

S. Cooper



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Department of the Army--Reconsideration

File: B-240647.2

Date: February 26, 1991

W.P. Albritton, Jr., for the protester.
Roger G. Darley, Esq., Department of the Army, for the agency.
Sabina K. Cooper, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

The General Accounting Office will not consider new arguments raised by the agency in request for reconsideration where those arguments are derived from information available during initial consideration of protest but not argued, or from information available but not submitted during initial protest, since parties that withhold or fail to submit relevant evidence, information, or analysis for our initial consideration do so at their own peril.

DECISION

The Department of the Army requests reconsideration of our decision in Amtec Corp., B-240647, Dec. 12, 1990, 90-2 CPD ¶ 482, in which we sustained in part Amtec's protest of the Strategic Defense Command's proposed award of a contract to Delta Research, Inc., for flight test analysis. The Army argues that our decision to sustain the protest in part was based on an incomplete evaluation record, in that detailed evaluation sheets of Amtec's technical evaluation were not included in the record forwarded to our Office.

We deny the request.

In the original protest, Amtec contended that the Army failed to conduct meaningful discussions; improperly applied the evaluation factors in the RFP; performed a defective cost analysis and did not conduct the competition in good faith. We denied the protest on the issues of the adequacy of discussions and cost analysis, but sustained it on the issue of the adequacy of the Army's evaluation of Amtec's technical proposal. We found that the record submitted by the Army

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substantiating its evaluation did not support the Army's generalized conclusion that Amtec's proposal was poorly organized and lacked technical detail. We therefore recommended that the Army reconsider its evaluation of Amtec's proposal and its selection decision. We also found Amtec entitled to the costs of filing and pursuing its protest.

In its request for reconsideration, the Army argues that it did not include evaluation sheets with its report on Amtec's protest filed in our Office because it interpreted the protest to challenge only the source selection official's decision to award to the offeror with the higher cost, higher technically scored proposal, instead of Amtec with its lower cost, lower technically scored proposal. The Army contends that it did so because Amtec, rather than challenging its own evaluation, argued that the source selection official's decision to award to Delta notwithstanding Amtec's lower cost was in violation of the solicitation's evaluation criteria.

We believe that the agency was on notice that the protester was challenging the evaluation of its proposal. In its comments on the agency report, the protester argued that the agency did not evaluate its proposal in accordance with the criteria in the request for proposals (RFP) and imposed certain requirements that were not stated in the RFP. The agency was given an opportunity to and did submit comments in response to the protester's allegations, in part addressing the protester's contentions regarding its technical evaluation.

The Federal Acquisition Regulation (FAR) requires agencies to document their selection decisions so as to show the relative differences among proposals, their weaknesses and risks, and the basis and reasons for the selection decision. FAR § 15.612(d)(2). As we noted in our prior decision, details of the reasons for the selection decision are particularly important where the agency is procuring highly complex, technical goods or services. This required explanation provides protesters and this Office a basis upon which to judge the reasonableness of the agency's decision and, ultimately, its compliance with the procurement statutes and regulations. In its reconsideration request the Army admits that the Proposal Evaluation Team (PET) report could be considered to reflect an evaluation that was "conclusionary" in nature. In other words, the PET report required the addition of the individual evaluators' notes to adequately document the evaluations and award. We could not properly ascertain the basis for the agency's procurement action without the additional materials.

Parties that fail to submit all relevant evidence, information or analyses for our initial consideration do so at their own peril. The Dep't of the Army--Recon., B-237742.2, June 11, 1990, 90-1 CPD ¶ 546. The supporting documents should have been produced by the Army during the initial protest; while they may assist the Army in accomplishing the reconsideration of its evaluation of Amtec's proposal that we recommended in our initial decision, their production at this point will not result in our reconsideration of that decision. Id.

The request for reconsideration is denied.


for James F. Hinchman
General Counsel