



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: East/West Industries, Inc.

File: B-278734.4

Date: May 28, 1998

Pamela J. Mazza, Esq., and Philip M. Dearborn, Esq., Piliero, Mazza & Pargament, for the protester.

Ellen D. Washington, Esq., Department of the Navy, for the agency.

Christine Davis, Esq., and James Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where the agency accounted for weaknesses in the awardee's technical approach in rating its proposal, protester's argument that the agency should have further downgraded the awardee's proposal based upon the evaluated weaknesses constitutes mere disagreement with the agency's judgment, which does not establish that the evaluation was unreasonable.

2. Agency reasonably used a price analysis and technical reevaluation to determine that the awardee understood the contract requirements, notwithstanding its low price.

DECISION

East/West Industries, Inc. protests the award of a contract to Skyline Industries, Inc. under request for proposals (RFP) No. N00019-97-R-0013, issued by the Department of the Navy, Naval Air Systems Command, for the design, development, testing and production of Common Crash Resistant Troop Seat Systems.

We deny the protest.

The RFP, issued as a small business set-aside, was for the award of a fixed-price contract for the design, development and testing of 20 seats. RFP § B. Assuming that qualification testing was successful, the RFP also stated two option quantities under which the government could procure an overall estimated quantity of 5,408 seats. RFP §§ B, M-3.

The solicited seats are for use in the UH-1N, H-3, and H-46 helicopters to minimize injuries during a crash. The contractor was to design the seats so that they could be installed, stowed, and reconfigured to fit in the three types of helicopters. RFP Attachment (2) §§ 1, 3(h). During the design and development effort, the contractor

was to engage in trade studies of the subject helicopters to develop a design for the seat, considering which design would optimize the seat's adaptability ("commonality") to the various helicopter platforms. Id., RFP Attachment (1) § 1.3.

The RFP stated three evaluation factors: technical, management, and price, including options. RFP § M-2(2), (5). The technical factor was most important, and the management and price factors, while equal to one another, were of lesser importance than the technical factor. RFP § M-2(2). The RFP stated that the government might not select a lower-priced proposal if a higher-priced proposal was deemed more advantageous, considering each proposal's relative strengths, weaknesses, and performance risks. Id. The source selection plan provided five adjectival ratings, "outstanding," "highly satisfactory," "satisfactory," "marginal," and "unsatisfactory," and three risk assessment ratings, "high," "medium," and "low."

The RFP listed five management subfactors and six technical subfactors. RFP § M-2(3), (4).¹ Under the most important technical subfactor, design and integration, offerors were to describe their knowledge of the subject helicopters and their approach to conducting trade studies to determine the best design approach. Under the next most important technical subfactor, commonality, offerors were to describe how they intended to address commonality considerations during the design process. The RFP did not require offerors to propose a particular design or design approach, but advised that proposals offering new seat designs would be considered higher risk than proposals offering existing seat designs. RFP § L-9.

The RFP invited the submission of alternate proposals, and, on June 16, 1997, the Navy received eight proposals from four offerors, including the awardee and the protester. The agency eliminated one offeror's proposal from the competitive range and conducted discussions with the remaining firms. On November 25, the agency received seven best and final offers (BAFO) from three firms, including East/West and Skyline.²

¹The management subfactors, in descending order of importance, were (i) Organization, (ii) Associate Contractor Agreements, (iii) Configuration Management, (iv) Tracking, and (v) Past Performance. The six technical subfactors, in descending order of importance, were (i) Design and Integration, (ii) Commonality, (iii) Experience, (iv) Production Capability, (v) System Safety, Reliability, and Quality Assurance, and (vi) Logistics. RFP § M-2(3), (4).

²Skyline submitted a single BAFO, East/West submitted two BAFOs, and the other firm submitted four BAFOs.

Skyline submitted the lowest-priced BAFO at \$8,726,604, or \$1,608 per seat. East/West submitted the next lowest-priced BAFO at \$16,341,081, or \$3,011 per seat. The government estimate was \$10,926,564, or \$2,013 per seat, which was based upon a 1996 contract for non-developmental crashworthy helicopter seats.

East/West's BAFO, which was based upon an existing seat design, was the highest-rated. East/West's management proposal was rated "highly satisfactory," and its technical proposal was rated "highly satisfactory/low risk." In comparison, Skyline's management proposal was rated "satisfactory," and its technical proposal was rated "satisfactory/medium risk."³ In assigning the "satisfactory/medium risk" rating, the technical evaluation team (TET) considered the fact that Skyline proposed a new seat to be developed by Skyline and its subcontractor, the manufacturer of the UH-1N helicopter; that the design was very preliminary; and that the proposal's design and integration approach focused on the UH-1N helicopter, not the H-3 and H-46 helicopters, though the TET found that the "preliminary seat design is common among the helicopters."

On January 5, 1998, the competitive award panel (CAP) performed a cost/technical tradeoff and recommended that Skyline's lowest-priced proposal be selected for award. Before making its recommendation, the CAP considered whether Skyline's significantly lower price and somewhat lower technical rating evidenced a flawed understanding of the contract requirements, and concluded that Skyline's "satisfactory/medium risk" rating was justified and evidenced an understanding of the requirements. The CAP reasoned that Skyline's price was probably lower than East/West's because Skyline will perform the work in an area with a lower cost of living than East/West (Fort Worth, Texas versus Long Island, New York) and because Skyline could purchase data rights for the UH-1N helicopter, manufactured by its subcontractor, on much more favorable terms than East/West could negotiate. In addition, the CAP considered the fact that Skyline's price was closer to the government estimate than was East/West's price. This price analysis, combined with the TET's findings, persuaded the CAP that Skyline understood the contract requirements.

The CAP presented its findings and award recommendation to the source selection authority (SSA). Like the CAP, the SSA questioned whether Skyline's much lower price evidenced a misunderstanding of the contract requirements. Suspending a selection decision, the SSA reconvened the TET to reevaluate all BAFOs received; in particular, the SSA asked the TET to assign adjectival and risk ratings at the subfactor level for each BAFO. The TET confirmed the overall "satisfactory" rating of Skyline's proposal based upon the new ratings assigned at the subfactor level. Skyline's proposal received "satisfactory/low risk" ratings under three subfactors,

³Skyline's proposal was rated "medium risk" from a design and development standpoint and "low risk" from a production standpoint.

"satisfactory/medium risk" ratings under two subfactors including commonality, and a "marginal/medium risk" rating under the design and integration subfactor.

After receiving the TET's report, the SSA determined that Skyline understood the contract requirements and approved the award recommendation of the CAP. The CAP acknowledged, and the SSA concurred, that Skyline's proposal was riskier than East/West's, though, in the agency's view, Skyline's proposed use of the UH-1N helicopter manufacturer as its subcontractor mitigated some of the proposal risks. Even accounting for the greater risks inherent in Skyline's proposal (and the potentially greater costs of monitoring the riskier contract, estimated at about \$1 million), the agency determined that the significant price advantage of Skyline's "satisfactory/medium risk" proposal outweighed the benefits of East/West's "highly satisfactory/low risk" proposal. This protest followed.

East/West protests that the agency should have rejected Skyline's proposal as technically unacceptable. East/West claims that Skyline's proposal focused on the design and integration issues relative to the UH-1N helicopter manufactured by its subcontractor, without establishing a design and integration approach relative to the H-3 and H-46 helicopter platforms. Accordingly, East/West argues that the agency should have regarded Skyline's proposal as technically unacceptable under the design and integration and commonality subfactors.

It is not the function of our Office to evaluate proposals de novo. Rather, we will examine an agency's evaluation only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit of competing proposals is primarily a matter within the contracting agency's discretion. Advanced Tech. and Research Corp., B-257451.2, Dec. 9, 1994, 94-2 CPD ¶ 230 at 3; Information Sys. & Networks Corp., B-237687, Feb. 22, 1990, 90-1 CPD ¶ 203 at 3. The protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. Medland Controls, Inc., B-255204, B-255204.3, Feb. 17, 1994, 94-1 CPD ¶ 260 at 3.

We find no basis to object to the TET's evaluation in this case. Skyline's ratings under the contested subfactors ("marginal/medium risk" for design and integration and "satisfactory/medium risk" for commonality) accounted for the weaknesses in Skyline's design and integration approach relative to the H-3 and H-46 helicopter platforms. While the protester believes that these weaknesses should have caused the TET to find the proposal unacceptable, we find reasonable the TET's assessment that Skyline's proposal demonstrated an acceptable, if not strong, approach to the contract requirements. Specifically, even though the TET questioned how effectively Skyline would address design and integration issues in adapting its seat to the H-3 and H-46 helicopters, the TET determined that Skyline's proposed seat was, in fact, common to all three platforms; that Skyline intended to perform a trade study early in the process to support its design before it ruled out other possibilities; and that Skyline's proposal presented a thorough understanding

of the design and integration issues related to the UH-1N helicopter platform, which would serve as the cornerstone for further trade studies. Furthermore, when asked during discussions about its design and integration approach with respect to the H-3 and H-46 helicopters, Skyline confirmed that the approach outlined for the UH-1N helicopter should generally apply to these other aircraft, since Skyline's proposed seat design was common to all three platforms, and that further integration issues would be addressed during a trade study--an approach contemplated by the RFP. RFP Attachment (1) § 1.3. The protester's argument that more was required to establish the acceptability of Skyline's proposal constitutes mere disagreement with the TET's ratings, which we find reasonably balanced the competing strengths, weaknesses, and risks in Skyline's proposal.

In a related argument, East/West also protests that Skyline's proposal price is unrealistically low and demonstrates that the awardee does not understand the solicitation requirements, which should have resulted in the rejection of Skyline's proposal. We disagree.

While an agency may provide for a price realism analysis in the solicitation of fixed-price proposals for such purposes as measuring an offeror's understanding of the solicitation requirements, this RFP did not provide for a price realism analysis, include price as a consideration in the technical evaluation, or provide for an evaluation of the offeror's understanding. See Applied Communications Research, Inc., B-270519, Mar. 11, 1996, 96-1 CPD ¶ 145 at 3; Akal Sec., Inc., B-261996, Nov. 16, 1995, 96-1 CPD ¶ 33 at 5-6. Nevertheless, the record reflects that the agency performed a price analysis based upon techniques recommended by the Federal Acquisition Regulation (FAR) to determine that Skyline's price was reasonable and to ascertain that Skyline understood the contract requirements, notwithstanding its low price. Specifically, the agency compared the awardee's price with the government estimate and with East/West's price, and determined that Skyline's price was generally in line with the government estimate and that the wide margin between Skyline's price and East/West's price reflected discounts available to Skyline in purchasing UH-1N data rights and in doing business in an area with a lower cost of living than East/West. Given that the nature and extent of an agency's price analysis is largely a matter of agency discretion, dependent upon the facts of a particular procurement, PHP Healthcare Corp., B-251933, May 13, 1993, 93-1 CPD ¶ 381 at 5, we think that the agency performed an adequate price analysis pursuant to FAR § 15.805-2 (June 1997), which validated the realism of Skyline's price and its understanding of the contract requirements. Furthermore, the SSA, in an effort to confirm that Skyline understood the contract requirements despite its low price, reconvened the TET and directed it to reevaluate BAFOs. Based upon this reevaluation, the TET determined that Skyline's proposal was free from any

"unsatisfactory" or "high risk" ratings at the subfactor level and manifested an overall "satisfactory" approach to the RFP technical requirements. See Crestmont Cleaning Serv. & Supply Co., Inc. et al., B-254486 et al., Dec. 22, 1993, 93-2 CPD ¶ 336 at 6-7. The protester has provided no basis to disagree with this assessment.

The protest is denied.

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