



United States Government Accountability Office
Washington, DC 20548

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Decision

Matter of: Global Automotive, Inc.

File: B-406828

Date: August 3, 2012

Timothy B. Shea, Esq., Nemirow Hu & Shea, for the protester.
George W. Ash, Esq., and Erin L. Toomey, Esq., Foley & Lardner LLP, for Global Fleet Sales, LLC, the intervenor.
Debra J. Talley, Esq., and Francis O. Wey, Esq. Department of the Army, for the agency.
Jonathan L. Kang, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly eliminated the protester's proposal from award consideration where the protester expressly refused to extend its proposal acceptance period as requested and the proposal could not be revived because it would compromise the integrity of the competitive bidding system.

DECISION

Global Automotive, Inc. (GAI), of Washington, District of Columbia, protests the award of a contract to Global Fleet Sales, LLC (GFS), of Southfield, Michigan, by the Department of the Army, Army Materiel Command, under request for proposals No. W56HZV-11-R-0307 for cargo vans. The protester argues that the agency unreasonably excluded its proposal from award consideration because its proposal acceptance period had expired.

We deny the protest.

BACKGROUND

The RFP was initially issued on June 27, 2011, and sought proposals to provide 199 Ford Transit cargo vans for use in Afghanistan. The solicitation anticipated award of a contract to the offeror submitting the low-priced, technically-acceptable proposal.

The Army received proposals from three offerors, including GAI and GFS, by the initial closing date of August 10.¹ The RFP required a proposal acceptance period of 30 days. The agency concluded that GAI's and GFS's proposals were technically unacceptable, and requested responses from the offerors to address the agency's concerns. Contracting Officer (CO) Statement ¶ 9. Upon review of the responses, the agency concluded that the offerors' proposals were technically acceptable. Id.

On September 27, the agency requested that the offerors extend their periods of acceptance to November 30, to provide additional time for the evaluation of proposals. Agency Report (AR), Tabs 15a and 15b, Agency Requests for Extension of Proposals (Sept. 27, 2011). GAI and GFS each agreed to extend their acceptance periods as requested. AR, Tabs 16a and 16b, GAI and GFS Responses to Requests for Extension of Proposals (Sept. 27, 2011).

In October, the Army's pre-award survey of GAI's proposal recommended that the protester not be selected for award based on a lack of capability to provide after-delivery coverage of the vans after they were delivered to Afghanistan. AR, Tab 26a, GAI Pre-Award Survey, at 1. The agency opened discussions to permit the protester to address this and other concerns, and to revise its proposed price. CO Statement ¶ 14.

On November 21, the Army requested that the offerors again extend their acceptance periods until January 30, 2012. AR, Tabs 17a and 17b, Agency Requests for Extension of Proposals (Nov. 21, 2011). GAI and GFS each agreed to extend their acceptance periods as requested. AR, Tabs 18a and 18b, GAI and GFS Responses to Requests for Extension of Proposals (Nov. 21, 2011).

Both offerors submitted revised proposals by December 14. On January 18, 2012, the agency concluded that the evaluation of the revised proposals would not be completed by the proposal acceptance date of January 30, and requested that the offerors extend their acceptance periods to February 29. AR, Tab 23a and 23b, Agency Requests for Extension of Proposals (Jan. 18, 2012). On January 19, the awardee agreed to extend its proposal acceptance period, as requested, to February 29. AR, Tab 24b, GFS Response to Extension Request (Jan. 19, 2012). The protester, however, informed the agency as follows: "[O]ur prices are valid until 1 February, only and we reserve the right to adjust prices hereafter." AR, Tab 24a, GAI Response to Extension Request (Jan. 19, 2012). Based on GAI's express refusal to extend its acceptance period as requested, and the CO's understanding that the evaluation would not be completed until after the protester's acceptance date of February 1, the CO concluded that GAI would no longer be considered for award. CO Statement ¶ 24.

¹ The third proposal was rejected as late. CO Statement ¶ 7.

In February, the Army found that the initial quantity of vans required was overstated, and the award was delayed in order to identify the agency's actual requirements. Id. ¶ 26. The agency subsequently reduced its requirement from 199 to 181 vehicles, and requested that GFS, the sole remaining offeror, agree to a reduction in the number of vehicles without a change in its proposed unit price. Id. ¶ 27; AR, Tab 18c, Agency Request to GFS for Extension of Proposal (Mar. 26, 2012). The awardee agreed to the reduction, without a change to its price. Id., GFS Response to Request for Extension of Proposal (Mar. 26, 2012). During the agency's reexamination of its requirements and exchanges with the awardee, the agency requested three extensions of GFS's acceptance period, each of which was agreed to by the awardee. Id., Requests for Extension of Proposal and Responses (Feb. 16-Mar. 26, 2012).

The Army awarded the contract to GFS on April 10, and notified GAI of the award. The letter advising the protester of the award also explained that the protester's proposal had been excluded from award consideration because GAI had been found non-responsible based on an "unsatisfactory finding under the factors of Technical and Quality Assurance capabilities . . . [in accordance with Federal Acquisition Regulation §] 9.104-3(b) 'Satisfactory performance record.'" AR, Tab 32, Letter from Army to GAI (Apr. 10, 2012). The Army provided a debriefing to GAI on May 1, which provided more information concerning the non-responsibility determination. AR, Tab 32b, Debriefing Letter (May 1, 2012). On May 9, GAI filed an agency-level protest, challenging the agency's evaluation of its proposal.

On May 22, the Army denied the agency-level protest. The agency explained that the bases for rejecting GAI's proposal set forth in the notice of award and debriefing were "incorrect." AR, Tab 35, Agency Protest Decision, at 1. The Army explained, however, that "[t]he underlying basis for the Government not considering GA[I]'s proposal was the result of GA[I] failing to extend its offer for the minimum required acceptance period." Id. at 2. On June 1, GAI filed this protest with our Office.

DISCUSSION

GAI primarily argues that the Army unreasonably eliminated its proposal from award consideration, and should have allowed it to revive its expired proposal. For the reasons discussed below, we find no basis to sustain the protest.

GAI does not dispute that it expressly refused to extend offer to February 29, 2012, as required by the agency, and instead limited the acceptance period to February 1. The protester argues, however, that the agency should have permitted it to revive its proposal.

A solicitation's minimum acceptance period is a material requirement. Banknote Corp. of Am., Inc., B-278514, Feb. 4, 1998, 98-1 CPD ¶ 41 at 3. An offeror's compliance with a solicitation's acceptance period is required so that all offerors

share the same business risks of leaving their bids or proposals open for acceptance by the government for the same amount of time. See General Elevator Co., Inc., B-226976, April 7, 1987, 87-1 CPD ¶ 385 at 2.

Where a proposal has expired, we have recognized that an offeror may extend its acceptance period and revive its proposal if doing so would not compromise the integrity of the competitive bidding system. BioGenesis Pacific, Inc., B-283738, Dec. 14, 1999, 99-2 CPD ¶ 109 at 6. Circumstances that compromise the system's integrity include an offeror's express or implied refusal of a request to extend its bid, and a subsequent request to revive the proposal subject to the offeror's own interests. Ocean Servs., LLC, B-404690, Apr. 6, 2011, 2011 CPD ¶ 73 at 3. An offeror who is allowed to specify a shorter acceptance period would enjoy an unfair competitive advantage because it would be able to refuse the award after its bid acceptance period expired should it decide that it no longer wanted the award, for example, because of unanticipated cost increases, market fluctuations, shortages, or better profit opportunities elsewhere. See Banknote Corp. of Am., supra, at 3.

GAI argues that the Army should have requested that the protester revive its proposal, after the proposal expired on February 1. The protester contends there would have been no prejudice to the competitive system by allowing it to revive its proposal because the agency requested that GFS extend its proposal acceptance date several times after February 29. As discussed above, however, the protester advised the agency that it would not extend its price beyond February 1, as requested, and also advised that the protester "reserved the right" to modify its proposal after that date. AR, Tab 24a, GAI Response to Extension Request (Jan. 19, 2012). Because GAI expressly refused to extend its proposal, the Army properly excluded its proposal from award consideration. In contrast, the agency reasonably requested that the remaining offeror, whose proposal was still valid, extend its proposal acceptance period on the same terms. On this record, we conclude that GAI's proposal expired, and the Army could not permit the protester to revive its proposal because, for the reasons stated above, such a revival and proposal extension would compromise the integrity of the competitive bidding system. See Esprit Int'l Corp., B-276294, Mar. 10, 1997, 97-1 CPD ¶ 106 at 2.

Additionally, GAI argues that the award notice and debriefing set forth different reasons for its elimination from the competition--reasons that the agency does not now defend. In effect, the protester argues that the agency is now estopped from arguing that its proposal had expired.

As discussed above, however, it is clear that GAI's proposal had expired and could not be revived without compromising the competitive bidding system and it therefore was no longer eligible for award. See Esprit Int'l Corp., supra. Thus, even if, as the protester contends, the agency did not reach this conclusion until after its

agency-level protest was filed, we see no basis to conclude on the record here that the protester's proposal could be considered for award.

The protest is denied.²

Lynn H. Gibson
General Counsel

² GAI also raises other collateral issues, none of which has merit. For example, the protester argues that the debriefing set forth reasons for rejection that the agency concedes were not correct. This situation does not, however, provide a basis to sustain the protest. Debriefings are procedural matters that do not affect the validity of the award. Healthcare Tech. Solutions Int'l, B-299781, July 19, 2007, 2007 CPD ¶ 132 at 5.