



Decision

Matter of: Rocamar Engineering Services, Inc.

File: B-406514

Date: June 20, 2012

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DIGEST

Protest against the rejection of the protestor's proposal of a modular bastion wall defense system for failing a fire/burn test conducted by the agency is sustained where the record shows that the test was unfair and unreasonable.

DECISION

Rocamar Engineering Services, Inc., of Delray Beach, Florida, protests the rejection of its proposal under request for proposals (RFP) No. S-WHARC-10-R-0007, issued by the United States Department of State (DOS), for modular bastion wall defense systems. Rocamar challenges the propriety of a second fire/burn test that was conducted by the agency on its system, which resulted in the rejection of its proposal.

We sustain the protest.

The RFP, issued on July 23, 2010, sought pre-fabricated modular bastion wall defense systems for various Columbian Army and Police bases. These requirements were to be fulfilled under an indefinite-delivery/indefinite-quantity contract, under which fixed-price task orders would be issued for specific base projects. The State Department estimates the value of this contract at between \$750,000 and \$1.25 million per year.

The RFP specifications provided that the bastion wall defense system were required to meet certain minimum force protection standards and provided for the testing of the proposed systems to determine whether they were acceptable. As relevant

here, the systems were required to be fire proof and provide material retention post exposure to flame.¹ See RFP, amend. No. 0009, attach. 7, § 5.1. To determine whether the system met the fire proof standard, the RFP stated that the “wall will be doused with flammable liquids, ignited, and left to burn itself out.” Id. at attach 8, § 2.1.2. The system was considered to have passed the test if there was “no resulting structural damage after flames extinguish” and the “fill material [is] . . . retained within the bastion wall” Id. The RFP provided that if the system failed this test, it would be determined unacceptable. Id.

The design of the protester’s wall system involved compacted soil which was covered by a fire resistant geotextile material compressed by square wire mesh fencing that encapsulated the wall. See Rocamar President Affidavit (May 15, 2012) at 6-8. The record shows that Rocamar’s wall system passed all of the minimum force protection standards, including the fire/burn test administered by the agency to the front of Rocamar’s wall system.² Rocamar reports that DOS indicated that it had passed all of the required testing and that disassembly of the wall system could be started. Protest at 5. However, the record shows that after Rocamar had begun dismantling the wall system, the agency decided to conduct a second fire/burn test on the rear side of the system.³ See Video Tape (VT) at 27:47-36-34. The agency explains that the second fire/burn test was conducted after partial demolition of the system revealed that the wall system was not covered with the same material on all sides. See DOS Comments (May 1, 2012) at 2. The contemporaneous DOS test report states:

Fire resistant bastion material did not cover 360 degrees of wall. This was discovered immediately when disassembly was begun. To validate this discovery, the fire test was conducted on the rear of the wall and the product failed (sand came out of the wall).

Agency Report (AR), Tab 13, Bastion Walls Testing Report, at 5.

¹ Also, the system was required to be resistant to various environmental factors, serve as a blocking system for external visual observation, and be able to effectively mitigate damage from direct fire and indirect fire weapons attacks. See RFP, amend. No. 0009, attach. 7, § 5.

² Seven offerors’ systems were subjected to the fire/burn test. All passed the test, except for Rocamar’s and another offeror’s systems. Email from DOS (May 7, 2012).

³ During the course of this protest, DOS provided a video tape of the specific tests conducted on the Rocamar wall system, including the second fire/burn test.

Rocamar contends that requiring its wall system to undergo a second fire/burn test, after it began dismantling its wall system, was unfair and improper. Rocamar argues that the second fire/burn test on the rear non-threat side of the wall system was not contemplated by the solicitation's test provisions. Rocamar also notes that none of the other offerors' wall systems were required to pass a second burn test on the non-threat side of their wall systems after partial demolition. Email from DOS (May 7, 2012).

Our Office will review an allegedly improper technical evaluation of product samples to determine whether the evaluation was fair, reasonable, and consistent with the evaluation criteria. We will not make an independent determination of the merits of an offeror's proposal; rather, we will review the evaluation record, including the results of any test demonstration, to ensure that the agency's technical judgment has a rational basis and is consistent with the stated evaluation criteria. Optical Sys. Tech, Inc., B-296516.2, B-296516.3, Mar. 17, 2006, 2006 CPD ¶ 63 at 5. Our Office affords particular deference to the technical expertise of agency personnel regarding judgments that involve matters of human life and safety and the conduct of qualification testing is an area where contracting agencies have broad discretion so long as their action is reasonable and does not prejudice potential offerors by, for example, treating them unequally. See Science Applications Int'l Corp., B-405612 et al., Dec. 5, 2011, 2012 CPD ¶ 8 at 7; Chemonics Indus., Inc., B-260284, Apr. 19, 1995, 95-1 CPD ¶ 206 at 4. As discussed below, we cannot conclude that DOS fairly or reasonably conducted the second fire/burn test of Rocamar's proposed system.

Our review of the video tape of the testing process confirms that the second fire/burn test was conducted by the DOS testing official, after Rocamar began to dismantle the components of its wall system. See VT at 27:47-36-34. Indeed, the protester notes that the video shows that prior to the unannounced second fire/burn test, the mesh was cut by bolt cutters approximately 210 times, had materials removed from the system with shovels, and the containment material cut with a razor. See Protester's Supp. Comments (May 8, 2012) at 5-6; Rocamar President Affidavit (May 15, 2012) at 6.

As noted, the agency argues that such action was justified because the testing official observed that Rocamar's wall system was constructed with a different material on the rear wall. See DOS Reply Comments (May 1, 2012) at 2. However, there is nothing in the RFP that would reasonably suggest that testing would be performed on anything other than the fully assembled system. See RFP, amend. No. 0009, attach. 8, § 2.1.2.⁴ Nor was any other offeror subjected to a similar test of its system.⁵

⁴ Other than the description of the fire/burn test in the RFP (quoted above), the record contains no testing protocol. The protester states that when asked about the
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In a sworn statement, Rocamar's president, who is a licensed engineer, attributes the failure of its wall system to pass the DOS's second burn test to the loss of the wall system's compaction resulting from partially dismantling the wall system.⁶ He also states that the demolition directly compromised the structural integrity of its system and caused the wall system to lose its compaction, which was a key component of the design of its system. He explains that the pre-test demolition allowed excess oxygen into Rocamar's wall system, which caused the fill inside the protester's system to move outside the structure, and for Rocamar's system to fail the test. Affidavit of Rocamar's President (May 15, 2012) at 6-7. The agency has not refuted the protester's engineering analysis of the design of its system and what would happen if there was a loss of compaction in the system.⁷ Based on this record, we find that DOS's second fire/burn test of Rocamar's wall system was neither fair nor reasonable, and sustain the protest on this basis.

We recommend that the agency review its test results to determine whether Rocamar's system should be considered acceptable. The agency should also review the test results of the other offerors' systems to determine whether further testing is required to determine their acceptability. In the event the agency determines that Rocamar's system requires further testing, we recommend that Rocamar be provided an opportunity to provide its system for testing and that it be tested in accordance with the RFP and consistent with the procedures used in testing the other offerors' systems. We also recommend that the protester be reimbursed for the costs of filing and pursuing its protest, including reasonable

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authority for a second test, the DOS testing official simply stated "I do what I want and you (me) do not have the right to question my actions." Protest at 5.

⁵ The record contains pictures of other offerors' wall system that appear to be constructed in the same manner as Rocamar's system. See AR, Tab 14, Bastion Wall Testing Photographs.

⁶ According to the engineer there was no requirement to construct the wall system with identical material and it has submitted pictures of the agency's earlier tests purportedly showing that its system passed this fire/burn test constructed with the same material it utilized on the rear side of its wall system for the second test. See Affidavit of Rocamar's President (May 15, 2012) at 2-3.

⁷ The agency instead argues that our Office should strike the president's sworn statement because (1) expert testimony is not allowed where the expert has a financial interest in the matter, and (2) Rocamar's president has not made a showing of relevant expertise in the product his company provides. None of these arguments, however, provide a valid basis for us not to consider the president's sworn and probative statements.

attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2012). The protester should submit its certified claim for such costs, detailing the time expended and costs incurred, directly with the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Lynn H. Gibson
General Counsel