



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Brewer-Taylor Associates

File: B-277845

Date: October 30, 1997

Charles E. Brewer for the protester.

Craig R. Schmauder, Esq., and Margaret P. Simmons, Esq., U.S. Army Corps of Engineers, for the agency.

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

DIGEST

Under request for quotations (RFQ), where agency has the option to delete certain contract requirements, and where price is the only evaluation factor, agency reasonably issued purchase order to vendor whose price quotation, as adjusted to account for eliminated contract requirements, was lower than protester's quotation. Agency decision is unobjectionable even though the protester's quoted price, if adjusted for the same eliminated requirements, would be lower than selected vendor's adjusted price where determination to eliminate preparatory contract requirements was based on firm having certain specific experience which selected vendor possessed, and protester did not.

DECISION

Brewer-Taylor Associates (BTA) protests the issuance of a purchase order to MSC Associates, Inc. under request for quotations (RFQ) No. DACW87-97-Q-0036, issued by the U.S. Army Corps of Engineers for instructional services. BTA contends that the agency's price analysis was flawed.

We deny the protest.

The RFQ was issued on January 31, 1997, under simplified acquisition procedures to obtain instructional services for a 5-day course entitled "DPW Support Services Contract Administration." The statement of work (SOW) provided that the contractor must use the government-furnished schedule of instruction, lesson plans, course manual/materials, and tests. The SOW identified minimum experience requirements for the lead and assistant instructors. The RFQ provided for the contractor to attend a 1-day post-award meeting to discuss in detail the expected services/supplies and to conduct a 1-day dry run of a condensed version of the classroom instruction, but also stated that the "government has the option to delete [each of these] meeting[s]."

In response to the RFQ, firms were required to submit a total price quote and a "cost breakdown." The RFQ did not provide any specific format for the breakdown. The RFQ also did not provide any technical evaluation criteria. The agency explains that it selected the respondent which met the SOW qualifications at the lowest quoted price.

The RFQ sought the submission of quotes by February 21. MSC submitted its quote of \$7,200, without a breakdown, on February 11. BTA submitted its quote of \$7,250, with a breakdown, on February 18. At the agency's request, MSC submitted its breakdown on March 4. The agency found both quotes technically acceptable and determined to issue a purchase order to MSC since it submitted the lowest quotation. Subsequently, the agency determined that, based on MSC's prior experience in teaching the course, the agency would delete the requirements for the post-award meeting and dry run (the remaining services are referred to hereinafter as the "reduced requirement"). Since MSC's cost breakdown priced the two meetings at \$200, the purchase order amendment reduced the price to \$7,000.

Upon learning of the purchase order, BTA requested a debriefing. At the debriefing, BTA learned of the amendment to the purchase order.¹ BTA then filed an agency-level protest challenging the agency's price analysis. In that protest, BTA requested that it be issued the purchase order at \$7,250 for the full requirement, or \$5,750 for the reduced requirement. MSC performed the contract in July 1997. In August, the agency dismissed the protest and BTA filed this protest with our Office.

BTA first protests the agency's decision to allow MSC to submit its cost breakdown after the closing date for this RFQ. This procurement was conducted under the simplified acquisition procedures set forth in part 13 of the Federal Acquisition Regulation (FAR). Unlike a sealed bid or a proposal, a quotation is not a legally binding offer which can be accepted by the government to form a contract. ACCESS for the Handicapped, 68 Comp. Gen. 432, 434 (1989), 89-1 CPD ¶ 458 at 3. A contract comes into being solely upon the supplier's acceptance of a government order for supplies or services in response to the supplier's quotation, and the government may withdraw its order anytime prior to acceptance. FAR § 13.108(a), (c). Therefore, the language of an RFQ is not generally construed as establishing a firm closing date, absent a late quotation provision (not present here), expressly providing that quotations must be received by that date in order to be considered. ACCESS for the Handicapped, *supra*, at 3-4.

¹In its comments, BTA states that the agency easily could have backdated the purchase order amendment in order to justify its award to MSC. However, BTA provides no evidence to support its claim, which assumes bad faith on the part of agency personnel. Such personnel are presumed to act in good faith and BTA's mere supposition is insufficient to support a finding of bad faith. Watson Indus., Inc., B-238309, Apr. 5, 1990, 90-1 CPD ¶ 371 at 5.

Here, inasmuch as at the time the agency requested the cost breakdown, no award had been made and no substantial activity had transpired in the evaluation, the agency's actions were consistent with the competitive rules that may be used in procurements conducted under simplified acquisition procedures. A & B Trash Serv., B-250322, Jan. 22, 1993, 93-1 CPD ¶ 53 at 2. Absent any evidence of an improper public disclosure of the protester's price, the protester was not prejudiced by the agency's action. Id. at 3.²

BTA next challenges the price analysis under which its quotation for the entire requirement was considered in comparison with MSC's quotation for only the reduced requirement. Since BTA's price for the reduced requirement is \$1,250 less than MSC's comparable price, BTA argues that the agency should have issued the purchase order to BTA at its lower price.

When using simplified acquisition procedures, contracting agencies are required to solicit quotations from a reasonable number of qualified sources to promote competition to the maximum extent practicable and ensure that the purchase is advantageous to the government based, as appropriate, on either price alone or price and other factors. FAR § 13.106-2(a)(1); SF & Wellness, B-272313, Sept. 23, 1996, 96-2 CPD ¶ 122 at 2. Here, since price was the only term requested by the solicitation, price was necessarily the sole evaluation criterion.³ AMBAC Int'l, B-234281, May 23, 1989, 89-1 CPD ¶ 492 at 3 n.2.

Under the circumstances of this procurement, we find unobjectionable the agency's decision to modify MSC's purchase order rather than to consider BTA for a purchase order on the reduced requirement. BTA correctly observes that its price for the reduced requirement is lower by \$1,250 than MSC's price. However, the agency explains that it would not have been able to reduce the requirement if the purchase order had been issued to BTA. In this regard, the record shows that MSC's lead instructor had taught the course which was the subject of the RFQ under two previous contracts and had participated in developing the course materials for use in this contract. Since BTA's instructors did not possess the same

²BTA apparently challenges the agency's position that it did not disclose BTA's cost breakdown or quote prior to receipt of MSC's cost breakdown. As with another allegation, noted above, in which BTA assumes bad faith on the part of agency personnel, we need not decide this issue, since BTA furnished nothing in its protest to substantiate this challenge.

³In its comments on the agency report, BTA questions whether price should have been the only evaluation factor. To the extent BTA is objecting to the lack of evaluation criteria in the RFQ, its argument is untimely; protests alleging apparent solicitation improprieties must be filed prior to the closing time. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1997).

experience, the agency reasonably concluded that, if issued the purchase order, BTA would need to perform both the post-award meeting and the dry run requirements. Thus, in issuing the purchase order amendment, the agency properly considered the price difference to be between MSC's reduced price of \$7,000 and BTA's full price of \$7,250.⁴

BTA next argues that the agency improperly eliminated the post-award meeting and dry run requirements because MSC did not use the experienced instructor it had proposed to perform the contract, and used an inexperienced substitute. It also alleges that the assistant instructor did not possess the proper qualifications. These allegations have no basis in fact; the individual whom BTA believed to be MSC's proposed instructor was not proposed by MSC. The record shows that the alleged substitute instructor was the one originally proposed by MSC. The record also shows that the proposed instructor possessed prior experience in teaching the course which was the subject of the RFQ. Further, both he and the assistant instructor possessed the requisite experience listed in the SOW. Thus, we have no basis for finding that the agency was unreasonable in eliminating the two preliminary course preparation requirements for MSC.

BTA finally argues that MSC's quotation is suspect because it is significantly lower than that proposed in prior contracts for teaching the same course.⁵ With respect to a fixed-price award, a protester's claim that an offeror submitted an unreasonably low price--or even that the price is below the cost of performance--is not a valid basis for protest. An offeror, in its business judgment, properly may decide to submit a price that is extremely low. Diemaster Tool, Inc., B-238877, Apr. 5, 1990, 90-1 CPD ¶ 375 at 2. An agency decision that the firm can perform the contract at the offered price is an affirmative determination of responsibility which we will not review absent a showing of possible bad faith on the part of procurement officials,

⁴To the extent BTA also challenges the initial award selection, the agency reasonably determined to issue the purchase order to MSC, since its price for the full requirement was \$50 less than BTA's price.

⁵In a related argument, BTA contends that the agency should have deleted more than \$200 from MSC's quote because the cost of the eliminated requirements would exceed that amount. While this is a matter of contract administration, we note that, since MSC's cost breakdown included \$200 for the eliminated items, there was nothing unreasonable in the agency's determination to reduce the purchase order price by that amount.

or that definitive responsibility criteria in the solicitation may not have been met. Bid Protest Regulations, 4 C.F.R. § 21.5(c); JWK Int'l Corp., B-237527, Feb. 21, 1990, 90-1 CPD ¶ 198 at 3-4. Where, as here, there is no such showing, we have no basis to review the protest.

The protest is denied.

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of the United States