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Decision

Matter of: All Points International Distributors, Inc.

File: B-402993; B-402993.2

Date: September 3, 2010

Scott A. Schipma, Esq., Winston & Strawn LLP, for the protester.

Wade L. Brown, Esq., and Scott Johnson, Esq., Department of the Army, for the agency.

Frank Maguire, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging selection decision on basis that evaluators deviated from solicitation's evaluation scheme in evaluating proposals is denied where record shows that, notwithstanding evaluators' actions, source selection authority's evaluation and award decision were consistent with evaluation scheme.
2. Where solicitation provided for assigning evaluation credit for "special features" in quotations, assertion that agency improperly declined to assign credit to protester's quotation for failure to provide features that were "unique" or "innovative"—terms not included in solicitation—is denied; the terms "innovative" and "unique" are reasonably related to the term "special," and therefore were encompassed by the evaluation factors set forth in solicitation.

DECISION

All Points International Distributors, Inc. (API), of Hillsdale, New Jersey, protests the issuance of a blanket purchase agreement (BPA) to Thermo Bond Buildings, LLC, of Elk Point, South Dakota, under Department of the Army, Army Materiel Command, request for quotations (RFQ) No. 442608, for dog kennels and supporting equipment. The protester asserts that the Army's evaluation of quotations was flawed.

We deny the protest.

BACKGROUND

The RFQ was issued on March 4, 2010, to holders of contracts under specified General Services Administration (GSA) schedules, for dog kennels and materials in support of the Contract Working Dog Initiative in Afghanistan. RFQ at 1. The RFQ provided for issuance of a BPA based on a “best value” evaluation applying the following factors: price, past performance, special features of the kennels required for effective performance, probable life of the item selected as compared to that of a comparable item, warranty considerations, maintenance availability, environmental and energy efficiency considerations, and delivery terms. RFQ at 8.

Quotations were received from nine vendors, including API and Thermo. Contracting Officer’s (CO) Statement at 2. Technical evaluations were conducted by a source selection board (SSB), and letters were sent to the vendors advising of evaluated deficiencies and allowing them to provide additional information and submit revised quotations. *Id.*; *see, e.g.*, Agency Report (AR) exh. 8, Letter to API, Apr. 22, 2010. API responded, providing information regarding shipping, construction materials, assembly, and special features. AR exh. 8.

The source selection board (SSB) evaluated the revised quotations and determined that Thermo’s was the overall best value. AR, Tab 10, Final Evaluation SSB Report, Apr. 28, 2010. The CO, as the source selection authority, likewise determined that Thermo’s quotation represented the best value. AR, Tab 11, Source Selection Decision Document (SSDD), May 18, 2010, at 13. API’s price was low, but the CO found as follows in concluding that its quotation did not represent the best value:

API initially submitted a two page quote that essentially simply regurgitated the requirements in the RFQ with no supporting details. After asking for final revisions and best pricing, API submitted a one-page email clarification, but no additional drawings.

API’s special features were not unique or innovative.

API’s insulation rating is very low for the harsh extreme climates of Afghanistan. A rating of R-15 is typically only used in warm climates and would require the heating unit to run almost continually during the winters of Afghanistan.

Id. at 11.

DISCUSSION

API challenges several aspects of the evaluation. In reviewing protests challenging the evaluation of proposals or quotations, we will not conduct a new evaluation or substitute our judgment for that of the agency; rather, we will examine the record to determine whether the agency’s judgment was reasonable and in accord with the

evaluation criteria and applicable procurement statutes and regulations. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. A protester's mere disagreement with the agency's evaluation judgment is not sufficient to establish that the agency acted unreasonably. Realty Executives, B-237537, Feb. 16, 1990, 90-1 CPD ¶ 288 at 3. We have considered all of API's arguments and find that they provide no basis to object to the evaluation or award. We address API's most significant arguments below.

SSB Evaluation

Several of API's protest grounds are based on asserted improprieties in the SSB's evaluation. For example, API asserts that the SSB's evaluation was inconsistent with the evaluation factors stated in the RFQ in that the SSB applied only two of the identified evaluation factors and used undisclosed weighting, Comments at 7-15, and that weaknesses the SSB identified in its quotation regarding tools necessary for installation were "irrational." Comments at 17-18.

These arguments are without merit. Source selection officials are not bound by the recommendation of lower-level evaluators. Verify, Inc., B-244401.2, Jan. 24, 1992, 92-1 CPD ¶ 107 at 7. Rather, they have broad discretion in determining the manner and extent to which they will make use of technical and price evaluation results. TRW, Inc., B-234558, June 21, 1989, 89-1 CPD ¶ 584 at 4. Accordingly, in determining whether the award decision was reasonable and consistent with the solicitation evaluation criteria, we review the decision, not of the evaluators, but of the source selection authority. Id. It follows that evaluators' judgments are relevant only to the extent that they affected the source selection authority's best value determination.

Here, there is no indication in the record that any of the asserted improprieties with regard to the SSB's evaluation affected the CO's best value determination. The Army advises that the CO did not make use of the scores and other determinations by the SSB that the protester asserts were inconsistent with the RFQ, SAR at 1, and the record indicates that none of the three deficiencies in API's quotation identified in the CO's best value analysis was based on the SSB's evaluation. For example, the SSB identifies only one weakness in API's quotation, tools necessary for installation, and that weakness is not mentioned in the best value analysis. SSB Report at 3; SSDD at 11. Thus, since the CO did not base her best value determination on the SSB's judgments, the fact that the evaluators may have deviated from the RFQ's evaluation scheme in arriving at its judgments (we do not reach this question) is irrelevant for purposes of assessing the reasonableness of the best value determination and source selection.

Special Features

With regard to the CO's determination that "API's special features were not unique or innovative," API asserts that this finding was inconsistent with the RFQ, since there is no mention in the RFQ of "innovative" or "unique" with reference to special

features. Protest at 7; Comments at 19-21. However, in evaluating proposals, an agency properly may take into account specific, albeit not expressly identified, matters that are logically encompassed by, or related to, the stated evaluation criteria. AMI-ACEPEX, Joint Venture, B-401560, Sept. 30, 2009, 2009 CPD ¶ 197. The Army asserts that the terms “innovative” and “unique” are reasonably subsumed within the term “special,” and therefore are encompassed by the evaluation factors set forth in the RFQ. Supplemental Agency Report (SAR) at 2-3. We agree with the Army; it is clear, we think, that considering whether a special feature is innovative and/or unique is a reasonable means of assessing the value of a feature to the government. Accordingly, this argument is without merit.

“Unclear” Areas

The SSDD identifies two areas—accessibility of the sleeping area and height of the exercise area—as “unclear.” SSDD at 3-4. API challenges these findings to the extent that they had a negative impact on its quotation’s evaluation. Comments at 16-17. The Army asserts that these items had no effect on the evaluation or source selection, and that the protester thus was not prejudiced by the findings. SAR at 4-5.

Prejudice is an essential element of every viable protest; we will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency’s actions. Armorworks Enter’s, LLC, B-400394.3, Mar. 31, 2009, 2009 CPD ¶ 79 at 3. Here, there is no indication that these findings affected the source selection. While the items are noted in the SSDD, they are identified under the heading “Technical Submission,” which was separate from the discussion of API’s quotation with regard to the evaluation factors. Further, there is no mention of these items in the evaluation of API’s quotation under any specific evaluation factor or in the best value analysis. SSDD at 4, 11. We conclude that there is no basis to find that API was prejudiced by these two items.

Special Features Discrepancy

API points out that the SSB identified six special features in its quotation, but the CO identified only three. Comments at 22-25; SSB Report at 3; SSDD at 4. The three features omitted by the CO were “Removable floor pan drain,” “Rapid assembly time,” and “Dehumidifier built into ECU.” Id. The protester asserts that these omitted features were comparable to items in Thermo’s quotation that the CO credited as special features, and that the CO’s failure to credit API’s quotation for these comparable features was “irrational, unequal, and prejudicial to API.” Id. at 24.

This argument is without merit. As indicated above, source selection officials are not bound by the recommendations of lower-level evaluators. Verify, Inc., supra. The Army has reasonably explained why the CO found that the three omitted

features did not warrant evaluation credit as special features.” SAR at 6-7.¹ For example, with regard to the removable floor pan drain feature, the Army explains that, unlike Thermo’s feature—a drainage pipe—API’s floor pan feature would have to be emptied multiple times during the cleaning process, and that the need to remove and re-insert the floor pan added a risk of damage, especially considering that the kennels had a 10-year life. *Id.* at 6. While the feature may be beneficial in certain respects, as API contends, the agency found that it also would have drawbacks that offset its benefits. Our conclusion is the same with regard to the other two features in question here – we see nothing unreasonable about this evaluation assessment. API’s disagreement with the CO’s conclusions does not render the evaluation unreasonable. See Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

Double Counting

API asserts that the Army improperly double-counted certain of the evaluated strengths of Thermo’s quotation by crediting them under multiple evaluation factors. Comments at 25-26.² Specifically, API notes that “Spare Parts and additional ECU provided with each shipment,” and “Highest insulation rating of all kennel solutions evaluated,” were identified as special features in the SSDD. SSDD at 9; Comments at 26. Thermo’s quotation was also given credit for its insulation rating and spare parts in other evaluation areas. *Id.* at 26; *see* SSDD at 9-10. The Army responds that “each evaluation factor was considered separately, but some features could reasonably be evaluated under multiple areas.” SAR at 7. There is nothing improper in an agency’s finding that a single strength has value under multiple factors, Teledyne Brown Eng’g, B-258078, B-258078.2, Dec. 6, 1994, 94-2 CPD ¶ 223 at 4-5, and the protester has not shown that Thermo’s evaluated strengths in insulation rating

¹ API objects to our consideration of this explanation because it is not contemporaneous with the selection decision. While we generally give more weight to contemporaneous records than to those prepared after the fact, we consider all documents of record, including explanations of evaluations and selection decisions furnished in response to a protest. LTR Training Sys., Inc., B-274996, B-274996.2, Jan. 16, 1997, 97-1 CPD ¶ 71 at 4 n.2.

² In its original protest, API challenged the Army’s evaluation of Thermo’s quotation in certain respects. However, since API did not have access to Thermo’s quotation or relevant evaluation documents, these challenges necessarily were based on speculation and did not state a valid basis of protest. See View One, Inc., B-400346, July 30, 2008, 2008 CPD ¶ 142. We thus will not consider these issues.

and spare parts will not be beneficial to the agency under multiple evaluation factors. See PharmChem, Inc., B-291725.3, et al., July 22, 2003, 2003 CPD ¶ 148.

The protest is denied.

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