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**Comptroller General
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Decision

Matter of: Aeroflex Test Solutions

File: B-295380; B-295380.2

Date: February 7, 2005

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DIGEST

Protest of agency's evaluation of proposals is denied where the record shows that the evaluation was reasonable and consistent with the solicitation's evaluation scheme.

DECISION

Aeroflex Test Solutions protests the award of a contract to OmniPhase Research Laboratories, Inc. under request for proposals (RFP) No. N00164-04-R-8910, issued by the Department of the Navy, Naval Surface Warfare Center, in Crane, Indiana, for a quantity of continuous wave illuminator noise test sets (CWINTS) to support the AEGIS shipbuilding program.¹ Aeroflex contends that the evaluation and selection decision were inconsistent with the terms of the solicitation and were unreasonable.

We deny the protest.

¹ The CWINTS is a narrowband noise tester that is primarily used to measure the amplitude modulation and frequency modulation noise level of the CWI signal generated by the radar equipment of the Navy's Mk 99 and Mk 92 AEGIS Fire Control Systems. Contracting Officer's (CO) Statement at 3; Agency Report (AR) exh. 11, Business Clearance Memorandum (BCM), at 6.

Issued on May 27, 2004, and amended several times, the RFP seeks the production and delivery of a first article unit and an estimated quantity of the CWINTS units to satisfy the Navy and Foreign Military Sales requirements. RFP at 6. The RFP provided for award of a fixed-price indefinite-delivery/indefinite-quantity contract with a 5-year ordering period. As amended, the RFP stated as follows:

Offerors may submit an alternate proposal and/or take exception to the RFP as part of any offer they submit. The Government will evaluate any alternate proposal, price and other factors considered, [in accordance with] the RFP and Source Selection Plan (SSP).

RFP amend. 1, at 2. Proposals were to be evaluated under the following five evaluation factors: (1) capability; (2) logistics; (3) life cycle costs (LCC); (4) past performance; and (5) price.² RFP at 60-63. Award was to be made to the responsible offeror whose proposal represented the “best value” to the government, all factors considered. *Id.* at 60.

The RFP contained detailed proposal instructions and identified specific information that offerors were expected to provide under each evaluation factor to demonstrate compliance with the RFP’s performance specifications and statement of work. With regard to price, the RFP required offerors to submit a separate price volume which was to include, among other things, a completed pricing matrix with fixed unit and extended prices inserted for each contract line item number (CLIN), for the base year and each option year. RFP at 2-4.³

OmniPhase and Aeroflex were the only offerors to submit proposals by the July 19 extended closing date. The agency evaluated the proposals and the contracting officer included both of them in the competitive range. Thereafter, the agency conducted oral and written discussions with OmniPhase and Aeroflex. During discussions, the protester was specifically advised of the following:

Aeroflex is reminded that this is a competitive acquisition. Your proposed prices are considered to be too high. It is requested that Aeroflex submit its most favorable pricing to the Government with the FPR [final proposal revision], including more favorable pricing for the first article. This is a business decision; however, award will be made to the offeror whose proposal is most advantageous to the

² The RFP identified various subfactors under each of the non-price factors.

³ As relevant to this protest, amendment No. 2 was issued to clarify the CLIN structure and to add CLIN 9 for training and CLIN 10 for spare parts. In addition, the amendment identified a “plug” number for CLIN 10, spare parts, as \$2,400,000.

Government, price and other factors considered [in accordance with] the RFP.

AR exh. 15, FPR from Aeroflex, at 32.

The protester's response to this discussion question was to submit its FPR, including the pricing matrix, as required by amendment 3.⁴ The agency evaluated the two FPRs received with the following results:

	OmniPhase	Aeroflex
(1) Capability	[DELETED]	[DELETED]
(2) Logistics	[DELETED]	[DELETED]
(3) LCC	[DELETED]	[DELETED]
(4) Past Performance	[DELETED]	[DELETED]
Overall Rating	[DELETED]	[DELETED]
Total Evaluated Price	\$42,387,248	[DELETED]

AR exh. 17, BCM, at 7-10, 15-16.

The evaluators prepared an extensive report that included a summary of their conclusions regarding each proposal under each area of evaluation, supported by a more detailed discussion of the strengths and weaknesses of each proposal. Because OmniPhase had the higher-rated, lower-priced proposal, the evaluators recommended award to OmniPhase. The source selection authority (SSA) reviewed the evaluation report and award recommendation and agreed with the evaluators that OmniPhase's proposal represented the best value, and thus made award to OmniPhase. Thereafter, Aeroflex was notified of the agency's source selection decision and, after receiving a debriefing, this protest followed.

Aeroflex first asserts that its technical proposal should have been evaluated higher than OmniPhase's proposal because Aeroflex is "the incumbent producer" of the CWINTS units and as the "only prior producer of that Equipment, [Aeroflex] should have received a superior evaluation both on a technical and past performance criteria." Protest at 4-5. In these circumstances, Aeroflex contends that it was unreasonable for OmniPhase to have received a higher rating than Aeroflex under these two evaluation factors.

In reviewing a protest against an agency's evaluation of proposals, we examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Support

⁴ In relevant part, amendment No. 3 instructed the offerors whose proposals were in the competitive range to submit prices for CLINs 2 through 6 based on the quantity shown on the pricing matrix. RFP amend. 3, at 3.

Servs., Inc., B-282407, B-282407.2, July 8, 1999, 99-2 CPD ¶ 30 at 3. The protester's mere disagreement with the agency's judgment does not establish that the evaluation was unreasonable. Hard Bodies, Inc., B-279543, June 23, 1998, 98-1 CPD ¶ 172 at 3.

The agency disagrees with Aeroflex's characterization of its status as the "incumbent producer." Specifically, in responding to Aeroflex's protest, the agency reports that RDL, Inc., not Aeroflex, was the original equipment manufacturer and points out that while Aeroflex acquired RDL and "may have gained ownership of that business's process, [Aeroflex] does not have the same corporate memory or corporate experience, or even the same employee staff." More importantly, the Navy reports, the "RDL contract was never novated to Aeroflex." CO's Statement at 16-17. Aeroflex has not disputed this information. In any event, the agency asserts that the evaluation record shows that it performed a detailed and documented evaluation of both offerors' proposals and, as discussed above, determined that OmniPhase's proposal was superior to Aeroflex's with regard to evaluation factor (1)--capability, and evaluation factor (2)--logistics. Based on our review of the record here and considering Aeroflex's failure to identify any specific error in the agency's evaluation of technical proposals, we find no merit in Aeroflex's protest that the agency unreasonably evaluated OmniPhase's technical proposal as the higher technically rated proposal.

Aeroflex next protests that it would have been evaluated as having the lowest overall price if the agency had properly considered what Aeroflex characterizes as an alternate price proposal consisting of approximately [DELETED] in savings. Protest at 4-5.⁵ The protester maintains that the agency impermissibly failed to evaluate Aeroflex's alternate price proposal in "establishing Aeroflex's total evaluated price" in "violation of Section M of the Solicitation, the FAR [Federal Acquisition Regulation]." Protest at 4. In its protest, Aeroflex specifically points to paragraph 1.4 of its initial cost and pricing proposal which states that:

1.4 Spare Parts Pricing Discussions

Line item 010 of the solicitation allocates up to \$2,400,000 for spare parts. The design proposed by Aeroflex utilizes the majority of the [DELETED]. A complete and detailed evaluation of spare parts for both systems would need to be completed in order to place a final or fixed dollar value on the savings. However, based on our knowledge of

⁵ Although the protester claims that its alternate proposal [DELETED] the existing CWINTS units would extend their useful life, resulting in additional savings of approximately [DELETED], the Navy correctly notes that neither this specific savings of [DELETED] per unit nor the quantity of [DELETED] units was ever presented in Aeroflex's proposal. See AR exh. 8, Aeroflex's Initial Cost and Pricing Proposal and AR exh. 15, Aeroflex's FPR.

the previous failures of the [existing CWINTS units], a reduction in spare parts of up to [DELETED] could be realized.

AR exh. 8, Aeroflex's Initial Cost and Pricing Proposal, at 4.

While it is undisputed that the solicitation specifically allowed offerors to submit alternate proposals, the RFP also required that offerors submit fixed unit and extended prices for all CLINs and all option years. Even assuming that the language quoted above constitutes an "alternate proposal," the above-quoted language (as the Navy points out) indicates that the undefined price reduction (of [DELETED] not approximately [DELETED]) is dependent on a spare parts evaluation for both systems--which had not occurred. In short, Aeroflex's reference (in its initial proposal) to potential price reduction did not meet the solicitation requirement for fixed prices, so that, in our view, the price evaluators appropriately focused on the fixed unit and extended price of \$2,400,000 entered on the pricing matrix in Aeroflex's initial and final proposals in performing the price analysis. AR exh. 8, Aeroflex's Initial Cost and Pricing Proposal, at 11.

In its FPR, while Aeroflex offered a "straight 4% annual inflation factor in year 3 [through] 5 of the pricing shown" on the firm's FPR pricing matrix, it also proposed an alternative form of pricing these option years based on a [DELETED]. AR exh. 15, FPR from Aeroflex, at 3. As noted above, the agency evaluated Aeroflex's FPR using the 4 percent inflation factor for option years 3 through 5 because it was a fixed rate that could be applied to the protester's fixed pricing for option years 3 through 5. As with Aeroflex's undefined spare parts savings, the alternate inflation factor [DELETED] was an unknown, not a fixed rate which could be used for evaluation purposes. Accordingly, the agency had no obligation to consider, and properly declined to consider, Aeroflex's proposed use of the referenced price index.

In sum, we find that the record here demonstrates the reasonableness of the agency's comprehensive evaluation of the firms' proposals, consistent with the stated evaluation scheme for award. We therefore have no reason to question the reasonableness of the agency's determination that OmniPhase's higher-rated, lower-priced proposal represented the best value to the agency.

Finally, after receipt of the agency report responding to the initial protest, Aeroflex filed a supplemental protest, asserting that OmniPhase's initial proposal was late and should have been rejected. In asserting that the awardee's initial proposal was submitted late, Aeroflex focuses on a July 26, 2004 letter from the president of OmniPhase to the agency's contract specialist which purportedly transmitted the awardee's price proposal on that date, rather than on the July 19 extended due date

for receipt of initial proposals.⁶ AR exh. 9. In addition, Aeroflex points to agency correspondence and the prenegotiation BCM in which the agency identifies OmniPhase's proposal as the "July 26" proposal. AR exh. 11, BCM, at 5 and AR exh. 10, E-mail from Contracting Officer to Aeroflex (Sept. 22, 2004).

In response, the Navy furnishes an affidavit from the contract specialist in which she states that "the initial solicitation/offer received from OmniPhase was hand carried to me at the Naval Surface Warfare Center, Building 3168, prior to the closing date and time." Supplemental AR exh. 2, Affidavit from Contract Specialist (Dec. 17, 2004). As further support, the agency has furnished our Office with a copy of a security gate pass issued on July 19 at 1:20 p.m. allowing OmniPhase's president to visit the contract specialist in Building 3168 at the Navy facility in Crane, Indiana. Supplemental AR exh. 4, Gate Pass. Moreover, the intervenor has provided copies of travel records for OmniPhase's president, which shows that he traveled on July 18 through 19 to the area where the Navy facility is located. We further note that although there are two agency documents which refer to the "July 26" proposal from OmniPhase, the record contains the subsequent award letter from the contracting officer which bases the award on "OmniPhase's offer of 19 July 2004 as supplement[ed] by Final Proposal Revision of 15 October 2004." AR exh. 19, Letter from Contracting Officer to OmniPhase, at 1 (Oct. 29, 2004). Further, the July 26 correspondence from OmniPhase, which the protester relies on, appears to reference the existence of a prior OmniPhase proposal in the Navy's possession. On the basis of the record before us, we are not persuaded that the awardee's initial proposal was not timely submitted.

The protest is denied.⁷

Anthony H. Gamboa
General Counsel

⁶ In pertinent part, the July 26 letter reads as follows:

Attached are three (3) copies of Section B that include the pricing information for the Spare Parts. I have included the entirety of Section B to simplify the collating on your end. . . . Also, attached are seven (7) copies of the DD-254 and supporting documentation to include at the end of Section C-M of our proposal.

⁷ The protester has also raised a number of other issues each of which we have considered and find without merit.