



Decision

Matter of: ITW Military GSE

File: B-403866.3

Date: December 7, 2010

David W. Leadingham for the protester.
David Z. Bodenheimer, Esq., Crowell & Moring LLP, for DRS Environmental Systems, Inc., the intervenor.
Howard B. Rein, Esq., Department of the Navy, for the agency.
Louis A. Chiarella, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Contracting agency did not engage in misleading or improper discussions when it accurately advised protester of specific instances where its prices were overstated in comparison to the government estimate.
 2. Agency's determination that awardee's lower-rated, lower-priced proposal represented the best value was reasonable and consistent with the stated evaluation criteria.
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DECISION

ITW Military GSE, of Palmetto, Florida, protests the award of a contract to DRS Environmental Systems, Inc., of Florence, Kentucky, under request for proposals (RFP) No. N68335-09-R-0130, issued by the Department of the Navy, Naval Air Warfare Center Aircraft Division, for shipboard and land based air conditioners. ITW argues that the Navy misled it in discussions and challenges the selection decision.

We deny the protest.

BACKGROUND

The RFP provided for the award of a fixed-unit-price, indefinite-delivery/indefinite-quantity, contract for state-of-the-art mobile, trailer mounted, shipboard, and land based air conditioners for equipment and avionics compartments during the ground maintenance of various Navy and Marine aircraft. Offerors were informed that

award would be made on a best value basis, considering the following evaluation factors in descending order of importance: technical; past performance; and price. The technical factor was in turn comprised of three subfactors, in descending order of importance: technical approach; logistics; and management. The nonprice factors, when combined, were significantly more important than price.¹ RFP § M-1.

Six offerors, including ITW and DRS, submitted proposals. The agency evaluated offerors' technical proposals using the following adjectival ratings for the technical factor: outstanding, highly satisfactory, satisfactory, marginal, and unsatisfactory.² With regard to the past performance factor, the agency used ratings of very low (risk), low, moderate, high, very high, and unknown. The Navy decided that discussions with offerors were necessary and established a competitive range that included the ITW and DRS proposals. Discussions were conducted, and final proposal revisions (FPR) received. The Navy evaluated ITW's and DRS's FPRs as follows:

Factor		ITW	DRS
Technical		Satisfactory/Low	Satisfactory/ Medium
	Technical Approach	Satisfactory/Low	Satisfactory/ Medium
	Logistics	Satisfactory/Low	Satisfactory/Low
	Management	Satisfactory/Low	Satisfactory/Low
Past Performance		Low	Moderate
Price		\$33,247,187	\$27,504,827

Agency Report (AR), Tab 13, Source Selection Advisory Counsel Report, at 2. The evaluators' adjectival ratings were also supported by narratives detailing the various strengths and weaknesses in the offerors' proposals. Id. at 4-7.

The evaluation ratings, findings, and proposed prices were reviewed by the agency's source selection advisory counsel (SSAC), which recommended the selection of DRS's proposal as the best value to the government. Id. at 7-10. The source selection authority (SSA) agreed with the SSAC that DRS's proposal represented the

¹ Offerors were also informed that price would become more of a deciding factor in the selection process, as the ratings of proposals with regard to the nonprice factors became more equal. See RFP § M-1.

² The Navy's evaluation also assigned risk ratings of low, medium, and high to the technical factor.

best value to the government. AR, Tab 14, Source Selection Decision, at 1-3. In making his decision, the SSA noted that ITW's proposal had received a slightly higher technical rating than DRS's. In particular, the SSA noted that DRS's proposal had been evaluated as a medium technical risk, whereas ITW's proposal had received a low risk rating under the technical factor. In addition, the SSA noted DRS's moderate risk rating for past performance, where ITW had a low risk rating. Nevertheless, the SSA concluded that ITW's slightly better risk ratings did not outweigh DRS's substantial price advantage. Id. at 2-3.

This protest followed.

DISCUSSION

ITW complains that it was misled during discussions. Specifically, the protester maintains that the Navy improperly advised it during discussions that its prices for two contract line item numbers (CLIN) were "somewhat lower" than the independent government estimate (IGE). ITW states that, in reliance on this notification, it increased its final price for these two CLINS. ITW also maintains that it was required to review its final pricing for all CLINs as result of the Navy's comments with respect to these two CLINs. Protester's Comments at 3.

When discussions are conducted, they must at a minimum identify deficiencies and significant weaknesses in each competitive-range offeror's proposal. Federal Acquisition Regulation (FAR) § 15.306(d)(3); Multimax, Inc., et al., B-298249.6 et al., Oct. 24, 2006, 2006 CPD ¶ 165 at 12. Discussions must be "meaningful," that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision. Smiths Detection, Inc., B-298838, B-298838.2, Dec. 22, 2006, 2007 CPD ¶ 5 at 12. An agency may not mislead an offeror--through the framing of a discussion question or a response to a question--into responding in a manner that does not address the agency's concerns, or misinform the offeror concerning a problem with its proposal or about the government's requirements. Academy Facilities Mgmt.--Advisory Opinion, B-401094.3, May 21, 2009, 2009 CPD ¶ 139 at 6; Multimax, Inc., et al., supra. In the context of discussions relating to cost or price, agencies may not coerce or mislead an offeror during discussions into raising its prices. Academy Facilities Mgmt.--Advisory Opinion, supra.

Here in its discussions with ITW, the Navy identified a number of weaknesses and deficiencies in the protester's initial proposal; these weaknesses and deficiencies were identified in 25 evaluation notices (ENs). AR at 3. The agency's concerns with ITW's proposed prices were not discussed in any of the ENs, but were communicated to ITW in the letter transmitting the ENs.³ With respect to the pricing

³ The Navy also identified eight CLINs in ITW's proposal that appeared to be priced higher than the government estimate. AR, Tab 2, Navy's Discussions with ITW, at 1. (continued...)

for the two CLINs (for which the agency was concerned the pricing was low), the agency informed ITW as follows:

[Y]ou are advised to carefully review the price proposal for any misunderstanding of the requirements, as several proposed . . . CLINs appear out of line with the Government estimate. . . . [B]ased on market research . . . CLINs . . . appear to be priced somewhat lower than the government estimate; therefore you are advised to carefully review your price proposal for any misunderstanding of the requirements.

AR, Tab 2, Navy Discussions with ITW, at 1.

In its FPR, ITW raised its prices for these two CLINs by approximately \$32,000, and lowered its overall price by more than \$1 million. AR, Tab 11, Navy Analysis of ITW's Prices, at 3.

We do not find that the Navy's discussions with ITW were misleading. The record shows that the Navy found that in these two particular instances ITW's prices appeared understated in comparison to the IGE. The agency accurately conveyed its concerns to ITW in discussions. ITW does not dispute that its pricing for these two CLINs was below the IGE. Rather, ITW essentially argues that the Navy "implied" that unless the offeror raised its prices it would be removed from the competition and/or downgraded regarding its ability to perform the work at the proposed price. Protest, Sept. 14, 2010, at 1; Protest, Oct. 23, 2010, at 3 ("how else would ITW be expected to respond other than increase [its] pricing?"). We find no merit to this argument. The agency simply communicated to ITW that its CLIN pricing appeared lower than that of the IGE in two particular regards, and asked the protester to review its pricing. This did not compel ITW to take any particular action, but left to the firm's business judgment whether it should raise its prices or explain the prices earlier submitted.

ITW also protests the Navy's source selection determination. The protester argues that since the RFP established that nonprice factors were significantly more important than price, the Navy's determination that DRS's lower-rated, lower-priced proposal represented the best value was unreasonable.

In a best value procurement, it is the function of the SSA to perform a price/technical tradeoff, that is, to determine whether one proposal's technical superiority is worth the higher price. Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006,

(...continued)

In its discussions with DRS, the Navy also identified similar concerns with the awardee's CLIN prices. Id., Tab 12, Navy Discussions with DRS, at 1.

2006 CPD ¶ 32 at 15; Chenega Technical Prods., LLC, B-295451.5, June 22, 2005, 2005 CPD ¶ 123 at 8. Even where, as here, price is stated to be of less importance than nonprice factors, the SSA may select the lower-rated, lower-priced proposal, where the SSA reasonably concludes that the price premium involved in selecting the higher-rated proposal is not justified. The extent of such tradeoffs is governed only by the test of rationality and consistency with the evaluation criteria. Aegis Def. Servs., Ltd., B-403226 et al., Oct. 1, 2010, 2010 CPD ¶ 238 at 10. A protester's mere disagreement with the agency's determinations as to the relative merits of competing proposals, or disagreement with its judgment as to which proposal offers the best value to the agency does not establish that the source selection decision was unreasonable. General Dynamics-Ordnance & Tactical Sys., B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 8.

We find the Navy's source selection decision to be reasonable, consistent with the stated evaluation criteria, and adequately documented. The SSA considered the relative importance of the price and nonprice evaluation factors, the technical advantages possessed by ITW, and the price advantage possessed by DRS. The SSA concluded the benefits that would be derived from ITW's lower risk proposal were not significant enough to outweigh the associated price premium, and found that DRS's proposal represented the best value to the government. AR, Tab 14, Source Selection Decision, at 2-3. In this regard, the SSA considered DRS's medium technical factor risk (which the SSAC found was attributable to a less mature technical design), but found that this risk was mitigated to a degree by the number of working level personnel proposed by DRS that are recognized as experts in their field. Id. at 2. Similarly, the SSA also specifically considered DRS's medium past performance risk factor, which the SSAC found was due to the fact that DRS had only one past performance reference involving mobile air conditioner units. Id., Tab 13, SSAC Report, at 9. The SSA concluded that the price premium associated with ITW's proposal did not justify its greater technical merit. As the SSA stated, "[t]he benefits to be derived from ITW's slightly better risk ratings are not significant enough to outweigh the benefits that would be derived from the financial savings of \$5.7 million between ITW and DRS." Id., Tab 14, Source Selection Decision, at 2-3. Although ITW disagrees with the SSA's judgment, this does not demonstrate that the judgment was unreasonable.

The protest is denied.

Lynn H. Gibson
Acting General Counsel