



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Canadian Commercial Corporation/Polaris Inflatable Boats (Canada), Ltd.

File: B-276945

Date: July 31, 1997

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Lucia E. Casale, Esq., Klimek, Kolodney & Casale, for Zodiac of North America, Inc., an intervenor.

Joshua A. Kranzberg, Esq., and Tony K. Vollers, Esq., Department of the Army, for the agency.

Glenn G. Wolcott, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably considered protester's failure to provide material performance data as a basis for rating protester's proposal "acceptable" rather than "exceptional" where solicitation required submission of performance data.
2. Agency's assessment of risk associated with protester's proposal was reasonably based, in part, on the fact that protester proposed to modify a 10-person boat and had not previously built such a 15-person boat.
3. Agency reasonably considered the fact that protester's spare and repair parts were not currently in military inventories where solicitation stated that components that were interchangeable with existing military components would constitute an enhanced feature.

DECISION

Canadian Commercial Corporation/Polaris Inflatable Boats (Canada), Ltd. protests the Department of the Army's award of a contract to Zodiac of North America, Inc. under request for proposals (RFP) No. DAAK01-97-R-0008 for 15-person inflatable

assault boats.¹ Polaris complains that the Army's assessment of a portion of Polaris's proposal as "acceptable" rather than "exceptional" was based on evaluation factors not set forth in the solicitation.

We deny the protest.

BACKGROUND

The RFP for this procurement, issued on January 31, 1997, sought proposals for a 5-year requirements contract for commercially available, 15-person inflatable assault boats with proven marine performance. The boats are to be used by Army special operation forces, Army engineers, and engineer divers during military dive and training missions.

Section M-2 of the solicitation provided that award would be made to the offeror whose proposal offered the best overall value to the government and stated that proposals would be evaluated in four areas--technical, logistics, cost/price, and past performance--with technical denominated as the most important evaluation area. RFP section M-2 also advised offerors that the technical evaluation would be divided into two parts--essential features, to be evaluated on a go/no go basis, and enhanced features, to be evaluated on the basis of "discriminators that will decrease mission risk, increase boat performance and decrease life-cycle cost."² Section M-2 of the RFP further provided that:

Data measurements such as top speed, planing speed, time to planing speed and maneuverability are required to document claimed performance. Test data should include test conditions, environmental conditions, test procedures, etc.

¹Polaris is a Canadian corporation and, pursuant to applicable regulations, the Canadian Commercial Corporation (CCC) is the actual offeror. If CCC were awarded a contract, it would subcontract 100 percent of the contract to Polaris. See Defense Federal Acquisition Regulation Supplement § 225.870-3 (DAC 91-3). The protest was filed on behalf of Polaris, hereafter referred to as the protester.

²RFP section L-19 identified the specific portion of the 15-page purchase description (PD), attached to the RFP, which listed the essential requirements. Regarding enhanced features, RFP section L-19 listed various features for consideration, including hull design, keel design, additional chambers, the inflation process and transfer valve system, repair procedures, and whether the proposed boat's components were interchangeable with existing military components.

The following three elements [within the technical area] are approximately equal in importance.

Element 1: Performance Enhancements. The performance capabilities of the boat will be assessed to determine whether they increase the probability of success of the missions for which the boat will be used.

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Element 3: Lifecycle Enhancements. The maintainability, standardization, and service life of the boat will be considered to determine the estimated life cycle cost of the boat.

Three proposals, including those of Polaris and Zodiac, were submitted by the March 12, 1997, closing date.³ Polaris's proposal was based on its modification of a 10-person boat it had previously manufactured. Following the agency's evaluation of initial proposals,⁴ discussions with each offeror were conducted. In its letter opening discussions with Polaris, dated March 21, 1977, the agency expressed concern that Polaris's proposal did not contain adequate performance documentation. Among other things, the letter stated:

At this time, the Government has serious reservations in your company's ability to meet the requirements of the solicitation within the time frame required. The solicitation request is for a commercial off-the-shelf boat with proven marine performance. The ten person inflatable boat that your company has proposed appears to require significant modifications with many engineering variables yet to be determined. Supporting documentation to included test data pertaining to materials, design, specifications and performance have not been provided.

If your company still wishes to remain as a potential offeror for this solicitation, the Government requires detailed comprehensive responses to the issues raised in the enclosed Offeror Notification Forms (ONFs).

³The third offeror's proposal will not be discussed as it it not relevant to the issues raised in the protest.

⁴The agency used an adjectival rating scheme consisting of "exceptional" (near-certain probability of success), "acceptable" (fair probability of success), "marginal" (questionable chance of success), and "unacceptable" (improbable chance of success).

Thereafter, during discussions, the agency made repeated requests to Polaris for additional information, including requests for specific documentation verifying the performance capabilities of the 10-person boat on which Polaris's proposal was based. Polaris acknowledges that it was unable to provide the requested performance documentation.

On April 18, best and final offers (BAFOs) were submitted and, thereafter, were evaluated by the agency. Zodiac's proposal was rated "exceptional" under each of the non-cost/price evaluation areas, and offered the lowest cost/price. Polaris's proposal was rated "acceptable" under the technical area, "exceptional" under the other non-cost/price evaluation areas, and offered the highest cost/price.

The "acceptable" rating under the technical area of Polaris's proposal primarily reflected the risk associated with Polaris's inability to document the performance capabilities of the boat on which its proposal was based, coupled with the fact that Polaris had not previously manufactured a 15-person boat. In its final evaluation report, the agency stated:

The capabilities and performance of [Polaris's] proposed IAB [inflatable assault boat] were not well documented. Documentation was scattered and the relationship between the documentation and the proposed IAB [inflatable assault boat] was unclear. For example, a picture of a stability test is shown, however, there is no description to show that the test boat is the same size, shape, etc. as the proposed IAB. Polaris promises the proposed IAB's performance will meet all PD and Solicitation requirements. The lack of clear substantiating documentation creates a greater risk to the Government in accepting the claimed levels of performance.

There is still confusion regarding what Polaris is offering. For example, Polaris states that the boat is based upon a 10-man boat with a 20" diameter tube, the drawings for the 10-man boat has a 21" tube, and the drawing for a 15-man boat has a 22" main tube. The PD requires nine (9) paddles, the proposal states 9 paddles, but the drawing for a 15-man boat (provided with BAFO) states six (6) paddles to be included. Similar discrepancies are seen throughout the proposal. (Note: an inadequate quantity of paddles is sufficient reason to disqualify the proposal. However, this appears to be an oversight.)

In addition, Polaris's proposal was evaluated as presenting a weakness under the technical element, lifecycle enhancements, on the basis that "none of the Polaris spare or repair parts are in the current DoD inventories."

Based on its final evaluation of proposals, the agency concluded that Zodiac's proposal represented the best value to the government and awarded a contract to Zodiac on April 25. This protest followed.

DISCUSSION

Polaris protests that its proposal was evaluated on the basis of factors other than those stated in the solicitation and maintains that if the agency had properly limited its evaluation to those stated in the RFP, Polaris's proposal could only have been rated "exceptional" rather than "acceptable." Specifically, although acknowledging that "[t]hroughout the technical review process, the Army called for detailed test procedures and test results," Polaris maintains that the solicitation did not "explicitly" require the performance documentation sought and, therefore, Polaris's failure to provide the requested data was not a proper evaluation consideration.

It is fundamental that offerors be advised of the bases on which their proposals will be evaluated. Specifically, a solicitation must state all significant evaluation factors and subfactors, along with their relative importance, and a procuring agency may evaluate proposals only on the basis of those factors identified. Federal Acquisition Regulation (FAR) §§ 15.605(d)(1), 15.608(a).

Contrary to Polaris's assertion that the RFP did not "explicitly" require the performance data repeatedly requested by the agency, RFP section M-2 expressly stated: "Data measurements . . . are required to document claimed performance. Test data should include test conditions, environmental conditions, test/procedures, etc." Polaris acknowledges that it failed to provide the data sought, specifically stating that the data was "unavailable to Polaris" and that only "samples" of technical data were provided.⁵

In short, the RFP specifically advised Polaris that it would be required to provide data measurements and test data documenting the claimed capabilities of the boat on which its proposal was based, and the agency repeatedly requested such data during discussions. Polaris acknowledges that the requested data was "unavailable." On this record, we find without merit both Polaris's assertion that consideration of

⁵Alternatively, Polaris challenges the agency's need for the data sought, asserting:

[the] documents [sought by the agency] are unique to military contracts. . . . [Such] military documentation is an unaffordable luxury in the commercial world--the commercial marketplace simply will not pay for it.

To the extent Polaris's protest is now challenging the provisions of the solicitation, the post-award protest is not timely filed. 4 C.F.R. § 21.2(a)(1) (1997).

its failure to provide the requested documentation constituted the application of an unstated evaluation factor, and its complaint that it was improper for the agency to rely on Polaris's submission of only limited data as a basis for rating the technical area of its proposal as "acceptable," rather than "exceptional."

Polaris also complains that it was improper for the agency to consider the fact that Polaris had never previously built a 15-person inflatable boat in rating its proposal "acceptable." Polaris maintains that, "[t]he solicitation never required that the boat offered had to have been built before. . . . There is no commercial demand of any substance for a 15-person inflatable boat. . . . Consequently, only one or two inflatable boat manufacturers worldwide have ever built a 15-person inflatable."

The record shows that, in assessing the claimed technical capabilities of Polaris's proposed boat, the agency evaluators noted that Polaris was proposing to modify a 10-person boat, and had not previously manufactured the proposed 15-person boat. As noted above, during discussions the agency questioned the capability of Polaris to successfully achieve the significant engineering modifications that would be required.⁶ Similar to Polaris's failure to document the performance of its 10-person boat, the agency viewed the fact that Polaris was proposing to modify that boat, and had not previously built the proposed 15-person boat, as a basis for assessing additional risk to the agency.

While a solicitation must state all evaluation factors and subfactors, FAR §§ 15.605(d)(1), 15.608(a), it need not identify each individual element to be considered where the element is intrinsic to the stated factors or subfactors. Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16 at 6-8.

Here, RFP section M-2(a) generally advised offerors that the agency would consider whether an offeror's proposal "would result in a lower risk to the Government in terms of the likelihood that an offeror will timely deliver a quality product conforming to the requirements of the solicitation." More specifically, with regard to evaluation of enhanced features, section M-2 stated that proposals would be evaluated "on the basis of discriminators that will decrease mission risk. . . ."

⁶Consistent with this concern, the agency noted that the drawing Polaris submitted during discussions reflected a boat with only six paddles rather than nine as required by the solicitation. Although a boat with nine paddles was an essential feature, the agency did not disqualify Polaris's proposal, noting that the drawing appeared to be a mistake. Nonetheless, it is clear that Polaris's inability to submit a drawing accurately reflecting the boat's basic requirements reasonably increased the agency's concern regarding Polaris's ability to make the necessary modifications to the smaller existing boat.

The agency did not disqualify Polaris's proposal based on either its failure to provide the performance data sought or the fact that it had not previously built a 15-person boat. Rather, the agency considered these facts as bases for rating Polaris's proposal "acceptable," rather than "exceptional." The fact that Polaris had not previously built a 15-person boat, along with its inability to provide accurate and complete documentation, reasonably must be understood as related and relevant to the agency's assessment of the risk of whether Polaris would successfully deliver a quality product conforming to the solicitation requirements. Accordingly, we find without merit Polaris's assertion that the agency's consideration of the fact that Polaris had not previously built the 15-man boat it proposed constituted the application of an unstated evaluation factor.

Finally, Polaris complains that it was improper for the agency to consider the fact that "none of the Polaris spare or repair parts are in the current DoD inventories." Again, Polaris maintains that this constituted the application of an unstated evaluation factor.

As noted above, the plain language of the RFP advised offerors that this aspect of proposals would be considered. Under the heading "enhanced features," section L-19 of the RFP listed various features to be considered, including whether "components are interchangeable with existing military components." Consistent with section L-19 of the RFP, section M-2 advised offerors that, in evaluating proposals under the technical element, lifecycle enhancements, the agency would consider "[t]he maintainability, standardization, and service life of the boat."

The provision in section M advising offerors that proposals would be evaluated on the basis of maintainability and standardization, along with the provision in section L-19 stating that proposed components which are interchangeable with existing military components would constitute an enhanced feature, clearly provided a reasonable basis for the agency's consideration of the fact that Polaris's spare or repair parts were not currently within DOD inventories. Polaris's protest to the contrary is simply without merit.

The protest is denied.

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