



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Emergency Vehicle Installations Corporation

File: B-408682

Date: November 27, 2013

Stefanie Stauffer for the protester.

Debra E. Rubin, Esq., National Geospatial-Intelligence Agency, for the agency.
Paula A. Williams, Esq., and Edward Goldstein, Esq., Office of the General
Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably evaluated and rejected the protester's quotation as unacceptable where protester's quotation failed to satisfy material terms in the solicitation.

DECISION

Emergency Vehicle Installations Corporation (EVI) of Springfield, Virginia, a small business concern, protests the rejection of its quotation and the issuance of a purchase order to Goldbelt Wolf, LLC (Goldbelt) of Alexandria, Virginia, under request for quotations (RFQ) No. HM0177-13-T-0018 issued by the National Geospatial-Intelligence Agency (NGA) for modification of police emergency vehicles. EVI contends that the agency improperly evaluated and rejected its quotation.¹

We deny the protest.

¹ The protester was not represented by counsel and therefore did not have access to nonpublic information pursuant to the terms of a protective order. Accordingly, our discussion in this decision is necessarily general in nature to avoid reference to nonpublic information. Our conclusions, however, are based on our review of the entire record, including nonpublic information.

BACKGROUND

Issued on May 30, 2013 as a simplified commercial item acquisition under Federal Acquisition Regulation (FAR) Parts 12 and 13, the solicitation sought fixed-price quotations to have five K9 police vehicles modified with necessary transport emergency equipment for explosives detection dog teams. RFQ at 5. The statement of work (SOW) described the modification services as installation of canine transport cages, extended/sliding beds for ease of access, and safety equipment for canines while in the vehicles, such as heat sensors and alarms. SOW at 24-26. The solicitation required the selected firm to procure, install, and deliver the equipment needed to perform these services “in as rapid a time frame as possible” and established a required delivery date of August 30. Id. at 26.

The RFQ provided for issuance of the purchase order without discussions to the firm submitting the lowest-priced, technically acceptable quotation. Technical acceptability was based on technical conformance to the solicitation specifications and the delivery requirements. RFQ at 4-5.² With regard to price, firms were to provide a unit price for each item as specified in the SOW. Id. at 5.

The agency received quotations from three vendors, including those from the protester and the awardee (the agency rejected the third quotation for reasons not relevant here).

As it relates to the protest, EVI’s quotation included the following language:

We understand and agree with the terms and conditions of the RFP. **We would like to ask that we be allowed to invoice NGA per vehicle.** Because we are a small woman owned company we have limited financial resources; we would find it difficult to wait for payment until the contract has been completed. A hardship letter in support of this request is attached.

Agency Report (AR) exh. 7, EVI’s Quote at 2 (June 4, 2013). The hardship letter provided as follows:

This letter is requesting fast pay under a Hardship Payment provision. [EVI] is a small business and this

² Although the solicitation identified itself as an “RFQ,” the term “proposal,” as opposed to “quotation,” appears repeatedly throughout both the solicitation and the agency’s procurement record. For the sake of consistency, our decision adopts the terminology associated with an RFQ.

money is requested to make payroll and pay vendors for the equipment needed for this contract. Many of the items specified on this contract are new vendors that have not extended Net 30 day terms requiring us to pre-pay to insure a timely performance on this contract.

Id. at 5.³

In addition, EVI's quotation included a price "Estimate," which included EVI's unit price for each item as specified in the RFQ's SOW and total price. Each page of the estimate included the following language:

Vehicle specific parts must be pre-paid.
Jobs invoiced as completed and made available for delivery. Estimate good for 60 days.

Id. at 6-9.

After the initial review of quotations, the agency sent a clarification question to both firms asking them to "provide an actual vehicle completion schedule/plan that will meet the Government's required delivery date of August 30, 2013." AR, exh. 6(a), Request for Clarification from EVI (June 10, 2013). In response, EVI indicated that it could meet the August 30th deadline, noting that "the cage you specified in the solicitation is built to order and would take 4-6 weeks to complete and deliver." EVI further stated that "our estimated build time is five weeks to complete this contract, when we have all the equipment." Id., exh. 6(b), EVI Response to Clarification Request (June 10, 2013) (emphasis added).

Upon review of EVI's quotation, the agency concluded that it was unacceptable because it was contingent on receipt of contract financing from the government and EVI failed to establish that it could meet the vehicle delivery date. After determining that Goldbelt's price of \$82,756.60 was fair and reasonable, the agency issued the purchase order to Goldbelt as the firm submitting the lowest-priced, technically acceptable quotation. Contracting Officer's Statement at 2-4.

EVI first challenged issuance of the purchase order in an agency-level protest. In responding to the protest, the agency acknowledged that EVI's quoted price of \$76,831.70 was lower than the awardee's. However, the agency affirmed its

³ The record shows that prior to submitting its quotation, EVI contacted NGA to request advance payment for the non-standard, vehicle specific parts. The record further shows that the agency denied the request for advance payment. Agency Dismissal Request, exh. 3, Email to EVI (June 3, 2013).

evaluative findings described above and dismissed EVI's agency level protest. AR , exh. 3, Agency Protest Decision at 2 (July 30, 2013). EVI then filed this protest with our Office.

DISCUSSION

EVI maintains that NGA's evaluation of its quotation was flawed and therefore does not support the agency's decision to issue the purchase order to Goldbelt at a higher price. Specifically, the protester asserts that the agency misread the documentation submitted with its quotation as requiring financing by the agency and improperly concluded that EVI failed to demonstrate its ability to meet the required delivery date.

As noted above, the procurement was conducted under simplified acquisition procedures. 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. DOER Marine, B-295087, Dec. 21, 2004, 2004 CPD ¶ 252 at 3; United Coatings, B-291978.2, July 7, 2003, 2003 CPD ¶ 146 at 10-11. A vendor is responsible for affirmatively demonstrating the merits of its quotation and risks the rejection of its quotation if it fails to do so. See, e.g., Stewart Distributors, B-298975, Jan. 17, 2007, 2007 CPD ¶ 27 at 3-4. Here, we find that the agency reasonably evaluated and rejected EVI's quotation as unacceptable.

The protester argues that neither the language in its hardship letter, nor the language included on the page which bears the signature of its president, quoted above, established that its pricing was contingent on the receipt of financing by the government. Rather, EVI argues that it merely made a "request" for payment on a per vehicle basis. The protester also argues that the information in its price "Estimate" was "informational only" and could not have reasonably led the agency to conclude that its price was contingent on the agency making prepayments or advance payments. Protester's Comments at 1-2 (Sept. 18, 2013); Protester's Surrebuttal Comments at 1-2 (Sept. 27, 2013).

The protester's arguments are without merit. First, we reject the notion that the agency unreasonably considered the language in EVI's price estimate sheets because they were merely "informational." The information provided by EVI in its price estimate sheets was required by the RFQ, which, as noted above, sought unit prices for each item specified in the SOW. EVI included this information in its price estimate sheets, nowhere else.

Second, we find that the language in EVI's price estimate sheets, at a minimum, created an ambiguity as to whether EVI took exception to the terms of the RFQ by

making its price contingent on the agency's prepayment of parts. In this regard, each page of EVI's price estimate included the statement "Vehicle specific parts must be pre-paid." AR, exh. 7, EVI Quote at 6-9. While the statement was silent as to who must prepay the parts, it was not unreasonable for the agency to have questioned whether EVI expected prepayment by the government. Such prepayment was clearly inconsistent with the RFQ which incorporated by reference Federal Acquisition Regulation (FAR) § 52.212-4, Contract Terms and Conditions--Commercial Items. Pursuant to this provision, the agency must accept goods or services prior to making payment under the contract--it does not provide for prepayments or other forms of contractor financing.⁴ FAR § 52.212-4(i).

It is a firm's responsibility to submit a well-written quotation, with adequately detailed information that clearly demonstrates compliance with the solicitation requirements. TechStart, LLC, B-403515, Nov. 10, 2010, 2010 CPD ¶ 274. Accordingly, where EVI's quotation was ambiguous with respect to a material solicitation term, specifically the government's contractual payment obligations, the agency reasonably rejected EVI's quotation as unacceptable. See id. In reaching this conclusion, EVI's statements of compliance with the RFQ requirements were not sufficient, and did not otherwise cure, the ambiguities in its quotation. See, e.g., National Shower Express, Inc.; Rickaby Fire Support, B-293970, B-293970.2, July 15, 2004, 2004 CPD ¶ 140 at 4-5 (offeror is responsible for including sufficient information to establish compliance with solicitation requirements, and blanket statements of compliance are insufficient to meet this obligation).⁵

EVI makes a number of other allegations which we have considered and find to be without merit. For example, EVI complains that the agency rejected its quotation in order to issue the purchase order to Goldbelt. In essence, the protester is alleging that agency officials acted in bad faith. Government officials are presumed to act in good faith and when a protester alleges bias, it not only must provide convincing evidence clearly demonstrating a bias against the protester or for the awardee, but also must demonstrate that this bias translated into action that unfairly affected the protester's competitive position. Advanced Sciences., Inc., B-259569.3, July 3, 1995, 95-2 CPD ¶ 52 at 17. EVI has made no such showing and we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. ACC Constr. Co., Inc., B-289167, Jan. 15, 2002, 2002 CPD ¶ 21 at 4. The protester also alleges that the solicitation should have been

⁴ As a general matter, since the contract price was below the simplified acquisition threshold (\$150,000), the contracting officer could not authorize contract financing, e.g., commercial interim payments or commercial advance payments. See FAR § 32.202-1.

⁵ Because we find that the agency reasonably rejected EVI's quotation for appearing to have taken exception to the material payment provisions of the RFQ, we need not also address the agency's evaluation of EVI's delivery schedule.

set-aside for small business concerns; however, this post-award challenge is untimely and will not be considered. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2013).

The protest is denied.

Susan A. Poling
General Counsel