



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hughes Technical Services Company

File: B-245546.3

Date: February 12, 1992

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Kenneth M. Bruntel, Esq., Crowell and Morning, for CAE-Link Corporation, an interested party.

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C. Douglas McArthur, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency properly found unacceptable a proposal whose low maintenance staffing created a risk of conflict with ongoing training and whose suggested approaches to system restoral were impractical.

2. Where protester's initially proposed maintenance and system restoral plans contained major deficiencies, and agency advised protester that the plans were deficient and sought details and elaboration of those plans, agency conducted meaningful discussions since it properly alerted protester to perceived deficiencies in its proposal.

3. Protester whose proposal was properly found technically unacceptable is not an interested party to protest the cost/technical tradeoff or the evaluation of the awardee's proposal where there are other, technically acceptable proposals in line for award and it would not be in line for award if its allegations were resolved in its favor.

DECISION

Hughes Technical Services Company (HTSC) protests the rejection of its offer under request for proposals (RFP) No. F25606-91-R-0020, issued by the Department of the Air Force for an aircrew training system for the KC-10 aircraft. The protester asserts that the agency failed to conduct meaningful discussions and failed to evaluate its proposal properly. We deny the protest in part and dismiss it in part.

On January 31, 1991, the agency issued the solicitation for a fixed-price, indefinite-quantity contract with award fee, to provide services for KC-10 aircrew training, maintenance of training devices, courseware modification/development, and operation and administration of three training sites at Air Force bases in Louisiana, California, and North Carolina, with associated support services, for fiscal year 1992, with four 1-year options for continued service. The solicitation provided for award to that responsible offeror considered most advantageous to the government in accordance with the evaluation criteria set forth in the RFP.

The agency advised potential offerors that it would select a contractor based upon an integrated assessment of each offeror's ability to satisfy the requirements of the solicitation, including the general considerations of past performance, proposed contractual terms and conditions, and the results of preaward surveys, as well as the results of evaluations against the specific evaluation criteria. The specific evaluation criteria, in descending order of importance, were as follows: aircrew training effectiveness; personnel qualifications; training standardization; courseware development/update plan; maintenance plan; system restoral plan; configuration management plan; logistics management plan; quality control plan; program management plan; small/small and disadvantaged business subcontracting plan; phase-in plan; transition-out plan; modification plan for Seymour Johnson AFB visual system; interactive video/computer based training courseware development option plan; and advance contract study notice option plan. The agency further advised potential offerors that it would assess how well each proposal met the specific evaluation criteria based on soundness of approach, understanding of requirement, compliance with requirement, and past performance; it would evaluate prices for completeness, realism, and reasonableness.

On April 11, 1991, the agency received eight proposals and submitted them to the source selection evaluation team (SSET), which identified deficiencies and areas in need of clarification; the contracting officer excluded no proposals from the competitive range, concluding that there were no deficiencies that the offerors could not cure through discussions. In accordance with the evaluation procedures of the solicitation, the agency issued a series of deficiency reports ("must be corrected before a contract negotiation can be completed") and clarification requests (" . . . issued when aspects of the proposal require clarification, when proposal areas are inadequate for evaluation or, when contradictory statements are found"), conducted site visits, and on July 29, decided to request each offeror to submit a best and final offer (BAFO); the agency requested BAFOs on August 2 and received them on August 14.

On August 26, the SSET submitted its analysis of proposals to the source selection authority (SSA), advising him that the protester's proposal was "very weak" and would require "considerable modifications to make it acceptable." The team advised the SSA of their perception that the protester had attempted to "skimp on quality" and that information regarding the protester's past performance on the C-141 aircrew training system was unfavorable. On August 30, the SSA eliminated the protester's proposal from consideration as unacceptable, based on his "integrated assessment" of the proposal, because among other things, the proposal was unacceptable in the areas of maintenance and system restoral plans. On that date, the SSA awarded a contract to CAE-Link Corporation.¹

HTSC filed a protest with our Office, contending that the agency had not given proper consideration to cost or price and had failed to justify payment of a \$6.8-million-cost premium associated with the selection of CAE-Link's proposal for award. HTSC subsequently filed a timely supplemental protest, arguing that there was no evidence to support the agency's determination that the protester's proposal was technically deficient and that the agency had failed to conduct meaningful discussions with the protester.

HTSC argues that the agency improperly evaluated past performance for this requirement by considering the performance of a different Hughes subsidiary, Hughes Training Systems, Inc., under an allegedly unrelated contract for a C-141 aircrew training system. Further, the protester contends that the agency based its evaluation on inaccurate information, applied requirements not contained in the solicitation, and improperly considered as technical deficiencies certain approaches that the protester argues would provide acceptable performance while saving costs.

In reviewing protests against an agency's technical evaluation and decision to eliminate a proposal from consideration for award, we review the record to determine whether the agency's judgments were reasonable and in accordance with the listed evaluation criteria and whether there were any violations of procurement statutes or regulations. CTA, Inc., B-244475.2, Oct. 23, 1991, 91-2 CPD ¶ 360. We find that the agency's technical evaluation in this case was reasonable and consistent with the evaluation criteria, and

¹Of the seven other offerors, one was found unacceptable, one nonresponsive, and one unreasonable in cost. The awardee submitted the highest rated technical proposal, which was second highest in cost, of the four remaining offers.

we conclude that the contracting officer's decision to eliminate the protester's proposal from further consideration was reasonable.

For each evaluation factor, in accordance with the solicitation evaluation procedures, the agency assigned ratings, a color and adjectival rating based on strengths and weaknesses identified in the proposals and a risk assessment rating. The color codes were as follows: blue, exceptional; green, acceptable; yellow, marginal ("Fails to meet minimum evaluation standards; and has low probability of satisfying the requirement; and has significant deficiencies but correctable"); red, unacceptable ("Fails to meet a minimum evaluation requirement; and deficiency requires major revision to the proposal to make it correct.") The SSET also assessed the risk associated with each proposal in terms of high, moderate, or low risk, for each of the evaluation criteria.

Of the 11 most heavily weighted evaluation factors, the protester received a red/unacceptable rating with a high risk in three--personnel qualifications, maintenance plan, and system restoral plan. The SSET also found the protester yellow/marginal with high risk in six other areas including aircrew training effectiveness, the most heavily weighted factor, and green/acceptable but high risk in the other two areas, training standardization and courseware development/update plan. As discussed below, we find that the agency reasonably found the protester's maintenance and system restoral plans unacceptable. While we have some concerns about the agency's evaluation in other areas, any errors in those areas are essentially irrelevant and will not be addressed because we find that the agency properly eliminated the protester's proposal from further consideration as unacceptable.

Regarding the proposed maintenance plan, the SSET found that the protester's scheduling of personnel neither met requirements nor evidenced understanding of the scope of work required. Although the solicitation statement of work expressly provided that scheduled maintenance should not impact the training effort, on 4 days a week the proposal provided only one person on day and second shifts (safety considerations dictate the presence of two personnel to perform work on the flight simulators). Although its BAFO increased staffing for the night maintenance shift during the week, the protester provided no staffing for that shift on Saturday and Sunday. While HTSC did advise the agency that "preventive maintenance is never scheduled [to] impact training," the failure to staff Saturday and Sunday maintenance shifts created a risk that scheduled and unscheduled maintenance might have to be accomplished during the day. With the anticipated workload for the aging KC-10 system,

the agency believes it necessary to accomplish as much scheduled maintenance on the night shift, including Saturdays and Sundays, as is possible, and to maintain sufficient staff for unscheduled maintenance. The SSET believed that the protester's staffing created risk that routine maintenance would overlap and disrupt training periods. The protester also did not address plans for integrating the repair of deficiencies noted during the required periodic simulation certification process (SIMCERT) into its maintenance plan. Staffing appeared insufficient for depot level maintenance, which the solicitation required. In the opinion of evaluators, the plan as submitted contained a high risk either of training disruption or simulator downtime and did not demonstrate understanding of the scope of the preventive maintenance effort and the need to schedule planned maintenance to avoid disruption of training.

The SSET found the system restoral plan relied primarily on call-ins and overtime, causing the team concern because of the lack of assurance that the necessary personnel would be available on short notice. The BAFO plan for long-term unscheduled maintenance did not address the need for prompt rescheduling of training and did not propose acceptable solutions for maintaining the training schedule in the event of a major disruption; neither the use of other simulators, already committed for use 16 hours a day, 7 days a week, nor the protester's proposal to use an actual aircraft, which might not be available or feasible for other than ground checks and would in any event be inconvenient and expensive, appeared workable as proposed. In this regard, the record shows that the agency schedules classes a year in advance, with consideration of transportation and billeting of personnel, many of whom are reservists and guardsmen whose availability is limited. The protester offered no criteria for when it would finally attempt, during long downtimes, to obtain training through the government at other locations as required by the RFP. The protester's proposal did not, in the opinion of evaluators, evidence an understanding of requirements and the difficulties involved in meeting them and created a high risk of training disruption.

The protester disagrees with the evaluation and argues that the evaluation reflects the evaluators' lack of familiarity with current competitive approaches used on similar contracts. Apart from assertions that it received positive comments on its performance under other contracts, the protester does not identify the contracts involved, the level of maintenance required, or the staffing actually in use and presents no evidence to demonstrate how its approach has in fact been successful in the past. The protester's disagreement with the evaluators' conclusions cannot itself establish that the evaluation was unreasonable; it is the

protester's obligation to show the feasibility of its approach, and we find that it did not do so. The protester also contends that the agency's consideration of past performance was unduly influenced by erroneous, negative comments concerning past performance on the C-141 contract that was attributable to Hughes Training Systems, not HTSC, an error that the protester asserts could have been avoided through discussions. Whatever the effect of the alleged confusion, the SSET rated the protester's past performance acceptable for both the maintenance plan and the system restoral plan. The deficiencies noted by the SSET in these two critical areas related to the plans and approach to performing the work under this contract, not to the protester's past performance in these areas. There is no evidence in the record that the firm's unacceptable ratings for its maintenance and system restoral plans resulted from confusion with Hughes Training Systems.

Based on the protester's failure to propose adequate staffing, particularly for weekend maintenance shifts, to address the repair of problems noted in the SIMCERT, and to provide an acceptable plan for prompt system restoral and long-term unscheduled maintenance, the agency reasonably concluded in accordance with the evaluation factors set forth in the solicitation that HTSC's proposal was unacceptable for failing to demonstrate its understanding of the solicitation's requirements.

HTSC also argues that the agency should have discussed its concerns over scheduling of maintenance staffing with the protester more fully. The protester alleges that the agency never identified its concerns during discussions and asserts that it could have demonstrated that its past performance under other contracts evidenced the acceptability of its approach under the instant solicitation.

Agencies must generally conduct written and oral discussions with all offerors within a competitive range, advising them of weaknesses, excesses or deficiencies in their proposals, unless doing so would result either in disclosure of one offeror's technical approach to another or in technical leveling, and providing them the opportunity to satisfy the government's requirements through submission of a revised proposal. tg Bauer Assocs., Inc., B-229831.6, Dec. 2, 1988, 88-2 CPD ¶ 549. The actual content and extent of discussions are matters of judgment primarily for determination by the agency involved, and our Office will review the agency's judgments only to determine if they are reasonable. Tidewater Health Evaluation Center, Inc., B-223635.3, Nov. 17, 1986, 86-2 CPD ¶ 563. Here, we conclude that the agency fulfilled its obligations by discussing with HTSC the weaknesses and deficiencies that the SSET found in the protester's proposal.

HTSC promised "aggressive" staffing levels in its maintenance plan, asserting that it was offering a concept "proven on the C-141 ATS Program." The chief concern that the agency noted in reviewing the protester's initial proposal related to overall staffing; the agency made this concern known by numerous references to the protester's "skelton" [sic] staff, "low manning," and "small maintenance work force." The agency specifically asked for details on preventive maintenance and SIMCERT, directing the protester to those areas where the staffing shortfall was most critical. The protester responded by increasing staffing, but the protester did not schedule these additional personnel for maintenance periods to avoid training disruption. In our view, the discussion questions concerning staffing did reasonably advise HTSC of its maintenance staffing deficiencies. The agency found that the additional staffing proposed in the BAFO did not resolve its concerns regarding HTSC's capability to meet maintenance requirements without disrupting training. Also, while the protester argues that the solicitation contained no requirement for correction of deficiencies found during SIMCERT, we think that the solicitation requirement and discussion questions seeking a SIMCERT plan reasonably advised the company that the agency expected offerors to provide for correction of problems noted during the process.


The agency issued several deficiency reports on the system restoral plan, warning the protester that it had failed to discuss how it would meet time critical functions and unscheduled maintenance, how it would direct its work force for unscheduled mission critical functional maintenance, and how it would assign repair responsibilities. Ultimately, the SSET found that the poor maintenance staffing and approach to long-term problems, the proposal to use instructors as safety observers, which might disrupt training, and the failure to plan for completion of training during a long-term failure, created a high risk that requirements would not be met in the event of such a failure. We find that these discussion questions clearly directed the protester's attention to the perceived deficiencies in its proposal, provided the opportunity to submit a revised proposal that met requirements, and fulfilled the agency's obligation to conduct meaningful discussions.

The protester also objects to the agency finding its proposal unacceptable for the personnel qualifications criteria, its use of allegedly erroneous past performance information in unfavorably evaluating other areas of HTSC's proposal, and the determination that HTSC was ineligible for award based on its proposal to seek a new wage classification for flight engineer and boom operator instructors. While as noted above, our review raises concerns about the agency's conclusions in some of these areas, since the

protester submitted a proposal that was unacceptable in the areas of maintenance and system restoral, there is no need to address the question of whether the agency properly found the proposal unacceptable in other areas. Environmental Technologies Group, Inc., 69 Comp. Gen. 193 (1990), 90-1 CPD ¶ 101.

We find that the agency's technical evaluation was reasonable and in accordance with the stated evaluation factors, that the agency made its concerns known to HTSC during discussions, and that the agency therefore could properly determine that HTSC's proposal was unacceptable and ineligible for award. Under our Bid Protest Regulations, a party is not interested to maintain a protest if it would not be in line for award if the protest were sustained, 4 C.F.R. §§ 21.0(a) and 21.1(a) (1991); State Technical Inst. at Memphis, 67 Comp. Gen. 236 (1988), 88-1 CPD ¶ 135. Since the agency properly found the proposal unacceptable, and since there are three other acceptable offerors other than CAE-Link, HTSC is not an interested party for purposes of questioning the agency's consideration of price in the award decision, its cost/technical tradeoff, or the award to CAE-Link. See ISC Defense Sys., Inc., B-236597.2, Jan. 3, 1990, 90-1 CPD ¶ 8.

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


for James F. Hinchman
General Counsel