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Decision

Matter of: Chicago American Manufacturing LLC

File: B-420533; B-420533.2

Date: May 23, 2022

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DIGEST

Protest challenging agency's issuance of a delivery order to a firm under its Federal Supply Schedule (FSS) contract is sustained where the awardee quoted a product under its FSS contract that does not meet the requirements of the solicitation.

DECISION

Chicago American Manufacturing LLC (CAM), of Chicago, Illinois, protests the issuance of a delivery order to Inovo, Inc., of Brooklyn, New York, under request for quotations (RFQ) No. W912DY-22-Q-0013, issued by the Department of the Army, U.S. Army Corps of Engineers, for new furniture. The protester asserts that the agency improperly evaluated the awardee's quotation as technically acceptable.

We sustain the protest.

BACKGROUND

On November 16, 2021, the Army issued the RFQ under the Federal Supply Schedule (FSS) procedures of Federal Acquisition Regulation (FAR) subpart 8.4, to current holders of General Services Administration (GSA) schedule 71 (the furniture schedule) contracts. See Contracting Officer's Statement (COS) at 2. The solicitation contemplated the award of a delivery order to a contractor who would supply, deliver, and install new furniture in four buildings at Camp Casey, South Korea. Agency Report (AR), Tab 4(a), RFQ at 19. The delivery order would be issued to the vendor whose quotation was technically acceptable and had the lowest total price. *Id.*

The agency would evaluate quotations as acceptable or unacceptable under three evaluation criteria: technical evaluation, schedule, and past performance. See *id.* at 18-19. An acceptable quotation under the technical evaluation criterion meets the specifications shown in the Furniture Item Description (FID), amendment 1, attachment 2 to the RFQ. *Id.* at 13. An acceptable quotation under the schedule criterion meets the installation dates. *Id.* at 19. The RFQ advised vendors that “[t]he Government will use any available information to evaluate past performance,” without providing additional guidance on the evaluation.¹ See RFQ at 19. The RFQ did not require vendors to provide past performance references. See *id.* at 13-18. To be technically acceptable, a quotation had to be evaluated as acceptable under all three evaluation criteria. See *id.* at 19. At issue in this protest is the agency’s evaluation of quotations under the technical evaluation criterion.

Award would be made based on the vendor’s total quoted price, which included supplies, services, shipping, storage, and optional items. *Id.* The RFQ advised vendors that “[q]uoted items from GSA Contractors shall be on [the vendor’s] GSA Schedule contract and be at or below GSA pricing, unless specified as open market items.” *Id.*

The FIDs listed the specifications and requirements for all solicited items. See *generally*, AR, Tab 4(b), RFQ amend. 1, attach. 2, FID. Of relevance here, the RFQ required a metal bunkbed that “[s]hall accommodate [a] 38”W x 80”L mattress. *Id.* at 11. The FID also required that all products “be manufactured in a [Trade Agreements Act (TAA)] compliant country, where applicable.” *Id.* at 3.

The agency received quotations from the awardee, the protester, and a third vendor. COS at 2. After five rounds of technical review, the agency evaluated the three quotations as technically acceptable. See *id.* at 2-3. The agency requested best and final offers “in an effort to give the vendors an opportunity to discount their prices to make their quotes more competitive against the entire pool of competition.” *Id.* at 3. The Army notes that this request was required by FAR section 8.405-4, which mandates that the government seek price reductions on orders over the simplified acquisition threshold. *Id.* Inovo and the third vendor reduced their prices, while CAM increased its price. *Id.*

¹ The contracting officer’s source selection decision notes that the past performance evaluation was based on a search of negative reports or exclusions in the Federal Awardee Performance and Integrity Information System (FAPIIS), the Past Performance Information Retrieval System (PPIRS), and the System for Award Management (SAM.gov) relevant to furniture. AR, Tab 12, Source Selection Decision Document (SSDD) at 2.

The table below summarizes the agency’s evaluation of the three quotations:

Contractor	Technically Acceptable	Total Price	Can Meet Installation Schedule?	Past Performance²
Inovo	YES	[\$DELETED]	YES	Acceptable
Chicago American	YES	[\$DELETED]	YES	
Vendor 3	YES	[\$DELETED]	YES	

AR, Tab 12, SSDD at 1. Because Inovo provided the lowest-priced technically acceptable quotation, the contracting officer issued the delivery order to Inovo, as the firm whose quotation represented the best value to the government. *Id.* at 2. This protest followed.

DISCUSSION

CAM asserts that Inovo quoted a product that is not on its GSA schedule.³ Comments, Apr. 21, 2022 at 3. The Army argues that the bed Inovo quoted, per the provided technical data sheets, met the RFQ requirements, and that the agency reasonably relied on the vendor’s representation of compliance with the RFQ’s requirements.⁴ Agency Response to Supp. Protest and Comments at 4, *citing Cynergy Prof’l Sys., LLC--Recon.*, B-418367.8, Sep. 22, 2020, 2020 CPD ¶ 300.

² The agency evaluated the past performance of the vendor with the lowest-priced, technically acceptable quotation--Inovo. In this instance, since the agency selected Inovo for award, it did not evaluate the past performance of CAM or vendor 3.

³ The protester also raises other arguments. For example, CAM argues that the awardee’s mattress did not demonstrate compliance with the RFQ’s [DELETED] requirements. CAM “conced[d],” however, that it “cannot demonstrate prejudice” if this is the only error in the agency’s evaluation. Comments, Apr. 21, 2022 at 7. We considered all of the protester’s allegations, but in this decision address only CAM’s one meritorious ground of protest, along with CAM’s challenge to the agency’s evaluation of Inovo’s past performance. None of the protester’s other arguments provide a basis to sustain the protest.

⁴ The agency initially argued that CAM was not an interested party to challenge the evaluation of Inovo’s quote, because an intervening vendor had quoted a lower price than CAM. The agency subsequently withdrew that contention, noting that because it had not evaluated the third vendor’s past performance as acceptable, it was not settled that there was, in fact, an intervening vendor. Agency Response to Supp. Protest and Comments at 2.

The FSS program directed and managed by GSA provides federal agencies a simplified process for obtaining commonly used commercial supplies and services. FAR 8.402(a). An agency may not use FSS procedures to purchase items that are not listed on a vendor's GSA schedule. *Chicago Am. Mfg., LLC*, B-419242, Jan. 6, 2021, 2021 CPD ¶ 97 at 5. Where, as here, an agency announces its intent to order from an existing FSS contract, all items quoted and ordered are required to be on the vendor's schedule contract as a precondition to receiving the order.⁵ *Id.*

The FID required that “[a]ll required items and features submitted shall be on current GSA schedule contract with the exception of UNICOR Products.^[6]” AR, Tab 4(b), RFQ, amend. 1, attach. 2, FID at 5. Vendors were required to provide technical data sheets and a “copy of the current GSA scheduled pricing.” *Id.* The RFQ further required that the technical data sheets “shall be legible with highlighted model numbers, dimensions, warranty information, and all salient features required in the FID.” *Id.* The technical data sheets were to “clearly state [the] name brand, model numbers, and GSA schedule contract numbers for all items quoted” and “all required features that have been provided.” *Id.*

At issue here is the discrepancy between the description of the bed in the technical data sheets provided with Inovo's quotation and the description of the bed on Inovo's FSS contract. As noted above, the RFQ required a metal bunkbed that “[s]hall accommodate [a] 38”W x 80”L mattress.” AR Tab 4(b), RFQ, amend. 1, attach. 2, FID at 141. CAM argues that the dimensions of the bed on the awardee's schedule did not meet the RFQ requirements, while the bed described in Inovo's quotation did. Supp. Protest at 2, *comparing* Protest, exh. 5, Excerpt from Inovo's FSS Catalog, at 3, (describing Inovo's FSS Schedule bed, model No. IN-SB3019, as 78 inches long and 38 inches wide) *with* AR, Tab 6(f), Inovo Technical Quotation, Best and Final, at 131 (describing that same model number bed as [DELETED] inches long, [DELETED] inches wide, and [DELETED] inches high). CAM contends that the bed on Inovo's schedule--at 78 inches long--would not accommodate the required 80-inch long mattress. Supp. Protest at 2. The intervenor asserts that its quoted bed complies with the RFQ and that “CAM relies on the generic description Inovo provides in its GSA FSS contract” as the basis for the protester's claim that Inovo's bed does not satisfy the RFQ's requirement. Intervenor's Comments at 8.

⁵ The sole exception to this requirement is for items that do not exceed the micropurchase threshold, since such items properly may be purchased outside the normal competition requirements. *Hi-Tech Bed Sys. Corp.*, B-416972, B-416972.2, Jan. 16, 2019, 2019 CPD ¶ 22 at 4. The parties have not asserted the applicability of this limited exception.

⁶ UNICOR, or the Federal Prison Industries program, is a wholly-owned subsidiary of the United States government that manufactures a wide variety of products. See <https://www.unicor.gov/About.aspx> (last visited May 11, 2022).

CAM argues that, where there is a discrepancy between a vendor's FSS schedule and its quote, the terms of the schedule are contractually binding. Protester's Response to GAO Request at 1-2, *citing AllWorld Language Consultants, Inc.*, B-411481.3, Jan. 6, 2016, 2016 CPD ¶ 12 at 6. We agree. Technical specifications for products available under a firm's FSS contract are fixed, discrete, specific, contractually binding, and not subject to alteration. *AllWorld Language Consultants, Inc. supra, citing American Sys. Consulting, Inc.*, B-294644, Dec. 13, 2004, 2004 CPD ¶ 247 at 10-11.

The agency argues that, following *Cynergy Professional Systems, LLC--Recon.*, *supra*, the Army could reasonably rely on the awardee's representation that its quoted bed was compliant with the solicitation's requirements. See Response to Supp. Protest and Comments at 4. We disagree. The foregoing decision concerned whether the agency was required to reopen discussions upon the subsequent discovery of a misrepresentation--which is neither the factual scenario present here, nor is it the relevant inquiry in this protest. In that case, the protester's quotation misrepresented that a quoted product had achieved a particular registration, and the quotation provided the agency no basis on which to question that representation. We concluded that, where an agency discovers--after discussions--a deficiency in a vendor's quotation caused by a misrepresentation, the agency's discussions are not rendered unreasonable because the agency does not reopen discussions with that vendor. See *Cynergy Prof'l Sys., LLC--Recon.*, *supra* at 7-8. Here, the relevant inquiry is whether the agency properly assessed whether the awardee quoted items from its FSS contract. Accordingly, we conclude that the Army misapplies our decision in *Cynergy Professional Systems, LLC--Recon.*

Here, there is no dispute that the bed Inovo quoted from its FSS contract did not meet the RFQ's requirements at the time the agency issued the delivery order. Because agencies may only place orders with a vendor whose schedule contract contains the goods or services required to meet the agency's needs under a solicitation, the Army could not properly issue the delivery order to Inovo. *Chicago Am. Mfg., LLC*, B-419242, Jan. 6, 2021, 2021 CPD ¶ 97 at 5-6, *citing Tri-Starr Mgmt. Servs., Inc.*, B-408827.2, B-408827.4, Jan. 15, 2015, 2015 CPD ¶ 43 at 8; *The CDM Grp., Inc.*, B-291304.2, Dec. 23, 2002, 2002 CPD ¶ 221 at 3-4. Accordingly, we sustain the allegation that the agency unreasonably evaluated Inovo's quotation as acceptable.

Past Performance Evaluation

CAM also challenges the reasonableness of the agency's evaluation of Inovo's past performance as acceptable. Protester's Comments on Agency's Response to Comments at 6. The protester asserts that "the Agency appears to have never made a past performance evaluation." *Id.* CAM contends that "[n]othing in the Agency Record indicates that the Agency looked at Inovo's '[DELETED]' ratings for [DELETED] of the [DELETED] areas assessed in Inovo's 2021 Contractor Performance Assessment Reporting System ('CPARS') report for Contract No. [DELETED], the only past performance assessment included in the record." *Id.*, *citing* AR, Tab 10, Inovo Evaluation Documents at 88 (showing one CPARS report with [DELETED] ratings). The

agency contends that its evaluation of Inovo's past performance as acceptable was reasonable and consistent with the solicitation criteria. Response to Suppl. Protest and Comments at 9.

Where a protester challenges an agency's past performance evaluation, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations, and to ensure that the agency's rationale is adequately documented. *SRM Grp., Inc.*, B-410571, B-410571.2, Jan. 5, 2015, 2015 CPD ¶ 25 at 5.

The evaluation record contained reports on Inovo's past performance from SAM.gov, Dun and Bradstreet, and FAPIIS, as well as one CPARS report. That CPARS report contained adjectival ratings for four categories of performance--[DELETED]. See AR, Tab 10, Inovo Evaluation at 88. The agency explained that its past performance evaluation was based on "a search of negative reports or exclusions" in FAPIIS, PPIRS (now CPARS.gov), and SAM. AR, Tab 12, SSDD at 2. The contracting officer stated that "[o]ther past performance information was not examined." *Id.*

CAM's argument that the agency did not "look at" the CPARS report in the evaluation is not supported by the record. In this regard, while the SSDD refers to the CPARS report by its outdated name--PPIRS--the SSDD states that the agency considered whether the CPARS reports contained "negative reports or exclusions." AR, Tab 12, SSDD at 2. As noted above, the RFQ requested no past performance information from vendors and provided them no specifics regarding how past performance would be evaluated. The record provides no basis to find that the agency's past performance evaluation was inconsistent with the RFQ's evaluation criteria, or that the agency failed to conduct the evaluation. We therefore deny the protester's allegation that the agency failed to conduct a reasonable evaluation of Inovo's past performance.

RECOMMENDATION

We recommend that the agency reevaluate quotations in a manner consistent with the RFQ's evaluation factors and this decision and make a new source selection decision based on that reevaluation. We further recommend that the agency reimburse the protester the reasonable costs of filing and pursuing its protest, including attorneys' fees. The protester's certified claim for costs, detailing the time expended and the costs incurred, must be submitted to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

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General Counsel