



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Benthos, Inc.
File: B-248597
Date: September 10, 1992

Lawrence W. Gray and Kevin McCarthy for the protester. Sherry Kinland Kaswell, Esq., and Justin P. Patterson, Esq., Department of the Interior, for the agency. Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency was justified in selecting a slightly higher priced proposal, which had demonstrated acceptable mission suitability--the primary technical evaluation factor under the solicitation--where the agency reasonably determined that the lower priced proposal was technically inferior because it did not provide specifically requested mission suitability information, a response that the agency reasonably interpreted as indicating inferior mission suitability.

DECISION

Benthos, Inc. protests the award to Deep Ocean Engineering, Inc. under request for proposals (RFP) No. 1-SP-10-12570 issued by the Bureau of Reclamation, Department of the Interior, for two submersible remotely operated vehicles (ROV) to be used for underwater inspections of dams in the Pacific Northwest and Mid-Pacific Regions.¹ Benthos alleges that Interior improperly determined that Deep Ocean's proposal was a better value to the Government than Benthos's lower-priced proposal.

We deny the protest.

¹Interior originally solicited for one ROV for use at the Grand Coulee Dam in the Bureau's Pacific Northwest Region. The second ROV later was added by amendment No. 002 for use at the Shasta Dam in the Mid-Pacific Region.

Interior issued the RFP on September 20, 1991. The RFP specified in section M.1 that award would "be made to the offeror whose proposal was determined to be in the best interest of the [g]overnment, price and other factors considered." The RFP stated that price and mission suitability were equally weighted for evaluation purposes. The most important subfactor of the mission suitability factor was compliance with the requirements specified in the statement of work (section C of the RFP).

The statement of work required an ROV capable of operating at depths of 500 feet with a neutrally buoyant umbilical cable consisting of two lengths of cable each measuring 250 feet.² Section C.3.3 specified the minimum levels of propulsion thrust to be produced by an ROV and stated that differences in actual thrust capabilities would be factored into the evaluation of proposals. Section C.3.6 stated:

"The ROV shall be capable of attaining a +2.9 knot speed in still water while carrying a pay load of eight (8) pounds. The ROV shall be proven operable in a current of +1.5 knots such that control over and maneuverability of the ROV, during spillway or trash rack inspection, can be maintained. The ROV shall be capable of making headway against an opposing +1.5 knot current. Attainable vehicle speed will be factored into the evaluation of proposals."

Three offerors submitted proposals by the October 22, 1991, due date. Interior determined that the proposals of Benthos and Deep Ocean were in the competitive range and conducted discussions with those offerors.³ Benthos and Deep Ocean submitted best and final offers (BAFO) by February 24, 1992.

After submission of BAFOs, but before final evaluation of proposals, Interior determined that it needed an additional ROV identical to the one being procured. It reopened negotiations and issued amendment No. 002 on March 6 to accommodate the agency's increased requirements.

²The ROV is operated via remote controls connected to the ROV by the umbilical cable. The cable also connects a video camera housed in the ROV to a video monitor located on the surface with the operator. A supplemental purpose of the umbilical cable is to function as a tether to permit manual retrieval of the ROV in the event of system malfunctions.

³Interior found the third offeror's proposal technically unacceptable and eliminated it from the competition.

At the same time, Interior realized that section C.3.6 did not specify the length of umbilical cable to be attached for the given performance requirements, and thus did not know what length of cable the offerors had assumed in stating the performance capabilities of their ROVs. This concerned Interior because the additional drag created by long lengths of cable could hamper an ROV's performance. To clarify this matter, Interior included the following request for additional information in a letter of March 6 that included amendment No. 002 and called for submission of revised BAFOs:

"Specify the maximum speed of the proposed ROVs under the following condition: no current, towing 250 feet of umbilical cord and loaded with an 8 pound payload.

and,

"Assume that the proposed ROVs are towing 250 feet of umbilical cord and are loaded with an 8 pound payload. Under these conditions, specify the maximum opposing current in which the proposed ROVs can still make headway."

Benthos and Deep Ocean submitted revised BAFOs by the March 18 due date. Benthos's BAFO was priced lowest at \$104,080. Deep Ocean's BAFO was priced at \$116,100. In response to Interior's request for additional information, Deep Ocean's BAFO stated:

"Maximum speed of the proposed ROV's under the following conditions. No current towing 250 feet of umbilical and loaded with an 8 pound payload will be [at an acceptable speed⁴].

and,

"The proposed ROV's, towing 250 feet of umbilical with an 8 pound payload will make headway in a 1.5 Knt current."

Benthos responded to the question in its BAFO as follows:

"The two questions that have been asked in regards to the ROV's performance while towing 250 feet of tether cable are difficult questions to properly respond to. Operation performance of any ROV system depends on many things, water depth,

⁴We do not disclose this speed because of its proprietary nature.

surface wave action, operator experience, and vehicle configuration to name a few. Any answer that I might be able to provide to you would only be based upon an assumption of these different operating conditions. We have not performed specific performance tests on this system with the style tether cable, and cable length that you have specified.

"The MiniROVER MKII system with the Ultra Thruster package that is provided has the capability of speeds [satisfying the RFP requirements]. This speed is based upon operations at or near the surface with a short length of tether cable (50') deployed. However, longer lengths of tether cable, especially the neutrally buoyant tether cable being proposed has very little effect on the vehicle forward thrust performance if the tether cable is properly fastened.

"More specific information regarding the Mini-ROVER's performance can be made available. However, more detailed information on the operational arena are required prior to being able to properly respond. If you have any questions, please feel free to contact me to discuss your specific application."

Interior evaluated the BAFOs and determined that, although both proposals satisfied the agency's minimum requirements, Deep Ocean's BAFO was superior in mission suitability. Specifically, Deep Ocean's ROV produced significantly greater thrust than Benthos's ROV, which, Interior determined, translated into satisfactory performance when towing long lengths of umbilical cable. Although Deep Ocean's ROV speed decreased slightly when towing 250 feet of cable, it was still able to make headway in a 1.5 knot opposing current. Thus, Interior concluded that Deep Ocean assured adequate performance of its ROV under typical working conditions. On the other hand, Benthos, by specifying performance with 50 feet of cable and not specifying performance with 250 feet of cable, only assured adequate performance of its ROV when towing a short length of umbilical cable. Interior determined that Deep Ocean's superiority in mission suitability outweighed Benthos's slight price advantage and awarded the contract to Deep Ocean.⁵

⁵Interior's technical evaluation panel identified areas of technical superiority in Deep Ocean's proposal for factors other than thrust and ROV performance when towing 250 feet of umbilical cable. However, the contracting officer's
(continued...)

Benthos asserts that the mission suitability of its ROV and that of Deep Ocean are essentially equal, and that it should be awarded the contract because the only material difference in the two BAFOs is Benthos's lower price.

The evaluation of technical proposals is a matter within the discretion of the contracting agency because the agency is responsible for defining its needs and the best method of accommodating them. Caldwell Consulting Assocs., B-242767; B-242767.2, June 5, 1991, 91-1 CPD ¶ 530; Virginia Tech. Assocs., B-241167, Jan. 29, 1991, 91-1 CPD ¶ 80. In reviewing an agency's technical evaluation, we will not reevaluate the proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the evaluation criteria stated in the RFP. Correa Enter., Inc., B-241912, Mar. 5, 1991, 91-1 CPD ¶ 249. In any case, the offeror has the burden of submitting adequately written proposals and proposal revisions for the agency to evaluate. Caldwell Consulting Assocs., supra; Virginia Tech. Assocs., supra.

We find no basis to conclude that Interior's evaluation was unfair or unreasonable. The RFP stated that propulsion thrust capability beyond the specified levels and attainable speeds would be considered in Interior's evaluation. Both offerors satisfied the specified thrust and performance requirements, but Deep Ocean offered significantly greater levels of thrust in comparison with Benthos's proposal.⁶

⁵(...continued)

justification for award emphasizes that Benthos's failure to adequately respond to the request for additional information was the determinative factor in his conclusion that Deep Ocean's BAFO proposed the best value. Therefore, we focus solely on this factor in reviewing the reasonableness of the contracting officer's determination.

⁶Benthos now offers a copy of Deep Ocean's advertising for an ROV model, which differed from the model actually offered by Deep Ocean, to show that the thrust levels were nearly identical. The actual model offered by Deep Ocean had significantly higher thrust levels than those proposed by Benthos. Benthos was not cognizant of the specifics of Deep Ocean's proposal as this was proprietary information that was not disclosed to Benthos during the course of this protest and no protective order was issued.

Interior requested additional information (i.e., the umbilical cable length) because it understood that this greater thrust capability did not necessarily translate into greater performance levels.⁷ Deep Ocean's revised BAFO showed that the performance of its offered ROV declined slightly, but the ROV was still capable of operating against the specified current. In contrast Benthos's revised BAFO did not answer Interior's question as to its ROV performance with a 250 foot umbilical cord. This question was central to source selection because it addressed the performance of the ROVs under typical operating conditions, i.e., dam inspections with the proposed length of umbilical cable in the current generated by spillways.

We think that Benthos was obligated to submit an adequately written proposal conveying the requested information and that since it did not do so Interior was justified in downgrading Benthos's proposal. See Virginia Tech. Assocs., supra. Contrary to Benthos's assertion that Interior did not provide enough information,⁸ i.e., all performance parameters, we think the agency provided sufficient information to expect a specific response to its request for additional information on ROV performance with a 250 feet umbilical cord. In this regard, we note that section C.3.6 asked for, and Benthos supplied, the same type of information as requested by Interior in the BAFO request, except that the length of umbilical cable was not stated. It follows that Benthos made assumptions about the same

⁷Interior recognized that the thrust figures by themselves only refer to the power output of thrusters but do not necessarily indicate the actual performance of the ROV. For example, one ROV may produce more thrust than another, but its design may produce more drag on the ROV, thus hindering its performance.

⁸To the extent Benthos protests that the RFP and BAFO requests were deficient because sufficient information was not provided to submit BAFOs, this protest is untimely since it was not filed prior to the BAFO due date. See 4 C.F.R. § 21.2(a)(1); Cajar Def. Support Co., B-237522, Feb. 23, 1990, 90-1 CPD ¶ 213. Although Benthos asserts that its BAFO requested additional information and thus should have timely alerted Interior to the asserted informational deficiency, this does not constitute a timely protest under our Bid Protest Regulations since solicitation deficiencies first alleged in a BAFO do not satisfy the timeliness requirements. See Colorado Research and Prediction Lab., Inc.--Recon., B-199755.2, May 11, 1981, 81-1 CPD ¶ 369.


unspecified factors that it later claimed prohibited it from providing an answer to Interior's request for additional information. Indeed, Benthos's BAFO supplied information regarding ROV operation with 50 feet of cable, which was obviously based on certain assumptions and parameters. Benthos's ability to provide the requested information at the time it submitted its BAFO is further evidenced by Benthos's submission of much of the requested information during this protest. Therefore, we think that Benthos assumed the risk that Interior would draw an adverse inference from Benthos's failure to respond to Interior's specific question, see Cajal Def. Support Co., B-242562.2; B-243520, June 12, 1991, 91-1 CPD ¶ 563; Patricia A. Geringer, B-247562, June 11, 1992, 92-1 CPD ¶ 511, and that Interior reasonably interpreted Benthos's lack of a specific response to Interior's question as indicating that Benthos's ROV performance would significantly decline with long lengths of umbilical cable. Thus, Interior reasonably found Deep Ocean's BAFO superior in mission suitability because it specifically assured performance adequate to meet Interior's needs, whereas Benthos's BAFO did not. See generally IPEC Advanced Sys., B-232145, Oct. 20, 1988, 88-2 CPD ¶ 380 (where RFP requests specific technical information and BAFO provides blanket statement of compliance but not the specific information requested, agency may consider the BAFO technically deficient).

During the course of this protest, Benthos submitted technical information showing that its ROV performed at least as well as Deep Ocean's ROV with 250 feet of umbilical cable. Although Benthos relies on this information to assert that Interior's evaluation was unreasonable, the only significant consideration for purposes of our review is whether this information was adequately conveyed in its proposal. Virginia Tech. Assocs., supra. Benthos did not convey this information to Interior until well after award; thus, it does not affect the reasonableness of Interior's evaluation and award decision. Cook Travel, B-238527, June 13, 1990, 90-1 CPD ¶ 371.

Benthos asserts that the evaluation was not consistent with the stated evaluation criteria. We disagree. Sections C.3.3 and C.3.6 stated that the evaluation would be based on the actual levels of thrust and performance. Interior's determination that Deep Ocean's BAFO was superior in mission suitability was largely based on Deep Ocean's greater ROV propulsion thrust level, which Interior reasonably believed translated into superior performance with a long umbilical cable. Also, the tradeoff between price and mission suitability was reasonably performed under the RFP that weighted

these evaluation factors equally, in that Interior reasonably determined the difference in mission suitability outweighed the slight difference in price. See Irwin & Leighton, Inc., B-241743, Feb. 25, 1991, 91-1 CPD ¶ 208.

The protest is denied.


for James F. Hincliman
General Counsel