



GAO

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Frontier Transportation, Inc.

File: B-400345

Date: September 9, 2008

Romona Doty, Frontier Transportation, Inc., for the protester.
Heather M. Self, Esq., Department of Agriculture, for the agency.
Linda C. Glass, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest that agency improperly rejected protester's quotation after unreasonably concluding that its price was too high is denied where the record shows that protester's price was significantly higher than the government estimate and significantly higher than the prices received from other small businesses during the competition.

DECISION

Frontier Transportation, Inc. protests the rejection of its quotation under request for quotations (RFQ) No. AG-0343-S-08-9004, issued by the Department of Agriculture for mobile refrigerated trailer units for use on incident assignments in the Northern Rockies geographic area. Frontier argues that the agency improperly rejected its quotation on the basis of unreasonable price.

We deny the protest.

This solicitation was posted on the federal business opportunities (FedBizOpps) internet website on February 29, 2008. The RFQ was issued as a small business set-aside, simplified commercial acquisition. The RFP provided that the quotations would be used to establish emergency equipment rental agreements, which the agency terms a form of blanket purchase agreement (BPA), against which orders could be placed for mobile refrigerated trailer units. RFQ ¶B. The RFQ contemplated the award of BPAs to all vendors submitting reasonably priced, technically acceptable quotations. RFQ ¶E.2.

The RFQ also contained a clause entitled, “Method of Award-Cascading Set-Aside Procedure.” RFQ at 5. The relevant portions of this clause advised that:

1. Multiple awards of Blanket Purchase Agreements (BPA) resulting from this solicitation will be made using the following cascading set-aside order of preference:

- a. In accordance with FAR [Federal Acquisition Regulation] Subpart 19.13, awards will be made on a competitive basis first to responsible, eligible HUBZone small business concerns.

- b. Secondly, additional awards will be made on a competitive basis in accordance with FAR Subpart 19.14, to responsible, eligible Service Disabled Veteran Owned Small Business (SDVOSB) concerns.

- c. Thirdly, additional awards will be made on a competitive basis in accordance with FAR Subpart 19.5, to responsible small business concerns.

Id.

The RFQ provided that quoted prices would be evaluated for reasonableness and that price was not the determining factor for award, but rather, a factor for consideration. RFQ at 67.

Eight quotations were received. Frontier was the only HUBZone vendor to submit a quote. There were no quotations received from SDVOSB vendors. Contracting Officer’s (CO) Statement at 3. The agency reports that the quotations ranged in price from \$125 to \$450 daily and that the independent government estimate (IGE) was \$250 per day. Three quotes exceeded the IGE—the quotes submitted by Frontier and two of the small business vendors.

The agency determined that the five quotations priced below the government estimate were reasonably priced, but might not be sufficient to satisfy the government’s needs during the upcoming season and decided that it would instead prefer to award to all eight vendors. Id. As a result, all three vendors that exceeded the IGE, including the protester, were contacted and each was given an opportunity to revise its quotation by June 25.

Frontier was contacted by the agency on June 17, 2008. Frontier attempted to explain that its prices should be deemed reasonable, in part because the agency had paid this price in the past. The CO gave Frontier until June 25 to submit a revised quote. According to the CO, Frontier advised, during a telephone conversation on June 18, that it would not re-submit a quotation but would instead seek to be listed as a potential source with the Missoula, Montana regional office of the U.S. Forest Service.

Only one of the small business vendors submitted a revised quotation by the June 25 deadline. The CO awarded six agreements with the following daily equipment rates: \$125, \$165, \$170, \$200, \$200 and \$250. On June 26, after awards had been made, Frontier submitted a revised quotation offering \$400 per day and imposing a per unit surcharge of \$1,000 per year. Since Frontier submitted the only quote from a HUBZone small business concern, the CO determined that Frontier's revised quote was unreasonably priced based on comparison with the IGE. CO's Statement at 4. Successful vendors were notified by mail and an on-line announcement was posted on June 20, 2008. Frontier subsequently filed this protest with our Office.

Frontier argues that its quote was reasonable and that the CO failed to properly evaluate its quoted price in accordance with the terms of the RFQ. Frontier also argues that the IGE was flawed and should not be used as a basis to determine price reasonableness. The protester further argues that since it was the only HUBZone small business vendor to submit a quote, the CO could not evaluate its price by comparing it to the prices quoted by other small business concerns.¹

As noted above, the procurement was conducted under simplified acquisition procedures. Simplified acquisition procedures are designed to, among other things, reduce administrative expenses, promote efficiency and economy in contracting, and avoid unnecessary burdens for agencies and contractors. Federal Acquisition Regulation (FAR) § 13.002. These procedures provide discretion to COs to use one or more of the evaluation procedures in FAR Parts 14 and 15. See FAR § 13.106-2(b); Finlen Complex, Inc., B-288280, Oct. 10, 2001, 2001 CPD ¶ 167 at 8-10. When using these procedures, an agency must conduct the procurement consistent with a concern for fair and equitable competition and must evaluate quotations in accordance with the terms of the solicitation. In reviewing protests of an allegedly improper simplified acquisition evaluation, we examine the record to determine whether the agency met this standard and exercised its discretion reasonably. Russell Enters. of N. Carolina, Inc., B-292320, July 17, 2003, 2003 CPD ¶ 134 at 3.

The primary issue here is Frontier's claim that the CO improperly used an "unreasonable price" determination to reject the quote of a HUBZone business concern.² As stated above, the RFQ specifically provided that a BPA would be issued

¹ In its initial protest, Frontier also protested the eligibility of one of the successful vendors, Watkins and Shepard Leasing, LLC on the basis that Watkins did not qualify as a small business vendor. On August 19, 2008, the Small Business Administration (SBA) determined that Watkins was other than a small business and the agency cancelled Watkins's agreement on August 21.

² The protester suggests that the agency rejected its quote in order to issued a BPA to Watkins, a local hometown large business concern. Essentially, the protester is alleging that agency officials acted in bad faith. Government officials are presumed
(continued...)

to those vendors who submitted a technically acceptable quote at a reasonable price. RFP ¶ E.2. The RFQ further stated that price would be evaluated in accordance with the FAR. Id. Under simplified acquisition procedures price reasonableness is determined by the CO. FAR § 13.106-3(a). The CO may make a reasonableness determination based on a comparison to an IGE. FAR § 13.106-3(a)(2)(vi). Here, the CO, in accordance with the FAR, based her price reasonableness decision on an IGE that was prepared using market research. Frontier's quote was significantly higher than the IGE and was therefore determined to be unreasonably priced. We do not find this determination to be unreasonable.³

The protester also argues that the IGE used here was developed after an inadequate evaluation of the market for the required equipment. In calculating the IGE, the agency reports that it contacted companies in Montana, Idaho and Washington who offered mobile refrigerated units for rent and the prices from these firms ranged from \$125 through \$175 with variations in pricing schemes depending on length of rental. AR, Tab 2, CO Statement at 6. The agency also did an internet search to establish a price range for similar units meeting OSHA (Occupational Safety and Health Administration) requirements. Finally, the IGE was established by adding a premium amount to an average of the market prices to take into consideration the excessive wear and tear the equipment would experience. Id.

On this record, we have no basis to conclude that the IGE was not reasonably based or that the market research was inadequate. If anything, the adequacy of the agency's market research was vindicated by the quotes it received from numerous

(...continued)

to act in good faith and any argument that contracting officials are motivated by bias or bad faith must be supported by convincing proof; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or suppositions. ACC Constr. Co., Inc., B-289167, Jan. 15, 2002, 2002 CPD ¶ 21 at 4. Moreover, the protester's allegations of bad faith are undercut by the agency's decision to terminate the award to Watkins on August 21, upon learning that the SBA had concluded that Watkins was ineligible for award under a small business set-aside.

³ Frontier also complains that, in the course of this procurement it has requested specific information and documents regarding actions taken by the CO after notification of the protest. These documents included the notice of protest to successful vendors, suspension of performance or termination of the BPAs, and notice to our Office concerning the agency's intent to continue contract performance in the face of a protest. We simply note that in this procurement, the agency issued BPAs to all vendors with reasonable prices. The remedy available to Frontier was not for the agency to remove another company's BPA, but to issue a seventh BPA to Frontier. Under these circumstances, these documents were irrelevant to Frontier's protest.

other small business concerns. Frontier's argument that the IGE was based on an inadequate evaluation of the market reflects mere disagreement with the agency's assessment and provides no basis for our Office to sustain a protest.

The protest is denied.

Gary L. Kepplinger
General Counsel