



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

Decision

REDACTED VERSION

Matter of: Medland Controls, Inc.
File: B-255204; B-255204.3
Date: February 17, 1994

John W. Hart, Esq., Beaton & Hart, P.C., for the protester.
Ronald W. Messerly, Esq., Bradach Law Offices, for Technical
Marine Services, Inc., an interested party.
Richard V. Gonzales, Esq., Department of Transportation, for
the agency.
John L. Formica, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

1. Given the reasonableness of the agency's determination that the awardee's proposal was superior to the protester's proposal because the awardee's proposal was more detailed than the protester's and offered significant technical advantages, the agency's award selection, based on its determination that the technical advantages associated with the awardee's proposal outweighed its higher price, was reasonable and consistent with the solicitation's evaluation criteria that accorded "paramount" importance to technical merit.
2. Protester was provided meaningful discussions where it was reasonably led into the areas of its proposal that were found deficient or lacking in detail; agency was not required to "spoon-feed" the protester, whose proposal was not detailed in numerous respects, with "more precise" questions regarding the proposal's ambiguities or weaknesses.

DECISION

Medland Controls, Inc. protests the award of a contract to Technical Marine Services, Inc. (TMS), under request for proposals (RFP) No. DTMA91-93-R-00021, issued by the Maritime Administration, Department of Transportation, for

The decision issued on February 17, 1994, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[DELETED]."

boiler control systems for Ready Reserve Force vessels. Medland argues that meaningful discussions were not conducted, that proposals were not evaluated in accordance with the terms of the RFP, and that the selection of TMS for award was unreasonable in view of TMS' higher price.

We deny the protest.

The RFP, issued on July 13, 1993, contemplated the award of a firm, fixed-price contract for microprocessor based boiler control systems to be installed on five vessels, with an option for the systems to be installed on four additional vessels. The solicitation stated that award would be made to the responsible offeror whose offer was determined most advantageous to the government, with technical quality being "of paramount importance." The RFP listed the following equally weighted technical evaluation factors:

1. Technical Attributes of Proposal, Equipment, and Design
2. Contractor's Work Experience and Capabilities
3. Ease of System Operation, Maintenance, Understanding and Adding on Systems

The RFP requested the submission of technical, business, and cost proposals, and contained detailed instructions regarding the preparation of proposals which, in part, tracked the evaluation factors set forth in the solicitation and above. For example, the instructions stated that with respect to the "Technical Attributes of Proposal, Equipment, and Design" evaluation factor, the proposals "shall illustrate the superior qualifications of the proposed equipment and design. . . . The ability of the equipment to withstand the marine environment, withstand long periods of inactive lay-up, provide quick start-up ability, and adapt to various fuel viscosities . . . shall also be discussed."

The agency received 10 proposals by the RFP's August 12, 1993, closing date. The proposals were evaluated by the Technical Evaluation Team (TET), with the proposals of only TMS and Medland being included in the competitive range. The TET determined that TMS's proposal was technically acceptable as submitted, while Medland's was unacceptable as submitted because it lacked certain descriptive information, but was susceptible to being made acceptable.

Discussions were held with TMS and Medland, and the offerors' responses were evaluated by the agency. Amendments to the RFP were issued on September 2 and 14. A second round of discussions was held and best and final offers (BAFO) were received and evaluated. TMS' proposal received an overall total score of 70.5 out of 75 possible technical points at a proposed price of \$4,630,697.

Medland's proposal received an overall total score of 64 points at a proposed price of \$4,188,278. The agency determined that TMS' proposal offered the best overall value to the government based on technical and price considerations and made award to that firm. This protest followed.

Medland protests that the evaluation of its and TMS' proposals was unreasonable, asserting that its system "is unequaled by any . . . in existence today [and] is the cutting edge of technology."

The evaluation of technical proposals is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them. Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16. In reviewing an agency's evaluation we will not reevaluate technical proposals but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria. MAR Inc., B-246889, Apr. 14, 1992, 92-1 CPD ¶ 367. The offeror has the burden of submitting an adequately written proposal, Complere, Inc., B-227832, Sept. 15, 1987, 87-2 CPD ¶ 254, and an offeror's mere disagreement with the agency does not render the evaluation unreasonable, particularly where the procurement concerns sophisticated technical hardware or services. MAR Inc., supra.

The agency considered TMS' technical proposal superior in part because it was more detailed than Medland's. Specifically, the agency found TMS' proposal "significantly more descriptive" than Medland's with regard to "the hardware to be provided, the interface with existing systems, and the necessary deviations to the basic design to suit separate vessel classes." The agency further found TMS' proposal more detailed in the areas concerning the proposed equipment's ability to withstand long periods of inactive lay-up, adapt to various fuel viscosities, and provide quick start-up ability. Additionally, the agency found that TMS' proposal was very specific with regard to the "maintainability of the equipment," in that TMS' proposal provided, among other things, [DELETED] and [DELETED]. In contrast, the agency found Medland's proposal vague in comparison to TMS' with regard to virtually all of the areas discussed above.

Medland does not dispute the agency's conclusion that TMS submitted a significantly more detailed proposal in the areas discussed above. Instead, the protester argues that because its proposal "took no exceptions to the solicitation, indicating [Medland's] acceptance of all equipment requirements stated," its proposal should not have

been downgraded for lacking detail or considered inferior to TMS' more detailed proposal.

Contrary to the protester's assertion, an offeror's blanket offer of compliance is not an adequate substitute for detailed and complete technical information in a proposal establishing that what the firm proposes will meet the government's needs. Whittaker Elec. Svs., B-246732.2, Sept. 10, 1992, 92-2 CPD ¶ 161. An agency may downgrade a proposal for lack of detail pertaining to the requirements of an RFP, or consider a more detailed proposal superior. See ICONCO/NATIONAL Joint Venture, B-240119, Oct. 16, 1990, 90-2 CPD ¶ 296. Based on our review of the record, we believe that the agency reasonably concluded that TMS' proposal was superior to Medland's proposal, in part, because TMS' proposal was significantly more detailed.

Medland also argues that "it appears that [it was] unfairly penalized" by the agency under the "Contractor's Work Experience and Capabilities" evaluation factor. The protester contends here that it received a lower score under this evaluation factor because the agency misunderstood Medland's position as expressed in its BAFO with regard to its ability to accomplish the work to be performed on the vessel Gopher State.

Medland's proposal received 23 out of 25 possible points under this evaluation factor, while TMS' proposal received 24.5 points under this evaluation factor. According to the record, TMS' proposal received the slightly higher score here because it documented TMS' installation of its proposed boiler control system on four other vessels operated by the agency, with each of these installations being successful operationally and approved by the United States Coast Guard. With regard to Medland's proposal, the agency found that although Medland appeared highly capable, its proposal referenced less experience in the installation of its proposed system. Further, we have reviewed the TET's evaluation of Medland's BAFO, and find no evidence of any "penalty" being assessed in the scoring of Medland's proposal based on a misunderstanding concerning Medland's ability to accomplish the work required on the Gopher State. On the contrary, in evaluating Medland's BAFO, the TET raised Medland's technical score under this evaluation factor based "on work plan clarifications" provided by Medland in response to discussions. In any event, based on our review of the record, we believe that the agency acted reasonably in assigning TMS' proposal a slightly higher score under this evaluation factor because TMS' proposal documented more experience in the installation of its proposed system than did Medland's

The agency also found that TMS' proposal demonstrated significant technical advantages in certain specific areas. For example, the agency concluded that the microprocessor control loops identified in TMS' proposal were "more innovative, creative, and functionally superior" to those proposed by Medland, and detailed the reasons why this was regarded as such a strength.

Despite having access under the General Accounting Office protective order to, among other things, TMS' proposal and the agency's evaluation documentation, Medland, in its comments on the agency report, does not substantively respond to, or rebut in any way, the propriety of the agency's determination that the microprocessor control loops described in TMS' proposal represented a significant technical advantage over Medland's system. Instead, Medland appears to rely solely on the contention raised in its original protest to our Office that "its system is unequalled by any . . . in existence today [and] is the cutting edge of technology." Under the circumstances, Medland's objection to this aspect of the agency's evaluation constitutes, at best, mere disagreement with the evaluation results, and does not demonstrate that the agency's technical evaluation was unreasonable. MAR Inc., supra.

The agency also found TMS' proposal superior because its proposed boiler control system is capable of retaining, [DELETED] the parameters set by operators in the system's memory in the event of a power outage. The agency states that power outages "often occur in emergency or crisis situations where quick action is required in stressful circumstances." The agency explains that because TMS' system [DELETED] upon resumption of power the operator will not have to reset the system, thereby saving time, and that because the operator will have set the parameters under circumstances less conducive to making mistakes, i.e., non-emergency situations, the chance for operator error will be greatly reduced.

The protester argues here that "there seemed to be some misunderstanding concerning the effects of a power failure to [its] system." The protester states, without further

¹While Medland initially argued that TMS' proposal must be deficient because it was not premised on the use of a forced balance regulating valve, which Medland asserts is the "heart of the system," the agency found (and the protester has not rebutted) that TMS' proposed [DELETED] allow for all the benefits of the forced balance regulating valve with regard to fuel oil flow control.

explanation, that one of its responses to the discussion questions "indicat(ed) that there would be no necessity for battery backup thereby stating that [its] system as well can continue to be used and data stored in spite of power failure."

The technical evaluators found that Medland's initial proposal failed to "discuss the effects of power outages on all system memory and effect on re-start operations" as specifically required by the RFP. As such, during discussions, the agency asked Medland the following question: "[c]larify your electrical distribution system. Also, is any battery backup advisable?" Medland responded by clarifying its approach to electrical distribution, including its system's operation in the event of a power outage caused by switch failure or the failure of either primary or backup power. Medland stated, however, that it did "not feel that a battery backup system is necessary" because in the event of a total loss of power, the vessel would not be operational anyway since, for example, the vessel's fuel oil pumps would not function.

We believe that the agency reasonably concluded from its review of Medland's proposal, including its response to the discussion questions, that Medland's system would not retain operator programmed parameters, as opposed to pre-programmed parameters, in the event of a total power outage. In this regard, it appears clear from Medland's response to the discussion question referenced above that while Medland's system will continue to function and store data in the event of certain types of power outages, it will not continue to function and retain operator programmed parameters in the event of a total power outage. We are unaware of any other reasonable interpretation of Medland's response to the discussion question, and do not see how the response suggests, as now contended by the protester, that the system will continue to function and retain operator programmed parameters in the event of a total power outage. As a result, we find reasonable the agency's conclusion that TMS' system--which, because of its [DELETED], will retain operator programmed parameters in the event of a total power outage--was superior in this respect.

In sum, as discussed above, while the record shows that the agency recognized that Medland's proposal also contained strengths and advantages, the agency reasonably found TMS' proposal to be superior.

Medland also protests that the agency failed to conduct meaningful discussions. Specifically, with regard to the effect of a power outage on its system, the protester argues that if the discussion question referred to above "reflected the concern for power failures, it should have [been]

clearly stated." Medland also argues that the discussion questions should have been "more precise."

In order for discussions to be meaningful, agencies must generally point out weaknesses, excesses, or deficiencies in proposals, unless doing so would result in disclosure of one offeror's technical approach to another offeror or technical leveling. Marine Animal Prods. Int'l, Inc., supra. Agencies, however, are not required to conduct all-encompassing discussions or describe deficiencies in such detail that there could be no doubt as to their identity and nature; rather, agencies are only required to reasonably lead offerors into the areas of their proposals which require amplification or correction. Son's Quality Food Co., B-244528.2, Nov. 4, 1991, 91-2 CPD ¶ 424. Accordingly, agencies are not obligated to "spoon-feed" offerors as to what factors must be addressed in an acceptable proposal or discuss every aspect of the proposal that receives less than the maximum score. Institute for Human Resources, B-246893, Apr. 13, 1992, 92-1 CPD ¶ 360; Caldwell Consulting Assocs., B-242767; B-242767.2, June 5, 1991, 91-1 CPD ¶ 530.

Medland was asked, as set forth previously, to "[c]larify [its] electrical distribution system. Also, is any battery backup advisable?" Although the term "power outage" does not appear in this question, the question clearly conveyed to Medland the need to clarify or modify its technical approach in this area. The protester has not pointed out, and we are unaware of, what the question could be referring to in the context of the equipment to be procured here--microprocessor based boiler control systems--other than the effects that a total power outage would have on Medland's system. Further, Medland's response evidences that Medland fully understood that the question was directed at clarifying the effects a power outage would have on Medland's system; Medland responded to the question by explaining the effects that various types of power outages caused by differing sources would have on its system.

The protester also argues that in view of the agency's determination that TMS' proposal was superior to Medland's because it was more detailed, the agency should have provided Medland with "more precise" discussion questions concerning the ambiguities the agency had found in Medland's proposal. The protester, however, does not point out which discussion questions, in its view, should have been "more precise."

Based on our review of the discussion questions posed by the agency concerning the areas of Medland's proposal that were found to be vague in comparison with TMS' proposal, we conclude that the questions asked, while not addressing every concern the agency had with the level of information

provided by Medland, imparted sufficient information to lead Medland into the areas of its proposal requiring more detail. The questions are replete with requests that Medland "clarify" numerous aspects of its proposal, including, for example, the "manufacturer/type and attributes of the controllers" proposed, Medland's "course of action regarding cooling of consoles and panels," the "spares" Medland would provide, "how maintenance access [would] be provided" to Medland's consoles and panels, and, as discussed above, Medland's proposed electrical distribution system. The agency simply was not obligated, through the use of "more precise" questions, to spoon-feed Medland as to each of the specific areas of its proposal which required more detail.

Medland protests generally that the agency unreasonably selected TMS for award in light of that firm's higher price. Medland's argues that once "[its] proposal was determined to be in the 'competitive range' . . . the basis for award should have been to the low [cost] responsible offeror."

In a negotiated procurement, the government is not required to make award to the firm offering the lowest price unless the RFP specifies that price will be the determinative factor. Network Sys. Solutions, Inc., B-246555, Mar. 19, 1992, 92-1 CPD ¶ 294. As noted previously, the RFP here stated that "technical factors are considered to be of paramount importance." Under such circumstances, agency officials have broad discretion in determining the manner in which they will make use of the technical and cost evaluation results. Premier Cleaning Sys., Inc., B-249179.2, Nov. 2, 1992, 92-2 CPD ¶ 298. Award to an offeror submitting a higher-rated, higher cost offer is proper where the selection official reasonably determines that the cost premium involved is justified, considering the technical superiority of the selected offeror's proposal. Id.

The agency found that TMS' proposal was technically superior to Medland's, with TMS' proposal receiving a score of 70.5 out of 75 possible points and Medland's proposal receiving 64 points. In its report on the protest, the agency provided all the documentation leading to the selection of TMS' higher-rated, higher-priced proposal for award as the offer representing "the greatest value to the government," and responded in detail to the protester's argument that the selection of TMS for award was unreasonable. The protester, in its comments on the agency report, again did not substantively respond to, or rebut in any way, the agency's persuasive explanation of its cost/technical tradeoff and the resultant selection of TMS for award. Given the technical disparity between TMS' and Medland's proposals, which the protester has not successfully challenged, and the

"paramount importance" of technical merit under the RFP's evaluation scheme, the selection official's determination that TMS' technically superior proposal was worth the higher cost was reasonable. Premier Cleaning Sys., Inc., supra.

Medland has also made a number of other related contentions during the course of this protest concerning the agency's evaluation of proposals, the conduct of discussions, and the selection of TMS for award. Each contention was carefully considered by our Office and found either to be insignificant in view of our other findings or invalid based upon the record as a whole.² For example, Medland alleges that the agency was biased in favor of TMS. We have reviewed the record and find no credible evidence of bias or bad faith on the part of the agency, nor has Medland offered such evidence. Prejudicial motives will not be attributed to contracting officials on the basis of unsupported allegations, inference, or supposition. Avocado Energy Sys., B-244106, Sept. 9, 1991, 91-2 CPD ¶ 229.

In sum, the record supports the agency's technical evaluation and conduct of discussions, as well as the agency's conclusion that TMS's technical proposal was superior to Medland's and that this superiority offset Medland's lower cost.

The protest is denied.

Robert P. Murphy
Acting General Counsel

²Medland also protests that the RFP was written to assure award to TMS. This contention, raised after award had been made to TMS, is untimely because it concerns an alleged solicitation impropriety which should have been apparent from the face of the solicitation and was therefore required to be protested prior to the time set for receipt of initial proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1993).