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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: Specific Systems, Ltd.

File: B-292087.3

Date: February 20, 2004

Richard J. Vacura, Esq., Holly Emrick Svetz, Esq., Peter C. Sales, Esq., and John R. Zitko, Esq. Morrison & Foerster, for the protester.

Clarence D. Long, III, Esq., and Paul S. Davison, Esq., Department of the Air Force, for the agency.

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DIGEST

1. Agency reasonably concluded that awardee's proposal was technically acceptable based on evaluation of 25 of more than 100 technical requirements, where solicitation did not require evaluation of each and every requirement and only required offerors to respond to the 25 requirements, and awardee's proposal did not suggest it would not comply with any of the requirements.

2. Under a solicitation providing for "Technically Acceptable-Performance/Price Tradeoff" evaluation scheme, agency's award to lower-priced, lower-rated proposal is unobjectionable, where agency reasonably concluded that [REDACTED] percent price differential was not worth "marginal" differences in performance ratings so as to justify award to the higher-rated offeror.

DECISION

Specific Systems, Ltd. (SSL) protests the award of a contract to American Turbo Systems (ATS) under request for proposals (RFP) No. F09603-02-R-70366, issued by the Department of the Air Force for roof-mounted air conditioner modules (RACM) that will be used to cool aircraft avionics systems while maintenance personnel work on aircraft.

We deny the protest.

The RFP, issued April 12, 2002 as a small business set-aside, provided for award of a fixed-price contract for 3 first-article RACM units and 240 production RACM units, with three yearly options for additional RACM production units. Award was to be

made using “Technically Acceptable-Performance/Price Tradeoff” procedures. That is, the RFP provided that proposals would first be evaluated to determine if they were technically acceptable, and for those that were acceptable, tradeoffs would then be made between past performance and price, with past performance being “significantly more important than” price. RFP § M-900(a).

Under the technical acceptability factor, the RFP stated that proposals would be evaluated “to determine if the offeror provides a sound, compliant approach that meets the requirements of the Purchase Description [PD] for [the RACM] . . . and demonstrates a thorough knowledge and understanding of those requirements and their associated risks.” RFP § M-900(b)(1). The PD was an attachment to the RFP and identified over 100 mandatory requirements for such things as materials, design and construction, performance, verification, and packaging of the RACM. With regard to the technical proposal requirements, the RFP required “[t]he following information [to] be provided [which] will be evaluated to determine acceptability in accordance with Section M-900” and listed 25 paragraphs of the PD, and instructed offerors that “[p]roposals shall describe the offeror’s proposed approach to performing the requirements set forth in [these 25 enumerated] paragraphs of the [PD].”¹ RFP § L-900(d)(2).

For those proposals found technically acceptable, the RFP stated that past performance would be assessed for relevance and confidence in the offeror’s ability to accomplish the proposed effort, and that price would be computed by multiplying the number of required RACM units by the proposed prices.

Four offerors, including SSL and ATS, responded to the RFP by the May 17 due date. The Air Force determined that discussions were necessary, and submitted to each offeror “Evaluation Notices” (EN) concerning weaknesses, deficiencies, and issues for clarification identified under the technical, past performance, and price factors. Offerors submitted their responses to the ENs and final proposal revisions by September 20.

The agency evaluated proposals and EN responses, and determined that all four proposals were technically acceptable. The agency assessed past performance ratings based on a review of information provided in the proposals, performance questionnaires, Air Force databases, and by the Defense Contractor Management Agency (DCMA); and evaluated price in accordance with the RFP.

ATS’s proposal received a rating of “Marginal/Little Confidence” under the past performance factor and was priced at \$27 million; SSL’s proposal received a rating of

¹ These 25 requirements involved some of the design and construction and performance specifications that the agency determined were the most important. Contracting Officer’s Statement at 3.

“Satisfactory/Confidence” under the past performance factor and was priced at [REDACTED]; and the other two offerors’ proposals received ratings of “Satisfactory/Confidence,” but were much higher priced than ATS’s and SSL’s proposals.² The Air Force selected ATS for award in February 2003, finding that the higher past performance ratings of SSL’s and the other offerors’ proposals were not worth the associated additional price.

SSL timely protested the award to ATS, contending, among other things, that ATS’s proposal was technically unacceptable in that it did not demonstrate compliance with many of the PD requirements, and that the agency’s evaluation was unreasonable. SSL later withdrew the protest after the parties reached a settlement agreement, in which the agency agreed to “consider the issues raised in the protest” and “make a new award decision based on the re-evaluation of all proposals.” Protest, exh. 3, Settlement Agreement.

The Air Force re-evaluated the proposals for technical acceptability, specifically considering each offeror’s proposal responses to the 25 paragraphs of the PD listed in section L of the RFP, and affirmed its determination that each proposal was technically acceptable, documenting its technical analysis and responding to each of the technical non-compliance allegations raised in the earlier protest.

The agency also affirmed its earlier past performance evaluation. The Air Force again assessed ATS’s proposal a rating of “Marginal/Little Confidence,” based on the fact that only limited feedback was available from its customers. The source selection authority (SSA) noted, however, that the information available from ATS’s customers, as well as government sources, showed ATS to be a “satisfactory” contractor with a “high rating for technical skills.” The SSA also favorably considered the fact that ATS had experience in air cycle technology and is a manufacturer of, and operates a repair facility for, the current air conditioning unit that the RACM is to replace, noting the similarities in technology between these two units, but also recognizing that ATS’s experience was only on “semi-relevant” contracts. Agency Report (B-292087.3), Tab 4, Revised Source Selection Decision, at 3.

The SSA assessed SSL’s proposal a higher rating of “Satisfactory/Confidence,” based primarily on the “considerable” experience of its subcontractor in [REDACTED].

² The RFP defined “Satisfactory/Confidence” as “[b]ased on the offeror’s performance record, some doubt exists that the offeror will successfully perform the required effort.” “Marginal/Little Confidence” was defined as “[b]ased on the offeror’s performance record, substantial doubt exists that the offeror will successfully perform the required effort. Changes to the offeror’s existing processes may be necessary in order to achieve contract requirements.” RFP § M-900(b)(2)(iii).

The SSA also considered positively that the subcontractor had participated in [REDACTED]. The SSA considered SSL's experience with ground support equipment and vapor cycle air conditioners, but noted that the information concerning SSL's performance history was "limited" and pertained to "semi-relevant" contracts where SSL was not the prime contractor. The SSA noted that SSL would be responsible for overall performance of the contract and would perform [REDACTED] percent of the manufacturing, and with limited performance history available, there was "some doubt" as to its ability to perform these functions. Id.

In performing its past performance/price tradeoff, the SSA concluded that even though SSL's proposal had received a higher rating for past performance, the differences in confidence levels between the two offerors' proposals was "marginal," given that limited information was available with regard to both SSL and ATS, and that SSL's higher rating was due primarily to the performance history of its subcontractor. The SSA also noted that ATS's lower rating was not due to negative history, but only to limited information, and in fact favorable customer ratings suggested to the agency that ATS could satisfactorily perform. The SSA thus determined that the [REDACTED] percent differential in price was not worth the higher confidence rating, and selected ATS for award. Id. at 3-4. This protest followed.

SSL challenges the Air Force's determination that ATS's proposal was technically acceptable. SSL complains that ATS did not address, and the Air Force did not evaluate, each of the paragraphs of the PD, and thus asserts that the Air Force cannot reasonably conclude that ATS's proposal was technically acceptable. SSL argues that section M of the RFP requires evaluation of each of the PD requirements, and that the Air Force relaxed the evaluation requirements for the benefit of ATS by considering compliance only with the 25 paragraphs listed in section L.

A solicitation must be read as a whole and in a reasonable manner, giving effect to all its provisions. Davies Rail and Mech. Works, Inc., B-278260.2, Feb. 25, 1998, 98-1 CPD ¶ 134 at 6. Contrary to SSL's assertion, the RFP did not require that offerors demonstrate compliance with, or that the agency evaluate, each of the more than 100 PD requirements. Rather, the RFP required only that offerors respond to the 25 requirements set forth in section L that the agency determined were the most important. Although section M required that the Air Force evaluate whether each offeror's technical proposal "meets the requirements of the [PD]," it does not specify that all of the requirements must be evaluated and, when read in concert with section L, which required proposals to address only the 25 requirements, the agency was not required to specifically evaluate a proposal's compliance with the other PD requirements.

As a general rule, a proposal need not show compliance with each aspect of a solicitation where the solicitation does not require such a showing. Joppa Maint. Co., Inc., B-281579, B-281579.2, Mar. 2, 1999, 2000 CPD ¶ 2 at 3. While it is

true that a proposal that creates doubt whether the offeror is agreeing to meet a material requirement may not be accepted for award, even where the solicitation did not require the proposal to show compliance with that requirement, Mine Safety Appliances Co; Interspiro, Inc., B-247919.5, B-247919.6, Sept. 3, 1992, 92-2 CPD ¶ 150 at 3, there is no evidence in the record here suggesting that ATS would not comply with all of the PD requirements.³ Thus, the agency reasonably determined that ATS's proposal was technically acceptable.⁴

SSL also challenges the reasonableness of the Air Force's past performance/price tradeoff, based largely on its assertion that ATS is not technically acceptable. However, as noted above, we find no error in the agency's technical evaluation. In any case, even where price is the least important evaluation factor, an agency may properly select a lower-priced, lower-rated proposal if it decides that the price premium involved in selecting a higher-rated, higher-priced proposal is not justified. NAPA Supply of Grand Forks, Inc., B-280996.2, May 13, 1999, 99-1 CPD ¶ 94 at 5.

Based on our review of the record, we find that the Air Force reasonably concluded that the [REDACTED] percent price differential in price did not justify award to SSL. As noted above, the agency found the differences between the two firms' past performance ratings to be "marginal." The grounds for that finding were, in our view, reasonable: ATS's lower past performance ratings were due to limited, rather than negative, past performance information; favorable customer ratings suggested to the agency that ATS could satisfactorily perform; and SSL had only limited performance information available concerning its performance as a subcontractor on semi-relevant contracts, which caused the agency to have "some doubt" as to

³ While SSL and its consultant point to several PD requirements which ATS did not address in its proposal, SSL has produced no evidence that ATS's proposed solution will not comply with these requirements, and the protester has pointed to nothing in ATS's proposal that could reasonably be viewed as creating doubt about whether ATS was agreeing to comply with any of them.

⁴ In its protest, SSL provided a statement from a consultant contesting the agency's evaluation of ATS's proposal for technical acceptability. This consultant focused on some of the 25 PD requirements, primarily arguing that ATS's proposal did not contain sufficient information to show compliance with these requirements. In its report, the agency responded in detail to each of the consultant's arguments regarding the 25 PD requirements. Since SSL did not respond to the agency's explanation in its comments on the report, we consider these arguments to be abandoned. TN-KY Contractors, B-291997.2, May 5, 2003, 2003 CPD ¶ 91 at 3 n.2. SSL's protest allegations challenging the past performance, critical subcontractor, and price evaluation were similarly responded to by the agency and SSL failed to address these issues in its comments on the agency report, and thus we consider these allegations to be abandoned as well.

SSL's ability to successfully perform as a prime contractor on this contract. Although SSL disagrees with the agency's judgment that the past performance distinctions were "marginal," it has not shown this judgment to be unreasonable. UNICCO Gov't Servs., Inc., B-277658, Nov. 7, 1997, 97-2 CPD ¶ 134 at 7.

SSL finally asserts that ATS does not have adequate financial resources, facilities, personnel, or experience to perform the contract and that the agency unreasonably determined that ATS was responsible. Affirmative determinations of responsibility are a matter reserved to the discretion of the contracting agency, which our Office generally will not review unless the protest alleges that definitive responsibility criteria in the solicitation were not met, or identifies evidence raising serious concerns that the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation. 4 C.F.R. § 21.5(c) (2003); International Roofing & Bldg. Constr., Inc., B-292833, Nov. 17, 2003, 2003 CPD ¶ 212 at 3. SSL's protest does not fall under either of these exceptions. Although SSL provides examples of "evidence" (such as DCMA comments) that it asserts demonstrate that ATS is not a responsible contractor, the record shows that the agency considered all of this information in reaching its responsibility determination.⁵

The protest is denied.

Anthony H. Gamboa
General Counsel

⁵ To the extent that SSL contends that the responsibility standards of Federal Acquisition Regulation § 9.104-1 were not met, these requirements are only "general standards" of responsibility involving the exercise of subjective business judgments, and are not definitive responsibility criteria, that is, specific objective standards established by the agency as a pre-condition for award and included in the solicitation. International Roofing & Bldg. Constr., Inc., *supra*, at 4.