



Decision

Matter of: Phoenix Corporation

File: B-414995

Date: October 27, 2017

Alfred Firmani, for the protester.
Jackie Schaefer for RJS Guam, LLC, the intervenor.
John V.R. Aguon, Esq., Department of the Navy, for the agency.
Robert T. Wu, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest challenging the agency's determination that protester's quotation was technically unacceptable is denied where the record shows that the evaluation was reasonable and in accordance with the terms of the solicitation.

DECISION

Phoenix Corporation, a small business located in Washington, D.C., protests the rejection of its quotation under request for quotations (RFQ) No. N40192-17-Q-7029, issued by the Department of the Navy, Naval Facilities Engineering Command Marianas, for a ground penetrating radar (GPR) unit. The protester contends that the Navy improperly determined that Phoenix's proposed GPR unit did not meet the solicitation's salient characteristics.

We deny the protest.

BACKGROUND

The RFQ, which was set aside for small businesses, was issued as a commercial item acquisition under Federal Acquisition Regulation (FAR) subpart 12.6 and part 13 to procure, on a brand name or equal basis, a GPR unit for Andersen Air Force Base (AFB), Guam. Agency Report (AR), Tab 8, RFQ, at 1-2; app. 1, Specifications, at 1-2. The solicitation identified three manufacturers' models as brand name equipment and listed several salient characteristics that had to be satisfied by any other GPR offered as equal to the brand name models. Id. As relevant here, the specifications state that the GPR, "[m]ust have an external and removable locking pin to hold arm secure whether in

operation or storage mode. An internal gear mechanism is not acceptable for this purchase.”¹ Id. The solicitation provided for the award of a fixed-price purchase order on a lowest-price, technically-acceptable basis. RFP, app. 2 at 5.

The Navy received quotations from a number of vendors, including Phoenixics and the awardee, RJS Guam, LLC, of Hagatna, Guam.² Contracting Officer’s Statement (COS) ¶ 5. The agency determined that Phoenixics’ proposed unit did not meet the RFQ’s specification for an external locking pin and was therefore technically unacceptable. Id. ¶ 6; AR, Tab 10, Price Reasonableness Memorandum (PRM), at 2. While Phoenixics submitted the lowest-priced quotation of \$17,500, since the firm’s proposal was found to be technically unacceptable, the Navy instead made award to RJS, as the lowest-priced, technically-acceptable offeror, with a price of \$26,994.50. Id. at 3-4; AR, Tab 15, Award Notice, at 1.

This protest followed.

DISCUSSION

Phoenixics argues that the product the firm offered is equivalent to the brand name specified by the RFQ, and that “[a]ncillary features are equal or exceed those of the brand name product.” Protest at 2. The agency responds that Phoenixics’ proposed GPR was unacceptable because the firm’s equipment did not have an external and removable locking pin as required by the RFP. Memorandum of Law (MoL) at 3. Our review of the record does not cause us to question the agency’s determination that Phoenixics’ quotation was technically unacceptable.

In reviewing a protest challenging an agency’s evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency’s discretion. Analytical Innovative Solutions, LLC, B-408727, Nov. 6, 2013, 2013 CPD ¶ 263 at 2. Rather, we will review the record only to determine whether the agency’s evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. Id.

¹ The equipment, which is wheeled and similar in size and appearance to a motorized lawn mower, was requested by the AFB’s Water and Fuels Maintenance Shop to detect the exact location of buried utility lines to avoid unnecessary utility breaks and outages during excavation. See Specifications at 1.

² Phoenixics was not represented by counsel who could obtain access to non-public information, such as the evaluation record of the awardee’s proposal, pursuant to the terms of a protective order. Accordingly, our discussion of some aspects of the procurement record is necessarily general in nature in order to avoid reference to non-public information. Our conclusions, however, are based on our review of the entire record, including the non-public information.

Here, the RFQ required the GPR to have “an external and removable locking pin to hold arm secure whether in operation or storage mode.”³ RFQ, app. 1, Specifications, at 1. Moreover, the RFQ warned vendors that “[a]n internal gear mechanism is not acceptable for this purchase.” *Id.* The record shows that the protester’s proposed GPR was found to be technically unacceptable because it did not meet the specification requirement for an external and removable locking pin. AR, Tab 10, PRM, at 2. A review of Phoenix’s quotation shows that its proposed “gear mechanism positively locks the arm with an integral locking insert/pin in either the operating or storage mode.” AR, Tab 12, Phoenix Quotation, at 5.

In its comments, Phoenix argues that the gear mechanism is “in full view and external,” and that the locking mechanism is “performed via a control button/lever within easy reach of the operator.” Protester’s Comments at 1. However, the protester does not refute the agency’s determination that the firm’s proposed GPR does not have “an external and removable locking pin,” as required by the terms of the RFQ. Since Phoenix does not refute the agency’s allegation, we are provided no basis to question the agency’s determination that its proposed GPR was technically unacceptable.⁴

The protest is denied.

Susan A. Poling
General Counsel

³ The agency determined that the external locking pin was required to ensure the equipment would be durable in the “harsh and corrosive environment” of Guam and was required to “reduce susceptibility of the arm breaking.” COS at 1. The protester does not challenge the reasonableness of the agency’s requirements. Protest at 1-3.

⁴ To the extent that Phoenix argues that the locking mechanism on the firm’s proposed GPR was similar to at least some of the brand name products specified in the RFQ, we conclude that since Phoenix did not offer one of the brand name products, it was required to meet the RFQ’s stated salient characteristics. Moreover, to the extent that there was a conflict between the brand name products and the salient characteristics, we find that any resulting ambiguity was patent—that is, apparent on its face. As such, Phoenix was required to protest any such defect in the terms of the RFQ prior to the date set for receipt of quotations, which it did not. MEDI/e-Imagedata Corporation, B-410018, Sept. 30, 2014, 2014 CPD ¶ 286 at 4.