



United States Government Accountability Office  
Washington, DC 20548

Comptroller General  
of the United States

# Decision

**Matter of:** Eomax Corporation

**File:** B-311391

**Date:** June 23, 2008

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Ken Smart for the protester.

James H. Roberts, III, Esq., Van Scoyoc Kelly PLLC, for Maxa Beam Searchlights, an intervenor.

Capt. R inah R. Shah, Department of the Army, for the agency.

Paul E. Jordan, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Evaluation of protester's technical proposal and award decision were unobjectionable where agency reasonably found weaknesses associated with firm's proposed search cameras based on inability to easily switch between sensor modes, size of the camera, proposed warranty, and higher price, that rendered its proposal other than the best value.

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## DECISION

Eomax Corporation protests the Department of the Army's award of a contract to Maxa Beam Searchlights, Inc. d/b/a MaxaVision Technologies, under request for proposals (RFP) No. W9124Q-08-D-0808, for search cameras to be included in the Commercial Equipment Direct Assistance Program (CEDAP). Eomax challenges the agency's technical evaluation and resulting source selection.

We deny the protest.

The CEDAP program helps meet the equipment and training needs of smaller jurisdictions and communities by providing equipment to assist emergency responders in improving their capabilities in the areas of prevention and detection, regional response and mutual aid, and interoperable communications. The RFP sought ruggedized, handheld, search camera kits. Each ultra-light camera was to have a telescoping pole and remotely articulated arm to determine the extent of fire and smoke "from difficult or impossible to reach areas (such as ceiling voids) without the initial need for ladders." RFP at 2. The RFP, issued as a total small

business set-aside, contemplated the award of a requirements contract for a base year with 1 option year for up to a maximum of 75 units per year.

Proposals were to be evaluated on a “best value” basis in two phases. Phase I was evaluated on a “go or no-go” basis using the following criteria: whether (1) the proposal addressed the RFP equipment; (2) the vendor/equipment were rated successful or higher by references; (3) the vendor provided verifiable, publicly available reports from an independent laboratory verifying performance characteristics; (4) the proposed pricing was within the competitive range; (5) the vendor’s production capability was adequate; and (6) the vendor proposed training. If a proposal was rated as “go,” it was evaluated under Phase II based on a demonstration of the offerors’ proposed systems before a panel of subject matter experts (SME). The Phase II evaluation included the following criteria of equal importance: (1) overall technical description and capabilities; (2) potential contribution and relevance to CEDAP; (3) estimated yearly operating costs to be expected by the user; (4) equipment warranty, technical support, equipment manual/CD/DVD, and installation/setup support; (5) type and quality of training provided; and (6) production capability/quantity and proposed delivery schedule. These criteria were evaluated on a color-coded basis—blue (exceptional), green (acceptable), yellow (marginal), and red (unacceptable). The agency also evaluated overall pricing of the equipment, with the technical factors combined considered approximately equal to price.

Five offerors (including Eomax and MaxaVision) submitted proposals.<sup>1</sup> Both Eomax’s and MaxaVision’s proposed equipment having been evaluated as “go” under Phase I, each offeror then demonstrated its equipment. The SMEs reached the following consensus ratings for Eomax’s and MaxaVision’s proposals:

	<b>Eomax</b>	<b>MaxaVision</b>
<b>1. Overall Technical Value</b>	Exceptional	Exceptional
<b>2. Potential Contribution to CEDAP</b>	Acceptable	Exceptional
<b>3. Estimated Operating Cost</b>	Exceptional	Exceptional
<b>4. Equipment Warranty</b>	Marginal	Marginal
<b>5. Training</b>	Acceptable	Acceptable
<b>6. Production Capability</b>	Exceptional	Exceptional
<b>Overall Rating</b>	Acceptable	Exceptional

Not only was MaxaVision’s proposal rated exceptional, versus the acceptable rating for Eomax’s, but in addition, the total price of MaxaVision’s proposal was approximately one-half that of Eomax’s. The source selection authority accordingly determined that MaxaVision’s proposal represented the best value and on that basis

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<sup>1</sup> Eomax submitted two proposals, including the one that is the subject of this protest and a second proposal which was rated “no go.”

made award to MaxaVision. After receiving a written debriefing, Eomax filed this protest.

Eomax asserts that the SMEs improperly evaluated its proposal, failing to recognize the superiority of its proposed equipment over that of the awardee. In Eomax's view, a proper evaluation would have resulted in an exceptional rating for its proposal under each evaluation factor.

In considering a protest of an agency's proposal evaluation, our review is confined to determining whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 10-11. Based on our review of the record, we find that Eomax's protest furnishes no basis for questioning the award to MaxaVision. We discuss Eomax's most significant arguments below.

Eomax asserts that the SMEs improperly noted, under the technical description and capabilities factor, the inability of its equipment to switch from using a thermal sensor to the infrared (IR) camera without changing the camera head. According to the protester, the evaluation in this regard was unreasonable because the RFP did not require the proposal of a single thermal sensor/IR camera head. In response, the agency acknowledges that the RFP did not require a single sensor-head, switchable design, but maintains that the single-head design represented a beneficial feature since it allowed a change in imaging without the need to retract the telescoping arm in order to swap sensors. Contracting Officer's Statement at 1.

We find the agency evaluation reasonable. Agencies are required to identify the evaluation factors and significant subfactors, but they are not required to identify all areas of each which might be taken into account provided that any unidentified areas are reasonably related to or encompassed by the stated criteria. MCA Research Corp., B-278268.2, Apr. 10, 1998, 98-1 CPD ¶ 129 at 8. Here, the record indicates that a single-head design enhances the ease and flexibility of use of the search camera by facilitating switching between modes in the difficult search and rescue environments in which the search camera will be used. We agree with the agency that while the RFP did not require a single-head design, nevertheless, the fact of whether the proposed search camera included such a design capability was reasonably encompassed by the stated technical description and capabilities evaluation factor.

Neither do we find persuasive Eomax's assertion that MaxaVision's proposal should only have been rated acceptable under the technical description and capabilities factor because its equipment is inferior to Eomax's. Protest at 2; Initial Comments at 1. While Eomax maintains that its equipment offers certain superior thermal features and pixel resolution, in rating Eomax's proposal as exceptional, the agency specifically acknowledged the pixel resolution and thermal range strengths of Eomax's equipment. However, in rating MaxaVision's proposal as exceptional, the agency also noted a number of strengths associated with its equipment. Our review

of the record furnishes no basis to question the SMEs' determination that MaxaVision's proposal, as well as Eomax's, was exceptional in this area.

Eomax also challenges the evaluation of its proposal under the equipment warranty/technical support factor. The SMEs rated Eomax's proposal as marginal, observing that due to the equipment's cost, Eomax's offered 1-year parts and labor warranty did not satisfy CEDAP's expectations. Agency Report, Tab 19, at 4. Eomax asserts that this rating was unreasonable because the evaluation sheets indicate that providing a warranty was to be scored on a "go/no-go" basis with no consideration of the warranty's length. Initial Comments at 2.

Eomax's assertions are without merit. While the length of the warranty was not identified as a specific evaluation factor, in our view, it was reasonably encompassed by the warranty/technical support evaluation factor. MCA Research Corp., *supra*. Further, given the price of each Eomax unit (in excess of \$20,000), we find that the SME reasonably concluded that the limited extent of the offered warranty did not justify a rating higher than marginal. Furthermore, the evaluation definitions on which Eomax relies were found only in the SMEs' evaluation worksheets and were not included in the RFP. An agency's failure to follow an internal evaluation plan is not a valid basis for protest. *See Apache Enters., Inc.*, B-278855.2, July 30, 1998, 98-2 CPD ¶ 53 at 2, n.2. Here the agency simply made a reasonable business judgment that Eomax's limited warranty for high-cost equipment was a weakness.

In any event, our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions. 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). Eomax was not prejudiced by the evaluation under the warranty/technical support evaluation factor since MaxaVision also received a marginal rating for its warranty based on the same rationale for Eomax's rating. Contracting Officer's Statement at 2. Where, as here, the agency evaluates both offerors' proposals on the same allegedly flawed basis, there is no prejudice. Sociometrics, Inc., B-261367.2, B-261367.3, Nov. 1, 1995, 95-2 CPD ¶ 201 at 4.

Eomax asserts that the SMEs improperly rated its proposal as only acceptable under the potential contribution and relevance to CEDAP factor. Specifically, it challenges the evaluators' comments that the equipment's contribution to CEDAP may be limited due to its price and limited functionality (due to its size). In the protester's view, neither of these comments is warranted given its equipment's technical superiority, value for its price, and the lack of any size specifications.

We find that the agency's evaluation under the potential contribution and relevance to CEDAP factor was reasonable. With regard to functionality, the SME lead evaluator explains that the SMEs found that Eomax's thermal sensor/camera would not be able to fit through a "2-inch" diameter hole. In the SMEs' experience, a 2-inch hole is typically used in search operations, thus making a camera that fits into that size hole more beneficial to first responders. SME Lead Declaration ¶ 6. While the

agency acknowledges that the RFP did not set a maximum size for the thermal sensor, the RFP did call for use of the equipment in determining the extent of fire and smoke from difficult or impossible to reach areas. RFP at 2. In our view, since Eomax's sensor is larger than would fit through a 2-inch hole, the SMEs reasonably considered its size to be a limitation on the operation of the search camera by the users such as to reduce the potential contribution the camera could make to achieving the CEDAP program goals. See SME Lead Declaration ¶ 5, 6.

With regard to price, the SMEs considered Eomax's higher unit price as limiting the number of cameras that CEDAP could purchase and have available for first responders. SME Lead Declaration ¶ 7. Eomax asserts that it was improper to consider its price under the potential contribution and relevance to CEDAP factor because the RFP already provided for the evaluation of price under a separate, specific factor. Cf. GlassLock, Inc., B-299931, B-299931.2, Oct. 10, 2007, 2007 CPD ¶ 216 at 6 (agency improperly assigned strengths related to offeror's experience and past performance under both the solicitation's specific experience/past performance factor and the project plan/schedule factor which did not encompass experience or past performance). Eomax's position, however, fails to account for the fact that while there was a separate price factor, the contribution factor was sufficiently broad and comprehensive enough to reasonably include any aspect of the proposed equipment which impacts the CEDAP program, and thus was broad enough to include the impact price would have on the number of search cameras that could be purchased by first responders. Accordingly, in our view, the agency reasonably evaluated Eomax's higher price under both the price factor and the potential contribution and relevance factor. NWT, Inc.; PharmChem Labs., Inc., B-280988, B-280988.2, 98-2 CPD ¶ 158 at 11, n.12 (an agency properly may penalize an offeror more than once for a single deficiency so long as the deficiency reasonably relates to more than one evaluation criterion).

The protest is denied.

Gary L. Kepplinger  
General Counsel