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Decision

Matter of: Ultra Electronics Ocean Systems, Inc.

File: B-400219

Date: September 8, 2008

Keith L. Baker, Esq., and William T. Welch, Esq., Barton, Baker, McMahon & Tolle, LLP, for the protester.

Sandra Shepard, Esq., Elizabeth G. Riesch, Esq., and Michael B. Hedrick, Esq., Department of the Navy, for the agency.

Thomas C. Papson, Esq., and Courtney J. Edmonds, Esq., McKenna Long & Aldridge LLP, and Bucky P. Mansuy, Esq., Lockheed Martin Corporation, for the intervenor.

Glenn G. Wolcott, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where solicitation required that offerors explain how their proposed designs would meet the solicitation requirements, and agency reasonably concluded that protester's proposal failed to meaningfully address the significant impacts flowing from its proposed design, including various failures to comply with the solicitation requirements that created potential performance risks and additional costs.

DECISION

Ultra Electronics Ocean Systems, Inc. protests the Department of the Navy's award of a contract to Lockheed Martin Maritime Systems and Sensors (LMMS2) pursuant to request for proposals (RFP) No. N00024-07-R-6229 for the design and manufacture of low cost conformal array (LCCA) systems to be installed on U.S. Navy submarines.¹ Ultra maintains that the agency made various errors in evaluating Ultra's technical and cost/price proposals.

We deny the protest.

¹ The LCCA is a passive planar array mounted on the submarine sail structure that assists in providing situational awareness and collision avoidance for improved tactical control in high-density environments.

BACKGROUND

The Navy issued this RFP in September 2007, seeking proposals for the manufacture and delivery of an LCCA “production representative unit” and associated activities. The agency’s publication of the RFP followed a preliminary research and development effort, led by the Applied Research Lab of the University of Texas, that produced an advanced development model (ADM) of the LCCA; that ADM was installed on the *USS Cheyenne*, a Navy submarine used for sonar system testing.² The solicitation provided the offerors with the ADM drawing package, stating that the objective of this procurement is “to complete the development and production effort for the LCCA.” Agency Report (AR), Tab 1, RFP at 42. The solicitation further provided that, although the Navy did not guarantee the ADM package and that it was being provided only on an informational basis, if an offeror elected to propose a design other than that reflected in the ADM package, the offeror “shall explain in their technical proposal how the design meets the Navy’s performance Specification requirement[s]³ and provide an in-depth comparison to the Navy’s informational design as part of the Risk Assignment evaluation.”⁴ RFP amend. 4, at 2.

The LCCA system, as specified in the solicitation, has three principal components: the hydrophone assemblies (in three separate module sets, known as triple module assemblies or TMAs) that pick up and absorb acoustic data; outboard electronics (OBE) canisters that collect the analog signals received by the TMAs and convert

² The *USS Cheyenne* is a LOS ANGELES class submarine. The solicitation provided that the LCCA units manufactured pursuant to this procurement are to be installed on “the LOS ANGELES class submarine (SSN 751 through SSN 773) SEAWOLF class submarine (SSN21 through SSN 23), and SSGN class submarine (SSGN 726 through SSGN 729),” adding that, “[i]ncorporation of the LCCA into the VIRGINIA class submarine is not currently planned.” AR, Tab 1, RFP attach. J-2, at 1.

³ The RFP and its attachments contained various mandatory requirements; specifically, the solicitation provided that an offeror’s proposal must “demonstrate that the design will achieve the performance requirements of the LCCA Module Critical Item Product Specification (CIPS), the OBE [outboard electronics] Canister CIPS, the Interface Design Document (IDD), and the Statement of Objectives (SOO).” RFP at 149-50. The CIPS, the OBE Canister CIPS, and the IDD were RFP attachments J-2, J-3, and J-4, respectively; the SOO was contained in section C of the RFP.

⁴ Similarly, section L-3 of the solicitation provided that each offeror’s proposal “shall present the Offeror’s design . . . in sufficient detail to demonstrate that the design will achieve the [solicitation’s specified] performance requirements.” RFP amend. 1, at 8.

them to digital signals for transfer to the inboard electronics system;⁵ and the hull penetrator (also referred to as the electrical/optical hull fitting (EOHF)) which is a “SUBSAFE” component⁶ through which cables carrying the data pass to the hull interior where the data is transmitted to inboard sounder control cabinets.

Section M of the solicitation provided that the agency would make its source selection decision on a “best value” basis, considering the following evaluation factors, listed in descending order of importance: design and manufacturing approach,⁷ contractor statement of work,⁸ past performance, and cost/price.⁹ RFP at 170. The solicitation further provided that, combined, the non-cost/price factors were significantly more important than cost/price and advised offerors that, in evaluating the non-cost/price factors, the agency would apply an adjectival rating system, assigning ratings of “outstanding,” “good,” “satisfactory,” “marginal,” and “unsatisfactory.” RFP at 174.

In November 2007, proposals were submitted by LMMS2 and Ultra. LMMS2’s proposal reflected the ADM design; Ultra’s proposal reflected an alternative design. Most significantly, Ultra’s alternative design proposed to eliminate the OBE canisters and move the functions performed by those components inboard. Ultra acknowledged that its alternative design was materially different from the ADM design, describing its alternative approach as achieving “desired simplification by

⁵ Both the TMAs and the OBE canisters are mounted inside a sea chest which is recessed into the sail structure.

⁶ The agency states: “SUBSAFE is a quality assurance program of the United States Navy designed to maintain the safety of the nuclear submarine fleet. All systems exposed to sea pressure or critical to flooding recovery are subject to SUBSAFE, and all work done and all materials used on those systems are tightly controlled to ensure the material used in their assembly, as well as the methods of assembly, maintenance and testing, are correct.” AR, Contracting Officer’s Statement, at 3.

⁷ The RFP established five subfactors under this evaluation factor: LCCA design approach; manufacturing, logistics, quality control and test approach/capability; risk assessment; software development plan; and small business subcontracting plan.

⁸ Section C of the RFP contained an SOO; however, each offeror was required to propose its own statement of work which met the objectives identified in the SOO.

⁹ Section M of the solicitation provided that the agency’s cost/price evaluation would incorporate consideration of both fixed-price and cost reimbursement elements of offerors’ proposals, as required by RFP section B. With regard to evaluation of the cost reimbursement items, the solicitation stated: “A cost-realism evaluation will be performed by the Government on the cost reimbursement items to arrive at the costs that would be incurred in the course of performance.” RFP at 172.

eliminating the OBE canister, reducing the number of cables from the 36 in the ADM system to 10, and reducing the number of connectors from 80 to 20.” AR, Tab 6a, Ultra Proposal, at 8. Following submission of proposals, the agency evaluated the proposals without conducting discussions.¹⁰

In evaluating Ultra’s proposal under the LCCA design subfactor, the agency’s technical evaluation review panel (TERP) concluded that Ultra’s proposal failed to adequately address multiple issues flowing from its alternative design. Among other things, in evaluating Ultra’s proposed design, the TERP stated:

The elimination of the OBE [canisters] requires changes to both the outboard and inboard components. The outboard changes allow the hybrid (fiber and copper) module cables to run directly to the Electrical Outboard Hull Fitting (EOHF), it also causes modifications to the current ADM Sea Chest and EOHF designs to be modified to incorporate the new telemetry scheme. The inboard electronics in the SCCs [sounder control cabinets] need to be upgraded to house additional LCCA system electronics; Ultra estimates that an additional 1U [unit] box would be required for each side of arrays.

AR, Tab 2, TERP Report (Feb. 8, 2008) at 32.

While the TERP acknowledged that Ultra’s alternative design offered certain advantages, including elimination of the OBE canisters, it also concluded that Ultra’s design failed to comply with various solicitation requirements and created risks which Ultra’s proposal failed to adequately address. Overall the TERP determined that the potential negative ramifications flowing from Ultra’s alternative design “far outweigh the elimination of the OBEs,” concluding that “[Ultra’s] [p]roposal shows that platform integration is not fully understood by the offeror as it pertains to U.S. Submarines.” Id.

Consistent with the TERP’s criticism of Ultra’s proposal under the LCCA design subfactor, the TERP also criticized Ultra’s proposal under the statement of work evaluation factor, stating that it contained “[n]o description of developmental work for inboard electronics, or strategy to address platform integration impacts” and, further, that Ultra’s statement of work contained “[n]o critical path discussions or mitigation thereof with relationship to the overall schedule,” elaborating that Ultra’s proposed schedule “requires first pass success, shows no margin for error, i.e. slack in schedule.” AR, Tab 2, at 50.

¹⁰ The solicitation advised offerors that the agency intended to make award without conducting discussions. RFP at 170.

Consistent with these assessments, the agency rated Ultra’s proposal as “marginal”¹¹ with regard to evaluation factor 1, subfactor 1, LCCA design, identifying 17 weaknesses in Ultra’s proposal under that subfactor; the agency similarly rated Ultra’s proposal as “marginal” with regard to evaluation factor 2, statement of work, identifying 6 weaknesses under that evaluation factor.¹² Overall, the agency’s final ratings were as follows:

	LMMSS	Ultra
Design and Mfg. Approach ¹³		
LCCA Design	Good	Marginal
Manufacturing, Logistics, QC and Test Approach/ Capability	Outstanding	Good
Risk Assessment	Good	Satisfactory
Software Dev. Plan	Good	Satisfactory
Small Business Subcontracting Plan	Satisfactory	Marginal
Statement of Work	Good	Marginal
Past Performance	Outstanding	Outstanding
Evaluated Cost/Price	\$82,294,908 ¹⁴	\$76,686,839 ¹⁵

AR, Tab 5, Source Selection Memorandum, at 2-3.

¹¹ The solicitation defined a “marginal” rating as properly applied where “[t]he proposed approach indicates a superficial or vague understanding of the program goals and the methods, resources, schedules, and other aspects essential to the performance of the program”; “[t]he proposal has weaknesses that are not offset by strengths”; and “[t]he risk of unsuccessful contract performance is moderate.” RFP at 174.

¹² The solicitation defined an evaluated weakness as “[a] flaw in the Offeror’s approach that increases the risk of unsuccessful contract performance.” RFP at 175.

¹³ The agency evaluated the first non-cost/price evaluation factor, design and manufacturing approach, by assigning separate ratings to each of the subfactors within that evaluation factor.

¹⁴ LMMSS2’s proposed cost/price was \$82,079,608; the evaluated cost/price reflected upward cost adjustments of \$215,300. AR, Contracting Officer’s Statement at 17.

¹⁵ Ultra’s proposed cost/price was \$70,897,139; the evaluated cost/price reflected upward cost adjustments of \$5,789,700. AR, Contracting Officer’s Statement at 17.

Based on the agency's evaluation and supporting documentation, the source selection official concluded that LMMS2's proposal represented the best value to the government, and awarded a contract to LMMS2 on May 22, 2008. This protest followed.

DISCUSSION

Ultra first challenges the agency's ratings of "marginal" with regard to the LCCA design evaluation subfactor and the statement of work factor. As discussed below, we have reviewed the entire record and find no basis to question the reasonableness of the agency's ratings.

In reviewing a protest challenging an agency's evaluation of technical proposals, our Office will not reevaluate proposals, but will examine the record to determine whether the agency's judgments were reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. A protester's mere disagreement with the agency's conclusions does not establish that they are unreasonable. E.g., SDS Int'l, B-291183.4, B-291183.5, Apr. 28, 2003, 2003 CPD ¶ 127 at 5-6.

The record here shows, and there is no dispute, that Ultra's alternative LCCA design incorporated multiple changes to the ADM design. In reviewing those changes, the Navy found, among other things, that Ultra's proposal failed to comply with the solicitation provision directing that an offeror proposing an alternative design "shall explain in their technical proposal how the design meets the Navy's performance Specification requirement[s]."¹⁶ RFP amend. 4, at 2.

For example, the solicitation provided that the TMA assembly was to be comprised of three separate acoustic modules, and further provided that each of these separate modules was to be the "lowest replaceable unit" for the LCCA system. RFP attach. J-2, CIPS, at 7. In contrast, Ultra's proposed LCCA design offered what Ultra refers to as an "integrated" TMA, or ITMA, which, along with an integrated foundation plate, was defined in its proposal as the "lowest replaceable unit." AR, Tab 6a, Ultra Proposal, at 16. Further, the foundation plate incorporated into Ultra's proposed ITMA was 2.32 inches longer than the foundation plate reflected in the ADM drawings. Ultra acknowledged that its proposed approach failed to comply with the solicitation requirements, stating: "ITMA Size--Meets all requirements except for the foundation plate length, which requires a change to the sea chest design." AR,

¹⁶ As noted above, the solicitation's requirements were contained in the CIPS, the OBE CIPS, the IDD, and the SOO, which were included in the solicitation at RFP attachments J-2, J-3, J-4, and RFP section C, respectively.

Tab 6a, at 21.¹⁷ Despite its repeated acknowledgement of both its failure to comply with the solicitation requirements as well as its recognition that its non-compliance will affect other aspects of the LCCA, Ultra's proposal offered scant discussion or analysis regarding the specific impact of its noncompliance.¹⁸

In evaluating Ultra's proposal, the agency assessed a "major weakness" because of various changes that Ultra's alternative LCCA design would require, noting for example, that "[s]ea chest and supporting component redesign [will be] required to accommodate new length of foundation plate." AR, Tab 2, at 35. The agency elaborated on this negative assessment noting that, among other things, "extensive sail modifications" would be required to accommodate Ultra's proposed approach; that "hot work efforts will increase"; and that "new test fixtures for acoustic and shock testing will have to be built." *Id.* The agency also assessed a major weakness on the basis that Ultra's proposal failed to adequately address the replacement issues created by its deviation from the solicitation requirements, noting that designation of the entire ITMA as the lowest replaceable unit would require the removal and replacement of all three acoustic modules (which the solicitation had defined as the lowest replaceable unit)—even if only one module failed. The agency concluded that this alteration of the solicitation requirements was neither cost-effective nor beneficial to the government. Additionally, the agency concluded that, by exceeding the specified dimensions of the foundation plate, replacement of one ITMA would likely require removal of adjacent ITMA's "by tilting it to clear the shear stops of the sea chest." AR, Contracting Officer's Statement at 22.

In its comments responding to the agency report, Ultra does not meaningfully dispute any of the agency criticisms noted above; rather, Ultra essentially argues that, overall, the positive aspects of its proposed alternative design should have been viewed by the agency as outweighing the various negative assessments.¹⁹ Based on

¹⁷ Ultra's proposal repeatedly acknowledges its noncompliance with the solicitation requirements in its proposal, stating elsewhere that, "[t]he overall dimensions of the ITMA are compliant with the CIPS except for the 2.32 inches in length," and again, "[t]he foundation plate length exceeds the CIPS requirement by 2.32 inches and requires a change to the sea chest design." AR, Tab 6a, at 8, 21.

¹⁸ In its comments responding to the agency report, Ultra asserts that both offerors would be expected to "deal with technical issues as they arise in the installation of the sea chest." Protester's Comments (July 13, 2008) at 9.

¹⁹ Contrary to Ultra's repeated acknowledgments within its proposal that its proposed design failed to comply with the solicitation requirements, Ultra's protest submissions inconsistently argue that any specification reflected in the ADM drawing package could not be considered a requirement because the ADM drawing package had been provided to offerors only as an "informational design." Ultra's argument ignores the express solicitation provisions that required compliance with

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our review of the record, we find no basis to question the agency's negative assessments of Ultra's proposal with regard to the alteration of the solicitation requirements and the various impacts flowing from those aspects of its proposal.

By way of another example, Ultra expressly acknowledges that the EOHF design described in the CIPS (critical item product specification) document, which the solicitation incorporated, contemplated an EOHF with six connectors.²⁰ Ultra Comments (July 13, 2008) at 5. In contrast to this solicitation provision, Ultra proposed what it described as a "modified hybrid E/O receptacle," with 10 connectors, which Ultra identified by reference number "PPD 802-6337554-8.7.1-3." AR, Tab 6a, at 46. Ultra's proposal contained no meaningful information regarding the size of its "modified hybrid E/O receptacle," but stated that, along with necessary cable assemblies, "the design of the EOHF . . . will also be supplied by [an Ultra subcontractor]." Id. at 8.

The agency noted that the EOHF on VIRGINIA class submarines, which has 10 connectors, is similarly identified by reference number PPD 802-6337554-8.7.1-3, and further concluded that the EOHF on VIRGINIA class submarines will not fit into the existing hole cut into the submarine sail to accommodate the EOHF on LOS ANGELES class submarines (which are the subject of this procurement).²¹ TERP Chair Declaration (July 16, 2008) ¶ 2. Accordingly, in the absence of further information provided by Ultra regarding the size of its "modified hybrid E/O receptacle," the agency concluded that Ultra's proposed 10-connector EOHF would not fit into the existing hole cut into the submarine to accommodate the EOHF described in the solicitation, and that Ultra's proposed approach would likely require cutting a larger hole.²² Accordingly the agency assessed a major weakness to Ultra's

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the CIPS, the OBE CIPS, and the IDD and, as Ultra acknowledged in its proposal, these documents independently established various solicitation requirements, including the required foundation plate dimensions. See RFP attach J-2 at 14. Additionally, Ultra's arguments ignore the solicitation requirement for an "in-depth comparison" of any alternative design to the ADM design. RFP amend. 4, at 2.

²⁰ As noted above, the EOHF is the hull penetrator fitting through which data-carrying cables pass into the hull interior.

²¹ As noted above, the solicitation provided that the LCCA units to be acquired under this solicitation are to be installed on LOS ANGELES class submarines, and further provided that "[i]ncorporation of the LCCA into the VIRGINIA class submarine is not currently planned." RFP attach J-2, at 1.

²² As noted above, issues related to penetration of the submarine hull are subject to "SUBSAFE"—the U.S. Navy's program designed to maintain the safety of the nuclear
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proposal based on its proposed EOHF, noting that additional engineering efforts would be required due to “platform integration impacts.” AR, Tab 2, TERP Report, at 36.

In our view, a procuring agency’s technical personnel, who are most familiar with the government’s requirements, are in the best position to make judgments regarding the methods for meeting those requirements, and this Office will not question those determinations absent a showing that they are unreasonable. In this regard, we will afford particular deference to the technical expertise of agency personnel regarding judgments that involve matters of human life and safety. E.g., American Airlines Training Corp., B-217421, Sept. 30, 1985, 85-2 CPD ¶ 356 at 6; Marine Transport Lines, Inc., B-224480.5, July 27, 1987, 87-2 CPD ¶ 91 at 4. Further, an offeror bears the burden for failing to submit an adequately written proposal, and a contracting agency is not obligated to go in search of needed information that the offeror has omitted or failed to present. E.g. Fluor Daniel, Inc., B-262051, B-262051.2, Nov. 21, 1995, 95-2 CPD ¶ 241 at 8.

In its comments responding to the agency report on this matter, Ultra expresses disagreement with the agency’s conclusions and asserts that it had no affirmative obligation to show the dimensions of its “modified hybrid E/O receptacle,” in its proposal.²³ However, Ultra does not dispute the agency’s assertions regarding the similarity of its proposed EOHF to the EOHF on VIRGINIA class submarines, nor does it refute the agency’s assertion that the 10-connector EOHF used on VIRGINIA class submarines will not fit into the existing hole cut to accommodate the EOHF on the *USS Cheyenne*, the LOS ANGELES class submarine on which the ADM is installed.²⁴

As noted above, the solicitation specifically directed that, if an offeror elected to propose a design other than the ADM design, the offeror “shall explain in their technical proposal how the design meets the [solicitation requirements].” RFP

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submarine fleet with regard to systems that are exposed to sea pressure or that are critical to flooding recovery.

²³ Ultra essentially argues that the burden was on the agency to conclusively demonstrate that Ultra’s EOHF will not fit in the existing hole.

²⁴ In this regard, Ultra’s technical representative acknowledges that SUBSAFE certification is required in connection with its proposed “modified hybrid E/O receptacle,” asserting that Ultra’s subcontractor “has applied for SUBSAFE certification,” and that the certification process for what it characterizes as “minor modifications to existing parts” is neither lengthy nor expensive. Undated Affidavit of AMETEK SCP, Inc. Vice President ¶ 13.

amend. 4, at 2. On the record here, as discussed above, we find no basis to question the agency's evaluation of weaknesses flowing from Ultra's proposed EOHF. Further, we have reviewed all of the agency's multiple criticisms of Ultra's proposal and find no basis to question any portion of the agency's technical evaluation.²⁵

Next, Ultra protests that the agency improperly evaluated its cost/price proposal, arguing that the cost realism adjustments made by the agency were improper. We disagree.

The record shows that, consistent with the solicitation provisions advising offerors that the agency would perform a cost realism analysis, the agency made relatively modest increases to Ultra's proposed cost/price.²⁶ The record shows that the majority of the agency's cost realism adjustments were made in connection with various additional costs that would be incurred due to Ultra's alternative LCCA design. In large part, Ultra's protest regarding the cost/price evaluation repeats the arguments we have previously considered regarding the agency's evaluation of Ultra's technical proposal. Consistent with our rejection of Ultra's arguments regarding the agency's technical evaluation, we find no merit in those same, or similar, arguments made in connection with the agency's cost/price evaluation. Additionally, the agency made limited upward adjustments to Ultra's proposed direct and indirect costs based on the agency's judgment that these proposed costs were understated. We have reviewed the agency's rationale and explanation supporting its judgments, and find no basis to question them.²⁷

Finally, Ultra asserts that the agency's best value determination was flawed. In this regard, Ultra's arguments are based on the assumption that various aspects of the

²⁵ Among other things, the agency expressed concern regarding various modifications and additional engineering and testing that would be required for the inboard electronics and the sounder control cabinets in order to accommodate Ultra's alternative design. Ultra expresses disagreement with the various agency criticisms and further argues that the agency failed to properly recognize certain strengths associated with Ultra's proposed approach. However, Ultra's arguments regarding these matters reflect mere disagreement with the agency's judgments and, as such, provide no basis for sustaining its protest.

²⁶ As noted above, Ultra's proposed cost/price was \$70,897,139. For evaluation purposes, the agency increased Ultra's proposed cost/price by \$5,789,700.

²⁷ The agency acknowledges a \$240,000 error in calculating Ultra's evaluated cost/price. This error constituted less than half of one percent of Ultra's total evaluated cost/price. As such, the error is *de minimis* and does not provide a basis for sustaining Ultra's protest. See, e.g., 4-D Neuroimaging, B-286155.2, B-286155.3, Oct. 10, 2001, 2001 CPD ¶ 183 at 10.

agency's cost/price and technical evaluations were flawed. Since the record does not support Ultra's arguments regarding the agency's evaluation of Ultra's technical and cost/price proposal, we reject Ultra's assertion that the agency's best value determination was flawed.

The protest is denied.²⁸

Gary L. Kepplinger
General Counsel

²⁸ In filing and pursuing this protest, Ultra's submissions have raised various additional arguments, or variations of the arguments discussed above. We have considered all of Ultra's assertions and find no basis for sustaining its protest.