

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Raloid Corporation

File: B-297176

Date: November 10, 2005

Anthony Jadra for the protester.

George C. H. Chou for DE Technologies, Inc., an intervenor.

Timothy Lasko, Esq., Department of the Navy, for the agency.

Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest is denied where the record shows that the agency's evaluation was reasonable and consistent with the solicitation's evaluation factors.
 2. Where proposal, on its face, does not reasonably lead the agency to conclude that the offeror will not comply with the subcontracting limitation contained in the solicitation, the offeror's compliance concerns a matter of responsibility or contract administration not for review by the Government Accountability Office.
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DECISION

Raloid Corporation protests the award of a contract to DE Technologies, Inc. (DET) under request for proposals (RFP) No. N68335-05-R-0046, issued by the Department of the Navy for aircraft adapters. The protester primarily objects to the agency's evaluation of the Raloid and DET proposals.

We deny the protest.

The solicitation was issued on February 1, 2005 for one pre-production ADU-876/E aircraft adapter unit and 450 production units.¹ The solicitation also contained four

¹ The adapter is used primarily to transport air-launched weapons and stores from the magazine and storage sites to the aircraft and is part of the ground support equipment for the United States Marine Corps Expeditionary Airfields. The adapter is secured to the bed of a trailer. Contracting Officer's Statement at 2.

1-year option periods for 450 units per option year, for a total of 2,250 production units manufactured in accordance with a government-furnished drawing package.

The RFP provided that award would be made on a “best value” basis. The RFP listed the following evaluation factors and subfactors: (1) technical ((a) technical approach, consisting of manufacturing, assembly, and welding; production evaluation, testing, and quality assurance; and production plan, and (b) management, consisting of manufacturing capacity, facilities, and personnel resources; management approach; quality assurance program; and extent of small business and small disadvantaged business participation); (2) past performance (quality of product and processes; timeliness of performance; business professionalism and business relations; and customer satisfaction; (3) experience (similarity of product and similarity of environment); and (4) price. RFP ¶ M.27.

Under the RFP, the technical evaluation factor was more important than the past performance and experience evaluation factors and the past performance and experience evaluation factors were equal in importance. The evaluation subfactors under the technical and past performance evaluation factors were listed in descending order of importance and the experience subfactors were identified as equal in importance. Offerors were further advised that price was significantly less important than the non-price evaluation factors combined, but the degree of importance of price would increase with the degree of equality of the proposals.

The agency received 18 proposals by the closing date. As relevant here, as a result of the agency’s evaluation, two proposals, including DET’s, were rated highly satisfactory and low risk under the technical evaluation factor and the proposals of both of these offerors received a low risk rating under the past performance and experience evaluation factors. Agency Report (AR), Tab 2, Source Selection Evaluation Board (SSEB) Evaluation Summary. DET, whose proposal was rated highly satisfactory overall, proposed the lowest total price of all offerors. The cost evaluation team determined that DET’s proposed price was reasonable. DET was requested to verify its price to ensure that its price proposal did not contain any mistakes; DET subsequently confirmed its price. AR, Tab 3, E-mail from DET to Agency. Raloid’s proposal was rated satisfactory and low risk under the technical evaluation factor, and low risk for both the past performance and experience evaluation factors. AR, Tab 6, Business Clearance Memorandum, at 15. Raloid submitted the lowest price of the six proposals rated satisfactory overall. Id. at 20. Raloid’s price was significantly higher than DET’s.

The source selection advisory counsel (SSAC) recommended to the source selection authority that DET be selected for award because its proposal represented the best value to the government based on DET having submitted one of the two highest rated proposals at the lowest overall evaluated price. AR, Tab 4, SSAC Source Selection Memorandum. Following the Small Business Administration’s dismissal of Raloid’s size status challenge to DET, award was made to DET on August 19. After receiving a debriefing, Raloid filed this protest with our Office on September 6.

Regarding the evaluation of DET's proposal, the protester maintains that DET cannot satisfy any of the RFP requirements because DET has no documented quality assurance system and lacks the equipment, employees, and facilities necessary to perform the requirement.

For the technical evaluation factor, based on the agency's rating of DET's proposal as highly satisfactory and low risk under the technical approach subfactor and as satisfactory and low risk under the management subfactor, the agency rated DET's proposal as highly satisfactory with low risk overall. AR, Tab 6, Business Clearance Memorandum, at 18. Specifically, under the technical approach subfactor, the evaluators found that DET provided detailed explanations of how components and subassemblies would be fabricated and DET described its plans for the manufacture of each part. The agency also found that DET provided exceptional detail, including illustrations, of how its manufacturing approach would minimize warping and deflection during welding operations. In its proposal, the evaluators noted that DET provided several other benefits, including a detailed plan for the pre-production unit and a commitment to provide the unit earlier than required under the RFP. With respect to the management subfactor, the evaluators found that DET described in detail its system to manage and track the project and provided details on its key personnel and its experience and qualifications. The agency also found that DET's quality assurance system exceeded the requirements of the RFP.

DET's proposal received a low risk rating under the experience evaluation factor. DET provided information on five relevant, similar contracts, all of which required the type of machining, welding, finishing, and assembly required for this procurement. The agency noted that DET also previously manufactured other adapters using similar design configurations and manufacturing approaches. AR, Tab 2, SSEB Evaluation Summary. Under the past performance evaluation factor, the agency found that all of DET's contracts were "performed well in terms of schedule and quality." Id. Additionally, DET had eight contracts listed in the contractor past performance assessment report system—three contracts which were rated very good and five contracts which were rated exceptional.² As a result of this information, DET was rated low risk under the past performance evaluation factor. Based on its evaluation of DET's proposal under the non-price evaluation factors, the agency concluded that DET had the manufacturing, assembly, welding, and

² The protester argues that the evaluation was improper because members of the evaluation team had, and considered, recent, first-hand knowledge of the performance of both DET and the other highly rated offerors. However, the RFP specified that references other than those identified by the offeror in its proposal may be contacted by the government for information to be used in the evaluation of the offeror's past performance. RFP at 43. Moreover, an evaluator's personal knowledge of an offeror may properly be considered in a past performance evaluation. Omega World Travel, Inc., B-271262.2, July 25, 1996, 96-2 CPD ¶ 44 at 4.

management capability, as well as the experience and performance record, necessary to successfully execute the aircraft adapter project.³ In short, the agency's evaluation of DET's proposal is documented and reasonable. While Raloid believes that DET does not have the necessary resources to perform, Raloid's protest in this regard constitutes nothing more than mere disagreement with the agency's evaluation of DET's capabilities as reflected in its proposal. Such disagreement, however, does not demonstrate that the evaluation was unreasonable or inconsistent with the evaluation factors. See McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 18.

Raloid also questions whether DET will comply with the limitations on subcontracting provision at Federal Acquisition Regulation (FAR) § 52.219-14 contained in the RFP because, in its view, DET does not have adequate facilities, equipment, or employees to manufacture the adapters.

The FAR limitations on subcontracting provision requires that a prime contractor perform at least 50 percent of the cost of the contract incurred for personnel with its own employees. An agency's judgment as to whether a small business offeror will comply with the limitations on subcontracting provision is a matter of responsibility and the contractor's actual compliance with the provision is a matter of contract administration. Coffman Specialties, Inc., B-284546, B-284546.2, May 10, 2000, 2000 CPD ¶ 77 at 5. However, where a proposal, on its face, should lead an agency to the conclusion that an offeror could not and would not comply with the subcontracting limitation, the proposal may not form the basis for an award. KIRA, Inc., B-287573.4, B-287573.5, Aug. 29, 2001, 2001 CPD ¶ 153 at 3. There is nothing on the face of DET's proposal evidencing that the firm cannot and will not comply with the RFP's subcontracting limitation provision. Accordingly, we have no basis to question the agency's reliance on DET's representations in concluding that DET agreed to perform as required.⁴

³ The agency reports that during a post-award meeting, the awardee's plant layout and equipment were verified. AR, Tab 16, Affidavit of SSEB Chairperson.

⁴ Raloid also argues that DET's price is unreasonably low. With respect to a fixed-price award, a protester's claim that an offeror submitted an unreasonably low price—even that the price is below the cost of performance—is not a valid basis for protest. An offeror, in its business judgment, properly may decide to submit a price that is extremely low. Diemaster Tool, Inc., B-238877, Apr. 5, 1990, 90-1 CPD ¶ 375 at 2. An agency decision that the firm can perform the contract at the offered price is an affirmative determination of responsibility, which we will not review except in circumstances not alleged here. Bid Protest Regulations, 4 C.F.R. § 21.5(c) (2005).

Raloid contends that its proposal was not fairly evaluated, maintaining that it demonstrated superior and outstanding benefits through its certified quality assurance system and its previous experience building the adapters.

Under the technical evaluation factor, the evaluators rated Raloid's proposal as satisfactory with low risk. AR, Tab 2, SSEB Evaluation Summary. The RFP required offerors to provide a detailed discussion of their manufacturing and assembly approach, including manufacturing, welding, and assembly techniques, equipment to be used, and requirements for specialized equipment, tools, and fixtures. RFP ¶ L.I.A. The proposal narrative was to include a description of how any specialized equipment, tools, and fixtures would be used in the process. Id. The evaluators found that Raloid's proposal lacked detail in certain areas, such as its failure to describe the process for fabrication of individual major components. The evaluators also noted that Raloid's proposal did not fully identify assembly line layout and did not adequately address the pre-production unit test equipment. The evaluators also noted that Raloid stated that it "will be formulating processing and designing . . . [for the] fixtures required," but did not describe the processes in the detail required by the RFP. AR, Tab 16, Affidavit of SSEB Chairperson. While recognizing that Raloid's proposal provided some potential benefits, such as noting that Raloid, like DET, had a certified quality assurance system that exceeded the RFP requirement, the evaluators concluded that, based on Raloid's lack of detail concerning its proposed manufacturing and assembly processes, Raloid's technical proposal merited a rating not higher than satisfactory overall. Although Raloid expresses general disagreement with its rating, Raloid does not meaningfully rebut the agency's evaluation concerns. Based on our review of the record, we have no basis to question the reasonableness of the agency's evaluation of Raloid's proposal.⁵

The protest is denied.

Anthony H. Gamboa
General Counsel

⁵ Raloid suggests that some of the evaluators were biased in favor of the awardee because of prior experience with the awardee. Government officials are presumed to act in good faith; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Triton Marine Constr. Corp., B-250856, Feb. 23, 1993, 93-1 CPD ¶ 171 at 6. Accordingly, Raloid's speculation in this regard provides no basis to question the award. Raloid also complains that the agency did not respond to its Freedom of Information Act (FOIA) request for information related to this procurement. Our Office has no authority to determine what information an agency must disclose in connection with a party's request to an agency under FOIA. The protester's recourse in this regard is to pursue the disclosure under the remedies provided by FOIA. LNM Corp., B-247669, Apr. 29, 1992, 92-1 CPD ¶ 405 at 2.