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Decision

Matter of: Essex Electro Engineers, Inc.

File: B-284149; B-284149.2

Date: February 28, 2000

Charles E. Raley, Esq., for the protester.
Jeffrey I. Kessler, Esq., and Robert E. Dudley, Jr., Esq., Department of the Army, for the agency.
John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's proposal was reasonably evaluated by the contracting agency as technically unacceptable and excluded from the competitive range where the proposal contained numerous deficiencies and disadvantages.

DECISION

Essex Electro Engineers, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. DAAB07-99-R-B404, issued by the Communications and Electronics Command, Department of the Army, for 100-kilowatt (kW) and 200-kW tactical quiet generators (TQG). Essex contends that the evaluation of its proposal and its exclusion from the competitive range were improper.

We deny the protest.

The RFP was issued to acquire modernized standard mobile 100-kW and 200-kW electric power generators for use by the Army, Navy, Air Force and Marine Corps. Contracting Officer's Statement, Dec. 12, 1999, at 1; RFP attach. 1, Statement of Work (SOW), at 1. The 100-kW and 200-kW TQGs will replace the current 100-kW and 200-kW generators and will have the following desirable characteristics relative

to current generators: less weight, diesel/JP-8 fueled, reduced aural signature, quality power output, improved reliability and maintainability, and decreased procurement and operational/maintenance costs. RFP attach. 1, SOW, at 1.

The RFP executive summary explains that the procurement is being conducted in three phases. Phase I of the procurement is an engineering and manufacturing development (EMD) effort, during which the successful contractor(s) will fabricate prototype generator sets.¹ During phase II of the effort, pre-production TQGs will be delivered by the successful contractor, based upon the contractor's phase I prototypes, with the TQGs being subjected to pre-production qualification testing conducted by the government, with the assistance of the contractor, to verify the TQGs' conformance to the relevant requirements and to evaluate the units' performance characteristics. After the successful completion of the Phase II effort, the agency may exercise the option for Phase III, during which the contractor will manufacture and deliver the TQGs.

The RFP contemplates the award of indefinite-delivery, indefinite-quantity, cost-plus-fixed-fee contract or contracts for phases I and II, and a fixed-price with economic price adjustment contract for phase III of the procurement. Award is to be made to the offeror(s) submitting the proposal determined to represent the best value to the agency based upon the following evaluation factors and subfactors:

1. Technical
 - (a) Technical Design and Performance
 - (b) Specific Design Characteristics
 - (c) Technical Data
 - (d) Capabilities, Plans, Personnel and Facilities
2. Logistics
 - (a) Operation and Support Analysis
 - (b) Supportability Planning
3. Performance Risk
4. Cost/Price
5. Small Business and Small Disadvantaged Business Utilization Plan

RFP attach. 5, at 2. The technical evaluation factor is slightly more important than the logistics factor and the logistics factor is significantly more important than the performance risk factor. The RFP further states that the performance risk,

¹ The RFP provides that multiple awards may be made for the Phase I effort. In the event multiple awards are made for the Phase I effort, the solicitation provides that the Phase II option will be awarded to the "best value" contractor. RFP Executive Summary.

cost/price, and small business and disadvantaged business utilization plan evaluation factors are equal in importance. Id. at 1. The RFP provides that under the technical evaluation factor, subfactors (a) and (b) are equal in importance and significantly more important than subfactors (c) and (d), which are equal in importance. With regard to the logistics evaluation factor, subfactor (a) is significantly more important than subfactor (b). Id. at 2.

The RFP includes a detailed explanation of the agency's intended evaluation approach, and cautions, among other things, that "[m]ere statements of compliance or repetition of the technical and/or [l]ogistics requirement without an intelligent, complete discussion and analysis are unsatisfactory." Id. The RFP adds that the agency will evaluate each offeror's proposed technical approach to determine "the extent to which understanding is exhibited in the operational and technical requirements of the generator sets." Id. at 3. The RFP specifies that the "proposed technical approach to each of the tasks delineated in the PD [purchase description] and SOW will also be evaluated as to completeness, feasibility, soundness of approach, potential risk, and amount and quality of technical analysis," and cautions that "[t]he evaluation team will not assume any technical competence not demonstrated by detailed discussion and analysis in the proposal." Id.

The RFP includes detailed instructions regarding the preparation of proposals. The solicitation requests that proposals consist of six volumes, including technical and logistics volumes, and specifies that neither the technical nor logistics volumes are to exceed 60 pages in length. RFP attach. 4, at 1. The RFP states, for example, that the technical proposal "shall" include "drawings, sketches, graphs, special analyses (e.g., model test results), calculations, design data, supporting narrative and/or other technical information outlining the proposed generator set and its performance characteristics." Id. at 2. The RFP requires that the technical volume include a "correlation matrix that shows where specific requirements are addressed in the proposal," and requests that the technical proposals consist of four sections, with each section to include a number of subsections. As an example, the RFP requires that section 1 of the technical proposal, "Technical Design and Performance," include five subsections, with offerors required under the first subsection A, "Overall Design and Approach," to address through description and information the following: design and layout; materials and construction; transportability and handling characteristics; skid base/housing; treatment and painting; and safety and human factors. Id. at 2-4.

The RFP also requires that offerors provide oral presentations regarding the portions of their proposals that correlate to the technical data and the capabilities, plans, personnel and facilities subfactors of the technical evaluation factor, and the supportability planning subfactor of the logistics factor. RFP attach. 04, at 5, 7, 14.

The RFP advises offerors that the agency “reserves the right to award the contract without negotiations/discussions or Final Proposal Revisions,” and that it “may elect to limit the competitive range . . . for purposes of efficiency in accordance with [Federal Acquisition Regulation] FAR [§] 15.306.” RFP attach. 5, at 1.

The agency received four proposals, including Essex’s, by the RFP closing date of September 7, 1999.² Contracting Officer’s Statement at 6. The proposals were forwarded to the appropriate evaluation teams. The technical, logistics, and small business and small disadvantaged business participation volumes of the proposals were evaluated under the applicable evaluation factors to assess each proposal’s advantages, disadvantages, and deficiencies, and an item for negotiation (IFN) was prepared for each evaluated “disadvantage” or “deficiency” to be sent to the respective offerors after the determination of the competitive range.³ Agency Report, Tab F, Initial Source Selection Evaluation Report, Sept. 29, 1999, at 6-7.

The offerors’ initial proposals received the following overall ratings:

Offeror	Technical	Logistics	Performance Risk	Small Business Participation Plan	Cost/Price (Ph. I & II)
A	Good	Marginal	Low	Marginal	\$6,746,000
B	Marginal	Marginal	Low	Marginal	\$9,174,000
C	Outstanding	Good	Neutral	Marginal	\$4,050,000
Essex	Unacceptable	Unacceptable	Low	Marginal	\$4,978,000

Agency Report, Tab D2, Competitive Range Determination, at 1.

The source selection authority (SSA) determined that Essex’s proposal should be excluded from the competitive range. *Id.* at 2. The SSA noted that Essex’s proposal was evaluated as unacceptable under the most important subfactors to the technical and logistics evaluation factors, and could “not be made acceptable without a major

² Although the RFP requested that offerors submit the past performance volume of their proposals to the agency by July 30, Essex did not submit its past performance volume until August 13. The agency nevertheless considered Essex’s past performance volume as timely received. Contracting Officer’s Statement at 6; Agency Report, Tab F, Initial Source Selection Evaluation Report, Sept. 29, 1999, at 3.

³ The agency chose not to complete its evaluation or assign ratings to the technical volumes of the offerors’ proposals under the technical data and capabilities, plans, personnel and facilities subfactors to the technical evaluation factor, or to the logistics volumes of the offerors’ proposals under the supportability planning subfactor to logistics factor, until oral presentations were conducted.

rewrite or revision to [the] proposal.” The SSA also found that Essex’s proposal “presented very little originality,” and “parroted back’ the RFP language indicating that the offeror has very little comprehension as to how to perform this contract.” Id. With regard to the relative merits of Essex’s proposal vis-à-vis the proposals included in the competitive range, the agency identified 13 deficiencies or disadvantages in offeror A’s proposal, 22 deficiencies or disadvantages in offeror B’s proposal, 12 deficiencies or disadvantages in offeror C’s proposal, and 102 deficiencies or disadvantages in Essex’s proposal. Contracting Officer’s Supplemental Statement, Jan. 14, 2000, at 1.

After the agency notified Essex that its proposal had been excluded from the competitive range, Essex filed an agency-level protest, which the agency denied. Agency Report, Tab D3, Competitive Range Determination Letter to Essex; Tab D4, Essex’s Agency-Level Protest; Tab D5, Contracting Officer’s Denial of Essex’s Agency-Level Protest. The agency’s decision denying Essex’s agency-level protest was accompanied by four attachments, which detailed the deficiencies and disadvantages in Essex’s proposal as identified by the agency in its evaluation. Attachment No. 1 consisted of a side-by-side comparison of 37 sections of the RFP’s PD and the corresponding sections of Essex’s technical proposal, which, in the agency’s view, constituted nothing more than mere statements of compliance with, or repetition of, the RFP’s requirements, and were thus evaluated as “disadvantages.” Attachment No. 2 consisted of another side-by-side comparison, this time of 24 sections of the RFP and the corresponding sections of Essex’s technical proposal, which were considered by the agency to contain insufficient information and were also evaluated as “disadvantages.” Also included was attachment A, which identified the 21 “deficiencies” in Essex’s technical proposal as evaluated by the agency, described the relevant section the of the RFP and Essex’s proposal’s response, and the agency’s reasons as to why the response constituted a deficiency. Attachment A also listed 16 additional aspects of Essex’s technical proposal that were evaluated by the agency as representing “disadvantages” that were not specifically due to a blanket statement of compliance or insufficient information, and described the agency’s reasons for evaluating these aspects of Essex’s proposal as representing “disadvantages.” Finally, attachment B (the fourth attachment to the agency’s decision denying Essex’s protest) identified three deficiencies (and one advantage) as evaluated by the agency under the operation and support analysis subfactor to the logistics evaluation factor, and included a narrative setting forth the agency’s reasoning in this regard. Id., Tab D5, Contracting Officer’s Denial of Essex’s Agency-Level Protest.

Essex subsequently filed its protest with our Office. Essex contends that the agency’s evaluation of its proposal was unreasonable as well as unequal when compared to the evaluation of the other proposals. Essex argues that, but for the agency’s improper evaluation, its proposal would have been evaluated at least comparably with the competitive range proposals, and would have been included in the competitive range.

Essex's protest includes an affidavit from the individual who supervised the preparation of Essex's proposal. This affidavit addresses each of the 21 deficiencies identified by the agency in attachment A in its evaluation of Essex's proposal under the technical design and performance and specific design characteristics subfactors of the technical evaluation factor, and the 3 deficiencies identified by the agency in attachment B in its evaluation of Essex's proposal under the operation and support analysis subfactor to the logistics evaluation factor. This affidavit also specifically addresses the propriety of the agency's conclusions regarding the 16 disadvantages in Essex's technical proposal in attachment A as evaluated by the agency that were not specifically due to a blanket statement of compliance or insufficient information.

In reviewing an agency's decision to exclude a proposal from the competitive range, we look first to the agency's evaluation of proposals to determine whether the evaluation had a reasonable basis. Although in reviewing an agency's evaluation we will not independently determine the merits of a proposal, we will examine the record to ensure that the evaluation was reasonable and consistent with the evaluation criteria. The judgments involved in an evaluation of proposals are subjective by their nature; nonetheless, the judgments must be reasonable and must bear a rational relationship to the announced criteria upon which competing offers are selected. Safeguard Maintenance Corp., B-260983.3, Oct. 13, 1995, 96-2 CPD ¶ 116 at 4.

An offeror must submit an initial proposal that is adequately written and that affirmatively states its merits, or run the risk of having its proposal rejected as technically unacceptable. Agencies may exclude proposals with significant informational deficiencies from further consideration whether the deficiencies are attributable to omitted or merely inadequate information addressing fundamental factors. Generally, offers that are technically unacceptable as submitted and would require major revisions to become acceptable are not required to be included in the competitive range for discussion purposes. Global Eng'g & Constr., Joint Venture, B-275999.4, B-275999.5, Oct. 6, 1997, 97-2 CPD ¶ 125 at 3.

Based upon our review of the record, the agency's evaluation of Essex's proposal, and the exclusion of Essex's proposal from the competitive range, were reasonable. The record reflects that Essex's proposal was downgraded in large part because the information provided either parroted back in whole or part the RFP's requirements, with a statement of Essex's intent to meet the requirements, or simply lacked sufficient information or detail for the agency to determine that Essex understood the RFP's requirements. Further, the record does not reflect, as Essex argues, that Essex's proposal was evaluated unequally as compared to the competitive range proposals.

We first note that, although Essex was informed by the attachments to the agency's decision denying Essex's agency-level protest of the 102 deficiencies and disadvantages identified by the agency in Essex's proposal, the protester specifically challenged the propriety of the agency's conclusions regarding only 24 deficiencies and 16 disadvantages. Additionally, the protester's specific challenges to the 24 deficiencies identified by the agency conclude in a number of instances with the protester's comment that the deficiency identified should have been the subject of a clarification or a matter raised during discussions. Protest, attach., Affidavit of Essex's President, at 8-10, 12, 14, 16.

Further, although the agency report included the affidavits of the technical factor evaluation team chief and the logistics factor evaluation team leader, which respond in detail to the arguments raised in the protester's affidavit, Essex's comments on the agency's report only generally argue that the evaluation was unreasonable. That is, the protester's comments in response to the report do not specifically respond to any of the explanations regarding the evaluation of Essex's proposal or views expressed in the affidavits of the technical factor evaluation team chief and the logistics factor evaluation team leader.

Nevertheless, given the agency's conclusion that Essex's proposal was technically unacceptable, and the resultant exclusion of Essex's proposal from the competitive range, we address below the propriety of the agency's evaluation through a representative sample of the deficiencies and disadvantages identified by the agency that were specifically challenged by Essex in its protest.

The first example concerns the RFP requirement that proposals address the fuel consumption of the TQGs proposed. RFP attach. 04, at 3. The purchase description for the 100-kW TQG specified that "[f]uel consumption shall be no more than 7.6 gallons per hour when the set is operating on low sulfur grade diesel fuel . . . at all loads up to and including rated load." RFP attach. 2, PD, 100-kW TQG, at 104. The engine Essex proposed for use in its 100-kW TQG, as reflected by the manufacturer's data Essex attached to its proposal, provided that the fuel consumption of the engine selected at the appropriate power requirements was 7.9 gallons per hour.⁴ Agency Report, Tab C1, Essex's Proposal, at 2-19, 2-23, attach. #3-Engine Performance Curve. The agency thus evaluated Essex's proposal as having a "deficiency" because the fuel consumption of Essex's 100-kW TQG exceeded the requirements set forth in the applicable PD. Agency Report, Tab F, Initial Source Selection Evaluation Report, Sept. 29, 1999, at 36.

⁴ Although apparently not considered by the technical factor evaluation team during its evaluation of Essex's proposal, we note that Essex's logistics proposal states its proposed 100-kW TQG will consume 8 gallons of fuel per hour. Agency Report, Tab CI, Essex Proposal, at 3-1.A.

Essex complains that the fuel consumption differential between the engine it proposed and the requirements of the RFP “would not normally be anticipated to be a ‘deficiency’ for rejecting a new engine to meet new [Environmental Protection Agency] requirements, particularly when verification of actual requirements was to be accomplished by the Prototype Testing during Phase I of the Contract to be awarded.” Protest, attach., Affidavit of Essex’s President, at 8. The protester adds that its proposal offered an alternate engine (at additional cost), which it asserts would comply with the fuel consumption limitation set forth in the RFP. The protester concludes that the agency’s determination here “is the product of not requesting an obvious clarification.” Id.

Based on our review of the record, the agency’s determination here was reasonable. The engine proposed by Essex for its 100-kW TQG, as evidenced by the materials Essex supplied with its proposal, simply did not comply with the RFP’s fuel consumption limitation. The fact that Essex’s proposal identified an alternate engine that may comply with the RFP’s fuel consumption limitations does not render the agency’s determination improper. We agree with the agency that the selection of the engine for Essex’s proposed 100-kW TQG was Essex’s responsibility, and the fact that Essex selected an engine which will not comply, based upon the engine manufacturer’s data, with the fuel consumption limitations of the RFP can certainly reasonably be considered a deficiency in Essex’s proposal. Further, despite Essex’s apparent view to the contrary, we fail to see how the testing to be performed after award of the contract under the RFP and the subsequent manufacture of prototype TQGs would have somehow aided Essex, where the manufacturer’s data indicates (and Essex does not argue otherwise) that the testing would only have verified that Essex’s proposed 100-kW TQGs failed to comply with the minimum requirement regarding fuel consumption.

Another example concerns the RFP requirement that the operational weight of the 100-kW TQG not exceed 7,000 pounds. RFP attach. 04, at 4. The RFP stated in this regard that proposals “shall include a detailed weight breakdown of each generator set component with information and data to verify and support each component weight and demonstrate the ability to comply with the overall generator weight requirements.” Id.

In evaluating Essex’s proposal, the agency found that “[a]lthough the proposal indicates that the weight requirements will be met . . . numerous components were omitted from the weight analysis.” Agency Report, Tab F, Initial Source Selection Evaluation Report, Sept. 29, 1999, at 36-37. The agency also found that Essex had failed to submit data supporting the weight analysis from the manufacturers of the generators for either the 100-kW or 200-kW TQG. Id., Tab D5, Contracting Officer’s Denial of Essex’s Agency-Level Protest, attach. A, at 1. The agency thus concluded that this aspect of Essex’s proposal constituted a “disadvantage.” Id., Tab F, Initial Source Selection Evaluation Report, Sept. 29, 1999, at 37.

Essex challenges the agency's determination that this aspect of its proposal constituted a "disadvantage," arguing that "[t]here was no requirement in the solicitation to submit manufacturer's supporting data." Protest, attach., Affidavit of Essex's President, at 8. The protester points out that its proposal included a weight breakdown which "provided the weights of all of the major components" of the TQGs. Id. at 8-9; see Agency Report, Tab C1, Essex's Proposal, attach. #5. Essex adds here that the weights of the engines were set forth in the engine manufacturer's data provided in Essex's proposal, and contends that the manufacturer of the generators Essex proposed for use in its 100-kW and 200-kW TQGs "had supplied the weight data" Essex had used in formulating its weight breakdown. Protest, attach., Affidavit of Essex's President, at 9. Essex also concludes here that the agency's determination that this aspect of its proposal represented a disadvantage was the product of "not requesting what was apparently a desired clarification." Id.

Again, based upon our review of the record the agency's determination here was reasonable. The weight breakdown in Essex's proposal does not include "each component" of the TQGs as required by the RFP, but rather, as explained by Essex, includes only "the major components." Id., at 8-9; Agency Report, Tab C1, Essex's Proposal, attach. #5. Nor does Essex's proposal include, with the exception of the engine manufacturer's data, any information or data verifying or supporting the weights of the components set forth in Essex's weight breakdown, as required by the RFP.

Another example of the protester's contentions concerns the dimensions of the 100-kW and 200-kW TQGs. The RFP set forth specific maximum dimensions for both TQGs, and stated that proposals "shall include a detailed dimensional breakdown of each generator set component with information and data to support each component and dimension and demonstrate the ability to comply with the overall generator set dimensional requirements." RFP attach. 4, at 4. The agency found, in evaluating Essex's proposal, that the "required detailed dimensional breakdown of each generator set component was not provided," and concluded that this aspect of Essex's proposal constituted a "deficiency." Agency Report, Tab F, Initial Source Selection Evaluation Report, Sept. 29, 1999, at 38.

Essex argues that its proposal should not have been considered deficient, pointing out that its proposal included two 2-page drawings, one for the 100-kW TQG and the other for the 200-kW TQG. Essex contends that these drawings should have been considered sufficient by the agency, and to the extent they were properly determined insufficient, "the agency could have made a clarification request." Protest, attach., Affidavit of Essex's President, at 9-10; see Agency Report, Tab C1, Essex's Proposal, attach. #7 (drawings B989-1000 and B989-2000).

Again, given the RFP's requirements, set forth above, regarding the information to be provided to support the proposed TQGs' ability to comply with the dimensional requirements detailed in the RFP, and Essex's failure to provide anything other than

basic drawings of the generator set, without any detailed dimensional breakdown or supporting data, we find the agency's determination that this aspect of Essex's proposal constituted a deficiency was reasonable.

Another example concerns the RFP requirement that proposals include certain information regarding the proposed TQGs' overall design and approach. In this regard, the RFP specifically requested information in the area of "[m]aterials and [c]onstruction." RFP attach. 4, at 2. In evaluating Essex's proposal, the agency found that the proposal did "not provide any information on the type of sheet metal (steel, composite materials, aluminum alloy, etc.) that will be used for the generator housing," and determined that this aspect of Essex's proposal constituted a "disadvantage." Agency Report, Tab F, Initial Source Selection Evaluation Report, Sept. 29, 1999, at 24.

Essex argues that "there is no disadvantage" in its proposal's failure to provide any information in this regard. Protest, attach., Affidavit of Essex's President, at 25. Essex points out here that "[n]othing in the Solicitation or the PD defines a requirement for the type of sheet metal to be used," and adds that its proposal "is based on using steel." Id.

Essex is correct that the RFP does not specify a type of material to be used here. However, as indicated, the solicitation does require that offerors at least identify in their proposals the material that they propose to use. Again, given that Essex's proposal failed to include the information requested by the RFP in this regard, the agency, which was left to guess what material Essex may use, acted reasonably in identifying this aspect of Essex's proposal as a "disadvantage."

Essex also argues that its proposal was unequally evaluated as compared to the evaluation of the other proposals. The protester first points out here that, according to the record, the agency found that the other offerors' proposals also had a large number of disadvantages and deficiencies which were to be addressed through the issuance of IFNs by the agency. Essex concludes that, because the agency characterized the number of IFNs as "large" for the other offerors, the agency's exclusion of Essex's proposal from the competitive range because its proposal had a large number of disadvantages and deficiencies was unreasonable and evidenced unequal treatment. Protester's Comments at 7.

Although the protester is correct that the agency characterized the IFNs needed for the offerors whose proposals were included in the competitive range as "large in number," Agency Report, Tab F, Initial Source Selection Evaluation Report, Sept. 29, 1999, at 71, that characterization does not alter the fact that the number of IFNs that would have to be issued for Essex would total approximately 100, while the number of IFNs for offerors A, B and C totaled 13, 22, and 12, respectively. In short, Essex's argument that that it was unreasonable to exclude Essex's proposal from the competitive range because of the very large number of deficiencies and

disadvantages identified in its proposal where “[e]ach of the offerors retained in the competitive range . . . are noted as having such a ‘large in number’ of outstanding IFNs,” see Protester’s Comments at 7, is without merit.

In support of its argument regarding the unequal evaluation of proposals, Essex next provides a list of 24 sections in its proposal and that of offeror B which address the same technical requirements. Essex contends that, because its proposal was found to have disadvantages or deficiencies regarding these sections, and offeror B’s proposal was not, the agency unequally evaluated Essex’s proposal compared to the evaluation of offeror B’s proposal. Id. at 7-8.

The agency first points out that, contrary to Essex’s comparison of its own proposal with that of offeror B, neither proposal was downgraded with regard to 13 of the 24 sections referenced by Essex. Statement of the Technical Factor Evaluation Team Chief, Jan. 13, 2000, at 5-6. Accordingly, Essex’s reference to the agency’s evaluation of these 13 sections of its and offeror B’s proposal in support of its argument that the evaluation of proposals was unequal is misplaced.

The agency responds to Essex’s assertions regarding four of the sections in Essex’s and offeror B’s proposals that address the same technical requirements by explaining in detail the differences in the proposals which led to the agency’s conclusion that these sections of Essex’s proposal represented disadvantages while the sections of offeror B’s proposal did not. Id. at 6-8. Despite having access under our protective order to all competitive range proposals and all relevant evaluation documents, Essex does not substantively comment on the agency’s response. Rather, Essex continues to argue in general terms, without again referring to these four sections of its and offeror B’s proposals, that its proposal was unequally evaluated as compared to the other proposals. In our view, Essex’s challenge here thus constitutes, at best, its mere disagreement with the evaluation results, and does not provide a basis to find that the evaluation of proposals was unequal. Global Assocs., Ltd., B-275534, Mar. 3, 1997, 97-1 CPD ¶ 129 at 9.

The agency concedes that in the remaining seven sections cited by Essex, the protester’s proposal was incorrectly rated (and thus should have been evaluated as having 95, rather than 102, deficiencies and disadvantages). Statement of the Technical Factor Evaluation Team Chief, Jan. 13, 2000, at 8. However, given the number of deficiencies and disadvantages remaining, the overall reasonableness of the agency’s evaluation of Essex’s proposal and the determination that it was technically unacceptable is not in doubt. See Benton Corp., B-249091, Oct. 21, 1992, 92-2 CPD ¶ 264 at 5 n.7.

Essex points to three other instances where it believes that the contents of its proposal and that of offeror B are “virtually identical” with regard to how they address the RFP’s requirements, including those concerning the weight limitations and dimensions requirements discussed previously. Protester’s Comments at 8.

The agency responds, and the record reflects, that offeror B's proposal was also evaluated as "deficient" with regard to how it addressed the weight limitations and dimensions of the TQGs as set forth in the RFP. Agency Report, Tab F, Initial Source Selection Evaluation Report, Sept. 29, 1999, at 32-33; Statement of the Technical Factor Evaluation Team Chief, Jan. 13, 2000, at 8-9. Accordingly, this example does not represent unequal evaluation.

In sum, as the above examples indicate, the agency's evaluation of Essex's proposal and the conclusion that the proposal was technically unacceptable were reasonable, and the agency did not evaluate the offerors unequally. See Mid-Ohio Fiberoptics, Inc., B-255924, Apr. 20, 1994, 94-1 CPD ¶ 269 at 3; Triton Marine Constr., Corp., B-250856, Feb. 23, 1993, 93-1 CPD ¶ 171 at 3-4.

As indicated above, the protester continually suggests, in response to the agency's identification of the numerous informational deficiencies in Essex's proposal, that the deficiencies or disadvantages could have been addressed through clarifications. Given that the agency reasonably found Essex's proposal technically unacceptable because of these numerous informational deficiencies, the purpose of any communication with Essex would have been to provide Essex with an opportunity to cure the material defects in its proposal caused by the numerous informational deficiencies. Wellco Enters., Inc., B-282150, June 4, 1999, 99-1 CPD ¶ 107 at 7. Such communications would have thus constituted discussions, which can only be conducted with offerors whose proposals are included in the competitive range. FAR § 15.306(b), (c).

The protester also contends that it had intended to address during oral presentations certain items in its proposal that were identified by the agency as deficiencies or disadvantages under the technical design and performance and specific design characteristics subfactors of the technical evaluation factor, and the operation and support analysis subfactor to the logistics evaluation factor. The protester thus argues that it was improper for the agency to find its proposal technically unacceptable without first allowing oral presentations. However, Essex would not have had the opportunity to address these areas of its proposal during its oral presentation because the RFP specifically stated that only the technical data and capabilities, plans, personnel and facilities subfactors of the technical evaluation factor, and the supportability planning subfactor of the logistics factor were to be addressed during oral presentations. RFP attach. 4, at 14.

Essex argues that its failure to include much of the information required by the RFP was due to the page limitations set forth in the solicitation. Notwithstanding the fact that Essex concedes that its proposal exceeded the RFP's page limitations (whereas the competitive range proposals did not), and was nevertheless considered in its entirety by the agency, Essex's argument here--that the RFP's page limitations were inadequate--raised after the receipt of proposals is untimely and will not be considered. See IMODCO, B-216259, Jan. 11, 1985, 85-1 CPD ¶ 32 at 4.

Finally, the protester argues that the exclusion of its proposal from the competitive range was improper because “FAR Subpart 15.306 permits a limitation of the competitive range only if the number of proposals that would otherwise be included in the competitive range would be too numerous to permit efficient negotiation.” Protester’s Comments at 9. The protester’s reading of FAR § 15.306(c) is simply incorrect. Where, as here, discussions are to be conducted, agencies are required to “establish a competitive range comprised of all of the most highly rated proposals, unless the range is further reduced for purposes of efficiency pursuant to subparagraph (c)(2) of this section.” FAR § 15.306(c). Thus, an unacceptable proposal, such as the protester’s, can be excluded from the competitive range because it was not among the most highly rated proposals, SDS Petroleum Prods., B-280430, Sept. 1, 1998, 98-2 CPD ¶ 59 at 5, and the regulation further provides that yet more proposals can be eliminated from the competitive range for purposes of efficiency if it has been announced in the RFP, as was the case here. See Kathpal Techs., Inc.; Computer & Hi-Tech Management, Inc., B-283173.2 et al., Dec. 30, 1999, 2000 CPD ¶ __, at 11.

The protest is denied.

Comptroller General
of the United States