



United States Government Accountability Office
Washington, DC 20548

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Decision

Matter of: Ocean Services, LLC

File: B-406087; B-406087.2

Date: February 2, 2012

Wayne A. Keup, Esq., for the protester.
Fred Kopatich, Esq., Ashley Powers, Esq., and Mark Langstein, Esq., Department of Commerce, for the agency.
Gary R. Allen, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's proposal was reasonably excluded from the competitive range where the agency found that the proposal was technically unacceptable and would require major revisions to be made acceptable.

DECISION

Ocean Services, LLC, of Seattle, Washington, protests the elimination of its proposal from the competitive range under request for proposals (RFP) No. QA133W-10-RP-0023, issued by the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), for marine vessels for the National Data Buoy Center (NDBC) to service weather buoys world-wide.

We deny the protest.

BACKGROUND

The NDBC is an agency within NOAA that provides meteorological and environmental monitoring data from buoys and other systems to NOAA. Among the Center's responsibilities is the operation and maintenance of the national data buoy network, a system of weather buoys of differing sizes and mooring configurations. The procurement at issue here will provide for the transportation and berthing of technicians and other personnel to perform scheduled maintenance and "non-routine activities" (that is, repairs of "discrepancies") of the buoys. Agency Report (AR), Tab 2, Statement of NDBC Operations Branch Chief, at 1-2.

The RFP, issued as small business set-aside, provided for the award of multiple indefinite-delivery/indefinite-quantity contracts for marine vessels to transport

personnel to service buoys world-wide. The solicitation identified five contract line items (CLIN) for vessels of differing type or size.¹ As relevant here, CLIN A was for intermediate class vessels, CLIN B for global class vessels, and CLIN C1 for vessels under 125 feet in length to perform discrepancy services and other tasks. Offerors were permitted to submit proposals for any or all of the CLINs. RFP at 9. The RFP required offerors to identify specific vessels under each CLIN. Id.

A detailed Statement of Work (SOW) was provided that identified general requirements that all vessel classes must meet and specific requirements for each vessel class. SOW at 10-46. As relevant here, intermediate class vessels (CLIN A) were required to “be outfitted with . . . a shipboard working deck crane . . . [with a] minimum lifting capacity of 60,000 lbs., and located in the immediate vicinity of the buoy working deck area . . . [and] capable of reaching the edge of the ship.” SOW at 13. Global class vessels (CLIN B) were required to have a crane with a minimum capacity of 40,000 lbs. that extends the entire working deck space. Global class vessels were also required to have a stern A-frame with a safe working load of 20,000 pounds, a vertical clearance of 28 feet between cross member and deck, and a horizontal clearance of 15 feet between legs at the deck.² Id. at 14-15.

The RFP provided for awards on a best value basis, considering price and the following technical evaluation factors in descending order of importance: corporate experience and past performance; vessels’ characteristics and capabilities; technical plan and approach; and key personnel. RFP at 89-90. Offerors were informed that the technical evaluation factors combined were more important than price. The RFP detailed what would be evaluated under each evaluation factor. For example, offerors were informed that under the vessels’ characteristics and capabilities factor, the agency would evaluate, among other things, the vessels sea keeping characteristics and “deck equipment (cranes, A-frames, winches, capstan, etc.)” RFP at 89.

Instructions for the preparation of proposals were provided for each evaluation factor. Offerors were informed that they should specifically and completely detail their “capabilities and the means to be used to satisfy the requirements of the” SOW. RFP at 83.

¹ The protester’s proposal was not eliminated from the competitive range for CLINs C2 and C3.

² A stern A-frame is a structure on the rear of vessel with a winch for lifting.

NOAA received proposals from five offerors, including Ocean, which were evaluated by the agency's source selection evaluation team (SSET).³ Ocean's proposal was evaluated as follows under CLINs A, B, and C1:⁴

	Experience/ Past Performance	Vessel's Characteristic/ Capabilities	Technical Plan and Approach	Key Personnel	OVERALL
CLIN A	Very good	Unsatisfactory	Marginal	Very good	Unsatisfactory
CLIN B	Very good	Unsatisfactory	Marginal	Very good	Unsatisfactory
CLIN C1	Very good	Unsatisfactory	Marginal	Very good	Unsatisfactory

AR, Tab 31, SSET Technical Evaluation Report, at 4. With respect to Ocean's unsatisfactory ratings under the vessel's characteristics and capabilities factor, the SSET found that, although Ocean proposed a number of vessels under these CLINs, Ocean's proposal omitted required information and failed to show that its vessels would satisfy all of the general or specific requirements. Id. at 13-14.

With regard to CLIN A, Ocean proposed two vessels, both of which the SSET found unsatisfactory because Ocean did not discuss a number of specific SOW requirements. The evaluators found that neither vessel satisfied the RFP's crane requirements for this CLIN. Specifically, the evaluators found that for one of the vessels Ocean's proposal indicated that the vessel's crane would not satisfy the required minimum lifting capacity. The evaluators found that, for the other proposed vessel, Ocean's proposal had not identified a crane, nor stated any plans for adding one. Id. at 13.

With regard to CLIN B, Ocean proposed four vessels, all of which the SSET found unsatisfactory. For each vessel, the SSET noted that Ocean had failed to provide required information and/or equipment listed as specific requirements in the SOW. One vessel did not have the required crane, the others either did not have the required A-frame, or the proposal did not contain the necessary technical information to demonstrate compliance with the A-frame requirement. Id. at 13-14.

³ Only three offerors submitted proposals for CLIN C1.

⁴ The SSET evaluated proposals as excellent, very good, good, marginal, or unsatisfactory. As relevant here, an unsatisfactory technical rating reflected a proposal with major errors, omissions or deficiencies that would require major revisions to meet program requirements stated in the RFP. See AR, Tab 16, Source Selection Plan, at 10.

With regard to CLIN C1, Ocean proposed four vessels, all of which the SSET found unsatisfactory. One of these vessels, the [deleted], had an identified overall length of 133, which exceeded the 125 foot maximum length identified for vessels under this CLIN.⁵ See Ocean Technical Proposal at 59.

The agency included a number of technically acceptable proposals in the competitive range for CLINs A, B, and C1. See AR, Tab 34, Business Case Memorandum, at 21-27. Ocean's proposal was excluded from the competitive range for these factors, because it was found to be technically unacceptable and would require major revisions to meet the RFP's requirement. Id.

Following a debriefing, Ocean protested to our Office.

DISCUSSION

Ocean first protests that the agency unreasonably failed to consider its proposed price in deciding to exclude its proposal from the competitive range under CLINs A, B, and C1. In this regard, Ocean contends that the agency did not determine that its proposal was technically unacceptable under these CLINs, only unsatisfactory. See Protester's Comments at 2-5.

There is no merit to Ocean's contention that its proposal was not found to be technically unacceptable. As documented in the contemporaneous record, NOAA found that Ocean's proposal under these CLINs had significant weaknesses and deficiencies that would require major revisions to meet the stated minimum requirements. See AR, Tab 31, SSET Technical Evaluation Report, at 12-14; Tab 34, Business Case Memorandum, at 24, 27, 29; Tab 35, Notification of Exclusion from the Competitive Range. A proposal that fails to satisfy a material solicitation requirement may not be considered for award, see LifeCare, Inc., B-291672, B-291672.2, Feb. 20, 2003, 2003 CPD ¶ 95 at 6, and is thus technically unacceptable.

There is also no merit to Ocean's objection that NOAA excluded its proposal from the competitive range for these CLINs without consideration of its price. While an agency may not exclude a technically acceptable proposal from the competitive range without meaningful consideration of that proposal's cost or price to the government, see Kathpal Tech., Inc.; Computer & Hi-Tech Mgmt., Inc., B-283137.3 et al., Dec. 30, 1999, 2000 CPD ¶ 6 at 9, where, as here, the agency concludes that a proposal is technically unacceptable, it is proper to exclude the proposal from the competitive range without considering price. TMC Design Corp., B-296194.3, Aug. 10, 2005, 2005 CPD ¶ 158 at 5.

⁵ Ocean Services only challenges the agency's evaluation of this vessel (the [deleted]). See Protest at 12 n. 20.

Ocean also challenges NOAA's evaluation of its proposal, arguing that the agency should have surmised from its proposal's general drawings and charts that its vessels satisfied the requirements or were readily correctable. See Protest at 6-13; Comments at 8-13.

The evaluation of an offeror's proposal is a matter largely within the agency's discretion. Frontline Healthcare Workers Safety Found., Ltd., B-402380, Mar. 22, 2010, 2010 CPD ¶ 91 at 5. In reviewing a protest that challenges an agency's evaluation of proposals, our Office will not reevaluate the proposals, but, rather, will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. Mike Kesler Enter., Oct. 23, 2009, B-401633, 2009 CPD ¶ 205 at 2-3. An offeror that does not affirmatively demonstrate the merits of its proposal risks rejection of its proposal. HDL Research Lab, Inc., B-294959, Dec. 21, 2004, 2005 CPD ¶ 8 at 5. Proposals with significant informational deficiencies may be excluded, whether the deficiencies are attributable to either omitted or merely inadequate information addressing fundamental factors. American Gov't Servs., Inc., B-292242, Aug. 1, 2003, 2003 CPD ¶ 163 at 4. A protester's disagreement with the agency's evaluation provides no basis to question the reasonableness of the evaluators' judgments. Mike Kesler Enter., supra.

Here, the record supports the agency's evaluation of Ocean's proposal as unacceptable under CLINs A, B, and C1. As noted above, the RFP identified both general and specific requirements that vessels must satisfy under each CLIN. Also, offerors were instructed to provide technical proposals that specifically and completely detailed their "capabilities and the means to satisfy the requirements of the" SOW. RFP at 83. Despite these requirements, Ocean's proposal provided little discussion, apart from pictures, drawings and charts, of how its vessels satisfied all of the specified requirements.⁶ See Ocean Technical Proposal at 33-61.

⁶ The protester asserts that all of its deficiencies were "readily correctable," did not need major revisions, and could easily have been explained or made acceptable through discussions. Comments at 12-13. We find that these assertions provide no basis to object to the agency's exclusion of Ocean's proposal from the competitive range. As noted above, Ocean provided little information in its proposal to establish that it would satisfy the RFP's requirements. We think that the agency reasonably determined that Ocean's proposal would require major revisions to be made

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In addition to finding that Ocean failed to provide information demonstrating that its vessels would satisfy the agency's requirements, the evaluators also found that some of the information provided by Ocean demonstrated that the protester's vessels did not meet the stated requirements in a number of regards. For example, under CLIN A, Ocean indicated that for one of its proposed vessels the vessel's largest crane had a maximum lifting capacity of 40,000 pounds, which would not satisfy the SOW requirement for a crane with a minimum lifting capacity of 60,000 pounds.⁷ Id. at 42; SOW at 13. With respect to Ocean's other proposed vessel under this CLIN, Ocean's proposal did not indicate that a crane was installed on this vessel and there was no discussion of how this requirement would be met. Similarly under CLIN B, the evaluators found that Ocean's proposed vessels did show compliance with the SOW requirements for a crane and stern A-frame.

We have reviewed Ocean's complaints with the agency's evaluation of its proposed vessels under CLINs A, B, and C1, and find that the evaluation conclusions are supported by the record. While Ocean continues to disagree with NOAA's determination that the firm's proposal was not acceptable under these CLINs, its disagreement does not demonstrate that the agency's technical judgment was unreasonable.⁸

In sum, the record supports the agency's determination that Ocean's proposal under CLINs A, B, and C1, contained significant weaknesses and deficiencies that

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acceptable. Although Ocean argues that it could have corrected all its deficiencies if it were provided with discussions, an agency is not required to include such a proposal (one that requires major revisions to be made acceptable) in the competitive range. See Americom Gov't Servs., Inc., supra, at 7.

⁷ In its protest Ocean argues that this vessel's crane was structurally designed for a capacity of 30 tons and thus could be "rerigged" to satisfy the SOW requirement. See Protest at 6. This is not information, however, that was provided in its proposal for the agency's review.

⁸ Ocean also argues that NOAA evaluated offerors' proposals disparately. Specifically, Ocean complains that the evaluators noted some of the same informational concerns with other offerors' proposals that were found to be acceptable, where Ocean's proposal was found unacceptable. There is no merit to this argument. None of the proposals that were found to be acceptable, however, had the same kinds of broad informational infirmities and failure to meet minimum requirements as Ocean's proposal.

would require major revisions to be made acceptable. Based upon this evaluation, NOAA reasonably excluded Ocean's proposal from the competitive range.

The protest is denied.

Lynn H. Gibson
General Counsel