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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: InterOcean Systems, Inc.

File: B-290916

Date: October 8, 2002

Michael Pearlman, InterOcean Systems, Inc., for the protester.
Terry Hart Lee, Esq., National Oceanic and Atmospheric Administration, for the agency.
Paul I. Lieberman, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency evaluation of protester's product design under negotiated commercial item acquisition is unobjectionable where record establishes that the evaluation was reasonably based on assessment of how well the proposed product met the agency's stated requirements.

DECISION

InterOcean Systems, Inc. protests the award of a contract for certain oceanographic monitoring stations (OMS) to Sound Ocean Systems, Inc. (SOSI) under request for proposals (RFP) No. AB1330-02-RP-0073, issued by the United States Department of Commerce, National Oceanic and Atmospheric Administration (NOAA). InterOcean contends that its proposal was misevaluated and that under a proper evaluation, InterOcean rather than SOSI would have been in line for award of the contract.

We deny the protest.

The RFP, issued on May 31, 2002, as a negotiated commercial item acquisition under Part 12 of the Federal Acquisition Regulation (FAR), with an amended June 7 closing time, sought proposals for four different types of oceanographic instruments to provide support for the Coral Reef Ecosystem Investigation program run by the Honolulu laboratory of NOAA's Marine Fisheries Service. The solicitation contemplated the award of individual indefinite-delivery/indefinite-quantity contracts for each type of instrument under separate contract line items (CLIN), with

individual vendors eligible for award of more than one CLIN; only the award of CLIN No. 0001 for OMS's is at issue here.[1] The RFP provided for a minimum base order of four OMS units for delivery by September 2002, and options consisting of a maximum of 11 additional OMS's during the years 2003 to 2005, plus the refurbishment of previously delivered units, an alternate to deliver units that use a newer satellite voice and data service that is currently in the process of being phased in by NOAA, plus various add-on features and shipping and training. Agency Report (AR) at 1. The RFP provided for award on a best-value basis considering technical capability, past performance and price, with the combination of the first two factors substantially more important than price, and stated that price would be calculated on the basis of the total price for all options plus the total price for the basic requirement. RFP § 14.

The agency received five proposals for CLIN No. 0001 by the closing time. Based on an evaluation by the source evaluation board (SEB), only the InterOcean and SOSI proposals were included in the competitive range. After the conduct of discussions, the last final proposal revisions were submitted on June 26. SOSI's final evaluated price was $1,222,713, which was slightly lower than InterOcean's price of $1,235,158; SOSI's proposal received a final technical and past performance evaluation score of 59.8 (out of a possible maximum of 80 points), which was slightly higher than InterOcean's score of 55.5.[2] AR, Tab 19, SEB Final Evaluation Results Memo, at 1. The SEB rollup narrative and the scoring of the proposals reflect that under both the technical and past performance factors, InterOcean's proposal was evaluated by all of the evaluators as very good or excellent, while SOSI's proposal received evaluations of good, very good or excellent.

The SEB recommendation, which was adopted by the contracting officer, was that award be made to SOSI as representing the best value because "the SOSI product [was rated] slightly higher and . . . the SOSI package is . . . less expensive." AR, Tab 23, SEB Recommendation Memorandum, at 3. In particular, the SEB found that:

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[1] The OMS is comprised of a buoy with a mooring system, to which necessary components including hardware, data logger, battery/power system, and transmitter are affixed.

[2] InterOcean has questioned the agency's price calculations. During the course of its debriefing, InterOcean advised the agency that it had calculated its total price at a higher amount than the agency. In preparing the agency report, the agency became aware that it had inadvertently failed to include certain shipping costs in evaluating the total price for both proposals, as a result of which SOSI's total price was adjusted to $1,233,889, and InterOcean's price was adjusted to $1,245,333. AR at 8 n.2. This correction had no effect on the competition since the SOSI price remained low, and award was made to SOSI on the basis that it offered the highest rated technical proposal at the lowest price.

"The benefits and features of the systems proposed by SOSI and [InterOcean] are very comparable and the close technical evaluation scores reflect this. Both products share many similar design features . . .." Id. at 2. The SEB stated that it "was particularly concerned about the [InterOcean} 3-strut bridle" with respect to the difficulties associated with attaching the bridle just prior to deployment, or with transporting the unit if it was assembled prior to loading the buoys on board for initial transport. In contrast, "the SOSI product is delivered ready-to-deploy . . . on a special pallet designed to help secure the buoy on the deck of the ship during transit to the deployment site." Id. at 2-3. The SEB further noted that there is "no overriding reason to award the contract to [InterOcean] and to assume the additional risks associated with requiring the field team to assemble part of the buoy just prior to deployment." Id. at 3. After receiving a debriefing, InterOcean filed this protest.

The crux of InterOcean's protest is that its proposal was improperly downgraded on the basis of its proposed use of a three-strut mooring bridle as part of its buoy design. InterOcean both disagrees with the agency's evaluation of the bridle, and contends that this design feature should not have been considered in the evaluation because it was not identified in the RFP as an evaluation factor or subfactor. InterOcean further contends that if this inappropriate technical downgrading were eliminated, its proposal would receive the highest technical and total score, and would be in line for award.[3] In our view InterOcean's proposed mooring bridle design was properly considered in the context of this commercial item acquisition, and there is no basis to object to the reasonableness of the agency's evaluation or the resulting award determination.

The evaluation of technical proposals is a matter within the contracting agency's discretion since the agency is responsible for defining its needs and the best method of accommodating them. Symtech Corp., B-285358, Aug 21, 2000, 2000 CPD ¶ 143 at 4. Where an evaluation is challenged, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with applicable evaluation criteria, procurement statutes

[3] As part of this argument InterOcean also asserts that the agency also improperly downgraded the protester's proposal on the basis of InterOcean's failure to provide information about, or a resume for, a key personnel member. While the agency mentioned this omission during InterOcean's debriefing as a minor concern, this is of no consequence because the record establishes that the omission did not have any effect on the evaluation of InterOcean's proposal. During discussions, InterOcean had been asked to provide qualification information about its key personnel. InterOcean did so for some of its key personnel, but did not provide such information about its software programmer. While the agency apparently noted this omission, it was not considered a weakness, and is not mentioned as a basis to downgrade InterOcean's proposal in any of the SEB evaluation material. Rather, the only evaluated weakness is the three-strut mooring bridle.

and regulations. The fact that the protester disagrees with the agency's judgment does not render the evaluation unreasonable. Crofton Diving Corp., B-289271, Jan. 30, 2002, 2002 CPD ¶ 32 at 10.

InterOcean cites the requirements under FAR Part 15 that a solicitation identify all factors and subfactors that will affect contract award, and that proposals be evaluated only on the factors and subfactors in the solicitation. InterOcean asserts that the RFP at issue contains nine listed evaluation factors under the technical evaluation criteria, none of which identify buoy design. Therefore, InterOcean objects that evaluation of its three-strut bridle buoy design was improper because it was not set forth as a factor or subfactor under the solicitation evaluation criteria. InterOcean's objection is misplaced.

For a negotiated commercial item acquisition such as that at issue here, the FAR provides the following streamlined evaluation procedures:

> Offers shall be evaluated in accordance with the criteria contained in the solicitation. For many commercial items, the criteria need not be more detailed than technical (capability of the item offered to meet the agency need), price and past performance. Technical capability may be evaluated by how well the proposed products meet the Government requirement instead of predetermined subfactors. Solicitations for commercial items do not have to contain subfactors for technical capability when the solicitation adequately describes the item's intended use. A technical evaluation would normally include examination of such things as product literature, product samples (if requested), technical features and warranty provisions.

FAR § 12.602(b).

Here, the RFP technical evaluation criterion required offerors to provide "a technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation." This is the specific streamlined language that FAR Part 12 references for use as the technical evaluation criterion in a negotiated solicitation for a commercial item. FAR § 12.301(b)(1). Consistent with FAR § 12.602(b), the RFP evaluation provision at issue here does not specify predetermined evaluation subfactors; the nine items which the protester posits as the evaluation subfactors are a list of the data that offerors were required to submit, as applicable, in conjunction with their technical descriptions, to enable the agency to perform a technical evaluation. In this regard, the first such required data item was "[c]oncept drawings of buoy, anchoring, and platform systems showing major components and their configuration." RFP § 14(a)(1).

The solicitation describes the item's intended use in detail. The statement of work includes the government's performance requirements for the OMS, among which are: "The systems shall be small and light enough to be easily towed from the ship into

atoll lagoons and deployed with the use of small boats (5-7m). Offerors are encouraged to design systems that are as small and unobtrusive as possible. . . . The vendor shall incorporate structural components and provide any associated packaging, bracing and/or apparatus necessary to safely handle each monitoring station and anchor assembly during dockside operations, ship loading/unloading, transit to remote [P]acific islands, and towing to the final mooring location." RFP attach. 1, at 3,6. The RFP further states that: "Offerors are encouraged to implement hardware appropriate for the conditions that the instruments are expected to encounter. Ease of deployment by field personnel should also be considered." RFP amend. 1, at 2.

The agency evaluated InterOcean's proposed 3-strut mooring bridle and downgraded the proposal on the basis that there were deployment difficulties associated with the design. The deployment conditions and requirements are clearly delineated and described as part of the item's intended use, as is the need for ease of deployment by field personnel. Accordingly, InterOcean's mooring bridle design was an appropriate area for evaluation here, and one for which technical information in the form of configuration drawings was required by the RFP, and was provided by protester in its proposal.

As to the reasonableness of the agency's evaluation, it is clear from the protester's proposal and its technical drawings that InterOcean's OMS buoy includes a rigidly mounted device denominated as a mooring bridle which is shown as three struts attached to the outer edge of the bottom of the buoy, extending into the water below the buoy. The bridle is diagrammed in InterOcean's proposal as extending to a depth of one meter below the buoy water line, where the struts are affixed to each other at a mooring bracket, at a point directly below the center of the buoy. The protester contends that it has previously provided numerous buoys of this design to NOAA, and explains that: "Buoys can be designed with or without rigid bridles…. [and while] many buoys do not have rigid bridles . . . the use of a rigid bridle is an easy, reliable and lightweight way to increase buoy stability insuring stability and survival. It is for this reason that we proposed a 3 leg bridle." Protester's Comments at 2-3.

The SOSI proposal was for a buoy design that did not include a bridle. InterOcean's proposed bridle design was the subject of repeated questions by the agency. InterOcean was initially asked: "Has the 3-strut mooring bridle been utilized in previous buoy deployments? Please provide a customer reference who is familiar with this design." AR, Tab 8, Request for Information. During oral discussions conducted on June 17, InterOcean described the buoy deployment procedure as including attachment of the 3-strut mooring bridle to the underside of the buoy while it was suspended by a crane from the ship's deck. InterOcean was then asked a number of questions about other methods of attaching the bridle, and InterOcean suggested the possibility of having a person grab the buoy mast and tilt the buoy on its side on the shipdeck, which would allow another person to attach the bridle to the underside of the buoy. AR, Tab 31, Conference Call with InterOcean, at 1. In its request to InterOcean for a final proposal revision (FPR), the agency asked

InterOcean the following question: "During transit, the body of your proposed buoy is separate from the 3-strut mooring bridle. Just prior to deployment, the bridle must be attached to the buoy. The technical review board is particularly interested in any procedures/fixtures/modifications that would simplify this field operation." AR, Tab 15, Request for InterOcean FPR. In its FPR, InterOcean responded by noting that: "The mooring bridle can be attached before the platform is loaded onto the deployment vessel in Hawaii, but may also easily be attached on the deck of the vessel just prior to deployment." AR Tab 18, InterOcean FPR at 4.

Thus, the record evidences that the agency plainly conveyed its concerns with the difficulties associated with assembling and attaching InterOcean's bridle as part of the buoy deployment process. InterOcean never satisfactorily addressed these concerns. In its final evaluation, the SEB concluded the procedures suggested by InterOcean for on-ship assembly just prior to deployment presented problems because the vessel likely to be used would not have sufficient stability or available deck space to perform them, and the need to lay the buoy on its side on the deck of a moving ship would increase the opportunity for damage to the buoy and its instruments, and to personnel as well. With respect to InterOcean's suggestion that the bridle could be attached before the buoy was initially loaded on ship, the SEB noted that this would require additional fixtures to store the assembled buoy, which InterOcean did not propose, and that storing the buoys with the bridles attached during ship transit would present challenges and complicate field operations. AR, Tab 23, SEB Recommendation Memo, at 2.

The protester disagrees with this assessment, pointing out that it has expertise and experience in this area, that its bridle design was the result of the recommendation of its consultant who is a world recognized expert, and that "the 3-strut bridle offered by InterOcean offers no risks to this program since good seamanship has allowed more than 1000 buoys with similar bridles to be deployed successfully in the oceans of the world." Protester's Comments at 6. While the protester may be correct that this buoy design has been deployed in numerous undescribed situations, this does not call into question the reasonableness of the agency's determination that the design would present problems in the context of the particular deployment circumstances associated with the agency's intended use here. In essence, the protester is simply expressing his disagreement with the agency's concerns about the deployment problems associated with the three-strut bridle design here, and asserting that the agency should be expected to exercise whatever skills are necessary to assure safe deployment. This does not provide a basis to question the

reasonableness of the agency's evaluation of InterOcean's proposal, particularly in view of the agency's repeated statements of these concerns to the protester during discussions.[4]

In short, the agency evaluation is unobjectionable, as is the determination to award to the higher technically rated, lower priced offeror.

The protest is denied

Anthony H. Gamboa
General Counsel

[4] The protester also contends that the evaluation reflects bias on the part of one of the evaluators, whose scores for InterOcean's proposal were slightly lower than the scores of the other two evaluators. Because government officials are presumed to act in good faith, we do not attribute unfair or prejudicial motives to them on the basis of inference or supposition. Therefore, where a protester alleges bias on the part of government officials, the protester must provide credible evidence clearly demonstrating a bias against the protester or for the awardee and that the agency's bias translated into action that unfairly affected the protester's competitive position. Dynamic Aviation-Helicopters, B-274122, Nov. 1, 1996, 96-2 CPD ¶ 166 at 4. Variations in scoring between evaluators are commonplace, and do not provide any evidence of bias on the part of a particular evaluator. Accordingly, this allegation is unfounded. The protester has also raised a number of collateral issues which we have considered and find without merit.