



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Aerial Image Technology

File: B-251913

Date: May 4, 1993

Brian Huberty for the protester.
Allen W. Smith, Department of Agriculture, Forest Service,
for the agency.
Katherine I. Riback, Esq., Glenn G. Wolcott, Esq., and
Paul I. Lieberman, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Allegation that protester was entitled to an award because it submitted a technically acceptable offer at a lower total price than that of the awardee is denied where the solicitation provided for award on the basis of proposals most advantageous to the government, and the agency reasonably concluded that the awardee's substantially higher rated proposal warranted payment of the higher total price.
2. Allegation concerning alleged solicitation impropriety that was incorporated into the solicitation by amendment is untimely where protest was not filed until after contract award.

DECISION

Aerial Image Technology protests the award of a contract to Pacific Meridian Resources (PMR) under request for proposals (RFP) No. 51-92-046, issued by the U.S. Department of Agriculture, Forest Service, for training and support services related to aerial photography. Aerial contends that it is entitled to award of the contract because it submitted a lower priced technically acceptable proposal and argues that PMR's proposal failed to comply with the solicitation requirements.

We deny the protest in part and dismiss it in part.

BACKGROUND

The solicitation, issued on August 31, 1992, contemplated the award of a fixed-price contract for a base year with 4 option years. The RFP called for the submission of cost and technical proposals and advised offerors that the government would make award to the responsible offeror whose offer, conforming to the solicitation, was determined to be the most advantageous to the government. The RFP's stated technical evaluation criteria, listed in descending order of importance, were: firm experience; experience of personnel assigned to the contract; teaching demonstration;¹ education of personnel assigned to the contract; and service reliability. The solicitation provided that technical evaluation factors were more important than price. The solicitation also contained the agency's standard insurance clause which, among other things, provided that: "when aircraft are used in connection with performing the contract, the Contractor shall have aircraft public and passenger liability insurance."

Five firms submitted proposals by the October 1, 1992, closing date. The technical evaluation board (TEB) found all five proposals to be in the competitive range. On November 5, the agency amended the solicitation to provide that the total proposed cost for the 5-year effort could not exceed \$250,000. By letters dated November 6, the agency advised offerors that teaching demonstrations would be required and requested submission of best and final offers (BAFOs).

Four of the five offerors performed teaching demonstrations and submitted BAFOs;² one of these firm's proposals was subsequently eliminated from the competitive range, based on price and technical factors. Of the three remaining

¹The agency reserved the right to require a teaching demonstration from any prospective contractor.

²Aerial complains that the agency improperly allowed PMR to delay its teaching demonstration for 1 week, and did not provide the same opportunity to the other offerors. Aerial asserts only that it could have obtained a cheaper airfare had it been given an extension. The agency responds that it gave the extension to PMR, upon request, and states that neither Aerial nor any other firm requested an extension, but if any had done so, an extension would have been similarly granted. On these facts, there is nothing which suggests that PMR received any improper competitive advantage from the extension, and the allegation provides no basis for protest.

offerors, Aerial's BAFO received the lowest technical score and offered a total price of \$247,760; PMR's BAFO received the highest technical score and offered a total price of \$249,847.

Aerial's technical proposal was rated significantly lower than PMR's in the two most important technical evaluation factors: experience of the firm and experience of personnel assigned to the contract. The TEB noted that Aerial lacked "depth" in that it had only one employee, Brian Huberty. The TEB further noted that Huberty had recently worked for several different organizations, including a Forest Service contractor, but had not stayed with any one group very long, and "ha[d] [not] demonstrated by word or deed, any superior level of accomplishment or skill with any of the techniques, equipment, technologies, or problems to be supported in the contract under consideration." Finally, the TEB noted that Aerial's proposal failed to substantively address certain RFP requirements and provided only minimal documentation from past employers regarding the firm's reliability and competence.

By comparison, the TEB noted that PMR had a large staff of highly skilled professionals and that the PMR proposal addressed in detail the project support issues and all other important requirements identified in the RFP. The TEB also noted that PMR's primary staff person assigned to this contract had been reliably performing duties similar to those contemplated by this solicitation under a similar contract for the past 3 years. The TEB found that PMR's reliability of service was well documented.

Based on the technical evaluation of the proposals and the prices offered, the TEB determined that PMR's proposal was more advantageous than Aerial's and, on December 22, the agency awarded a contract to PMR. This protest followed.

DISCUSSION

Aerial first protests that its technical proposal should have been rated higher than PMR's, complaining that its proposal was improperly downgraded for failing to provide adequate information. Aerial objects that the agency seemed more interested in "evaluating words [in its proposal] than the person behind the words."

We will examine an evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria; however, a protester's mere disagreement with the agency's judgment does not render that judgment unreasonable. Maytaq Aircraft Corp., B-237068.3, Apr. 26, 1990, 90-1 CPD ¶ 430.

Here, the record supports the agency's judgment that, although Aerial's proposal was technically acceptable, it was technically inferior to PMR's proposal. For example, Aerial's proposal contained only limited information regarding the qualifications and experience of Huberty, Aerial's sole employee, stating that "[the Forest Service's] personnel could attest to [Huberty's] efficiency." However, the TEB report specifically referenced the statement of Huberty's prior Forest Service supervisor that "[Huberty] performed at an adequate, though not superior, level."

An offeror must include in its proposal all of the information sought by a solicitation since a contracting activity's technical evaluation of a proposal is dependent upon the information furnished therein. Computerized Project Mgmt. Plus, B-247063, Apr. 28, 1992, 92-1 CPD ¶ 401. There is no legal basis for favoring a firm with presumptions on the basis of the offeror's prior performance; rather, all offerors must demonstrate their capabilities in their proposals. Id. On this record, we find no basis for questioning the agency's technical evaluation of Aerial's proposal.

Aerial also complains that it should have received the award because its proposal offered a lower price than PMR's. In a negotiated procurement, an agency is not required to make award to the firm offering the lowest price unless the RFP specifies that price will be the determinative factor. Patricia A. Geringer, B-247562, June 11, 1992, 92-1 CPD ¶ 511. The RFP provided that the award would be based on price and technical factors, with technical factors being more important. The agency determined that PMR's proposal--with its substantially higher technical rating and slightly higher price--was more advantageous to the government. Aerial's protest provides no basis to question that determination.

Aerial next argues that PMR's proposal did not satisfy the RFP's requirements for aircraft liability insurance. Such insurance was not required, however. The insurance clause only imposed this requirement in the event the contractor's aircraft was to be used in contract performance. The agency points out that, under this solicitation, which essentially calls for classroom instruction, the contractor is not required to furnish aircraft; accordingly, the aircraft liability insurance provision is inapplicable to this procurement and Aerial's contention that PMR's proposal failed to satisfy the RFP requirements therefore is without merit. See Irwin & Leighton, Inc., B-241734, Feb. 25, 1991, 91-1 CPD ¶ 208.

Finally, Aerial objects to the \$250,000 limitation on cost proposals contained in the solicitation amendment issued on November 5. This allegation concerns an alleged impropriety incorporated into the RFP that was apparent from the face of the amendment. Under our Bid Protest Regulations, such a protest must be filed not later than the next closing date for receipt of proposals following incorporation of the alleged impropriety. 4 C.F.R. § 21.2(a)(1) (1993). Aerial may not participate in a procurement, then challenge the solicitation provisions following the agency's selection of a competing offeror's proposal. See Don's Wheelchair & Ambulance Serv., Inc., B-216790, Jan. 22, 1985, 85-1 CPD ¶ 82. Since Aerial did not raise this matter until after the contract was awarded, the issue is untimely and will not be considered.

The protest is denied in part and dismissed in part.



for James F. Hinchman
General Counsel