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Decision

Matter of: Olin Corporation

File: B-283401; B-283401.2; B-283402; B-283402.2

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DIGEST

Protests against selection decision are denied where record shows that source selection authority considered major discriminators favoring selection of protester and reasonably determined that they did not justify the considerable price premium associated with the proposal.

DECISION

Olin Corporation protests the award of two contracts to Alliant Techsystems, Inc., for procurement of small caliber ammunition and for the use of facilities at Lake City Army Ammunition Plant (LCAAP), under requests for proposals (RFP)

Nos. DAAA09-98-R-0121 and DAA09-99-R-0088, issued by the U.S. Army Industrial Operations Command (IOC), in Illinois, a subordinate command of the Army Materiel Command (AMC). Olin essentially contends that the evaluation and selection decisions here were unreasonable.

We deny the protests.

BACKGROUND

The protest concerns the selection of an operating contractor for LCAAP. On September 29, 1998, the agency issued RFP No. -0121, for a fixed-price requirements contract for 10 classes of small caliber ammunition. RFP No. -0121, at 2; Replenishment Requirements Attachment to RFP No. -0121. The RFP required the submission of past performance information, a “year 2000” compliance plan, and price information, as well as an oral presentation in response to certain questions. RFP No. -0121, at 2-3. The agency would use the information generated to establish a competitive range for a second phase, where it would select an awardee on the basis of best value; the awardee would receive the facilities use contract for LCAAP, where it would produce the ammunition. Id. at 2. Both contracts would be for at least a 5-year term. Id.

The solicitation provided for an “integrated assessment” of technical capability, past performance, and price in the best value determination; the agency would consider the information on year 2000 compliance only in the first phase. Id. at 11. The three factors were “relatively equal” in weight. Id. A source selection evaluation board (SSEB) would consider each offeror’s oral presentation in response to five questions related to technical capability, the fifth of which would remain undisclosed until the presentation.¹ The RFP advised offerors what information to submit for the past

¹These questions, slightly modified, were the same as the technical capability subfactors during the best value phase. The factors, as they read during the best value phase, the phase relevant to this decision, were as follows:

1. (Sub-factor 1) What is your plan to deliver peace time requirements for small caliber ammunition at the best cost and quality, on time for all DOD customers? All production items need to comply with quality requirements to include NATO approved U.S. design.
 - A. Element 1 - Produceability/Delivery Schedule
 - B. Element 2 - Quality
2. (Sub-factor 2) What is your plan to provide R&D capability for undefined requirements?
 - A. Element 1 - In-house R&D Capability
 - B. Element 2 - Production Processes
 - C. Element 3 - Critical Skills
3. (Sub-factor 3) What is your plan to provide capacity for replenishment?
4. (Sub-factor 4) What is your plan to develop/execute a future strategy for LCAAP and NATO test facility that makes sense?

RFP No. -0088, at 17.

performance evaluation; it told them to provide a brief summary of the contracts cited, addressing five subfactors:

- (A) How has the offeror manufactured in house and delivered large volumes of centerfire ammunition?
- How has the offeror manufactured in house a wide range of centerfire ammunition?
- How has the offeror's production/quality system detected in house production problems and resolved them?
- How has the offeror identified technical data discrepancies and taken corrective action?
- How has the offeror demonstrated vendor control, including handling of non-conforming material and hardware?

Id. at 8. The past performance subfactors were "relatively equal" in weight. Id. at 11.

The agency received four proposals, including offers from the protester and the awardee, and included all four proposals in the competitive range. On March 11, 1999, the agency issued the second phase solicitation for RFP No. -0121, amendment No. 2 to RFP No. -0121, and RFP No. -0088, for the facility use contract. Amendment No. 2 provided for award of a fixed-price contract with economic price adjustment for all requirements of six classes of ammunition, for a 10-year term; it provided for the selected firm to receive award under RFP No. -0088 of a 25-year facility use contract. Amend. 2 to RFP No. -0121, at 2.

RFP No. -0088 advised offerors that, in the second phase (best value selection), the agency would reevaluate price and technical capability but not past performance. RFP No. -0088, at 17; amend. 4 to -0121, at 3. The agency would compare proposals through a risk assessment documenting the relative strengths, deficiencies, significant weaknesses, and risks and assign an overall risk rating. RFP No. -0088, at 17. With regard to technical capability, the solicitation advised offerors that subfactors 1 and 3, supra, were "relatively equal" and significantly more important than the "relatively equal" subfactors 2 and 4. Id. Beyond the listing of subfactors for past performance and technical capability, neither solicitation told offerors what information to provide or indicated what criteria the agency would use to evaluate the information submitted in response to those subfactors.

On April 13, one of the four competitive range offerors withdrew from the competition; the other three submitted revised proposals. Evaluators at IOC assigned all three offerors "excellent" ratings for all elements and subfactors of technical capability; evaluators noted that each offeror had several strengths but noted no deficiencies or significant weaknesses. 2d Phase Evaluation of Technical Factor at 1-6. The agency had done no comparative evaluation of past performance. Alliant offered a significant price advantage, but its prices were considered

unbalanced. On May 4-5, the source selection advisory council (SSAC) met and agreed with the SSEB's findings regarding technical capability; although it had rated all offerors "excellent" for technical capability, the SSEB advised the SSAC that there were qualitative differences that warranted the selection of Olin. Undated Memorandum, Subject: Minutes of Small Caliber Ammunition Competition SSAC at 1. The SSAC was reluctant to recommend an award to Olin because of the significant price premium associated with the protester's proposal; it was reluctant to recommend an award to Alliant because of the unbalanced pricing. Id. The Army appointed a source selection authority (SSA) from AMC headquarters in Virginia. Prior to receiving his first formal briefing, he advised IOC that, aside from the concerns over unbalancing and the need to review the agency's estimates, the SSEB would have to demonstrate a significant technical advantage in the Olin proposal for him to ignore an 18-percent price differential. Copy of Electronic Mail Message, Subject: LCAAP, from Chief of Contract Policy Team (HQ, AMC) to the Contracting Officer (May 4, 1999). He suggested reopening discussions. Id.

On May 19, the agency amended the solicitations and advised offerors that it would reopen discussions and reevaluate past performance. Amend. 4 to RFP No. -0121, at 3. That amendment contained a warning against the submission of unbalanced prices, revised the pricing methodology, and requested revised pricing based on estimated quantities. Id. The agency requested submission of best and final offers (BAFO) by June 1. Id. at 2.

Alliant's revised proposal resolved the agency's concern over unbalancing; its price advantage was nearly \$200 million, or \$1.1 billion versus Olin's evaluated price of \$1.292 billion. On May 28, the contracting officer had requested that offerors categorize engineering change proposals (ECP) as "before" and "during" production, as a means of "objectifying" its analysis. Copy of Electronic Mail Message, Subject: FW: Past Performance Information, from the Contracting Officer to Richard D. Hess (May 29, 1999). That is, under subfactor (D) of past performance, evaluators would consider an offeror more favorably if it had a record of identifying technical data discrepancies prior to production rather than during production. Olin's response, received on June 3, was late, and the contracting officer issued a second request for BAFOs to allow the protester the opportunity to include this information in the record. Letter from Olin to the Contracting Officer (June 3, 1999); amend. 5 to RFP No. -0121, at 2. Discussions closed on June 10. The SSEB completed its evaluation on that day and rated the offerors the same for past performance subfactors 3 and 5 ("good") and rated both the protester and the awardee as "excellent" for subfactor 1. Evaluation of Past Performance Factor at 1-3. Olin and the third offeror received "excellent" ratings for subfactors 2 and 4, while Alliant received a "satisfactory" rating for subfactor 2 and a "good" rating for subfactor 4. Id. at 1-2.

On June 16, the SSAC assigned an overall "low" performance risk rating to the proposals of Olin and the third offeror; they assigned a "moderate" risk rating to the proposals of Alliant. Memorandum for Record, Subject: Risk Assessment for Solicitation DAAA09-99-R-0088, at 1 (June 16, 1999). The SSAC noted that Olin had

the highest overall past performance rating, which the SSAC considered an indicator of successful future performance. Id. The firm had experience with the full range of products under procurement; it had a high rate for initial lot acceptance, a low waiver rate, and the number of ECP's submitted prior to production exceeded, by far, the number submitted during production. Id. at 2. Although all offerors received equal "excellent" technical ratings, there were aspects of Olin's proposal that, in the opinion of evaluators, also made its proposal more attractive than the others--a high inventory investment and firm commitments from potential customers to use the facilities at LCAAP. Id.

The SSA, after reviewing the information furnished by the SSAC, however, noted both offerors had received equal ratings for technical capability and advised the SSAC that what he perceived as a slight advantage in past performance was not worth the \$200 million price difference. In other words, both offerors had received equal technical and similar past performance ratings, and he did not want to spend the extra money.² He also noted that he had directed the SSEB and SSAC to reopen discussions for the purpose of supporting their recommendation of Olin, and, in 2 months, they had found nothing except that Olin's quality control (on cost-plus contracts) was more "proactive" than Alliant's (on fixed-price contracts). Tr. at 124. On July 1, the SSAC presented a "comparative analysis" to show the hidden costs in Alliant's proposal, as well as a chart of "best value discriminators" among the three offerors. After considering this information, the SSA remained unconvinced that there were advantages to Olin's proposal worth the associated price premium, even if performance problems and delays were more likely with Alliant. On July 19, he selected Alliant for the awards, which the agency announced on July 30. These protests followed.

EVALUATION

The protester contends that the initial second-phase evaluation of technical capability improperly failed to identify the qualitative difference among the proposals; as a consequence, Olin contends, the SSEB evaluation steered the SSA toward the selection of the lowest-price, technically acceptable proposal, contrary to

²In a hearing held to assist in the resolution of this protest, the SSA testified as follows:

Essentially there was little or no difference in the past performance or technical evaluation process. There was not sufficient [difference] between either in any of the subfactors except in the area of past performance, which was not a substantial area of difference.

Hearing Transcript (Tr.) at 124.

the stated selection criteria, which provided for a best value analysis and selection. Further, the protester asserts, when the SSAC did attempt to present the SSA with discriminators to allow a best value selection, the SSA unreasonably and improperly ignored the information presented to him in choosing Alliant despite the technical superiority of Olin's proposal.

In reviewing protests against an agency's evaluation and selection decision, our Office examines the record only to determine whether the agency's judgment was reasonable and in accord with the stated evaluation and selection criteria. Abt Assocs. Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. A protester's mere disagreement with an agency's judgment does not render it unreasonable. Brunswick Defense, B-255764, Mar. 30, 1994, 94-1 CPD ¶ 225 at 9. Where, as here, the agency announces plans to select a contractor on the basis of best value, it does not have the discretion to follow an evaluation plan that ignores the relative differences among proposals, and award based solely on low price. See Dewberry & Davis, B-247116, May 5, 1992, 92-1 CPD ¶ 421 at 5. The record here, however, demonstrates that to the extent that second-phase evaluators initially failed to recognize or identify qualitative differences between proposals, they did advise the SSA, during the selection phase, of the major discriminators between proposals, including those here identified by Olin, and the SSA considered them in his selection decision.

Olin argues that the record shows that the second-phase evaluation, which was supposed to support a best value selection, was a mere review of technical acceptability that made no attempt to identify discriminators between proposals. For example, the protester points out that the source selection plan here contains the following criterion for an "excellent" rating under subfactor 3:

Sub-factor 3 'What is your plan to provide capacity for replenishment?'

Excellent

Offeror has/proposes to use small caliber production and support facilities in US/Canada to meet total replenishment requirement within specified timeframe. These facilities are currently producing 5.56mm, 7.62 mm, and .50 cal. [a]nd have 20mm capability.

Source Selection Plan at 16.

Every offeror, Olin notes, was proposing to perform the work at LCAAP; the solicitation required them to. It was therefore inevitable, Olin submits, that offerors would receive "excellent" ratings just by submitting responsive proposals. On the whole, Olin asserts, the rating definitions in the source selection plan do no more than require offerors to propose to comply with solicitation requirements; they measure technical acceptability, or at best understanding of requirements, without drawing a distinction among the qualitative differences in capability.

The solicitation, the terms of which Olin did not protest, provided no precise guidance on how offerors should respond to the technical criteria, what information they should submit or what factors evaluators would consider, other than identifying the stated factors. The contracting officer, in fact, informed offerors on March 25 of the likelihood that all would receive “excellent” ratings for technical capability. Memorandum for Record, Subject: Exchanges With Offerors After Establishment of the Competitive Range at 1. While he promised a further “comparative assessment,” he never issued a written modification to the RFP to provide for the consideration of additional factors under technical capability. Id.

Here, we think that any shortcomings in the evaluation process were immaterial, since we conclude that ultimately the SSEB and SSAC did identify the qualitative differences among proposals, and the SSA had this information in making the selection decision. Since the record here shows that evaluators did provide the SSA with a clear understanding of the differences among proposals, we have no reason to find the evaluation improper.

The record supports the testimony of the SSA with reference to the situation in May, before the agency obtained information for a comparative evaluation of past performance, that “an award could only be made to Alliant,” considering its low price and the absence of any noted advantages associated with the Olin proposal. Tr. at 104. Evaluators at that point had considered only technical capability and had rated both offerors “excellent.” As noted, the agency then reopened discussions to obtain past performance information and allow evaluators to identify discriminators between the two proposals. As part of this process, it was clear that the SSA essentially instructed the evaluators that, if they wanted him to select Olin, they would need to convince him that there were advantages to that proposal justifying the price premium. Tr. at 136. The SSAC subsequently argued that, despite Alliant’s “excellent” technical capability, there was a higher degree of excellence in Olin’s “excellent” technical capability. Memorandum for Record, Subject: Tradeoff Analysis for Solicitation DAAA09-98-R-0121 and DAAA09-99 R-0088, at 1-2 (June 14, 1999). Further, based on the anticipated difference in performance, the SSAC contended that Alliant’s price advantage was illusory. Memorandum for Record, Subject: Comparative Analysis of Small Caliber Ammunition Offerors for Solicitation DAAA09-98-R-0121 and DAAA09-99-R-0088, at 2-5 (July 1, 1999).

After several discussions throughout June, the SSAC made its final presentation to the SSA on July 1. The SSAC’s analysis favored Olin and included an overview, a chart of “best value discriminators,” a comparative analysis which attempted to quantify the expected difference in performance, an evaluation summary, and a “Qualitative” chart, listing the advantages of selecting Olin.

The first chart was essentially as follows:

	Olin	Alliant
Manufacturing over last 3 years	1 Billion small caliber, to military specifications	1 Billion to commercial specifications. 12 Million, medium caliber and tank rounds for military.
Ammunition Configurations and Ranges	All	No .50 Caliber or linked configurations
Quality Indicators	[Deleted] initial lot acceptance; [Deleted] waiver rate ([Deleted] lots)	[Deleted] initial lot acceptance; [Deleted] waiver rate ([Deleted] lots)
Correct deficiencies in technical data package	[Deleted] ECP's before production, [Deleted] during; [Deleted] requests for deviation (RFD)	[Deleted] ECP's before, [Deleted] during; [Deleted] RFD
Facility Investment	[Deleted] million, [Deleted] million in inventory	[Deleted] million
R&D Investment	[Deleted] million	[Deleted] million
Facility Management	Commitment from other operators to move work to LCAAP	Probable moves of other commercial operators
Total Evaluated Price for 10 years	\$1,292,070,525	\$1,100,196,241

SSAC Small Caliber Ammunition Best Value Discriminators Chart at 1-2.

With regard to these discriminators, the SSA noted that, although it had not produced small caliber ammunition to military specifications, Alliant's subcontractor, Federal Cartridge, had produced the ammunition commercially; further, Alliant had produced more sophisticated items to military specifications. Tr. at 124-25. On this basis, the SSA concluded that Alliant:

could produce these relatively unsophisticated rounds, in comparison to the rounds that they currently make with fuses that are a little more technically difficult.

Id. at 125.

He testified, further, that, while Olin did have an advantage in past performance, comparison of waiver rates was mixing "apples and oranges," in view of the more sophisticated rounds produced by Alliant. Tr. at 184-85. For example, he explains that, with the .50 caliber produced by Alliant, components are more difficult to

produce and pack. Tr. at 191. He also considered that a large inventory of materials was of no particular advantage to the government, so long as the inventory was sufficient to keep the plant operating, and that there was no benefit to the government from the large inventory proposed by Olin, as long as Alliant's inventory was sufficient to keep the facility operating without interruption. Tr. 201-05. We cannot find this position unreasonable.

In the comparative analysis, the SSAC also identified "hidden costs" in Alliant's proposal. For example, the SSAC projected that, presuming that Olin continued with a [Deleted] percent initial lot acceptance and that Alliant continued at [Deleted], that corrective actions would cost Alliant [Deleted] million more than they would cost Olin. The cost of processing ECP's, RFD's and requests for waiver would be [Deleted] million more for the government, not counting the costs of verifying the ballistic performance of lots for which waivers had been granted and any other costs if there were problems in ballistic performance. The SSA did not give these projections any weight in his deliberations. First, he believed that these "costs" were not identified as part of the evaluation criteria and could not be considered. We find this conclusion reasonable. The ECP, RFD, and request for waiver history was properly considered under the past performance factor. There was nothing in the RFP award methodology that provided for consideration of the cost impact of this history. Second, the SSA noted that the analysis was based on comparison of Olin's long-term (14-15 year) cost contract with an Alliant fixed-price contract for more complex items. Agency's Hearing Comments, Oct. 12, 1999, at 5. Thus, the SSA believed the differences in contract and ammunition type did not allow for a valid comparison. Granting that Olin had the superior record of past performance, the SSA considered it impossible to project any exact rate of ECP's, RFD's and RFW's, on a future contract, comparing it to the chance of predicting whether he would receive a traffic ticket on the way home. Tr. at 158. Further, the quantification of costs for processing ECP's, he noted, did not establish that the costs would be additional, considering that the staff involved would be retained even if the agency received fewer ECP's for processing. Under these circumstances, where consideration of these costs would have been a departure from the stated award methodology, and, in any event, the costs were reasonably viewed as speculative, we think the SSA's decision not to consider this information was reasonable.

The SSA also reasonably concluded that while the final document prepared by the SSAC, the "Qualitative" chart, identified advantages for Olin in several areas, most of them were not clearly related to the announced evaluation scheme: commitment to the facility, readiness (selection of Alliant would cause training delays), transition risks, narrowing of the mobilization base, and flexibility. For example, while the solicitation clearly could have included the cost and effects of transition as a consideration in the evaluation, it did not; the SSA therefore considered the SSAC's suggestion that he consider such costs, and the delays necessary to accommodate and train new Alliant personnel, outside the stated scheme. We think the SSA's reluctance to consider them was proper, because he reasonably found these "discriminators" were not covered by the RFP evaluation scheme.

In selecting Alliant, the SSA prepared a 12-page memorandum reviewing the technical factors and recognizing the lower risk of Olin's ability to identify and resolve technical data problems prior to production. Small Caliber Ammunition Source Selection Decision Document for Solicitation Numbers DAAA09-98-R-0121 and DAAA09-99-R-0088, at 6. He considered the risk with Alliant "moderately low" because of the weak past performance record and its possible below-cost price. Tr. at 196. Although all offerors received the same adjectival rating for technical capability, he did recognize that Alliant was relying upon the expertise of a subcontractor (Federal Cartridge) associated with commercial production, who might encounter problems in the transition to production according to military specifications. Small Caliber Ammunition Source Selection Decision Document for Solicitation Numbers DAAA09-98-R-0121 and DAAA09-99-R-0088, at 8. He determined that the performance risk with Alliant was mitigated by the firm's demonstrated ability on complex items. Id. at 9. He found the risk "manageable and acceptable." Id. at 12. He determined that the past performance and slight technical advantages of Olin's proposal simply did not justify the additional price premium. Id. Based on this record, we cannot conclude that the SSA failed to consider the qualitative differences between proposal, that his consideration of them was unreasonable, or that his selection decision was either unreasonable or inconsistent with the solicitation.

The protests are denied.

Comptroller General
of the United States