



Comptroller General
of the United States
Washington, D.C. 20548

1153299

Decision

Matter of: Cincinnati Electronics Corporation

File: B-253814

Date: September 30, 1993

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John D. Titus, Esq., Lowe & Berman, for Motorola Inc., and Elliot J. Clark, Jr., Esq., for Magnavox Electronic Systems Company, interested parties.
Vera Meza, Esq., and Walter Harbort, Jr., Esq., Department of the Army, for the agency.
Daniel I. Gordon, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's proposal was properly rejected as technically unacceptable and outside the competitive range where agency reasonably determined that the proposal as submitted failed to demonstrate understanding of the solicitation requirements and did not present a feasible technical solution.

DECISION

Cincinnati Electronics Corporation (CE) protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. DAAB07-93-R-A019, issued by the Department of the Army for the acquisition of enhanced manpack ultrahigh frequency terminals (EMUT). The Army excluded CE's proposal from the competitive range on the basis of the evaluators' finding that the proposal was technically unacceptable and that a major revision would be needed in order to correct its deficiencies. CE contends that its proposal should have been included in the competitive range because it was, if not already acceptable, then at least susceptible of being made acceptable through discussions.

We deny the protest.

The Army's Communications-Electronics Command (CECOM) issued the RFP on October 26, 1992, to obtain proposals for a firm, fixed-price requirements contract for EMUTs, which are essentially portable radio terminals capable of

communicating via satellite. Two of the most significant features required for the terminals are capabilities for communications security (COMSEC) and Demand Assignment Multiple Access (DAMA), which allows more than one user to communicate essentially simultaneously over the same satellite channel.

Section L-19 of the RFP included instructions for proposal format and content. Offerors were required to submit sample hardware capable of demonstrating certain technical features. While setting page limits for various parts of the written proposals, such as a 400-page limit for the proposed technical approach, Section L-19 provided that "the offeror shall confine the proposal presentation to essential matters, sufficient to define the offer and to provide an adequate basis for evaluation."

Section M set forth the evaluation factors and subfactors, and stated that "[a] proposal must be acceptable in each [f]actor and [s]ubfactor to be considered eligible for award." The factors were: technical approach, integrated logistics support, performance risk, cost, and management. Section M advised offerors that technical approach was the most important factor. Logistics, performance risk, and cost were of equal importance in the evaluation; each of those three factors, while less important than technical approach, was twice as important as management. Among the six subfactors of the technical approach, the most important was the engineering approach, the second most important was DAMA, and the third most important was sample hardware performance, which the RFP stated would be evaluated independently "to determine the degree of reliance that the [g]overnment will place on the offerors['] written proposal."

In addition to the factors and subfactors, Section M set forth the evaluation criteria which would be applied "in the determination of the acceptability of the offeror's proposal." The three evaluation criteria were understanding of requirements; comprehension, clarity, and adequacy of presentation; and feasibility of approach. Regarding the second of those criteria, Section M stated as follows:

"[t]he proposal must fully and clearly present, explain, and justify the recommended approach and demonstrate compliance with all the requirements of the request for proposals. The omission of information considered significant to achievement of requirements may be cause for considering the proposal technically unacceptable. Although an offeror may be technically dominant in a specific technological field, the evaluation team will not assume that the offeror's performance will include

areas of effort not specified in his written proposal."¹

Section M stated that award would be made on the basis of the "best overall proposal," which was defined as the one "which offers the most favorable trade-off among the [evaluation] factors."

The Army evaluated the proposals submitted and tested the sample hardware provided by the offerors. We summarize here the agency's extensive written review of CE's proposal. The evaluation documentation includes detailed analysis of each aspect of the proposals, and that analysis closely tracks the RFP evaluation criteria.

Concerning the first evaluation criterion, the offeror's understanding of requirements, the agency noted that CE's technical proposal provides "general statements of the ability" of the proposed solution to satisfy the specification requirements instead of providing "proof of understanding through discussion of how the requirements will be fulfilled." In addition, the agency found that CE "fails to address a significant number of technical requirements, specifically the requirements related to COMSEC, DAMA implementation, software development, quality assurance, configuration management, human factors, and [test and evaluation]." The agency's overall determination was that CE's proposal's "lack of depth leads to the conclusion that [CE] does not understand the [specification] requirements."

Regarding the second evaluation criterion, feasibility of approach, the Army had concern that CE's proposed solution was not feasible, for reasons set forth in detail in the evaluation documentation. In particular, specific aspects of CE's proposed design were evaluated as not feasible, and the agency concluded that major redesign of the proposed solution would be needed.

Under the third evaluation criterion, comprehension, clarity, and adequacy of presentation, the Army concluded that CE's proposal:

"does not exhibit a complete or clear approach to addressing the . . . [s]pecification requirements. The technical approach is not addressed in a coherent and verifiable manner. Information related to the engineering approach, DAMA, software, producibility, reliability, quality assurance, and [test and evaluation] are scattered

¹The underscoring appears in the original.

throughout the proposal and discussion of important requirements omitted."

Overall, the agency concluded that CE's proposal was unacceptable under both the technical approach and the logistics factors. In addition, the Army found that CE's proposal entailed a high degree of risk under both these factors. The agency also determined that there was "a low degree of probability that [CE] can meet all technical requirements of the . . . [s]pecification within the planned production schedule." Under the technical approach factor alone, the agency found that CE's proposal contained 17 significant deficiencies and disadvantages, 13 significant omissions, and 13 significant risks.

On June 4, 1993, before conducting any discussions, the agency informed CE that its proposal was unacceptable under the technical approach and logistics factors, that discussions could not be expected to cure the proposal's significant deficiencies and omissions without a major revision of the proposal, and that CE's proposal was therefore being excluded from the competitive range. At a debriefing held on June 7, the agency detailed the basis for its evaluation of CE's proposal. This protest followed on June 18.

The determination of which proposals to include in the competitive range is a decision largely committed to the procuring agency's discretion. National Sys. Mgmt. Corp., 70 Comp. Gen. 443 (1991), 91-1 CPD ¶ 408. The Federal Acquisition Regulation (FAR) directs contracting officers to include within the competitive range "all proposals that have a reasonable chance of being selected for award" and provides that, "[w]hen there is doubt as to whether a proposal is in the competitive range, the proposal should be included." FAR § 15.609(a).

CE relies on this latter provision as a basis for its position that the Army could not properly exclude CE's proposal from the competitive range, particularly since (in CE's view) any errors were easily correctable without major revision, CE's proposal was not the highest-priced one, and the evaluation records make clear that the other proposals submitted also contained deficiencies, weaknesses, and omissions.² CE alleges that, "beneath the surface of easily correctable errors, CE's initial proposal contains

²Although the protester's counsel was permitted access to evaluation documents concerning all proposals under the terms of a protective order, our Office found that other offerors' proposals themselves were not relevant to the protest and therefore were not required to be produced. See 4 C.F.R. § 21.3(c) (1993).

the substance of a viable initial proposal which shows an in-depth understanding of the Army's . . . requirements."³ The above-quoted guidance to contracting officers contained in FAR § 15.609(a) does not by itself alter our standard of review of a proposal's exclusion from the competitive range, and for which we apply the standard used in reviewing all aspects of an agency's technical evaluation of proposals: we review the record to determine whether the agency's judgment was reasonable, supported by the record, and consistent with the applicable evaluation criteria.⁴ See Bay Tankers, Inc., 69 Comp. Gen. 403 (1990), 90-1 CPD ¶ 389; Monopole, S.A., B-252745, July 23, 1993, 93-2 CPD ¶ 51.

³The underscoring appears in the original.

⁴We will scrutinize more closely a determination that only one proposal is in the competitive range, since such a determination constitutes a decision to consider only one proposal for award, without the competition which is central to our procurement system. See Coopers & Lybrand, 66 Comp. Gen. 216 (1987), 87-1 CPD ¶ 100. That circumstance does not arise here, however, where the Army determined that more than one proposal was in the competitive range. Accordingly, this decision does not address the protests decided under that closer scrutiny. See, e.g., National Sys. Mgmt. Corp., supra.

CE points to our decision in Intertec Aviation, 69 Comp. Gen. 717 (1990), 90-2 CPD ¶ 232, as support for its suggestion that a strict standard of review applies to all competitive range determinations and, in particular, for its contention that, regardless of the number of proposals remaining in the competitive range, a protest must be sustained where a proposal was excluded from the competitive range solely on the basis of deficiencies in the proposal which could be easily corrected. CE's reliance on Intertec Aviation is misplaced, since, as explained below, the Army here reasonably concluded that the deficiencies in CE's proposal were not easily correctable through discussions. In any event, we note that, while our decision in Intertec Aviation does state that the deficiencies at issue appeared minor, it points to the overall unreasonableness of the agency's evaluation process by highlighting that the discussions conducted by the agency were legally inadequate and that some of the deficiencies for which the protester's proposal was downgraded had, in fact, already been corrected before the competitive range determination was made. We therefore found that both the evaluation and the competitive range determination based on that evaluation were improper.

CE contends that its proposal's rating of unacceptable was based on evaluator errors in reading the proposal and on minor informational deficiencies which would have been readily corrected during discussions without requiring a significant modification of the proposal. CE also alleges that the Army treated the various offerors' proposals unequally, and deviated from the RFP criteria in proposal evaluation.

Our discussion of the technical issues in this decision is confined to a general presentation of a limited number of instances. CE disputes an enormous number of specific and frequently minute points in the technical evaluation, and no useful purpose would be served by addressing every such allegation. As noted above, the agency's evaluation of CE's proposal identified a large number of what were characterized as "significant" deficiencies, disadvantages, omissions, and risks under the technical approach factor alone; in addition to challenging those ratings, CE has raised, sometimes in a cursory fashion, a host of further issues. Notwithstanding the relative brevity of the following discussion and our refraining in the discussion from disclosing proprietary or source selection information, we note that we have carefully reviewed each of CE's allegations in light of the record, and our conclusion as to each is consistent with the analysis set forth here.

Two examples demonstrate the reasonableness of the Army's evaluation of CE's proposal. In the first instance, the agency advised CE at the June 7 debriefing that the company's proposal failed to provide a particular required feature related to the EMUT's remote control and that the agency viewed this matter as a significant disadvantage. CE provided a written response, dated June 11, in which it claimed that its proposed solution did have the particular remote control feature.⁵ CE's June 11 response cited particular pages in CE's proposal and argued that the company's solution actually offered the required feature through one remote arrangement as well as an additional, alternative remote control arrangement but that "we did inadvertently omit a discussion of [the primary] remote control [arrangement]." The agency replied to CE's response with a June 18 rebuttal. In its rebuttal, the agency notes:

"[n]owhere in the proposal (including the referenced paragraphs [cited in CE's June 11 response]) is it mentioned that the proposed [solution] has two remote control options. Nowhere in the proposal is it mentioned that remote control

⁵CE did not (and does not) dispute that a significant RFP requirement was at issue.

capability is provided [as required by the RFP]. No new information provided by CE will be used in addressing this issue. The evaluation of the remote control [RFP] requirement, based on the information given in the proposal, remains unchanged."

CE prepared a surrebuttal, which was submitted to our Office on August 9, together with the protester's comments on the agency report. In that surrebuttal, CE argues:

"[t]he [fact that the remote control feature at issue was provided] was inadvertently left out of the proposal. The existing [primary remote control arrangement] does have [the required] capability and no redesign of the radio is required. The [inadequate capability] referenced by CECOM applies when [CE's additional, alternative method is used]. This additional remote capability was not a specification requirement and thus had no [feature] requirement. The [alternative remote arrangement] as an enhancement to the [RFP] requirements is identified in [particular paragraphs of the proposal].

"Our June 11 response was not correct in that the pages of the proposal referenced did not contain reference to the remote capability [required by the RFP]."⁶

The surrebuttal went on to point out that the primary remote arrangement was described in the operator's manual, which was part of the technical proposal. However, even the operator's manual does not indicate (nor does CE claim that it does) that the required feature was offered--merely that CE was planning to provide the primary remote control arrangement, under which the feature might or might not be provided. As to the issue raised in the debriefing (and in the evaluation) concerning the remote control feature, CE concedes that the feature was required and does not dispute that its proposal gives no indication that the feature would be provided. Accordingly, it is clear that the agency's evaluation in this regard was reasonable and consistent with the RFP evaluation criteria.

A second example concerns the RFP requirement that proposals use a capacitor to maintain classified encryption key data when the primary power source is interrupted (referred to as "key fill retention"), and that the capacitor not maintain the data for more than 5 minutes. The agency advises that

⁶Underscoring in the original.

the purpose of the two parts of this requirement is, on the one hand, to ensure that a backup power source is available to protect the encryption key data in case of power outage, but, on the other hand, to have the backup power cease functioning after a short time in order to avoid the data falling into the hands of unauthorized (particularly enemy) personnel.

The agency found that CE's proposal did not provide for the required capacitor. Instead, CE proposed use of a different means of key fill retention. The Army determined that this alternative means was unsatisfactory, because it would retain the classified data for more than 5 minutes after the primary power source was removed, thus exposing the data to the risk of capture by enemy personnel. After the agency advised CE of this aspect of the evaluation at the June 7 debriefing, the company addressed the issue in its June 11 response, citing particular pages of the proposal and providing the following explanation:

"The [proposed solution] actually does provide for the use of a capacitor for fill retention as well as [the additional means criticized by the agency as disadvantageous]. This [latter means] is an added feature of [CE's solution] and exceeds the requirement."⁷

The agency's June 18 rebuttal stated as follows:

"Nowhere in the proposal (including the referenced [pages]) is it mentioned that the proposed [solution] provides for the use of a capacitor for key fill retention. In addition, [CE's proposed additional means] is not an advantage [for particular technical reasons set forth here]. No new information provided by CE will be used in addressing this issue. The evaluation of the crypto key retention requirement, based on the information given in the proposal, remains unchanged."

CE's surrebuttal on this issue, provided with its comments on the agency report, was as follows, in relevant part:

"[CE] was very much aware of the requirement to use a capacitor for fill retention. . . . The fill capacitor was always planned for [CE's

⁷Underscoring in the original.

solution). However[,] the discussion on the subject was inadvertently left out of the proposal. No redesign of the radio is necessary."

In this example, as well, the protester does not dispute that the agency is concerned about an RFP requirement, nor does it contend that the requirement is not significant. It does not respond to the agency's argument that a proposal relying solely on the means described in CE's proposal would be disadvantageous to the agency. Further, the protester now concedes that, notwithstanding its June 11 reference to particular pages of its proposal, there was no indication in the proposal (whether in the body of the technical proposal, the operator's manual, or elsewhere) that CE intended to provide a capacitor for key fill retention. Accordingly, the agency had a reasonable basis for its finding that CE's proposal was relying on an alternative, disadvantageous means for key fill retention, and that the proposal failed to satisfy the RFP specification requirement that a capacitor be provided for this purpose.

CE's rejoinder is that these and other matters which led the agency to conclude that the protester's proposal was technically unacceptable were simple informational deficiencies, easily remediable through discussions, without the need for a major rewriting of the proposal.⁸ Our review of the record confirms that, at least as to a significant number of deficiencies identified by the Army, the agency had a reasonable basis to conclude that CE's technical approach (rather than merely the brevity of the discussion of that approach) was unacceptable and presented a substantial performance risk.

In this regard, we note that, while it is sometimes self-evident that a mere informational gap underlies a problem, cf. American Dev. Corp., B-251876.4, July 12, 1993, 93-1 CPD ¶ ____, this is not the case where a proposal fails to provide required features and instead describes lesser, unsatisfactory alternatives. The failure of a reference to

⁸In this regard, CE points to the language in Section L-19 advising offerors that proposals were to be confined to essential matters. CE contends that this section justifies the lack of detail in the company's proposal. This argument cannot be used as a reasonable explanation for CE's failure to mention required features in its proposal, particularly in light of the Section L provision permitting the technical proposals to contain up to 400 pages and the Section M evaluation criterion advising offerors that proposals "must fully and clearly present, explain, and justify the recommended approach and demonstrate compliance with all the requirements of the [RFP]."

the required capacitor for key fill retention illustrates the distinction: the Army did not identify this problem in the list of omissions, but rather as one of the disadvantages. The agency reasonably understood the proposal to mean that CE was relying on the alternative means of key fill retention, which the agency viewed as unsatisfactory, rather than on the required means, which was not detailed or even mentioned in the proposal. The agency had no way knowing that the offeror had inadvertently neglected to mention the capacitor in its proposal, and the agency could reasonably infer that adding the capacitor would involve significant redesign.

As the two examples set forth above illustrate, CE does not dispute that the problems which the Army identified in CE's proposal were legitimate in that their identification was consistent with the RFP evaluation criteria. CE also does not deny that, if the deficiencies identified in its proposal had been caused by the absence of the required features in CE's solution rather than simply the inadvertent failure to address the requirements in the proposal, the deficiencies would indeed be technically significant.

CE's "fallback" position is that other offerors' proposals were also identified as having weaknesses and deficiencies. The agency does not deny that this is so, and it is confirmed by the evaluation documentation. The question, however, is not whether other proposals contained any flaws; rather, it is whether the other proposals' problems were so grave that the agency was required to find those proposals technically unacceptable, or indistinguishable in terms of technical merit from CE's. The judgment regarding the relative importance of proposals' strengths and weaknesses is an integral part of proposal evaluation, and, as noted above, we review that judgment solely to ensure that it was reasonable and consistent with the RFP criteria. Within those limits, the Army was free to conclude that problems in CE's proposal rendered it technically unacceptable, while the competing proposals were acceptable (or susceptible of being made so through discussions). Although CE's counsel was provided a copy of evaluation documentation regarding all proposals, the protester has failed to show either unreasonableness or any other impropriety in the agency's conclusion that CE's proposal's weaknesses were more serious than those of competing proposals.

We note in this regard that CE's protest initially suggested that deficiencies in its proposal must be shared by other proposals, thus rendering unfair the agency's conclusion

that the deficiencies caused only CE's proposal to be technically unacceptable. The initial protest argued that,

"based upon CE's understanding of the stage of development of the . . . technology required, CE believes that a number of the alleged deficiencies relating to [specific technical requirements] are found in its competitors' proposals."

This statement could be read as an allegation that the offerors were not treated equally. Accordingly, our Office advised the protester, during a conference call in which the agency also participated, that this general allegation needed to be presented in terms of one or more specific technical requirements, if, in fact, CE was arguing that the state of technology meant that deficiencies found in CE's proposal must have been found in other offerors' proposals as well. CE failed to offer any specific instance to support its initial general allegation, which itself was not mentioned in the protester's comments on the agency report.⁹

Finally, CE argues that the Army ignored the results of the sample hardware tests. CE contends that "[n]o offeror's radio performed appreciably better than the other." In CE's view, the less than perfect performance of the other offerors' hardware should have led the Army to discount those offerors' claims concerning the capabilities of their hardware.

⁹Instead, CE's response was that it needed access to the competitors' proposals in order to support its position of unequal treatment. (As noted above, our Office found that those other proposals were not relevant to the protest.) CE's response is both unreasonable and inconsistent with its allegation. If CE believes that, due to the state of technology, no offeror could avoid certain deficiencies for which it was criticized, it is required to identify those deficiencies--which CE declined to do. If CE had done so, it could have submitted evidence (in the form of, for example, excerpts from professional literature or an affidavit from a person knowledgeable in the field) supporting the claim that no company could avoid the deficiencies for which CE's proposal was criticized. If CE had identified the specific technical areas at issue and if it had submitted such evidence to support its position, our Office could have considering introducing the competing proposals into the record to determine whether, in fact, they shared CE's proposal's deficiencies in those specific areas.

CE's allegation that no offeror's radio performed appreciably better than the others' is contradicted by the record, which carefully details the difference in performance and makes clear that CE's sample hardware's performance was weaker than any of the other offerors'. While it is true that no offeror's hardware was capable of providing all of the desired results, the agency notes (and CE does not dispute) that the sample tests were not a pass/fail requirement. Our review of the record confirms that the agency used the sample hardware tests, as provided for in the RFP, "to determine the degree of reliance that the [g]overnment will place on the [offerors'] written proposal." Specifically, where hardware tests indicated a lack of capability to perform certain functions, the evaluation took that into account in determining the extent to which claims made in the written proposals could be seen as realizable without risk. Accordingly, CE's allegations concerning the use of the sample test results are unsupported by the record, which indicates that the Army evaluated the proposals reasonably.

In sum, the record does not indicate that the Army treated offerors unequally in the evaluation of proposals, misread CE's proposal, found CE's proposal technically unacceptable on the basis of minor informational gaps which were self-evidently remediable through discussions, or deviated from the RFP evaluation criteria. The agency had a reasonable basis for finding CE's proposal technically unacceptable, and the subsequent determination to exclude CE's proposal from the competitive range was reasonable and consistent with the RFP evaluation criteria. While CE plainly disagrees with the agency's technical judgment, that disagreement alone does not demonstrate that the agency's exclusion of CE's proposal from the competitive range was unreasonable or otherwise improper. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450.

The protest is denied.



James F. Hinchman
General Counsel