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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: DOER Marine

File: B-295087

Date: December 21, 2004

John P. Hurabiell, Esq., Huppert & Hurabiell, for the protester.
Stephen H. S. Tryon, Esq., Naval Surface Warfare Center, for the agency.
Louis A. Chiarella, Esq., and Christine S. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protester's contention that the awardee misrepresented its corporate history and technical experience is denied where the record shows that no misrepresentation occurred and that, in any event, the agency did not evaluate the awardee or any other offeror as to corporate experience.

DECISION

DOER Marine protests the issuance of a purchase order to Deep Ocean Engineering under request for quotations (RFQ) No. N00167-04-Q-0412, issued by the Naval Surface Warfare Center, Carderock Division (NSWCCD), Department of the Navy, for tethered underwater remotely operated vehicle (ROV) systems. DOER argues that Deep Ocean Engineering misrepresented its corporate history and ROV manufacturing experience.

We deny the protest.

On August 3, 2004, NSWCCD issued the RFQ for seven ROV systems.¹ The RFQ, issued as a simplified commercial item acquisition under Federal Acquisition Regulation (FAR) Parts 12 and 13, contemplated the award of a fixed-price purchase order. In addition to the specifications for the ROV system, the solicitation notified

¹ The intended purpose of the ROVs was to position sensors relative to a Navy ship hull in a marine industrial environment. ROV Specifications at 1. The ROV was also designed to carry a suite of sensors for inspection of ship hull and other underwater structures. Id.

vendors that “[a]ward will be made to the company [whose] offer can meet all of the technical specifications and delivery requirements, and at the lowest overall cost.” ROV Specifications at 4.

Five vendors, including DOER and Deep Ocean Engineering, submitted quotations consisting of a technical proposal and price proposal by the August 27 closing date. The Navy’s evaluation of vendors’ technical proposals determined that only Deep Ocean Engineering’s proposal met all of the solicitation requirements; by contrast, the agency determined that DOER’s proposal did not, among other things, meet the solicitation’s weight and delivery schedule requirements.² Agency Report (AR), Tab 6, Agency Evaluation of ROV Quotations, at 2-3. After determining that Deep Ocean Engineering’s price of \$781,690 was fair and reasonable, the agency made award to Deep Ocean Engineering as the vendor submitting the lowest-priced, technically acceptable quotation. AR, Tab 7, Source Selection Decision. This protest followed.

DOER’s protest essentially centers upon its assertion that Deep Ocean Engineering misrepresented both its corporate history and ROV manufacturing experience. Specifically, DOER contends that while the current Deep Ocean Engineering company has been in existence for just 4 years, the entity “masquerades as a firm with a 20-plus year contiguous [*sic*] history and unfairly trades on the proven track record of the original [Deep Ocean Engineering] company,” citing various corporate sales, divestitures, and name changes. Protest at 2. DOER further argues that Deep Ocean Engineering’s various misrepresentations about its corporate history and ROV manufacturing experience have misled clients and potential clients, including the Navy here. *Id.*

² Specifically, the agency determined that DOER’s proposed ROV failed to comply with the solicitation’s weight requirement of less than 100 pounds. AR, Tab 6, Agency Evaluation of ROV Quotations, at 2. The Navy also concluded that DOER’s quotation did not comply with the solicitation requirement that the first two ROVs be delivered within 45 days of award and the remaining five ROVs be delivered within 90 days of award. *Id.* Despite the agency’s determination that the protester’s quotation was technically unacceptable (a conclusion which DOER does not contest), the protester remains an interested party to challenge the award to Deep Ocean Engineering here because the awardee was the only vendor whose offer was found by the agency to be technically acceptable; if the awardee’s offer were found to be unacceptable, then the agency would have to resolicit the requirement, giving the protester another chance to compete. See *Infrared Techs. Corp.*, B-255709, Mar. 23, 1994, 94-1 CPD ¶ 212 at 3 n.2; *Georgetown Univ.*, B-249365.2, Jan. 11, 1993, 93-1 CPD ¶ 87 at 5.

When using simplified acquisition procedures, an agency must conduct the procurement consistent with a concern for fair and equitable competition and must evaluate quotations in accordance with the terms of the solicitation. Kathryn Huddleston & Assocs., Ltd., B-289453, Mar. 11, 2002, 2002 CPD ¶ 57 at 6; Finlen Complex, Inc., B-288280, Oct. 10, 2001, 2001 CPD ¶ 167 at 8-10. In reviewing protests of an allegedly improper simplified acquisition evaluation, we examine the record to determine whether the agency met this standard and exercised its discretion reasonably. American Artisan Prods., Inc., B-293801.2, June 7, 2004, 2004 CPD ¶ 127 at 3. An offeror's misrepresentation concerning experience or other matters that materially influences an agency's consideration of its proposal generally provides a basis for proposal rejection or reevaluation of the award decision based on the faulty proposal. See ACS Gov't Servs., Inc., B-293014, Jan. 20, 2004, 2004 CPD ¶ 18 at 4; Cygnus Corp., B-275957, B-275957.2, Apr. 23, 1997, 97-1 CPD ¶ 202 at 10. A misrepresentation is material where the agency relied upon it and it likely had a significant impact upon the evaluation. ACS Gov't Servs., Inc., *supra*; Integration Techs. Group, Inc., B-291657, Feb. 13, 2003, 2003 CPD ¶ 55 at 5.

We conclude that the record simply provides no basis to find that Deep Ocean Engineering made a misrepresentation here. In its technical proposal, Deep Ocean Engineering provided an introduction and a company profile, claiming that the entity has been in continuous operation for 22 years designing, building, and testing ROV systems. AR, Tab 4, Deep Ocean Engineering's Technical Proposal, at 1-2. Deep Ocean Engineering's technical proposal then provided descriptions of its manufacturing expertise and experience, including specific information on similar, relevant ROV programs. Lastly, Deep Ocean Engineering provided extensive information about how the vendor's proposed ROV system would meet each of the required specifications by means of a line-by-line comparison. *Id.* at 13-22.

We think the protester's allegations challenging Deep Ocean Engineering's claim of 22 years' continuous ROV experience amount to a disagreement as to the proper attribution of (and credit for) the awardee's corporate history. As the agency correctly notes, "whether the company's history must be measured by the latest date of incorporation, or its past corporate history, or the contracting and manufacturing experience of its [principal employees] is not established by law, regulation or practice." Agency Report at 4. At most, we think Deep Ocean Engineering's alleged "misrepresentations" regarding its corporate history and ROV production experience amount to mere "puffery" and do not, in our view, rise to the level of misrepresentations. See Cygnus Corp., *supra*.

In any event, it is clear that any "misrepresentation" by Deep Ocean Engineering was not material to the agency's evaluation and resulting award decision. As set forth above, the RFQ did not require vendors to provide information regarding corporate history or prior ROV production experience, and the agency did not consider vendors' corporate experience or past performance in its evaluation of proposals. In this regard, the record clearly establishes, and DOER does not dispute, that NSWCCD did not evaluate Deep Ocean Engineering or any other vendor as to

corporate experience. AR, Tab 6, Technical Evaluation of ROV Quotations. Instead, the Navy's technical evaluation was limited to whether each vendor's proposal ROV was technically acceptable (i.e., whether it would meet the requirements of the ROV specification as set forth in the solicitation). Id. Similarly, the agency's award decision was based solely upon price and technical acceptability. AR, Tab 7, Source Selection Decision. Quite simply, even assuming arguendo that Deep Ocean Engineering's claim of 22 years' continuous ROV experience was inaccurate, the record demonstrates that the claim did not have a significant impact on the agency's evaluation of vendors' quotations.³ See ACS Gov't Servs., Inc., supra.

The protest is denied.

Anthony H. Gamboa
General Counsel

³ DOER also protests that the ROV specifications here were dramatically different from those that it had expected, thereby making the preparation of a complete and responsive quotation more difficult. Protest at 2. To the extent that DOER is challenging defects in the solicitation, that protest is untimely; under our Bid Protest Regulations, a protest against alleged solicitation improprieties must be filed prior to the closing time for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (2004).