Tietrolito

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Swiftships, Inc.

File: B-235858

Date: October 13, 1989

DIGEST

1. Proposal was properly excluded from competitive range after discussions where agency reasonably determined that proposal was technically unacceptable because it evidenced offeror's failure to satisfy a mandatory, material performance requirement under the solicitation.

2. Agency is not required to reopen negotiations to esolve a deficiency which first appears in revisions to an offeror's technical proposal or to conduct successive rounds of discussions to help an offeror to correct deficiencies or omissions in offeror's proposal.

DECISION

Swiftships, Inc., protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. N00024-89-R-2020(Q), issued by Naval Sea Systems Command under the foreign military sales program for 77 foot standard patrol boats to be delivered to the Philippines. Swiftships contends that the Navy unreasonably found its proposal to be technically unacceptable and that the agency failed to conduct meaningful discussions.

We deny the protest.

The RFP contemplated the award of a firm, fixed-price contract for the design and construction of 4 patrol boats with options to purchase an additional 16 boats. Offerors were informed that technical proposals were to be sufficiently detailed and complete to enable government engineering personnel to determine whether the proposed boat would meet the solicitation requirements. The RFP provided that the boats would operate in tropical conditions where air temperatures may exceed 110 degrees fahrenheit and water temperatures may exceed 85 degrees fahrenheit and that the boats were required to be capable, under those conditions,

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of attaining a burst speed of 28 knots for a 4 hour duration at maximum intermittent horsepower engine rating.

Seven proposals, including that of Swiftships, were received. Swiftships' proposal was included in the competitive range as susceptible of being made acceptable. Discussions were conducted with all offerors in the competitive range, and Swiftships was provided with the opportunity to revise its proposal in response to the Navy's questions.

The Navy determined after evaluation of Swiftships' discussion responses that Swiftships' proposal contained several deficiencies, including that Swiftships' proposal did not evidence that its boat design would meet the solicitation's minimum burst speed specification which was a material, major performance requirement.1/ Because of the failure of Swiftships' boat to meet the speed requirement, Swiftships' proposal was excluded from the competitive range as technically unacceptable. This protest followed. While the protest was pending, the Navy determined that because of urgent and compelling circumstances significantly affecting the interests of the United States, it would not withhold award pending our protest decision. Accordingly, a contract has been awarded to Philippine Patrol Craft.

The evaluation of proposals and determination of the competitive range are matters within the discretion of the contracting agency since it is responsible for defining its needs and deciding the best method of accommodating them. Contracting Programmers & Analysts, Inc., B-233377.2, Feb. 22, 1989, 89-1 CPD ¶ 190. Since the evaluation of technical proposals is inherently a subjective process, in reviewing protests of allegedly improper evaluations, our Office will not substitute its judgment for that of the agency's evaluators, but will examine the record to determine whether the agency's judgment was reasonable and in accordance with the listed criteria and whether there were any violations of procurement statutes or regulations. Gary Bailey Eng'g Consultants, B-229943.2, May 3, 1988, 88-1 CPD ¶ 430. In this regard, the protester bears the burden of proving that the agency's evaluation was unreasonable, and this burden is not met by the protester's mere

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1/ The Navy has conceded that Swiftships' failure to demonstrate that its proposed boat could meet the speed requirement is the only deficiency material to this protest. The agency states that Swiftships' proposal would have been included in the competitive range but for this deficiency, notwithstanding any other deficiencies which were noted.

disagreement with the agency's judgment. Wellington Assocs., Inc., B-228168.2, Jan. 28, 1988, 88-1 CPD ¶ 85.

Swiftships argues that its proposed boat meets all the solicitation requirements and should have been included in the competitive range. In its proposal, Swiftships used a parametric formula referred to as the "coefficient k" formula to demonstrate that its proposed design would meet the RFP's speed requirement. The Navy agrees that the formula used by Swiftships provides an accurate calculation of the speed a boat could attain so long as certain variables (including the shaft horsepower of the boat's engines, the boat's hull coefficient and its displacement) are known.2/ The parties, however, disagree as to the proper values which should be assigned to the formula variables in order to ascertain the attainable speed for the vessel design actually proposed by Swiftships.

During discussions, the Navy questioned the shaft horsepower figure used by Swiftships in its initial proposal because the figure used appeared to be the engine manufacturer's rated brake horsepower, rather than shaft horsepower.3/ Further, Swiftships had failed to provide supporting data for this number or for the other numbers which it assigned to the variables. The Navy advised Swiftships that its proposal information concerning speed and powering was deficient and requested that Swiftships demonstrate its shaft horsepower calculation, including derating. In response, Swiftships reduced its shaft horsepower figure to reflect gearbox and temperature considerations. However, Swiftships also revised its hull coefficient figure upwards.4/ Using these revised figures, Swiftships

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2/ Swiftships considers information concerning the type and configuration of engines which it proposed, shaft horsepower, hull coefficient and displacement to be proprietary. Therefore, we will not disclose this information here.

3/ Brake horsepower is the actual power available at the engine source while shaft horsepower is derived from brake horsepower by "derating" it to factor in power loss from the drive train/gearbox and from ambient air and water temperature.

4/ The hull coefficient is an expression of the efficiency of the boat hull in terms of the resistance of a given hull design as it moves through the water. The effect of the changes in these variables on the calculated attainable speed is that reducing the shaft horsepower variable reduces the calculated speed, while increasing the hull coefficient increases the calculated speed.

contended that its design would still meet the speed requirement.

The Navy questioned Swiftships' revision of the hull coefficient since this figure should have been relatively certain. Swiftships contends that it calculated this figure by applying the "coefficient k" formula to a 77 foot hull which it had previously built for the Navy. For these calculations, since the actually obtained boat speed was available from speed trials, one may use this speed to derive the hull coefficient variable. Swiftships asserts that in reviewing its calculations it concluded that the figure it first used was too conservative because it did not take into consideration Swiftships' actual experience with the hull. Swiftships states that this earlier 77 foot hull is a nearly identical design to the hull proposed for the current solicitation, but that the earlier hull utilized different engines and a different engine configuration.

In its initial proposal, Swiftships did not provide any technical data documenting its hull coefficient figure, but in response to the discussion question Swiftships provided performance data sheets from the previously built hull. The Navy states that the data provided by Swiftships indicated that in calculating the hull coefficient Swiftships had not applied the proper shaft horsepower, which resulted in making the calculated hull coefficient number too high. The figure used by Swiftships was different from the manufacturer's stated shaft horsepower for the engines; using the engine manufacturer's figures would result in a much lower hull coefficient figure. Application of this lower hull coefficient figure to the coefficient k formula calculations in Swiftships' best and final offer results in the design not achieving the 28 knot speed requirement.

Swiftships argues that the Navy acted unreasonably in questioning Swiftships' hull coefficient figure and determining, on the basis of the agency's recalculated figure, that Swiftships' design could not meet the speed requirement. Specifically, the protester contends that the agency's use of the engine manufacturer's shaft horsepower rating is unreasonable because it is standard marine practice to set up ("prop") the engine so that there is reserve power at normal load. Swiftships also argues that its choice of propellers on the earlier hull affected the horsepower utilized during the speed trials. The protester contends that the agency, knowing this "standard marine practice," should have realized from the test data provided that Swiftships' horsepower calculation was correct.

We find that the agency acted reasonably in using the manufacturer's horsepower rating. The Navy relied on the information provided by the protester in response to the discussion question, and it was from this information that the manufacturer's rating for engine horsepower was obtained. Swiftships provided no information in its discussion response to explain why its shaft horsepower calculation differed from the engine manufacturer's shaft horsepower rating, nor did Swiftships provide any explanation to the agency regarding its view that the speed trials for its earlier hull were performed with the engines set up so that there was reserve power in the engines at normal load, or that a particular propeller design affected the horsepower calculation. We have held that where an offeror fails to furnish sufficient information in its proposal to establish its technical acceptability, the agency can reasonably conclude that the offer is technically unacceptable and exclude it from competition. See Data Controls/North Inc., B-233628.4, Apr. 5, 1989, 89-1 CPD ¶ 354. Since Swiftships failed to provide sufficient information to support its boat speed calculations, we have no basis to question the agency's determination that Swiftships' proposal was unacceptable. Further, the information which was actually supplied by Swiftships provides support for the manner in which the Navy calculated that Swiftships proposed boat could not attain the required speed.

In this regard, we note that the protester has provided us with no evidence to substantiate its view that the agency should have known as a matter of "standard marine practice" that the discrepancy between Swiftships' shaft horsepower figure and the manufacturer's figure was the result of "propping" the engine so that there was reserve power available. The agency, however, has provided us with an affidavit from a marine engineer who states that he has independently reviewed Swiftships' proposal and discussion response, without knowledge of the agency's opinions or conclusions, and determined from the information provided by Swiftships and, "in the absence of information to the contrary," that the manufacturers' shaft horsepower rating was the correct figure to apply in the coefficient k formula.

Swiftships also argues that discussions were inadequate because the agency never informed Swiftships that the agency questioned the value used by Swiftships for its hull coefficient. The record indicates that Swiftships' hull coefficient figure only came into question after Swiftships revised the figure in response to the agency's discussion question concerning the speed and horsepower of the proposed

engines. It is well established that a contracting agency need not reopen discussions to resolve technical deficiencies first introduced in revisions to an offeror's proposal. See IPEC Advance Sys., B-232145, Oct. 20, 1988, 88-2 CPD ¶ 380. Generally, an agency is not required to help an offeror by conducting successive rounds of discussions until omissions or deficiencies are corrected and the proposal is brought up to an acceptable level. Id. Accordingly, we find no merit to the protester's contention that the Navy should have reopened negotiations to discuss Swiftships' hull coefficient figure.

The protest is denied.

James F. Hinchman
General Counsel