



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Telephonics Corporation

File: B-246016

Date: January 30, 1992

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Thomas P. Johnston for BDM International, Inc., an
interested party.
Gregory H. Petkoff, Esq., and Alan F. Lehman, Esq.,
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of the decision.

DIGEST

1. Protest allegation that agency misinterpreted solicitation requirement in determining that protester's proposal did not meet the requirement, raised for the first time in comments on the agency report, is untimely where not filed within 10 days of protester's actual knowledge of that basis of protest.
2. Protest challenging agency's technical evaluation of proposal for air surveillance system is denied where agency reasonably determined that protester's proposal failed to meet solicitation requirements for manual tracking of targets.
3. Protest alleging that agency failed to conduct meaningful discussions with protester is denied where agency's discussion letter specifically addressed perceived deficiencies, and protester was afforded second opportunity to correct deficiencies in best and final offer.

DECISION

Telephonics Corporation protests the rejection of its proposal, and the award of a contract to BDM International, Inc., under request for proposals (RFP) No. F19628-91-R-0022, issued by the Department of the Air Force for the Peace Panorama program, a program to provide an air surveillance system for the Colombian Air Force to support the United States-Colombian drug interdiction effort. Telephonics contends that the Air Force misevaluated its proposal and improperly failed to raise perceived deficiencies in the proposal during discussions.

We dismiss the protest in part and deny it in part.

The Air Force describes the Peace Panorama system as an integrated air situation display that will receive, process and display digitized radar data received via government-furnished communications links with two existing Colombian civilian air traffic control radars, two Caribbean Basin Radar Network radars located in Colombian territory, and up to six Colombian military radars that will be acquired later. In addition to the display capabilities, the system will have internal and external voice communications capability.

The RFP provided for evaluation of technical proposals based on five factors: system performance, demonstration, project implementation, supportability, and management. The first two factors were considered equally important, and more important than the other three factors. As to the remaining factors, project implementation and supportability were considered equally important, and more important than management.

Ten firms submitted proposals by the April 22, 1991, due date. Of these offerors, the source selection evaluation board (SSEB) found seven to be in the competitive range. On July 12, a second competitive range determination was made based on the results of live demonstrations of the proposed systems, leaving five offerors in the competition, including Telephonics and BDM; the Air Force issued clarification requests (CR) and deficiency reports (DR) to those offerors on July 15. Following evaluation of the offerors' responses to the CRs and DRs, the Air Force issued points for negotiation (PFN) and conducted face-to-face discussions based on the PFNs. After discussions were completed, the agency requested best and final offers (BAFO) from the five remaining offerors by September 16.

Based on Telephonics' responses to three DRs that were issued in connection with deficiencies noted at the live demonstration of its system, the SSEB determined that Telephonics was ineligible for award because its system as demonstrated did not meet the RFP requirements in several areas, and the firm had failed to resolve the deficiencies during discussions. The SSEB briefed the source selection advisory council (SSAC) on the results of the evaluation, including Telephonics' failure to meet RFP requirements; the SSAC prepared a proposal analysis report recommending award to BDM. On September 26, the SSAC briefed the source selection authority on its recommendation, and on September 27, the agency made award to BDM for \$4,182,579. Upon learning of the basis for rejection of its proposal, Telephonics, which had offered a price of \$2,900,074, filed this protest.

TECHNICAL EVALUATION

Telephonics contends that the Air Force improperly determined that its proposed system did not meet certain RFP requirements for the system's tracking function. In general, the tracking function takes individual radar "blips" ("plots" in the RFP) corresponding to targets, and groups them into tracks representing the current and previous locations of the target. The RFP requires automatic and manual tracking of aircraft based on automatic or manual input of data from various sources, including radars and operator entries. Based on Telephonics' live demonstration of its offered system, the Air Force found that Telephonics had failed to show compliance with the RFP requirements in three areas: manual track initiation, manual track maintenance capabilities, and tracking in areas of overlapping radar coverage. Telephonics challenges the agency's findings in the areas of manual track initiation and maintenance, asserting that its proposed system met the requirements as stated in the RFP, and maintains that the Air Force's evaluation is based on a misinterpretation of the demonstrated capabilities of its system and the RFP requirements.¹

The evaluation of technical proposals is primarily within the discretion of the procuring agency and not our Office, since the agency is responsible for defining its needs and the best methods of accommodating them, and must bear the burden resulting from a defective evaluation. Consequently, we will examine the agency's evaluation only to ensure that it was reasonable and consistent with the stated evaluation factors. Litton Sys., Inc., B-239123, Aug. 7, 1990, 90-2 CPD ¶ 114. Where a proposal fails to conform to material terms and conditions of the solicitation, the proposal is unacceptable and may not form the basis for award. Fraser-Volpe Corp., B-237617, Mar. 12, 1990, 90-1 CPD ¶ 263. A protester's mere disagreement with the agency's judgment in this regard does not render the evaluation unreasonable.

¹Telephonics also protested the Air Force's conclusion that its system did not meet the RFP requirements concerning tracking in areas of overlapping radar coverage. However, the Air Force explained in its report on the protest that Telephonics' proposal was considered deficient in this area for failure adequately to explain how a problem would be corrected, and Telephonics did not dispute the agency's conclusion in its report comments except to assert that the Air Force should have raised any questions it had about the nature of the proposed correction during face-to-face discussions. We therefore consider the technical evaluation issue abandoned as it relates to this RFP requirement; the discussions issue is addressed below.

Litton Sys., Inc., supra. As discussed below, we find that the agency reasonably determined that Telephonics' proposal failed to comply with certain RFP requirements and properly was rejected.

The RFP's system performance specification set forth a requirement for "manual track initiation with automatic tracking based on correlation of search and beacon plot data from all available radars." In addition, the specification provided that "tracks shall be initiated by operator action entries." The Air Force explains that this requirement allows the system operator to control track generation by deciding which radar plots will form the track. At the live system demonstration, Telephonics only demonstrated automatic track initiation, by which the system initiates a track based on radar plots it receives electronically. The Air Force therefore issued the firm a DR stating that "the offeror did not demonstrate the ability to manually initiate tracks." In its response to the DR, Telephonics conceded that it had not demonstrated manual track initiation, but explained that manual track initiation capability was present in another Telephonics system in development, known as MTRACS, which it planned to incorporate into the Peace Panorama system.

In addition to the manual track initiation requirement, the specification required several manual track maintenance capabilities, including movement of a track to a different position, entry of data to be correlated with existing tracks, and dropping of tracks from the system. Based on Telephonics' live demonstration, the Air Force issued a DR stating that "the capability for the operator to maintain and drop tracks and the capability to support operator entry of track data were not demonstrated." Again, Telephonics agreed with the Air Force that it had not demonstrated these capabilities, but stated that the MTRACS system would perform all of the required functions.

In evaluating Telephonics' responses to the DRs, the Air Force noted that although there was an MTRACS workstation present in the room during Telephonics' demonstration, the capabilities of that system were never demonstrated. The Air Force found that Telephonics' brief explanations in its DR responses of how the MTRACS manual track initiation and maintenance capabilities would operate within the Peace Panorama system were insufficient to establish, without a demonstration, that the proposed system could actually perform the manual track initiation and maintenance functions required by the RFP.

Telephonics contends that the Air Force's determination that its system did not meet the RFP requirement for manual track initiation was based upon the Air Force's misinterpretation

of the requirement. This allegation is untimely. A protest of other than apparent solicitation improprieties must be filed within 10 working days after the basis of the protest is known or should have been known. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1991). Where a protester initially files a timely protest and later supplements it with new and independent grounds of protest, the new allegations must independently satisfy our timeliness requirements; our Regulations do not contemplate the unwarranted piecemeal presentation of protest issues. EER Sys. Corp., 69 Comp. Gen. 207 (1990), 90-1 CPD ¶ 123. Telephonics first became aware that its interpretation of the manual track initiation requirement was different from the agency's interpretation when it received the agency report on November 13, 1991. Thus, Telephonics had until November 27, 10 working days later, to raise this new protest ground. Telephonics did not do so until November 29, when it filed its comments on the agency report.² Its challenge to the agency's interpretation of the RFP is therefore untimely.³

²Telephonics was granted a time extension for purposes of filing its comments; however, this extension did not waive the timeliness rules with regard to new bases for protest. See Ebasco Constructors, Inc. et al., B-244406 et al., Oct. 16, 1991, 91-2 CPD ¶ 341.

³In any case, Telephonics' argument that the Air Force misinterpreted the manual track initiation requirement is without merit. Although the RFP does not define a procedure for manually initiating a track, it does require "manual track initiation with automatic tracking based on correlation of search and beacon plot data," in order to give the operator control over the formation of tracks. Telephonics' approach, which allows the operator to select only one plot to initiate a track, gives the operator virtually no control over track formation. While Telephonics argues that operator selection of more than one radar plot would violate the RFP requirement for automatic tracking, we do not think this is the case. As Telephonics notes, the RFP calls for automatic tracking of manually initiated tracks; that is, once the operator has initiated a track, the system must be able to monitor the track automatically. The RFP requirement for automatic tracking of existing tracks clearly does not limit the manner in which an operator can initiate a track. Thus, contrary to the protester's position, the specification does not preclude the operator from manually initiating a track in whatever manner is appropriate under the circumstances, including selection of more than one radar plot to form the track.

Telephonics also challenges the Air Force's finding that its DR response was insufficient to establish that its system would meet the manual track initiation requirement by asserting that it offered the same approach in another surveillance system that is operating at approximately 120 Air Force and Navy installations, and that the Air Force is in possession of the design documents for that system. Telephonics thus appears to be arguing that the Air Force should have known, or been able to discover using its own resources, that Telephonics' approach to the manual track initiation would meet the RFP requirements.

Telephonics' position is without merit. All offerors must demonstrate their capabilities in their proposals, and an offeror runs the risk of rejection if it does not submit an adequately written proposal. Intelcom Support Servs., Inc., B-225600, May 7, 1987, 87-1 CPD ¶ 487. The evaluators here were not required to give Telephonics credit for a specific approach that it did not demonstrate or explain sufficiently in its proposal; there is no legal basis for favoring a firm with presumptions based on the offeror's prior performance. Id.

As for the manual track maintenance requirements, the RFP required that the proposed system allow the operator to change the position of a track or alter other data associated with it; at the same time, the RFP required that modified tracks remain associated with their plot histories. The purpose of these two requirements is to allow the operator to correct any errors caused by correlation of false radar data with tracks, while the system continues to display where the aircraft is coming from. While Telephonics was able to demonstrate the required manual track maintenance capabilities on manually-initiated tracks, it was unable to demonstrate the same capabilities on system-generated tracks because the system's automatic track update function overrode the manual changes made by the operator. For example, system-generated tracks that had been dropped from the display manually were automatically reinitiated at the next track update interval. Since Telephonics' system thus did not meet the RFP requirements for manual track maintenance, Telephonics was asked to explain in its DR response how it proposed to comply.

Telephonics' response stated that its MTRACS system could perform the required manual track maintenance functions, but did not offer enough information to show the Air Force that the problems encountered in the demonstration would be resolved. For example, Telephonics stated that "MTRACS manual track drop capability satisfies PPS track drop requirements," but did not explain how it would resolve the problem of automatic reinitiation of manually-dropped tracks. Besides failing to correct the noted deficiencies,

Telephonics' response stated that system-generated tracks are "disassociated" from any previously associated radar tracks when they are modified, indicating to the Air Force that modified tracks do not remain associated with their plot histories as required by the RFP.

Based on Telephonics' failure to explain to the Air Force how its proposal to incorporate MTRACS into the Peace Panorama system would resolve the defects observed at the demonstration, we think the AF reasonably found that Telephonics' DR response did not correct its deficiencies in the area of manual track maintenance. Telephonics' only specific challenge to the Air Force's evaluation in this area--that modified tracks in fact remain associated with their plot histories--does not affect our conclusion, as the record clearly shows that it was Telephonics' failure to adequately describe how it would incorporate the required track maintenance functions into its deficient system, and not the Air Force's view that modified tracks would be dissociated from their plot histories, that caused the firm's proposal to be rejected.

In sum, the record supports the reasonableness of the Air Force's conclusion that Telephonics failed to meet the solicitation requirements in the areas of manual track initiation and manual track maintenance. As for the third deficient area, tracking in areas of overlapping radar coverage, we have no basis to question the agency's finding of noncompliance with the RFP requirements because Telephonics abandoned the issue. We conclude that Telephonics' failure to show compliance with these three material solicitation requirements at the demonstration and inability to resolve the deficiencies provided a reasonable basis for determining that Telephonics was not eligible for award.⁴ See Fraser-Volpe Corp., supra.

DISCUSSIONS

Telephonics asserts that the Air Force improperly failed to notify it of the three perceived deficiencies in the tracking capabilities of its proposed system. In this regard, Telephonics notes that it attempted to resolve the

⁴Telephonics also asserts that the Air Force improperly rejected its proposal for other reasons, including its failure to return with its BAFO a copy of an amendment reflecting matters discussed during face-to-face negotiations. Since the primary reason for Telephonics' rejection was its failure to meet the requirements for demonstration of tracking functions, and we have found rejection on that basis reasonable, we need not address Telephonics' challenges to other perceived deficiencies in its proposal.


deficiencies in its responses to the DRs issued by the Air Force, and contends that the Air Force should have informed it during the subsequent face-to-face discussions that its DR responses were not satisfactory.

In order for discussions in a negotiated procurement to be meaningful, contracting officials must furnish information to offerors in the competitive range as to the areas in their proposals which are believed to be deficient, so that the offerors have an opportunity to revise their proposals to satisfy the government's requirements. Federal Acquisition Regulation § 15.610; Besserman Corp., B-237327, Feb. 14, 1990, 90-1 CPD ¶ 191. Where an offeror has been given an opportunity to revise aspects of its proposal with which the agency is concerned, and its responses lead to a determination that the proposal is unacceptable, the agency has no obligation to conduct further discussions. Compu-Serve Data Sys., Inc., 60 Comp. Gen. 468 (1981), 81-1 CPD ¶ 374.

The record shows that the Air Force conducted meaningful discussions with Telephonics. As noted, the Air Force issued three DRs to Telephonics based on its live system demonstration, and the firm had the opportunity to correct the deficiencies. Since Telephonics' response to the deficiency reports confirmed the unacceptability of the firm's approach, the Air Force was not required to conduct further discussions regarding these deficiencies. See CompuServe Data Sys., Inc., supra.

In view of the confirmed unacceptability of Telephonics' proposal, it is not clear why the Air Force proceeded to conduct face-to-face discussions with the firm instead of eliminating it from the competitive range. However, by keeping Telephonics in the competition and conducting further discussions with it, the Air Force assumed the obligation to afford Telephonics a reasonable opportunity to correct its remaining deficiencies. FAR 15.610(b)(2); Price Waterhouse, B-220049, Jan. 17, 1986, 86-1 CPD ¶ 54. The record shows that the Air Force met this obligation by informing Telephonics in its BAFO request that the three DRs remained open, notwithstanding the fact that it did not furnish this information during face-to-face discussions. See Textron Marine Sys., B-243693, Aug. 19, 1991, 91-2 CPD ¶ 162.

The protest is dismissed in part and denied in part.


James F. Hinchman
General Counsel