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Comptroller General
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United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Novex Enterprises

File: B-407914

Date: April 5, 2013

Vahe Penbe, Novex Enterprises, for the protester.
Marc Shepler, Esq., Defense Logistics Agency, for the agency.
Charles W. Morrow, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Award to a vendor whose quotation was higher-priced than the protester's quotation was reasonable where the awardee had superior past performance record, and the solicitation specifically provided that award could be made to other than the lowest-priced vendor, based on consideration of non-price factors, including past performance.

DECISION

Novex Enterprises, of Fort Lauderdale, Florida, protests the issuance of a purchase order to Polymer Technologies, Inc. (PTI), of Newark, Delaware, under request for quotations (RFQ) No. SPM7L2-13-3381, issued by the Defense Logistics Agency (DLA), for insulation panels. Novex argues it should have received the award as the lowest-priced vendor.

We deny the protest.

BACKGROUND

The RFQ was issued on November 29, 2012, as a total small business set-aside, and sought quotations to supply 1387 insulation panels, with a delivery term of 144 days after award. The solicitation was issued under the simplified acquisition procedures of Federal Acquisition Regulation (FAR) part 13, and used the terms of "DLA Master Solicitation for Automated Simplified Acquisitions (FAR Part 13)." See Agency Report (AR), Tab 7, DLA Master Solicitation for Automated Simplified Acquisitions (Nov. 2012) at 1. Award was to be made on a best value basis considering past performance, offered delivery, and price. AR, Tab 8, Evaluation

Factors, ¶ 52.215-9C10. The solicitation stated that “[a]n award may be made to other than the lowest priced, technically acceptable, responsible offeror(s).” Id.

As relevant here, the RFQ stated that the past performance evaluation would consider the vendors’ scores under the automated best value system (ABVS) and the past performance information retrieval system (PPIRS).¹ The solicitation provided that the agency would first consider vendors’ ABVS scores; if the lowest-priced vendor’s ABVS score was below 70, then the agency would not automatically select that quotation for award. AR, Tab 10, Contractor Past Performance Evaluation, at 2-3. Instead, under those circumstances, the agency would also evaluate all quotations based on their PPIRS scores. Id.

Six vendors, including Novex and PTI, submitted quotes by the December 13 closing date. DLA established a competitive range of the four vendors who quoted the lowest prices, including Novex, which quoted the lowest price, and PTI, which quoted the second-lowest price. The agency’s evaluation of the vendors’ past performance, offered delivery, and price was as follows:

	ABVS Score	PPIRS Score	Offered Delivery (Days)	Price
Novex	52.4	0	120	\$75,660
PTI	100.0	100	42	\$90,141

See Contracting Officer (CO) Statement at 2.

Although Novex quoted the lowest price, the CO noted that its ABVS score was below 70, and thus concluded that, in accordance with the solicitation, the protester’s quotation could not be selected for award without considering the other vendors’ PPIRS scores. AR, Tab 15, Award Justification (Dec. 17, 2012), at 1. The CO concluded that it was in the best interest of the government to select PTI’s quotation for award, based on its higher ABVS and PPIRS scores. In support of this conclusion, the CO noted that Novex’s PPIRS score of 0 indicated that the protester’s deliveries were late 100 percent of the time, and thus indicated a “high risk for poor or nonperformance.” Id.; see also CO Statement at 3. In contrast, the

¹ The ABVS is an automated system that collects and analyzes vendors’ past performance history for a specific period of time and translates it into a numeric score based on the consideration of delivery and quality; scores range from 0 to 100, with a higher score indicating higher performance quality. AR, Tab 10, DLA Contractor Past Performance Evaluation, at 1. The PPIRS is a web-enabled, government-wide application that collects quantifiable delivery and quality past performance information from Department of Defense activities; the PPIRS score used for this procurement ranges from 0 to 100, with a higher score indicating a higher rate of on-time delivery. Id. at 2-3.

CO found that PTI had the highest past performance scores of all the vendors, and quoted the second-lowest price. AR, Tab 15, Award Justification (Dec. 17, 2012), at 1. DLA selected PTI's quotation for award and notified Novex on December 19. This protest followed.

DLA provided its report on the protest to our Office and the protester on January 30, 2013. In the report the CO explains that she reevaluated the initial December 17, 2012, award decision in light of the protest allegations. CO Statement at 2. The CO concluded that her initial award decision failed to consider the vendors' delivery schedules, as required by the solicitation. Id. For this reason, the CO issued a new award decision on January 18, 2013, which included consideration of the vendors' delivery schedules. See AR, Tab 16, Award Justification (Jan. 18, 2013) at 2. The CO again found that Novex, despite quoting the lowest price, had the lowest past performance scores and delivery scores of the vendors in the competitive range. Id. The CO also concluded that consideration of vendors' delivery schedules further supported award to PTI, particularly when comparing the awardee's quotation of a delivery schedule of 42 days to Novex's longer delivery schedule of 120 days. Id.

DISCUSSION

Novex argues that, as the low-price vendor, DLA should have selected its quotation for award. The protester also disputes the agency's characterization of its past performance record. Finally, the protester argues that consideration of vendors' delivery schedules was improper. For the reasons discussed below, we find no merit to these arguments.

As noted above, the procurement was conducted under simplified acquisition procedures. When using these procedures, an agency must conduct the procurement consistent with a concern for fair and equitable competition and must evaluate quotations in accordance with the terms of the solicitation. In reviewing protests of an allegedly improper simplified acquisition evaluation and award selection, we examine the record to determine whether the agency met this standard. Dew Drop Sprinklers & Landscaping, B-293963, July 15, 2004, 2004 CPD ¶ 171 at 3. For the reasons that follow, we find DLA's source selection was reasonable and in accord with the terms of the solicitation.

First, Novex argues that it should have received the award because it quoted the lowest price. This argument, however, ignores the terms of the solicitation, which stated that the award would be made on a "best value basis considering past performance, offered delivery, and price," and that award could be made to other than the lowest priced, technically acceptable, responsible vendor. AR, Tab 8, Evaluation Factors, ¶ 52.215-9C10. Thus, the CO was within the discretion afforded by the evaluation scheme to consider factors other than low price in determining best value to make the award. See Structural Preservation Sys., Inc., B-285085, July 14, 2000, 2000 CPD ¶ 131 at 7.

Next, Novex disputes DLA's finding that its past performance record indicates a "high risk for poor or nonperformance." See AR, Tab 15, Award Justification (Dec. 17, 2012), at 1. The protester notes that it has received other awards from DLA, which, the protester contends, shows that it should not be viewed as presenting a high risk of poor performance. The protester also asserts that it is "in the process of requesting" a correction to its ABVS scores. Protester's Comments at 2.

While Novex disputes DLA's characterization of the risk associated with its past performance record, the protester does not dispute that it had received the ABVS and PPIRS scores cited in the evaluation. Although the protester states that it is seeking a correction to those scores, the solicitation clearly provided for their use in the evaluation, and the protester provides no basis to conclude that the agency unreasonably relied on those scores in the evaluation of its past performance.

Finally, Novex complains that DLA improperly gave favorable consideration to PTI's shorter delivery schedule. To the extent the protester argues that it was improper to consider PTI's shorter delivery schedule, this argument has no merit because the solicitation specifically provided for the consideration of both price and non-price factors in the award decision, and also stated that one of the non-price factors was offered delivery. AR, Tab 8, Evaluation Factors, ¶ 52.215-9C10.

As noted above, however, DLA's initial award decision did not consider vendors' delivery schedules, as contemplated by the solicitation's evaluation scheme. Instead, the agency issued a new award decision in response to the protest on January 18, 2013, concluding that PTI's offered delivery of 42 days was more advantageous than Novex's offered delivery of 120 days. See AR, Tab 16, Award Justification (Jan. 18, 2013), at 2. Because the revised evaluation decision was prepared during the course of the protest and was not a contemporaneous document, we accord it no weight, and instead look to the reasonableness of the initial award decision. See Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15 (declining to give deference to alternative award decision prepared in response to protest allegations).

Despite the departure from the evaluation criteria in the initial award decision, we find no basis to conclude that DLA's evaluation in any way prejudiced the protester. See McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996) (competitive prejudice is a necessary element of any viable bid protest). In this regard, limiting our review to the agency's contemporaneous award decision provides no basis to sustain the protest because, as discussed above, the initial decision reasonably concluded that PTI's quotation merited award based on the awardee's superior past performance record--without consideration of its delivery schedule. In effect, the initial award decision reflected precisely the analysis that the protester argues should have been

followed, that is, exclusion of consideration of the vendors' delivery schedules. In any event, PTI's delivery was shorter than Novex's schedule; thus, the revised decision merely provided an additional basis to support the initial award decision. In sum, the record provides no basis to sustain any of Novex's challenges to the award to PTI.

The protest is denied.

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General Counsel