



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Electronic Associates, Inc.

**File:** B-240666.2

**Date:** October 11, 1991

John W. Fowler, Jr., Esq., Saul, Ewing, Remick & Saul, for the protester.

Richard S. DeBellis, for Encore Computer Corporation, an interested party.

Lester Edelman, Esq., Department of the Army, for the agency. Paul E. Jordan, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Where solicitation required that certain of the offeror's personnel possess specific high-level security clearance in order to be considered for award, agency properly eliminated protester from competition when protester's responses in discussions indicated that it could not obtain clearance until after award.

2. Agency satisfied obligation to conduct meaningful discussions with regard to protester's lack of security clearance by questioning protester as to status of clearances and its contingency plans for access to secured area.

### DECISION

Electronic Associates, Inc. (EAI) protests the award of a contract to Encore Computer Corp., under request for proposals (RFP) No. DACA76-90-R-0012, issued by the Army Corps of Engineers, Engineer Topographic Laboratories, for support and maintenance of the Terrain Visualization Test Bed, an advanced computer image generator.<sup>1/</sup> EAI contends that it was improperly excluded from consideration for award because of its lack of security clearances.

<sup>1/</sup> The computer image generator is used for research efforts at the Topographic Laboratories in various programs that use digital terrain data in Army topographic applications, which include visualization of battlefields.

We deny the protest.

This is EAI's second protest of this procurement. Originally, two offerors, EAI (the incumbent) and Encore (the original equipment manufacturer), submitted proposals by a July 23, 1990, closing date. Encore was evaluated as the technically superior, lower-priced offeror, and was awarded the contract without discussions in August 1990. In its protest of that award, EAI alleged that the evaluation process was unfair, unreasonable, and misleading. Because the Army took corrective action by amending the RFP and reopening discussions with EAI and Encore, our Office dismissed that protest as academic. Electronic Assocs., Inc., B-240666, Dec. 10, 1990. After considering revised proposals and conducting discussions, the Army eliminated EAI from the competition because it was unacceptable in the "Security Clearance" subfactor. The contract was again awarded to Encore and EAI filed this protest with our Office.

As in the original RFP, the successful offeror is required to provide all necessary parts, supplies, test equipment, and diagnostic software, as well as to provide a full-time, on-site primary engineer to maintain the components of the system. The equipment to be maintained is in a sensitive compartmented information facility (SCIF) and runs top secret/sensitive compartmented information (TS/SCI). Access to SCI data and source code is necessary for performance of software and hardware maintenance. In this regard, section L.23 of both the original and amended RFP advised offerors that a TS/SCI clearance "is required for complete performance of work. The Contractor who is not cleared will not be considered for award."

The requirement for TS/SCI clearance is also addressed in the evaluation factors in Section M of the RFP. While the original RFP required the offeror "to provide a U.S. citizen cleared TOP SECRET to perform under the contract," the amended RFP contained a "technical experience" subfactor which provided that the primary engineer "must possess" a TS/SCI clearance. It also provided that the "offeror shall provide a statement to this effect or the current status of any security clearance application(s)."

EAI acknowledges these provisions but points to the statement of work provision at C.3.1.2., "Security" which provides in pertinent part that the "Contractor shall obtain and maintain a security clearance for all personnel performing service at this site. The on-site maintenance representative MUST be

cleared to the TOP SECRET/SCI level (emphasis added)." EAI asserts that the emphasized words reasonably indicated that the clearances did not have to be obtained prior to contract award, but rather were only a matter of contract performance. We disagree.

EAI places undue reliance on the "contractor's" responsibility to obtain the necessary clearance. Each solicitation provision must be construed in relation to other provisions and in light of the general purpose to be accomplished. NBI, Inc., B-220677, Feb. 5, 1986, 86-1 CPD ¶ 132. Notwithstanding the use of the term "contractor" in C.3.1.2, the RFP provisions uniformly require clearance as a prerequisite to award and such a requirement is consistent with the general purpose of this procurement. Here, section L.23 clearly provides that an offeror without the proper clearance would not be considered for award. This requirement is reinforced by the provisions of section M, as amended, that "offerors" are required to state their compliance or the status of any pending application; that clearance status would be considered in the evaluation; and that an "acceptable" rating was required in each subfactor to receive consideration for award. Further support for this interpretation is found in the concluding sentence of section C.1.2.3 on which EAI relies: "The [g]overnment reserves the right to bar unsatisfactory Contractor personnel from [g]overnment premises." Absent appropriate clearance, the contractor will not be able to commence performance of the work called for under the RFP.

To the extent EAI contends that the provisions are ambiguous, it was required to raise the ambiguity prior to the closing date for submission of offers, and its post-award protest on that basis untimely. 4 C.F.R. § 21.2(a)(1) (1991) as amended by 56 Fed. Reg. 3759 (1991). While EAI contends that this protest basis is timely because its interpretation of the alleged ambiguous provisions was reasonable, as explained above, we find no ambiguity in the provisions of this RFP. The mere allegation that a solicitation is ambiguous does not make it so. Telelect, Inc., B-224474, Sept. 25, 1986, 86-2 CPD ¶ 355.

EAI also contends that the Army failed to engage in meaningful discussions because it did not advise EAI that the lack of security clearances was a disqualifying deficiency. In addition, EAI alleges that the Army, by failing to notify EAI of this deficiency in July 1990, when EAI was first eliminated from the competition, prevented EAI from having a reasonable opportunity to correct the deficiency.

In order for discussions in a negotiated procurement to be meaningful, contract officials must advise offerors of deficiencies in their proposals and afford offerors an

opportunity to revise their proposals to satisfy the government's requirements, Federal Acquisition Regulation § 15.610; Elsinore Aerospace Servs., Inc., B-239672.6, Apr. 12, 1991, 91-1 CPD ¶ 368. Although agencies are not obligated to afford all encompassing discussions, they still must reasonably lead offerors into those areas of their proposals which are of concern to the evaluators and which require amplification or correction. Jaycor, B-240029.2 et al., Oct. 31, 1990, 90-2 CPD ¶ 354.

We disagree with the protester that discussions were not meaningful. Here, four of the nine questions asked of EAI in discussions after negotiations were reopened concerned security clearances. Specifically, the Army evaluators asked what EAI meant by its security clearances being on "administrative hold"; whether the proposed primary engineer currently, or had ever, held a TS/SCI clearance; what type of background investigation had been performed on the proposed primary and backup engineers; and what were EAI's contingency plans for access to the SCIF if there were a time lapse for the primary engineer to obtain SCI clearance. We believe these questions adequately led EAI into the area of security clearances. In fact, EAI responded, indicating a lack of current clearances and the need for escorts while awaiting the grant of clearances. The fact that these responses resulted in EAI's being evaluated as unacceptable does not establish that the discussions were not meaningful, but that the responses were not adequate.

We also do not agree that the Army prevented EAI from having a reasonable opportunity to correct the deficiency by not advising it of the deficiency in July when it was found. The record reflects that in an August 1990 telephone debriefing<sup>2/</sup> the Army specifically advised EAI that it had been scored lower due to, among other matters, a lack of information on security clearances (if any) held by the proposed primary and backup engineers. Coupled with the existing admonition of sections L.23 and M, and the questions posed to EAI, EAI had ample notice of its deficiency. While EAI notes that it needed agency sponsorship to obtain the proper clearances, and this was not provided, it also recognized that it could have

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<sup>2/</sup> The debriefing was conducted after the initial award to Encore.

replaced its proposed engineers with ones who had proper clearance. Its decision not to replace the proposed engineers with properly cleared engineers was a matter of business judgment which does not provide grounds for a protest.

Finally, in view of the RFP requirement for properly cleared personnel, the agency was not obligated to remind EAI, as it contends, that without clearances it would not be considered for award. Huff & Huff Serv. Corp., E-235419, July 17, 1989, 89-2 CPD ¶ 55 (where information is specifically requested in an RFP, the agency is not required to remind offerors of the requirement in discussions.)

The protest is denied.



for James F. Hinchman  
General Counsel