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## Decision

**Matter of:** Marine Design Dynamics, Inc.

**File:** B-414109

**Date:** February 16, 2017

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Bradford P. Johnson, Esq., Johnson Law Group International, PLLC, for the protester.

C. Peter Dungan, Esq., Christine Reynolds, Esq., and Thomas L. McGovern III, Esq., Hogan Lovells US LLP, for Metro Machine Corporation d/b/a General Dynamics NASSCO-Norfolk, an intervenor.

Katherine A. Andrias, Esq., Susan S. Grooms, Esq., and Rhonda L. Russ, Esq., Department of the Navy, for the agency.

Young H. Cho, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest challenging agency's conduct of discussions and evaluation in a lowest-priced, technically acceptable procurement is denied where the record provides no basis on which to conclude that discussions were not meaningful and where the evaluation was reasonable and consistent with the terms of the solicitation.

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### DECISION

Marine Design Dynamics, Inc. (Marine), of Washington, DC, protests the rejection of its proposal under request for proposals (RFP) No. N0024-16-R-2212, issued by the Department of the Navy, Naval Sea Systems Command, for a post shakedown availability<sup>1</sup> of United States Naval Ship (USNS) Lewis B. Puller (Puller), an expeditionary mobile base vessel. Marine challenges the agency's conduct of discussions and the evaluation of its technical proposal.

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<sup>1</sup> The term "post shakedown availability" refers to repairs and modifications to a newly constructed ship that are found to be necessary following delivery of the ship to the Navy and a brief period of operation at sea. See National Steel & Shipbuilding Co., B-250305.2, Mar. 23, 1993, 93-1 CPD ¶ 260 at 2 n.1.

We deny the protest.

## BACKGROUND

The solicitation,<sup>2</sup> issued on July 22, 2016, under Federal Acquisition Regulation (FAR) part 15, contemplated the award of a fixed-price contract, with base and option contract line item numbers (CLINs). RFP at 1, 2-20, 94. The work will include such items as significant alteration/modernization and integration of naval and aviation requirements, as well as post-delivery repairs and modernization. Id. at 28-39. Award was to be made on a lowest-priced, technically acceptable basis, considering the following four technical evaluation factors: understanding of the statement of work, ability to perform the statement of work, management control and quality assurance, and past performance. Id. at 113.

For the understanding of the statement of work factor, as relevant here, section L of the solicitation required offerors to submit a time-phased progress sequencing network (TPSN) that demonstrates, in detail, an understanding of the overall scope and plan to accomplish contractor work. Id. at 100. The solicitation also required that the TPSN provide the anticipated progress at one week intervals and the anticipated manning levels for each work item at one week intervals; and that it include at a minimum 18 specific milestones, the dates of which were specified by the agency. Id.; see also id., section J-6, Execution Milestones and Key Event Dates. The solicitation further required that offerors demonstrate an understanding of the requirements of the contract by providing a critical path analysis by work item, as well as a detailed narrative addressing areas specified in the solicitation and other areas that the offeror deemed critical. RFP at 100. Also of relevance to the protest, the solicitation requested that the offeror demonstrate it would plan, manage, and execute a number of specific work items that were of particular concern to the agency. Id. at 100-101.

The solicitation stated that all offerors' responses would be evaluated, as relevant here, to assess the offeror's understanding of the statement of work (SOW) as it "pertains to the requirements of Section L of this solicitation. The offeror will be evaluated on the documentation and narratives relating to planning [and] scheduling . . . that it proposes to satisfy the requirements of the [Puller] [post-shakedown availability]." Id. at 114. An offeror was also required to "clearly demonstrate that it has a detailed and complete understanding of the SOW and the efforts required to successfully complete the [Puller] [post-shakedown availability]." Id.

As relevant here, the solicitation stated that the adjectival ratings would reflect whether the information submitted in response to the technical factors "meet or do

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<sup>2</sup> The solicitation was amended eight times. All citations to the RFP are to the conformed copy provided by the agency.

not meet the minimum requirements through an assessment of the proposal.” Id. at 115. The solicitation clearly warned offerors that “[o]missions or inaccurate or inadequate responses may render the offer unacceptable.” Id. at 99. The solicitation also advised offerors that “[a] proposal rating of [u]nacceptable on any [f]actor or [s]ubfactor renders the proposal ‘[u]nacceptable’ overall.” Id. at 113. Unacceptable was defined as a “[p]roposal [that] does not clearly meet the minimum requirements of the solicitation”). Id. at 115.

The solicitation was amended six times prior to the proposal closing date of September 19, 2016. Agency Report (AR), Combined Contracting Officer Statement and Memorandum of Law (COSMOL) at 5. The agency received timely proposals from Marine and Metro Machine Corporation d/b/a General Dynamics NASSCO-Norfolk (NASSCO), of Norfolk, Virginia. A source selection evaluation board (SSEB) evaluated proposals and found Marine’s initial technical proposal to be technically unacceptable. Id.; see also AR, Tab 11, SSEB Final Evaluation Report at 2. The SSEB found Marine’s initial proposal did not clearly meet 10 of the 27 requirements under the understanding of the statement of work factor. AR, Tab 11, SSEB Final Evaluation Report at 2.

A competitive range that included both offerors was established. Marine was informed of its inclusion in the competitive range and was provided with discussion questions on September 27 and 29. AR, Tab 5, Marine Sept. 27 Discussion Letter; Protest, exh. 2, Marine Sept. 29 Discussion Letter.<sup>3</sup>

The agency informed Marine that its proposal did not meet a number of requirements in section L, including, failing to provide all specified milestones in its TPSN.<sup>4</sup> AR, Tab 5, Marine Sept. 27 Discussion Letter, encl. 1, Government Technical Discussion Questions at 1. As a result, the agency requested that Marine submit a revised TPSN that included all the specified dates. Id.

Marine was advised that its responses to all discussion questions must be clear and complete, and reminded that “[f]ailure to clearly and completely respond to all discussion areas may have an adverse impact on the proposal’s evaluation, including the possible removal of the [o]fferor from consideration for award.” AR,

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<sup>3</sup> The September 27 discussion letter contained technical discussion questions while the September 29 discussion letter contained price discussion questions.

<sup>4</sup> The agency also informed Marine that it failed to provide its anticipated manning levels for each work item at one week intervals, a critical path analysis, and demonstrate its method for installing a platform for work item 621 and requested that Marine provide revisions to its proposal addressing these issues. AR, Tab 5, Marine Sept. 27 Discussion Letter, encl. 1, Government Technical Discussion Questions at 1.

Tab 5, Marine Sept. 27 Discussion Letter at 1. Marine's response was due on October 3. Id.

Marine submitted a timely response. See AR, Tab 6, Revised Proposal at 6-8. Upon reviewing Marine's responses, the agency found that six issues remained. See AR, Tab 11, SSEB Final Report at 3. On October 7, Marine was advised that its proposal still did not satisfy a number of the solicitation's minimum requirements as stated in section L and was provided a number of follow-up discussion questions. See AR, Tab 7, Request for Final Proposal Revisions (FPR) at 1-2. In addition to providing follow-on discussion questions and requesting FPRs, the agency's October 7 letter included Amendment 7. The letter specifically highlighted the revisions included in Amendment 7--such as an extension of the contract award date to on or around October 26, 2016, as well as the dates for all other milestones --and emphasized that it was the offeror's responsibility to ensure all Amendment 7 revisions were incorporated throughout the FPR submittal. Id. at 4. In this regard, the agency warned that "[f]ailure to do this may have an adverse impact on the proposal's evaluation, including possible removal of the [o]fferor from consideration for award." Id.

As relevant here, the agency's follow-on discussion questions advised Marine that its TPSN still did not include all the milestones dates specified in the solicitation and requested that Marine provide a revised TPSN that incorporated the revised dates as provided in Amendment 7.<sup>5</sup> Id. at 1.

Both offerors submitted timely FPRs. The SSEB found Marine's proposal unacceptable based on two deficiencies<sup>6</sup> and three significant weaknesses assessed under the understanding of the SOW factor.<sup>7</sup> AR, Tab 11, SSEB Final

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<sup>5</sup> The agency also advised Marine that its anticipated manning levels for each work item at one week intervals chart did not correlate to the proposed schedule on the TPSN for 15 specific work items; its critical path analysis and narrative did not demonstrate that Marine assessed the impact of work items independently and together specifically on the mission deck and flight deck; and its approach for installing the platform was not possible as written and, in addition, provided for two different methods for installing the platform. AR, Tab 7, Requests for FPR at 1-3. The agency requested that Marine provide revisions to its proposals to address these issues. Id.

<sup>6</sup> The two deficiencies were assessed based on Marine's failure to provide (1) a TPSN that included all the dates specified in the solicitation and (2) a TPSN and anticipated man-hour per item per week chart that included no discrepancies. See AR, Tab 11, SSEB Final Report at 3-5.

<sup>7</sup> The three significant weaknesses were assigned based on Marine's failure to (1) clearly understand the impact of multiple work items in the same location, as  
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Report at 3. The source selection authority (SSA) concurred with the SSEB's evaluation. See AR, Tab 12, Source Selection Decision Memorandum. As relevant here, the SSA found that Marine failed to meet material requirements of the solicitation and was therefore ineligible for award. Id. As a result, the SSA found that NASSCO's proposal represented the best value to the government as the lowest-price technically acceptable offer. Id. NASSCO's total evaluated price was also determined to be balanced, and fair and reasonable. Id.

On October 27, 2016, the agency notified Marine that its proposal had been rejected as technically unacceptable and that the award had been made to NASSCO, based on its total evaluated price of \$36,177,479. Marine was debriefed on November 3, and this protest followed.

## DISCUSSION

Marine challenges the agency's conduct of discussions and virtually every aspect of the evaluation of its technical proposal. Although we do not specifically address all of the protester's arguments, we have fully considered all of them and find that they provide no basis on which to sustain the protest.

Marine first argues that the agency failed to conduct meaningful discussions. Specifically, Marine contends that the agency's evaluation and award determination were based on deficiencies and significant weaknesses that were not identified during discussions, such that the protester did not have the opportunity to respond. See Protest at 4-6; Protester's Comments at 4-9.

Agencies have broad discretion to determine the content and extent of discussions, and we limit our review of the agency's judgments in this area to a determination of whether they are reasonable. InfoPro, Inc., B-408642.2, B-408642.3, Dec. 23, 2014, 2015 CPD ¶ 59 at 9. When an agency engages in discussions with an offeror, the discussions must be meaningful, that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror's potential for receiving the award. FAR § 15.306(d); Cubic Simulation Sys., Inc., B-410006, B-410006.2, Oct. 8, 2014, 2014 CPD ¶ 299 at 12. The requirement that discussions be meaningful, however, does not obligate an agency to spoon-feed an offeror or to discuss every area

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identified in its narrative and reflected in the discrepancies between its FPR narrative and TPSN; (2) clearly understand the impact of multiple work items in the same location, as reflected in the discrepancies in its FPR narrative regarding the integration of work items; and (3) clearly demonstrate that its proposed platform installation method can be successfully accomplished without destruction to the mission and flight decks. Id. at 5-8.

where the proposal could be improved. FAR § 15.306(d)(3); Insignia-Spectrum, LLC, B-406963.2, Sept. 19, 2012, 2012 CPD ¶ 304 at 5. The degree of specificity required in conducting discussions is not constant and is primarily a matter for the procuring agency to determine. Kathpal Techs., Inc., B-291637.2, Apr. 10, 2003, 2003 CPD ¶ 69 at 3.

With respect to discussions, Marine essentially argues that because Amendment 7 was issued concurrently with the request for FPRs and the final set of discussion questions, it was deprived of the opportunity to address any deficiencies or significant weaknesses introduced into its proposal as a result of Amendment 7. Protest at 4; Protester's Comments at 4-6. In this regard, the protester contends that the agency should have provided it with another round of discussions to resolve these issues. We disagree.

As explained by the agency, Marine was provided three opportunities to submit a compliant TPSN demonstrating a complete understanding of the contract requirements. AR, COSMOL at 12. In addition, the agency specifically told Marine to use the dates specified in the solicitation, which Marine failed to do, resulting in the agency assigning Marine's proposal a deficiency for failing "to clearly demonstrate that they can meet all key milestones in their TPSN." Id. at 11-12; see also AR, Tab 11, SSEB Final Report at 2-4. On this record, we do not find that the agency was obligated to reopen discussions, where the agency repeatedly led the offeror into the area of its proposal requiring revision.<sup>8</sup>

Marine also challenges the agency's evaluation of its technical proposal. See Protest at 7-15. The evaluation of an offeror's technical proposal is a matter within the agency's broad discretion and our Office will not substitute our judgment for that of the agency; rather, we will examine the record to determine whether the agency's judgments were reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Aerostar Perma-Fix TRU Servs., LLC, B-411733, B-411733.4, Oct. 8, 2015, 2015 CPD ¶ 338 at 7. A protester's disagreement with the agency's judgment does not establish that the evaluation was unreasonable. Jacobs Tech., Inc., B-411784, B-411784.2, Oct. 21, 2015, 2015 CPD ¶ 342 at 6.

Again, on this record, the protester's arguments provide no basis to sustain the protest. For example, in challenging its deficiency for failing to include all the required dates in its TPSN, the protester does not dispute that its TPSN did not utilize the exact dates provided in the solicitation. See Protest at 7-8. Rather, the

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<sup>8</sup> We note that where, as here, a procurement is conducted on a lowest-priced technically acceptable basis, the agency's identification of any technical issue during discussions would appear to be an indication that the acceptability of the matter identified is in question. See also Raytheon Co., B-414057, Jan. 31, 2017, 2017 CPD ¶ \_\_\_ at 6 n.10.

protester contends that with regard to the ship arrival date which the solicitation listed as November 28, 2016, its TPSN indicated a November 27, 2016 date. See id. at 7. Marine argues that its earlier date allows for Marine to prepare on the day before ship arrival. See id. Similarly, with regard to the habitability turnover date which the solicitation provided as April 7, 2017, Marine's TPSN reflected an April 6, 2017 date. Id. Marine asserts that its plan was "to be prepared for the habitability turnover on April 6<sup>th</sup>] in time for the milestone turnover date of April 7<sup>th</sup>." Protester's Comments at 10. Marine contends that its "plan as described by the TPSN ensures that the [h]abitability [t]urnover date is met." Id.

In response, the agency explains that offerors were expected to use the exact dates provided in the solicitation and Marine was advised numerous times during discussions to specifically utilize the dates provided in the solicitation, yet failed to do so. AR, COSMOL at 11 n.11, 12.

It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information that clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. Mike Kesler Enters., B-401633, Oct. 23, 2009, 2009 CPD ¶ 205 at 2-3. Marine ran the risk of the agency evaluating its proposal unfavorably where it failed to clearly demonstrate compliance with the solicitation, which clearly instructed the offeror's to utilize the dates provided in the solicitation to complete the TPSN. See, e.g., International Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 7. On this record, we do not find the agency's assignment of a deficiency unreasonable. Accordingly, Marine's protest ground is denied.

Because we find reasonable the agency's assessment of a deficiency with regard to Marine's TPSN, and have found that the protester failed to correct the deficiency when given the opportunity to do so through meaningful discussions, we conclude that the deficiency rendered Marine's proposal unacceptable. This is so because the solicitation, as described above, warned offerors that an unacceptable rating for any subfactor would result in an overall rating of unacceptable. While the agency found Marine's proposal unacceptable based on a variety of other significant weaknesses and an additional deficiency assessed in the evaluation, many of which Marine has challenged, we need not determine whether each of these other flaws provides an additional basis for finding the proposal unacceptable.

The protest is denied.

Susan A. Poling  
General Counsel