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Decision

Matter of: Intercomp Company, Inc.

File: B-405578

Date: November 21, 2011

Timothy M. Connelly, Esq., for the protester.
Harold Thomas, General Electrodynamics Corporation, for the intervenor.
Elan Taylor, Esq., Defense Logistics Agency, for the agency.
Cherie J. Owen, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that agency failed to consider criteria other than past performance and price is denied where the solicitation required consideration of other criteria only in the event of a tradeoff, and no tradeoff was necessary.

DECISION

Intercomp Company, Inc., of Medina, Minnesota, protests the award of a contract to General Electrodynamics Corporation (GEC) by the Defense Logistics Agency (DLA) under request for proposals (RFP) No. SPM4A6-11-R-1322 for 30 sets of digital aircraft weighing scales.

We deny the protest.

BACKGROUND

The solicitation was issued on July 7, 2011, and contemplated award of a fixed-price contract to provide 30 sets of digital aircraft weighing scales to be used for weighing U.S. Army helicopters. The RFP required that the scales be delivered within 233 days after the date of award, and stated that, unless delivery was identified as an evaluation factor elsewhere in the solicitation, there would be no evaluation preference or penalty for faster delivery. RFP at 12.

Section 52.212-2, titled Evaluation--Commercial Items, referred offerors to two other solicitation clauses, M15F32 and M15C06, for the factors to be evaluated. *Id.* at 7. Clause M15F42, titled Evaluation and Award, stated that the agency would base its

best value determination on a comparative assessment of the offerors' prices, past performance,¹ "and the other evaluation factors identified elsewhere in this solicitation." Id. at 17. The RFP stated that all evaluation factors, when combined, were approximately equal to price. Id.

The RFP also advised that the final award decision may involve a tradeoff among price and the non-price factors. "Factors that may be considered" in the tradeoff included, but were not limited to: item criticality and weapons system application; current inventory status; historical delivery or quality problems; concerns over limited supply sources and industrial base; and benefits from obtaining new sources. Id. The RFP also stated that "[u]nless delivery is identified elsewhere in the solicitation as an evaluation factor . . . there will be no evaluation preference or penalty for faster delivery." Id. at 12.

After receiving proposals, the agency conducted evaluations of past performance and price. The past performance evaluation was conducted using the automated best value system (ABVS).² As a result of its evaluation, the agency concluded that Intercomp's total evaluated price was \$[deleted] and its past performance ABVS score was 81.0. Contracting Officer's Statement at 2. GEC's total evaluated price was \$459,000 and its past performance ABVS score was 84.3. Id. Because GEC's proposal received the highest past performance rating and offered the lowest price, the agency determined that no tradeoff was necessary and that GEC's proposal represented the best value. Id. The agency made award to GEC on July 22, 2011. After receiving a debriefing, Intercomp filed a protest with our Office.

DISCUSSION

Intercomp contends that the agency's evaluation was flawed because the agency failed to apply evaluation criteria listed in the solicitation. Protest at 2. In particular, the protester contends that the agency unreasonably failed to evaluate the proposals under the "current inventory status," "item criticality and weapons system application," and "historical delivery or quality problems" factors identified in the solicitation.³ Comments at 9-12. The agency contends that the solicitation language

¹ Clause M15C06 provided additional details about the past performance evaluation.

² ABVS is an automated system that collects information about contractors' existing past performance record for quality and delivery and translates it into a numerical score between 0 and 100. Contracting Officer's Statement at 2. Higher ABVS scores reflect better past performance.

³ Intercomp's initial protest also argued that award to GEC was improper because GEC could not comply with the solicitation's requirement that the scale be fully electronic and use no hydraulic or other mechanical components. Protest at 3-6. In its comments on the agency report, Intercomp stated that it "waives any further

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required only that past performance and price be evaluated, except in the event of a tradeoff. Contracting Officer's Statement at 7.

Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that reasonably gives effect to all its provisions. Vital Link, Inc., B-405123, Aug. 26, 2011, 2011 CPD ¶ __ at 4; Solec Corp., B-299266, Mar. 5, 2007, 2007 CPD ¶ 42 at 2.

The agency argues, and we agree, that the solicitation's language identified only past performance and price as evaluation factors. In the event that a tradeoff between past performance and price was necessary, the solicitation stated that several other factors could be considered, including the offerors' current inventory status, item criticality and weapons system application, and historical delivery or quality problems. However, the agency reasonably understood that the solicitation required that these other factors were to be considered only in the event of a tradeoff.⁴ RFP at 17. If a proposal was both the highest rated in past performance and the lowest priced, then award would be made to that offeror without a tradeoff or consideration of other factors. We find that this interpretation of the solicitation's language reasonably gives effect to all its provisions.⁵

The record here reflects that the agency considered the offerors' past performance scores and prices and reasonably determined that no tradeoff was necessary because GEC's proposal was superior under both evaluation factors. Given the solicitation's requirement that past performance and price be considered in making the award decision, and that other factors would be considered only in the event of a tradeoff,

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consideration of these issues in this forum." Comments at 1-2. Therefore, this protest ground is dismissed.

⁴ Furthermore, with respect to the protester's claim that it should have received credit for its accelerated delivery schedule under the current inventory status criteria, as noted above, the RFP stated that there would be no evaluation preference for faster delivery. RFP at 12.

⁵ To the extent that the protester believes that the RFP provisions were ambiguous in this regard, we find that the ambiguity was apparent on the face of the solicitation, and therefore, a challenge to the solicitation's terms at this point is untimely and will not be considered. Protests of alleged solicitation improprieties, to be timely, must be raised prior to the closing time for receipt of proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2011).

we find no merit to the protester's argument that the agency erred in failing to consider other criteria identified by Intercomp.

The protest is denied.

Lynn H. Gibson
General Counsel