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Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Eastern Computers, Inc.

File: B-258164.3; B-258164.4

Date: February 7, 1995

John F. Fugh, Esq., Charlotte R. Rosen, Esq., and Mary E. Albin, Esq., McGuire, Woods, Battle & Boothe, for the protester.
Thomas J. Madden, Esq., James F. Worrall, Esq., Fernand A. Lavallee, Esq., and Carla D. Craft, Esq., Venable, Baetjer, Howard & Civiletti, for Firearms Training Systems, Inc., an interested party.
Maj. Carol A. Kettenring, United States Marine Corps, for the agency.
David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency properly rejected protester's proposal as technically unacceptable where the solicitation required offerors to demonstrate simulated marksmanship trainers, and the protester, although afforded two opportunities almost 2 months apart, was able to satisfactorily demonstrate only 4 of the 11 required trainer weapons and was unable to demonstrate several required system capabilities.

2. Where a small business concern's proposal was found technically unacceptable based upon a comparative assessment under the stated evaluation criteria, including factors not related to responsibility as well as responsibility-related factors, the agency was not required to refer the matter to the Small Business Administration for a certificate of competency review.

DECISION

Eastern Computers, Inc. (ECI) protests the United States Marine Corps's award of a contract to Firearms Training Systems, Inc. (FATS), under request for proposals (RFP) No. M67854-94-R-2014, for the Indoor Simulated Marksmanship Trainer (ISMT) and associated Infantry Squad Trainer (IST). ECI challenges the agency's determination that its proposal was technically unacceptable.

We deny the protest.

BACKGROUND

The solicitation requested proposals for the design, production, testing, and delivery of two models of simulated marksmanship trainers for indoor use; the ISMT with 4 firing positions and the IST with 12 firing positions. Because the agency has an urgent need for the trainers, the solicitation required delivery to commence within 150 days after award. Each trainer was to consist of an instructor position, audiovisual system, and the firing positions. The purchase description specified the use of simulated weapons to fire upon simulated targets projected on a large screen display; an indication of the round fired was to be depicted on the screen, with the location of the round displayed to be consistent with the weapon's ballistics and the simulated distance of the target. The purchase description required that the rounds be coded to correspond to the firing position that fired the round; the trainer was to provide immediate feedback regarding aiming point, recoil, reaction time, impact, engagement time, rounds fired, and an indication of success or failure. In addition, the purchase description required the trainer to include the capability to incorporate a "shoot back" mode in which lasers placed on or near the screen would "shoot back" at the shooters to simulate enemy fire, with hits on the shooters to be registered by laser-sensing, Multiple Integrated Laser System (MILES) equipment.

The purchase description called for 11 simulated weapons, including the M-9 pistol, M-16A2 rifle, M-203 grenade launcher, Service Shotgun, MP-5 submachine gun, the M-2HB, M-240G and Mk-19 machine guns, M-249 squad automatic weapon, Mk-153 shoulder-launched assault weapon (SMAW), and M-136 AT4 anti-armor weapon. The simulated weapons were required to possess the same weight and weight distribution as the actual weapons (within a 5-percent tolerance), include all of the functional characteristics of the actual weapons, and generate simulated recoil with a force equal to 70 percent of the actual recoil force for the M-16A2, M-203, M-240G, M-249 and MP-5 weapons, and 15 percent for the other weapons.

The solicitation provided for award of a firm, fixed-price contract to the offeror whose proposal was most advantageous to the government under the stated evaluation factors. The RFP listed, in descending order of importance, seven evaluation factors: (1) product demonstration and performance, (2) system design, (3) integrated logistic support, (4) reliability and maintainability, (5) test and evaluation, (6) management, and (7) cost. The solicitation provided for the proposed trainers to undergo a live test

demonstration; offerors were "expected to demonstrate a system that shall physically and functionally present a 4-lane trainer and a 12-lane trainer." In particular, the RFP stated that:

"[i]n order to be evaluated as satisfactory or better, offerors' systems shall demonstrate answers to the following requirements:

Weapons

--Does the system utilize the required weapons?
--Do the weapons look and function realistically?
--Can numerous types of weapons fire simultaneously?
--Does the system have a supporting arms [forward observer] capability?
--Does the [forward observer] network with a fire direction center and a gun section?
--Does the system have a shoot back capability?"

If an offeror was unable to demonstrate one of the above "demonstration requirement[s]," the solicitation provided for possible consideration of the offer, stating that the "requirement must be addressed in the written technical proposal," and that "[i]n addressing this shortcoming, the offeror must stipulate when the capability shall be demonstrable."

Three proposals were received by the May 9, 1994, closing date. At the initial capability demonstration, FATS demonstrated 10 of the 11 required weapons, including at least 1 weapon incorporating government-furnished equipment, and received an overall satisfactory rating for the demonstration. In contrast, ECI initially demonstrated only 5 of the 11 required weapons, and significant weaknesses were found with respect to 3 of those--the M-16A2 rifle, M-9 pistol, and M-203 grenade launcher. As a result of these and other deficiencies, ECI received an overall marginal rating for the demonstration. During the subsequent discussions, the Marine Corps identified in writing the specific deficiencies in the weapons demonstrated by ECI and noted its failure to demonstrate six of the required weapons. The agency advised ECI that:

"[t]he offeror needs to provide a detailed plan on when each of the weapons could be demonstrated and when the M-16, M-9 and M-203 could be properly demonstrated. The plan needs to include identification of weapons experts, their background and qualifications and where the work will be accomplished."

The Marine Corps then afforded ECI and FATS the opportunity for another demonstration. ECI again received only a marginal rating; as discussed below, while this time ECI demonstrated nine weapons, the agency found only four of the nine to be satisfactory. (In contrast, FATS demonstrated 10 of the required 11 weapons, and its rating for the demonstration was increased to superior.) In addition, the Marine Corps found ECI's responses to the prior discussion questions to be informationally deficient; the agency generally cautioned ECI that its responses needed to be "more specific and in-depth." With respect to ECI's failure to satisfactorily demonstrate all of the required weapons, the agency specifically instructed ECI that:

> "[t]he offeror needs to provide a detailed plan and schedule for each of the required weapons as to when they would fully meet the [purchase description] requirements. The plan needs to specify what processes must be accomplished, testing, identification of weapons experts/technicians and their qualifications that will do the work, and where the work will be accomplished."

After concluding discussions with the offerors, the Marine Corps requested best and final offers (BAFO) from FATS and ECI. (The third offeror was not included in the competitive range.)

Based upon the Marine Corps's evaluation of BAFOs and the results of the second capability demonstration, the FATS proposal received an overall technical rating of superior. In contrast, the agency determined that ECI's proposal had not demonstrated the technical capability to satisfy the solicitation requirements for system performance, and that ECI therefore could not be considered for award. The agency noted in this regard that ECI demonstrated a system in the second capability demonstration, conducted nearly 2 months after the first, which still failed to comply with numerous specification requirements.

ECI's failure to satisfactorily demonstrate the M-16A2 rifle and the M-9 pistol were "of particular concern" to the agency since these weapons are the baseline for weapons training, and therefore are used most frequently and are expected to be purchased in the largest quantities. Specifically, ECI demonstrated an M-16A1 rifle with M-16A2 parts attached, rather than the required M-16A2. The M-16A2, however, has a different trigger pull than the M-16A1 demonstrated by ECI, requiring the shooter to squeeze the trigger harder on every third round fired. The M-16A2 also has different sights and a different method for zeroing the weapon than the demonstrated M-16A1. Further, the

demonstrated M-16A1 would not accept a magazine, and therefore did not have the same weight and balance as the weapon to be simulated, and also had an unrealistic recoil when fired. In this regard, while actual recoil causes the weapon to be pushed rearward and the muzzle to rise when fired, the recoil on the demonstrated weapon initially caused the weapon to be pushed forward and the muzzle to drop, before a secondary action caused the weapon to be pushed back (but without any muzzle rise). As for the M-9 pistol, the weapon presented in the first demonstration would not fire when the trigger was first pulled, and required the shooter to continue to pull the trigger (after the weapon should have fired). ECI did not correct this problem for the second demonstration.

Three of the remaining weapons demonstrated by ECI were also found unsatisfactory. The M-203 grenade launcher was supposed to be mounted on an M-16A2 rifle, but instead was mounted on an M-16A1 rifle. ECI used a modified M-2 machine gun to simulate the required Mk-19 grenade launcher, even though the M-2 differs in operation with respect to loading, cocking, and body position. ECI used a B-300 to simulate the required SMAW assault weapon even though the B-300 has a smaller caliber, shorter effective range, and less penetration, and also differs with respect to length, width, muzzle velocity, and sights. In addition, two of the required weapons--the M-240G machine gun and MP-5 submachine gun--were not demonstrated.

ECI's demonstrated system was found lacking in other regards as well. The purchase description required a 12-lane trainer IST that has "all of the same capabilities as, and meets the same requirements as, the ISMT in a manner that allows up to 12 trainees to use the trainer simultaneously," and that has a hit detection system "fully integrated for all lanes" such that a shooter firing from lane 1 can fire at a target in lane 12. In the initial demonstration, ECI demonstrated three ISMT screens networked as one, with the target able to move across all three screens, but the evaluators were unable to fire any weapons at the screen. Although in the second demonstration ECI demonstrated an 8-lane system (two ISMTs networked together) in which simulated weapons fire was possible, ECI did not demonstrate the required 12-lane IST system and the agency was unable to determine whether ECI's system could track and record 12 weapons (rather than only 8) firing simultaneously at targets anywhere on the screen. In addition, the purchase description required that the trainer provide "the capability to conduct forward observer procedures for mortars, artillery, and naval gunfire," including "the capability to link the FO [forward observer] with the . . . guns of the firing unit for indirect weapons (mortars and/or artillery) for crew training." Although ECI's system

possessed the capability to link the forward observer to a simulated fire direction center, it lacked the capability to link the forward observer directly to a gun section for gun crew training. In addition, ECI failed to demonstrate the required shoot-back capability--that is, the use of lasers placed on or near the screen to shoot back at shooters wearing laser-sensing equipment for detecting hits.

The agency also questioned ECI's ability to complete the development of its trainer system so as to remedy the numerous deficiencies in the system as demonstrated in time to comply with the delivery schedule. Agency evaluators found that ECI had failed to furnish the required plan for furnishing the weapons not satisfactorily demonstrated. The agency also found that, while ECI's proposal identified individuals as weapons experts, the claimed expertise was not evident at the demonstrations; ECI's weapons expert at the demonstrations was unable to satisfactorily address design, testing, or ballistics matters. Indeed, according to ECI's proposal, design and production of the required weapons was initially to be accomplished not by ECI, but by a foreign subcontractor; ECI did not possess the necessary rights to the weapons kits designs, and would have to acquire them in the future, along with the necessary work force, before it could take over production responsibilities. In view of ECI's apparent lack of weapons expertise, the Marine Corps concluded that there was a significant risk that ECI could not remedy the numerous deficiencies in its system in time to comply with the solicitation requirement to commence deliveries within 150 days after award.

Upon learning of the rejection of its proposal and the subsequent award to FATS, the only remaining offeror in the competitive range, ECI filed this protest with our Office.

The procuring agency has primary responsibility for evaluating the technical information supplied by an offeror and determining the technical acceptability of the offeror's item. Alpha Technical Servs., Inc., B-250878; B-250878.2, Feb. 4, 1993, 93-1 CPD ¶ 104. Our Office will not question an agency's evaluation of proposals unless the agency deviated from the evaluation criteria or the evaluation was otherwise unreasonable. IDB Int'l, B-257086, July 15, 1994, 94-2 CPD ¶ 27. A protester's mere disagreement with the agency's technical judgment does not establish that it was unreasonable. See Diversified Technical Consultants, Ltd., B-250986, Feb. 22, 1993, 93-1 CPD ¶ 161.

EVALUATION OF ECI'S PROPOSED TRAINER

Forward Observer

ECI raises numerous arguments challenging the evaluation of proposals and conduct of the procurement. Our review of the record provides no basis to question the rejection of ECI's proposal and the award to FATS. We discuss several of the protester's arguments below.

As an initial matter, ECI disagrees with the Marine Corps's conclusion that ECI's proposal to link the forward observer to a simulated fire direction center, instead of directly to a gun section, was noncompliant with the RFP. ECI generally asserts that there was no requirement for linking the forward observer directly to a gun section. This argument is without merit. The purchase description required that the trainer provide the capability to conduct forward observer procedures, including "the capability to link the FO with the . . . guns of the firing unit for indirect weapons (mortars and/or artillery) for crew training." The protester does not explain how its approach of linking the forward observer to a fire direction center, which generates the simulated artillery/mortar fire, satisfies this express requirement to link the forward observer to the artillery/mortar firing unit and provide training for the artillery/mortar crew.

Demonstration Failure

ECI primarily argues that the Marine Corps placed undue emphasis on its failure to demonstrate a number of the required system capabilities. ECI claims that the agency essentially conducted an improper evaluation of proposals--instead of the best value evaluation called for in the RFP--based on the capability demonstration, finding a proposal unacceptable if the offeror could not demonstrate compliance with the purchase description by the time of the second demonstration.

As noted above, the solicitation did not require rejection of an offer submitted by an offeror that was unable to show in the capability demonstration compliance with all specification requirements. Instead, the solicitation provided for possible consideration of the offer where the offeror addressed the requirement not demonstrated in its written technical proposal and indicated "when the capability shall be demonstrable." In essence, the offeror was required to establish that the capability not demonstrated would be available in time for the contractor to meet the requirement for deliveries to commence within 150 days after award. The record shows that the agency followed this evaluation methodology, and did not simply

conduct a pass/fail evaluation of proposals based on the capability demonstration. Thus, although FATS ultimately failed to demonstrate 1 of the 11 required weapons--the SMAW assault weapon--its offer was not rejected as unacceptable; instead, the agency concluded that FATS had satisfactorily explained how it would develop a simulated SMAW in time to meet the required delivery schedule. In this regard, FATS submitted a written, detailed step-by-step description of its established weapons development process, which it proposed to apply to developing the SMAW. In addition, FATS made a written and oral presentation at the second operational demonstration in which it explained its approach to developing the SMAW and included drawings of the proposed simulated weapon.

ECI similarly was asked to provide "a detailed plan and schedule for each of the required weapons," specifying "what processes must be accomplished, testing, identification of weapons experts/technicians and their qualifications." ECI's proposal ultimately was rated unacceptable, not solely because of its demonstration failures, but because it furnished only a brief summary in response to the agency's information request, rather than the required detailed explanation. For instance, although ECI generally described how its laser shoot-back capability would operate, it did not explain how it would develop the required capability which it had failed to demonstrate. Further, while FATS proposed to develop and manufacture the simulated SMAW itself, ECI indicated that it was dependent upon a foreign subcontractor to design recoil and sensing mechanisms for the weapons and furnish "complete kits" to ECI for installation.

The protester contends that the agency failed to take into account the fact that the required modifications to its system did not involve any new or different technology. However, it is not clear from the record that all of the deficiencies in ECI's demonstrated system were easily remedied. For example, although ECI claims that it could furnish a 12-lane trainer simply by adding a 4-lane ISMT to the 2 networked ISMTs it demonstrated, the Marine Corps reports that effectively tracking and recording 12 shooters firing simultaneously is a very complex process which requires significantly more computer capability than is possessed by any individual ISMT system. Whether ECI or the agency is correct in its view of the level of difficulty involved in meeting the requirement, there certainly is no basis for us to question the rejection of ECI's proposal on this basis. In this regard, we agree with the agency that ECI's failure to remedy the numerous deficiencies in its system in the nearly 2 months between the first and second capability demonstrations provided a legitimate basis for the agency to conclude that the deficiencies would not be

easily correctable for ECI. The agency also reasonably could take into account the fact that ECI actually had been afforded an extended period within which to prepare its system. ECI was made aware of the government's general requirements for ISMT/IST systems by a December 1992 solicitation under which it competed (and under which no award was made), and was aware that there would be a demonstration requirement based on a meeting with contracting officials in October 1993, several months before the issuance of the current solicitation in March 1994.

Beyond the deficiencies which ECI questions, ECI's evaluation challenge overlooks a fundamental weakness in its proposed system. While FATS failed to demonstrate 1 of the 11 required weapons, ECI did not even attempt to demonstrate 2 of the weapons, failed to satisfactorily demonstrate 5 other weapons, including the 2 most important weapons (the M-16A2 rifle and M-9 pistol), failed to demonstrate the required shoot-back and forward observer/gun battery capabilities, and only demonstrated an 8-lane trainer, not the required 12-lane trainer. Given the numerous observed deficiencies in ECI's system as demonstrated, ECI's failure to remedy them in the nearly 2 months between capability demonstrations, and its failure to furnish the required detailed description as to how it would remedy them, the Marine Corps could reasonably determine that ECI had not demonstrated an acceptable technical approach to complying with the purchase description requirements in time to commence deliveries within the required 150 days after award.

FATS's COMPLIANCE WITH SPECIFICATIONS

ECI argues that FATS's proposed training system failed to comply with various mandatory specification requirements, including the visual projection and recoil requirements. We find these arguments without merit.

Visual Projection Requirements

With respect to the visual projection requirements, the purchase description generally provided for two types of scenarios: (1) a marksmanship qualification mode; and (2) a combat marksmanship mode, including scenarios simulating shoot/no-shoot decision-making by military police, close quarters battle encounters and other simulated combat scenarios. In this regard, paragraph 3.2.1.6.1 of the purchase description provided that:

> "[t]he projected images shall be a combination of real images and graphic images. Real images are defined as images generated from filmed images of live personnel and actual terrain. . . . The

> targets presented during shoot/no-shoot and combat scenarios shall be real images, unless it can be otherwise demonstrated that graphically generated images provide increased or equal realism and also provide some benefit from the training course."

In addition, the purchase description generally provided for two modes of display: (1) computer generated imagery (which the agency defines as images generated by computer software from the digitizing of graphics or video), and (2) video disc technology, which uses filmed sequences stored on a video disc. (According to the agency, while computer generated imagery provides greater flexibility than video discs because the scenario can be changed every time it is used and targets react to hits, video disc technology provides a more realistic display at ranges of less than 100 meters.) The purchase description provided that: "Computer generated imagery is required for training scenarios that exceed 1,000 meters. Video disc technology may be used for training at projected distances of less than 1,000 meters."

While FATS generally proposed to use a combination of real and graphic images, it specifically stated in its proposal that "for shoot/no-shoot and combat tactical scenario targets, live images are used for total realism." In addition, FATS proposed "using CGI [computer generated imagery] at ranges greater than 1,000 meters and video discs for ranges less than 1,000 meters." In this regard, FATS noted in its proposal that photographs of targets and of background scenes can be digitized and processed by the scanning hardware and software of its image processor subsystem.

ECI essentially argues that for combat scenarios at ranges in excess of 1,000 meters, where the purchase description required the use of computer generated imagery and "real images" for targets, FATS's proposed use of digitized photographs fails to comply with the solicitation's definition of real images as "images generated from filmed images of live personnel and actual terrain." (Emphasis added.) According to the protester, the only acceptable approach to furnishing "real images" for use as targets in combat scenarios at ranges in excess of 1,000 meters is the use of digitized video, as proposed by ECI, that is, video filming targets and then digitizing the filmed targets for manipulation by the computer.

We find ECI's interpretation of the purchase description unreasonably restrictive. As noted by the agency, the purchase description does not expressly require the use of digitized video but, rather, requires the use of computer

generated imagery, a broader concept, for scenarios at ranges greater than 1,000 meters. Indeed, the Marine Corps specifically amended the solicitation to remove a reference to digitized video in the solicitation's statement of evaluation criteria (section M). As issued, section M provided that, to be evaluated as satisfactory, offerors were required to demonstrate answers to a number of questions, including: "Does the system utilize digitized video?" However, in response to an offeror's inquiry as to whether this question should read "does this digitized video provide photographic realism utilizing pre-filmed targets and target paths," the agency amended the solicitation to eliminate altogether the section M reference to digitized video and substituted the following questions:

> "Does the system utilize computer generated imagery? Does the video provide realistic, high resolution targets and background (whether it comes from pre-photographed or graphic targets)?"

Under these circumstances, ECI's position unreasonably attributes to the solicitation a digitized video requirement; ECI ignores the fact that section M of the RFP was amended to eliminate the reference to digitized video, and that no such requirement is set forth in the RFP.

Recoil Requirements

ECI's argument concerning the compliance of FATS' proposed approach to simulating weapons recoil is without merit. As noted above, the purchase description required the proposed M-16A2 rifles to provide 70 percent of the actual weapon's recoil force when fired. In its initial proposal, FATS generally claimed that Air Force testing demonstrated that the recoil of its simulated weapons was more than sufficient to train shooters; with respect to the M-16A2, FATS specifically stated that the recoil would be 55-60 percent of that of the actual weapon. When asked by the agency during discussions to show how "recoil will be improved so that it meets or exceeds the requirement" of the purchase description, FATS responded that:

> "The [recoil of the] M-16 has also been increased but remains below the specification requirement of 70%. FATS can increase the M-16 recoil further, however there will be a very significant impact on the reliability of the original weapon parts. . . . If additional recoil is required the failure rate will increase thus impacting on reliability and repair costs. A discussion of failure rates and recoil percentages will be provided [at the second capability demonstration]."

ECI argues that FATS's response must be interpreted as taking exception to the 70-percent recoil requirement of the purchase description with respect to the M-16A2. We find it clear from the language of the above quote that FATS offered to comply with the recoil requirement; it then cautioned that providing the specified recoil force would adversely affect reliability. In this regard, the agency reports that FATS in fact demonstrated a 70-percent recoil force for the M-16A2 at the second capability demonstration simply by adjusting upward the pneumatic pressure supplying the simulated recoil.

NONRESPONSIBILITY DETERMINATION

ECI alleges that in negatively evaluating ECI's capability to complete development, manufacture, and deliver the trainers within the required delivery schedule, the agency in effect made a nonresponsibility determination which, because ECI is a small business concern, it was required to refer to the Small Business Administration (SBA) for consideration under the Certificate of Competency (COC) procedures.

Under the Small Business Act, 15 U.S.C. § 637(b)(7) (1988), the SBA has conclusive authority to determine the responsibility of small business concerns; an agency may not deprive a small business offeror of its right to pursue a COC by in effect determining it nonresponsible under the guise of a technical evaluation. As noted by the protester, ability to comply with the specifications is a traditional responsibility matter. See PHE/Maser, Inc., 70 Comp. Gen. 689 (1991), 91-2 CPD ¶ 210.

Our Office has long recognized, however, that traditional responsibility factors may be used for the comparative evaluation of proposals in relevant areas, Design Concepts, Inc., B-184754, Dec. 24, 1975, 75-2 CPD ¶ 410, and that where a proposal is determined to be deficient pursuant to such an analysis, the matter is one of technical unacceptability not requiring referral to the SBA. See Advanced Resources Int'l, Inc.--Recon., B-249679.2, Apr. 29, 1993, 93-1 CPD ¶ 348. Furthermore, where an agency rejects a proposal as technically unacceptable on the basis of factors not related to responsibility as well as responsibility-related ones, referral to the SBA is not required. See Paragon Dynamics, Inc., B-251280, Mar. 19, 1993, 93-1 CPD ¶ 248. Here, the Marine Corps took ECI's ability to comply with the specifications into consideration as part of a comparative evaluation. Furthermore, the finding of technical unacceptability was also based upon an

evaluation factor that was not responsibility-related--the performance of the trainers in the capability demonstrations. In these circumstances, no referral to SBA was required.

The protest is denied.

Robert P. Murphy
General Counsel