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Decision

Matter of: Raytheon Company, Space and Airborne Systems

File: B-411631

Date: September 16, 2015

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DIGEST

1. Agency's discussions with the protester were meaningful where they led the protester into the areas of its proposal that required revision.
 2. Protest that agency's technical evaluation was unequal and unreasonable is denied where the record demonstrates that differences in the proposals supported differing evaluation results.
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DECISION

Raytheon Company, Space and Airborne Systems, of El Segundo, California, protests the issuance of a task order to Northrop Grumman Systems Corporation, of Linthicum, Maryland, by the Department of the Army, under request for task order execution plan (RTEP) No. R2-3G-0823, issued to holders of the Army's Rapid Response-Third Generation multiple-award contract, for the purpose of prototyping, designing, integrating and testing a Synthetic Aperture Radar/Ground Moving Target Indicator (SAR/GMTI) long range radar. Raytheon alleges that the Army's technical evaluation was unreasonable, principally because the Army conducted inadequate and misleading discussions.

We deny the protest.

BACKGROUND

The Army released the RTEP on January 20, 2015, for the purpose of selecting a contractor to perform studies and analysis with the end goals of prototyping, designing, integrating and testing a SAR/GMTI long range radar that can detect moving and stationary targets and provide real time data analysis. The RTEP performance work statement (PWS) specified that the contractor effort included hardware development, software development, engineering support, and program management support necessary to prototype the required long range radar. The PWS further advised that the analysis and prototype from this procurement is intended to be transitioned to the Army's Airborne Reconnaissance Low-Enhanced program, for integration on the De Havilland Canada-8 (DHC-8) Series 300 aircraft for operation at altitudes of 15,000 to 25,000 feet. The PWS provided that at the conclusion of the study effort, "[t]he contractor shall deliver one (1) [long range radar] prototype (B-kit) and one (1) DHC-8 300 aircraft integration [kit] (A-kit)." Agency Report (AR), Tab AK, PWS, at 1.

The RTEP anticipated the issuance of a cost-plus-fixed-fee task order with a base period of 24 months. The RTEP provided that the task order would be issued on a best-value basis considering three evaluation factors: technical, cost, and past performance. The RTEP advised that among the evaluation factors, technical was slightly more important than cost, and cost was significantly more important than past performance. The RTEP cautioned that "proposal evaluation will be limited to the information provided by the Offeror," and that "Offerors are responsible for including sufficient details to permit a complete, thorough, and accurate evaluation of the submitted proposal." AR, Tab AJ, RTEP, at 4.

Concerning the technical evaluation factor, the RTEP instructed that "the Offeror shall describe its methods and approach for fulfilling the requirements of each of the task areas listed under [the] PWS and with emphasis on PWS paragraphs/subparagraphs 3.1 through 4.0, 6.0, 8.0 and 9.0." Id. The RTEP evaluation criteria further provided that:

The [proposal] will be evaluated to determine the extent to which it demonstrates a clear understanding of all RTEP requirements. This includes the extent to which uncertainties are identified and resolutions proposed. The proposal will be evaluated to determine the extent to which the Offeror is expected to successfully complete the proposed tasks and technical requirements; the extent to which the success is not contingent upon untried or unproven processes or methods; and the extent to which the Offeror's methods and approach, inclusive of program management oversight, is realistic and provides the Government with a high level of confidence meeting the RTEP requirements.

Id. at 14-15.

With respect to the performance requirements for the radar, as relevant here, the PWS provided specific performance thresholds and objectives for the radar's GMTI and SAR operation modes (PWS paragraphs 3.1.10.2 and 3.1.10.3, respectively), and required offerors to deliver frequency assignment/allocation data to support frequency allocation approvals (PWS paragraph 3.1.10.7). For example, concerning the GMTI mode, among other requirements, the performance thresholds included the ability to identify targets traveling at a minimum velocity of 5 m/s, at a detection range of between 30km and 150km, with a location error of less than 200 meters at 90km, and a probability of detection of 85 percent at 90km, and 50 percent at 120km. AR, Tab AK, PWS, at 14-15. The radar was to be "capable of [completing a scan,] collecting the full threshold swath of 30-120km and 90° of angular coverage within 60 seconds." Id. at 15.

The Army received three proposals in response to the RTEP, including the proposals submitted by Raytheon and Northrop. As relevant here, Raytheon proposed to meet the requirements of the PWS through development of a prototype radar designated as the [DELETED]. The prototype was to be based on [DELETED], with modifications necessitated by the PWS's requirements for a lower operating altitude and integration on the DHC-8 300. While this effort required modification of various software and hardware components [DELETED], the [DELETED] radar was to re-use [DELETED] major components [DELETED].

After an initial technical evaluation of the proposals, the Army concluded that discussions were necessary, and established a competitive range consisting of the three offerors. Discussion questions were released to the offerors on May 6, concerning every deficiency or significant weakness in each offeror's proposal. Raytheon's discussion questions included six questions resulting from significant weaknesses in Raytheon's technical proposal under six PWS paragraphs: 3.1.2 (Prototype Production), 3.1.8 (Laboratory Testing), 3.1.10.1 (Data Formats), 3.1.10.2 (GMTI Radar Performance Thresholds), 3.1.10.3 (SAR Radar Performance Thresholds), and 3.1.10.7 (Frequency Allocation). A seventh discussion question related to Raytheon's cost proposal.

Raytheon submitted its response to the discussion questions on May 8. As a result of Raytheon's response, the Army concluded that the cost issue and the significant weakness under PWS 3.1.10.1 were fully resolved, and that the significant weaknesses under PWS 3.1.2 and 3.1.8 were no longer considered significant, but remained weaknesses. However, the Army also concluded that the significant weaknesses under PWS paragraphs 3.1.10.2 (GMTI thresholds) 3.1.10.3 (SAR thresholds), and 3.1.10.7 (frequency allocation) were not resolved and, taken together, represented a deficiency because "the significant weaknesses, when

combined, increase the risk of unsuccessful performance to an unacceptable level.” AR, Tab BL, Raytheon Technical Evaluation, at 7.

Since Raytheon’s technical proposal contained a deficiency and was considered unacceptable, Raytheon’s proposed cost of \$19,608,932, was not evaluated for cost realism. AR, Tab CB, Source Selection Decision Document (SSDD), at 2. Overall, the three offerors were rated as follows:

Offeror	Technical Rating	Past Performance Confidence	Revised Cost Proposal	Evaluated/ Probable Cost
Northrop	Outstanding	Substantial	\$23,066,341	\$23,066,341
Offeror B	Acceptable	Substantial	\$16,329,553	\$16,329,553
Raytheon	Unacceptable	Substantial	\$19,608,932	N/A

Id.

In the SSDD, the source selection authority (SSA) concluded that Northrop’s technical proposal was significantly superior to that of Offeror B, due to a “combination of a significant strength and multiple strengths, higher level of detail, lower-risk approach, and exceptional understanding” of the PWS requirements. Id. at 14. In the final tradeoff analysis, the SSA concluded that Northrop’s and Offeror B’s proposals were superior to Raytheon’s, as Raytheon’s technical proposal was unacceptable. Between the remaining two proposals, the SSA concluded that Northrop’s proposal, when taken as a whole, was superior to Offeror B’s proposal and represented the best value to the government.

Raytheon received notice of the award on May 29, 2015, and a summary of the evaluation results on June 3. Raytheon then received an in-person debriefing session and the opportunity to submit questions. The debriefing closed on June 4. This protest followed.¹

DISCUSSION

Raytheon alleges that the three significant weaknesses--and resulting deficiency--assessed against its proposal were the result of inadequate and misleading discussions, were unreasonable, and were the result of unequal treatment. As explained above, the three significant weaknesses assessed against Raytheon’s

¹ As explained above, this protest concerns a task order competition under the Army’s Rapid Response-Third Generation multiple-award contract. As the estimated value of this proposed task order under the contract exceeds \$10 million, this protest is within our jurisdiction. 10 U.S.C. § 2304c(e)(1)(B).

proposal related to its responses in the areas of GMTI threshold capabilities (PWS 3.1.10.2), SAR threshold capabilities (PWS 3.1.10.3), and frequency allocation (PWS 3.1.10.7).

Concerning the GMTI mode and SAR mode thresholds, the technical evaluation of Raytheon's revised proposal explained that the significant weaknesses were assigned because the proposal failed to sufficiently substantiate its performance claims. In this regard, the evaluators concluded that Raytheon provided insufficient details concerning measured performance data from the [DELETED] radar on which the proposed [DELETED] radar was based, or measured parameters for the underlying radar components, to verify Raytheon's [DELETED] predicted performance claims. The technical evaluation also explained that Raytheon's discussions response, which included radar test data, did not address the Army's concern because the test data related to [DELETED] which utilized a different transmitter and different receiver from those used in the [DELETED] and the proposed [DELETED]. The Army evaluators were also concerned because the provided test data presented only a statistically insignificant number of attempted radar detections. The evaluation noted that changes in the transmitter and receiver would affect the performance characteristics of the system, and that without underlying data concerning performance of the [DELETED], or concerning the performance parameters of the [DELETED] transmitter and receiver components--such as the "Signal to Noise Ratio," "Noise Figure," and "Multiplicative Noise Ratio"--the evaluators did not have confidence that the Raytheon approach would meet the required detection ranges and probability of target detection. AR, Tab BL, Raytheon Technical Evaluation, at 4-5.

Concerning frequency allocation requirements, the technical evaluation explains that a portion of Raytheon's originally proposed operational frequency range ([DELETED]) overlapped with the frequency spectrum specifically reserved for [DELETED], which would jeopardize Raytheon's ability to receive a required Department of Defense (DoD) frequency allocation approval. The evaluation acknowledged that Raytheon's discussions response indicated that the [DELETED] would only need to operate between [DELETED], but also noted that Raytheon did not provide any measured or predicted data on the out of band performance (the extent to which frequency emissions extend outside of the intended frequency band) of the proposed radar. The evaluators concluded that Raytheon's approach of [DELETED] increased the risk of unsuccessful performance.

Discussions

Returning to Raytheon's allegations, in the case of each of the above significant weaknesses, Raytheon asserts that the agency's discussions questions failed to disclose the actual focus of its concerns, which prevented Raytheon from providing meaningful proposal revisions. Raytheon asserts that the Army instead posed questions "only generally describing areas of concern." Protest at 12.

Federal Acquisition Regulation (FAR) part 15 requires that the discussions be “meaningful,” that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror’s potential for receiving the award. FAR § 15.306(d); Bank of Am., B-287608, B-287608.2, July 26, 2001, 2001 CPD ¶ 137 at 10-11. FAR part 15 specifically requires that discussions, when held, must address “[a]t a minimum ... deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond.” FAR § 15.306(d)(3). However, the regulations concerning discussions under FAR part 15, which pertain to negotiated procurements, do not, as a general rule govern task and delivery order competitions conducted under FAR part 16, such as the procurement here. See NCI Info. Sys. Inc., B-405589, Nov. 23, 2011, 2011 CPD ¶ 269 at 6. In this regard, FAR § 16.505 does not establish specific requirements for discussions in a task order competition; nonetheless, we have held that exchanges in that context must be fair and not misleading. CGI Fed. Inc., B-403570 et al., Nov. 5, 2010, 2011 CPD ¶ 32 at 9.

We have reviewed the record and conclude that the Army’s discussion questions were sufficient to lead Raytheon into the areas of its proposal that required amplification. Accordingly, we conclude that the discussions were meaningful and not misleading.

With respect to the significant weaknesses relating to GMTI and SAR mode performance, Raytheon argues that the agency’s discussion questions did not disclose the agency’s desire for specific measured performance values, which were not required by the RTEP. Raytheon asserts that instead, the Army only generally requested that Raytheon “explain how the proposed radar will meet the [GMTI/SAR] performance requirements of [operation at] 15-25 Kft,” in light of the [DELETED]. AR, Tab BZ, Raytheon Discussions, at 13, 20.

On our review of the record, however, we conclude that the Army raised these concerns during discussions. Specifically, the record demonstrates that the subject headings of the discussion questions precisely described the agency’s concern regarding the lack of detail in its proposal where they read as follows: “Insufficient details on how GMTI performance meets the PWS requirements,” and “Insufficient details on how SAR performance meets the PWS requirements.” Id. Further, the discussion questions specifically indicated that, because many components of the proposed [DELETED] were re-used from the [DELETED], “current measured performance data should exist to demonstrate PWS compliance.” Id. Where these aspects of the discussion questions mirror the agency’s concerns as recorded in the

technical evaluation, we cannot conclude that the Army failed to conduct meaningful discussions.²

Next, Raytheon takes issue with the agency's discussions concerning the significant weakness assessed relating to frequency allocation. As explained above, the agency was concerned that Raytheon's final revised proposal failed to include any measured or predicted data on the out of band performance of its proposed radar. Raytheon asserts that the agency's discussion question did not request information on out-of-band performance, however, and merely requested that Raytheon "indicate how the proposed [long range radar] frequency allocation of [DELETED] can receive a DoD stage 3 and 4 frequency allocation," in light of the overlap with reserved spectrum. Id. at 27.

The record demonstrates that the agency's concern regarding out-of-band performance was not detailed in the agency's discussion question because the concern was first introduced in Raytheon's discussion response. In this connection, the Army's initial concern was that Raytheon had proposed an operating frequency spectrum that actually overlapped the reserved spectrum. Accordingly, the agency asked Raytheon to explain how it could obtain necessary DoD approval where its radar overlapped with frequency spectrum reserved for [DELETED]. In its discussion response, Raytheon revised its specified operating frequency range to [DELETED], and thereby eliminated any explicit overlap with the reserved frequency spectrum. However, this revised approach presented a new concern because, in the agency's view, Raytheon did not provide any supporting data to show that its

² With respect to Raytheon's allegation that the significant weaknesses were unreasonable, we also disagree. For example, Raytheon asserts that it was unreasonable for the agency to dismiss the [DELETED] test data provided during discussions because that test data was responsive to the agency's concern about performance at 25,000 feet and lent credibility to Raytheon's performance predictions. However, we see nothing unreasonable about the agency's determination that limited data concerning [DELETED] with a different transmitter and different receiver than the [DELETED], did not provide a basis on which to validate Raytheon's [DELETED] predicted performance. The evaluation of an offeror's proposal is a matter of agency discretion and, by its very nature, is a subjective judgment. See Visual Connections, LLC, B-407625, Dec. 31, 2012, 2013 CPD ¶ 18 at 3-4. Ultimately, it is within the agency's discretion to determine the level of substantiation necessary to support an offeror's approach. Id. Nor can we conclude that the agency's desire for additional substantiating data constitutes an unstated requirement. The RTEP cautioned in this case that "[o]fferors are responsible for including sufficient details to permit a complete, thorough, and accurate evaluation of the submitted proposal," and provided that the offeror "shall describe its methods and approach . . . with emphasis on PWS paragraphs/subparagraphs 3.1 through 4.0." RTEP at 4.

radar could utilize an operational frequency spectrum [DELETED], without out-of-band performance crossing into the reserved spectrum [DELETED].³ Further, while Raytheon's discussion response also asserted that Raytheon had received a classified Stage 3 Equipment Spectrum Certification document from the Air Force, and maintained various frequency spectrum approvals and operating licenses, the discussion response did not provide any documentation of the approvals or licenses, or connect those approvals to the proposed radar in a manner that addressed the agency concerns.

In sum, the significant weakness in Raytheon's revised proposal, concerning the fact that Raytheon failed to provide technical data to support its radar's ability to operate from [DELETED] without out-of-band emissions into the reserved frequency range, was not the agency's concern with Raytheon's initial proposal. Rather, the significant weakness assessed against Raytheon's revised proposal was introduced in Raytheon's response to discussions. Where a weakness is first introduced in an offeror's final proposal revision, after discussions are concluded, the agency has no obligation to reopen discussions to address the new weakness. Smiths Detection, Inc., B-298838, B-298838.2, Dec. 22, 2006, 2007 CPD ¶ 5 at 13 n.13. We see no error in the agency's discussions here.

Unequal Treatment

Raytheon next asserts that each significant weakness assessed against its proposal demonstrates unequal treatment, because its proposal was held to a higher standard of substantiation than was Northrop's proposal. Specifically, Raytheon alleges that Northrop's proposal did not receive similar weaknesses for lack of substantiation of its radar's performance, despite the fact that Northrop did not provide measured performance data for its proposed radar. In fact, Raytheon alleges that Northrop could not have provided such data because its proposal [DELETED]. Raytheon argues that the agency in effect required additional substantiation for its more developed approach, and less substantiation from Northrop for its allegedly less developed approach, which was unequal and improper.

Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in rating did not stem from differences between the offerors' proposals. See Northrop Grumman Sys. Corp., B-406411, B-406411.2, May 25, 2012, 2012 CPD ¶ 164 at 8. With respect to Raytheon's allegations, the protester has not made this showing, and we conclude that the allegations are without merit.

³ As addressed more fully below, in contrast, Northrop proposed an operating frequency band far above the frequency spectrum reserved for [DELETED], and provided detail on its radar's out-of-band performance characteristics.

The record in this case shows that Northrop's proposal included significantly more technical data to substantiate its unique technical approach.

For example, concerning GMTI and SAR mode thresholds, unlike Raytheon's proposal, Northrop's proposal contained detailed specification charts and other exhibits providing precise values for each system parameter. This detail led the evaluators to conclude that Northrop provided a "detailed analysis" of GMTI and SAR predicted performance which warranted strengths. AR, Tab BW, Northrop Technical Evaluation, at 5. The agency's technical lead for the evaluation further explains that Northrop's proposal contained "well broken out radar parameters that explicitly lead the evaluator to their calculations of Signal to Noise (SNR) and Probability of Detection (Pd)." Supplemental Technical Declaration, at 8. Further, "[t]he provided SNR and Pd values supported and met PWS requirements and provided the Government with a high level of confidence." Id.

With respect to frequency allocation, unlike Raytheon's proposed operating frequency range of [DELETED], Northrop proposed an operating frequency range of [DELETED], which did not present a concern with reserved frequency spectrum. Additionally, Northrop's proposal included detail on out-of-band performance, explaining that its radar's signal was "[DELETED]." AR, Tab BO, Northrop Technical Proposal, at 54. Thus, Northrop's entire operating frequency—including out-of-band performance characteristics specifically addressed in Northrop's proposal—was within the approved frequency range for radiolocation and did not present the concern raised with Raytheon's proposal. As a result, we conclude that the record supports the agency's evaluation results.

Prejudice

Although Raytheon has raised additional grounds of protest, we do not address these additional grounds in our decision, as Raytheon cannot show that it was prejudiced by any other alleged agency errors. As explained above, we have reviewed Raytheon's allegations concerning the agency's assessment of significant weaknesses in its proposal which, taken together, resulted in a deficiency and an unacceptable technical rating, and we find no error in the agency's evaluation. Accordingly, we conclude that the agency did not err in concluding that Raytheon's proposal was unacceptable.

Our Office will not sustain a protest absent a showing of competitive prejudice, i.e., where the protester demonstrates that, but for the agency's actions, it would have a substantial chance of receiving award. Fintrac, Inc., B-311462.2, B-311462.3, Oct. 14, 2008, 2008 CPD ¶ 191 at 11. In this case, because Raytheon's proposal was considered technically unacceptable as a result of the three significant weaknesses addressed above, there is no possibility that Raytheon was prejudiced by other alleged errors in the agency's technical evaluation. See, e.g., HP Enter. Servs., LLC, B-410212.2, Jan. 26, 2015, 2015 CPD ¶ 54 at 14 (GAO will not sustain a

protest based on procurement flaws where the record establishes that elimination of flaws would not reasonably alter the source selection decision).

CONCLUSION

On the basis of our review of the record here, we see no error in the agency's conduct of discussions, which we conclude were sufficient to lead Raytheon to the areas of its proposal which required amplification. Additionally, we see no merit to Raytheon's allegation that the agency treated the offerors unequally in the technical evaluation. Rather, we conclude that the record shows that differing levels of detail concerning the underlying radar component parameters supporting the offeror's respective predicted radar performance led to the agency's differing evaluation results. Because we see no error in the assessment of the significant weaknesses which, taken together, led to the conclusion that Raytheon's proposal was technically unacceptable, there is no possibility that Raytheon was prejudiced by other alleged errors in the evaluation.

The protest is denied.

Susan A. Poling
General Counsel