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Decision

Matter of: O’Gara-Hess & Eisenhardt Armoring Company, LLC

File: B-415178.2; B-415178.3

Date: April 18, 2018

Barbara A. Duncombe, Esq., Suzanne Sumner, Esq., and Erin Davis, Esq., Taft Stettinius & Hollister, LLP, for the protester.
Susan M. Colarco, Esq., U.S. Department of Justice, for the agency.
Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging an agency’s evaluation of quotations is denied where the agency’s evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement statutes and regulations.

DECISION

O’Gara-Hess & Eisenhardt Armoring Company, LLC (O’Gara), of Fairfield, Ohio, protests the U.S. Department of Justice, Drug Enforcement Administration’s (DEA or agency) award of a delivery order under the General Services Administration’s (GSA) federal supply schedule (FSS) to Ultra Armoring, LLC, of Shelby, North Carolina, pursuant to request for quotations (RFQ) No. DJD-17-Q-0087 for a quantity of armored vehicles. O’Gara challenges the agency’s evaluation of the protester’s and awardee’s quotations under the non-price evaluation factors, and asserts that the agency’s best-value determination was unreasonable.

We deny the protest.

BACKGROUND

On June 9, 2017, the agency published RFQ No. DJD-17-Q-0087 on GSA’s e-Buy system, seeking quotations from FSS contractors for 25 Toyota Land Cruiser 200 Series armored vehicles, and establishing various specifications that the vehicles were required to meet. Following submission of quotations, a source selection decision, and a protest challenging that decision, the agency stated that it would reevaluate proposals

and make a new award determination. Accordingly, this Office dismissed the prior protest.

On November 5, the agency effectively reissued the solicitation through RFQ amendment No. 4,¹ establishing a November 22 due date for submission of quotations and advising offerors that the procurement was being conducted pursuant to Federal Acquisition Regulation (FAR) subpart 8.4.² Agency Report (AR), Tab 4(a), RFQ at 32. As amended, the solicitation provided that the agency would award a single fixed-price delivery order on a “best value” basis, and established the following four evaluation factors: (1) terms of warranties; (2) delivery; (3) past performance; and (4) price.³ Id. at 32-33. The solicitation did not provide for, nor did the agency contemplate, assignment of adjectival or numerical ratings under the evaluation factors. Rather, the solicitation identified the various attributes that were required and/or desired under each factor,⁴ and quotations were evaluated based on the “overall benefits, risks, and flaws associated with each offer.” Contracting Officer’s Statement, Feb. 12, 2018, at 3. Finally, vendors were advised that, in evaluating quotations, the agency would assess whether “the non-price benefits to the Government of [a] higher rated quote justifies the price premium.” RFQ at 33.

¹ In addition to stating the procurement requirements, amendment No. 4 provided responses to various offeror questions. On November 9, the agency issued amendment No. 5, providing additional responses to offeror questions.

² The solicitation also advised vendors that “[t]he Government reserves the right to make award without discussions.” Id. at 32.

³ The solicitation provided that the 1st and 2nd factors were equally important and were each more important than the 3rd and 4th factors, which were also of equal importance. RFQ at 32.

⁴ For example, with regard to the “terms of warranties” evaluation factor, the solicitation directed vendors to “describe [their warranties] in detail” and address how warranty or maintenance services will be provided; discuss whether services will be provided at government locations; and discuss whether original equipment manufacturer (OEM) warranties will remain in effect. Id. at 30-31. The solicitation further provided that the agency would evaluate the warranties as to their “likely efficiencies, timeliness, and cost effectiveness.” Id. at 32. Similarly, with regard to the delivery factor, the solicitation directed offerors to provide a “detailed proposed delivery schedule,” and provided that the agency would evaluate quotations for realism and “anticipated time savings,” noting the government’s interest in “having the armored vehicles ready for deployment in the shortest practicable time.” Id. at 31-32. Finally, with regard to the past performance factor, vendors were advised that the agency would assess an offeror’s past performance risk based on its prior performance of contracts that were “similar in nature and scope,” elaborating that “[p]rojects that do not entail successful delivery of DOS [Department of State] Level C or higher armored vehicles will not be considered comparable.” Id. at 31.

On November 22, the agency received quotations from four vendors, including O’Gara and Ultra.⁵ Ultra’s quotation reflected a total price of \$3,621,829; O’Gara’s quotation reflected a total price of \$3,835,079. AR, Tab 6, Evaluation Report, at 2. Thereafter, the agency evaluated the quotations under each of the non-price evaluation factors, identifying various positive and/or negative aspects in each.

Evaluation of O’Gara’s Quotation

In evaluating O’Gara’s quotation under the terms of warranties factor, the agency recognized that O’Gara had proposed a [redacted] limited warranty on armoring components installed by O’Gara, and noted that this exceeded the solicitation requirements. The agency also noted that O’Gara’s quotation “made clear” that any OEM warranty would be “voided due to the armoring.” AR, Tab 6, Evaluation Report, at 3. The agency further noted that O’Gara’s quotation did not contemplate providing repair services at [redacted], and that the agency would be responsible for [redacted]. Id. Finally, the agency noted that, while O’Gara’s quotation offered [redacted] to perform non-warranty services, the agency would bear the costs for [redacted] associated with such [redacted]. Id.

In evaluating O’Gara’s quotation under the delivery factor, the agency found that O’Gara “provided a detailed schedule and narrative”; that its production facilities and processes “appear to be more than adequate”; and that “[e]ach step of the production process is described in detail.” Id. However, O’Gara’s quotation reflected a comparatively lengthy [redacted] delivery schedule and [redacted] production schedule. Contracting Officer’s Statement, Feb. 12, 2018, at 5; AR, Tab 9a, O’Gara Quotation, at 9. The agency also noted that O’Gara is ISO 9001:2008 certified for quality management, and that O’Gara’s welders “have the required certification.” AR, Tab 6, Evaluation Report, at 3. Finally, the agency noted that, although the solicitation required delivery of “2017 or later models,” one portion of O’Gara’s quotation stated that O’Gara would deliver “model year 2016 or later.” Id.; see AR, Tab 9b, O’Gara Quotation, at 11.

In evaluating O’Gara’s quotation under the less important past performance factor, the agency noted that O’Gara “has a history of performing DEA orders for similar requirements” which “directly correlate with DEA’s current requirement.” Id. The agency further noted that all seven of the contracts referenced in the past performance information retrieval system (PPIRS) had been performed satisfactorily or better, and that “[c]omments included complimentary language on customer service and responsiveness, and quality products.” Id. at 3-4.

⁵ The quotations of the other offerors, and the agency’s evaluation thereof, are not relevant to this protest and are not further discussed.

Evaluation of Ultra's Quotation

In evaluating Ultra's quotation under the terms of warranties factor, the agency noted that Ultra had offered a [redacted] mile warranty on modified components "which meets the [solicitation's] minimum requirements," but also noted that, because OEM warranties are voided when vehicles are armored, Ultra had also offered to provide its [redacted], "which is above and beyond the [solicitation] requirements." AR, Tab 6 Evaluation Report, at 6. The agency describes this [redacted] as a benefit that no other offeror proposed, which the evaluators valued significantly. AR, Contracting Officer's Statement, Feb. 12, 2018, at 5. The agency further noted that "[redacted] and [redacted] are included in the warranties"; that Ultra will make repairs [redacted] or, in the event [redacted] repair is not feasible, that Ultra "will [redacted]." AR, Tab 6 Evaluation Report, at 6. Finally, the agency noted that Ultra's quotation offered to provide a [redacted] with each vehicle. Id.

In evaluating Ultra's quotation under the delivery factor, the agency concluded that Ultra "provided a detailed schedule and narrative on its production facilities and processes . . . which appear to be more than adequate," further noting that "[e]ach step of the production process is described in detail." Id. at 6. The agency also noted that, because Ultra's quotation reflected some ambiguity as to whether it was offering a delivery schedule of [redacted] days or [redacted] days, the agency evaluated the quotation based on the longer period ([redacted] days); nonetheless, the agency concluded that "[Ultra's] delivery schedule is the best offered by any of the offerors." Id. at 7.

In evaluating Ultra's quotation under the less important past performance factor, the agency characterized this aspect of the quotation as a "weakness," noting that, of the 13 prior contracts reflected in the past performance information retrieval system (PPIRS) 11 had been performed satisfactorily and 2 had been performed marginally, further noting that the PPIRS contracts "were for unarmored vehicles and did not correlate directly with the Government's requirement." Id. at 7. The agency noted that Ultra "is currently under a BPA [blanket purchase agreement] call to deliver 200 armored Toyota Land Cruisers to DOS [Department of State] under Level C armoring and have provided DOS with a First Article armored to Level C that is currently undergoing testing." Id.

Evaluators' Recommendation and Source Selection Authority's (SSA) Award

Upon concluding its evaluation of the two quotations, the agency evaluators stated: "The advantages of O'Gara proposal reflected in the non-price evaluation factors do not offer specific benefits to the Government that justify the price premium. Also, there is a lack of clarity regarding the model year of the vehicles offered by O'Gara." Id. at 4. In contrast, with regard to Ultra's quotation, the agency evaluators stated: "[Ultra's] technical advantages and capabilities together with its lowest price quote outweigh the weakness in regard to past performance and the discrepancy in the delivery schedule, and justifies the selection of [Ultra] for award." Id. at 7.

Thereafter, the SSA selected Ultra for award. In making the selection, the SSA recognized that O’Gara “offered a longer limited warranty [than Ultra] and had more relevant past performance, but a longer delivery schedule,” concluding that “[t]ogether with a price that is \$213,249.95 higher than [Ultra’s] quote, the O’Gara quote did not offer the best value.” AR, Tab 7, Source Selection Memorandum, at 1. O’Gara was subsequently advised of the source selection decision. This protest followed.

DISCUSSION

O’Gara challenges the agency’s evaluation of the protester’s and awardee’s quotations under the non-price evaluation factors, and asserts that the agency’s best-value tradeoff determination was unreasonable. As discussed below, O’Gara’s protest is without merit.⁶

Challenges to the Evaluation of O’Gara’s Quotation

First, O’Gara asserts that the agency’s evaluation of its own quotation under the two most important non-price factors--terms of warranties and delivery--was flawed. For example, with regard to the terms of warranties factor, O’Gara complains that the agency’s evaluation of its quotation “identified only some of O’Gara’s numerous technical assets” and failed to recognize “other cost efficiencies built into the quote, such as O’Gara’s [redacted].” Protest at 9. O’Gara also complains that the agency “undervalued” O’Gara’s extended warranty, and that the agency failed to properly understand the distribution of costs between O’Gara and the agency in connection with obtaining warranty or maintenance services. Id.

Similarly with regard to the delivery factor, O’Gara complains that the agency’s evaluation was unreasonable because it: “did not address the quality of the schedule for milestones and activities, whether O’Gara had in fact captured anticipated time savings, or if the FAT [first article test] Waiver [that O’Gara had requested] had even been reviewed or considered.” Id. at 10. Additionally, O’Gara asserts that “it was unreasonable for the Agency not to request a clarification” of O’Gara’s reference to delivery of 2016 models--which O’Gara characterizes as its “typographical/clerical error.” Id. at 11.

The agency responds that its evaluation of O’Gara’s quotation was not flawed. With regard to evaluation under the terms of warranties factor, the agency points out that its evaluation specifically acknowledged that O’Gara had proposed an extended warranty that exceeded the solicitation requirements, and that it was longer than Ultra’s. With regard to O’Gara’s complaint that it failed to receive appropriate credit for its

⁶ In its various protest submissions, O’Gara has made arguments that are variations of, or additions to, the arguments discussed below. We have considered all of O’Gara’s assertions and find no basis to sustain its protest.

“[redacted],” the agency states that it “did not view this as advantageous . . . due to the existence of already-existing warranties on those vehicles--and the potential that O’Gara’s proposed service would void or affect any of those warranties.” Contracting Officer’s Statement, Feb. 12, 2018, at 5. Finally, with regard to the distribution of costs between O’Gara and the agency, the agency notes that O’Gara’s proposal specifically stated that the government would be “responsible for [redacted].” See AR, Tab 9a, O’Gara’s Quotation, at 19.

Similarly, with regard to O’Gara’s complaints challenging the agency’s evaluation under the delivery factor, the agency points out that its evaluation specifically acknowledged that O’Gara’s schedule, production facilities and processes were “more than adequate.” AR, Tab 6, Evaluation Report, at 3. Nonetheless, in the context of the solicitation provisions specifically advising vendors of the agency’s interest in “having the armored vehicles ready for deployment in the shortest practicable time,” RFQ at 32, O’Gara’s proposal of a [redacted] delivery schedule and a [redacted] production schedule were not seen as reflecting relative benefits to the agency. With regard to O’Gara’s assertion that the agency was obligated to seek clarification of O’Gara’s purported “typographical/ clerical error” regarding delivery of “model year 2016 or later”--when the solicitation required delivery of at least 2017 models--the agency notes that the solicitation advised offerors that it “reserve[d] the right to make award without discussions,” RFQ at 32, and maintains that it was not obligated to communicate with O’Gara regarding the possible error.

Where, as here, an agency issues a solicitation to FSS contractors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency’s evaluation is reasonable and consistent with the terms of the solicitation. SRM Group, Inc., B-410571, B-410571.2, Jan. 5, 2015, 2015 CPD ¶ 25 at 4. In reviewing a protest challenging an agency’s technical evaluation, our Office will not reevaluate the quotations; rather, we will examine the record to determine whether the agency’s evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. OPTIMUS Corp., B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4. A protester’s disagreement with the agency’s judgment does not establish that an evaluation was unreasonable. DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2. Further, it is an offeror’s responsibility to submit a well-written proposal or quotation. International Med. Corps, B-403688, Dec. 6, 2010 CPD ¶ 292 at 8. Finally, agencies have broad discretion regarding whether to seek clarifications from vendors or offerors. See, e.g., Technatomy Corp., B-411583, Sept. 4, 2015, 2015 CPD ¶ 282 at 8; A.G. Cullen Constr., Inc., B-284049.2, Feb. 22, 2000, 2000 CPD ¶ 45 at 5.

Based on our review of the record, we find nothing unreasonable in the agency’s evaluation of O’Gara’s quotation under the terms of warranties evaluation factor. That is, the record reasonably supports the agency’s recognition that O’Gara’s limited warranty exceeded the solicitation requirements, but that, unlike Ultra, O’Gara did not offer any replacement for the dealer warranties that would be voided by the modifications. Further, we find nothing unreasonable in the agency’s determination that

O’Gara’s “[redacted]” did not reflect a benefit to the agency because there were already-existing warranties on those vehicles, which O’Gara’s [redacted] could void. Finally, the record reasonably supports the agency’s assessment that O’Gara’s quotation reflected an intent to provide service at “[redacted]”, and that the agency would bear certain costs associated with [redacted].

Similarly, we find nothing unreasonable in the agency’s evaluation of O’Gara’s quotation under the delivery factor. More specifically, the record establishes that the agency’s evaluation recognized that O’Gara “provided a detailed schedule and narrative”; that its production facilities and processes were “more than adequate”; and that “each step of the production process [was] described in detail.” Id. However, the record also supports the agency’s assessment that O’Gara’s quotation reflected a comparatively longer delivery schedule. Finally, there is no merit in O’Gara’s assertion that the agency was required to conduct communications with O’Gara regarding the “typographical/ clerical error” in O’Gara’s quotation, since it was O’Gara’s responsibility--not the agency’s--to ensure the submission of a well-written quotation. In short, we find no merit in any of O’Gara’s complaints regarding the agency’s evaluation of O’Gara’s quotation.

Challenges to the Evaluation of Ultra’s Quotation

Next, O’Gara challenges various aspects of the agency’s evaluation of Ultra’s quotation under the non-price evaluation factors. For example, with regard to the terms of warranties factor, O’Gara’s protest reflects O’Gara’s own assessments regarding Ultra’s warranties, noting that Ultra’s [redacted] limited warranty only minimally met the solicitation requirements and complaining that the agency, among other things, failed to adequately consider the “limited efficiencies and cost effectiveness” of that warranty. Supp. Protest at 4. Similarly, O’Gara asserts that the agency “overemphasized the value” of Ultra’s additional OEM warranty, asserting that “the majority of warranty claims for armored vehicles relate to . . . a part that has been modified [and thus are covered under the vendor’s limited warranty]”; accordingly, O’Gara asserts that the value of Ultra’s OEM warranty was “minimal.” Id. at 5. Finally, O’Gara complains that the agency “overvalued” Ultra’s offer to include [redacted] with each vehicle, noting that such [redacted], and maintaining that the value of these [redacted] was insignificant in the context of the total price. Id. In short, based on O’Gara’s own opinions as to the value of Ultra’s warranties and the agency’s evaluation thereof, O’Gara protests that the agency’s evaluation was “unreasonable.” Id. at 6.

As noted above, our Office will not reevaluate quotations; rather, we will examine the record to determine whether the agency’s evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations, OPTIMUS Corp., supra, and a protester’s disagreement with the agency’s judgments does not establish that such judgments were unreasonable. DEI Consulting, supra.

Here, nothing in O’Gara’s complaints regarding the agency’s evaluation of Ultra’s quotation under the terms of warranties factor constitute anything other than O’Gara’s disagreement with the agency’s judgment. That is, O’Gara’s protest fails to identify any particular aspect of the evaluation that is inconsistent with the terms of the solicitation, nor does O’Gara identify anything--beyond O’Gara’s own views regarding the relative value of its competitor’s quotation--to establish that the agency’s evaluation was unreasonable. Accordingly, based on our review of the record and O’Gara’s various complaints, we conclude that none of those complaints provides a basis for sustaining the protest.

Next, O’Gara challenges the agency’s evaluation of Ultra’s quotation under the delivery factor, first noting that there were “inconsistencies” in Ultra’s quotation regarding its delivery schedule that “required the Agency to make an assumption as to whether Ultra’s proposed delivery was [redacted] days or [redacted] days.” Supp. Protest at 6. Nonetheless, O’Gara acknowledges that the agency conducted its evaluation on the basis of the longer of the two--that is, that the agency resolved the ambiguity in a manner least favorable to Ultra. Additionally, O’Gara speculates that Ultra will not successfully meet the schedule reflected in its quotation, again speculating that delays could occur if Ultra “experienced a labor shortage, a part was received late from a manufacturer, or if there were any installation challenges.” Id. Finally, O’Gara asserts that the agency’s evaluation was “unreasonable” in that it failed to reflect the “inherent risk” flowing from Ultra’s limited past performance. Id. at 7.

The agency responds that its evaluation of Ultra’s quotation under the delivery factor did, in fact, incorporate the agency’s consideration of all the factors about which O’Gara complains. With regard to assessment of risk, the agency states that its evaluation considered Ultra’s limited past performance, but noted that Ultra “is currently under a BPA call to deliver 200 armored Toyota Land Cruisers to DOS under Level C armoring and have provided DOS with a First Article armored to Level C that is currently undergoing testing.” AR, Tab 6, Evaluation Report, at 7. In this context, the agency notes that, in assessing schedule risk, its evaluation took into consideration the fact that Ultra’s production line was already set up and operating pursuant to Ultra’s performance of the DOS contract. Id. at 6-7. Finally, the agency responds that O’Gara’s speculation as to Ultra’s subsequent success in meeting its delivery schedule involves a matter of contract administration. Supp. Contracting Officer’s Statement, Feb. 28, 2018, at 2.

Again, as noted above, our Office will not reevaluate quotations, but will examine the record to determine whether the agency’s evaluation was reasonable and consistent with the terms of the solicitation and with applicable laws and regulations. OPTIMUS Corp., supra.

Here, based on our review of the record, we find no basis to question the reasonableness of the agency’s evaluation of Ultra’s quotation under the delivery factor. First, as noted above, where the length of Ultra’s delivery schedule was ambiguous, the agency resolved the ambiguity in a manner least favorable to Ultra. Further, we find nothing unreasonable in the agency’s recognition, as part of its risk assessment, that

Ultra's production line was already set up and operating due to Ultra's performance of the DOS contract. Finally, to the extent O'Gara's protest reflects its speculation regarding Ultra's subsequent success in meeting the delivery schedule, the protest involves a matter of contract administration which we will not consider. See 4 C.F.R. § 21.5(a).

Finally, O'Gara challenges the agency's evaluation of Ultra's quotation under the past performance factor. In short, O'Gara asserts that none of Ultra's past performance was sufficiently relevant to merit the agency's consideration. In this regard, O'Gara notes that the solicitation stated that prior contracts that "did not entail successful delivery of DOS Level C or higher armored vehicles will not be considered comparable." RFQ at 31. In this context, O'Gara complains that Ultra has not yet completed the "successful delivery" of DOS Level C armored vehicles under its DOS contract, and that none of Ultra's prior contracts reflected in the PPIRS involved armored vehicles. Accordingly, O'Gara asserts that, "to the extent the Agency considered any of Ultra's prior contracts comparable to the current procurement, its evaluation was unreasonable and not in accordance with the RFQ." Protest at 12.

The agency, while acknowledging that O'Gara's past performance was superior to Ultra's, maintains that its evaluation was consistent with the terms of the solicitation. AR, Contracting Officer's Statement, Feb. 12, 2018, at 7. In this regard, the record shows that the agency viewed Ultra's past performance unfavorably, characterizing it as constituting a "weakness" in the quotation. See AR, Tab 6, Evaluation Report, at 7. The agency further notes that, even if its evaluation was flawed, that flaw worked to O'Gara's benefit since, in the absence of relevant past performance, Ultra's quotation should have been rated "neutral"--that is, neither favorably or unfavorably.

The evaluation of past performance is a matter largely within the contracting agency's discretion, and our review of an agency's past performance evaluation is limited to determining whether it was reasonable and in accordance with applicable statutes and regulations. See, e.g., DRA Software Training, B-289128, B-289128.2, Dec. 13, 2001, 2002 CPD ¶ 11 at 2. With regard to applicable statutes and regulations, in enacting the Federal Acquisition Streamlining Act of 1994 (FASA), Congress mandated that an offeror without relevant past performance information "may not be evaluated favorably or unfavorably on the factor of past contract performance." 41 U.S.C. 405(j)(2). In implementing FASA's mandate, the FAR provides that an offeror or vendor that does not have any relevant past performance information must receive a "neutral" past performance rating. FAR 15.305(a)(2)(iv); see also Kalman & Co., Inc., B-287442.2, Mar. 21, 2002, 2002 CPD ¶ 63 at 8.

Here, we decline to sustain O'Gara's protest based on the agency's evaluation of Ultra's past performance. As the agency points out, even accepting O'Gara's assertion that none of Ultra's past performance information met the solicitation's criteria for comparability, the agency was obligated to consider Ultra's past performance as "neutral"--that is, Ultra's quotation "[could] not be evaluated favorably or unfavorably on the factor of past contract performance." 41 U.S.C. 405(j)(2). Thus, even accepting

O’Gara’s assertions that the agency’s consideration of any of Ultra’s past performance was improper, we find no prejudice to O’Gara. That is, the record here is clear that the agency viewed Ultra’s past performance unfavorably, characterizing it as a “weakness.” Since, pursuant to FASA, the agency’s assessment should have been neither favorable nor unfavorable, the agency’s unfavorable assessment of Ultra’s past performance operated to O’Gara’s benefit. On this record, O’Gara’s complaints regarding the agency’s assessment of Ultra’s past performance do not provide a basis for sustaining the protest.

Best-Value Determination

Finally, as discussed above, O’Gara protests that the agency’s evaluation of the competing quotations was flawed and complains that “a source selection decision based on material, flawed information cannot form a proper basis for award.” Protest at 13. Since, as discussed above, we have rejected all of O’Gara’s complaints regarding the evaluation of the competing quotations, O’Gara’s assertion that the best-value determination flowing from those assessments was flawed fails to state a valid basis for protest.

The protest is denied.

Thomas H. Armstrong
General Counsel