GAO
Accountability * Integrity * Reliability
United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Alpha Marine Services, LLC

File: B-292511.4; B-292511.5

Date: March 22, 2004

Michael R. Charness, Esq., and Amy R. Napier, Esq., Vinson & Elkins, for the protester.
Wayne A. Keup, Esq., Jonathan K. Waldron, Esq., and David A. Leib, Esq., Blank Rome, for Ocean Services, LLC, the intervenor.
Richard Knutsen, Esq., and David Townsend, Esq., Department of the Navy, for the agency.
John L. Formica, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where proposal did not take exception to requirement in solicitation for the services of an oceanographic research vessel that the vessel be capable of a minimum transit speed of 12 knots, but rather specifically provided that the proposed vessel would comply, and there was no significant countervailing evidence reasonably known to the agency evaluators that should have created doubt whether the offeror would comply with the requirement, the proposal was reasonably evaluated by the agency as acceptable in this regard.

DECISION

Alpha Marine Services, LLC protests the Department of the Navy's award of a contract to Ocean Services, LLC, under request for proposals (RFP) No. N00033-02-R-2009, for the "time charter" of a vessel to support the National Oceanic and Atmospheric Administration's (NOAA) hydrographic survey program. Alpha asserts that the vessel proposed by Ocean does not meet the RFP's requirement that the vessel be capable of a minimum transit speed of 12 knots, and that the selection of Ocean's proposal for award was inconsistent with the terms of the solicitation.

We deny the protest.

The RFP provided for the award of a time-charter contract, for a base period of 1 year, with three 1-year and one 11-month option periods, for an oceanographic research vessel to be used in performing hydrographic surveys in the Gulf of Mexico and the near coastal areas of Alaska.[1] RFP § C2.2. The solicitation provided a number of minimum requirements with regard to the vessel, including, for example, a minimum range of 6,048 nautical miles, minimum transit speed of 12 knots, and minimum length overall of 150 feet. RFP § C2.3. The solicitation also provided that "[t]he vessel shall . . . meet the requirements of Title 46 of the U.S. Code of Federal Regulations, Parts 188-196, Subchapter U, Oceanographic Research." Id. The RFP added that "[t]he vessel shall meet all International Maritime Organization Safety of Life at Sea (SOLAS) construction, equipment, and communication requirements for a vessel of its type, size, class, and service." Id.

Award was to be made to the offeror submitting the proposal representing the best value to the government based upon four evaluation factors: (1) technical, (2) past performance, (3) participation of small businesses, historically underutilized business zone small businesses, small disadvantaged businesses, and women-owned business concerns, and (4) price. The RFP provided that the technical, past performance, and small business participation evaluation factors, when combined, were more important than price in determining which proposal represents the best value to the government. RFP at 12-13.

Initial proposals were received from four offerors, including Alpha and Ocean. After conducting several rounds of discussions with offerors, and obtaining final proposal revisions (FPR), the agency determined that Alpha's revised proposal represented the best value to the agency. Upon learning of the resulting award to Alpha, and after receiving a debriefing, Ocean filed a protest with our Office, arguing that the agency had failed to conduct meaningful discussions, and had failed to evaluate the proposals reasonably and in accordance with the terms of the RFP. In response to the protest, the agency informed our Office that it was taking the corrective action of amending the solicitation and reopening discussions with the offerors. Our Office then dismissed the protest as academic.

The agency, in order to "level the playing field" after release of Alpha's proposed price, Agency Report (AR) (B-292511.3), Memorandum (Aug. 12, 2003), at 2, provided the offerors with a spreadsheet listing the total evaluated prices proposed by the offerors, but identifying the offerors only by letter designations and the vessels proposed only by number designations. The agency also amended the solicitation to clarify that any vessel proposed, regardless of size, must comply with the SOLAS requirements, and requested FPRs. RFP amend. 15, at 1. Ocean then filed a protest with our Office, arguing that the requirement that all vessels meet the SOLAS requirements was unreasonable, and that the agency's release of the spreadsheet

[1] The RFP explains that hydrographic surveys are conducted to determine the configuration of the bottoms of bodies of water, especially as it pertains to navigation. RFP § C2.2.

that disclosed the overall evaluated prices previously received was improper. We denied Ocean's protest in Ocean Serv., LLC, B-292511.2, Nov. 6, 2003, 2003 CPD ¶ 206.

The agency subsequently conducted further discussions, and requested FPRs. Ocean's FPR was evaluated as "acceptable" with "moderate" risk under the technical factor, "very good" with "low" risk under the past performance factor, and "outstanding" under the small business factor, at an evaluated price of $21,064,949. Alpha's FPR was evaluated as "good" with "minimal" risk under the technical factor, "exceptional" with " very low" risk under the past performance factor, and "satisfactory" under the small business factor, at an evaluated price of $26,156,940. Source Selection Authority (SSA) Award Decision, at 4. The SSA, while recognizing the superiority of Alpha's proposal under the technical and past performance factors, determined that Ocean's proposal represented the best value to the government. In this regard, the SSA concluded that "[a]lthough [Ocean's] ship is not the best offered, it provides minimal risk while recognizing significant cost savings to the Government" given that "Ocean's proposed price is $5,091,991.00 or 24% lower than the price submitted by Alpha." Id. at 8-9.

Alpha asserts that Ocean's vessel does not meet the solicitation requirement that the vessel be capable of a minimum transit speed of 12 knots. RFP § C2.3. In support of this assertion, the protester has provided a letter signed by an individual who was master of the vessel offered by Ocean on two occasions (once in 1998 and again in 2000), in which that individual states that the vessel did "not operate above 10.5 knots under normal sea conditions." Letter to Operations Manager, Edison Chouest Offshore (Alpha's parent company), Jan. 9, 2004. In addition, the protester cites a declaration by the operations manager of Edison Chouest Offshore, in which that individual states that based on Internet research he has identified what he believes to be a "sister ship" of the vessel proposed by Ocean, and that his research indicates that this "sister ship" has a "transit speed of 10 knots." Declaration of Operations Manager, Edison Chouest Offshore, Jan. 12, 2004. Additionally, the protester claims that the captain of Ocean's proposed vessel has previously conceded that Ocean's vessel cannot achieve a transit speed of 12 knots. Protester's Comments, Feb. 6, 2004, at 6.

In response, the agency first points out that Ocean's proposal explicitly provided that its proposed vessel is capable of a transit speed of 12 to 12.5 knots, depending on load, as well as a top speed of 13 knots. Ocean Proposal at 37, I-6. As for the letter from the prior master of Ocean's vessel (which was submitted by Alpha in support of its challenge to Ocean's compliance with the speed requirement), the agency notes that this individual acknowledged that on those occasions when he was the master the vessel "had troubles with the main engines." Letter to Operations Manager, Edison Chouest Offshore, Jan. 9, 2004. The agency further points to the fact that in response to the protest, Ocean has submitted the declaration of one of the current captains of Ocean's proposed vessel, in which the captain states that a 2-hour sea trial was undertaken by Ocean's vessel on February 4, 2004, and that during this sea trial "the vessel maintained a speed of 12.1 knots." AR, Tab H, Declaration. (This declaration also notes that at the time of the sea trial, a sonar array and a 17-by-17 foot wing assembly was attached to the bottom of Ocean's vessel; according to the declaration, this array and wing assembly will be removed prior to performance of the contract and as a result the speed of the vessel will be increased by approximately one knot. Id.) Additionally, the record includes the declaration of a captain who commanded Ocean's vessel for approximately 3 years (1999-2001), performing surveys from Oregon to Alaska, in which that individual states that based on his experience, Ocean's vessel presently is capable of doing 12 knots on a sustained basis. AR, Tab I, Declaration. This declaration was accompanied by an excerpt from the vessel's original design documents listing the vessel's "sea speed as 13.5 knots," and documents from the vessel's previous owner, the United States Department of Commerce, listing the vessel's service speed as 13 knots. Id.

In a negotiated procurement, any proposal that fails to conform to material terms and conditions of the solicitation is unacceptable and may not form the basis for award. Alpha Tech. Servs., B-250878; B-250878.2, Feb. 4, 1993, 93-1 CPD ¶ 104 at 3. The procuring agency has primary responsibility for evaluating the technical information supplied by an offeror and determining the acceptability of the offeror's item; we will not disturb such a determination unless it is shown to be unreasonable. Id.

Here, it is undisputed that Ocean's proposal did not take exception to any of the RFP's requirements, including the requirement that the vessel have a minimum transit speed of 12 knots. On the contrary, as noted above, Ocean's proposal explicitly provided that its proposed vessel is capable of a transit speed of 12 to 12.5 knots, depending on load, as well as a top speed of 13 knots. Although an agency may not accept at face value a proposal's promise to meet a material requirement where there is significant countervailing evidence reasonably known to the agency evaluators that should create doubt whether the offeror will or can comply with that requirement, Maritime Berthing, Inc., B-284123.3, Apr. 27, 2000, 2000 CPD ¶ 89 at 6; see American Recycling Sys., Inc., B-292500, Aug. 18, 2003, 2003 CPD ¶ 143 at 3, there simply is nothing in the record here to suggest that such countervailing evidence regarding the transit speed capabilities of Ocean's vessel was reasonably known to the agency prior to the award of the contract to Ocean. In these circumstances, we conclude that the agency had a reasonable basis for finding that Ocean's proposal met the RFP's requirement regarding minimum transit speed. Further, we will not consider Alpha's claim that, in performance of the contract, Ocean's vessel will be unable to transit at a minimum speed of 12 knots; whether a contractor in fact performs in accordance with solicitation requirements is a matter of contract administration that is the responsibility of the contracting agency, and is not for consideration by our Office. 4 C.F.R. § 21.3(m)(1) (2004); Alpha Tech. Servs., supra, at 4.

Alpha protests the agency's evaluation of the offerors' prices. Specifically, the protester argues that the agency's methodology for calculating the fuel costs associated with the operation of the proposed vessels was unreasonable.

The record reflects that the agency calculated fuel costs by assuming that the contracted vessel would be underway 300 days per year at 12 knots, and would spend 30 days in port. The agency multiplied the consumption rates provided by the offerors in their proposals by the price for fuel and assumed days of operation. For example, Alpha's proposed vessel has a consumption rate at 12 knots of 107.1 barrels of fuel per day. The agency thus multiplied the consumption rate (107.1 barrels of fuel per day) by the number of days of operation (300) by the price of fuel ($33.72 per barrel), which resulted in an estimated fuel cost of $1,083,423.60 for Alpha's proposed vessel for 300 days of operation at 12 knots.[2] The fuel cost for Ocean's vessel was calculated in an identical manner, but because Ocean's vessel has a consumption rate at 12 knots of 55 barrels of fuel per day, the estimated fuel cost for Ocean's vessel for 300 days of operation at 12 knots totaled $556,380.[3] AR, Vessel Fuel Analyses.

Alpha argues that the methodology used by the agency to calculate fuel costs was unreasonable because it was based, in part, on the assumption that the vessel will be operating at a 12-knot transit speed 300 days per year. The protester points out that the RFP provided that the vessel was expected to operate 330 days per year, including 300 "operational" days and 30 days in port; that the estimated transit time from the Gulf of Mexico operation area to the Alaskan operation area was 24 days at 12 knots; and that, with respect to the remaining survey time, survey and side scanning sonar towing operations were typically conducted at speeds between 5 and 10 knots, but the vessel must be capable of conducting surveys at speeds as low as 3 knots. RFP §§ C2.3i, C.2.3j, C2.4b. The protester argues that because the operating scenario assumed by the agency for the purpose of calculating fuel costs was based on 300 days of operation at the 12 knot transit speed, and no time at survey speeds, it did not comport with the manner in which the vessel will actually be used, and thus resulted in artificially high estimated fuel costs for the vessels.

The agency responds that its total evaluated fuel pricing model assumed a worst-case scenario for the cost to the government, that is, that the vessel would be

---

[2] The total annual fuel costs calculated by the agency included fuel for the 30 days that the agency assumed the vessel would be in port. This amount for Alpha's vessel (9 barrels per day for a cost of $9,104.40 per year), results in a total annual fuel cost of $1,092,528, and total fuel cost over the life of the contract of $5,462,640.

[3] The annual and total fuel costs over the life of the contract for Ocean's vessel, including the fuel for the 30 days that the agency assumed the vessel would be in port, were calculated as $560,021 per year, and $2,800,108 overall.

in nearly continuous operation (300 days) at the average warranted laden speed (12 knots), and that the agency used the average warranted fuel consumption rates provided by the offerors. The agency maintains that "[w]hile in a perfect world" another methodology "might be useful, in the real world, wind weather and currents . . . may cause fuel consumption rates to be higher (or lower) than predicted." AR at 14. As a result, according to the agency, "[t]here is no perfect pricing model" available. Id. The agency further asserts that, in any case, since the fuel consumption differential for Alpha's and Ocean's proposed vessels increases as speed decreases, and the average fuel consumption rate of Alpha's vessel will be about twice that of Ocean's no matter which methodology one uses, Alpha could not have been prejudiced by the methodology used here.

Competitive prejudice is necessary before we will sustain a protest; where the record does not demonstrate that the protester would have had a reasonable chance of receiving award but for the agency's actions, we will not sustain a protest, even if deficiencies in the evaluation process, such as the unreasonable or unequal evaluation of proposals, are found. Leisure-Lift, Inc., B-291878.3; B-292448.2, Sept. 28, 2003, 2003 CPD ¶ __ at 10; Metropolitan Interpreters & Translators, B-285394.2 et al., Dec. 1, 2000, 2001 CPD ¶ 97 at 9.

The proposals submitted by Alpha and Ocean confirm the agency's position that at any given speed Alpha's vessel consumes more than twice the fuel that Ocean's vessel consumes. For example, at 6 knots Alpha's vessel consumes 69.4 barrels per day, while Ocean's consumes 27.2 barrels per day, and at 10 knots Alpha's vessel consumes 85.7 barrels per day while Ocean's vessel consumes 42.3 barrels per day. Ocean Proposal at I-6; Alpha Proposal at 1-6. As a result, it is apparent that regardless of the vessel speed or speeds chosen to calculate the fuel costs to the agency, the estimated fuel costs associated with Alpha's vessel remain considerably higher than those associated with Ocean's vessel, with the difference in fuel costs generally consistent with that calculated for the evaluation of proposals.[4] Accordingly, we fail to see any reasonable possibility that the protester was prejudiced by the methodology used by the agency in calculating the fuel costs associated with the offerors' vessels.

Alpha asserts that the agency's determination that Ocean's proposal represented the best value to the government was inconsistent with the terms of the solicitation.

---

[4] As noted above, the agency estimated the fuel costs for Alpha's vessel for 300 days at sea at a speed of 12 knots as $1,083,423, and for Ocean's vessel as $556,380, resulting in a difference of $527,043 per contract year, or $5,091,991 for the overall potential term of the contract. If the same calculation is performed based upon an assumed vessel speed of 6 knots, the estimated fuel costs for Alpha's vessel for the 300 days are $702,050, and for Ocean's vessel are $275,155, resulting in a difference of $426,895 per contract year, or $4,591,251 for the overall contract.

Again, the RFP provided that in determining which proposal represented the best value to the government, the evaluation factors of "[t]echnical, past performance and small business, when combined, are more important than price." RFP at 13. The solicitation added that "[a]s the difference in the evaluated quality among the offers with the highest rated combination of technical and past performance decreases, the importance of price as an evaluation factor shall increase, and may become the determinative factor for making award." Id.

Alpha argues that under this latter provision, before the agency could give price significant or determinative weight, it first had to determine that the difference in the evaluated quality of the offerors in the technical and past performance areas was negligible or at least minimal. We find Alpha's interpretation of the solicitation's award provisions to be unreasonable. The fact that the RFP provided that price was less important than the other three factors combined, or that the importance of price would increase as the difference under the other factors decreased, in no way indicated that price, one of four listed evaluation factors, would not be a significant factor or would be significant only under limited circumstances.

Here, the SSA, in selecting Ocean's proposal for award, recognized the superiority of Alpha's proposal under the technical and past performance factors, but concluded that the superiority of Alpha's proposal in this regard did not warrant payment of the proposal's significantly higher evaluated price. SSA Award Decision, at 8-9. Alpha has not shown this determination to be unreasonable or inconsistent with the evaluation approach set forth in the solicitation.

The protest is denied.

Anthony H. Gamboa
General Counsel