



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Symetrics Industries, Inc.

File: B-274246.3; B-274246.4; B-274246.5

Date: August 20, 1997

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DIGEST

Argument that agency was required to amend the solicitation upon receiving information that funds were unavailable for the purchase of a significant portion of an estimated quantity included in the request for proposals for an indefinite quantity/indefinite delivery order contract is sustained where the record shows that the change in quantity was material and there was a reasonable possibility that the protester was prejudiced by the agency's failure to amend the solicitation.

DECISION

Symetrics Industries, Inc. protests the award of a contract to Tracor, Inc. by the Department of the Air Force, pursuant to request for proposals (RFP) No. F33657-96-R-0001, issued for the purchase of Lots IV through VII of the AN/ALE-47 Countermeasures Dispenser System (CMDS). Symetrics argues that the evaluation of proposals was unreasonable because it was based on a flawed quantity estimate, which resulted in an improper award decision.

We sustain the protest.

BACKGROUND

The AN/ALE-47 CMDS is an electronic warfare system used by the Army, Navy and Air Force to protect aircraft from hostile missile attacks. The system discharges chaff cartridges and decoy flares to distract ground-launched missiles aimed at

aircraft.¹ Five distinct line replaceable units (LRU) comprise the system in varying numbers and configurations depending on the aircraft involved. These LRUs are a control-display unit, a programmer, a switch assembly, a digital sequencer, and a dispenser assembly.

The RFP was issued in October 1996, and contemplated the award of a 4-year fixed-price indefinite delivery/indefinite quantity (ID/IQ) contract to the offeror whose proposal provided the best value to the government.² The RFP explained that the proposal with the best value would be "the most advantageous offer, price and other factors considered . . . providing the best mix of utility, technical quality, business aspects, risks, and price for a given application." RFP § M.1.0.

The RFP advised that each proposal would be evaluated in four areas, in descending order of importance: technical, schedule, cost/price--most probable life cycle cost, and management. Under these four factors, the technical factor included four subfactors of equal weight: manufacturing/quality assurance, integrated logistics support, systems engineering, and testing. In addition to the four factors, the RFP also listed four general considerations of equal weight, all of which were less important than the four evaluation factors. The general considerations were pre-award survey, executive in-plant review, plant visits, and RFP terms and conditions. RFP § M.2.0.

Offerors were also advised that two of the evaluation factors--technical (including the four subfactors) and management--would be assigned a color/adjectival rating, a

¹The AN/ALE-47 has been developed for integration and installation on Air Force F-16, C-130, C-141, C-17 and C-5 aircraft; Navy F-18, VH-60, VH-3, P-3, V-22 and HH-60 aircraft; and Army MH-47D and MH-60 aircraft. Foreign military sales to Korea, Taiwan, Switzerland, Finland and Malaysia are also underway.

²The appropriate method for procuring these items--after procuring them since 1988 on a sole-source basis from Tracor, the original equipment manufacturer--has been in dispute for several years. The Air Force first decided to "break out" the remaining need for these parts for full and open competition, but later elected to reserve the requirement for exclusive small business participation in accordance with a decision by the head of the agency. In response, Congress first directed that the viability of a small business set-aside be reviewed, and ultimately directed the use of full and open competition including, but not limited to, small businesses. A more complete recitation of these events is found in our decision in Datacom, Inc.--Protests and Request for Costs, B-274175 et al., Nov. 25, 1996, 96-2 CPD ¶ 199 at 2-4.

proposal risk assessment, and a performance risk assessment.³ They were also advised that the color/adjectival rating and the two risk ratings would receive equal consideration. RFP § M.6.0 The remaining two evaluation factors--schedule and cost/price--were not rated but were assigned a performance risk assessment. Since the RFP here envisioned the award of an ID/IQ contract, each LRU had an accompanying minimum and maximum order quantity, as well as a best estimated quantity (BEQ) for each of the four lots to be procured. These BEQs were used to evaluate each offeror's capabilities and price, and are set forth below:

LRU	LOT IV	LOT V	LOT VI	LOT VII
Control-Display Unit	95	123	101	98
Programmer	107	147	137	134
Switch Ass'y	279	267	126	270
Sequencer	3,755	491	315	503
Dispenser	1,024	810	408	838
TOTAL SHIPSETS	107	147	137	134

As shown above, the purchase estimate for one of the LRU's, the sequencer, was much higher than any other item in Lot IV, and was much higher than the purchase estimate for this item in Lots V through VII. The RFP explained that in Lot IV, an estimated 3,219 additional digital sequencers would be procured to support the upgrade of the AN/ALE-40 system under the Consolidated Clean-Up modification program. RFP ¶ M.4.1.2.

By the December 4, 1996, initial closing date, the Air Force received [deleted] proposals, [deleted] were included in the competitive range. Written and oral discussions were held with the competitive range offerors and best and final offers (BAFO) were received by April 7.

³The color/adjectival ratings used in the evaluation were blue/exceptional, green/acceptable, yellow/marginal, and red/unacceptable. Proposal risk was rated high, moderate or low, and was defined as the risks identified in an offeror's proposed approach. Performance risk was rated high, moderate, low, or not applicable, and was defined as an assessment of the offeror's present and past work record to gauge confidence in the offeror's ability to successfully perform as proposed.

At the conclusion of the evaluation, Tracor's proposal received [deleted] ratings [deleted] under the four equally-weighted technical subfactors, [deleted] rating under the management factor, and [deleted]. Symetrics's proposal received [deleted] ratings under the technical and management factors, and [deleted] ratings in every assessment of proposal and performance risk but one [deleted].⁴ Symetrics's proposal offered [deleted]. A summary of these results is shown in the table below:

	TRACOR			SYMETRICS		
	Color Rating	Prop Risk	Perf Risk	Color Rating	Prop Risk	Perf Risk
Technical						
--Mfg./QA	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
--Int. Logistics Support	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
--Systems Eng'g	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
--Testing	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
Schedule	----	----	[deleted]	----	----	[deleted]
Cost-Price/ MPLCC	[deleted]	----	[deleted]	[deleted]	----	[deleted]
Management	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]

In making the award decision, the source selection authority (SSA) noted that Tracor [deleted] the manufacturing/quality assurance technical subfactor, and [deleted] under the integrated logistics technical subfactor. In addition, since Tracor proposed to accelerate delivery of production units--the RFP required production within 18 months, Tracor offered to begin deliveries [deleted]--the SSA decided that the expedited production schedule offered "a significant risk mitigation opportunity" for the government. Source Selection Decision, April 29, 1997, at third unnumbered page. As a result, the SSA concluded that Tracor's technical superiority [deleted] awarded to Tracor. This protest followed.

DISCUSSION

Symetrics disputes nearly every element of the evaluations, raising at least 42 challenges in its initial and four supplemental protests. While many of these challenges fail to state a valid basis for a bid protest and some suggest a lack of

⁴[deleted]

understanding of the federal procurement process,⁵ certain of these challenges raise issues appropriate for our review. The three major areas in which Symetrics raises potentially valid challenges are whether the evaluation was based on an erroneous BEQ for sequencers and was flawed as a result, and whether the evaluations of Symetrics's and Tracor's proposals were reasonable.

With respect to the need for sequencers, Symetrics argues that the requirement for sequencers in Lot IV of the purchase (which was only available for orders until September 30, 1997) was so unusually high that any offeror other than Tracor was required to take extraordinary steps to meet the agency's need. Symetrics does not argue that the RFP was flawed when initially issued, but contends that the Air Force was required to amend the RFP when it received notice--1 week prior to the request for BAFOs--that the underlying purchase order for the great majority of the needed sequencers had been canceled for lack of funding. In Symetrics's view, since several of the evaluation weaknesses assessed against its proposal--and against proposals submitted by any offeror other than Tracor--were related to the high number for sequencers in Lot IV which no longer reflected an accurate quantity estimate, the final evaluation and cost/technical tradeoff lacked a reasonable basis.

The Air Force responds that the BEQ for sequencers included in the RFP had a sound basis and that the agency was not required to amend the RFP 1 week before the request for BAFOs on the basis of a funding change that did not diminish the underlying need for the parts. The Air Force argues that the need for sequencers remains valid, and that the agency may yet receive funding before the end of the Lot IV ordering period on September 30, 1997. In addition, the Air Force points out that other requirements for sequencers have arisen and the agency currently has concrete orders for 1,574 sequencers as part of Lot IV. Alternatively, the Air Force argues that Symetrics was not prejudiced by the agency's decision not to amend the sequencer estimate in the RFP since all offerors competed equally.

⁵For example, Symetrics argues that the evaluation was flawed because the source selection briefing contained a slide showing the number of CRs (clarification requests) and DRs (deficiency requests) issued to the competitive range offerors during negotiations. Conducting negotiations using CRs and DRs is a routine procedure and a summary of this effort routinely appears as part of the briefing given to selection officials. Symetrics cannot reasonably claim to be prejudiced by the mere mention of the number of CRs and DRs to the selection official. In another instance, Symetrics complains that the assessment of performance risk by the Performance Risk Assessment Group (PRAG) constituted an improper double evaluation. Again, the use of a PRAG to evaluate performance risk is a routine technique for making reasoned judgments about risk, and violates no federal procurement principle.

Generally, where an agency's requirements change after a solicitation has been issued, it must issue an amendment to notify offerors of the changed requirements and afford them an opportunity to respond. Federal Acquisition Regulation (FAR) § 15.606(a); United Tel. Co. of the Northwest, B-246977, Apr. 20, 1992, 92-1 CPD ¶ 374 at 7, aff'd, Department of Energy et al., B-246977.2 et al., July 14, 1992, 92-2 CPD ¶ 20. The object of the requirement is to avoid award decisions not based on the agency's most current view of its minimum needs. See N.V. Philips Gloellampenfabriken, B207485.3, May 3, 1983, 83-1 CPD ¶ 467 at 12. Agencies must amend solicitations to reflect a significant change in the government's requirements even after the submission of BAFOs, up until the time of award. See United Tel. Co. of the Northwest, supra, at 8 (change in requirements occurred after the selection decision but during the 2-1/2 year delay in award caused by various protests); Universal Techs., Inc., B-241157, Jan. 18, 1991, 91-1 CPD ¶ 63 at 4-5, recon. denied, B-241157.2, May 24, 1991, 91-1 CPD ¶ 505. One circumstance requiring the issuance of an amendment is a significant change in the government's estimate of the quantity it expects to order. See Management Sys. Designers, Inc. et al., B-244383.4 et al., Dec. 6, 1991, 91-2 CPD ¶ 518 at 5, recon. denied, Institute for Sys. Analysis--Recon., B-244383.7, Apr. 1, 1992, 92-1 CPD ¶ 328, req. for mod. of remedy denied, Management Sys. Designers, Inc.--Request for Modification of Remedy, B-244383.8, June 8, 1992, 92-1 CPD ¶ 496; Universal Techs., Inc., supra.

As explained above, the RFP's estimate for sequencers in Lot IV was largely driven by a single requirement--the upgrade of the AN/ALE-40 system under the Consolidated Clean-Up (CCUP) modification program. RFP § M.4.1.2. Specifically, 3,219 of the sequencers out of the estimated 3,755 were related to this program. Id. A funded purchase request for Lot IV in the amount of \$7 million in support of this program had been filed with the contracting office.

Based on our review of the record, we have little doubt that the BEQ for sequencers in Lot IV was valid at the time the solicitation was issued, as the Air Force urges. Notwithstanding the validity of the estimate when first made, the agency was required to amend the solicitation when it learned that its estimate of the amount to be purchased was no longer valid. Universal Techs., Inc., supra. Here, the record shows that on March 25, the CCUP program manager withdrew the \$7 million order for 3,219 sequencers pending completion of an ongoing review of the precise number of sequencers that would be needed. Concurrently, the Office of the Secretary of the Air Force redirected the funds for the sequencer upgrade away from the CCUP program to support the Air Force's efforts in Bosnia. At that point--which, as noted above, was 1 week before BAFOs were requested--the 3,755 figure no longer represented a reasonable estimate of the quantity of sequencers to be purchased as part of Lot IV.

In addition, our Office has previously considered whether the removal of available funding changes the validity of an agency's estimated requirement. In Management Sys. Designers, Inc. et al., supra, an agency issued an ID/IQ RFP for the purchase of support services in seven discrete task areas--task areas A through G--but learned after the initial evaluation of proposals, and before convening discussions, that funding would be available only for task area A. Id. at 3. We concluded that while the agency might still have an ongoing "need" for the other six task areas, it could actually expect to procure only task area A since funding was only available for task A. Under these circumstances, we held that the agency was required to amend the RFP to reflect the agency's best estimate of the purchase amount. Id. at 5. In our view, the Air Force here--when it learned in March that the 3,755 figure was no longer realistic--was likewise required to amend its RFP to reflect its best estimate of the quantity of sequencers to be purchased during Lot IV.⁶

Nonetheless, even where we have held that an agency has acted improperly, a protester must demonstrate a reasonable possibility that it was prejudiced by the agency's actions, that is, the protester must show that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996); Universal Techs., Inc., supra, at 5. As stated above, the Air Force argues that Symetrics was not prejudiced by the agency's failure to amend the RFP because all offerors were treated equally, and because the weaknesses in Symetrics's evaluation--resulting in the decision to select Tracor's higher-priced, higher-rated proposal over Symetrics's lower-priced, slightly lower-rated proposal--would not change as a result of a correction of the solicitation's estimated quantity.

We disagree. Our review of the record shows that the requirement for sequencers in Lot IV, 3,755, is between 7 and 12 times higher than the BEQ for sequencers in Lots V through VII (491, 315, and 503, respectively). This anomaly in the RFP's requirement for sequencers was triggered by the one-time purchase of sequencers in support of the upgrade program discussed above. The effects of this one-time purchase are reflected in the evaluation results.

Specifically, during the evaluation, only Tracor, the original equipment manufacturer and the incumbent producing these items since 1988, was found to clearly possess the capacity to produce the items required by Lot IV without schedule risk. Symetrics's proposal (and those of the other small business offerors) showed a

⁶While the Air Force contends that it could yet purchase more sequencers if it locates more funding between now and September 30, we note that the ordering period for Lot IV expires in just over 1 month. At this juncture, a general claim that these funds might materialize, without more, is speculative and insufficient to support the estimate in the RFP.

requirement to hire additional workers to meet the RFP's requirements for Lot IV. It was because of the need for the new hires that the agency evaluators gave the proposal a [deleted] rating and concluded that there was a [deleted] of schedule slippage under the [deleted] technical subfactor.

The Air Force argues that its assessment of [deleted] under the [deleted] technical subfactor was related to all of the requirements in Lot IV, and not just the sequencers. In addition, the Air Force argues that, even if its need for sequencers had been reduced to the amount of its current orders, it still would have assessed a performance risk against Symetrics. In our view, the evidence in the record does not support these contentions.

With respect to the link between new hires--the cited reason for the risk assessed under this subfactor--and the large estimate for sequencers, the Air Force's request for clarification number CTQD003 asked how many additional people would be needed to support the program, and how many were new hires as opposed to transfers within the company. Symetrics responded that due to the "surge" requirements in Lot IV it would need [deleted]. In addition, in its comments on the first agency report, Symetrics explained that it needed "to hire [deleted] to meet the high quantity manufacturing requirements of having to build 3,755 Sequencers in one year." Symetrics's First Comments Filing, June 30, 1997, Part I at 11. Thus, our comparison of all the BEQs in Lot IV with those in Lots V, VI, and VII (see table on page 3 of this decision) and our review of other materials in the record, lead us to conclude that the requirement for sequencers was clearly driving the need for additional hires to meet the requirements of Lot IV.

With respect to the Air Force's claim that even with a lower sequencer estimate it still would have assessed a risk against Symetrics, we note that Symetrics claims its hiring needs would drop substantially [deleted] if the requirement for sequencers dropped to 600. *Id.* at 20. While there is no way to know how the evaluators would have assessed the risk associated with Symetrics needing to hire [deleted] the record provides no basis to infer that the risk assessment would be the same as when Symetrics needed to hire [deleted] as it did under the superseded estimate of 3,755 sequencers. Thus, on this record, we conclude that there is a reasonable possibility that Symetrics was prejudiced by the agency's failure to amend its quantity estimate.

For the reasons above, we conclude that the large requirement for sequencers in Lot IV significantly affected the evaluation, and that the agency's decision not to amend the solicitation and permit offerors to revise their proposals accordingly resulted in an unreasonable evaluation and a flawed selection decision. Since we are sustaining Symetrics's protest and recommending that all offerors in the

competitive range be permitted to submit revised proposals, we need not address the other issues raised in Symetrics's protest.⁷

RECOMMENDATION

For the reasons above, we recommend that the agency reopen the competition, issue an amendment to reflect its current best estimate of the quantity to be ordered as part of Lot IV, request a second round of BAFOs, and reevaluate proposals. If, at the conclusion of the agency's reevaluation, another offer represents the best value to the government, the Air Force should terminate the contract awarded to Tracor--performance of which has been suspended pending the outcome of this protest--and make a new award. We also recommend that the protester be reimbursed the reasonable costs of filing and pursuing its protest, including attorneys' fees, limited to its contention that the agency failed to amend the RFP's estimate for sequencers. 4 C.F.R. § 21.8(d)(1) (1997); see Komatsu Dresser Co., 71 Comp. Gen. 260, 267 (1992), 92-1 CPD ¶ 202 at 9. In accordance with 4 C.F.R. § 21.8(f)(1), Symetrics's certified claim for such costs, detailing the time expended and the costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision.

The protest is sustained.

Comptroller General
of the United States

⁷While we do not address Symetrics's specific challenges to the evaluation of its and Tracor's proposals, we have reviewed each of these contentions and conclude that none would merit a decision by our Office to sustain the protest.