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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hard Bottom Inflatables, Inc.

File: B-245961.2

Date: January 22, 1992

Francis L. Crowley, Esq., for the protester, M.L. Petersen for KEM Equipment, Inc., and John R. Twohig for Novamarine America, Inc., interested parties. Robert J. Boardman, Department of the Navy, for the agency. Barbara C. Coles, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

The General Accounting Office will not review a contracting officer's affirmative determination of responsibility unless the protester shows possible bad faith or fraud on the part of the procurement officials or that the solicitation contains definitive responsibility criteria that allegedly have not been met. A decision not to conduct a pre-award survey is not indicia of bad faith; an agency is not required to conduct a pre-award survey if the information readily available to the agency is sufficient to allow the contracting officer to make a determination of responsibility.

DECISION

Hard Bottom Inflatables, Inc. (HBI) protests the award of a contract to Novamarine America, Inc. under request for proposals (RFP) No. N00024-91-R-2345(Q), issued by the Department of the Navy for 12 rigid inflatable boats (RIB). HBI principally contends that the Navy's affirmative determination of Novamarine's responsibility was made in bad faith. Novamarine also questions one aspect of the agency's evaluation of Novamarine's technical proposal as technically acceptable.

We dismiss the protest.

The RFP, issued July 30, 1991, contemplated the award of a firm, fixed-price contract and required offerors to submit technical proposals and prices. Under the terms of the RFP, offerors were required to propose a 30 foot RIB with either a fiberglass/glass reinforced plastic Nautica RH-1000 or a

LeComte 305 model hull or an equivalent hull which met the performance characteristics set forth in the RFP's statement of work (SOW); specifically, the SOW centered on the following characteristics: speed, range, acceleration, and dimensional and weight restrictions.

The RFP advised offerors that the award would be made to the responsible offeror whose offer conforming to the solicitation was technically acceptable and would result in the lowest price. The RFP listed the following technical evaluation factors which were equal in terms of relative weight: (1) list of general characteristics; (2) proposed brand name or equivalent hull or equipment; (3) specifications and drawings; (4) major equipment list; (5) production facilities; (6) company management and history; and (7) key events.

The Navy received proposals from several offerors, including HBI and Novamarine, by the September 6 closing date. After an initial evaluation of proposals, the technical evaluation review panel (TERP) determined that Novamarine's and HBI's proposals, among others, were acceptable and should be included in the competitive range. Subsequently, the Contract Award Review Panel (CARP) met to discuss the offerors' proposed prices. Because there appeared to be a significant disparity between Novamarine's low-priced offer and the prices proposed by HBI and the other offerors, the CARP requested the TERP to review Novamarine's manhour estimates and Novamarine's estimated material costs; using these estimates, the TERP was requested to arrive at its own estimate of the manhour and material costs necessary to construct the RIB proposed by Novamarine. The TERP's review revealed that the material costs proposed by Novamarine were in line with the TERP's material estimate, but Novamarine's estimated manhours were lower than the TERP's estimated manhours.

The contracting officer then reviewed Novamarine's price proposal, the price breakdown information submitted by the other offerors, and the manhour and material estimate provided by the TERP. Finding no evidence indicating that Novamarine's proposal contained a mistake, the contracting officer asked Novamarine to verify its proposed prices. By letter dated September 18, Novamarine advised the contracting officer that its proposed prices were correct. Upon receiving this price verification, the contracting officer reviewed Novamarine's proposal to determine whether the firm was a responsible contractor and subsequently found the firm responsible. As a result, the contracting officer awarded the contract to Novamarine on September 20. HBI's protest to our Office followed.

HBI principally contends that the award to Novamarine was improper because the contracting officer failed to make an "adequate responsibility determination" regarding Novamarine. Specifically, HBI argues that the contracting officer's determination was made notwithstanding an apparent absence of information from Novamarine to demonstrate the firm's responsibility. The protester alleges that since Novamarine's proposal lacked information demonstrating its responsibility, the contracting officer's failure to obtain adequate evidence concerning both Novamarine's and its subcontractor's responsibility in addition to the contracting officer's failure to conduct a pre-award survey on these firms constituted and resulted in an arbitrary determination made in bad faith.¹

Our Office will not review an affirmative determination of responsibility, which is largely a business judgement, unless the protester shows possible fraud or bad faith on the part of procurement officials, or that the solicitation contains definitive responsibility criteria that allegedly have not been met. 4 C.F.R. § 21.3(m)(5) (1991). Procurement authorities are presumed to act in good faith and, in order for our Office to conclude otherwise, the record must show that procuring officials had a specific and malicious intent to harm the protester. NFI Mgmt. Co., 69 Comp. Gen. 515 (1990), 90-1 CPD ¶ 548.

We find no showing of bad faith here. The record shows that the contracting officer's affirmative determination of Novamarine's responsibility was based upon detailed information contained in Novamarine's proposal. Novamarine's proposal contained information concerning Novamarine's and its subcontractor's (Douglas Marine Corporation) organization, management, technical capabilities, experience, facilities, delivery schedule and quality control. The proposal also contained information regarding the experience of

¹HBI also contends that the contracting officer abused his discretionary authority when he asked Novamarine to verify its proposed price. The protester argues that the contracting officer's request should have "included explicit advice that Novamarine's proposed prices were much lower than other bids" and were otherwise mistaken. HBI states that the verification request was incomplete and defective. A protester has no standing to claim an error in a competitor's offer or to assert rights stemming from alleged violations by the agency regarding a request that the competitor verify its proposed prices, since it is the responsibility of the contracting parties--the government and the low offeror--to assert rights and bring forth the necessary evidence to resolve mistake questions. Esilux Corp., B-234689, June 8, 1989, 89-1 CPD 538.

Novamarine's parent company, Novamarine 2 S.p.A. Further, contrary to the protester's contention, the decision not to conduct a pre-award survey is not indicia of bad faith; an agency is not required to conduct a pre-award survey if the information readily available to the agency is sufficient to allow the contracting officer to make a determination of responsibility. See Kirk Bros. Mechanical Contractors, Inc., B-228603, Nov. 12, 1987, 87-2 CPD ¶ 479; Hotel Donuts & Pastries, B-227306, Sept. 18, 1987, 87-2 CPD ¶ 275. In short, the record is totally devoid of any evidence of bad faith. Accordingly, we dismiss this protest ground.

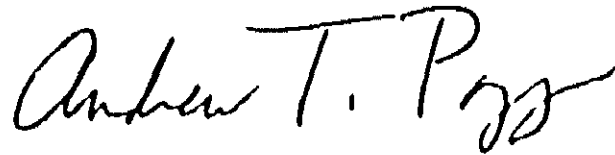
HBI also challenges the award to Novamarine based on its view that the Navy, in one aspect, improperly evaluated Novamarine's equipment. To support its claim, HBI argues that while the RFP required "actual test performance data" on the proposed equipment, the Navy allowed Novamarine to submit test data on a different boat. HBI maintains that even though the two boats may have identical hulls there are "substantial and material differences in the propulsion equipment and therefore these differences invalidate the test performance data as adequate documentation to qualify the boat that Novamarine proposed." HBI states that these differences directly affect the speed, acceleration, operational range, and overall weight characteristics of the proposed boat.

The record shows that HBI simply misunderstands the requirements of the RFP. In this regard, the RFP required that an offeror's proposed boat have the same hull form as that of the test boat, but there was no requirement in the RFP that the engines and waterjets of the proposed boat be the same as those in the test boat. Rather, the RFP required the offerors to provide test data which demonstrated that the test boat met the performance requirements in the SOW, including speed, range, and acceleration.

Here, Novamarine proposed a "Novamarine America, Inc. RH-1000" hull as its alternative to Nautica or LeComte and stated that this hull was identical to the hull of the "Novamarine 2 S.p.A. RH-1000" of Italy. In its proposal, Novamarine provided a "list of craft characteristics" showing that its proposed hull would either meet or exceed the required RFP characteristics. In support of its list, Novamarine provided full scale trial and test results; the full scale trial and test results were based on the actual performance of an existing test boat, the Novamarine 2 S.p.A. RH-1000 which had an identical hull form as the proposed boat. With regard to its proposed equipment, Novamarine proposed to substitute the engines and waterjets used in the test with different engines and waterjets. To show that these items met the RFP requirements, Novamarine provided manufacturers' performance data. This data

demonstrated that the proposed engine was more fuel efficient and offered faster acceleration capabilities than the test engines; further, the net thrust of the proposed waterjets exceeded the test waterjets. In this regard, the protester has not alleged that Novamarine's proposed propulsion equipment does not comply with the RFP requirements.

The protest is dismissed.

A handwritten signature in cursive script, reading "Andrew T. Pogany".

Andrew T. Pogany
Acting Assistant General Counsel