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Decision

Matter of: RSL Electronics Ltd.

File: B-404117.3; B-404117.4; B-404117.5; B-404117.6

Date: March 28, 2011

Andrew J. Mohr, Esq., John J. O'Brien, Esq., and William J. Bainbridge, Esq., Cohen Mohr LLP, for the protester.

Capt. Joon K. Hong, and John W. Tangelos, Esq., Department of the Army, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq., GAO, participated in the preparation of the decision.

DIGEST

1. Solicitation for muzzle velocity sensor systems to be used in howitzer gun systems that required a 100-percent score for all aspects of the bid sample test in order for the proposal to be considered technically acceptable is unobjectionable where the requirements are reasonably based.

2. Agency's evaluation of the protester's proposal as technically unacceptable was reasonable and consistent with the terms of the solicitation where the protester's bid sample, submitted in response to a solicitation for muzzle velocity sensor systems to be used in howitzer gun systems, failed to accurately measure the muzzle velocity of the projectiles fired on two occasions during the bid sample test.

DECISION

RSL Electronics Ltd., of Migdal Ha'Emek, Israel, protests the terms of request for proposals (RFP) No. W15QKN-10-R-0627, issued by the Department of the Army, for muzzle velocity sensor systems (MVSS), and the award of a contract under the RFP to Weibel Equipment, Inc., of Leesburg, Virginia.

We deny the protests.

BACKGROUND

The solicitation, issued July 8, 2010, provided for the award of an indefinite-delivery, indefinite-quantity contract, with fixed-price delivery orders, for MVSS kits and component parts.¹ RFP at 23. The RFP stated that award would be made to the offeror submitting the lowest-priced, technically acceptable proposal. The solicitation provided that the offerors' technical submissions were to consist of two MVSS "bid samples" that would be tested in accordance with the solicitation's bid sample test plan. RFP at 42. The RFP added that the bid sample tests would be comprised of eight "test events" derived from the RFP's specifications, and that "[a]ll [eight] of the test events must be passed in order for an Offeror to be found technically acceptable and eligible for award." RFP at 47.

The agency received proposals from three offerors, including RSL and Weibel. The MVSS bid samples were tested, with Weibel's bid sample passing each of the eight test events, including the "muzzle velocity measurement accuracy event," on which its MVSS accurately measured the velocity of the projectile 100 percent of the time. The bid samples of RSL and another offeror passed seven of the bid sample test events, but both failed the muzzle velocity measurement accuracy event.² The agency selected Weibel's proposal, which was evaluated as technically acceptable at an evaluated price of \$36 million, for award, and rejected RSL's proposal (evaluated price of \$[DELETED]) and the third offeror's proposal (evaluated price of \$[DELETED]) as technically unacceptable, and therefore ineligible for award because of the failure of their respective MVSS units to pass the muzzle velocity measurement accuracy test event. AR (B-404117), Tab D.1., Source Selection Statement, at 1, 15.

RSL filed a protest with our Office on October 7, 2010, arguing that the Army's conduct of the bid sample test, and its conclusion that RSL's MVSS failed the test, were inconsistent with the terms of the solicitation and unreasonable. Protest (B-404117), at 12-15. In this regard, RSL argued, among other things, that the agency's conduct of the bid sample test was inconsistent with the terms of North Atlantic Treaty Organization (NATO) Standard Agreement (STANAG) 4114, which

¹ The MVSS will be attached to two different types of lightweight howitzers "to provide accurate measurement of projectile velocity." RFP at 3.

² RSL's MVSS failed to accurately record the muzzle velocity of the projectile fired on 35 out of 94 rounds fired. Agency Report (AR) (B-404117), Tab D.1, RSL Technical Evaluation, at 1-6; Protester's Comments (B-404117) at 14.

was referenced in the RFP as “part of” the solicitation.³ Protest (B-404117), at 12-13; RFP Performance Specification, at 4.

After receiving the agency’s report in response to the protest and the protester’s comments, our Office conducted a conference call with the parties to discuss the protest and request the submission of a supplemental agency report and supplemental comments. The agency, rather than submitting a supplemental report, informed our Office and the protester that the agency would take corrective action in response to RSL’s protest. Specifically, the agency stated that it would issue an amendment to the solicitation “clarifying the solicitation requirements,” and “then re-evaluate proposals and issue a new award decision.” Army Request for Dismissal (Nov. 22, 2010). Our Office dismissed RSL’s protest as academic on November 22, 2010.

On December 23, 2010, the agency issued an amendment to the solicitation. The amendment, issued as part of the agency’s corrective action, provided for the “retesting of participating Offeror’s proposed MVSS units” solely with regard to the muzzle velocity measurement accuracy bid sample test event on the one particular gun platform, which RSL and the other offeror had previously been found to have failed. RFP amend. 2, at 2. The amendment specified that the MVSS must meet the performance specification’s requirements for accuracy on each shot/round fired during the retest, and that “a failure to meet the specified accuracy requirement on **any** of the test shots/rounds fired will result in the failure of this bid sample test event.” Id. at 3. The amendment added that only the MVSS units originally submitted in response to the solicitation would be tested, and deleted all references to NATO STANAG 4114 from the solicitation. Id. Finally, as described further below, the amendment clarified the use and applicability of a “troubleshooting phase” to the bid sample test event. Id. at 4.

RSL filed a protest with our Office in January 7, 2011, arguing that numerous terms of the RFP, as amended, “makes the test unreasonable, irrational and arbitrary.” Protest (B-404117.3) at 16-20. For example, the protester argues that the requirement in the RFP, as amended, that the MVSS units initially submitted be used for the bid sample test is “unreasonable, irrational and arbitrary,” and that the agency should return RSL’s MVSS units, allow RSL to inspect and determine if its “MVSS system unit is malfunctioning,” and if so, to provide the agency with a replacement MVSS for bid sample testing. Id. at 17. The protester further argues that the RFP, as amended, does not allow the offerors to use their own reference radars during the bid sample test, “omits stating the dates when or how often the [Army’s] reference radars will be calibrated for accuracy in the context of the

³ NATO STANAGs “are developed and promulgated by the NATO Standardization Agency in conjunction with the Conference of National Armament Directors and other authorities concerned.” Protest (B-404117) at 7 n.4.

conduct of bid sample test firings,” and “omits stating that the measurement accuracy will be tested against the average of two reference radars.” Id. The protester also argues, among other things, that the solicitation unreasonably limits the applicability of the troubleshooting phase “to a limited number of basic functions,” and that the “100% pass/fail standard is unduly restrictive.” Id. at 18-19.

On January 27 and 28, 2011 (and prior to the submission of the agency report in response to RSL’s protest against the terms of the RFP as amended), RSL participated in bid sample testing. RSL’s MVSS passed the first day of the muzzle velocity measurement accuracy bid sample test. However, according to RSL, during the second day of testing, “RSL’s MVSS reported muzzle velocity that significantly deviated from the expected velocity” for the first two rounds fired, and “[b]ecause it was clear to both the Army and RSL that something was wrong, RSL requested that it be permitted to troubleshoot before continuing the test.” Protest (B-404117.4) at 3. RSL was allowed to troubleshoot its MVSS, and after having “successfully troubleshooted its MVSS,” was informed by the agency personnel that the “two rounds that were at variance with expected velocity . . . would count towards RSL’s score.” Id. RSL successfully completed the remainder of the test.

RSL filed a supplemental protest with our Office, arguing that the agency’s conduct of the muzzle velocity measurement accuracy bid sample test was “unreasonable, irrational and arbitrary” for many of the same reasons it had argued in its previous protest challenging the terms of the RFP as they related to the conduct of the test. Id. at 4-6. RSL also argues that the Army’s decision to count the two rounds, which were not recorded accurately by RSL’s MVSS, and which necessitated troubleshooting by RSL, was unreasonable. Id. at 4. RSL contends in this regard that “the implication is that any vendor that troubleshoots its equipment . . . automatically fails to meet the Army’s 100% system performance specification,” and that “[i]f that is the case, then troubleshooting one’s equipment is pointless.” Id. at 4-5.

After being informed by the agency that its proposal had been found unacceptable, given RSL’s MVSS’s failure of the muzzle velocity measurement accuracy bid sample test, and that award had been made to Weibel, RSL filed another protest with our Office on February 10. This protest again repeated the arguments raised in RSL’s two pending protests, and asserted for the first time that “[t]he history of this procurement, and in particular, the Army’s repeated failure to conduct its bid sample testing in a reasonable manner, reflect a strong bias against RSL.” Protest (B-404117.5) at 23.

DISCUSSION

As an initial matter, we note that much of RSL’s protest against the terms of the solicitation have been overtaken by events. For example, RSL has not alleged, and there is no indication in the record, that the Army’s refusal to allow RSL to use its own reference radar during the bid sample test, or the manner in which the Army

used its reference radars during the MVSS bid sample test, or the Army's requirement that the MVSS unit RSL had submitted with its initial proposal be tested, had any effect on the test results. Accordingly, we need not address these issues.⁴ What remains at issue with regard to RSL's protest against the terms of the solicitation is the RFP's requirement that in order to be found technically acceptable the MVSS units must pass 100 percent of the muzzle velocity measurement accuracy bid sample test, and the solicitation's restriction of the applicability of the troubleshooting phase to only certain situations.

RSL contends that the RFP's requirement that the MVSS units must achieve 100-percent accuracy during the muzzle velocity measurement bid sample test is in excess of the agency's needs. The protester points out here that NATO STANANG 4114, which the protester characterizes as providing "the most reliable procedures to testing MVS systems," requires that the MVSS achieve 95-percent accuracy. Protester's Comments (B-404117.3) at 5. With regard to the RFP's provisions regarding the applicability of the troubleshooting phase to the bid sample test, RSL complains that the limitation of troubleshooting to what RSL characterizes as an "overly narrow subset of performance issues" is again contrary to NATO STANANG 4114, which according to the protester "allows troubleshooting to determine and correct the cause of measurements exceeding the MVS system performance specification." Protest (B-404117.3) at 18.

We review testing requirements using the same standard applicable to any other challenge of a solicitation's evaluation procedures; the establishment of testing or qualifications procedures or standards is a matter within the technical expertise of the procuring activity, and we will not object to the imposition of certain terms, such as the requirement here for 100-percent accuracy rate during testing or the restriction of the troubleshooting phase to certain circumstances, unless they are shown to be without a reasonable basis. Essex Electro Engineers, Inc.; Alturdyne, B-259832; B-259832.2, May 3, 1995, 95-1 CPD ¶ 228 at 3. Where, as here, a requirement relates to national defense or human safety, an agency has the discretion to define solicitation requirements to achieve not just reasonable results, but the highest possible reliability and/or effectiveness. COB EventLizenz GmbH, B-401999.2, Jan. 12, 2010, 2010 CPD ¶ 24 at 4. A protester's mere disagreement with the agency's judgment concerning its needs and how to accommodate them does not show that the agency's judgment is unreasonable. Id.

The agency explains that the "measurement data taken from MVSS units will be used directly by the guns' fire control systems which the gun crews rely upon to assess the precision, accuracy and effectiveness of their gun system," and that, "[i]n effect, gun

⁴ RSL does not challenge the agency's determination that Weibel, whose MVSS passed 100 percent of the muzzle velocity measurement accuracy bid sample test, was technically acceptable.

crews will use the muzzle velocity measurement readings from their MVSS units to ultimately ensure that they are hitting intended targets or whether they need to adjust their fire to do so.” Contracting Officer’s Statement (B-404117.3) at 5. The agency adds here that “the MVSS data gets used by the guns’ fire control systems to set up the ballistics information for subsequently fired rounds,” and that “if there is an inaccurate MVSS measurement, that errant velocity measurement data is carried forward and used by the fire control system in plotting ballistics for the round after it.” Id. at 6. This inaccurate data “potentially [has] a cumulative effect of increasing the likelihood of a fired round either falling short of or over-shooting its intended target,” which in either case “significantly increas[es] the chances of fratricide and/or striking civilian-populated areas.” Id. As simply put by the agency, “[t]he projectiles fired by these gun systems are extremely lethal, and . . . go where they are aimed and inflict damage no matter who or what happens to be in the way at ground zero once they arrive at their designated target area,” and it is “therefore crucial that a gun crew have the most exact and accurate MVSS readings possible.” Id.

The agency concludes the 100-percent standard for the muzzle velocity measurement accuracy bid sample test was established “to meet the Government’s need to provide the Warfighter with a reliable and highly effective MVSS system that will allow for proper aiming and functioning of the . . . howitzer gun systems during field use.” Id. at 15. The agency adds that, as described above, this is particularly important “in active combat situations where being able to quickly ascertain and verify a gun’s firing performance and accuracy is critical to both human survival and mission readiness/success.” Id.

The agency similarly explains that the RFP’s applicability of the troubleshooting phase to “neutral, hardware-based causes that result in a bid samples inability to be tested” is consistent with its desire to obtain MVSS units with 100-percent accuracy.⁵

⁵ The RFP’s provisions regarding the troubleshooting included in the solicitation, as amended, state:

A time-restricted “troubleshooting” phase of 5 rounds will be allowed to a vendor should it have a power or mounting problem with its MVSS unit. This troubleshooting phase, with a maximum time frame of two hours, will be limited to addressing the following performance issues only:

- 1) A failure of the MVSS to power up and/or stay powered up during testing.
- 2) A failure of the weapon-mounted portion of the MVSS to remain secured to the weapon system.
- 3) A failure of the MVSS to obtain a velocity measurement reading after a round is fired.

(continued...)

Id. at 13. The agency explains here that to allow an offeror, whose MVSS inaccurately measured the muzzle velocity of the projectile fired, the opportunity during the troubleshooting phase to “modify its MVSS bid sample unit’s ability to perform the very task it is being tested for runs completely contrary to the requirements under this solicitation.” Id.

In our view, the agency report reasonably explains the need for MVSS units that can achieve the highest level of accuracy possible and the potential dangers should the solicitation allow for the supply of less accurate units. The report also explains the relationship of these needs and concerns to the RFP’s requirement that the offered MVSS pass 100 percent of the muzzle velocity measurement accuracy bid sample test. Further, the agency explains the relationship between the 100-percent success rate on the muzzle velocity measurement accuracy bid sample test and the restrictions as to when troubleshooting would be permitted. That is, troubleshooting was limited to instances where the MVSS failed to power up or stay powered up during testing, failed to record a velocity measurement reading due to a power failure, or failed to remain secured to the weapon system.⁶ Given the agency’s explanations, we find reasonable both the RFP’s requirement that the MVSS units accurately measure the muzzle velocity of the projectiles fired 100 percent of the

(...continued)

The specific intent of the available troubleshooting phase is to ensure only that an MVSS unit is able to power up/remain powered during bid sample testing, remain fixed/attached to the gun, and be able to generate recordable data.

Accordingly, the following are NOT performance issues with regard to troubleshooting an MVSS unit:

- 1) The capability and/or inability of an MVSS unit to meet any of the solicitation’s stated MVSS performance specification requirements, including but not limited to muzzle velocity measurement accuracy;
- 2) The occurrence of any inaccurate muzzle velocity measurement readings during bid sample testing other than those which can be directly attributed to gun damage which conclusively caused the inaccurate muzzle velocity measurements to occur.

RFP amend. 2, at 4.

⁶ As indicated, should an offeror’s MVSS fail to record a muzzle velocity measurement due to a power failure or the failure of the MVSS to remain secured to the weapon system, troubleshooting would be allowed, and as such the troubleshooting provisions in the solicitation are not “pointless,” as asserted by the protester. See Protest (B-404117.4) at 4-5.

time, and the applicability of the troubleshooting phase to only those circumstances set forth in the solicitation.

We also find reasonable the agency's conduct of the MVSS bid sample test, and determination that RSL's MVSS, which as set forth above failed to accurately record projectiles' velocity on two occasions, was technically unacceptable.

The evaluation of proposals is primarily a matter within the contracting agency's discretion, since the agency is responsible for defining its needs and the best method of accommodating them. In reviewing an agency's evaluation, we will not reevaluate proposals, but will examine the record of the evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria as well as with procurement law and regulation. Federal Envtl. Servs., Inc., B-260289, B-260490, May 24, 1995, 95-1 CPD ¶ 261 at 3.

As set forth above, the record establishes, and RSL concedes, that its MVSS failed to accurately record the projectiles' velocity on two occasions during the second day of the muzzle velocity measurement accuracy bid sample test. With regard to the applicability of the troubleshooting phase to the test of RSL's MVSS, the record also establishes, and RSL concedes, that its MVSS did in fact record muzzle velocity measurements for the two occasions at issue. Protest (B-4041174.) at 3; Protest (B-404117.5) at 21; Agency Supp. Report at 5. Although RSL asserts that its MVSS's failure to accurately record the projectiles' velocity was due to a "power failure and data interruption," the fact remains that as evidenced above, RSL's MVSS did not fail to "obtain a velocity measurement reading," but rather, provided inaccurate muzzle velocity measurements on two occasions.⁷ As such, and despite RSL's concerns to the contrary, we agree with the agency that it was inconsistent with the terms of the RFP to allow RSL to troubleshoot its system, and that it would have been inconsistent with the terms of the solicitation to exclude the two inaccurate muzzle velocity measurements from the test results. In sum, the record reflects that the agency's conclusions that the inaccurate readings provided by RSL's MVSS on two occasions during the muzzle velocity bid sample test were required by the terms of the solicitation to be considered by the agency, and ultimately rendered RSL's proposal technically unacceptable, were consistent with the terms of the RFP.

As to the protester's assertion that the agency's actions here reflected "strong bias against RSL," the protester has provided no evidence of improper action on the part

⁷ The protester asserts that the inaccurate readings were caused by a bad electrical connection. The agency responds that there is no evidence that this was the case. In any case, this problem does not fall under the troubleshooting criteria because the record shows that RSL's MVSS did not fail to "obtain a velocity measurement reading" due to a power failure, but rather, obtained inaccurate readings on two occasions.

of agency officials. Government officials are presumed to act in good faith, and a protester's claim that agency officials were motivated by bias or bad faith must be supported by convincing proof; our Office will not attribute unfair or prejudicial motives to agency officials on the basis of inference or supposition. Operational Support and Servs., B-299660.2, Sept. 24, 2007, 2007 CPD ¶ 182 at 3.

The protests are denied.

Lynn H. Gibson
General Counsel