Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Litton Systems, Inc.

File: B-239123.3

Date: October 10, 1990

Paul G. Dembling, Esq., Schnader, Harrison, Segal & Lewis, for the protester.
Paul Shnitzer, Esq., Crowell & Moring, for Varian Associates, Inc., an interested party.
Craig E. Hodge, Esq., and Robert A. Russo, Esq., Army Materiel Command, for the agency.
John Van Schaik, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Awardee's offer for base and option quantities is not materially unbalanced when the awardee's prices are lower than protester's for the basic quantity and any quantities of options that could be awarded under the solicitation.

2. Normalization procedure used by contracting agency to evaluate two versions of night vision device was fair and reasonable where the purpose of the normalization was to avoid a situation where proposal of device that lacked additional features desired by agency would have been rated equal to a proposal of device which included the additional features.

DECISION

Litton Systems, Inc. protests the award of a contract to Varian Associates, Inc. under request for proposals (RFP) No. DAAB07-89-R-F112, issued by the Army for night vision

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devices. Litton contends that Varian's prices were unbalanced and the Army's evaluation of Varian's proposal was deficient.1/

We deny the protest.

Night vision devices amplify light so as to enhance vision at night and under low light conditions. Several generations of this equipment exist; the RFP here solicited proposals for third generation equipment. The Army also issued RFP No. DAAB07-89-R-F113 for less advanced second generation equipment.2/

The solicitation included requirements for AN/AVS-6 devices which are used by military helicopter pilots and crews, MX-10160 image intensifier assemblies (spare tubes for the AN/AVS-6), AN/PVS-7 night vision goggles which are ground use monocular systems and spare goggle tubes, designated as MX-10130. For the AN/PVS-7 devices and tubes, offerors could propose either one of two alternative models, the "A" or "B" which are similar in performance.

The RFP solicited firm, fixed-price proposals and limited competition to the domestic manufacturers who comprise the mobilization base for the devices. Under the solicitation, awards were to be made on the basis of the best overall proposal or proposals with consideration given to four factors: price; technical; product assurance and test (PA&T); and production and management (P&M). Each of the nonprice factors included subfactors. The solicitation indicated that the three nonprice factors were of equal importance and combined were significantly more important than price, although price was more important than any one of the other factors. Further, under the solicitation, past performance was to be separately evaluated to assist in determining overall performance risk.

1/ Litton previously protested the award to Varian and the award to ITT Electro-Optical Products Division under the same solicitation. We denied that protest. Litton Sys., Inc., B-239123, Aug. 7, 1990, 90-2 CPD ¶ ___. Also, on August 22, 1990, the United States District Court for the District of Columbia denied Litton's motion for a preliminary injunction. Litton Sys., Inc. v. United States, No. 90-1770 (D.D.C. Aug. 22, 1990) (order denying preliminary injunction).

2/ Litton also protested the award under RFP No. DAAB07-89-R-F113. We denied that protest. Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ ____.

The solicitation was structured to require a minimum of two and a maximum of four 3-year, multi-year contracts. The awards could be split 60 percent/40 percent either by the total requirement or by separate line items and were to include 100 percent options (150 percent for the MX-10130 tube).

Four firms submitted proposals: Optic Electronic Corp. (OEC) for AN/PVS-7 devices/tubes only and Varian, Litton and ITT for the total requirement. The final nonprice factor ratings, past performance risk ratings and the evaluated prices were compared by the evaluators and presented to the Source Selection Authority (SSA).

According to the SSA, the evaluation established that ITT submitted the superior overall proposal with low performance risk for both the AN/AVS-6 and AN/PVS-7 devices and tubes. The SSA noted that Varian's proposal was the second best overall on the nonprice factors and also was the lowest priced proposal. In the SSA's view, Varian offered a number of advantages and technical enhancements and, although the Litton and Varian proposals were essentially equal on the nonprice evaluation factors, Varian's performance risk was rated lower than Litton's based on its established total quality management (TQM) program.3/ The SSA determined that an award of 60 percent of the total requirement to ITT and a 40 percent award to Varian represented the best overall value to the government.

Litton first argues that Varian's offered prices on the AN/AVS-6 and the MX-10160 and the prices at which it was awarded the contract were mathematically and materially unbalanced and thus unacceptable under the solicitation. Generally, Varian priced its AN/AVS-6 devices and MX-10160 spare tubes so that its prices for optional quantities varied depending on the number of devices ordered, with the lowest option quantities priced higher than the basic quantities, with declining prices on higher option quantities and with the

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3/ TQM is a management approach that relies on principles of quality assurance and makes managers and employees alike responsible for providing quality products and services.

100 percent options priced lower than the basic quantities. For instance, Varian's prices for the first year of the 3-year contract for AN/AVS-6(1) devices and MX-10160 tubes, including options, were as follows:

Item	AN/AVS-6(1) 4/	MX-10160
Basic unit price	$7,372 (599 units)	$2,772 (960 units)
Options		
Range 1	$7,852 (1-300 units)	$2,835 (1-600 units)
Range 2	$7,716 (301-450 units)	$2,803 (601-900 units)
Range 3	$7,626 (451-598 units)	$2,795 (901-959 units)
100 percent option	$6,427 (599 units)	$2,439 (960 units)

According to Litton, Varian's pricing scheme contradicted the explicit terms of section H. 138(c) of the RFP which stated:

> "The offeror shall enter option unit prices in Section B in the solicitation. Varying prices may be offered depending on the quantities actually ordered and/or the dates when ordered. The offeror agrees not to include in the option unit prices any costs of a startup or nonrecurring nature which have been provided for in the unit prices . . . [for the basic items] and further agrees that the prices offered for option quantities will reflect only those costs, and a reasonable profit thereon, which are necessary to furnish the additional supplies."

Litton argues that Varian did exactly what this provision of the solicitation prohibited by loading its intermediate option range prices with excess profit. Further, Litton states that the purpose of Varian's pricing scheme, which included its lowest unit prices for the 100 percent options, was to take unfair advantage of the way prices were to be evaluated. In this respect, under section M.7(a) of the RFP, only the prices offered for the 100 percent option quantities were to be considered in the evaluation. As a result, according to Litton, the Army should have rejected Varian's offer pursuant to section M.7(b) of the solicitation which states:

4/ Varian offered two configurations of this device, the AN/AVS-6(1) and AN/AVS-6(2). Varian's prices for the AN/AVS-6(2) were similar to the AN/AVS-6(1) prices illustrated here.

> "The Government may reject an offer as nonresponsive if it is materially unbalanced as to prices for the basic requirement and the option quantities. An offer is unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work."

The concept of material unbalancing may apply in negotiated procurements where cost or price constitutes a primary basis for source selection. An offer is materially unbalanced where: (1) it is mathematically unbalanced, that is, each item does not carry its share of the cost of the work, in that nominal prices are offered for some of the work and enhanced prices for other work; and (2) there exists a reasonable doubt as to whether award based on a mathematically unbalanced offer will result in the lowest overall cost to the government. Surface Technologies Corp., 68 Comp. Gen. 287 (1989), 89-1 CPD ¶ 233. Here, although price was the single most important evaluation factor, the nonprice evaluation factors combined were significantly more important than price and the record indicates that the selection of Varian as opposed to Litton for the 40 percent award was based in large part on Varian's lower performance risk, rather than just on Varian's low prices. Nonetheless, price was indeed a factor in the selection.

Even if it could be argued that at least the option prices for the lesser quantities are mathematically unbalanced as they exceed the base quantity price--a conclusion we do not reach here--there is no reasonable doubt that the award to Varian will result in the lowest cost to the government for the 40 percent award and therefore the offer is not materially unbalanced. In this respect, Varian's prices for the AN/AVS-6 and the MX-10160 are lower than Litton's prices for the basic quantity and for any option quantity that could be awarded under the solicitation. Further, the Army reports that it has exercised the 100 percent options under Varian's contract for the first program year for the AN/AVS-6 devices and MX-10160 tubes. By doing so the agency realized the full benefit of Varian's lowest option prices for the first program year and the Army reports that it also expects to exercise the options in the second and third program years at the 100 percent level.

Litton also argues that the Army's evaluation of Varian's offer was deficient since the agency did not evaluate the two versions of the AN/PVS-7 device equally. The record indicates that the A and B versions of the AN/PVS-7 were developed by different contractors and have specification differences. The B version specifications call for a high light cutoff and a low battery indicator while the A version specifications do not.

Generally, the Army rated the nonprice evaluation factors as follows: marginally acceptable for a proposal that met minimum RFP requirements; acceptable for a proposal that met the RFP requirements and included minor advantages; and outstanding for a proposal that met the RFP requirements and offered significant advantages.5/ Nonetheless, according to the Army, to ensure an equitable evaluation of the AN/PVS-7, it "normalized" the offers by rating a standard B version (with the high light cutoff and low battery indicator) higher than a standard A version (without those features). The Army explains that it performed the evaluation in this manner in order to avoid the situation, which would have occurred under the evaluation plan, where a device built to the A specifications, but with the addition of a high light cutoff and low battery indicator, would be evaluated higher than a B version which, in accordance with the standard specifications for the B device, already included those features.

Varian offered to supply the B device and received an "outstanding" technical rating on the AN/PVS-7. Litton, on the hand, explains that in an alternative proposal, it offered the A version but with an improved high light cutoff, a low battery indicator and other enhancements. Litton also earned an "outstanding" rating under the technical factor.

Litton maintains that the evaluation penalized it for offering the A version since it had to earn an outstanding rating by offering enhancements beyond the standard A version while Varian received an outstanding rating simply by offering the standard B version with minor enhancements. Litton argues that under the solicitation, each offeror's proposal, whether for the A or B version, should have been evaluated to determine how well it met the standard specifications for that particular version and since Varian offered only minor advantages for the B version, consistent with the Army's evaluation plan, it should have merited only an acceptable technical rating on its proposal for that device.

While it might have been better if the Army had specifically informed offerors of the manner in which it planned to evaluate the two versions of the AN/PVS-7, we think the procedure used was fair and reasonable. In this respect, since the standard B version included features not included

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5/ This evaluation plan was not specifically set out in the RFP and Litton argued in its earlier protest that this plan was inconsistent with the RFP evaluation scheme. We rejected this contention. Litton Sys., Inc., B-239123, *supra*.

in the standard A version, to have evaluated the two versions on the same baseline--as Litton argues--would have had the anomalous result of rating as equal two proposals only one of which included the two additional features which were desired by the agency. Such an evaluation was not required by the solicitation.

The protest is denied.

for James F. Hinchman
General Counsel