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

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Decision

Matter of: HDL Research Lab, Inc.

File: B-294959

Date: December 21, 2004

Johnathan M. Bailey, Esq., and Theodore M. Bailey, Esq., Bailey & Bailey, P.C., for the protester.

Capt. Victor G. Vogel and John J. Reynolds, Esq., U.S. Army Materiel Command, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where award was made on the basis of initial proposals and agency reasonably found that protester's proposal contained numerous informational deficiencies and weaknesses, agency reasonably excluded proposal from consideration for award.

DECISION

HDL Research Lab, Inc. protests the award of a contract to Custom Manufacturing & Engineering, Inc. (CME) under request for proposals (RFP) No. W15P7T-04-R-C006, issued by the U.S. Army Communications-Electronics Command (CECOM) for tactical power supplies (TPS). HDL principally challenges the evaluation of its proposal.

We deny the protest.

The RFP sought proposals for new designs of the TPS (part Nos. PP-2953D/U and PP-6224C/U) to replace the existing TPS (part No. PP-6224B/U), used in support of SINGARS radios, Patriot missiles, and various helicopters. The RFP contemplated the award of a fixed-price, indefinite-delivery, indefinite-quantity (ID/IQ) contract.

Offerors were to furnish technical and management proposals detailing their designs, along with first article testing (FAT) plans in accordance with detailed instructions in RFP section L. Proposals were to be evaluated under four factors, listed in descending order of importance (with related subfactors)—technical (design and reliability test program); management (contractor logistics support (CLS)/warranty program, facilities, pre-production and FAT schedule, and quality system);

performance risk; and price. To be considered for award, a proposal had to be rated not less than acceptable in every subfactor. RFP § M.A. Award was to be made on a “best value” basis, without discussions. Id.; RFP § L.2 at 63 (incorporating by reference Federal Acquisition Regulation (FAR) § 52.215-1(f)(4)).

Nine offerors, including HDL and CME, submitted proposals. The source selection evaluation board found that only CME’s proposal was acceptable. It rated HDL’s proposal unacceptable under the technical factor, susceptible to being made acceptable under the management factor, and low under the proposal risk factor. No discussions were conducted with the offerors. After reviewing the evaluation reports, including the associated strengths and weaknesses of the proposals, the source selection authority (SSA) determined that CME’s proposal was the best value and selected it for award. After receiving a debriefing, HDL filed this protest.

HDL asserts that every deficiency and weakness identified by the evaluators was either mistaken, not related to the contract requirements, or otherwise unreasonable. In reviewing a protest of an agency’s proposal evaluation, our review is confined to a determination of whether the agency acted reasonably 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. A protestor’s mere disagreement with the agency’s judgment is not sufficient to establish that the agency acted unreasonably. Command Mgmt. Servs., Inc., B-292893.2, June 30, 2004, 2004 CPD 168 at 3. We have reviewed all of HDL’s challenges to the evaluation and find that none has merit. We address what we view as HDL’s primary arguments below.

In evaluating HDL’s proposal, the evaluators found seven weaknesses and eight deficiencies, including five deficiencies under the design subfactor. The deficiencies, and many of the weaknesses, were principally based on the firm’s failure to satisfy various informational requirements in its proposal. For example, despite the RFP’s requirement for detailed information, HDL’s proposal lacked any information on its parts obsolescence program; did not address the required stacking requirement; did not address expedited returns; and did not make clear its maximum/available facilities production capacity or identify the labor force necessary for support of full production.¹

¹ The first two deficiency examples were assessed under the technical factor, under which HDL’s proposal was rated unacceptable. The other two deficiencies were assessed under the management factor and contributed to its rating of susceptible to being made acceptable under that factor. While these deficiencies were potentially correctable, in the absence of discussions, these ratings effectively resulted in making HDL’s proposal unacceptable under the management factor as well.

HDL asserts that there was no reasonable basis for downgrading its proposal for these reasons, because the information in question either was not required by the RFP or was in fact provided. For example, with regard to the parts obsolescence program, HDL asserts that, because neither the specifications nor the SOW required the establishment of a parts obsolescence program, it was not required to include one in its proposal. Protest at 18. This argument is without merit. The RFP provided that each offer “shall explain its program for identifying and replacing obsolete parts during the course of the contract [and] . . . shall also explain how it intends to update the User’s Guide to reflect the new parts.” RFP § L at 4. Section M provided that the offeror’s parts obsolescence approach would be evaluated to determine its effectiveness during the course of the contract. The agency explains that the 5-year duration of the contract made it prudent to request information on each offeror’s parts obsolescence approach/program for evaluation. The agency anticipated that, due to the RFP’s performance specification approach, many changes would take place during the course of the contract at the component level, and concluded that it thus was imperative that offerors address how they would handle parts obsolescence, particularly with regard to the user’s guide which, in the agency’s past experience, often included erroneous parts information due to a lack of updating. Agency Report (AR) at 2. While the RFP did not require the establishment of a parts obsolescence program, it did require offerors to explain how they would handle the issue. Since HDL’s proposal did not provide the required explanation, the agency reasonably downgraded HDL’s proposal on this basis.

With regard to the stacking test, HDL notes that the testing requirement derives from the cover design requirement--the contractor was to design a new cover to protect the front panel assembly, such that rough handling and stacking would not cause breakage or damage to the assembly or cover. Protest at 19; RFP § L at 4-5. The RFP advised in this regard that the current design used steel pins and hinges that were easily broken. SOW at § 3.0 A.1. HDL asserts that its proposal adequately addressed this requirement and that it should have been clear from its design that it eliminated the possibility of damage to latches from stacking. This assertion is without merit. The RFP required that proposals describe the cover design and provided that the design would be evaluated to determine if it would meet the government’s requirements. RFP § M at 2. In this regard, it called for a stacking test to show the cover’s capability to withstand the weight of 10 stacked TPSs. SOW § 3.0 A.1. While HDL’s proposed design [deleted] making HDL’s design unclear. Since HDL’s proposal did not otherwise explain how its design would meet the stacking/rough handling requirements, the agency reasonably determined that the proposal lacked required information, and was deficient, on this basis.

Regarding expedited returns, the RFP required proposal of a CLS plan that included a maximum “turn around time” (receipt at repair facility to return to customer) of 21 days. SOW ¶ 3.14(d). The RFP instructed offerors that their CLS program description shall also address “provid[ing] faster turn around times than required by the SOW for simpler repairs/replacements.” RFP § L at 5. HDL asserts that its

proposal met this requirement by describing its plan [deleted]. HDL Management Proposal at 4. According to HDL, this plan was for the “sole and exclusive purpose of meeting and exceeding (providing faster than) the 21-day turn-around time.” Comments at 18. HDL’s assertion is without merit. Notwithstanding the RFP’s clear requirement that the CLS program address providing faster turn-around times, HDL’s proposal does not do so. It describes HDL’s plans and procedures, but it does not mention providing faster turn-around times. Instead, its plan’s only reference to turn-around time is in its opening statement that “[t]he 21 consecutive day requirement shall be met” through the described plan. HDL Management Proposal at 4. While HDL believes the evaluators should have deduced that its plan would result in faster turn-around times, nothing in its proposal led to such a conclusion. Since HDL’s proposal only addressed meeting, but not moving faster than, the 21-day requirement, the agency reasonably determined that the proposal lacked required information, and was deficient, on this basis.

As for the available facilities production capacity and labor force deficiency, HDL notes that its proposal described its physical plant and available expansion space; referenced its testing and inspection capabilities; and proposed to accomplish the work with its existing human and equipment resources. Protest at 28. HDL thus asserts that its proposal provided all necessary information. This assertion is without merit. The RFP required offerors to show present production capabilities and/or well defined plans to obtain the necessary production facilities that will enable it to produce the power supplies at the required delivery rate. RFP § L at 6. While HDL’s proposal provided the information outlined above, it did not mention what capacity percentage of its current automated testing and optical inspection equipment would be dedicated to this production and whether it could handle maximum production. Likewise, HDL’s proposal did not address whether the 100-150 units per month production volume required by the RFP had ever been maintained at its facility for in-house cable assemblies, power supplies, and warranty repair, meeting all contractual delivery requirements.² AR at 15. While HDL

² In its comments on the agency’s report, HDL for the first time asserts that its proposal contained evidence of its high production capacity (200 units per month) in the past performance section of its proposal. Comments at 20. However, HDL’s proposal did not explain how the high volume production of that unit demonstrates the capability to meet the multiple production and repair requirements of the RFP. Further, this capacity was not referenced in HDL’s management proposal or otherwise identified as information HDL intended to have considered to meet this requirement. In this regard, HDL’s proposal was assessed another deficiency for failing to include a required detailed cross-reference matrix correlating applicable proposal submission requirements to proposal paragraphs. See RFP § L at 3. In our view, the evaluators were not required to search throughout HDL’s proposal to identify every reference that might support a given RFP requirement; evaluators are (continued...)

proposed to use its current workforce to accomplish the requirements, its proposal did not identify the labor force necessary to support full production. Since HDL's proposal lacked evidence showing its high volume production capability, the agency reasonably downgraded HDL's proposal on this basis.

An offeror is responsible for affirmatively demonstrating the merits of its proposal and risks the rejection of its proposal if it fails to do so. Arctic Slope World Servs., B-284481, B-284481.2, Apr. 27, 2000, 2000 CPD ¶ 75; DBA Sys., Inc., B-241048, Jan. 15, 1991, 91-1 CPD ¶ 36 at 4. In our view, the agency reasonably concluded that these and other deficiencies and weaknesses were sufficient to render HDL's proposal unacceptable under the technical factor and only susceptible to being made acceptable under the management factor. Since the RFP provided that proposals must be found acceptable under all subfactors in order to be in line for award, the agency properly rejected HDL's proposal.

HDL suggests that the agency should have conducted discussions to provide HDL an opportunity to correct the identified deficiencies. However, there generally is no obligation for an agency to conduct discussions where, as here, the RFP specifically instructs offerors of the agency's intent to award a contract on the basis of initial proposals. FAR § 15.306(a)(3); Colmek Sys. Eng'g, B-291931.2, July 9, 2003, 2003 CPD ¶ 123 at 7. The contracting officer's discretion in deciding not to hold discussions is quite broad. Our Office will review the exercise of that discretion only to ensure that it was reasonable based on the particular circumstances of the procurement. Id. We find no circumstances here that call into question the agency's decision not to engage in discussions.

HDL asserts that the best value determination was flawed because the SSA did not compare the relative strengths and weaknesses of its and CME's proposals, and also did not consider the fact that HDL's FAT price was lower. However, because CME's proposal was the only technically acceptable proposal, and since the RFP warned offerors that the agency intended to award on the basis of initial proposals, the agency was not required to consider HDL's proposal or its lower FAT price in making its award decision. Exploration Prods., B-279251.2, B-279251.3, June 1, 1998, 98-2 CPD ¶ 15 at 11-12.

The protest is denied.

Anthony H. Gamboa
General Counsel

(...continued)
not required to infer an offeror's intent from an inadequately detailed proposal.
Leach Mgmt. Consulting Corp., B-292493.2, Oct. 3, 2003, 2003 CPD ¶ 175 at 5.