



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: American Artisan Productions, Inc.

File: B-278450

Date: January 30, 1998

Arthur L. Friedman for the protester.

James L. Weiner, Esq., and Justin P. Patterson, Esq., Department of the Interior, for the agency.

Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester is not competitively prejudiced by the confusing evaluation scheme in a procurement conducted under simplified acquisition procedures that did not list technical approach as an evaluation criterion, where the solicitation otherwise reasonably disclosed that technical approach would be evaluated, the protester does not deny that the solicitation required it to describe its technical approach, the awardee's technical approach was reasonably found to be clearly superior to the protester's technical approach so as to reasonably offset the protester's modest price advantage, and the agency had a reasonable basis for finding the awardee's proposal superior to the protester's under the explicitly identified evaluation criteria.

DECISION

American Artisan Productions, Inc. protests the award of a contract to Turner Exhibits, Inc., under request for quotations (RFQ) No. 1443-RQ-8530-97-027, issued by the Department of the Interior, National Park Service, for fabricating museum exhibits for the Loomis Museum, Lassen Volcanic National Park, California. American Artisan contends that the Park Service's evaluation was not in accordance with the stated evaluation factors.

We deny the protest.

The RFQ, issued under simplified acquisition procedures, required the contractor to fabricate and install a set of seven exhibits related to volcanic activity to be exhibited at the Loomis Museum, including necessary labor, materials, professional services, facilities, and travel. The exhibits were required to be constructed and installed in accordance with detailed specifications and construction drawings keyed to each exhibit.

Under section IX.3(1) of the RFQ, the award is to be made on a best value basis in which the "offeror's quotation will be evaluated under two areas of consideration; namely, technical and cost." Under section VIII.7, "INSTRUCTIONS FOR TECHNICAL SUBMITTAL," the RFQ states:

the offeror shall submit . . . Supplemental Technical Evaluation Information as indicated in Part IX [EVALUATION FACTORS FOR AWARD]. Offerors should ensure that their technical responses are clear, concise, and fully address all of the evaluation factors listed. The submittal must also fully conform to the statement of work and clearly define an approach and methodology. Mere indication of an intent to conform will not be considered as acceptable.

The technical submittal should be specific, detailed, and complete enough to clearly and fully demonstrate that you have a thorough understanding of the effort required and have a valid and practical plan for performing the work and should be sufficiently detailed to show how it will comply with the specification requirements.

Section IX.3(2) states:

BASIS FOR AWARD. Award will be made to the offeror who the Government determines can best accomplish the necessary work to satisfy the objectives and requirements set forth in the Request for Quote Specifications in a manner most advantageous to the Government. The documentation that is submitted by the offeror in response to the Request for Quote will receive a thorough evaluation. Offerors must convey to the Government that the offeror is able to accomplish the work in a coordinated and timely fashion such that technical requirements will be achieved.

Finally, section IX.3(4) states:

TECHNICAL EVALUATION CRITERIA. The following paragraphs identify the criteria. A rating of "unacceptable" for any criteria may eliminate the offer from further consideration, regardless of [the] rating for any other criteria. Criteria items and factors to be considered for evaluation are listed in descending order of importance, as follows:

A. Past performance: Demonstrated past and recent experience in fabricating visitor center exhibits.

B. Qualifications: Professional qualifications of the principals and staff proposed for the award.

The Park Service received seven quotations in response to the RFQ, ranging in price from \$50,022 to \$164,992. American Artisan's quotation price was \$81,993 and Turner's price was \$85,844. An evaluation team, after reviewing the quotes, determined that Turner's quote represented the best value in terms of technical and cost, and that the quotes priced lower than Turner's quote, including American Artisan's, were technically inferior to Turner's.

According to the contemporaneous evaluation documentation, labeled "Technical Evaluation Summary," the agency found that Turner's quote represented the best value because it:

addresses all of the criteria and exceeds our qualifications in terms of experience and expertise. The proposal clearly shows that the contractor took the time to examine each exhibit element and then specify in the proposal 1) their understanding of how the exhibit was to look and work and 2) to identify any special or unusual fabrication requirements

On the other hand, the agency recorded that American's quote was technically inferior because it:

fails to discuss any of the technical requirements of any of the exhibits elements. Therefore, it is not possible to ascertain exactly what is included in their cost proposal of \$81,993, i.e., will [American Artisan] provide the proper amount of illumination and fiberoptics for the Ring of Fire diorama, have they reflected the fact that one exhibit is a highly mechanical, interactive exhibit which must also include installation of light emitting diodes (LEDs), fittings, and hardware, etc.

On September 29, the Park Service issued a purchase order to Turner. American Artisan initially protested the award to the agency on October 6. It subsequently requested a debriefing, which was provided by the agency on October 17. This protest challenging the evaluation followed. Performance has been withheld pending our decision.

American Artisan protests that the Park Service improperly based its award selection on an unstated evaluation factor--the relative detail and contents of the respective offeror's discussion of how the offeror would fabricate each technical exhibit, that is, technical approach--because past performance and qualifications were the only listed technical evaluation factors. The Park Service maintains that downgrading American Artisan's proposal for not including an adequately detailed technical approach was reasonable and contemplated by the RFQ, given that the RFQ instructions request such information to be submitted by the offerors.

Federal Acquisition Regulation (FAR) § 13.106-2 affords contracting officers using simplified acquisition procedures discretion in determining how to conduct a procurement and in fashioning suitable evaluation procedures. This discretion does not permit a failure to identify significant evaluation factors in the RFQ or evaluating quotes on the basis of factors not announced in the RFQ. Rather, FAR §§ 13.106-2(a)(1) and 13.106-2(b) specifically require that solicitations advise potential offerors of the basis upon which award is to be made, and agencies must conduct evaluations based on the factors set forth in the solicitations. Forestry, Surveys & Data, B-276802.3, Aug. 13, 1997, 97-2 CPD ¶ 46 at 2.

The RFQ here was confusing as to whether and how technical approach would be evaluated. Section IX.3(4), standing alone, would indicate that technical approach was not a factor to be evaluated, and that past performance and qualifications would be the only technical criteria evaluated in making the award selection. That provision also disclosed the relative weight assigned to the two identified criteria, but did not indicate how much weight might be assigned to technical approach. Since technical approach was also evaluated, the agency did not comply with the requirements in FAR §§ 13.106-2(a)(1) and 13.106-2(b) that the RFQ clearly disclose the basis for award and that undisclosed factors not be used in the award evaluation. Id.

However, particularly because simplified acquisition procedures were being used here, we conclude that the defects in this procurement do not provide a basis for sustaining the protest. In this regard, section VIII.7 clearly required the offerors to describe a technical approach addressing how the offeror would conform to the statement of work requirements that was "specific, detailed, and complete enough to clearly and fully demonstrate . . . understanding . . . and . . . sufficiently detailed to show how it will comply with the specification requirements." Section IX.3(2) describing the "basis for award" indicates that this submission would "receive a thorough evaluation" to show that the "work [will be accomplished] in a coordinated and timely fashion"--which indicates that the technical approach will be part of the award consideration. Thus, American Artisan was on notice that its technical approach would be evaluated and considered in the award selection.

American Artisan does not claim that it was not required to describe its technical approach, but argues that it submitted all that was required. From our review, we agree with the agency that Turner's quote more clearly and thoroughly described how it would accomplish each of the statement of work requirements than did American Artisan's quote, which only generally described how certain work tasks would be performed and contained a preliminary production plan that did not describe how each exhibit would be constructed. Thus, the agency reasonably considered Turner's technical approach to be superior to American Artisan's approach, which did not describe in detail how the statement of work requirements would be performed, as required by the proposal instructions.

Moreover, the contracting officer reports that in making the award selection she and the evaluators considered and discussed Turner's and American Artisan's relative past performance, as described in the quotes, and found that Turner's quote demonstrated superior past performance. While this consideration was not recorded in contemporaneous documentation,¹ the agency states that it found that American Artisan's quote did not indicate when it performed its identified projects, most of which appeared to have been done many years ago, or clearly show their particular relevance to this work. In contrast, Turner's quote did date its projects and describe them in a way that showed their relevance to the present work. From our review, we cannot find the agency's judgment in this regard to be unreasonable.

We conclude that the protester was not prejudiced by the consideration of technical approach, even though it was not explicitly identified in the RFQ as an evaluation criterion. As explained above, American Artisan was on notice that technical approach would be considered in the award evaluation and, while the RFQ gave no indication of the relative weight that technical approach would be accorded, the relative weight of the evaluation factors need not be disclosed in procurements conducted under simplified acquisition procedures. FAR § 13.106-2(a)(10). Moreover, Turner's demonstrated past experience--a clearly stated technical evaluation factor--was reasonably found superior to American Artisan's. Accordingly, we conclude that American Artisan was not competitively prejudiced by the agency's consideration of the vendors' technical approaches in deciding that Turner's quote represented a better value than American Artisan's slightly lower-priced quote. Id. Therefore, notwithstanding the flaws in the procurement, we find no basis to disturb the award. See McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

The protest is denied.

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¹Although FAR § 13.106-2(d)(4) advises that "[d]ocumentation should be kept to a minimum" in simplified acquisition procedure acquisitions, we would expect that the documentation that is prepared to describe the basis for award would address the evaluation criteria stated in the solicitation (such as the past performance at issue here). See FAR § 13.106-2(b)(1).