

Maeder
147646



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Electrolux SARL

File: B-248742

Date: September 21, 1992

L. Graeme Bell, III, Esq., Brian E. Sweeney, Esq., and Joan H. Moosally, Esq., Crowell & Moring, for the protester. S. Beitner for Thermopol, Inc., an interested party. Michael Trovarelli, Esq., Defense Logistics Agency, for the agency.

Jacqueline Maeder, Esq., Glenn Wolcott, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly applied solicitation's technical evaluation criteria by downgrading the importance of production management/production capability is denied where the record shows that the agency reasonably reevaluated proposals as to production capability when the quantity of units required was significantly reduced.

DECISION

Electrolux SARL (Electrolux) protests the award of a contract to Thermopol, Inc. under request for proposals (RFP) No. DLA 120-89-R-9033, issued by the Defense Personnel Support Center (DPSC), Defense Logistics Agency (DLA) for the acquisition of portable, solid state refrigerators, national stock number (NSN) 4110-01-287-7111. Electrolux alleges that DPSC did not follow the RFP evaluation criteria in evaluating proposals.

The protest is denied.

The RFP, issued on October 27, 1989, contemplated the award of a firm, fixed-price contract for 1,523 refrigerators with tools, test equipment and manuals. The refrigerators are to be used by the military to store and transport whole blood.

The RFP provided that award would be based on the proposal most advantageous to the government, price, technical quality and other factors considered. It further stated that technical quality was more important than price, but that as proposals became more equal in technical merit,

price would become more important. The technical evaluation factors, listed in descending order of importance, included:

- I. Technical Capability
- II. Production Management
- III. Manufacturing Plan
- IV. Quality Assurance Plan
- V. Experience/Past Performance

Under the production management evaluation factor, the RFP listed production capability as the sole subfactor. To facilitate evaluation of an offeror's production capability, the RFP requested offerors to list the number and names of employees and their related experience, education, and training; plant equipment, including special tooling and test equipment presently available; and any additional equipment to be required, along with an acquisition plan for that additional equipment. Offerors were also asked to describe maintenance procedures, provide data on equipment downtime for the last 3 years, describe the selection of subcontractors, and identify those operations which would be performed by subcontractors.

Three firms submitted proposals by the December 12 closing date. Offers were evaluated by DPSC personnel for technical merit. Each proposal was scored on the basis of an adjectival rating system,¹ supported by a narrative listing its strengths and weaknesses.

After reviewing responses to interrogatory letters advising offerors of their technical deficiencies and conducting pre-award surveys for each offeror, the agency determined that all three offerors' proposals were in the competitive range. The agency conducted negotiations and requested submission of best and final offers (BAFO) by June 7, 1991.² The technical ratings of the initial BAFOs were as follows:

¹Each proposal was rated as "highly acceptable," "acceptable," "marginally acceptable," or "unacceptable."

²From August 1990 through March 1991, during Operation Desert Shield/Desert Storm, DPSC procured 676 refrigerator units under emergency contracts to meet requirements called for by the solicitation. During this time, DPSC suspended action under this solicitation.

	Thermopol	Electrolux
I. Technical Capability	A	A
II. Production Management/ Capability	MA	HA
III. Manufacturing Plan	A	A
IV. Quality Assurance Plan	MA	A
V. Experience/Past Performance	A	A ³

Both Electrolux and Thermopol were rated "acceptable" overall. In September, the procurement was suspended to allow the agency to reassess its needs. On October 18, 1991, amendment 0005 was issued reducing the required quantity from 1,523 to 343 units;⁴ the agency subsequently requested second BAFOs from the three offerors. While there were no technical changes submitted in the second round of BAFOs, the agency reevaluated the technical proposals, noting that the drastic reduction in the quantity sought affected the prior evaluation of proposals in the area of production management/capability. Due to the reduced quantity sought, Thermopol's rating for production management/capability was upgraded from "marginally acceptable" to "acceptable"; its overall rating remained "acceptable." There were no changes in Electrolux's ratings.

The technical and price evaluations and the pre-award surveys were reviewed by the Source Selection Authority (SSA). The SSA determined that Thermopol's and Electrolux's technical proposals were essentially equal and that award to Thermopol, the lower priced offeror, represented the best value to the government. On May 7, 1992, a contract for 267 units was awarded to Thermopol.⁵ Electrolux filed its protest with our Office on May 14.

³"A" is "acceptable"; "MA" is "marginally acceptable"; and "HA" is "highly acceptable."

⁴Amendments 0001, 0002, 0003, and 0004 included various changes to the solicitation, including, for example, extending the closing date, responding to questions on the RFP submitted by the offerors, updating RFP clauses, soliciting the requirement on an "all or none basis," revising the delivery schedule, and changing the option clause from two successive year options to two successive quantity options.

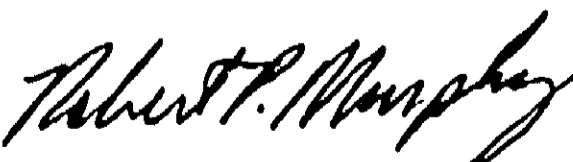
⁵Due to lack of funds, award was made for a lower quantity than had been solicited.

Electrolux protests that DPSC effectively downgraded the importance of production management/capability, thus, revising the technical evaluation criteria without notifying offerors. Electrolux argues that the quantity of units to be produced was never an evaluation factor, was not suggested by the evaluation criteria concerning production management/capability and that, in order to raise Thermopol's score, DPSC had to change the content of the technical evaluation criteria by improperly introducing "quantity of units to be produced" into the evaluation.

Our Office will examine an agency's evaluation to ensure that it was fair and reasonable and consistent with the evaluation criteria stated in the RFP. A protester's disagreement with the agency's evaluation is not itself sufficient to establish that the agency acted unreasonably. CH2M Hill Southeast, Inc., B-244707, B-244707.2, Oct. 31, 1991, 91-2 CPD ¶ 413. Here, we find the agency's evaluation of the proposals reasonable and in accord with the RFP's evaluation criteria.

We find without merit Electrolux's contention that "the quantity of units to be produced" was an improper consideration in evaluating offerors' production management/capability. On the contrary, we believe that an offeror's ability to produce a specified quantity of items is an essential aspect of production capability, and the agency's consideration of this factor was implicit in its evaluation of production capability. Indeed, the RFP's request that each offeror provide information relating to its work force and its equipment was clearly intended to provide the agency with the data it needed to determine each offeror's capability to produce the desired number of units within the time specified in the solicitation. Thus, while the agency judged Thermopol's production capability "marginally acceptable" for a solicitation seeking 1,500 units, it reasonably upgraded this rating to "acceptable" when only 343 units were sought. We do not view this adjustment to the agency's evaluation of Thermopol's production management/capability as altering the importance of the evaluation factor itself. Rather, because fewer units were required, the agency properly determined that Thermopol's personnel and plant equipment were more clearly capable of producing the reduced quantity. Accordingly, we have no basis to object to the evaluation.

The protest is denied.


for James F. Hinchman
General Counsel