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Decision

Matter of: Chicago American Manufacturing, LLC

File: B-419242

Date: January 6, 2021

James W. Kim, Esq., and Llewelyn M. Engel, Esq., McDermott Will & Emery LLP, for the protester.

Matthew R. Keiser, Esq., and C. Clay Weisenberger, Esq., Department of the Army, for the agency.

Paula A. Williams, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly rejected protester's quotation for a delivery order under the Federal Supply Schedule because one of the protester's quoted items was not listed on its schedule contract at the time the agency issued the order.

DECISION

Chicago American Manufacturing, LLC, (Chicago American), a small business located in Chicago, Illinois, protests the issuance of a delivery order to J. Squared, Inc., dba University Loft Company (U Loft), of Greenfield, Indiana, by the Department of the Army, under request for quotations (RFQ) No. W912DY-20-Q-0123, for replacement furniture. The protester argues that the agency improperly rejected its quotation as technically unacceptable.

We deny the protest.

BACKGROUND

On April 24, 2020, the Army issued the RFQ as a small business set-aside under the Federal Supply Schedule (FSS) procedures of Federal Acquisition Regulation (FAR) subpart 8.4, to current holders of General Services Administration (GSA) schedule 71

(the furniture schedule) contracts, with a response date of May 26. RFQ at 1¹. The solicitation sought a contractor to supply, deliver and install replacement metal furniture and accessories; specifically, beds, mattresses and wardrobes in support of the Huntsville Center centrally managed furnishings program for North Fort Hood, Texas. RFQ at 3. Detailed furniture item descriptions (FID) were included in the RFQ, which listed the specifications and requirements for all solicited items. See *generally*, RFQ attach. 2, FID at 15-21. Of relevance to the protest, the specific type of bed solicited was listed as “Bunkable, Adjustable Height Bed, Single.” RFQ attach. 1, Line Item Pricing at 14. The technical requirements for this bed were described in the FID, one of which was the requirement that the bed should accommodate a “38”W x 80”L mattress.” RFQ attach. 2, FID at 21.

The RFQ provided that all quoted items “shall comply with current GSA test requirements and be on the GSA contract schedule, unless specified as open market items.”² RFQ at 10. Vendors were not required to submit testing documentation with their quotations; however, the agency reserved the right to “request actual copies of test reports at any time prior to or after award.” *Id.*

The solicitation contemplated the issuance of a fixed-price delivery order to the vendor whose quotation represents the best value to the government, and stated: “Best value will be determined by the quote that is technically acceptable and has the lowest total price.” RFQ at 13. Quotations were to be rated acceptable or unacceptable under the following three non-price factors: technical, schedule, and past performance. *Id.* at 12-13. A quotation rated acceptable under the technical evaluation factor was defined as “all line items meet the specifications shown in the [FID].” *Id.* at 12.

The Army received timely responses from three vendors, including Chicago American and U Loft. Contracting Officer’s Statement and Memorandum of Law at 2. In its quotation, Chicago American offered model EBSP88-5778, Bunkable, Adjustable Height Bed, Single, 38¼” W x 83” L with an innerspring mattress 38” W x 80” L. Agency Report (AR) exh. 2a, Protester’s Initial Quotation attach.1, Line Item Pricing at 1.

Quotations were evaluated, and the agency engaged in multiple rounds of exchanges with vendors, including Chicago American. Contracting Officer’s Statement of Facts and Memorandum of Law at 2. The Army’s program manager emailed GSA to inquire about a discrepancy in the testing documentation for one of the models of beds

¹ The RFQ was amended twice. References herein are to the RFQ as amended and, for clarity, our Office has numbered the pages of the RFQ consecutively. We refer to those page numbers in this decision.

² The solicitation provided that open market items (non-schedule items) must be separately identified in the quotation and should not exceed \$10,000 per line item and must not exceed \$25,000 per order. RFQ at 9.

proposed by Chicago American.³ Specifically, the agency stated that the testing documentation provided by Chicago American for bed model EBSP88-5778 “does not appear to fall in line with the GSA Bed Testing requirements” and asked GSA to provide “the testing submitted for the following models and provide confirmation . . . that the testing was found acceptable.” AR exh. 4, Email Correspondence to GSA at 3 (Sept. 17, 2020).

On September 21, GSA provided the requested test reports. AR exh. 5, Chicago Bed Testing Report from GSA. After reviewing the test report for model EBSP-5778, the Army noted that the bed tested for this model was 36” wide and not 38” wide, as required by the RFQ. As a result, the Army sent another email to GSA which stated, in pertinent part, as follows:

Apparently we have a 38" bed that has been quoted but not tested. You all seemingly have accepted the bed on schedule with results from a 36" bed. However, the GSA testing requires that the testing be done on the worst case scenario. As a result, according to the testing criteria a 38" bed cannot be evaluated against testing for a 36" bed because it is not the worst case scenario. Are you available to discuss this with us as soon as possible? We currently have two open RFQ's with the bed being evaluated so we need some clarity on the issue from you all please.

AR exh. 6, Email Correspondence to GSA at 6 (Sept. 21, 2020).

GSA responded that if the solicited bed is 38" wide and Chicago American:

provided testing for the 36," [bed] that is not in accordance with 3FNE-99-582E [GSA's Safety and Performance Test Requirements for Bunkable and Loftable Beds with Drawers and Drawer Units for Use under Beds⁴]. The branch chief and contracting officer are checking for this specifically,

³ The Army's inquiry to GSA also pertained to bed model LPMS88-5778 manufactured by Chicago American. Model LPMS88-5778 does not apply to this procurement and will not be discussed further.

⁴ In relevant part, GSA's testing requirements for single bed versions of bunkable/loftable beds, 3FNE-99-582E, states:

Each bed deck type shall be tested. When bed deck types are offered in different sizes the largest (widest and longest) version of the deck shall be tested. e.g. If a deck is available in 36 and 38” wide versions then only the 38” wide version shall be tested. If a deck is available in 76 and 80” long versions then only the 80” long version shall be tested.

AR exh. 7, GSA's Safety and Performance Test Requirements for Bunkable and Loftable Beds with Drawers and Drawer Units for Use under Beds at 12 n.3.

but if testing on the 38" was not done, it will be removed from [Chicago American's] Schedule contract. If you could give us a couple of hours, we can let you know for sure if/when the bed will be removed.

Id., Email Correspondence from GSA at 4 (Sept. 22, 2020).

GSA subsequently removed from Chicago American's schedule contract all of the LPMS88-5778 and EBSP88-5778 bunk bed series that were more than 36" wide because model LPMS88-5778 and EBSP88-5778 were approved only for 36" wide beds. AR exh. 8, GSA Modification PO-0051.

During subsequent exchanges with Chicago American, the agency stated: "According to GSA, this model number [EBSP88-5778] is no longer on GSA schedule and it is over the open market threshold. Vendor shall resubmit an item that meets all FID and RFQ requirements." AR exh. 3, Protester's Composite Technical Review at 3. In its response, Chicago American stated:

Attached is our Bed Testing, which is valid based on GSA Technical Requirements for Schedule 71 on Page 7 regarding representative samples. We are challenging GSA's Removal of our Bed EBSP88-5778 from our GSA Schedule. We believe GSA's removal was in error and are requesting until Wednesday before you make a final decision on Award.

Id. at 3-4.

After reviewing Chicago American's response, the agency determined that its revised quotation was technically unacceptable since the vendor offered the same 38" wide bed that GSA had removed from its schedule contract. The agency also determined that Chicago American's offered bed could not be considered as an open market item because its quote of \$80,969.76 for this item exceeds the open market threshold of \$25,000. Contracting Officer's Statement and Memorandum of Law at 6-7.

On September 29, the Army issued the delivery order to U Loft in the amount of \$427,547.00, as the lowest priced, technically acceptable vendor.⁵ AR exh. 10, Contracting Officer's Determination at 2-3; exh. 11, Delivery Order. On September 30, the agency issued an unsuccessful notice to Chicago American and this protest followed.

⁵ The agency reports that the total award price of \$472,547.00 includes \$600.00 for the storage option. AR exh. 10, Contracting Officer's Determination at 3.

DISCUSSION

Chicago American's protest centers on its allegation that GSA's removal of the 38" wide bed from its schedule contract was improper and that the Army's determination that such removal rendered its quotation technically unacceptable was unreasonable. See *generally*, Protest at 4-6; Comments at 2-6. As support, the protester argues that its quoted 38" wide bed was a permissible bed variation of its tested 36" wide bed pursuant to GSA's schedule 71 testing requirements, with the sole variation being that the quoted bed was 2" wider. Protest at 4. According to the protester, this 38" wide bed variation was listed on its FSS contract and "GSA made no objection to the inclusion of the bed variation" prior to the Army's inquiries to GSA. *Id.*; see *generally* Comments at 2-4.

The Army responds that it had a reasonable basis for concluding that the protester's quotation was technically unacceptable. The agency reports that, at the time the FSS order was issued, the protester's quoted 38" wide bed had been deleted from its schedule contract. The protester therefore was ineligible to receive the order. Contracting Officer's Statement and Memorandum of Law at 6-8. We agree.

The FSS program directed and managed by GSA gives federal agencies a simplified process for obtaining commonly used commercial supplies and services. Federal Acquisition Regulation (FAR) 8.402(a). An agency may not use FSS procedures to purchase items that are not listed on a vendor's GSA schedule. *Tri-Starr Mgmt. Servs., Inc.*, B-408827.2, B-408827.4, Jan. 15, 2015, 2015 CPD ¶ 43 at 8; *American Warehouse Sys.*, B-402292, Jan. 28, 2010, 2010 CPD ¶ 41 at 2. Where, as here, an agency announces its intent to order from an existing FSS contract, all items quoted and ordered are required to be on the vendor's schedule contract as a precondition to receiving the order.⁶ *AINS, Inc.*, B-405902.3, May 31, 2012, 2012 CPD ¶ 180 at 8; *Science Applications Int'l Corp.*, B-401773, Nov. 10, 2009, 2009 CPD ¶ 229 at 2 n.1; *Tarheel Specialties, Inc.*, B-298197, B-298197.2, July 17, 2006, 2006 CPD ¶ 140 at 3-4.

The record here does not support the protester's claim that the agency unreasonably evaluated its quotation. As previously stated, the RFQ limited the competition to vendors who hold contracts under schedule 71, the agency therefore was required to issue the delivery order to a vendor whose FSS contract included all of the solicited items. Here, it is undisputed that Chicago American's FSS contract did not include the solicited 38" wide bed at the time the delivery order was issued. Since agencies may only place orders with a vendor whose schedule contract contains the goods or services

⁶ The only exception to this requirement is for open market items that do not exceed the micro-purchase threshold, since such items properly may be purchased outside the normal competition requirements. See *Maybank Indus., LLC*, B-403327, B-403327.2, Oct. 21, 2010, 2010 CPD ¶ 249 at 4; *CourtSmart Digital Sys., Inc.*, B-292995.2, B-292995.3, Feb. 13, 2004, 2004 CPD ¶ 79 at 5. Here, as noted above, the RFQ permitted submission of open market items not to exceed \$25,000 per order. RFQ at 9. However, the protester's quote of \$80,969.76 for its offered 38" wide bed exceeds the open market threshold of \$25,000.

required to meet the agency's needs under a solicitation, the Army could not properly issue the delivery order to Chicago American. *Tri-Starr Mgmt. Servs., Inc.*, B-408827.2, B-408827.4, Jan. 15, 2015, 2015 CPD ¶ 43 at 8; *The CDM Grp., Inc.*, B-291304.2, Dec. 23, 2002, 2002 CPD ¶ 221 at 3-4.

In sum, Chicago American has not shown that the agency's evaluation of its quotation as technically unacceptable was unreasonable or inconsistent with the RFQ and applicable statutes and regulations. Accordingly, there is no basis to question the agency's determination that Chicago American's quotation was unacceptable despite the protester's disagreement with the agency's determination. *Electrosoft Servs., Inc.*, B-413661, B-413661.2, Dec. 8, 2016, 2017 CPD ¶ 7 at 5; *Technology & Telecomms. Consultants, Inc.*, B-413301, B -413301.2, Sept. 28, 2016, 2016 CPD ¶ 276 at 4.

The protest is denied.⁷

Thomas H. Armstrong
General Counsel

⁷ Throughout Chicago American's protest, there appear express and implicit assertions that the Army's communications with GSA regarding the quoted 38" wide bed listed on its GSA schedule were improper. For example, the protester asserts that the agency "pushed GSA to reconsider" whether the quoted bed "had been properly tested in order to appear on [the protester's] schedule contract." Comments at 1. To the extent Chicago American's protest is based on the premise that the agency should not have requested testing documentation from GSA, the protest is without merit. The protester has not pointed to any violation of applicable procurement law or regulation, and the solicitation expressly advised that the agency may request testing documentation. Moreover, to the extent the protester believes that it was improper for GSA to remove the bed from its schedule contract, this is a matter concerning the administration of the protester's schedule contract with GSA, which is not for our consideration. See Bid Protest Regulations, 4 C.F.R. § 21.5(a).