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Decision

Matter of: Geo-Seis Helicopters, Inc.

File: B-299175; B-299175.2

Date: March 5, 2007

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Crowell & Moring LLP, for Presidential Airways, Inc., an intervenor.
Robert M. Elwell, Esq., and Michelle L. Salter, Esq., Military Sealift Command, for the
agency.
Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Where awardee's final proposal revision (FPR) was received after closing time, it was unobjectionable for contracting officer to extend closing time to provide awardee another opportunity to timely submit its FPR; agency properly may extend closing time under these circumstances where extension is intended to enhance competition.
2. Price/technical tradeoff was reasonable where record demonstrates that, based on consideration of evaluation documents, source selection authority concluded that awardee's and protester's proposals were technically equal, and that protester's superior past performance was not sufficient to offset awardee's lower price.

DECISION

Geo-Seis Helicopters, Inc. protests the award of a contract to Presidential Airways, Inc. for commercial helicopter vertical replenishment (VERTREP) services under request for proposals (RFP) No. N00033-05-R-1004, issued by the Department of the Navy, Military Sealift Command. Geo-Seis principally argues that MSC improperly selected Presidential's proposal for award.

We deny the protest.

The RFP, as amended, provided for award on a "best value" basis, considering (in descending order of importance) technical factors--detachment specifications (with equally-weighted subfactors for airframe specifications and mission capability), and

support concept and experience (with equally-weighted subfactors for maintenance plan, logistics plan, personnel plan, casualty plan, quality plan, and safety plan)– price, and past performance. Regarding past performance, offerors were required to provide questionnaires from references for at least three prior contracts. Offerors were also required to submit aircraft casualty and personnel fatality information for each of the three contracts and to explain the reasons for any casualty or fatality and steps taken to prevent a recurrence.

The agency received six proposals, which were evaluated by a source selection evaluation board (SSEB),¹ established a competitive range, held four rounds of discussions, and requested two rounds of final proposal revisions (FPR). Following the evaluation of the second FPRs, both Geo-Seis's and Presidential's proposals were rated "exceeds satisfactory" for each technical evaluation subfactor, while Geo-Seis was rated "exceptional" and Presidential "neutral" for past performance. Presidential's proposed price was \$92,977,882, and Geo-Seis's was \$100,376,241. The agency performed a best value analysis and determined that Presidential's and Geo-Seis's proposals were equal technically, and that Geo-Seis's higher past performance rating was not sufficient to offset Presidential's lower price. The agency therefore made award to Presidential. Geo-Seis challenges the award decision.

In reviewing a protest against an agency's proposal evaluation, our role is limited to ensuring that the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. Philips Med. Sys. of North Am., B-293945.2, June 17, 2004, 2004 CPD ¶ 129 at 2. We have reviewed the record and find Geo-Seis's arguments to be without merit. We discuss several of those arguments below.

EVALUATION

Past Performance

Geo-Seis asserts that MSC improperly assigned Presidential a neutral past performance rating. In this regard, the protester maintains that this rating fails to account for the fact that Presidential had experienced an aircraft casualty that resulted in aircraft damage and personnel fatalities and that, had this information been properly considered, Presidential would have received a negative past performance rating.

¹ Proposals were assigned adjectival ratings of unsatisfactory, satisfactory, or exceeds satisfactory under the technical evaluation subfactors. Past performance was evaluated as unsatisfactory, marginal, satisfactory, very good, exceptional, or neutral.

This argument is without merit. The record shows that Presidential disclosed the crash in its proposal, Agency Report (AR) at 12, and that the agency was fully aware of the crash during the evaluation. The agency ultimately assigned Presidential a neutral past performance rating because the firm provided references for only two contracts, and was found to have only limited relevant past performance; the solicitation specifically provided that if an offeror provided references for fewer than three contracts it would receive a neutral rating. RFP at 78, 83. The agency also determined that the crash warranted assigning Presidential a neutral rating because the contract under which the crash occurred was not terminated and the reference for that contract rated Presidential's performance favorably, notwithstanding the crash.² AR at 8-9. Given that MSC considered the impact of the crash, but found that it was mitigated by the favorable information provided by Presidential's references, MSC's assigning Presidential a neutral past performance rating was reasonable.³

Key Personnel

Geo-Seis argues that the agency should have downgraded Presidential's proposal under the key personnel subfactor because the letters of intent Presidential submitted for proposed key personnel indicated that they would perform as independent contractors, not as Presidential employees. This argument is without merit since, as the agency points out, the solicitation neither prohibited offerors from using independent contractors to perform the contract, nor indicated a preference that personnel be employed directly by the offeror. In any case, Presidential's second FPR stated that all personnel employed on the contract would be full-time Presidential employees. Presidential Revised Proposal at 49.

² Geo-Seis asserts that our Office should not consider the agency's explanation of the past performance evaluation because that explanation is not part of the contemporaneous evaluation record. See Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15. While we accord greater weight to contemporaneous source selection materials, we will nonetheless consider the entire record, including statements and arguments made in response to a protest, in considering whether an agency's source selection decision is supportable. Id. Post-protest explanations that provide a more detailed rationale for contemporaneous conclusions may, as is the case here, simply fill in previously unrecorded details, and will generally be considered in our review of the rationality of the selection decision, so long as those explanations are credible and consistent with the contemporaneous record. Jason Assocs. Corp., B-278689 et al., Mar. 2, 1998, 98-1 CPD ¶ 67 at 6.

³ We note that Geo-Seis was rated exceptional for past performance, despite having had three accidents over the past 5 years, one of which resulted in a fatality, and another that occurred while Geo-Seis was performing the same services being procured here.

Geo-Seis asserts that Presidential's proposal should have been downgraded because, during discussions, MSC asked Presidential whether it had discussed compensation with its key personnel, and Presidential never submitted documentation showing it had done so. This argument, too, is without merit. The contracting officer did ask Presidential (and three of the other four offerors in the competitive range) whether compensation had been discussed, in order to assess whether there was substance behind the prices and resumes submitted. AR at 13. In response, Presidential stated that compensation had been discussed, which satisfied the contracting officer. *Id.* The RFP did not require offerors to provide documentation showing that compensation had been discussed with proposed key personnel, and the contracting officer was satisfied with Presidential's statement that compensation had been discussed. Under these circumstances, there was no requirement that the agency downgrade Presidential's proposal.

Geo-Seis argues that, in evaluating Presidential's personnel plan, MSC failed to consider that Presidential planned to "raid" the staff of Evergreen, the current contractor for the ongoing Atlantic VERTREP Program, and Geo-Seis's teaming partner under the solicitation here. Supplemental Protest at 11. We agree with MSC that it was not required to consider whether Presidential intended to use Evergreen's personnel to perform. In this regard, as Geo-Seis acknowledges in its protest, it is not uncommon, and not illegal, for contractors to hire employees from other contractors.⁴ Anjon Corp., B-249115, B-249115.3, Oct. 20, 1992, 92-1 CPD ¶ 261 at 6.

Geo-Seis argues that the agency improperly evaluated Presidential's personnel plan. This argument is based on Geo-Seis's assessment of the proposed program manager and chief test pilot, both of whom previously were employed by Geo-Seis. According to the protester, the program manager did not perform a number of required duties while employed by Geo-Seis, and the chief test pilot lacks necessary experience regarding shipboard helicopter operations. However, Geo-Seis's argument based on its own self-serving assessment of the two employees' performance as Geo-Seis employees does not provide a basis for questioning the evaluation.⁵ MSC's evaluation was based not on Geo-Seis's assessment, but on its own evaluation of the

⁴Geo-Seis asserts that Presidential may use Evergreen's training plan in performing the contract; this would be improper, according to the protester, because the plan is proprietary. Even assuming that this is the case, this argument concerns a dispute between private parties; we will not consider such disputes where, as here, there is no evidence of government involvement. LLH & Assocs., LLC, B-297804, Mar. 6, 2006, 2006 CPD ¶ 52 at 5.

⁵ The agency notes that, despite Geo-Seis's denigration of the program manager's and test pilot's prior performance, both were employed by Geo-Seis for a number of years on its VERTREP contract, which expired in 2004.

resumes submitted with Presidential's proposal, which showed that the employees had experience other than that obtained while employed by Geo-Seis. Further, MSC was not required to downgrade Presidential's personnel plan based on its proposed test pilot's alleged lack of experience regarding shipboard helicopter operations, since the RFP did not require that the key personnel have any specific experience.

EXTENSION OF CLOSING TIME

During the course of the procurement, the agency twice extended the deadline for FPRs in order that Presidential's FPR could be considered. In this regard, initial FPR's were due on March 22, 2006, at 2 p.m. EST, but Presidential's FPR was not received until 2:33 p.m. At 2:36 p.m., the contracting officer extended the deadline to March 23 at 11 a.m. A second round of FPR's was due August 15 at 2 p.m., and Presidential's FPR was received at 2:30 p.m. At 2:29 p.m., after becoming aware that Presidential would miss the deadline, the contracting officer issued an amendment changing the deadline to 4 p.m. Geo-Seis argues that extending the closing times was improper and that MSC instead should have rejected the FPRs and eliminated Presidential from the competition.

This argument is without merit. The record shows that the agency's motivation in extending the deadlines was to enhance competition by keeping Presidential's proposal in the competition. There is no prohibition against a procuring agency issuing an amendment to extend the closing time for receipt of proposals after that time has passed in order to accommodate even one offeror, where the motivation for the extension is enhanced competition. Varicon Int'l, Inc.; MVM, Inc., B-255808, B-255808.2, Apr. 6, 1994, 94-1 CPD ¶ 240 at 4. Geo-Seis attempts to distinguish our prior decisions from the case here on the facts. However, we find that the essential facts from our prior cases are present here--the agency issued an amendment extending the closing time after the expiration of the original closing time in order to keep an offeror in the competition, and thereby enhance competition. Again, extending the closing time for this purpose is unobjectionable. See Institute for Advanced Safety Studies--Recon., B-221330.2, July 25, 1986, 86-2 CPD ¶ 110 at 2 (it was not improper for agency to issue an amendment extending the closing time 3 days after expiration of the original closing time); Fort Biscuit Co., B-247319, May 12, 1992, 92-1 CPD ¶ 440 at 4 (it was not improper for agency to extend closing time to permit one of four offerors more time to submit its best and final offer).⁶

PRICE/TECHNICAL TRADEOFF

⁶ This is true notwithstanding the otherwise applicable late bid and proposal rules. See Systems 4, Inc., B-270543, Dec. 21, 1995, 95-2 CPD ¶ 281 at 3-4.

Geo-Seis maintains that the agency's tradeoff improperly failed to reflect differences in the firms' past performance and technical proposals that warranted finding its proposal to be the best value. For example, Geo-Seis argues that the agency ignored the fact that Presidential has no organizational experience in providing the types of services being procured, while Geo-Seis has performed virtually identical services. As another example, Geo-Seis notes that, although the SSA found that Geo-Seis's proposal had advantages over Presidential's under the detachment specifications subfactor (greater lift capacity, higher endurance) and certain support concepts and experience subfactors (e.g., Presidential proposed the minimum number of pilots and mechanics, while Geo-Seis proposed a larger pool), he did not specifically discuss these differences in making the source selection decision.⁷

An agency properly may select a lower-priced, lower technically rated proposal for award if it determines that the price premium involved in selecting the higher-rated, higher-priced offer is not justified given the level of technical competence available at the lower cost. The determinative consideration is not the difference in technical merit per se, but the contracting agency's judgement concerning the significance of the difference. The SSA has broad discretion in making this determination, and the extent to which technical merit may be traded off against price is limited only by the requirement that the tradeoff decision be reasonable in light of the established evaluation and source selection criteria. MD Helicopters, Inc.; AgustaWestland, Inc., B-298502 et al., Oct. 23, 2006, 2006 CPD ¶ 164. While the SSA must document any tradeoff, that explanation can be given in the award decision or evidenced from the documents on which the source selection decision is based. TRW, Inc., B-260788.2, Aug. 2, 1995, 96-1 CPD ¶ 11 at 4.

Here, in making the source selection decision, the SSA relied on the technical, past performance, and price evaluations provided by the SSEB. SSD at 2. In this regard, and contrary to Geo-Seis's position, he did not summarily determine that Presidential's proposal provided the best value to the government, ignoring Geo-Seis's superior experience. Rather, the SSA recognized that Geo-Seis was rated exceptional for past performance based on relevant experience and good references,

⁷ The RFP required the awardee to maintain approval by the Commercial Airlift Review Board (CARB). Offerors were required to obtain this approval within 12 months of receiving the award, but were given evaluation credit if they already had approval or provided a realistic plan to receive approval within 6 months following the award. Geo-Seis argues that MSC did not reasonably evaluate Presidential's plan to obtain approval within 6 months of award because approval is not feasible in 6 months. However, Geo-Seis has provided no conclusive evidence that approval cannot be obtained within 6 months. Since MSC also reports that Presidential does in fact now have CARB approval, and obtained it within the 6-month time frame, this argument provides no basis for questioning the evaluation.

and that Presidential was rated neutral based on its lack of relevant experience. SSD at 4-5. The SSA found that this was a significant discriminator between the proposals when considering the non-price factors but, in the final analysis, determined that Geo-Seis's superiority in this area was not sufficient to offset Presidential's \$7.3 million lower price. SDD at 4, 5. We find no basis for questioning this determination.

With respect to the second example above, the record shows that the SSA specifically considered that Geo-Seis offered equipment with higher ratings under the detachment specifications subfactor, but concluded that the ratings were not significantly higher than those for Presidential's equipment, and did not represent a meaningful technical advantage. SSD at 5. Similarly, the record reflects that the SSA reviewed the proposals' ratings under the support concepts and experience subfactor and found no significant differences between the proposals. SSD at 5. Geo-Seis has not established that the agency's conclusion was unreasonable; its disagreement with those conclusions does not demonstrate that the evaluation was unreasonable. Weber Cafeteria Servs., Inc., B-290085.2, June 17, 2002, 2002 CPD ¶ 99 at 4.

The protest is denied.

Gary L. Kepplinger
General Counsel