

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: 1-A Construction & Fire, LLP

File: B-404128

Date: January 7, 2011

Patricia Maier for the protester.

Azine Farzami, Esq., Department of Agriculture, Forest Service, for the agency.

Lauren I. Grossman, Esq., Susan K. McAuliffe, Esq., and Edward Goldstein, Esq.,
Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of protester's quotation and selection of higher-priced, higher technically rated quotation is denied where evaluation and selection were reasonable and in accordance with the solicitation's evaluation criteria.

DECISION

1-A Construction & Fire, LLP, of Hermiston, Oregon, protests the issuance of a task order to Hayden Brothers, Inc., of Emmett, Idaho, under request for quotations (RFQ) No. AG-04M3-S-10-0047, issued by the Department of Agriculture, Forest Service, for the construction of reservoirs in Wallowa-Whitman National Forest in Union County, Oregon.

We deny the protest.

The RFQ, which was issued on September 2, 2010 as a set-aside for Historically Underutilized Business Zone (HUBZone) small businesses, with a cascading set-aside for consideration of other small businesses if no quotes were received from HUBZone vendors, contemplated the issuance of a fixed-price task order for the construction of six ponds/reservoirs located in Wallowa-Whitman National Forest. The RFQ provided that the task order was to be issued to the vendor whose quotation conforming to the solicitation was determined to be the most advantageous to the Government considering three factors: (1) relevant past performance; (2) benefit to the local community; and (3) price. RFQ at 24. The RFQ established that the relevant past performance and benefit to the local community factors, combined, would be approximately equal in weight to price. Id. at 26.

For the purpose of evaluating past performance, the RFQ instructed vendors to list their relevant projects (including contracts or subcontracts “similar in nature and complexity to that required by the solicitation”) that were completed during the past 2 years or that are currently in progress. Id. at 24. With regard to the projects identified, vendors were required to provide information regarding, for instance, the size, location, quality, and timeliness of the work, the contract administrator’s contact information, and, if problems were encountered, what corrective actions were taken. Id. Under the benefit to the local community factor, vendors were to provide a summary of how they planned to benefit the local (Union County) area, “with respect to people working on the project, any rental equipment that will be provided from businesses in Union County, housing and meal facilities used, etc.” Id. The RFQ advised vendors that their quotations were to include sufficient, detailed information for evaluation, and that submissions lacking such information would be considered deficient. Id.

The agency received nine quotations by the September 20 closing date for the receipt of quotations, including four quotations from HUBZone small businesses. In accordance with the cascading set-aside procedures established by the RFQ, only the four quotations from HUBZone vendors were considered for selection. Of these four quotations, 1-A Construction & Fire’s was the lowest-priced (at \$19,950). The agency, however, rejected the protester’s quotation. The evaluators found that the protester’s quotation identified limited reservoir experience for the firm and provided limited information about that experience. The evaluators also found that 1-A’s limited response under the benefit to the local community factor, which stated only that the reservoir project would provide water sources for cows and all other wildlife, was insufficient to explain how the firm planned to benefit the local area. The agency selected Hayden Brothers for the task order at that firm’s quoted price of \$42,680. After learning of the agency’s decision, 1-A filed this protest.

In its protest, 1-A contends, among other things, that the agency unreasonably concluded that its quotation was unacceptable under the benefit to the local community evaluation factor; 1-A contends it was sufficient for the firm to have noted in its quotation that the pond project will provide water for cows and wildlife.¹ 1-A suggests, in its comments submitted in response to the agency’s report on the protest, that the pond project’s benefits in providing water to local wildlife will

¹ Given our conclusion, as discussed below, that the agency reasonably evaluated 1-A’s quotation as unacceptable under the benefit to the local community factor, which provided a reasonable basis for the agency to reject 1-A’s quotation, we do not need to separately address 1-A’s contentions regarding the agency’s evaluation of its quotation under the past performance factor, or its general contention that the agency acted unreasonably by issuing the task order to a vendor with a higher price than that quoted by 1-A.

ultimately benefit the community, by supporting, among other things, hunters who,² in turn, will spend money in the county.

In reviewing a protest against the propriety of an evaluation, it is not our function to independently evaluate proposals and substitute our judgment for that of the contracting activity. Barents Group, L.L.C., B-276082, B-276082.2, May 9, 1997, 97-1 CPD ¶ 164 at 6. Rather, we will review an evaluation to ensure that it was reasonable and consistent with the evaluation criteria in the solicitation and applicable procurement statutes and regulations; a protester's mere disagreement with the evaluation does not show it lacked a reasonable basis. Id. On the record here, we see no basis to question the evaluation of the protester's quotation or the source selection decision.

Here, the RFQ specifically instructed vendors to address how they planned to benefit the local community in carrying out the project, for example, through local hiring, local equipment rentals, and the use of local housing and meal facilities. To the extent 1-A generally noted that the reservoir project itself would provide a benefit, since it would serve as a water source for cows and wildlife, 1-A's response was not meaningful, since the RFQ clearly required vendors to establish how their own planned activities in performance of the project would provide a direct economic benefit to the local community. Given 1-A's failure to adequately address this fundamental solicitation requirement, the agency acted reasonably in finding 1-A's

² To the extent the protester argues that the benefit to the local community evaluation factor discriminates against 1-A because, according to 1-A, it would lose its HubZone status if it hired employees from the local community (which is not a HUBZone area), and because the firm has its own equipment (and therefore does not need to lease equipment in the local area), these challenges are untimely, since they pertain to the terms of the solicitation and, therefore, should have been raised prior to the time designated for the receipt of initial quotations. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2010). Further, while 1-A also contends that the agency's evaluation of its quotation was biased and discriminatory, as reflected by the agency's failure to properly respond to the protester's repeated requests for information regarding the number of vendors who submitted quotations, the protester has not adequately supported its contention; contracting officials are presumed to act in good faith and we will not attribute bias in the evaluation of proposals on the basis of inference or supposition. Advanced Sys. Tech., Inc.; Eng'g and Professional Servs., Inc., B-241530, B-241530.2, Feb. 12, 1991, 91-1 CPD ¶ 153.

quotation unacceptable under the benefit to the local community evaluation factor, which provided a reasonable basis for the agency's rejection of 1-A's quotation.

The protest is denied.

Lynn H. Gibson
Acting General Counsel