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Decision

Matter of: Crowley Technical Management, Inc.

File: B-407904.4

Date: September 25, 2014

Dismas Locaria, Esq., James Y. Boland, Esq., and Nathaniel Canfield, Esq., Venable LLP, for the protester.

Jason A. Carey, Esq., J. Hunter Bennett, Esq., and Patrick J. Stanton, Esq., McKenna Long & Aldridge, for Maersk Line, Ltd., an intervenor.

Kristopher A. Fischer, Esq., and Tinelle S. Windham, Esq., and Patrick Mayette, Esq., Department of the Navy, for the agency.

Mary G. Curcio, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that in conducting cost realism analysis of proposed fuel costs for offered ships the agency was required to reduce the protester's price/cost to account for the fact that its proposed fuel costs, unlike the awardee's, included the fuel costs associated with carrying passengers, is denied where the resulting reduction would not change the award decision.

DECISION

Crowley Technical Management, Inc., of Jacksonville, Florida, protests the Department of the Navy, Military Sealift Command's (MSC) award of a contract to Maersk Line, Ltd., of Norfolk, Virginia, under request for proposals (RFP) No. N00033-13-R-2015, for a time charter of a United States flagged, twin shaft vessel to provide maritime support. Crowley primarily asserts that the agency did not properly evaluate the realism of the offerors' proposed fuel costs.

We deny the protest.

BACKGROUND

The RFP required offerors to provide a vessel with certain features, including a flight deck and 46 passenger cabins capable of transporting 207 "sponsor personnel" in

addition to the crew. RFP at 47, 50, att. 2. at 2. Offerors were permitted to propose ships that they would modify to meet the agency's requirements. The RFP included fixed-price and cost-reimbursable items, and provided for award to the lowest-priced, technically acceptable offeror. RFP at 182.

For purposes of award, the price/cost evaluation was to be based on the sum of the proposed prices for the fixed-price items and the fuel consumption of the pre-modified ship, a cost-reimbursable item. RFP at 173. In this regard, offerors were required to indicate the fuel consumption of their ship, at service and variable speeds, under specified operating conditions, based on operation of the ship without any required modifications. Id.

Thirteen offerors, including Crowley and Maersk, responded to the solicitation. Offerors completed a solicitation form to calculate their fuel costs, but initially did not include any explanation of how they determined the fuel consumption rate or fuel cost of their proposed ship. Id. The initial evaluated price/cost of Maersk's and Crowley's proposals was as follows:

	CROWLEY	MAERSK
Fixed Price	\$(DELETED)	\$(DELETED)
Fuel Cost	\$(DELETED)	\$(DELETED)
Total Price	\$166,403,056	\$163,777,124

Contracting Officer's Statement (COS) at 8.

Following a protest to our Office, however, the agency decided to take corrective action, including advising offerors that it would perform a cost realism analysis of offerors' proposed fuel costs. B-407904.2, Jan. 16, 2014. Since the agency did not have the information it needed to conduct a cost realism analysis, it sent offerors the following request:

Please provide a narrative explanation of the methodology used to develop the fuel consumption rates proposed . . . Please include an explanation of any assumptions and calculations used, as well as the data sources relied upon in making those assumptions and calculations. . . . If historical data is submitted, please explain how fuel was metered on the vessel.

Clarification Request, Feb. 26, 2014. The agency received responses from Crowley and Maersk.

In the final cost realism analysis, the agency raised Maersk's fuel costs by \$(DELETED), which resulted in an evaluated fuel cost of \$(DELETED) and a total

price of \$163,903,411.¹ COS at 6. Crowley's proposed fuel cost of \$[DELETED] was considered realistic as submitted, leaving Crowley's total price at \$166,403,056. Id. The agency thereupon awarded the contract to Maersk as the lowest-priced, technically acceptable offeror, and this protest followed.

DISCUSSION

Crowley protests that the agency failed to perform a reasonable cost realism analysis of proposed fuel costs. As relevant to this protest, both Crowley and Maersk proposed to lease vessels to the agency that were required to be modified to meet the agency's requirements, which included passenger cabins and the ability to transport up to 207 passengers, in addition to the crew.

Maersk proposed the M/V CRAGSIDE, a Roll-On/Roll-Off (RoRo) cargo ship not currently constructed to accommodate passengers. In contrast, Crowley proposed the M/V STENA FERONIA, a so-called "RoPax" car ferry vessel with 72 cabins that can accommodate 285 passengers.² Crowley Clarification, February 20, 2014, at 3. As required by the solicitation, both offerors proposed fuel consumption rates for their unmodified ships. In responding to the agency's request for an explanation of the basis for its proposed fuel costs, Crowley explained that its fuel consumption figures included the fuel to provide for the electric usage for 285 passengers.

In its protest, Crowley argues that the agency should have removed from its evaluated price/cost the fuel costs associated with the 285 passengers to account for the fact that Maersk, whose vessel did not currently include passenger accommodations, did not include fuel costs for passengers.

Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions; that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3. Here, we find that even if we were to accept Crowley's argument that the agency was required to reduce Crowley's proposed fuel costs to account for the 285 passengers Crowley took into account in

¹ The adjustment was made to account for an error Maersk made in applying the admiralty coefficient (a constant for a given hull that gives the approximate relationships between the needed propulsion power, ship speed and displacement, Basic Principles of Ship Propulsion, MAN Diesel and Turbo, at 13), and the application of a slightly different conversion factor than that provided in the solicitation. COS at 6.

² A RoRo ship is one on which vehicles can be driven straight on or off. A RoPax ship is a RoRo ship that carries passengers.

computing those costs, the record supports the agency's position that Maersk would remain the lowest-priced offeror, and thus the awardee.

In response to the agency's request to explain the basis for its proposed fuel costs, Crowley provided three methods it used to determine fuel consumption for the pre-modified ship. Method A was based on data collected from the proposed ship, the M/V STENA FERONIA, at a time when it was unloaded and in port. According to Crowley, since there were no passengers on the ship at this time, it adjusted electricity usage by 113kW to account for 285 passengers. Crowley Clarification Response at 4. In Method B, Crowley used the actual measured average electrical load for at sea crossings for a sister ship, the M/V STENA FLAVIA, which Crowley indicated included an additional electric load of 113kW to account for the 285 passengers.³ *Id.* at 5-6. Finally, in Method C Crowley used an electrical load analysis design document for the STENA FERONIA from which Crowley estimated that the additional electric load for the 285 passengers was 250kW. *Id.* at 7-8. According to Crowley, in reducing its fuel costs for the assumed 285 passengers the agency should use the 250kW number, which results in a reduction of \$[DELETED] Declaration of Protester's Consultant, Mr. A., July 31, 2014, at 34. The agency disagrees, and argues that if it was required to reduce Crowley's proposed fuel costs by any amount, it would be based on an electrical load of 113kW, which results in a reduction of Crowley's proposed fuel costs of \$[DELETED] Declaration of Navy's Director of Chartering and Ship Operations Division, Sept. 2, 2014, at 1-2.

We find reasonable the agency position that any reductions in Crowley's proposed fuel costs to account for included passengers should be based on an electric load of 113kW. As an initial matter, Crowley's protest position is that the reduction should be based on the estimated 250kW electric load calculated by Method C, which is based on an electric load analysis design document for the ship. Crowley Clarification Response at 7. Crowley acknowledges in its clarification response, however, that the purpose of the electric load analysis design document is to size the capacity of the electric plant, and that the analysis therefore assumes worst case environmental conditions, with all equipment running simultaneously and continuously at an estimated load factor based on the maximum nameplate (rated) power rating of the equipment. *Id.* In contrast, in Methods A and B, Crowley used an electric load of 113kW to account for passengers based on actual data from the sister ship STENA FLAVIA during an overnight voyage. *Id.* at 5-7. Crowley has not explained why, given that the Method B information it provided the Navy was based on actual data from a sea voyage, the Navy should have instead relied upon the

³ The 113kW Crowley used to adjust electricity usage to account for the 285 passengers in Method A was taken from the actual data for the proposed vessel's sister ship, the STENA FLAVIA, as determined in Method B. Crowley Clarification Response at 5.

theoretical calculations used in its Method C approach. More importantly, in response to a request for further clarification from the agency regarding how Crowley calculated its fuel consumption rate, Crowley specifically stated that it “used only Method A in order to estimate . . . fuel consumption. . .” Crowley Response to Additional Clarification Request, Mar. 12, 2014, at 1. In these circumstances, there is no basis to conclude that the agency acted unreasonably by attempting to calculate Crowley’s proposed fuel costs using an electric load of 113kW for passengers.⁴

Thus, Crowley has provided our Office with no basis to conclude that the agency acted unreasonably--or in a manner that caused competitive prejudice to Crowley—

when it decided not to adjust Crowley’s proposed fuel costs for passenger-related electrical usage.

⁴ Crowley also asserts that Maersk’s fuel costs, and thus its overall evaluated price, should be increased because Maersk based its fuel consumption rates on fuel that it did not intend to use. Specifically, Crowley asserts that in its proposal, Maersk proposed to use [DELETED], which has a calorific value of [DELETED], but calculated its fuel consumption based on the use of [DELETED], which has a calorific value of [DELETED]. In our view, this argument is untimely since it was apparent from Maersk’s proposal, which Crowley’s attorney received in December 2013, but was not raised until July 31, 2014, when Crowley submitted its comments on the agency report. 4 C.F.R. § 21.2(a)(2) (2014). Crowley also asserts that the agency should have increased Maersk’s fuel costs by \$[DELETED], to account for a [DELETED], as recommended by the original equipment manufacturer. The agency disagrees, asserting that this factor was included in the [DELETED] Maersk included in its proposal for fuel consumption to account for [DELETED]. Declaration of Navy’s Director of Chartering and Ship Operations Division, Aug. 11, 2014 at 2. While the protester speculates that this is not the case, it has not pointed to anything in Maersk’s proposal that indicates that the [DELETED] did not include provision for a [DELETED]. In any case, even if \$[DELETED] was added to Maersk’s total evaluated price of \$163,777,124, Maersk’s price would increase to only \$[DELETED], still lower than Crowley’s total price, as reasonably adjusted for the fuel costs associated with electrical usage related to the 285 passengers assumed by Crowley in its fuel calculations--\$[DELETED].

The protest is denied.

Susan A. Poling
General Counsel