

Protest of) Date: November 24, 1992
)
AMERICAN BODY ARMOR)
& EQUIPMENT, INC.)
)
Solicitation No. 089990-92-A-0099) P.S. Protest No. 92-89

DECISION

American Body Armor & Equipment, Inc., (American) protests its failure to receive award under solicitation 089990-92-A-0099 for "routine, full-time wear body armor." Initially, award was made to Point Blank Body Armor (Point Blank), but that award was subsequently terminated for convenience.

The solicitation was issued August 14, 1992, by the Procurement and Material Management Service Center, Windsor, CT. The solicitation sought 362 sets of body armor and outer shells to be delivered to locations in six cities within the Postal Service's Northeast Region. Section A of the solicitation provided that the "armor must meet the National Institute of Justice type II model standard, . . . [and] must be full coverage and lightweight" and identified three acceptable brand-name items.^{1/} According to Section M of the solicitation, award was to be made on the basis of price.

Suppliers of each of the identified brand-name items submitted offers. On October 5, award was made to Point Blank in the total amount of \$135,532.80. By letter dated

^{1/} The items were listed as:

Point Blank, Hi-Lite II model
Second Chance, SUPERfeatherlite II-2 model
American Body Armor, ABA-NC-II-FS-R model.

While the solicitation identified specific quantities of each of four sizes of the Point Blank model, sizes for the other two brand names were to be measured after award. The solicitation called for on-site custom fitting at the six delivery cities.

October 12, American protested the award, noting that it had offered its conforming brand-name item at a price lower than that offered by Point Blank, and that the solicitation had identified no evaluation factors other than price which would justify its exclusion from the award.

Responding to the protest, the contracting officer advises that following the receipt of the initial offers, each offeror was asked to provide a sample vest, and that the sample vests were evaluated. It was concluded that the American vest "did not provide full coverage protection."^{1/} Further, the contracting officer advises that subsequent to the receipt of the proposals, "for the first time this office was informed that the product offered by . . . [American] did not meet National Institute of Justice ('NIJ') Type II model standards."^{1/} (Emphasis in original.)

The contracting officer views the solicitation as ambiguous in that it requires compliance with the NIJ standard while identifying as an acceptable item models which does not so comply, but contends that any protest on that issue is now untimely as not raised before the receipt of offers, and that American's protest should be denied since its product does not meet the NIJ standard. Alternatively, the contracting officer suggests that the award should be "canceled" and the solicitation reissued, omitting the acceptable brand-name items, but requiring compliance with the NIJ standard.

Subsequently, the contracting officer terminated the contract with Point Blank for convenience, and advised American that "because of various inconsistencies in the specifications and evaluation factors in the solicitation package, a new solicitation will be issued." Although the contracting officer views this action as resolving American's protest, American has taken exception to this action in a further letter which asserts that its product does provide full coverage and does meet NIJ standards.^{1/}

^{2/} A memorandum in the file accompanying the contracting officer's statement asserts that when the regular/medium size samples were worn by a 5'10", 160 lb. postal inspector, American's product exposed a portion of the inspector's abdomen, and exposed a portion of the underarm area. Second Chance's item was also said to "ride high," exposing the abdomen, and to provide reduced shoulder area protection.

^{3/} The file which accompanies the contracting officer's statement contains an August 31, 1990, telegraph message from the NIJ which states that various samples of an unspecified model of American body armor purchased and tested by a law enforcement agency which were labeled as complying with the NIJ 0101.3 standard for body armor (which includes the requirements for the Type II model, as well as others) did not pass tests in conformance with that standard and were found to be stitched in a different manner than the certified model. The message also identified similar problems with various samples of Second Chance's "Super Feather Like [sic] [Type] IIA Soft Body Armor."

^{4/} American attaches copies of NIJ letters dated February 16, and December 11, 1990, attesting to the qualifications of American's models ABA-NC (Type II), ABA-NC Style II-FS-R (Type II), ABA-NC-F Female (Type II) and ABA-NC-F Style F-II-FS-R Female (Type II). American also furnishes letters dated August 24, 1992, from the NIJ Director to the New York City Police Commissioner, and the Acting Undersecretary of Defense for Acquisition, advising that previous communications from the NIJ,

The contracting officer has responded to American's further comments, noting that the cancellation was appropriate because of the solicitation's inconsistencies and the unacceptability of armour which would not meet the NIJ's standards.

Second Chance Body Armor, Inc., (Second Chance) which was advised of American's protest by the contracting officer by letter of October 15, submitted comments on the protest to the contracting officer by letter dated October 19. The comments are styled as a protest against the award to Point Blank, and complain about the evaluation of its sample vest, noting that since the solicitation called for custom fitting, the evaluation of its product's fit and coverage should have been measured on the basis of a custom-fitted sample, not a "generically-sized" sample as it furnished. Noting that its offer met the requirements of the solicitation and offered a price lower than Point Blank's, Second Chance requests that it be given the award.^{1/}

Discussion

The contracting officer's statement and its supporting documentation indicates that the offers of American and Second Chance were found to be unacceptable because the products offered were understood not to meet the requirements of the NIJ standard for Type II model body armor, and because evaluation of samples provided indicated that they did not provide "full coverage."

The standard of our review of such a determination is clear.

This office will not substitute its judgment for that of the contracting officer or disturb his evaluation of an offer's technical acceptability unless it is shown to be arbitrary or in violation of procurement regulations. Our review of the contracting officer's determination of technical acceptability examines the contracting officer's evaluation only to ensure it had a reasonable basis.

Doninger Metal Products Corporation, P.S. Protest No. 90-50, October 10, 1990 (citations omitted).

Rejection on the first basis was clearly unsupported by the evidence in the record furnished in the protest. That evidence indicates that an unidentified model of

including an August 31, 1990, telegraphic message, related only to specific listed models of American's body armor, which did not include model ABA-NC-II-FS-R.

^{5/} The contracting officer viewed Second Chance's letter as a protest separate from American's, and concluded that it was untimely as received more than ten working days after the information on which is based was known or should have been known." Procurement Manual (PM) 4.5.4 d. We have considered Second Chance's letter as comments on American's protest.

American's body armor and Second Chance's Type II-A (a model different from Type II) had been found nonconforming with the NIJ standard in 1990. It indicated nothing about the status of the brand-name items identified in the solicitation as of 1992. While the evidence might have suggested the wisdom of inquiry to the two offerors about that status, no such inquiry was made. The rejection of these two offers on the basis that they did not meet the requirements for an NIJ Type II model lacked a reasonable basis.

Rejection of the offers on the second basis was also inappropriate given the structure of the solicitation which was in the form of a product description. PM 2.3.2 c.1 provides that product descriptions, rather than specifications, must be used "[w]henver standard or modified commercial products will meet Postal Service requirements." Product descriptions are to include "[k]nown acceptable brand-name products," (PM 2.3.2 c.2.(b)) and, "[i]f at least three acceptable brand names are specified," may provide that only proposals for the specified products will be considered. PM 2.3.2. c.3. Using a product description incorporating the identification of brand-name items establishes that the Postal Service has determined that those items will meet the Postal Service's needs. See Air Compressor Distributors, Inc., P.S. Protest No. 92-09, March 24, 1992. Accordingly, it is inconsistent with that determination and with the determination to award from among the brand-name suppliers solely on the basis of price to undertake to evaluate samples of the offered brand-name items.^{1/}

As the narrative above indicates, the contracting officer has terminated the contract awarded to Point Blank for convenience, and proposes to recompetes the requirement. The basis for his intention to do so is unclear on the record before us, but we gather that it involves some concern about the adequacy of the determination that each of the identified brand-name items does, in fact, meet the Postal Service's requirements.^{1/}

Accordingly, we sustain the protest to the extent that it objects to the award to Point Blank, and remand the matter to the contracting officer for a determination whether award may be made on the basis of the original solicitation, whether the solicitation may be amended and revised offers sought on the basis of the amendment, or the

^{6/} In view of this determination, we need not consider whether the examination which was conducted was conducted appropriately. We note, however, the obvious problem inherent in the use of undefined terms, such as "full coverage" and "lightweight," as criteria, and the evaluation of samples of armor not custom-fitted with respect to a solicitation which requires fitting.

^{7/} Information in the protest file from the NIJ appears to suggest that the NIJ's designations of models by type does not fully resolve the issue of body coverage, and that ordering agencies accordingly may need to state their requirements in that regard in addition to specifying compliance with an NIJ model standard. Further, the Comptroller General has found appropriate the rejection of specific models of body armor for failing to meet an agency's minimum needs with respect to side panel overlap and armhole coverage. American Body Armor & Equipment, Inc., B-238860, 90-2 CPD & 4, July 3, 1990.

solicitation must be canceled and the requirement resolicited.^{1/} Dataview Corporation, P. S. Protest 90-31, July 19, 1990. The terms of any amended or new solicitation may be the subject of a further protest.

The protest is sustained to the extent indicated.

For the General Counsel:

William J. Jones
Senior Counsel
Contract Protests and Policies

^{1/} PM 4.1.2 j. provides that solicitations "may not be canceled unless circumstances make cancellation essential, such as where . . . the solicitation requires amendments of such magnitude that a new solicitation is needed."