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Decision

Matter of: TransAtlantic Lines, LLC

File: B-401825

Date: November 23, 2009

Brian S. Gocial, Esq., and Brian A. Bannon, Esq., Blank Rome LLP, for the protester.
Lars E. Anderson, Esq., Justin J. Wortman, Esq., and Maria Alejandra del-Cerro, Esq., Venable LLP, for Sealift, Inc., an intervenor.

Michelle L. Salter, Esq., Department of the Navy, for the agency.

Jonathan L. Kang, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's acceptance of a letter of commitment from the owner of a cargo vessel as evidence that the awardee had secured a commitment for the vessel is denied where the solicitation did not specify the evidence required, and the record shows that the contracting officer's determination was reasonable.

DECISION

TransAtlantic Lines, LLC, of Greenwich, Connecticut, protests the award of a contract to Sealift, Inc., of Oyster Bay, New York, under request for proposals (RFP) No. N00033-09-R-5502, issued by the Department of the Navy, Military Sealift Command, for the charter of a vessel for cargo transport. TransAtlantic contends that the agency improperly evaluated the awardee's proposal under the solicitation requirement that offerors either own the vessel proposed for contract performance, or provide a letter of commitment from the owner of the vessel that it will be available for contract performance.

We deny the protest.

BACKGROUND

The RFP was issued on March 27, 2009. The RFP anticipated the award of a fixed-price contract, with cost reimbursement line items for certain costs such as fuel, for a 1-year base performance period, and three 1-year and one 11-month option periods. Offerors were required to propose to provide a vessel for worldwide cargo

transportation, with the expectation that the work would be performed primarily in the Far East and Indian Ocean. The RFP provided for award to the lowest-priced, technically-acceptable offeror.

The solicitation here included a number of “boxes,” or requirements, for offerors to address in their proposals. As relevant here, Box 75 stated as follows:

True Ownership: If the Offeror is not the true owner of the vessel being proposed, the Offeror shall provide proof acceptable to the Contracting Officer that the true owner commits that [the] vessel will be provided, if the Offeror is awarded the contract.

RFP § B, Box 75.

The Navy received proposals from six offerors by the closing date of May 18, including TransAtlantic and Sealift. To address the requirement of Box 75, both Sealift and TransAtlantic submitted letters of commitment for their proposed motor vessels (“MV”). Sealift submitted a letter of commitment for the MV Sky Treasure, which stated that “the vessel has been committed to Sealift Inc., New York, in connection with RFP 5502.” Agency Report (AR) Tab 8, Sealift Letter of Commitment. TransAtlantic submitted a letter of commitment for the vessel Heidi B ex MV Rio Bogota, which stated that the owners would sell the vessel to TransAtlantic if that company was awarded the contract before June 20.¹ AR, Tab 9, TransAtlantic Letter of Commitment, at 3.

For reasons not relevant here, the agency’s initial evaluation of offerors’ proposals found that none were technically acceptable, but that all were susceptible to being made acceptable. AR, Tab 25, Business Clearance Memorandum (BCM), at 9. The agency then opened discussions with all offerors.

During discussions, Sealift replaced its original vessel with the MV Rio Bogota, the same vessel that TransAtlantic had offered in its initial proposal. The letter of commitment tendered by Sealift stated, “Sealift or [its] nominee has the exclusive right to offer the MV Rio Bogota for the MSC RFP N00033-09-R-5502. Any other letter issued in this respect is thus null and void.” AR, Tab 19, Sealift Letter of Commitment, July 16, 2009.

Upon receipt of Sealift’s letter of commitment for its replacement vessel, the Navy advised TransAtlantic that since its option to purchase the MV Rio Bogota had expired on June 20, and since another offeror (Sealift) had provided a letter of commitment for that vessel that revoked any earlier letter of commitment,

¹ The name Heidi B ex MV Rio Bogota indicates that the vessel is currently named MV Rio Bogota, but is intended to be renamed MV Heidi B.

TransAtlantic would need to offer a different vessel. In response, TransAtlantic confirmed that the owners of the MV Rio Bogota had given an option for the vessel to another offeror, and confirmed that it no longer had the right to offer the MV Rio Bogota for this procurement. Contracting Officer's ("CO") Statement ¶ 7. TransAtlantic then provided a letter of commitment for the MV LS Aizenshtat. AR, Tab 20, TransAtlantic Letter of Commitment, July 22, 2009, at 1.

The Navy concluded that TransAtlantic's and Sealift's proposals were technically acceptable, including their letters of commitment for the offered vessels, and offered the two lowest prices, as follows:²

	TransAtlantic	Sealift
Technical	Acceptable	Acceptable
Past Performance	Satisfactory	Satisfactory
Price	\$42,415,356	\$39,031,093

AR, Tab 25, BCM, at 9;

The selection decision was made by the CO, who concluded that award should be made to Sealift based on its technically acceptable proposal and lowest proposed cost. *Id.* at 14. After the contract was awarded to Sealift on August 20, and after receiving a debriefing, TransAtlantic filed this protest.³

DISCUSSION

This protest raises a single issue: whether the Navy reasonably concluded that Sealift's letter of commitment satisfied the solicitation requirement to "provide proof acceptable to the Contracting Officer that the true owner commits that [the] vessel will be provided, if the Offeror is awarded the contract." RFP § B, Box 75. TransAtlantic argues that the letter offered by the awardee was not a firm commitment, but rather an option that fell short of the required commitment. For the reasons discussed below, we find no merit to the protester's arguments.

There is no dispute in the record here that Sealift's commitment letter stated that "Sealift or nominee has the exclusive right to offer the MV Rio Bogota for the MSC

² For the technical factor, the agency used an evaluation scheme of acceptable, susceptible of being made acceptable, and unacceptable; for the past performance factor, it used satisfactory, unsatisfactory, and neutral.

³ On August 21, Sealift signed a contract for the purchase of the MV Rio Bogota. Intervenor's Comments on Supp. AR, Oct. 8, 2009, at 13, and Exh. 1 (Letter from Former Owner of the MV Rio Bogota, at 1 (terms and chronology of the sale)).

RFP N00033-09-R-5502.” AR, Tab 19, Sealift Letter of Commitment, July 16, 2009. After reviewing the letter, the CO decided that the letter, as well as the statement by TransAtlantic that it no longer had the right to offer the vessel, was adequate proof that Sealift had the right to offer the MV Rio Bogota. CO Statement ¶ 10.

TransAtlantic argues that Sealift’s letter of commitment did not meet the requirements of the solicitation because it merely stated that the awardee had the “exclusive right to offer” the vessel. The protester contends that this statement falls short of a specific commitment by the owners of the MV Rio Bogota to actually provide the vessel in the event that Sealift were awarded the contract. The protester further argues that its letter of commitment for the MV LS Aizenshtat—the protester’s replacement vessel—provided more detail regarding specific terms and conditions than Sealift’s commitment letter. The Navy responds that its interpretation of the commitment letters was reasonable.⁴

In reviewing a protest of an agency’s evaluation of proposals, our Office will examine the record to determine whether the agency’s judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. A protester’s mere disagreement with the agency’s judgment in its evaluation of offerors’ proposals does not establish that the evaluation was unreasonable. C. Lawrence Constr. Co., Inc., B-287066, Mar. 30, 2001, 2001 CPD ¶ 70 at 4.

We think that the agency reasonably concluded that Sealift’s letter met the solicitation’s requirements. The RFP simply stated that offerors must “provide proof acceptable to the Contracting Officer” that the offeror has the right to tender the proposed vessel. RFP § B, Box 75. Under these circumstances, and without specific criteria for evaluating this issue, the RFP provided broad discretion to accept an offeror’s representation that it had the required commitment. We further think that, on this record, the CO reasonably concluded that Sealift’s letter granting it an

⁴ For the record, we did not agree with the Navy’s contentions that this protest involves a matter of responsibility, which our Office generally does not review. Bid Protest Regulations, 4 C.F.R. § 21.5(c) (2009). We view the letters of commitment here to be a part of the RFP’s technical acceptability criteria, rather than offeror responsibility. See TYBRIN Corp. B-298364.6, B-298364.7, Mar. 13, 2007, 2007 CPD ¶ 51 at 6-7. In addition, the Navy’s evaluation of proposals—including its discussions with offerors regarding issues required to be addressed to make their offers acceptable—showed that the agency viewed the offerors’ responses as a matter of technical acceptability. See AR, Tab 26, Technical Evaluation and Evaluation of Discussions Responses, Aug. 3-7, 2009. On this record, we concluded that this protest raised a matter within our jurisdiction.

“exclusive right to offer” the vessel met the requirements of the RFP.⁵ Additionally, we do not think that the protester’s more detailed letter required the CO to question Sealift’s less detailed letter.

Finally, TransAtlantic argues that certain documents it obtained during this protest indicate that Sealift did not have a firm commitment to provide the MV Rio Bogota, because the vessel was simultaneously being offered for sale.⁶ See Intervenor Comments on AR, Oct. 8, 2009, at 13. In this regard, the owner of the vessel states that Sealift had a “right of first refusal,” which allowed the owner to offer the vessel for sale, with the right for Sealift to purchase it.⁷ See id.; see also id., Exh. 1, Letter from Prior Owners of MV Rio Bogota, at 1.

We note that these matters were not before the CO during the procurement, and there is no evidence the CO was aware of them prior to award. Thus, the question for our review is whether, in light of this information, Sealift’s proposal misrepresented the commitment by the owners of the vessel. Sealift contends that its “exclusive right to offer” the vessel was consistent with “a right of first refusal.” In our view, the offer for sale of the MV Rio Bogota was not inconsistent with Sealift’s letter of commitment, and therefore we find no basis to sustain the protest.

The protest is denied.

Lynn H. Gibson
Acting General Counsel

⁵ We also reject TransAtlantic’s argument that this protest should be sustained because the business clearance memorandum does not specifically discuss the letters of commitment, and because the basis for the CO’s conclusion on this issue is not documented in the contemporaneous record. We think that the CO’s Statement reasonably shows that the matter of the offerors’ letters of commitment was considered as part of the award determination. See CO’s Statement at 10.

⁶ The intervenor points out that the vessel ultimately proposed by the protester, the MV LS Aizenshtat, may also have been offered for sale during the period it was offered for this procurement. Intervenor Comments on AR, Oct. 8, 2009, at 16.

⁷ In fact, Sealift has purchased the MV Rio Bogota since the award of the contract.