



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

803261

Decision

Matter of: Polar Power, Inc.--Reconsideration
File: B-257373.2
Date: January 23, 1995

Arthur D. Sams for the protester.
Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where protester does not show that prior decision denying its protest contained any errors of fact or law or present information not previously considered that warrants reversal or modification of our decision.

DECISION

Polar Power, Inc. requests that we reconsider our decision in Polar Power, Inc., B-257373, Sept. 2, 1994, 94-2 CPD ¶ 92, in which we denied its protest of the award of contracts to Goodman-Ball, Inc., FERMONT Division of Dynamics Corporation of America, and Lear Astronics Corporation under request for proposals (RFP) No. DAAK01-93-R-0024, issued by the Department of the Army for the development of an auxiliary power unit (APU).

We deny the request for reconsideration.

The purpose of the acquisition was to develop and produce a 5 kilowatt, 28 volt direct current APU using a multi-phase acquisition approach. The RFP contemplated awarding two or more cost-reimbursement contracts for phase I (development), with an option for phase IIa (continued engineering and development), to be followed with fixed-price production contracts (phases IIb and III) to one of the successful offerors under the RFP. Offerors were required to submit proposals divided into five separate volumes consisting of an executive summary, technical, integrated logistics support (ILS), past performance, and a cost proposal. Award was to be made to the offerors whose proposals represented the best value to the government.

A source selection evaluation board (SSEB) evaluated the 11 proposals submitted in response to the RFP in accordance with the RFP's evaluation scheme. Based on the results of the initial evaluation, the agency included 10 proposals, including the protester's, within the competitive range, held written discussions, and requested best and final offers (BAFO) from all 10 firms. The SSEB evaluated BAFOs and submitted its results to a source selection advisory council. The record shows that the SSEB identified several strengths in the technical area of the awardees' proposals, while the SSEB did not identify any significant strengths worth noting in the protester's proposal. The source selection authority concurred with the recommendations of the source selection advisory council and directed the contracting officer to award contracts to Goodman-Ball, FERMONT, and Lear Astronics as the firms whose proposals represented the best value to the government.

Polar protested the awards to the Army alleging that the agency had improperly evaluated the competing proposals and had failed to conduct meaningful discussions with the firm. The Army responded to each of Polar's contentions, explaining in detail the basis for the award decisions. Polar subsequently filed a protest in our Office. In response to Polar's protest, the agency provided our Office with a complete record, including the protester's and the awardee's proposals, the individual evaluators' notes, the discussion questions submitted to Polar, the final evaluation results, and the justification for the agency's selection decisions.

Based on our review of the record, we concluded that the SSEB had thoroughly evaluated each area of the competing proposals in accordance with the evaluation criteria announced in the RFP and found that while Polar's proposal met the RFP's minimum requirements, it did not demonstrate any significant advantages over the awardees' proposals. Regarding discussions with Polar in general, the evaluators identified nine weaknesses in Polar's proposal, initially rating the protester's proposal "marginal." Each of those nine weaknesses was actually a combination of related items about which the SSEB had concerns.

By letter dated November 19, 1993, the contracting officer informed Polar that certain areas of its proposal required clarification or explanation, and included 29 standard "ERRORS, OMISSIONS, CLARIFICATIONS, DEFICIENCIES" (EOC) forms, with questions numbered from K001 to K029. Each EOC indicated that the question concerned the technical evaluation area, and referenced the relevant volume and section of Polar's proposal, and the corresponding solicitation section. These questions were based on the

weaknesses the SSEB identified in the protester's proposal following the initial evaluation.

Between December 16 and January 28, 1994, the contracting officer provided Polar additional written questions covering a broad range of issues raised earlier in the agency's EOCs, and to which Polar either had not fully responded, or had answered with conflicting or confusing statements. Polar responded in writing to each round of questions by supplying additional information. We concluded that the agency's questions submitted to Polar during several rounds met the requirement for meaningful discussions. See SeaSpace Corp., B-252476.2, June 14, 1993, 93-1 CPD ¶ 462.

RECONSIDERATION REQUEST

In its reconsideration request, Polar does not take issue with our conclusion regarding the evaluation of proposals. Rather, Polar argues that the agency's discussions with the firm were not meaningful because, for example, the agency did not raise any questions reflecting the evaluators' concerns over Polar's noise suppression capability. In this connection, the RFP required that audio noise sound-pressure levels (SPL) emanating from the APU not exceed "75 dBA at 7 meters (23 feet) from the perimeter of the APU In addition, audio noise SPL emanating from the APU shall not exceed 85 dBA at the operator's position." In its proposal, Polar claimed that the SPL emanating from its APU could be expected to measure less than 70 dBA. The SSEB thoroughly considered the information Polar provided and concluded that, although Polar's proposal demonstrated a high level of understanding of noise suppression design, Polar's noise suppression analysis did not adequately support the low noise level Polar claimed could be expected at the operator's position.

While Polar correctly notes that the agency did not raise during discussions this particular concern regarding Polar's claimed low noise level at the operator's position, the agency was not required to do so. As explained in our previous decision, agencies are not required to afford offerors all-encompassing discussions. They must point out weaknesses that, unless corrected, would prevent an offeror from having a reasonable chance for award. Department of the Navy--Recon., 72 Comp. Gen. 221 (1993), 93-1 CPD ¶ 422. Agencies need only lead offerors generally into the areas of their proposals that require amplification. TM Sys., Inc., B-228220, Dec. 10, 1987, 87-2 CPD ¶ 573. Where a proposal is considered to be acceptable and in the competitive range, an agency is not required to discuss every aspect of the proposal that receives less than the maximum rating. Caldwell Consulting Assocs., B-242767; B-242767.2, June 5, 1991, 91-1 CPD ¶ 530.

Here, the SSEB considered Polar's proposal acceptable, and thus the agency was not required to raise every weakness in Polar's proposal. In fact, Polar's proposal received overall final ratings comparable to that given the proposals of two of the awardees. The agency's decision not to award a contract to the protester was not based on Polar's noise suppression analysis, as that was not a major concern of the SSEB. On the contrary, the SSEB found that Polar had satisfied the RFP's requirements with respect to all subfactors in the technical area, rating Polar's proposal "satisfactory" for each evaluation subfactor, and "satisfactory" overall for the technical area. Since the agency considered Polar's proposal acceptable overall, the fact that the agency did not raise any questions about Polar's low noise claims at the operator's position--an area that was not a major concern to the SSEB--does not establish that the discussions with the firm were not meaningful.

Under our Bid Protest Regulations, to obtain reconsideration the requesting party must show that our prior decision may contain either errors of fact or law or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a) (1994). Polar's repetition of arguments made during our consideration of the original protest and mere disagreement with our decision do not meet this standard. R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

The request for reconsideration is denied.

\s\ Ronald Berger
for Robert P. Murphy
General Counsel