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**Comptroller General
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**United States General Accounting Office
Washington, DC 20548**

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Decision

Matter of: Paraclete Armor & Equipment, Inc.

File: B-293509

Date: February 24, 2004

Ruth E. Ganister, Esq., Rosenthal and Ganister, for the protester.
Maj. Robert B. Neill, and Christopher E. Kernan, Esq., Department of the Army, for the agency.
John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably determined that the protester's proposal contained elements of risk that justified the award of a contract to an offeror that had submitted a slightly higher-priced proposal.

DECISION

Paraclete Armor & Equipment, Inc. protests the award of a contract to Eagle Industries under request for proposals (RFP) No. USZA22-03-R-0027, issued by the Department of the Army, for quick release body armor vest systems. Paraclete protests that the evaluation of its proposal was unreasonable, and evidenced bias against Paraclete and unequal treatment of the offerors.

We deny the protest.

The RFP provided for the award of a fixed-price, indefinite-delivery/indefinite-quantity contract, to the offeror submitting the proposal representing the best value to the government based upon the evaluation factors of technical, past performance, and price. The RFP advised that the technical factor (which consisted of 20 evaluated criteria) was more important than the past performance factor, and that the technical and past performance factors combined were more important than price.

The RFP set forth detailed technical requirements for the vest systems, providing, for example, that the vest systems were to have "a dual quick release system that allows the operator easy access to the quick release handle," and were to "be capable of being worn by [special operations force] operators under the parachute harness

without causing any increased risk of injury during static airborne operations.” RFP at 23. The RFP contained detailed instructions regarding the preparation of proposals, and required the submission of one sample vest system per size (small, medium, large and extra large) for evaluation, as well as written technical, past performance, and business/price proposals.

The agency received sample vest systems and proposals from three offerors, including Eagle and Paraclete. The samples/proposals were evaluated, discussions conducted, and the offerors’ responses to the discussion questions and proposal revisions evaluated. Eagle’s revised proposal was evaluated as “green/acceptable” under the technical factor and “low risk” under the past performance factor, at an evaluated price of \$6,191,110. Specifically, the agency evaluated Eagle’s proposal as “blue/excellent” under 3 of the evaluation criteria comprising the technical evaluation factor, and “green/acceptable” under the remaining 17 criteria comprising the technical evaluation factor. Paraclete’s proposal was evaluated as “green/acceptable” under the technical factor and “low risk” under the past performance factor, at an evaluated price of \$[DELETED]. The agency evaluated Paraclete’s proposal as “green/acceptable” under 18 of the evaluation criteria comprising the technical evaluation factor, and “yellow marginally acceptable” under the remaining 2 criteria. Agency Report (AR), Tab 33, Post-Negotiation Business Clearance Memorandum, at 3-4. The contracting officer/source selection authority selected Eagle’s slightly higher-priced proposal for award, explaining that while Paraclete’s and Eagle’s proposals were both evaluated as technically acceptable, Paraclete’s proposal “still contained some elements of risk.” AR, Tab 32, Source Selection Decision, at 1.

Paraclete first argues that the evaluation of its proposal under the technical factor was unreasonable. In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency’s judgment was reasonable and in accord with the evaluation factors set forth in the RFP. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. The protester’s mere disagreement with the agency’s judgment does not establish that an evaluation was unreasonable. UNICCO Gov’t Servs., Inc., B-277658, Nov. 7, 1997, 97-2 CPD ¶ 134 at 7.

The record reflects that the agency, while evaluating Paraclete’s initial proposal/sample as “green/acceptable,” determined that the proposal/sample had “no areas of major strength, 4 areas of acceptable weakness, and 2 areas of marginal acceptance.” AR, Tab 19, Initial Technical Evaluation Board (TEB) Report, at 13.

With regard to the areas of “acceptable weakness,” one of the agency evaluators was able to “physically hand pull apart” the vest system’s “release system,” and the TEB concluded that this created the risk that the vest system could release prematurely “under ground impact loading (e.g., airdrop).” Id. at 10, 13. Additional weaknesses noted were the result of the agency’s determination that Paraclete’s vest system

posed “the potential for user mix-up between [the] vest release lanyard and reserve parachute lanyard during a parachute mishap,” and the fact that Paraclete’s vest system was comprised in part of “non-stainless marine hardware, which would be subject to corrosion in salt water.” Id. at 11, 13.

The two areas of evaluated “marginal acceptance” were “somewhat related,” in that both concerned the design of the vest system’s cummerbund. In this regard, the record reflects that “[i]t was the consensus of the [TEB] that the cummerbund on [Paraclete’s] system is a marginally acceptable design and would not function well under the added weight of MOLLE pockets and equipment.”¹ The agency found here, among other things, that Paraclete’s vest system would not allow for “rapid access” to the vest system’s “modular pocket/pouches,” as required by the solicitation, and created “a significant operational deficiency,” in that it “compromise[s] the intended load[-]bearing function of the releasable vest system and need[s] to be corrected.” Id. at 9, 12-13.

The agency conducted written discussions with Paraclete, and specifically informed Paraclete of each of the evaluated weaknesses and areas of marginal acceptance discussed above. For example, with regard to the design of the vest system’s cummerbund, the written discussions provided as follows:

Regarding the requirement that the vest system shall orient the modular pocket/pouches to provide rapid access: The vest was found to be marginally acceptable on this criterion. When weighted MOLLE pockets were attached to the cummerbund and the user moved up and down, the cummerbund became dislodged from the Velcro attachment and the top edge rolled over. Correspondingly, the upper portions of the pockets also rolled over, inhibiting access to the MOLLE pockets and reducing the ability of the user to rapidly retrieve his equipment. This is considered a major design deficiency resulting in compromised operational suitability.

AR, Tab 22, Contracting Officer’s Letter to Paraclete (July 25, 2003), attach.-Paraclete Discussion Items, at 1. The agency’s written discussions concluded by providing that “responses and any proposal revisions you wish to make are due via email,” and provided an e-mail address. AR, Tab 22, Contracting Officer’s Letter to Paraclete (July 25, 2003).

The protester provided written responses to each of the discussion items identified by the agency. With regard to the evaluated area of marginal acceptability

¹ MOLLE is an acronym for the modular lightweight load-carrying equipment system.

associated with the design of the vest system's cummerbund, Paraclete responded as follows:

I assume that by "moved up and down" you mean jumped up and down. I was not aware of a requirement that the cummerbund had to stay in place when the operator repeatedly jumped up and down. It could be determined that this aspect of the testing was unrealistic as it would never be repeated in a real life situation. This aspect of the test could also be looked at as targeted to manifest an artificial deficiency in one system while also manifesting an artificial advantage of another system. I say this based on the fact that of the many thousands of vest[s] that we have had in service for the past several years we have never, ever, had an operator return to us with feedback stating that when they jumped up and down repeatedly with weighted pockets on the cummerbund, the cummerbund rolls over at the top and they can't use the pockets. One could assume from this that it either is not a problem or that none of these operators ever in the real life use of these system[s] has had to stand in one place and repeatedly jump up and down.

I will not make this determination but will address this "deficiency" as if it were actual.

Paraclete's response continued by offering three different approaches to resolving the agency's evaluated concern with the design of the vest system's cummerbund. The protester's responses to the remainder of the agency's evaluated concerns with Paraclete's proposal/sample under the technical factor were similar in manner; that is, they expressed Paraclete's disagreement with the agency's determinations, suggested alternatives to the current design, and concluded with a statement that Paraclete would do "what ever is desired." AR, Tab 23, Paraclete's Response to Discussions (July 28, 2003), at 1-3.

The agency reviewed Paraclete's responses, and informed Paraclete that it was unclear whether Paraclete was proposing "a specific change" for each of the evaluated areas of acceptable or marginal weakness, or whether Paraclete was "not proposing any changes." This letter informed Paraclete that the agency would "not make assumptions" regarding its proposal, and requested that Paraclete "please clarify" its response to the agency's discussion items. AR, Tab 24, Contracting Officer's Letter to Paraclete (July 29, 2003). This letter was followed by an e-mail to Paraclete (in response to a Paraclete query) that informed the protester that "wording along the lines of 'we'll do whatever you want' is not a definitive technical solution." AR, Tab 25, Contract Specialist's E-Mail to Paraclete (July 30, 2004).

Paraclete responded by referring to what it viewed as the agency's "extremely subjective determinations about the so called deficiencies in [Paraclete's] design," and again offering, for example, three different approaches to resolving the agency's

evaluated concern with the design of the vest system's cummerbund. Paraclete continued here by clarifying that it was "proposing three options and ask that you determine the severity of this perceived problem." Paraclete added that "[n]one of our current users have ever encountered this problem before and therefore I would recommend [DELETED]." Paraclete concluded this section of its response by stating that "[w]e again offer three options," and "[w]e ask that you determine if any or all are necessary." The protester's responses to the remainder of the agency's evaluated concerns with Paraclete's proposal/sample under the technical evaluation factor were similar in manner, in that they expressed Paraclete's disagreement with the agency's determinations, suggested alternatives, and concluded by stating that Paraclete would change its proposal/sample to "what ever [the agency] desires," although it commented that "[t]he approach of not cramming somebody else's ideas down their throat has made our system the standard." AR, Tab 26, Paraclete's Response, at 1-3.

The agency evaluated Paraclete's responses, and determined with regard to the vest system's cummerbund design that any of Paraclete's three proposed solutions "might work," depending on "where [DELETED]." The agency noted, however, that Paraclete's response to the discussion questions did not include "a sample, pictures or drawings incorporating the changes so it was very difficult to assess the functional and operational efficacy of the proposed corrective action based only on a written response." As a result, the agency again evaluated this aspect of Paraclete's proposal/sample as "marginally acceptable." AR, Tab 30, Final TEB Report, at 9-11. In selecting Eagle's proposal/sample for award, the agency noted with regard to Paraclete's proposal/sample that there was "an element of risk to their proposal, because, without a specific proposed solution, the Government technical evaluators could not make an affirmative determination that one of the possible solutions, if any, actually resolves the problem(s)." AR, Tab 32, Source Selection Decision, at 1.

In our view, the agency's determination that Paraclete's response, as set forth above, provided alternate solutions and not single solutions to address the agency's evaluated concerns was reasonable. This is illustrated by Paraclete's responses regarding the design of the vest system's cummerbund, where Paraclete proposed different technical approaches to addressing the agency's evaluated concerns, made a recommendation as to which of the approaches may work best, but then reiterated its three alternative solution approach and requested that the agency "determine if any or all are necessary." AR, Tab 26, Paraclete Letter to the Contracting Specialist. Based upon our review of the record, we cannot find unreasonable the agency's determination that Paraclete's responses to the discussion questions did not set forth a specific proposed solution, nor can we find unreasonable the agency's conclusion that Paraclete's proposal contained elements of risk that justified the award based on a slightly higher-priced proposal that did not have such risks.

Paraclete contends that the agency's actions during discussions evidenced unequal treatment of offerors, given that Eagle submitted revised sample vest systems in

response to the agency's discussion questions.² The protester argues in this regard that the submission of samples in response to the agency's discussion questions was not "requested or in reality permitted," pointing out here that that the contracting officer's discussions letter provided that responses were to be submitted by e-mail. Protest at 15. The protester also complains that because of this, its responses to discussions were unfairly criticized by the agency for lacking a vest system sample incorporating the changes Paraclete proposed to make. The protester concludes that "had Paraclete known that it too could have submitted revised samples and had it done so, it is likely that that the evaluations would have been even closer, and the outcome of the award determination might well have turned in Paraclete's favor." Protester's Comments at 17.

However, we find that the protester was not prejudiced by the agency's allowing Eagle to submit a revised sample in response to the discussions. Competitive prejudice is necessary before we will sustain a protest; where the record does not demonstrate that the protester would have a reasonable chance of receiving award but for the agency's actions, we will not sustain a protest, even if deficiencies, such as an unreasonable or unequal evaluation of proposals, is found. Leisure-Lift, Inc., B-291878.3, B-292448.2, Sept. 28, 2003, 2003 CPD ¶ ___ at 10; Metropolitan Interpreters & Translators, B-285394.2 et al., Dec. 1, 2000, 2001 CPD ¶ 97 at 9. A variety of factors show the lack of prejudice to Paraclete.

We first note that, as set forth above, Paraclete's responses to the agency's discussion questions were not found lacking by the agency solely because Paraclete did not submit a revised sample vest system. Rather, the agency noted that Paraclete, while proposing alternative solutions to the areas of its proposal/sample evaluated as marginally acceptable by the agency, did not include "a sample, pictures or drawing incorporating the changes" Paraclete proposed to make to its vest system, and that because of this, "it was very difficult to assess the functional and operational efficacy of the proposed corrective action." AR, Tab 30, Final TEB Report, at 9-11. Thus, as provided by the agency's evaluation documents, Paraclete could have addressed the agency's concerns had it submitted either pictures or drawings of the vest system with the proposed changes, and contrary to the protester's assertion, there is nothing in the RFP or record to suggest that the submission of pictures or drawings was prohibited.

² The record shows that Eagle asked the agency after receiving its discussion questions whether the submission of revised sample vest systems was permissible, and was informed by the agency that "it is up to you how to respond," and "it is up to you to make sure that your response (with or without physical sample) contains enough detail and information to permit technical evaluation [of] your response against the negotiation issue and requirements." AR, Tab 28, Contracting Specialist's E-Mail to Eagle (July 28, 2003).

Another factor showing the lack of prejudice to Paraclete is evidenced in its responses to the agency's discussion questions (set out above), which consistently take issue with the legitimacy of the agency's evaluated concerns, suggest that the design of its vest system remain in its current configuration, and suggest alternative approaches to address the agency's concerns with concluding statements that the agency should choose the approach from the alternatives provided and that Paraclete would do whatever the agency desired. In our view, there is simply nothing in Paraclete's responses that indicates that Paraclete would have submitted a revised vest system sample had it known that the submission of such a sample was permissible, and in fact Paraclete does not claim that it would have done so in these circumstances if it thought this were permitted.

Yet another factor showing lack of prejudice is the fact that Eagle's initial proposal/samples received the same ratings under the same 20 evaluation criteria as did its proposal/samples as revised, which suggests that Eagle did not receive a material competitive advantage because of its submission of the revised sample.

Paraclete finally protests that it "may have been the victim of an improper evaluation by virtue of possible involvement of [certain unnamed] personnel in the evaluation" who according to Paraclete "have developed an inherent bias" against Paraclete. Protester's Comments at 22, 25; Protest at 16. The agency denies any bias in the evaluation, and asserts that, in any event, the personnel Paraclete claims are biased against it "did not participate in the evaluation review, testing or consideration of the proposals." Contracting Officer's Statement at 10. According to the agency, the role of the personnel Paraclete claims are biased against it was "limited to non-evaluating advising and administrative support," including "activities such as coordinating the nomination of technical evaluators and the user community; coordinating the location and time of the technical evaluations; coordinating paperwork." *Id.* at 3.

We have reviewed the record and find no credible evidence of bias or bad faith on the part of the agency. Prejudicial motives will not be attributed to contracting officials on the basis of unsupported allegations, inference, or supposition. McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 28. In our view, the agency's actions during this acquisition and evaluation of the offerors' competing proposals were reasonable and in accordance with the evaluation criteria set forth in the solicitation.

The protest is denied.

Anthony H. Gamboa
General Counsel