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Decision

Matter of: GlassLock, Inc.

File: B-299931; B-299931.2

Date: October 10, 2007

Robert S. Brams, Esq., and Elizabeth M. Gill, Esq., Patton Boggs LLP, for the protester.

Jonathan S. Baker, Esq., Environmental Protection Agency, for the agency.

Katherine I. Riback, Esq., and James A. Spangenberg, Esq., Office of General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Under a solicitation for competitive quotations issued under the Federal Supply Schedule program that only provided for vendors to submit prior experience/past performance references for the past 5 years, an agency improperly considered and awarded strengths, based on information provided by the successful vendor with its quotation, for projects that were completed more than 5 years ago.
 2. Agency failed to evaluate quotations reasonably or in accordance with the solicitation where strengths relating to the successful vendor's experience and past performance were assigned under the project plan/schedule technical factor, which did not encompass evaluation of the vendor's experience and past performance, and where the solicitation contained a separate evaluation factor for experience/past performance under which the successful vendor received consideration for its experience/past performance.
 3. Under solicitation for competitive quotations issued under the Federal Supply Schedule program that provided for a tradeoff analysis with technical factors being more important than price, agency improperly based issuance of an order on the lowest-priced, technically acceptable quotation.
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DECISION

GlassLock, Inc. protests the award of a task order to Commercial Window Shield (CWS) under request for quotations (RFQ) No. RFQ-DC-07-00168, issued by the Environmental Protection Agency (EPA) for the procurement and installation of window retrofits for window glass fragment retention in 15 EPA facilities in the

United States and Puerto Rico.¹ GlassLock argues that the agency's evaluation of CWS's quotation and the selection of that quotation for award were unreasonable.

We sustain the protests.

BACKGROUND

The RFQ contemplated the award of a fixed-priced order based upon a competition among Federal Supply Schedule (FSS) vendors. The solicitation stated that award would be made to the vendor representing the "best value," and listed, in descending order of importance, prior experience/past performance on similar projects, project plan/schedule, and organization and staffing as the technical evaluation factors; the technical factors combined were said to be more important than price.² RFQ at 1-3. The solicitation requested that vendors provide price offers on two different options: (1) security film with attachment systems and (2) security film only; the RFQ stated that the EPA would choose the option it determined to be the best value to the Government. RFQ at 1.

The agency received quotations from three vendors, including CWS and GlassLock, by the RFQ's closing date. GlassLock's quotation was evaluated as [DELETED] by the TEP under each of the three technical factors and overall, with a total price for option No. 2 of [DELETED] AR, Tab 5, TEP Report, at 2-4; Tab 6, Source Selection Decision, at 3. CWS's quotation received from the TEP an [DELETED] rating for the prior experience/past performance on similar projects factor, an [DELETED] rating for the project plan/schedule factor, and an [DELETED] rating for the organization and staffing factor, with an overall rating of "above average" and a total price for option No. 2 of [DELETED]³ AR, Tab 5, TEP Report, at 5-7; Tab 6, Source Selection Decision, at 3. Because of the "huge cost difference between" the vendors' option No. 2 prices, the agency contacted CWS to review its pricing, ensure there were no errors, and provide a price breakdown to account for these differences. Based on its

¹ We recognize that this protest involves an RFQ; however, the agency throughout its procurement record uses language appropriate to procurements under a request for proposals, including references to offerors and to an award. We have retained the language used by the agency in some instances for consistency with the underlying record.

² With regard to the non-price evaluation factors, the technical evaluation panel (TEP) assigned adjectival ratings of "outstanding," "above average," "average," "below average," and "unsatisfactory." Supplemental Agency Report (Supp. AR), Tab 1, Technical Evaluation Information (May 21, 2007), at 3.

³ The prices offered for option No. 1 ranged from [DELETED] to [DELETED]. The prices offered for option No. 2 ranged from [DELETED] to [DELETED]. AR, Tab 6, Source Selection Decision, at 3.

review of the information provided and after a further conversation with one of CWS's references, the agency determined that CWS could successfully perform the work at its quoted price. AR, Tab 6, Source Selection Decision, at 3-4. The agency determined that because of budget constraints option No. 2 met the agency's needs, and given that both GlassLock and CWS were "technically acceptable," CWS's low-priced quotation represented the best value to the government.⁴ Id.

GlassLock protests that the agency's evaluation of CWS's quotation under every one of the evaluation factors was unreasonable and inconsistent with the terms of the solicitation, and that the source selection was made on a "lowest-priced, technically acceptable determination," in violation of the RFQ's evaluation scheme that provided for a tradeoff analysis between technical factors and price.

Where an agency conducts a formal competition under the FSS program, as is the case here, we will review the agency's actions to ensure that the evaluation was fair and reasonable and consistent with the solicitation. COMARK Fed. Sys., B-278343, B-278343.2, Jan. 20, 1998, 98-1 CPD ¶ 34 at 4-5. Based on our review, we find that the agency's evaluation under the prior experience/past performance on similar projects factor and project plan/schedule factor was unreasonable and inconsistent with the announced evaluation criteria, and that the award decision was not in accordance with the solicitation, which gave greater weight to the technical factors.

PRIOR EXPERIENCE/PAST PERFORMANCE ON SIMILAR PROJECTS FACTOR

With regard to the prior experience/past performance on similar projects factor, the solicitation required that vendors provide a narrative that discussed five projects that most closely represented the project elements of similar scope, size and complexity, and that "must have been substantially completed within the past five years." The RFQ stated that this evaluation factor would measure the extent and relevance of the offeror's prior experience as well as whether the vendor "delivered high quality work in a positive and professional partnership with the client." RFQ at 1-2.

The protester argues that in evaluating CWS's experience and past performance the agency not only considered the five projects that CWS had performed within the past 5 years that it had listed in its quotation, but also considered certain other past performance of the firm that were discussed in an introductory letter to its quotation, most of which occurred more than 5 years ago, for example, a 1998 project at the Federal Bureau of Investigation Headquarters; a project at the Pentagon prior to the attacks of September 11, 2001; a project in 2000 for the Department of Energy headquarters; and a project in 2001 at the United States Capitol. Supp. Protest at 2; see AR, Tab 4, CWS Proposal, Introductory Letter, at 1-2.

⁴ The third vendor proposed GlassLock as subcontractor to perform the work and its highest-priced quotation was not considered for award.

The agency responds that CWS's introductory letter was not the basis for the TEP's evaluation of CWS's past performance. Supp. AR at 3. This agency contention is contradicted by the TEP Report and the source selection document.

As stated above, the agency gave CWS an [DELETED] rating for the prior experience/past performance on similar projects factor. In so doing, the TEP Report listed four strengths and no weaknesses. Two of the four noted strengths for this factor refer to the information in CWS's introductory letter:

- Extensive, documented experience in this field. (Intro, pp. 1-2; Past Experience, pp. 1-6).
- Impressive work on previous projects for the Capitol Building and other nearby government facilities.⁵ Reflects capability to work in a high-security environment.

AR, Tab 5, TEP Report, at 5. The source selection document stated the following regarding CWS's quotation and the prior experience/past performance on similar contracts factor:

The TEP noted that the strengths of Commercial Window Shield was its extensive, documented experience in this field; numerous, similar projects, *i.e.*, attachments/framing and film, or film only; impressive work on previous projects for the Capitol Building and other nearby government facilities, as this reflects capability to work in a high-security environment; and outstanding customer feedback via letters of recommendation. No weaknesses or risks were noted.

AR, Tab 6, Source Selection Decision, at 2. Thus, the record shows that, contrary to the RFQ requirements, CWS provided in the introductory letter of its quotation experience/past performance references on projects that CWS had performed more than 5 years ago, and that these projects were recognized as strengths and were a significant part of the agency's evaluation of this evaluation factor and source selection decision.

It is a fundamental principle of government procurement that competition must be conducted on an equal basis, that is, offerors must be treated equally and be provided with a common basis for the preparation of their proposals. This principle

⁵ This refers to the projects discussed in CWS's introductory letter, inasmuch as none of the five projects performed in the last 5 years identified in the experience/past performance section of CWS's proposal were performed in or around Washington, D.C.

is violated where, as here, an offeror provides past performance references beyond those allowed by the solicitation and the agency considers those references in evaluating proposals. See Electronic Design, Inc., B-279662.2 et al., Aug. 31, 1998, 98-1 CPD ¶ 69 at 10-11. Thus, the agency's evaluation of CWS's proposal under this factor was improper and we sustain the protests on this basis.⁶

PROJECT PLAN/SCHEDULE FACTOR

The project plan/schedule factor required that vendors provide a project schedule for execution of the project from award of the task order to completion and acceptance of the buildings. The solicitation provided that project schedules that included specific details of the activities for each location and that were organized in a realistic and achievable order would be judged more favorably. RFQ at 2.

As indicated, CWS's proposal was rated [DELETED] under this factor. In so doing, the TEP assigned CWS's proposal two strengths, the only strengths that it received for this factor, for completing projects on schedule and for completing "projects under challenging conditions requiring greater flexibility and adaptability to customer constraints." The TEP also assigned CWS's proposal two weaknesses under the factor: (1) absence of detail in the narrative explanation of the activities to be conducted and (2) no evidence of measures to ensure close and continuous coordination with the government. The TEP also found a risk that CWS "[m]ay not provide for sufficient planning and coordination to minimize problems associated with this variety of facilities included in the project." AR, Tab 5, TEP Report, at 6.

GlassLock maintains that the evaluated strengths under the project plan/schedule factor properly belonged under the prior experience/past performance on similar contracts factor, and that for the agency to consider this same information under

⁶ The protester also argues that the agency's evaluation under this factor was improper because the projects that CWS had performed were not multi-site projects, and therefore not sufficiently similar to the scope, size, and complexity to the solicited work. We disagree. We first note that the RFQ did not identify experience in "multi-site" projects as a specific indicia of project comparability with regard to scope, size or complexity. We also note that CWS listed as a project that it had performed within the past 5 years, work that it had performed at the Merrill Lynch Headquarters in New York, which involved working on two buildings simultaneously. AR, Tab 4, CWS's Quotation, at 28. Based on this project, and the other four projects that CWS listed that it had performed within the past 5 years, the TEP reasonably determined that CWS's past performance references were relevant and not inconsistent with an [DELETED] rating under this factor. We have no reason to question the agency's evaluation in this regard, although for the reasons stated above, the TEP's and Source Selection Decision's reliance on projects submitted by CWS outside the 5-year period specified by the RFQ was improper.

both factors amounted to “double counting,” and therefore CWS’s quotation should not have received an [DELETED] rating under this factor. Supp. Protest at 3.

The agency does not rebut or otherwise specifically respond to the protester’s contention, but states that the “TEP noted some strengths and some weaknesses/risks associated with CWS under this evaluation factor and reasonably rated its project plan/schedule as [DELETED]” Supp. AR at 4.

We agree with the protester that the agency essentially “double counted” CWS’s past performance information by assigning strengths in addition to evaluating them under the specific factor that addressed experience and past performance. See J.A. Jones Mgmt. Servs., Inc., B-254941.2, Mar. 16, 1994, 94-1 CPD ¶ 244 at 6. As stated above, the project plan/schedule factor was for the agency to evaluate each vendor’s proposed project schedule, that is, how the vendor would perform the work, and to judge whether each vendor adequately described the flow of activities at each site from the award of the task order to acceptance of the buildings, and did not indicate that a vendor’s experience/past performance would be considered. RFQ at 2. As CWS’s only two strengths under the project plan/schedule factor were for matters not for consideration under this factor, we cannot find that the agency’s evaluation of CWS’s proposal was consistent with the RFP’s evaluation criteria. We thus sustain this protest basis.

ORGANIZATION AND STAFFING FACTOR

The organization and staffing factor required that each vendor provide a project organization chart, which at a minimum should “address project management, project superintendence, quality assurance/control, and project controls.” RFQ at 2-3. The TEP assigned CWS’s quotation an [DELETED] rating for this factor. AR, Tab 5, TEP Report, at 7. In support of this rating, the TEP assigned the following strength: “Proposed project organization adequately addresses principal elements- preparation, supply/logistics, installation, and quality control. (Org. & Staffing p. 1).” Id.

The protester contends that the agency incorrectly evaluated CWS’s quotation under this factor because the TEP assigned CWS’s quotation the strength, even though page 1 of the quotation assertedly failed to address project management, quality assurance/control, and project controls, as was indicated by the TEP Report. Supp. Protest at 4.

While the first page of the organization and staffing portion of CWS’s quotation did not reference quality control, it did contain an organizational chart that pertained to project controls and project management, and a narrative describing the responsibilities of the proposed key personnel relating to project controls and project management (which discussion continued to the next page of this portion of the quotation). AR, Tab 4, CWS’s Quotation, at 68-60. Page three of the same section

describes CWS's plan for quality control. Id. at 70. In our view, GlassLock has provided no basis to question the agency's evaluation of this factor.

PRICE

As stated above, CWS's total price for option No. 2 of \$406,644 was considerably lower than the other vendors' prices, and it was for this reason that the agency obtained a greater price breakdown to confirm that CWS could perform the work at the price quoted.

GlassLock contends that CWS's price was unreasonable and unrealistic, and failed to include adequate documentation to support its price, and that the agency improperly allowed CWS to supply a further breakdown of its price. Supp. Protest at 4.

The RFQ contained no provision that required quoted prices to be evaluated for realism. Nevertheless, when the agency ascertained that CWS's price was much lower than the other vendors' prices, the agency appropriately took steps to ensure the price was not a mistake and that CWS was capable of performing the work at the quoted price. In furnishing the price information, CWS did not change its price. Based on this further breakdown and after a further conversation with CWS's reference, the agency determined that CWS could perform the work at the price proposed. We find the agency's evaluation of CWS's price unobjectionable.

SOURCE SELECTION DECISION

Finally, the protester asserts that the agency abandoned its RFQ evaluation scheme, which provided for a tradeoff analysis between the technical factors and price with the technical factors being more important than price, and instead made award based on the lowest-priced quotation. Supp. Protest at 5.

Agencies cannot announce in a solicitation an evaluation scheme that provides for a tradeoff analysis with the technical factors being considered more important than price and then disregard the evaluation scheme and make award based on the lowest-priced, technically acceptable submission. See Trijicon, Inc., B-244546, Oct. 25, 1991, 91-2 CPD ¶ 375 at 5, 7.

Here, the source selection decision reported the factor ratings of the quotations, from which it concluded that "[b]ased on the technical evaluations, both GlassLock and [CWS] were impressive," that both "would be able to effectively perform the required work," and that both quotations were "technically acceptable." AR, Tab 6, Source Selection Decision, at 3-4. Then after acknowledging that the technical factors were more important than price, it determined that CWS's quotation represented the best value without any further comment. Id. at 4. Absent from the decision is any analysis, determination or even statement that CWS's lower price offset the technical advantages that could result from GlassLock's quotation's higher

technical ratings. Thus, we agree with the protester that the source selection decision was improperly made based on the lowest-priced, technically acceptable quotation and we sustain this protest ground.

RECOMMENDATION

We recommend that the agency reevaluate quotations in accordance with the terms of the solicitation, giving each evaluation factor its appropriate weight. Following the evaluation, the agency should determine which quotation is most advantageous to the government in accordance with the RFQ. In the event that the protester's quotation is determined to be most advantageous to the government, the agency should terminate the order issued to CWS and award to the protester. We also recommend that the protester be reimbursed the cost of filing and pursuing the protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.6(d)(1) (2007). In accordance with 4 C.F.R. § 21.6(f), the protester's certified claim for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision.

The protests are sustained.

Gary L. Kepplinger
General Counsel