Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Harris Corporation and Lockheed Missiles & Space Company, Inc.

File: B-237166.4; B-237166.5

Date: February 16, 1990

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DIGEST

1. Protester's proposal under modified two-step procurement was properly rejected as technically noncompliant where protester was given notice of potential areas where its proposal did not comply with essential requirements of the solicitation and failed to correct those areas.

2. The General Accounting Office will not question the exclusion of the protester's proposal as noncompliant where the proposal was reasonably found deficient with respect to essential requirements of the solicitation.

DECISION

Harris Corporation and Lockheed Missiles & Space Company, Inc., protest the rejection of their technical proposals under invitation for bids (IFB) No. F19628-88-B-0002. The IFB was essentially a modified two-step sealed bid procurement conducted by the Electronics System Division,

Department of the Air Force, for the purpose of procuring the development of the Iceland Air Defense System (IADS).1/

We deny both protests.

The IADS is a proposed North Atlantic Treaty Organization (NATO) funded, ground-base, centrally controlled, air defense surveillance and control system. The system will provide long range detection of aircraft entering the Iceland military air defense identification zone and automated reporting of information between interfacing systems. Additionally, the IADS will maintain a "Recognized Air and Sea Picture" (display) to prevent tactical surprise by enemy air or sea attack, provide control of friendly aircraft, provide information for search and rescue, and provide pilot data to the Icelandic civil air traffic control center.

The Air Force, acting as an agent for NATO, issued the IFB on July 25, 1988, on a firm-fixed price basis. The IFB was for a NATO procurement conducted in accordance with NATO bidding procedures and the IFB so stated. The bidding procedure, as reflected in a NATO document incorporated by reference, was similar to the federal government's two-step sealed bidding procedures. Under the normal NATO bidding procedures, firms simultaneously submit separate technical and price proposals.2/ Although consultation with bidders is encouraged in the interest of clarity, no alteration of proposals (including technical, financial and schedule changes) after the closing date are permissible. The United States, as host nation, sought and received NATO's approval

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1/ The two-step process is a hybrid method of procurement under which the step-one procedure is similar to a negotiated procurement in that the agency requests technical proposals and may hold discussions and request revised proposals, and step two is conducted by sealed bidding among those firms that submitted acceptable proposals under step one. See Datron Sys., Inc., B-220423, B-220423.2, Mar. 18, 1986, 86-1 CPD ¶ 264. Under this procedure, bids are based on the technical proposals. Here, the offerors submitted separate technical and price proposals simultaneously; however, only the price proposals of the technically compliant offerors were to be subsequently evaluated.

2/ Although under the NATO procedures the step one submission is called a bid, here, in essence, offerors submitted technical and price proposals.

to modify the NATO international competitive bidding two-step procedure for this procurement. Under the revised procedures, firms were allowed to submit one modification to their technical proposal package to correct potential deficiencies identified during the government reviews and at the same time submit another price proposal reflecting any technical revisions. The modified proposals were to only address the areas of concern identified by the government.

The IFB provided for the notification to all offerors of the areas that appeared to require further clarification and an opportunity to correct deficient items and clarify others. However, offerors were also advised that further discussion or clarification was not contemplated after submission of revised proposals. The IFB advised that technical proposals would be evaluated to determine compliance with the requirements, i.e., the extent to which the proposal provided evidence that solicitation requirements would be met. Award was to be made to the responsible offeror whose proposal conformed to the solicitation, demonstrated that the offeror possessed the management, technical and facility capabilities necessary to manufacture, test, integrate and deliver a control reporting center, an alternate control reporting center/Iceland software support facility and all necessary communication, which were judged by an overall evaluation to be technically compliant and whose bid contained the lowest cost.

After issuance of the solicitation, the Air Force held a bidder's conference to respond to numerous questions concerning both the technical requirements and the procurement procedures. Eight proposals were received by the closing date of January 11, 1989. Based on initial evaluations, all firms were found to have potential areas of noncompliancy. In accordance with the modified international competitive bidding procedures, written discussions were initiated with all offerors by letters dated April 13, 1989, which identified potential areas of noncompliance. Specifically, the notice contained two sets of clarification requests. One set of clarification requests indicated areas of potential noncompliance, and offerors were urged to carefully prepare responses because inadequate responses could result in a noncompliant determination. The second set of clarification requests did not require a detailed response but merely requested a statement as to whether the government's interpretation was correct or, if not, the correct interpretation. Offerors were advised that this was their final opportunity to insure the acceptability of their proposals.

The responses to the clarification requests were received from all offerors and together with the information contained in the original proposals, were evaluated to determine each offerors' technical acceptability. Five of the eight offerors were determined to be technically non-compliant, and they were so notified by letter dated September 18, 1989.

The protesters generally argue that the Air Force evaluation of their technical proposals was arbitrary and unreasonable. The basic position of the protesters is that the Air Force improperly eliminated the firms from the competition for failure to meet specification requirements that were insignificant and easily correctable. The protesters also argue that the Air Force clarification requests did not clearly identify the alleged proposals deficiencies.

Generally, our review of an agency's technical evaluation under a two-step sealed bid procurement is limited to the question of whether the evaluation was reasonable. The contracting agency may reject a proposal under step one where the agency reasonably evaluates the proposal as not meeting essential requirements. Gichner Iron Works, Inc., B-230099, May 16, 1988, 88-1 CPD ¶ 459. In order to reject a proposal for technical deficiencies alone, however, the agency must find the proposal to be more than technically inferior--it must be unacceptable in relation to the agency's requirements, that is, its stated minimum needs. See A.R.E. Mfg. Co., Inc., B-224086, Oct. 6, 1986, 86-2 CPD ¶ 395.

Here, the solicitation advised that the procurement was being conducted raised under NATO procedures which permitted only one opportunity to respond to clarification/discussion questions and provided that price revisions were limited to the technical changes.3/ As noted above, proposal revisions are not normally permitted under the NATO procedures. In

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3/ We note that the Air Force's source selection plan (SSP) indicates that multiple clarification requests were permitted and included a schedule which envisioned a second round of clarification requests. However, the SSP was not part of the RFP. SSPs are in the nature of internal agency guidance and as such do not give outside parties any rights. Pan Am World Servs., Inc., B-235976, Sept. 28, 1989, 89-2 CPD ¶ 283. It is the RFP which controls. Here, the RFP invoked NATO procedures subject to a deviation permitting the opportunity to respond to one round of clarification requests. This procedure was set forth in the RFP and also was confirmed in the cover letter to the clarification requests.

this case, the Air Force had obtained permission from NATO to permit proposal revisions. Under these procedures, we think that the Air Force's responsibility was to provide the offerors a reasonable opportunity to revise their proposals, not to engage in technical leveling or to permit offerors to rewrite the technical proposals. It remained the offerors' responsibility to establish their compliance with the technical requirements. We think Harris and Lockheed failed to do so.

HARRIS PROTEST

Harris' proposal was determined noncompliant with respect to nine performance requirements involving the following areas: (1) air defense; (2) interoperability; (3) display; (4) government-furnished equipment; and (5) verification. The Air Force rejected Harris' proposal based on information contained in Harris' original technical proposal and responses to clarification requests.

Harris maintains that its answers to the clarification requests together with its original proposal fully and satisfactorily responded to the expressed intent of the clarification request and to the extent that it was not responsive, it is directly attributable to the Air Force's failure to clearly identify the alleged Harris deficiencies or identify the additional information required from Harris.

Harris admits in its protest documents that with respect to certain areas of its proposal determined to be non-compliant, Harris did not present details concerning certain aspects of its approach, relying on its belief that statements that it would comply with the specification were acceptable since the technical proposal was not intended to be a part of the contract and Harris would be bound to perform in strict accordance with the specifications notwithstanding any lack of design detail in Harris' proposal.

However, we do not find it unreasonable for the Air Force to require an offeror, under this solicitation, to provide details of its approach, to ensure that the technology involved was understood and the requirement would be delivered in a timely manner.

Our review of the record here indicates that in certain technical areas Harris' proposal, as it concedes, was not detailed enough. Further, where, during discussions, Harris was asked to explain a certain approach or describe in detail how certain requirements were to be met, Harris

responded with merely general discussions which sometimes were inconsistent with other parts of its offer.

For example, with respect to air defense, offerors were required to propose either the recommended algorithms defined in section 6 of the specifications or algorithms that had been previously implemented in other air defense systems.4/ These algorithms concerned the tracking of aircraft by the system. If the section 6 algorithms were not proposed, the offeror was required to include an "unequivocal statement to that affect in the proposal," and to provide the proposed algorithms and summary data from live tests to support contentions that the specified tracking accuracy and stability measures for maneuvering and non-maneuvering aircraft were achievable with the proposed algorithm. The Air Force states that it was intended that offerors propose only proven tracker designs for the system.5/

Harris initially proposed to use algorithms that had been implemented in another air defense system, however, Harris indicated it only had simulated data indicating that live test data would be available later. Harris did indicate in its proposal that during system design review after contract award should the government prefer the section 6 algorithms they would be implemented without prejudice to schedule or cost. Harris was found initially noncompliant in this area for its failure to provide the requested tracking algorithms and the supporting live test data. During discussions, Harris was again advised of the solicitation requirement to provide the algorithm and live test data, not, contrary to Harris' position, merely to discuss it in general terms. In response, Harris stated that the live test data was not available and that in fact they now intended to implement the section 6 algorithms with the understanding that live test data in that instance was not required. The Air Force still found Harris noncompliant because Harris did not

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4/ An algorithms is a step-by-step procedure for solving a problem or accomplishing some end.

5/ The air defense requirement generally provides for an automatic tracker to provide for associating radar data with local tracks based on: predefined maneuver volumes and search areas; selecting the radar data for track updating based on data type, maneuver characteristics, and proximity to the track; and performing position and velocity smoothing using alpha-beta smoothing parameters.

provide any additional information to support its use of the section 6 algorithm.

Harris, in its initial proposal, provided for a design that centered around single radar sectorized plot to track correlation algorithms installed in another air defense system. Although in response to the clarification request, Harris indicated it would use the section 6 algorithms, Harris indicated no changes to its original proposal in its use of sectorized plot to track correlation which was inconsistent with the use of section 6 algorithms. The use of the section 6 algorithms was also incompatible with Harris' response to another clarification request where Harris still proposed a plot to track correlation approach. The Air Force maintains that a plot to track correlation is completely dissimilar to the correlation process described in section 6 and that the plot to track correlation described in the Harris proposal has no relationship to the search areas and associated smoothing logic required by the specifications.

Harris argues that its response to the related clarification request did not reaffirm its intent to use sectorized plot to track correlation. Harris contends that the sectorized correlation language used by it in its response was only a filtering or preselection process occurring before the actual correlation process which would implement the section 6 algorithms and in fact is a completely separate process from the active tracking process. Harris advises that once the preselection process was completed, the section 6 algorithms would be implemented. Harris, however, failed to clearly set this forth in its written response to the clarification request. Notwithstanding Harris' argument that all the solicitation required was an unequivocal statement to the effect that section 6 algorithms would be used, we do not find the Air Force determination unreasonable here. Its proposal to use the RFP designated formula in its clarification response was, at best, ambiguous given Harris' failure to conform its proposal and Harris' response to another clarification request which was inconsistent with its use of the section 6 algorithms.

Harris also failed to provide the government with a detailed explanation of its approach concerning the algorithms to be used in performing intercept guidance calculations as required by the solicitation. Harris maintains that the solicitation did not require contractors to provide the algorithms at issue but only to describe them which Harris alleges it did. However, the solicitation also required the discussion of the algorithms to be in sufficient detail to demonstrate an understanding of the requirement. Even if,

as Harris argues, all that was required was a description of the algorithms, when the Air Force, in its clarification request, asked Harris to provide a description of the algorithms as required by the solicitation, Harris reasonably as on notice that its description as submitted was not considered sufficient. Consequently, Harris should not have responded as it did with merely more general discussions of its proposed algorithms. Further, in its response to the concerns of the Air Force, Harris made a statement that indicated to the government that it in fact did not understand the requirement. Specifically, Harris indicated to the government that it did not understand the concept of miss distance check which according to the government could result in an incorrect implementation of the radar intercept system and reduce the probability of achieving successful intercepts. We do not find it improper that the government also used that statement as a basis for finding Harris deficient since the miss distance check was reasonably considered an essential part of the requirement. Moreover, even in its protest submissions, Harris does not dispute the Air Force's interpretation of its response in this matter. Harris was given a reasonable opportunity to demonstrate to the government its ability to deliver an acceptable product.

The Air Force reasonably found that Harris' proposal shows a lack of detail, contains ambiguities, and is noncompliant in areas the Air Force considers essential to the requirements Further, we are not persuaded that these deficiencies would not require significant revisions to its design.

LOCKHEED PROTEST

Lockheed was originally determined to be noncompliant with respect to five items involving the following areas: (1) display (two items); (2) switching; (3) connectivity; and (4) Environmental Stress Screening (ESS).

Lockheed has failed to demonstrate that the agency unreasonably determined it to be noncompliant with certain essential requirements. The record contains extensive highly technical arguments by both parties. We limit our discussion to a few critical examples of deficiencies found by the agency in Lockheed's proposal.

With respect to display, the solicitation required that the universal console be "capable of presenting data in the RASP [Recognized Air and Sea Display] display area in at least seven discernible colors on a dark background with each color provided at low intensity and high intensity." The solicitation specifically provided that "the universal

console shall have a capability to accept control information designating the color to be displayed for each symbol and vector." The Air Force contends that the requirement is for all data, including symbols and vectors, to be capable of being displayed in any of seven colors. Lockheed in its design proposed to satisfy the seven color requirement for radar data and track data, but proposed only four colors for map data. According to the Air Force, Lockheed's proposal effectively limited the number of colors map data could be presented in which would potentially reduce the effectiveness of the operators who must continuously monitor the screen. Consequently, Lockheed was determined noncompliant.

In its protest, Lockheed contends that the color requirement stated in the specification applies to the RASP display, and does not assign any particular number of colors for any of the data categories. According to Lockheed, nothing in the specification precludes the contractor from allocating colors to the three general categories of data, as long as the console is capable of presenting at least seven colors in the RASP display at any one time. Lockheed maintains that at the very least the specifications are ambiguous with respect to whether each category of data must be presented in a least seven colors.

Lockheed's noncompliance in this area did not become apparent until its response to a related clarification request was evaluated. In that response, Lockheed proposed to provide the required number of colors for all general categories of data except one, map data, providing for a total of 20 colors in the display area considering each color separately in light and dark intensities. We believe the requirement is reasonably clear, that for any type of data to be displayed, the agency required seven colors. We think Lockheed arguably was aware of the Air Force's requirement since it offered seven colors for the other two data categories. However, even if we accept Lockheed's interpretation that the requirement is satisfied as long as the console is capable of presenting at least seven colors in the RASP display at one time, Lockheed is still noncompliant. Under Lockheed design, should an operator select to display only map data, it would be displayed in only four colors, which clearly does not conform to the requirement.

Lockheed states that had the agency made its specifications clear, Lockheed could easily provide a graphics engine that would allow each of the data categories to be presented in at least seven colors and that this would not be a major redesign of the Lockheed approach. However, Lockheed has

not offered any evidence of what new engine could be offered and details of what effect if any it would have on its design approach.

Also, with respect to the display area, the solicitation required the RASP display to be "flicker-free." The Air Force states that display flicker causes operator fatigue and hence reduces system effectiveness. The Air Force evaluation concluded that Lockheed's proposal failed to support their contentions that flicker free continuous displays are achievable by its system. Lockheed's response, during discussions, that its design "dramatically reduce display flicker," reasonably suggested to the agency that its requirement might not be met by Lockheed's proposed graphics engine. Here, we believe it is clear that Lockheed, in both its proposal and clarification request response, failed to convince the evaluators that its graphics engine could produce a flicker-free display.

Lockheed also objects to what it considers the Air Force's "real" reason for rejecting it, the Air Force's belief that its proposed graphics engine cannot in fact provide a flicker-free update every 6 seconds as required. Lockheed contends that had the Air force disclosed its uncertainty about the engine it could have submitted sufficient documentation to remove that uncertainly.

The Air Force, at a minimum, expressed its uncertainty during discussions when Lockheed was asked to describe how its display update strategy would prevent flicker. It was incumbent upon Lockheed to present all available documentation at the time to convince the agency that its proposed engine could meet the requirements. In fact, Lockheed has yet to provide any descriptive literature to support its position that its engine can meet the requirements.

The agency maintains that the universal console is a critical element of the total system and Lockheed proposes to use one that was reasonably evaluated as not being capable of satisfying the minimum requirements of the solicitation. We have no basis to object to the agency's evaluation here.

Finally, the specification required that all "engineering prototypes and production equipment shall be environmentally stress screened (ESS) in accordance with a government-approved contractor standard or the method prescribed in Table 14." Lockheed was determined to be noncompliant because Lockheed proposed to perform ESS on off-the-shelf equipment without government approval of the ESS procedures

used. Lockheed maintains that: (1) the specifications do not require governmental approval of the manufacturer's ESS standards used for testing off-the-shelf equipment; (2) if government approval is required for off-the-shelf equipment, it can only be for the contractor's, not the manufacturer's, ESS standard; and (3) off-the-shelf equipment manufacturers do not permit their procedures to be submitted to the government for approval.

We have reviewed the requirement and conclude that offerors had two choices, either to use a government-approved contractor ESS standard or the method in table 14. Moreover, the Air Force made it clear in their clarification request that they interpreted the provision as requiring government approval of ESS standards, if table 14 is not used. In this regard, the Air Force specifically asked Lockheed to "verify whether the ESS procedures used by the various vendors will be submitted to the government for approval."

The Air Force states that ESS is an essential requirement that uncovers potentially defective components in the manufacturing processes. The use of this process reduces downtime and maintenance costs. The Air Force maintains that Lockheed's approach to ESS increases the risks to the government of receiving potentially defective equipment, thus affecting the system availability and the IADs mission. Lockheed did not correct its proposal during discussions and thus was properly found noncompliant to the solicitation requirements in this area.

In our view, with regard to the technical requirements discussed above, the Air Force found that Lockheed did not meet these requirements and properly rejected the technical proposal after providing Lockheed the opportunity to demonstrate its compliance with these requirements. Moreover, we are not persuaded that the deficiencies contained in Lockheed's proposal regarding these requirements, especially concerning its universal console and ESS approach, are easily correctable without significant revisions to Lockheed's design.

The protests are denied.

James F. Hinchman
General Counsel