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United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

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Decision

Matter of: Kaman Dayron, Inc.

File: B-292997

Date: January 15, 2004

Robert S. Ryland, Esq., and James S. Hostetler, Esq., Kirkland & Ellis, for the protester.

James J. McCullough, Esq., and Steven A. Alerding, Esq., Fried, Frank, Harris, Shriver & Jacobson, for AMTEC Corporation, an intervenor.

Maj. Tami L. Dillahunt, and Sandra Bierman, Esq., Department of the Army, for the agency.

David A. Ashen, Esq., and John M. Melody, Esq., Office of General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is sustained where, under a solicitation that indicated that when rating proposals under the technical evaluation factor particular importance would be placed on the similarity of the items previously produced to the grenade fuze being procured, the record does not support the agency's ultimate determination that the awardee's experience producing part of a different fuze was nearly identical to the experience of the protester in producing the fuze being procured here such that both offerors were entitled to the same "excellent" rating.

DECISION

Kaman Dayron, Inc. protests the award of a contract to AMTEC Corporation by the Department of the Army, U.S. Army Joint Munitions Command, under request for proposals (RFP) No. DAAA-09-03-R-0002, for M549A1 40-millimeter (mm) grenade fuzes. Kaman Dayron, the incumbent contractor, challenges the technical evaluation primarily on the basis that the agency unreasonably considered Kaman Dayron's experience and that of AMTEC to be equal.

We sustain the protest.

The RFP contemplated the award of a fixed-price contract for 747,473 M549A1 grenade fuzes, with an evaluated 50 percent option for an additional 373,736 fuzes. The M549A1 fuze is a component of the 40-mm High Explosive Dual Purpose M430A1 cartridge (grenade) used in the MK-19 Grenade Machine Gun.

Award was to be made to the responsible contractor whose offer was determined to be most advantageous to the government. The most advantageous proposal was to be determined in a “best value” evaluation based on four factors: (1) technical approach, including subfactors for technical and automated production capability, automated acceptance inspection equipment (AAIE) capability, technical data management, production problem investigation and resolution, and vendor control and requirements flow-down; (2) recent, relevant past performance, including subfactors for on-time deliveries and quality of performance; (3) price; and (4) small business utilization. Technical approach was slightly more important than past performance, and each was significantly more important than price, which was more important than small business utilization.

The RFP further indicated that particular importance would be placed on the degree of similarity of offerors’ experience and the items previously produced to the M549A1 fuze—distinguishing among identical, nearly identical, and similar experience—when rating proposals. Thus, with respect to the technical subfactor for technical and automated production capability, the solicitation required offerors to furnish documentation of experience in the use of high-volume production machinery needed to meet quality requirements and delivery dates; photographs of “any existing production equipment that is used or similar to what would be required to produce the M549A1 fuze”; “representative process flow diagrams of identical, nearly identical, or similar items for which the offeror has manufacturing capabilities”; and “technical information of the item produced (other than the M549A1 fuze) revealing any similarity of it to the M549A1 fuze with respect to both assembly and function.” RFP § L at 51. Likewise, with respect to the subfactor for AAIE capability, the solicitation required offerors to document “any existing AAIE in use or that [is] similar in complexity to what is required to perform inspection of the M549A1 fuze,” and furnish “technical information of the item being manufactured, if other than the M549A1 fuze, sufficient to show similarity of it to the M549A1 fuze with regards to assembly, function, and inspection requirements.” RFP § L at 51-52. Further, the RFP defined relevant contracts for purposes of the past performance evaluation “as procuring the same or similar items, requiring the same or similar manufacturing processes, skills, and abilities.” RFP § L at 53. The RFP provided that “[t]he Government reserves the right to determine whether an item is the same or similar and identical or nearly identical.” RFP § L at 54; RFP § M at 57.

The RFP’s focus on the degree of similarity among the items previously produced to the M549A1 fuze was mirrored in the agency’s internal evaluation plan. In this regard, the source selection plan provided in pertinent part that an offeror’s technical approach would be rated excellent where “[t]he offeror has demonstrated the experience and capability to manufacture and inspect the M549A1 Fuze or an item(s) nearly identical in assembly and functional complexity,” and that an offeror’s technical approach would be rated as only good where “[t]he offeror has

demonstrated the experience and capability to manufacture and inspect an item with similar assembly requirements to the M549A1 Fuze.” Source Selection Plan ¶ 8.

Initial proposals were received from two offerors, AMTEC and Kaman Dayron. Kaman Dayron was the developer (in conjunction with the Army) and only manufacturer up to that time of the M549A1 fuze. In this regard, as explained in more detail below, the M549A1 fuze is comprised of a centerplate assembly, which is placed above an escapement assembly under the dome or ogive of the 40-mm grenade. AMTEC, not having manufactured the M549A1 fuze, nor any centerplate assembly, [DELETED] its production of the M550 escapement assembly—a component used in the M550 40-mm grenade fuze and the M918 target practice projectile--[DELETED].

Following the evaluation, the Army determined that AMTEC’s proposal offered the best value to the government. Both AMTEC’s and Kaman Dayron’s proposals received excellent ratings under the technical approach factor. In this regard, in explaining AMTEC’s overall excellent rating, the contracting officer (who was the source selection authority) emphasized that, while AMTEC had not previously manufactured the M549A1 fuze, AMTEC had successfully produced the escapement assembly for the M550 fuze. According to the contracting officer,

AMTEC has successfully produced over 6 million M550 Escapement Assemblies that are nearly identical in design complexity and assembly processes as those used in the proposed M549A1 Fuze production. AMTEC has demonstrated a clear understanding of all critical defects and has current and past experience and technical capability to design, produce, and use AAIE for the inspection of items nearly identical to the M549A1 fuze.

. . . .

AMTEC’s proposal may portray a slight risk in that they have never assembled the centerplate, a subcomponent of the M549A1 Fuze. However, AMTEC is the previous/current producer of the M550 Escapement Assembly, the most complex, major component of the M549A1 Fuze. Successful manufacture and assembly of the M550 Escapement Assembly is of utmost importance in ensuring the manufacture of a quality M549A1 Fuze. Although the centerplate assembly is complex, manufacture of the M550 Escapement Assembly far outweighs it in complexity.

Source Selection Decision (SSD) at 4, 11. In addition, the Army rated the past performance of both AMTEC and Kaman Dayron as good. As for small business utilization, the proposal of AMTEC, itself a small business, received an excellent rating while Kaman Dayron’s received a good rating. Based on the above considerations, the contracting officer concluded that the proposals were “relatively

equal on non-cost factors.” SSD at 12. However, AMTEC’s evaluated cost (price plus charge for the use of government-furnished equipment and materials) of \$[DELETED] (with first article), was \$[DELETED] lower than Kaman Dayron’s cost of \$[DELETED] (with first article). Given the evaluated relative equality of the proposals with respect to the non-cost factors, the contracting officer concluded that there was no basis for paying the price premium associated with Kaman Dayron’s proposal, and thus made award to AMTEC. Upon learning of the award, and after being debriefed, Kaman Dayron filed this protest with our Office.

Kaman Dayron asserts that the Army unreasonably evaluated the M550 escapement assemblies produced by AMTEC as being “nearly identical in design complexity and assembly processes” to the M549A1 fuze, designed and produced by Kaman Dayron, which is the subject of this procurement. As a result, it argues, the agency unreasonably assigned AMTEC’s proposal the same technical factor rating of excellent assigned to Kaman Dayron’s proposal.

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 RFP criteria and applicable procurement statutes and regulations. See Rolf Jensen & Assocs., Inc., B-289475.2, B-289475.3, July 1, 2002, 2002 CPD ¶ 110 at 5. Based on the record here, including testimony at the hearing we conducted in this matter, we find that the evaluation was unreasonable.

As previously noted, the M549A1 fuze consists of a centerplate assembly placed atop an escapement assembly under the dome (or ogive) of the 40-mm grenade. Because of their importance in the source selection decision, we describe the two assemblies in some detail. The escapement assembly serves a “safe and arm” function by ensuring that the fuze is not armed during handling nor sooner than approximately 100 milliseconds after firing or launch (so that the round will not explode if it hits a tree branch or other interference near the gunner). This “safe and arm” function is accomplished in the M549A1 escapement assembly through several safety features, including: (1) a setback pin (and spring), which locks the rotor containing the detonator into a safe position, and only retracts (thereby allowing the escapement to move to an armed position) when the round is fired; (2) a double spin “detent” consisting of two spin locks that move to the outside and are thereby disengaged from the rotor as a result of the centrifugal forces generated by the rotation of the round caused by its traveling down the grooved (rifled) gun barrel; and (3) a timing device that prevents movement into an armed position for approximately 100 milliseconds after firing. In addition, the M549A1 escapement assembly includes a rotor locking feature--when the rotor in the escapement assembly rotates into an armed position, a small locking ball slides into the detent, thus locking the rotor into position such that the detonator is properly aligned with the firing pin in the centerplate assembly and cannot become misaligned prior to impact.

The centerplate assembly serves a detonation function by sensing the impact of the round on the target and then pressing the firing pin into the detonator. The M549A1 centerplate assembly accomplishes the detonation function using three weighted brackets; because of the centrifugal force of the spinning round, each bracket rotates on a retaining (hammerweight) pin away from the firing pin during flight, but when the round hits, a bracket spring pushes back enough such that one or more brackets press into the firing pin. Hearing Transcript (Tr.) at 12-31, 186-193; Declaration of Kaman Dayron General Manager.

As explained above, it was the escapement assembly for another fuze--the M550--[DELETED] that the contracting officer cited in her SSD as the AMTEC experience most similar to experience with the overall M549A1 fuze. It appears from the record, however, that the M549A1 escapement assembly is more complex in design and assembly than the M550 escapement assembly. In this regard, while the M549A1 escapement assembly was designed to use many of the same components and features of the M550 escapement assembly, the M549A1 escapement assembly includes significant features not found in the M550 escapement assembly (as well as having a number of parts that are somewhat different from the corresponding M550 parts). Specifically, the double spin detent and the rotor locking feature with the small locking ball in the M549A1 escapement assembly are not present in the M550 escapement assembly. While the agency asserts that these features do not substantially increase assembly or functional complexity, Agency Comments, Dec. 2, 2003, the double spin detent consists of two spin locks that are smaller, more complex in shape than the locking feature on the M550 and, according to Kaman Dayron, the only manufacturer of the M549A1 fuze, difficult to install. Tr. at 196-97; Declaration of Kaman Dayron General Manager.¹

The agency has not adequately explained why the M550 escape assembly was nearly identical in complexity to the M549A1 escapement. In fact, Kaman Dayron's position that the smallness of the double spin detent increases the assembly complexity is consistent with the view expressed by one of the three agency technical evaluators, namely, that the M549A1 centerplate is less complex than the M549A1 escapement assembly because it uses larger parts that have lesser tolerance requirements and are

¹ We note that the record indicates that the contracting officer lacked technical knowledge regarding the fuzes and their production, and instead relied on the agency technical evaluators. Tr. at 237, 244-49; see Tr. at 20, 29, 63-65, 90, 220-21. Further, while, according to the contracting officer, AMTEC has manufactured 6 million M550 escapement assemblies, Kaman Dayron has manufactured 22 million M550 escapement assemblies and 15 million M550 fuzes (as well as 1 million M549A1 fuzes and 30 million of the earlier M549 fuzes). Declaration of Kaman Dayron General Manager. Thus, the record indicates that Kaman Dayron has detailed knowledge of both the M550 fuze and components and the M549A1 fuze it developed and manufactured.

easier to assemble because of their larger size. Tr. 51, 133, 140-41. Further, it appears from the record that, overall, the M549A1 escapement assembly is more difficult to assemble than the M550 escapement assembly. Not only does the M549A1 escapement assembly include additional, smaller, complex-in-shape parts but, in addition, unlike the essentially single-plane M550 design, the M549A1 is a layered design in which some parts are less accessible and which requires a more complex, sequential assembly process. Tr. at 196, 314-16, 375, 386.

As for the M549A1 centerplate assembly, the agency maintains that this assembly is not as complex as the escapement assembly. However, even if the centerplate assembly is less complex, the source selection decision characterized the M549A1 centerplate assembly as “complex,” SSD at 11, and the record confirms that production of the centerplate assembly poses significant challenges.² Further, the fact remains that AMTEC had not produced any centerplate assemblies for any fuze. The agency, however, failed to account for AMTEC’s lack of experience with centerplate assemblies; nothing in the record indicates that, in determining the similarity of experience, the agency accounted for the addition to the overall complexity resulting from having to manufacture a centerplate assembly as well as an escapement assembly, and then having to integrate the two assemblies into an overall fuze.

The position taken by the evaluators immediately before preparing the final evaluation summary was consistent with the view that the M550 escapement is only similar--and not nearly identical--to the M549A1 fuze. Tr. at 52-53, 105, 162. Specifically, the handwritten draft of the evaluation team’s final evaluation summary states that “[t]he M550 escapement is similar in design and complexity to the M549A1 escapement used in the M549A1 fuze.” Agency Evaluation Notes. Again, the source selection plan provided in pertinent part that an offeror’s technical approach would be rated as excellent where the offeror demonstrated the experience and capability to manufacture and inspect “the M549A1 Fuze or an item(s) nearly identical in assembly and functional complexity,” but would be rated as only good where the offeror demonstrated the experience and capability to manufacture and inspect “an

² Although the centerplate assembly generally has larger, simpler parts than does the escapement assembly, the record indicates that production/assembly of the centerplate assembly is a very demanding process. This process extends beyond simply casting parts in an enclosed die, that is, in a controlled environment, and instead also requires a dynamic, difficult-to-control process of [DELETED]. Tr. at 303-05, 313-19, 327-28, 344-46. Indeed, the complexity of the M549A1 centerplate assembly and the demanding nature of the production process appear to be confirmed by the fact that, as verified by the agency’s evaluators, the problems encountered with the M549A1 fuze, namely duds or unexploded ordinance, have been attributable to [DELETED]. Tr. at 75-77, 379.

item with similar assembly requirements to the M549A1 Fuze.” Source Selection Plan ¶ 8.

The agency does not concede that the evaluators’ reference to “similar” equates with a determination that the M550 escapement assembly did not satisfy the “nearly identical” standard. When asked during the hearing to explain why the final evaluation summary stated that the M550 escapement assembly is “nearly identical in assembly, processes, design complexity and function as the M549A1 fuze,” rather than merely similar, the evaluator responsible for preparing the team’s handwritten draft summary, responded that “it is just easier to say similar than it is to say nearly identical.” Technical Evaluation Worksheet, AMTEC; Tr. at 53-54, 85. We find this explanation unreasonable. The source selection plan emphasized the importance of distinguishing between these two levels (similar vs. nearly identical) and, thus, as conceded by the evaluator, there was an important difference in the meaning of these phrases in the context of this evaluation. Tr. at 85. More importantly, the evaluator’s explanation in no way explains the shift from the narrower claim of similarity (or near identity) between the two escapements to the broader, and unsupported, claim of near identity between the M550 escapement and the overall M549A1 fuze.

Again, in reviewing protests against allegedly improper evaluations, our Office does not reevaluate proposals, and we will not substitute our judgment for that of the agency; rather, we examine the record only to determine whether the agency’s judgment was reasonable (and in accord with the RFP criteria and applicable procurement statutes and regulations). However, where neither the source selection decision nor the evaluation record support the agency’s conclusions, we will sustain a protest challenging the agency’s award decision. See TRW, Inc., B-260788.2, Aug. 2, 1995, 96-1 CPD ¶ 11 at 3-4. We find that this is the case here. Given that the record indicates that there are significant differences in design and complexity between the M550 escapement, which is only part of a fuze, and the M549A1 fuze, and the fact that the contracting officer relied upon the evaluators’ unexplained conclusion in determining that the M550 escapement was nearly identical to the M549A1 fuze, we conclude that the record does not support the determination of near identity. Since this finding was one of the bases underlying AMTEC’s excellent rating under the technical factor, it follows that this rating, and the overall determination that the offerors were relatively equal under the non-cost factors, were unreasonable.

Although the contracting officer has testified that there was no “guarantee” that Kaman Dayron would receive award if AMTEC’s technical rating were reduced from excellent to good, she added that she was not claiming that Kaman Dayron had no chance for award. Tr. at 242, 250-51. Given the relative evaluated equality under the non-cost factors when AMTEC’s proposal was rated excellent under the technical factor, and the relatively small difference in prices, there is no basis for concluding that Kaman Dayron would not had a reasonable chance for award had the award decision been based on a reasonable evaluation. In these circumstances, we

conclude that Kaman Dayron was competitively prejudiced by the evaluation deficiencies. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica v. Christopher, 102 F. 3d 1577, 1581 (Fed. Cir. 1996).

We sustain the protest on the basis that the Army's evaluation of AMTEC's proposal and the resulting source selection decision were unreasonable. We recommend that the Army either reevaluate the existing proposals or, in the event that it determines that its procurement approach does not reflect its actual requirements, revise the solicitation, and then request revised proposals. If its reevaluation or evaluation of revised proposals results in the determination that an offer other than AMTEC's represents the best value to the government, the agency should terminate AMTEC's contract for convenience. We also recommend that the agency reimburse Kaman Dayron the reasonable costs of filing and pursuing the protest, including attorney's fees. 4 C.F.R. § 21.8(d)(1) (2003). Kaman Dayron's certified claim for costs, detailing the time spent and the costs incurred, must be submitted to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1) (2003).

The protest is sustained.

Anthony H. Gamboa
General Counsel