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**Comptroller General
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**United States Government Accountability Office
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Decision

Matter of: Israel Aircraft Industries, Ltd.--TAMAM Division

File: B-297691

Date: March 13, 2006

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Anthony Conductor, Esq., for the Department of the Navy, for the agency.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's rejection of protester's technical proposal as technically unacceptable is denied where record shows that agency reasonably found numerous instances where protester's proposal failed to meet material solicitation requirements.

DECISION

Israel Aircraft Industries, Ltd.--TAMAM Division (IAI) protests the award of a contract to FLIR Systems, Inc. under request for proposals (RFP) No. N00164-04-R-8543, issued by the Department of the Navy to acquire, on behalf of the United States Coast Guard, a quantity of shipboard infrared visual sensor systems (SIRVSS) to be installed on Coast Guard cutters and other maritime craft. IAI asserts that the Navy misevaluated proposals in connection with its award decision.

We deny the protest.

The RFP contemplated the award of a fixed-price, indefinite-delivery/ indefinite-quantity contract to the firm whose proposal was deemed to offer the government the overall "best value." Product samples tendered with the proposals were to be evaluated initially using 12 go/no-go criteria. RFP at 15. If a firm's product sample passed the go/no-go evaluation, its proposal and product sample were to be evaluated under four equally-weighted factors (and subfactors): technical evaluation (evaluation of the written technical proposal's performance specification

compliance, evaluation of the written technical proposal's statement of work compliance, and product sample evaluation in the field), capability (delivery/ production schedule, logistics capability, and management capability/ relationship with subcontractors), past performance (quality, customer satisfaction, business practices and subcontracting reliability/compliance), and price. Under both the technical evaluation and capability factors, the first subfactors were significantly more important than the second, and the second were more important than the third. The past performance subfactors were listed in descending order of importance.

The agency received two proposals, the protester's and the awardee's, and following an initial evaluation, followed by discussions, obtained final proposal revisions (FPR), which were rated as follows:

Factors/Subfactors	FLIR	IAI
Go/No-Go Criteria	Pass	Pass
Technical Evaluation	Satisfactory/Low Risk ¹	Marginal (Unacceptable)/High Risk ²
Performance Spec.	Satisfactory/Low Risk	Marginal/Medium Risk
Statement of Work	Satisfactory/Low Risk	Satisfactory/Low Risk
Product Sample Eval.	Marginal/Low Risk	Marginal/High Risk
Capability	Satisfactory/ Low Risk	Satisfactory/Low Risk
Delivery/Product Schedule	Highly Satisfactory/Low Risk	Satisfactory/Low Risk
Logistics Capability	Satisfactory/Low Risk	Satisfactory/Low Risk
Management Capability	Satisfactory/Low Risk	Satisfactory/Low Risk
Past Performance	Favorable/Medium Risk	Highly Favorable/Medium Risk
Price	\$45,974,128 ³	\$39,448,255

¹ IAI asserts that, since risk was not set forth as an evaluation factor in the RFP, the risk ratings assigned proposals evidence application of an unstated evaluation factor. However, even where risk is not identified in the solicitation as an evaluation factor, an agency may always consider risk intrinsic to the stated evaluation factors, that is, risk that arises, for example, from an offeror's approach or demonstrated lack of understanding. Davies Rail & Mech. Works, Inc., B-278260.2, Feb. 25, 1998, 98-1 CPD ¶ 134 at 10.

² The record shows that in evaluating proposals, where the agency assigned an initial adjectival rating of marginal for a factor, and then subsequently continued to assign a marginal rating to the factor after discussions, the source selection plan called for the factor rating to be changed from marginal to unacceptable. AR, exh. 6 at 5.

³ The agency's post-negotiation business clearance memorandum contains a mathematical error in the calculation of FLIR's price, but the Navy's debriefing letter (continued...)

AR, exh. 26, at 6, 13. On the basis of these evaluation results, the agency concluded that IAI's proposal was technically unacceptable. In particular, the agency found that IAI's proposed product did not meet numerous requirements of the solicitation and that, overall, its proposal contained a large number of weaknesses and deficiencies. Consequently, the Navy eliminated the IAI proposal from further consideration and made award to FLIR as the only firm submitting a technically acceptable proposal.

IAI challenges the agency's evaluation, and resultant rejection, of its proposal. In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, we will examine the record only to determine whether the agency's evaluation was reasonable and consistent with the RFP evaluation scheme and applicable procurement statutes and regulations. DeLeon Tech. Servs., Inc., B-293783, June 4, 2004, 2004 CPD ¶ 145 at 2. We have reviewed the record here and find no basis to object to the agency's evaluation conclusions. We discuss the primary evaluated proposal deficiencies below.

HAND CONTROL UNIT (HCU)

The RFP called for an HCU to operate the SIRVSS, and further required that the HCU include adjustable backlighting that is night vision goggle (NVG) compatible. The Navy found that the IAI proposed by HCU did not include adjustable, NVG compatible backlighting. The protester asserts that the [deleted] design of its HCU is such that [deleted], and that, as a consequence of its unit [deleted], it was unnecessary to show that it is NVG compatible. In any case, IAI asserts, its November 9, 2005 proposal included an option to furnish a backlit HCU.

The evaluation in this area was unobjectionable. It is undisputed that the protester's HCU did not include backlighting, contrary to the express RFP requirement. IAI's belief that its HCU did not require backlighting did not provide a basis for IAI to ignore the requirement, and does not render the agency's downgrading of its proposal on this basis unreasonable. To the extent IAI believed the requirement overstated the agency's needs, it was required to protest on this ground prior to the deadline for submitting proposals, since the requirement was apparent from a reading of the RFP. 4 C.F.R. § 21.2(a)(1) (2005). IAI did not do so, and there is no basis for questioning the requirement at this juncture.

IAI's claim that it offered the agency the option of a viable backlit version of its HCU is not supported by the record. Its proposal stated in this regard as follows:

(...continued)

to IAI included the correct price, which is reflected in the table above. Compare AR, exh. 26, at 13, with exh. 28, at 6.

[deleted]

AR, exh. 15, at 2. This statement indicated that IAI was [deleted], but that it did not have [deleted]; it did not unequivocally offer a backlit HCU as a part of its proposal. We therefore find that the agency reasonably found that IAI's proposed HCU failed to meet the backlighting requirement.

ENVIRONMENTAL REQUIREMENTS

Blowing Sand

One of the product sample test requirements related to the SIRVSS's ability to withstand blowing sand. The agency's testing showed that one of [deleted]; the other of the [deleted] at IAI's request because IAI was [deleted]. After being asked about the matter during discussions, IAI stated in its proposal revision that its product could not meet the blowing sand test. AR, exh. 15, at 23. The agency concluded that IAI's proposed unit did not meet the RFP requirements in this area. IAI does not refute the agency's finding, but asserts instead that there is no practical reason for its product to meet this requirement, since a sandstorm of the magnitude being simulated would render the unit useless because of a lack of visibility. IAI Comments, Jan. 3, 2006, attachment 1, at 9. As with IAI's claim, discussed above, that there is no need for its HCU to have backlighting, IAI's position regarding the need for the solicitation's blowing sand requirement is no more than an untimely challenge to the agency's requirements. IAI's proposal was facially noncompliant with this aspect of the requirement, and the agency acted reasonably in finding this aspect of IAI's proposal unacceptable.

Ice and Freezing Rain

Another test requirement involved subjecting the product samples to freezing temperatures and rain for a period of time until ice formed on the unit; thereafter, the unit was to be powered up for a specified interval, during which the ice was to melt. IAI's [deleted] because the [deleted]. The agency discussed the matter with IAI, in response to which IAI stated in its revised proposal, without elaboration, that its production units would have a deicing mechanism [deleted]. AR, exh. 15, at 22. The agency remained concerned, finding that such a redesign effort would cause disruption to the delivery schedule, increase cost, and affect the performance of IAI's proposed unit. AR, exh. 24, at 14. IAI does not dispute the agency's conclusion, but maintains that, because it committed in its FPR to redesigning its product with a deicing mechanism, its proposal should not have been found unacceptable for this reason. IAI Comments, Jan. 3, 2006, attachment 1, at 8. This argument is without merit. The testing was intended to ascertain the offered unit's compliance with the deicing requirement, and IAI's unit [deleted]. While IAI's proposal to redesign its unit to add a deicing mechanism addressed the test failure, this did not overcome the fact that the unit [deleted] in the first instance. Moreover, the risks identified by the

agency that would be associated with any redesign effort on the part of IAI appear legitimate, and IAI has not shown that the agency's concerns regarding these risks were unreasonable.

CONTROL OF THE SIRVSS

The purpose of the HCU that was to be included with the proposed SIRVSS was to allow the device to be manually operated. However, the device also is to be operable automatically by the ship's command and control system (SCCS), which would provide the SIRVSS with a series of pre-established target coordinates. When the device is being automatically operated by the SCCS, it is said to be "slaved" to the ship's navigational system, in which mode it does not respond to commands inputted through the HCU. The RFP required the HCU to include a "slave override" function which, in effect, permits the operator to momentarily take control of the SIRVSS and manipulate it manually for fine tuning purposes. See RFP Amendments 1, 3 and 4, AR, exhs. 5, 9.

During the evaluation, the agency found conflicting information in IAI's proposal regarding whether its SIRVSS was properly integrated with the SCCS. It appeared that, even when IAI's device was in the slave mode, it could be [deleted]. In sum, the agency found that the HCU and SCCS interface were [deleted] of the SIRVSS. AR, exh. 24, Executive Summary, at 4. This was deemed noncompliant with the RFP requirements. AR, exh. 24, at 11.

IAI asserts that its proposed system is fully compliant with the RFP requirements, and that the Navy simply misunderstood its proposal. We find that the evaluation was reasonable.

The agency issued several amendments to clarify this control requirement, in response to which IAI's revised proposal stated as follows:

[deleted]

AR, exh. 11, at 4. We agree with the agency that this language indicates that IAI's SIRVSS can be [deleted], even when the device is set to the slave mode [deleted]. This interpretation is supported by another provision of the IAI proposal. The user manual submitted with IAI's proposal provides as follows:

[deleted]

AR, exh. 8, user manual, at 83. Again, it appears from these statements that the SIRVSS can be [deleted] during slave mode [deleted], and this was inconsistent with the agency's requirement, which was that the device not be available for manual manipulation during slave mode. AR, exh. 24, at 11.

We conclude that the agency's concern in this area was reasonable; the proposal includes information showing that the IAI device does not meet the agency's requirement to have the device be unavailable for manual manipulation during slave mode. Accordingly, the agency reasonably found IAI's proposed SIRVSS noncompliant with this requirements.

TRADEOFF

IAI maintains that the agency improperly based its determination that its proposal was technically unacceptable on just one or two of the subfactors under the technical evaluation factor; since its proposal was rated equal or superior to FLIR's proposal under all of the remaining factors, it claims, the agency should have performed a price/technical tradeoff between the two proposals. This argument is without merit. Since IAI's proposal failed to meet the agency's requirements in several material respects, it was technically unacceptable and could not provide a proper basis for contract award. Plasma-Therm, Inc., B-280664.2, Dec. 28, 1998, 98-2 CPD ¶ 160 at 3. Accordingly, the fact that IAI's proposal may have been evaluated as more favorable under the other factors is irrelevant, and no tradeoff was required.⁴

MISCELLANEOUS

In its comments responding to the initial agency report, IAI alleged that the agency improperly failed to take into consideration a weakness in FLIR's proposal, and otherwise evaluated proposals disparately. In its comments responding to the agency's supplemental report (in which the agency provided a specific response to these assertions), IAI makes no substantive response. Where, as here, an agency provides a detailed response to a protester's assertions and the protester either does not respond to the agency's position or provides a response that merely references or restates the original allegation without substantively rebutting the agency's

⁴ IAI asserts that the agency was precluded from rejecting a proposal as unacceptable once it passed the initial go/no-go evaluation. We disagree. The RFP stated that the go/no-go criteria applied to the offerors' sample products, and then went on to state that the agency would make a best value award determination, selecting the proposal that conforms to the solicitation and is determined to be the most advantageous to the government. RFP at 15. There was no indication that proposals that passed the go/no-go evaluation could not subsequently be rejected for failure to conform to other RFP requirements.

position, we deem the initially-raised arguments abandoned. Citrus College; KEI Pearson, Inc., B-293543 et al., Apr. 9, 2004, 2004 CPD ¶ 104 at 8 n.4. We therefore will not consider these arguments.

The protest is denied.

Anthony H. Gamboa
General Counsel