

Protests of)	
)	Date: July 17, 1987
BEIER AND GUNDERSON;)	
EXECUTIVE OFFICE CONCEPTS)	
)	
Solicitation No. 059990-87-C-0025)	P.S. Protest No. 87-51

DECISION

Beier and Gunderson (B&G) and Executive Office Concepts (EOC) protest the issuance of a purchase order to Facility Systems, Inc. (Facility) under Solicitation No. 059990-87-C-0025 for selected office furniture.^{1/}

Request for Quotations (RFQ) 059990-87-C-0025 was issued by the Western Region Procurement and Materiel Management Service Center, San Bruno, CA, on April 23, 1987, with a quotation due date of May 14.^{1/} The solicitation noted that "[d]uring the planning stages of this procurement, the furniture looked at was Kimball and Artec brands. Furniture of this type is the quality and style the Postal Service finds acceptable in meeting their needs." Quotations would be evaluated on the basis of 45% for design and quality, 30% for cost, and 25% for delivery schedule. The evaluation criteria were further explained as follows:

Cost evaluation will be based on price, with the lowest price submitted receiving the greatest number of points. Delivery is expected by June 1, 1987 for all inside areas (Rooms No. 609, 610, 628, 639, 663 665A, 665B, 672, 673, 685A, 685B, 687 & 695). Delivery is expected by June 30, 1987 for all remaining office

^{1/} EOC was the supplier for the furniture quoted on by B&G. B&G's letter of protest states that its protest is based on the arguments set forth in EOC's protest. We cannot consider EOC's protest because EOC is not an interested party pursuant to our regulations at Postal Contracting Manual (PCM) 2-407.8 c., and therefore lacks standing to protest to this office. Generally, a potential subcontractor or supplier is not an interested party since the prospective prime contractor usually has the greater interest in relation to contract award. Falcon Systems, Inc., et. al, P.S. Protest No. 86-31, 86-33, 86-35, July 25, 1986; Radix II Incorporated, Comp. Gen. Dec. B-208557.3, November 29, 1982, 82-2 CPD & 484. However, since the prime contractor B&G has protested based on the same grounds raised in EOC's protest, we consider these issues as raised by B&G.

^{2/} The decision to use informal procedures for a procurement over \$25,000 was justified by a deviation from the price limitations located at Postal Contracting Manual (PCM) 3-203 and 6-100 et seq. The basis was the need to expedite delivery of the furniture because of the pending relocation of certain postal activities. We note that the use of informal purchase procedures may have been responsible for some of the misunderstandings which form the basis of B&G's protest.

and conference room areas. Award will be made by May 15, 1987. Delivery dates indicated are predicated on Award being made by May 15, 1987. If Award is made after May 15, a like amount of days will be added to the delivery schedule. Offerors not meeting these dates will have their proposal reduced by 5 points per day for every day late on either delivery date. Design/Quality will be subjectively evaluated by the requiring activity.

Quotations were solicited from eight prospective quoters, and a mandatory pre-proposal conference was held on April 29. Representatives from B&G and Facility appeared at the conference. The minutes of that conference indicate that the evaluation criteria were explained, B&G asked several questions (but apparently none about any perceived vagueness in the specifications), and Facility asked no questions.

Amendments dealing with style and feature requirements for the furniture were issued on April 24 and April 30. Amendment A02 stated that the furniture was to be "solid wood, walnut finish," that the fabric was to be "Grade 3," that, except for two "contemporary style" offices, all other offices were to be "traditional" style, and that showroom visits would not be required in the evaluation of the quotations. B&G and Facility submitted quotes on May 14. Best and final offers requested from both parties on May 15 were received on May 18.^{1/}

Pursuant to the evaluation criteria, a four member evaluation team rated the quoters' proposed products. The evaluators found Facility's product to be of better quality, more aesthetically pleasing, and more functional than B&G's. Facility received 45 points for design and quality, while B&G received 31.5 points. The delivery and cost factors were scored by the contracting officer. Both quotes received no points for delivery, as they both quoted delivery schedules more than 20 days beyond the requested delivery date. B&G received 30 points for cost and Facility received 21. Thus, B&G's final evaluated score was 62, Facility's was 66. Because Facility received the highest evaluated score, the contracting officer issued a purchase order to Facility on May 19. This protest followed.^{1/}

The protester first contends that the specifications are vague. It argues that the RFQ referred only to brand names such as Kimball or Artec without specifying the type or models of furniture required. B&G further alleges that the terms "Grade 3 Fabric," "contemporary," "traditional," and "solid wood, walnut finish," are ambiguous and open to wide variations in interpretation. In addition, it indicates that it was unable to get clarifications to these questions when they contacted the contracting officer after the pre-proposal conference. B&G suggests that series and model numbers, specific fabrics, and a legible floor plan should have been supplied to clarify exactly what was desired.

^{3/}In response to the request for best and final offers, B&G lowered its price; Facility did not change its quote.

^{4/} The contracting officer has issued a stop work order to Facility pending the resolution of the protest by this office.

B&G also protests the evaluation criteria. It asserts that in GSA solicitations in which it has participated, no evaluation has been made of design or quality and award has been made to the offeror with the lowest price. Therefore, it believes it should receive the award based on its significantly lower price. Further, if a point evaluation system is used, specific criteria are necessary to eliminate the subjective evaluations that resulted here.

Finally, B&G objects to the design/quality score given to its furniture. It contends that the evaluations were arbitrary and that the rating given to Facility was "conveniently just 4 points" more than necessary to overcome B&G's large price advantage. B&G argues that the quality of EOC's product is as good as Facility's, and that it was irresponsible to evaluate the quotes without visiting the nearby EOC showroom to see the furniture offered by B&G. Finally, B&G protests the request for best and final offers, finding it "a very unusual and questionable procedure on a written bid situation."

In his report to this office, the contracting officer argues initially that, since the protest deals with the terms of the solicitation, it is untimely and should be dismissed. The contracting officer indicates that B&G had every opportunity to ask questions about the solicitation process at the pre-proposal conference. He further states that the two amendments were in answer to questions which arose. Subsequent questions from B&G were not answered "in order to keep all bidders [sic] on an equal footing."

Concerning the merits of the protest, the contracting officer states that the requirements were stated specifically enough to indicate to potential quoters the quality and design of the equipment desired without requiring them to supply furniture of any particular brand. He also states that the terms to which the protesters object are standard in the trade and were further clarified in the amendments.

The contracting officer also states that the evaluation scoring system used in this solicitation was clearly explained and that prior contracts in which the protester has participated and the practices of other agencies are irrelevant. He explains that B&G should not receive award based on price, because price was only one of three factors in the evaluation scheme. Although there is a significant difference in the pricing of the two quotes, Facility's superior quality/design rating was more than enough to offset B&G's better price.

The contracting officer states that the design/quality rating was not arbitrary and the procedures used were in accordance with normal Postal Service procurement practices. He notes that the four person evaluation team was provided with the descriptive literature from both quotes, and that the pricing and delivery schedule information was removed from the submittals so that the committee could make an independent analysis of the design/quality portion of the solicitation. The team found the data submitted to be sufficient to make an evaluation, and therefore made no effort to visit showrooms. The contracting officer further contends that it was clear from the solicitation that the evaluation would be made solely from the descriptive literature provided by the quoters. Finally, the contracting officer argues that a request for best and final offers is normal procedure in a negotiated procurement.

EOC and B&G have each responded to the contracting officer's statement. Their comments indicate that they believe there was fraud involved in the solicitation process and that Facility had access to inside information which assisted Facility in developing its quote. They point to the vagueness of the specifications, which they say they were unable to have clarified; the unwillingness of the contracting officials to visit EOC's showroom; the fact that the successful quoter asked no questions at the pre-proposal conference; the refusal to allow B&G to interview members of the evaluation committee; and finally, the \$56,000 that the Postal Service would have saved by buying from B&G. B&G contends that the RFQ was issued solely to satisfy statutory requirements, and that there was no intent to award the contract to any quoter other than Facility.

Those portions of B&G's protest which are based on alleged deficiencies in the solicitation are untimely and must be dismissed. PCM 2-407.8 d. (1) requires that "[w]ritten protests based upon alleged deficiencies in a solicitation which are apparent before the date set for the receipt of offers must be received by the date and time set for the receipt of offers." This timeliness requirement is jurisdictional and cannot be waived by this office. Motorola, Inc., P.S. Protest No. 86-93, December 22, 1986; POVECO, Inc., et al., P.S. Protest No. 85-43, October 30, 1985. Because B&G's arguments regarding the alleged ambiguity of the RFQ's specifications and the evaluation scheme were raised after the time set for receipt of quotations, they are untimely and cannot be considered.^{4/}

As to B&G's protest of the evaluation of the quotations, we note that, in negotiated procurements,^{5/} this office will not substitute its judgment for that of the evaluators or disturb the evaluation unless it is shown to be arbitrary or in violation of procurement regulations. Management Concepts, Inc., P.S. Protest No. 86-29, July 10, 1986; H & B Telephone Systems, P.S. Protest No. 83-61, February 6, 1984. The determination of the relative merits of technical proposals is largely subjective and primarily the responsibility of the contracting officer, as assisted by his technical personnel. Such a determination is not objectionable unless shown to be unreasonable, arbitrary, or violative of the law. Service America Corp., P.S. Protest No. 86-96, January 14, 1987. Further, the assignment of numerical scores or ratings to a proposal, an attempt to quantify what is essentially a subjective judgment, is an accepted procedure. Book Fare, Inc., P.S. Protest No. 80-29, July 3, 1980. Finally, the protester bears the burden of showing that the technical evaluation was unreasonable. A protester's mere disagreement with the evaluators' judgment does not meet this burden of proof. Digital Radio Corporation, Comp. Gen. Dec. B-216441, May 10, 1985, 85-1 CPD & 526; Computer Systems & Resources, Inc., P.S. Protest No. 86-4, March 27, 1986.

In this case, while the record evidences disagreement between B&G and the contracting officer, it does not provide a basis upon which we may conclude that the evaluation of the protester's proposal was arbitrary or

^{5/} While B&G's contention that the evaluators should have visited the EOC showroom is also untimely raised, we note that Amendment A02 clearly stated that such visits were not required.

^{6/} Requests for quotations such as this solicitation are negotiated procurements. Lancom, Inc., P.S. Protest No. 85-48, October 9, 1985.

unreasonable. The evaluators' report indicates that B&G's offered items were of lesser quality (mostly laminates and veneers) than Facility's (mostly hardwoods),^{1/} and that B&G's design was less functional and aesthetic than Facility's. B&G's contention that Facility had knowledge of inside information, and that the procuring officials intended all along to award the contract to Facility fall well short of the "virtually irrefutable proof" necessary to demonstrate fraud. See Garden State Copy Company, P.S. Protest No. 84-31, July 5, 1984; Georgetown Air & Hydro Systems, Comp. Gen. Dec. B-210806, February 14, 1984, 84-1 CPD & 186. B&G's allegations fail for lack of proof.

B&G also argues that its proposal was significantly less costly than Facility's, and that a mere four point difference in ratings should not be determinative. It is well established that in negotiated procurements, awards are not required to be made solely on the basis of the lowest price. Where, as here, the solicitation advises offerors of an evaluation point system where technical considerations are to be weighed more heavily than price, there is no basis for objecting to an award solely because the awardee did not submit the lowest priced proposal. See, Computer Systems & Resources, Inc., supra; H & B Telephone Systems, supra.

Finally, the protester objects to the opportunity given to the quoters by the contracting officer to amend their quotations. Since in this case there were no discussions, the request for best and final offers was not standard procedure. Service America Corp., supra; cf. Input Output Computer Services, Inc., P.S. Protest No. 86-28, July 2, 1986. However, a request for best and final offers is not, by itself, improper, and satisfies the legal requirement for discussions where there is no uncertainty with respect to the technical aspects of the proposals. See Input Output Computer Services, Inc., supra; Information Management, Inc., Comp. Gen. Dec. B-212358, January 17, 1984, 84-1 CPD & 76. Additionally, it is unclear how B&G was disadvantaged by the request, since Facility did not change its quote while B&G lowered its price.

EOC's protest is dismissed. B&G's protest is dismissed in part and denied in part.

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Office of Contracts and Property Law

[Compared to original 3/4/93 WJJ]

^{1/}B&G indicates that the contracting officer told it that hardwood products would be preferred, but that it chose to quote on less expensive materials at a lesser price. This was a business judgment taken by B&G and is certainly not a reason to overturn the evaluators' judgment.