



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Polar Products

File: B-242079

Date: March 27, 1991

Arthur D. Sams for the protester.

Major William R. Medsger and Jack D. Olson, Esq., Department of the Army, for the agency.

David Hasfurther, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's decision to reject protester's proposal as unacceptable and not consider it further for award was reasonable where the proposal contained significant technical and informational deficiencies which would have required major revisions to correct.

2. An award without discussions to the lowest-priced offeror whose proposal was evaluated as acceptable and the best value was proper where the solicitation provided that an award without discussions could be made.

DECISION

Polar Products protests the rejection of its proposal and the award of a requirements contract to Tiernay Turbines under U.S. Army Troop Support Command request for proposals (RFP) No. DAAK01-90-R-0070, issued for a first-time procurement of an estimated 1,217 small diesel engine-driven generator sets for the M577 track vehicle, along with first articles, mockups, testing, and related data requirements. Polar contends that the agency did not evaluate its proposal in accordance with the evaluation criteria set out in the RFP and improperly found its offer unacceptable. Polar also argues that based on past actions the agency was biased against it and believed that it was incapable of performing the contract.

We deny the protest.

The RFP required the submission of proposals by a closing date of September 4, 1990. Proposals were to be evaluated in the areas of technical, integrated logistics support (ILS), and

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cost and pricing data. Prices were to be submitted for the estimated number of generator sets (and related items) that would be purchased during each of the four yearly ordering periods. The technical area was to be slightly more important than either the ILS area or the cost area. The ILS and cost areas were to be of equal importance. The RFP listed numerous evaluation factors for each area in descending order of importance, each factor within one area being slightly less important than the preceding factor. The RFP also required that the proposal contain sufficient information to verify compliance with all of the requirements and show how each requirement was to be accomplished. The RFP advised that the failure to address one or more of the RFP requirements could be reason for finding a proposal unacceptable. Award was to be made to the offeror whose proposal represented the "best overall value to the government" as determined by the source selection authority. The RFP advised that discussions might be conducted with those offerors in the competitive range and that at their conclusion a request for best and final offers (BAFOs) would be issued. However, the RFP also advised that the government reserved the right to make award on the basis of original proposals without discussions.

Five proposals were received. On September 4, the source selection evaluation board (SSEB) convened to evaluate each proposal individually. Each was evaluated in accordance with the RFP evaluation criteria and the source selection plan for this procurement. Prior to the issuance of the SSEB's findings, preaward surveys were requested on all offerors. Both Polar and Tiernay were found to be responsible offerors as a result of the surveys. At the conclusion of proposal evaluations, the SSEB issued summaries of the results of its findings. Of all the proposals, Tiernay's proposal received the highest technical rating, the highest logistics rating, and was evaluated the lowest on cost/price. Polar's proposal was judged inferior to Tiernay's in all three areas. Although no formal competitive range determination was made, Polar was found unacceptable overall in the logistics and technical areas. Since Tiernay's initial low-evaluated proposal was determined to represent the best overall value to the government by the source selection authority, contract award was made to Tiernay on November 13 and delivery order 0001 (for the first ordering period) was issued for an estimated 317 generator sets (and related items) at a price of \$3,033,030.22.

Polar essentially contends that the determination that Tiernay represents the best value to the government is erroneous because the Polar proposal was misevaluated; Polar asserts that

agency was biased against it because of its previous unacceptable attempt to obtain this contract under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988).

Polar believes that a proper evaluation would have resulted in Polar's proposal receiving an acceptable rating and a higher technical score than Tiernay's because its product was more technologically advanced than Tiernay's product. Polar argues that its product was more attractive since its height and weight were less than the maximum height and weight allowed, and its alternator was of higher efficiency (83 percent versus 60-70 percent for Tiernay) and greater reliability than the one Tiernay offered (Tiernay's proposal was scored acceptable in this area, while Polar's was scored marginal). Polar asserts that its alternator design would reduce the government's maintenance costs and increase the alternator's life expectancy, that its engine was designed (at substantial cost) to operate at 3,000 rather than 3,600 revolutions per minute, thereby increasing its service life to 16,000 hours, and that the noise suppression (its superior exhaust muffler), starting, operating, and stopping characteristics of its product were of the highest order. Polar believes that any determination of "best value" would have had to take into consideration factors such as replacement component costs; maintenance frequency for oil, fuel, and air filters; and the labor cost required for repair and maintenance and fuel consumption.

The agency states that the SSEB thoroughly considered all the information contained in Polar's proposal in accordance with the RFP evaluation criteria and that it considered Polar's proposal on an equal basis with all other proposals without any bias towards Polar. The agency reports that Polar's proposal contained insufficient supporting information which rendered its proposal noncompliant with many RFP requirements and did not justify any higher rating than was given the proposal for the technical and logistics areas. It also notes that the information in Polar's protest provides examples of the very type of information which was absent from the proposal.

The agency notes various instances where Polar's failure to submit sufficient information made it impossible to rate Polar's proposal acceptable. The agency points out that, for instance, submission of a logistics support analysis plan was required by the RFP, and Polar was the only offeror that failed to submit one as part of its proposal. Further, the agency found that Polar's proposal did not contain the calculations and analysis/data to meet the RFP requirement for a complete description of the generator set (generator-engine combination and associated components), a set of power calculations at ambient and extreme environmental conditions,

and analysis/data establishing the stated capabilities. While Polar contends that it offered the best value with its superior exhaust muffler, the agency also states that Polar failed to submit any data and analysis addressing other noise sources and any sound absorbing materials used in its design. The agency asserts that Polar's offer was reasonably evaluated as unacceptable and that the conclusion that Tiernay's lower-priced, acceptable proposal offered the best value was proper.

The contracting agency is responsible for evaluating the information supplied by an offeror and ascertaining whether it is sufficient to establish the technical acceptability of its offer, since the contracting agency must bear the burden of any difficulties incurred by reason of a defective evaluation. Machinery Assocs., Inc., B-237407, Feb. 1, 1990, 90-1 CPD ¶ 139. Our review of allegedly improper technical evaluations is limited to a determination of whether the evaluation was fair and reasonable and consistent with the evaluation criteria. Sach Sinha & Assocs., Inc., 69 Comp. Gen. 154 (1990), 90-1 CPD ¶ 50. Such a showing is not made by the protester's mere disagreement with the evaluation or its good faith belief that its own proposal should have been considered acceptable. See Sigma Sys., Inc., B-225373, Feb. 24, 1987, 87-1 CPD ¶ 205.

We conclude that the evaluation was reasonable and that award made to Tiernay on the basis of its initial proposal was proper.^{1/} Polar admits in its protest that it "could not make the heavy financial investment (\$60,000 to \$90,000) in order to address all the factors and issues" that were to be addressed in the proposal and that instead "Polar made a heavy investment in the technology itself." Thus, apparently for this reason, Polar failed to submit, for example, a logistics support analysis plan, notwithstanding the RFP requirement that each proposal contain a plan that is specifically for

^{1/} Polar also appears to protest certain solicitation terms, such as the failure to require certain additional components such as a fuel return line and valve, and the RFP requirements that certain information, such as a logistics support analysis plan or a complete description of the reliability, maintainability, and life characteristics of the proposed design, be submitted as part of the proposal rather than as contract deliverables. The solicitation requirements concerning these matters were clear on the face of the RFP, and therefore these alleged solicitation improprieties should have been raised prior to the closing date for the receipt of proposals. 4 C.F.R. § 21.1(a)(1) (1990). Thus, Polar's protest is untimely and we are reviewing the merits of the agency's evaluation consistent with the evaluation method as stated in the RFP.

this acquisition. Polar reasons that the agency did not have the right to require the submission of this information, and certain other information also, as part of the proposal, since Polar considered it "unfair" [and prejudicial to small businesses] that the agency should require offerors "to perform, at their own cost, substantial portions of the contract in order to establish the credibility [through their proposals] that they can perform the contract." Nonetheless, the RFP required the offeror to provide such a plan and clearly listed logistics support analysis as a technical factor for evaluation. Also, under logistics, offerors were to provide a complete description of the safety and human factors engineering characteristics of the proposed design, for example, provide a description of the safety features of the equipment and demonstrate its ability to meet required safety features. Polar failed to describe in detail its safety provisions for the system. In our view, the failure to provide a complete logistics and safety plan was a material omission which reasonably rendered Polar's offer unacceptable.

The RFP also provided that each proposal was to include a complete description of the reliability, maintenance, and life characteristics of the proposed design with specifically identified information required as part of that description. It also required a complete description of the firm's proposed approach to conducting required inspections and tests. Notwithstanding the requirement for detailed descriptions, Polar treated these matters throughout its proposal in a general way, because, as it states in its protest, it believed that detailed calculations and numerical data for these matters were contract deliverables and thus did not have to be submitted as part of its proposal. For example, while Polar stated that its generator had an efficiency of 83 percent, it provided no data sufficient to substantiate this claim. Further, under reliability, Polar did not provide detailed information concerning failure rates, calculations to support mean time between failure data, its maintenance concept, the number of people needed to perform maintenance actions, and supporting data for maintainability prediction. Polar also did not provide any information to describe its approach to performing required inspections, exams and tests.


Responses that are essentially blanket offers of compliance are not adequate substitutes for the detailed and complete technical information necessary to establish that what the offeror proposes will meet the agency's needs, especially where the RFP specifically calls for detailed descriptions of how an offeror proposes to meet RFP requirements. IPEC Advanced Sys. A B-232145, Oct. 20, 1988, 88-2 CPD ¶ 380. We think that Polar's failure to address in detail and with

appropriate supporting documentation the requirements concerning reliability, maintenance, and testing reasonably were considered significant deficiencies which support the agency's finding of proposal unacceptability.

Based on the foregoing, we find the agency reasonably concluded that Polar's offer was unacceptable for failure to meet RFP requirements. In view of our conclusion that the evaluation was reasonable, we deny the protester's allegation of bias in the evaluation. There is no support in the record for the allegation of bias. See Interceptor Group Ltd., Inc., B-239490.3, Dec. 4, 1990, 90-2 CPD ¶ 451.

Polar nevertheless contends that discussions would have shown its proposal to be the best value. Where major revisions would be required to make a proposal acceptable, the agency is not required to include a firm in the competitive range and hold discussions with the firm. National Contract Management Servs., B-240564, Dec. 3, 1990, 90-2 CPD ¶ 446. We concur with the agency that only major revisions could make Polar's proposal acceptable. Under the provisions of the Competition in Contracting Act of 1984, applicable to this procurement, 10 U.S.C. § 2305(b)(4)(A)(ii) (1988), an agency may award a contract on the basis of initial proposals without holding discussions if the solicitation advised offerors of that possibility and the competition or prior cost experience clearly demonstrates that the acceptance of initial proposals will result in the lowest overall cost to the government. Here, notice of the possibility of an award on initial proposals was contained in the RFP. The agency properly made award to Tiernay who offered the highest-rated, lowest-priced proposal and was rated the best value.^{2/}

The protest is denied.


for James F. Hinchman
General Counsel

^{2/} Finally, since we have found the agency's evaluation and rejection of the Polar proposal to have been reasonable, Polar's contention that the award notification to it was insufficient under FAR § 15.1001 is irrelevant since whether or not the notification was proper was not prejudicial to Polar.