S. Riback

Comptroller General
of the United States
Washington, D.C. 20548

441296

REDACTED VERSION*

Decision

Matter of: Household Data Services, Inc.

File: B-259238.2

Date: April 26, 1995

Keith R. Malley, Esq.; and Dorn C. McGrath III, Esq., and Richard L. Moorhouse, Esq., Holland and Knight, for the protester.
Joel R. Feidelman, Esq., and Douglas E. Perry, Esq., Fried, Frank, Harris, Shriver & Jacobson, for Southern California Microwave, Inc., an interested party.
Michelle Davis King, Esq., and Eileen H. Miller, Esq., Department of the Treasury, for the agency.
Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency improperly evaluated protester's technical proposal in acquisition for microwave transmission equipment is denied where record shows that the agency had a reasonable basis for finding the protester's product noncompliant with the specifications.

2. Protest that agency misevaluated cost proposals is dismissed because protester is not an interested party to maintain allegation in light of its technically noncompliant proposal.

DECISION

Household Data Services, Inc. (HDS) protests the award of a contract to Southern California Microwave, Inc. (SCM), based on its initial offer, under request for proposals (RFP) No. BATF-94-14, issued by the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms (BATF), for the award of a requirements-type contract for microwave transmitters and receivers. HDS chiefly maintains that the

*The decision issued on April 26, 1995, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions are indicated by "[deleted]."

agency misevaluated its initial offer and that it should have received the award.

We deny the protest because we conclude that the agency properly decided that HDS' proposal did not meet certain specifications and thus the firm could not receive an award without discussions.

The RFP called for fixed-price proposals to furnish indefinite quantities of various electronic surveillance equipment. Firms were required to offer three different microwave transmitters--[deleted]--as well as a [deleted] receiver and a [deleted] receiver for purchase during a base year with 5 option years. The RFP provided that offerors were to submit both technical and cost proposals. Firms were also required to provide sample equipment and test data relating to the performance of that equipment as part of their offer, including one of each type of transmitter, and a receiver.

Award was to be made to the firm whose proposal offered the best overall value to the government in light of technical and cost considerations. Technical proposals would be point scored using five technical evaluation criteria, listed in descending order of importance as follows: physical dimensions and construction (30 points); direct current (DC) draw (25 points); receiver sensitivity and selectivity (20 points); video quality (15 points); and audio quality (10 points). Cost, although not a weighted criterion, was to be an important element in the evaluation.

BATF received three timely offers. The agency found all three written proposals compliant on their face with the specifications, and then evaluated the sample equipment. Based on this evaluation, the agency found that the awardee's (and the third offeror's) equipment was compliant but determined that the protester's equipment did not meet the specifications in three respects: (1) the [deleted] transmitter failed to meet the current draw requirement outlined in the solicitation; after operating for a period of approximately [deleted], the device drew in excess of the [deleted] amps allowed; (2) the [deleted] receiver's on/off switch operated only when the device was being used with alternating current, but not when it was being used with [deleted] current; (3) the [deleted] transmitter's frequency deviated from the frequency indicated in the firm's test data by [deleted] Megahertz (MHz). BATF also found the construction, video and audio quality of the protester's equipment inferior to the other offerors' products. Based on its conclusions, BATF assigned technical scores to the proposals as follows: SCM, 296.25 points (out of a possible 330); the third offeror, 262.25 points; and HDS, 197 points. BATF concluded that SCM had offered the most advantageous offer and made award to that firm based on initial offers.

EVALUATION CRITERIA

Initially, HDS argues that BATF improperly evaluated proposals based on (1) the relative quality of the device's construction (HDS' proposal was downgraded under the dimensions and construction evaluation criterion)--HDS maintains BATF was limited to considering whether the design and construction met the specifications; and (2) evaluators' subjective impressions as to the device's video and audio quality. HDS maintains BATF was limited to objective tests spelled out in the RFP.

This allegation is without merit. Where detailed technical proposals are sought and technical evaluation criteria are used to enable the agency to make comparative judgments about the relative merits of competing proposals, offerors are on notice that qualitative distinctions among competing proposals will be made under the various evaluation factors. FMS Corp., B-255191, Feb. 8, 1994, 94-1 CPD ¶ 182. In such circumstances, agencies may properly take into consideration specific, albeit not expressly identified matters that are logically encompassed by or related to the stated evaluation criteria. Id.

The RFP specifically advised that the most important evaluation consideration would be the physical dimensions and construction of the devices. In our view, the term "construction" clearly encompasses consideration of the quality of construction, and the fact that this was a best value procurement where technical proposals were to be compared put HDS on notice that this and the other factors would be applied on a relative basis.

With respect to the video and audio quality evaluation, the fact that the RFP indicated that the agency could conduct specified tests in no way precluded it from assessing relative quality in some other reasonable fashion. Viewing a video device and listening to an audio device, in our view, are reasonable means of assessing relative video and audio quality, and the fact that doing so injects some degree of subjectivity into the evaluation does not render it unreasonable; evaluations commonly involve some degree of subjectivity.[1]

---

[1]HDS argues that its proposal should have received the maximum possible score in those instances where it met the RFP's specifications. This argument is without merit. Agencies may properly distinguish between competing proposals by assigning point scores that reflect the evaluators' relative judgments about the merits of the proposals. FMS Corp., supra. An agency is not required to assign the maximum possible score in every instance where a

(continued...)

TECHNICAL EVALUATION

HDS challenges the propriety of the agency's evaluation from a substantive standpoint. According to the protester, its proposal was consistently and improperly downgraded throughout the evaluation.[2]

The evaluation of technical proposals is primarily a matter committed to the discretion of the contracting agency; we will review an evaluation to ensure that it is reasonable and consistent with the RFP's evaluation criteria, applicable statutes, and regulations. FMS Corp., supra. Based on the record, including an in-depth hearing during which the offerors' products were demonstrated and compared at length, we conclude that the evaluation was proper.

Failure To Meet The Specifications

As discussed above, HDS' demonstration models failed to meet the RFP's specifications in three respects while, by comparison, the equipment of the other two offerors was found to be fully compliant. HDS does not contend that the agency's findings were incorrect, but maintains instead that the deficiencies were minor. First, HDS has not shown that the on/off switch was not required for [deleted] power

---

[1](...continued)
proposal meets the requirements of the specifications, and may properly use point scoring in conducting their evaluation--even, for example, in "pass/fail" type acquisitions where the RFP contemplates award to the low-priced, technically acceptable proposal--if doing so provides a useful guide for discerning between proposals. OPSYS, Inc., B-248260, Aug. 6, 1992, 92-2 CPD ¶ 83.

[2]HDS argues that inconsistencies and disparities in the scores assigned by the individual evaluators show that the evaluation was improper. These scores ultimately were not significant, however, because the evaluators assigned consensus scores to the proposals. It is not unusual for individual evaluator scores to differ significantly from one another, or from the consensus score eventually assigned; the overriding concern for our purposes is whether the final scores assigned accurately reflect the relative merits of the proposals, and not whether the scores are mathematically traceable to the individual evaluator scores. See Schweizer Aircraft Corp., B-248640.2; B-248640.3, Sept. 14, 1992, 92-2 CPD ¶ 200; General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44. As discussed below, we conclude that there was an adequate basis for the consensus score assigned to the HDS proposal.

operation[3], and states only that to provide it would require a minor modification. Whether or not this is true, it remains that HDS' receiver lacked this required feature; accordingly, this formed a reasonable basis for the agency to find HDS noncompliant with a mandatory requirement of the specifications. The record also shows that this requirement is material to the agency's needs. The agency explains that it is necessary to have an on/off switch that operates when the device is using [deleted] power because [deleted]. Hearing Transcript (Tr.) p. 109 et seq. [Deleted]. Id. The record thus shows that HDS' receiver failed to comply with this material aspect of the specifications.

Second, with regard to HDS' [deleted] transmitter operating at [deleted] MHz, HDS' engineers state that the frequency deviation resulted from the fact that two of the unit's switching digits had not been grounded. The evaluators concluded that this deficiency reflected adversely on the manufacturing and quality assurance procedures used by HDS during fabrication, and this conclusion was borne out, in our view, by HDS' own explanation; the problem apparently arose because of faulty soldering procedures.[4]

This frequency deviation also rendered HDS' [deleted] transmitter noncompliant with another material requirement of the specifications. The RFP allowed a deviation in transmitter frequency of plus or minus [deleted] percent from the frequency stated by the manufacturer; this requirement was material because a deviation beyond that point could significantly affect the quality of the video and audio transmissions being sent by the device[5]. In the

---

[3]HDS argues that the switch was not expressly required [deleted]. We disagree. The only RFP reference to the power switch states "Power, on/off--Toggle." As there is no indication that this requirement was only for [deleted], we think it would be unreasonable to assume that an on/off switch for [deleted] was not also required.

[4]HDS suggests that the connections could have been broken while the device was being shipped to BATF. Given that the items will be transported during use, however, we fail to see how this possibility could render the agency's consideration of this deficiency unreasonable. In any event, HDS' samples were hand-delivered (not shipped) to the agency. Tr. p. 227.

[5]As discussed below, the agency's evaluators demonstrated the HDS [deleted] transmitter at both [deleted] MHz and [deleted] MHz; the demonstration at [deleted] MHz revealed that a [deleted] MHz deviation in broadcast frequency

(continued...)

case of HDS' [deleted] transmitter--which the firm represented broadcast at [deleted] MHz--its permissible frequency range was from [deleted] MHz to [deleted] MHz. Tr. pp. 176, 177. Since HDS' [deleted] transmitter broadcast at [deleted] MHz, it was outside of this permissible range, and thus properly found by the agency to be noncompliant with this solicitation requirement. Based on the record before us, we conclude that BATF properly found the HDS [deleted] transmitter noncompliant for failing to meet the requirements of the RFP in this area, and also properly drew a reasonable adverse inference regarding the firm's manufacturing and quality assurance procedures based on this deviation.

Finally, as for the excess power draw problem (HDS' [deleted] transmitter drew in excess of [deleted] when tested after approximately [deleted] hours), HDS argues that the agency's test is inconsistent with the industry practice of testing power consumption after [deleted] hour of operation. An independent laboratory test performed at HDS' request shows that after the device was operated for [deleted] hour, it drew less than [deleted] amps of power. HDS also claims that its own test shows that the device drew less than [deleted] amps after operating for approximately 1 week.

The [deleted] transmitters of HDS and SCM were demonstrated during the hearing. HDS' transmitter was equipped for the demonstration with a large heat sink (a device designed to dissipate heat generated by the operating device). During HDS' demonstration, the heat sink was employed and the transmitter drew less than [deleted] amps of power after approximately [deleted] hour. Thereafter, the BATF evaluators conducted a demonstration without the heat sink at the request of the General Accounting Office's hearing examiner, since the transmitter would not meet the RFP's specifications for size with it attached. After operating for less than [deleted] hour, the device began to draw in excess of [deleted] amps, and the transmitter's current draw gradually increased over the course of the demonstration.

Since the agency's measurement equipment had been calibrated within 3 days of the hearing (Tr. p. 183), the results agreed with the BATF's original finding, and the record shows that, at least during HDS' week-long test at its facility, the heat sink was employed (Tr. p. 161), we conclude that there is no basis for questioning the results of BATF's testing or evaluation in this area; the record thus shows that HDS' [deleted] transmitter drew in

---

[5](...continued)
significantly diminished the video and audio quality of the transmissions.

excess of the required [deleted] amps of power, and therefore was noncompliant with the specifications for this reason as well.

Quality of Construction

The evaluators found that the material used in the housing of the HDS devices was of a lesser quality than that used by the other two offerors, and that HDS' equipment exhibited undesirable design features. HDS maintains that these conclusions were unreasonable.

The evaluators found, and demonstrated at the hearing, that the housing material used by HDS was of a lighter gauge metal than that employed by SCM, and that the joints where the housing came together were better manufactured on the SCM equipment, with the edges and corners more flush. The evaluators explained that this was important because the equipment can be subject to rough treatment during actual field operations; construction quality as it related to the durability of the housing was critical because a failure could render the device inoperable, [deleted]. Tr. pp. 54-57, 223.

The evaluators also compared the connectors used in the two firms' products, as well as the design and construction of the receivers. The evaluators found the SCM transmitters superior because they used standardized connectors available almost anywhere, whereas the HDS equipment used a different type of connector that was not as readily available; the connectors thus could more easily be replaced on the SCM equipment in the event of failure. Tr. p. 212. In addition, the evaluators considered the placement of the connectors on the transmitters preferable on the SCM model. On the HDS transmitters the evaluators explained, for example, that the power connector partially blocked one of the device's mounting holes; this was of concern to the evaluators because [deleted]. Tr. p. 216. Finally, the evaluators preferred the SCM receiver for a number of reasons, including that, unlike HDS' receiver, it used a circuit breaker rather than a fuse as a safety feature[6] and that, as with the transmitters, the SCM receiver housing was constructed of heavier gauge materials. We conclude that the record supports the reasonableness of the evaluators' judgments regarding the relative superiority of the SCM equipment compared to that of HDS in this evaluation area.

[6]The evaluators explained that a circuit breaker is preferable because it can simply be redeployed in the field, whereas a fuse that has burned out must be replaced; they also criticized the HDS receiver because the fuse employed was not a standard fuse readily available from most stores. Tr. p. 201.

Video and Audio Quality

HDS' equipment was downgraded based on the relative quality of its video and audio transmission. At the hearing, BATF's evaluators demonstrated both HDS' and SCM's equipment to exhibit the video and audio quality differences between the products, and support their evaluation conclusion.

The demonstration involved running the transmitter's signal through an attenuator (which is a device that simulates distance and/or interference between the transmitter and receiver) to the receiver; the attenuator was adjusted to simulate different distances or interference between the two components.[7] At low attenuation, the video and audio quality of the two firms' products was comparable. At increasingly greater attenuation, however, the performance of the HDS product diminished more rapidly than the performance of the SCM product. As the evaluators concluded, the SCM picture quality remained more robust, the colors were brighter and more accurate and the picture's definition better, especially at higher levels of attenuation. Similarly, the audio quality of the SCM product was more natural sounding and the device performed better at greater levels of attenuation. The evaluators also demonstrated the HDS transmitter broadcasting at [deleted] MHz rather than [deleted] MHz to show the video and audio quality actually observed during their evaluation. When broadcasting at this frequency, the problems observed during the other demonstration were more pronounced. Tr. pp. 185, et seq.

Summary

The record in this case, including the tests performed at the hearing, conclusively shows that the HDS products were technically noncompliant with the specifications in at least three material respects. In addition, the record supports the evaluators' findings regarding the significant inferiority of the HDS equipment compared to the SCM equipment in the areas discussed. In light of these considerations, the agency found that "HDS did not meet the specifications," and "would not have been selected to be the

---

[7]HDS, in its hearing comments, maintains that this demonstration produced no scientifically valid basis for determining compliance with the specifications. The object of the demonstration, however, was simply to provide a general overview of the relative performance of the products, and not to measure their strict conformance with the specifications. Tr. pp. 73-75, 94. Both firms' products were subject to the same examination and, from a subjective standpoint, the SCM product generally performed better.

contractor." We have no basis to object to BATF's conclusions. Accordingly, the agency reasonably could conclude that it could not award to HDS on the basis of its initial proposal.

COST EVALUATION

HDS maintains that the cost evaluation was improper. However, HDS is not an interested party to raise this argument. Our Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1995), provide that, in order to be an interested party a firm must be an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. Because an agency may not properly award a contract on the basis of a proposal that does not meet the solicitation's material specifications, Allenhurst Indus., Inc., B-256836; B-256836.2, July 8, 1994, 94-2 CPD ¶ 14, as BATF concluded, HDS was ineligible for award. Since HDS would not be eligible for award even if we were to sustain its allegations relating to the cost evaluation, HDS is not an interested party for purposes of these arguments.

The protest is denied.

Robert P. Murphy
General Counsel