



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Kollsman, Inc.

File: B-413485; B-413485.2; B-413485.3

Date: November 8, 2016

Alan A. Pemberton, Esq., Jason A. Carey, Esq., J. Hunter Bennett, Esq., Julia A.C. Lippman, Esq., and Ryan Burnette, Esq., Covington & Burling LLP, for the protester. Damien C. Specht, Esq., and James A. Tucker, Esq., Morrison & Foerster LLP, for Optics 1, Inc., an intervenor.

Debra J. Talley, Esq., and Dylan C. Bush, Esq., Department of the Army, for the agency.

Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that awardee's proposal was ambiguous as to the identity of the offeror is denied where the awardee's proposal, read as a whole, clearly identified the offering concern.
2. Protest that agency unreasonably credited awardee with the past performance of an affiliated concern is denied where record establishes that past performance examples were performed by the same concern identified for performance of the solicited requirement.
3. Protest that agency improperly gave awardee's proposal more evaluation credit than given to the protester's proposal is denied where record shows that the agency had a reasonable basis for distinguishing between the proposals during its evaluation.

4. Protest that agency's source selection decision improperly took into consideration a factor not identified in the solicitation's evaluation criteria is denied where record does not bear out protester's assertion.

DECISION

Kollsman, Inc., of Merrimack, New Hampshire, protests the award of a contract to Optics 1, Inc., of Bedford, New Hampshire, under request for proposals (RFP) No. W91CRB-14-R-0017, issued by the Department of the Army for laser target locator modules (LTLMs). Kollsman maintains that the agency miscalculated proposals and made an unreasonable source selection decision.

We deny the protest.

BACKGROUND

The RFP contemplates the award, on a best-value basis, of an indefinite-delivery, indefinite-quantity contract to manufacture LTLMs, along with an array of peripheral equipment and related testing services and documentation, during a base year and four 1-year options. Firms were advised that proposals would be evaluated considering price, and several non-price considerations.¹ Specifically, the RFP stated that the agency would evaluate proposals considering four principal evaluation factors: technical, price, past performance and small business subcontracting approach. RFP, Amendment No. 2, at 3. Under the technical and small business approach factors, the RFP included several subfactors, and under the technical factor and subfactors, the RFP identified numerous elements. Id. at 5-6.

As is relevant to the protest, the RFP advised offerors that all of the elements under the technical and small business subfactors (as well as the past performance factor) would be evaluated on an acceptable/unacceptable or pass/fail basis, except one element under the bid sample subfactor of the technical factor. RFP, Amendment No. 2, at 5-6. This element, LTLM weight, was further divided into two subelements, base weight and system weight, with base weight deemed more important than system weight.² Id. at 6.

¹ The RFP advised offerors that price would be evaluated for fairness and reasonableness. RFP, Amendment No. 2, at 11. The RFP included two optional cost-reimbursement line items that were to be evaluated for realism. Id. There are no protest issues relating to the evaluation of price.

² Broadly speaking the LTLMs are comprised of a hand-held base unit and a total system package that is comprised of the hand-held base unit, as well as peripheral equipment such as spare battery packs, carrying cases and cables.

For award purposes, the RFP provided that proposals had to be assigned ratings of at least acceptable under all of the non-price factors. RFP, Amendment No. 2, at 4. For purposes of conducting a cost/technical tradeoff, the RFP advised that only the technical factor and price would be considered, and that the technical factor was significantly more important than the price factor. Id. at 3-4. The RFP further provided that the LTLM weight element would be the only element considered in connection with the agency's cost/technical tradeoff decision. Id. at 3-4. In short, proposals were largely evaluated on an acceptable/unacceptable or pass/fail basis. However, the RFP contemplated the evaluation of the LTLM weight element on a comparative basis, and the results of that comparative evaluation would be used by the agency to make its best-value selection decision in conjunction with price.³

For purposes of evaluating LTLM weight, the RFP specified threshold and objective weight values. In this connection, the RFP provided that the base and system threshold weight values were, respectively, 4 pounds and 8.5 pounds. RFP, Amendment No. 2, at 8. The RFP also specified objective weight threshold values for the base and system weights of, respectively, 3.5 pounds and 8 pounds. Id. The RFP advised offerors that a failure to achieve the threshold values would result in the proposal being assigned a deficiency. RFP, Amendment No. 2, at 8. The RFP further provided that achieving or exceeding the threshold values, but not meeting or exceeding the objective values, would result in the assignment of a strength to the proposal. Id. Finally, the RFP provided that, where the objective values were met or exceeded (that is, where the unit's respective weights were less than, or equal to, the objective values), the agency would assign the proposal a significant strength under either the base weight subelement, the system weight subelement, or both. Id.

The agency received several proposals in response to the solicitation. After evaluating proposals, engaging in several rounds of discussions and soliciting, obtaining and evaluating final proposal revisions, the agency assigned the protester's and awardee's proposals acceptable ratings under all of the non-price factors except the technical factor. Agency Report (AR), exh. 20, Source Selection Decision Document (SSDD), at 15. The record shows that the agency assigned the protester's proposal two significant strengths and a rating of good under the technical factor based on the fact that it proposed an LTLM with a base weight of [deleted] pounds and a system weight of [deleted] pounds. AR, exh.19, Source Selection Evaluation Board (SSEB) Final Report at 15.⁴ The agency assigned the

³ In evaluating LTLM weight, the agency would assign adjectival ratings of outstanding, good, acceptable or unacceptable. RFP, Amendment No. 2, at 4.

⁴ The record shows that the agency evaluated two bid samples from the protester. The first bid sample had a base weight of [deleted] pounds and a system weight of [deleted] pounds. AR, exh. 19, SSEB Final Report at 15. The second had a base weight of [deleted] pounds and a system weight of [deleted] pounds. Id. We
(continued...)

awardee's proposal two significant strengths and a rating of outstanding under the technical factor based on the fact that it proposed an LTLM with a base weight of [deleted] pounds and a system weight of [deleted] pounds. Id. at 18.⁵

The record shows that the protester proposed a total price of \$280,814,458, while the awardee proposed a total price of \$304,522,367. AR, exh. 20, SSDD, at 15. Based on the fact that the awardee's proposal had been rated superior to the protester's proposal under the technical evaluation factor, the agency performed a cost/technical tradeoff. The agency concluded that, because the base weight of the Optics 1 LTLM was [deleted] percent lighter than the base weight of the LTLM proposed by Kollsman, and because the system weight of the Optics 1 LTLM was [deleted] percent lighter than the system weight of the Kollsman LTLM, award to Optics 1 was warranted based on the 8.4 percent price premium associated with its proposal. Id. at 16-17. After being advised of the agency's source selection decision and requesting and receiving a debriefing, Kollsman filed this protest.

PROTEST

Kollsman makes several allegations relating to the identity of the awardee and its teaming entities. The protester also maintains that the agency improperly assigned the Optics 1 proposal a higher rating than it assigned to the Kollsman proposal under the technical evaluation factor. Finally, the protester argues that the agency's source selection decision improperly considered a technical feature other than the weight of the Optics 1 LTLM in making its cost/technical tradeoff, notwithstanding the terms of the RFP. We have carefully considered all of Kollsman's allegations and find no basis to object to the agency's selection of Optics 1 for the reasons advanced by Kollsman.⁶

(...continued)

identify the more favorable measurements above, even though those measurements were made on separate bid samples.

⁵ The record shows that the agency also evaluated two bid samples for Optics 1, and both samples weighed the same. AR, exh. 19, SSEB Final Report at 18.

⁶ In its initial protest, Kollsman also alleged that the agency engaged in misleading discussions, failed to distinguish between base unit weight and system weight in making its source selection; and improperly made an "apples to oranges" comparison of its product and the Optics 1 product because of what it described as editing error in the RFP. In its report, the agency provided detailed responses to these allegations. In commenting on the agency report, Kollsman made no further mention of these allegations. Accordingly, we deem these protest bases abandoned. Batelco Telecomm. Co. B.S.C., B-412783, et al., May 31, 2016, 2016 CPD ¶ 155 at 4 n.5.

Identity of the Awardee

Kollsman alleges that the Optics 1 proposal was ambiguous regarding what entity was submitting the proposal. In this connection, the proposal names the offeror as “Safran Optics 1” on the standard form (SF) 33, however, the contractor and government entity (CAGE) code included on that same document is a CAGE code for an entity known as Optics 1, Inc. The protester maintains that, because there is an ambiguity concerning the identity of the offeror, the agency improperly accepted the proposal for award.

We find no merit to this aspect of Kollsman’s protest. Uncertainty as to the identity of the offeror renders a proposal technically unacceptable, since ambiguity as to an offeror’s identity could result in there being no party bound to perform the contract. W.B. Construction and Sons, Inc., B-405874, B-405874.2, Dec. 11, 2011, 2011 CPD ¶ 282 at 4. Although the name of the bidding or proposing entity need not be exactly the same in all of the bidding or proposal documents, the proposal must show that any differently-identified entities are, in fact, the same concern. Dick Enter’s., Inc., B-259686.2, June 21, 1995, 95-1 CPD ¶ 286 at 2.

Here, the record shows that information in the awardee’s proposal is adequate to confirm the identity of the offeror. Kollsman is correct that the offeror identified on the awardee’s SF 33 is “Safran Optics 1.” AR, exh. 26, Optics 1 Proposal, SF-33. The record also shows that the CAGE code included on the firm’s SF 33 is 1YWM6, and that this CAGE code is for a concern known as “Optics 1, Inc.” Id.; AR, exh. 13, System for Award Management Search Result. However, information included elsewhere in the proposal clearly establishes that the prime contractor submitting the offer is “Optics 1, Inc.”; that Optics 1, Inc. is a subsidiary of a larger corporate entity known as the Sagem/Safran Group headquartered in France with American subsidiaries; and that “Optics 1, Inc.” is obligated to perform the contract.

Optics 1’s technical proposal describes the Sagem/Safran group as follows: “Sagem/Safran Group, a leading optronic company in the world, made a commitment years ago to expand to the US market by creating a presence with its Safran Optics 1 and Safran Vectronix companies.” Optics 1 Technical Proposal at 1. Optics 1’s technical proposal goes on to describe the role played by each of the Sagem/Safran business elements, as well as the role of its subcontractors in performance of the contract:

Our team combines resources and experience from multiple units of our Opto-Electronics Division across the globe. Safran Optics 1 is the prime contractor providing total program management and specific US-based, fully cleared, engineering capability. Co-located, Safran Vectronix brings world class production capabilities to deliver to the demands of this important program, including all aspects of reliability and quality control. Safran Vectronix AG brings a legacy of proven

solutions including world-class optics dating far back from our Leica heritage. [deleted].

Id. In addition to these explanatory materials, the Optics 1 technical proposal also includes a chart that identifies the roles and responsibilities of the Safran group's business elements. Optics 1 Technical Proposal at 3, 66. That chart identifies the prime contractor as both "Optics 1" and "Safran Optics 1." It is therefore clear that the firm is using the names "Optics 1" and "Safran Optics 1" interchangeably to refer to a single entity, namely, Optics 1, Inc.

Finally, the proposal includes a letter of financial commitment from the parent entity, Sagem, that identifies "Optics 1, Inc." as its subsidiary. That letter provides as follows:

I, the undersigned [name deleted], Chief Executive Officer of **SAGEM DEFENSE SECURITE ("Sagem")**, a corporation organized under the laws of France, with headquarter[s] at 18/20, quai du Point du Jour, 92100 Boulogne-Billancourt – FRANCE, confirms that **Sagem** agree[s] to provide its subsidiary OPTICS 1, Inc. ("**Optics 1**"), a corporation organized under the laws of the State of Delaware, having its principal place of business at 2 Cooper Lane in the City of Bedford in the State of New Hampshire – USA, with adequate financial resources, equipment and material necessary in order to assure the full, complete and satisfactory execution of the LTLM II contract by **Optics 1**.

Optics 1 Proposal, Letter of Financial Commitment (emphasis in original).

The Optics 1 proposal therefore shows that the prime contractor is a concern known as "Optics 1, Inc." that has the CAGE code identified in the proposal. It is also clear that the firm's proposal uses the names "Safran Optics 1" and "Optics 1" interchangeably to refer to the prime contractor, Optics 1, Inc. Further, the Optics 1 proposal shows that the prime contractor is a subsidiary of a larger corporate group, Sagem/Safran, and several of that group's business elements will be participating in contract performance. Finally, the Optics 1 proposal shows that the prime contractor, Optics 1, Inc., has a full array of financial and other resources of its parent corporation, Sagem Defense Securite, at its disposal for purposes of contract performance.

In addition to these considerations, we point out that the protester has not introduced any evidence to show that there even is a separate legal entity known as "Safran Optics 1." Ordinarily in cases where there is a question concerning the identity of the bidder or offeror, there is more than one similarly-named legal entity, and the question in these cases concerns which of the several existing entities is responsible for contract performance. See W.B. Construction, supra. Here, there is

nothing to show that there even is another legal entity that would raise a question concerning which firm is responsible for contract performance. In light of the discussion above, we deny this aspect of Kollsman's protest.

Past Performance Evaluation

In a related allegation, Kollsman asserts that the agency improperly credited the awardee with the past performance examples of its affiliated concern, Vectronix, Inc. The record shows that Optics 1 included three past performance examples that were performed by a company known as Vectronix, Inc. The protester maintains that the agency should not have given the awardee credit for these three past performance examples because they were performed at a facility in Virginia that is different than the facility identified for performance of this contract in Bedford, New Hampshire. The protester also speculates that these two facilities may, in fact, be different, but affiliated, concerns.

We find no merit to this aspect of Kollsman's protest. The record shows that the Optics 1 proposal identifies the manufacturing facility of Vectronix, Inc. located in Bedford, New Hampshire as the place of contract performance. See generally, Optics 1 Technical Proposal at 65. However, the past performance examples list the CAGE code for Vectronix, Inc. in Virginia. Optics 1 Past Performance Proposal at 8-28. Nonetheless, although the CAGE code for the Vectronix, Inc. facility in Virginia is called out in the past performance examples, each of the examples also specifically identifies the firm's Bedford, New Hampshire facility as the place of performance for each contract. Optics 1 Past Performance Proposal at 8-28. (One of the contracts identifies the place of performance as Newington, New Hampshire. This past performance example explains that the Newington, New Hampshire location was the firm's production facility prior to a move to its current Bedford, New Hampshire location. Optics 1 Past Performance Proposal at 8.)

In connection with the protest, the president of Vectronix, Inc. submitted an affidavit that explains the relationship between these two locations. He states that Vectronix, Inc. is a single legal entity incorporated in the state of Delaware (and also a Safran subsidiary) with offices in Virginia, New Hampshire and California. He further represents that Vectronix, Inc. has two active entries in the System for Award Management, one for its manufacturing facility in New Hampshire (CAGE code 5DZQ0) and one for its sales and marketing facility in Virginia (CAGE code 7Z946). He further explains that the Virginia facility address historically has been the address used for contracts awarded to Vectronix, Inc. However, the contracts awarded to Vectronix, Inc. are then performed at the firm's other locations, such as the firm's production facility in Bedford, New Hampshire.

The protester essentially takes issue with this explanation, maintaining that it was not available at the time of the agency's evaluation. However, in considering the reasonableness of an agency's evaluation and source selection, we consider the

entire record, including explanations and arguments presented in connection with the protest. Analytic Serv's, Inc., B-405737, Dec. 28, 2011, 2012 CPD ¶ 16 at 6 n.5. While the protester is correct that the agency did not have the benefit of the explanation offered in the affidavit of Vectronix's president, his explanation bears logical scrutiny, and is consistent with the past performance references bearing the CAGE code of the firm's Virginia facility that go on to explain that performance occurred in New Hampshire. We therefore deny this aspect of Kollsman's protest.⁷

Evaluation of LTLM Weight

Kollsman also argues that the agency erred in assigning its proposal only a good rating for the technical factor while assigning the awardee's proposal an outstanding rating. The RFP provided that, where the objective weight values were met or exceeded, a proposal was to be assigned two significant strengths, and that a proposal receiving two significant strengths should have been assigned a rating of outstanding. The protester alleges that it was led by the terms of the solicitation to conclude that exceeding the objective values would earn it an outstanding rating, and that, once it crossed that threshold, it concentrated on reducing its price rather than on further reducing the weight of its proposed LTLMs.

We find no merit to this aspect of Kollsman's protest because it is premised on an unreasonable reading of the solicitation.⁸ In effect, the protester maintains that once a firm's LTLM crossed the threshold of the objective weight values, it would automatically be entitled to an outstanding rating. However, the RFP was clear that the agency was evaluating the weight of the LTLM devices on a comparative basis --as opposed to pass/fail basis--and that the agency could evaluate a solution that weighed less as technically superior.

⁷ The protester suggests that the awardee's proposal also is ambiguous concerning what entity will perform the manufacturing for the requirement, "Vectronix, Inc." or an entity identified in the proposal as "Safran Vectronix." The Vectronix president's affidavit explains that, because Vectronix belongs to the Safran family of companies, it often refers to itself as "Safran Vectronix." In addition, as with the question of the identity of the prime contractor, the awardee's proposal also identifies "Vectronix, Inc." and Safran Vectronix" as the concern responsible for manufacturing. Optics 1 Technical Proposal at 3, 66.

⁸ Kollsman suggests that the RFP contained a latent ambiguity. We disagree. An ambiguity exists where there are two or more reasonable interpretations of a solicitation term. Vista Tech. Serv's, LLC, B-413366, Oct. 3, 2016, 2016 CPD ¶ ____ at 4. As noted above, we conclude that Kollsman's interpretation of the RFP is not reasonable.

As noted the RFP identified objective weight thresholds. It also stated that proposed LTLMs that weighed “less than or equal to” the objective weight thresholds, would receive additional evaluation credit. RFP, Amendment No. 2, at 8. The objective weight thresholds themselves were expressed as follows: Base Weight: ≤3.5 lbs.; System Weight: ≤8 lbs. Id. It is therefore clear from the terms of the RFP that the agency would evaluate weight on what amounted to a sliding scale, and award additional evaluation credit for lighter solutions.

In any event, we point out that there is nothing inherently unreasonable in the agency’s evaluation finding that the Optics 1 LTLM was technically superior to the Kollsman LTLM because it was lighter. As we have long held, evaluation scores, whether they are numeric or adjectival ratings, are merely guides to intelligent decision making. enrGies, Inc., B-408609.9, May 21, 2014, 2014 CPD ¶ 158 at 8. The scores or the number of strengths assigned to proposals are not dispositive metrics for an agency to express a proposal’s merit. What is important is not the scores themselves, but the underlying substantive merits of the proposals as embodied in, or reflected by, the scores, along with the underlying narrative description that supports the assignment of those scores. Id.

Here, as noted, the RFP advised offerors that the agency would award additional evaluation credit for lighter solutions. The RFP also essentially provided that the agency would make a cost/technical tradeoff between price and weight. The record shows that Optics 1 offered a lighter solution than the solution proposed by Kollsman, and the agency made a cost/technical tradeoff, finding the Optics 1 lighter-weight solution to be worth the cost premium associated with the firm’s proposal. Simply stated, this was reasonable and consistent with the terms of the solicitation. We therefore deny this aspect of Kollsman’s protest.

Cost Technical Tradeoff

Finally, Kollsman alleges that the agency improperly took into consideration a factor other than weight in making its cost/technical tradeoff. According to Kollsman, the agency improperly considered a feature known as “direct view optic” (DVO) in making its source selection decision, even though the RFP provided that only weight and price would be considered in the agency’s tradeoff decision.

We find no merit to this allegation. Although the protester is correct that the source selection authority (SSA) made note of Optics 1’s DVO feature in connection with the selection decision, the record shows that this did not factor in to her tradeoff analysis. Instead, the record shows that she made reference to the DVO feature as reinforcing the conclusion that the Optics 1 proposal merited an outstanding technical rating. AR, exh. 20, SSDD, at 16. However, her actual tradeoff expressly states that it was made on the basis of differences in the weight of the two proposed solutions, and that it was this difference, rather than the adjectival ratings assigned to the proposals, that led to her selection decision. The SSDD provides as follows:

Regardless of the adjectival difference, I find that there is meaningful technical difference between these two offerors in the Technical Subfactor Element 1 - LTLM II weight. . . . Further, the basis of award clearly states the Technical factor is significantly more important than the Price Factor and that the bid sample LTLM II weight (both base and system weight) is the only element that will be considered for tradeoff analysis.

Both Optics 1's and Elbit's [Kollsman's] LTLM II bid samples were both rated with a significant strength for achieving objective weight requirements (≤ 3.5 lbs. base and ≤ 8 lbs. system) and Optics 1's does so by achieving a system weight savings of [deleted] lbs. that is nearly equal to the base system itself ([deleted] lbs.). Nevertheless, my decision is based on a direct comparison between offerors, Optic[s] 1 and Elbit. Optic[s] 1's design for base weight was determined to be [deleted] lbs. lighter ([deleted]%) and [deleted] lbs. ([deleted]%) lower in system weight than the Elbit's design.

Next, I examined the total evaluated price between Optics 1 and Elbit; Optics 1 total evaluated price is 8.4% greater than Elbits (a total of \$23.71M). The SSAC [source selection advisory council] determined that the LTLM II weight savings offered by Optics I are substantial in comparison to Elbit and would improve Soldier survivability.

* * * * *

The weight reduction offered by the Optics 1 design is significant and offers direct benefit to the Soldier's mission and therefore measurable value to the Government. The RFP clearly stated that the Technical Factor is significantly more important than the Price Factor with weight as the only element to be considered for a trade-off analysis.

AR, exh. 20, SSDD, at 16-17. The SSDD concludes by finding that the price premium associated with the Optics 1 proposal is worth the technical superiority offered by its solution. Id. Thus, the record shows that, although the SSA did make note of the DVO feature in connection with concluding that the Optics 1 proposal merited an outstanding adjectival rating, her tradeoff was not based on that rating, but was instead based on a direct comparison of the two proposed solutions, and was confined to considerations of weight and price. We therefore deny this aspect of Kollsman's protest.

The protest is denied.

Susan A. Poling
General Counsel