



Comptroller General  
of the United States

Washington, D.C. 20548

144308

## Decision

**Matter of:** Robert Slye Electronics, Inc.

**File:** B-243272

**Date:** July 5, 1991

William W. Beecher for the protester.

David T. Mulligan for Video Dynamics, Inc., an interested party.

Jay R. Snyder and Robert H. Berry, Jr., Esq., Defense Intelligence Agency, for the agency.

Barbara C. Coles, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Protest that an agency improperly evaluated protester's and awardee's proposals is denied where record shows that the agency's evaluation of the proposals was reasonable and in accordance with the solicitation's evaluation criteria.

2. Allegation that the awardee does not have the financial resources needed to perform the contract concerns the agency's affirmative determination of the awardee's responsibility which the General Accounting Office will not review where there is no indication of possible fraud, bad faith, or misapplication of a definitive responsibility criterion.

3. Protest that award is improper because three of the awardee's certifications in the solicitation contain errors or omissions is denied where the alleged failure to properly complete the certifications constitutes a minor defect that can be corrected prior to award.

### DECISION

Robert Slye Electronics, Inc. (RSE) protests the award of a contract to Video Dynamics, Inc. under request for proposals (RFP) No. MDA908-90-R-0113, issued by the Defense Intelligence Agency (DIA) for the design, production, installation, and integration of a video teleconferencing system. RSE principally alleges that the agency improperly evaluated its proposal.

We deny the protest.

The RFP, issued on January 10, 1990, contemplated the award of a firm, fixed-price contract and sought prices and technical proposals for the design, production, installation, and integration of a video teleconferencing system with three-way capability. The RFP requires the contractor to furnish and install a video teleconferencing facility in DIA's Clarendon Building in Arlington, Virginia, and to provide and install the necessary upgrades for full, compatible integration to DIA's existing facilities at Bolling Air Force Base, Washington, D.C., and the Pentagon.

The solicitation advised offerors that the agency would award a contract to the responsible offeror whose proposal was most advantageous to the government considering the evaluation factors involved. The solicitation listed the following three factors in descending order of importance: (1) technical considerations, (2) management/past experience, and (3) price. The solicitation advised offerors that price would be the determining factor "[i]f two or more highest rated offers are essentially equal." The RFP also stated that "[i]f one offeror's rating is significantly superior to all others and his proposed [price] is higher than other acceptable offerors, [DIA] will determine whether this superiority is sufficient to justify the difference in [price]."

Six firms submitted proposals by the March 2 closing date. After the initial evaluation, the agency determined that five offerors, including RSE and Video Dynamics, were within the competitive range. Discussions were held and best and final offers (BAFO) were requested by January 7, 1991.

After the evaluation of the four remaining<sup>1/</sup> offerors' BAFOs, DIA ranked them in the following descending order of technical merit: (1) Pierce Phelps; (2) Video Dynamics; (3) RSE; and (4) Hoppman Corporation. While Pierce Phelps, the high offeror with a BAFO price of \$675,275, received a higher evaluation score than Video Dynamics, the second high offeror with a BAFO price of \$635,261, DIA considered their proposals to be essentially equal. With regard to the two lower ranked offerors, RSE and Hoppman, DIA determined that while they offered lower BAFO prices (\$599,750 and \$598,277, respectively) than Video Dynamics, Video Dynamics' technical superiority warranted its higher proposed price. Therefore, the agency determined that Video Dynamics' proposal was the

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<sup>1/</sup> One of the technically acceptable offerors withdrew its offer prior to discussions.

most advantageous to the government and awarded the contract to Video Dynamics on February 28. RSE filed a protest with our Office on March 12, challenging DIA's evaluation of its proposal.

#### TECHNICAL EVALUATION

RSE argues that in the management/past experience area, DIA improperly downgraded its proposal, despite its superior experience, and overrated Video Dynamics' proposal. RSE contends that the agency ignored the following facts: (1) that RSE has over 30 years of experience in the electronics systems business and is a leader in providing conference services; and (2) that Video Dynamics is a "relatively short-lived company" with many key employees who were not involved with the company until many years after its 1982 inception.

The evaluation of technical proposals is a matter within the discretion of the contracting agency since that agency is responsible for defining its needs and the best method of accommodating them. Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203. In reviewing an agency's technical evaluation, we will not reevaluate the proposal, instead we will examine the record to ensure that the evaluation was reasonable. Id. A protester's disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. United HealthServ Inc., B-232640 et al., Jan. 18, 1989, 89-1 CPD ¶ 43. Here, after reviewing the record, we conclude that the evaluation was reasonable and in accordance with the RFP's stated evaluation criteria.

Generally, the agency found that while both RSE's and Video Dynamics' proposals demonstrated excellent credentials in audiovisual systems design, installation, and operation support, Video Dynamics' proposal indicated that it is better qualified to provide the video teleconferencing requirements called for under the solicitation. In the agency's view, Video Dynamics' proposal demonstrated more recent experience and expertise than RSE's proposal in providing systems comparable to the one contemplated under the RFP using the latest technology. With regard to RSE, the agency found that the firm failed to demonstrate its knowledge and experience in designing, installing, and integrating three-way multipoint video teleconferencing systems.

The protester disagrees with the agency's evaluation and argues that the agency improperly downgraded its proposal in the management/past experience area. The protester argues that DIA overlooked one of the facilities listed in its proposal, which had six-way capability via routing switches.

RSE also maintains that even though it does have experience in this area, any discussion in its proposal about multipoint conferencing would have been irrelevant under the solicitation. In this regard, the protester claims that the only difference between multipoint and point-to-point systems are the multiplexer and the transmission facility, and under the solicitation, the government, not the contractor, is responsible for providing and installing these devices.

According to the agency, the protester's attempt to distinguish point-to-point and multipoint conferencing is faulty and shows RSE's lack of experience in video teleconferencing. The agency states that multipoint video teleconferencing requires considerably more sophisticated technology configurations than broadcast or point-to-point video teleconference systems. The agency also states that while routing switches may be used in video teleconferencing systems, they are also used in many other audiovisual applications; as a result, the reference in RSE's proposal to a facility with six-way capabilities via routing switches does not necessarily demonstrate specific experience in teleconferencing, especially where, as here, the facility was listed in RSE's proposal as an audiovisual and video system, not a video teleconferencing system. The protester's comments on the agency report merely reiterate the arguments raised in its prior submission and do not effectively rebut the agency's response. We see no other basis in the record to question the agency's conclusions in this area.

The protester's other argument--that any discussion regarding its multipoint video teleconferencing experience was irrelevant under the solicitation and thus that the agency improperly downgraded its management/past experience in this area--is refuted by the language of the RFP. The solicitation specifically advised offerors that the proposals would be evaluated on "[e]xperience in design, fabrication, installation and maintenance of multicamera teleconferencing systems," and stated that the evaluation would "include [an assessment of] the organization's experience as well as the pertinent experience of the individuals who will be directly involved in the contract tasks." One of section C's tasks required the contractor to upgrade the existing nodes at Bolling Air Force Base and the Pentagon to ensure full compatibility and capability for multipoint and point-to-point video teleconferencing with the Clarendon node. Since the protester was on notice that discussion of its experience in multipoint conferencing was required, it was imperative that RSE either include such discussion in its proposal or timely object to the requirement as irrelevant prior to the closing date.

The agency also had a reasonable basis to downgrade RSE because its proposal merely stated, but did not substantiate, that "[RSE] will provide design assistance and technical review as required by the government to assist the government in constructing the facility to be compatible with the systems it will house." This statement, standing alone, does not establish that the protester in fact has the requisite experience to upgrade the existing nodes to ensure full compatibility and capability with multipoint video teleconferencing. To the extent that the protester claims that it has more video teleconferencing experience than the awardee, and presumably is the technically superior offeror, this claim is unpersuasive. An agency must base its technical evaluation solely upon the information furnished in the proposal rather than on presumptions favoring an offeror based on its prior performance. See Intelcom Support Servs., Inc., B-225600, May 7, 1987, 87-1 CPD ¶ 487. Since the proposal lacked the required information regarding the extent of RSE's multipoint video teleconferencing experience and, thus, the assurance that the firm possessed this experience, the agency properly downgraded its proposal.

The record does not support the protester's further claim that the agency ignored the fact that Video Dynamics is a "relatively short-lived company" with many key employees who were not involved with the company until many years after its 1982 inception. As discussed above, the RFP stated that proposals would be evaluated under the management/past experience area to assess the pertinent experience of the individuals who will be directly involved in the contracts tasks. The record indicates that while Video Dynamics proposed experienced individuals who would work closely in designing, installing, and upgrading the system, RSE proposed only one or, at most, two staff members with video teleconferencing design and integration backgrounds. While some of Video Dynamics' employees received experience outside that firm, they nonetheless do possess the requisite experience; based on the extent of that recent experience, the agency reasonably concluded that they are more capable than RSE's employees of successfully performing the requirements under the contract. The protester's mere disagreement with the evaluation does not establish that the evaluation was unreasonable. See VGS, Inc., B-233116, Jan. 25, 1989, 89-1 CPD ¶ 83.

Similarly, the record does not support RSE's argument that given its 31-year corporate existence and Video Dynamics' 9-year corporate existence, the agency must have overlooked Video Dynamics' apparent lack of corporate experience. The RFP states that the evaluation in the management/past

experience area would include an assessment of the organization's experience; it does not state--as the protester seems to suggest--that proposals would be evaluated merely the offerors' corporate existence. Since the record indicates that regardless of the length of their relative corporate existence, Video Dynamics has had more corporate experience than RSE with video teleconferencing projects that are similar to the one the RFP calls for, we have no basis to find the evaluation unreasonable.

#### CORPORATE FINANCES

RSE also argues that the award to Video Dynamics is improper because Video Dynamics does not have the financial resources to perform the contract. RSE essentially challenges DIA's affirmative determination of Video Dynamics' responsibility to successfully perform the contract. We will not review that determination unless there is a showing of possible fraud or bad faith on the agency's part or that definitive responsibility criteria in the RFP were misapplied. Marine Transport Lines, Inc.; Lant Shipping, Inc., B-238223.2; B-238223.3, July 30, 1990, 90-2 CPD ¶ 80. Since no such showing has been made here, we will not review the agency's determination of affirmative responsibility.


#### CERTIFICATIONS

RSE also challenges the award based on certain certifications that Video Dynamics made in section K of the solicitation. RSE first asserts that Video Dynamics' certification in section K-15 of the solicitation that "all end items to be furnished [under the contract] will be manufactured or produced by a small business concern in the United States" is likely to be inaccurate in light of "the nature of the components to be provided." RSE's contention is purely speculative and provides no basis to question the selection of Video Dynamics.

The protester also claims that the award is improper because three of the awardee's certifications--section K-19, the Walsh-Healey Public Contracts Act Representation clause; section K-30, "Technical Data Certification"; and section K-31, "Government Employee Representation"--contain errors or omissions. Any uncertainty in the three certifications is minor in nature and does not show that the award to Video Dynamics is improper. In fact, contrary to RSE's contention, we think that the certifications in the awardee's proposal reasonably can be read as having been properly completed. For example, under section K-30, "Technical Data Certification," Video Dynamics checked both that it "has not delivered" and that it "is not obligated to deliver" to the government any

technical data included in its offer. While the certification suggests that the offeror should check one of the options-- indicating either that it has not delivered data or that it is not obligated to do so--checking both provisions as the awardee did merely indicates more unequivocally that it is not involved in any way in delivery to the government of the data covered by its offer under the RFP.

The protest is denied.

  
for James F. Hinchman  
General Counsel