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Decision

Matter of: Argon ST, Inc.

File: B-401387

Date: August 6, 2009

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Alex F. Marin, Esq., and Michael B. Hedrick, Esq., Naval Sea Systems Command, 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

1. Protest that agency improperly found proposal unacceptable is denied where record shows that proposal never demonstrated—initially, during discussions, or in final proposal revision—compliance with material solicitation requirement.
 2. Protest that agency misled protester during discussions is denied where there was no reasonable basis for protester to assume, based on agency’s silence in subsequent discussions, that its proposal was acceptable or that it should submit information in a manner inconsistent with express requirements of solicitation.
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DECISION

Argon ST, Inc., of Fairfax, Virginia, protests the award of a contract to Global Technology Systems (GTS), of Virginia Beach, Virginia, under request for proposals (RFP) No. N00024-08-R-5210, issued by the Department of the Navy for a common processing system (CPS). Argon alleges that the agency improperly found its proposal unacceptable and failed to engage in adequate discussions.¹

¹ Initially, Argon also challenged the agency’s evaluation of GTS’s proposal, maintaining that the Navy unequally evaluated the proposals. Letter of Protest, May 11, 2009, at 22-23. However, since Argon failed to provide a factual basis for this assertion, it did not constitute a valid basis of protest.

We deny the protest.

The RFP contemplated the award of an indefinite-delivery/indefinite-quantity contract to develop, qualify, produce and support a CPS, essentially a commercial-based processing, memory, storage, and network input/output computer system, to be deployed in various Navy combat systems. Offerors were to make oral presentations, which would serve as the principal basis for the evaluation and award, and were to provide oral presentation briefs comprised of slides or charts memorializing their presentations. RFP at 89-97. Award was to be made to the firm submitting the proposal deemed to offer the “best value” to the government, considering (in descending order of importance) management approach and capabilities, technical approach, past performance, and price, which was less important than the non-price factors combined. RFP at 106, 110. Proposals were to be assigned ratings of outstanding, very good, satisfactory, marginal, unsatisfactory, or (for past performance) neutral. RFP at 105-06.

The agency received several proposals/oral presentations; at the conclusion of the presentations, it engaged in two rounds of discussions and then solicited and received final proposal revisions (FPR). The agency made award to GTS, concluding that its proposal offered the best value. Argon’s price was lower than GTS’s, but its proposal was rated marginal for the management approach and capabilities factor, and unsatisfactory for the technical approach factor. Agency Report (AR), exh. 9, at 9, 37; exh. 10, at 6. Thus, the agency rejected Argon’s proposal as technically unacceptable. AR, exh. 9, at 41; exh. 10, at 8-9; exh. 11, at 1.

After being advised of the agency’s source selection decision and requesting and receiving a debriefing, Argon filed an agency-level protest, maintaining that the agency miscalculated its proposal and failed to engage in adequate discussions. The agency denied the protest. While it determined that rating Argon’s proposal marginal under the management approach and capabilities factor was erroneous, the Navy concluded that this was not prejudicial because Argon’s proposal was properly rated unsatisfactory under the technical approach factor. AR, exh. 15, at 14. Argon then filed this protest with our Office.

Argon’s allegations relate to the system reliability requirement under the RFP. The RFP’s system requirements document (SRD) provided that the proposed CPS must have a minimum of 15,000 hours mean time between operation mission failure (MTBOMF) at an ambient temperature of 25 degrees Celsius (C) under normal operating conditions. SRD at 29. (The SRD also specified an operating temperature range of 0-50C. SRD at 30.) Argon’s initial proposal/oral presentation did not include MTBOMF information. The agency therefore asked Argon during the first round of discussions to provide such information, stating “Offeror did not define the MTBOMF for the proposed design.” AR, exh. 4, at 10. The agency also asked Argon for information relating to mean time between failure (MTBF) in connection with

Argon's inclusion of the term in its management proposal, stating "Offeror mentioned MTBF, but no numbers were provided." Id. at 9.

In response, Argon provided, with respect to MTBOMF, as follows: "[deleted]" AR, exh. 5, at 8. With respect to MTBF, Argon stated: "[deleted]" Id. at 3. The agency engaged in a second round of discussions with Argon by e-mail dated September 30, 2009, but asked no further questions relating either to MTBOMF or MTBF. AR, exh. 6, at 1.

Argon submitted its FPR by the October 10 deadline. AR, exh. 8. With respect to MTBF, Argon's FPR provided: "[deleted]" Id. at chart I.1-284a/I.1-434a.² Following this statement was detailed information relating to how Argon calculated MTBF, along with the statement "[deleted]" Id. Similarly, with respect to MTBOMF, Argon's FPR provided: "[deleted]" id. at chart I.1-284b/I.1-434b, and included detailed information relating to Argon's calculation, along with the statement "[deleted]" Id. On the basis of Argon's FPR, the agency found its technical proposal unacceptable for failing to meet the MTBOMF requirement. AR, exh. 9, at 37, 41; exh. 10, at 8.

Argon argues that the agency unreasonably determined that its proposal did not establish compliance with the MTBOMF requirement. In considering protests challenging the evaluation of proposals, we will not reevaluate proposals; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. Engineered Elec. Co. d/b/a/ DRS Fermont, B-295126.5, B-295126.6, Dec. 7, 2007, 2007 CPD ¶ 4 at 3-4. We find the agency reasonably concluded that Argon's proposal did not establish compliance with the MTBOMF requirement.

It is undisputed that Argon's initial proposal contained no information whatsoever relating to the ability of its CPS to meet the solicitation's MTBOMF requirement.³ Argon's response to the ensuing discussion questions included an estimate of MTBOMF expressed in terms of hours ([deleted]), but was silent as to the temperature at which the estimate could be achieved. The agency appears to have considered this information sufficient, but any such conclusion was unwarranted, since MTBOMF was not expressed in terms of number of hours at the specified

² Argon's FPR included two charts depicting identical information for MTBF, and two charts depicting identical information for MTBOMF.

³ As demonstrated by the agency's discussion question, Argon's initial proposal did make reference to MTBF. However, since the RFP did not request or require information relating to MTBF, we do not understand why such information was included in the Argon proposal.

temperature of 25C. The information thereafter provided by Argon in its FPR was similarly noncompliant with the requirements of the RFP; the MTBOMF hourly figure ([deleted]) failed to meet the minimum requirement of 15,000 hours, and was expressed at a temperature (55C) that was outside the specified operating parameters for the CPS.

Argon asserts that the agency should have applied the “Arrhenius” model or equation, which allegedly has led to a rule of thumb that a 10C change in operating temperature results in a doubling (or halving) of reliability predictions; according to the protester, using this approach would have allowed the agency to project the MTBOMF of Argon’s proposed CPS at 25C using the data provided for MTBOMF at 55C. Protest, May 11, 2009, exh. 4, at 2-3. This argument is without merit. The agency has produced evidence both that its evaluators were unaware of this rule of thumb, and that the model’s reliability is both suspect, and dependent upon having various data that were not included in Argon’s proposal. AR, exh. 13, at 2-4. Argon has not shown otherwise. In any case, an offeror is responsible for submitting an adequately written proposal and bears the risk that, if it fails to do so, its proposal may be rejected as unacceptable. L-3 Communications EOTech, Inc., B-311453, B-311453.2, July 14, 2008, 2008 CPD ¶ 139 at 4. Argon could not provide inadequate MTBOMF information in response to the specific RFP requirement and then rely on the agency to evaluate the information based on an approach not referenced in the RFP (or, for that matter, in the protester’s proposal).

Argon maintains that any inadequacy of the MTBOMF information it provided was the result of its being misled by the agency regarding its MTBF information during discussions. Specifically, Argon asserts that, because the agency did not object to Argon’s MTBF data (provided in its response to the initial discussion questions) being based on performance of its CPS at 55C, it assumed that it could also present its MTBOMF data based on 55C.

This argument is without merit. Discussions, when held, must be meaningful; that is, they must lead offerors into those areas of their proposals requiring amplification or revision, and may not prejudicially mislead the offeror. American States Utilities Servs., Inc., B-291307.3, June 30, 2004, 2004 CPD ¶ 150 at 6-7. However, agencies are not required to engage in successive rounds of discussions until all proposal defects have been corrected, nor are agencies required to reiterate concerns that were not alleviated by a firm’s proposal revisions. Id. Where an agency engages in initial discussions that lead an offeror to revise its proposal, the agency’s subsequent silence in connection with those proposal revisions during a subsequent round of discussions cannot reasonably be understood as an indication that the agency determined that the initial weakness or deficiency was cured. Id.

Here, under the circumstances, there was no reasonable basis for Argon to interpret the agency’s silence regarding the MTBF data as a waiver of the plainly stated RFP requirements regarding MTBOMF. See American States Utilities Servs., Inc., supra. Simply stated, since the RFP clearly required MTBOMF information to be presented

in terms of a particular temperature, and the RFP was not amended in this regard, Argon was required to provide the information in those terms. To the extent Argon chose to rely on its impressions from the agency's silence instead of complying with the RFP's clear requirements, it did so at its peril.⁴

Argon challenges the agency's assigning its proposal a marginal rating under the management approach and capabilities factor. However, since the firm's proposal was properly found technically unacceptable under the technical approach factor, and therefore was ineligible for award, this aspect of the protest is academic.

The protest is denied.

Daniel I. Gordon
Acting General Counsel

⁴ We point out as well that, in light of the representation in Argon's discussion response that its "[e]stimations will be fully justified in the FPR," it was all the more reasonable for the agency not to have made further inquiry, and to have awaited the additional details Argon pledged to provide in its FPR.