



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: SCI Systems, Inc.
File: B-258786
Date: February 13, 1995

Alan M. Grayson, Esq., and Hugh J. Hurwitz, Esq., for the protester.
R. Timothy Hanlon, Esq., Alex D. Tomaszczuk, Esq., Devon E. Hewitt, Esq., and J. Russell Morrissey, Esq., Shaw, Pittman, Potts & Trowbridge, for Loral Western Development Laboratories, an interested party.
Maj. Bill Medsger, LTC Ron Heuer, and Richard A. Couch, Esq., Department of the Army, for the agency.
Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency improperly allowed awardee to elect not to participate in the solicitation's vibration demonstration is denied where the solicitation calls for offerors to at least commence such a demonstration, but does not prohibit award to an offeror that fails to do so, and the protester was not prejudiced by the agency's actions.
2. Protest that agency's response to a pre-proposal question improperly misled offerors as to the importance of certain government-furnished equipment to be used in a demonstration, and improperly failed to furnish such information, is denied where the agency's response was not misleading, and the protester was not prejudiced by the agency's refusal to provide such information.
3. Protest that agency improperly failed to discuss with the protester its choice of one type of communications cable over another is denied where both types of cable were technically acceptable.

DECISION

SCI Systems, Inc. protests the award of a contract to Loral Western Development Laboratories under request for proposals (RFP) No. DAAB07-94-R-E005, issued by the Department of the Army's Communications-Electronics Command for Mission Module Systems (MMS). SCI argues that the Army improperly allowed

the awardee to opt out of the RFP's vibration demonstration; improperly denied SCI technical information necessary to conduct the RFP's functional demonstration; and improperly misled SCI concerning the acceptability of its proposed coaxial cable.

We deny the protest.

BACKGROUND

This solicitation called for proposals to engineer, design, test, and install the MMS into the Army's Command and Control Vehicle (C2V), an armor-tracked vehicle that provides the military commander and his battle staff with a safe and mobile battlefield command post. The MMS is an electronic system which provides communications within the C2V and between the C2V and other vehicles. One of its components, the Vehicle Inter/Intra Communications System (VIICS), is basically an intercom device for communication both within the C2V and between C2Vs.

The RFP, issued on April 8, 1994, contemplated award of a cost-plus-fixed-fee contract for six C2V/MMS prototypes and two additional VIICS, along with fixed-price options for the provision of up to 72 low rate initial production units. Award was to be based on the best overall proposal determined to be most beneficial to the government, with appropriate consideration given to four major evaluation factors: technical, cost/price, past performance risk, and management. The technical and cost/price factors were of equal importance, and past performance risk was significantly more important than management. To be considered for award, an offeror had to receive a rating of no less than "acceptable" for both the technical and management factors.¹ Offerors were cautioned that award might not necessarily be made to the lowest-priced offer.

The technical evaluation factor was comprised of two subfactors, operational suitability and integrated logistics support. As discussed below, of the five criteria included under the operational suitability subfactor, "demonstration," which would be used to verify the extent that the offeror's VIICS demonstrated functional, vibration, and noise attenuation requirements, was the most important.

¹The ratings used in the evaluation were "outstanding," "good," "acceptable," "susceptible," and "unacceptable."

Seven proposals were submitted in response to the solicitation by the May 23 closing date,² and, after an initial evaluation by the source selection evaluation board (SSEB), six offerors remained in the competitive range. Discussion questions were issued on July 6, and demonstrations were held between July 7 and July 17. As discussed further below, during those demonstrations, Loral elected not to submit equipment for the vibration demonstration. The competitive range was subsequently narrowed to three offerors, among them SCI and Loral. Further discussion questions were issued, oral discussions were conducted, and best and final offers (BAFO) were submitted on September 7. The final evaluation results were as follows:³

	<u>Loral</u>	<u>SCI</u>
Technical:	Good	Acceptable
Operational Suitability	Good	Acceptable
Integrated Logistics Support	Acceptable	Acceptable
Evaluated Cost/Price:	\$24,581,561	\$23,129,052
Past Performance Risk:	Low	Low
Management:	Outstanding	Good

The source selection official (SSO) determined that Loral's proposal had certain key advantages, such as a good understanding of and concern for an existing government problem relating to co-site interference, and that its VIICS demonstration presented low risk. Loral's proposal also had no disadvantages. In contrast, while SCI's proposal had some advantages, it also had disadvantages, such as a VIICS demonstration that presented high risk, and its use of coaxial cable instead of fiber optic cable. The SSO did not view the evaluated cost/price difference to be sufficient to outweigh the risk resulting from SCI's poor VIICS demonstration, and noted Loral's superior rating under the management factor. Award was made to Loral on September 26, and SCI filed this protest after its debriefing. Performance of the contract has been suspended pending resolution of this protest.

²Technical, management, and past performance proposals were submitted on May 23, and cost proposals were submitted on June 7.

³The third offeror's proposal is not at issue here.

SCI argues that the Army improperly allowed Loral to "opt out" of the vibration demonstration portion of the VIICS demonstration, and improperly relaxed the vibration requirements after the submission of BAFOs. SCI also argues that the Army's response to a pre-proposal question concerning the government-furnished equipment (GFE) to be used during the demonstration was misleading, and that the Army improperly failed to furnish information regarding this GFE. Finally, SCI contends that the Army improperly failed to inform it, during discussions, that the firm's proposed use of coaxial cable was viewed as a weakness.

DISCUSSION

VIICS Demonstration

The "Source Selection Criteria" section of the RFP states that the VIICS demonstration "will be used to verify the extent that the offeror's VIICS demonstrates functional, vibration, and noise attenuation requirements."⁴ The section of the solicitation describing the VIICS demonstration states that:

"the offeror will be required to demonstrate his candidate VIICS . . . and be required to provide two candidate VIICS and necessary cabling to undergo a demonstration of shock/vibration, audio clarity, and functionality." § J, Attachment 8, ¶ 2.3(a)

"Should the offeror demonstrate a VIICS that does not meet the functional, vibration, and noise attenuation requirements he proposes to provide under contract, he shall explain in the operational suitability section in his technical proposal how he proposes to modify his system to meet those requirements." § J, Attachment 8, ¶ 2.3(b)"

As to the vibration demonstration in particular, the solicitation provides that:

"[t]o avoid excessive damage to a component, the offeror may elect to halt the vibration demonstration

⁴The actual vibration requirements are found in the RFP's statement of work. The VIICS must "withstand vibration and shock induced during field transport by the XM4 carrier and rough handling. The VIICS shall withstand vibrations encountered during transportation and shocks encountered during servicing."

at any time, and receive a failure for this event."
§ J, Attachment 8, Enclosure 2.1.1(b)."

In its proposal, Loral informed the Army that it was not prepared to conduct a vibration test at the demonstration, because it had taken existing proven circuits and was down-sizing them specifically for use in the C2V, and final production would not be complete at the time of the demonstration. As a result, its functional demonstration unit contained circuits that provided full electrical functionality, but were wire-wrapped. The proposal stated that packaging of the VIICS to meet vibration requirements was viewed as extremely low risk, and would be completed well in advance of the required need date. It also noted its intention to "ruggedize" one of the VIICS components. Accordingly, at Loral's demonstration, the firm declined to submit equipment for the vibration events. It successfully completed the events concerning the functional and noise attenuation requirements.

The subsequent evaluation noted that Loral had not demonstrated the vibration events due to lack of an appropriate interface circuit card. However, the SSEB had a high degree of confidence that this could be accomplished, based on the offeror's previous mobile subscriber equipment experience. In addition, Loral had adequately responded to a discussion item concerning its intention to "ruggedize" a component of the VIICS to comply with environmental requirements, such as vibration and shock. The SSEB also found that the functional demonstrations showed little risk to the government in Loral's integrating its proposed VIICS with any of the GFE communications systems. Overall, the SSEB found no advantages or disadvantages.

During SCI's demonstration, the firm successfully passed the events concerning the audio and vibration requirements. In accordance with the RFP's terms, described above, SCI did remove a circuit card from its unit to prevent damage during the vibration events. However, SCI unsuccessfully completed three of the five functional demonstration events. With regard to these events, in the subsequent evaluation, the SSEB noted that while SCI was able to interface with GFE radios, it was unable to perform any inter-vehicular functions (conferencing or data transfer via either wire or wireless radio). The SSEB concluded that this inability to perform inter-vehicular command post communications functions posed a risk to the government.

SCI argues that the Army improperly allowed Loral to elect not to participate in the vibration portion of the demonstration, as it asserts that the solicitation's terms require offerors to at least commence the vibration demonstration.

When a dispute exists as to the meaning of solicitation language, we resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions. Lithos Restoration, Ltd., 71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 379; Honeywell Regelsysteme GmbH, B-237248, Feb. 2, 1990, 90-1 CPD ¶ 149. To be reasonable, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Id.

While SCI's interpretation of the provisions set forth above is reasonable,⁵ the solicitation's terms clearly provided offerors with alternate means to meet the vibration requirements. In accordance with those terms, Loral met the vibration requirements to the agency's satisfaction. As a result, Loral's failure to at least commence the vibration demonstration does not prevent it from receiving award.

The government may waive testing requirements when the waiver is not arbitrary or prejudicial to the protester. See Informatics, Inc., B-190203, Mar. 20, 1978, 78-1 CPD ¶ 215; Boston Pneumatics, Inc., B-188275, June 9, 1977, 77-1 CPD ¶ 416. Even when a testing requirement is waived, the waiver does not affect the contractor's legal obligation to furnish a conforming system. Le Don Computer Servs., Inc., B-225451.2; B-225451.3, Apr. 28, 1987, 87-1 CPD ¶ 441; Sperry-Univac, B-195028, Jan. 3, 1980, 80-1 CPD ¶ 10.

Here, since the Army's conclusion that Loral met the vibration requirements was in accordance with the solicitation's terms, we cannot conclude that its waiver of the vibration demonstration for Loral was arbitrary or improper. Further, SCI was not prejudiced by the waiver. The firm successfully completed the vibration demonstration, and there is no evidence to suggest that the Army's "diminished confidence" in the results of that demonstration, discussed below, had any impact on SCI's "acceptable" rating under the operational suitability subfactor--the record shows that the key reason for this rating was SCI's poor performance during the functional demonstration. In that regard, SCI's argument that if it

⁵Section J, Attachment 8, ¶ 2.3(a) clearly states that offerors will be "required to . . . undergo a demonstration of shock/vibration, audio clarity, and functionality." In addition, § J, Attachment 8, ¶ 2.3(b) does not contemplate that offerors will fail to submit equipment for a given demonstration, but, rather, that during a demonstration, an offeror's equipment might not meet that demonstration's requirements. Finally, § J, Attachment 8, Enclosure 2.1.1(b) merely states that the demonstration may be halted to avoid damaging the equipment, not that offerors need not commence the vibration demonstration.

had not been required to undergo the vibration demonstration, it could have spent more time preparing for the functional demonstration and successfully passed those events, is purely speculative. SCI does not explain how it would otherwise have allowed the agency to verify that its proposed VIICS would meet the vibration requirements, nor does it explain how more preparation time would have allowed it to successfully pass the functional events that it failed. Prejudice is an essential element of a viable protest, and we will not sustain a protest where, as here, no prejudice is evident from the record. Lithos Restoration Ltd., supra.

SCI also argues that the Army improperly relaxed the evaluation criterion concerning vibration after BAFOs were submitted without notifying offerors. SCI contends that the Army told SCI at its debriefing that it had relaxed this criterion, and, as evidence of this, points to the contracting officer's statement, found in the agency report, that "the consideration of the vibration was diminished."

The Army denies that it told SCI it had downgraded this criterion, and the record belies SCI's assertion, as the results of the vibration demonstration are clearly reflected in the evaluation documents. Moreover, SCI's selective quotation from the contracting officer's statement does not support its position. The portion of the statement cited by SCI concerns what the Army told the firm during its debriefing about the way the demonstration results were used as an evaluation factor, and how SCI's vibration demonstration results were assessed. The contracting officer's complete statement in this regard is:

"The [g]overnment explained in the debrief that the usefulness of SCI's vibration demonstration results in building confidence was diminished when SCI presented prototype developmental models for the demonstration that were mechanically different from what was actually proposed to be delivered under contract. The reason for this decrease in the usefulness of the results is that any changes made to a component or subcomponent (to include circuit card insertions or removals) influences the mechanical integrity of that component. This could significantly affect the ability [of] that component to endure vibration and shock requirements of the contract."

In short, the SSEB's consideration of either the vibration demonstration results or the vibration requirements themselves was not diminished, but the usefulness of SCI's successful vibration demonstration was diminished by the fact that it submitted a prototype model that differed from what it proposed to deliver under the contract. SCI's

characterization of this language is faulty and its allegation without basis.

PRE-PROPOSAL QUESTIONS

SCI argues that the Army misinformed it by characterizing as unimportant requested technical information concerning the GFE to be used in the functional demonstration, and improperly refused to provide such information, since SCI's lack of familiarity with the GFE was the "critical basis for rejecting its proposal."

Since many of the VIICS demonstration tasks involved showing how the VIICS would operate in conjunction with various items of GFE, among them a specific radio, the solicitation included information regarding GFE interfaces in the form of drawings and the VIICS functional description document. Prior to the submission of proposals, offerors asked two questions concerning GFE which were answered by amendment. First, Loral sought information concerning radio interfaces, specifically in the form of an interconnect diagram, and was advised to:

"use the data provided with the drawing package enclosed with the RFP to answer the solicitation. Furthermore, information requested is completely unrelated/not required to be submitted as part of your response to the RFP."

Second, SCI sought information to "validate" certain information concerning various items of GFE, including the radio. In response, the Army stated that "offerors [were] required to follow the provided drawings."

SCI's contention that the Army misinformed it concerning the significance of radio interface information by stating that such information was "completely unrelated" to the RFP mischaracterizes the Army's response to Loral's question. The Army did not state that such information was completely unrelated to the RFP, but that, one, such information could be found in the drawing package and functional description document, and, two, offerors did not require such information, including the interconnect diagram, in order to submit a response to the solicitation.

More important, however, SCI was not prejudiced by the agency's decision not to provide offerors the requested information, as SCI successfully accomplished the functional demonstration task concerning interface between its equipment and the radio. The only functional demonstration tasks involving GFE that SCI failed were associated with the inability of one of its VIICS to transfer data to another of its VIICS. While SCI contends that the "considerable"

amount of time it spent attempting to achieve the interface between its equipment and the radio was at the expense of other areas of the demonstration, SCI has provided no evidence to support this contention. Again, we will not sustain a protest where no prejudice is evident from the record. Lithos Restoration Ltd., supra.

MISLEADING DISCUSSIONS

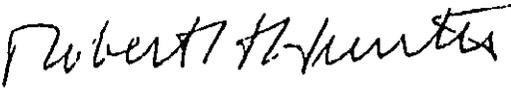
SCI finally argues that the agency improperly failed to inform it, during discussions, that the firm's proposed use of coaxial cable was viewed as a weakness.

This solicitation required offerors to propose a method by which to establish a communications link between two C2Vs, but left the selection of methods to the discretion of offerors. The agency states, and the protester does not dispute, that there are two acceptable approaches: coaxial cable and fiber optic cable. In their proposals, SCI proposed the former, and Loral proposed the latter. The evaluation reports and the source selection document noted as a disadvantage in SCI's proposal its use of coaxial cable because, although coaxial cable is more economical, it is much bulkier than fiber optic cable and more susceptible to noise and electromagnetic interface problems. SCI's use of coaxial cable was not raised during discussions.

While it was left to the offeror to propose what it believed to be the best approach to meeting this communication link requirement, there was no guarantee that the agency would consider each different approach to be equally effective. Canadian Commercial Corp./Canadian Marconi Co., B-250699.4, Mar. 5, 1993, 93-1 CPD ¶ 251. Where, as here, a solicitation allows for alternative approaches to meeting performance requirements, the manner in which offerors are to fulfill the requirements need not be specified in the solicitation. Pitney Bowes, 68 Comp. Gen. 249 (1989), 89-1 CPD ¶ 157, recon. denied, B-233100.2, June 22, 1989, 89-1 CPD ¶ 587; Canadian Commercial Corp./Canadian Marconi Co., supra. Nor must the agency advise a technically acceptable offeror during discussions that it considers another approach to be superior. Id. Agencies are not obligated to discuss every element of a technically acceptable competitive range proposal. Department of the Navy--Recon., B-250158.4, May 28, 1993, 93-1 CPD ¶ 422. While SCI's proposed use of coaxial cable was identified as a disadvantage and contributed to the agency's determination that SCI's proposal, while technically acceptable, offered a relatively less desirable approach than did Loral, as the protester concedes, this issue had only a minor effect on the award decision. Based on the record before us, we do not believe that the agency was required to raise the issue

in discussions with SCI. See Dynamic System Technologies, Inc., B-253957, Sept. 13, 1993, 93-2 CPD ¶ 158.

The protest is denied.


for Robert P. Murphy
General Counsel

'While SCI argues that the Army's determination was not reasonably based because the firm's proposed shielded coaxial cable is not subject to noise or electromagnetic interface problems, SCI does not dispute the Army's finding that coaxial cable is bulkier than fiber optic cable, an additional reason for which SCI was downgraded. As a result, we have no basis to find the agency's determination unreasonable.