



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Deep Ocean Engineering

File: B-241223

Date: January 30, 1991

Philip J. Ballou for the protester.

Lawrence W. Gray for Benthos, Inc., an interested party.
Charles J. McManus, Esq., Jonathan H. Kosarin, Esq., and
Timothy K. Dowd, Esq., Department of the Navy, for the
agency.

Jacqueline Maeder, Esq., Paul Lieberman, Esq., and John F.
Mitchell, Esq., Office of the General Counsel, GAO, par-
ticipated in the preparation of the decision.

DIGEST

Agency properly determined to award to low-priced, technically acceptable offeror, consistent with the solicitation evaluation criteria, where the agency reasonably concluded that the protester's lower-priced alternative offer was unacceptable based on protester's statement in its offer indicating that the product did not satisfy a material performance requirement under the solicitation.

DECISION

Deep Ocean Engineering protests the proposed award of a firm, fixed-price contract to Benthos, Inc. under request for proposals (RFP) No. N66001-90-R-0236, issued by the Naval Ocean Systems Center (NOSC) for an underwater security vehicle system, including a remotely operated vehicle (ROV), sensors system with video camera and sonar, a tether, surface consoles, spare parts, training, and supporting documentation. Deep Ocean contends, generally, that NOSC improperly rejected its alternative offer for not meeting the solicitation specifications.

We deny the protest in part and dismiss it in part.

The RFP called for a non-developmental ROV in accordance with design and performance characteristics set forth in section 3.0 of the solicitation's specifications. In relevant part, the specifications required that the ROV, complete with a

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20-pound payload,^{1/} achieve a minimum forward speed of 3.0 knots in no current and 1.0 knots in a 2.0-knot current, at an operating depth of 150 feet and a horizontal standoff range of 300 feet. Thrust was required to be 90 pounds forward. The vehicle was to maintain these speed and thrust requirements for a minimum of 30 minutes. The ROV was also required to be equipped with a Smith's Hi-Scan 600 sonar system or equivalent. Delivery was required within 60 days of award, which was to be made to the responsible offeror proposing the lowest price for equipment meeting the solicitation requirements. The RFP indicated that award may be made on the basis of initial proposals without discussions.

Four offerors submitted offers, including Benthos and Deep Ocean. Benthos offered its Super Sea Rover at a fixed price of \$185,673. Benthos stated that its Super Sea Rover complied with the specifications and took no exceptions to the solicitation requirements, including the delivery requirement. The Super Sea Rover was found technically acceptable by the technical review panel. Deep Ocean offered its Phantom S4 model but it also proposed its Phantom S2+ model as a "lower cost alternative." The Phantom S4 was priced at \$195,430 and the Phantom S2+ was priced at \$171,970. The review panel found the Phantom S4 acceptable but did not rate the S2+ because Deep Ocean indicated in its offer that the Phantom S2+ alternative "might not meet the speed requirements."

The lead evaluator subsequently evaluated the Phantom S2+ and determined that its ability to meet the speed requirements "was questionable." The evaluator relied on Deep Ocean's statement in its proposal that:

"[T]he Phantom S2+ vehicle includes all of the characteristics listed for the S4 system . . . , with the exception of thrust and speed. The S2+ vehicle will provide thrust exceeding the solicitation requirements (up to 120 pounds thrust on boost) at a lower cost than the Phantom S4, but may not meet all the necessary speed requirements."

Deep Ocean further explained that "[t]he S2+ . . . may have difficulty in consistently meeting the speed requirements, especially when given a complete payload or when operating with substantial amounts of umbilical cable in the water."

The contracting officer concluded that Deep Ocean's Phantom S2+ ROV did not meet the specifications because of this

^{1/} The 20-pound in-air payload was in addition to equipment required to be part of the vehicle itself, such as sonar.

apparent speed deficiency, and decided to award a contract to Benthos as the low offeror of an acceptable product.

Deep Ocean argues that it submitted a technically acceptable product and was the low offeror. Deep Ocean states that its Phantom S2+ alternative offer meets NOSC's speed requirements, that sufficient data were given in its proposal for a reasonable person to make this determination, and that the language relied on by the agency consists of "cautionary statements" which "refer to the vehicle's performance margin in 'real-world' worst-case operating conditions, not the test conditions set forth in NOSC's solicitation."

The protester argues that the stated speed is required to be achieved with an additional 20-pound payload, yet the RFP gives no additional information about the payload. According to the protester, without knowledge of the "drag" coefficient of this payload, it is impossible to calculate the thrust required to satisfy the specification. Deep Ocean says that "[b]ecause of the ambiguity of the specifications, we volunteered an honest assessment of the Phantom S2+'s capabilities and limitations with respect to the question of payload," but that, with 120 pounds of thrust, the Phantom S2+ will meet the speed requirement if the payload is "reasonably streamlined." Deep Ocean contends that it "should not be penalized for addressing the ambiguity of the specification. . . ."

The protester also asserts that Benthos's Super Sea Rover may not meet the RFP speed requirements. Deep Ocean asserts that because the frontal drag and umbilical diameter for each ROV are approximately equal, the relative performances of the ROVs can be compared by simply comparing the thrust of each ROV. Since Benthos's promotional literature indicates that the Super Sea Rover develops 100 pounds of forward thrust, the protester contends that the Phantom S2+, which has greater forward thrust, must perform at least as well as the Benthos ROV, so that if the Phantom S2+ will not meet requirements, neither will the Benthos model.

Finally, Deep Ocean argues that Benthos cannot meet the RFP delivery requirements. Deep Ocean claims that, as the exclusive agent for the Smith's sonar in the United States and Canada, it knows that Smith quoted Benthos a delivery lead-time of 10 weeks after receipt of order. According to the protester, Benthos had not ordered the sonar in time to assure delivery within the required 60 days after award was made, but has used the delay caused by this protest to its advantage in order to satisfy the delivery requirement. Based on these facts, the protester argues that Benthos's assertion that it could deliver a system within 60 days of award was incorrect and therefore the offeror is not responsible.

In reviewing protests against the propriety of an agency's evaluation of proposals, it is not the function of our Office to independently evaluate those proposals. Biological Research Faculty & Facility, Inc., B-234568, Apr. 28, 1989, 89-1 CPD ¶ 409; Ira T. Finley Invs., B-222432, July 25, 1986, 86-2 CPD ¶ 112. Rather, the determination of the technical adequacy of the proposals is primarily a function of the procuring agency, which enjoys a reasonable range of discretion in proposal evaluation. AT&T Technology Sys., B-220052, Jan. 17, 1986, 86-1 CPD ¶ 57. Consequently, we will question the agency's technical evaluation only where the record shows that the evaluation does not have a reasonable basis or is inconsistent with the evaluation criteria listed in the RFP. See American Educ. Complex Sys., B-228584, Jan. 13, 1988, 88-1 CPD ¶ 30. The fact that the protester disagrees with the agency does not itself render the evaluation unreasonable. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450.

We find that NOSC had a reasonable basis for awarding to Benthos. The determination that the Phantom S2+ was technically unacceptable was based on Deep Ocean's own statement, repeated throughout its proposal, that the S2+ may not meet all the necessary speed requirements. Even in its protest submission, Deep Ocean does not unequivocally contend that the Phantom S2+ meets the RFP speed requirements; rather, it conditions its claim on a requirement that the required payload must be "streamlined." Accordingly, based on Deep Ocean's own representations, we find that NOSC had a reasonable basis to determine that the Phantom S2+ model was technically unacceptable.

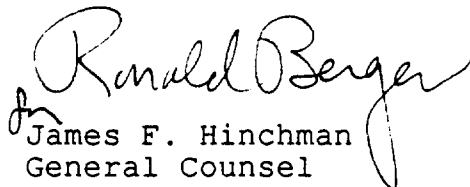
Deep Ocean's assertion that its "cautionary statements" merely reflect its concern with allegedly ambiguous payload specifications is not supported by the record.^{2/} Deep Ocean's proposal did not provide any indication that its Phantom S2+ alternative's capability to meet the speed requirements was contingent on the precise configuration of the required payload. Rather, Deep Ocean's proposal simply indicated that the Phantom S2+ model would have difficulty satisfying the stated RFP speed requirements, thus evidencing its technical unacceptability.

^{2/} To the extent that Deep Ocean is protesting that the specifications relating to the payload are ambiguous, this protest ground is untimely. Our Bid Protest Regulations provide that where, as here, a protest is based on alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals, the protest must be filed prior to that date. 4 C.F.R. § 21.2(a) (1) (1990).

While Deep Ocean alleges that the Benthos Super Sea Rover is unlikely to meet the RFP speed requirements, due to the lack of sufficient thrust, the RFP required only a 90-pound forward thrust. The Benthos proposal indicates that the Super Sea Rover meets both the speed requirement and the forward thrust requirement, and Benthos's proposal does not take exception to any performance requirements. Deep Ocean's argument is based on its premise that since its Phantom S2+ model has greater thrust capacity than the Benthos Super Sea Rover, but cannot meet the speed requirement, it necessarily follows that the Benthos vehicle will not be able to perform as required. However, Deep Ocean's proposal indicates that the "normal thrust" of its Phantom S2+ is only 80 pounds, while the comparable thrust for the Benthos Super Sea Rover is approximately 25 percent greater. While Deep Ocean also provides a higher figure for thrust which is available "on boost," it is not clear that this boosted thrust is provided in a manner which will permit the vehicle to satisfy the speed requirements for the specified duration. Moreover, the speed requirement and the forward thrust requirement are separate and independent RFP specifications, and since speed is affected by other variables as well, even if Deep Ocean's vehicle has a thrust capability equal to or greater than Benthos's Super Sea Rover, this would not establish that Benthos's vehicle fails to satisfy the RFP speed requirement.

Finally, as to the protester's assertion that Benthos cannot meet the delivery schedule, whether Benthos is capable of delivering the ROV in accordance with the proposed delivery schedule is a matter of contractor responsibility. Here, NOSC found that Benthos was a responsible contractor and we will not review an affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of the contracting officials, or that definitive responsibility criteria in the solicitation have not been met. 4 C.F.R. § 21.3(m) (5); Logics, Inc.--Recon., B-237411.2, Apr. 25, 1990, 90-1 CPD ¶ 420. Since there is no indication in the record, and Deep Ocean had not alleged, that either of these exceptions applies, our Office will not review the responsibility determination.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel