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Comptroller General
of the United States

Washington, D.C. 20548

337114

REDACTED VERSION*

Decision

Matter of: Cubic Communications, Inc.

File: B-254860.2

Date: March 22, 1994

Rand L. Allen, Esq., Matthew S. Simchak, Esq., and James J. Gildea, Esq., Wiley, Rein & Fielding, for the protester.
Paul Shnitzer, Esq., and Devorah S. Mayman, Esq., Crowell & Moring, for Harris Corporation, an interested party.
Andrei Kushnir, Esq., and Sumari Stamps-Henderson, Esq., Department of the Navy, for the agency.
Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Challenge to adequacy of discussions is denied where the agency pointed out technical deficiencies in the protester's proposal and provided offerors the opportunity to revise their offers. While agency did not point out weaknesses in offerors' management proposals, the protester was not prejudiced by the failure to hold discussions in this area, since it affected both offerors and even if the protester was given all possible points for management, the record shows that the selection decision would not have changed.

2. Argument that agency improperly evaluated technical proposals is denied where the record shows that the evaluation was reasonable and in accordance with the stated evaluation criteria, and where the protester fails to show that the agency's conclusions were unreasonable or that offerors were treated disparately.

3. Protest of decision to award to higher-priced, higher technically evaluated offeror is denied where the solicitation provided for award to offeror whose proposal was determined most advantageous to the government and

*The decision issued on March 22, 1994, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[deleted]."

where agency made a reasonable determination that the technical superiority and lower risk of the awardee's proposal outweighed the protester's lower price.

DECISION

Cubic Communications, Inc. protests the award of a contract to Harris Corporation under request for proposals (RFP) No. N00039-92-R-0016(Q), issued by the Department of the Navy for the production of AN/URR-79 radio receivers. Cubic argues that the Navy failed to conduct meaningful discussions, improperly evaluated its proposal, and unreasonably selected Harris for award despite Harris's higher price.[1]

We deny the protest.

BACKGROUND

The RFP, issued on February 27, 1992, contemplated the award of a firm, fixed-price contract for the production of 100 receivers including requirements for: installation and spares; first article testing; training; on call engineering services; technical data; and options for additional receivers, spares, and technical data. Offerors were encouraged to propose non-developmental items (NDI) or partial NDI alternatives to satisfy the Navy's requirements. The RFP notified vendors that innovative, creative, or cost-saving proposals that met or exceeded the RFP requirements were encouraged. The RFP required offerors to describe their intended procedures to assess and manage technical risk. To the extent offerors planned to use new concepts, processes, and components to accomplish efforts not previously accomplished, the RFP required the offerors to describe the associated risk or rationale for why such new concepts, processes, or components did not constitute a risk.

The RFP stated that award would be made to the offeror whose proposal was considered most advantageous to the government, price and other factors considered. The RFP listed the following evaluation criteria--technical, management, and

[1]Cubic initially also argued that Harris's proposed equipment did not meet certain minimum RFP requirements. The Navy responded to these allegations in its report, explaining that Harris's equipment was fully compliant with the specifications. Cubic offered no further argument or evidence in support of its contentions, and thus we find the firm has abandoned this issue. See The Big Picture Co., Inc., B-220859.2, Mar. 4, 1986, 86-1 CPD ¶ 218.

price. The RFP provided that technical was substantially more important than management and that price would be evaluated against the overall technical/management score to determine the proposal most advantageous to the government. The RFP set forth the following factors and subfactors for the technical and management proposals, with the subfactors for technical listed in descending order of importance and management subfactors being of equal importance:

TECHNICAL PROPOSAL

a. Compliance with Specification.
b. Degree of Technical Risk.[2]
c. Compliance with Statement of Work.
d. Compliance with Technical Data Requirements.

MANAGEMENT PROPOSAL

a. Personnel--overall technical competence.

b. Management--level of management effort (capability) appropriate to the program.

c. Delivery schedule--shall be based upon a specific set of milestones that will culminate in timely performance.

d. Record of Past Performance--contract history and offeror's self assessment.

e. Facilities--production capability including ability to meet required delivery schedule and quality assurance.

Price was to be evaluated to determine whether it was reasonable and realistic for the technical/management approach offered. The RFP also provided for testing of the equipment after initial evaluation.

On June 16, 1992, four offerors, including Cubic and Harris, submitted proposals. The technical evaluation board (TEB) performed an initial evaluation to determine compliance with solicitation requirements. The purpose of the preliminary review was to determine which offerors appeared to meet the specifications with either little or no modification to their equipment. Those offerors whose proposals satisfied

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[2]Technical risk was to be evaluated for any equipment modifications necessary to meet requirements. Offerors were to demonstrate that if modifications were required, those modifications could and would be made without adversely impacting schedule or performance.

the preliminary review requirements were required to submit for testing the equipment the offerors intended to supply to the government. The initial TEB review determined that Harris's and Cubic's proposals complied with the RFP requirements and recommended to the contract award review panel (CARP) that Cubic and Harris be requested to submit their equipment for testing.

[deleted] with only minor modifications. Harris proposed a proven design with components which are part of Harris's existing inventory. Harris demonstrated its successful performance on a virtually identical requirement and noted that it had existing facilities and personnel to perform the contract. The TEB's initial review indicated that Harris appeared to meet the specification requirements and took no exceptions. The TEB also concluded that Harris appeared to satisfy the management requirements. Harris's proposal addressed the technical risk associated with its modified equipment and the techniques to be applied to managing that risk. Harris provided a plan in its proposal that discussed Harris's manufacturing process, risk control management resources availability, and its current suppliers.

[deleted] Cubic made some modifications to the basic design to meet the RFP requirements. Cubic's proposal addressed past performance, availability of resources, and the proposed modifications to the equipment. Cubic provided a brief statement discussing technical risk and its proposed actions to reduce risk. Cubic stated that its proposed approach offered minimal or zero risk. Cubic's proposal did take exception to several specifications.

The Harris and Cubic equipment was delivered to the Naval Command, Control and Ocean Surveillance Center (NCCOSC), San Diego on October 14 for testing.[3] As a result of the testing, the Navy found several deficiencies in Cubic's equipment, including the failure to meet specification requirements such as receiver sensitivity for required frequencies and front end intermodulation (tuning to signal

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[3]The RFP required offerors to submit test data and results with the proposals. Cubic did not submit test data with its proposal and stated that it would not have equipment available for testing until approximately 60 days after proposal submission. Cubic also informed the CARP that the required test data would not be available until after November 13. The CARP decided that Cubic should still be requested to submit its equipment for government testing, but that the late contractor test data/results, if provided, would not be considered.

capability). In order to achieve acceptability in these deficient areas, Cubic proposed the following modifications to its equipment: [deleted] The results of this evaluation were as follows:[4]

	CUBIC Point Score	Weighted Score	HARRIS Point Score	Weighted Score
Specification	[deleted]			
Technical Risk				
SOW				
Technical Data				
Personnel				
Management				
Delivery Schedule				
Past Performance				
Facilities				
Total				

The CARP reviewed the results of the equipment demonstration, the TEB evaluations, the weighted technical score of each offeror, and the price proposals.[5] Based on the TEB's findings, the CARP determined that Cubic's proposal was susceptible to being made acceptable and that Harris's proposal was acceptable. The CARP recommended that both offerors be included in the competitive range.

Questions were forwarded to Cubic and Harris concerning deficiencies in their proposals. Cubic was asked 108 questions concerning its technical proposal and 3 regarding price. Harris was asked 54 technical questions

[4]The following rating system was used by the evaluators: [deleted]

[5]Each offeror's price was considered to be reasonable and realistic. Neither offeror provided a price for a government-use license and thus a life-cycle support adjustment was calculated for each offeror's price in accordance with the RFP and added to the offers.

and 3 price questions. Both offerors responded by April 21, 1993. The TEB reevaluated and rescored the proposals and determined that Cubic's proposal was acceptable. After discussions, the scores were as follows:

	CUBIC Point Score	Weighted Score	HARRIS Point Score	Weighted Score
Specification	[deleted]			
Technical Risk				
SOW				
Technical Data				
Personnel				
Management				
Delivery Schedule				
Past Performance				
Facilities				
Total				

Best and final offers (BAFO) were requested from both offerors and were received on June 7. After receipt of BAFOs, the CARP reviewed the weighted technical and management scores and noted that Harris's technical score was [deleted] higher than Cubic's and that Harris's management score was [deleted] higher than Cubic. Harris's combined score was [deleted] higher than Cubic's. The CARP agreed that first article testing would not be required from Harris, since its proposed receivers had been produced and delivered to the Navy within the past year. Harris's price was $21,151,245; Cubic's price was [deleted]. The CARP concluded that following discussions, all weak points had been eliminated from the Harris proposal while Cubic's proposal still indicated noncompliance with certain specifications. Cubic also failed to adequately clarify issues raised in the discussion questions, such as concerns about electromagnetic interference. Harris was determined to have submitted the superior proposal. The CARP considered the difference in technical/management scores and price, and determined that the difference in technical/management scores was significant and outweighed the price differential. The CARP concluded that award to Harris would be most advantageous to the government. The source selection authority (SSA) concurred and award was made to Harris on September 2. This protest followed.

MEANINGFUL DISCUSSIONS

The protester argues that the Navy failed to conduct meaningful discussions because it did not disclose all the weaknesses and deficiencies that the evaluators had

identified in its proposal. Specifically, Cubic contends that the Navy did not ask questions concerning technical risk, management, and delivery schedule. Cubic also argues that discussions were unequal because the Navy afforded Harris an opportunity to improve its already technically acceptable proposal.

The agency responds that discussions were meaningful in that the Navy issued 108 technical questions to Cubic that identified its technical deficiencies. The Navy maintains that technical risk issues were covered in the questions related to the specification evaluation criteria. While the Navy admits that it did not ask Cubic questions concerning its management and delivery schedule, the Navy maintains that these areas were minor when compared to the technical considerations and did not affect the ultimate award decision. The Navy maintains that even if Cubic had been asked questions concerning these areas and the TEB subsequently gave Cubic the maximum points in these areas, the increased score would not have affected the award selection since Cubic received lower scores in the heavier weighted technical areas. The agency argues that it was Cubic's technical proposal which prevented it from receiving an award.

Agencies are required to conduct meaningful discussions with all competitive range offerors. Miller Bldg. Co., B-245488, Jan. 3, 1992, 92-1 CPD ¶ 21. Although agencies are not obligated to afford all-encompassing discussions or to discuss every element of a technically acceptable proposal that receives less than the maximum possible score, they still generally must lead offerors into the areas of their proposals which require amplification or correction. Delta Food Serv., B-245804.2, Feb. 11, 1992, 92-1 CPD ¶ 172. Based on the record of the written discussions, we think the agency satisfied its duty to hold meaningful discussions.

The record shows that Cubic was given the opportunity to respond to 108 questions concerning its technical proposal. The Navy maintains that seven of these questions specifically concern technical risk and that as a result of Cubic's satisfactory responses to some of these questions, Cubic's score increased in the technical risk area. We have reviewed these questions and the protester's responses and conclude that the Navy did adequately communicate its concerns regarding technical risk.

The technical risk evaluation criterion specifically provided that, where proposed equipment had to be modified to meet requirements, offerors were required to demonstrate that the modifications could and would be made without adversely impacting schedule or performance. Cubic in its proposal stated that several modifications to its equipment

were necessary to meet certain specifications and that these modifications would involve minimum or zero risk. However, the agency found that Cubic had proposed no meaningful plan addressing technical risk; specifically, it only briefly discussed risk control management, manufacturing process, and supplier base. The Navy believed that this lack of a plan to reduce technical risk materially affected the potential for successful modification of Cubic's equipment. The Navy also had a more fundamental concern regarding technical risk--it was not certain that the modifications would meet the specifications and ensure contract performance.

Consequently, the Navy posed several questions to Cubic concerning its plans to meet certain specifications through the modification of its equipment. For example, concerning Cubic's receiver sensitivity deficiency, Cubic was asked: "What action do you propose to take to correct the sensitivity . . . ?" Also, regarding display, Cubic was asked to "identify what will be displayed," and how it would work because Cubic's proposal lacked details. Where Cubic, through its responses, provided more details concerning the proposed modifications and how the modified equipment would satisfy a particular requirement, the Navy's concerns about the risk of performance in these areas were alleviated and Cubic's score was increased. The record shows, however, that Cubic did not satisfactorily respond to all the agency's concerns about its proposed modifications; as a result, its proposal received only an acceptable rating in technical risk. The agency remained concerned that Cubic's offer posed technical risk because it had not persuasively shown that its product, as modified, could meet all requirements. Given the record of discussions in this case, the agency was not required to further advise the protester of deficiencies remaining in its proposal which the agency had previously identified to the protester. ITT Fed. Servs. Corp., B-250096, Jan. 5, 1993, 93-1 CPD ¶ 6.

Regarding the agency's failure to discuss any weaknesses or deficiencies contained in Cubic's management proposal, the record shows that while the agency did not consider Cubic's proposed management structure to be exceptional or innovative, Cubic's proposal was always rated acceptable in this area. The record also shows that while Harris received slightly higher scores for its management proposal than Cubic, its proposal also contained weaknesses in this area, and Harris was also not asked any questions concerning management. While we believe that the Navy should have discussed weaknesses in the management proposals with both Cubic and Harris, we agree with the agency that Cubic was not prejudiced by the agency's failure to do so. The record shows that even if Cubic received the maximum possible score in all management areas, it would have received a weighted

score in management of 25 and its overall technical/management score would have increased to [deleted]; Harris would remain higher with its score of [deleted], primarily because of its higher technical scores.[6] Given that the technical criteria were significantly more important than management, the agency has determined that an increase in Cubic's overall score based on an increase in the management area would not affect the award decision. We therefore have no basis to believe the lack of discussions in this regard would have affected the award to Harris, whose proposal was technically superior.

Cubic maintains that discussions were unequal because Harris was asked questions concerning weak areas while Cubic allegedly was not given the opportunity to correct its weaknesses. The record shows that Harris's initial proposal was technically superior to Cubic's and merely needed clarification in some areas. (In fact, Harris's initial proposal was technically superior to Cubic's revised proposal as well.) As stated above, Harris was asked 54 questions concerning weaknesses in its technical proposal. Cubic was asked 108 questions involving both weaknesses and deficiencies in its technical proposals. Neither offeror was given an opportunity to respond to the agency's concerns about their management proposal. Based on the record here, we do not see how the offerors were treated unequally.

EVALUATION OF CUBIC'S PROPOSAL

Cubic challenges the evaluation of its own proposal on various grounds. Cubic maintains that it proposed an innovative, state-of-the-art [deleted] signal processing solution and that the Navy identified only six minor points that remained in the technical area at the conclusion of evaluations. Cubic contends that the Navy misevaluated or misunderstood its state-of-the-art solution.

The determination of the relative merits of proposals is primarily a matter of agency discretion which we will not disturb unless it is shown to be without a reasonable basis or inconsistent with the evaluation criteria listed in the RFP. Pemco Aeroplex Inc., B-239672.5, Apr. 12, 1991, 91-1 CPD ¶ 367. The protester's disagreement with the agency does not render the evaluation unreasonable. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450.

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[6]Discussions concerning management also would have had to be conducted with Harris, and Harris's score could also have improved.

The record shows that after the proposal evaluations and hardware demonstrations, although Cubic's proposal was considered technically acceptable, the agency concluded that several weaknesses remained in Cubic's proposal which prevented Cubic from being highly rated.

For example, with respect to tuning accuracy, the RFP required the equipment to be tuned "to the applicable operating frequency with an accuracy equivalent to that of the frequency standard." The Navy found Cubic's response to this requirement to be weak because Cubic stated in its proposal that the frequency error in the output of its receiver would be "approximately" the same as the error in the standard. During discussions, the agency asked Cubic to explain how it would comply with the requirement. Cubic's response was that the tuning accuracy of its receiver was equal to or better than that of the frequency standard and was therefore compliant with the specifications. The TEB found Cubic's response deficient because Cubic's explanation of the above statement was inadequate and confusing. Cubic argues that the Navy should not have been confused by its explanation and that its proposed approach to use a phase locked loop technology is recognized by industry as the standard method used in modern receivers to achieve the frequency accuracy required by the Navy. The Navy does not dispute that a phase locked loop is a viable technical approach, but maintains that Cubic failed to adequately explain its use of this approach to meet the agency's requirement. While Cubic argues that the Navy's conclusion demonstrates a lack of understanding of state-of-the-art receiver technology and attempts to explain its approach in its protest documents, it was Cubic's responsibility to alleviate the agency's concerns by a more detailed explanation of its approach in its response to the discussion questions. See Fisons Instruments, B-254787, Jan. 19, 1994, 94-1 CPD ¶ 25. We do not believe the agency's evaluation was unreasonable here.

The specification also required the receiver to have an Internal/External Frequency Standard Switch (toggle switch). Cubic stated in its proposal that its receiver had the ability to select either the internal or external frequency standard by pushing a soft key "switch" much like a computer operator selects an option from a menu and maintained that it served the same function as the required toggle switch. During discussions, the agency pointed out that the specifications required a manually operated two-position switch on the frequency standard and specifically inquired as to how Cubic intended to comply with the specification. Cubic's response was that this requirement is provided through a front panel screen and soft key push. The agency concluded that Cubic's approach required a relatively complex series of programming actions that would have to be

made by the sailor-operators to accomplish the same function as a simple two-position switch. The agency believed that Cubic's approach was too complex for the intended environment. Cubic disagrees with the agency's conclusions and maintains that the operation of the "soft key" feature is straightforward, simple, and easily mastered. The Navy states that a manual switch was required in order to provide simplified operating procedures and that Cubic's approach requires a series of programming steps to accomplish the same function which may be overly burdensome, especially where combat situations are involved. We have no basis to question the agency's judgment that Cubic's approach fails to satisfy the toggle switch requirement. The protester's disagreement with the agency's needs does not make the evaluation unreasonable. ECCO, Inc., supra.

A review of the evaluation documents shows that Cubic had weaknesses or deficiencies in all the areas where modifications to its equipment were necessary in order to meet certain specifications. We believe that the agency could reasonably be concerned that while the protester's equipment was acceptable, Cubic's proposal did not merit a higher rating because of the risk that Cubic's proposed modifications would result in delays or a failure to accomplish the agency's requirements. See Communications Int'l Inc., B-246076, Feb. 18, 1992, 92-1 CPD ¶ 194.

PRICE/TECHNICAL TRADEOFF

Cubic maintains that it offered an acceptable "state-of-the-art" receiver at a lower price and given that price was the most important evaluation factor, it should have received the award.

In negotiated procurements, there is no requirement that award be made on the basis of price unless the RFP so specifies. Henry H. Hackett & Sons, B-237181, Feb. 1, 1990, 90-1 CPD ¶ 136. Here, the RFP did not require that award be made to the offeror with the lowest-priced, technically acceptable proposal. Rather, the RFP stated that award would be made to the offeror whose proposal was most advantageous to government. In making this determination, the RFP provided that the technical evaluation factors would carry significantly greater weight than the management factors and that price would be evaluated against the overall technical/management score to determine the proposal most advantageous to the government.

Where the RFP does not provide for award on the basis of the lowest-priced, technically acceptable proposal, an agency has the discretion to make the award to an offeror with a higher technical score and higher price where it reasonably determines that the price premium is justified considering

the technical superiority of the awardee's proposal and the result is consistent with the evaluation criteria. Hercules Engines, Inc., B-246731, Mar. 19, 1992, 92-1 CPD ¶ 297; General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44.

Here, the agency found that Harris offered a completely responsive solution based on an operationally proven and in-production fully solid state design hardware. Harris took no exceptions to any of the requirements and made minor modifications to its basic design to meet the RFP requirements. All modifications were compatible with existing components and were interchangeable with the existing design. The agency determined that there was a minimum risk and minimum impact on the receiver because only [deleted] of the [deleted] printed circuit board modules were affected by the modifications. Harris's proposal addressed the techniques to be applied to managing the various elements of technical risk associated with the equipment proposed. Harris provided a well-defined plan that discussed manufacturing process details, risk control management, resources availability, established supplier base, successful performance on a virtually identical requirement and existing facilities and personnel.

In contrast, Cubic offered a solution based on a [deleted] which, as stated above, did not comply with several specifications. Cubic considered the five areas of modifications proposed to its equipment to be minimum or zero risk. The Navy believed that the modifications would have some impact on the equipment maintainability and any attempt to make minimum changes to an existing design would have some degree of technical risk which Cubic did not acknowledge. In short, the agency concluded that Cubic's proposed use of a more sophisticated technology with a commensurate risk could cause delivery delays. The test model provided by Cubic did not satisfy all specification requirements, despite including the modifications needed to meet the requirements, which further highlighted the risk inherent in the Cubic's approach.

Based on our review of the record, we find the agency reasonably determined that Harris's proposal was significantly superior to the proposal offered by Cubic and that Harris's technical superiority, and better record of past performance, offset Cubic's lower evaluated price. While Cubic believes its proposal should have been rated more favorably for its technical approach, Cubic fails to provide any substantive basis for its position. Essentially, Cubic disagrees with the acceptable technical

rating its proposal received. Thus, we conclude that the agency properly awarded the contract to Harris, the technically superior, higher-priced offeror, as its proposal was reasonably found to be most advantageous to the government.

The protest is denied.

Robert P. Murphy
Acting General Counsel