Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Avondale Industries, Inc.

File: B-271510

Date: July 15, 1996

Theodore M. Bailey, Esq., for the protester.
Alan W. Mendelsohn, Esq., and Charles A. Johnson, Esq., Department of the Navy, for the agency.
Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency conducted meaningful discussions regarding proposed noncompliance with a safe working area requirement in the solicitation through discussion questions which explicitly advised the protester of the agency's concern in this respect.

2. Agency evaluation of the protester's proposal and subsequent decision not to grant the protester a waiver of a safe working area requirement was unobjectionable where the waiver determination was entirely a matter of agency discretion and there were other offerors, including the awardee, that met the requirement.

DECISION

Avondale Industries, Inc. protests the Department of the Navy's award of a contract to Diversified Group, Inc., under request for proposals (RFP) No. N62387-95-R-4007. The protester alleges that the Navy failed to conduct meaningful discussions and that its proposal was improperly evaluated.

We deny the protest.

The Department of the Navy, Military Sealift Command (MSC) issued the RFP on July 25, 1995, seeking proposals for a firm, fixed-price contract for a 3-year base period with 2 option years, to provide layberth facilities for two Fast Sealift Ships (FSS).[1]

The RFP provided that the technical factors were more important than price, but that price would increase in importance as the difference in the technical scores of the highest-rated offerors decreased. The technical factors were, in descending order of importance: (1) "Layberth Safety"; (2) "Layberth Location"; (3) "Facility Services"; and (4) "Past Performance."

The RFP contained a statement of work (SOW) which listed the requirements for the layberth facilities and the services to be provided under this contract. Section C-5.3. of the SOW, entitled "Safe Working Area," provided that:

> "A safe working area of one hundred feet (100) at 34' MLLW fore, aft, and outboard of the moored ships shall be provided. The berth or slip must be of sufficient width to facilitate safe docking and undocking without interference to other shipping and adequate to permit safe working of and training room for tugboats, barges, lighters, and floating cranes."

The RFP provided that the agency could permit deviations from the SOW at the government's sole discretion so long as the deviations "(1) provide the same level of safety and security, and (2) such deviation(s) is accepted at the time of contract award."

MSC received four proposals. The technical evaluation panel (TEP) evaluated the initial proposals, conducted a site survey of each proposed site, and established a competitive range of three proposals, including Avondale's. MSC then held discussions with the competitive range offerors and received best and final offers (BAFO). Avondale's proposal received a technical rating of red (unacceptable) based on the failure to offer an acceptable safe working area. Award was made to Diversified after the agency determined that Diversified's proposal was the most advantageous to the government.

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[1]The FSS transports equipment to support Army divisions during worldwide military operations. A FSS in full operational status transports equipment, such as vehicles and aircraft, by rapid point-to-point sealift. When not in operational status, the FSS remains at the layberth sites in a reduced operating status, except for brief periods for testing and repairs.

Avondale first argues that the agency did not conduct meaningful discussions in that it did not adequately explain that the 100-foot safe working area requirement was a minimum, mandatory requirement.

The requirement for meaningful discussions with offerors is satisfied by pointing out weaknesses that, unless corrected, would prevent an offeror from having a reasonable chance for award, Department of the Navy--Recon., 72 Comp. Gen. 221 (1993), 93-1 CPD ¶ 422, and an agency need only lead offerors generally into the areas of their proposals that require improvement. TM Sys., Inc., B-228220, Dec. 10, 1987, 87-2 CPD ¶ 573. Under this standard, the discussions with Avondale concerning its proposed safe working areas were meaningful. Avondale's initial proposal provided a safe working area of under 50 feet and its alternate layberthing plan appeared to provide a safe working area of only a few feet. The record reflects that the agency pointed out during discussions that in each instance Avondale's layberthing facilities failed to meet the solicitation's safe working area requirement of 100 feet and asked Avondale, "[h]ow do you plan to rectify this deficiency?" This question clearly conveyed the agency's concerns with the inadequate safe working areas proposed by the protester, and afforded the protester a reasonable opportunity to satisfy the government's requirements through the submission of a revised proposal. To the extent that Avondale believes that it should have been given additional opportunities to revise its proposal after its BAFO, with an expanded safe working area of 77 feet, was also determined to be inadequate, there simply is no requirement that agencies notify offerors of deficiencies remaining in BAFOs or conduct successive rounds of discussions until such deficiencies are corrected. See Honeywell Regelsysteme GmbH, B-237248, Feb. 2, 1990, 90-1 CPD ¶ 149.

Next, Avondale protests the agency's evaluation of its proposal regarding the safe working areas. Avondale argues that the agency unreasonably failed to grant it a waiver of the 100-foot safe working area requirement for the expanded 77-foot safe working area proposed in its BAFO. Avondale notes that the Navy has waived this requirement in other procurements.

The protester was made aware by the express terms of the RFP that the required safe working area was 100 feet. To the extent that Avondale is actually arguing that the 100-foot safe working area requirement is unreasonably restrictive, it was required to protest this requirement prior to the closing time set for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1996). An offeror may not participate in a procurement and then wait until after it is not selected for award to protest alleged improprieties fully disclosed in the solicitation. With respect to the agency's decision not to waive the 100-foot safe working area requirement for Avondale, the agency was under no obligation to grant Avondale a waiver from this SOW requirement. The waiver language in the RFP was permissive and left the determination entirely to the agency's discretion; hence, the protester had no

entitlement to a waiver. See Aerospace Design, Inc., B-247938, July 21, 1992, 92-2 CPD ¶ 33. Here, where there were other acceptable reasonably priced offers, including the awardee's, that met the safe working area requirement, we see no reason why the agency was required to consider granting a waiver to Avondale.

The fact that the Navy may have permitted deviations from the 100-foot safe working area requirement in other procurements, as the protester asserts, does not require the agency to permit the deviation in this instance; each procurement action is a separate transaction, and the action taken under one is not relevant to the propriety of the action taken under another procurement for the purposes of a bid protest. Komatsu Dresser Co., B-251944, May 5, 1993, 93-1 CPD ¶ 369.

The protest is denied.

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