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Decision

Matter of: Midwest Tube Fabricators, Inc.

File: B-407166; B-407167

Date: November 20, 2012

Cindy Rhodes Victor, Esq., The Victor Firm, PLLC, for the protester.
Elliott Wolf, E.W. Packaging Corporation, Inc., for the intervenor.
Marc A. Shepler, Esq., Defense Logistics Agency, for the agency.
Matthew T. Crosby, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that item offered by awardee cannot have met solicitation specifications merely because awardee offered item at lower price than protester fails to state valid basis of protest.

DECISION

Midwest Tube Fabricators, Inc., of Sterling Heights, Michigan, protests the issuance of a purchase order to E.W. Packaging Corporation, Inc. (EWPC), of Deerfield Beach, Florida, under request for quotations (RFQ) Nos. SPM7M4-12-T-9441 and SPM7M4-12-T-9460, issued by the Defense Logistics Agency, for a quantity of bent, seamless, stainless steel tube.¹ Midwest asserts that based on EWPC's comparatively lower price, the item offered by EWPC could not have met the solicitation specifications, and, therefore, issuance of the purchase order to EWPC was improper.

We dismiss the protest.

¹ Other than the quantities solicited, the RFQs essentially are identical. This decision provides single, rather than dual, citations to the RFQs because the relevant information appears on the same page of each RFQ.

On June 12, 2012, the agency issued two RFQs for an item designated as national stock No. 4710-01-186-0665.² RFQ at 1. The first RFQ sought a quantity of 2770. Id. The second RFQ sought a quantity of 3000. Id. Both RFQs contemplated the issuance of a fixed-price purchase order to the vendor submitting the lowest-price quotation for items conforming to the solicitation specifications.³ See id. at 1.

Both Midwest and EWPC submitted quotations in response both RFQs. On July 30, the contracting officer notified Midwest and EWPC via e-mail that the agency was combining the two RFQs. AR, Tab 5, Agency E-Mail to Vendors (July 30, 2012). The contracting officer's e-mail requested that the firms provide quotations for a quantity of 5770 of the solicited item; i.e., the agency sought a single quotation from each vendor for the sum of the previously solicited quantities. Id. In response to the contracting officer's e-mail, both Midwest and EWPC submitted quotations. Midwest's unit price for the quantity of 5770 was [DELETED]. AR, Tab 8, Midwest Quotation on Combined RFQs, at 1. EWPC's unit price for the quantity of 5770 was [DELETED]. AR, Tab 11, EWPC Quotation on Combined RFQs, at 1.

The contracting officer evaluated the quotations and determined that EWPC had quoted the lowest price.⁴ See AR, Tab 17, Simplified Acquisition Pricing Memorandum, at 1. The contracting officer also found that EWPC's quotation stated both that the firm had "bid without exception" to the solicitation and that the quoted item was "in accordance with" the solicitation specifications. Contracting Officer's Report at 2. Based on this finding, the contracting officer determined that the item quoted by EWPC conformed to the solicitation requirements. Id. The contracting officer then issued a purchase order to EWPC for a quantity of 5770. AR, Tab 1, EWPC Purchase Order, at 1. This protest followed.

² The RFQs described the item as bent, seamless, stainless steel tube with certain dimensions and conforming to United States Army Tank Automotive Command drawing No. 12338581. RFP at 2; Agency Report (AR), Tab 16, Drawing No. 12338581. The item apparently serves as a fuel line on the high mobility multipurpose wheeled vehicle. See RFQ at 2.

³ The RFQs incorporated by reference the terms and conditions of the agency's master solicitation for automated simplified acquisitions (MSASA). RFQ at 1. MSASA provides that in general, quotations will be evaluated on the basis of price alone where an RFQ provides that the acquisition is a candidate for automated award. AR, Tab 4, MSASA (May 2012), at 4. Both RFQs here stated that the acquisitions were candidates for automated award. RFQ at 1.

⁴ The contracting officer noted that EWPC's price was 66 cents lower than the price paid by the agency in its most recent purchase of the item. AR, Tab 17, Simplified Acquisition Pricing Memorandum, at 1. The contracting officer attributed the price decrease to an increased purchase quantity. Id. ("The drop in price is due to the much more economical quantity we are currently procuring.").

Midwest asserts that issuance of the purchase order to EWPC was improper because, according to Midwest, EWPC's lower price reflects that the item offered by EWPC "could not" meet the solicitation specifications. Protest at 2. In this regard, Midwest alleges that EWPC "could not have provided pricing based on the specifications" and that EWPC's pricing "could only have been based on the part being manufactured of an inferior low carbon steel." Id. Midwest also alleges that while it is a manufacturer of the item, EWPC "would have to hire sub-contractors to produce the [item] and perform the packaging requirements." Id. at 5.

Our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. 4 C.F.R. § 21.1(c)(4), (f) (2012). These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Pacific Photocopy and Research Servs., B-278698, B-278698.3, Mar. 4, 1998, 98-1 CPD ¶ 69 at 4.

In this case, Midwest's challenge amounts to a claim that the item offered by its competitor fails to meet the solicitation specifications merely because its competitor offered the item at a lower price than Midwest. Without more, such a claim fails to state a valid basis for protest. See Wright Tool Co., B-276416, June 10, 1997, 97-1 CPD ¶ 210 at 3 (under solicitation for fixed-priced contract, there is no prohibition against procuring agency's acceptance of low or below-cost offer); SAIC Computer Sys., B-258431.2, Mar. 13, 1995, 95-1 CPD ¶ 156 at 2, 11-13 (where solicitation contemplates award of fixed-price contract without evaluation of price realism or offeror's understanding of requirements, protester's claim that another offeror submitted unreasonably low price is not valid basis for protest). Accordingly, we dismiss Midwest's protest. 4 C.F.R. § 21.5(f).

In its comments on the agency report, Midwest argues that the item offered by EWPC cannot meet the solicitation specifications because in five prior procurements, the agency acquired this item at a unit price that was higher than the unit price quoted by EWPC in this procurement. Comments at 2, 4-5. The solicitations in this procurement, however, expressly listed the unit pricing cited in Midwest's comments. Accordingly, Midwest's argument, not raised until the time of its comments and more than 10 days after Midwest learned of the issuance of the purchase order to EWPC, is untimely. 4 C.F.R. § 21.2(a)(2). In any event, Midwest's argument is wholly unpersuasive. As we repeatedly have observed, each procurement stands alone, and an action taken under a prior procurement is not necessarily relevant to the reasonableness of the action taken under the present procurement. JRS Mgmt., B-402650.2, June 25, 2010, 2010 CPD ¶ 147 at 4; Harris Enters., Inc., B-311143, Mar. 27, 2008, 2008 CPD ¶ 60 at 3. Additionally, each of the prior procurements cited by Midwest in its comments materially differ from the procurement here because in the prior procurements, the agency was purchasing significantly lower quantities of the item; it is reasonable to expect, as the

contracting officer here recognized, that vendor unit pricing for an item will decrease as a result of an increase in the purchase quantity for the item.⁵

In its comments on the agency report Midwest also argues that the item offered by EWPC cannot meet the solicitation specifications because the unit prices that EWPC quoted in response to the initial, separate RFQs were “significantly higher” than the unit price that EWPC quoted in response to the combined RFQ.⁶ Comments at 5. Midwest’s argument has no merit. We see nothing in the record--and Midwest offers nothing--to indicate that the item offered by EWPC will not conform to the solicitation specifications. Additionally, and as previously noted, it is reasonable to expect that a vendor’s price for an item will decrease as the purchase quantity for that item increases.

The protest is dismissed.

Lynn H. Gibson
General Counsel

⁵ None of the prior procurements involved even half the quantity being purchased in this procurement. RFQ at 1, 5.

⁶ In response to the agency’s e-mail request for a combined quotation, EWPC lowered its unit pricing from [DELETED] to [DELETED]. AR, Tab 9, EWPC Quotation for RFQ SPM7M4-12-T-9441, at 1; AR, Tab 10, EWPC Quotation for RFQ SPM7M4-12-T-9460, at 1; AR, Tab 11, EWPC Quotation for Combined RFQs, at 1.