

Calhoun



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

Decision

Matter of: SCI Systems, Inc.--Reconsideration
File: B-258786.2
Date: July 17, 1995

Alan M. Grayson, Esq., and Hugh J. Hurwitz, Esq., for the protester.
Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where protester has not shown that prior decision contained errors of fact or law, nor has it presented information not previously considered.

DECISION

SCI Systems, Inc. requests that we reconsider our decision in SCI Sys., Inc., B-258786, Feb. 13, 1995, 95-1 CPD ¶ 80, denying its protest of the award of a contract to Loral Western Development Laboratories under request for proposals (RFP) No. DAAB07-94-R-E005, issued by the Department of the Army's Communications-Electronics Command for Mission Module Systems (MMS), an electronic system providing communications for the Army's Command and Control Vehicle (C2V).

We deny the request for reconsideration.

The technical evaluation factor in this best value procurement¹ was comprised of two subfactors, operational suitability and integrated logistics support. Of the five criteria included under the operational suitability subfactor, the most important was "demonstration," which would be used to verify the extent that the offeror's Vehicle Inter/Intra Communications System (VIICS), demonstrated functional, vibration, and noise attenuation requirements.

¹The solicitation included four major evaluation factors: technical, cost/price, past performance risk, and management. The technical and cost/price factors were of equal importance, and past performance risk was significantly more important than management.

064222

At the conclusion of the evaluation process, Loral's proposal was rated good and SCI's acceptable under the technical factor; its evaluated cost was \$24,581,561 as compared with SCI's \$23,129,052; both offerors' proposals were rated low under the past performance risk factor; and Loral's proposal was rated outstanding and SCI's good under the management factor.² The source selection official (SSO) determined that Loral's proposal had key advantages, that its VIICS demonstration presented low risk, and that its proposal had no disadvantages. In contrast, while SCI's proposal had some advantages, it also had disadvantages, such as a VIICS demonstration that presented high risk and its use of coaxial cable instead of fiber optic cable. The SSO did not view the evaluated cost difference to be sufficient to outweigh the risk resulting from SCI's poor VIICS demonstration, and noted Loral's superior rating under the management factor. After award was made to Loral, SCI filed its protest in our Office.

SCI first argued that the Army improperly allowed Loral to "opt out" of the vibration demonstration portion of the VIICS demonstration. In our decision, we set forth the relevant solicitation provisions and stated that the RFP clearly provided offerors with alternate means to meet the vibration requirements. Since Loral met the requirements to the agency's satisfaction in accordance with these alternate means, we stated that the firm's failure to commence the vibration demonstration did not bar it from award. We also stated that SCI was not prejudiced by the Army's waiver of the demonstration requirement because SCI itself had successfully completed the vibration demonstration, and the key reason for its lower rating was its poor performance during the functional demonstration. We found that SCI's claim of prejudice--that it could have spent more time preparing for the functional demonstration and successfully passed it if it had not been required to undergo the vibration demonstration--was unpersuasive.

In its request for reconsideration, SCI argues that it was prejudiced per se by the Army's waiver of the demonstration requirement because if the Army had not waived the testing requirement, it would have made award to SCI. However, aside from the fact that the RFP provided offerors with alternate means to meet the vibration requirements, when an agency waives a solicitation requirement, prejudice does not mean that, had the agency failed to waive the solicitation requirement, the awardee would have been unsuccessful. Rather, the question is whether, had the protester known how the agency understood the solicitation, it would have

²The ratings used in the evaluation were "outstanding," "good," "acceptable," "susceptible," and "unacceptable."

submitted a different offer that would have had a reasonable possibility of being selected for award. Corporate Jets, Inc., B-246876.2, May 26, 1992, 92-1 CPD ¶ 471; RGI, Inc., B-243387.2; B-243387.3, Dec. 23, 1991, 91-2 CPD ¶ 572; Tektronix, Inc., B-244958; B-244958.2, Dec. 5, 1991, 91-2 CPD ¶ 516. As discussed in our decision, we fully considered SCI's argument that it would have passed the functional demonstration if it had not been required to undergo the vibration demonstration, but found it unpersuasive and speculative--SCI did not explain how it would otherwise have allowed the agency to verify that its proposed VIICS would meet the vibration requirements, nor did it explain how more preparation time would have allowed it to successfully pass the functional events that it failed. SCI has not given us any reason to reconsider our decision on this ground.

SCI also argued that the Army's response to a pre-proposal question concerning the government-furnished equipment (GFE) to be used during the demonstration was misleading. In our decision, we explained that since many VIICS demonstration tasks involved showing how the VIICS would operate in conjunction with GFE, including a specific radio, the RFP included information regarding GFE interfaces in the form of drawings and the VIICS functional description document. Prior to the submission of proposals, Loral sought information concerning radio interfaces, specifically in the form of an interconnect diagram, and was advised to

"use the data provided with the drawing package enclosed with the RFP to answer the solicitation. Furthermore, information requested is completely unrelated/not required to be submitted as part of your response to the RFP."

While SCI argued that the Army misinformed it concerning the significance of radio interface information by stating that such information was "completely unrelated" to the RFP, we stated that SCI had mischaracterized the response. In our view, the Army did not state that such information was completely unrelated to the RFP, but that, one, such information could be found in the drawing package and functional description document, and, two, offerors did not require such information, including the interconnect diagram, in order to submit a response to the solicitation.

In its request for reconsideration, SCI disputes our statement that it mischaracterized the Army's response and essentially reiterates its earlier-raised interpretation of that response. However, repetition of arguments made during our consideration of the original protest and mere

disagreement with our decision do not provide a basis for reconsideration of our decision. See Dictaphone Corp.-- Recon., B-244691.3, Jan. 5, 1993, 93-1 CPD ¶ 2. SCI also contends that we incorrectly attributed a statement to the agency that it did not make--that "such information could be found in the drawing package and functional description document." However, any reasonable reading of our decision makes it clear that our characterization of the response was not meant to suggest that the Army actually made these statements, but was meant to interpret the response when read as a whole and in the context of the question to which it responded. SCI has provided us no basis to reconsider our decision on this ground.

SCI finally argued that the Army improperly failed to inform it, during discussions, that the firm's proposed use of coaxial cable was viewed as a weakness. In our decision, we explained that the RFP left the selection of methods by which to establish a communications line to the discretion of the offerors, and that there were two acceptable approaches, coaxial cable and fiber optic cable. Loral proposed to use fiber optic cable, and SCI proposed to use coaxial cable, and the agency found this latter approach to be a disadvantage. We concluded that where, as here, a solicitation allows for alternative approaches to meeting performance requirements, the agency need not advise a technically acceptable offeror during discussions that it considers another approach to be superior, citing Pitney Bowes, 68 Comp. Gen. 249 (1989), 89-1 CPD ¶ 157, recon. denied, B-233100.2, June 22, 1989, 89-1 CPD ¶ 587, and Canadian Commercial Corp./Canadian Marconi Co., B-250699.4, Mar. 5, 1993, 93-1 CPD ¶ 251.

In its request for reconsideration, SCI does not address the substance of our decision, that an agency need not advise a technically acceptable offeror during discussions that it considers another approach to be superior where the solicitation allows for alternative approaches to meeting performance requirements. Instead, SCI apparently contends that our decision turned on a distinction between the terms "weakness" and "deficiency," and embarks upon a discussion of the impropriety of this approach. However, since a plain reading of the decision shows that we did not make such a distinction, and since SCI does not challenge the substance of our conclusion here, we will not reconsider the decision on this ground.

Under our Bid Protest Regulations, to obtain reconsideration, the requesting party must either show that our prior decision contains errors of fact or law, or present information not previously considered that warrants

reversal or modification of our decision. 4 C.F.R.
§ 21.12(a) (1995); R.E. Scherrer, Inc.--Recon., B-231101.3,
Sept. 21, 1988, 88-2 CPD ¶ 274. SCI has not met this
standard.

The request for reconsideration is denied.

Michael A. Golden
for Robert P. Murphy
General Counsel