



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Saco Defense, Inc.

File: B-252066

Date: May 20, 1993

Robert A. Mangrum, Esq., and Kevin P. Connelly, Esq., Seyfarth, Shaw, Fairweather & Geraldson, for the protester; Fred Barakat, Esq., for JMT Machine Company, Inc., an interested party. Craig Hodge, Esq., and Martin Kane, Esq., Department of the Army, for the agency. Paul E. Jordan, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where protester's best and final offer (BAFO) advised agency that it had extensively redesigned its proposed item to remedy deficiencies and weaknesses, agency reasonably determined that it could not raise protester's scores in all areas affected without retesting. In view of substantial cost of retest and protester's failure to submit sample of the item with its BAFO, agency reasonably determined to evaluate redesigned item without conducting retesting.
2. Agency properly awarded contract to offeror whose higher priced proposal was technically higher rated, where the price/technical tradeoff was reasonably based and consistent with the solicitation's evaluation scheme.

DECISION

Saco Defense, Inc. protests the award of a contract to JMT Machine Co. under request for proposals (RFP) No. DAAA21-92-R-0057, issued by the Department of the Army for basic and optional quantities of a night-sight bracket (NSB). Saco contends that the Army failed to properly evaluate its bracket and failed to properly support its price/technical tradeoff.

We deny the protest.

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The NSB is used to attach three different night-vision devices to the Army's current light anti-armor weapon, the M136 (AT4), which currently has no night-sighting capability. Offerors were required to submit technical proposals consisting of drawings containing dimensions, tolerances, interface information, material, and fabrication processes. Offerors were advised that their proposals must provide convincing documentary evidence in support of any stated conclusions relating to promised performance. In addition, the RFP required offerors to submit two samples of their proposed NSBs with written instructions for safe and effective use of the NSB as described in the statement of work (SOW). The RFP contemplated award of a fixed-price contract for delivery of 200 brackets within 60 days of award, with an option for delivery of an additional 7,200 brackets in multiples of 100 over an 18-month period.

The SOW specified various operational and environmental requirements of the proposed NSBs and provided that proposals would be evaluated in three areas: mandatory requirements, desired characteristics, and cost (price). According to the RFP, if a bracket failed to meet a mandatory requirement, it would be excluded from further consideration. The mandatory requirements were scored on the basis of "go/no go," while the desired characteristics received numerical, "merit" scores. The desired characteristics were organized in two areas: technical, consisting of design and performance (70 percent), and manprint consisting of human factors engineering, safety, and training (30 percent). The merit rating was more important than price. Award was to be made, based upon an integrated assessment of the evaluation results, to the offeror whose proposal meeting the mandatory requirements was most advantageous to the government, price and other factors considered. In this regard, the RFP advised that the Army would not necessarily award the contract to the lowest priced offeror or the offeror with the highest merit rating.

Three offerors, Saco, JMT, and a third offeror, submitted proposals by the August 21, 1992, closing date. Evaluation was divided into five phases: (I) physical examination (review of drawings, weighing and measuring brackets); (II) environmental considerations (such as temperature and vibration); (III) tests by Army soldiers (speed of assembly, boresighting, and human factors); (IV) optical bench test (boresight retention and probability of hit); and (V) safety

testing (drop testing and live fire).¹ All three offerors' brackets failed under the Phase III evaluation, and the offerors were provided an opportunity to remedy the deficiencies. The offerors submitted new or modified bid samples and all five phases were then completed. The evaluations revealed that all three offerors' NSBs contained weaknesses and were deficient for failing to meet one or more of the mandatory requirements.

The Army conducted oral and written discussions with all offerors in early November 1992. By letters of November 25, the Army again identified the weaknesses and deficiencies in each proposal and requested best and final offers (BAFOs). The letters reminded each offeror that to be considered for award, all deficiencies had to be alleviated and that competitive positions could be bettered by minimizing or eliminating weaknesses. According to the evaluators, all three NSBs required only minor changes in order to meet the mandatory requirements. Accordingly, new bid samples were not requested and additional testing was not anticipated.

In reviewing the BAFOs, the evaluators found that JMT had corrected its single deficiency, and most of its weaknesses. Based on its BAFO, JMT's merit score increased from 82.725 to 86.225 points, out of 100. The third offeror did not correct all its deficiencies and was not considered for award. With regard to Saco's BAFO, the evaluators found that the protester had extensively redesigned its NSB in an attempt to correct deficiencies. These deficiencies included meeting the Picatinny Rail specifications; a clearance problem; and a problem with inadvertent disengagement. Saco's proposal's weaknesses included mounting and removal times; boresighting; captive fasteners; poor performance on the drop test; and operation of the AT4's built-in day-sight. The redesign encompassed changes to the NSB housing to correct identified weak areas; modifications to allow use of the day-sight; changes to the Picatinny Rail; and extension of the NSB to remedy the clearance problem. Saco's use of an adapter for attaching some sights had also been identified as a weakness, but Saco did not propose to eliminate this aspect of its design.²

¹The brackets were subjected to two separate drop tests. One involved dropping an AT4, with the candidate NSB and a night-sight attached, from a height of 5 feet onto concrete. The other involved dropping only the candidate NSB with a night-sight attached.

²Since details of Saco's original and redesigned NSBs are proprietary, this decision will only address them in general terms.

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While Saco described how it anticipated the redesigned bracket would correct the various deficiencies and weaknesses, it neither submitted a sample of its new NSB nor any documentation, such as test results, to support its conclusions.

The evaluators at first concluded that since the changes cast doubt on the validity of certain test results, they could not determine whether Saco had remedied its deficiencies without additional testing. After notifying Saco that it had been eliminated from the competitive range, the contracting officer reconsidered and had the evaluators reexamine Saco's BAFO. While the evaluators found that Saco had corrected the deficiencies, they still had concerns with Saco's NSB with respect to several of the desired characteristics. The result was that Saco's proposal's score was increased from 64.86 to 71.1 points.

In making his award determination, the contracting officer considered JMT's proposal's superior merit score and limited weaknesses against Saco's lower score and weaknesses in the areas of probability of hit, operable day-sight, drop test results, and use of an adapter. Based on safety concerns and performance risks, the contracting officer concluded that JMT's superior technical rating outweighed the \$501,538 difference between JMT's BAFO of \$1,513,868 and Saco's BAFO of \$1,012,330.¹ In the agency report, the contracting officer explains that it would not be possible to justify the purchase of Saco's NSB without first redoing all five phases of testing, which would have cost more than an estimated \$214,000 and taken four additional months. In addition, the Army's technical experts concluded that Saco's redesigned bracket was not capable of "coming close" to the performance of JMT's bracket. Upon receiving notice of the contract award to JMT, Saco filed this protest challenging the evaluation of its BAFO and the validity of the contracting officer's price/technical tradeoff.

¹In a document further explaining his award decision, the contracting officer referred to the price difference as \$373,000. This figure represents the difference between the offers for the basic items only. The agency explains that the contracting officer's use of this figure was inadvertent and that he was aware of the total price differential at the time he made his award decision. While Saco argues that this casts doubt on the validity of the price/technical tradeoff, the record reflects that the contracting officer was aware of and considered the actual price difference. We have no basis for concluding that the contracting officer's decision was flawed by the inadvertent reference to the smaller price difference.

In reviewing protests of allegedly improper evaluations, we will not reevaluate proposals; the evaluation of proposals is within the discretion of the contracting agency, since it is responsible for defining its needs and for deciding on the best method of accommodating those needs. Engineering Mgmt. Resources, Inc., B-248866, Sept. 29, 1992, 92-2 CPD ¶ 217; TLC Sys., B-243220, July 9, 1991, 91-2 CPD ¶ 37. However, we will examine the record to determine whether the evaluators' judgments were reasonable and in accord with the listed criteria. Id. A protester's mere disagreement with the agency does not render the evaluation unreasonable. Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115.

Saco first argues that the redesign of its NSB, as reflected in its BAFO, maintained the basic design principles in its original NSB and was not substantial enough to require retesting. We disagree. From our review of the record, including Saco's original and BAFO proposals, we find that Saco's redesign effort was extensive. In order to correct its deficiencies and weaknesses, Saco proposed numerous changes to its NSB housing, including an extension and reconfiguration to accommodate the AT4's built-in day-sight. In addition, Saco proposed to add a device to correct the NSB's problem with inadvertent disengagement. However, Saco failed to furnish any test results or other information to support the efficacy of its new design. Under the circumstances, the agency reasonably concluded that the previous test results, based on Saco's original design, were subject to question.

For example, one of Saco's brackets cracked during the original drop test. While the proposed attempt to strengthen the housing appears to be a plausible correction, even Saco's BAFO stated only that this "should ensure that the housing is capable of withstanding future drop tests without failure." [Emphasis added.] Further, Saco's proposed correction failed to address strengthening another NSB feature which was damaged in the test. The Army also inferred that the alterations to accommodate the day sight and the housing extension to correct the clearance problem introduced potential new design weaknesses with regard to the NSB's durability.

Saco next argues that if the Army believed additional testing was necessary, it was required by the RFP to perform those tests. Again, we disagree. The RFP provided that both NSB samples and technical proposals would be used in the evaluation of proposals and that after discussions, offerors could submit "any revisions" in response to the discussions. However, the RFP both reserves to the agency the right to perform "any or all" of the tests, and does not state that additional, post-discussion or post-BAFO testing will be provided. We do not find that the opportunity for

offerors to make revisions imposed a requirement on the agency to retest a significantly redesigned item. This is especially so where, as here, Saco's NSB required only minor changes to meet the mandatory requirements.

An offeror is responsible for demonstrating affirmatively the merits of its proposal and runs the risk of rejection if it fails to do so. Microwave Solutions, Inc., B-245963, Feb. 10, 1992, 92-1 CPD ¶ 169. Here, having failed to submit either a sample of its significantly redesigned NSB or results of its own testing, Saco ran the risk that the agency's evaluation would not include additional testing.⁴ Thus, the agency reasonably determined not to conduct additional testing of Saco's NSB. Cf. Cajal Defense Support Co., B-239297, July 24, 1990, 90-2 CPD ¶ 76 (deficiencies introduced in BAFOs do not require agency to conduct further discussions.)

Saco next contends that the agency erred in its post-BAFO evaluation by simply reassigning Saco's original scores in those areas affected by the redesign. Contrary to Saco's assumption, the agency did not simply reassign scores. The evaluators reviewed each change and its potential impact on performance and either raised, lowered, or kept the original scores. From our review of the record, we find the agency's evaluation was reasonable and in accordance with the RFP.

The evaluation of each offeror's NSB encompassed some 44 elements (26 mandatory items scored as go/no go and 18 desirable items scored numerically.) With regard to the mandatory items of Picatinny Rail and inadvertent disengagement, Saco's "no go" scores were raised to "go" and its scores also increased on the desirable items, captive fasteners and operable day-sight. Saco's NSB mounting and removal time scores all decreased by .1 point due to the addition of a device to correct the inadvertent disengagement problem. In deducting the points, the agency reasoned that the addition of the mechanical operation involved in using the new device would add at least 2 seconds to removal and mounting of the NSB. Since the removal and mounting must be accomplished in the dark and at times using gloves, we believe the evaluators' assessment was reasonable.

⁴According to the record, there is doubt whether Saco could have timely furnished a new sample since machining would take up to 90 days. Further, while Saco argues that the RFP did not require it to submit documentation supporting its redesign, the RFP warned that conclusionary statements about performance must be supported by convincing documentary evidence.

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With regard to probability of hit, drop test, and time for mounting/removal of the night vision devices to and from the NSB, the evaluators neither increased nor decreased Saco's scores. Their rationale for keeping the original scores was based on their evaluation that even though Saco had made changes to its NSB with the intent of improving the bracket's performance, either no score increase was warranted or additional testing was required to verify any improvement. For example, with regard to the drop test, although Saco proposed to thicken the NSB housing to strengthen it, the evaluators found that other design changes could result in weakening the NSB in other areas. In view of the changes in design (e.g., the housing extension and accommodation for the day-sight), and in the absence of any documentation from Saco to support its conclusions of improvement, we find the agency's evaluation was reasonably based.

Finally, Saco challenges the award to JMT on the basis that the price/technical tradeoff was not properly supported.⁵ The relative merit of competing proposals is primarily a matter of agency discretion and, in a negotiated procurement, award may be made to an offeror who submitted a higher rated, higher priced proposal where the decision is consistent with the RFP's evaluation factors and the agency reasonably determines that the technical superiority of the higher cost offer outweighs the price difference. Instrument Control Serv., Inc., B-247286, Apr. 30, 1992, 92-1 CPD ¶ 407. Agency officials have broad discretion in making price/technical tradeoffs and the extent to which one may be sacrificed for the other is governed by the test of rationality and consistency with the established evaluation factors. General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44; CORVAC, Inc., B-244766, Nov. 13, 1991, 91-2 CPD ¶ 454. Here, the record supports the contracting officer's decision to award the contract to JMT as the

⁵As part of this argument, Saco notes that part of the contracting officer's rationale is contained in a document produced after the protest was filed. This has no effect on the validity of the contracting officer's decision. Where, as here, a source selection official provides an after-the-fact discussion of his price/technical tradeoff, either to supplement or explain the selection decision, we will not object to the tradeoff if it is consistent with the evaluation criteria in the solicitation and otherwise is supported by the record. See EMSA Ltd. Partnership, B-245973, Feb. 5, 1992, 92-1 CPD ¶ 148. Here, the contracting officer's explanations of his tradeoff decision are consistent with each other, the evaluation criteria, and the record.

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technically superior offeror, even though JMT proposed a higher price than Saco.

In making the award determination, the contracting officer considered the price and technical evaluations of Saco and JMT. JMT's proposal scored more than 17 points higher than Saco's in four desirable design and operational characteristics. The contracting officer specifically noted that JMT's design did not use an adapter for attaching sights to the NSB;⁶ was designed to allow use of the AT4 day-sight without removal of the NSB; had a higher probability of hit score; and, unlike Saco, experienced no damage in the drop tests. In all these instances, the contracting officer reasoned that the JMT bracket's superior performance would translate into increased safety and reliability in the field.

For example, small adapters like Saco's are easily lost in the field, especially at night, and any loss would limit the number of sights which could be attached. With regard to the day-sight, the contracting officer noted that if the sight were suddenly required (e.g. where a night battle area is illuminated by a flare), the extra seconds necessary to remove the Saco NSB to allow use of the day-sight could endanger the life of the operator. In addition, the durability of the JMT bracket would translate into greater reliability in the field and lower life-cycle costs of the NSB.

In view of the RFP's recognition that technical concerns were more important than price, the contracting officer concluded that the safety concerns and performance risks associated with Saco's bracket outweighed Saco's lower price. In this regard, the contracting officer considered that before it would have been possible to justify an award to Saco, he would have to verify Saco's improved performance claims by reconducting the tests. Since these tests would have cost between \$200,000 and \$300,000 and taken approximately 4 months to readminister, the contracting officer reasoned that the expense was not justified for a potential \$500,000 savings. This conclusion is reinforced by the opinion of agency technical experts that, even with further testing, the JMT bracket would be evaluated as clearly technically superior to the Saco NSB, especially with regard to durability and use of an adapter.

Saco argues that only those tests affecting the changes it made in its BAFO, not all tests, would have to be repeated, and thus the cost would not be so great. We disagree. The

⁶The RFP specified "no adapters" as a desirable characteristic.

agency explains that many of the tests are conducted by soldiers and are affected by their performance and weather conditions on the date of testing. Thus, to ensure fairness, all offerors' NSBs would have to be retested. With regard to reconducting all tests, the agency explains that it is unknown what effect Saco's design changes would have on technical areas previously found satisfactory. Saco's arguments to the contrary essentially constitute disagreement with the agency considered judgment, which does not render the evaluation unreasonable. Litton Sys., Inc., supra.

Saco also argues that the agency based its award decision on hidden evaluation criteria. Specifically, Saco argues that the "desired" features of the RFP improperly became "critical" safety features. In fact, the RFP differentiated between mandatory and desired features and rated them differently. Mandatory features were rated on a go-no/go basis and failure to meet one or more could result in the elimination of an offer from further consideration for award. The desired features were scored numerically, based on the results of evaluations which included testing, and award, in accordance with the RFP, was based on consideration of scores for these desired features. Thus, the agency correctly viewed weaknesses in desired features to be "critical." Since the award basis stated in the RFP called for evaluation of scores for these features, we find no impropriety in the agency's award decision.

Given the documented superiority of the JMT design and its performance, the safety and reliability considerations involved with Saco's design, and the expense involved in retesting the offerors' NSBs, we have no basis to question the reasonableness of the contracting officer's determination that JMT's proposal offered the best value to the government. CORVAC Inc., supra. While the price difference is great, we do not believe that alone is reason to question the determination. See Dynamics Research Corp., B-240809, Dec. 10, 1990, 90-2 CPD ¶ 471.

The protest is denied.



for James F. Hinchman
General Counsel