



Comptroller General
of the United States

606172

Washington, D.C. 20548

Decision

Matter of: Bay & Delta Towing Company

File: B-258804

Date: February 15, 1995

John S. Going and Ronald L. Charlesworth, for the protester, Richard D. Gluck, Esq., Garvey, Schubert & Barer, for Foss Maritime Company, an interested party, Dennis J. Kelleher, Esq., Department of the Navy, for the agency, Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably found awardee's proposal superior to the protester's proposal under the stated evaluation factors in solicitation for tugboat towing services, where the awardee offered newer tugs, more experienced personnel and more applicable experience.

DECISION

Bay & Delta Towing Company protests the award to Foss Maritime Company under request for proposals (RFP) No. N62383-94-R-2097, issued by the Department of the Navy, Military Sealift Command, for towing by tugboat of targets for military training missions, miscellaneous towing services, and extended tows¹ in the San Diego, California area.

We deny the protest.

The Navy issued the RFP on May 26, 1994, contemplating the award of a firm fixed-price, indefinite-delivery-type contract for 1 year with 4 option years. The RFP stated that award would be made on the basis of best value with price and technical criteria being of equal importance.

¹The RFP defined extended tows as those known to exceed 24 hours to accomplish.

Under the RFP, the price included the options.² Under the technical criterion, the RFP listed, in descending order of importance, the following four evaluation factors and, designated in attachment 3 of the RFP the following subfactors for each factor:

"I. EQUIPMENT

- "A. Description of tugs to be used in performance of this contract (Attachment J-2 to Solicitation).

"II. PERSONNEL QUALIFICATIONS

- "A. Provide a resume for all personnel employed in performance of this contract.
- "B. Years experience operating type of tug to be used under this contract.
- "C. License and/or certificate certifying primary personnel's training in operating tug and tug equipment (Tug Master, Tug's engineer, etc.).

"III. RESPONSE REQUIREMENTS

- "A. Demonstrated ability to dispatch tug within times specified in the solicitation.
- "B. Offeror's physical proximity to area of operations.
- "C. Offeror's plan for having a 24-hour-a-day contact for emergency tows.

"IV. EXPERIENCE AND PAST PERFORMANCE

- "A. Offeror's history on quality of tows delivered, schedule history on tows delivered, reasons for schedule slippages, if any, and description of internal controls to monitor schedule, and cost performance on previous contracts will be evaluated."

²Because this is the case, Bay & Delta's contention that its price should be considered low by virtue of its lower first year price has no merit. See Federal Contracting, Inc., B-250304.2, June 23, 1993, 93-1 CPD ¶ 484.

Attachment J-2, referenced under the equipment factor, requested information about the tugs proposed, including year built, flag, horsepower, size, average speed (both with and without tow), fuel consumption (in gallons per day for both with and without tow), usable fuel capacity, and identification of the propulsion plant and engine manufacturer. The statement of work set forth the agency's minimum requirements, including minimum horsepower requirements for the various towing services and a minimum speed of 10 knots while towing a target in moderate weather.

Three offerors, including Bay & Delta and Foss, submitted proposals by the amended closing date of July 8. The Navy evaluated proposals, conducted discussions with all offerors, and requested best and final offers (BAFO). All three offerors submitted BAFOs by the amended due date of September 20. The results of the Navy's final evaluation were as follows:

<u>Offeror</u>	<u>Technical Score</u>	<u>Price</u>
Foss	87.90	\$3,805,207
Bay & Delta	80.05	3,824,020
Harbor Tug & Barge	83.25	4,288,782

Foss, the highest-rated, lowest-priced offeror, was selected for award as documented in the following source selection decision:

"Foss's [BAFO] price is 12 [percent] and 1 [percent] lower than the [BAFOs] proposed by Harbor Tug and Bay & Delta . . . respectively. Although all offered proposals were rated "good" and all offerors are basically qualified to perform the towing requirements of the solicitation, Foss's [proposal] is determined to be the best qualified to perform the towing services, based on the trained experienced personnel and relatively new fleet of tugs offered, past performance, and minimal performance risk. The two older tugs each offered by both Harbor and Bay & Delta are perceived to present a moderate performance risk of unreliability and/or non-availability. Foss's combined higher rating and lowest offered price provides the "Best Value" to the [g]overnment and in accordance with FAR [S] 15.605(b) presents a quality proposal for performance of the contract. It is recommended that award be made to Foss"

The Navy awarded the contract to Foss on September 30. Bay & Delta then protested, basically alleging that its proposal was technically superior to the other offerors' proposals, and that the agency either did not apply the stated evaluation factors or applied additional, unstated evaluation factors.

The evaluation of technical proposals is a matter within the discretion of the contracting agency because it is responsible for defining the agency's needs and the best method of accommodating them. Instructional Design Sys., B-246314, Feb. 28, 1992, 92-1 CPD ¶ 254. Where a protester alleges that the contracting agency's evaluation is improper, we will examine the agency's technical evaluation to ensure that it is reasonable and consistent with the evaluation criteria. Sarasota Measurements & Controls, Inc., B-252406.3, July 15, 1994, 94-2 CPD ¶ 32. The protester's mere disagreement with the agency does not render the evaluation unreasonable. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450.

The record shows that Navy's source selection decision is primarily based on the superiority of Foss's proposal, as compared to the other proposals, particularly in the areas of tugs proposed, experience of personnel, and past performance, as well as Foss's low price. As discussed below, we find the Navy's decision was reasonable and consistent with the stated evaluation criteria, and that no unstated evaluation criteria were improperly considered.³

As indicated above, a primary discriminator among the proposals was the relative age of the tugs, which was considered under the most important evaluation factor--equipment. The year in which a tug was built was information solicited by attachment J-2, which identified

³While Bay & Delta complains that it was not provided the offerors' proposals or documentation relating to the evaluation, Bay & Delta was provided by the agency with the documentation concerning the evaluation of its own proposal at our Office's request. Other requested information was considered by the agency not to be releasable, and no protective order was issued because Bay & Delta was not represented by counsel in its pursuit of the protest. However, we have reviewed the entire record, in camera, and find the evaluation was proper. For example, while Bay & Delta alleges that the fact that the agency employed a Source Selection Plan--which has not been provided to Bay & Delta--shows that unstated evaluation factors were employed, our review shows that this plan was, in fact, consistent with the RFP evaluation factors.

the areas that would be evaluated under the equipment factor. Thus, the age of the tugs was an evaluation criterion under this factor. Although all of the tugs proposed by Foss and Bay & Delta met or exceeded all of the stated equipment requirements, the tugs proposed by Foss were from 10 to 38 years newer than those proposed by Bay & Delta. Thus, we find reasonable the Navy's determination that Foss's proposal deserved a higher rating because its tugs, being newer, generally would be more reliable.

While Bay & Delta alleges that the Navy should have rated its equipment superior to Foss's equipment because Bay & Delta proposed two tugs with more than twice the horsepower required under the RFP, the record shows that the Navy did consider its tugs' horsepower to be a strength in Bay & Delta's proposal. However, it also found that Foss proposed five tugs that met or exceeded the minimum horsepower requirements and also matched the capability of Bay & Delta's tugs with regard to towing the specified load at a speed of 10 knots. Moreover, in addition to the fact that Foss's tugs were newer, they had the capability for longer range between refueling based on the fuel consumption and fuel capacities of its proposed tugs. Thus, the record supports the Navy's determination that Foss's equipment was superior under the evaluation factor.⁴

Bay & Delta nevertheless alleges that the Navy was required to inspect its proposed tugs as part of the Navy's evaluation of proposals under the equipment factor, which would assertedly have disclosed the superiority of Bay & Delta's tugs. Bay & Delta references the provision in section E.1 that reserved to the government the right to conduct either pre- or post-award inspections of the tugs and equipment to be provided under this contract, which Bay & Delta asserts obligated the agency to perform pre-award inspections of the tugs. However, it is apparent that section E.1 does not relate to the evaluation of the proposals, which is provided for in section M of the RFP, but rather relates to determining a prospective contractor's responsibility. A contracting officer has broad discretion whether to conduct a pre-award survey to assess responsibility, since a pre-award survey is not a

⁴Although Bay & Delta asserts that it should have been rated superior because it proposed such items as new communications equipment and exceeded the requirements for on-board accommodations, the RFP did not set forth these elements as evaluation criteria. Rather, the RFP merely stated minimum requirements for these elements, and did not provide for evaluation of, and the Navy did not evaluate proposals for, equipment that may exceed the minimum requirements with regard to these elements.

prerequisite to an affirmative responsibility determination. See Oliver Prods. Co., B-245762.2, Apr. 28, 1992, 92-1 CPD ¶ 501. Because award was made to the incumbent, no pre-award survey was considered necessary here.

Foss's proposal was also reasonably rated superior to Bay & Delta's proposal under the second most important evaluation factor--personnel qualifications. Although both Foss and Bay & Delta proposed qualified crew members, Foss proposed crew with several years more experience on average. Several of Foss's proposed crew members have over twice the years of experience of Bay & Delta's most experienced personnel. As indicated above, years of experience of qualified personnel was a specific subfactor of the personnel qualifications factor.

With regard to past performance and experience, both Foss and Bay & Delta have exemplary records. Foss, however, has a much longer history of providing quality tug services and, as the incumbent, has provided quality performance on the exact services solicited here. Bay & Delta has no Navy experience and, although the Navy still considered Bay & Delta qualified to perform this contract, the Navy reasonably considered Foss's past performance history to be superior among all offerors in light of Foss's direct experience on the contract requirements. See AWD Technologies, Inc., B-250081.2, Feb. 1, 1993, 93-1 CPD ¶ 83.⁵

Bay & Delta alleges that the Navy improperly considered the location of an offeror's office as an unstated evaluation factor. However, the RFP specifically stated "offeror's physical proximity to area of operations" as a subfactor under the third evaluation factor--response requirements.⁶

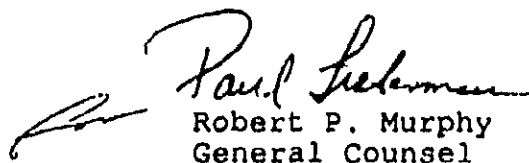
⁵Although Bay & Delta alleges that consideration of previous experience on the specific contract requirements is an unstated evaluation criteria because such specific experience is not required by the RFP or otherwise stated under the past performance factor, such experience is intrinsically related to the past performance factor and need not be specifically stated in the RFP. See AWD Technologies, Inc., supra.

⁶In any case, the record shows that during discussions the Navy asked Bay & Delta to explain how it would manage performance and response time requirements in San Diego when Bay & Delta's facilities were in San Francisco. In response, Bay & Delta offered to establish facilities in San Diego and the Navy appropriately increased Bay & Delta's technical score.

Bay and Delta finally alleges that the closeness of Foss's price to Bay & Delta's price, considered together with the inherent advantages Foss may have as the incumbent contractor,⁷ suggests that Foss was given Bay & Delta's pricing information. Both Foss and the agency deny this allegation and the record does not provide any evidence to support the protester's speculation. We will not consider an allegation of price disclosure based on nothing more than conjecture or inference. See Elektra Instruments, Inc., B-226616, Mar. 30, 1987, 87-1 CPD ¶ 365.

In sum, the record supports the agency rating Foss's proposal superior technically to Bay & Delta's proposal. Although Bay & Delta disagrees with the Navy's evaluation, the protester has not shown that its proposal is technically superior to Foss's proposal. Since Foss also offered the lowest price, the record supports the Navy's conclusion that Foss's proposal was the best value under the evaluation criteria stated in the RFP. See ESCO, Inc., supra.⁸

The protest is denied.


Robert P. Murphy
General Counsel

⁷The natural advantages of incumbency do not suggest agency bias nor is the agency required to compensate other offerors for such inherent advantages. Employment Perspectives, B-218338, June 24, 1985, 85-1 CPD ¶ 715.

⁸Bay & Delta initially protested that the Navy failed to conduct meaningful discussions with the protester. The Navy fully refuted this allegation in its report on the protest. Bay & Delta did not respond on this issue in its subsequent submissions. We thus consider this basis for protest to be abandoned. Hampton Rds. Leasing, Inc.--Recon., B-244887.2, Apr. 1, 1992, 92-1 CPD ¶ 330.