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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: RAO Contract Sales, Inc.

File: B-408656

Date: November 6, 2013

Seth Bergman for the protester.

Matthew V. Edwards, Esq., Department of Veterans Affairs, for the agency.

Pedro E. Briones, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of an agency's technical evaluation and source selection decision is denied where the agency reasonably evaluated the protester's quotation as technically unacceptable for failing to meet requirements of the solicitation.

DECISION

RAO Contract Sales, Inc., of Wyckoff, New Jersey, protests the issuance of a purchase order to Artmoxm Inc., d/b/a Designers Art, of Palos Verdes, California, under request for quotations (RFQ) No. RFQ790169, issued by the Department of Veterans Affairs (VA) for framed wall art.

We deny the protest.

The RFQ was issued pursuant to Federal Acquisition Regulation subpart 8.4 and was set-aside for small business Federal Supply Schedule (FSS) vendors. RFQ at 1; amend. 1, at 8. The solicitation contemplated the purchase of 90 framed photographs on a lowest-priced, technically-acceptable basis; the framed photographs were to be displayed in corridors and medical wards on the upper floors of a VA Medical Center (VAMC) in Las Vegas, Nevada. RFQ amend. 1, at 12; amend. 2, Artwork Spreadsheet. Artmoxm is the incumbent, having supplied the artwork currently displayed on the first floor of the VAMC. Agency Report (AR) at 4-5.

Of significance here, the RFQ required that vendors' frames be substantially similar and conform to those on the VAMC's first floor. RFQ amend. 1, at 5. The RFQ specified three frame types and provided required dimensions, colors, materials,

and matting for each, and provided color photographs of some of the current frames on the first floor.¹ Id.; RFQ amend. 2, at 3-4. The RFQ advised that no particular frame manufacturer was required and that vendors should propose whichever manufacturer they believed would best meet the specifications. RFQ amend. 2, at 3. Vendors were to submit samples of their proposed frames for the agency to evaluate for compliance with the RFQ specifications. RFQ amend. 1, at 6.

The VA received eight quotations, including from Artmoxm and RAO. AR at 2-4. RAO's quotation was rejected as technically unacceptable because the firm submitted frames that did not meet the required size and color specifications, among other things. Id. The agency found that Artmoxm's quotation was the only one that met the specifications, and after seeking a discount from the vendor's quoted price, the VA issued the purchase order to Artmoxm. Id.

RAO asserts that its quotation was technically acceptable and that the agency was biased in favor of Artmoxm. RAO also believes that the awardee had an unfair competitive advantage and a potential organizational conflict of interest (OCI) because it was the incumbent.²

Where, as here, an agency conducts a competition under FAR subpart 8.4, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. Maybank Indus., LLC, B-403327, B-403327.2, Oct. 21, 2010, 2010 CPD ¶ 249 at 5.

Based on our review of the record here, we find the agency's technical evaluation of RAO's quotation to be reasonable. The record shows that, consistent with the criteria described above, the agency evaluated RAO's sample frames and determined that they were not substantially similar to the current first floor frames and did not meet the required specifications. For example, the agency evaluated the dimensions, colors, materials, and matting of RAO's sample frames and found that some of RAO's sample frames were gold in color (instead of silver) and others had dimensions that were "way off."³ AR, exh. 17, RAO Tech. Evaluation, at 1-3. Although RAO generally maintains that its quotation was technically acceptable, it has not provided any specific bases to question the agency's evaluation conclusions.

¹ The agency held several site visits (one of which RAO attended) to permit vendors to observe, photograph, and ask questions about the first floor artwork. AR at 4; see RFQ amend. 2, at 3.

² RAO did not submit a quotation in the earlier procurement. AR at 4.

³ In its comments, the protester complains that the RFQ's specifications were "vague" and "generic" and "did not define the frame sufficiently in the RFQ." Comments at 1. These claims are without merit.

We also find no merit to RAO's claims of bias or conflict of interest, which are based on supposition and generalized allegations regarding Artmoxm's incumbency. It is well-settled that incumbency does not necessarily create an unfair competitive advantage. See, e.g., Computer Universal, Inc., B-291890, B-291890.2, Apr. 8, 2003, 2003 CPD ¶ 81 at 3. On the record here, RAO has fallen far short of providing the convincing evidence necessary to establish bias, or the hard facts necessary to establish the existence of an organizational conflict of interest. See Kingdomware Techs., B-407389, Dec. 4, 2012, 2012 CPD ¶ 348 at 4 (convincing proof needed to show bias); Science Applications Int'l Corp., B-406899, Sept. 25, 2012, 2012 CPD ¶ 282 at 8-9 (hard facts necessary to show actual or potential conflict).

The protest is denied.⁴

Susan A. Poling
General Counsel

⁴ RAO also protested that the order to Artmoxm exceeded the maximum ordering limitation under Artmoxm's FSS contract. However, RAO failed to respond to the agency's argument in defense of this protest allegation, and thus RAO is deemed to have abandoned this protest ground. Washington-Harris Group, B-401794, B-401794.2, Nov. 16, 2009, 2009 CPD ¶ 230 at 5 n.3.