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**Comptroller General
of the United States**

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

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Decision

Matter of: Keystone Sealift Services, Inc.

File: B-401526.3

Date: April 13, 2010

Andrew W. Dyer Jr., Esq., Brian A. Bannon, Esq., and Brian S. Gocial, Esq., Blank Rome LLP, for the protester.

J. Alex Ward, Esq., Daniel E. Chudd, Esq., and Caroline A. Keller, Esq., Jenner & Block LLP, for General Dynamics American Overseas Marine, an intervenor.

Michelle L. Salter, Esq., Military Sealift Command, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency unreasonably failed to consider offeror's conversion and re-flagging experience under maintenance and repair (M&R) evaluation subfactor, and that it otherwise unreasonably downgraded proposal for specific weaknesses under other subfactors, is denied, where proposal lacked detail on conversion/re-flagging experience in M&R section, and evaluation record shows agency in fact did not downgrade proposal for other specific weaknesses identified by protester.

DECISION

Keystone Sealift Services, Inc. (KSS), of Bala Cynwyd, Pennsylvania, protests the award of a contract to General Dynamics American Overseas Marine (AMSEA), of Quincy, Massachusetts, under request for proposals (RFP) No. N00033-08-R-5302, issued by the Department of the Navy, Military Sealift Command (MSC), for the operation and maintenance of large, medium-speed, roll-on/roll-off (LMSR) ships in the agency's surge project. KSS challenges the evaluation of its proposal.

We deny the protest.

The surge project, part of the agency's Sealift Program, involves the quick transition of ships from reduced to full operating status to move U.S. forces and military equipment to defend and promote vital U.S. interests anywhere in the world. Lot 1 of the RFP--the subject of KSS's protest--concerns seven BOB HOPE class LMSRs. Proposals were to include personnel, operational and technical support (ashore and afloat), equipment tools, and supplies, necessary to operate and maintain the vessels.

The RFP contemplated award—on a “best value” basis—of a fixed-price contract with reimbursable elements for a base year, with 4 option years. Proposals were to be evaluated on the basis of four factors, listed in descending order of importance—technical (with subfactors for ship operations and manning (O&M), maintenance and repair (M&R), contract administration, management of reimbursables and purchasing system, and accounting system), past performance, socioeconomic program utilization, and price. Non-price factors, combined, were more important than price.¹

Seven offerors submitted proposals and, after the initial evaluation, both KSS’s and AMSEA’s were included in the competitive range. After discussions, each submitted a final proposal revision. Based on a consensus evaluation, KSS’s proposal was rated very good under the technical factor (exceptional for O&M and very good for the remaining subfactors), very good under the past performance factor, and exceptional under the socioeconomic factor. AMSEA’s proposal was rated exceptional under the technical factor (very good for management of reimbursables and exceptional for the remaining subfactors), very good under the past performance factor, and satisfactory under the socioeconomic factor. KSS’s price was approximately 4% lower than AMSEA’s price of \$238 million. Based on the evaluation results, the source selection authority concluded that AMSEA’s proposal was the best value, and made award to that firm for Lot 1. After a debriefing, KSS filed this protest.

DISCUSSION

KSS challenges the rating of its proposal in four areas under the technical factor—its work on the USNS WHEAT under the M&R subfactor; its surge experience under the O&M subfactor; and its approaches under the contract administration and property management subfactors. In the protester’s view, had the agency properly evaluated its proposal, it would have been rated equal or superior to AMSEA’s, and KSS thus would have been in line for award of the Lot 1 contract based on its lower price.

In considering a protest of an agency’s evaluation of proposals, our review is confined to determining whether it was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. See United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 10-11. We have considered all of KSS’s arguments and find that none has merit.²

¹ Adjectival ratings used in the evaluation for the technical factor were exceptional, very good, satisfactory, marginal, and unsatisfactory; for the past performance factor, very good, satisfactory, unsatisfactory, and neutral; and for the socioeconomic utilization factor, exceptional, satisfactory, and unsatisfactory.

² KSS withdrew its assertion that the agency improperly downgraded it for a lack of surge experience, since the record showed that the agency in fact considered its

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M&R Subfactor Evaluation

Under the M&R subfactor, proposals were to be evaluated for corporate experience, planned maintenance, management of repairs, and continuous improvement. RFP at 127. Offerors were to provide a synopsis of their last 10 years of experience in maintaining and repairing ships that were the same as or similar to those in the RFP; describe their experience using various types of maintenance; describe their approach to mitigating risks; and describe incorporation of lessons learned. RFP at 98-99. KSS asserts that the agency improperly failed to assign its proposal a strength under the M&R subfactor concerning its successful completion of the conversion and re-flagging of the vessel WHEAT. Specifically, KSS notes that its proposal referred to its completion of the reconstruction and commissioning of the WHEAT, and its successful operation of the vessel since then, and that some details of the conversion work were included in its separate past performance proposal. KSS Technical Proposal at 2-3; Past Performance Proposal at 3-4.

The evaluation was reasonable. KSS's proposal under this subfactor referred to KSS's experience with the WHEAT, but primarily in terms of M&R work performed after the conversion and re-flagging work had been completed; it did not include any significant detail addressing the conversion work itself or how that work was relevant to the RFP requirements. For example, the proposal identified the WHEAT (by size and propulsion system) as 1 of 17 named vessels for which its responsibility included manning, maintenance, repair, drydock, and regulatory certification. KSS Technical Proposal at 15. It also referred to KSS's MSC experience with the WHEAT and two other MPF(E) (Marine Prepositioning Force (Enhanced)) ships beginning in 2005. *Id.* The agency rated KSS's proposal as very good overall for this subfactor based on four planned maintenance strengths and two corporate experience strengths—one for operation of large vessels, including the WHEAT, and the second for “numerous successful opportunities for dry-docking and voyage repairs” of the three MPF(E) ships. Technical Consensus at 11-12; Lead Technical Evaluator (LTE) Declaration, ¶ 15. In considering KSS's experience in converting/re-flagging the WHEAT under the M&R subfactor, the agency concluded that an additional evaluated strength was not warranted because the proposal lacked detail as to the conversion work and how it was relevant to the RFP requirements. LTE Declaration, ¶ 16. In this regard, the only mention of the WHEAT's conversion in this section of

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surge experience as a strength. KSS Initial Comments at 5; Technical Consensus at 2. KSS's continued assertion that the agency improperly found a lack of surge experience with the BOB HOPE class of ships is unsupported in the evaluation record. In any case, KSS's exceptional rating under the O&M subfactor would render any error nonprejudicial. Joint Mgmt. & Tech. Servs., B-294229, B-294229.2, Sept. 22, 2004, 2004 CPD ¶ 208 at 7 (prejudice is an essential element of every viable protest).

KSS's proposal was as an entry in a matrix of more than 30 recent drydockings and, apart from the drydock location, cost, and time, the only detail provided was "[r]equested by MSC to complete a 5 year re[-]flagging and conversion project." KSS Drydockings at 1.

Offerors bear the burden of submitting an adequately written proposal and contracting agencies evaluating one section of a proposal are not obligated to go in search of additional information that the offeror has omitted or failed to adequately present. Sam Facility Mgmt., Inc., B-292237, July 22, 2003, 2003 CPD ¶ 147 at 5. Here, other sections of KSS's proposal—including past performance (where it described some aspects of the conversion process) and O&M (where it simply referred to the WHEAT's conversion without significant detail)—referred to the conversion and re-flagging of the WHEAT, and the proposal received the highest possible ratings where detailed information was provided. It is not clear why KSS did not provide the same detailed information with regard to the M&R subfactor. However, to the extent that KSS believed its WHEAT conversion experience was relevant to the M&R subfactor—as it now argues—and wanted to ensure that it would be properly considered under that subfactor, it should have provided the detailed information in that section of its proposal. The agency was not required, essentially, to assume responsibility for perfecting KSS's proposal by reading information into it that KSS omitted. Especially given that it already had assigned several strengths to the proposal based on KSS's successful operation of MPF(E) ships which included the WHEAT, we think the agency reasonably could conclude that the proposal did not warrant an additional strength for this aspect of KSS's experience.

Our Office has recognized that in certain limited circumstances, an agency evaluating an offeror's proposal has an obligation (as opposed to the discretion) to consider "outside information" bearing on the offeror's past performance when it is "too close at hand" to require offerors to shoulder the inequities that spring from an agency's failure to obtain and consider the information. See, e.g., International Bus. Sys., Inc., B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5. The circumstances here do not fall under this exception to the general rule that offerors are responsible for submitting an adequately written proposal. Unlike a past performance evaluation where an offeror often must rely on the submission of information from third parties, here KSS was in control of what it included in each section of its proposal and exercised its own judgment not to include details about converting the WHEAT in the proposal section devoted to M&R experience. Thus, there was no inequity in the LTE's decision to base his evaluation on KSS's proposal—as written—instead of supplementing it with his understanding of KSS's WHEAT conversion experience.

Contract Administration and Property Management Subfactors

KSS asserts that the agency unreasonably evaluated its proposal under the contract administration and property management subfactors. As with its other protest grounds, KSS's assertions are based on statements allegedly made by the agency

during the debriefing. Specifically, KSS understood that the agency did not consider its proposal to be as “compelling” as AMSEA’s due to unspecified “past problems” with contract administration and its failure to provide specific examples of how it used its property management system. Protest at 12-13.

The evaluation record, not the agency’s alleged statements during a debriefing, is the basis for our review. We are concerned with the manner in which the evaluation was conducted, notwithstanding the protester’s understanding of the agency’s subsequent explanation of how it conducted the evaluation. In this regard, a debriefing is only an explanation of the agency’s evaluation and source selection decision, not the evaluation or decision itself. Del-Jen Int’l Corp., B-297960, May 5, 2006, 2006 CPD ¶ 81 at 4.

The agency denies advising KSS that its proposal was downgraded due to contract administration and property management system concerns, and the evaluation record does not establish otherwise. Specifically, the record shows that KSS’s proposal was rated very good under the contract administration subfactor based on three strengths, the correction (in the revised proposal) of two deficiencies, and a lack of any weaknesses. Technical Consensus at 13-15. Overall, the evaluators found that KSS had satisfied all and exceeded some RFP requirements (id. at 13). The record contains no mention of any problems with KSS’s administration of prior contracts.

Similarly, the agency denies advising KSS that its proposal was downgraded due to specific problems with KSS’s property management system. LTE Declaration ¶ 25. Rather, the LTE explains, he advised KSS during the debriefing only that KSS could have improved its proposal by elaborating on or providing specific examples of its system. Id. Again, the evaluation record supports the agency’s position. KSS’s proposal was rated very good under the property management subfactor based on one strength (which specifically praised KSS’s government approved property control system), the correction of three deficiencies, and the lack of any weaknesses. Technical Consensus at 18-20. Overall, the evaluators found that KSS had satisfied all and exceeded some RFP requirements. As with the contract administration evaluation, there is nothing to indicate that the evaluators downgraded KSS’s proposal for failing to mention sufficient property management examples.

The protest is denied.

Lynn H. Gibson
Acting General Counsel