



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Precision Echo, Inc.

File: B-276740; B-276740.2

Date: July 23, 1997

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DIGEST

Protest challenging evaluation and source selection is denied where agency reasonably determined that awardee's aircraft video fatigue data recorder demonstrated more user-friendly interface and consequently higher reliability; since awardee's proposal therefore was superior to protester's under the most important evaluation criteria, agency reasonably concluded that, despite its higher price, it represented better value than protester's.

DECISION

Precision Echo, Inc. protests the award of a contract to TEAC America, Inc. under request for proposals (RFP) No. N00163-96-R-0336, issued by the Department of the Navy, Naval Air Warfare Center, Indianapolis, Indiana, for HI-8mm video fatigue data recorders (VFDR) for the Harrier AV-8B aircraft.¹ Precision Echo challenges the acceptability of TEAC's offer and the evaluation generally.

We deny the protest.

The solicitation provided for award of a fixed-price contract for a base quantity of 209 VFDRs (with an option for an additional 20 units) to the responsible offeror whose offer "provides the best value to the Government" under the following three criteria (listed in descending order of importance): (1) statement of work (SOW),

¹The VFDRs record the pilot's view of the heads-up display information (or instrument readings) projected onto the inside of the cockpit windshield for subsequent use in mission evaluation.

comprised of six subcriteria, including performance requirements, mean-time-between-failure (MTBF), mean-time-to-repair (MTTR), environmental survivability, safety assessment, and supportability; (2) past performance; and (3) price. Past performance was "slightly less important" than SOW, while price was "the least important."

Four proposals from three offerors were received by the closing time on October 1, 1996. TEAC submitted two proposals--one for entirely new VFDRs, and a "buy-back" proposal which offered a price reduction based upon the return and reuse of certain components from the agency's current VFDRs. All proposals were included in the competitive range. Following discussions with offerors, the Navy requested best and final offers (BAFO). Based upon its evaluation of BAFOs, the agency determined that TEAC's buy-back proposal provided the best value to the government. The evaluation results were as follows:

| | TEAC (New/Buy-back) | Precision Echo |
|--------------------------|---|---------------------|
| SOW | | |
| Performance | Satisfactory Plus | Satisfactory Plus |
| MTBF | Highly Satisfactory | Satisfactory |
| MTTR | Highly Satisfactory | Highly Satisfactory |
| Survivability | Satisfactory | Satisfactory |
| Safety | Satisfactory | Satisfactory |
| Supportability | Highly Satisfactory | Satisfactory |
| Past Performance | Highly Satisfactory | Satisfactory |
| Risk | Low | Moderate |
| OVERALL NON-PRICE | Highly Satisfactory | Satisfactory |
| PRICE | \$(DELETED)(New)/ \$1,143,855 (Buy-back) | \$(DELETED) |

On December 20, the Navy made award to TEAC.

REUSE OF MATERIAL

TEAC offered a credit or price reduction of \$(DELETED) per new VFDR when an existing VFDR was returned in working order within 60 days of receipt of the new

replacement unit. Precision Echo maintains that this constituted the use of government-furnished material (GFM), and that this arrangement resulted in an unfair competitive advantage for TEAC because the solicitation did not advise offerors that GFM would be available, as required by Federal Acquisition Regulation (FAR) § 45.303-2. Precision Echo also argues that the agency improperly failed to fully evaluate the buy-back proposal, for example, by not considering the additional costs to the government in the event that existing VFDRs were not returned on time and in working order.

While the Navy denies that it acted improperly or unreasonably in accepting TEAC's alternate buy-back offer, the agency also asserts that, in any case, Precision Echo was not prejudiced since TEAC's other proposal--offering all new VFDRs--not Precision Echo's, was next in line for award by virtue of its superior ratings under the SOW and past performance evaluation factors. In this regard, a protest will not be sustained unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577 (Fed. Cir. 1996).

As discussed in detail below, we find that the Navy reasonably determined that TEAC's proposal based on furnishing all new VFDRs was next in line for award. As a result, Precision Echo was not competitively prejudiced by any alleged impropriety regarding the use of GFM in TEAC's buy-back proposal, and there is no basis for sustaining the protest on this ground.²

PAST PERFORMANCE

Offerors were required to furnish "a summary of recent relevant contracts which appropriately supports past and present positive performance or correction of past or present performance problems." For each relevant contract, offerors were to provide specified contract administration data, a description of the relevance of the

²Precision Echo also argues that TEAC's proposal was ineligible for award because TEAC did not complete a certification included in the solicitation and set forth at the then-current FAR § 52.222-48, entitled "Exemption from Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain ADP, Scientific and Medical, and/or Office Business Equipment--Contractor Certification (OCT 1995)." However, the Navy reports that this clause was included in the solicitation inadvertently and was not applicable, since the purpose of the procurement was not to obtain the maintenance, calibration, or repair of the types of equipment covered by the certification. Indeed, the solicitation indicated that the procurement was not subject to the Service Contract Act. In these circumstances, TEAC's failure to complete the clause did not preclude award to it.

contract, and a synopsis of contract performance, including information with respect to (1) product quality, (2) product performance, "with particular emphasis on reliability and maintainability," (3) delivery schedule performance, and (4) cost/price performance. The RFP advised that past and present performance would be evaluated based on this information, as well as data in existing government databases or from contracting offices and on-site surveys. As noted above, TEAC's past performance was rated highly satisfactory, and Precision Echo's only satisfactory.

Precision Echo essentially argues that the evaluation of TEAC's past performance failed to account for schedule problems that led the cognizant Defense Contract Management Center (DCMC) for the facility at which TEAC proposed to complete the VFDRs to recommend against award to TEAC. In this regard, the DCMC reported that TEAC America had not previously manufactured VFDRs but, rather, had acted only as a distributor of VFDRs manufactured by other TEAC entities. The DCMC found that, while TEAC possessed satisfactory organization and management, facilities, equipment, material and subcontracting systems, and personnel, such that TEAC "appears able to produce" the VFDRs, TEAC's current and past performance was unsatisfactory. Specifically, according to the pre-award survey report, the information available to the DCMC indicated that TEAC was responsible for delays on approximately 89 percent of its current contracts. In contrast, the pre-award survey on Precision Echo reported that, while 7 of its 29 current contracts (24 percent) were delinquent, Precision Echo was responsible for the delays on only 4 of the 7 contracts, for an effective delinquency rate of 14 percent. Precision Echo argues that, given TEAC's record of unsatisfactory performance, the agency could not reasonably assign its proposal a higher past performance rating and a lower risk rating than Precision Echo's received.

In considering a protest against an agency's evaluation of proposals, we will examine the record to determine whether the agency's judgment was reasonable and consistent with stated evaluation criteria and applicable statutes and regulations. ESCO, Inc., 66 Comp. Gen. 404, 410 (1987), 87-1 CPD ¶ 450 at 7. The information available to the Navy at the time of the evaluation reasonably supported TEAC's superior past performance rating.

Relevance

As noted, the RFP focused on "recent relevant contracts," specifically calling for an explanation of the relevance of the contract to the work contemplated here, that is, production of current generation HI-8mm VFDRs. The record shows that the Navy discounted much of the DCMC's report on the basis of lack of relevance; as acknowledged by the DCMC itself, the performance information reviewed related only to TEAC's performance as a distributor, not as a manufacturer. Further, TEAC explained to the Navy that all of the discrepancies cited by the DCMC related to spare parts and service/repair contracts for TEAC's oldest model video recorders,

with none related to its current line of HI-8mm VFDRs. Moreover, TEAC advised the Navy that DCMC's information (marginally relevant as it was) was inaccurate in significant respects; TEAC furnished the Navy with information indicating that significantly fewer of the cited contracts, on the order of 29 to 43 percent, could be considered delinquent.

The Navy considered the contracts for TEAC's HI-8mm VFDRs to be most relevant for the past performance evaluation. In this regard, TEAC's proposal discussed 12 contracts (in 8 contracting programs) for its HI-8mm VFDRs, on all of which it reported successful performance. In addition, in a letter to the DCMC, a copy of which was furnished to the agency, TEAC cited an additional 15 contracts for its HI-8mm VFDRs. (In contrast, while Precision Echo also referred in its proposal to successful past performance on contracts for HI-8mm VFDRs, it cited only three contracts, only one of which--albeit the largest--was for installation in high performance jet aircraft, the application in this contract.) This information led the agency to conclude that TEAC's relevant past delivery schedule performance had been "excellent." We find nothing unreasonable in the agency's reaching this conclusion, based on the contracts most similar to the effort under this RFP.

Quality and Reliability

In any case, the record shows that it was the quality and reliability of the VFDRs that was the most significant discriminator in the past performance area. Two of the four specific areas proposals were to address in describing the quality of performance under the listed contracts were product quality and product performance, "with particular emphasis on reliability and maintainability." The available data led the Navy to conclude that the overall product quality of the TEAC VFDR was "much more desirable" than that of Precision Echo's. Specifically, TEAC's VFDR was rated "extremely reliable," and "much more reliable" than Precision Echo's, with a demonstrated MTBF of at least 1,900 hours. In contrast, although Precision Echo estimated the MTBF of its VFDRs as between 3,300 and 6,534 hours, the available past performance data showed a significantly lower MTBF, with its latest line of VFDRs demonstrating an MTBF of approximately 801 hours (earlier models showed an even lower MTBF).³

³This data was consistent with a May 1996 report (from the aircraft carrier USS Nimitz) TEAC submitted with its proposal concerning the performance of Precision Echo's HI-8mm VFDRs on the carrier's F/A-18 squadrons during a 6-month deployment beginning in December 1995. The report termed Precision Echo's VFDRs a "high failure item" requiring an "unsatisfactory" level of manpower to maintain. TEAC's analysis of the performance data indicated an MTBF of less than 100 hours.

Precision Echo challenges the evaluated MTBF numbers. According to the protester, most of the failures attributed to its VFDR were caused by user misuse, such as attempting to remove a tape when the aircraft power had been turned off and before the tape had been completely unthreaded. Precision Echo asserts that when MTBF is properly calculated to exclude user-caused failures, the TEAC and Precision Echo MTBFs are the same. In support of its position regarding user misuse, Precision Echo cites an electronic mail message dated June 19, 1997 (after this protest was filed), from an officer apparently serving on the aircraft carrier USS Nimitz, which states as follows:

Operator induced failures continue to be a big problem. The recorder is not a milspec sailor-proof box. If an attempt is made to remove a tape that is not completely unthreaded, the recorder drive will be damaged and require replacement. Different squadrons exhibit wide ranges of MTBFs which appear to correlate to their understanding of the system. As an example, one squadron deployed aboard the [aircraft carrier USS] Roosevelt reported over an [1800-hour] MTBF while another squadron aboard the same carrier was getting about [a] [100-hour] MTBF. The demand from the squadron with the high failure rate effectively dried up spares for lower priority (ashore and on workups) squadrons.

The protester's argument is without merit. The technical evaluation team (TET) was well aware that users played a role in Precision Echo's lower MTBF. However, after conducting a "hands-on review," the TET attributed significant responsibility for Precision Echo's VFDR's higher failure rate to product design. According to the TET report, "[i]t is clear that human interface problems exist with the [Precision Echo] recorder" and "[h]uman interface problems are viewed as quality problems." In this regard, the Navy reports that examination of the actual VFDRs indicated that the TEAC unit was "more ruggedized" and possessed "a more friendly user interface such that the unit was less likely to be inadvertently damaged by Navy or Marine personnel." For example, the agency reports that the TEAC VFDR has a mechanical ejection system connected to the door, which raises the flight tape out of the chassis, thereby reducing the likelihood of inadvertent damage to the VFDR. In contrast, reports the agency, Precision Echo's tape ejection requires an additional step--a lever located inside the front panel must be manually released by the user, who usually is wearing gloves. As another example, the Navy reports that vendor data indicates that the tape transport mechanism for the TEAC VFDR has a lower repair rate than Precision Echo's. Further, since TEAC's tape transport mechanism, unlike Precision Echo's, is constructed of separate subcomponents, it often can be repaired without replacing the entire mechanism.

The Navy's conclusions were reasonable. The Navy was aware of the possibility that many of the failures of Precision Echo's VFDRs were due to user error, but specifically determined that these errors likely were attributable, at least in

significant part, to design features. It appears that the features cited by the agency, including those discussed above, reasonably could account for failures, and a resultant lower MTBF, and Precision Echo has not shown otherwise. Although one squadron on the Roosevelt reportedly attained an MTBF of more than 1,800 hours using the Precision Echo VFDR (a fact not known to the evaluators at the time of source selection), this fact alone, even if it had been available at the time of the evaluation, would not preclude the agency from considering the countervailing fact that another squadron on the same ship attained a significantly lower MTBF (no more than 100 hours, which corresponds to the experience of the squadrons aboard the Nimitz), and the reports of Precision Echo's significantly lower overall MTBF on F/A-18 aircraft relative to the TEAC VFDRs similarly deployed; the agency reasonably concluded that, on average, the Precision Echo VFDR was more difficult to use or learn to use properly than the TEAC unit. We conclude that the Navy reasonably viewed the past performance data as indicating that TEAC's VFDR was more ruggedized and had a more user-friendly interface such that it was likely to be more reliable in future use. It follows that the Navy reasonably rated TEAC's overall past performance superior to Precision Echo's.

PRICE/TECHNICAL TRADEOFF

TEAC's proposal was evaluated as superior to Precision Echo's under both the most important SOW criterion and the next most important past performance criterion. Although TEAC's proposal for all new VFDRs was somewhat higher priced ([DELETED] percent) than Precision Echo's, price was the least important criterion. In these circumstances, the Navy reasonably concluded that the technical advantages of TEAC's proposal were worth the associated price premium and that TEAC's proposal represented the best value.

The protest is denied.

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