



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. No party requested redactions; we are therefore releasing the decision in its entirety.

Decision

Matter of: Southern California Engineering, Inc.

File: B-296244

Date: July 11, 2005

Thomas M. Finrow, Esq., for the protester.
Alton E. Woods, Esq., Sherry Kinland Kaswell, Esq., and Veronica Rowan, Esq.,
Department of the Interior, for the agency.
Paul N. Wengert, Esq., and Michael R. Golden, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where agency reasonably determined that protester's proposal for removal and replacement of pumps did not provide sufficient detail regarding the accomplishment of the work and the replacement pumps to be installed, and was therefore technically unacceptable.

DECISION

Southern California Engineering, Inc. (SoCal) protests the award of a contract to Moltz Constructors, Inc. under request for proposals (RFP) No. 05-SP-30-8023 by the Department of the Interior, Bureau of Reclamation, for removal and replacement of specified pumps at the Hoover Dam and Powerplant. The protester argues that its proposal was unreasonably determined to be technically unacceptable due to flaws in the evaluation.

We deny the protest.

The RFP contemplated the award of a fixed-price contract to remove and replace sump pumps at the dam. The criteria for award specified that the non-price factors, when combined, were significantly more important than price. RFP at M-1. The RFP indicated, through incorporation of the provision in Federal Acquisition Regulation (FAR) § 52.215-1(f)(4), that the agency intended to make award without holding discussions. RFP at L-1.

The RFP called for evaluation of proposals based on the following evaluation factors and weights:

Factor 1 - Technical Approach - (Total Points: 35) Responses to this factor will be evaluated in the areas of cost and schedule management. The work plan will be evaluated for sufficient details to demonstrate a clear understanding of the major tasks involved in the work.¹

Factor 2 - Proposed Pumps - (Total Points: 15) Responses to this factor will be evaluated for detail[ed] performance and technical characteristics of the proposed pumps.²

Factor 3 - Experience of Key Personnel - (Total Points: 10) . . .

Factor 4 - Offer[or]'s Past Performance - (Total Points: 5) . . .

Factor 5 - Cost/Price - (Total Points: 35) . . .

RFP at M-2.

¹ As relevant here, the corresponding proposal preparation instructions for the technical approach factor provided that responses should

(i) Contain detailed explanations of proposed approaches to performing and accomplishing the work, including preliminary design and other information indicating configuration and functions of components as applicable, and a specific outline of the actual tasks proposed to be performed in order to complete the work. . . .

(iv) Include a proposed work plan in sufficient detail to demonstrate a clear understanding of the major tasks involved in the work, including removal of existing pumps and associated components; water control; excavation and new construction for sump pits; installation of pumps; installation of associated piping, valves and other components; and system testing; . . .

RFP at L-9.

² The corresponding proposal preparation instructions for the proposed pumps factor provided that responses should

(vii) Provide detail[ed] performance and technical characteristics of proposed pumps. Include the manufacture[r], model number, and pumping capacity of pumps.

RFP at L-9.

The technical evaluation report³ ranked SoCal's proposal as fifth out of the five proposals overall, and concluded that SoCal's proposal was technically unacceptable. AR, Tab 25, Technical Evaluation Report, at 7. Under the two most important technical factors, the evaluators rated SoCal 18.75 out of 35 ("Adequate")⁴ in technical approach, and 2.75 out of 15 ("Poor/Absent") for its proposed pumps. On the remaining factors, SoCal was rated 3.5 out of 5 ("Good") and 3.75 out of 5 ("Very Good") for key personnel (the evaluation of which was divided into two subfactors), and 2.75 out of 5 ("Adequate") for past performance. Nevertheless, the overall rating of SoCal's proposal was 31.5 out of 65 ("Weak/Deficient"), reflecting the significance of the low rating on the technical approach factor and the poor rating under the proposed pumps factor.

The technical evaluation report narrative summarized the evaluation thus:

SoCal's proposal showed that the company understands the complexity of this project but failed to provide detailed information on methods needed to accomplish the work. The written portion gave poor and incomplete descriptions of the work that needs to be performed. The proposal did not include a schedule that showed the sequencing of work and the required time to perform the work. A key element of the proposal, detailed manufacturer's information on the sump pump/motor, was not provided.

AR, Tab 25, Technical Evaluation Report, at 7.

³ As an exhibit to its comments on the agency report, SoCal submitted a copy of a technical evaluation report that was not included in the agency report, and which had some differences from the evaluation report contained in the agency report. The agency explains that the protester's copy, although signed by the entire panel and bearing the same date, was an earlier "draft." The protester alleges that the differences demonstrate forgery and a cover-up, because a weakness assigned to Moltz was deleted. We find the agency's explanation reasonable; in any event, the differences appear minor, and both versions conclude that the protester's proposal was weak/deficient for the same reasons. Protester's Comments, exh. B, at 5; AR, Tab 25, Technical Evaluation Report, at 7.

⁴ SoCal objects to the use of adjectival ratings on the basis that the use of adjectival ratings was not disclosed in the RFP, which referred only to point scores. Protester's Supplemental Comments at 5. Here, the agency used the adjectival ratings as an adjunct to the point scoring system disclosed in the RFP, and we find nothing impermissible in the use of adjectival ratings in this manner. In any event, the record confirms that the agency properly based its conclusion that SoCal's proposal was unacceptable on the substance of the evaluation, rather than either the point scores or the adjectival ratings.

The evaluators specifically identified the following weaknesses in SoCal's proposal:

- 1) Insufficient detail on procedure for delivering concrete to the sump area;
- 2) Insufficient detail on valve replacement, steel piping, FRP [fiber reinforced plastic] grating, etc.;
- 3) Failed to provide a work schedule with completion dates; and
- 4) Failed to provide detailed information from pump/motor manufacturer, including pump performance curves.

AR, Tab 25, Technical Evaluation Report, at 7.

The contracting officer determined that Moltz's proposal represented the best value, and made award to Moltz without holding discussions.

As discussed above, the RFP required that the offeror's proposal provide detailed information concerning its technical approach to accomplishing the work, including a detailed discussion of the pump it would furnish, and a work plan. SoCal challenges the agency's evaluation of SoCal's proposal with respect to the level of detail regarding both its schedule and its methods of accomplishing the work.

In reviewing a procuring agency's evaluation of an offeror's technical proposal, our role is limited to ensuring that the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. Urban-Meridian Joint Venture, B-287168, B-287168.2, May 7, 2001, 2001 CPD ¶ 91 at 2. Our Office will not question an agency's evaluation judgments absent evidence that those judgments were unreasonable or contrary to the stated evaluation criteria. Kay & Assocs., Inc., B-291269, Dec. 11, 2002, 2003 CPD ¶ 12 at 4.

We find that the agency's criticisms of SoCal's proposal are supported by the record. With regard to SoCal's failure in its proposal to address the explicit requirement, as quoted above, that offerors provide detailed performance and technical characteristics of proposed pumps, including the manufacturer, model number, and pumping capacity, SoCal's proposal failed to provide that information.

SoCal concedes that its proposal lacked information regarding its proposed pumps. Indeed, several days before the agency notified SoCal that its proposal was unsuccessful, SoCal wrote a letter to the agency that stated, in part, thus:

SoCal is concerned that it has not received normal inquiry from the Bureau as to any technical questions the government may have regarding any of the equipment [SoCal] intends to provide, for instance the vertical turbine pumps. SoCal's proposal was formulated on the premise that pumps, which are the subject of a detailed specification in the RFP, would be submitted for review and approval after award and not at the proposal stage.

AR, Tab 38, Letter from Protester to Agency (Mar. 9, 2005).

As the agency points out, SoCal's premise was directly contrary to the express language of the RFP, which, as quoted above, required the proposal to include specific information about the pumps that the offeror proposed.⁵ Since SoCal's proposal did not include the required information concerning the pumps it intended to furnish, we conclude that the agency reasonably found SoCal's proposal to be deficient in this regard.

Also, while the RFP called for offerors to include a detailed work plan for the project, the agency reasonably found SoCal's proposal lacked significant information. For example, the agency reasonably expressed concern that SoCal's proposal did not provide a work schedule with completion dates, and contained only a limited explanation of its plans to accomplish concrete delivery to the specific site in the dam. AR, Tab 25, Technical Evaluation Report, at 7. The evaluators also found while the SoCal proposal referenced piping, FRP grating and valve replacement, the proposal did not discuss installation details and failed to provide sufficient detail on the methods for accomplishing the work. AR, Tab 25, Technical Evaluation Report, at 7.

Here, where the RFP required specific and detailed information with regard to the pumps to be furnished, and how the work was to be accomplished, and SoCal's proposal lacked this information, the agency was reasonable in concluding that SoCal's proposal was technically unacceptable. Worldwide Primates, Inc., B-294481, Oct. 12, 2004, 2004 CPD ¶ 206 at 4.

SoCal also challenges the evaluation of its past performance, in which the technical evaluators rated SoCal 2.75 out of 5 points. However, SoCal has not shown that any error in the past performance evaluation affected the determination that SoCal was technically unacceptable. The source selection decision and underlying evaluation report do not identify SoCal's past performance as a basis for the agency conclusion that SoCal's proposal was unacceptable. AR, Tab 25, Technical Proposal Evaluation Committee Report, at 7. 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; that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award.

⁵ We reject the protester's claim that its omission of information regarding its pumps was the type of "informational defect" that could have been addressed by clarifications, rather than discussions. Clarifications cannot be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, or otherwise revise the proposal. DynCorp Int'l LLC, B-294232; B-294232.2, Sept. 13, 2004, 2004 CPD ¶ 187 at 8. The RFP here explicitly made the pump specifications a material aspect of the technical acceptability of the proposal; as such, the missing pump specifications could not have been supplied through clarifications.

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). In light of our conclusions regarding the reasonableness of the agency's evaluation of the deficiencies in SoCal's technical proposal, we conclude that SoCal was not competitively prejudiced by any alleged error in the past performance evaluation.

The protest is denied.⁶

Anthony H. Gamboa
General Counsel

⁶ SoCal raises a large number of allegations about improprieties in the procurement, each of which we have reviewed and found to be without merit. Most significantly, SoCal also alleges that there was a general bias or policy against awarding further contracts to it, amounting to a de facto debarment. With its comments on the agency report, SoCal submitted an unsigned declaration from a named government employee, purportedly attesting to the existence of such a policy, and an agency memorandum (marked as a "confidential draft") recounting a request from an investigator in the agency's Office of Inspector General that no further contract awards should be made to SoCal. Protester's Comments, exh. A. In statements submitted to our Office, each of the evaluators denied that he or she knew of the memorandum or was affected by any related policy. Supplemental Agency Report, exhs. A-D. SoCal disputes those denials. Protester's Supplemental Comments at 10-16. Regardless, we conclude that here, SoCal's proposal was properly found unacceptable based on the evaluation criteria stated in the solicitation. Since we conclude that the agency reasonably found SoCal's proposal to be technically unacceptable based on the RFP's evaluation criteria, we deny the grounds of protest alleging that the agency's decision not to award the contract to SoCal was the result of bias.