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Decision

Matter of: Master Lock Company, LLC

File: B-309982.3

Date: December 10, 2008

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Gail L. Booth, Esq., Defense Logistics Agency, for the agency.

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DIGEST

Protest arguing that an agency's rationale for making a split award was improperly based on an undisclosed criterion of demand for the solicited items--or, alternatively, giving disproportionate weight to a single criterion--is denied where the solicitation stated that past performance in delivering similar quantities of items would be considered, and the evaluation was consistent with the terms of the solicitation.

DECISION

Master Lock Company, LLC, of Oak Creek, Wisconsin, protests the award of a contract to Evergreen Specialty Services under request for proposals (RFP) SPM5L5-07-R-0056, issued by the Defense Logistics Agency (DLA) for low security padlocks. Master Lock contends that the agency improperly considered the anticipated demand for each lock type when conducting a price/technical tradeoff for that type. The protester also argues, in the alternative, that if demand was a proper evaluation criterion, the agency's selection decision elevated its importance in a manner inconsistent with the solicitation's stated evaluation scheme.

We deny the protest.

BACKGROUND

This protest involves the second challenge to DLA's rationale for splitting between Master Lock and Evergreen the awards to provide 35 separate types of locks, and arises after the agency's reevaluation of proposals in response to our decision sustaining the earlier protest. Although the protester initially received an award for

22 of the lock types solicited, it argues for the second time that it should have received award for all of the remaining 13 lock types as well. For the reasons set forth below, we conclude the agency award decisions had a reasonable basis.

The RFP was initially issued on February 5, 2007, and sought proposals to provide 35 types of low-security padlocks. The RFP anticipated the award of one or more fixed-price, indefinite-quantity contracts, subject to an economic price adjustment clause, with a 1-year base performance period and four 1-year option periods. The solicitation identified the estimated volumes for each lock type. RFP at 37-47.

The RFP stated that proposals would be evaluated on the basis of the following non-price factors, in descending order of importance: past performance, socio-economic considerations, and Javits-Wagner-O'Day (JWOD) Act considerations. RFP at 64-65. The past performance evaluation factor had three equally-weighted subfactors: delivery, business relations/customer satisfaction, and quality. Id. The price and non-price factors were of equal weight. Id. at 66.

The agency convened a technical evaluation team (TET) to evaluate the offerors' proposals. As relevant here, the TET found that Evergreen's initial proposal did not address the socio-economic or JWOD considerations evaluation factors, and rated the proposal as "poor" under these factors, the lowest rating under the agency's source selection plan (SSP).¹ Following discussions, the contracting officer (CO) and source selection authority (SSA) each concluded that Evergreen's proposal should be rated "neutral" under the socio-economic and JWOD evaluation factors because, as a small business, Evergreen had fewer opportunities to enter into subcontracts with other small businesses or JWOD entities. The ratings for the offerors were as follows:

¹ For the past performance evaluation, the agency used an evaluation scheme of outstanding, good, no record, fair and poor. AR, Tab 8, SSP at 4. For the socio-economic and JWOD considerations evaluations, the agency used an evaluation scheme of outstanding, good, fair and poor. Id. at 6-7.

| | MASTER LOCK | EVERGREEN |
|--|--------------------|------------------|
| PAST PERFORMANCE | OUTSTANDING | GOOD |
| Delivery | Good | Good |
| Business relations/ customer satisfaction | Outstanding | Outstanding |
| Quality | Outstanding | Good |
| SOCIO-ECONOMIC CONSIDERATIONS | GOOD | NEUTRAL |
| JWOD CONSIDERATIONS | GOOD | NEUTRAL |
| OVERALL RATING | OUTSTANDING | GOOD |

AR, Initial Source Selection Authority Decision (SSAD), at 2.

In the tradeoff decision, the SSA noted that Master Lock and Evergreen proposed prices that ranged in difference from 1% to 17%, with “the majority of items averaging an 8% or less (+/-) difference.” *Id.* Based on Master Lock’s higher rating for past performance, the SSA selected Master Lock for award of the 22 lock types where Master Lock’s price was either lower than Evergreen’s, or no more than 8% higher. *Id.* The SSA selected Evergreen for the award of the remaining 13 lock types, stating that Evergreen “is the lowest priced offer, and their past performance is rated as overall good.” *Id.* at 1.

DLA advised each offeror of the award decisions, and provided Master Lock a debriefing regarding the portion of the requirements it was not awarded. Master Lock filed a protest with our Office on March 18, 2008, arguing that DLA’s selection decision was inconsistent with the stated evaluation criteria because the agency’s “neutral” ratings for Evergreen’s proposal under the socio-economic and JWOD considerations evaluation factors resulted in an award decision that did not consider those evaluation factors. We agreed with Master Lock and sustained the protest on June 24. Master Lock Co., LLC, B-309982.2, June 24, 2008, 2009 CPD ¶ __ at 11-12.

Following our decision sustaining the protest, DLA reevaluated the offerors’ proposals for the 13 lock types challenged in Master Lock’s first protest. The offerors were not permitted to revise their proposals. As relevant here, the agency changed Evergreen’s rating for the socio-economic considerations and JWOD considerations factors from “neutral” ratings to the original ratings of “poor.” The final ratings for the offerors were as follows:

| | MASTER LOCK | EVERGREEN |
|--|--------------------|------------------|
| PAST PERFORMANCE | OUTSTANDING | GOOD |
| Delivery | Good | Good |
| Business relations/ customer satisfaction | Outstanding | Outstanding |
| Quality | Outstanding | Good |
| SOCIO-ECONOMIC CONSIDERATIONS | GOOD | POOR |
| JWOD CONSIDERATIONS | GOOD | POOR |
| OVERALL RATING | OUTSTANDING | GOOD |

AR, Tab 10, Revised SSAD, at 2.

In its revised selection decision, DLA noted that Master Lock’s proposed prices for each of the lock types was between 11 and 21 percent higher than Evergreen’s proposed prices. The agency stated that, as part of its price/technical tradeoff, it considered the relative demand for each of the lock types, as follows:

In making the price/technical trade off decision for the 13 [lock types] in question where the price offered by Master Lock is more than 8% higher than the price offered by Evergreen, an evaluation of the Annual Demand Quantity (ADQ) was completed. The ADQ is used as a method of determining for which items the government has the most critical needs.

AR, Tab 10, Revised SSAD, at 5.

In this second selection decision, DLA selected Master Lock for award of the 2 lock types with the highest demands, and selected Evergreen for award of the remaining 11 lock types. The RFP stated that the estimated demand for the 2 lock types awarded to Master Lock was 480,000 locks per year; the estimated quantity for the 11 lock types awarded to Evergreen was 40,219 locks per year. RFP at 37-47. DLA stated Master Lock’s past performance record provided a high degree of confidence that Master Lock could meet the contract requirements for the two highest-demand lock types. The agency concluded that the protester’s higher ratings under the past performance factor, and to a lesser extent its higher rating under the other two factors merited the price premium of 11 and 13 percent for the two lock types, as compared to Evergreen’s proposal. Id. at 6.

In selecting Evergreen for award of the remaining 11 lock types, the agency concluded that although Evergreen’s past performance ratings were lower than Master Lock’s, and thus provided a lower confidence of successful performance, the agency could accept a “slightly higher performance” risk in light of the fact that the

lock types had a lower demand. Id. at 6. The agency also concluded that, for the remaining lock types, the differences between the offerors' ratings under the non-price factors was less significant in light of the 12 to 21 percent price advantage for Evergreen's proposal.

DLA advised each offeror of the award decisions, and provided Master Lock a debriefing regarding the portion of the requirements it was not awarded. This protest followed.

DISCUSSION

Master Lock challenges the award of 11 of the 13 remaining lock types to Evergreen during the reevaluation. The protester argues that the agency improperly considered the anticipated "demand" for each lock type in its price/technical tradeoff. The protester also argues, in the alternative, that if demand was a proper evaluation criterion, the agency's selection decision elevated its importance in a manner inconsistent with the solicitation's stated evaluation scheme. We disagree with both of the protester's arguments.

Use of "Demand" as an Evaluation Criterion

First, Master Lock argues that DLA's consideration of anticipated demand for each lock type constituted an undisclosed evaluation criterion. For the reasons discussed below, we disagree.

Agencies are required to evaluate proposals based solely on the factors identified in the solicitation, and must adequately document the bases for their evaluation conclusions. Intercon Assocs., Inc., B-298282, B-298282.2, Aug. 10, 2006, 2006 CPD ¶ 121 at 5. While agencies properly may apply evaluation considerations that are not expressly outlined in the RFP where those considerations are reasonably and logically encompassed within the stated evaluation criteria, there must be a clear nexus between the stated criteria and the unstated consideration. Global Analytic Info. Tech. Servs., Inc., B-298840.2, Feb. 6, 2007, 2007 CPD ¶ 57 at 4.

As discussed above, DLA's selection decision considered the anticipated volume of orders for each lock type, as identified in the RFP. Specifically, the selection decision considered whether offerors' past performance demonstrated that they could meet the "demand" for the higher-volume lock types. AR, Tab 10, Revised SSAD, at 5. Master Lock argues that the solicitation did not state that DLA would consider "demand" as an evaluation factor, and that the agency had therefore departed from the evaluation scheme.

The RFP stated that the agency would consider the overall relevance of offerors' past performance as follows: "Past performance information will be used in the determination of the best value to the Government. This evaluation process will focus on information that demonstrates quality of performance relative to the type,

size and complexity of this acquisition.” RFP at 66. The RFP also stated that the delivery subfactor of the past performance factor would evaluate offerors’ performance record to assess their ability to deliver the required volumes of locks. Specifically, the delivery subfactor stated as follows:

The Government will evaluate the offeror’s Delivery. We will review the offeror’s record of on-time performance. Accordingly, the offeror’s past performance record will be evaluated to ensure its ability to handle the volume of sales similar to the solicitation’s estimated requirements with on-time delivery and to assess its experience in complex contracting with an emphasis on Stock Delivery.

Id. at 67.

With regard to the two lock types for which the RFP anticipated the highest demand, DLA concluded that Master Lock’s past performance record provided the agency a high degree of confidence that the offeror would be able to meet the requirements for providing the high-demand lock types. Id. at 6. With regard to the remaining 11 lock types, the agency concluded that although Evergreen’s past performance record demonstrated a “slightly higher performance risk” because the offeror did not have as much experience with high-demand item delivery as compared to Master Lock, this risk was acceptable because Evergreen would be providing the lower-demand lock types. Id. at 6-7.

We think the solicitation advised offerors that their past performance records would be evaluated based on relevance, thereby making the offeror’s performance of higher and lower-demand requirements relevant. We further think that the agency’s consideration of the demand for each lock type and the offerors’ delivery records was reasonably and logically encompassed within the express terms of the delivery subfactor. On this record we find no merit to the protester’s argument that the agency used an undisclosed evaluation criterion.

Weight of “Delivery” Subfactor in the Selection Decision

Next, Master Lock argues that even if DLA properly considered demand for each lock type in its evaluation of offerors’ past performance, the agency placed an improper emphasis on this criterion in a way that was inconsistent with the stated evaluation scheme. For the reasons discussed below, we disagree.

As discussed above, the RFP stated that past performance was the most important non-price evaluation factor. The RFP also stated that the three past performance subfactors of delivery, business relations/customer satisfaction, and quality were of equal importance. Master Lock argues that DLA improperly treated delivery as more important than the other past performance subfactors, and thereby departed from the solicitation’s stated evaluation scheme. Specifically, the protester contends that although the selection decision discusses the offerors’ delivery records, the agency

did not address the offerors' evaluations under the other two subfactors. We find these arguments without merit.

The record does not show, as the protester argues, that DLA considered only the delivery subfactor, and ignored the business relations/customer satisfaction and quality subfactors. Instead, the selection decision discussed the degree to which the ratings under all three subfactors demonstrated confidence in the offeror's ability to meet the solicitation requirements. Id. With regard to each offeror, the agency also addressed the relevance of each offerors' past performance, particularly with regard to each offeror's ability to deliver the volume of locks required under the contract. AR, Tab 10, Revised SSAD, at 3.

As discussed above, we think the agency's consideration of "demand" was reasonably related to both the overall evaluation of the relevance of the offerors' past performance, and to the specific subfactor of delivery. We do not agree with the protester that because more words were devoted to the discussion of the delivery subfactor than to the specific ratings under the business relations/customer satisfaction and quality subfactors, the agency departed from the evaluation scheme. In this regard, the selection decision shows that DLA considered the overall past performance evaluation in a tradeoff between the price and non-price evaluation factors. The record further shows that for each lock type, the agency weighed Evergreen's lower price against Master Lock's higher ratings under the past performance, socio-economic considerations and JWOD considerations factors. In light of Master Lock's higher prices, the agency determined that the protester's advantage under the non-price evaluation factors merited award to the protester only for those lock types where the high volume of orders decreased the confidence in Evergreen's ability to perform.

In sum, we think the record shows that DLA considered all of the evaluation factors and made its selection decision in a manner consistent with the solicitation.

The protest is denied.

Gary L. Kepplinger
General Counsel