



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Patriot Solutions, LLC

File: B-413779

Date: December 22, 2016

John Tellier, for the protester.

Steven Thaler, Esq., and Marianne Cantwell, Esq., Department of Justice, Federal Prison Industries, Inc., for the agency.

Charmaine A. Stevenson, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly converted the best-value tradeoff competition set forth in the solicitation into a lowest-priced, technically acceptable competition is sustained where the record shows that the agency did not perform a best-value tradeoff and instead selected the lowest-priced, technically acceptable offers for award.

DECISION

Patriot Solutions, LLC, of Grand Rapids, Michigan, a small business, protests the award of contracts to Wonder State Box Company, of Conway, Arkansas, and Sigma Supply, Inc., of Hot Springs, Arkansas, pursuant to request for proposals (RFP) No. CT2211-16, issued by Federal Prison Industries, Inc. (UNICOR)¹ for various corrugated containers. The protester contends that the agency failed to perform a best-value tradeoff as stated in the solicitation, and instead selected the lowest-priced, technically acceptable (LPTA) offers for contract awards.

We sustain the protest.

¹ Federal Prison Industries, Inc., which operates under the trade name UNICOR, is a wholly-owned government corporation within the Department of Justice.

BACKGROUND

On June 6, 2016, UNICOR issued the RFP as a small business set-aside using the procedures set forth in Federal Acquisition Regulation (FAR) subparts 12.6, Streamlined Procedures for Evaluation and Solicitation for Commercial Items, and 13.5, Simplified Procedures for Certain Commercial Items. The RFP contemplated award of a three-year base period, fixed-price requirements type contract for various corrugated containers. RFP at 10. Proposals were to be evaluated considering the following factors: past performance, technical,² and price. Id. at 20. Award was to be made on a best-value basis, and the past performance and technical factors were significantly more important than price. Id.

As relevant here, past performance was to be evaluated using five factors: (1) experience; (2) quality of item supplied; (3) on-time delivery; (4) adherence to shipping instructions; and (5) customer service/business relations performance. RFP at 20. Regarding the evaluation of experience, the RFP provided that a rating of more relevant, relevant, or less relevant “will be assigned based on the offeror’s experience with like or similar awards based on product supplied, total award amount, and length of performance.” Id. In addition, the RFP explained that “[m]ore relevant past performance will be considered performance with less risk potential to the agency.” Id. The RFP provided that a rating of excellent, good, satisfactory, or poor would be assigned for the remaining factors to be evaluated under past performance, based on the submitted references and other sources available to UNICOR. Id.

The RFP required delivery of the corrugated containers to various destinations. RFP at 3-9. The solicitation stated that all items were to be awarded to one offeror and therefore, offerors were to submit an offer on all items. Id. at 10. UNICOR received seven proposals by the solicitation closing date. On July 29, the agency notified responsive offerors that it “anticipated enhanced competitive price proposals by possibly making two awards,” and that therefore the items would be divided into two groups. Agency Report (AR), Tab 8, Letter to Offerors dated July 29, 2016. The agency requested offerors to submit final proposal revisions for all items in a group. Id.

After receiving final proposal revisions, the contracting officer eliminated the four highest-priced proposals from consideration for each group of containers, stating that they would be “considered out of the competitive range,” and evaluated the

² The technical factors consisted of the following: (1) conformance to material specifications; (2) completed FAR provision 52.215-6 (indicating that items were to be manufactured domestically by a small business); and (3) ability to deliver within 30 days of order receipt. RFP at 20.

remaining three lowest-priced proposals for each group,³ and assigned the following ratings:⁴

Offeror	Past Performance		Technical
	Experience	Other Factors	
Patriot Solutions	More Relevant	Excellent	Acceptable
Sigma Supply	More Relevant	Excellent	Acceptable
Wonder State Box Company	Relevant	Excellent	Acceptable
[Name deleted]	Relevant	Excellent	Acceptable

AR, Tab 1, Award Decision Memo dated August 15, 2016, at 2-4. The contracting officer further assessed the offerors' pricing as compared to the independent government estimate (IGE) as follows:

Offeror	Group 1
Wonder State Box Company	\$658,249
[Name deleted]	\$777,830
Patriot Solutions	\$833,360
IGE	\$964,300

Offeror	Group 2
Sigma Supply	\$92,040
[Name deleted]	\$126,120
Patriot Solutions	\$141,600
IGE	\$145,200

Id. at 4.

On August 16, UNICOR awarded contracts to Wonder State Box Company (group 1) and Sigma Supply (group 2). Patriot Solutions timely requested a debriefing, which was provided in writing on August 22. See AR, Tab 7, Debriefing Document. According to the debriefing document, the agency awarded the contracts "based on lowest price technically acceptable [and n]o tradeoffs were used." Id. at 1.

³ For group 1, the contracting officer evaluated the Wonder State Box Company, Patriot Solutions, and another offeror's proposals. For group 2, the contracting officer evaluated the proposals of Patriot Solutions, Sigma Supply, and another offeror. AR, Tab 1, Award Decision Memo dated August 15, 2016, at 2.

⁴ Patriot Solutions was not represented by counsel who could obtain access to non-public information (such as the identity and pricing of unsuccessful offerors) pursuant to the terms of a protective order. Accordingly, some evaluation results have been redacted, and our discussion of them is necessarily general in nature to avoid reference to proprietary or source-selection information. Nonetheless, our conclusions are based on our review of the entire record.

On August 26, Patriot Solutions filed an agency level protest arguing that the selection decision was not in accordance with the best-value tradeoff provided in the solicitation, and requested review by the agency protest official. AR, Tab 3, Agency Protest. The contracting officer re-evaluated proposals and issued a new award decision memorandum with evaluation results identical to the initial evaluation. Id., Tab 2, Award Decision Memo dated September 1, 2016. On September 12, the agency protest official denied the protest. AR, Tab 4, Agency Protest Decision. This protest followed.

DISCUSSION

Patriot Solutions asserts that UNICOR improperly failed to perform a best-value tradeoff as provided in the solicitation, and instead admitted in the debriefing that it converted the procurement to LPTA. Protest at 1-2. UNICOR acknowledges that its debriefing document stated that it selected the lowest-priced, technically acceptable offers, but argues that the debriefing document contained a “typographical error” and that the contracting officer did in fact perform a best-value tradeoff. AR, Memorandum of Law at 5-8. During the course of this protest, the agency contends that because the offers were equally rated, price became the determining factor in the selection decision. Id. at 3.

In reviewing an agency’s source selection decision, we examine the supporting record to determine if it was reasonable and consistent with the solicitation’s evaluation criteria and applicable procurement statutes and regulations. The SI Organization, Inc., B-410496, B-410496.2, Jan. 7, 2015, 2015 CPD ¶ 29 at 14. Where a solicitation provides for a tradeoff between the price and non-price factors, even where price is the least important evaluation factor, as here, an agency properly may select a lower-priced, lower-rated proposal if the agency reasonably concludes that the price premium involved in selecting a higher-rated, higher-priced proposal is not justified in light of the acceptable level of technical competence available at a lower price. i4 Now Solutions, Inc., B-412369, Jan. 27, 2016, 2016 CPD ¶ 47 at 15. However, a tradeoff analysis that fails to furnish any explanation as to why a higher-rated proposal does not in fact offer technical advantages or why those technical advantages are not worth a price premium does not satisfy the requirement for a documented tradeoff rationale, particularly where, as here, price is secondary to technical considerations under the RFP’s evaluation scheme. Blue Rock Structures, Inc., B-293134, Feb. 6, 2004, 2004 CPD ¶ 63 at 6; Universal Building Maintenance, Inc., B-282456, July 15, 1999, 99-2 CPD 32 at 4.

Despite the agency’s insistence that the debriefing document included a typographical error indicating that selection was made on a LPTA basis, the contemporaneous record does not support this contention. In both award decision memoranda, the contracting officer states that because “past performance and technical ratings are acceptable among the evaluated offerors, price became the

determining factor. . . . No Trade-Offs were used.” AR, Tab 1, Award Decision Memo dated August 15, 2016, at 4; AR, Tab 2, Award Decision Memo dated September 1, 2016, at 4. The agency protest official states in her decision: “As past performance and technical ratings were equal among the evaluated offerors, however, price became the determining factor.” AR, Tab 4, Agency Protest Decision, at 1.

With respect to experience, evaluated as part of past performance, Patriot Solutions received a rating of more relevant for its experience, a rating that is higher than the rating of relevant assigned to Wonder State Box Company, the awardee for group 1. AR, Tab 2, Award Decision Memo dated September 1, 2016, at 2-3. Specifically, Patriot Solutions received a rating of more relevant because it is the incumbent. Id. at 2. Wonder State received a rating of relevant because it has past experience with government contracts, including UNICOR. Id. at 2. To that end, the RFP explicitly stated: “More relevant past performance will be considered performance with less risk potential to the agency.” RFP at 20.

By treating all offerors as acceptable, without any comparative evaluation, the agency effectively negated any potential advantage in past performance that Patriot Solutions’ proposal had over the others. See Technical Support Services, Inc., B-279665, B-279665.2, July 8, 1998, 98-2 CPD ¶ 26 (protest sustained where agency disregarded RFP’s best-value scheme and awarded to offeror on LPTA basis). Here, if a tradeoff analysis had been performed, UNICOR might reasonably have determined that Patriot Solutions’ more relevant experience warranted payment of Patriot Solutions’ higher proposed price. Competitive prejudice is an essential element of a viable protest; we resolve any doubts regarding prejudice in favor of a protester since a reasonable possibility of prejudice is a sufficient basis to sustain a protest. Intelsat General Corp., B-412097, B-412097.2, Dec. 23, 2015, 2016 CPD ¶ 30 at 19-20. On the record before us, we find a reasonable probability that the protester was prejudiced by the agency’s failure to follow the solicitation and sustain the protest.⁵

⁵ We note that the ratings are identical for Patriot Solutions and Sigma Supply, the awardee for group 2. Where selection officials reasonably regard proposals as being essentially technically equal, price may properly become the determining factor in making award, notwithstanding that the solicitation assigned price less importance than the technical factors. SRA International, Inc.; Vistrionix, LLC, B-413000, B-413000.2, July 25, 2016, 2016 CPD ¶ 208 at 11-12. Here, although Patriot Solutions and Sigma Supply received the same more relevant rating, the agency found differences in the past performance information between the two. These differences, however, were not addressed in the evaluation summary. AR, Tab 2, Award Decision Memo dated Sept. 1, 2016, at 4 (“As past performance and technical ratings are acceptable among the evaluated offerors, price becomes the determining factor.”). The propriety of the price/technical tradeoff decision turns not
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RECOMMENDATION

We recommend that UNICOR perform a best-value tradeoff and prepare a new source selection decision that adequately documents whether the higher-rated proposals submitted warrant payment of the premium associated with Patriot Solutions' higher proposed price. Alternatively, if UNICOR determines that its interests would be better served by making award on a lowest-priced, technically acceptable basis, the agency should amend the solicitation accordingly, solicit and evaluate revised proposals, and make a new source selection decision. We also recommend that UNICOR reimburse the protester its costs associated with filing and pursuing this protest. Bid Protest Regulations, 4 C.F.R. § 21.8(f). The protester's certified claim for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after the receipt of this decision. Id.

The protest is sustained.

Susan A. Poling
General Counsel

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on the difference in the technical scores or ratings per se, but on whether the selection official's judgment concerning the significance of the difference was reasonable and adequately justified in light of the RFP's evaluation scheme. Blue Rock Structures, Inc., supra. An agency that fails to document adequately its source selection decision runs the risk that our Office may be unable to determine that the decision was reasonable. Id. Here, the agency failed to adequately document its decision.