



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: SEAIR Transport Services, Inc.

File: B-274436

Date: December 12, 1996

Ronald H. Uscher, Esq., Bastianelli, Brown, Touhey & Kelley, for the protester. Rachel A. Sens, Esq., and G. Matthew Koehl, Esq., Seyfarth, Shaw, Fairweather & Geraldson, for Eagle Aviation Services & Technology, an intervenor. Marian E. Sullivan, Esq., Michael Farr, Esq., and John Lariccia, Esq., Department of the Air Force, for the agency. Christina Sklarew, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest based on disagreement with agency's evaluation of certain features in the protester's proposal, alleging that credit should have been given under one evaluation criterion rather than another, is denied where the record shows that the agency evaluated in accordance with the criteria announced in the solicitation, and the record reasonably supports the evaluators' conclusions.
 2. Protest against agency's performance risk assessment of awardee's proposal is denied where the agency's evaluation and conclusions reached were reasonable and supported by the record.
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DECISION

SEAIR Transport Services, Inc. protests the Department of the Air Force's award of a contract to Eagle Aviation Services & Technology, Inc. ("EAST") under request for proposals (RFP) No. F34650-96-R-0059 for the performance of fuels operations services at Tinker Air Force Base, Oklahoma. SEAIR contends that the Air Force's evaluation of competing proposals and resulting award decision were flawed in a number of ways.

We deny the protest.

The RFP was issued as a total small business set-aside, and contemplated the award of a firm, fixed-price contract for a 1-year base period, plus 4 option years. The solicitation provided that the source selection would be conducted in accordance with the Streamlined Source Selection Procedures of Air Force Federal Acquisition Regulation Supplement Appendix BB. The RFP listed the following specific criteria

against which proposals would be evaluated: management, production, quality, and cost. The technical areas were to be of primary importance and would be considered equal in value, with cost/price having substantial but secondary importance. The RFP also provided the following assessment criteria against which the technical areas would be evaluated: understanding/compliance with the requirements and soundness of approach. Each of the technical areas was to be rated in three different ways: by a color rating, used to reflect how well the proposal meets the evaluation standards and RFP requirements; by a proposal risk factor, used to assess any risks associated with the offeror's proposed approach; and by a performance risk factor, used to reflect any risks associated with the offeror's present and past work record. Cost was to be evaluated for completeness, realism and reasonableness, and would be evaluated against the government's 'most probable cost' estimate. Award was to be made to the offeror presenting the best value to the government.

Eleven firms submitted timely initial offers. After these were evaluated, the agency determined that only seven offers, including SEAIR's and EAST's, should remain in the competitive range. The competitive range offerors were then permitted to present oral proposals, as the RFP had described. Following the oral presentations, members of the Air Force technical evaluation team asked any questions required for clarification. Discussions were then conducted with each offeror by telephone, followed by the submission of best and final offers (BAFOs). The BAFOs that were submitted by EAST and SEAIR were rated as superior to the other remaining offerors. The two firms received identical technical ratings, with each firm's proposal rated blue ("exceptional") under the management and production factors and green ("acceptable") under the quality factor, with low risk ratings. EAST's proposed price of \$11,547,388 was approximately \$450,000 lower than SEAIR's price. The source selection authority determined that EAST's offer represented the best value to the government, and EAST was selected for award. SEAIR requested and received a debriefing, and this protest followed.

SEAIR protests that the Air Force failed to award proper evaluation credit for certain aspects of SEAIR's proposal. The protester asserts that its proposal should have received a "blue" rating for quality, instead of "green," because it included additional features that improved the quality of its level of performance. SEAIR cites the inclusion in its proposal of an additional clerk in order to reduce the contract manager's administrative duties and permit the manager to spend more time in the field, and the inclusion of a plan to divert 25 percent of the contract profits to an employee incentive plan that would award incentive bonuses to employees for excellent/safe performance. The protester asserts that the Air Force failed to consider these additional features.

The evaluation of proposals is primarily a matter within the agency's discretion since it is responsible for defining its needs and for deciding on the best methods for accommodating them. SEAIR Transport Servs., Inc., B-252266, June 14, 1993, 93-1 CPD ¶ 458. Therefore, our Office will question the evaluation only if the record demonstrates that it was unreasonable or inconsistent with the RFP's evaluation criteria. Id.

Here, the record shows that the Air Force, in fact, considered the features to which SEAIR refers to and recognized them as strengths but did so under the production criterion rather than the quality criterion. For the production area, offerors were instructed to discuss such matters as each element of the production function to be performed, to include operations and maintenance services for all shifts; the planned method of compliance with the performance work statement (PWS); staffing that will be used to perform the contract; supervisory assignments and responsibility, and so on. Under the quality factor, offerors were advised to discuss quality control and inspection organization; quality control and inspection procedures; quality control plan; production flow path and inspection points; and ratio of inspection to production personnel. Since these additional features of SEAIR's proposal involved staffing and a staff incentive plan, both of which reflect a particular approach to performance, we think the Air Force could reasonably determine that these features were most closely related to the production area which covered staffing, supervision, and the planned approach to meeting the PWS.¹ We therefore find no merit to this aspect of the protest.

SEAIR also alleges that the Air Force failed to conduct meaningful discussions by not specifically identifying any weaknesses in the quality area of its proposal. According to SEAIR, had it been allowed to address these weaknesses, its revised proposal would have received a blue/excellent rating for quality and its overall score would have been higher than EAST's, and it would be entitled to the contract award. SEAIR also asserts that had it known of Air Force concerns about the cost of its proposed additional features, it would have eliminated them and lowered its price, thus placing it in line for award.

¹In its comments on the agency report, SEAIR raised additional reasons why it believes its proposal should have received a higher score for the quality area. However, these arguments are untimely raised and will not be considered. SEAIR received the agency report on October 4 and was required, under our revised Bid Protest Regulations, 61 Fed. Reg. 39039, 39047 (1996) (to be codified at 4 C.F.R. Part 21) to file any additional grounds of protest based on information first received in the report within 10 days of that date. SEAIR did, in fact, file supplemental protest grounds separately on October 15. The new arguments raised in its protest comments on October 18, however, are untimely.

Generally, agencies are required to conduct discussions with all competitive range offerors and this mandate is satisfied only when discussions are meaningful. The Faxon Co., 67 Comp. Gen. 39 (1987), 87-2 CPD ¶ 425. However, agencies are not obligated to afford offerors all-encompassing discussions. Department of the Navy--Recon., 72 Comp. Gen. 221 (1993), 93-1 CPD ¶ 422. Where a proposal is considered to be acceptable and in the competitive range, an agency is not required to discuss every aspect of the proposal receiving less than the maximum rating. Fairchild Space and Defense Corp., B-243716; B-243716.2, Aug. 23, 1991, 91-2 CPD ¶ 190. Here, SEAIR's proposal was rated equal to EAST's, and the two were considered superior to all of the other proposals in the competitive range. In view of its overall high score and an evaluation record that demonstrates that SEAIR's proposal was not viewed as having any meaningful weaknesses, SEAIR was not entitled to discussions which would essentially have been conducted solely to permit it to achieve a perfect score in all areas. Further, the record does not support SEAIR's premise that the agency had "concerns about the cost of SEAIR's proposed additional features."

SEAIR also protests that the Air Force's evaluation was inconsistent with the RFP's terms because it failed to give the three technical areas equal weight, as required by the solicitation. The protester notes that the memorandum of law in the agency report once refers to the management and production areas as "the two most important technical areas," and once characterizes the quality factor as "the third and least important technical evaluation area."

As SEAIR correctly points out, once offerors are informed of the criteria against which their proposals will be evaluated, the agency must adhere to those criteria or inform all offerors of any significant changes made in the evaluation scheme. Greenebaum and Rose Assocs., B-227807, Aug. 31, 1987, 87-2 CPD ¶ 212. Here, however, we find no discrepancy between the evaluation method established in the RFP and the evaluation that was performed. Although the report makes the statements that SEAIR quotes, the agency explains that these statements were made in error and the records supports the agency's position. There is no indication in the contemporaneous evaluation record and contracting officer's statement of facts that any unequal weighting formula was applied to the three areas. Moreover, since the proposals were rated equal and the color rankings for each of these areas were identical for the protester's and the awardee's proposals (which color ratings we have found to be consistent with the RFP, as discussed above), no competitive prejudice would result even if the agency had failed to weight the three areas equally. Optimum Technology, Inc., B-266339.2, Apr. 16, 1996, 96-1 CPD ¶ 188.

SEAIR protests that the Air Force should not have rated EAST's performance risk as low. "Performance risk" was described in the RFP as relating to "the assessment of an offeror's present and past work record to assess confidence in the offeror's ability to successfully perform as proposed." The protester alleges that the awardee

has no current contracts requiring performance of fuels operations and previously performed only one fuels-related contract for 2 years.

In reviewing an evaluation of an offeror's performance risk, we will examine it to ensure that it was reasonable and consistent with the stated evaluation criteria, since the relative merit of competing proposals is primarily a matter of agency discretion. See CTA Inc., B-253654, Oct. 12, 1993, 93-2 CPD ¶ 218; Instrument Control Serv., Inc., B-247286, Apr. 30, 1992, 92-1 CPD ¶ 407. We find that the record here supports the Air Force's conclusion that EAST's proposal presented a low performance risk. First, the protester's allegations are not supported by the record, which shows that EAST is currently performing subcontracts under Department of State and Air Force contracts that involve aviation fueling and management requirements which are similar to the services required under this contract. EAST submitted information about five fuels and fuels-related service contracts that the performance risk analysis group (PRAG) considered relevant when it evaluated EAST's past performance, and seven relevant contracts under which EAST performed as subcontractor. Although it is true that only one of the relevant contracts, for fuels operations services at Columbus Air Force Base in Mississippi, was specifically for fuels operations services, that contract was virtually identical in size and scope of work to the contract at issue here. The performance of that contract earned EAST the "Black Gold" award as the best fuels operation in the Air Education and Training Command (AETC) for 2 years in a row, in 1992 and 1993. EAST was the first civilian contractor ever to win this award, and its fuels officer under that contract received AETC's "Best in the Command" award. Moreover, the performance assessment questionnaire that the agency received in connection with that contract reported the highest satisfaction with EAST's past performance.

Second, the PRAG was to consider the past performance information for the purpose of assessing the potential risks associated with each offeror's performance of the contract, and not for the purpose of evaluating that past performance itself. The PRAG's definition of "low risk" in this context was, "little doubt exists, based on the offeror's performance record, that the offeror can satisfactorily perform the proposed effort." Contrary to SEAIR's contention, the solicitation did not require the agency to perform a comparative evaluation, rating competing proposals on a scale relative to each other, neither do we find support for SEAIR's premise that only contracts that were strictly for fuel could be considered relevant, or even that the number of contracts completed was relevant here. In short, we find on this record that the Air Force reasonably determined that EAST posed a low performance risk. See Lockheed Aircraft Serv. Co., B-255305; B-255305.2, Feb. 22, 1994, 94-1 CPD ¶ 205.

SEAIR also challenges the agency's affirmative determination of EAST's responsibility, alleging that it was made in bad faith. Our Office will not review affirmative determinations of responsibility by the contracting officer absent a

showing of possible bad faith on the part of the government procurement officials or that definitive responsibility criteria in the solicitation were not met. Mitel, Inc., B-270138, Jan. 17, 1996, 96-1 CPD ¶ 36. Here, the only basis that SEAIR asserts for its allegation that the agency's determination that EAST is a responsible contractor involved "bad faith" is its own belief that the responsibility determination cannot be accurate. That does not meet the requirement for a showing of possible bad faith. While SEAIR also alleges generally that the responsibility determination is invalid because EAST failed to meet definitive responsibility criteria, the protester does not identify any such criterion that the awardee allegedly failed to meet, nor do we find any in the RFP.

SEAIR challenges the agency's documentation of its award decision, characterizing the record as "devoid of any real rationale for the decision to award the contract to EAST," and alleging that the source selection decision does not address the relative differences between SEAIR's and EAST's proposals. While the selection official's judgment must be documented in sufficient detail to show it is not arbitrary, KMS Fusion, Inc., B-242529, May 8, 1991, 91-1 CPD ¶ 447, a source selection official's failure to specifically discuss every detail regarding the relative merit of the proposals in the selection decision document does not affect the validity of the decision if the record shows that the agency's award decision was reasonable. See McShade Gov't Contracting Servs., B-232977, Feb. 6, 1989, 89-1 CPD ¶ 118. Here, the record documents the evaluation process, the color coding, and the risk assessments, concluding with the agency's determination that SEAIR's and EAST's proposals were essentially equal technically. The source selection document refers to this determination and concludes that, taking price into consideration, EAST's lower-priced offer represented the best overall value to the government. We see no basis to object to the source selection document, which very clearly sets forth the basis for the agency's award decision.

SEAIR protests that the Air Force improperly engaged in technical leveling and technical transfusion, alleging that evaluation team members told EAST during the oral presentation that the firm should consider employing the incumbent's personnel. SEAIR notes that EAST proposed to employ a different project manager and operations supervisor in its initial proposal than it did in its BAFO, and alleges that EAST was coached during its oral presentation to make that change. First, we find that the record refutes this allegation. EAST's initial proposal states the firm's intention to "hire as many incumbent employees as possible who are qualified," and states that the firm would contact the incumbent personnel for hiring purposes as soon as EAST received notification of contract award. Not having commitments from the incumbent personnel, however, EAST provided names of alternate personnel choices that it would employ if the incumbents declined EAST's offer of employment. The agency has supplied a videotape of the EAST's oral presentation, which refutes the protester's allegation that the agency improperly coached EAST. Second, the substitution of personnel in EAST's BAFO did not affect its rating in

any event; both the initial proposal and BAFO were rated "blue" in the management area; the substitution had no impact on the evaluation.

The protest is denied.

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