Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Mid-Atlantic Service & Supply Corporation

File: B-281028.2

Date: December 29, 1998

Wayne Staley for the protester.
Rumu Sarkar, Esq., Agency for International Development, for the agency.
Marie Penny Ahearn, Esq. and David Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency failed to give sufficient credit in best value determination to protester's allegedly superior technical proposal and offer of longer-than-required warranty coverage period is denied where solicitation provided for technical evaluation on a pass/fail basis and, although warranty was a separate evaluation factor equal in weight to price and past performance, the agency reasonably determined that protester's longer warranty coverage was not worth the higher price (47.7 percent higher) of its proposal.

DECISION

Mid-Atlantic Service & Supply Corporation protests the award of a fixed-unit-price, indefinite-quantity contract to CHB Industries, Inc. under request for proposals (RFP) No. M/OP-98-1668, issued by the Agency for International Development (AID) for installation of security/safety window film in the AID-occupied portions of the Ronald Reagan Building in Washington, D.C. Mid-Atlantic argues that the award to CHB was improper because (1) the agency failed to make a best value determination consistent with the RFP and (2) the awardee cannot meet certain specifications which allegedly are impossible to meet.

We deny the protest.

The solicitation provided for award to the responsible and responsive offeror whose proposal represents the best value to the government after consideration of past performance, price, and warranty coverage. RFP § M.2 at 37.[1] Of relevance here, the RFP provided that "[i]f an offeror submits an alternate warranty in excess of the required seven year coverage, the Government may take such warranty into

[1]Since the RFP did not assign relative weights to the evaluation factors, it must be presumed that they were of equal weight. Forestry, Surveys & Data, B-276802.3, Aug. 13, 1997, 97-2 CPD ¶ 46 at 2 n.1.

consideration when determining best value." RFP § M.4.c at 38. The solicitation further provided that "[t]he Government will determine the responsiveness of an offer on a pass/fail basis. An offer is responsive when it manifests assent to all the terms and conditions of this . . . RFP . . . , which includes the . . . statement of work" (SOW). RFP § M.3 at 37.

Four offerors submitted proposals on or before the closing time for receipt of proposals on August 28, 1998. After evaluation, the offerors were ranked in the following order, from best to least value:

Offeror	Performance	Price	Warranty
CHB	Good to excellent	$ 95,150	Meets minimum
Offeror A	Average to good	$119,100	Exceeds minimum
Mid-Atlantic	Good to excellent	$140,520	Exceeds minimum
Offeror B	Excellent	$141,840	Meets minimum

AID determined that CHB's offer met all technical requirements and offered the best value to the government. Award was made to CHB on September 14, and this protest to our Office followed on September 25.

Mid-Atlantic argues that the agency improperly made award on the basis of the low-priced, technically acceptable proposal without regard to (1) the RFP provision for consideration of warranty coverage in the best value determination, (2) the RFP direction that "[t]he contractor shall mount the protective film to the window using the methodology providing the greatest security and longest guarantee," RFP SOW, § C.4 at 5, and (3) oral advice of agency personnel to "offer the best system available." Mid-Atlantic Comments of November 4, 1998, at 2. While recognizing that its price was third low, the protester claims that its higher price resulted from its offer of certain enhancements--i.e., a window film warranty of 12 years rather than the required 7 years and the strongest available caulking for the window film mounting (under the technical adhesive requirements)--which the agency improperly failed to consider in the evaluation; according to the protester, if its enhancements had been considered, its offer would have been determined the most advantageous, even with the price premium.[2]

[2]The relevant adhesive requirement is for film to be installed using a 100-percent polymer-based construction silicone of a minimum 5/16 bead and tensile strength of 20 pounds per square inch (PSI). RFP, as amended, § C.4. While the protester contends that "there is no caulking currently capable of meeting the . . . requirement," it states that it proposed "the best and strongest construction caulking material on the market." Protest at 2. The agency determined that Mid-Atlantic met the requirement. AID Evaluation Documents at 2.

Source selections officials have the discretion to make price/technical tradeoffs and the extent of such tradeoffs is governed only by the test of rationality and consistency with the evaluation criteria. Best Temporaries, Inc., B-255677.3, May 13, 1994, 94-1 CPD ¶ 308 at 3. Even where a source selection official does not specifically discuss the price/technical tradeoff in the selection decision document, we will not object if the tradeoff is supported by the record. Kendall Auto Auction, Inc., B-252474.3, June 10, 1994, 94-1 CPD ¶ 386 at 5.

Based on our review of the record, we find that the price/technical tradeoff is reasonable and consistent with the RFP. Contrary to the protester's argument that only price was considered in the award determination, the record shows that in addition to price, the non-price factors of past performance and warranty also were considered. Mid-Atlantic's and CHB's offers were rated equal on past performance, both receiving a "good to excellent" rating, while on warranty Mid-Atlantic's offer was rated as "exceeds minimum" and CHB's offer was rated "meets minimum." The record indicates that CHB's offer was determined to represent the best value to the government, based on its demonstrated positive past performance history, acceptable warranty, and low price. Negotiation Memorandum, September 14, 1998, at 5. While the contemporaneous evaluation record does not specifically address this point, the agency reports that it determined that the additional 5 years of warranty coverage offered by Mid-Atlantic was not worth the higher price ($45,370 or 47.7 percent higher) of Mid-Atlantic's proposal. Agency Report at 7. The protester has not shown this conclusion to be either unreasonable or inconsistent with the RFP evaluation scheme (which in effect assigned equal weight to warranty, past performance and price).

Although Mid-Atlantic argues that evaluation credit should have been given to its allegedly superior adhesive/caulking in accordance with the general SOW direction to mount the film using a methodology providing the greatest security and longest guarantee, the RFP specifically provided that the technical requirements would be evaluated on a pass/fail basis. To the extent that the protester believes that the agency personnel misled the firm concerning the best value determination, oral advice, even if given, does not operate to amend the solicitation or otherwise legally bind the agency. Nomura Enter., Inc., B-271215, May 24, 1996, 96-1 CPD ¶ 253 at 4; Materials Management Group, Inc., B-261523, Sept. 18, 1995, 95-2 CPD ¶ 140 at 3-4. Consequently, the protester's reliance on any oral advice was at its own risk.

Next, Mid-Atlantic argues that it is impossible for CHB to meet the "break/safe" requirements that the window film completely contain all window glass fragments against a blast generating up to either 4 or 10 pounds of pressure per square inch (PSI), depending on the type of film installation to the window. RFP SOW, § C.3.d(4). According to the protester, "no company has test results that shows they pass the . . . 10 PSI and 4 PSI requirements. . . . We contend that meeting the test requirements called for in the specification is not possible. . . . [N]o bidder can

produce the required test results and therefore none can meet the requirements." Comments at 5.

Although presented as a challenge to the agency's determination that CHB met the RFP requirements, the crux of Mid-Atlantic's position is that the specifications are impossible for any offeror to meet. This is essentially a challenge to the specifications as stated in the RFP, which the protester previously protested to our Office, and we dismissed as an untimely basis of protest because it was filed after the closing date for receipt of initial proposals. Mid-Atlantic Commercial Window Shield, B-281028, Sept. 16, 1998, 98-2 CPD ¶ ___; see 4 C.F.R. § 21.2(a)(1) (1998); Fraser-Volpe Corp., B-237617, Mar. 12, 1990, 90-1 CPD¶ 263 at 3. This basis for protest remains untimely.[3] In any case, even if neither offeror satisfied the requirements at issue, it appears that both offerors were treated equally, i.e., neither proposal was rejected on this basis. Under these circumstances, we find no basis for sustaining Mid-Atlantic's protest. See C3, Inc., B-233742.9, Mar. 1, 1991, 91-1 CPD ¶ 230 at 9.

The protest is denied.

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[3]While Mid-Atlantic states that it objected to the specifications in its proposal, this does not constitute a timely pre-closing protest to the agency, since there is no requirement that an agency open or read proposals on or before the closing date. Tower Corp., B-254761.3, Mar. 8, 1994, 94-1 CPD ¶ 186 at 4.