



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: California Microwave, Inc.
File: B-229489
Date: February 24, 1988

DIGEST

1. Where RFP required that offerors reasonably demonstrate each essential characteristic and supplemental requirement designated for demonstration, the agency's use of a "pass/fail" system to assess demonstrated capabilities was consistent with the RFP's stated evaluation criteria.
2. Based on General Accounting Office's in camera review of the record, which includes classified materials, an agency's determination that a protester failed to reasonably demonstrate certain required capabilities was reasonable.
3. Procuring agency need not hold discussions with offerors whose proposals are technically unacceptable and not susceptible to being made acceptable.
4. Cancellation of a solicitation was proper where an agency determined there were no technically acceptable offers.

DECISION

California Microwave, Inc. (CMI), protests the actions taken by the Department of the Army pursuant to request for proposals (RFP) No. DAAH01-87-R-A764. CMI protests that the Army: applied evaluation criteria other than those specified in the RFP; erroneously determined that CMI failed to demonstrate the required capabilities; failed to conduct meaningful discussions; improperly canceled the solicitation; and violated the statutory and regulatory provisions concerning procurement of non-developmental items (NDIs). We deny the protest.

The RFP was issued on October 31, 1986, seeking proposals for an intelligence electronic warfare unmanned aerial vehicle (IEW UAV). The RFP stated that the IEW UAV was to be solicited as an NDI and that offerors must demonstrate their products' capabilities at their own expense. The objective of the planned procurement was to provide the Army

C41356-135109

with a complete off-the-shelf IEW UAV system consisting of: air vehicles; mission payloads; command, launch and recovery equipment; and support and training equipment. The closing date for submission of proposals was February 17, 1987. On or before that date the Army received proposals from three offerors, including CMI.

Section C of the RFP contained a list of system capabilities divided into three categories: (1) essential characteristics; (2) supplemental requirements; and (3) desired characteristics. This section of the RFP stated:

". . . All essential characteristics and those supplemental requirements designated for demonstration must be demonstrated by each proposed system."

During March and April, CMI and one other offeror demonstrated their IEW UAVs' capabilities at Fort Huachuca, Arizona.^{1/} The Army concluded that both offerors failed to successfully demonstrate several of the required capabilities and therefore determined that both were technically unacceptable and not susceptible to being made acceptable. Accordingly, the Army canceled the solicitation on June 17, 1987.

CMI first protests the Army's use of a "pass/fail" system to assess the demonstrations since the Army disqualified any offeror who "failed" to demonstrate an essential characteristic or supplemental requirement designated for demonstration. CMI maintains that the "pass/fail" system was inconsistent with the RFP evaluation criteria which indicated that offerors who "reasonably demonstrated" the designated capabilities would remain in the competition. Section M-3, subsection I, of the RFP contained the following requirements concerning submission, demonstration and evaluation of proposals:

"The offeror's proposal that provides reasonable evidence that the essential characteristics required for demonstration and supplemental requirements can be satisfied will be given an opportunity to demonstrate performance of the proposed system. The results from this system demonstration will be provided to the Source Selection Evaluation Board (SSEB). The proposed system which reasonably demonstrates these essential characteristics and the selected

^{1/} The third offeror dropped out of the competition without participating in a demonstration.

supplemental requirements will be evaluated using the following criteria:

- (1) Technical Performance.
- (2) Sustainability/RAM/ILS/MANPRINT.
- (3) Cost.
- (4) Management."

CMI maintains that the phrase "reasonably demonstrates" meant offerors were not required to demonstrate all of the essential characteristics/supplemental requirements and, since it demonstrated 43 of 48 required capabilities, it argues that its performance should have been characterized as "reasonably demonstrat[ing]" compliance with the requirements.^{2/} We do not agree. The plain language of section C of the solicitation, as quoted above, required offerors to demonstrate "all essential characteristics and those supplemental requirements designated for demonstration." (Emphasis added.) As discussed below, the requirements which CMI's system did not successfully demonstrate were critical to fulfilling the Army's mission.

In arguing that the "pass/fail" system was inconsistent with the stated evaluation criteria, CMI also refers to language concerning "scores" to be awarded during proposal evaluations. CMI maintains that the "pass/fail" system was inconsistent with such language, since, according to CMI, such a system required perfection and provisions concerning "scoring" implied that some level of performance other than perfection would be acceptable.

CMI's arguments on this matter are without merit since it is relying on RFP provisions taken out of context. Section M-3 of the RFP, quoted above, established three distinct steps in the evaluation process. First, it required an offeror's proposal to provide evidence that it could satisfy the essential characteristics and supplemental requirements. Those offerors that provided such evidence advanced to step two, that is, they were afforded an opportunity to demonstrate the essential characteristics and supplemental requirements designated for demonstration. Finally, offerors that "reasonably demonstrated" each of the required capabilities were to be point scored, using as evaluation

^{2/} The Army states that CMI's assertion that it "passed" 43 of 48 technical requirements is misleading since there were only 22 requirements designated for demonstration. However, it agrees there were 5 required capabilities which CMI's proposed system failed to meet.

criteria: (1) technical performance; (2) sustainability; (3) cost; and (4) management.

The provisions concerning point scoring of proposals on which CMI relies refer to the evaluation of proposals against the four criteria listed above. This evaluation was to have taken place following successful demonstrations of the required capabilities. Since no offeror successfully demonstrated all of the required capabilities, no point scored evaluations were completed. Accordingly, we do not find the Army's use of a "pass/fail" system to assess demonstration performances to have been inconsistent with the RFP provisions stating that proposals would be point scored.^{3/}

CMI next protests that the Army's technical assessment of its demonstration was erroneous. CMI states that "while there were some minor problems, the demonstration flights by [CMI] were extraordinary. It was the first time that any unmanned vehicle had performed to the degree accomplished by [CMI]." The Army responds that the problems encountered by CMI were not minor, but substantial. Specifically, the Army states that CMI failed to reasonably demonstrate the required capabilities concerning: (1) position/navigation equipment; (2) imagery intelligence detection and recognition; and (3) vehicle recovery and reusability.^{4/}

In reviewing an agency's assessment of the technical acceptability of a proposal, we will not substitute our evaluation of the proposal for the agency's, but rather will only examine the agency's assessment to insure that it had a

^{3/} We also find no merit in CMI's assertions that the Army treated it unfairly or in bad faith. Counsel for CMI states that, during a telephone conversation prior to CMI's demonstration, the contracting officer told him that the demonstrations would not be pass/fail. The contracting officer denies having made this statement. CMI also complains that one of its competitors was clearly advised of the pass/fail nature of the performance tests; however, the RFP clearly envisioned this type of assessment.

^{4/} The Army also states that CMI failed to successfully demonstrate the emergency recovery system and did not comply with the RFP specification concerning transportability. CMI challenges those determinations. In light of our conclusion that CMI's proposal was properly rejected on other bases, we need not address these matters.

reasonable basis. PacOrd, Inc., B-224249, Jan. 5, 1987, 87-1 CPD ¶ 7. In this regard, the protester has the burden of showing that the agency's determination was unreasonable, and mere disagreement with the agency's assessment on this issue does not satisfy that burden. Ridge, Inc., 65 Comp. Gen. 663 (1986), 86-1 CPD ¶ 583.

Much of the specific information concerning demonstration of the required capabilities is classified. Nonetheless, our Office has conducted an in camera review of the entire record; that is, we have reviewed notes, minutes, memos, photographs, correspondence and briefing documents generated by Army personnel before, during, and after CMI's demonstration.

CMI contends that the Army's technical assessment of its demonstration was unreasonable in that it required perfection in all demonstrated capabilities. However, the record indicates that CMI's system achieved considerably less than perfection in a number of technical areas. For example, Army personnel state, and photographs and videotapes show, that CMI's plane twice sustained substantial damage during its attempted landings. Notwithstanding CMI's arguments that the accidents were due to the Army's mistakes and the damage was subsequently repaired, we conclude that the Army reasonably considered these crashes in assessing CMI's attempted demonstration of vehicle recovery and reusability and we find no basis for questioning its determination that CMI's system was unacceptable in this regard. This requirement is considered critical to the system's ability to achieve the Army's mission.

The record also shows that CMI did not demonstrate certain required navigation capabilities during flight and that the images transmitted by CMI's intelligence gathering systems did not achieve the required level of resolution. Accordingly, we find no basis to question the Army's determination that CMI failed to reasonably demonstrate the required capabilities concerning position/navigation equipment and imagery intelligence detection and recognition. Both of these requirements were considered critical to the system's ability to achieve the Army's mission.

CMI next protests that the Army violated the requirement to conduct meaningful discussions set forth in the Federal Acquisition Regulation § 15.610 (FAC 84-5). CMI maintains that if it had been informed of its deficiencies it could have easily corrected them.

The record shows that prior to completion of CMI's designated demonstration period, the Army advised it in writing

that it was in danger of being disqualified because its proposed schedule did not provide for demonstration of all essential characteristics and supplemental requirements. The Army states that CMI took no action in response to this notification.

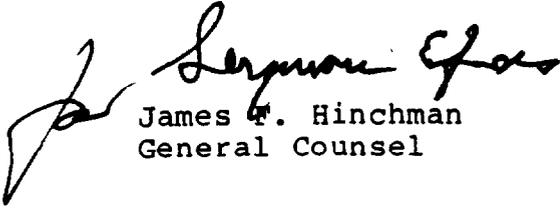
Although procuring agencies are required to conduct meaningful discussions with offerors in the competitive range, our Office has held that agencies need not hold discussions with offerors who are technically unacceptable and not susceptible to being made acceptable. HSQ Technology, B-227054, July 23, 1987, 87-2 CPD ¶ 77. As discussed above, the terms of the RFP required offerors to reasonably demonstrate all essential characteristics and supplemental requirements designated for demonstration in order to remain in the competition. Accordingly, CMI's failure to reasonably demonstrate a number of required critical capabilities rendered it technically unacceptable and not susceptible to being made acceptable. Therefore, discussions were not required.

CMI protests that the Army canceled the solicitation without any rational basis. We disagree. As discussed above, the Army properly concluded that no offeror had reasonably demonstrated the required capabilities and thus, there existed no technically acceptable offer. Clearly, the absence of any technically acceptable offer is a reasonable basis for canceling a solicitation. Marshfield Realty Partners Limited Partnership, B-227863, Aug. 14, 1987, 87-2 CPD ¶ 159.

Finally, CMI protests that the Army violated the provisions of 10 U.S.C.A. § 2325 (West Supp. 1987) (establishing a statutory preference for conducting acquisitions on an NDI basis) and Army Regulation 70-1, paragraph 6-4 (establishing policies and procedures to be followed in planning and performing system acquisitions of commercial products). However, CMI has not elaborated on these charges or explained how it believes the statute and/or regulation were violated. A protester has the burden of affirmatively proving its case and this burden is not met by general

allegations of illegality or impropriety. Alan Scott
Division, United Instrument Corporation, B-225963, March 23,
1987, 87-1 CPD ¶ 334.

The protest is denied.



James F. Hinchman
General Counsel