



Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Centre Manufacturing Company, Inc.

File: B-251665

Date: April 21, 1993

Marc Lamer, Esq., and Fredric T. Rekstis, Esq., Kostos and Lamer, P.C., for the protester.
Diane Cherinchak, Esq., and Michael Trovarelli, Esq., Defense Logistics Agency, for the agency.
Douglas McArthur, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where evaluators reasonably found proposals equal in technical quality, selection of the lower priced offer was reasonable and consistent with solicitation that provided that as proposals became more equal in technical quality, price would become more important in the selection decision.

DECISION

Centre Manufacturing Company, Inc. protests the award of a contract to Sterlingwear of Boston, Inc. under request for proposals (RFP) No. DLA100-91-R-0655, issued by the Defense Personnel Support Center (DPSC). Centre asserts that based on its past performance, its proposal should have been rated higher than the awardee's under the solicitation's evaluation factors.

We deny the protest.

On January 29, 1992, the agency issued the solicitation as a partial small business set-aside for production and delivery of men's and women's belts and coats. The solicitation provided for award based on the offer most advantageous to the government, price, technical quality, and other factors considered. Technical factors included a product demonstration model, manufacturing plan, quality assurance plan ("in accordance with the requirements of [DPSC Manual] 4155.3") and past performance. The solicitation advised offerors that technical quality would be more important than price, but that as proposals became more equal in their technical merit, price would become more important.

The solicitation provided for evaluation of past performance in two ways: first, to evaluate the "credibility of the offeror's proposal," the agency would treat a record of marginal or unacceptable past performance as an indication that the offeror's representations were "less than reliable"; second, to evaluate the "relative capability" of offerors, the agency would more favorably evaluate an offeror with "an exceptional record of past performance." The solicitation defined past performance as follows:

"[T]he offeror's record of conforming to [g]overnment specification requirements and to standards of good workmanship; the offeror's adherence to contract schedules, including the administrative aspects of performance; the offerors reputation for reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the offeror's business like concern for the interests . . . of the customer."

Amendment No. 0002 to the solicitation, dated March 4, provided guidance for the preparation of technical proposals and advised offerors to describe "experience with producing the same or similar item within the last [3] years," and to provide the contracting officer's telephone number "[i]f a [g]overnment contract is involved."

The agency received six offers by March 23, the date set for receipt of initial proposals, and eliminated one offer from the competitive range. The agency held discussions, receiving revised proposals on July 13, and best and final offers on October 21. Two offerors withdrew; of the three remaining offerors, one received a marginally acceptable rating, while the awardee and the protester received ratings of acceptable. Since the two acceptable proposals were rated equal in technical quality, the agency awarded a contract to Sterlingwear, the lower priced offeror, on December 8. This protest followed.

The protester contends the evaluation was unreasonable because it is far superior to the awardee with respect to technical expertise and experience in producing the products in question. Sterlingwear has not produced the coats called for by the RFP for 5 years and, the protester argues, cannot possibly possess expertise equivalent to its own. The protester concludes that in view of Sterlingwear's lack of expertise, its proposal could not have been equal to

¹The awards which Centre challenges were for contract line item numbers (CLIN) 0001 and 0002. For these items, Sterlingwear's total price (\$10,073,231) was \$1,041,971 lower than Centre's price (\$11,115,202).

Centre's, and that the "small disparity" in price cannot justify an award to Sterlingwear given that the solicitation emphasizes technical quality.

In reviewing protests against an agency's technical evaluation and selection decision, we examine the record to determine whether the evaluation was reasonable and consistent with the criteria listed in the solicitation. SeaSpace, 70 Comp. Gen. 268 (1991), 91-1 CPD ¶ 179. Here, we conclude that the agency's determination that the two proposals were equal in technical merit is supported by the record. Selection of the lower priced offeror was therefore reasonable and consistent with the solicitation, which provided that evaluated cost or price would be more important where proposals were equal in technical merit.

In evaluating past performance, the agency reviewed the offerors' performance over the past 3 years. Similar numbers of government contracts were involved--five for Sterlingwear and eight for Centre; each delivered some contracts ahead of schedule and the rest on time; both encountered quality problems, which were satisfactorily resolved, under one of their contracts. Centre's contracts were for the same coats being procured under this RFP, and another item, a cold weather coat. While Sterlingwear had no contracts for the exact item that is the subject of this procurement, three of the government contracts reviewed were for production of an enlisted man's peacoat, which the agency considers a similar item. Sterlingwear has also manufactured similar items for the commercial marketplace--a man's all weather coat, a man's raincoat, and a man's and woman's overcoat.

In sum, there is nothing in the record to distinguish Centre's record from Sterlingwear's in terms of meeting requirements for those items for which they had contracts. There is no evidence of marginal or unacceptable past performance by the awardee, such as would lead under the terms of the solicitation to the conclusion that the offeror's representations were "less than reliable." Nor is there evidence that the protester possessed an "exceptional record of past performance," such that it was entitled to a more favorable evaluation under the terms of the solicitation. The evaluation of past performance therefore appears both reasonable and consistent with the criteria listed in the solicitation.

The protester, however, challenges the agency's consideration of Sterlingwear's experience with producing the man's peacoat. Centre also argues that it was improper for the agency to consider Sterlingwear's experience with commercial

contracts since, in Centre's view, the RFP limited the evaluation of an offeror's past performance to its performance under government contracts. As discussed below, we see nothing improper in the agency's evaluation of Sterlingwear's past performance.

With regard to the agency's consideration of Sterlingwear's experience producing an enlisted man's peacoat, the agency concedes that the evaluators initially advised the contracting officer, incorrectly, that the peacoat was "more technically complex" than the coats being procured here. The agency points out, however, that the solicitation instructed offerors to submit evidence of experience with "same or similar item[s]," and that, while the peacoat is not more complex, it does qualify as a similar item. We see no basis to conclude, and the protester has not shown, that the agency's position is unreasonable. The agency therefore reasonably could consider Sterlingwear's contract for the peacoat as evidence of experience with producing similar items for the government, as the solicitation called for.

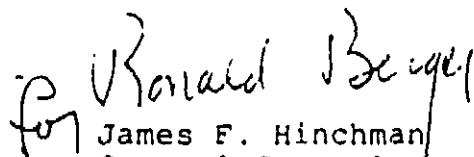
The protester also asserts that Sterlingwear's commercial experience is irrelevant, since the solicitation states that the evaluation would be based on the offeror's record of conforming to government specifications, which are more rigid than those for the commercial marketplace. We think the protester's interpretation of the past performance evaluation factor is unreasonable. The RFP focused on evaluating an offeror's past performance not only for evidence of producing an item in conformance with government specifications but more generally for evidence of the offeror's overall reliability and capability. Thus, while, as Centre points out, the RFP referred to "the offeror's record of conforming to [g]overnment specification requirements" as one element of past performance, the solicitation also defined past performance to include the offeror's adherence to contract schedules; its reputation for "reasonable and cooperative behavior and commitment to customer satisfaction"; and the offeror's concern for its customer's interests. These factors all are elements of a contractor's performance regardless of whether a commercial or government contract is involved. Similarly, with regard to the information that offerors were to provide regarding their prior performance, amendment No. 0002 advised offerors to provide the contracting officer's telephone number, "[i]f a [g]overnment contract is involved"; clearly, this language indicates that the evaluation was not to be limited to government contracts. Consideration of Sterlingwear's experience with producing similar--in fact, more complex--items for the commercial marketplace as evidence of the awardee's general reliability and capability thus was reasonable and consistent with the solicitation.

Centre's initial protest alleged only that it was superior in the category of past performance. In its comments on the agency report, the protester questioned the evaluation of the awardee's quality assurance plan. The protester contended that its history of producing the coats should have entitled it to a higher rating than the awardee, since, regardless of Sterlingwear's commercial experience, the solicitation indicated that the agency would consider only whether the quality assurance plan complied with DPSC Manual 4155.3, and Sterlingwear, unlike Centre, had not implemented such a quality assurance plan.

Amendment No. 0002 to the solicitation instructed offerors to submit either an existing or a proposed quality assurance plan, describing the quality assurance system and inspection procedures to be used under the proposed contract. Sterlingwear submitted a plan, which the evaluators found adequate to control and rectify anticipated deficiencies. Although Centre was provided a copy of Sterlingwear's plan, Centre has not identified any specific deficiencies in that plan. With respect to Centre's own plan, the evaluators concluded that while the plan was somewhat more detailed than Sterlingwear's, it did not quite outweigh the defects in Centre's product demonstration model; accordingly, the evaluators advised the contracting officer that, overall, Sterlingwear had a slightly higher probability of successful performance than did the protester. In light of the evaluators' conclusions, and the protester's failure to rebut them, we see no basis for challenging the agency's determination that Centre and Sterlingwear were equal in the area of quality assurance plan.

Given that the agency reasonably found Centre's and Sterlingwear's proposals equal in technical quality, and the RFP provided that price would become more important in the selection decision as proposals became more technically equal, the agency properly made award to Sterlingwear, the lower priced offeror.

The protest is denied.


for James F. Hinchman
General Counsel