GAO
Accountability * Integrity * Reliability

Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

DOCUMENT FOR PUBLIC RELEASE
The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Matter of: OSC Solutions, Inc.

File: B-407014.3

Date: October 31, 2012

Robert H. Koehler, Esq., and Elizabeth M. Gill, Esq., Patton Boggs LLP, for the protester.
Michael A. Hordell, Esq., Michael R. Golden, Esq., Heather Kilgore Weiner, Esq., and Samuel W. Jack, Esq., Pepper Hamilton, LLP, for Noble Supply & Logistics, an intervenor.
Richie Poelma, Esq., Department of the Navy, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Under a solicitation to operate a hardware store that requested prices for selected "market basket" items to determine the lowest-priced proposal, the agency reasonably evaluated the price submission of the awardee consistent with the solicitation and applicable regulations.

DECISION

OSC Solutions, Inc., of West Palm Beach, Florida, protests the establishment of a blanket purchase agreement (BPA) with Noble Supply & Logistics, of Rockland, Massachusetts, under request for quotations (RFQ) No. N00604-12-T-3068, issued by the Naval Supply Systems Command, for operating an industrial parts store at Pearl Harbor, Hawaii. OSC challenges the propriety of the Navy's evaluation of Noble's low-priced quotation.

We deny the protest.

The Navy issued the RFQ on April 27, 2012, to establish a BPA, for a base period and three option years, with a General Services Administration (GSA), Federal Supply Schedule (FSS) vendor, who would manage and operate a "turn-key" supply store comparable to a full-service, commercial hardware store with a product line of

25,000 products or more.[1] RFQ amend 0007, at 5. Under the terms of the BPA, the vendor was required to provide various specified items that would be available under the vendor's GSA FSS schedule and catalogs. Id. at 9. The RFQ explained that a facility, including utilities, and equipment, would be provided at no cost to the vendor, and that the government therefore expected a substantial discount off the vendor's GSA schedule prices. Id. at 19-21, 26. With regard to pricing, the RFQ provided:

> The Contractor shall provide a material price list for the base year and each option year period of performance. Under this contract, the Contractor shall NOT sell any product listed in the Sample Price Schedule (Attachment V) above the corresponding price provided. All items in Attachment V shall be based on a commercial benchmark, such as GSA Schedule Pricing, a published price list, a catalog, or otherwise established prices as described in the Contractor's proposed pricing methodology. . . . For items ordered and received, the contractor's GSA Schedule pricing or the current edition of FEDLOG will be used to substantiate pricing for those items.[2]

Id. at 14.

The RFQ provided that award would be based upon the evaluation factors of technical and price. The technical factor would be rated as either acceptable or unacceptable.

To facilitate the price evaluation, the RFQ contained a Test Market Basket Items Price Schedule, which contained a list of 146 separate items that might be furnished under the BPA.[3] For each item, the schedule identified the item, listed a unit of measure, a 1-year historical quantity, a place for the vendor to insert its unit price, a place to insert a percentage off the unit price, the discounted unit price and the total line item evaluated price for the discounted item based on the historical quantity. Agency Report (AR), Tab 21, Test Market Basket Items Price Schedule. The RFQ

---

[1] Offerors were required to be holders of GSA Multiple Award Schedule 51V, Hardware Superstore Federal Supply Group 51V SIN 105-001 or 105-002. See RFQ, amend. 0007, at 5.

[2] In answers to vendors' questions prior to the closing date, the Navy explained that products and prices not on the vendor's current FSS contract could be added within the 30-day transition period after award of the contract. See AR, Tab 20, Question and Answers, at 5.

[3] The agency states that the items included in the market basket were selected as "fast movers" based on historical data and as representative of a mix of high volume and high dollar items. Contract Specialist Affidavit at 1.

provided the following instructions pertaining to the preparation of the Test Market Basket Items Price Schedule and how it would be evaluated:

> The Price portion of the quote shall include the completed solicitation documents and the completed **Test Market Basket Items Price Schedule** as follows:
>
> - The contractor shall complete the **Test Market Basket Items Price Schedule** for the base period and each option period as they would be offered for sale to customers at the storefront location. The prices specified in the **Test Market Basket Items Price Schedule** shall include applicable shipping/handling fees of material. The vendor shall include in [the price submission] the benchmark GSA catalog price of each item listed and the quoted percentage discount rate that will be applied to all materials for the anticipated base performance **period** and each option **performance period. The discount percentage is the overall discount rate (same rate for all items) that will be applied to each item for each order.** All quoted prices must be substantiated by the GSA catalog commercial benchmarks.
>
> - In accordance with FAR [§] 8.405-4, the Navy is seeking and expecting significant price reductions and requires contractors to use the reductions identified to establish a **SINGLE DISCOUNT** percentage for those items in the **Test Market Basket Items Price Schedule** that will apply to ALL items purchased through the store front and or catalog. The Government expects a substantial discount in consideration for the space provided (rent and utilities). The pricing discount rate, **Test Market Basket Items Price Schedule**, and GSA Schedule Catalog will be incorporated into the award.
>
> *   *   *   *   *
>
> - The price submission will be evaluated in accordance with FAR [§] 15.404-1. The [purchasing contracting officer] will evaluate the **Test Market Basket Items Price Schedule** by comparing the prices with other contractors' **Test Market Basket Items Price Schedule. The result of multiplying the historical quantity for each item by the discounted period unit price for the base period and all option periods will be used** to determine the total evaluated price to support the selection of the lowest priced technically acceptable quote. The **Test Market Basket Items Price Schedule** shall be representative

> of the contractor's pricing methodology throughout the term of the contract. Prices quoted in the **Test Market Basket Items Price Schedule** shall be established as firm fixed prices for the base **period** and all option **periods**.

RFQ amend. 0007, at 26-27.

Four vendors, including OSC and Noble, responded to the RFQ by the May 29 closing date. Technical submissions were evaluated by a source selection evaluation board and price submissions were evaluated by the contracting officer.

The Navy conducted discussions with the vendors regarding their technical submissions. Although all of the technical submissions were initially rated unacceptable, the vendors' revised technical submissions were all rated acceptable.

As to price, the Navy found that Noble's initial price submission of $3,317,840 failed to reflect a single percentage discount for each product on the Test Market Items Price Schedule as was required by the solicitation. Rather than applying a single percentage discount that would be applicable to the quoted benchmark price for each product, Noble's initial price schedule reflected varying percentage discounts for each of its quoted benchmark catalog prices for the various products listed on the Test Market Basket Items Price Schedule. During discussions, the Navy advised Noble that this was noncompliant with the solicitation, and that Noble should "[p]rovide a **SINGLE DISCOUNT** percentage for those items in the Test Market Basket Items Price Schedule that will apply to **ALL** items purchased through the store front and or catalog." AR, Tab 2a, Noble Discussion Letter (June 5, 2012), at 1.

On June 7, Noble responded with a revised price submission. Noble's overall evaluated price of $3,317,840 did not change. However, Noble changed the quoted individual product benchmark prices listed on its Test Market Basket Items Price Schedule, by evidently backing out the initially offered varying discounts from each price and providing for a single [REDACTED] percent discount for each item. This revision resulted in the evaluated discounted prices for each product included in the schedule to be the same as initially quoted and no change in the total evaluated price.

OSC submitted the second lowest overall price of $3,942,168. Award was made to Noble because it submitted the lowest-priced technically acceptable quotation.

OSC contends that the Navy failed to properly evaluate Noble's price submission in accordance with the RFQ's price evaluation criteria because it did not verify, on an item by item basis, that each of the item prices included in Noble's Test Market Basket Items Price Schedule were substantiated by "GSA catalog commercial benchmarks," such as actual GSA schedule pricing or prices from a published price list or catalog. See RFQ amend. 007, at 26. OSC contends that it is highly unlikely that Noble's final item prices are FSS or catalog prices, given that Noble significantly manipulated the benchmark prices shown in its Test Market Basket Items Price Schedule from those initially quoted, in the 2-day period from when the Navy advised that a single discount was required to be applied to all items.

The agency concedes that it did not verify whether the individual item prices included in Noble's Test Market Basket Items Price Schedule were Noble's current FSS prices or were based on Noble's current published or established prices. Contract Specialist Affidavit at 2. Nor did the agency compare the vendors' individual item prices contained in their respective Test Market Basket Items Price Schedules, but only compared the vendors' total evaluated prices. Id. The Navy contends that no further price evaluation was required by the solicitation. We agree.

As indicated, the RFQ provided that price would be evaluated in accordance with FAR § 15.404-1. That regulation--which encompasses both price and cost evaluation techniques that may be used by an agency--does not indicate that prices must be evaluated by the agency under a fixed-priced contract to ensure that they are consistent with FSS or catalog prices. The regulation also does not require that each line item, such as those on the Test Market Basket Items Price Schedule, be compared to the other vendors' prices for that item. Instead, consistent with that regulation, the Navy could reasonably rely upon a comparison of the bottom line prices of each quote to ascertain whether the price was reasonable and to determine which price was the lowest. FAR § 15.404-1(b)(2)(i). In this regard, we note that the protester does not argue that the prices were required to be evaluated for price realism or unbalancing.

We also find that the solicitation imposes no additional duties upon the agency with regard to the evaluation of price. While the protester argues that Noble's quoted benchmark prices (before the discount was applied) for individual items could not be substantiated by "GSA catalog commercial benchmarks,"[4] we find no requirement that the agency engage in any such verification process, given that Noble was bound to provide the market basket items at the prices quoted.[5] There is no

---

[4] The term "GSA catalog commercial benchmarks" is not specifically defined in this paragraph. However, the solicitation paragraph that introduces this term states that the requested prices should be those "offered for sale to customers at the storefront location." RFQ amend. 0007, at 26. Thus, the agency explains that these benchmark prices would be those included in the contract, which would be further discounted in accordance with the successful vendor's proposal, here [REDACTED]. See Supp. AR at 3.

[5] In fact, these items are now included in Noble's FSS contract at the quoted benchmark prices. Id. at 4.

suggestion or allegation that these prices exceed Noble's FSS contract prices or that they are otherwise unreasonable. Moreover, given that the solicitation expressly encouraged significant reductions in vendors' current FSS or catalog prices, it could be reasonably anticipated that vendors prices would not match existing FSS or catalog prices.

Finally, while the protester characterizes Noble's actions as "manipulation," OSC has not shown how it was prejudiced, given that Noble's overall price, which was significantly lower than OSC's price, did not change through the manipulation.

The protest is denied.

Lynn H. Gibson
General Counsel