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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hydraudyne Systems and Engineering B.V.

File: B-241236; B-241236.2

Date: January 30, 1991

Robert Martin, Esq., and Richard D. Gluck, Esq., Robins, Kaplan, Miller & Ciresi, for the protester.
Paul G. Dembling, Esq., and Dennis A. Adelson, Esq., Schnader, Harrison, Segal & Lewis, for MTS Systems Corporation, an interested party.
Craig E. Hodge, Esq., and David H. Scott, Esq., Department of the Army, for the agency.
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Procuring agency in a negotiated procurement adequately documented its evaluation judgments where the record consists of the proposal evaluation board's contemporaneous evaluation narratives and point scores for each evaluation criteria and the agency during the protest provided further detailed narrative explanations for each evaluation criteria, such that there is sufficient detail to judge the rationality of the agency's evaluation decision.
2. Award was properly made to the low priced offeror under a negotiated procurement, in which technical considerations were stated to be more important than cost, where the procuring agency reasonably determined that the offers were technically equal.
3. Procuring agency under a negotiated procurement did not improperly award extra credit for enhancements exceeding the solicitation's minimum requirements where the agency's evaluation, in accordance with the stated evaluation scheme, merely reflected the agency's qualitative distinctions between the offerors' technical approaches to accomplishing the solicitation requirements.
4. Procuring agency, in a negotiated procurement for a recoil system exerciser, reasonably found that the awardee and the protester had equivalent experience under the pertinent evaluation criterion, where both firms had considerable experience in building such equipment.

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DECISION

Hydraudyne Systems and Engineering B.V. protests the award of a contract to MTS Systems Corporation under request for proposals (RFP) No. DAAD05-90-R-0326, issued by the Aberdeen Proving Ground, Department of the Army, for a recoil system exerciser.

We deny the protest.

The RFP was issued in response to our recommendation in MTS Sys. Corp., B-238137, Apr. 27, 1990, 90-1 CPD ¶ 434, that the Army recompetes this requirement. Under the original solicitation for the recoil system exerciser, the Army received offers only from Hydraudyne and MTS and determined that the firms' proposals were technically equal. A contract was awarded to Hydraudyne on the basis of its lower, fixed-price offer. In our earlier decision, we sustained MTS's protest against award to Hydraudyne, a Dutch firm, because the solicitation contained a domestic source restriction. We recommended that the Army resolicit this requirement without the domestic source restriction and, if the successful offeror was other than Hydraudyne, terminate Hydraudyne's contract for the convenience of the government.

The present RFP contemplated the award of a fixed-price contract for the design, construction and installation, on a turnkey basis, of a recoil system exerciser at the Aberdeen Proving Ground. This system tests the performance and endurance of various howitzers and tank guns. The exerciser essentially operates by striking the muzzle of the test weapon with sufficient force and momentum to drive the gun tube into a recoil motion similar to that generated by the firing of live ammunition.

The RFP informed offerors that a previous recoil system exerciser had been built by MTS at the Rock Island Arsenal and that the major difference between the recoil system exerciser sought by the RFP and previous exercisers was that the Aberdeen Proving Ground exerciser must have the ability to test weapons at various elevation angles.^{1/} The RFP contained detailed performance and function specifications for the exerciser, including the peak breech force and momentum values for testing each type of weapon.

^{1/} Previous exercisers did not have the ability to test weapons at elevation angles.

The RFP provided that award would be made based on the proposal offering the best overall value considering technical, management, and cost factors. Technical considerations were stated to be more important than management, and both technical and management factors were more important than cost. Offerors were also informed that cost would become more significant to the extent that proposals were found to be technically equal. The following technical and management subfactors were set forth in the RFP, with subfactor "a" listed as being more important than subfactor "b" under each evaluation factor:

Technical

- a. Experience on similar projects
- b. Grasp of problems and technical approach

Management

- a. Adequacy of facilities and personnel
- b. Completeness and overall quality of the proposal

As before, only MTS and Hydraudyne submitted proposals, and the Army again found both proposals to be technically acceptable and essentially equal. Since the offerors' initial proposals were evaluated as containing no technical deficiencies, only cost discussions were conducted. Best and final offers (BAFO) were requested and evaluated as follows:

	<u>Score</u> (100 maximum)	<u>Price</u>
MTS	95.3	\$5,229,856
Hydraudyne	94.9	\$5,430,320

The two firms' proposals were evaluated as being technically equal, and award was made to MTS on the basis of its lower evaluated price. Hydraudyne's contract was terminated for the convenience of the government, and this protest followed.

Hydraudyne argues that the Army failed to evaluate proposals in accordance with the stated evaluation factors.^{2/}

^{2/} The protester also protested that the agency by recompeting this requirement had engaged in an impermissible auction. We consider this issue to have been abandoned by the protester since the agency responded in detail concerning this allegation, and the protester in its comments failed to respond to the agency's response. See TM Sys., Inc., B-228220, Dec. 10, 1987, 87-2 CPD ¶ 573. In any event, the

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Specifically, Hydraudyne contends that the Army improperly awarded extra credit for enhancements exceeding the RFP's minimum requirements, even though the solicitation only provided that offers would be evaluated for meeting the specifications, and did not give it credit for its superior experience. The protester also argues that the Army failed to sufficiently document its technical evaluation to demonstrate how proposals, and the alleged enhancements, were evaluated and, therefore, in accordance with American President Lines, Ltd., B-236834.3, July 20, 1990, 90-2 CPD ¶ 53, we have no basis on which to conclude that the agency's evaluation is reasonable.

Evaluation and award in negotiated procurements are required to be made in accordance with the terms of the RFP. Environmental Technologies Group, Inc., B-235623, Aug. 31, 1989, 89-2 CPD ¶ 202. In reviewing protests against allegedly improper evaluations, we examine the record to determine whether the agency's judgment was reasonable and in accord with the evaluation criteria listed in the solicitation. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223. Such judgments by their nature are often subjective; nonetheless, the exercise of these judgments in the evaluation of proposals must be reasonable and must bear a rational relationship to the announced criteria upon which competing offers are to be selected. See Bunker Ramo Corp., 56 Comp. Gen. 712 (1977), 77-1 CPD ¶ 427. Implicit in the foregoing is that these judgments must be documented in sufficient detail to show that they are not arbitrary. Waddell Eng'g Corp., 60 Comp. Gen. 11 (1980), 80-2 CPD ¶ 269. Where there is not adequate supporting rationale in the record for the source selection decision, we will not conclude that the agency had a reasonable basis for the decision. Id.; American President Lines, Ltd., B-236834.3, supra.

The record here consists of the contemporaneous summary evaluation narratives and point scoring of the proposal evaluation board (PEB) for each of the firms' technical proposals. The PEB's memorandum also states that members of the PEB individually scored each proposal and then conducted :

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reopening of negotiations to correct improper procurement actions does not constitute an impermissible auction, notwithstanding the disclosure of offerors' prices. See PRC Information Sciences Co., 56 Comp. Gen. 768, 783 (1977), 77-2 CPD ¶ 11.

consensus evaluation of the proposals.^{3/} During the protest, the Army provided further narrative detail to explain its evaluation of the competing offers under each technical factor.

We do not agree with the protester that there is insufficient detail and documentation in the record to allow us to determine the rationality of the agency's technical judgments. Unlike American President Lines, Ltd., the Army provided detailed explanations for its evaluation conclusions. The adequacy of the record is to be determined from all of information provided, including the arguments of the parties. While the Army did not retain its evaluators' notes and scoring sheets, this alone does not render the record inadequate for us to test the reasonableness of the agency's judgment.^{4/} Cf. TV Travel Inc. et al, 65 Comp. Gen. 109 (1985), 85-2 CPD ¶ 640 (where our Office made inferences regarding the agency's evaluation in the absence of documentation). Here, the agency's detailed descriptions of its evaluation are consistent with the contemporaneous memorandum of the PEB, and the PEB's evaluation memorandum along with the agency's later evaluation descriptions provide sufficient detail to judge the rationality of the agency's evaluation decision.

Our review of the record indicates that the agency reasonably found the proposals technically equal and selected the lower priced offeror. As indicated by the high and very close technical point scores (95.3 and 94.9), both proposals were considered excellent with very minor evaluated differences between them. While Hydraudyne has made a detailed critique of the minor evaluated differences between the proposals, we find that the agency's evaluation was reasonable and in accordance with the evaluation criteria. In this regard, contrary to Hydraudyne's arguments, the Army did not award extra credit for enhancements that exceed the RFP's minimum

^{3/} The Army states that the handwritten notes and scoring sheets of the individual evaluators were discarded after the creation of the evaluation summary, because the individual notes and scoring sheets were illegible and difficult to interpret.

^{4/} We think the Army's destruction of this documentation is inappropriate since the Federal Acquisition Regulation (FAR) essentially requires that the procuring agency retain evaluation documentation. See FAR §§ 4.801(b), 15.608(a)(2).

requirements.^{5/} Rather, the record here shows, as the examples below demonstrate, that the Army's point scoring reflected the agency's qualitative distinctions between the proposals and the technical approaches offered to accomplish the RFP requirements, and did not give inappropriate extra credit for enhancements not contemplated by the RFP. Since the RFP required offerors to provide technical proposals describing their technical approach to accomplishing the RFP requirements and stated that these technical approaches would be evaluated, we think offerors were on notice that qualitative distinctions would be made among the technical proposals in the evaluation of offers. See Mutual of Omaha Insurance Co., B-203338.2, Sept. 24, 1982, 82-2 CPD ¶ 268.

For example, Hydraudyne argues that MTS received a superior evaluation score for offering an exerciser that was capable of firing continuously at the rate of one shot every 30 seconds when the RFP only required that "[t]he exerciser[s]. . . be capable of a continuous testing rate of at least 100 of any single type of round in 8 hours. . . ." The record shows that the Army awarded MTS a slightly higher evaluation score for its proposed firing rate because MTS's exerciser could meet the firing rate requirements without the connection of auxiliary equipment to its exerciser while Hydraudyne's proposed exerciser required the incorporation of auxiliary equipment.^{6/} Similarly, under the Army's evaluation of the offerors' acceptable approaches to accomplishing the interface and alignment of the weapons with the exerciser, the protester received a slightly higher score for its acoustical approach to accomplishing this requirement while MTS's video camera approach was judged less desirable. The other minor evaluated differences between the proposals similarly reflect qualitative differences in technical merit, and not credit beyond that contemplated in the RFP.

Hydraudyne next contends that the agency, in determining the firms' proposals to be technically equal, failed to consider Hydraudyne's superior experience under the most important technical subfactor, "experience on similar projects." Hydraudyne contends that it has specific experience, which MTS does not have, in the testing of guns mounted on vehicles

^{5/} While the Army in its report on the protest states that "both offerors received appropriate credit for exceeding the government's minimum requirements," this statement is misleading.

^{6/} Our discussion of the offerors' equipment and approaches to meeting the RFP requirements is necessarily general due to the proprietary nature of this information.

(such as tanks and self-propelled artillery pieces) and in the design and production of alignment systems.

The Army states that it found that both firms had built recoil system exercisers and had a great deal of experience with weapons testing, although neither firm had existing equipment with an elevation capability.^{7/} Both firms were awarded identical point scores of 39 of 40 available points for this subfactor. In concluding that the offerors had equivalent experience, the Army recognized that Hydraudyne had built for the Dutch Army a recoil system exerciser that had the capability of testing test-stand mounted gun barrels, as well as tanks and towed howitzers. On the other hand, the Army also recognized that MTS was the first firm to design and build a recoil system exerciser (that is, the exerciser in use at Rock Island Arsenal) and that the basic design of MTS's earlier exerciser could accommodate tests of both tanks and towed howitzers.^{8/} We find reasonable the agency's judgment that the two offerors had essentially equivalent experience, since the record indicates that both firms have considerable experience in building recoil system exercisers and testing weapons such that the agency could reasonably conclude that either firm could build an exerciser meeting the RFP requirements.

Hydraudyne also protests that the Army, in making award to MTS, improperly waived mandatory RFP requirements that MTS's proposal does not meet. Specifically, Hydraudyne contends that MTS's proposed exerciser will not satisfy the peak breech force and momentum values as set forth in Table 2 of the RFP while the protester's exerciser was designed to meet the Table 2 requirements.

^{7/} Hydraudyne disagrees with the agency's assessment that it does not have existing equipment with an elevation capability and directs our attention to its proposal that states that its existing equipment can be rotated. Our review of Hydraudyne's proposal indicates that Hydraudyne did not describe its approach to elevation capability in terms of existing equipment and the reference to rotating the exerciser refers to the ability of the exerciser to move in a circular fashion to accommodate different weapons systems.

^{8/} The Army states that the Rock Island Arsenal exerciser tests only gun barrels mounted on test stands because of space constraints at the Arsenal as well as the nature of the Arsenal's mission, which is to design and build recoil systems for artillery and tank weapons.

Table 2 of the RFP is entitled "Peak Force and Momentum for Design and Safety," and sets out peak breech force and momentum values for each type of weapon to be tested. Table 1 of the RFP also sets out peak breech force and momentum values for the same weapons. The values in Table 1 are significantly lower than the corresponding values in Table 2. In pertinent part, the RFP states that acceptance testing and most of the use of the exerciser will be at the values listed in Table 1, but that for design and safety factors the exerciser should be based on the values listed in Table 2.

The Army states that both firms offered exercisers designed to operate at the standard performance levels stated in Table 1, but with the capability of functioning at the peak breech force and momentum values of Table 2 at any given time.^{9/} The agency states that Table 2 only provides maximum force and momentum levels that exercisers must meet for design and safety purposes, but that the exerciser need not have the capability to continuously perform at these stated maximum performance levels. Hydraudyne disagrees and contends that the RFP required exercisers to be capable of continuously performing at the Table 2 values.

We think the only reasonable interpretation of the solicitation is that Table 2 set forth maximum values that must be designed into the exerciser to provide a safety margin and that Table 1 set forth the peak breech and momentum values at which the exerciser would generally be operated. Table 2 specifically states that it provides values for "design and safety," and any other reading of the solicitation would make the values set forth in Table 1 superfluous since there would be little need to state the lower force and momentum values of Table 1 if the exerciser was required to perform continuously at the higher Table 2 values.^{10/} Accordingly, we conclude that MTS's exerciser, which was

^{9/} The Army states that neither Hydraudyne's nor MTS's exerciser can perform continuously at the Table 2 values. While Hydraudyne disagrees with the Army's technical assessment of its exerciser's ability to perform continuously at the Table 2 values, its proposal only states in this regard that its exerciser was designed in accordance with the Table 2 values. We think the Army reasonably interpreted this to mean that Hydraudyne, like MTS, had designed its exerciser to meet the safety margin provided by Table 2.

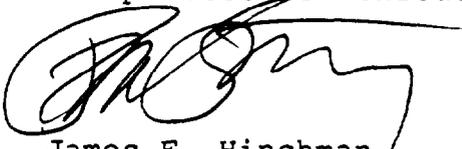
^{10/} In resolving disputes concerning the interpretation of a solicitation, we read the solicitation as a whole and in a manner that gives effect to all solicitation provisions. Honeywell Regelsysteme GmbH, B-237248, Feb. 2, 1990, 90-1 CPD ¶ 149.

designed in accordance with the values stated in Tables 1 and 2, is acceptable.

Hydraudyne also argues that MTS's exerciser is not state-of-the-art as required by the RFP, and that MTS proposed a research and development effort to meet the RFP requirements. The Army responds that there is no solicitation requirement that offered equipment be state-of-the-art or based upon proven technology, and that neither firm offered a research and development effort.^{11/} Hydraudyne admits that the solicitation does not expressly require offered equipment to be state-of-the-art but argues that the Commerce Business Daily (CBD) notice for this solicitation provided that "[t]he planned solicitation will be made using a performance specification and it is contemplated that any equipment proposed will be within the state of the art."

Hydraudyne's arguments concerning the alleged requirement that offered equipment be state-of-the-art are meritless. As the protester itself acknowledges, there is no requirement in the RFP that offered equipment be state-of-the-art; furthermore, the CBD notice does not purport to provide notice of a state-of-the-art requirement but merely states the agency's belief that equipment meeting the RFP requirements would be state-of-the art. In any event, if Hydraudyne believed that the CBD notice set forth a state-of-the-art requirement that was not identified in the RFP, this alleged apparent solicitation impropriety was required to be protested prior to the closing date for receipt of proposals. See 4 C.F.R. § 21.2(a) (1) (1990).

The protest is denied.



James F. Hinchman
General Counsel

^{11/} Hydraudyne's argument that MTS proposed a research and development effort to meet the RFP's requirements is apparently derived from information Hydraudyne obtained in the earlier protest of this requirement. MTS's proposal under the prior solicitation did in fact offer substantial research and development, and Hydraudyne erroneously assumed that MTS's proposal under the current RFP must also offer research and development. However, from our review of MTS's current proposal, we find that MTS's proposed exerciser is based upon existing technology with engineering modifications.