



Decision

Matter of: General Offshore Corporation
File: B-251969.5; B-251969.6
Date: April 8, 1994

W. Bruce Shirk, Esq., and Laura K. Kennedy, Esq., Seyfarth, Shaw, Fairweather & Geraldson, for the protester. Thomas P. Humphrey, Esq., and Devorah S. Mayman, Esq.; Crowell and Moring, for MAR, Inc., an interested party. Barbara Vail, Esq., Department of the Treasury, for the agency. Paul E. Jordan, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that awardee's proposal was noncompliant with solicitation requirements is denied where agency reasonably found that awardee's proposal met solicitation requirements concerning corporate and personnel experience and a computer system.
2. Protest allegations are dismissed as academic where, even if the allegations were sustained, protester would not be in line for award because its proposed and evaluated cost was higher and its proposal's technical score was lower than that of an intervening offeror.

DECISION

General Offshore Corporation (GOC) protests the award of a contract to MAR, Inc., under request for proposals (RFP) No. CS-92-009, issued by the U.S. Customs Service, Department of the Treasury, for maintenance of Customs vessels. GOC challenges the agency's award determination, arguing that MAR's proposal failed to meet certain requirements of the RFP.

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

The RFP sought proposals to furnish necessary personnel, services, materials, and facilities primarily to perform preventive maintenance and corrective maintenance for various Customs vessels on a nationwide basis as part of

Customs' drug interdiction mission.¹ The RFP contemplated award of a cost-plus-award-fee contract for a base period with 4 option years. Proposals were evaluated on the basis of cost and five technical factors: (a) technical approach, (b) personnel qualifications and experience, (c) corporate experience, (d) management plan, and (e) computer reporting specification. The five factors are listed in descending order of importance, although factors B, C, and D are of equal importance. Cost, while less important than technical factors, was evaluated on the basis of accuracy, adequacy, realism, and reasonableness. The RFP also provided that cost was to be the determining factor among technically equal proposals.

Six offerors, including GOC, MAR, and Burns and Roe Services Corp. (BRSC),² submitted proposals. After initial technical and cost evaluations, Customs included the proposals of MAR, BRSC, and GOC in the competitive range. Discussions were then conducted with the three offerors and Customs requested best and final offers (BAFO). All identified weaknesses were resolved and in the final evaluation, the three proposals were scored within 1 point of each other: MAR, 70.7; GOC, 70.4; BRSC, 71.0. The evaluators and contracting officer concluded that all three were substantially technically equal which made lowest cost the determinative factor in the award selection. Customs awarded the contract to MAR since MAR's evaluated cost of \$24,889,658 was lower than that of GOC and BRSC.³

GOC first challenges Customs' evaluation of MAR's proposal as acceptable and technically equivalent to GOC's proposal. Specifically, GOC contends that MAR failed to comply with mandatory requirements for corporate experience, and that

¹Preventive maintenance includes scheduled inspections, lubrications, cleaning, and preservation actions. Corrective maintenance includes repair work resulting from accidents and material failures. In addition, by amendment No.A004, the RFP advised that Customs had begun a rebuilding program (which includes inspection, evaluation, and rebuilding suitable engines, outdrives, transmissions, and other marine equipment) and a refurbishment program (which includes inspection, evaluation, and refurbishing of selected vessels).

²Our Office denied BRSC's protest on unrelated grounds. Burns and Roe Servs. Corp., B-251969.4, Mar. 1, 1994, 94-1 CPD ¶ ____.

³Unlike MAR's and BRSC's costs, GOC's proposed cost was not adjusted upward for cost realism. Its proposed cost was more than \$1 million higher than MAR's adjusted cost.

MAR's proposal did not satisfy personnel and computer reporting system requirements.⁴

In a negotiated procurement, any proposal that fails to conform to material terms and conditions of the solicitation should be considered unacceptable and may not form the basis for an award. National Medical Staffing, Inc.; PRS Consultants, Inc., 69 Comp. Gen. 500 (1990), 90-1 CPD ¶ 530. Where an evaluation is challenged, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the evaluation criteria and applicable statutes and regulations, since the relative merit of competing proposals is primarily a matter of administrative discretion. Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203. We have reviewed MAR's proposal and the agency's evaluation and find that Customs reasonably evaluated MAR's proposal as meeting the RFP's requirements.

In its challenge to the evaluation of MAR's corporate experience, GOC relies on amendment No. A004 which made several additions to the statement of work (SOW). These additions included a general statement outlining the composition of the Customs fleet (including interceptors with high performance engines and platform vessels) and the statement that the "[c]ontractor shall have experience with these types of vessels." The amendment also expanded the experience required with the "type of vessels in the Customs fleet" for the proposed project manager, quality assurance monitor, and site managers. GOC contends that Customs should have lowered MAR's corporate experience score because it does not have corporate experience in all the types of Customs vessels, *i.e.*, small, high performance powered vessels. We disagree. All of the experience references in amendment No. A004 are included under the personnel specifications of the SOW. As such, they are relevant to the personnel, not corporate, experience evaluation factor. Thus, Customs properly evaluated MAR's experience with the types of vessels in the Customs fleet under the personnel experience factor.

⁴GOC raised a number of other issues in its initial protest including allegations that the cost evaluation was flawed, that MAR had not agreed to all "general and special provisions" of the RFP, and that the evaluators had been improperly influenced by a Customs employee who was hostile toward GOC. The agency's report responded to and refuted these allegations and GOC's comments did not dispute the agency's explanations. Accordingly, we have treated these issues as abandoned. See Telephonics Corp., B-246016, Jan. 30, 1992, 92-1 CPD ¶ 130.

With regard to corporate experience, the RFP requested "supporting data" from offerors reflecting their experience and background on similar projects, and a list of past and present government and non-government contracts in related fields. In evaluating this information, the evaluators, according to the source selection worksheets, considered the following:

"Corporate knowledge, experience and demonstrated ability in performing tasks substantially similar to those identified in the [SOW]. Subfactors to be considered include: Vessel maintenance and related experience. Experience managing large dollar multi-task contracts."

The evaluators found that MAR had a good background in marine work, with good experience in medium and small vessels, that it had successfully managed high dollar contracts, and overall, that it was prepared to cover all areas and aspects of servicing the Customs fleet. They scored MAR's proposal at 88.75 out of a possible 100 points, and from our review of MAR's proposal, we believe this score was reasonable. MAR's listed experience is "substantially similar" to the tasks identified in the SOW as evidenced by MAR's performance of some 20 current and past contracts (ranging in price from hundreds of thousands to millions of dollars) which reflected experience in preventive and corrective maintenance, repairs to vessels, maintenance of navigational and marine communications equipment, hull repairs, modifications, and inventory control tasks.

While the protester believes that its experience on the predecessor Customs' contract translates into greater corporate experience, we believe the evaluators properly gave MAR's proposal an equivalent score in view of its substantial experience on medium and small vessels. In this regard, according to GOC's proposal, prior to the predecessor contract, GOC was inexperienced with the small vessels used by Customs. Thus, GOC's corporate experience with small vessels like those in the Customs fleet is limited to a single contract. Further, the predecessor contract was for a limited area, while the contract at issue is for national coverage. Thus, GOC's experience, while relevant, did not necessarily entitle it to a higher score than it received on its proposal.

GOC next argues that Customs improperly evaluated MAR's personnel as meeting the requirement for experience in all

types of Customs vessels.⁵ Specifically, GOC contends that the resumes of five MAR site managers do not reflect experience in small, high-performance vessels.⁶

Although the resumes of five of MAR's proposed site managers do not contain the words "high performance," Customs explains that the resumes describe experience which meets the RFP requirements. For example, one of the site managers worked for 8 years as a mechanic for the Florida Marine Patrol (FMP), 30 percent of whose fleet is high performance, while another, as owner and operator of a full service marina, provided maintenance and repair support to the FMP. A third worked in the marine division of a sheriff's department in another state, completed advanced training on high-performance engines, and is a certified mechanic on engines known to be high performance. According to their resumes, the other two site managers have had similar training and have operated full service marinas, including work on all makes and models of small boats and motors. Customs notes that it used the same evaluation technique on GOC's proposed site managers, several of whose resumes did not explicitly mention experience with utility or platform boats, which comprise the balance of the Customs fleet. Since their resumes indicated the requisite experience, they were found acceptable. We have reviewed the resumes of both offerors' proposed site managers and find nothing

⁵In a related argument, GOC alleges that one of MAR's certified marine mechanics did not meet a SOW requirement to be certified in one of several propulsion systems "by a marine factory authorized facility." GOC contends that the mechanic's diploma from the American Marine Institute (AMI) does not meet the requirement. This issue is untimely because it was not filed within 10 working days of when GOC knew, or should have known, this protest ground. 4 C.F.R. § 21.2(a)(2) (1993); EER Sys. Corp., 69 Comp. Gen. 207 (1990), 90-1 CPD ¶ 123. On November 9, 1993, GOC's attorneys received a copy of MAR's proposal with the agency report, including a copy of the employee's AMI diploma. However, GOC did not raise this issue until December 30, more than 10 working days later. While GOC argues that it was unaware of the significance of the AMI certificate until shortly before December 30, when it interviewed the employee, we believe the protester had sufficient information to raise the issue within 10 days of receipt of the proposal. See Columbia Research Corp., B-247073.4, Sept. 17, 1992, 92-2 CPD ¶ 184.

⁶According to Customs, the term "high performance" generally refers to the amount of horsepower relative to length of a given boat. To an extent, any boat can be high performance if enough engine power is present.

inappropriate or unreasonable in this evaluation technique or in the conclusion that MAR's proposed personnel were fully qualified.⁷

GOC next contends that MAR's proposal did not satisfy the RFP requirements for the computer reporting system because it did not propose to provide the specified system within 90 days. In GOC's view, MAR's proposal lacked the degree of detail in GOC's proposal and indicated that MAR did not understand the requirements.

The RFP included specifications for a vessel reporting system (VRS), a computer system which includes a network to enable work stations to report maintenance and other actions completed on Customs vessels, equipment, and/or related facilities. GOC designed the existing VRS under the predecessor contract, but that system was limited to the regional scope of that contract. The procurement at issue involves nationwide maintenance services and thus expansion of the VRS is required. Information from the work stations is to be communicated on a real-time basis and all Customs maintenance facilities are to have both computer access and the capability to add data to the VRS. The specifications detailed numerous requirements which the VRS is to be capable of reporting in real time including: maintenance actions, expenditures, parts inventory and accounting, parts issued, maintenance tracking and scheduling, and tracking warranties on vessels and equipment. The VRS also was required to generate reports showing maintenance actions, repairs, and expenditures; and inventory property for financial reporting in compliance with the Chief Financial Officers Act of 1990 (CFOA), 31 U.S.C. § 501 (Supp. IV 1992). The RFP specified that the system specified shall be completed within 90 days after contract award.

In response to questions from the offerors, Customs issued amendments advising that the VRS had already been developed, was satisfactorily operating, and met the SOW requirements. Customs' responses to offerors' questions also advised that the detailed system design was to be made available on award and that the successful offeror was not required to design a VRS, or to redesign or modify the existing software. As a point of clarification, Customs later advised that although the system was available, some software was proprietary to

⁷GOC also observes that many of the high-performance engines in the Customs fleet are manufactured by Mercury and contends that MAR should have been downgraded because not all of MAR's site managers and certified marine mechanics list experience with that brand of engine. Since the RFP did not specify experience with any particular brand of propulsion unit, this contention is without merit.

the incumbent, and that the successful offeror was required to develop a nationwide system in accordance with the SOW.

Customs found that MAR's proposal took no exception to the solicitation requirements for the VRS. The proposal set forth the requirements for the system and then detailed a phased approach to expanding and implementing the existing VRS and plans for assessing, upgrading and/or replacing the system as directed by Customs. In the proposal, MAR specifically promised to field a basic operational system as required by the solicitation in the 90 days after award. The proposal also outlined MAR's plans for carrying out its phased approach and offered details of a candidate system for use by the agency. Customs' evaluation found this proposal to be fully compliant with the RFP's requirements and we find no basis to disagree with the agency's conclusion.

GOC notes that the RFP, as amended, notified offerors that after contract award and at Customs' discretion, the successful contractor "may be directed to expand the current system or use a new system." Based on this notice, GOC contends that MAR's failure to propose a new system which could be implemented within the 90 days after contract award made MAR's proposal unacceptable. We disagree. The amendment does not specify that use of a new system would be required in 90 days. The RFP provided only that a computer system meeting the SOW specifications was required in the first 90 days. Moreover, the language on which GOC relies does not mention design of a new system, but only that the contractor could be directed to "use" a new system. In this regard, Customs states that it is considering a replacement system that has already been designed. Thus, the absence of a promise by MAR to replace the existing system in 90 days is irrelevant to the evaluation.⁸

GOC also notes that MAR's proposal does not account for replacement of those aspects of the VRS which are proprietary to GOC, does not explain how it will meet the real-time requirements, and does not provide a detailed proposal for complying with the CFOA. MAR's proposal promises to meet the requirements specified within the first 90 days and advises that MAR's proposed system will have real-time capability. MAR's proposal also states that the firm has a software module which meets all the requirements of the SOW. With regard to the CFOA, MAR's proposal identifies it as a system requirement and has agreed to furnish a system meeting all requirements. The

⁸In fact, Customs states that GOC's proposal also did not describe a new computer system but simply an expansion of the existing system.

fact that MAR did not provide as detailed a proposal as GOC, the contractor which developed the existing system, does not mean that MAR's proposal is technically unacceptable. While GOC has raised these and other matters which it contends indicate a lack of understanding by MAR and from which it infers MAR's inability to perform, whether MAR is capable of performing in accordance with its proposal is a matter of responsibility, which our Office does not review, except in limited circumstances not present here. 4 C.F.R. § 21.3(m).

GOC next contends that, overall, the agency's evaluation documentation is inadequate to support the generally identical scores assigned to the MAR and GOC proposals and the ultimate determination that the two proposals were technically equivalent. According to GOC, the evaluation documents do not contain sufficient narrative comments delineating the respective strengths and weaknesses to support the evaluation scores and the award determination.

The Federal Acquisition Regulation (FAR) requires that documents prepared to support selection decisions include the relative differences between proposals, their strengths, weaknesses, and risks. FAR § 15.612(d)(2). Where there is inadequate supporting rationale in the record for the source selection decision, our Office cannot conclude that the agency had a reasonable basis for the decision. Hattal & Assocs., 70 Comp. Gen. 632 (1991), 91-2 CPD ¶ 90. Here, the evaluators individually scored each proposal using score sheets with detailed statements of the evaluation factors and subfactors. After these scores were tabulated, all narrative comments explaining the strengths and weaknesses of each initial proposal were consolidated into a single report. A similar procedure was followed for evaluation of BAFOs. After individually scoring the proposals, the evaluators met to discuss the results and prepared a narrative summary by consensus. For example, in the initial evaluation, Customs found MAR's presentation to be very good and detailed, including a strong plan, excellent understanding of Customs' operations and needs, quality personnel in management, and good background in marine work on various sized vessels. Weaknesses included location of the management base and a performance task assumption. The evaluators also found GOC's presentation very good, with an excellent management plan and employees, a good understanding of Customs' needs, good implementation plans, and proven experience in the types of vessels operated by Customs. Weaknesses included a "wait and see" approach to the computer system, and weak preparedness on the west coast. The evaluators found that each proposal improved after discussions and that all weaknesses were resolved in the offerors' BAFOs. Based on our review of the agency's evaluation, we find it sufficient to support the source selection decision.

While GOC contends that it is better qualified than MAR, its criticism of the evaluation simply reflects its disagreement with the agency's judgment, which does not itself render the evaluation unreasonable. Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115. In this regard, we note that at GOC's debriefing, Customs advised GOC that its primary weakness was its reliance on its status as the incumbent to convey its capabilities, rather than through its proposal. No matter how competent a contractor may be, to ensure that it receives credit in the technical evaluation, the offeror must submit the requisite information with its proposal. BENMOL Corp., B-251586, Apr. 16, 1993, 93-1 CPD ¶ 325.

Finally, GOC alleges that MAR violated the substitution clause in the RFP and contract because it replaced more than half of its proposed key personnel after contract award. This clause provides that during the first 60 days of the contract performance period, no key personnel substitutions will be permitted unless such substitutions are necessitated by an individual's sudden illness, death or termination of employment.

We need not consider this allegation since GOC would not be in line for award even if we found that the argument had merit. If MAR were eliminated from the competition, BRSC, not GOC, would be in line for award. The agency determined that the three proposals were essentially equal technically and GOC's proposed cost (unchanged in the cost evaluation) was approximately \$400,000 higher than BRSC's evaluated cost which was adjusted upward for cost realism. GOC has not timely challenged the technical evaluation or the cost-realism analysis of BRSC's proposal.⁹ Since GOC would not be in line for award even if this aspect of its protest were

⁹In its comments on the agency's supplemental report, GOC for the first time alleged that the evaluation of "all" the proposals as technically equivalent was irrational. It also made generalized assertions regarding the evaluation of BRSC's proposal. Aside from the fact that such generalized assertions are not specific enough to constitute a valid basis for protest (and thus amount to no more than disagreement with the agency's evaluation), the matter is untimely. GOC did not raise these assertions until more than 10 working days after receiving the agency's initial report which contained all of the evaluation materials relating to BRSC and which clearly delineated the final scores and cost evaluations. 4 C.F.R. § 21.2(a)(2).

sustained, this argument is academic and we will not consider it. Ebon Research Sys., B-253833.2; B-253833.3, Nov. 3, 1993, 93-2 CPD ¶ 270.

The protest is denied in part and dismissed in part.

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- 1. PROCUREMENT
 - Competitive Negotiation
 - Requests for proposals
 - Terms
 - Compliance

- 2. PROCUREMENT
 - Bid Protests
 - GAO procedures
 - Interested parties
 - Direct interest standards

- 2a. PROCUREMENT
 - Bid Protests
 - Moot allegation
 - Determination

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