



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Astrosystems, Inc.

File: B-261673.2

Date: December 7, 1995

Brett A. Alcalá, Esq., Birnbaum & Umeda, for the protester.

Gregory H. Petkoff, Esq., and Mark E. Frazier, Esq., Department of the Air Force, for the agency.

Robert Arsenoff, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's determination to qualify awardee as an approved source is denied where record shows that the agency's determination was reasonably based.

DECISION

Astrosystems, Inc. protests the award of a contract to Support Systems Associates, Inc. (SSAI) under request for proposals (RFP) No. F41608-95-R-0194, issued by the San Antonio Air Logistics Center, Department of the Air Force, for services including the repair, testing, and calibration of automatic test equipment used on B-1B aircraft. The protester principally maintains that SSAI was improperly approved as a qualified source.

We deny the protest.

The RFP contemplated the award of a fixed-price contract to the lowest-priced offeror determined to be an approved source for the technical services to be performed under the contract, and listed Astrosystems as one of two previously approved sources. Offerors which had not been previously approved were invited to submit a source approval request (SAR) information package to enable the government to determine whether they could meet the government's needs. The SAR package was to contain the following:

(1) Evidence of capability (*e.g.*: brochures, technical information, FAA certification, purchase orders or contract for similar items showing equal or greater degree of difficulty than equipment being considered).

(2) Company experience and experience of the work force.

- (3) Facilities description.
- (4) Support and test equipment availability.
- (5) Kits and piece parts availability.
- (6) List of current applicable technical orders or commercial literature/manuals and supplements which are available for repair/overhaul.
- (7) Description of Quality Program.
- (8) Safety program for protection of government assets.
- (9) Copy of any warranty which will be provided.¹

Four offers were received. SSAI submitted the lowest offer of \$1,003,978.13 and Astrosystems submitted the second lowest offer of \$1,257,617.28. SSAI submitted a SAR information package which was reviewed by agency engineers and approved. SSAI was awarded a contract based on its low price and this protest followed.

As indicated above, Astrosystems principally maintains that the agency improperly qualified the awardee as an approved source. Prior to discussing this allegation, however, we address certain of the protester's other complaints which are not for review by our Office.

First, Astrosystems challenges the contracting officer's determination that the awardee was responsible both in a general context and with respect to what the protester asserts are definitive responsibility criteria. Because a determination that an offeror is capable of performing a contract is based largely on subjective judgments which generally are not susceptible of reasoned review, an affirmative determination of responsibility will not be reviewed by our Office absent a showing that such determination was made fraudulently or in bad faith or that definitive

¹This is the same information that was considered when the protester's SAR was evaluated a year prior to this procurement. Item (5) on the list, concerning kits and piece parts availability, was inadvertently included in the instructions and is not relevant to the procurement of repair services because electronic parts are readily available in the commercial market. Since the Air Force did not measure any offeror's ability to perform against this standard, its inadvertent inclusion was not prejudicial. Moreover, an agency is not obligated to use previous qualification standards in future procurements if it determines that they are no longer needed to measure whether an offeror can meet the agency's needs. See Chromalloy Gas Turbine Corp., B-234272, May 17, 1989, 89-1 CPD ¶ 474.

responsibility criteria in the solicitation were not met. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(5) (1995); Bomem, Inc., B-234652, May 17, 1989, 89-1 CPD ¶ 475. Astrosystems has not alleged, nor does the record contain any suggestion of, fraud or bad faith on the part of the contracting activity. With respect to the protester's presumption that the nine quoted information categories of the SAR package constitute definitive responsibility criteria, which SSAI allegedly did not meet, Astrosystems's argument lacks legal merit. Information requested in an RFP to determine source approval status simply does not constitute definitive responsibility criteria—i.e., standards applied by the agency for measuring a particular offeror's ability to perform a contract. Advance Gear & Mach. Corp., B-228002, Nov. 25, 1987, 87-2 CPD ¶ 519. Accordingly, this aspect of the protest is dismissed.

Noting that SSAI mentions a "team member," Southwest Electronics Laboratory, Inc., in its SAR package, Astrosystems asserts that the Air Force failed to assure that the awardee would perform in accordance with RFP amendment No. 0002, which the protester characterizes as placing a fixed 10-percent cap on the amount of subcontracting permitted. However, amendment No. 0002 actually provides as follows:

"Intent of this procurement is for on-site repair to the maximum extent possible. Procurement is envisioned as having one contractor responsible for entire repair effort with very few items being subvendored out. There [is] less than 10% exceptions to the on-site requirement."

This language does not establish a 10-percent cap on subcontracting; rather, it limits the amount of repair work which may be performed outside the contractor's premises. Whether SSAI performs in accordance with the limitation is a matter of contract administration, which is the responsibility of the contracting agency and not within the purview of our Office. Janke and Co., Inc., B-210776, May 19, 1983, 83-1 CPD ¶ 534. In any event, in its proposal SSAI specifically acknowledged amendment No. 0002 and stated that it took no exceptions to the RFP. Further, in the SAR package, SSAI states that it plans to perform all repair work at its own Oklahoma City facility, using its "team member" only to perform equipment calibration efforts. As the agency reports, these efforts represent less than 10 percent of the contract effort. Accordingly, the record does not support the protester's supposition that the awardee will not perform in accordance with the RFP.²

²Astrosystems has raised various other nonmeritorious allegations which we will not address in detail. For example, the protester claims that the agency's failure to

(continued...)

We now turn to Astrosystems's principal allegation that SSAI's SAR package was inadequate to permit the Air Force to properly conclude that the firm was a qualified source and the related allegation that the agency waived or relaxed source approval requirements for SSAI.

The contracting agency has the primary responsibility for determining its minimum needs and for determining whether a previously unapproved source will satisfy those needs, since it must bear the burden of difficulties incurred by reason of a defective evaluation. Chromalloy Gas Turbine Corp., *supra*; Sony Corp. of Am., 66 Comp. Gen. 286 (1987), 87-1 CPD ¶ 212. Whether an offeror seeking source approval has submitted sufficient information to convince the agency that it will meet the agency's minimum needs is essentially a technical judgment committed to the agency's discretion, *id.*, which we will not disturb unless it is unreasonable. Service & Sales Inc., B-247673, June 29, 1992, 92-1 CPD ¶ 545. A protester's mere disagreement with an agency's technical judgment does not render the judgment unreasonable and does not provide a legal basis for sustaining a protest. *See* DBA Sys., Inc., B-241048, Jan. 15, 1991, 91-1 CPD ¶ 36.

Astrosystems's criticisms of the Air Force's conclusions concerning the adequacy of SSAI's SAR package fall short of establishing that the agency's determination was unreasonable. At best, the protest arguments constitute technical disagreements which do not provide a basis for the protester to prevail in this matter.

For example, Astrosystems questions whether the awardee has established its "capability" under the first listed source approval standard. In this regard, the protester asserts that the awardee has not performed contracts involving similar items of comparable complexity. The agency notes that SSAI listed six contracts

²(...continued)

execute a justification for a source approval requirement, as required by Federal Acquisition Regulation § 9.202(a), prior to including the requirement in the RFP prejudiced its pricing strategy, arguing, in essence, that it could have and would have offered a substantially lower price in an unrestricted procurement with a different competitive mix of offerors. The fact of the matter is, however, that, notwithstanding the agency's error in not executing the justification, the source approval requirement was included in the RFP and all offerors competed under the same set of standards. We therefore fail to see how the protester was prejudiced. Astrosystems also asserts that SSAI's failure to complete the inspection and acceptance and f.o.b. origin clauses rendered its offer technically unacceptable. In both cases, however, the omissions were waivable as minor informalities since SSAI identified its place of performance elsewhere in the offer. Moreover, under Astrosystems's position, its own offer would be unacceptable for failure to complete the f.o.b. origin clause.

and states that an Air Force technical representative familiar with B-1B equipment to be repaired contacted the Federal Aviation Administration (FAA) concerning the details of SSAI's performance on all six contracts. The technical representative, who was also familiar with FAA equipment, concluded that the six identified contract efforts were comparable to that required under the RFP. On the basis of this conclusion, SSAI was found to have provided sufficient information to establish its capability under this standard. While Astrosystems takes exception to this conclusion and insists that the evaluation should have been more extensive, we find nothing in the RFP's standards to suggest that the successful performance of six contracts of similar complexity is insufficient to establish SSAI's capability.

Likewise, regarding the first listed overall "capability" standard, the agency reviewed technical descriptive information on repair procedures provided by SSAI in its SAR package and found it to be adequately detailed. Astrosystems argues that the information was generic in nature and asserts that the agency essentially waived the standard. The RFP standard merely sets forth technical information as one illustrative category of data impacting on capability without providing any specific requirements, and Astrosystems's assertion that the agency's conclusion is wrong does not provide us with a basis for questioning the evaluators' judgment here.

With reference to the second and third listed source approval factors, Astrosystems questions whether SSAI has a sufficient number of employees and insists that the agency should not have accepted at face value, without further investigation, the awardee's statement that its 7,675 square foot Oklahoma City facility was adequate to perform the contract. The RFP did not set forth specific personnel requirements or square footage facility requirements, nor did it require the Air Force to conduct a plant facilities survey in conjunction with source approval; thus, Astrosystems's objection merely reflects its disagreement with the Air Force regarding the significance of the information provided by SSAI.

Finally, Astrosystems complains that SSAI did not submit a complete list of current applicable technical orders which are available for repair or overhaul as required by the sixth listed source approval factor. The agency points out that SSAI did indicate what technical orders it possessed and included a statement that it would order supplementary orders as required in the performance of the contract. Since

SSAI's SAR package also indicated that the firm subscribes to the military service which provides such orders, we see no basis for questioning the agency's judgment that the awardee satisfied this requirement.

The protest is denied.

Comptroller General
of the United States