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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Midwest Metals

File: B-299805

Date: July 17, 2007

Dave Murar for the protester.

Maj. Walter R. Dukes, and Pamela Kennerly-Ignatius, Esq., Department of the Army, for the agency.

Frank Maguire, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Issuance of purchase order to higher-priced vendor with lower evaluated performance risk was unobjectionable where request for quotations advised that evaluation could involve tradeoff between price and performance risk, and agency concluded that successful vendor's lower evaluated performance risk made its quotation the best value despite protester's lower-quoted price.

DECISION

Midwest Metals (Midwest) protests the issuance of a delivery order to Alpha Technologies under request for quotations (RFQ) No. W52H09-07-T-0167, issued by the Department of the Army for 90 headless pins and 800 round nuts. Midwest challenges the Army's use of the Past Performance Information Retrieval System-Statistical Reporting (PPIRS-SR) in measuring performance risk and the evaluation of its proposal.

We deny the protest.

The solicitation was issued on January 28, 2007 as a small business set-aside and incorporated FAR clause 52.213-4, "Terms and Conditions--Simplified Acquisitions (Other than Commercial Items)." The solicitation contemplated a single award to the vendor whose quotation represented "the best value to the Government based on

Price and Performance Risk.” RFQ at 26.¹ Performance risk was to be assessed based on data received from PPIRS-SR, although the agency reserved the right to consider information from other sources. The RFQ provided that award would be made on a “best value” basis, which may involve a trade-off between price and performance risk. RFQ at 23.

Twelve quotations were received. The protester’s quotation was low at \$6,173.40, and, based on PPIRS-SR information, received a delivery score (reflecting deliveries under prior contracts) of 49 for the headless pins, and 68 for the round nuts. Alpha’s quotation was the sixth lowest at \$10,280.70, and it received a delivery score of 100 for both items. The contracting officer determined that Midwest’s quotation represented a much greater performance risk than Alpha’s, and that Alpha’s quotation thus was the best value despite its higher price. Memorandum for Record, May 15, 2007, at 2.

Midwest complains that the PPIRS-SR does not provide contractors with adequate access to data related to them, without going through cumbersome procedures that require a fee and as much as 6 to 8 weeks to complete. It further alleges that PPIRS-SR data do not correspond with data compiled by the Defense Logistics Agency, which apparently are more favorable to the protester. Midwest seems to conclude that the agency should not have based the performance risk evaluation on PPIRS-SR information.

Our Bid Protest Regulations provide that a protest based upon alleged improprieties in a solicitation that are apparent prior to the deadline for receipt of offers, or quotations, must be filed before that time. 4 C.F.R. § 21.2(a)(1) (2007). In this respect, our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Dominion Aviation, Inc.—Recon., B-275419.4, Feb. 24, 1998, 98-1 CPD ¶ 62 at 3. Here, since the Army’s intention to use PPRIS-SR information in the evaluation was clearly indicated in the RFQ, any argument that this information should not be used was required to be raised in a protest filed before the deadline for receipt of quotations. Since Midwest did not protest until after the delivery order was issued, this argument is untimely and will not be considered.

¹ The purpose of the PPIRS-SR is to provide contracting personnel with quantifiable past performance information regarding delivery and quality, as collected from existing Department of Defense reporting systems. RFQ at 27. Delivery scores are calculated using the number of line items delivered and a weighting factor reflecting the length of time a delivery was overdue. See <https://www.ppirs.gov/ppirs-sr/ppirssr.htm>.

Midwest also complains that the evaluation and award decision reflect the Army's "general practice" of "totally ignor[ing] the price quoted by a vendor and bas[ing] the entire procurement decision on the use of the PPIRS program." Protest at 1.²

In reviewing a protest against an agency's evaluation of proposals, we will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. Where, as here, the RFQ provides for a price/performance risk tradeoff, the agency retains discretion to issue a purchase order to a vendor with a higher performance risk rating, that is, a vendor which has a better performance record, despite a higher price, so long as the tradeoff decision is properly justified and otherwise consistent with the stated evaluation and source selection scheme. 4-D Neuroimaging, B-286155.2, B-286155.3, Oct. 10, 2001, 2001 CPD ¶ 183 at 10; see MacAulay-Brown, Inc., B-292515, B-292515.2, Sept. 30, 2003, 2003 CPD ¶ 190 at 8.

The record does not support the protester's assertion that the Army based its award decision solely on past performance, without regard for price. Rather, as noted above, the record shows that the contracting officer compared Alpha's quotation, which received the highest possible past performance rating, to Midwest's (and other vendors') lower-priced quotations on a price/past performance basis. Based on this comparison, the contracting officer concluded that Alpha's higher price was "warranted to avoid the additional risk" reflected in Midwest's (and the other lower-priced vendors') lower past performance ratings. Memorandum for Record, May 15, 2007, at 2. Consistent with this contemporaneous documentation, the Contracting Officer further elaborates, in response to the protest, that "Midwest ... was not considered the best value to the Government due to their low PPIRS-SR scores of 49 and 68. Their price was considered and it was determined that the discount was not worth the performance risk that these scores represent." Memorandum for Record, undated, at 2. We conclude that the Army did consider price in its tradeoff, and that the tradeoff was otherwise unobjectionable.

The protest is denied.

Gary L. Kepplinger
General Counsel

² To the extent Midwest is suggesting that the agency evaluated quotations in bad faith, we point out that our Office will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition; such allegation must be supported by convincing proof. Shinwa Elecs., B-290603 et al., Sept. 3, 2002, 2002 CPD ¶ 154 at 5 n.6. Here, Midwest has provided no evidence that the evaluation here reflects agency bad faith.