



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Apache Enterprises, Inc.

File: B-278855.2

Date: July 30, 1998

J. Michael Slocum, Esq., Slocum & Boddie, for the protester.

John J. Pavlick, Jr., Esq., Thomas J. Madden, Esq., and Carla D. Craft, Esq., Venable, Baetjer, Howard & Civiletti, for Luminescent Systems, Inc., an intervenor.

Marian Sullivan, Esq., and Janice C. Beckett, Esq., Department of the Air Force, 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

In evaluation of proposals for aircraft lighting systems compatible with the Night Vision Imaging System (NVIS), contracting agency reasonably assigned awardee's proposal low performance risk rating, notwithstanding its lack of references for NVIS contracts, where solicitation did not require NVIS contract experience, and awardee received good references for its performance of aircraft lighting system contracts.

DECISION

Apache Enterprises, Inc. protests the award of a contract to Luminescent Systems, Inc. (LSI) under request for proposals (RFP) No. F33657-97-R-0010, a small business set-aside issued by the Department of the Air Force for interior and exterior aircraft lighting kits compatible with the Night Vision Imaging System (NVIS). Apache principally asserts that the agency misevaluated LSI's past performance references in awarding its proposal a low risk rating.

We deny the protest.

The RFP, issued October 28, 1997, contemplated award of a fixed-price contract (with minor cost-reimbursable items) and stated that the agency would employ performance-price trade-off techniques to make a best value award decision. However, the RFP proceeded to define "best value" as the proposal received from the low, technically acceptable, responsible offeror which has been awarded a low performance risk rating. The RFP provided that award could be made to other than the low, technically acceptable offeror if that offeror was "judged to have a not

applicable, moderate, or high performance risk rating." RFP § M.B.3.b. The RFP ranked the technical/management area as the most important; price and past performance were of equal weight and ranked second. Concerning past performance, the RFP stated that a performance risk assessment would be conducted on each proposal and required offerors to submit information on past "relevant" contracts demonstrating their ability to perform the proposed effort.¹ RFP § L.B.2.b, d.

On January 20, 1998, the agency received six proposals. Five, including LSI's and Apache's, were found technically acceptable. After discussions, best and final offers (BAFO) were received; LSI offered a total evaluated price of \$50.7 million for all basic and option requirements, and Apache offered a price of [deleted]. The agency's performance risk assessment group (PRAG) sent out questionnaires to the sources provided by the offerors. LSI provided 16 sources--8 references for efforts performed by LSI and 8 for its subcontractors. The PRAG evaluated only the past performance of offerors and not their subcontractors. Six of LSI's sources returned the questionnaires; four of those sources met the PRAG's definition of qualified sources. After reviewing the responses, the PRAG awarded LSI a low risk rating. Further, a preaward survey by the Defense Contract Management Command rated LSI satisfactory in the areas of production capability, quality assurance capability, financial capability, and accounting system capability, and also found that LSI had more than 25 years of experience in electroluminescent lamp and aircraft light manufacture; the survey thus recommended award. The Air Force made award to LSI and this protest followed.

Apache principally asserts that LSI's references evaluated by the agency for past performance did not include a contract for the design, fabrication and testing of integrated NVIS lighting systems because LSI has neither such experience nor experience in providing any of the part families in the F-16 lighting system. In the absence of a reference source for NVIS lighting systems, Apache maintains, LSI should have received a "not applicable," rather than a "low," performance risk rating.²

¹Section M of the RFP stated that the purpose of the past performance evaluation was to identify and review relevant present and past performance and to seek past and present performance information through the use of simplified questionnaires sent to sources listed in the past performance volume of offerors' proposals.

²Apache also argues that the agency violated its own internal evaluation plan by basing the relevance determination for LSI's references on insufficient (under \$1 million) or unstated dollar values, as shown on the returned source questionnaires. However, these relevance guidelines were not included in the RFP, and an agency's failure to follow an internal evaluation plan is not a valid basis for
(continued...)

We will review an agency's evaluation of proposals to ensure that it is fair, reasonable, and consistent with the evaluation criteria stated in the solicitation. Wind Gap Knitwear, Inc., B-261045, June 20, 1995, 95-2 CPD ¶ 124 at 3.

The evaluation here was reasonable. This RFP called for cockpit and exterior aircraft lighting systems compatible with NVIS's--it did not cover the design, fabrication and testing of NVIS lighting systems--and nothing in the RFP indicated that the contract references furnished by offerors had to include NVIS lighting system contracts in order to be deemed "relevant" or for a proposal to receive a low performance risk rating.³ Indeed, the RFP did not establish any specific parameters for determining which aspects of reference contracts would be regarded as relevant, or as warranting a favorable risk rating. Rather, offerors were merely required to submit certain information--including contracting agency, contract number, a brief description of the contract effort, indicating whether it was development and/or production, type of contract, period of performance, dollar value, and completion date--and to explain what aspects of the contract were deemed relevant, including significant achievements or past problems.

We find nothing in LSI's source references which would reasonably preclude a low risk rating. Of the six returned references, all rated LSI as either satisfactory or exceptional. LSI's references included: [deleted]. These references all concern aircraft lighting systems, and, we think, thus are relevant to the requirement here. We therefore see no reason why LSI's performance on these contracts would not be predictive of its performance under the current RFP, notwithstanding that LSI's references lacked a contract for the design, fabrication and testing of NVIS lighting systems. We conclude that the agency reasonably assigned LSI's proposal a low performance risk rating based on these references.

²(...continued)

protest. See Mandex, Inc.; Tero Tek Int'l, Inc., B-241759 et al., Mar. 5, 1991, 91-1 CPD ¶ 244 at 7.

³The agency's concern regarding technical compliance with NVIS and other RFP requirements was fully addressed in the evaluation factors in the technical/management area of the RFP. Factors under this area included the offeror's understanding of the government's requirements based on the statement of work and draft technical requirements documents submissions; the offeror's manufacturing management system, using sound manufacturing principles to assure delivery of all kits on a timely basis; the offeror's plan for successfully accomplishing First Article Test shown in their Integrated Master Plan and Integrated Master Schedule; the offeror's configuration management program; and the offeror's quality system. The agency found LSI to be technically acceptable under these criteria, and Apache has not challenged this determination.

Apache also argues that LSI engaged in an improper "bait-and-switch" concerning its proposed subcontractors. To establish an improper "bait-and-switch," a protester must generally show that the firm in question either knowingly or negligently made a misrepresentation regarding resources that it did not expect to furnish during contract performance, that the misrepresentation was relied upon by the agency in the evaluation, and that this had a material impact on the evaluation results. See USATREX Int'l, Inc., B-275592, B-275592.2, Mar. 6, 1997, 98-1 CPD ¶ 99 at 9-10. Here, the agency did not evaluate offerors' proposed subcontractors. Accordingly, the agency did not rely on LSI's (or any offeror's) representations concerning its proposed subcontractors, and its subcontractors did not have a material impact on the evaluation results. There thus is no basis for a finding of a "bait-and-switch."

The protest is denied.

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