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Decision

Matter of: VT Halter Marine, Inc.

File: B-415510.2; B-415510.3; B-415510.4

Date: January 24, 2018

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Jonathan A. Hardage, Esq., Department of the Army, for the agency.
Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's evaluation of proposals is denied where record shows that agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations.
 2. Protest that agency engaged in inadequate discussions with protester is denied where record shows that agency adequately conveyed its concerns to the protester during discussions.
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DECISION

VT Halter Marine, Inc. (VT), of Pascagoula, Mississippi, protests the award of a contract to Vigor Works LLC, of Clackamas, Oregon, under request for proposals (RFP) No. W56HZV-15-R-0187, issued by the Department of the Army for the design and manufacture of a quantity of maneuver support vessels (MSVs).¹ VT maintains that the agency misevaluated proposals and made an unreasonable source selection decision.

We deny the protest.

¹ Throughout the record in this case, the parties also refer to the MSVs as MSV (L), which refers to the maneuver support vessels (light).

BACKGROUND

This RFP contemplates the award, on a best-value tradeoff basis, of a largely fixed-price,² indefinite-delivery, indefinite-quantity contract to design and manufacture a quantity of MSVs. The MSVs are landing craft that will be used for conducting operations in riverine environments or denied access areas where there either is a degraded or non-existent port; accessing austere entry points such as bare beaches in the absence of assistance ashore; and interfacing and operating with commercial platforms, ports and facilities. The RFP contemplates a three-phase performance period comprised of an initial four-year engineering, manufacturing and development (EMD) phase, a two-year low-rate initial production phase, and a four-year full-rate production phase. RFP at 2.³ The EMD phase is the guaranteed minimum under the contemplated contract, and the RFP also provided for a maximum dollar value of \$998,590,000.⁴ RFP at 18.

The RFP advised offerors that the agency would evaluate proposals considering price and several non-price evaluation criteria. The evaluation factors were, in descending order of importance, as follows: (1) technical performance, deemed most important, and more important than, (2) maturity, deemed slightly more important than, (3) production readiness, deemed slightly more important than, (4) total evaluated cost/price, deemed significantly more important than, (5) small business participation. RFP at 240. The RFP provided that the non-price factors were, collectively, significantly more important than price. Id. Under the technical performance factor, the RFP identified four equally-weighted subfactors, functional draft, payload, sea state operations, and speed. Id. Under the maturity factor, there were two equally-weighted subfactors, engineering design maturity and system reliability maturity.⁵ RFP at 241.

² One of the contract line items--for interim contractor support--is to be performed on a cost reimbursement basis. None of the protest allegations relate to the propriety of the agency's evaluation of this contract line item.

³ All references to the RFP are to the "conformed" copy of the solicitation provided by the agency. Agency Report (AR), exh. 5.

⁴ The RFP also identified what was referred to as an "affordability" threshold of \$979,390,000 and offerors were advised that proposals that offered a total price in excess of that amount (exclusive of a performance incentive) would be ineligible for award. RFP at 2, 238-39. VT originally protested that Vigor's proposal exceeded the affordability threshold and was therefore ineligible for award on that basis. VT subsequently withdrew this allegation. VT Comments, Nov. 27, 2017, at 3, n. 1.

⁵ The record shows that, in evaluating proposals under the non-price factors and subfactors, the agency assigned adjectival ratings of outstanding, good, acceptable, marginal or unacceptable. AR, exh. 6, Source Selection Plan, at 33-36.

With respect to total evaluated cost/price, the RFP provided for two adjustments to proposed prices (other than cost realism evaluation adjustments that the agency deemed appropriate under the cost reimbursement contract line item that are not relevant here). First, the RFP advised offerors that it would award a price “credit” to firms proposing to provide a technical data rights package (principally relating to the provision of product drawings and models, associated lists, and computer software) that would enable the government to support sustainment activities on a competitive basis. RFP at 244. The RFP provided that the agency would apply a “multiplier” based on the extent to which the firm proposed to provide the agency with data rights; in effect, firms received a progressively larger price credit based on the extent to which they offered to provide data rights free of restrictions. Id. The maximum amount of price credit for this element of the agency’s evaluation was \$39,000,000. Id.

Second, the RFP provided for a credit against proposed price where the offeror proposed to exceed the solicitation’s threshold specifications for functional draft (essentially how much water will be displaced by the proposed boats) and speed. RFP at 245. The maximum amount of price credit for this adjustment was \$108,000,000. Id.

In response to the RFP, the agency received a number of proposals. The agency engaged in several rounds of discussions and solicited, obtained, and evaluated final proposal revisions. After completing its evaluation, the agency assigned the following ratings to the proposals submitted by VT and Vigor:

	VT	Vigor
Technical	Acceptable	Good
Functional Draft	Marginal	Acceptable
Payload	Marginal	Acceptable
Sea State Operations	Good	Good
Speed	Outstanding	Outstanding
Maturity	Marginal	Good
Engineering Design	Acceptable	Good
System Reliability	Marginal	Acceptable
Production Readiness	Good	Good
Total Evaluated Cost/Price	\$901,917,477	\$890,034,011
Small Business Participation	Marginal	Good

AR, exh. 14, Source Selection Advisory Council (SSAC) Report, at 4. The record shows that the agency applied a price evaluation credit of \$39,000,000 to the Vigor proposal for offering unlimited data rights, as well as a \$50,760,000 credit for functional draft and speed. Id. at 5. The agency applied an evaluation credit of \$19,500,000 to the VT proposal for offering limited, but beneficial data rights. Id. On the basis of these evaluation results, the agency made award to Vigor, concluding that its technically-superior, lower-priced proposal represented the best value to the government. After

being advised of the agency's selection decision and requesting and receiving a debriefing, VT filed the instant protest.

PROTEST

VT raises several challenges to the agency's evaluation of proposals and also alleges that the agency failed to engage in meaningful discussions. We have considered all of VT's allegations and find them to be without merit. We note at the outset that, in reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria, and applicable statutes and regulations. ManTech Advanced Sys. Int'l, Inc., B-413717, Dec. 16, 2016, 2016 CPD ¶ 370 at 3. We discuss VT's principal allegations below.

Vigor Price Credit for Data Rights

VT argues that the agency unreasonably assigned the Vigor proposal a \$39,000,000 price credit for proposing to provide unlimited data rights in the software that the firm intends to furnish. VT argues that, with the exception of a pricing worksheet provided by Vigor, its proposal essentially was silent with respect to describing the data rights the firm intends to provide to the agency. VT specifically argues that all of the companies that might provide a software solution for Vigor's proposed boats would never offer their products with unlimited data rights, and that it was unreasonable for the agency to have assumed that Vigor would provide unlimited data rights based only on the pricing worksheet submitted by Vigor with its proposal. VT maintains that, under the circumstances, the agency does not actually know what data rights Vigor will be providing, and that the agency failed to appreciate the risk associated with Vigor's proposal. VT concludes that it was prejudiced by the agency's actions because the \$39,000,000 price credit assigned to the Vigor proposal essentially resulted in that firm being considered the low-priced offeror.

We find no merit to this aspect of VT's protest. The RFP's evaluation factor relating to consideration of the data rights pricing credit advised offerors that the agency made an assumption relating to the potential value of data rights offered without any restrictions, and this was referred to as the "government baseline savings." RFP at 244. This was described as follows:

The Government's baseline savings is \$39,000,000. This baseline savings represents the savings the Government expects to yield for a fully competitive Government Format Production Level TDP [technical data package] and fully competitive computer software which supports future sustainment activities.

Id. The RFP went on to explain that the agency would use something referred to as the "competitive utility multiplier," which the RFP described as the agency's assessment of the data rights provided by the offeror. Id. Firms were advised that the agency would

multiply the government's baseline savings of \$39,000,000 by either 0.0, .0.5, or 1.0, depending on the agency's assessment of the data rights being offered to arrive at the amount of the data rights pricing credit. Id. If, for example, a firm offered unlimited data rights, the agency multiplied the government's baseline savings by 1.00, to arrive at a data rights pricing credit of \$39,000,000. Of significance for purposes of this protest, the RFP specifically advised offerors as follows with respect to application of the competitive utility multiplier: "The Government will not perform a risk assessment as part of the Competitive Utility Multiplier evaluation." Id.

The RFP also was clear regarding both what information the agency would evaluate in connection with the data rights credit calculation, and what information offerors were required to provide in connection with describing the data rights being proposed. Regarding the information to be evaluated, the solicitation advised offerors as follows:

The Data Rights Adjustment will evaluate information submitted in response to Section L.4.4.2 to assess the Government["]s anticipated future savings based on the degree to which the delivered Government Format Production Level TDP [technical data package] and computer software will support future sustainment activities (i.e. performing system maintenance, diagnosing and eliminating field issues and reliability problems, and engineering future changes to the MSV(L)) including full and open competitive acquisitions of spare parts. The resulting Data Rights Adjustment will be subtracted from the Offerors Evaluated Contract Cost/Price as part of the TEC/P [total evaluated cost/price] calculation.

RFP at 244. Section L.4.4.2 of the RFP (referenced in the quote above) advised offerors that the following information was required in connection with describing what was being offered:

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data and Computer Software. The Offeror shall fill out Attachment 0044, utilizing the instructions and definitions set forth in the Attachment. The offeror shall only identify noncommercial items, noncommercial components, noncommercial processes, and noncommercial computer software on Attachment 0044.

RFP at 231.

The record shows that, consistent with these RFP provisions, Vigor submitted attachment 0044 with its proposal, and that it did not reserve any data rights for the software it proposed to furnish. AR, exh. 19.A.2, Vigor Attachment 0044.

Given the discussion above, we conclude that Vigor provided all the information required by the RFP in connection with describing what amounts to the unlimited data rights it proposed to provide the agency. We also conclude that the agency evaluated Vigor's proposal in the manner described in the RFP and appropriately credited Vigor with the entire data rights pricing credit in light of the fact that Vigor did not identify any

data rights restrictions in its proposal. Moreover, as expressly provide for by the terms of the RFP, the agency did not perform any risk assessment associated with Vigor's proposal to provide unlimited data rights. Under the circumstances, we have no basis to object to the agency's evaluation in this area for the reasons advanced by VT. We therefore deny this aspect of its protest.⁶

Weaknesses Assigned to the VT Proposal

VT argues that the agency unreasonably assigned two weaknesses to its proposal. First, under the functional draft⁷ requirement, the record shows that the agency assigned a weakness to the VT proposal because the agency concluded that the VT proposed boats would operate too close to the sea floor; the record shows that the agency was particularly concerned with the small distance between the engine inlet openings (where water is drawn into the boat's jet propulsion system) and the sea floor. Second, the record shows that the agency assigned the VT proposal another weakness under the payload evaluation subfactor because of the firm's alleged failure to provide for the safe transport of a habitability shelter. VT maintains that both of these weaknesses were assigned in error.

We need not consider these allegations in any detail since, even if VT is correct that the agency erred in assigning the identified weaknesses, this was not prejudicial to VT. Prejudice is an essential element of every viable protest, and where none is shown or otherwise evident, we will not sustain a protest, even if the protester arguably is correct. Next Tier Concepts, Inc.; MAXIMUS Federal Services, Inc., B-414337, B-414337.2, May 15, 2017, 2017 CPD ¶ 161 at 8-9.

As noted above, VT's proposal was assigned marginal ratings under both the functional draft and payload evaluation subfactors, resulting in its proposal being assigned an overall rating under the technical performance evaluation factor of acceptable. In

⁶ As a final matter, we note that VT alleges that Vigor was required by certain provisions of the solicitation's specifications to provide more detail than it provided in its proposal in describing the data rights it was offering. The provisions identified by VT, however, relate to activities to be performed by the successful contractor. See e.g., RFP at 84 ("The contractor shall design and maintain an open architecture for the C4ISR [Command, Control, Communications, Computers Intelligence, Surveillance, and Reconnaissance] system."). Such requirements are performance requirements to be met after contract award, rather than informational requirements to be met in submitting a proposal. Citrus College; KEI Pearson, Inc., B-293543, et al., Apr. 9, 2004, 2004 CPD ¶ 104 at 3-4.

⁷ The term "functional draft" refers to the amount of water displaced by the boats being offered. The RFP identified a threshold requirement that the offered boats displace less than 5 feet of water, and also set an objective functional draft of 2 feet. RFP, Attach. 0001, Purchase Description, PD-41, at 31.

contrast, Vigor's proposal was assigned acceptable ratings under these same two subfactors (and an overall technical performance factor rating of good). VT does not allege that its proposal, if evaluated correctly, would have been rated superior to the Vigor proposal. It follows that, even if VT were correct in its protest allegations, its proposal would receive ratings of no more than acceptable under these two subfactors, and correspondingly, a good rating under the technical performance evaluation factor.

The record shows, however, that Vigor's proposal was rated technically superior to VT's under both the maturity and small business participation evaluation factors, receiving good ratings under those factors compared to the marginal ratings assigned to the VT proposal under the same factors, and VT does not challenge the agency's evaluation under these factors.⁸ The record therefore shows that, even if VT were correct with respect to the evaluation challenges described above, its proposal would still be technically inferior to the VT proposal under the maturity and small business participation factors, as well as higher priced compared to the Vigor proposal. Under the circumstances, we conclude that VT was not prejudiced by the evaluation errors it alleges occurred. We therefore deny these protest allegations.

Meaningful Discussions

VT argues that the agency failed to engage in meaningful discussions with it relating to two aspects of its proposed boats, functional draft and payload. We discuss each of these areas below.

Functional Draft

The record shows that the agency had concerns with, and engaged in discussions about, functional draft with both VT and Vigor. As is relevant to the protest, the issue relates to the distance between the water jet inlets on their respective boats, and the sea floor.⁹ With respect to VT, the record shows that the agency's principal concern related to the proximity of the water jet inlet to the sea floor. Specifically, the record shows that the agency was concerned that VT's proposed water jet inlet was only [deleted] above the sea floor when the boat was operating in shallow conditions, and that this clearance would result in the engine ingesting sediment when in operation. AR, exh. 9.A, Discussion Questions for VT Relating to Functional Draft.

⁸ In a supplemental protest allegation, VT challenged the agency's evaluation of its proposal under the maturity factor. It subsequently withdrew this aspect of its protest. VT Comments on the Agency Report, Nov. 27, 2017, at 3 n.1.

⁹ Both firms proposed boats with propulsion systems that function much like a jet engine, drawing water from the sea, passing it through an accelerator or turbine-type device known as the impeller, and using the accelerated column of water to propel the boat.

With respect to Vigor, the record shows that the agency was not similarly concerned about the absolute distance between its water jet inlets and the sea floor (which the record shows was [deleted]), but had a concern about the fact that this distance was less than the water jet impeller diameter of [deleted]. AR, exh. 10.A, Discussion Questions for Vigor Relating to Functional Draft.

VT argues that the agency also identified a concern relating to the fact that the distance between VT's water jet inlets and the sea floor was less than the impeller diameter for its proposed propulsion system, but that the agency never brought that concern to its attention, as it did with Vigor. VT therefore argues that the agency's discussions with it were unequal when compared to its discussions with Vigor.

We find no merit to this aspect of VT's protest. While agencies must afford offerors an equal opportunity to revise their proposals during discussions, the content and extent of discussions need not be identical; rather, a procuring agency's discussions must be tailored to each offeror's particular proposal. Environmental Quality Management, Inc., B-402123.4, B-402123.6, Aug. 31, 2010, 2012 CPD ¶ 79 at 4.

Here, as noted, the agency's principal concern with the VT design was that it placed the water jet inlet so close to the sea floor that there was a risk of degraded performance because the water jet would ingest sediment. The agency expressed its concern to VT in a discussion question that specifically brought the matter to its attention:

A total clearance below the waterjet inlets of [deleted] indicates that the clearance is insufficient and would increase the risk of ingesting sediment preventing effective operations at the Offeror's proposed functional draft of [deleted], which is identified as a weakness.

AR, exh. 9.A, Discussion Questions for VT Relating to Functional Draft, END_HAL_TEC_FD_001.pdf, at 2.

In contrast, the agency did not have a concern that Vigor's proposed design would result in the ingestion of sediment, but nonetheless the agency was concerned about degradation of its proposed water jet's performance because it was closer to the sea floor than the diameter of its proposed impeller:

The Offeror proposed a clearance under the waterjet inlets ([deleted]) which is less than the impeller diameter of the waterjet ([deleted]). The clearance less than the impeller diameter indicates some risk remains that the waterjet performance will be degraded when operating at the proposed functional draft because waterjet performance is reduced when the clearance is less than the waterjet impeller diameter. The increased risk that the waterjet performance will be degraded when operating at the proposed functional draft indicates an increased risk that the proposed design will fail to effectively operate at the proposed functional draft. The increased risk is a weakness.

AR, exh. 10A, Discussion Questions for Vigor Relating to Functional Draft, END_VIG_TEC_FD_005.pdf, at 2.

While the record shows that the agency also observed that the VT water jet inlet had a clearance that was less than the diameter of its impeller, its primary concern was the one discussed with VT, namely, that its water jet clearance was so close to the sea floor that it presented a risk that it would ingest sediment and therefore be incapable of effective operations. AR, exh. 11.B, Final Evaluation Subfactor, Functional Draft, at 9; exh. 14, Source Selection Advisory Report, at 14. VT did nothing to increase or change the clearance between its water jet inlet and the sea floor, even after being advised repeatedly of the agency's concern.

In the final analysis VT did nothing to increase the clearance of its water jet inlets at all, nor did it increase the clearance of its water jet inlets to a distance comparable to the clearance offered by the Vigor proposal ([deleted]), even after it was advised of the agency's concern relating to the possible ingestion of sediment. It follows that there is no reasonable basis to find that being advised of the fact that its water jet clearance also was less than the diameter of its impeller (a fact known to VT) would have changed VT's fundamental technical approach to resolving this question. We therefore conclude that, while the agency's discussions with VT and Vigor were different, they were not prejudicial in the sense that Vigor--but not VT--was afforded an opportunity to address the agency's concerns. We therefore deny this aspect of VT's protest.

Payload

The record shows that the agency had a concern relating to VT's ability to transport a habitability shelter on its payload deck. The agency's specific concern was that the width dimensions of VT's payload deck were inadequate to safely transport the habitability shelter because there was no clearance between the habitability shelter and the port and starboard sides of the VT payload deck. AR, exh. 11.B., Final Evaluation Subfactor Payload, at 34. VT essentially argues that the agency had a predefined dimension for these clearances, but never communicated its requirements to VT.

We find no merit to this aspect of VT's protest. The record shows that the agency repeatedly asked VT during discussions about its ability to safely transport the habitability shelter in light of the width dimensions of its payload deck. However, the central problem related to the fact that VT consistently used the wrong drawing for purposes of establishing the dimensions of the habitability shelter to demonstrate that it could be transported safely in light of the dimensions of its payload deck. For example, the agency posed the following discussion question to VT in connection with the transport of the habitability shelter:

The Offeror used the length and width dimensions of the habitability shelter from drawing 19207 12620969. The Government requires the Offeror verify the measurement for the watertight doors, the watercraft features, and the operation of watertight doors and features to

demonstrate that the proposed design meets the PD-400 requirements to safely transport a single Habitability Shelter using the dimensions provided in Attachment 0001 ATPD Annex C.

AR, exh. 9.B, Discussion Questions for VT Relating to Payload, END_HAL_TEC_PL_005.pdf, at 2.

The record shows that, notwithstanding the agency's discussion question above, VT continued to use the wrong drawing for purposes of establishing the dimensions of the habitability shelter. The agency therefore advised VT a second time about its concern. AR, exh. 9.B, Discussion Questions for VT Relating to Payload, END_HAL_TEC_PL_005A.pdf, at 2. While the record shows that VT improved its proposal somewhat in this area, the central problem--its use of the wrong drawing to establish the dimensions of the habitability shelter--remained, and resulted in the firm's proposal receiving a weakness in this area.

Agencies are not required to "spoon feed" offerors as to each and every item that may be improved in its proposal. Intelligent Decisions, Inc., et al., B-409686, et al., July 15, 2014, 2014 CPD ¶ 213 at 9-10. Here, as noted, the record shows that the agency guided VT into the area of its concern relating to the dimensions of its payload deck, and also--specifically and repeatedly--advised VT that it was using the wrong dimensions in presenting its data relating to its ability to safely transport the habitability shelter. We therefore conclude that VT was afforded adequate discussions in connection with this aspect of its proposal, but its failure to use the correct drawing, rather than the agency's failure to adequately discuss the matter with the firm, was the central reason its proposal was found to have a continuing weakness in this area. We therefore deny this aspect of its protest.

The protest is denied.

Thomas H. Armstrong
General Counsel