, and the awardee's use of such software had an insignificant effect on its proposed costs.
3. Protester's general expression of disagreement with the conclusions of the agency's technical evaluators does not establish that their judgments were unreasonable.
4. Protester was not prejudiced in the evaluation of its cost proposal where record shows that alleged irregularities in the evaluation process did not affect the final ranking of proposals.

DECISION

McDonnell Douglas Electronic Systems Company (MDESC) protests the award of a contract to GTE Space Corporation under request for proposals (RFP) No. F05603-88-R-0016, issued by the Department of the Air Force to design and provide a computer-based system for analysis and production of current intelligence data for the Joint Space Intelligence Center (JSIC) at Peterson Air Force Base and at the Cheyenne Mountain Air Force Station. The protester principally contends that GTE was provided an unfair advantage during the evaluation and that the evaluation was otherwise defective.

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We deny the protest.

The RFP contemplated the award of a cost-plus-award-fee contract to the offeror whose proposal was most advantageous to the government as determined, by an integrated analysis, based on three evaluation criteria listed in descending order of importance: technical, management, and cost. The RFP also described an existing mainframe computer system--the intelligence support processor (ISP)--which was performing current missions applications functions for JSIC. In designing systems to incrementally accommodate additional JSIC missions for the near-term and the future which have the potential to increase the load on the ISP significantly, offerors were advised by the RFP that the ISP was a valuable resource to be used in the most effective manner possible; however, they were cautioned that "the contractor shall not in any way degrade ongoing operational missions of the ISP."

Four firms, including MDESC, submitted proposals. The proposals were evaluated and task demonstrations were conducted at each offeror's facility. Clarification requests (CRs) and deficiency reports (DRs) were then issued to the offerors. Following the evaluation of responses to these written discussion questions, best and final offers (BAFOs) were requested and received. The BAFOs were then evaluated and the results were presented to the Source Selection Advisory Council (SSAC), which prepared a comparative analysis and ranked the proposals in accordance with the evaluation categories set forth in the RFP.

MDESC was ranked last under the technical evaluation category. The protester was faulted for proposing an overly complex design using nonstandard parts and offering the greatest technical risk to the government. Offeror B and GTE were ranked highest technically.

MDESC was also ranked last under the management evaluation criterion. This ranking was primarily due to the evaluators' conclusions that the protester had proposed a deficient schedule, cost control system and staffing approach. GTE, on the other hand, was found to be acceptable and ranked on a par with offeror A behind offeror B.

The SSAC also conducted an integrated assessment of final proposed costs in light of technical and management risks which were assigned an estimated cost factor with the following results:

<u>Offeror</u>	<u>BAFO Cost</u>	<u>Risk Estimate</u>	<u>Est. Program Cost</u>
Offeror A	\$23.7 M	High (\$52.7 M)	\$76.06 M
GTE	\$44.5 M	Low (\$7.25 M)	\$51.75 M
Offeror B	\$64.5 M	Low (-0-)	\$64.05 M
MDESC	\$69.7 M	Mod. (\$29.0 M)	\$98.07 M

Based on these findings, the SSAC concluded that GTE provided the most advantageous approach to the RFP requirements with the lowest risks falling within the amount of available funding. Accordingly, GTE was awarded the contract.

MDESC's protest has evolved since it was first filed, and the firm has obtained additional information through the protest process and agency debriefing. It is our view that the following basic contentions have emerged: (1) MDESC's proposed design was held to a stricter standard than GTE's with regard to degradation of the ISP; (2) the agency failed to put offerors on an equal footing by not making certain government-owned software used by GTE available to other offerors; (3) various errors in the technical evaluation of proposals indicated that the evaluation process was hurried to the point that cost was impermissibly permitted to direct the final selection; and (4) the cost evaluation itself was conducted improperly.

1. Degradation

As stated above, the RFP required offerors to use the ISP in the most effective manner possible in their system designs with the following caveat: "However, the contractor shall not in any way degrade ongoing operational missions of the ISP."

The protester read this requirement to mean that the actual computer processing time associated with the performance of any given task, by the ISP, could not be increased by additional processing loads imposed on it by virtue of an offeror's system design. MDESC maintains that this presented a formidable and costly design problem which the protester believes its proposal successfully addressed. The protester does not believe, however, that GTE's design solution met the same standard and argues that some lesser standard must have been applied to that firm's proposal.

Contrary to MDESC's speculation about the details of GTE's proposed design and even assuming that the protester's interpretation of the degradation prohibition is correct, the record reflects that the awardee's design was examined to determine whether it increased the processing load of the ISP; no such increase was found. The record further

reflects that GTE's proposed solution was found to provide processing capability in addition to the ISP such that the awardee's system did "not place increased reliance on the ISP to support existing or new functions." Moreover, the Air Force states that GTE's design was found to impose "no additional user load and no increase in ISP processing," and was found to permit the "immediate" processing of current operational missions. Accordingly, we have no basis for concluding that the competing proposals were not subject to the same standard of evaluation--even under the protester's interpretation of that standard.

2. Software

MDESC argues that it was prejudiced by a cost advantage enjoyed by GTE because that firm was permitted to use software in which the government had unlimited rights to solve a unique requirement of the RFP. Other offerors, according to MDESC, were placed at a competitive disadvantage because the Air Force did not use its unlimited rights to make the software equally available to all offerors.

As the agency points out and as the record shows, GTE proposed the use of 21,000 lines of software code (out of 500,000 total lines) which was modified from software developed by GTE in which the government had unlimited rights. However, this software was not used to support the unique JSIC requirements to which MDESC alluded, and it appears that, insofar as it constituted a mere 4 percent of the total software involved in the proposal, its effect on GTE's proposed costs was de minimis. Moreover, GTE has indicated that the software is unique to its own approach and would not be of benefit to another offeror--such as the protester--who proposed a different solution using different equipment.

In light of these facts and since the RFP actually encouraged the use of rehosted software and the record shows that all offerors, including MDESC, used rehosted software in which the government had unlimited rights, we disagree with the protester's assertion that it was unfairly disadvantaged by a failure on the agency's part to disclose what specific software GTE was proposing to use. Cf. Midland Maintenance, Inc, B-184247, Aug. 5, 1976, 76-2 CPD ¶ 127.

3. Evaluation Process

MDESC's original contention was that since its proposal had been found to be technically superior to GTE's, cost was

impermissibly permitted to affect the selection decision. When the protester later found that its proposal had been rated lowest technically and highest in cost, MDESC responded with a critique of the evaluation of its proposal in which it asserted that the government's findings were riddled with factual errors suggestive of a hurried process in which cost considerations were bound to predominate.^{1/}

In cases where a protester challenges an agency's technical evaluation, we will not conduct a reevaluation of the proposal but we will examine it to ensure that the evaluation was reasonable and consistent with the RFP evaluation criteria. Fairfield Machine Co., Inc., B-228015, B-228015.2, Dec. 7, 1987, 87-2 CPD ¶ 562. In such instances, a protester must show or point to portions of the record which indicate irregularities in an agency's evaluation. Its mere disagreement with the agency's technical judgment does not suffice. VGS, Inc., B-233116, Jan. 25, 1989, 89-1 CPD ¶ 83.

The challenge to the evaluation process presented by MDESC with respect to the technical and management portions of its proposal consists almost exclusively of disagreements with the findings of the evaluators and thus does not provide us with a sufficient basis to question the Air Force's evaluation, which on its face does not appear to be unreasonable. For example, the protester asserts in its final comments that the agency's conclusion that its proposed use of repeaters as an element of network design is "unproven" constitutes a plain "factual error." In this regard, the protester has provided nothing more than its general disagreement with the agency's conclusion to counter the agency's technical judgment.

^{1/} MDESC also questioned whether, in this allegedly hurried evaluation, the Air Force adequately examined GTE's past performance on several contracts which the protester alleges to have been inadequate with respect to cost control. The record of the evaluation reflects that GTE's past performance was considered and that the agency discounted the effect it would have on performance under this contract because previous problems in cost control were encountered by GTE divisions separate from the one proposed for the JSIC effort and were largely the result of the fixed-price nature of the earlier contracts.

4. Cost Evaluation

With regard to the evaluation of its cost proposal, MDESC relies primarily on agency statements made to it in an October 5 debriefing session in which, among other things, the Air Force noted that a Defense Contract Audit Agency (DCAA) audit had revealed certain unsupported costs in its proposal and had questioned others. Basically, MDESC asserts that these DCAA findings were incomplete and related only to its initial proposal, not to its BAFO, and argues that references to the findings contained in later evaluation materials and at the debriefing indicated that its BAFO was not thoroughly examined and that its final proposed costs were not properly evaluated.

The record indicates that an incomplete DCAA audit of the protester's initial proposal was referenced, although not prominently, in final evaluation documents. That audit questioned \$6.7 million of the protester's costs because of alleged deficiencies in the firm's estimating methods and cited an additional \$8 million of its costs as unsupported because of a lack of documentation. However, an examination of the agency's actual treatment of these costs does not reveal that MDESC was prejudiced by the references.

In the comparative analysis prepared by the SSAC which formed the basis for the award decision, risks inherent in MDESC's BAFO were assigned a risk factor of moderate, presumably in part because of these questioned costs. The difference in proposed costs between GTE and MDESC was \$24.5 million while the difference between the agency's adjusted costs was \$46.95 million. Considering that GTE was rated technically superior to MDESC and the much lower proposed and evaluated cost of the GTE proposal, the questioned costs--even if DCAA's conclusions were wrong--were simply not factors which, in the final analysis, affected the ranking of proposals or the selection of GTE. Thus, even if MDESC were correct about all of its contentions concerning DCAA's findings, it was not prejudiced as a result of their being mentioned in the evaluation of BAFOs and we see no point in considering the matter further. See Sechan Electronics, Inc., B-233943, Mar. 31, 1989, 89-1 CPD ¶ 337, aff'd on reconsideration, B-233943.2, July 19, 1989, 89-2 CPD ¶ 59.

Finally, MDESC suggests that the SSAC's comparison of offerors' costs for the basic contract effort to known funding profiles is indicative of an impermissible emphasis on cost as an evaluation factor. Since it is clear from the record that the analysis complained of followed an evaluation which had resulted in a finding that GTE had

provided a technically superior system at a significantly lower cost, we fail to see how MDESC--the highest cost, least technically acceptable offeror--was prejudiced by the additional comparison or how the selection decision contravened the stated evaluation criteria.

The protest is denied.

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