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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

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Decision

Matter of: American Ordnance, LLC

File: B-292847; B-292847.2; B-292847.3

Date: December 5, 2003

Richard B. Oliver, Esq., and Gregory Murphy, Esq., McKenna Long & Aldridge, for the protester.

James J. McCullough, Esq., and Steven A. Alerding, Esq., Fried, Frank, Harris, Shriver & Jacobson, for AMTEC Corp., an intervenor.

Joshua Kranzberg, Esq., and John W. Seeck, Esq., U.S. Army Materiel Command, for the agency.

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably assessed weaknesses against protester's proposal where proposal failed to include information required by the solicitation.
 2. Agency was not required to discuss weaknesses in protester's proposal that did not make the proposal unacceptable or prevent protester from having a reasonable opportunity for award.
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DECISION

American Ordnance, LLC (AO) protests the award of a contract to AMTEC Corp. under request for proposals (RFP) No. DAAA09-02-R-0064, issued by the Department of the Army for a contractor to load, assemble and pack charges for TNT demolition blocks. AO challenges several aspects of the evaluation.

We deny the protest.

The RFP provided for a "best value" award based on an evaluation of three factors--manufacturing plan, past performance and small business utilization--and price. The manufacturing plan factor was comprised of three subfactors--quality management system, essential processes and procedures, and essential skills--and the small business utilization factor was comprised of two subfactors--proposed small business utilization and past small business utilization. The manufacturing plan factor was significantly more important than the other factors, the small business

utilization factor was less important than past performance or price, and the non-price factors combined were more important than price.

Four offerors responded to the RFP, including AO and AMTEC. The Army evaluated the proposals, held discussions and requested, received and evaluated final proposal revisions (FPR). AO's proposal was rated good overall under the manufacturing plan factor, with ratings of excellent under the quality management system and essential skills subfactors and good under the essential processes and procedures subfactor; good overall under the small business utilization factor; and excellent under the past performance factor. AMTEC's proposal was rated excellent under every factor and subfactor. AO's offered price was [DELETED], and AMTEC's \$44,346,260. The source selection authority (SSA) reviewed the evaluation results and selected AMTEC's proposal as offering the best value to the government.

AO protests the agency's evaluation of its and AMTEC's proposals on several bases. In reviewing a protest against an agency's proposal evaluation, our role is limited to ensuring that the evaluation was reasonable and consistent with the terms of the solicitation and with applicable statutes and regulations. National Toxicology Labs, Inc., B-281074.2, Jan. 11, 1999, 99-1 CPD ¶ 5 at 3. We have reviewed the record and find all of AO's arguments to be without merit. We discuss its primary arguments below.

AO EVALUATION

Manufacturing Plan

The Army identified six weaknesses in AO's proposal under the essential processes and procedures subfactor, under which AO's proposal was rated good. Five of those weaknesses--[DELETED]; it did not allow sufficient time to account for unexpected problems; it proposed to add two new machine presses after first article testing was completed; and it proposed to inspect and test tooling held in storage and replace such tooling as necessary--reflected the Army's concern that AO would experience delays that would affect the first article or delivery schedule. The sixth weakness the agency identified was AO's failure to provide sufficient details regarding a specific gravity test that offerors were required to perform on the ammunition blocks.

AO maintains that it was unreasonable for the Army to assess weaknesses against its proposal for not including evidence [DELETED]. According to AO, there is little risk that it will not obtain the approval, or that seeking approval will delay contract performance, because the approval will come from the same command that is conducting the procurement, and because the equipment in question was stored for use in performing future Army contracts (such as the one here) for TNT demolition blocks.

The evaluation in this area was reasonable. First, since the solicitation specifically required offerors planning to utilize government-furnished property to submit with their proposals written permission to use that property, there was nothing unreasonable in the Army's assessing a weakness against AO's proposal for failing to do so. See Brickwood Contractors, Inc., B-290305, July 8, 2002, 2002 CPD ¶ 129 at 4. While AO may have believed that prompt approval was assured, and while approval may well have been the likely outcome, the fact is that the request could be denied or approval delayed and, in the absence of the required written permission, the Army reasonably could take that possibility into consideration.¹

AO's argument regarding specific gravity testing also is without merit. The item specification for the TNT blocks required offerors to perform this test and provided instructions on how to conduct it. In its FPR, AO stated, "Press set up determines pellet weight and density. AO will sample-inspect pellet weight and density to ensure that pellets meet all specifications." AO FPR at 18. The agency found that this statement, without information on how the press fulfills the specification requirements, warranted assigning AO's proposal a weakness in this area. AO maintains that, notwithstanding the alleged lack of detail in its proposal, there is no basis for finding any meaningful performance risk, since the Army is aware that AO performs specific gravity testing on all ammunition contracts and has a "stellar" record of quality assurance. This argument is without merit. The item specification required testing, and since AO did not provide any details in its proposal with respect to gravity testing, the Army could reasonably rate the proposal weak in this area. AO's assertion that the Army knows AO always performs specific gravity testing on its ammunition contracts is not a substitute for establishing this in its proposal; contracting agencies are not responsible for evaluating information that is not included in a proposal. See General Sec. Servs. Corp., B-280388, B-280388.2, Sept. 25, 1998, 99-1 CPD ¶ 49 at 4 n.3.

Small Business Utilization

Under the proposed small business utilization subfactor, proposals were to be evaluated based on the complexity of the products or services to be provided by the proposed small business subcontractors, the estimated dollar amount of the products and services and, for large business concerns, the realism of the proposed

¹AO initially challenged all five of the evaluated weaknesses concerning production or first article delay. In its report, the Army explained why each assessed weakness justified its concern. In its report comments, AO continued to assert generally that the Army's assessment of all five weaknesses was unreasonable, but only specifically addressed the weaknesses regarding [DELETED]. We have reviewed the Army's position with respect to the remaining weaknesses and find that its conclusions were reasonable; in the absence of any showing by AO to the contrary, there is no basis for us to question the assigning of those weaknesses.

utilization. The Army rated AO's proposal only good under this subfactor, because it did not show that AO would subcontract complex items to small businesses.

AO asserts that its proposal should have been rated excellent under this subfactor because it included a plan to subcontract 99.8 percent of all subcontracted items to small business concerns. According to AO, it followed that small businesses would get their share of complex items. This argument is without merit. AO's proposal did not indicate that any complex items would be subcontracted to small businesses; the mere fact that AO intended to place virtually all subcontracts with small businesses did not establish that these subcontracts would include complex items. It thus was reasonable for the agency to rate the proposal only good in this regard.

The Army also rated AO's proposal only good under the past small business utilization subfactor based on AO's failure to provide information from which it could determine whether previously subcontracted items were similar to the TNT demolition blocks here. AO asserts that this conclusion was unreasonable since, as required by the RFP, it provided Standard Forms 294 and 295, which identified each past contract number; AO maintains that the evaluators could have used these contract numbers to find the missing product information in the past performance volume of AO's proposal.

This argument is without merit. The solicitation specifically advised offerors to submit separate management, past performance and small business utilization volumes, and to include information in each volume specific to that volume. RFP at 40. Thus, the fact that the past performance volume contained information on the subcontracted items did not preclude the agency from finding that the failure to provide the required information in the small business utilization volume was a weakness. It is an offeror's obligation to submit an adequately written proposal for the agency to evaluate, and an offeror fails to do so at its own risk. Securicor Sicherheitsdienste, B-292723, Nov. 18, 2003, 2003 CPD ¶ __; United Defense LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 19.

DISCUSSIONS

AO complains that the agency failed to hold meaningful discussions because it did not point out any of the weaknesses discussed above under the manufacturing plan or small business utilization factors.

Although discussions must address at least deficiencies and significant weaknesses identified in proposals, the scope and extent of discussions are largely a matter of the contracting officer's judgment. In this regard, we review the adequacy of discussions to ensure that agencies point out weaknesses that, unless corrected, would prevent an offeror from having a reasonable chance for award. An agency is not required to afford offerors all encompassing discussions, or to discuss every aspect of a proposal that receives lower than the maximum score, and is not required

to advise an offeror of a minor weakness that is not considered significant, even where the weakness subsequently becomes a determinative factor in choosing between two closely ranked proposals. Northrop Grumman Info. Tech., Inc., B-290080 et al., June 10, 2002, 2002 CPD ¶ 136 at 6.

Here, none of the identified weaknesses prevented AO's proposal from being considered fully acceptable or otherwise from having a reasonable chance of receiving the award. Rather, the weaknesses merely resulted in AO's proposal being rated good rather than excellent under the factors in question, and the award ultimately was made to AMTEC, not because AO's proposal was deficient, but because AMTEC's was superior. Development Alternatives, Inc., B-279920, Aug. 6, 1998, 98-2 CPD ¶ 54 at 7. Under these circumstances, the agency was not required to discuss these weaknesses with AO.²

AMTEC EVALUATION

AO asserts that the agency improperly rated AMTEC's proposal excellent under the past small business utilization subfactor, since the SSA recognized that AMTEC's proposal lacked certain documentation, including documentation to support its estimate of 95 percent past small business utilization. This argument is without merit. As AMTEC is a small business concern, it was not required to document past small business utilization. RFP at 43. Thus, the agency reasonably determined that the absence of documentation was not a basis for downgrading the proposal.

BEST VALUE DETERMINATION

AO alleges that, in making its best value determination, the Army ignored the evaluation criteria and AO's price advantage, and instead made award on the basis of a lowest risk, reasonable price analysis. Our review of an agency's price/technical tradeoff decision is limited to a determination of whether it was reasonable and consistent with the evaluation criteria enunciated by the solicitation. Construction Tech. Labs., Inc., B-281836, Apr. 12, 1999, 99-1 CPD ¶ 71 at 11. An agency may select a higher-priced, higher-rated offer where the decision is consistent with the evaluation criteria and the agency reasonably determines that the superiority of the higher-priced offer outweighs the price difference. National Toxicology Labs., Inc., supra, at 7.

² In any case, we note that, with respect to the small business utilization factor, the agency pointed out to AO that it had failed to provide specifics on individual contracts, that it could not determine the complexity of work performed or similarity to this procurement of past contracts, and that AO had not provided all information requested by the solicitation. Discussion Letter to AO, Apr. 17, 2003, at 3.

The tradeoff here was unobjectionable. The source selection document demonstrates that the SSA specifically considered the relative strengths and weaknesses of AO's and AMTEC's proposals under each evaluation factor and subfactor, and concluded that, among other things, AO's proposal contained some risk of delayed performance, while AMTEC's did not. The SSA then concluded that, because prompt delivery was critical to the agency, even with its [DELETED] percent higher than AO's price), AMTEC's proposal represented the best value to the government because it presented the least amount of performance risk. Source Selection Decision at 19, 20, 22-24. Although AO maintains that the risk represented by its proposal is only minor, the agency could reasonably conclude that, in light of the importance of prompt delivery, AMTEC's proposal provided the best value.³

The protest is denied.

Anthony H. Gamboa
General Counsel

³ In its initial protest, AO alleged that the Army improperly rated AMTEC's proposal excellent under the manufacturing plan and past performance factors. We dismissed that aspect of the protest as legally insufficient because the protest was based solely on AO's "information and belief" that AMTEC had not recently manufactured the TNT demolition blocks, with no further explanation or evidence establishing the basis for the assertion. AO requests that we reconsider our decision in this regard (it also reasserted the argument in its comments on the agency report). According to AO, in dismissing these arguments, we overlooked its statement that "AMTEC however has not recently performed contracts for the demolition blocks or similar items." AO maintains that this statement was sufficient to warrant fully developing the issue. We disagree. As stated in our dismissal, for a protest to be legally sufficient, a protest must provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that we will find improper agency action. AO did not provide any evidence supporting its statements, and AO's statements alone did not establish the likelihood that we would sustain the protest. An assertion, without further supporting details or evidence, is essentially no more than speculation and does not meet the standard contemplated by our Regulations for a legally sufficient protest. Science Applications Int'l Corp., B-265607, Sept. 1, 1995, 95-2 CPD ¶ 99 at 2-3. Accordingly, we deny the request for reconsideration.