



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Cubic Communications, Inc.--Reconsideration

File: B-254860.3

Date: August 11, 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. Sumari Stamps-Henderson, Esq., and Barry J. Plunkett, Esq., Andrei Kushnir, Esq., Department of the Navy, for the agency.

Susan K. McAuliffe, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where an agency determines that a proposal is weak because it does not have an adequate plan to address the technical risk associated with proposed modifications to existing equipment and the agency is concerned whether the modifications will comply with the specification and schedule requirements, the agency satisfied its duty to conduct meaningful discussions when it raised questions with the offeror about its specific modifications, since this should have adequately apprised the offeror that the agency was concerned about the technical risk of the modifications, given that the solicitation expressly advised that the technical risk associated with equipment modifications was an important concern and advised offerors to address this concern.

DECISION

Cubic Communications, Inc. requests reconsideration of our decision in Cubic Communications, Inc., B-254860.2, Mar. 22, 1994, 94-1 CPD ¶ 238, in which we denied Cubic's protest of 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 100 AN/URR-79 radio receivers. In its protest, Cubic contended that the Navy failed to conduct meaningful discussions, improperly evaluated Cubic's proposal, and unreasonably made the award to a higher-priced offeror. On reconsideration, Cubic only contests our decision with regard to the meaningful discussions issue.

We deny the request for reconsideration.

The RFP encouraged offerors to propose nondevelopmental items (NDI) or partial NDI alternatives to meet the Navy's requirements. To the extent offerors planned to use new concepts, processes, and components to accomplish efforts not previously accomplished, including modification of existing equipment, the RFP advised offerors of their burden to fully describe the associated risk or rationale for why such new concepts, processes, and components did not constitute a risk. Award was to be made to the offeror submitting the offer determined most advantageous to the government, price and other factors considered. Technical factors were substantially more important than the management factors. Compliance with the specifications and degree of technical risk were the two most heavily weighted technical factors. Technical risk was said to be measured in terms of whether new concepts or modifications would keep the proposed equipment from meeting the RFP's specifications and scheduling.

Cubic's proposed equipment called for some modification to existing equipment, whereas Harris offered a proven product. Cubic's proposal was rated lower than Harris's under every one of the RFP's technical and management factors and subfactors. Upon testing the offered products after initial proposal evaluation, the Navy found several performance deficiencies in Cubic's modified equipment, while Harris's equipment was considered acceptable in all respects. More specifically, Cubic's proposal was considered to have more technical risk than Harris's; for example, the Navy was concerned that Cubic had proposed no meaningful plan for addressing the technical risk arising from its proposed equipment modifications and was uncertain whether the modifications would meet the specifications and ensure contract performance.

Cubic was asked 108 questions during discussions regarding its technical proposal and 3 questions regarding price; Harris was asked 54 technical questions and 3 price questions. Neither offeror was questioned about its management proposal.

Discussion responses and best and final offers were received and evaluated. Harris was determined to have submitted the superior proposal, having received higher scores in all evaluation areas. After comparing the difference in technical/management scores and price, the agency determined that the significant difference in technical/management scores in favor of Harris outweighed the difference in price and made award to Harris.

Cubic contended that the agency failed to specifically discuss Cubic's alleged lack of a plan that discussed risk control management, manufacturing process, or supplier base, even though the record indicated that this was its primary deficiency. (These areas of risk were listed in the RFP's section L instructions to the offerors to provide information to help evaluate technical risk.) Although the agency did not specifically request such a plan during discussions, we found that the agency adequately questioned the firm during discussions about technical risk by posing questions concerning its more "fundamental concern"--that the proposed modifications satisfied the specifications and could be timely accomplished--for example, the agency asked Cubic "[w]hat action do you propose to take to correct [receiver] sensitivity . . . ?" and, regarding display, "identify what will be displayed" and how it would work.

On reconsideration, Cubic essentially contends that the agency's failure to discuss the lack of an adequate plan, listed by the evaluators as the sole "weak point" in Cubic's proposal with regard to technical risk, is a per se violation of the requirement for meaningful discussions and that the questions about the specific modifications were not sufficient to satisfy the agency's obligations in this regard.

First, the protester is incorrect in its suggestion that the "sole" deficiency noted by the evaluators was a lack of plan regarding risk control management, manufacturing process details, or supplier base. Although the evaluators' report includes a statement about the lack of such information, the report concludes that the agency's concern (which we believe we accurately described in our prior decision as the agency's "fundamental concern") was that, notwithstanding Cubic's statement that its equipment modifications would present minimal or zero risk, the firm's proposal did not support that assessment. In this regard, we note that the "weak points" section of the same evaluation report lists each of the protester's proposed modifications and concludes that Cubic's assertion of minimal or zero risk is not supported as there was perceived risk associated with each modification that should have been addressed by the offeror. In other words, the technical risk evaluation report, when read as a whole, does not show that the noted lack of a technical plan was a significant weakness independent of the agency's concern about product and schedule compliance which kept the protester from meaningfully competing for award. See Department of the Navy--Recon., 72 Comp. Gen. 221 (1993), 93-1 CPD ¶ 422.

In any case, we believe the agency's discussion questions calling for amplification of the offeror's approach to the proposed equipment modifications reasonably apprised Cubic

that it should address the agency's concern regarding the modified equipment's technical compliance with the RFP's specifications as well as the associated technical risk. Agencies are not obligated to give all-encompassing discussions or to discuss every element of a technically acceptable proposal that receives less than the maximum possible score; they must only 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. Here, while the agency could have specifically requested a more detailed risk control management plan,¹ the record, as indicated above, shows that the agency's predominant concern was its uncertainty whether Cubic's modifications would satisfy the specifications and contract performance requirements. The RFP made clear that the technical risk of proposed modifications to equipment was an important concern of the agency, which had to be addressed by the offerors. Thus, we think the agency's discussions on this point were sufficient, even though they did not request the risk control management plan, as the agency's questions demonstrated that the agency had concerns with the technical risk associated with Cubic's modifications. Given the burden placed upon offerors to show the risk of modifications had been addressed, we think the agency's questions about the specific modifications should have reasonably advised Cubic that the agency had concerns about the technical risk of its modifications that should be addressed in its response.

In our prior decision, we also found that although the Navy should have discussed its noted concerns about the offerors' management proposals, Cubic was not prejudiced by the failure to conduct discussions in this area. Cubic's reconsideration request contests our finding of no prejudice since, Cubic contends, if the evaluators had discussed the noted weaknesses in the firm's management proposal, the firm could have improved its management score (and its total technical/management score for purposes of award). Cubic further contends that since the evaluators did not note any "weak points" in the Harris management proposal, the agency did not have a similar obligation to conduct discussions with that firm.²

¹Cubic's proposal only addresses risk control for its equipment modifications in a cursory manner, notwithstanding that the RFP clearly solicited this information.

²We note that, contrary to the protester's contention that Harris's management proposal would not have increased in evaluation score after discussions (since the agency had no
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As we stated previously, even if Cubic's management weaknesses had been discussed and Cubic received the maximum points available for management, the record here provides no evidence to show that these additional points would have affected the agency's award determination. In fact, a review of the evaluation record showed that even if Cubic were given the maximum management points available, it would still not displace Harris for award of the contract because of the substantial weight given technical factors and Cubic's low ratings in the technical areas. The record provides no reason to question our determination that Cubic was not prejudiced by a lack of discussions in this area. See Sundstrand Data Control, Inc., B-237020.2, Jan. 23, 1990, 90-1 CPD ¶ 95.

The request for reconsideration is denied.


Robert P. Murphy
Acting General Counsel

²(...continued)

meaningful concerns about Harris's management proposal), the record shows that Harris's management proposal, although rated higher than Cubic's, did not receive the maximum points available and could have improved in score.