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Decision

Matter of: Kelvin International Corporation
File: B-408346; B-408346.2; B-408346.3
Date: August 13, 2013

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Charles W. Morrow, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of the awardee's proposal as technically acceptable is denied where the agency reasonably accepted the awardee's responses during discussions concerning the solicitation's maximum weight limit requirement.
2. Protest challenging the agency's evaluation of the protester's record of past performance is denied where the agency reasonably concluded that the protester's record did not reflect work commensurate with the requirements of the solicitation.
3. Protest challenging the agency's award decision is denied where the agency reasonably concluded that the protester's "limited confidence" rating for past performance did not merit a price premium as compared to the awardee's "unknown confidence" rating.

DECISION

Kelvin International Corporation, of Newport News, Virginia, protests the award of a contract to Hydraulics International, Inc. (HII), of Chatsworth, California, under request for proposals (RFP) No. FA8533-12-R-30143, issued by the Department of the Air Force, for high-purity, self-generating nitrogen service carts (HP-SGNSC). Kelvin challenges the agency's evaluation of offerors' proposals and the source-selection decision.

We deny the protest.

BACKGROUND

An HP-SGNSC is a self-contained, diesel engine towable cart that produces gaseous nitrogen at the flow rates required for certain weapon systems. Agency Report (AR), Tab 5, Source Selection Plan at 3. This acquisition is for two versions of the HP-SGNSC: (1) Type I is a self-contained, four-wheeled, towable, trailer-mounted cart with an internal diesel combustion engine to be used on a flight line and in open areas; and (2) Type II is a self-contained, skid-mounted cart powered with an electric motor to be used in closed, contained areas with no exhaust ventilation, such as tire shops. AR at 1.

The RFP, issued on September 14, 2012, as a total small business set-aside, sought award of a fixed-price requirements contract for a 24-month base period with five 12-month option periods.¹ See Contracting Officer's (CO) Statement at 2. The award was to be made on a best-value basis considering three evaluation factors: (1) technical, (2) past/present performance, and (3) cost/price. The technical factor was to be evaluated on an acceptable/unacceptable basis, and included three subfactors: (1) physical configuration, (2) performance requirements, and (3) safety features. See RFP at 69. The cost/price factor evaluation was to consider the reasonableness and balance of the offeror's proposed prices. Id. at 73. For purposes of award, tradeoffs were to be made between past/present performance and price, with each factor having approximately equal importance. Id.

The RFP explained that an offeror's technical proposal would be evaluated under the technical subfactors to determine if it provided a sound, compliant approach that meets the requirements of the purchase description and demonstrates a thorough knowledge and understanding of those requirements, and their associated risks. Id. at 74. As relevant here, the RFP stated that the physical configuration subfactor required offerors to provide an acceptable preliminary design for the physical configuration of the HP-SGNSC unit, with detailed narrative information and supporting documentation. Id. at 69-70. This subfactor specified that the Type I and Type II units must not exceed a maximum weight of 4,500 pounds. See AR, Tab 15, Purchase Description, at 5.

Under the past/present performance factor, the RFP stated that the evaluation would assess an offeror's ability to successfully accomplish the effort based on its

¹ Three amendments were issued to the RFP.

demonstrated past and present work record.² The evaluation was to consider the offeror's performance record in the following areas: contract compliance in supplying products and services that meet users' needs; cost and schedule; and recency, relevance, context, and performance trends. Id. at 70-71. The relevancy of the offeror's record was to be evaluated against the scope, magnitude, and complexities of the work required by the solicitation, as follows:

“Scope and magnitude of work and complexities” in the above definitions denotes not only technical features and characteristics of each effort but also the programmatic and logistical considerations including but not limited to quantities produced, dollar values, type of contract, length of effort, testing requirements, type and complexity of data contractually required of the offeror, etc.

Id. at 71.

The RFP stated that offerors without a record of past performance or for whom information is so sparse that no confidence assessment rating can be reasonably assigned will not be evaluated favorably or unfavorably on performance and as a result will receive an unknown confidence rating. It also stated that a strong record of recent and relevant performance may be considered more advantageous to the government than an unknown confidence rating. See RFP at 73.

Six offerors responded to the RFP by the October 29 closing date, including Kelvin and HII. A source selection evaluation board (SSEB) evaluated proposals, which led to the Air Force conducting detailed discussions with Kelvin and HII, as well as the other three offerors included in the competitive range.

As discussed in detail below, the agency identified concerns regarding Kelvin's past performance, particularly with regard to the relevance of its contract references. See AR, Tab 7, Kelvin Discussion Questions and Responses, at 17-20. For HII, one of the agency's evaluation notices (ENs) concerned the maximum weight of the offeror's Type II unit. Specifically, the Air Force advised HII that “[t]he proposed weight for the Type II unit exceeded [the] PD's mandated maximum weight by 3 pounds.” AR, Tab 6, HII Discussion Questions and Responses, at 3. In response, HII stated as follows:

² The contracts submitted for this purpose were assigned a relevancy rating of either very relevant, relevant, somewhat relevant, or not relevant. RFP at 71. The evaluation under this factor was to result in a confidence assessment rating of either substantial confidence, satisfactory confidence, limited confidence, or no confidence. See Id. at 72.

The proposed weight for the Type II unit [is] estimated based on weights of listed components. The most purchased components weights are accurate. The structural components weights are estimated from simplified CAD models and mostly rounded to [the] higher limit of [the] expected weight. Since deviation from required weight is only 3 pounds HII will ensure to reduce the overall weight of the cart to fit in requested limit of 4500lbs.

Id. at 3. HII also provide a revised weight estimation table in its revised proposal, which reflected a weight for the Type II unit of 4,329 pounds. Id. at 4.

The Air Force received final proposal revisions on March 13, 2013, and evaluated the revised proposals as follows:

	Kelvin	HII
Technical Factor	Acceptable	Acceptable
Past/Present Performance Factor	Limited Confidence	Unknown Confidence
Price	\$46,306,179	\$42,351,675

See AR, Tab 10, Source Selection Decision Document (SSDD), at 17.

As contemplated by the RFP, the source selection authority made an integrated best value assessment of the offerors' proposals, based on the past/present performance factor and price. With regard to Kelvin, the source selection authority (SSA) noted that Kelvin's recent and relevant performance record consisted of one effort with a somewhat relevant rating. Id. at 18. With regard to HII, the SSA concurred with the SSEB's finding that the firm had no relevant past performance, and merited a rating of unknown confidence. Id. at 16.

The SSA stated that selecting Kelvin for award, based on its higher price and limited confidence rating as compared to HII's lower price and neutral confidence rating, would not be a "sagacious" tradeoff. See AR, Tab 10, SSDD, at 18. After considering the evaluation results of all proposals, including Kelvin's and HII's, the SSA found HII's proposal to be the best value. Award was made to HII on May 15. Kelvin received a debriefing from the agency, and this protest followed.

DISCUSSION

Kelvin first contends that the Air Force unreasonably found that HII's proposal complied with the mandatory weight limitation requirement of 4,500 pounds. Second, Kelvin contends that the Air Force unreasonably evaluated Kelvin's

past/present performance record.³ Third, Kelvin contends that the Air Force's tradeoff analysis improperly leveled Kelvin's and HII's past performance records, rather than differentiating the relative merits of each offeror's proposal as required by the RFP evaluation criteria. For the reasons discussed below, we find no basis to sustain the protest.

The evaluation of an offeror's proposal is a matter within the agency's discretion. IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. A protester's disagreement with the agency's judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4. In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3.

Weight Limitation

First, Kelvin argues that HII's proposal, as amended by its EN response, failed to demonstrate that HII's proposed Type II unit "clearly meets" the mandatory weight requirement. We find no merit to this argument.

As discussed above, the agency advised HII during discussions that the proposed weight for its type II unit exceeded the weight limit of 4,500 pounds by 3 pounds. AR, Tab 6, HII Discussion Questions and Responses, at 3. In response, HII advised that the weight for its proposed type II unit was "estimated based on weights of listed components," and that "[t]he structural component[] weights are estimated from simplified [computer assisted design] models and mostly rounded to [the] higher limit of [the] expected weight." Id. The awardee provided a revised list of its proposed components and their weights, which showed that its proposed base would weigh 370 pounds, rather than the 544 listed in its initial proposal. This change reduced the overall weight for the type II unit to 4,329 pounds. Id. at 3-4. The awardee further stated that, "[s]ince deviation from required weight is only

³ Kelvin filed a supplemental protest challenging HII's compliance with the RFP's technical requirements, but subsequently withdrew this argument as to matters other than the awardee's compliance with the weight limitation. Protester's Comments (July 1, 2013) at 7 n.3. The protester also raises other collateral arguments; we have reviewed all of the protester's arguments and find that none provides a basis to sustain the protest.

3 pounds HII will ensure to reduce the overall weight of the cart to fit in requested limit of 4,500 lbs.” Id. at 3.

Kelvin maintains that the Air Force should not have accepted HII’s response because it contradicted the awardee’s representation in its initial proposal that the weights of the components identified in its proposal were “exact and have been verified in the design phase.” AR, Tab 6, HII Technical Proposal, Vol. II, at 5. Kelvin asserts that despite the blanket statement by HII in its EN response that it would meet the weight limit, HII did not explain how it planned to reduce the overall weight of the cart. Specifically, Kelvin notes that HII did not provide a detailed narrative and supporting documentation about how it would meet the weight limit, as required by the RFP. See RFP at 65, 70.

The Air Force states that HII’s EN response demonstrated compliance with the weight limitation requirement because it explained that a simplified initial estimation process led to the design exceeding the limit by 3 pounds. See Supp. AR, at 4. The agency states that HII’s response was acceptable because it explained the basis for the revised estimate, and provided a revised components list which showed how the new product base would result in an overall weight that met the solicitation requirements. Id.

Where, as here, a solicitation requires an offeror to explain its approach to specific requirements, an agency may reasonably find a blanket statement that the offeror will comply with the requirements to be deficient. See Professional Performance Dev. Group, Inc., B-311273, B-311273.2, June 2, 2008, 2008 CPD ¶ 101 at 4. On the other hand, an agency’s decision to accept a protester’s proposed approach to comply with the terms of a solicitation is a matter within the agency’s discretion that we will not question unless the record shows that the agency’s judgment was unreasonable, for example, that there was significant countervailing evidence reasonably known to the agency evaluators that should create doubt whether an offeror will or can comply with the requirement. See Alpha Marine Servs., LLC, B-292511.4, B-292511.5, Mar. 22, 2004, 2004 CPD ¶ 88 at 4; Maritime Berthing, Inc., B-284123.3, Apr. 27, 2000, 2000 CPD ¶ 89 at 9.

We do not agree with protester’s characterization of HII’s revised proposal and the agency’s evaluation. As noted above, in response to the agency’s concerns that its proposed Type II unit did not meet the weight limit requirement, HII responded with an explanation as to why its proposed unit exceeded the weight limit. HII committed to reduce the weight of the Type II unit to meet the weight limitation requirement, and provided a detailed list of the weights of the components that it proposed to use in its Type II unit to meet the weight requirement. In essence, the record shows that although the awardee made an initial representation regarding the accuracy of its proposed component weights, it subsequently clarified the initial representation and provided an alternate and more detailed explanation, along with a revised list showing that its proposed components met the weight restriction. While Kelvin

argues that HII's EN response should not have been sufficient or convincing because of the initial statements in its proposal regarding the awardee's basis for estimating the weight of its proposed Type II unit, the protester's disagreement with the agency's judgment does not provide a basis to sustain the protest.

Past/Present Performance

Next, Kelvin challenges the assessment of its past/present performance record as limited confidence. We find no merit to this argument.

As discussed above, the RFP stated that the agency would consider an offeror's performance record in the following areas: contract compliance in supplying products and services that meet users' needs; cost and schedule; and recency, relevance, context, and performance trends. RFP at 70-71. During discussions, the Air Force advised Kelvin that its past performance was rated as limited confidence. AR, Tab 7, Kelvin Discussion Questions and Responses, at 17. The agency stated that one of the two contract references submitted by the protester, for high pressure nitrogen carts at the Norfolk Naval shipyard, was not considered recent because it had not been performed or completed during the previous five years, and was therefore excluded from the evaluation. Id. The agency advised that the other contract reference, for nitrogen recharging trailers at the Puget Sound Naval shipyard, was considered "somewhat relevant." Id. Kelvin's response to discussions did not address the Puget Sound contract, and instead argued that the agency should have considered its Norfolk contract. Id. at 18-20. Based on the protester's responses to the discussions question, the agency concluded that its past performance still merited a limited confidence rating. AR, Tab 8, Proposal Analysis Report, at 11; Tab 10, SSDD, at 11, 18.

Kelvin argues that the Air Force's evaluation of its Puget Sound contract as "somewhat relevant" was unreasonable because it was not in accord with the solicitation evaluation criteria.⁴ The protester contends that the agency's evaluation failed to consider the quality of Kelvin's performance of that contract, and improperly focused on the fact that the Puget Sound contract required fewer units and was for a smaller value, as compared to the solicitation here. Kelvin asserts that while the RFP anticipated a higher-value contract award that required production of a greater number units as compared to the Puget Sound contract, the complexity of the Puget Sound contract far exceeded the RFP requirements.⁵ For this reason, Kelvin

⁴ Kelvin does not challenge the agency's evaluation of its Norfolk contract.

⁵ As described in Kelvin's proposal and its protest, the Puget Sound contract involved the design and manufacture of two high pressure nitrogen recharging trailers with diesel engine generators, a 2500 gallon capacity storage tank, nitrogen cryogenic pumps and a nitrogen vaporizer and pump drive motor packaged in a
(continued...)

argues that the contract should have been assessed as very relevant, since the contract exceeded all three of the objective relevancy criteria. Kelvin also argues that the Air Force's evaluation of its past performance should have placed more emphasis on the technical features and characteristics of the Puget Sound contract, and less emphasis on the number of units and overall size of the contract.

Contrary to the protester's arguments, the record shows that the SSEB report and selection decision specifically considered the technical complexity of Kelvin's Puget Sound contract. Specifically the SSEB report addressed the requirements of the Puget Sound contract, including flow rate, purity level, and pressure/square inch (PSI), and noted that the technical aspects of Kelvin's effort met the definition of "very relevant" performance. AR, Tab 8, Proposal Analysis Report, at 11. The SSEB also found that Kelvin's performance of the contract was considered to be very good and that no adverse performance information was provided by the customer. Id.

Despite these findings, the SSEB found that the Puget Sound contract merited a "somewhat relevant" rating because the effort was not of the same magnitude as the RFP. As discussed above, the RFP stated that the past performance evaluation would consider not only the technical features and characteristics of each effort, but also programmatic and logistical considerations, including but not limited to quantities produced, dollar values, type and complexity of data contractually required of each offeror. RFP at 71. The SSEB noted that the Puget Sound contract required production of only for two units during a 3.7 year period. AR, Tab 8, Proposal Analysis Report, at 11. In comparison, the RFP here has a projected estimated quantity of 290 production units over a five year period, which, the agency states, would require dedicated attention to the production and manufacturing process, recruitment and maintenance of labor resources, management and administrative work associated with creating and maintaining working vendor and supplier relationships, delivery tracking, transportation issues, and warranty processes. Id.

The SSEB concluded that a rating of limited confidence was appropriate. Id. The SSA concurred with the SSEB's rating, and concluded that, based on the limited

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standard tractor trailer. See First Supp. Protest (May 28, 2013) at 10; id. Exh. 3, Kelvin Facts Sheet, Puget Sound Contract at 2. These units provided gaseous nitrogen at a flow rate of 600 standard cubic feet per minute (SCFM), a purity level of 99.999 percent and a pressure level of between 6,000 and 10,000 PSI. Id. In contrast, the RFP here required the proposed HP-SGNSC units to provide nitrogen gas at a flow rate of 30 SCFM, a purity level of 99.5 percent, and a pressure level of 5,000 PSI. See AR, Tab 15, Purchase Description, at 8.

confidence rating, the agency had a “low expectation that Kelvin will successfully perform the HP-SGNSC effort.” AR, Tab 10, SSDD, at 11, 18.

In sum, the record shows that the agency’s evaluation of Kelvin’s past performance was consistent with the solicitation, and gave due consideration to its Puget Sound contract in assigning a somewhat relevant rating, and in assigning the protester an overall limited confidence rating. We find the Air Force’s evaluation to be consistent with the RFP’s criteria and reasonable. On this record, we find that the protester’s disagreement with the agency’s evaluation provides no basis to sustain the protest.

Selection Decision

Finally, Kelvin argues that the Air Force’s award decision was flawed because the Air Force did not perform a tradeoff between Kelvin’s superior performance record and HII’s slightly lower price. To this effect, Kelvin argues that the Air Force (1) failed to conduct a meaningful tradeoff analysis comparing the relative merits of the Kelvin and HII proposals, and/or (2) improperly converted this best value tradeoff into a low-priced/technically acceptable competition by treating Kelvin’s limited confidence rating as equivalent to HII’s unknown confidence rating. We find no merit to this argument.

Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of the technical and price evaluation results; price/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the solicitation’s evaluation criteria. World Airways, Inc., B- 402674, June 25, 2010, 2010 CPD ¶ 284 at 12.

As discussed above, the SSA specifically considered the past performance records of each offeror. The SSA noted that Kelvin’s recent and relevant performance record consisted of one effort (the Puget Sound contract) with a somewhat relevant rating, and that this effort involved production of only two high pressure nitrogen recharging trailers with a diesel engine generator. AR, Tab 10, SSDD, at 18. In comparing the two offerors’ past performance records, the SSA stated that “whereas HII was assigned . . . an Unknown, or neutral, confidence assessment, the Government determined that it has a low expectation that [Kelvin] will successfully perform the HP-SGNSC effort.” AR, Tab 10, SSDD, at 18. The SSA concluded that selecting Kelvin for award based on its higher priced proposal and limited confidence rating over the HII, based on its lower-priced proposal and unknown confidence rating, would be “imprudent” and “not a sagacious tradeoff.” Id.

While the protester contends that the agency unreasonably treated the offerors' past performance as equal, the record shows that the agency did not find that the protester's limited confidence rating merited paying a price premium of \$4 million.⁶ See id. We think the Air Force's evaluation was reasonable, and that Kelvin's disagreement with the agency's judgment does not provide a basis to sustain the protest.

The protest is denied.

Susan A. Poling
General Counsel

⁶ As the SSA noted, the RFP advised that a "strong record of recent and relevant performance may be considered more advantageous than an 'unknown confidence' rating." AR, Tab 10, SSDD at 18, citing RFP at 73. While we conclude that the SSA's exercise of discretion here was reasonable, we also think that the SSA's conclusions regarding the relative merits of the offerors' past performance--i.e., that Kelvin's limited confidence rating was not viewed as more advantageous than HII's unknown confidence rating--was expressly contemplated by the RFP here.