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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Ballast Ham Dredging BV

File: B-291848

Date: April 4, 2003

Simon Boon for the protester.
Joseph A. Gonzales, Esq., Department of the Army, for the agency.
John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's evaluation of the protester's proposal as marginal under certain evaluation factors and selection of the awardee's higher-rated, slightly higher-priced proposal for the award of a contract for dredging were reasonable and consistent with the terms of the solicitation.

DECISION

Ballast Ham Dredging BV protests the award of a contract to Van Oord ACZ Marine Contractors BV, under request for proposals (RFP) No. DACW01-02-R-0067, issued by the Army Corps of Engineers, for maintenance dredging of the access channel to the Port of Guayaquil, Ecuador. Ballast Ham argues that the agency's evaluation of its proposal, and the selection of Van Oord's higher-priced proposal for award, were unreasonable.

We deny the protest.

The RFP provided for the award of a fixed-price contract for the dredging to be completed within 540 days. The successful contractor will provide all equipment, materials, and personnel to complete the dredging and dispose of the dredged materials in accordance with the terms of the RFP. The solicitation stated that award would be made to the offeror whose proposal represented the best value, considering price and the following evaluation factors listed (with one exception) in descending order of importance: specialized experience on similar type work; dredging equipment; dredging approach; key personnel experience and

qualifications; organization; and preliminary project schedule.[1] The RFP advised that to determine the "best value" proposal for award, the agency would consider all evaluation factors combined (other than price) equal in importance to price.

The RFP included detailed instructions for the preparation of proposals, and requested that proposals include separate sections addressing each of the stated evaluation factors. The solicitation added that the agency intended to award a contract without conducting discussions and therefore offerors' initial proposals should contain their best terms with regard to both price and technical submissions.

The agency received six proposals by the closing date. The proposals were reviewed, and clarification questions were provided to the offerors. Van Oord's proposal was evaluated as "above average," with an identified "advantage," under both the specialized experience on similar type work and dredging equipment factors, and "satisfactory" under the dredging approach, key personnel experience and qualifications, organization, and preliminary project schedule factors, at a price of $13,245,597.[2] Ballast Ham's proposal was also evaluated as "above average," with an identified "advantage," under both the specialized experience on similar type work and dredging equipment factors, and "satisfactory" under the key personnel experience and qualifications and organization factors; however, this proposal was rated "marginal," with one "significant weakness," under the dredging approach factor and "marginal," with two "deficiencies," under the preliminary project schedule factor, at a price of $12,872,087. AR, Tab I, Source Selection Evaluation Board (SSEB) Report, Dec. 5, 2002, at 1-3; attachs., Revised Consensus Evaluation Sheets, Van Oord's and Ballast Ham's Proposals.

In considering the evaluation results, the source selection authority (SSA) and SSEB noted that the proposals submitted by Van Oord and two other offerors were technically acceptable or better as initially submitted, while the proposals of Ballast Ham and the remaining two offerors had deficiencies and/or weaknesses, such that "discussions would be necessary to allow them to bring their offers into compliance with the Solicitation." The SSA also noted that Van Oord's proposal was evaluated as above average with advantages under the two most important evaluation factors (specialized experience and dredging equipment), and that it had offered a "highly competitive" price (only 3 percent higher than Ballast Ham's price). With regard to Ballast Ham's proposal, the SSA found that while it was the lowest-priced proposal, and like Van Oord's proposal had received "above average" ratings under the two most important evaluation factors, the proposal contained one significant weakness and two deficiencies that would need to be addressed through discussions. The SSA ultimately concluded that because of Van Oord's initial proposal's highly competitive

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[1] The dredging equipment and dredging approach factors were equal in importance.

[2] In accordance with the solicitation, the proposals were evaluated under the evaluation factors as outstanding, above average, satisfactory, marginal, or unsatisfactory.

price, "above average" ratings under the two most important technical evaluation factors, and lack of any weaknesses or deficiencies, award should be made to Van Oord without discussions as the offeror submitting the proposal representing the best value. AR, Tab H, Source Selection Decision, at 1-3.

Ballast Ham protests that the agency's evaluation of its proposal as containing a significant weakness under the dredging approach factor and two deficiencies under the preliminary project schedule factor was unreasonable, and that given its proposal's low price and "above average" ratings under the two most important evaluation factors, it should have been selected for award as representing the best value.

In reviewing an agency's evaluation of proposals, we will not reevaluate them, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation factors and applicable statutes and regulations. J.A. Jones/IBC Joint Venture; Black Constr. Co., B-285627, B-285627.2, Sept. 18, 2000, 2000 CPD ¶ 161 at 3.

With regard to dredging approach, the RFP requested that each offeror's proposal provide "a narrative describing your approach to dredging," to include, for example, descriptions of "the resources available and to be utilized to perform the work." RFP at 00110-1, ¶ 2.2.l. The RFP informed offerors that proposals would be evaluated to determine "the extent and adequacy of their understanding of the Solicitation requirements," including "the approach to carrying out the required maintenance dredging activities in an efficient and timely manner." RFP at 00120-2, ¶ 3.2.1.

In the dredging approach section of its proposal, Ballast Ham stated that "[t]he available information from site investigations indicates that the soil to be dredged is ranging from medium to fine sands up till very soft clay, with specific gravity ranging from between $1.3^t/m^3$ and $1.9^t/m^3$"--that is, the material to be dredged weighs between 1.3 and 1.9 tons per cubic meter. The protester's proposal continued here by stating that "[t]he selected dredging equipment shall be capable of dredging these types of soil and within the time limits stipulated in the Contract Documents." AR, Tab S, Ballast Ham's Proposal, at 38.

In evaluating Ballast Ham's proposal, the agency referred to the above-quoted statements, and determined that, before it could receive award, Ballast Ham would have to "explain the accuracy of the information" regarding the materials to be dredged, as well as "the expected impact on the contract if the materials fall outside these limits." AR, Tab I, SSEB Report, Dec. 5, 2002, attach., Revised Consensus Evaluation Sheet, Ballast Ham's Proposal, at 1. The agency explains that it was concerned that Ballast Ham's reference to the materials that firm believed were to be dredged, and the indication that it had selected its equipment and dredging approach based upon this belief, constituted an impermissible "limitation" on its equipment's "capabilities . . . qualifying the type of dredge material that the offeror would agree to

remove, and establishing grounds for a potential claim." AR at 4. Because of this, the agency evaluated Ballast Ham's proposal under the "dredging approach" factor as "marginal" with a "significant weakness." AR, Tab I, SSEB Report, Dec. 5, 2002, attach., Revised Consensus Evaluation Sheet, Ballast Ham's Proposal, at 1.

Ballast Ham asserts that the agency's concern here is unreasonable, and that the notation was merely a "summation of the soil information . . . contained in the Bid documentation." Protest at 2. The protester explains in this regard that it had "extrapolated the physical characteristics of the material" to be dredged from the information included in the solicitation, and had used that data in preparing its proposal. Ballast Ham points out that in any event its proposed dredge is capable of removing materials "up to $2.1^{t}/m^{3}$." Protester's Comments at 2.

In our view, the agency reasonably determined that the references in Ballast Ham's proposal to the materials to be dredged by metric ton (which was not included in the solicitation), and the statement that its equipment and approach would allow it to remove "these types of soil and within the time limits stipulated in the Contract," could reasonably be construed to be a limitation on what the contractor was capable of performing or bound to perform within the scope of the contract. Although the protester's assertion that its dredge is capable of performing the contract appears accurate, and it contends that the references in its proposal were not meant as limitations but were simply informational references, the fact remains that this assertion and explanation were not included in the protester's proposal. As such, we do not object to the agency's evaluation of Ballast Ham's proposal as "marginal" with a "significant weakness" under the dredging approach factor.

With regard to the preliminary project schedule section, the RFP instructed offerors to include a "narrative, describing [their] scheduling capability and planning organization." RFP at 00110-4, ¶ 2.3.4.1. Offerors were also instructed to address how they planned to maintain, update and use their schedules, and to "[d]escribe the equipment and software/hardware" that they intended to use for scheduling. Id. Offerors were also requested to "[s]ubmit a preliminary schedule for dredging." RFP at 00110-4, ¶ 2.3.4.2. In this regard, the solicitation identified five "reaches" (or sections) of the channel to be dredged, and specifically requested that the submitted schedules "[s]how the dredging time for each of the reaches identified." RFP amend. 1, at 00110-4, ¶ 2.3.4.2.2 (emphasis deleted). With regard to the evaluation of proposals, the solicitation provided, among other things, that "[t]he Offeror must submit the requested information" and "demonstrate an effective understanding of the schedule logic, activities, and constraints necessary to complete dredging, within the required performance period." RFP at 00120-3, ¶ 3.2.6.

The preliminary project schedule section of Ballast Ham's proposal consisted of only a one-page "PRELIMINARY TIMESCHEDULE" chart, depicting seven tasks and the number of days scheduled to complete each task described. For example, the schedule included the tasks of "mobilisation" and "dredging works," and scheduled

42 and 182 days, respectively, for the completion of these tasks. AR, Tab S, Ballast Ham's Proposal, at 142.

As mentioned previously, the agency evaluated Ballast Ham's proposal as "marginal" with two deficiencies under the preliminary project schedule factor, specifically noting that the proposal "failed to address" the requirement for a narrative describing Ballast Ham's scheduling capability, planning organization, and the equipment and software/hardware it intended to use, and that the schedule "failed to show the time for dredging each of the Reaches identified" in the solicitation for dredging as required. AR, Tab I, SSEB Report, Dec. 5, 2002, attach., Revised Consensus Evaluation Sheet, Ballast Ham's Proposal, at 3.

While conceding that nowhere in its proposal does it describe the equipment and software/hardware that it intended to use for scheduling, the protester asserts that the narrative sought by the agency with regard to scheduling was provided in other sections of its proposal. In support of this assertion, the protester points to the "dredging approach" section of its proposal, which provides in part that after notice of award "[t]he project staff will start making final planning's, work preparations and work plans," and the "organization" section of its proposal, which provides in part that Ballast Ham's proposed "works manager" will be involved in "[p]lanning and progress control." Protester's Comments at 2-3; AR, Tab S, Ballast Ham's Proposal, at 40, 62. Similarly, the protester, while conceding that its proposal did not "[s]how the dredging time for each of the reaches identified" in the solicitation as required, asserts that the "dredging approach" section of its proposal effectively met this requirement with regard to 98 percent of this work by stating that "the actual dredging will start from the Oceanside of the channel, working towards the port" and that "[t]he total channel will be dredged in sections about two-kilometer[s] length." AR, Tab S, Ballast Ham's Proposal, at 43.

The agency explains that it was aware that Ballast Ham had included information bearing on its preliminary project schedule in other sections of its proposal, but that in its view, this information was insufficient. The agency adds that the Ballast Ham's proposal does not, in any section, address the equipment and software Ballast Ham intends to use for scheduling, nor does it explain how Ballast Ham would maintain, update, or use the schedule as required by the solicitation. AR at 5.

As described above, the record demonstrates that Ballast Ham's proposal omitted required information with regard to the preliminary project schedule. Additionally, the information actually provided was sparse and was not presented in a manner consistent with the RFP's instructions. As such, the agency's evaluation of Ballast Ham's proposal under the "preliminary project schedule" evaluation factor as marginal with two deficiencies was reasonable.[3]

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[3] Ballast Ham argues for the first time in its comments that the agency "should have sought further clarification before awarding the Contract." Protester's Comments at 1. The agency's written debriefing of December 18, 2002, included the agency's

Based upon its contention that its proposal was unreasonably evaluated, Ballast Ham finally challenges the agency's award determination. As explained above, we believe that the agency's evaluation of Ballast Ham's proposal was reasonable. Because the agency in its source selection document reasonably explained why Van Oord's slightly higher-priced, higher-rated proposal represented the best value, Ballast Ham's contentions here provide no basis for overturning the award determination. Matrix Int'l Logisitics, Inc., B-277208, B-277208.2, Sept. 15, 1997, 97-2 CPD ¶ 94 at 14.

The protest is denied.

Anthony H. Gamboa
General Counsel

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consensus evaluation sheets for Ballast Ham's proposal. Ballast Ham was thus aware of the precise ratings, weaknesses, and deficiencies identified by the agency in its evaluation of Ballast Ham's proposal at that time, and should have raised its argument regarding "further clarifications" in its initial protest to our Office. Ballast Ham's protest on this basis, raised for the first time in its February 19, 2003 comments on the agency report, is therefore untimely. 4 C.F.R. § 21.2(a)(2) (2003); Wilderness Mountain Catering, B-280767.2, Dec. 28, 1998, 99-1 CPD ¶ 4 at 7. In any event, the record indicates that Ballast would have had to provide additional information (such as its approach to project scheduling and the equipment and hardware/software it would use) in order to address the agency's evaluated concerns. Allowing Ballast to so revise its proposal or provide additional information to address these concerns could not have been accomplished through clarifications, but rather, would have constituted discussions. J.A. Jones/IBC Joint Venture; Black Constr. Co., supra, at 5.