



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Sealift Inc.

File: B-405705

Date: December 8, 2011

Alan Adler, Sealift Inc., for the protester.

Kevin P. Callahan, for Teras BBC Ocean Navigation Enterprises Houston, LLC, an intervenor.

Scott S. Sheffler, Esq., Military Sealift Command, for the agency.

Frank Maguire, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where proposal for ship charter services did not take exception to requirements in solicitation that the proposed vessel meet certain draft and cargo capability requirements, but specifically provided that the proposed vessel would comply, and where there was no significant countervailing evidence reasonably known to the agency evaluators that should have created doubt about whether the offeror would comply with the requirements, the proposal was reasonably evaluated by the agency as acceptable.

DECISION

Sealift Inc., of Oyster Bay, New York, protests the Military Sealift Command's (MSC) award of a contract to Teras BBC Ocean Navigation Enterprises Houston, LLC (Teras BBC), of Bellaire, Texas, under request for proposals (RFP) No. N00033-11-R-5500, for ship charter services. Sealift asserts that the vessel offered by Teras BBC was incapable of performing the requirements of the RFP and that therefore the awardee's proposal was technically unacceptable.

We deny the protest.

The RFP was issued on May 11, 2011, for the time charter of a dry cargo container ship with the capability to carry ammunition. Agency Report (AR) at 3. The ship was expected to be deployed between the U.S. East Coast and the Arabian Gulf to support resupply operations in the Arabian Gulf. RFP at 22; see AR at 3. Award was

to be made to the lowest-priced, technically-acceptable proposal. RFP at 120; see AR at 3.

Pertinent here, the RFP required that the chartered vessel “have a laden draft not to exceed 8 meters,” RFP at 22, § C.3.2.1, and “a minimum cargo capacity of 800 TEUs [twenty foot equivalent units] of ammunition.” RFP at 23, § C.3.3.1. Offerors were required to represent that their proposal “addresses all of the requirements of the solicitation,” and to “warrant that they acknowledge and will comply with all terms and conditions of the RFP.” RFP Section L, “Instructions, Conditions and Notices to Offerors,” at 116. In addition, offerors were also required to “acknowledge and demonstrate compliance with” specific elements of technical acceptability, including laden draft and cargo capacity. RFP Section M-2-2, at 116, 121.

Seven proposals were received, including proposals from Sealift and Teras BBC. AR, exh. 6, Pre-Negotiation Business Clearance Memorandum, at MSC0272. After several rounds of discussions and proposal revisions, final proposal revisions were received. Both Sealift’s and Teras BBC’s revised proposals stated that their offered vessels could meet all the requirements of the RFP, and specifically indicated compliance with the 8-meter laden draft and the 800 TEU cargo requirements. Teras BBC Proposal at MSC0544, MSC0768-69; Sealift Proposal at MSC1232, MSC1277. Both proposals were found technically acceptable. AR at 6. MSC awarded Teras BBC a contract on September 6, based on its low-priced, technically-acceptable offer. Id. This protest ensued.

Teras BBC proposed to use the vessel “BBC Leer” to perform the contract. Sealift challenges the acceptability of the BBC Leer, asserting that,

[w]e have looked at an exact sister of the BBC Leer and have carried out a stability calculation to ascertain whether the vessel can carry out the mission. Our conclusion is that in this vessel’s present configuration, she is unable to perform her mission and have a sufficient quantity of fuel to navigate safely.

Protest at 2. Sealift specifically claims that it is “very clear” that the BBC Leer will be unable to comply with the requirement of having a laden draft of less than 8 meters with her full fuel load and the required 800 ammunition loaded containers. Id. at 2-3; see also Supp. Comments. According to the protester, compliance with other requirements of the RFP will “diminish the cargo carrying capability of this vessel.” Id. Sealift concludes that the complying with the limit on laden draft and the cargo carrying requirement would result in a reduced fuel load that would “force her to run out of fuel in the middle of the Atlantic Ocean.” Protest at 3.¹

¹ In its response to a supplemental agency report requested by GAO, Sealift offered additional arguments regarding the acceptability of Teras BBC’s proposal and

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In a negotiated procurement, any proposal that fails to conform to material terms and conditions of the solicitation is unacceptable and may not form the basis for award. Alpha Tech. Servs., B-250878, B-250878.2, Feb. 4, 1993, 93-1 CPD ¶ 104 at 3. The procuring agency has primary responsibility for evaluating the technical information supplied by an offeror and determining the acceptability of the offeror's item; we will not disturb such a determination unless it is shown to be unreasonable. Id.

Here, the record indicates that Teras BBC's proposal indicated on its face that its offered vessel would comply with the requirement for a draft no greater than 8 meters when loaded with 800 TEUs. AR at 10; see Teras BBC Proposal at MSC0544, MSC0768-69. Although the protester questions whether the BBC Leer will have sufficient fuel if it complies with the 8 meter draft requirement, as noted by the agency, RFP amendment No. 0003 clarified that the "maximum draft" requirement of 8 meters is "based on a planned discharge port," and further provided that "[f]ueling during the period of performance will be up to the seamanship of the contractor." RFP Amendment No. 0003, Question and Answer No. 1(c). As explained by the contracting officer, since there was no measurable draft restriction at the loading port, there was no requirement that the vessel draft could not exceed 8 meters when departing the port fully loaded with fuel and mission cargo. The contracting officer further maintains that since the definition of "laden" set forth in the RFP does not address fuel, RFP at 18 ("Laden – containing cargo"), the amount of fuel carried, as indicated in amendment No. 0003, is to be left to the seamanship of the contractor. CO's Statement at 2. Sealift has furnished no basis for us to question either the agency's interpretation of the specifications nor the agency's resulting determination to find Teras BBC's proposed vessel to be acceptable.

An agency, of course, may not accept at face value a proposal's promise to meet a material requirement where there is significant countervailing evidence reasonably known to the agency evaluators that should create doubt whether the offeror will or can comply with that requirement. Maritime Berthing, Inc., B-284123.3, Apr. 27, 2000, 2000 CPD ¶ 89 at 6. Here, however, Sealift has pointed to no such significant

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specifically identified the "sister ship" it refers to in its protest. Supp. Comments, attach. These additional arguments will not be considered. Our Bid Protest Regulations do not contemplate the piecemeal presentation or development of protest issues through later submissions citing examples or providing alternate or more specific legal arguments missing from earlier general allegations of impropriety. CapRock Gov't Solutions, Inc.; ARTEL, Inc.; Segovia, Inc., B-402490 et al., May 11, 2010, 2010 CPD ¶ 124 at 24. Because the protester did not present these arguments earlier in the protest process, even though it could have done so, these arguments are untimely raised.

countervailing evidence, that both (1) creates doubt whether the BBC Leer will comply with the solicitation draft and cargo capabilities as reasonably interpreted, and (2) was reasonably known to MSC prior to the award of the contract to Teras BBC. In these circumstances, we conclude that the agency had a reasonable basis for finding that Teras BBC's proposal met the RFP's requirements regarding draft and cargo capability. See, e.g., Alpha Marine Servs., LLC, B-292511.4, B-292511.5, March 22, 2004, 2004 CPD ¶ 88 at 4.

Further, to the extent that Sealift's protest can be read as a claim that, in actual performance of the contract, the BBC Leer will be unable to satisfy the RFP's draft and cargo requirements, we will not consider it. Whether Teras BBC ultimately complies with the performance requirements of the RFP is a matter of contract administration, which is within the ambit of MSC, and is not subject to review under our bid protest function. 4 C.F.R. § 21.5(a); see, e.g., Sealift, Inc., B-298588, Oct. 13, 2006, 2006 CPD ¶ 162 at 2.

The protest is denied.

Lynn H. Gibson
General Counsel