

Matter of: Motorola, Inc.
File: B-254489; B-254489.2
Date: December 15, 1993

Thomas P. Barletta, Esq., and Clifford E. Greenblatt, Esq., Steptoe & Johnson, for the protester.
David V. Anthony, Esq., and Mark A. Riordan, Esq., Pettit & Martin, for GTE Government Systems Corporation, an interested party.
Craig E. Hodge, Esq., and Cruz Febres-Ferrer, Esq., Department of the Army, for the agency.
Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. In determining whether a contracting agency's evaluation and selection decision is supportable, the General Accounting Office will accord greater weight to contemporaneous evaluation and source selection documents rather than documents prepared in response to protest allegations, especially where allegations and statements contained in contracting officer's after-the-fact protest document is wholly inconsistent with the evaluation and procurement record.
2. Agencies are required to discuss weaknesses, excesses, and deficiencies in an offeror's proposal where the weaknesses have a significant adverse impact on the proposal's technical rating; discussions need not address every area in which a proposal receives less than a perfect score, and the need for meaningful discussions may be constrained to avoid technical leveling, technical transfusion, and an auction.
3. The evaluation of proposals is primarily within the discretion of the procuring agency. Consequently, the General Accounting Office will not make an independent determination of the merits of offers; rather, our Office will examine the agency evaluation to ensure that it was reasonable and consistent with the stated evaluation factors.

4. Contracting agency is not required to conduct an in-depth analysis or to verify each item in conducting a cost realism analysis.

DECISION

Motorola, Inc. protests the award of a cost-plus-fixed-fee contract to GTE Government Systems Corporation under request for proposals (RFP) No. DAAB07-93-R-B252, issued by the Department of the Army Communications and Electronics Command for a secure communications system identified as the Army Secure Tactical Initiative (ASTI), Tactical End-to-End Encryption Device (TEED). Motorola principally contends that the agency failed to conduct meaningful discussions; that the agency miscalculated its proposal; and that the agency failed to conduct a proper cost/technical trade-off.

We deny the protest.

BACKGROUND

The requirement was for the research, design, development, production, and support of 18 multi-level security systems, including operational software and spares within a period of 26 months. An option for an additional 18 units was required. The agency's intent was to research techniques and devices to secure Army transmissions of classified data between computers deployed in a tactical battlefield environment. The device to be procured, ASTI-TEED, is an Information Security (INFOSEC) device which, in turn, relies on a Communications Security (COMSEC) device embedded in its chassis to perform security functions.² The ASTI-TEED is

¹Motorola filed an initial protest on August 13, 1993. After receipt of the report, Motorola filed comments which raised new issues and which we treated as a subsequently-filed protest. We received a second report from the Army, and Motorola also filed comments on that report. The issues discussed in this decision are those that remain after the final set of filings from the parties on the second protest. See Contract Servs., Inc., B-251761.4, July 20, 1993, 93-2 CPD ¶ 40; Kaiserslautern Maintenance Group, B-240067, Oct. 12, 1990, 90-2 CPD ¶ 288.

²The National Security Agency (NSA) has the national charter to develop and provide guidance to Department of Defense (DOD) services on COMSEC techniques, architecture and technology. NSA has designated its program to research secure computer communications as the Secure Data Networks Standards (SDNS), which represents NSA's approach to providing INFOSEC to the services.

required to provide the agency with an encryption device that will support the end-to-end secure transfer of classified information.³ The ASTI-TEED was required to operate in the Army's MSE packet switched network (MPN) which, according to the agency, is the only military communications network in which the ASTI-TEED could be used in the tactical Army since it is the only network currently in the field.

The RFP was issued on December 1, 1992.⁴ The RFP advised that award would be made on the basis of the "best overall" proposal in terms of technical, cost, and management. Technical was the most important factor and was of greater weight than the two other factors combined. Of the two remaining factors, cost was afforded greater weight than management. The RFP further advised offerors that to be eligible for award, a rating of no less than "acceptable" had to be achieved in each factor.⁵ The technical and management factors contained several subfactors. Specifically, the technical factor contained four subfactors: (1) technical approach (the most important subfactor); (2) personnel; (3) facilities and materials; and (4) engineering manhours. The management factor also contained four subfactors: (1) past performance (the most important subfactor); (2) management techniques and controls; (3) project structure; and (4) technology transfer/insertion. The RFP also contained specific evaluation methodologies that the agency intended to employ. For example, under technical approach, the RFP stated that the agency would evaluate feasibility of approach, understanding of problems, completeness, and design.

³"End-to-end" refers to the transmission of data from a sending user to a receiving user. Each user must have an ASTI-TEED to permit transmission and receipt of secure data.

⁴Prior to the issuance of the solicitation, NSA had conducted a market investigation and had extensive discussion with industry to identify those firms that had the technical expertise to participate in this SDNS research activity. NSA identified 12 contractors with appropriate qualifications and expertise; the agency subsequently identified two additional sources. The RFP here solicited only these 14 sources, including Motorola and GTE.

⁵Under the agency's evaluation plan, each proposal was rated in only one of four possible categories: "superior," "acceptable," "susceptible to being made acceptable," and "unacceptable." Point scoring was not done.

Concerning cost, the RFP stated that the government's concern was to evaluate the prospective contractor's understanding of the project and its ability to organize and perform the proposed contract within its proposed cost. The RFP stated that the realism of the offeror's proposed costs in relation to the offeror's specific technical approach would be evaluated. Finally, the RFP also stated that "if a corporat[e] policy decision [is] made to absorb a portion of the estimated cost, that should be stated in the proposal."

On February 4, 1993, five offerors, including Motorola and GTE, submitted proposals.⁶ Upon completion of the initial evaluation by the agency's source selection evaluation team, the ratings and proposed costs were as follows:

| <u>OFFEROR</u> | <u>TECHNICAL FACTOR</u> | <u>MANAGEMENT FACTOR</u> | <u>PROPOSED COST AND FEE</u> |
|----------------|-----------------------------|------------------------------|----------------------------------|
| GTE | Superior | Superior | \$2,098,825 ⁷ |
| Offeror A | Acceptable | Acceptable | 2,093,917 |
| Offeror B | Susceptible | Acceptable | 2,088,482 |
| Motorola | Susceptible | Susceptible | 1,790,680 |
| Offeror C | Susceptible | Susceptible | 2,837,125 |

The ratings were supported by detailed narrative technical findings by the evaluation team of the strengths and weaknesses of each offeror's proposal in each evaluation area.

The agency determined that all offerors were within the competitive range. The agency then conducted discussions by sending items for negotiations (IFN) to the offerors. Specifically, the first set of IFNs were sent by letter dated April 29, 1993; the evaluation of responses from offerors was completed on May 26. The evaluation team again rated GTE's proposal as superior in the technical and management areas and also rated all remaining offerors as acceptable in these two areas.

⁶The proposals of the offerors and the evaluation record contains highly proprietary information concerning very complex technical matters. This proprietary information was provided to the parties under a protective order. Because we are issuing this decision on an unrestricted basis, our discussion of the technical issues will be general and limited in scope to protect the parties' proprietary data.

⁷This total dollar amount for GTE, as well as amounts subsequently shown for GTE in this decision, reflects a cost sharing reduction of \$1,286,376 which GTE offered pursuant to a corporate decision to absorb a portion of the estimated costs as explained in its proposal.

A second set of IFNs was sent to all offerors on June 16. After evaluation of responses, the agency requested best and final offers (BAFO) which were received on July 19. The final ratings and evaluated costs were as follows:

| <u>OFFEROR</u> | <u>TECHNICAL FACTOR</u> | <u>MANAGEMENT FACTOR</u> | <u>EVALUATED FEE COST AND FEE</u> |
|----------------|-----------------------------|------------------------------|---------------------------------------|
| GTE | Superior | Superior | \$2,098,825 |
| Offeror A | Acceptable | Acceptable | 2,056,194 |
| Offeror B | Acceptable | Acceptable | 2,088,482 |
| Motorola | Acceptable | Acceptable | 1,776,902 |
| Offeror C | Acceptable | Acceptable | 1,998,131 |

Based on this final evaluation by the agency's evaluation team, the contracting officer, acting as the source selection authority (SSA), determined that award should be made to GTE whose proposal was found to represent the best value to the government. GTE was awarded the contract, and this protest followed.

INITIAL PROTEST AND AGENCY RESPONSE

Motorola initially filed what was essentially a "blind" protest, asserting on the basis of "information and belief" that the agency miscalculated proposals, that the discussions were inadequate (cursory allegation with no specifics), and that the agency's selection decision was flawed. Motorola stated that it was a very experienced contractor in encryption systems, that it offered to modify a proven system already developed which would expedite NSA certification for its modified system, and that it thus offered an "extremely low-cost, low-risk solution to the development of the security equipment." Without asserting any specific flaws in the technical evaluation by the agency, Motorola essentially argued that in view of its proposed technical approach, and its expertise, its proposal offered the best value to the government and should have been selected for award.

After the protective order was issued by our Office, the agency, in its report, furnished the protester with competitive proposals, all contemporaneous evaluation and source selection documents, all relevant IFNs and responses thereto--in short, the entire relevant procurement record. In addition, the contracting officer, under his signature, submitted a "Contracting Officer's Statement," prepared solely for purposes of this protest, which, as explained below, can reasonably be characterized as an after-the-fact litigation document which contained numerous unsupported allegations of inadequacies of the protester's proposal. Specifically, this protest document purportedly identified numerous alleged shortcomings, weaknesses, and deficiencies

in the protester's proposal that, in fact, were never identified, recognized or considered by the agency's evaluation team as being deficiencies during the evaluation process.⁶ Motorola then filed what amounted to a detailed supplemental protest based largely on the contracting officer's narrative protest statement, in isolation from the contemporaneous procurement record. We will examine these issues in turn.

MEANINGFUL DISCUSSIONS

Motorola's basic technical approach was to adapt an existing NSA-endorsed end-to-end COMSEC device (designated as the Network Encryption System (NES)) to the tactical environment by modifying and repackaging it to a more compact form, and by making changes to its software. Motorola believed that it could make these changes without going through a complete recertification process by the NSA for its product. During discussions, Motorola received six IFNs and answered them to the satisfaction of the evaluators who rated its proposal as fully acceptable.

Upon receipt of the contracting officer's protest statement, Motorola for the first time alleged that the Army failed to conduct meaningful discussions which was largely based on the assertions of weaknesses or deficiencies by the contracting officer: (1) Motorola's proposed product would require complete "certification from scratch" by NSA; (2) Motorola's product would require "a complete redesign from the ground up"; (3) Motorola's plan to use certain computer chips to downsize its product was faulty; (4) Motorola's proposed product had various physical and operational "tactical deficiencies"; (5) the cost of Motorola's proposed unit could be too high; (6) Motorola's proposal of a shorter contract schedule was faulty; and (7) there would be maintenance and repair problems from Motorola's use of its modified product. As stated above, these allegations by the protester are mostly based on the contracting officer's protest document which, in turn, has no factual basis in the contemporaneous procurement record.

⁶The Army subsequently explained that the contracting officer's statement was simply a protest filing in response to Motorola's original protest narrative in which Motorola "went to great lengths extolling only the positive characteristics of [its] device." The Army further states that the "government, in response, was compelled to point out . . . shortcomings of the device, [and the contracting officer's statement was] taken out of context [by the protester]." The protester has subsequently disagreed with the Army's suggestion that "it did not really mean what it said in its earlier agency report."

While we consider the entire record, including statements and arguments made in response to a protest, in determining whether an agency's evaluation and selection decision are supportable, see Burnside-Ott Aviation Training Center, Inc.; Reflectone Training Sys., Inc., B-233113; B-233113.2, Feb. 15, 1989, 89-1 CPD ¶ 158, we accord greater weight to contemporaneous evaluation and source selection documents rather than documents which were prepared in response to protest allegations. See DynCorp, 71 Comp. Gen. 129 (1991), 91-1 CPD ¶ 575.

Here, the contemporaneous record throughout the procurement process shows that the evaluation of initial proposals, the conduct and scope of discussions, and the evaluation of responses to IFNs and BAFOs were well documented with technical narratives justifying the agency's comparative evaluation of proposals which, except as stated below, the protester essentially has not challenged. Rather, the protester, in requesting that we overturn the evaluation and selection results, has seized on an isolated document prepared after the award and after the protest was filed. It would invalidate the procurement through repudiation of the contemporaneous procurement file in favor of an isolated, post-facto, document prepared in response to the protest. We decline to do so. We think the contracting officer's statement was unfortunate in that it exaggerated or identified alleged weaknesses which played no part in the evaluation and selection process. In view of the extensively documented procurement record, we do not find the contracting officer's post-facto statement sufficiently credible to disturb the evaluation and selection results solely on that basis. Accordingly, we will discuss issues concerning alleged lack of meaningful discussions and other protest grounds only so far as they have some basis in the evaluation record or other contemporaneous documents, apart from the contracting officer's later allegations.

Agencies are required to discuss weaknesses, excesses, and deficiencies in an offeror's proposal where the weaknesses have a significant adverse impact on the proposal's technical rating, although discussions need not address every area in which a proposal receives less than a perfect score, and the need for meaningful discussions may be constrained to avoid technical leveling, technical transfusion, or an auction. See American Dev. Corp., B-251876.4, July 12, 1993, 93-2 CPD ¶ 49.

Motorola argues that the Army should have raised a concern regarding the perceived need for recertification of the NES with NSA. Motorola relies on individual evaluator notes which allegedly demonstrate that the Army knew about this concern during evaluation. However, although the evaluators' notes contain lengthy narratives concerning the

strengths and weaknesses of the various proposals, there is only a brief, one sentence mention (in passing) of a possible need for recertification of the NES but only for a specific function ("red to black bypass and the registration processes changes"). When the evaluators notes are read in their entirety, it is clear that this issue was not considered significant by the evaluators.

Motorola also argues that the Army should have stated its perception that Motorola would have to completely redesign its NES to meet ASTI-TEED requirements. In support of this argument, the protester makes a general reference to the initial evaluation documents as a whole. However, nowhere in these documents is any conclusion, determination or suggestion that the Army believed a complete redesign of the NES was necessary.

Motorola next argues that the Army failed to discuss its concerns as to "how [its] device would operate in the Army's MPN [and its] effect on the MPN." MPN is a tactical voice and data communications system; the requirement which distinguishes the ASTI-TEED from existing end-to-end encryption devices is the requirement that it function in a mobile, tactical environment, including a requirement for rapid deployment and dynamic network reconfiguration. The Army sent Motorola IFN No. 2, which asked Motorola "[w]hat effect will offeror's proposed device have on the MPN?" IFN No. 3 asked Motorola "[w]hat upgrades to NES are being made, other tha[n] to operate in MPN [?]" While the protester believes that these questions were too "general," especially with respect to certain design questions, we think the agency reasonably led Motorola into the area of concern. This is especially true since Motorola is one of the most experienced and expert contractors in this technical field.⁹ We therefore deny this protest ground.

⁹We note that Motorola also complains about lack of discussions concerning another "tactical" weakness of its device concerning its physical characteristics. While the evaluators did express concern about the weight and power consumption of the proposed unit, the record does not suggest that failure to discuss these concerns had any significant effect on the protester's technical ratings. The evaluators found Motorola's technical approach to be fully acceptable, and nothing in the record suggests that Motorola would have earned a superior rating in this technical area but for lack of discussions about weight and power consumption of the unit.

TECHNICAL EVALUATION

Motorola argues that the agency's evaluation gave undue weight ("dispositive" weight) to the Motorola device's interface with the MPN, contrary to the terms of the solicitation. Motorola complains that the Army downgraded its proposal for MPN issues under all three relevant areas of technical approach: feasibility of approach--"Narration of MSE Packet Network Not In Depth"; understanding of the problem--"Terse Description of File and E-Mail Service on MPN"; and completeness--"Did Not Describe Details of Motorola Products or Their Applicability to MPN." In short, Motorola complains that the Army gave "disproportionate emphasis" to this requirement. We reject this argument.

The evaluation of proposals is primarily within the discretion of the procuring agency. Consequently, we will not make an independent determination of the merits of offers; rather, we will examine the agency evaluation to ensure that it was reasonable and consistent with the stated evaluation factors. See Buffalo Central Terminal, Ltd., B-241210, Jan. 29, 1991, 91-1 CPD ¶ 82.

Section M-3 of the solicitation notified offerors that technical approach was the most important subfactor under the most heavily-weighted evaluation factor: technical. The solicitation's description of the technical approach subfactor advised potential offerors that their technical proposals should address the network demonstration issues outlined in Annex 1 to the ASTI-TEED purchase description. The first three interoperability modes identified in Annex 1 are expressly concerned with the MPN. Moreover, a reasonable reading of the remainder of the purchase description, with its numerous recurring references to the MPN, demonstrates the significant and importance of the MPN issues. In any event, the primacy of the ASTI-TEED use in the MPN was obvious to any contractor since the only network that the tactical Army has in the field that could use an ASTI-TEED device is the MPN. Thus, we also deny this protest ground.¹⁰

¹⁰Motorola also complains that by giving MPN interface "dispositive weight," the Army failed to give appropriate weight to its use of low risk, proven devices, ease of NSA certification, and modularity. However, our review of the record shows that these arguments amount to a disagreement with the evaluator as to how much weight the agency should have given certain technical features. Stated differently, the record shows that the evaluators did consider these features of the protester's product but did not give them as much weight as the protester would have liked.

(continued...)

Motorola next complains that at the debriefing, it was told that it received credit for its previous development of NES and associated hardware and software, but only in the subfactor, past performance, which is in the management factor, the least important evaluation factor. The record shows that the evaluators rated Motorola's past experience as "superior" (the highest possible rating), under the past performance subfactor as specified in Section M of the solicitation. Additionally, contrary to the protester's assertion, its NES and other relevant experience enhanced the evaluation of its proposal under technical approach where it received an acceptable rating. Nevertheless, as the agency states, a "repackaged NES device was not judged a unique or innovative approach" to warrant a superior rating under that subfactor. Nothing in the record shows otherwise.

COST EVALUATION

Motorola stated in its initial protest that the award to GTE suggested that the Army failed to conduct a proper cost evaluation, including an appropriate analysis of the realism of the offerors' costs. In its agency report, the Army explained that a cost analysis was conducted, including a cost realism analysis. The Army further explained that while GTE's proposed costs were \$3,385,201, these proposed costs included a fixed-fee reduction and a cost sharing of 38 percent which reduced the final cost to \$2,098,825 (which was within the government's estimate). The Army, in its report, forwarded the cost analysis documents and GTE's cost proposal to the protester's counsel under a protective order which our Office issued.

In its comments on the agency report, Motorola generally argued that the Army failed to conduct a proper cost realism analysis because the contracting officer did not consider all of the offerors' proposed costs; did not obtain a Defense Contract Audit Agency (DCAA) audit of material, subcontract, and other direct costs due to unspecified "time constraints"; and did not adequately document the nature, scope or results of its review of proposed labor hours for GTE.

¹⁰ (...continued)

Additionally, the protester again argues that the contracting officer's protest statement contains exaggerated allegations of deficiencies which are not reasonable, rational evaluation findings, or consistent with the terms of the solicitation. We agree. However, as we have already explained, we are disregarding this document in favor of the contemporaneous evaluation and procurement record.

The record shows that the Army used cost analysis techniques and a comparison of offerors' costs to the government's estimates in order to analyze the cost realism of each proposal. The analysis included a review of labor hours, direct labor rates and indirect cost rates. In reviewing GTE's direct labor rates, the agency compared GTE's proposed rates (prime and interdivisional) to DCAA's latest recommended rates and found no major discrepancies. The agency performed an evaluation of proposed labor hours based on the contractor's technical approach, which resulted in no exception to the proposed hours. Concerning indirect expenses, the agency compared indirect expense rates/cost of money factors to DCAA's latest recommended indirect expense rates/cost of money factors and again found no major discrepancies. The contracting officer elected to waive a full DCAA audit due to time constraints (apparently the agency desired to make an early award).

An agency is not required to conduct an in-depth analysis or to verify each element in conducting a cost realism analysis. PRC/VSE Assocs. Joint Venture, B-240160 et al., Oct. 30, 1990, 90-2 CPD ¶ 348. While DCAA audits can be of assistance to a contracting officer in evaluating proposed costs, they are advisory in nature and, therefore, are not required for a proper cost analysis. Electronic Warfare Integration Network, E-2358143, Oct. 16, 1989, 89-2 CPD ¶ 356.

While the cost realism analysis was not in-depth or comprehensive, the protester has not called into question any element or elements of GTE's estimated costs. While Motorola has had access to the cost and technical proposals submitted by GTE, it has not suggested where GTE failed to propose any specific effort or materials required by the statement of work or otherwise misstated or failed to include costs for the required effort. The protester has not shown that the labor hours or labor rates proposed by GTE for any aspect of its proposed technical approach were understated. On this record, we cannot conclude that the agency misevaluated the cost proposal of GTE. See Allied-Signal Aerospace Co., Bendix Communications Div., B-249214.4, Jan. 29, 1993, 93-1 CPD ¶ 109.

COST/TECHNICAL TRADE-OFF

Finally, Motorola argues that the agency failed to conduct a proper cost/technical trade-off. Motorola first made this allegation in its initial protest based on a misunderstanding that the contract had been awarded to GTE for a cost-plus-fixed-fee of approximately \$3.4 million (that is, without accounting for GTE's cost sharing reduction in its proposal). Motorola repeated this allegation in its comments based on its claim that during

the debriefing, "[t]he contracting officer stated that there was no cost/technical tradeoff conducted here and that the award was based on technical superiority only."

In response, the Army explains as follows:

"What was said at the debriefing was that, since Motorola's cost was lower by only approximately 18 percent and since GTE had a technically superior proposal, there was no need to conduct a formal trade-off involving percentages etc., since there was a Superior proposal with relatively little cost difference and the RFP stated that technical was more important than all other factors combined."

The record supports the agency's position. The agency here made a rational (albeit informal) trade-off decision by considering the fact that although GTE's proposed costs were higher than the other offerors, GTE's technical and management proposals were uniquely rated superior. (Motorola has not questioned GTE's final superior rating.) We therefore find nothing in the record to question the agency's determination that GTE's proposal represented the best value to the government.

The protest is denied.

James F. Hinchman
General Counsel