



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Stratus Systems, Inc.

File: B-281645

Date: February 24, 1999

Steven A. Becnel for the protester.

Lawrence E. Kinker for Survival Systems Group USA, an intervenor.

Richard V. Gonzales, Esq., United States Coast Guard, for the agency.

Andrew T. Pogany, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Contracting agency properly did not give evaluation credit for undated and general past performance information contained in protester's technical approach, where request for proposals (RFP) stated that past performance would be separately evaluated using detailed past performance criteria for the past 24-month period.
 2. Contracting agency's written discussion questions reasonably apprised protester of the areas of its proposal that the agency considered deficient, such that the protester should have known and understood the agency's concerns.
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DECISION

Stratus Systems, Inc. protests the award of a contract to Survival Systems Group USA under request for proposals (RFP) No. DTCG38-98-R-J00002, issued by the United States Coast Guard for 42 emergency egress lighting systems for the HH60J helicopter.¹ Stratus principally argues that the agency miscalculated technical and price proposals.

We deny the protest.

The RFP, issued March 5, 1998, contemplated the award of a fixed-price commercial item supply contract to the responsible offeror whose offer conforming to the

¹An emergency egress lighting system, in simple terms, is a system of lights which mark doors and window openings through which the crew could exit the helicopter in an emergency situation.

solicitation would be most advantageous to the government, price and other factors considered. Agency Report (AR), Tab E, RFP at 6. The RFP stated that a single award would be made based on the evaluation factors of technical approach (the most important factor), past performance and price. Id. Technical approach (with five subfactors)² and past performance each were more important than price; the RFP stated, however, that price was an important factor and its importance would increase as the degree of equality of the proposals increased. Id.

The agency received four offers; following evaluation, one offer was determined to be yellow/marginally satisfactory from a technical standpoint and excluded from the competitive range.³ The evaluators found that Survival Systems proposed a complete system, which appeared easy to install and maintain. It took 2-1/2 hours to install the system, which was designed for easy changing of components, had an excellent range of visibility, and was powered by relatively inexpensive battery packs of "C" cell alkaline batteries. Testing of the system could include actually illuminating the exit lights. This proposal was rated green/acceptable. Stratus also offered a complete system, which could be installed within 3-1/2 hours. Its system used lithium batteries, which are more expensive than normal alkaline batteries. The evaluators found that testing of Stratus's system would check the battery, sensor and circuit condition, but would not illuminate the actual emergency lights; if the lights were illuminated during testing, they would have to be replaced, at a cost of approximately [deleted].⁴ This proposal nevertheless also was rated green/acceptable. Following discussions, best and final offers (BAFO) were received and evaluated.

In its BAFO, Survival Systems was found to have improved the design of its mounting brackets and backing plates to reduce or eliminate a potential snag hazard; as a result, its rating was upgraded to blue/outstanding. Stratus's BAFO offered to provide a de-coupling module to reduce the risk of maintenance personnel accidentally activating the inversion sensor. However, because the lights still would have to be replaced when used (accidently or due to training needs), and

²The subfactors were ease of installation on aircraft, maintainability of lighting system, light intensity and angle of view, environmental impact, and life cycle cost.

³The agency rated proposals with color/adjectival ratings of blue/outstanding, green/acceptable, yellow/marginally satisfactory, and red/unacceptable.

⁴Stratus offered a "chemiluminescent" type light source. An illumination is produced by a non-toxic biodegradable chemical reaction. The control module contains proprietary chemicals which are combined and then injected in the light tube. The primary drawback of this type of light source is that it can only be used once and then has to be replaced. The other offerors proposed light emitting diodes (LED) which did not have to be replaced after being illuminated during testing.

in view of the associated costs, its rating remained green/acceptable. Survival System offered a price of \$275,100; the protester offered a price of [deleted]. The agency's tradeoff analysis stated as follows:

The difference in price between the two systems is [deleted]. If we were to install the Stratus product, the accidental or intentional illumination of a system more than 56 times over the life of the airframe would cost more in replacement parts than we would save in initial acquisition. Assuming a 20 year life, that would be less than 3 times per year. With 42 aircraft at eight different air stations, the potential for activation of the system is far greater than 3 times per year. Other considerations that favor the [Survival System] product are the ease of maintenance, the durability of the system, the additional range of visibility, and the ability of the aircrew to actually see the system illuminated during testing.

AR, Tab M, Trade-off Analysis at 1. The agency thus awarded the contract to Survival System; this protest followed.

The protester raises several arguments concerning the evaluation and award decision, all of which we find to be without merit. We discuss Stratus's key arguments below.

The protester first argues that the agency failed to adhere to the evaluation criteria because it did not give adequate credit to the protester in the area of past performance. The protester states that, in addition to information about contracts performed within the last 24 months, as required by the solicitation, its proposal included past performance information in its technical approach. Specifically, the protester states, this information related to a "host of other products that Stratus personnel have developed [in more than] 20 years," including products in the general areas of fluid engineering, chemical engineering, electronic engineering and others. Protester's Comments at 4. The protester concludes that it should have received a blue/outstanding rating for past performance.

The evaluation of proposals is a matter within the discretion of the contracting agency; our Office will question the agency's evaluation only where it lacks a reasonable basis or conflicts with the stated evaluation criteria for award. Sytel, Inc., B-277849.2, B-277849.3, Jan. 8, 1998, 98-1 CPD ¶ 21 at 7.

We find no basis for concluding that the evaluation was unreasonable or conflicted with the stated evaluation criteria. The RFP indicated that only relevant experience during the past 24 months was required and would be evaluated. The proposal did not indicate, and the protester does not assert, that the cited additional past performance items fall within the 24-month period.

Stratus argues that the agency did not adequately apprise the firm of its concerns about the Stratus product's life cycle costs during written discussions. Specifically, Stratus complains that when the agency asked it to provide replacement costs for the lighting system, Stratus believed the agency was asking about kit replacement, not individual location replacement; since there are three units in a kit, according to Stratus, the true replacement cost was [deleted], not [deleted].

Written discussion questions generated by a contracting agency should reasonably apprise offerors of the areas that the agency considers deficient such that the offerors will understand the agency's concerns. See IT Facilities Servs., B-279585, June 29, 1998, 98-2 CPD ¶ 16 at 5-7. We have reviewed the questions asked of Stratus by the agency and find them to be clear. The questions were: "What components will require replacement in case of accidental activation? What will the cost of components be?" Stratus's answer was that the control module, inversion and crash sensor and the light tube would need replacement at a cost of [deleted]. We think both the agency's questions and the protester's reply were clear. There was no mention whatsoever in the protester's response that its answer related to kits rather than individual location replacement. If the protester meant something other than what it told the agency in simple and clear terms, the miscommunication was its own fault and did not reflect a failure by the agency to provide adequate discussions.

Finally, Stratus argues that the agency is purchasing an inferior and inadequate technology (LED), which is not capable of the illumination and range of visibility that its superior solution is capable of achieving; specifically, Stratus asserts that the agency "has elected to go with an unproven solution that [it] know[s] has inferior illumination."⁵ Protester's Comments, at 6. The protester insists that no

⁵In its protest, Stratus contended that it understood from the agency's debriefing and award notification letter that the award was for an item that was going to be custom made; the protester argued that this was inappropriate in a procurement governed by Part 12 of the FAR for commercial items. Protest at 7-8. In its report, the agency explained that, at the debriefing and award notification letter, it may have misused the term "custom made" with reference to the awardee's system; the agency advised that, while the awardee's system contains developmental items, these are small in number and minor in nature (brackets and mounting hardware), and the system thus met the definition of a commercial item, since it was primarily non-developmental and was an adaptation of a system commercially available to the general public. Contracting Officer's Statement at 4. See FAR § 2.101. In its comments on the agency report, Stratus conceded that this protest ground was based on the agency's earlier information, now corrected, and Stratus provided no other basis for challenging the awardee's item as a commercial item. Protester's Comments at 8. We therefore view the issue as abandoned.

other system can match its technology, and that the agency thus should purchase only its product in order to ensure the safety of its personnel.

We generally will not consider allegations such as this that, essentially, the government's interest is not adequately protected by purchasing the product solicited. Assurance that sufficiently rigorous specifications are used in an RFP is ordinarily of primary concern to procurement personnel and user activities, since it is they who must suffer any difficulties resulting from inadequate equipment. We therefore do not resolve such issues pursuant to our bid protest function--since use of broadened or less rigorous specifications is consistent with the requirement for full and open competition--absent evidence of possible fraud or willful misconduct by procurement or user personnel acting other than in good faith, neither of which is alleged by the protester. See Miltope Corp.--Recon., B-188342, June 9, 1977, 77-1 CPD ¶ 417 at 2, aff'd, Miltope Corp.--Recon. (Second), B-188342, July 1, 1977, 77-2 CPD ¶ 3 at 1.

The protest is denied.

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