Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Advanced American Diving Service, Inc.

File: B-274766

Date: January 2, 1997

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Margaret S. Easton, Esq., and David C. Groff, Esq., Groff & Murphy, for Fletcher General, Inc., an intervenor.
John Breiling, Esq., and Robert C. Turner, Esq., Department of the Army, for the agency.
Marie Penny Ahearn, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly evaluated protester's alternate design proposal for bulkheads as technically unacceptable and impermissibly made award on the basis of initial proposals is denied, where record shows agency reasonably concluded that the proposal contained informational deficiencies so significant that it did not demonstrate the technical feasibility of the design, and award to lowest-priced, technically acceptable offeror without discussions was consistent with the solicitation.

DECISION

Advanced American Diving Service, Inc. (AAD) protests the rejection of its lowest-priced proposal as unacceptable and the award of a contract to Fletcher General, Inc., under request for proposals (RFP) No. DACW57-96-R-0030, issued by the Army Corps of Engineers for fabrication/installation of two floating bulkheads (to dewater spillway bay work areas) and construction of flow deflectors/pier extensions at the John Jay Lock and Dam, Klickitat County, Washington. AAD challenges the agency's determination that its proposed alternate design for the bulkheads was not supported by sufficient information, rendering its proposal technically unacceptable.

We deny the protest.

BACKGROUND

The RFP, which contemplated an award of a fixed-price contract, permitted offers of either government or contractor designed bulkheads, and contained three

technical evaluation factors of equal weight: (1) technical realism, applicable to alternate design proposals, (2) qualifications, and (3) past performance. For technical realism, the RFP advised that an alternate approach "must be practical and meet or exceed the quality and schedule terms of the government's design and technical approach" and, in this regard, that offers "should demonstrate that the alternate approach is realistic and more beneficial in terms of schedule and performance risk than the government specified approach." The RFP also stated that, to be found acceptable, offers "must provide a reasonable assurance, in the opinion of the government, that the required work will be performed satisfactorily, ahead of schedule and under budget without undue risk." Award was to be made to the offeror submitting the lowest-priced, technically acceptable proposal. The RFP advised that the government intended to make award without discussions, and that initial proposals therefore should be submitted on the offeror's most favorable terms.

Five firms submitted proposals. AAD and Fletcher General both submitted alternate design proposals. AAD offered a commercial modular interlocking steel barge product known as Flexifloat, which normally is deployed in a flat, horizontal position. AAD proposed to assemble seven of these units, turn them on their sides (and ends), and stack them side-to-side and end-to-end in a vertical position to form a bulkhead. Although AAD's proposed price ($7,266,000) was low, its design was evaluated as technically unacceptable due to inadequate or omitted structural and engineering data necessary to demonstrate the feasibility of the design.[1] The Corps therefore made award to Fletcher General as the low ($7,599,800) technically acceptable offeror.[2]

Specifically, the Corps determined that key categories of information, primarily concerned with structural details and engineering analysis, necessary to demonstrate adequate structural capacity of AAD's alternate design, were missing from the firm's proposal. This included details of load capacity or structural support necessary to convert the normally horizontally-deployed floats to a vertical bulkhead, including the internal bracing system, properties of materials used, such as strengths or allowable stresses, and lock connections between units. Additional areas of missing information included procedures for positioning the system into

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[1]The 45 technical evaluation points were allocated among 6 subfactors: 15 points were allocated to feasibility of technical approach and concept, 10 points to schedule, 5 points to adequacy of data, 5 points to safety, 5 points to dewatering system design/procedure, and 5 points to dewatering system positioning/sealing. AAD's proposal received 10 points, all under the schedule subfactor.

[2]The protester also submitted the third low proposal, based on the government design, which was determined acceptable.

the proposed vertical mode. The agency considered all of this information to be of critical importance because using the floats in a vertical position as a bulkhead would subject them to load conditions and structural forces (i.e., a two-way bending action) different from those that would be encountered when they are used in the horizontal position where continuous buoyant support conditions exist. The agency was specifically concerned that the floats would tend to tip, causing instability, since the floats are built to be bottom-heavy so they will float top-side up.[3] The agency determined that this potential instability was not addressed in AAD's proposal--the manufacturer's data AAD submitted addressed only the horizontal application of the floats. Further, the agency considered the drawings AAD submitted to be inadequate to the extent that they addressed the design, because the drawings were not stamped and certified by a professional engineer or otherwise supported by the manufacturer's designers.

AAD argues that its submitted data--one page of manufacturer's specifications (including unit dimensions, weight, rated-load capacity, lock spacing, lock strength, plate thickness, deck beam spacing and deck bearing); one page of manufacturer's descriptive literature on the unit locking or connector system (with a photograph); and six drawings showing the physical arrangement of the floats and connectors--adequately presented its alternate design, and that the agency either ignored the data or failed to appropriately analyze it.

In reviewing a technical evaluation, we will not reevaluate proposals; rather, we will examine the record to ensure that the evaluation was reasonable and consistent with the RFP evaluation criteria and applicable statutes and regulations. Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203; Dylantic, Inc., B-261886, Oct. 30, 1995, 95-2 CPD ¶ 197. Based on our review of the record, we conclude that the Army reasonably determined that AAD's alternate design proposal was technically unacceptable for lack of adequate supporting information. We discuss some areas of the evaluation below.

STRUCTURAL CAPACITY

AAD argues that its submitted manufacturer's data sheet clearly showed the structural capacity of the Flexifloats as 5,000 pounds per square foot (psf) (listed under deck bearing) and the lock strength (between units) as 70 tons, which it claims would be sufficient to resist the anticipated 2,564 psf hydrostatic pressure. It claims that the Army should have performed some analysis to determine if the

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[3]AAD's proposal indicated that the connections between units would be made with the heavier-sided bottoms facing in one direction and the lighter-sided deck tops facing in the opposite direction.

Flexifloat bulkhead would have the requisite structural capacity if deployed vertically as AAD proposed.

The agency determined that the overall structural capacity of the Flexifloat units in the proposed vertical mode could not be determined based on the data submitted. Although the submitted manufacturer's data indicated a deck bearing capacity of 5,000 pounds psf in the horizontal mode, there was no data to demonstrate the same rating in the proposed vertical mode and, further, the structural capacity (or sufficient data to calculate it) for the remaining bottom, side, and end surfaces was not indicated (in either the horizontal or vertical mode). The agency recognized that the protester's drawings indicated internal bracing/trussing of the units, which theoretically could provide sufficient support for the anticipated load. However, the proposal did not include specific information in this area--such as the dimensions of the internal bracing beams, their steel weight or strength, and the method of their connection--and without it the agency was unable to determine the sufficiency of this support. In this regard, the agency noted that, due to the inherent instability of the floats (due to the uneven weighting of the bottom, top and side plates), their tendency to tip sideways could actually be exaggerated by the bracing, depending on the center of gravity of the bracing, which was not indicated.

The steel weight was of particular concern to the agency because AAD's proposal indicated that its design was one-half the weight of the government's design, but did not address how sufficient structural capacity would be achieved given this diminished weight.[4] Similarly, because the proposed lock connections were not synchronized with the supporting beam structure, the agency questioned whether the 70-ton rating indicated for horizontal usage (in the submitted manufacturer's data) would be valid for the proposed vertical application; in any case, vertical lock strength was not established with any data. Even assuming that the 70-ton rating would remain valid in a vertical deployment, moreover, the agency found nothing in the proposal supporting an assumption that the joint at the center of the second tier of the proposed bulkhead (i.e., the second row of floats from the bottom), where two 20 x 10 foot units would be connected by four locks, would be adequate to resist the maximum anticipated hydrostatic load.

The agency's conclusions were reasonable. The agency's areas of concern related directly to the realism/feasibility of AAD's proposed design, and those areas were

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[4]AAD contends that because its submitted data adequately indicated structural capacity, there was no need for it to submit the steel weight of its design. In this regard, the protester maintains that the reduced steel weight of its design was attributable to a more efficient design than the agency's, which, unlike AAD's, uses thick plate steel with no stiffening or truss type supports.

not explained by the proposal. Rather, as indicated, AAD merely furnished standard manufacturer's information, which contained no detailed description of how the system, designed to be used for an entirely different purpose, in a different configuration, could successfully be used as AAD proposed. AAD essentially would have the agency rely upon the specifications in the manufacturer's literature in determining structural capacity. The record establishes, however, that the stresses that would result from vertical deployment of the floats would be different from the stresses encountered when the floats are deployed in the standard horizontal position; there thus was no basis for assuming that the standard manufacturer's information would be applicable here. It was for this reason (and because a design without sufficient structural capacity could put lives at risk in the dewatered work area) that the agency determined that additional information, relating to vertical deployment of the floats, was necessary to determine whether the design was feasible. While, as the protester points out, the RFP only requested an explanation of the "design concept" (as distinguished from final construction drawings, which were not required until after award), it also requested drawings which indicated "major components and dimensions, structural design approach (including connector details) materials used and fabrication methods," as well as supported claims and a reasonable assurance of satisfactory performance. We agree with the Corps that the information included in AAD's proposal was inadequate under the RFP's terms because it was insufficient to establish the feasibility of deploying the floats vertically, as AAD proposed.

While AAD generally disagrees with the agency's conclusion that its proposal included inadequate information in this area, it has not specifically refuted those conclusions; in particular, it has not refuted the agency's overall concern--which we have found to be reasonable on its face--as to the validity of the submitted horizontal deployment data for purposes of evaluating the proposed vertical mode design.[5] AAD does contend that the agency needed only to analyze the submitted

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[5]In fact, AAD's own consulting engineers discovered a design deficiency in their review of the proposal after award--they agreed with the agency that the capacity of the proposed joint at the second tier connecting the two 20 x 10 units would be exceeded by the anticipated hydrostatic load, and suggested that the firm's proposed design would need to be changed by moving these two units to the top tier and replacing them with the 40 x 10 foot unit from the top tier. AAD asserts that this change does not mean that its design was invalid. Even if AAD is correct, however, this deficiency perfectly illustrates the agency's concern--since the Flexifloat product was not designed for vertical deployment, AAD essentially was proposing a product the structural capacity of which had never been demonstrated. Without information in the proposal addressing structural issues relating to vertical deployment of the floats, there was no basis to conclude that the proposed design was feasible.

data to determine sufficient structural capacity; however, the protester fails to indicate exactly how the submitted data could be analyzed to determine sufficient structural capacity, given the omitted information the agency considered essential to determining acceptability in this area.[6]

DEWATERING SYSTEM POSITIONING

The Corps determined that AAD's proposal omitted all details on how its proposed bulkhead assembly would be aligned, fastened, and positioned, including procedures for water ballasting and deballasting of the floats and safety. In this regard, the agency noted that basic details, such as the location of the Flexifloat hatches (for ballasting and deballasting), were not included. Instead, the proposal simply cross-referenced the RFP drawings for the government-designed bulkhead. The agency determined that these references were inadequate given that AAD's design based on a nonstandard usage of the floats differed significantly from the government design.

AAD insists that because it planned to use the government design methods (except for the minor change of additional bolts) there was no reason to show its aligning, positioning, and safety procedures, including ballasting and deballasting; its methods would not differ from the government's methods.

The agency's conclusions were reasonable. The omitted information was directly related to the technical subfactor, "Dewatering System Positioning Procedures," under which offerors were required to "[e]xplain how the system will be positioned, aligned and fastened," and "[i]dentify the equipment that will be used and safety precautions." AAD could not satisfy this requirement by generally referring to the government's design, without some explanation or information that would enable the Corps to independently assess whether the same methods could in fact be used for AAD's design.[7] The Corps certainly was not required to assume that the same

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[6]We permitted AAD to clarify its claim that the agency only needed to perform elementary engineering calculations on the submitted data in order to determine sufficient structural capacity. In response, AAD submitted multiple pages of detailed calculations by its consulting engineers, with no clear explanation of how the calculations related to this issue, or how the agency could have performed the same calculations based on the limited information provided in the firm's proposal. AAD's claim in this regard thus does not bring the evaluation into question.

[7]The agency's concern in this area is buttressed by the Flexifloat manufacturer, which was consulted by the protester after award. In a letter to the parties, the manufacturer states that the "primary concern with the use of Flexifloats for this application [i.e., the vertical application proposed by AAD] was the possible

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methods could be used--on the basis of AAD's unsupported assertions--given the significant differences between AAD's and the agency's designs, and the previously discussed structural capacity informational omissions.[8]

DISCUSSIONS

AAD argues that the agency should have held discussions to permit it to correct any deficiencies in its proposal. However, there generally is no requirement that an agency hold discussions when the solicitation advises offerors that the agency intends to make award without discussions. Federal Acquisition Regulation § 15.610(a)(3) (FAC 90-31); Triple P Servs., Inc., B-271777, July 24, 1996, 96-2 CPD ¶ 39. Since the solicitation advised offerors that the agency intended to make award without discussions, AAD could not presume that it would have a chance to improve its proposal through discussions. The burden was on AAD to submit an initial proposal containing sufficient information to demonstrate its merits, and the protester ran the risk of having its proposal rejected by failing to do so. Scientific-Atlanta, Inc., B-255343.2; B-255343.4, Mar. 14, 1994, 94-1 CPD ¶ 325. Given that the

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[7](...continued)
imploding of the units due to differential water pressure between the inside and outside of the units . . . ; [the protester] has since informed me that his company developed a procedure to allow the floats to be flooded in such a manner that the pressure differential will not exceed approximately 10-feet of head." This procedure was not referenced in the firm's proposal. Additionally, AAD's consulting engineers, in a post-award letter of opinion, describe an "upending or flipping" procedure to successfully position the bulkhead; the agency states that this flipping procedure is different from the government design method indicated on government drawing sheet No. 9 (and referenced by the protester in its proposal), which shows a series of winches and pulleys used to position the bulkhead. This inconsistency is not addressed by the protester.

[8]Under technical feasibility, the protester further contends that, because two of the three technical evaluators initially rated its proposal acceptable, the overall unacceptable rating was unreasonable. Although the initial point scores varied among evaluators--in fact only one evaluator rated the proposal at an acceptable level with 35 out of 45 possible points and the remaining two rated it at an unacceptable level with 11 and 0 points respectively--the record clearly indicates that all three evaluators determined that there were informational deficiencies and agreed on the consensus rating of unacceptable and 10 points. In any case, a difference of opinion among evaluators does not evidence an erroneous evaluation where, as here, there is no showing that the evaluation was improper. See Mounts Eng'g, 65 Comp. Gen. 476 (1986), 86-1 CPD ¶ 358; Monarch Enters., Inc., B-233303 et al., Mar. 2, 1989, 89-1 CPD ¶ 222.

solicitation advised offerors of the possibility of award without discussions, and our conclusion that the Corps reasonably determined that AAD's proposal was unacceptable as written, there was no requirement for the agency to hold discussions with AAD.

The protest is denied.

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