



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Keco Industries, Inc.

File: B-261159

Date: August 25, 1995

Mark A. Rowland, Esq., and Del Stiltner Dameron, Esq., McKenna & Cuneo, for the protester.

Eileen B. White, Esq., Department of the Navy, for the agency.

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DIGEST

Evaluation of proposal as technically unacceptable and its subsequent elimination from the competitive range were reasonable where solicitation warned offerors that a finding of unacceptable under any one of six technical factors could result in rejection of the proposal, the proposal was rated unacceptable in five out of six evaluation areas, and protester does not show that evaluation was unreasonable.

DECISION

Keco Industries, Inc. protests the elimination of its proposal from the competitive range under request for proposals (RFP) No. N00024-94-R-4187, issued by the Department of the Navy for plastic waste processors. Keco asserts that the evaluation was unreasonable and inconsistent with the criteria listed in the solicitation, and that the agency's decision to eliminate the proposal from the competitive range was improper.

We deny the protest.

On September 29, 1994, the agency issued the solicitation for award of two fixed-price contracts for plastic waste processors. These processors were developed in response to a congressional mandate to end all plastic discharges at sea, and are to be used in Navy surface ships to reduce volume and sanitize plastic waste for

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storage and eventual disposal in port.¹ The plastic waste processor system consists of solid waste shredders, compress melt units and closed loop cooling units; after shredding, plastic waste goes into the compress melt unit, which compresses the waste into disks that can be placed into odor bags and heat-sealed for storage.

The solicitation included the clause at Federal Acquisition Regulation (FAR) § 52.215-16, alternate III, advising offerors of the agency's intention to evaluate proposals and award contracts without discussions, but reserving the right to hold discussions if needed. The solicitation provided for award to the two offerors whose proposals were considered most advantageous to the government, considering price and other factors, and set forth the following six evaluation factors: past performance; equipment/facilities/tooling; human resources; schedule compliance; technical approach; and subcontracting.

The RFP advised offerors that the factors of past performance and equipment/facilities/tooling would be of nearly equal importance and more important than the remaining factors, which were nearly equal in importance among themselves. In evaluating proposals, evaluators assessed risk and assigned numerical scores of 0-100 for each factor, with a score of 60 being minimally acceptable. The solicitation warned offerors that regardless of a proposal's overall rating, the agency might consider a proposal technically unacceptable if it received an unacceptable rating for any one of the six technical factors. The solicitation stated that in selecting proposals of greatest value, the agency was seeking proposals demonstrating the greatest technical capability at a reasonable price, and stated that the agency was willing to pay up to a 40-percent premium in price for a technically superior proposal.

The agency received 13 offers on January 25, 1994, and began technical and price evaluations; on March 30, the technical evaluation review panel (TERP) completed its review of technical proposals, assigning raw scores to each proposal in each evaluation area. Although Keco submitted the lowest price, its overall weighted technical score was significantly lower than that of the second or third low-priced offerors, and Keco's score ranked eighth of the 13 proposals received. Further, although the proposal was acceptable under the past performance evaluation factor, the TERP found the proposal unacceptable in the remaining five areas. Evaluators advised the contracting officer that Keco and seven other offerors had no reasonable chance for award, and by letter dated April 7, the contracting officer advised Keco of its elimination from the competition. This protest followed.

Keco argues that the agency failed to follow the listed evaluation criteria, because in Keco's view, its proposal contained all of the information required by the RFP

¹Legislative milestones include initial installation of the plastic waste processors by July 1, 1996, and installation of 100 percent of the processors by December 31, 1998.

related to each evaluation factor. Since Keco contends there were no deficiencies in its proposal—or in any event, none that was major or that could not have been cured through discussions—it concludes that the decision to eliminate Keco from the competition was unreasonable.

In a negotiated procurement, the purpose of a competitive range determination is to select those offerors with which the contracting agency will hold written or oral discussions. See FAR § 15.609(a); Everpure, Inc., B-226395.2; B-226395.3, Sept. 20, 1988, 88-2 CPD ¶ 264. The competitive range is to be determined on the basis of price and other factors that were stated in the solicitation and is to include all proposals that have a reasonable chance of being selected for award. In reviewing an agency's technical evaluation and decision to eliminate a proposal from the competitive range, we review the record to determine whether the agency's judgments were reasonable and in accordance with the listed evaluation criteria and whether there were any violations of procurement statutes or regulations. CTA, Inc., B-244475.2, Oct. 23, 1991, 91-2 CPD ¶ 360. In reviewing a competitive range determination, we do not reevaluate technical proposals; instead, we examine the agency's evaluation to ensure that it was reasonable and in accord with the evaluation criteria. Rainbow Technology, Inc., B-232589, Jan. 24, 1989, 89-1 CPD ¶ 66.

Although Keco was found acceptable under the factor of past performance, the solicitation provided that an unacceptable rating in any one of the other five evaluation factors could result in the rejection of the proposal. Our review shows that the evaluation was generally reasonable and consistent with the solicitation criteria and supports the conclusion that the proposal was unacceptable, at a minimum, in the areas of equipment/facilities/tooling, human resources, and schedule compliance.²

With respect to the equipment/tooling/facilities evaluation factor—which was one of the two most important evaluation factors and under which Keco received a rating of unacceptable—offerors were required to identify facilities and provide a table identifying tooling and equipment for use in production and testing of the

²In determining overall technical score, the agency assigned a weight of 20 percent to each of the technical factors of past performance and equipment/tooling/facilities. The four remaining technical factors—human resources, schedule compliance, technical approach, and subcontracting—received a weight of 15 percent each. Although the protester objects generally to the evaluation of those portions of its proposal relating to past performance, the TERP rated the proposal acceptable under that factor, and past performance does not appear to have been of significant concern in the agency's decision to reject Keco's proposal. As discussed below, our review shows that the agency could reasonably and properly eliminate the proposal based solely on its concerns with the other areas of the proposal.

processor. Keco proposed its Florence, Kentucky plant for the plastic waste processor program, and named another facility—used primarily for sheet metal fabrication and welding—as a standby. Based on the configuration of the Florence facility the proposal identified 2,850 square feet dedicated to assemble the processors. In addition, despite the solicitation's request for a table identifying tooling and equipment, the proposal did not discuss any plans to obtain additional equipment, and Keco's proposal showed a heavy reliance on subcontractors.

The TERP identified two major concerns with Keco's proposal. First, evaluators concluded that Keco had grossly underestimated the amount of floor space needed to assemble the plastic waste processors. Second, the agency concluded that Keco's failure to provide information on subcontractor equipment, tooling, and facilities raised a concern that Keco would be unable to use its own equipment to work around any subcontractor failure.

With respect to the floor space issue, the TERP noted that three quarters of the Florence facility represented manufacturing floor space that could not be used for assembly of the processors, and expressed concerns that the remaining 2,850 square feet dedicated to assembling the processors was inadequate by a factor of five. In addition to their basic concerns about floor space, evaluators expressed concern that if some of the subcontractors proved unable to perform as proposed, the amount of required space would be even greater.

Despite the Navy's extensive concerns that the proposal dedicated insufficient floor space to the assembly of the processors, Keco's response to the agency report—filed during the course of this protest—did not address this issue. When the agency, in rebuttal to Keco's comments, pointed out Keco's silence on this point, Keco merely indicated disagreement with the agency's estimate and claimed that its specified production space is adequate. Given that the Navy has set forth reasonable concerns about Keco's proposed floor space, to which Keco has failed to substantively respond, we conclude that Keco's disagreement with the evaluation, without more, provides no basis to question the agency's assessment of this issue. Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115.

With respect to the agency's concerns about the availability of the equipment, tooling, and facilities at its proposed subcontractors, Keco argues that the solicitation did not state that this factor would be applied to subcontractors, and denies that its ability to deliver on time depended heavily on its subcontractors. Keco also points out that its proposal contained evidence of prior problems in managing subcontractors, which Keco had overcome by using in-house facilities.

Our review shows that the Navy's concern, in essence, is that if Keco were required to perform some, or all, of the work it has proposed for subcontracting, Keco would lack the equipment and tools necessary to do so. Thus, the Navy first criticized Keco for failing to identify equipment and tooling available at subcontractor

facilities, and rejected Keco's general contention that it possessed the equipment and tools necessary in case of subcontractor default.³

In response to the Navy's criticism that Keco failed to identify the equipment and tooling available at subcontractor facilities, Keco first argues that the solicitation did not require such information. However, our review of the record shows that the solicitation did, in fact, request such information. Specifically we note that the RFP required two tables under the equipment/tooling/facilities factor, one for tooling and equipment currently under the offeror's control, and one for tooling and equipment not currently under its control, along with the written commitment of a supplier. Although subcontractors are not expressly mentioned in the provision, we think the Navy reasonably concluded that the provision required identifying such equipment/tooling/facilities when they were to be provided by an outside source.

Our review also leads us to conclude that there was nothing unreasonable in the Navy's assessment that Keco offered only general claims about its in-house ability to assure timely performance. In this regard, the Navy claimed that Keco's assertion that it possessed "a full complement" of such equipment was insufficient to address the agency's concerns about the adequacy of Keco's in-house equipment and tooling to meet the requirements here. Given that Keco's proposal identifies available in-house equipment and tooling based on its proposed level of subcontracting, this general assertion, without more, does little to allay the Navy's concerns about this issue.

Finally, Keco claims that the Navy's assessment of this portion of its proposal was based on an unreasonable review of a situation where Keco claims it performed admirably in using in-house resources to cure delinquencies caused by a subcontractor's default. Instead of accepting only Keco's characterization of that situation, the Navy evaluators concluded that the situation also suggested that Keco was not sufficiently vigilant to spot the problem in advance to reduce the risk of schedule delay. While Keco disagrees with this conclusion, there is nothing inherently unreasonable about the Navy's concerns on this point.

Similarly, the TERP found the proposal unacceptable, with high risk, under the evaluation factor of human resources; major concerns involved the program manager and Keco's overall management commitment to the program. Evaluators considered the interface between the program and upper management insufficient; the program manager would report through the manager of engineering design, who

³The Navy's concerns are tied to the statutory requirement that the processors at issue here be installed in all Navy surface ships by the end of 1998. For this reason, the Navy evaluators looked for assurances that contractors would perform the work on time.

would report to the chief engineer. Also, there was no direct line to top executive management beyond a weekly meeting with the executive vice president, who would spend no more than 10 percent of his time on the program.

In addition, the TERP found the program manager to be unqualified, and questioned Keco's decision to propose its program manager for less than a full commitment to the program. In this regard, the program manager's resume showed only 1-1/2 years of program management experience, none with a program of similar size and complexity; it also showed a lack of formal management education. Moreover, Keco planned to dedicate its program manager to the program for only the first 3 months, and then reduce his availability to 50 percent. Similarly, the manufacturing manager was available for only 20 percent of his time.

With respect to the interface between the program manager and upper management, Keco responds that its proposal has numerous references to this issue; that its centralized structure encouraged "a coordinated and therefore efficient effort"; that critical path items are "monitored closely with frequent follow-up"; and that management "encourages daily contact with subordinates." With respect to whether the agency miscalculated its proposed program manager, Keco argues that the program manager had experience with programs of equal or even greater complexity than the plastic waste processor.

We find reasonable the agency's concern that the general language in Keco's proposal contains no evidence of a direct and formal communication link between the contract's program manager and the company's upper management. As the Navy argues, the record shows that under these circumstances the program manager would have had to work through two levels of management to alert upper management to any issues arising in the course of performance. We also see nothing unreasonable about the agency's criticism that since other key management personnel would spend only a portion of their time on the project, the program manager might not receive the management support needed. In this regard, the record shows that the proposed project manager's previous experience was as a "project engineer" under other programs, rather than a "program manager," and that this program involves a considerably shorter delivery schedule (9 months versus 15) and a far greater total cost.

Keco also disputes the Navy's finding that Keco had insufficient machine shop capacity for the program. Since Keco proposed to use five of its six current machinists to perform this effort, with no discussion of how it proposed to accomplish its remaining work with virtually all of its staff dedicated to the plastic waste processor contract, we see nothing unreasonable about the Navy's staffing concerns.

Finally, Keco challenges the evaluation of its proposal as unacceptable and high risk under the factor of schedule compliance. Under this factor, the RFP required a

detailed milestone plan through the first 3 months of delivery, demonstrating the offeror's ability to comply with the required delivery schedule. The TERP considered the protester's milestone charts to lack detail, hindering the panel's consideration of how much time Keco had allowed for key operations and events, and failing to provide information on the critical paths and slack time through assembly, test and acceptance, and delivery. Because of these shortcomings, the panel could not tell whether Keco had allowed sufficient time for machining and fabrication by outside vendors. In addition, the Navy noted that lead time for certain items exceeded the time allowed for completion of the subassembly of which they were a part. Further, the Navy concluded that Keco's response to RFP requirements for addressing risk management was very general, and lacked discussion of detecting or handling schedule slippages, working around problems, or using alternate vendors.

Keco does not contest the evidence of carelessness in the preparation of its milestone charts, but argues that these details could have been straightened out through discussions. However, where a solicitation states that the agency intends to make award without discussions, an offeror may not presume that it will have the chance to correct deficiencies and weaknesses through discussions; the offeror has the burden to submit an initial proposal demonstrating its own merits and otherwise runs the risk of rejection. Scientific-Atlanta, Inc., B-255343.2; B-255343.4, Mar. 14, 1994, 94-1 CPD ¶ 325.

In conclusion, we find the agency's evaluation of the proposal as unacceptable in the areas of equipment/tooling/facilities, human resources, and schedule compliance, was reasonable and supported by the record. Since the solicitation specifically provided that a finding of unacceptable in any one area might result in rejection of the proposal, we need not address the evaluation in the remaining areas. See Environmental Technologies Group, Inc., 69 Comp. Gen. 193 (1990), 90-1 CPD ¶ 101.

The protest is denied.

\s\ Ronald Berger
for Robert P. Murphy
General Counsel