

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Capitol Drywall Supply, Inc.

File: B-400721; B-400722

Date: January 12, 2009

Kenneth E. O'Quinn for the protester.
Howard E. Strackbein, Esq., Army Corps of Engineers, for the agency.
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DIGEST

Protest challenging agency's evaluation of protester's proposal is denied where the record establishes that the evaluation was reasonable and consistent with the solicitation's evaluation criteria.

DECISION

Capitol Drywall Supply, Inc. (CDS) of Jackson, Mississippi protests the evaluation of its proposal under request for proposals (RFP) No. W9126G-08-R-0119, issued by the Army Corps of Engineers for construction materials. CDS contends that, since the firm has been "stocking, storing, and delivering material for 15 years," its proposal was unreasonably downgraded under the solicitation's evaluation factors.¹ Protest at 1.

¹ In its protest, CDS stated that it had submitted the same proposal for two solicitations (for different geographical regions), and challenged that the same proposal information was evaluated differently under each solicitation; accordingly, we opened as a separate protest (B-400722) its challenge to its proposal's lower evaluation ratings under the second solicitation, RFP No. W9126G-08-R-0121. The agency filed a separate report responding to that protest. CDS failed to file comments in response to that report, as required by our Bid Protest Regulations; accordingly, we dismiss that protest. 4 C.F.R. § 21.3(i) (2008); Prio-Leau Culinary Servs., Inc.--Recon., B-236373.6, Jan. 23, 1990, 90-1 CPD ¶ 90 at 1. CDS also generally challenged that two awards were made under the solicitation at issue in protest B-400721, instead of as many as four awards, as provided in the RFP. Protest at 1. The agency responded to the allegation in its report on the protest, explaining that

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We deny the protest.

The RFP, issued on December 14, 2007, as a competitive section 8(a) set-aside, provided a detailed statement of work describing the performance requirements, including immediate response, timely production, delivery and reporting, information management, a safety and health program, staging of materials, an automated tracking system and direct communication with drivers, as well as a liaison for agency contacts. RFP at 8-16. Up to four awards of indefinite-delivery/indefinite-quantity contracts were to be made for a base year and 4 option years; the agency's needs were to be specified in future task orders to be competed among the awardees. *Id.* at 8, 76. Offerors were advised that their proposals must be "sufficiently detailed" to allow the agency to evaluate them under the evaluation factors in the RFP. *Id.* at 51. Also, since award could be made without discussions, offerors were advised to include their best terms in their initial proposals. *Id.* at 49.

Proposal strengths and weaknesses were to be evaluated under the following four equally important technical factors: technical approach (including evaluation of the firm's understanding of and proposed method of meeting the referenced statement of work requirements, as well as its proposed quality control and identified benefits from subcontractor relationships); delivery (including evaluation of planned procedures to expeditiously obtain and deliver varying materials to remote locations and multiple sites or states simultaneously, as well as proposed delivery documentation and reporting procedures); experience (including evaluation of five of the firm's recent contracts with dollar values of at least \$1 million that are similar in size, scope, and complexity to the current statement of work requirements demonstrating the ability to, for instance, respond rapidly, process multiple actions at once, control costs, timely deliver, and resolve problems with creative solutions); and past performance, including an evaluation of the relevance of those five contracts, as well as the results of customer surveys completed by the offeror's past performance references. *Id.* at 52-54, 56-57. Adjectival ratings, ranging from unsatisfactory (for "major errors, omissions or deficiencies") to outstanding (where the proposal "very significantly exceeds most or all solicitation requirements") were to be assigned to each proposal for each of the first three technical evaluation factors; for the past performance factor, adjectival ratings were to range from neutral (for "little/no relevant past performance") to outstanding (where "[e]ssentially no doubt exists" for successful performance based on the offeror's past

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due to a decrease in estimated funds available for the work, and a determination that its needs could be met by the award of only two contracts, only two contracts were awarded. Since, in its comments, the protester failed to rebut the agency's response to the challenge, we consider the matter abandoned. Dynamic Instruments, Inc., B-291071, Oct. 10, 2002, 2002 CPD ¶ 183 at 4; The Big Picture Co., Inc., B-220859.2, Mar. 4, 1986, 86-1 CPD ¶ 218 at 5.

performance record). Id. at 57-59. The awards were to be made to offerors whose proposals were deemed to represent the best overall value to the agency; in determining best value, the technical factors combined were to be significantly more important than price. Id. at 54-57, 76.

Six offers submitted in response to the solicitation were evaluated. The CDS proposal, which was the second lowest-priced proposal received, was rated lowest for technical merit due, primarily, to a lack of detailed information describing the firm's proposed procedures to perform the statement of work requirements, as well as a failure to demonstrate experience performing contracts similar in size, scope, and complexity, and which were valued at \$1 million or more. Finding that the lowest-priced and third lowest-priced proposals, which received significantly higher technical ratings than the protester's proposal, represented the best value to the agency, awards were made to those firms; with respect to the latter award, the agency concluded in a price/technical tradeoff determination that the higher technical merit of the higher-priced proposal warranted the payment of the price premium associated with it. Following a debriefing in which the agency reports it explained to CDS that its proposal lacked sufficient detail to demonstrate either the firm's understanding of, or its proposed methodology to meet, the statement of work requirements, CDS protested the agency's evaluation to our Office.

CDS generally contends that the agency unreasonably evaluated its technical proposal, which was rated unacceptable under the technical approach and delivery factors, marginal under the experience factor, and neutral for past performance. The agency responds that due to a critical lack of information in the protester's proposal, it was unable to determine that the firm had a sufficient understanding of the statement of work requirements; the agency concluded that the information provided by the protester was insufficient to rate its proposal acceptable under the technical approach and delivery factors. Specifically, the agency evaluators found that while the firm's proposal provided a brief response to the detailed technical approach requirements, in which CDS mentioned the firm's intention to maintain inventory and warehouse operations, specific statement of work requirements were not referenced, as was required (e.g., regarding subcontractor relationships, safety and health plans, quality control, and planned communication and information management), and no planned procedures or detailed methodologies were provided to explain how the firm intended to perform the statement of work requirements. Similarly, under the delivery evaluation factor, while the CDS proposal mentioned the use of certain vehicles and noted that certain reports could be produced, the evaluators found that insufficient detail was provided to ensure an adequate number and type of vehicles would be readily available for simultaneous deliveries, as required, and no detailed methodology was presented to either explain what procedures would be followed to ensure that materials would be expeditiously obtained and delivered, including delivery to remote locations, or to explain in any meaningful detail the firm's planned procedures to meet stated reporting requirements.

Under the experience factor, the evaluators rated the proposal marginal, finding that, although the summaries of work performed by CDS indicated a willingness to provide customer service and effective communication with the customer, with evidence of quick response and on-time deliveries, the work descriptions provided in the proposal failed to demonstrate the relevance of the work to the substantial and varied statement of work requirements set out in the RFP; none of the five contracts presented for evaluation was demonstrated to be of similar size, scope, and complexity as the work required under the RFP. Under the past performance factor, the proposal was rated neutral for demonstrating little or no relevant past performance, since the proposal's contract descriptions did not provide details to demonstrate work of similar size, scope, and complexity, and no past performance reference surveys were submitted for consideration, as required by the RFP.

In reviewing protests of alleged improper evaluations and source selections, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the solicitation's stated evaluation criteria and applicable procurement laws. See Abt Assocs. Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. It is an offeror's responsibility to submit an adequately written proposal that establishes its capability and the merits of its proposed technical approach in accordance with the evaluation terms of the solicitation. See Verizon Fed., Inc., B-293527, Mar. 26, 2004, 2004 CPD ¶ 186 at 4. A protester's mere disagreement with the evaluation provides no basis to question the reasonableness of the evaluators' judgments. See Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11. Further, where, as here, technical factors are to be given greater importance than price in the determination of which proposal offers the agency the best overall value, price/technical tradeoffs may be made, and we will not disturb awards to offerors whose proposals have higher technical ratings and higher prices so long as the result is consistent with the evaluation factors and the agency has reasonably determined that the technical superiority outweighs the price difference. See Structural Preservation Sys., Inc., B-285085, July 14, 2000, 2000 CPD ¶ 131 at 7.

As stated above, the solicitation here required detailed responses from offerors in their proposals setting out their planned procedures to perform a comprehensive set of requirements. Our review of the record here confirms the reasonableness of the agency's findings of a critical lack of information in the proposal to demonstrate the firm's understanding of, and planned procedures to meet, the multitude of performance requirements set out in the RFP. Since such information was necessary for evaluation under the first two technical evaluation factors, we have no basis to question the reasonableness of the ratings of unacceptable assigned to the firm's proposal under the technical approach and delivery evaluation factors.

The RFP also required a demonstration of relevant experience performing contracts of similar size, scope, and complexity, valued at \$1 million and performed within the past 5 years. Our review of the record shows there is no basis to question the reasonableness of the marginal rating assigned under the experience evaluation

factor, since the protester's proposal failed to demonstrate that the contracts it referenced for review were either performed within the past 5 years or encompassed work of similar size, scope, or complexity (or met the dollar value threshold required) compared to the work requirements here. Similarly, since the relevance of the contracts, as described in the proposal, was reasonably determined to be marginal, at best, we also have no basis to question the reasonableness of the neutral rating assigned under the past performance factor. The past performance evaluation was to be based not only on the relevance of the work, but the quality of the work performed, which was to be assessed in survey forms to be completed and returned to the agency by the firm's past performance references. No such surveys were submitted for CDS. The rating of neutral for past performance thus is unobjectionable, since, as defined by the RFP, such rating is applicable where a proposal demonstrates "little/no relevant past performance upon which to base a meaningful performance risk prediction." RFP at 59.

Given the lack of detail in CDS's proposal under each technical evaluation factor, we have no basis to question the evaluation. See Financial & Realty Servs, LLC, B-299605.2, Aug. 9, 2007, 2007 CPD ¶ 161 at 4. Further, since the RFP provided for awards based on a determination of which proposals presented the best value to the agency, with technical merit more important than price, there is no basis to question the selection of a higher-rated, lower-priced proposal, and a higher-rated, higher-priced proposal (where, as noted above, the agency reasonably determined that the technical superiority of the higher-priced proposal warranted the price premium associated with the award).² See Financial & Realty Servs, LLC, supra at 5-6. While

² In its comments, CDS suggests that the RFP requirements for what the firm refers to as "just in time delivery" and a required demonstration of experience with \$1 million contracts are excessive and should not be applied to CDS, since the firm has a "better understanding" of manufacturer schedules affecting delivery, and because it believes certain other, unrelated contracts have been awarded to small businesses in the past for work (and at dollar amounts) exceeding those firms' prior experience. Comments at 1. These contentions provide no basis to question the award. First, to the extent the protester is now challenging the solicitation's stated requirements, its challenge is untimely, as protests of apparent improprieties in a solicitation must be filed prior to the closing date for the receipt of proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1). Furthermore, reference to other unrelated awards is irrelevant here, as each procurement is a separate transaction; as discussed above, the protester has provided no basis to conclude that the awards here were made other than in accordance with the stated requirements of this procurement. See Patriot Contract Servs., LLC; Keystone Shipping Servs., Inc. et al., B-278276.11 et al., Sept. 22, 1998, 98-2 CPD ¶ 77 at 7 n.6.

CDS disagrees with the evaluation and awards, its mere disagreement does not show that the agency's actions were not reasonably based. See Citywide Managing Servs. of Port Washington, Inc., supra.

The protest is denied.

Gary L. Kepplinger
General Counsel