



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

REDACTED DECISION

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Matter of: Shilog Limited, Inc.

File: B-261412.4

Date: November 8, 1995

Michael E. Krasnow, Esq., for the protester.

James S. Phillips, Esq., for W. S. Darley & Company, an interested party.

Sandra D. Baker Jumper, Esq., and Neil Hirsch, Esq., Department of the Navy, for the agency.

Behn Miller, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that contracting agency improperly evaluated proposals using unstated evaluation factor is denied where area considered--benefits offered by smaller-sized pump unit--was part of the specified design evaluation factor.
 2. Protest that agency failed to hold meaningful discussions with protester is denied where record shows that agency reasonably led protester into the areas of its technical proposal that were deficient.
 3. Protest challenging agency's downgrading of proposed pump exhaust system is denied where the record shows the protester's competitive position was not prejudiced by this alleged error.
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DECISION

Shilog Limited, Inc. protests the award of a contract to W. S. Darley & Company under request for proposals (RFP) No. N00104-94-R-D014, issued by the Department of the Navy for portable emergency firefighting centrifugal pumps and associated special tool kits for use in damage control, dewatering, and firefighting operations on Navy ships. Shilog contends that the Navy improperly evaluated proposals under an unstated design factor which resulted in an improper upgrading of the awardee's technical proposal. Shilog also challenges the agency's technical evaluation of its proposed corrosion protection features and exhaust system as unreasonable and further alleges that the Navy never gave the firm an adequate opportunity to remedy these alleged deficiencies.

We deny the protest.

The RFP was issued on May 2, 1994, as a total small business set-aside and contemplated the award of a fixed-price, indefinite quantity contract for a base year and 4 option years to the offeror proposing the "best value" offer, based on a combination of price and technical factors specified in the RFP.¹

In addition to a price proposal, offerors were required to submit a detailed technical proposal which was to include acceptance test plan reports demonstrating compliance with various technical requirements set forth in the RFP's "Purchase Description," sample technical manuals, quality assurance plans, milestone production schedules, corrosion protection standards, and offered warranties. The RFP provided that technical proposals would be evaluated under the following five technical evaluation criteria, which were listed in "relative order of importance" in the RFP: (1) Corrosion Protection; (2) Performance; (3) Design; (4) Supportability; and (5) Quality Management.

As specified in the RFP, the Navy required a fire pump composed of commercial products or commercial-type products to replace the existing P-250 fire pump model currently used in the fleet. The RFP advised offerors that while the Navy's minimum technical needs were enunciated in the statement of work set forth in the "Purchase Description" at Section C of the RFP, in fact "[t]he government's needs are greater than that defined in section C; and therefore, offerors are encouraged to propose pump units which will yield improved performance."

On the November 2 closing date, offers were received from three offerors, Darley, Mechanical Equipment Company (MECO), and Shilog. On November 21, the contracting officer requested a size determination from the Small Business Administration (SBA) to ascertain Shilog's eligibility for award. On December 16, the SBA determined that Shilog did not qualify as a small business for this procurement; consequently, the contracting officer advised Shilog that its offer was unacceptable.

By separate letters dated December 21, the contracting officer advised Darley and MECO that the agency would conduct discussions with each offeror regarding various topics which were outlined in the letters. After conducting discussions with Darley and MECO, both offerors were asked to submit best and final offers (BAFO) by February 10, 1995.

¹The RFP set forth an estimated yearly quantity of 800 pumps and 360 special tool kits. The maximum quantity which the Navy could order was 4,000 pump units and 1,800 special tool kits; the minimum quantity was established at 500 pump units.

On February 13, the SBA Office of Hearing and Appeals issued a redetermination opinion which held that Shilog was in fact a small business. That same day, the Navy reinstated Shilog in the competition and proceeded to schedule discussions with Shilog. Of significance to this protest, the Navy asked Shilog to

"provide verification in your [BAFO] submission that the pump unit subjected to Acceptance Testing is the pump unit proposed. In particular, [were] the proposed corrosion protection features included in, or applied to, the pump unit tested?

". . . . Request you provide in your [BAFO] submission information on the maximum operating temperature for the Viton o-ring seals used in the exhaust hose couplings."

On February 28, after completing discussions with Shilog, the Navy received BAFOs from all three offerors. On March 10, the Navy amended the RFP to "encourage" all offerors to submit a sample fire pump for "visual inspection." Shilog advised the contracting officer that it had removed the "guts" of the model it had prepared for testing so that revisions could be made for an upcoming trade show, and therefore the tested prototype model was no longer technically functional. The contracting officer responded that the pump was only required for visual inspection; Shilog then submitted a "gutted" model to the agency.

Prior to the request for samples, the Navy had rated Shilog's proposal as "satisfactory" under each technical evaluation factor. However, after its visual inspection of the submitted sample, the Navy became concerned about the corrosion protection features of Shilog's model, even though Shilog had submitted independent tests demonstrating full compliance with these requirements. In addition, the Navy decided that the packaging requirements set forth in the RFP needed to be revised.

As a result, on April 6, the contracting officer issued three separate facsimiles which identified brief agendas and topics for a subsequent round of discussions which were held with each offeror by telephone that afternoon. Each discussion letter began with the following introduction:

"All proposals indicate that corrosion has been considered, however, for some offerors, there is insufficient description of the materials, e.g., alloy, ASTM specifications, etc. All offerors are afforded an opportunity with their [BAFO] to submit any additional information they wish in the area of corrosion protection materials used on the pump units offered."

With regard to technical deficiencies in Shilog's proposal, the Navy set forth the following two specific concerns for Shilog to respond to

"Request you provide data to demonstrate the MIL-C-81751B coating will resist disbonding when used to coat pump interior surfaces, and to particularly provide evidence that the agent applying the coating has proven experience with the coating, and if it fails, to provide the particle size of the failed coating.

"Request you verify satisfactory compliance with the requirements (Section C-4.5., para[graph], C-4.5.2.) for maximum allowable exhaust hose outer surface temperature."

On April 13, each of the three firms submitted a second BAFO. At the conclusion of the technical evaluation, the proposal evaluation panel (PEP) rated the technical proposals as follows for each of the technical evaluation factors:

<u>Evaluation Factor</u>	<u>Darley</u>	<u>MECO</u>	<u>Shilog</u>
Corrosion Protection	Outstanding	Good	Not Technically Acceptable
Performance	Good	Good	Not Technically Acceptable
Design	Outstanding	Satisfactory	Satisfactory
Supportability	Satisfactory	Satisfactory	Satisfactory
Quality Management	Good	Satisfactory	Satisfactory

Of significance to this protest, the record shows that after evaluating Shilog's second BAFO, the PEP downgraded Shilog's ratings of "satisfactory" for both the Corrosion Protection and Performance factors to ratings of "not technically acceptable."

After the contract award review panel (CARP) reviewed both the PEP's and cost evaluation panel's (CEP) findings, the CARP recommended Darley for award, primarily as a result of the following three findings. First, the CARP placed a very high value on Darley's offered corrosion protection features--the most important technical factor. Next, the CARP determined that Darley's proposed pump design was extremely advantageous to the agency because its smaller size enabled it to be stored in the existing shipboard stowage containers which had been used to house the predecessor fire pump model, the P-250; this feature allowed the Navy to save

substantial stowage container modification costs which otherwise would have been required for a larger-sized model. Finally, the CARP determined that Darley's quality plan and warranty plan provided a potential cost savings to the Navy. As a result of these three strengths, the Navy determined that Darley's offer warranted paying a \$252,820 price premium.²

On May 4, the Navy advised all offerors that the contract would be awarded to Darley. On May 15, Shilog filed this protest, which was supplemented on July 5, after Shilog received the agency report responding to its May 15 filing.³

PROTESTER'S CONTENTIONS

Shilog contends that the Navy evaluated technical proposals under an evaluation factor that was not specified in the RFP. Shilog also contends that the agency's evaluation of Shilog's offered corrosion protection features was unreasonable since--according to the protester--the Navy failed to apprise Shilog of technical deficiencies in this aspect of its proposal. Finally, Shilog contends that the Navy improperly evaluated the performance features of its proposed pump.

DISCUSSION

Design Evaluation

As discussed above, the record shows that the Navy substantially upgraded Darley's proposal under the Design evaluation criterion--and in fact, considered the smaller size of Darley's proposed pump to be a substantial strength--in part because the smaller dimensions of Darley's proposed pump resulted in significant cost savings to the agency with regard to stowage container modifications. Specifically, because Darley's pump would fit into the stowage containers used by the fleet to house the predecessor pump model, the Navy calculated that it would save approximately \$2.8 million in costs which otherwise would be required to modify the stowage containers to house a larger-sized pump model. The Navy also concluded that Darley's smaller pump size rendered its model more readily transportable and advantageous for use in the smaller passageways of a shipboard environment.

²Darley's offered price was \$20,773,540; MECO's offered price was \$20,520,720. Shilog's offered price was \$17,998,215.

³On May 18, MECO--the second ranked offeror--filed a protest against the Darley award and technical evaluation which we denied by decision dated September 29. Mechanical Equip. Co., B-261412.3, Sept. 29, 1995, 95-2 CPD ¶ ____.

In its protest, Shilog argues that the Navy applied an unstated evaluation criterion--smaller pump size--in evaluating Darley's proposed pump, and that had the Navy's preference for a smaller-sized pump been disclosed to all offerors, Shilog would have proposed a smaller-sized pump design.

It is a fundamental rule of federal procurement that an RFP adequately inform all offerors of the basis for evaluation of proposals, and that the subsequent evaluation be based on the evaluation scheme set forth in the RFP. Global Plus, B-257431.9, Dec. 14, 1994, 95-1 CPD ¶ 77. In this case, we conclude that the RFP adequately informed offerors of the agency's preference for a smaller-sized pump model. First, as noted above, the RFP encouraged offerors to propose pump models with features that surpassed the minimum needs specified in the RFP. More specifically, the "Design" factor provided the following evaluation guidelines in the RFP:

"Design will be evaluated based on the extent the offeror provides documentation that demonstrates superiority in areas such as, but not limited to, those identified below:

"a. Weight - Consideration will be given to units that weigh less than that specified in Section C

"b. Size - Consideration will be given to units that are smaller in size than that specified in Section C

"c. Portability - Consideration will be given to units that are more ergonomically suited for a shipboard environment." (Emphasis added.)

Although it is true that the RFP did not specify the substantial cost savings which would inure to the Navy as a result of a smaller-sized pump model, given the above language which encouraged offerors to propose a pump model that was "superior" to the minimum specifications set forth at section C and "more ergonomically suited" for shipboard use, as well as the express notation that "[c]onsideration" would be given to smaller-sized units, we think the RFP design factor placed offerors on notice that smaller-sized pump models would receive a more favorable technical evaluation. As a result, we conclude that the Navy properly considered the advantages associated with a smaller-sized model in its evaluation of Darley's proposal.

Corrosion Protection

Section 3.7 of the RFP--Corrosion Protection--required that all components of the proposed pump unit exposed to seawater or sea air be constructed of corrosion resistant materials or treated in accordance with commercial corrosion protection/control specifications. As noted above, the record shows that the Navy

downgraded Shilog's proposal from a "satisfactory" to a "not technically acceptable" rating under the Corrosion Protection factor, based on the Navy's evaluation of Shilog's sample and subsequent BAFO submissions.

In its protest, Shilog contends that the agency improperly downgraded its proposal under the Corrosion Protection evaluation factor. First, Shilog argues that the Navy's downgrading was unreasonable since the Navy's actions were based on its examination of a nonworking, gutted prototype model of the pump unit. Next, Shilog contends that the agency's downgrading of its proposal for alleged corrosion protection deficiencies was improper since the Navy never alerted the protester to these weaknesses.

To the extent Shilog argues that the agency's assessment of its sample was unreasonable, we find this argument unpersuasive. Shilog contends that because it advised the agency that its submitted model was a modified, nonworking version of the pump unit which had been tested, the agency was precluded from drawing negative inferences or otherwise questioning the technical properties of its proposed pump. We disagree.

Although amendment No. 0009 did provide that the agency's "inspection is limited to visual only," the amendment also specified that the purpose of obtaining the model was to examine the "Pump Unit (including any fittings)" as well as the "Exhaust Hose (2 items)." Although it was clear from the amendment that the submitted sample would not be subjected to physical testing (and thus, the amendment specifically directed offerors to "identify in writing any differences between the unit being provided for visual inspection and that offered in their proposal"), the stated purpose of the agency's request for a sample was to allow a visual examination. Consequently, the fact that this step in the technical evaluation caused the agency to question certain corrosion protection features of Shilog's offered pump which were evident from the visual examination provides no basis for objection by the protester.

Moreover, we find the PEP's concerns to be reasonably based. Initially, the PEP had rated Shilog's proposal as "satisfactory" under the Corrosion Protection evaluation factor--primarily as a result of offsetting major strengths against major weaknesses. Of significance to this discussion, the PEP awarded Shilog a "major strength" rating for the firm's selection of an aluminum pump; however, because Shilog did not detail the materials and coatings which would be used in conjunction with an aluminum based-pump model, and because Shilog's proposal indicated that the pump contained cast iron and steel fittings which require extensive corrosive protection, the PEP classified this lack of detail as a "major weakness in the protester's corrosion protection plan, resulting in a moderate risk." (Emphasis in original.) In sum, the PEP determined that while the use of aluminum as a base-line material appeared to be suitable for a marine environment, Shilog's initial proposal

nonetheless contained "a limited and incomplete demonstration" as to the exact corrosion protection features of its offered pump. However, the PEP also noted that Shilog had submitted the required acceptance test results demonstrating compliance with the testing corrosion protection standards. Consequently, despite the vague corrosion protection description, the PEP gave Shilog's initial proposal a "satisfactory" rating for the Corrosion Protection factor.

However, after examining the model submitted by Shilog, the agency became increasingly concerned about Shilog's lack of explanation regarding its proposed pump's corrosion protection features. In short, the agency began to question its initial rating of "satisfactory" under the corrosion protection factor because its examination of Shilog's submitted physical sample indicated other troublesome pump features which were not evident from Shilog's submitted initial proposal. For example, although not stated in the initial proposal, the model submitted by Shilog revealed that the protester intended to use malleable iron piping--which, even if coated, rusts rapidly in a marine environment.

As a result of these technical concerns, the agency decided to conduct a second round of discussions. Consequently, on April 6--as noted above--the Navy issued a letter to Shilog that expressly stated "[t]he first area to be discussed is corrosion protection." Further, the letter expressly repeated the solicitation's directions that "[t]he proposal should identify and address what corrosion protection material is used on the pump units offered." In addition to the letter, the agency has submitted an affidavit from the chief PEP evaluator detailing how the Navy orally "informed Shilog that corrosion protection was the primary evaluation criteri[on] in the solicitation and of extreme importance . . . [and] invited Shilog to present any additional information necessary to show" compliance with the RFP's corrosion protection testing standards. Shilog does not dispute the Navy's account of the April 6 oral discussion session; instead, the protester asserts that merely advising it of the corrosion protection requirements of the solicitation was not a reasonable indication that there were any weakness or deficiencies in Shilog's offer. In sum, Shilog contends that neither the April 6 correspondence nor that day's oral discussions were adequate to place Shilog on notice of the corrosion protection deficiencies for which its proposal was later downgraded. We disagree.

In order for discussions to be meaningful, agencies generally must point out weaknesses, excesses, or deficiencies in proposals, unless doing so would result in disclosure of one offeror's technical approach to another offeror or in technical leveling. Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16. Agencies, however, are not required to describe deficiencies in such detail that there could be no doubt as to their identity and nature; rather, agencies are only required to reasonably lead offerors into the areas of their proposals which require amplification or correction. Son's Quality Food Co., B-244528.2, Nov. 4, 1991, 91-2 CPD ¶ 424. Accordingly, agencies are not obligated to "spoon-feed" offerors as to

what factors must be addressed in an acceptable proposal or to conduct all-encompassing discussions. Institute for Human Resources, B-246893, Apr. 13, 1992, 92-1 CPD ¶ 360.

Here, although Shilog repeatedly argues that the testing results submitted with its initial proposal should have precluded the need for any further elaboration about how its proposed model complied with the RFP's corrosion protection requirements, we think both the plain language of the April 6 letter and the oral discussions were sufficient to apprise Shilog that the Navy was unwilling to accept Shilog's submitted test results at face value. Clearly, the Navy sought further corroboration that the proffered corrosion protection testing results accurately reflected features of Shilog's proposed pump. Under these circumstances, we conclude that the Navy imparted sufficient information which should have led Shilog into the corrosion protection area of its proposal, and conveyed to Shilog that this area of its proposal required amplification. See Lucas Aerospace Communications & Elecs. Inc., B-255186, Feb. 10, 1994, 94-1 CPD ¶ 106.

Our Office will not question an agency's evaluation of proposals unless the agency deviated from the solicitation evaluation criteria or the evaluation was otherwise unreasonable. Avacelle, Inc., B-258651, Jan. 24, 1995, 95-1 CPD ¶ 41. In this case, although the protester contends that the agency improperly downgraded its proposal under the corrosion protection factor, we find no basis to challenge this aspect of the agency's technical evaluation. As discussed above, we think the lack of proposal detail coupled with the agency's examination of Shilog's sample reasonably caused the Navy to question the corrosion protection properties which Shilog intended to offer. Shilog chose to ignore the agency's April 6 discussion attempts to alert the protester to these deficiencies. Under these circumstances, we conclude that the Navy reasonably downgraded this aspect of the Shilog proposal. Id.

Exhaust System

Shilog also contends that the Navy improperly downgraded its proposal under the Performance evaluation factor. We have carefully reviewed this protest ground, and conclude that the protester has made a compelling argument that this particular aspect of the agency's technical evaluation was flawed. In short, the record contains several numerical calculation errors made by the agency which apparently--and we think, inadvertently--misled the Navy evaluators into concluding that the exhaust components of Shilog's proposed pump unit could not comply with the RFP's outer surface temperature thresholds. As a result, the Navy downgraded Shilog's proposal to a rating of "not technically acceptable" for the Performance technical evaluation factor.

Despite this alleged evaluation error, however, we will not consider this protest ground further. Prejudice is an essential element of a viable protest; consequently, we will not sustain a protest against an alleged evaluation error unless the protester was somehow prejudiced. See Square 537 Assocs. Ltd. Partnership, B-249403.2, Apr. 21, 1994, 94-1 CPD ¶ 272. In this case, the record shows that even if the Navy corrected its alleged evaluation error, and restored Shilog's initial performance factor rating of "satisfactory," Shilog would not be in line for award because it was properly found technically unacceptable under the Corrosion Protection factor. Under these circumstances, we see no basis to conclude that Shilog was prejudiced by this alleged evaluation error, and therefore deny this protest ground. AEC-ABLE Eng'g Co., Inc., B-257798.2, Jan. 24, 1995, 95-1 CPD ¶ 37.

The protest is denied.

Comptroller General
of the United States