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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Curtin Maritime Corporation

File: B-414335.2

Date: May 5, 2017

Martin Curtin, Curtin Maritime Corporation, for the protester.
Clinton D. Hubbard, Esq., Law Offices of Clinton D. Hubbard, for Pacific Tugboat Service, the intervenor.
Hallie L. Balkin, Esq., Department of the Navy, for the agency.
Mary G. Curcio, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly made award of standing route order to lowest-priced bidder is denied where solicitation defined best value as the lowest-priced, acceptable bid.

DECISION

Curtin Maritime Corporation, of Long Beach, California, protests the Department of the Navy's award of a standing route order (SRO) to Pacific Maritime Freight, Inc. dba Pacific Tugboat Service, of San Diego, California, under solicitation No. ILWX170030N-EL, for freight services. Curtin asserts that the agency's cancellation of Curtin's award and the re-award of the SRO to Pacific was improper because Curtin offered the best value.

We deny the protest.

BACKGROUND

The solicitation, issued on January 11, 2017, sought service for 48 weekly round trips to transport freight between the Naval Base in San Diego and San Clemente Island.¹ Solicitation at 1. Only approved Transportation Service Providers (TSP)

¹ This protest concerns a solicitation for a tender of service and award of a barge service contract. Our Office has explained that we have jurisdiction to consider

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were permitted to submit a bid. Id. at 3. The solicitation provided for award on the basis of the best value to the government, and stated: “For this solicitation, the best value is defined as the lowest-priced acceptable bid.” Id. at 4. Bids were to be rated acceptable or unacceptable under the following technical factors: barge equipment and availability; experience; and arms, ammunition, and explosives certification. Id. at 5.

The solicitation also instructed TSPs to indicate whether they had a voluntary intermodal sealift agreement (VISA). VISA status would be used as a tie-breaker to determine the awardee in the event bidders were equal for both the technical factors and price. Id. With respect to price, TSPs were required to complete a bid sheet with a price per trip and a proposed demurrage (idle time) rate. The agency would calculate the total prices by multiplying the round trip bid price by 48 trips and adding a representative amount for demurrage (250 hours minus proposed free time multiplied by the proposed demurrage rate). Id.

Both Curtin and Pacific submitted acceptable bids in response to the solicitation. The agency evaluated Curtin’s total price as \$1,912,800, and Pacific’s as \$1,824,000. Transportation Officer’s Statement at 3. On January 24, the agency awarded the SRO to Curtin, the incumbent, after the transportation officer concluded, based on prior experience with Curtin, that its higher-priced bid offered superior performance. Id. Pacific protested the award to our Office, asserting that it submitted the lowest-priced, acceptable bid, and in accordance with the solicitation should have received the award. The agency agreed that it had not awarded the SRO in accordance with the terms of the solicitation, and on February 6, revoked the SRO it had awarded to Curtin. Notice of Corrective Action, Feb. 8, 2017. We dismissed Pacific’s protest. Pacific Tugboat Service, B-414335, Feb. 10, 2017 (unpublished decision). The agency subsequently awarded the SRO to Pacific, and this protest followed.

DISCUSSION

Curtin protests that the agency changed the basis of award from the bid that represented the best value to the government to the bid that was lowest in price. In this regard, the agency initially determined that Curtin offered the best value due to

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objections to agency actions concerning solicitations for competitive rate tenders for transportation services that affect the eligibility of firms to receive awards for shipments. See Abba Int’l, Inc., et al., B-311225.4, Feb. 2, 2009, 2009 CPD ¶ 28; see also Biblia, Inc., B-403006, Sept. 13, 2010, 2010 CPD ¶ 203 at 3 (jurisdiction over protest of issuance of government bill of lading for one-time shipment where agency issues formal solicitation, provides evaluation factors, and makes a best-value source selection decision).

its prior performance as the incumbent. Curtin asserts that by changing the basis of award from best value to lowest priced, the agency created a latent ambiguity in the solicitation.²

An agency's evaluation and award decision are required to be made in accordance with the terms of the solicitation. Biblia, Inc., supra, at 3. In reviewing a protest challenging an agency's evaluation and award decision, our Office will review the documentation supporting the source selection decision to ensure that it was adequately supported and rationally related to the stated evaluation criteria. Id.

Here, for purposes of award, the solicitation specifically defined best value to the government as the acceptable offer that was lowest in price. Solicitation at 4. The agency was therefore required to award the contract on that basis, that is, to the TSP that submitted the acceptable bid with the lowest price. In this case, Pacific submitted the lowest-priced, acceptable bid.

Curtin asserts that the solicitation contains a latent ambiguity because during an earlier procurement (in 2014) for the same services, Curtin was advised that where the agency is making award on the basis of the best value to the government, price is not the only consideration. Curtin argues that this interpretation is supported by defense transportation regulations addressing best-value award cargo movements, and the fact that the agency initially awarded the SRO to Curtin on the basis of Curtin's prior performance for the same work.

We first note that Curtin has not provided us with the prior solicitation so it is unclear whether best value in that procurement was defined as the acceptable, lowest-priced bid. In any case, each procurement stands on its own. Complete Packaging & Shipping Supplies, Inc., B-412392 et al., Feb. 1, 2016, 2016 CPD ¶ 28 at 7. Further, the solicitation specifically defined best value as the acceptable, lowest-priced bid. If there was any ambiguity in the solicitation it was patent, that is, clear from the face of the solicitation, and Curtin was required to protest the alleged ambiguity prior to the due date for bids. See 4 C.F.R. § 21.1(a)(1).

Curtin also asserts that the solicitation reserved to the agency the right to cancel the solicitation after award, but prior to commencement of an actual cargo move. Solicitation at 5. According to Curtin, the agency was therefore permitted to cancel

² Curtin had also argued that the agency incorrectly calculated the total prices of the bids. In its report, the agency explained that it calculated the prices in accordance with the solicitation. Curtin did not respond to or rebut the agency's response in its comments. Curtin's failure to comment on the agency's response renders this argument abandoned. 22nd Century Techs., Inc., B-412547 et al., Mar. 18, 2016, 2016 CPD ¶ 93 at 10.

the entire solicitation, but not to cancel Curtin's SRO award and award the SRO to Pacific.

We disagree. The cancellation was taken as corrective action in response Pacific's protest complaining that the Navy failed to follow the award criteria provided for in the solicitation. Contracting agencies have broad discretion to take corrective action where they determine that such action is necessary to ensure a fair and impartial competition. RS Info. Sys., Inc., B-287185.2, B-287185.3, May 16, 2001, 2001 CPD ¶ 98 at 4. We generally will not object to the specific corrective action so long as it is appropriate to remedy the concern that caused the agency to take corrective action. American Warehouse Sys., LLC, B-412543, Mar. 1, 2016, 2016 CPD ¶ 66. Here, the agency agreed with Pacific that it initially failed to make award on the basis stated in the solicitation. It was therefore entirely appropriate for the agency to rescind the award to Curtin and make an award to Pacific in accordance with the solicitation.³ See Image Contracting, B-253038, Aug. 11, 1993, 93-2 CPD ¶ 95 at 4.

Finally, Curtin protests that it is not clear whether the agency checked Pacific Tugboat's VISA status and "investigated" Pacific's previous shipyard work as it relates to Pacific's VISA status. The agency asserts that it did assess Pacific's status as a participant in the VISA program and provided supporting documents to show Pacific's VISA enrollment. Agency Report (AR) at 7; AR, Tab 24, Pacific's VISA Contract . In any case, VISA status was only to be used as a tie-breaker if acceptable bids were equal in price. Here, Pacific's VISA status is not relevant to the award since its bid was lower than Curtin's.⁴

The protest is denied.

Susan A. Poling
General Counsel

³ Curtin asserts that the agency cancelled its award as a pretext to avoid the protest submitted by Pacific. Curtin argues that the agency's failure to provide Curtin immediate notice of Pacific's protest supports this allegation. On the record before us, we have no basis to reach that conclusion. The solicitation provided for award to the bidder that submitted the lowest-priced, acceptable bid. The agency was therefore required to award on that basis. Since the agency did not initially award the contact to the lowest-priced, acceptable bidder, it rescinded the award and made an award in accordance with the solicitation.

⁴ It was clear from the solicitation that participation in the VISA program would be used as a tie-breaker. If Curtin believed that bidders should have been required to participate in the VISA program as a precondition to award, Curtin was required to protest this concern prior to the due date for bids. 4 C.F.R. ¶ 21.2 (a)(1).