



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: L-3 Communications EOTech, Inc.

File: B-311453; B-311453.2

Date: July 14, 2008

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DIGEST

Protester's challenge to the exclusion of its proposal from the competitive range based on the failure of its bid sample during testing to satisfy an "essential criteria" is denied, where the solicitation advised offerors that the failure to satisfy an "essential criteria" would result in elimination of the proposal from the competition, the agency's testing method was reasonable and consistent with the solicitation instructions, and the protester's complaint about the test failure was related to its inadequately written proposal.

DECISION

L-3 Communications EOTech, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. W15QKN-07-R-0428, issued by the U.S. Army Materiel Command for "Close Combat Optics" to be used with M16A2 rifles. L-3 asserts that the agency performed flawed testing on its proposed sight and mount and improperly rejected its proposal.

We deny the protest.

The RFP sought "Close Combat Optics," that is, optical sights with mounts, to be used as fire control devices on M16A2 rifles, M16A4 rifles, and M4 carbines. RFP § C.2. These systems were to be procured through award of a fixed-price indefinite-delivery/indefinite-quantity (ID/IQ) contract for a 5-year base period with two 1-year option periods. *Id.* § B. The RFP instructed each offeror to submit a

written proposal, as well as a bid sample that would be tested against numerous criteria described in the solicitation.

The solicitation provided for award on a “best value” basis, considering the evaluation factors of bid sample, quality system, equipment/production, price, performance risk, and small disadvantaged business participation. With regard to the bid sample factor, which was the most important factor, offerors were advised that the bid samples first would be tested against 15 “essential criteria,” each of which would be rated on a “pass/fail” basis, and only samples that passed all of the “essential criteria” would be tested against 7 additional “rated criteria.” Id. § M ¶ B. In this regard, section M of the RFP stated in three places language essentially identical to the following:

A failure in any one or more of the essential criteria as stated shall be cause for elimination from further consideration for award and [the] offeror[']s submission will not be further evaluated.

Id. § M ¶¶ A, C.1.0, C.1.1.

At issue in this protest is the evaluation of optical sights for the M16A2 rifles. In response to the solicitation, seven proposals and bid samples from four offerors were submitted for the M16A2 rifles. With the bid samples, offerors were required to submit commercial off-the-shelf manuals, each of which included mounting instructions. RFP § L; Mounting Instructions. Six of the samples, including L-3's, failed the “endurance-live fire” test, which was one of the “essential criteria.”¹ This test required that bid samples be mounted on the M16A2 rifle, withstand a 6,000 round endurance firing with no physical damage, and maintain a “zero within 1 Gunner’s mil upon completion of [the] endurance test.” Id. § M ¶ C.1.1.10. Based on this failure, the agency determined that L-3's sample was unacceptable and eliminated L-3's proposal from the competition. This protest followed.

L-3 contends that the agency's endurance-live fire test was flawed. In this regard, the protester asserts that the only reason its optical sight sample failed the endurance-live fire test was because the agency failed to properly secure the locking nut that tightens the mount to the weapon. L-3 contends that the agency improperly hand-tightened the nut when it should have used a tool, such as a hex key, to secure the locking nut before conducting the test. L-3 asserts that it should have been “obvious” to the agency that a tool was required from the locking nut's design and that it is “common knowledge” in the industry that a tool is required for these types of locking nuts. Protest at 7-8.

¹ Four of the six samples that failed the endurance-live fire test also failed multiple other “essential criteria.” Agency Report, Tab 6.1., Final Technical Evaluation, at 1-2.

Our Office will review an allegedly improper technical evaluation of product samples to determine whether the evaluation was fair, reasonable and consistent with the evaluation criteria. We will not make an independent determination of the merits of an offeror's proposal; rather, we will review the evaluation record to ensure that the agency's technical judgment has a rational basis and is consistent with the stated evaluation criteria. Optical Sys. Tech., Inc., B-296516.2, B-296516.3, Mar. 17, 2006, 2006 CPD ¶ 63 at 5; Sun Chem. Corp., B-288466 et al., Oct. 17, 2001, 2001 CPD ¶ 185 at 7.

Here, the agency explains that the design of the locking nut (with "knurled" ridges) on the submitted bid sample suggested to it that hand-tightening was the appropriate tightening method,² and the agency further explains that its own experience has shown that over-tightening the locking nut with a tool can damage the optic or optical mount.³ The agency also notes that each of the other offerors submitted mounting instructions that identified when hand-tightening was appropriate, when tools were required, what tool was to be used, and how to use the tool to tighten the particular nut, screw, or bolt. For example, when tools were required, offerors included specific instructions for what component the tool should be used with and, where appropriate, described the number of turns or amount of force to be applied.⁴ Agency Report at 9, 11-12; Mounting Instructions. However, with respect to the optical sight for the M16A2 rifle, L-3's proposal failed to include any instruction that a tool was required; the proposal merely stated, "Secure the locking nut." Id. at 7-8; Mounting Instructions at 25. Without such an instruction, the agency or user could reasonably conclude that hand-tightening L-3's knurled ridge locking nut was the appropriate method to secure the sight mount.⁵

² We recognize, as L-3 points out, that five of the seven bid sample mounting instructions make some reference to using a tool, but none of these optical sights contained knurled ridge locking nuts of the type on L-3's optical sight. Thus, the fact that some offerors may have instructed that tools be used does not evidence that the agency should have inferred that a tool should have been used to mount L-3's optical sight to the M16A2 rifle here.

³ L-3 disputes the agency's contention that over-tightening damages the optics system, but has provided no evidence to support its argument.

⁴ The offerors' mounting instructions also illustrate that each bid sample was uniquely designed and contained different parts and tightening requirements. In other words, no common approach or industry standard is apparent.

⁵ To the extent that L-3 challenges the agency's ability to consistently and rationally apply a hand-tightening method, the agency has explained the steps that it took to ensure consistency, and we find this approach to be reasonable. See Declaration of Optical Engineer, at 1-2.

As we have often stated, an offeror must submit an adequately written proposal or it runs the risk of having its proposal rejected as unacceptable. Dynamic Mktg. Servs., Inc., B-279697, July 13, 1998, 98-2 CPD ¶ 84 at 6. Here, the complaint raised by L-3 concerning the endurance-live fire test was the result of its failure to identify how its locking nut was to be tightened, and not because of agency error. Under these circumstances, we cannot find the agency's testing approach unreasonable.⁶

L-3 nevertheless asserts that its test failure was not design related, but was the result only of a "minor informational deficiency" that could have been corrected easily by asking L-3 whether a tool was required to properly tighten the nut. L-3 contends that given this minor issue and the fact that this was the only one of the "essential criteria" that its sample failed to satisfy, the agency should allow L-3 to correct the informational deficiency and repeat the pass/fail test, especially because the failure to do so resulted in the establishment of a competitive range of one. Supp. Protest and Comments at 9.

Federal Acquisition Regulation (FAR) permits an agency to limit the competitive range to only the "most highly rated proposals" and does not require that discussions be held with offerors that are not included in the competitive range.⁷ FAR §§ 15.306(c)(1), (d)(1). We have held that there is nothing inherently improper in a competitive range of one where the agency has a reasonable basis for its competitive range determination. M&M Investigations, Inc., B-299369.2, B-299369.3, Oct. 24, 2007, 2007 CPD ¶ 200 at 3. As indicated above, this RFP clearly established the ground rules for testing the samples as well as the consequences—"elimination from further consideration for award"—for offerors whose proposed bid sample failed any one of the 15 "essential criteria." Given these ground rules, we cannot find unreasonable the agency's decision to exclude L-3's proposal and bid sample from the competitive

⁶ L-3 asserts that flaws in the testing should have been evident because six of seven bid samples failed the endurance-live fire test, and because L-3's optical sight of the M4 carbine passed the test. Supp. Protest and Comments at 10. However, as stated above, the record shows that with regard to the M16A2 rifle, each offeror proposed unique and different sights and mounts, and each offeror provided different mounting instructions. With regard to M4 carbine testing, L-3 provided different mounting instructions to the agency than it provided for the M16A2 rifle, and the M4 carbine also is of a different design. Mounting Instructions at 24-25. L-3 has not shown that the test was flawed.

⁷ Although L-3 asserts that any confusion about its mounting instructions could have been resolved through "clarifications," Supp. Protest and Comments at 15, the agency was under no obligation to conduct clarifications with L-3 here, particularly considering that they were the result of an inadequately written proposal. FAR § 15.306(b)(2); Government Telecomms., Inc., B-299542.2, June 21, 2007, 2007 CPD ¶ 136 at 8 (agency has discretion to not seek clarifications).

range where, as here, the proposal failed an “essential criteria” test and the only complaint about this failure is related to L-3’s inadequately drafted proposal, and not because of agency error or flawed testing.⁸ See California Microwave, Inc., B-229489, Feb. 24, 1988, 88-1 CPD ¶ 189 at 6.

L-3 also asks us to consider that the optical sight of the only offeror in the competitive range (Aimpoint) experienced test failures, which require design changes that L-3 asserts are more significant than the informational deficiency that caused L-3’s test failure. However, the test failures experienced by the Aimpoint bid sample occurred with the “rated criteria,” which, as defined by the RFP, were only evaluated after the bid sample passed all of the “essential criteria”; Aimpoint’s bid sample passed all of the “essential criteria.” In contrast, L-3’s failure occurred under the “essential criteria” and required no further evaluation. The agency has persuasively explained why the Aimpoint test failures were easily correctible without a need to retest the optical sight under these “essential criteria,” and, since the RFP allowed for discussions to occur on “rated criteria” failures, we find no error in the agency’s actions here.

In sum, we find that L-3’s proposal was properly eliminated from the competitive range in accordance with the unambiguous ground rules of the RFP.

The protest is denied.

Gary L. Kepplinger
General Counsel

⁸ L-3 cites to our line of “benchmark” cases where we have emphasized the need for flexibility in the conduct of “benchmark” and other demonstration tests, and where we have stated that deficiencies should be pointed out and corrected during the negotiation process to ensure maximum competition. See, e.g., CRX Telecom, B-249610, B-249610.5, Apr. 9, 1993, 93-1 CPD ¶ 308 at 11. However, in CRX Telecom and similar cases, the “benchmark” tests were deemed to be “an inherent part of the negotiation process” where discussions were required, *id.* at 11, unlike here where the RFP specifically stated that bid samples that failed “essential criteria” would be rejected and not included in the competitive range. Thus, the facts here are more similar to our line of cases that require only that product testing be conducted fairly and consistent with the RFP, as we found was done here. See, e.g., Optical Sys. Tech., Inc., *supra*, at 5; Pride Mobility Prods. Corp., B-291878, Apr. 8, 2003, 2003 CPD ¶ 80 at 3.