



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Buck Environmental Technologies, LLC

File: B-280520

Date: October 14, 1998

William B. Barton, Jr., Esq., and William T. Welch, Esq., Barton, Mountain & Tolle, for the protester.

Lee P. Curtis, Esq., Harvey G. Sherzer, Esq., and Douglas S. Many, Esq., Howrey & Simon, for PRIMEX Technologies, Inc., the intervenor.

Maj. Cynthia Mabry, Vera Meza, Esq., and Terese Marie Harrison, Esq., Department of the Army, for the agency.

John L. Formica, Esq., and Jerold D. Cohen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester was not prejudiced by the agency's consideration of the transportation costs to the government associated with each offeror's proposal in determining which proposal submitted in response to a solicitation for the demilitarization of ammunition represented the best value to the government, where the solicitation did not explicitly state that such costs would be evaluated, because the agency reasonably determined that the costs should be considered and the record does not evidence that if the solicitation had been explicit the protester would have submitted a different proposal that would have had a reasonable possibility of award.
2. Agency's estimate of transportation costs associated with the protester's proposal cannot be determined unreasonable where the estimate was prepared by government transportation rate specialists, and then was reviewed and double-checked by transportation rate specialists in response to the protest, and the protester, despite access to the breakdown of costs associated with the estimate, states only that one area of costs "appears excessive" and fails to identify any specific errors in the estimate.
3. Agency's evaluation and relatively low rating of the protester's oral presentation and response to discussion questions were reasonable where the presentation and discussion responses failed in some instances to provide certain information specifically requested by the solicitation, and in other instances were very general.

DECISION

Buck Environmental Technologies, LLC protests the award of a contract to PRIMEX Technologies, Inc., under request for proposals (RFP) No. DAAA09-97-R-0209, issued by the Department of the Army for the demilitarization of ammunition. Buck argues that the agency's evaluation of its proposal was unreasonable and not in accordance with the evaluation factors set forth in the solicitation.

We deny the protest.

The RFP, issued on January 28, 1998, provided for a fixed price contract with a performance period not to exceed 18 months from the date of award. RFP at 2, RFP statement of work (SOW) at 1. The successful contractor under the RFP will be required to provide all necessary materials, equipment, and personnel to demilitarize certain ammunition.¹ RFP SOW at 1. The solicitation provided that the ammunition would be furnished "F.O.B. contractor's place of performance," RFP at 11, and that the "[a]mmunition shipped to a contractor site will be shipped at Government expense." RFP SOW at 11. The RFP (at 8) also incorporated by reference the standard clause "F.O.B. Point for Delivery of Government-Furnished Property," Federal Acquisition Regulation § 52.247-55, which states in part:

If the destination of such Government-furnished property is a Contractor's plant located outside the 48 contiguous states, the District of Columbia or Canada, the f.o.b. point for Government delivery of Government-furnished property shall be a location in the United States (excluding Alaska and Hawaii) specified by the Contractor.

Award in the procurement was to be made to the offeror submitting the proposal representing the best value to the government, price and other factors considered. RFP at 2, 28. The RFP requested that offerors, "in lieu of a written technical proposal . . . make an oral presentation to a panel of government evaluators." RFP at 2. The solicitation listed the following evaluation factors and their relative weights: oral presentation (40 percent); past performance (40 percent), and cost (20 percent). RFP at 28-29. The solicitation also noted that the agency would "develop a level of confidence assessment rating for each offeror" which would

¹The solicitation defined demilitarization, or "demil," as

[t]he act of removing the military offensive or defensive advantages of ammunition and explosives, which may or may not include the disposal of the item.

RFP SOW at 2.

"reflect the government's degree of confidence that the offeror will keep the promises it made in its proposal." RFP at 29.

The RFP, in setting forth detailed instructions for the preparation of proposals, noted that the oral presentation would "be an opportunity for the offeror to demonstrate his understanding of the RFP requirements and provide additional insight into his capability to perform." RFP at 25. The RFP added that the oral presentation would be limited to 2 hours, and that the number of presenters would be limited to four. Id. The solicitation also required that an offeror provide a written summary of its oral presentation, not to exceed 10 pages in length, prior to the oral presentation. Id.

Section L of the RFP included a detailed outline for the oral presentation, and informed offerors that "oral presentation presenters must demonstrate specific/detailed knowledge of and proposed application to" the demilitarization process and the associated areas of safety, security, and environmental concerns. RFP at 26. The outline included three to four items under each of these areas (demil process, safety, security, and environmental concerns) which the offerors were instructed to address. Id. For example, the RFP (at 26) included the following items to be addressed by the offerors during the portion of their oral presentations about safety:

1. Show how you will comply with the contractual safety regulation, DOD [Department of Defense] 4145.26M, DOD Contractors' Safety Manual for Ammunition and Explosives.
2. Discuss your facility siting and quantity-distance compliance applicable to the place of performance for this contract.
3. Specify specific industrial safety and regulatory compliance issues related to this contract.
4. Discuss the actual process analysis and hazard/risk management that will apply to this contract.

The agency received proposals from four offerors, including Buck and PRIMEX, by the RFP's March 16 closing date. Buck stated in its proposal that the work required under the contract would be performed at its facility in [DELETED], and that its total price of \$14,245,996 for the base and option quantities "is firm fixed and includes all transportation from FOB USA east coast [DELETED]." Buck proposal at 22. PRIMEX offered to perform the work required under the contract for a total price of \$13,420,380, at its facility in Marion, Illinois.

The agency distributed past performance surveys, asked its transportation office to compute the costs to the government of transporting the ammunition to the places

of performance specified by the offerors in their proposals, and scheduled oral presentations with all four offerors. The offerors were informed that the 2-hour presentations would be followed by a 1-hour recess, during which the evaluation team members would discuss the presentation and "decide what if any clarifications they may need." Agency Report, tab 15, letters to offerors. The offerors were further informed that should clarifications be required, the "designated Government spokesperson will request the noted clarifications from your presenters. This clarification period will last no longer than 1 hour." Id.

The offerors submitted their written summaries of their oral presentations, and the presentations were conducted and evaluated by a source selection evaluation board (SSEB). Buck's and PRIMEX's oral presentations were rated at 34.5 and 78.5 out of 100 points, respectively. With regard to Buck's oral presentation, the agency evaluators found that Buck had failed to provide much of the information requested by the RFP regarding the areas of safety, security, and environmental concerns.

Upon review, the agency determined that "some very good/important questions were not asked" during the clarification portion of the oral presentations. Agency Report, tab 33, Source Selection Decision Document, at 1. The agency therefore decided to conduct discussions with the offerors. Written discussion questions were forwarded to the offerors and the offerors' responses were received and evaluated. The agency revised the offerors' oral presentation scores to reflect the information contained in the offerors' responses, with Buck's score increasing from 34.5 to 55 points, and PRIMEX's score increasing from 78.5 to 85 points.

By letters dated June 5, the agency requested that the offerors provide revised "Cost Proposals." Agency Report, tab 29. PRIMEX did not change its proposed total price for the base and option quantities of \$13,420,380. Buck responded by reducing its proposed price to \$13,604,463.² Buck noted that this price "reflect[s] shipping to an East Cost port paid by the Government and shipment from the port to [DELETED] paid by [Buck]." Buck added that "[a]s an alternate proposal, if you will ship the rounds to [DELETED] as a Government shipment at Government expense, we will perform the demil" for a total price of \$8,674,264. Id.

The agency received the responses to the past performance surveys, as well as the estimated costs to the government of transporting the ammunition to the offerors' places of performance as calculated by the transportation office. PRIMEX's and Buck's past performance was rated as "excellent." Agency Report, tab 31. With regard to transportation costs, the agency was informed by its transportation office that it would cost the government approximately \$5,775,382 to transport the

²It is unclear from the record why the agency considered \$13,604,463 to be Buck's proposed price, rather than \$13,604,694 as set forth in Buck's proposal.

ammunition to Buck's facility, and \$299,184 to transport the ammunition to PRIMEX's facility. Agency Report, tab 30.

In order to determine the total costs to the government associated with each offeror's proposal, the agency added the estimated costs of transporting the ammunition to the offerors' facilities, as calculated by the transportation office, to the offerors' proposed prices. That is, the agency added the estimated \$299,184 in transportation costs associated with PRIMEX's proposal to PRIMEX's total proposed price, arriving at a total evaluated price for PRIMEX's proposal of \$13,719,564. Similarly, the agency added the estimated \$5,775,382 in transportation costs associated with Buck's proposal to Buck's total price, arriving at a total evaluated price for Buck's proposal of \$19,379,845. Agency Report, tab 32.

The final oral presentation and discussion responses, past performance evaluations, level of confidence assessment ratings (LOCAR), and cost/price evaluation results were forwarded to the source selection authority (SSA). In this regard, PRIMEX received 85 out of 100 points for its oral presentation and discussion response, an "excellent" past performance rating, a LOCAR of .95, at an evaluated price of \$13,719,564.³ Buck received 55 points for its oral presentation and discussion response, an "excellent" past performance rating, a LOCAR of .9, at an evaluated price of \$19,379,845. The SSA, while recognizing Buck as "a world-class, multi-national firm . . . [with] a proven history of literally centuries [of] experience," selected PRIMEX's proposal for award as representing the best value to the government. Agency Report, tab 33, Source Selection Decision Document, at 2. After requesting and receiving a debriefing, Buck filed this protest, challenging numerous aspects of the agency's price and technical evaluations.

The agency concedes that it made a number of mistakes in calculating both offerors' total evaluated prices. First, with regard to Buck, the agency points out that, because Buck's primary proposal's price of \$13,604,694 included the costs of transporting the ammunition to Buck's facility in [DELETED], only the costs of transporting the ammunition from the agency's facilities to an east coast port should have been considered in evaluating this proposal. Contracting Officer's Statement at 9. These costs were estimated by the agency's transportation office to be \$244,213. Contracting Officer's Statement, Attachment. The agency concludes

³The solicitation provided that LOCAR would range from 0 to 1, with a rating of 0 reflecting a low level of confidence, a rating of .5 being neutral, and a rating of 1 reflecting a high level of confidence. RFP Amendment No. 0001, at 30.

that Buck's primary proposal's price, which provided for Buck's transportation of the ammunition from an east coast port to Buck's facility in [DELETED], should have been evaluated as totaling \$13,848,676, rather than \$19,379,845. Id.

The agency adds that Buck's alternate price of \$8,674,264, which was based on the agency's shipment of the ammunition to [DELETED], should have been evaluated as totaling \$14,768,718. Id. The agency explains that the initial estimate that the transportation costs associated with this proposal totaled \$5,775,381 was in error. The agency states that the initial estimate should have been \$5,772,736, and that this initial estimate failed to include \$321,718 in costs associated with transporting the ammunition from [DELETED] to Buck's facility in [DELETED]. Contracting Officer's Statement at 9. In sum, the agency concedes that the evaluated prices of Buck's primary and alternate proposals should have been calculated as \$13,848,676 and \$14,768,718, respectively. Contracting Officer's Statement, Attachment.

The agency adds that the calculation of the transportation costs associated with PRIMEX's proposal included two errors (the existence of which is supported by the documentation in the agency report), and that such costs should have been calculated as \$229,483, rather than \$299,183. Contracting Officer's Statement, at 9; Contracting Officer's Statement, Attachment.

The agency concludes that, despite the substantial errors made in calculating the transportation costs associated with the offerors' proposals and their evaluated prices, "[Buck] was not prejudiced because neither the evaluated cost of [Buck's primary] proposal nor the evaluated cost of their alternate proposal is lower than PRIMEX's evaluated costs." Contracting Officer's Statement at 13. Specifically, the agency points out that, had these errors not been made, it still would have selected PRIMEX's proposal as representing the best value, because of PRIMEX's superior technical score of 85 points (as opposed to Buck's score of 55 points), the offerors' identical past performance scores of "excellent," and the cost advantage associated with PRIMEX's total evaluated price of \$13,649,864, compared to Buck's total evaluated price of \$13,848,676 for its primary, and more competitive, proposal.

Buck contends that the agency could not properly consider the transportation costs associated with the offerors' proposals in determining which proposal represented the best value to the government, because the RFP did not include any clause specifically providing for the consideration of transportation costs. Buck argues that its alternate proposal's price of \$8,674,264, without the addition of any estimated transportation costs, should have been considered by the agency in making its best value determination.

The agency argues that the consideration of transportation costs was consistent with the terms of the RFP, and that in any case, the protester was not prejudiced by the agency's consideration of such costs in determining which proposal represented the best value to the government.

Prejudice is an essential element of every viable protest, and we will not sustain a protest where the record does not establish prejudice. Brown & Root, Inc. and Perini Corp., a joint venture, B-270505.2, B-270505.3, Sept. 12, 1996, 96-2 CPD ¶ 143 at 10. The protester's argument that it was prejudiced by the consideration of transportation costs focuses on its view that the RFP did not provide for inclusion of such costs in the evaluation, and Buck's position that if its alternate proposal were considered at its price of \$8,674,264 with a technical score of 55 points, and PRIMEX's proposal were considered at its proposed price of \$13,420,380 with a technical score of 85 points, the agency would have selected Buck's proposal for award. However, as pointed out by the agency, the cost to the government of accepting Buck's alternate proposal and contracting with Buck on that basis in fact would have included the cost to transport the ammunition to [DELETED], and because of this, such costs should be considered. Accordingly, the pertinent question with respect to prejudice is whether there is reason to conclude that Buck would have submitted a different offer that would have had a reasonable possibility of being selected for award had it known that the agency was going to consider transportation costs in determining which proposal represented the best value to the government. Cf. Geonex Corp., B-274390.2, June 13, 1997, 97-1 CPD ¶ 225 at 5 (agency's waiver of a requirement in evaluating proposals was not prejudicial).

Buck does not claim that its proposal would have been any different had the RFP expressly provided that transportation costs would be considered in determining which proposal represented the best value to the government. Because PRIMEX's proposal's evaluated price (proposal price plus transportation costs) of \$13,649,864 is lower than either Buck's primary proposal's evaluated price of \$13,848,676 or its alternate proposal's evaluated price of \$14,768,718, and, as detailed below, we find that the remainder of the agency's evaluation was reasonable, we agree with the agency that Buck was not prejudiced by the agency's consideration of transportation costs in making its best value decision.

Buck contends that the agency's determination in considering Buck's alternate proposal that it would incur a total of \$6.1 million in transportation costs for shipping the ammunition to Buck's place of performance was unreasonable. Buck argues, based upon its review of the detailed breakdown of the transportation costs furnished by the agency in its report, that "the port handling charges . . . appear excessive," and that by not specifically challenging the calculation of these costs, the cognizant contracting officer "violated his duty to evaluate costs reasonably and fairly." Protester's Comments at 13.

A contracting officer, acting in good faith, has the right to rely on the information provided by transportation rate specialists. Fiber-Lam, Inc., B-237716.2, Apr. 3, 1990, 90-1 CPD ¶ 351 at 3.⁴ However, a contracting officer may not automatically rely upon such information if it leads to an unreasonable evaluation. Id.

Here, as mentioned previously, the contracting officer requested and received the estimates of the transportation costs associated with each offeror's proposal from the agency's transportation office. The traffic management specialist who calculated the transportation estimates explains that she used rates provided by the Military Traffic Management Command because that command is responsible for negotiating rates and providing freight management services to Department of Defense components. Agency Report, tab 38, at 1. The record reflects that in response to this protest and pursuant to the agency's request, the specialist "reviewed and recomputed the transportation cost for Buck," and that another transportation specialist "double checked the computations." Id. In this regard, although the breakdowns and bases for the transportation cost computations were provided by the agency in its report, and Buck "has reviewed the detailed corrections and recalculations provided by the Agency," Protester's Comments at 11, the protester has failed to identify any specific errors. In sum, Buck's general assertion, after having had access to the agency report, that "the port handling charges . . . appear excessive," does not provide a basis for our Office to conclude that the agency acted unreasonably in light of the agency's explanations and the detailed reports and calculations provided by the agency to support its position.

Buck argues that the agency's evaluation of its oral presentation and discussion response was unreasonable. The evaluation of such matters is within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them. Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16 at 5. In reviewing an agency's evaluation, we will not reevaluate proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria. MAR Inc., B-246889, Apr. 14, 1992, 92-1 CPD ¶ 367 at 4. An offeror's mere disagreement with the agency does not render the evaluation unreasonable. McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 18. Based upon our review of the record, including the videotape of Buck's oral presentation provided by the agency with its report, we have no basis on which to determine the agency's evaluation unreasonable.

The agency evaluated each offeror's oral presentation and discussion response with regard to the demil process, safety, security, and environmental concerns, with each of these areas being worth a maximum of 25 points. Agency Report, tab 22, SSEB

⁴Buck does not assert that the contracting officer acted in bad faith.

evaluation worksheets/forms. The record includes detailed evaluation forms that set forth specific matters under each of the four areas and the range of points to be awarded based upon the content of the offerors' oral presentations and discussion responses. Id.

Buck's oral presentation received 18 points for the portion addressing the demil process, 4 points for safety, 3.5 points for security, and 9 points for environmental concerns. Id. The relatively low scores received by Buck for the portions of its oral presentation addressing safety and security concerns largely were due to the SSEB's view that Buck had failed to address the matters outlined in the RFP for discussion by the offerors during their oral presentations. Id. Buck's low score of 9 points for the portion of its proposal addressing environmental concerns largely was due to the SSEB's conclusion that Buck's discussion of waste streams and required environmental permits was incomplete. Id. The agency summed up Buck's oral presentation as "concentrating more on who they were than on what the Government specified they wanted." Agency Report, tab 33, Source Selection Decision Document, at 2.

The agency provided Buck with a detailed list of discussion questions by letter dated May 26. Agency Report, tab 24. The agency noted in this letter, for example, that while "[Buck's] presentation addressed [Buck's] history and a general demil process . . . [it] omitted a good portion of Section L requested information." The letter thus requested, among other things, that Buck provide responses to the specific areas requested in section L of the RFP. Id., at 1.

The agency evaluated Buck's response to the discussion questions, and increased Buck's overall score from 34.5 to 55 points. Agency Report, tab 28. Specifically, the agency raised Buck's scores for the portions of its oral presentation and discussion response addressing the demil process from 18 to 22 points, safety from 4 to 7 points, security from 3.5 to 9 points, and environmental concerns from 9 to 17 points. Id.

Buck protests the evaluation of its oral presentation and discussion response regarding safety, security, and environmental concerns. For example, referring to safety concerns, Buck states in its comments (at 16) that:

[w]hile these additional points may not have been in the format that the Army desired and may not have reached the level of detail for an excellent score, a 28% score [7 out of 25 points] on safety issues . . . is unreasonably low for a contractor that the Source Selection Authority recognizes as a 'world-class, multinational firm . . . with an excellent record of past demil performance.'

Based upon our review of the record, we consider the protester's arguments to constitute nothing more than its mere disagreement with the agency's evaluation.

Buck concedes that its oral presentation and discussion response regarding safety concerns were not in the form requested by the agency, and more importantly, did not include the detail requested by the agency. As pointed out by the agency, there is nothing in Buck's oral presentation or discussion response that addresses Buck's compliance "with the contractual safety regulation, DOD 4145.26M, DOD Contractors' Safety Manual for Ammunition and Explosives" as required by the RFP (at 26). Agency Report, tab 37, at 1-2. Rather than discussing its facility siting as requested by the RFP (at 26), Buck's discussion response provided only that "[o]ur plant and all storage, handling, disassembly, and disposal facilities have been approved by [DELETED] authorities for specific amounts of explosives in every room or work space" and offered to provide "a site map . . . if desired." Agency Report, tab 27. Additionally, rather than providing any discussion of the "specific industrial safety and regulatory compliance issues related to this contract" as requested by the RFP (at 26), Buck stated only that "[w]e comply with all [DELETED] and NATO Safety Regulations." *Id.* In sum, because the portions of Buck's oral presentation and discussion response addressing safety fail, in some instances, to provide the information specifically requested by the RFP, and in other instances, appear to be very general, we have no basis to conclude that the agency's evaluation of this aspect of Buck's oral presentation and discussion response was unreasonable.

The portions of Buck's oral presentation and discussion response regarding security is similar to the portion addressing safety. For example, the first of four matters set forth in the RFP to be addressed by offerors with respect to security concerned compliance with a specific Department of Defense regulation regarding "physical security of sensitive conventional arms, ammunition, and explosives." RFP at 26. Buck's oral presentation and discussion response do not even mention this regulation. Again, because Buck's oral presentation and discussion responses either do not provide the information specifically requested by the RFP or appear to be very general, we have no basis to conclude that the agency's evaluation of this aspect of Buck's oral presentation and discussion response was unreasonable.

Buck, while conceding that the portions of its oral presentation and discussion response that address the RFP's environmental concerns also "may not have been in the format that the Army desired and may not have reached the level of detail for an excellent score," argues that its score of 17 out of 25 points "is unreasonably low." Protester's Comments at 19. In light of our above conclusions, we need not determine the reasonableness of this aspect of the agency's evaluation. That is, even if Buck's oral presentation and discussion response addressing the RFP's environmental concerns received a perfect score of 25 points, a total score of 63 points (55 points as evaluated plus the 8 remaining points available for environmental concerns) would be considerably less than PRIMEX's total score of 85 points. Given PRIMEX's higher technical score, the offerors' equal ratings of "excellent" for past performance, and PRIMEX's lower evaluated price (proposal price plus transportation costs) of \$13,649,864 when compared to Buck's primary

proposal's evaluated price of \$13,848,676 or its alternate proposal's evaluated price of \$14,768,718, Buck was not prejudiced by the evaluation in this area.

The protest is denied.

Comptroller General
of the United States