



Decision

Matter of: AVIS Jordan

File: B-417248

Date: April 23, 2019

Hashem Abu Samra, AVIS Jordan, for the protester.
Dennis J. Gallagher, Esq., Department of State, for the agency.
Evan C. Williams, Esq., Stephanie B. Magnell, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In a lowest-priced, technically acceptable acquisition using commercial item and simplified acquisition procedures, where two vendors submitted technically acceptable quotations at the same price, and where the solicitation contained no tie-breaking procedures, the agency reasonably considered the quality of the quoted items to determine the award priority among equally low-priced vendors.

DECISION

AVIS Jordan, of Amman, Jordan, protests the issuance of a purchase order to Masafat Car Rental (Masafat), under request for quotations (RFQ) No. S-J010-19-Q-0005, issued by the Department of State for rental vehicles. The protester contends that the agency's award to Masafat was unreasonable.

We deny the protest.

BACKGROUND

On November 29, 2018, the Department of State issued the RFQ, seeking prices for the rental of four vehicles, to be used at the U.S. Embassy in Amman, Jordan. Agency Report (AR), Tab 1, RFQ at 1; Combined Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 1. Although not clearly stated in the solicitation, the agency advises that the procurement was conducted under Federal Acquisition

Regulation (FAR) part 12, Acquisition of Commercial Items, and FAR part 13, Simplified Acquisition Procedures.¹ Supp. MOL at 3.

The RFQ stated that the agency intended to issue a purchase order to rent four vehicles for a period of 12 months, beginning in January 2019. RFQ at 1, 4. In addition to providing a list of salient characteristics for the required vehicles, the RFQ specified various other minimum requirements for the vehicles. Id. at 3-5. As relevant to this protest, the RFQ stated:

Quality: The contractor shall certify that all vehicles meet the requirements of local laws, and are covered by a comprehensive insurance plan. Vehicles shall be current year model or no more than one year old (not to exceed 1000 km [kilometers]).

Id. at 3.²

The RFQ neither identified the basis upon which award would be made, nor provided any evaluation factors. In a declaration submitted to our Office, the contracting officer stated that award under the RFQ was to be made on a lowest-priced, technically acceptable basis. Contracting Officer's Supp. Decl. at 1.

The agency received quotations from several vendors, including AVIS Jordan and Masafat. COS/MOL at 3. Masafat provided a price quotation for one type of vehicle, a 2019 Chevrolet Tahoe. AR, Tab 3, Masafat Quotation. AVIS Jordan's quotation included prices for several different vehicle makes, with varying model years, including both 2017 and 2019 Chevrolet Tahoes. AR, Tab 2, AVIS Jordan Quotation, at 2.

The agency determined that both AVIS Jordan and Masafat provided technically acceptable quotations, each providing the same lowest price. COS/MOL at 3. Whereas AVIS Jordan's lowest-priced vehicle was for the rental of 2017 Chevrolet Tahoes, Masafat's quotation provided the same low price, for the rental of 2019 Chevrolet Tahoes. AR, Tab 2, AVIS Jordan Quotation, at 2; AR, Tab 3, Masafat Quotation.

On December 30, the agency issued the purchase order to Masafat for the rental of four 2019 Chevrolet Tahoes, at a value of \$122,033.90. On January 13, 2019, the agency informed AVIS Jordan that even though the lowest-priced vehicle offered as part of its

¹ The solicitation was issued using a Standard Form 1449 (Solicitation/Contract/Order for Commercial Items), and incorporated by reference the following clauses: FAR clause 52.212-1, Instructions to Offeror-Commercial Items; FAR clause 52.212-4, Contract Terms and Conditions-Commercial Items, and FAR Clause 52.213-4, Terms and Conditions-Simplified Acquisitions (Other Than Commercial Items).

² Another section of the RFQ again stated that "[v]ehicles shall be new or in like new condition (Model year should be current year or no more than one year old)." Id. at 4.

quotation was quoted at the same price as Masafat's quoted vehicle, AVIS Jordan's quotation did not provide the best value to the agency. Protest attach. 1, E-Mail to AVIS Jordan, Jan. 13, 2019 (12:46 p.m.). On January 14, AVIS Jordan filed this protest.

DISCUSSION

AVIS Jordan argues that the agency improperly made award to Masafat because AVIS Jordan also provided a technically acceptable quotation at the same price. In this regard, the protester contends that the solicitation did not permit the agency to consider the model year of the quoted vehicles in order to resolve the tie with regard to price. Protest at 1. According to the protester, the RFQ only permitted the agency to consider model year to ensure that quotations were acceptable--i.e., that quotations met the minimum requirement that vehicles be current year or no more than one year old.

In response, the agency maintains that it reasonably made award to Masafat. The agency explains that because there are no tie-breaking procedures in FAR parts 12 or 13, and the RFQ did not establish a tie-breaking protocol, the agency reasonably exercised its discretion to consider vehicle model year to resolve the tie between AVIS Jordan and Masafat. COS/MOL at 7. In this regard, the agency asserts that although both vendors submitted lowest-priced, technically acceptable quotations, it was clearly in the best interest of the government to rent newer model vehicles--i.e., model year 2019 instead of 2017--for the same price. Id. at 3, 7.

Our Office reviews allegations of improper agency actions in conducting simplified acquisitions to ensure that the procurements are conducted consistent with a concern for fair and equitable competition and with the terms of the solicitation. Houston Air, Inc., B-292382, Aug. 25, 2003, 2003 CPD ¶ 144 at 4. For the reasons set forth below, we find the agency's actions unobjectionable under the facts of this procurement.

The agency conducted this commercial items acquisition using the simplified procedures of FAR part 13. The procedures of FAR part 13 are designed, among other things, to reduce administrative costs, promote efficiency and economy in contracting, and avoid unnecessary burdens for agencies and contractors. FAR § 13.002. As relevant here, when awarding contracts using simplified acquisition procedures, contracting officers are instructed to use innovative approaches to the maximum extent practicable. FAR § 13.003(h)(4).

Notably, AVIS Jordan has not identified any procurement law or regulation, or any provision of the RFQ, that the agency violated when considering model year to resolve the tie between two lowest-priced, technically acceptable vendors. Rather, in support of its argument, the protester simply points to the absence of express authorization in the RFQ of the agency's consideration of model year to give priority to Masafat's quotation. In circumstances, like here, where a solicitation does not contain tie-breaking procedures, our Office has rejected challenges to an agency's chosen method of resolving a tie where the agency's actions were reasonable. Vetcorp, Inc., B-402519, May 14, 2010, 2010 CPD ¶ 114 at 2 (finding reasonable the agency's use of FAR part

14 procedures for determining the award priority among equally low-priced proposals in a commercial items procurement under FAR subpart 12.6); see, e.g., Raytheon Company, B-410719.10, B-410719.11, Nov. 15, 2016, 2019 CPD ¶ 119 at 11, 14-15 (finding reasonable an agency's decision to amend the solicitation and seek revised proposals, rather than canceling the solicitation, to resolve a tie between low-price offerors). Based upon our review of the record in this case, we find reasonable, for the reasons below, the agency's method of resolving the tie between AVIS Jordan's and Masafat's lowest-priced, technically acceptable quotations.

First, the agency's actions here are not per se prohibited by the solicitation, or any procurement law or regulation. As pointed out by the agency, neither FAR parts 12 or 13, nor the RFQ, established tie-breaking procedures in the event that two vendors quoted the same price. Second, it stands to reason that in the event of a tie, it would be in an agency's best interest to rent the newer vehicle of the same model, when choosing between identically-priced vehicles. On this point, the protester offers no argument or evidence to dispute the superiority of the 2019 Chevrolet Tahoe to the 2017 model. In addition, the basis upon which the agency gave priority to Masafat's quotation--vehicle model year--is clearly related to a stated requirement in the RFQ. RFQ at 3 ("Quality: . . . Vehicles shall be current year model or no more than one year old . . ."). In this regard, the agency's reliance on quality, as opposed to a non-performance related rationale, supports the reasonableness of the agency's findings under these circumstances. We also note that other than expressing its general dissatisfaction with the agency's actions, AVIS Jordan does not identify the method or procedure it thinks the agency should have used to determine which of the lowest-priced, technically acceptable vendors should have received award. Consequently, we find no basis to conclude that the agency's chosen tie-breaking method was unreasonable.³

The protest is denied.

Thomas H. Armstrong
General Counsel

³ The protester also argues that the agency should have notified vendors that it would use model year to break any potential tie. Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest. Glem Gas S.p.A., B-414179, Feb. 23, 2017, 2017 CPD ¶ 60 at 4. Here, even if we were to agree that the agency should have notified vendors of its tie-breaking methodology, the protester fails to demonstrate how it was prejudiced by its lack of advanced knowledge regarding the this methodology. To the contrary, the record shows that AVIS Jordan's quotation included a price for a 2019 Chevrolet Tahoe--the same model vehicle--at a price higher than Masafat's quoted price. AR, Tab 2, AVIS Jordan Quotation, at 2.