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Decision

Matter of: Thames Towboat Company, Inc.

File: B-282982

Date: September 9, 1999

Wayne A. Keup, Esq., and Brian A. Bannon, Esq., Dyer Ellis & Joseph, for the protester.

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DIGEST

1. Where solicitation does not require submission of detailed technical information, submission of representative technical information along with statements of compliance with minimum requirements is sufficient to meet the requirement for submission of "adequate technical information."

2. Decision to make multiple awards for time charter of tugboats, instead of a single award to the protester, is unobjectionable where solicitation provided for best value award and explicitly indicated that payment of a cost premium was contemplated for increased mission capability and early delivery date, both of which were gained with the awardee's tug.

DECISION

Thames Towboat Company, Inc. protests the award of a contract to Alpha Marine Services, LLC under request for proposals (RFP) No. N00033-99-R-1004, issued by the Military Sealift Command (MSC), Department of the Navy, for time charter of a tugboat. Thames challenges the agency's technical evaluation and best value determination.

We deny the protest.

MSC issued the solicitation on January 13, 1999 for the charter of up to two U.S.-flag tractor tugs for use at the Naval Submarine Base in New London, Connecticut, to

service a variety of naval vessels including nuclear submarines. Services included towing, mooring, berthing, docking, undocking, escorting identified naval vessels, providing emergency support services, and firefighting. Tugs offered could be existing or newly built with delivery not later than April 1, 2000. Offers were solicited for a base period of 17 months with two, 17-month options.

The RFP was a best value solicitation with price as important as all technical factors. The four equally weighted technical factors were: tug utility and flexibility; construction or charter plan; past performance; and delivery date. Minimum requirements were set forth in RFP § C3 and included performance specifications such as bollard pull,¹ shaft horsepower (SHP), minimum transit speed, fendering, navigation/communications equipment, and firefighting capability. Under the delivery factor, the RFP provided that offerors submitting early delivery dates would receive more credit, and increased credit was to be given to the offeror proposing the delivery date closest to April 1, 1999. Under the source selection plan, each factor was rated on an adjectival basis including “excellent,” “good,” “satisfactory,” “marginal,” and “unsatisfactory.” In general, in order to receive an excellent rating, the proposed tug had to significantly exceed the relevant requirements; to receive a good rating, the tug simply had to exceed the requirements. Agency Report, Tab 10, attach. 3, at 1.

The RFP permitted multiple awards. Award to other than the low-cost offeror could be based on a tug’s increased mission capability, decreased risk of non-performance, past performance, or early delivery. RFP § M1.1.

Seven offerors, including Thames and Alpha, submitted offers by the March 15 closing date. After initial evaluations, the contracting officer included only the Thames and Alpha proposals in the competitive range. Thames offered two reverse tractor-like tugs, one existing and one to be built, each of which was evaluated as good with an overall proposal rating of good. Alpha offered two true-tractor tugs one existing (referred to as a C-Tractor 6), rated as excellent and the other, unbuilt, rated as marginal, resulting in an overall proposal rating of marginal.² After conducting discussions, the contracting officer requested final proposal revisions from both offerors.

The final evaluation of the proposals was as follows:

¹ Bollard pull is the measure, in pounds, of the strength of the tug’s pulling ability.

² A “reverse tractor-like” tug such as those proposed by Thames has an adjustable propulsion system fitted at the aft end of the tug. A “true-tractor” tug such as those proposed by Alpha has an adjustable propulsion system fitted at the forward end of the tug. Agency Report at 4 nn. 5-6.

Factor/Offeror	Thames (existing tug)	Thames (new-build tug)	Alpha (existing tug)	Alpha (new-build tug)
Utility/Flexibility	Good	Good	Excellent	Unsatisfactory
Past Performance	Excellent	Excellent	Excellent	Excellent
Construction/ Charter Plan	Excellent	Excellent	Excellent	Unsatisfactory
Delivery Date	Excellent	Satisfactory	Excellent	Unsatisfactory

Agency Report, Tab 26, Business Clearance Memorandum, May 17, 1999, at 7-8.

The agency considered four scenarios in making its best value determination based on combinations of two tugs per offeror or one tug each. Because Alpha's new-build tug was technically unacceptable, the tradeoff decision was made between awards of both tug charters to Thames or award of one charter to each offeror for the existing tugs.

In making the best value recommendation, the source selection evaluation board and the contracting officer considered that each offeror's existing tug was rated overall "excellent" because of its superior technical abilities and the early delivery dates.³ They also recognized that an award of both charters to Thames represented a cost of [deleted], while an award of one charter to each offeror represented a cost of \$6,000,229, a difference of [deleted]. They found that the technical benefits associated with Alpha's true-tractor tug outweighed the additional costs the government would incur over the life of the contract. Agency Report, Tab 27, Best Value Scenario Report, at 2-4. Based on his review of the technical evaluation, the source selection authority (SSA) accepted the board's recommendation and determined that awards to Thames and Alpha for their existing tugs represented the best value to the government. Agency Report, Tab 28, Source Selection Memorandum.

³ Thames's existing tug was to be delivered within 30 days of the (May 28, 1999) contract award and Alpha's existing tug was to be delivered by August 1, 1999. Thames's new-build tug was to be delivered by February 11, 2000. Agency Report, Tab 18, Business Clearance Memorandum, Apr. 20, 1999, at 5.

After receiving notice of the award and a debriefing, Thames filed this protest. Thames contends that the technical evaluation of Alpha's proposal was flawed and does not support the award determination.

Where there is a challenge to the evaluation of proposals in a negotiated procurement, it is not the function of our Office to evaluate the proposals de novo. Rather, we will examine an agency's evaluation only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit of competing proposals is primarily a matter within the contracting agency's discretion. Advanced Tech. and Research Corp., B-257451.2, Dec. 9, 1994, 94-2 CPD ¶ 230 at 3; Information Sys. & Networks Corp., B-237687, Feb. 22, 1990, 90-1 CPD ¶ 203 at 3. An offeror's mere disagreement with the judgment of the evaluators does not render the evaluation unreasonable. Medland Controls, Inc., B-255204, B-255204.3, Feb. 17, 1994, 94-1 CPD ¶ 260 at 3. Based on our review of the record, the evaluation at issue was reasonable and was conducted in accordance with the stated criteria.⁴

Thames first argues that Alpha's proposal failed to provide sufficient technical information to support a valid evaluation because it simply provided blanket statements of compliance with the requirements. In Thames's view, reliance on this information was inconsistent with the RFP. We disagree. A contracting agency is responsible for evaluating the data submitted by an offeror and ascertaining if it provides sufficient information to determine the acceptability of the offeror's item; we will not disturb this technical determination unless it is shown to be unreasonable. SAIC Computer Sys., B-258431.2, Mar. 13, 1995, 95-1 CPD ¶ 156 at 8.

Contrary to Thames's view, the RFP did not require that offerors submit detailed technical information with their proposals. Instead, the RFP specifications provided that tug owners were to "warrant" that their vessels were in "full conformity with the [stated] specifications" including the performance specifications which formed the basis of the technical evaluation. RFP § C3. Section L of the RFP provided that proposals were to include "[a]dequate technical information to conduct a technical evaluation [and] [a]t a minimum it shall individually address each requirement outlined in Article C3." RFP § L12(b). Alpha's proposal followed this guidance.

⁴ While both offerors proposed two tugs, all of which were evaluated by the agency, the protester challenges only the evaluation of the Alpha tug selected for award. Thus, our discussion of the evaluation will concern only Alpha's existing C-Tractor 6 tug and Thames's new-build tug.

In addition to attachment J-2, which provided “tug particulars,”⁵ Alpha provided detailed drawings of its tug (showing fendering, location of equipment, deck plans, and how the tug would be used in handling submarines); discussed the advantages of its true-tractor design with a separate discussion on the skeg design; and addressed each of the specifications with the statement that its tug “meet[s] this requirement” and “exceed[s]” the requirements of five of the specifications including SHP, minimum range/endurance, sewage, wind/sea state, and firefighting. Alpha Proposal Tabs 4, 5, 7. The proposal also stated that the C-Tractor 6 was currently in operation providing tug support services at a Navy installation in San Diego, California. Alpha Proposal, Tab 5. Taken together, this information provided sufficient technical information on which the agency could reasonably base its evaluation that Alpha’s tug met and significantly exceeded the requirements of the RFP.

Thames’s argument that its proposal provided relatively more technical information does not provide any basis to conclude that the agency’s evaluation of Alpha’s proposal was unreasonable. In this regard, while Thames’s proposal included a J-2 attachment, engine specification sheets for its new-build tug, and a narrative paragraph for each requirement, its drawing was less detailed than Alpha’s and showed only a single profile of the vessel. Moreover, although it did discuss each of the specifications, in general these narratives simply reiterated the specification itself, sometimes with a representation of specific attributes of the existing tug and the new-build tug. For example, with regard to navigation and communications equipment, the RFP stated that each tug had to have the minimum equipment required by the U.S. Coast Guard for international waters and then listed a two-way radio, radar, and navigation equipment with stated ranges. RFP § C3.1(f)(xii). Thames’s proposal stated that “[t]he tugs are equipped with navigational and communication equipment exceeding both the Solicitation and U.S.C.G. requirements” and identified equipment on the existing tug. Thames Proposal, Tug Characteristics, at 4. Similarly, the RFP called for the tugs to be equipped with 7-inch kevlar and equivalent sufficient synthetic lines and wires and associated equipment to safely and efficiently perform the services listed in the charter. RFP § C3.1(f)(xi). Thames’s proposal represented that its “tugs are equipped with both 7 inch kevlar and equivalent synthetic working lines to perform the required services” as well as equipped with certain towing wire. Thames Proposal, Tug Characteristics, at 4. In our view, since Thames’s “detailed” information essentially repeated the specified requirements and/or simply represented certain specific attributes that its

⁵ Tug particulars included specific information on ownership, dimensions of the tug, propulsion including SHP, transit speed, fuel consumption and capacity, and equipment.

new-build tug would possess, its proposal was substantially the same as a blanket representation of compliance.⁶

Thames next argues that the evaluators failed to specifically consider Alpha's ability to perform different types of missions because they focused only on the tug's capabilities. Section M of the RFP identified two subfactors under the tug utility and flexibility factor: (a) ability of the tug to perform more than one type of mission and (b) ability of the tug to perform in excess of requirements. RFP § M1.2(b)(ii)A. Thames contends that the evaluators' consideration of the tugs' capability should have been relevant only to the question of whether the proposed tug exceeded requirements under the second subfactor. We disagree. The key inquiry for the evaluators for both subfactors is the tug's capability. Thus, when an evaluator finds that a tug possesses certain characteristics, it logically follows that it can perform a mission that requires these characteristics and it is evaluated under the first subfactor. Where a recognized capability exceeds the requirements, it is then evaluated under the second subfactor. Thus, focusing on the tug's capability is part and parcel of the evaluation of the proposal under the tug utility and flexibility factor.

Contrary to Thames's position, the evaluation record supports the finding that the evaluators considered Alpha's ability to perform various missions. Each individual evaluation worksheet contained a list of the different missions to be evaluated: towing, docking, ship assists, firefighting, personnel transport, handling of different types of watercraft, and emergency response. It is plain from the worksheets that the evaluators considered these. For example, one evaluator noted that the fendering drawings submitted with Alpha's proposal, along with relevant past performance information, "provide great assurance that Alpha Marine's tugs offer excellent flexibility to handle the full array of Naval water craft." Agency Report, Tab 14. The same evaluator noted that the true-tractor design had "some maneuverability advantages over tractor-like tugs [and] [e]xceeded [the minimum

⁶ Thames also makes the argument that the RFP's statement of minimum technical requirements constitute definitive responsibility criteria and, because the awardee did not furnish "objective evidence" reflecting the minimum requirements, the agency should not have evaluated Alpha's tug as "excellent." This argument is misplaced. A definitive responsibility criterion is a specific objective standard that has been established by a procuring agency in a solicitation to measure an offeror's ability to perform--such as a requirement for 5 years of specific experience--with which an offeror must be found to comply as a precondition to receiving award. Clamshell Bldgs., Inc., B-250520, Dec. 11, 1992, 92-2 CPD ¶ 408 at 2. Specifications of minimum technical requirements do not establish standards relating to an offeror's ability to perform the contract; rather, they describe the item offerors are to furnish if they are awarded the contract. Here, the minimum technical requirements are specification requirements, not definitive responsibility criteria. Id.

SHP], minimum transit speed and firefighting capability.” Id. While the evaluator did not specifically state that these capabilities translated into the tug’s ability to perform specific missions, that conclusion follows from the evaluator’s having listed these comments on the evaluation worksheet dealing with the first subfactor. Two other evaluators who rated Alpha’s tug as “excellent” under this subfactor, annotated the list of different missions indicating the tug’s ability to perform all identified missions. One of these evaluators specifically noted that the “true-tractor, skeg & crane makes [the tug] much more flexible” and concluded that it could “more than adequately meet mission req[uiirements].” Id.

While the protester seeks to contrast Alpha’s proposal with Thames’s specific examples of capability to perform more than one type of mission, we note that its examples for its new-build tug are merely representations based on past performance with other tugs. In this regard, Alpha also provided examples of previous successful missions in personnel transport, ocean-towing, hurricane anchorage transport, firefighting, and operations during storm conditions. Although these references do not concern the C-Tractor 6, they concern similarly designed tugs operated by the contractor. Since both offerors’ relied on the past mission performance of other tugs, we see no appreciable difference in the agency’s consideration of the offerors’ information in this regard in its evaluation of both proposals.

Thames next argues that the evaluation and award determination failed to take into account those aspects of the protester’s new-build tug that exceeded comparable aspects of Alpha’s tug under the ability to perform in excess of requirements subfactor. For example, Thames’s new-build tug would feature an SHP exceeding Alpha’s by [deleted] horsepower and a bollard pull exceeding Alpha’s by [deleted] pounds. Protester’s Comments at 11. The Navy acknowledges these differences but overall determined that the combination of advantages associated with Alpha’s tug made it a better value than Thames’s new-build tug.

In making this determination, the agency considered that Alpha’s true-tractor tug, steered and driven from the bow, was better suited for work under this charter where quick position changes, orientation, and immediate response to the tug pilot were required to meet the RFP requirements. The agency noted that the tug’s quick response, smaller turning circle, and direct steering would be very beneficial in placing submarines in dry-dock. The agency also noted that the curved shape of the Alpha tug’s skeg enabled it to fit snugly against the hulls of submarines, providing for tight handling of those vessels. In addition, since this aspect of the tug’s fendering was at the aft end of the tug, it was less prone to being removed by the expected ice conditions in the port. Further, the agency noted that Alpha’s tug had a firefighting capacity of [deleted] gallons per minute higher than that required by the RFP, and that its transit speed of [deleted] knots at 80 percent SHP, faster than the 10-knot requirement, would allow for faster transits to and from work sites. Agency Report, Tab 27, Best Value Scenario Report, ¶¶ 7(a), 7(b). While not specified in the source selection narrative, Alpha’s offer of a [deleted], which could be used for additional

missions such as [deleted], was also deemed an added value by the agency. Agency Report at 11.

Price/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the established evaluation factors. Dawco Constr., Inc., B-278048.2, Jan. 2, 1998, 98-1 CPD ¶ 32 at 3. Here, the agency recognized that an award of both tug charters to Thames would result in a higher combined SHP and bollard pull, at a savings of [deleted] over 5 years. However, the agency determined that the extra horsepower was not necessary to successfully meet the RFP requirements. It took into account the fact that awarding charters to both Thames and Alpha resulted in the quickest delivery of two technically superior tugs, whose combined SHP and bollard pull exceeded the minimum requirements of the RFP. In the agency's judgment, the extra maneuverability of Alpha's true-tractor tug was more important than the extra SHP and bollard pull available with Thames's new-build tug. Agency Report, Tab 27, Best Value Scenario Report, ¶ 5.⁷ The RFP evaluation scheme specifically contemplated award at a higher cost where a tug was offered with increased mission capability or early delivery, and Alpha's tug met both of these considerations. Under these circumstances the SSA's award determination was reasonable and unobjectionable.

Our conclusion is not changed by Thames's argument that Alpha's and the agency's contrast between true-tractor and reverse-tractor tugs was misleading. In this regard, Thames submitted information from a consultant in support of its position that its reverse-tractor tug uses the same type of adjustable drives as Alpha, which permit it to operate with turning circles and tug responses that are nearly identical, the only difference being the pivot point. Declaration of Captain Robert L. Hempstead, July 26, 1999, ¶¶ 8-9. However, the agency also submitted information regarding the difference in the two:

“Reverse tractor” is a term coined to take advantage of the current elite status of tractors for use in escort service. Five years ago they would have been described as conventional tugs with Z-drive propulsion. Now, as these “reverse” tractors are designed to go into the “indirect towing” mode, they are advertising themselves as full tractors. As with

⁷ Thames also questions the validity of the evaluation based on the agency's use of language from Alpha's proposal in its source selection documentation to support the selection decision. The contracting officer states that he included the language because he “thought the rationale provided by Alpha . . . was well written and seemed to encompass most of the evaluators' individual comments.” Declaration of Contracting Officer, Aug. 4, 1999, ¶ 10. Based on our review of Alpha's proposal, the source selection and evaluation documents, we see nothing improper in the agency's action.

most tug designs though, all things are never exactly the same and when we cut through the marketing hype, we find that most current reverse tractors cannot create indirect forces as well as true tractors. They are really a compromise design trying to maximize the performance of a conventional hull.

CAPTAIN GREG BROOKS, TUGS AND SHIPHANDLING (1997), quoted in Agency Supplemental Report at 6-7. In view of this difference of professional opinion, we have no basis to conclude that the agency was unreasonable in its evaluation of true-tractor tugs as more advantageous than reverse-tractor tugs. The protester's contrary view simply constitutes disagreement with the judgment of the evaluators, which does not render the evaluation unreasonable. Medland Controls, Inc., *supra*.

The protest is denied.

Comptroller General
of the United States