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

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Decision

Matter of: Maybank Industries, LLC

File: B-403327; B-403327.2

Date: October 21, 2010

James H. Roberts III, Esq., Van Scoyoc Kelly PLLC, for the protester.
Philip R. Sloan, Esq., Sloan Bobrick, P.S., for the intervenor.
Catherine Rubino, Esq., Department of the Navy, for the agency.
Pedro E. Briones, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that an agency issued an order under the Federal Supply Schedule (FSS) for a boat that did not satisfy the solicitation's minimum technical requirements is denied, where the order was for a modified boat that satisfied the solicitation requirements and which was added to the vendor's FSS contract prior to the issuance of the order.

DECISION

Maybank Industries, LLC, of Charleston, South Carolina, protests the issuance of a delivery order to Modutech Marine, Inc., of Seattle, Washington, under request for quotations (RFQ) No. 420440, issued by the Department of the Navy, Naval Sea Systems Command, for a range training support craft.

We deny the protest.

BACKGROUND

The RFQ, issued on October 14, 2009, on the General Service Administration's (GSA) e-Buy website,¹ provided for the issuance of a fixed-price delivery order for a commercially available boat with specified options and modifications. See RFQ at 2.

¹ GSA's e-Buy system allows ordering activities to post requirements, obtain quotations, and issue orders electronically. Federal Acquisition Regulation (FAR) § 8.402(d).

The competition was conducted under FAR subpart 8.4 and was limited to vendors holding contracts under Federal Supply Schedule (FSS) 84, category 260-01, Powered Boats. Vendors were informed that the delivery order would be issued on a best value basis, considering the following evaluation factors: technical capability of the proposed design; price, including discounts; past performance; and additional consideration such as ability to meet the delivery schedule, warranties, terms and conditions for proprietary data, administrative costs, or other proposed unique items. Id. at 9. The RFQ did not state the relative importance of the identified evaluation factors.

Detailed specifications for the boat were provided, and vendors were informed that the boat's primary mission was to support the Navy's offshore multi-warfare training ranges, fleet operations training, and undersea warfare combat systems training. See RFQ attach. 1, at 10-44. Among other things, vendors were informed that the boat must have a minimum overall length of 90 feet, an aft ramp capable of launching and retrieving various seaborne targets and munitions, an aluminum hull, and identified minimum cruise and speed requirements. Id. at 10.

The RFQ included five contract line items (CLIN), including CLIN 1 for the construction and delivery of one range training support craft and CLIN 4 for the delivery of the boat with transportation charges prepaid by the vendor. RFQ at 2. Vendors were instructed to provide prices for each CLIN and, using RFQ attachment 1, for each specification. In this regard, vendors were encouraged to include minimal non-FSS items and were required to identify which of the items quoted did not appear on the vendor's FSS contract. Id. at 8.

The agency received quotations from three FSS vendors, including Maybank and Modutech, all of whom had previously received FSS orders for other Navy craft. Agency Report (AR), Tab 12, Best Value Recommendation, at 3. Modutech quoted a 95-foot "range support craft" for \$8,252,700 and identified 65 non-FSS items, including the required ramp. See Modutech Quotation. Maybank quoted a 93-foot "range support vessel" for \$9,101,750 and identified one non-FSS item. Maybank later discounted its price to \$8,275,000.² See Maybank Quotation.

² Maybank submitted three unsolicited price reductions from its initial \$9,101,750 quotation: \$8,800,000; \$8,290,000, and finally \$8,275,000. Contracting Officer's Supp. Statement at 1-2. The contracting officer based her selection decision on Maybank's second discount (\$8,290,000). She did not learn of Maybank's third discount until after the protest was filed because Maybank submitted this final price reduction to an incorrect email address. See AR at 6 n.7. Even after its third price reduction, Maybank's quotation was higher than Modutech's.

The agency evaluated the technical capabilities of the vendors' respective boats and the vendors' past performance.³ With regard to the boats' technical capabilities, the agency found that the boats offered by Maybank and Modutech were both technically capable of meeting mission requirements and acceptable.⁴ Essentially, the evaluators found the firms' quotations to be technically equal. See AR, Tab 5, Statement of Principal Evaluator, at 1-2; Tab 6, Statement of Lead Evaluator, at 1-2.

Modutech's quotation was assessed as good under the past performance factor, because the agency found that the vendor was a regular source of boats and had current delivery orders with the Navy with satisfactory performance overall. See AR, Tab 6, Statement of Lead Evaluator, at 2. Maybank's quotation was assessed as acceptable under the past performance factor. The agency noted that Maybank's previous delivery order was for fuel barges, that Maybank subcontracted the fabrication of barges, and that its overall performance was satisfactory. Id. at 2-3. Modutech's higher rating reflected the agency's judgment that Modutech had more relevant experience than Maybank. See id. at 3.

With regard to price, the evaluators found that Modutech's quotation was the lowest priced, and recommended that the delivery order be issued to Modutech, as reflecting the best value to the agency. AR, Tab 12, Best Value Recommendation, at 4. The agency noted that Modutech was in the process of placing the non-FSS items from its quotation on its FSS contract.⁵ On May 27, 2010, Modutech informed the agency that Modutech's FSS contract had been amended to include a "27 Meter Patrol Craft/Escort Boat Aluminum IR" which satisfied all the solicitation requirements.⁶ See Contracting Officer's Supp. Statement at 1; see also AR, Tab 18, Modutech Email to the Navy.

³ Maybank and Modutech were also asked a number of clarifications concerning their quotations. See AR, Tab 9, Navy Emails to Maybank and Modutech.

⁴ Quotations were assessed as good, acceptable, marginal, or unacceptable. See AR, Tab 12, Best Value Recommendation, at 2.

⁵ Modutech was informed by the Navy that the firm could either add the non-FSS items to its FSS schedule contract or provide the Navy with a justification for the non-FSS items. See AR, Tab 6, Statement of Lead Evaluator, at 3. In this regard, the evaluator provided Modutech with a draft list of standard and accessory boat equipment that could be included if a delivery order was issued to Modutech. AR, Tab 14, Navy Email to Modutech.

⁶ Because GSA administers the FSS program, we requested GSA's views regarding the Modutech boat ordered by the Navy and allowed the parties to comment. GSA stated that the boat that the Navy ordered from Modutech was available on the vendor's FSS contract on the date that the delivery order was issued and that the boat met the minimum 90-foot overall length. See GSA's Comments at 1, 3.

The contracting officer agreed with the evaluators' recommendation to issue the order to Modutech. Contracting Officer's Supp. Statement at 1-2. She determined that Modutech's lower price and more relevant past performance and experience presented the best value to the agency. *Id.* at 2; Contracting Officer's Statement at 1-2; AR, Tab 19, Findings of Fact & Determination of Fair & Reasonable Pricing.

On June 22, 2010, the Navy issued the delivery order to Modutech, and this protest followed.

DISCUSSION

Maybank complains that Modutech's FSS contract does not include a boat with a minimum overall length of 90 feet as required by the RFQ. Protest at 2; Protester's Supp. Comments at 2-4. The protester contends that Modutech's FSS contract only lists a passenger tour boat that measures 27 meters, or 88.58 feet, which would not satisfy the RFQ's minimum technical requirement. Protest at 2; Supp. Protest at 2.

The Navy responds that, at the time the order was issued, Modutech's FSS contract listed a 27-meter boat with an interchangeable ramp (IR) which had an overall length of 95 feet. *See* AR at 8-9. In this regard, the record includes Modutech's explanation to the agency that the "27 Meter Patrol Craft/Escort Boat Aluminum IR" on Modutech's FSS contract is part of the 27-meter boat family, but has been "stretched" to a minimum of 95 feet to accommodate the ramp. *See* AR, Tab 26, Modutech Email to Navy, at 2. GSA also notes that the naval architectural drawing, which Modutech provided to GSA for the 27-meter boat with an interchangeable ramp, showed an overall length of 95 feet. GSA's Comments at 3. In addition, the Navy points out that Maybank quoted an 85-foot boat from its FSS schedule, which Maybank also was apparently modifying to satisfy the RFQ's overall length requirement.

The FSS program provides federal agencies a simplified process for obtaining commonly used commercial supplies and services. FAR § 8.401(a). Non-FSS supplies and services may not be purchased using FSS procedures; instead, their purchase requires compliance with applicable procurement laws and regulations, including those requiring the use of competitive procedures. When an agency announces its intention to order from an existing FSS vendor, all items quoted and ordered are required to be on the vendor's FSS contract at the time the order is issued. *See Tarheel Specialties, Inc.*, B-298197, B-298197.2, July 17, 2006, 2006 CPD ¶ 140 at 3-4. The sole exception to this requirement is for items that do not exceed the micro-purchase threshold of \$3,000, since such items properly may be purchased outside the normal competition requirements in any case. *See CourtSmart Digital Sys., Inc.*, B-292995.2, B-292995.3, Feb. 13, 2004, 2004 CPD ¶ 79 at 5; *Symlicity Corp.*, B-291902, Apr. 29, 2003, 2003 CPD ¶ 89 at 4; *Pyxis Corp.*, B-282469, B-282469.2, July 15, 1999, 99-2 CPD ¶ 18 at 4; *see also ATA Defense Indus., Inc. v. United States*, 38 Fed. Cl. 489, 503 (1997).

In reviewing an agency's technical evaluation under an FSS competitive acquisition, we will not reevaluate the quotations, but, as with protests of negotiated procurements, we examine the record to ensure that the agency's evaluation was reasonable and consistent with the terms of the solicitation and the stated evaluation criteria. See CourtSmart Digital, *supra*, at 7; KPMG Consulting, LLP, B-290716, B-290716.2, Sept. 23, 2002, 2002 CPD ¶ 196 at 11.

Here, the record shows that Modutech's 27-meter boat with an interchangeable ramp satisfied the RFQ's 90-foot overall length requirement. As explained by the Modutech, the Navy, and GSA, the 27-meter boat on the firm's FSS contract was lengthened to 29 meters, or 95 feet, to accommodate the interchangeable ramp. See AR at 9; AR, Tab 26, Modutech Email to Navy, at 2; GSA's Comments at 3. Although Maybank generally complains that the lengthened boat is identified on Modutech's FSS contract as a 27-meter boat, it does not address Modutech's or the agency's explanations as to how Modutech's modified boat satisfied the overall length requirement. At best, Maybank's protest reflects mere disagreement with the agency's evaluation judgment, which does not show that the Navy unreasonably found that Modutech's boat satisfied the RFQ's requirements in this regard. We also note that Maybank quoted a boat on its FSS contract that was less than 90 feet, but which Maybank proposed to lengthen to 93 feet to satisfy the RFQ's requirements.

Maybank next complains that the Navy improperly accepted Modutech's modified 27-meter boat, because the boat was added to Modutech's FSS contract after the receipt of quotations. We find no merit to this argument. The critical date for determining whether the supplies and services are on the vendor's contract is the date that the order is placed. See Science Applications Int'l Corp., B-401773, Nov. 10, 2009, 2009 CPD ¶ 229 at 2 n. 1; Symlicity Corp., *supra*, at 5. Although Maybank argues that the Navy suggested to Modutech that it add its modified boat to its FSS contract prior to the agency's issuance of an order to that firm, it does not identify any law or regulations that the agency allegedly violated by informing Modutech that its quoted boat must be on its FSS contract before the issuance of an order.

The protester raises a number of other challenges to the issuance of an order to Modutech. Maybank generally contends that Modutech's boat failed to satisfy "numerous other minimum requirements" specified in the RFQ. See Protest at 3. The protester does not, however, identify these other requirements. The protester also generally complains that Modutech is a manufacturer of "tour boats" and does not have the necessary technical or past performance experience to perform this order. Again, Maybank does not support or explain these general allegations, and, moreover, the protester does not further address this complaint in its comments following the agency's report responding to the protester's allegations in this regard. These general and unsupported allegations fail to satisfy the requirement that the protester provide a sufficiently detailed statement of the legal and factual grounds to state a valid basis for protest. See 4 C.F.R. §§ 21.1(c)(4) and (f) (2010). Bare, generalized assertions, without substantive support or evidence or explanation of

the protester's theory regarding the alleged violation, are insufficient to satisfy this requirement. See Detica, B-400523, B-400523.2, Dec. 2, 2008, 2008 CPD ¶ 217 at 5 n. 2. Furthermore, to the extent that the protester did not further address these allegations in its comments following the agency's response, we deem these protest grounds to be abandoned.

In its comments, Maybank argues for the first time that Modutech's quotation included a \$25,000 delivery charge that was not on the vendor's FSS contract and which exceeds the \$3,000 micro-purchase threshold.⁷ Protester's Comments at 2. We dismiss this ground of protest as untimely. On July 30, 2010, the Navy provided Maybank with a copy of the delivery order issued to Modutech, which identified the delivery charge. Maybank, however, did not challenge the delivery charge until August 25, or 27 days after it knew, or should have known, the basis of its complaint regarding the delivery charge. Under our Regulations, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Where a protester initially files a timely protest, and later supplements it with independent protest grounds, the later-raised allegations must independently satisfy the timeliness requirements, since our Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues. FR Countermeasures, Inc., B-295375, Feb. 10, 2005, 2005 CPD ¶ 52 at 9.

The protest is denied.

Lynn H. Gibson
Acting General Counsel

⁷ GSA informed our Office that Modutech's FSS contract does not include delivery charges as a line item. GSA's Comments at 1, 4.