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Decision

Matter of: Hamilton Sundstrand Power Systems

File: B-298757

Date: December 8, 2006

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Maj. John G. Terra, Department of the Air Force, for the agency.

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DIGEST

Agency reasonably excluded protester's proposal from the competitive range where proposal contained multiple informational deficiencies pertaining to required elements of design even after protester had been given the opportunity to address the deficiencies during discussions.

DECISION

Hamilton Sundstrand Power Systems (HS) protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. FA8518-05-R-75369, issued by the Department of the Air Force for the production of large aircraft start system (LASS) units. The protester contends that the agency unreasonably determined its proposal to be technically unacceptable.

We deny the protest.

BACKGROUND

The LASS is a four-wheeled, multi-system towable vehicle used to start engines on a variety of Air Force aircraft. LASS units deliver compressed air to start an aircraft's jet turbine engines and provide pneumatic power for the aircraft's various electrical and mechanical systems. The units are used when maintenance and testing functions are conducted on aircraft in hangars and other enclosed areas since they are capable of delivering the required power to the aircraft without posing the danger to personnel and facilities that self-ignition of the jet turbine engines would engender. The units consist of an enclosure assembly, turbine engine assembly, fuel

system, electrical system, lubrication system, frame and running gear, and air delivery system.

The RFP, which was issued on July 22, 2005, contemplated the award of a fixed-price requirements contract for a 2-year base period and three 1-year option periods. The RFP contained a detailed purchase description (PD) of the units sought and instructed offerors that their proposals should “provide a narrative description supported by detailed drawings, pictures, sketches, calculations or other items as required to provide evidence that the offered product will meet the technical and performance requirements called for within [the PD].” RFP, Rev. 1, at 26. The solicitation provided for award to the offeror whose technically acceptable proposal represented the best value to the government, taking into consideration proposal risk, past and present performance, and price. With regard to the relative weights of the latter three factors, the RFP instructed that proposal risk and past/present performance were of equal importance, and, when combined, were significantly more important than price.

The solicitation explained that to be determined technically acceptable, a proposal needed to demonstrate compliance with solicitation requirements pertaining to design of the enclosure assembly, design and operation of the air flow system, and mobility of the unit.¹ With regard to the enclosure specifically, the RFP explained that for an offeror’s design to be determined technically acceptable, its proposal needed to demonstrate “a sound and feasible methodology of how the proposed configuration complies with the requirements of paragraph 3.3 and section 3.4 [of the PD];”² in addition, the proposal needed to include “an acceptable narrative description of the chassis design and elevation layouts with major components identified.” *Id.* at 29. Along the same lines, the RFP provided that for an offeror’s air flow system design to be determined technically acceptable, the offeror needed to demonstrate “in acceptable and detailed methodology how the proposed

¹ While the RFP also contained detailed guidance regarding the evaluation of proposal risk, past performance, and price, such guidance is irrelevant to the issues raised in this protest and, accordingly, is not addressed in this decision.

² Paragraph 3.3 set forth a number of requirements pertaining to design of the enclosure; of relevance to this protest, they included a requirement for an identification plate securely attached to the LASS in a readily accessible location (3.3.1); a requirement for a control panel accessible to users for the purpose of making maintenance adjustments (3.3.2); and a requirement for operating instructions mounted in a location where they would be easily viewable by the operator (3.3.3). Paragraph 3.4 set forth requirements pertaining to weight, *i.e.*, that the weight of the unit be evenly distributed from left to right, to allow ease of movement on a flat surface by one person, and that the maximum gross weight without fuel be as low as possible.

configuration complies with the requirements of paragraphs 3.6.1, 3.6.9, and 3.7.11 [of the PD],” and to furnish “an acceptable flow diagram, with the significant components identified, and a comprehensive and accurate description of operational and safety controls.”³ Id. To be determined technically acceptable with regard to mobility, the solicitation required offerors to demonstrate compliance with paragraphs 3.5, 3.6.14, 3.6.15, and 3.13 of the PD and to provide an acceptable flow diagram with controls and significant components identified and a description of operational and safety controls.⁴

³ Paragraph 3.6.1 set forth requirements not of relevance to this protest pertaining to the regulation of air flow. Paragraph 3.6.9 set forth requirements pertaining to the air hose used to deliver compressed air from the LASS to the aircraft; of relevance to this protest, one of the requirements was that “[t]he hose shall be the standard bleed air hose 30 ft. (100 ft. availability) long with quick disconnect and lanyard chain.” RFP, Rev. 1, PD at 7. Paragraph 3.6.11 set forth requirements pertaining to the LASS engine not of relevance to this protest.

⁴ Paragraphs 3.5, 3.6.14, and 3.6.15, all of which are relevant to this protest, provided as follows:

3.5 Mobility. The LASS shall comply with the mobility requirements specified in AS8090 for Type 1, Class 2 equipment ground mobility, except that it shall be towable at speeds up to 15 mph, with a 20-foot maximum safe turning radius. Also, each tie down point will have a minimum clear opening of 1-1/2 inches. The unit shall be capable of being configured for air shipment in less than 10 minutes. The user shall be able to reassemble to towing configuration in less than 5 minutes. . . .

3.6.14 Wheels. Wheels shall be of the pneumatic type that will absorb vibration while the LASS are transported. The wheels will need to be able to transport the LASS while it is in operational and transport mode. The LASS shall have a braking system that shall be hand/foot operated which shall not allow the LASS to move on a slope of 15 degrees.

3.6.15 Cargo Tie Down and Hoisting Provisions. The LASS shall be designed to be air, land, and sea transportable with four cargo tie downs for LASS retention. Each cargo tie down shall have a minimum operating load capability of twice the weight of the LASS. . . .

RFP, Rev. 1, PD at 6, 8. Paragraph 3.13, pertaining to airlift capability, is not relevant to this protest.

Five offerors submitted proposals by the December 14, 2005 closing date. Discussions were opened with all offerors on February 17, 2006 through the issuance of evaluation notices. After reviewing offeror responses to multiple rounds of evaluation notices, the technical evaluation team determined the proposals of HS and one of the other five offerors to be technically unacceptable. The source selection authority (SSA) subsequently determined that the two proposals should be excluded from the competitive range. By letter of July 11, the Air Force notified HS that its proposal would not be considered further.

The agency explained in its July 11 letter that HS's proposal had been determined technically unacceptable for failing to demonstrate compliance with solicitation requirements pertaining to the enclosure, the air flow system, and mobility. With regard to the enclosure, the letter noted that HS had failed to provide an acceptable design, and, indeed, had responded to an evaluation notice informing it of this deficiency by stating, "As this is a new design LASS, there is as yet no detailed design." Agency Report (AR), Tab 5, Memorandum from Air Force to HS, July 11, 2006, at 2. The letter further explained that HS's proposal had failed to furnish detailed information regarding the size and weight of the LASS and the accessibility of the control panel for maintenance adjustments; in addition, it had failed to identify the material of the chassis, the location/integration of the fuel tank, the type of wheel and brakes, and the location of the identification plate, operating instructions, and control panel. The letter noted that HS's air flow system design had been determined technically unacceptable for failing to demonstrate compliance with the requirement of paragraph 3.6.9 of the PD that the air hose incorporate a quick disconnect feature and a lanyard chain. The letter went on to note that HS's proposal had failed to demonstrate compliance with the requirements of paragraphs 3.5 (pertaining to mobility), 3.6.14 (wheels), and 3.6.15 (cargo tie downs and hoisting provisions) and that the protester had failed to furnish the required flow diagram identifying controls and significant components of the mobility system. With regard to paragraph 3.5, the proposal had failed to demonstrate compliance with the requirements concerning towable speed, openings at tie down points, and time limits for disassembly and reassembly. With regard to paragraph 3.6.14, the proposal had failed to demonstrate compliance with the requirements that the wheels absorb vibration while the LASS is transported and that the units include a hand/foot operated braking system capable of holding the LASS on a slope of 15 degrees. With regard to paragraph 3.6.15, the proposal had failed to provide detailed information to demonstrate that the LASS would be air, land, and sea transportable, and that the cargo tie downs would each have a minimum operating load capacity of twice the weight of the LASS.

Upon receipt of the agency's letter, HS filed an agency-level protest. On August 25, the agency denied HS's protest. HS protested to our Office on September 1.⁵

DISCUSSION

HS protests the exclusion of its proposal from the competitive range, arguing that it was unreasonable for the Air Force to determine the proposal technically unacceptable based on minor informational deficiencies pertaining to a relatively unimportant element of the LASS, *i.e.*, the enclosure and trailer. The protester notes in this regard that only six percent of the RFP's technical requirements pertain to the enclosure/trailer assembly and that it is far less complex technically than the turbine and power systems, with regard to which the Air Force found no deficiencies in its proposal. The protester further contends that in many instances, the RFP specifications described the components to be furnished in such detail that its stated intent to comply should have been recognized as sufficient, and that the RFP clearly anticipated that certain elements of the design would not be finalized until after award. The protester also argues that in many cases, the information that the Air Force alleges to have been missing from its proposal was not in fact missing.

At the outset, we point out that, contrary to the protester's assertion, not all of the informational deficiencies identified by the agency pertain to the enclosure and trailer; the failure to demonstrate compliance with the requirement that the air hose incorporate a quick disconnect feature and a lanyard chain pertains instead to the air flow system, for example. Further, even assuming that the enclosure/trailer assembly is less complex technically than other parts of the unit, this does not mean that it is a relatively unimportant part of the LASS. It is clear from the many sections of the PD pertaining to the enclosure and trailer with which the RFP required a demonstration of compliance that the agency regarded the enclosure and trailer as a significant element of the design.⁶ Moreover, contrary to the protester's assertion that the solicitation did not anticipate completion of certain elements of the design until after award, the sections of the RFP noted above made abundantly clear that proposals would not be determined technically acceptable unless they demonstrated compliance with the enumerated requirements.

⁵ The agency proceeded with evaluation of the proposals remaining in the competitive range, and, on August 24, the SSA selected Science and Engineering Services, Inc. (SESI) for award. A contract was awarded to SESI on August 28.

⁶ In responding to HS's protest, the contracting officer explained that the reason that the Air Force regards design of the enclosure as important is that it plays a significant role in the overall footprint and ease of use of the unit, and that it affects the weight and durability of the unit. Contracting Officer's Statement at 5.

With regard to the protester's complaint that the informational deficiencies in its proposal did not provide a reasonable basis for determining the proposal technically unacceptable and excluding it from the competitive range, in reviewing protests challenging the evaluation of proposals and exclusion of proposals from a competitive range, we do not conduct a new evaluation or substitute our judgment for that of the agency. Rather, we examine the record to determine whether the agency's judgment was reasonable and in accord with the solicitation evaluation criteria. Information Sys. Tech. Corp., B-291747, Mar. 17, 2003, 2003 CPD ¶ 72 at 2.

Contracting agencies are not required to retain a proposal in a competitive range where the proposal is not among the most highly rated or where the agency otherwise reasonably concludes that the proposal has no realistic prospect of award. Federal Acquisition Regulation § 15.306(c)(1); Wahkontah Servs., Inc., B-292768, Nov. 18, 2003, 2003 CPD ¶ 214 at 4. Where a proposal is technically unacceptable as submitted and would require major revisions to become acceptable, exclusion from the competitive range is generally permissible. CMC & Maint., Inc., B-290152, June 24, 2002, 2002 CPD ¶ 107 at 2. Proposals with significant informational deficiencies may be excluded, whether the deficiencies are attributable to omitted or merely inadequate information addressing fundamental factors. Americom Gov't Servs., Inc., B-292242, Aug. 1, 2003, 2003 CPD ¶ 163 at 4. That is, it is the obligation of the offeror to include sufficient information in its proposal for the agency to determine whether the proposal will meet its needs, Wahkontah Servs., Inc., *supra*, at 6, and offerors who fail to do so risk rejection of their proposals. ADC, Ltd., B-297061, Oct. 14, 2005, 2005 CPD ¶ 178 at 5.

Based on our review of the record here, we think that the agency reasonably determined HS's proposal to be technically unacceptable for failing to demonstrate compliance with solicitation requirements pertaining to the LASS enclosure and air flow and mobility systems. As explained in greater detail below, not only did the proposal as initially submitted contain informational deficiencies, but further, many of the informational deficiencies remained even after the protester had been given the opportunity to respond to them during discussions. In multiple instances, the protester responded to requests from the agency for detailed explanations as to how its proposed unit would comply with PD requirements with mere assurances that it had the ability to and would come up with a compliant design, while in several other instances, it simply did not respond to the agency's requests for verification of compliance. Given the protester's failure to furnish the agency with the information requested, even after repeated requests, we think that it was reasonable for the agency not to consider the protester's proposal further.

For example, as previously noted, to be determined technically acceptable, the RFP required offerors to demonstrate compliance with the requirements of paragraphs 3.5, 3.6.14, and 3.6.15 and to furnish a flow diagram identifying the controls and significant components of their mobility systems. In its proposal, HS responded to the requirements of paragraph 3.5 by [deleted].

In its first round of evaluation notices, the Air Force advised HS that its proposal had failed to demonstrate compliance with the above requirements; the agency noted in this connection that [deleted]. AR, Tab 5, Evaluation Notice No. T-HS-2. The evaluation notice further advised that HS had failed to provide the required flow diagram identifying controls and significant components of the mobility system.

HS responded to the notice with the following comments:

[deleted]

Id. The protester [deleted].

The Air Force followed up with another evaluation notice, informing the protester that its response to the initial notice had not provided sufficient detail regarding compliance with the requirements of paragraphs 3.5, 3.6.14, and 3.6.15. The notice reiterated that the protester's response [deleted], but that it should "provide a narrative as to how [HS] will comply with each aspect of the PD paragraph in accordance with the instructions in the RFP provisions referenced above." AR, Tab 5, Evaluation Notice No. T-HS-14. The notice further observed that [deleted].

HS responded to the second evaluation notice pertaining to the mobility system with the following comments:

[deleted]

Id.

We think that the Air Force reasonably viewed the information furnished by HS in its proposal, together with its responses to the evaluation notices, as inadequate to demonstrate compliance with the above requirements pertaining to mobility of the unit. Rather than demonstrating that its proposed unit meets the PD requirement that the unit be towable at speeds up to 15 mph, with a 20-foot maximum safe turning radius, for example, the protester [deleted]. Similarly, rather than demonstrating compliance with the PD requirement for a hand/foot operated braking system capable of preventing movement of the LASS on a slope of 15 degrees, the protester [deleted]. Along the same lines, the protester responded to the requirement that [deleted]. AR, Tab 5, Evaluation Notice No. T-HS-2.

As a second example, the RFP required offerors to furnish "an acceptable narrative description of the chassis design." RFP, Rev. 1, at 29. In Evaluation Notice No. T-HS-11, the Air Force notified HS that it had failed to comply with this requirement; in response, the protester [deleted]. AR, Tab 5. While HS [deleted].

As a final example, the solicitation required that the weight of the unit be evenly distributed “to allow ease of movement on a flat surface by one person.” RFP, Rev. 1, PD at 5. In Evaluation Notice No. T-HS-1, the agency asked [deleted]. AR, Tab 5. The Air Force brought up the matter again in Evaluation Notice No. T-HS-12, [deleted]. Id. In short, the record provides a reasonable basis for the agency’s determination to exclude HS’s proposal from the competitive range.

The protester further argues that even assuming that its proposal did contain informational deficiencies, the agency treated it unequally in eliminating it from the competitive range because proposals that were retained in the competitive range also contained informational deficiencies.

While, as previously noted, agencies may properly exclude from the competitive range proposals that are deemed to have no realistic prospect for award, SDS Petroleum Prods., Inc., B-280430, Sept. 1, 1998, 98-2 CPD ¶ 59 at 5, judgments regarding which proposals are included in a competitive range must be made in a relatively equal manner. Columbia Research Corp., B-284157, Feb. 28, 2000, 2000 CPD ¶ 158 at 4. Accordingly, an agency cannot reasonably exclude a proposal from the competitive range where the strengths and weaknesses found in that proposal are similar to those found in proposals in the competitive range. Nations, Inc., B-280048, Aug. 24, 1998, 99-2 CPD ¶ 94 at 4-5. This means that an agency may not reasonably exclude a proposal from the competitive range on the basis of informational deficiencies where proposals included in the competitive range contained informational deficiencies similar in magnitude.

It does not mean, however, that an agency may not reasonably exclude a proposal that contains significant informational deficiencies from a competitive range, while retaining in the competitive range proposals with informational deficiencies of lesser magnitude. In this connection, since inclusion in or exclusion from the competitive range is based on evaluation of the overall proposal and not on a single deficiency, the fact that other offerors’ proposals may have deficiencies similar to the protester’s, but were not excluded from the competitive range, does not, in and of itself, demonstrate unequal treatment. NCLN20, Inc., B-287692, July 25, 2001, 2001 CPD ¶ 136 at 5 n.4. Here, while the protester asserts that the proposals of [deleted] contained informational deficiencies, it has not demonstrated that the alleged informational deficiencies were comparable in overall significance to the informational deficiencies in its own proposal.⁷

The protest is denied.

Gary L. Kepplinger
General Counsel

⁷ Significantly, the protester [deleted].

