



Comptroller General
of the United States

Washington, D.C. 20548

S. Riback
147663

Decision

Matter of: SeaArk Marine, Inc.

File: B-248755

Date: September 21, 1992

Joel S. Rubinstein, Esq., Sadur, Pelland & Rubinstein, for the protester.

Alan R. Yuspeh, Esq., and Jerone C. Cecelic, Esq., Howrey & Simon, for Swiftships, Inc., an interested party.

E.J. Stolark, United States Marine Corps, for the agency.

Scott H. Riback, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest against evaluation of technical proposals is denied where record indicates that the agency reasonably determined that, although protester had built the prototype of the riverine assault craft being procured, awardee also had comparable boatbuilding experience and overall submitted a more advantageous proposal.

2. Protest that awardee's offer was materially unbalanced because of higher unit prices for option quantity of riverine assault craft (RAC) is denied where, because option was for RACs primarily intended for possible foreign military sales for which there was no current requirement, the solicitation provided that the option quantity prices would not be evaluated; agency was not required to consider unevaluated option quantity prices in determining whether awardee's offer was unbalanced.

DECISION

SeaArk Marine, Inc. protests the award of a contract to Swiftships, Inc. under request for proposals (RFP) No. M67854-91-R-1145, issued by the Marine Corps for the design and manufacture of riverine assault craft (RAC). SeaArk alleges that the agency improperly evaluated its proposal and that Swiftships' proposal was materially unbalanced.

We deny the protest.

The RFP called for offers to design and manufacture a specified quantity of RACs meeting a variety of performance-type requirements. The solicitation included contract line items (CLIN) for a first article RAC, a basic production quantity of seven RACs, the cost-reimbursement retrofitting of earlier prototype model RACs, and training and data. In addition, it included options for a production quantity of up to 92 RACs, 75 of which were primarily intended for the foreign military sales program along with associated training and data.

The solicitation provided for a two-step evaluation of proposals. First, offerors had to demonstrate that their proposed RAC satisfied four "go/no go" criteria relating to the craft's speed, draft, endurance, and transportability. Second, once agency evaluators were satisfied that the go/no go criteria were met, proposals were to be scored under three technical evaluation criteria including, in descending order of importance: performance, integrated logistics support, and management. The RFP provided that award would be made to the firm whose proposal represented the best overall value to the government, price and technical factors considered, and that technical considerations would be more important than price/cost; the undisclosed evaluation plan called for technical considerations to be worth 60 percent and price/cost 40 percent in the overall evaluation. The solicitation also stated that the government reserved the right to make award on the basis of initial offers without discussions. In addition, the RFP specified that, for price/cost evaluation purposes, the agency would exclude from evaluation the prices for the RACs intended for possible foreign military sales, for which there was no current requirement.

In response to the solicitation, the Marine Corps received six initial proposals, all of which were determined to meet the go/no go criteria. The agency determined that both Swiftships' and SeaArk's proposals were "highly technically qualified and reasonably priced." It found, however, that Swiftships had submitted the technically superior, lower priced proposal. Swiftships' proposal received a weighted technical score of 52.51 points, and a price/cost score of 34.71, for an overall score of 86.92 points. SeaArk's proposal received the next highest weighted technical score of 48.28 points, and a price/cost score of 32.56 points, for an overall score of 80.83 points. The remaining four firms all scored lower than Swiftships and SeaArk. The Marine Corps concluded that award to either Swiftships or SeaArk on the basis of initial proposals would be satisfactory and would fully meet the agency's requirements. Consequently, it made award to Swiftships without discussions based on that firm's higher technical score and lower evaluated price/cost. SeaArk thereupon filed this protest.

SeaArk argues that the Marine Corps improperly failed to take into consideration its prior experience in building the prototypes to be converted under this contract and improperly lowered its technical score based on weaknesses which did not exist in its proposal.

In reviewing challenges to an agency's technical evaluation, we will not independently reevaluate proposals; instead, we will consider only whether an agency's evaluation was reasonable and in accordance with the solicitation's evaluation criteria. See Herndon Science and Software, Inc., B-245505, Jan. 9, 1992, 92-1 CPD ¶ 46. A protester's mere disagreement with the agency's judgment is not sufficient to establish that the agency's evaluation was unreasonable. Id. Based upon our review of the record, we find that the Marine Corps reasonably concluded that while SeaArk's proposal included no significant deficiencies, Swiftships had submitted a somewhat better written, more advantageous technical proposal.

For example, the solicitation required that "the location of personnel and facilities to be used in the performance of the work shall be addressed in the proposal and this shall be sufficient to demonstrate that the available facilities are adequate for full performance of the work required." While Swiftships provided a comprehensive discussion of its facilities and the capital equipment and tools which would be used in manufacturing the RACs, the Marine Corps viewed as a weakness the failure of SeaArk's proposal to include a comprehensive list of the "capital equipment" or tools the firm would use during contract performance. SeaArk does not claim that its proposal specified the equipment or tools to be used in the performance of the work; instead, it maintains that the downgrading of its proposal in this regard was improper because the firm had provided a full listing of all plant facilities and tools during a preaward survey (PAS) conducted by the agency. This, however, provides no basis to question the agency's technical evaluation of SeaArk's offer. Proposals must generally be evaluated solely on the basis of material contained therein, see M.C. Dean Elec. Contracting, Inc., B-246193, Feb. 24, 1992, 92-1 CPD ¶ 219, and information developed during the course of a PAS is no substitute for information that should have been included in the technical proposal. Intelcom Support Servs., Inc., B-225600, May 7, 1987, 87-1 CPD ¶ 487. We have reviewed SeaArk's proposal and the agency's evaluation materials in light of all of SeaArk's allegations and find that, as in the above example, the agency's actions in awarding SeaArk less than maximum possible score were proper.

With respect to SeaArk's experience, which was only the third most important subcriterion under management, the

least important evaluation criterion, the evaluators considered it a strength that SeaArk had built the prototype and many similar boats. They also noted that Swiftships has extensive boatbuilding experience and that, while both firms have extensive boatbuilding experience with comparable boats, neither has built a boat which fully meets the specifications. As noted by the agency (and confirmed by the CLIN items for their modification), the prototypes previously built by SeaArk will require substantial modification to meet the current, revised requirements. In short, our review of the record indicates that the agency did take the protester's experience into account but that this experience simply was not sufficient to warrant a conclusion that SeaArk submitted a superior technical proposal.


SeaArk also argues that Swiftships submitted an unbalanced offer, thereby requiring the Marine Corps either to reject Swiftships' proposal and make award to SeaArk, or to conduct price discussions with all offerors. SeaArk contends that Swiftships proposed below-cost prices for the basic and evaluated option data and training CLINs, while proposing higher unit prices for the unevaluated CLIN 0023 RAC quantity. SeaArk calculates that its overall price would become low if the agency ordered the evaluated options and 20 percent of the unevaluated CLIN 0023 quantity.

An offer can be rejected as materially unbalanced where (1) it is mathematically unbalanced, that is, where nominal prices are offered for some of the items and enhanced prices for other items; and, (2) there exists a reasonable doubt whether award based on a mathematically unbalanced offer will result in the lowest cost to the government. Virginia Mfg. Co., Inc., B-241404, Feb. 4, 1991, 91-1 CPD ¶ 113.

SeaArk's argument that Swiftships' proposal was unbalanced rests upon Swiftships' higher unit prices for the CLIN 0023 option quantities. The Marine Corps, however, has no obligation to purchase any of these optional RACs from the awardee, and the solicitation advised that the CLIN 0023 option quantity would not be evaluated; according to the agency, the RACs under CLIN 0023 were primarily intended for possible foreign military sales for which there was no current requirement. Although SeaArk questions the agency's rationale for not evaluating the CLIN 0023 option quantity, the agency's intentions in this regard were apparent on the face of the solicitation, and any challenge now, after the closing date for receipt of proposals, is untimely. 4 C.F.R. § 21.2 (1992). In these circumstances, the agency was not required to consider the prices offered under CLIN 0023 in determining whether Swiftships' offer was

unbalanced. See Unisys Corp., B-237005, Jan. 5, 1990, 90-1 CPD ¶ 24. We therefore find no basis upon which to sustain SeaArk's protest on this ground.

The protest is denied.


for James F. Hinchman
General Counsel