

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

60454

FILE: B-184469

DATE: January 30, 1976

MATTER OF: Edmac Associates, Inc.

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~~9938A~~

**DIGEST:**

99169

1. Fact that only successful offeror proposed mechanically rotated antenna while other four offerors based proposals on electronically rotated antenna presents no basis for amendment or cancellation of RFP and resolicitation as specifications contemplated either type antenna.
2. Protest that successful proposal did not meet specifications contained in RFP and that protester's proposal was not properly evaluated is denied because determination of whether proposal is technically acceptable is matter of administrative judgment reserved to procuring agency and will not be disturbed absent clear showing that agency acted arbitrarily or unreasonably, which showing was not made.
3. Prior contract performance relates to offeror's responsibility and as GAO does not review protests against affirmative responsibility determinations unless either fraud is alleged on part of procurement officials or solicitation contains definitive responsibility criteria which allegedly have not been met and as neither exception is for application here, consideration of this facet of protest is declined.
4. Allegation that protester should be paid proposal preparation costs because contracting officer knew after submission of initial proposals which offeror would eventually be successful because of differing approaches but continued negotiations with protester during 4-month period in which 12 amendments were issued necessitating costly revisions to proposal is without merit. As differing approaches were contemplated by RFP, and prior to best and final offers final cost comparisons could not be made to determine successful offeror, it would have been improper to have excluded any offerors in competitive range.

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On August 5, 1974, the United States Air Force issued request for proposals (RFP) No. F19628-74-R-0159 for the design, development and production of navigation sets, TACAN AN/TRN-XX, which consists of a receiver/transmitter, an antenna unit and a Government-furnished power supply. On June 27, 1975, award under the RFP was made to E-Systems, Inc., Montek Division (E-Systems). This award has been protested to our Office by Edmac Associates, Inc. (Edmac).

Initially, Edmac contends that the proposal submitted by E-Systems and accepted for award by the Air Force did not meet the specifications contained in the RFP.

Five offers were evaluated for award and of these five, four offerors proposed to use an electronically rotated antenna and only E-Systems offered a mechanically rotated antenna.

Edmac argues that a complete reading of the specifications shows that the Air Force desired an electronically rotated antenna as opposed to one which was mechanically rotated. Edmac points to paragraph 3.3 of the specifications, which states, in part, "State-of-the-art, solid-state techniques shall be employed to the maximum extent possible in the design of the AN/TRN-XX," to show such a requirement. The Air Force responds that paragraph 3.3 does not constitute a requirement but merely a preference for solid state techniques. The Air Force cites paragraph 3.7.2.1.3 of the antenna specifications which reads as follows to show that either type of antenna was contemplated:

"3.7.2.1.3 Antenna Signal.

"3.7.2.1.3.1 The antenna may be mechanically or electronically rotated (scanned) to achieve the standard signal to be radiated and received by the LWADT system LAW MIL-STD-291B.

"3.7.2.1.3.2 Composite 15 and 135 Hz variable bearing signal. The bearing signal shall be generated by either mechanically or electronically rotating a directional pattern which produces, at a point in space, a composite amplitude modulation of the RF pulse signals at 15 and 135 Hz. The

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directional pattern rotation shall be in a clockwise direction looking down on the antenna. The mode of operation shall conform to MIL-STD-291B."

Finally, the Air Force states that the offering of the mechanically rotated antenna was consistent with section 0, paragraph 7b, of the RFP entitled "General Considerations for Award." That paragraph reads as follows:

"For this program, the Government is seeking a minimum development-low risk effort. Any offeror proposing a high technical risk item or high risk design approach will be severely penalized in the evaluation process."

Air Force technical evaluators considered the antenna offered by Edmac and three of the other offerors to be a high risk approach as the electronically rotated antenna was still under development.

Based on the foregoing, it appears the specifications contemplated either type antenna and we find nothing improper in the consideration of the mechanically rotated antenna as the RFP did not exclude such an approach and, therefore, the protest on this point is denied.

Edmac also challenges the evaluation of the E-Systems proposal contending that the proposal failed to meet the specifications in various areas. Edmac states that the equipment offered by E-Systems cannot meet the specifications in regard to (1) reliability; (2) impact survival; (3) power consumption; (4) man portability; and (5) weight limitation. The Air Force has stated in rebuttal that it considered all of the requirements in the specifications including the above five in determining the acceptability of E-Systems' proposal and found the proposal technically acceptable. The Air Force also discusses in its report to our Office the above five areas separately and gives the reasons its technical evaluators found E-Systems acceptable.

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Our Office has stated on numerous occasions that the determination of whether a proposal is technically acceptable is a matter of administrative judgment reserved to the procuring activity and we will not disturb a finding of technical acceptability absent a clear showing that the agency acted arbitrarily or unreasonably. 52 Comp. Gen. 382 (1972). Based on the information before our Office, we cannot say that the Air Force acted arbitrarily or that the finding of acceptability of E-Systems' proposal was without a reasonable basis. Therefore, the protest on this point is denied.

Edmac contends further that E-Systems held a prior contract for a similar item which employed a mechanically rotated antenna and under this contract the item furnished by E-Systems failed to meet some of the contract requirements. Edmac alleges that the Air Force failed to consider these prior deficiencies in evaluating the proposal of E-Systems.

Initially, it must be pointed out that prior contract performance is for consideration in determining an offeror's responsibility and not in determining the acceptability of a proposal from a technical standpoint. See section 1-903.1(iii) of the Armed Services Procurement Regulation (ASPR) (1974 ed.). The Air Force states that a preaward survey was conducted on E-Systems and this survey, which considered all aspects of the firm's ability to perform (including past contract performance), resulted in an affirmative determination of responsibility by the contracting officer.

Our Office does not review protests against affirmative determinations of responsibility unless either fraud is alleged on the part of procuring officials or the solicitation contains definitive responsibility criteria which allegedly have not been met. As neither of these exceptions are for application in the instant case, we must decline to consider this aspect of the protest further. Continental Cablevision of New Hampshire, Inc.--Reconsideration, B-178542, October 17, 1975, 75-2 CPD 236.

Next, Edmac argues that the approach of the E-Systems proposal (mechanical vs. electronic antenna) differed so greatly from the proposals of the other offerors that it was incumbent upon the Air Force either to find E-Systems outside the competitive range and

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discontinue negotiations with E-Systems or modify the solicitation or cancel and reissue a new RFP with revised specifications.

As noted above, the approach taken by E-Systems was contemplated by the specifications and, therefore, we find no basis for challenging the determination by the Air Force to include E-Systems within the competitive range. Also, because such an approach was within the parameters of the specifications, there would have been no need to amend the RFP. Further, as we have found no need for the Air Force to amend the RFP, there certainly was no reason to cancel and readvertise the requirement.

Edmac also raises several points with regard to the Air Force's evaluation of its proposal. The Air Force found weakness in the Edmac proposal in the areas of modulation scheme, insertion loss and weight. Edmac contends that these areas were not weaknesses but actually strengths of the proposal. The Air Force has supplied our Office with its technical evaluation of these areas and we cannot say that the evaluation of Edmac's proposal was without a reasonable basis. 52 Comp. Gen. supra.

Edmac further states that its proposal was unfairly downgraded because it intended to subcontract the antenna and power amplifier and that such action by the Air Force violated ASPR § 1-707.1 (1974 ed.) which states that small business concerns shall be fairly considered as subcontractors or prime contractors.

Edmac states that at the postaward debriefing the Air Force advised that because of the subcontractors it was more difficult for the Air Force to monitor and control the program and, therefore, this area was considered a weakness in Edmac's proposal. The Air Force contends that Edmac misinterpreted what was said at the debriefing and that the Air Force's concern was with Edmac's ability to monitor and control the program. Moreover, the Air Force states that this was not the reason for the nonacceptance of the Edmac proposal but that technical and cost considerations were the primary reasons.


Finally, Edmac contends that the Air Force knew after the submission of initial proposals that only E-Systems was offering a mechanically rotated antenna at a lower cost than the electronically

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rotated antenna offered by Edmac and the other offerors. However, according to Edmac, all offerors continued to be misled into believing they were under consideration during the 4-month period following the submission of initial proposals when 12 amendments were issued to the RFP. Edmac contends that these amendments necessitated revisions in its proposal at great expense and that it should be paid its proposal preparation costs for this period of time prior to the award to E-Systems.

Upon review, we believe the Air Force acted properly in continuing to negotiate with all five offerors it considered to be in the competitive range. As the offering of either the mechanically or electronically rotated antennas was permissible under the specifications and prior to best and final offers being submitted the final cost comparisons could not be made, it would have been improper for the Air Force to have excluded any of the offerors in the competitive range from further competition. In that regard, 10 U.S.C. § 2304(g) (1970) states that "written or oral discussions shall be conducted with all responsible offerors who submit proposals within a competitive range, price, and other factors considered." Therefore, we find nothing to justify consideration of the claim for proposal preparation costs.

For the foregoing reasons, the protest is denied.

  
Deputy Comptroller General  
of the United States