



United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** Microwave Monolithics, Inc.

**File:** B-413088

**Date:** August 11, 2016

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Daniel R. Ch'en for the protester.  
Maria S.G. Cooke for McMurdo, Inc., an intervenor.  
Erica A. Harder Smith, Department of the Army, for the agency.  
Frank Maguire, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protester's proposal was properly eliminated from the competition where the agency reasonably concluded that proposal failed to show compliance with International Traffic in Arms Regulations (ITAR), as required.

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### DECISION

Microwave Monolithics, Inc. (Microwave) of Simi Valley, California, a small business, protests the elimination of its proposal from the competition under request for proposals (RFP) No. W91CRB-14-R-0032, issued by the Department of the Army, Army Materiel Command (Army) for personal recovery devices (PRD). The protester asserts that the Army improperly evaluated its technical proposal.<sup>1</sup>

We deny the protest.

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<sup>1</sup> Our Office did not issue a protective order in connection with this protest because Microwave did not retain counsel who could be admitted to a protective order. A redacted version of the agency report was furnished to the protester. Our discussion regarding the agency's evaluation of the protester's proposal is general in nature to avoid revealing information that may be proprietary to the protester.

## BACKGROUND

The PRD is a militarized personal locator beacon (PLB), part of the Personnel Recovery Support System (PRSS), designed as an alert and notification system to facilitate the recovery of isolated, missing, detained, or captured service members. Agency Report (AR) at 2; RFP (conformed copy), at 2. PRSS Increment 1a involved acquisition of a commercial PLB. AR at 2. Over 50,000 Increment 1a PLBs have been fielded for operational use. Id. PRSS Increment 1b is the subject of this RFP and protest. Increment 1b PRDs will be similar to Increment 1a PRDs, except that, unlike Increment 1a PRDs, Increment 1b PRDs will operate in a “secure manner” with a “secure waveform” supplied by the government. AR at 2-3.

The Increment 1b acquisition includes two phases. Id. at 4, citing RFP at 4, 51. Phase I entails award of up to four fixed-price contracts for the delivery of four working production representative articles, whereas Phase II will entail award of a contract for production of PRDs to a single contractor (from the Phase I awardees). AR at 4. The RFP separately defines what information is required for, and will be evaluated with regard to, Phase I and Phase II. AR at 4 n.1, citing RFP, § L, at 42-47, 51-62. At issue in this protest is the Phase I evaluation.

The RFP provided that award in Phase I would be “made to the best four (4) proposals . . . determined to be the most beneficial to the Government.” RFP at 51. The evaluation factors and subfactors for award in Phase I were as follows:

- Phase I – Production Representative PRD
  - Factor I – Technical
    - Sub-Factor A. Manufacturing (Go/No-Go)
    - Sub-Factor B. PRD Conceptual Design
  - Factor II – Past Performance
    - Sub-Factor A. Past Performance Relevancy
    - Sub-Factor B. Performance Confidence Assessments
  - Factor III – Small Business Utilization (Go/No-Go)
    - Subfactor A. Small Business Participation Plan (Go/No-Go)
    - Subfactor B. Small Business Subcontracting Plan (Go/No-Go)
  - Factor IV – Price.

RFP at 51-52. The RFP advised that in the evaluation, technical was more important than past performance, and both factors were more important than price. Id. at 51.

Pertinent here, under Factor I, Technical, Subfactor A, Manufacturing, the solicitation provided for evaluation of the offeror's compliance/capabilities in five areas: ITAR<sup>2</sup> Compliance, ISO 9001<sup>3</sup> Certification, Facilities, Manufacturing Capabilities, and Production Schedule. AR at 6, citing RFP at 42-43, 52-53. The RFP further advised offerors:

The Manufacturing Sub-factor will be evaluated as Go/No-Go; the Government will evaluate the proposals in terms of the stated minimum requirements. Failure to meet the minimum requirements will eliminate the proposal from further evaluation and potential contract award.

RFP at 51 (emphasis added). The RFP also advised offerors that “[i]n order to pass the Go/No-Go criteria for the Manufacturing Sub-Factor, an evaluation of the offeror's proposal must determine that it meets all of the criteria” for that factor. RFP at 53. In this connection, the RFP warned offerors:

The evaluation will be limited to the information provided and nothing will be assumed. For proposals to be evaluated as meeting the minimum requirements, the offeror shall furnish enough definitive supportive information on the factor areas to effectively describe the offeror's capability to adequately support the solicitation requirements.

Id. at 42.<sup>4</sup>

The Army received five proposals in response to the RFP, including a proposal from Microwave. AR at 3. After the initial evaluation, the contracting officer (CO) established a competitive range of the four most highly rated proposals. Microwave's proposal was excluded from the competitive range based on the agency's overall evaluation under Factor I: Technical, Sub-Factor A, Manufacturing as “No-Go” (i.e., unacceptable). AR at 5-6, citing AR, Tab 5, Evaluation Form; Tab 6, Technical Summary Evaluation Form for Phase I; Tab 7, Technical Evaluation Memorandum.

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<sup>2</sup> International Traffic in Arms Regulations, 22 C.F.R. §§ 120.1 – 130.17.

<sup>3</sup> This ISO standard is a specific quality management system standard set by the International Organization for Standardization. See USA Jet Airlines, Inc.; Active Aero Group, Inc., B-404666, Apr. 1, 2011, 2011 CPD ¶ 91 at 3 n.3.

<sup>4</sup> The Army points out that the manufacturing subfactor at issue in this protest is “contained only in Phase I and is being evaluated as part of Phase I to ensure that the contractors that receive a Phase I award will have the manufacturing capability to perform if ultimately selected for a Phase II award.” AR at 4, citing RFP at 52-53.

On March 9, 2016, the Army advised Microwave that it had been excluded from the competitive range. AR at 6, citing AR, Tab 9a-9b. On March 10, Microwave requested a debriefing, which the agency provided in written form on March 23, 2016. AR, Tab 11, Debriefing.

Microwave filed an agency level protest on March 28, 2016. AR, Tab 12, Agency Protest. In response to the agency protest, the CO asked the Source Selection Evaluation Board (SSEB) to conduct a review of Microwave's proposal. AR at 6. After reviewing the results of the reevaluation, the CO concluded that Microwave's overall technical rating remained a No-Go and that Microwave would remain excluded from the competitive range. AR, Tab 13, CO Memorandum. By letter of April 28, the CO notified Microwave that its proposal had been rated as No-Go under the ITAR compliance, facilities, and production schedule elements, leading to an overall rating of No-Go under the manufacturing subfactor; that its proposal would not be included in the competitive range; and that its agency-level protest was denied. AR at 6-7; Tab 14, CO's Decision Regarding Agency Protest, at 2 (as redacted). See Protest at 1.

This protest to our Office followed.

## DISCUSSION

Microwave challenges the rating of its proposal as No-Go under the ITAR compliance, facilities, and production schedule criteria, as well as the overall rating of No-Go under the manufacturing subfactor. Protest at 2-3. As discussed below, we find that the agency reasonably determined that Microwave's proposal failed to meet the solicitation's requirements pertaining to ITAR compliance, which rendered the proposal a No-Go under the manufacturing subfactor. As a result, we do not address in this decision the protester's complaints pertaining to the evaluation of its proposal with regard to the facilities and production schedule criteria.

As previously noted, the RFP provided that, to be rated as a Go under the manufacturing subfactor, a proposal had to meet the solicitation's minimum requirements, which included the following pertaining to ITAR compliance:

The offeror, and subcontractors as appropriate, is ITAR compliant, or has a viable plan to become ITAR compliant prior to contract award. The contractor has appointed an employee to be responsible for ITAR compliance and has established the following: written policies and procedures for employees performing activities subject to ITAR and/or handling ITAR-controlled items or data; procedures for the receipt, handling, storing, implementation and testing of ITAR-controlled items, procedures for the restriction of access by foreign nationals to ITAR-controlled items or data; an auditing procedure for ITAR compliance; and procedures for actions to be taken if a violation is discovered.

RFP at 53.<sup>5</sup>

Microwave contends that its proposal met the solicitation requirements pertaining to ITAR compliance. In this regard, the protester argues that its proposal “clearly states [that it is] ITAR compliant and is evidenced by the fact that [it is] already registered with the DDTC [Directorate of Defense Trade Controls], which by default requires a designated security officer and maintenance of records showing compliance per ITAR Section 122.” Protest at 3; see also Comments at 3.

The Army responds that Microwave’s position that statements in its proposal satisfied the ITAR compliance requirements was “completely inaccurate” and that Microwave “incorrectly assumes the Agency was looking merely for ITAR registration with DDTC.” AR at 9. According to the agency, the RFP “makes it clear that the Agency was looking for more detail than this.” Id.<sup>6</sup>

In reviewing protests challenging the rejection of a proposal for consideration for award, it is not our role to reevaluate proposals; rather our Office examines the record to determine whether the agency’s judgment was reasonable and in accordance with the solicitation criteria and applicable procurement statutes and regulations. Wolverine Servs. LLC, B-409906.3, B-409906.5, Oct. 14, 2014, 2014

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<sup>5</sup> The agency points out that the RFP clearly indicated that ITAR compliance was “of significant importance.” AR at 8. In this regard, the CO asserts that the agency “intentionally put significant emphasis on ITAR Compliance as an evaluation criterion to safeguard against the potential disclosure or transfer of sensitive information to foreign persons, Governments, or advisories,” and points out that, in fact, “‘ITAR’ is referenced fifty-nine (59) times in the Solicitation.” CO Memorandum at 8. The CO cites the highly sensitive nature of the protected information, and asserts that compromise of that information “has the potential to place isolated, missing, detained, and captured Service members and high value U.S. Government resources at risk.” Id.

<sup>6</sup> Along the same lines, in denying the protester’s agency-level protest, the CO explained as follows:

ITAR compliance as described within the Solicitation may not be deduced simply through registration with the U.S. Department of State Directorate of Defense Trade Controls (DDTC). The Solicitation provides offerors with great detail ... what information the Government requires in regards to ITAR compliance.

AR, Tab 14, CO’s Decision Regarding Agency Protest, at 2.

CPD ¶ 325 at 3; Orion Tech., Inc., B-405077, Aug. 12, 2011, 2011 CPD ¶ 159 at 4. Further, it is the offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. CACI Techs., Inc., B-296946, Oct. 27, 2005, 2005 CPD ¶ 198 at 5. A protester's disagreement with the agency's judgment does not establish that the evaluation was unreasonable. WAI-Stoller Servs., LLC; Portage, Inc., B-408248.13 et al., May 29, 2015, 2015 CPD ¶ 201 at 7. In a negotiated procurement, a proposal that fails to conform to the material terms and conditions of the solicitation is considered unacceptable and may not form the basis for award. Wolverine Servs. LLC, supra; LOGMET LLC, B-405700, Dec. 14, 2011, 2011 CPD ¶ 278 at 3.

We find the Army's evaluation reasonable here. Offerors are responsible for submitting a well-written proposal with adequately-detailed information that allows for a meaningful review by the procuring agency. iGov, et al., B-408128.24 et al., Oct. 31, 2014, 2014 CPD ¶ 329 at 31. Further, we have held that offerors are responsible for including sufficient information to establish compliance with solicitation requirements and blanket statements of compliance are insufficient to meet that obligation. National Shower Express, Inc.; Rickaby Fire Support, B-293970, B-293970.2, July 15, 2004, 2004 CPD ¶ 140 at 4-5. See, e.g., Aero Simulation, Inc., B-411373, B-411373.2, July 2, 2015, 2015 CPD ¶ 233 (agency's evaluation found reasonable where explanations proffered in the protester's comments on the agency report were not included in its proposal).

Here, our review indicates that Microwave's brief statements in its proposal with regard to how it would implement ITAR requirements were both conclusory and limited. See Microwave Proposal, at Appendix A; Appendix D at D-17. Accordingly, we agree with the Army that Microwave's proposal was inadequate with regard to ITAR requirements, that it did not provide the level of information regarding ITAR compliance required by the RFP, and that the Army's "No-Go" rating for Sub-Factor A, Manufacturing, was reasonable. This protest ground therefore is denied.

Finally, as indicated above, the RFP provides that failure to meet the minimum requirements of the manufacturing subfactor will eliminate the proposal from further evaluation and potential contract award. RFP at 51. Because we find that the Army reasonably determined Microwave to be ineligible for award based on its failure to demonstrate ITAR compliance, Microwave is not an interested party with respect to its remaining protest grounds. Rotech Healthcare, Inc., B-409020, B-409020.2, Jan. 10, 2014, 2014 CPD ¶ 28 at 5. Accordingly, we will not consider those protest grounds.

The protest is denied.

Susan A. Poling  
General Counsel