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**Comptroller General
of the United States**

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

Decision

Matter of: Qualicon Corporation

File: B-309989.2

Date: December 3, 2007

John R. Lockard, Esq., Vandenter Black LLP, for the protester.
Jessica Gilden for Jessico Inc., an intervenor.
Timothy A. Chenault, Esq., U.S. Coast Guard, for the agency.
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the
General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that agency deviated from solicitation's stated evaluation scheme in evaluating bids is denied where protester has not demonstrated a reasonable possibility that it was prejudiced by any deviation.

DECISION

Qualicon Corporation protests the selection of Jessico Inc. for award under invitation for bids (IFB) No. HSCG83-07-B-3WQ254, issued by the Department of Homeland Security, U.S. Coast Guard for replacement of pier services at the Coast Guard's Little Creek Station in Norfolk, Virginia. Qualicon contends that it submitted the lowest overall price and thus is entitled to award.

We deny the protest.

The IFB requested prices on six line items, identified as B-1 through B-6. The solicitation provided for award to the "low, responsive, responsible bidder based on the Total Aggregate Amount of Items B-1 through B-6." IFB, § M-1. Of significance to this protest, items B-3 and B-4 provided as follows:

B-3. Unit Item 2: Provide all labor, material, equipment, supervision and transportation required to install insulated carrier and containment piping system with heat tracing for potable water. Attach to existing piping at bulkhead and existing piping on top of the pier.

B-4. United Item 3: Provide all labor, material, equipment, supervision and transportation required to install insulated ASTM B88, type K copper carrier pipe, accessories and fittings. Install containment piping system with heat tracing for potable water. Attach to existing piping at bulkhead and existing [piping] on top of the pier.

IFB § B.

The agency opened the following bids on August 7, 2007:

Bidder	Jessico	Qualicon	Bidder C
Item B-1	\$331,000	\$408,821	\$345,639
Item B-2	\$ 26,000	\$ 16,393	\$ 94,000
Item B-3	\$113,100	\$ 70,599	\$ 60,400
Item B-4	\$117,000	\$ 78,901	\$ 69,400
Item B-5	\$110,000	\$119,880	\$127,050
Item B-6	\$ 52,000	\$ 44,322	\$ 68,000
Total	\$749,100	\$738,916	\$764,489

Agency Report, Tab 6.

On August 8, Jessico protested to our Office, arguing that the project in question requires the performance of either the work in B-3 or the work in B-4, but not both, since the work to be performed under the two items is the same, the only difference between the two being the type of piping to be installed. Accordingly, Jessico maintained, the agency should include one or the other, but not both, in calculating the overall low bid. Jessico demonstrated that when the low bid was calculated by including either B-3 or B-4, but not both, its overall price was low.¹ The agency subsequently notified us that it intended to award to Jessico, whereupon we dismissed Jessico's protest.

Upon learning that the agency intended to award to Jessico, Qualicon protested to our Office. Qualicon argues that the IFB explicitly provides for award to the bidder whose total aggregate price for items B-1 through B-6 is low, and that award to any bidder other than itself would thus be contrary to the clear language of the solicitation. The protester further argues that the bid schedule gives no indication that items B-3 and B-4 are to be considered alternate items. In response, the agency contends that bidders should have recognized from the descriptions of the work to be accomplished under items B-3 and B-4 that the two items are alternates, and that

¹ With the exclusion of item B-4, Jessico's overall price of \$632,100 is approximately \$28,000 less than Qualicon's overall price of \$660,015, whereas with the exclusion of item B-3, Jessico's overall price of \$636,000 is approximately \$32,000 less than Qualicon's overall price of \$668,317.

the only reasonable reading of the IFB as a whole is that only one of the two alternates is to be considered in the computation of overall low price.

We need not resolve the foregoing dispute to decide this protest because (1) it is clear from the record that the agency does in fact consider items B-3 and B-4 to be alternates and does not intend to award both, and (2) there is no evidence that Qualicon was prejudiced by any failure on the part of the agency to make clear that items B-3 and B-4 are to be considered alternates, with one or the other, but not both, to be considered in the evaluation of the overall lowest bid. In connection with the latter point, we will sustain a protest only where a reasonable possibility of prejudice is evident from the record, Lithos Restoration, Ltd., B-247003.2, Apr. 22, 1992, 92-1 CPD ¶ 379 at 5-6, and where an agency fails to adhere to its stated evaluation approach in evaluating bids, such prejudice exists only where the record shows a reasonable possibility that the protester would have altered its bid to its competitive advantage had it known of the change. See CW Constr. Servs. & Materials, Inc., B-279724, July 15, 1998, 98-2 CPD ¶ 20 at 9; Hughes Missile Sys. Co., B-272418 et al., Oct. 30, 1996, 96-2 CPD ¶ 221 at 14. Here, Qualicon has not alleged, and we see no basis in the record to conclude, that it would have altered its pricing for the various line items had it recognized that either item B-3 or item B-4, but not both, would be considered in the calculation of the overall low price. Accordingly, even assuming that the agency failed to adhere to its stated evaluation scheme in determining overall low price, we see no basis to sustain Qualicon's protest in light of the absence of prejudice from the alleged deviation from the evaluation scheme.

The protest is denied.

Gary L. Kepplinger
General Counsel