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Decision

Matter of: Pemco Aeroplex, Inc.

File: B-310372.3

Date: June 13, 2008

David R. Hazelton, Esq., Roger S. Goldman, Esq., Kyle R. Jefcoat, Esq., and Benjamin Wei, Esq., Latham & Watkins LLP, for the protester.
Rand L. Allen, Esq., Paul F. Khoury, Esq., Scott M. McCaleb, Esq., Kara M. Sacilotto, Esq., Nicole P. Wishart, Esq., and William J. Grimaldi, Esq., Wiley Rein, LLP, for The Boeing Company, an intervenor.
Brent G. Curtis, Esq., and Kenneth C. Kitzmiller, Esq., Department of the Air Force, for the agency.
Glenn G. Wolcott, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. In responding to this Office's prior decision that sustained a previous protest and recommended that the agency perform and document a price realism and proposal risk analysis as contemplated by the solicitation, the agency was not required to reopen discussions with offerors to perform the necessary analysis.
 2. Agency's record documenting its various judgments and analysis regarding the impact of awardee's final proposal revisions reasonably supports the agency's conclusions with regard to price realism and proposal risk and complies with solicitation requirements.
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DECISION

Pemco Aeroplex, Inc.¹ protests the Department of the Air Force's selection of Boeing Aerospace Operations, Inc. for award of a contract pursuant to request for proposals

¹ We understand that Pemco is now doing business as Alabama Aircraft Industries, Inc. Since the protester refers to itself as Pemco, our decision does the same.

(RFP) No. FA8105-05-R-0014 to provide programmed depot maintenance (PDM) for KC-135 aircraft.²

We deny the protest.

BACKGROUND

The solicitation was initially issued in August 2005 and, thereafter, was amended several times. As amended, the solicitation provided for award on a “best value” basis and established the following evaluation factors: mission capability, proposal risk, past performance and cost/price. RFP at 78-79.

With regard to proposal evaluations under the mission capability factor, the solicitation established various subfactors and provided that color ratings would be assigned at the subfactor level.³

With regard to evaluation of proposal risk, the solicitation provided that risk assessments of “low,” “moderate,” or “high” would be made for each of the mission capability subfactors, and provided that these risk assessments would consider each offeror’s proposed approach with regard to “the potential for disruption of schedule, increased cost, degradation of performance, and the need for increased Government oversight, as well as the likelihood of unsuccessful contract performance.” Id. at 82-83.

Finally, with regard to evaluation of cost/price, the solicitation contemplated award of a fixed-price contract. Nonetheless, section M of the solicitation provided that the agency would perform a price realism analysis based, in part, on data offerors were required to submit, including data regarding “labor, fringe benefits, overhead and G&A rates by year for all labor categories anticipated for use in the performance of this effort.” RFP at 86.

² The agency’s initial source selection decision for this procurement was made in September 2007; shortly thereafter, Pemco filed a protest challenging that decision. In December 2007, this Office issued a decision sustaining a portion of Pemco’s prior protest, recommending that the Air Force take certain corrective actions. Pemco Aeroplex, Inc., B-310372, Dec. 27, 2007, 2008 CPD ¶ 2. This protest challenges the agency’s actions taken in response to our prior decision.

³ The mission capability subfactors were depot maintenance, supply chain management, transition, program management, and small business; the solicitation provided for ratings of “Blue/Exceptional,” “Green/Acceptable,” “Yellow/Marginal,” and “Red/Unacceptable.” Id. at 80.

In September 2006, Pemco and Boeing each submitted initial proposals for the requirements at issue.⁴ Boeing's initial proposal reflected [deleted].^{5 6}

Following receipt and review of initial proposals, the agency conducted discussions with each offeror. During discussions, the agency requested that Boeing explain [deleted].

Boeing responded that [deleted].

Thereafter, final proposal revisions (FPR) were requested and submitted in February 2007; notwithstanding its response to the agency during discussions, Boeing's FPR [deleted].⁷ AR, Tab 27, FPR, at V3-57. It is undisputed that Boeing's proposal revisions following discussions offered no substantive explanation for [deleted].⁸ It is also undisputed that the direct effect of Boeing's [deleted] was to reduce Boeing's proposed price by more than the total difference between Boeing's and Pemco's final evaluated prices.

⁴ A third proposal was also submitted by another offeror; that proposal, and the agency's evaluation thereof, are not relevant to this protest and are not further discussed.

⁵ The solicitation requirements were divided into three types of work: basic PDM work (work that is performed on all aircraft), intermittent tasks (IT) (tasks that are recurring, but not performed on all aircraft), and "over and above" (O&A) work (unanticipated repairs that exceed 200 manhours or \$20,000 in material costs). Basic PDM work constitutes a substantial portion of the contract requirements.

⁶ [deleted]

⁷ In May 2007, the agency reopened discussions for the limited purpose of addressing certain past performance matters, seeking submission of second final proposal revisions (SFPR) in June. Boeing's SFPR reflected the [deleted].

⁸ Indeed, in responding to Pemco's protest regarding this matter, Boeing expressly acknowledged that the [deleted] was not connected in any way to a technical change in its proposed approach to contract performance, stating: "Boeing decided for business reasons to assume the risk [associated with [deleted]]."

Following submission of the final proposal revisions, Boeing's and Pemco's proposals were evaluated with the following ratings.

	Boeing	Pemco
Mission Capability Subfactors		
Depot Maintenance Proposal Risk	Blue/Exceptional Low Risk	Blue/Exceptional Low Risk
Supply Chain Management Proposal Risk	Blue/Exceptional Low Risk	Green/Acceptable Low Risk
Transition Proposal Risk	Blue/Exceptional Low Risk	Blue/Exceptional Low Risk
Program Management Proposal Risk	Green/Acceptable Low Risk	Green/Acceptable Low Risk
Small Business Proposal Risk	Green/Acceptable Low Risk	Green/Acceptable Low Risk
Past Performance	Satisfactory	Satisfactory
Cost/Price	\$1,165,138,187	\$1,180,186,789

AR, Tab 6, Proposal Analysis Report (PAR), at 78, 166.

Based on this evaluation, the source selection authority (SSA) concluded that Boeing's proposal was superior with regard to mission capability; that Pemco's proposal was superior with regard to past performance; that performance risk was not a significant discriminator; and that Boeing offered the lowest total evaluated price (TEP). AR, Tab 5, Source Selection Decision Document, at 22. In light of these assessments, the SSA concluded: "Pemco's better record of past performance is not sufficient to outweigh the benefits of Boeing's superior Mission Capability proposal and \$15,048,062 lower TEP." *Id.* Thereafter, Boeing's proposal was selected for contract award.

In September 2007, Pemco filed a protest with this Office, maintaining that the agency's evaluation of proposals was flawed with regard to various aspects of the procurement, including its consideration of price realism and proposal risk related to Boeing's final proposal revisions that [deleted]. As noted above, the solicitation specifically provided that the agency would assess price realism and proposal risk based on each offeror's proposed approach to contract performance.

In December 2007, we sustained Pemco's protest to the extent it challenged the agency's evaluation of cost/price. In this regard, we found that the agency's procurement record contained no documentation regarding a price realism analysis that considered the effect of the [deleted] incorporated into Boeing's final proposal revisions, nor any evidence that the agency considered the potential proposal risk created by Boeing's [deleted]. We noted that, in the absence of documented agency analysis regarding this matter, we were unable to determine that the realism and risk

assessments required by the solicitation were reasonably performed; accordingly, we sustained the protest based on the agency's failure to create a record addressing these matters. We recommended that the agency perform and document price realism and risk assessments, taking into consideration the [deleted] Boeing introduced in its final proposal revisions.

Following receipt of our decision, the agency took various actions to implement our recommendations. AR, Tab 59 at 9-10; Tab 60 at 6-19, 68-69; Tab 61 at 71-75, 179-80. Among other things, the agency compared the level of [deleted] with the level of [deleted] that have been recently required to perform similar tasks by the Air Force's "organic" facility at Tinker Air Force Base.⁹

The agency also analyzed, and documented its consideration of, Boeing's [deleted]. This analysis concluded that the [deleted] in Boeing's final proposal revisions were [deleted]. Further, the agency's analysis considered the impact that the [deleted] may have on the contract's workload requirements.¹⁰ In this regard, the agency's analysis acknowledged that, within a given [deleted] could cause [deleted], but also concluded that such [deleted] would not be significant enough to [deleted].¹¹ Finally, in assessing proposal risk, the agency considered the data and analysis discussed above, and further concluded that Boeing's proposed use of its [deleted] would decrease proposal risk with regard to the potential for schedule disruption, cost increases, and the need for government oversight. COS at 15; AR, Tab 60, at 6-7.

Following its risk and realism analysis, the Air Force again concluded that Boeing's proposal reflected the best value to the government. This protest followed.

⁹ PDM on KC-135 aircraft is currently performed both by the Air Force itself at Tinker Air Force base (frequently referred to as "organic" PDM) and by an outside contractor or contractors (until recently, the outside contractor work has been divided between Boeing and Pemco).

¹⁰ In this regard, the agency points out that the impact of the [deleted] is mitigated by the solicitation provisions that contemplate periodic adjustments to the [deleted]. In short, even though the contract is characterized as "fixed price," the solicitation contemplates periodic renegotiation of the required [deleted], along with negotiated adjustments to the contractor's compensation.

¹¹ The agency also performed additional analyses, including consideration of [deleted]; consideration of [deleted] proposed; and comparison of offerors' [deleted]. The agency's analysis further recognized, and made adjustments for, the offerors' different methods of [deleted]. Contracting Officer's Statement (COS) (Apr. 18, 2008) at 5-6, 11-12; AR, Tab 60, at 3, 6, 14-15, 68-69.

DISCUSSION

Pemco protests that, following the receipt of this Office's prior decision, the agency was required to reopen discussions with the offerors. Pemco also argues that the substance of the agency's evaluation and analysis following receipt of our decision was flawed for various reasons. As discussed below, we reject these assertions.

First, Pemco asserts that the agency was obligated to reopen discussions with the offerors in order to obtain additional information prior to performing the price realism and risk analysis required by the solicitation and recommended by our Office, and that its failure to do so rendered the subsequent source selection decision improper.

As a general rule, the details of implementing recommendations of our Office are within the sound discretion and judgment of the contracting agency, and we will not question an agency's ultimate manner of compliance, so long as it remedies the procurement impropriety that was the basis for our recommendation. See, e.g., Partnership for Response and Recovery, B-298443.4, Dec. 18, 2006, 2006 CPD ¶ 3 at 3; ST Aerospace Engines Pte, Ltd., B-275725.3, Oct. 17, 1997, 97-2 CPD ¶ 106 at 5. In this regard, an agency's discretion generally extends to determining whether it is necessary to reopen discussions and obtain proposal revisions. See SDS Int'l, Inc. B-291183.4, Apr. 28, 2003, 2003 CPD ¶ 127 at 6; Computer Assocs. Int'l, B-292077.2, Sept. 4, 2003, 2003 CPD ¶ 157 at 5.

Here, our decision sustaining Pemco's prior protest was based on the absence of any agency documentation reflecting the agency's judgments regarding price realism and proposal risk in the context of Boeing's final proposal revisions. Pemco's assertion that the agency was required to reopen discussions appears to be based on a perception that our Office found Boeing's proposal to be informationally deficient; we did not.¹² In this regard, it is not the function of our Office to evaluate proposals; rather, we will examine the procurement record created by the agency to determine whether the agency's evaluation was consistent with the solicitation requirements and applicable statutes and regulations. E.g. Pacific Ship Repair and Fabrications, B-279793, July 23, 1998, 98-2 CPD ¶ 29 at 3-4.

Since our prior decision was based on an informational deficiency in the agency's evaluation record, it was not unreasonable for the agency to correct that deficiency by performing, and documenting, the required analyses based on the information

¹² Indeed, our decision sustaining Pemco's protest recognized that Boeing's proposal contained a "relatively detailed explanation of [deleted] and its application to performance of the solicitation requirements." Pemco Aeroplex, Inc., B-310372.2, Dec. 27, 2007, 2008 CPD ¶ 2 at 11.

that was already available. Pemco's assertion that the agency was obligated to reopen discussions with all of the offerors is without merit.

Next, Pemco challenges various aspects of the agency's price realism and risk analysis performed in response to our recommendation. In this regard, Pemco identifies various standards, essentially arguing that the agency should have considered the standards as dispositive benchmarks in determining whether [deleted] were realistic and reflected higher proposal risk. More specifically, Pemco asserts that any conclusion that Boeing's final proposal revisions were realistic and did not reflect increased proposal risk was precluded by: the [deleted] in Pemco's own final proposal; the [deleted] in Boeing's initial proposal; and the [deleted] in the agency's internal government estimate (IGE). We have considered all of Pemco's arguments and find no basis for sustaining its protest.

Price realism is not ordinarily considered in the evaluation of proposals for the award of a fixed-price contract, because these contracts place the risk of loss upon the contractor. However, in light of various negative impacts on both the agency and the contractor that may result from an offeror's overly optimistic proposal, an agency may, as here, expressly provide that a price realism analysis will be applied in order to measure the offerors' understanding of the requirements and/or to assess the risk inherent in an offeror's proposal. See, e.g., Wackenhut Servs., Inc., B-286037, B-286037.2, Nov. 14, 2000, 2001 CPD ¶ 114 at 3; Molina Eng'g, Ltd./Tri-J Indus., Inc. Joint Venture, May 22, 2000, B-284895, 2000 CPD ¶ 86 at 4. Although the Federal Acquisition Regulation (FAR) identifies permissible price analysis techniques, FAR § 14.404-1, it does not mandate any particular approach; rather, the nature and extent of a price realism analysis, as well as an assessment of potential risk associated with a proposed price, are generally within the sound exercise of the agency's discretion. See Legacy Mgmt. Solutions, LLC, B-299981.2, Oct. 10, 2007, 2007 CPD ¶ 197 at 3; Comprehensive Health Servs., Inc., B-310553, Dec. 27, 2007, 2007 CPD ¶ 9 at 8. In reviewing protests challenging an agency's evaluation of these matters, our focus is whether the agency acted reasonably and in a way consistent with the solicitation's requirements. See, e.g., Grove Res. Solutions, Inc., B-296228, B-296228.2, July 1, 2005, 2005 CPD ¶ 133 at 4-5.

Here, as discussed above, the record establishes that the agency performed various analyses regarding price realism and proposal risk in the context of Boeing's final proposal revisions. Specifically, the agency's actions included an analysis of the [deleted] proposed by Boeing to [deleted] with the [deleted] that have been most recently experienced [deleted] internally at Tinker Air Force Base; an analysis of Boeing's [deleted]; consideration of the impact [deleted] will have on [deleted] within the context of the provisions of this solicitation; consideration of the [deleted] contemplated to [deleted]; consideration of the [deleted] proposed; comparison of offerors' [deleted], [deleted], and [deleted]; recognition of, and adjustment for, the offerors' different methods of [deleted]; and consideration of Boeing's proposed use of its [deleted] to [deleted] and mitigate the potential risk for schedule disruption,

cost increases, and need for government oversight. AR, Tab 59 at 9-10; Tab 60 at 6-19, 68-69; Tab 61 at 71-75, 179-80.

Although Pemco raises the full range of possibilities--that is, that the agency should not have considered certain information, that the agency should have considered certain other information, that the agency should have performed alternative analyses, and/or that the price realism and risk assessments should have been dispositively resolved by comparison to various benchmarks including Pemco's own proposal--its protest fails to demonstrate that any of the agency's actions, inactions, or analyses are inconsistent with, or contrary to, the terms of the solicitation or applicable statute or regulation. As discussed above, an agency has considerable discretion in determining the nature and extent of required price realism and proposal risk assessments in the context of fixed-price contracts. Based on our review of the record, we conclude that Pemco's various arguments challenging the agency's analysis and judgments reflect Pemco's mere disagreement or dissatisfaction with the agency's determinations.¹³

Accordingly, based on our review of the entire record, including the agency's documentation responding to our prior decision, we see no basis to question the adequacy or reasonableness of the agency's actions, its analysis, or its conclusions. Pemco's protest challenging the agency's cost/price evaluation is without merit.

The protest is denied.¹⁴

Gary L. Kepplinger
General Counsel

¹³ For example, Pemco asserts that the impact of [deleted] has a greater potential to [deleted] than was recognized by the agency; Pemco's argument in this regard reflects mere disagreement with the agency's judgment. We note that Pemco has not challenged the agency's position that, pursuant to the provisions of this solicitation, the impact of [deleted] is mitigated by the solicitation provisions that contemplate periodic adjustments to [deleted] which are to be negotiated during contract performance.

¹⁴ In addition to the issues specifically discussed above, Pemco raised additional arguments, or variations of the arguments discussed above, regarding the agency's source selection process. For example, Pemco has essentially renewed its arguments, which we previously denied, regarding Boeing's past performance and its impact on this procurement decision. Pemco also asserts that the agency failed to conduct meaningful discussions and complains that the agency did not properly consider Pemco's recently-acquired small business status. We have considered all of Pemco's arguments and find no basis for sustaining its protest.