



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

REDACTED DECISION

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Matter of: Fermont Division, Dynamics Corporation of America

File: B-257373.3; B-257373.4; B-257373.5

Date: December 22, 1995

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Ron S. Talain for Goodman Ball, Inc., an interested party.

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DIGEST

1. Protest that contracting agency unreasonably evaluated offerors' technical proposals is denied where the record shows that the evaluation was reasonable and in accordance with the stated evaluation criteria; protester's disagreement with the agency's judgment as to the merits of various aspects of these proposals does not render that judgment unreasonable.

2. Protest that contracting agency's source selection decision improperly emphasized the benefits of the awardee's proposal under one evaluation criterion is denied where the decision was consistent with the stated evaluation criteria, and where the source selection authority's view that these benefits were sufficiently significant to warrant the design's slightly increased cost was reasonable.

DECISION

Fermont Division, Dynamics Corporation of America protests the Department of the Army's selection of Goodman Ball, Inc. (GBI) to proceed with the Army's continuing engineering, development, and production of auxiliary power units (APU). Fermont argues that the Army's selection of GBI—by exercising two options in its existing contract, and by not exercising the options in Fermont's corresponding contract—is unreasonable.¹

¹Even though the selection was made through the exercise of an option on the original contract award, our Office has jurisdiction to consider the protest because the option exercise was based on the results of a limited competition

(continued...)

We deny the protests.

BACKGROUND

On August 12, 1993, the Army issued request for proposals (RFP) No. DAAK01-93-R-0024 for the development and production of a 5 kilowatt, 28 volt direct current APU. The APU, which supplies power for on-board equipment in an XM1068 tracked vehicle, will be mounted on the vehicle's sloping front "hood," directly in front of the commander's hatch. After reviewing and evaluating the best and final offers (BAFO), the Army awarded a contract for phase I of the effort to each of the three highest-rated offerors: GBI, Fermont, and a firm not at issue here.

All three contracts required the contractor to design; select and purchase components, parts, and subassemblies; fabricate; and assemble six mock-up APUs for inspection and test in accordance with the purchase description. The evaluation scheme next anticipated evaluating the contractors' proposals to determine which should receive the "down-select" award for the phase IIA option, continued engineering and development, and the phase IIb option, limited production. Section H of the three contracts, as amended, listed the down-select criteria.

The Army would consider two areas, design and cost, with design roughly twice as important as cost. The design area² would consider the results of the operational mock-up inspection and testing done in phase I and yield an adjectival rating of exceptional, acceptable, or unacceptable for each of three evaluation categories and their factors. An exceptional rating meant that the design exceeded some requirements in a beneficial way to the Army and had a high probability of success with no significant weaknesses. An acceptable rating meant that the design met most requirements and had a good probability of success with weaknesses that could be readily corrected. An unacceptable rating meant that the design failed to meet several requirements and needed major revisions to correct deficiencies, or failed to meet one or more requirements with an adverse impact on the effective operation of the units.

The Category I factors, which were considerably more important than the Category II factors, were sound survey, size and weight, and reliability maturation. The Category II factors, slightly more important than the Category III factors, were

¹(...continued)

and evaluation of proposals; the option exercise thus was not mere contract administration. Mine Safety Appliances Co., 69 Comp. Gen. 562 (1990), 90-2 CPD ¶ 11.

²The cost area is not at issue here.

operation, safety examination, test method, overload demonstration, and scheduled maintenance. The Category III factors were vibration survey, electromagnetic testing, Table I examination, test method, review of sample wire, XM1068 interfaces, rated speed calculation, proposed design changes, and demonstration local-remote.³

Award would be made to the contractor providing the overall best value to the government. While cost was an important factor, the Army reserved the right to award the contract to the firm whose competitive strengths in the design area significantly outweighed those of the low-cost offeror. However, cost would become increasingly more important as the relative merits of the design were determined to be substantially equal; cost would then be determinative.

The final test reports and proposals were submitted to the contracting officer on May 30, 1995. After these were evaluated, discussions were conducted with the offerors, and BAFOs were received and evaluated. Both GBI and Fermont were rated [DELETED] under the design area and each of its categories. Within those categories, Fermont received an [DELETED] rating under the reliability maturation factor, GBI received an [DELETED] rating under the size and weight factor, and both offerors received [DELETED] ratings under all of the remaining factors. Both proposals were also attributed with various strengths and weaknesses, discussed further below. GBI's evaluated cost was \$3,068,070, and Fermont's was \$[DELETED].

On August 7, the source selection authority (SSA) reviewed the evaluation results, including each offer's strengths and weaknesses, and determined that GBI's proposal represented the best overall value to the government. The SSA concluded that the fact that GBI's installed APU did not extend beyond the top of the XM1068 vehicle--one reason it received its [DELETED] rating under the size and weight factor--was an exceedingly important design feature that afforded significant safety, operational, and transportability advantages that did not exist in Fermont's design. The SSA believed that these advantages justified the associated higher cost. Award was made that same day in the form of an option exercise on GBI's contract, and these protests followed.

Fermont raises numerous challenges to the Army's technical evaluation of both its and GBI's proposals. In related arguments, Fermont contends that the source selection decision was unreasonable and contrary to the evaluation criteria.

³The Category I factors were of equal weight; the first Category II factor was twice as important as the rest, which were equal to each other; and the first two Category III factors were equal and slightly more important than the remaining factors, which were equal to each other.

DISCUSSION

Evaluation of Proposals

In reviewing a protest against the propriety of an evaluation, it is not our function to independently evaluate proposals and substitute our judgment for that of the agency. Polar Power, Inc., B-257373, Sept. 2, 1994, 94-2 CPD ¶ 92. Rather, we will review an evaluation only to ensure that it was reasonable and consistent with the RFP evaluation criteria. Id. The fact that a protester disagrees with the agency's judgment does not itself establish that that judgment is unreasonable. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450. Here, we conclude that Fermont's challenge essentially expresses the firm's disagreement with the agency's judgment, and that, as the following examples demonstrate, the record reasonably supports the Army's evaluation of proposals.

The sound survey factor considered two sets of sound levels measured on two APUs from each contractor. Levels were measured from 12 positions, each 7 meters from the APU, and the highest level for each APU was compared with the not-to-exceed requirement of 75 dBA and the desired level of 70 dBA. A level was also measured from the APU operator's station and compared with the not-to-exceed requirement of 85 dBA. Fermont's highest reading from 7 meters was [DELETED] dBA,⁴ and its readings from the operator's position were [DELETED] dBA.

Fermont objects to the Army's use of the highest reading as its benchmark, and contends that it should have been rated exceptional because several of its readings were below 70 dBA. However, we believe that the Army's rationale for such a benchmark—that the direction of enemy attack cannot always be controlled or anticipated—is reasonable, as is its reservation of an exceptional rating for an APU with a maximum reading nearer 70 dBA. While Fermont also contends that it should have been credited for having operator's station readings below the required level, the Army states that this requirement was only necessary to avoid the need

⁴Fermont's contention that its highest reading was [DELETED] dBA is not clearly supported by the test report. In any event, the record does not support the inference that Fermont's rating would have differed had the agency considered [DELETED] dBA to have been its highest reading.

for hearing protection, and that there was little advantage to be gained from a further decrease in sound levels once the threshold was met. That Fermont disagrees with the Army's view, arguing that lower sound levels increase operator comfort, does not make that view unreasonable.⁵

One consideration under the operations factor was preventive maintenance. Offerors' APUs were to require such maintenance at no less than 8-hour intervals, and the maintenance was to last no longer than 20 minutes. Fermont's maintenance interval was [DELETED] and the work lasted [DELETED]. The firm's proposal was rated acceptable and given a strength for the short duration of its maintenance time. GBI's maintenance interval was [DELETED] and the work lasted [DELETED]. The firm's proposal was rated acceptable.

Fermont asserts that its proposal should have been rated exceptional and that GBI's proposal should have been downgraded on the basis of their respective maintenance times. The record shows that the Army favorably considered the short duration of Fermont's preventive maintenance time, giving it a strength, but rated the proposal acceptable because its interval required APU shutdown [DELETED] times daily. Likewise, the Army considered the fact that GBI's preventive maintenance time was excessive, but rated the proposal acceptable because its interval required APU shutdown only [DELETED] daily and its excessive time could be easily corrected. While Fermont disagrees with the Army's judgment as to the value of the offerors' respective maintenance times, agency evaluators' judgments about the slight qualitative differences which can render a proposal exceptional or acceptable are

⁵Fermont also argues that the Army failed to recognize that one of GBI's readings from 7 meters, on one APU, exceeded the requirement by [DELETED] dBA. However, the record shows that the Army recognized this failure but considered it to be readily correctable because GBI's second APU met the requirements. Moreover, since this reading was from the direction of the engine exhaust, the Army believes it is highly likely that a redirection of the exhaust exit angle will lower the reading. Fermont's speculation that GBI's proposed design changes will increase the sound level is insufficient to render the evaluation unreasonable.

not subject to rational legal objection unless a clear showing of unreasonableness is made; we find no such showing here.⁶ Mevatec Corp., B-260419, May 26, 1995, 95-2 CPD ¶ 33.

The Category II test method factor required the APUs to be subjected to a frequency and voltage regulation, stability and transient response test at three temperatures: ambient, -25° Fahrenheit (F), and 120° F. GBI's APU significantly exceeded the minimum requirements under both ambient temperature and -25° F, and was given a strength for this achievement. However, the evaluators noted that the test could not be performed at 120° F because the oil temperature exceeded the requirement when the test was attempted. The evaluators stated that there was no data to indicate that the APU would not have completed the test with results similar to those under the other temperatures if it had been able to operate at 120° F, and referred to the evaluation under the Category III test method factor for a further discussion of the problem.

The Category III test method factor required the APUs to be subjected to the maximum power test under these same three temperatures. While GBI's APUs were tested under ambient temperature and -25° F, they were not tested at 120° F for the reasons described above. The evaluators noted this failure, but concluded that it should be readily correctable with the [DELETED] proposed by GBI under the proposed design changes factor. Under that factor, the evaluators described the design changes that GBI had proposed to correct this problem, and stated that GBI had performed these changes on a unit identical to the mock-up units, and that the unit had performed as required. While GBI's proposal was rated acceptable, it was given a weakness for its failure to perform the maximum power test at 120° F.

Fermont challenges this evaluation, arguing that the Army has inadequate assurance that GBI's APU will successfully perform at high temperature. However, the Army duly considered the risks presented here and downgraded GBI accordingly. Contrary to Fermont's implication, the evaluation criteria did not require offerors to demonstrate compliance with every requirement, and allowed evaluators to rate proposals meeting "most requirements" under a given factor as acceptable. Further,

⁶Similarly, the scheduled maintenance factor specified a minimum interval of 100 hours. Fermont contends that it should have been rated exceptional because its maintenance interval was [DELETED] hours, which it asserts would be a substantial benefit in terms of reduced labor costs and increased availability of the APU. The Army acknowledged this benefit in giving Fermont's proposal a strength for this attribute, but did not consider it sufficiently beneficial to merit a rating of exceptional. Fermont's insistence that the value of its maintenance interval merited an exceptional rating again is a mere disagreement with the agency's judgment.

Fermont's descriptions of numerous other steps that the Army might have taken to ascertain the likelihood that GBI's APU would successfully perform do not amount to a showing that the steps that were taken were inadequate or that the firm's acceptable rating was unreasonable, particularly in light of the firm's significant showings under the other temperatures for both tests.

Offerors were to provide a demonstration of generator overload—the generator overload device automatically limits the output current when it exceeds a certain level. At the time of the inspection and test, GBI's alternator manufacturer had not incorporated the overload device into its design and the firm was unable to demonstrate it. GBI subsequently conducted tests on the alternator with a current limiter, and included this test data with its test report. The evaluation documents clearly acknowledge GBI's failure to demonstrate the device during testing, but state that the firm proposed a device and included test data indicating that that device would work. GBI's proposal was rated acceptable here, but given a weakness for its failure, which was considered to be readily correctable with a minimal risk. While Fermont argues that GBI should not have been rated acceptable because it did not conduct the demonstration, we have no basis to so conclude, given the RFP's allowance of such a rating for APUs not meeting all of the requirements. The record shows that the Army considered the risk pointed out by the protester, giving GBI a weakness as a result; Fermont's disagreement with the Army's judgment as to the impact of this failure does not render the evaluation unreasonable. Id.

Finally, Fermont's contention that GBI improperly made a design change to its unit after testing is not supported by the record. During GBI's reliability maturation test there were two failures involving loss of engine oil pressure within the first 50 hours of test. These failures were diagnosed as a defect concerning the [DELETED], which was the subject of a manufacturer's recall notice. The recall notice advises the installation of a different oil pump on the recalled engines, but Fermont argues that GBI's change of the oil pump baseplate constituted an improper design change. However, GBI states that the only difference between the defective oil pump and the replacement oil pump is the baseplate kit, which incorporates the [DELETED], and that replacing the baseplate results in the entire changeover called for by the recall notice. Thus, as the Army asserts, GBI did not change the design of its APU but merely replaced a defective component with a nondefective one so that the proper APU configuration could be tested.

Source Selection Decision

Fermont argues that the source selection decision was made in contravention of the evaluation criteria. The protester contends that the selection decision should have been made on the basis of cost, and that the Army overemphasized the benefits of GBI's shorter APU.

Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. In exercising that discretion, they are subject only to the tests of rationality and consistency with the established evaluation criteria. Id.

The evaluation criteria stated that award would be made to the contractor providing the best overall value to the government. While cost was an important factor, the Army "reserved the right to award the contract to the firm whose competitive strengths in the design area significantly outweighed those of the low-cost offeror." Cost would only be determinative if the relative merits of the design were substantially equal. The source selection decision makes it quite clear that the SSA did not consider the relative merits of the two proposals to be substantially equal, but believed that GBI's lower APU height was a competitive strength which significantly outweighed those of Fermont. Thus, the SSA's decision to rely on this strength was fully consistent with the stated evaluation criteria and, as discussed below, reasonable.

The APU's height was one of two considerations under the size and weight factor, one of the three most important factors set forth in the evaluation scheme. The purchase description listed a maximum acceptable APU height of 26 inches and a desired height of "lowest possible." GBI's APU was 17.1 inches tall, 8.9 inches below the maximum, and its proposal was rated exceptional and given a strength for significantly exceeding the requirement.⁷ One of Fermont's APUs was [DELETED] inches tall, with the other [DELETED] inches tall, and its proposal was rated acceptable.

As reflected in the source selection decision, the Army believed that the lower height of GBI's APU would increase personnel safety and survivability. The APU is mounted directly in front of the commander's hatch, and the lower height of GBI's APU allows the commander increased vision to the front of the vehicle, enabling him to assist the driver whose vision is partially obstructed by the APU. Thus, any reduction in height would decrease the obstruction--the commander's forward blind area is reduced by more than half with the GBI APU versus the higher Fermont APU. While Fermont argues that the driver only requires visual assistance from the right, not the front, the Army clearly states that, according to the using representative, the commander looks out the hatch whenever the vehicle is moving, and the only time he would not be looking out the hatch would be when the vehicle

⁷GBI's proposal was also given a strength for significantly exceeding the purchase description's weight requirement.

was under direct fire. As to Fermont's assertion that its APU would act to shield the commander from frontal exposure, thereby making its APU safer, the protester does not address the possibility that enemy fire would come from other directions.

The Army also believed that the lower height of GBI's APU was a significant benefit in the area of transportability. According to the Army, these systems will be transported on C-130 and C-141 aircraft. The vehicle can be loaded onto these aircraft with the GBI APU installed, but, due to its height, the Fermont APU would have to be removed with cargo handling equipment and space would have to be provided in the aircraft for stowage. Handling equipment and additional manpower would also have to be available at the aircraft landing point to remount the Fermont APU. Contrary to Fermont's belief, the Army states that handling equipment, aircraft space, rigging materials, and manpower are at a premium during large-scale deployments, and avoiding a requirement for such things is of significant value. While Fermont largely relies on a 1992 directive in arguing that there is no requirement to transport these vehicles by air, the Army states that the use of past deployment data is no longer applicable and reasserts the necessity of such transport.

Since the evaluation criteria contemplated award to a firm whose competitive strengths in the design area significantly outweighed those of the lower-cost offeror, and since Fermont has not persuaded us that the Army unreasonably determined that the benefits inherent in the lower height of GBI's APU significantly outweighed those of Fermont, we cannot conclude that the source selection decision was improper.

The protests are denied.

Comptroller General
of the United States