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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

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Decision

Matter of: The Refinishing Touch

File: B-293562; B-293562.2; B-293562.3

Date: April 15, 2004

Lawrence J. Sklute, Esq., Sklute & Associates, for the protester.
Capt. John P. Dever, Maj. Frank A. March, Raymond M. Saunders, Esq., and Kevin K. LaChance, Esq., Department of the Army, for the agency.
Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, participated in the preparation of the decision.

DIGEST

Protest challenging agency's affirmative determination of successful vendor's responsibility is dismissed where record does not support allegation that contracting officer failed to consider available relevant information.

DECISION

The Refinishing Touch (TRT) protests the agency's issuance of a purchase order to Commercial Marketing Corporation (CMC) under request for quotations (RFQ) No. W911RX-04-T-0044, issued by the Department of the Army for furniture refinishing services. The protester challenges the agency's selection of CMC, alleging that CMC's price is too low to perform the services the protester believes are required under the RFQ, and contesting the agency's affirmative determination of CMC's responsibility.

We dismiss the protest.

The RFQ, issued as a small business set-aside, sought refinishing services for Army barracks furniture at Fort Riley, Kansas. The RFQ's general performance-based specifications called for furniture reconstitution, including refinishing, relaminating, reupholstering, and hardware repair work; each line item of the RFQ's pricing schedule represented a different type of furniture to be serviced. The RFQ, issued

under simplified acquisition procedures, contained no evaluation factors for selection other than price.¹

Earlier, as part of its market research, the agency had asked TRT to prepare a cost analysis comparing the anticipated price to do the reconstitution work to the price of purchasing new furniture. That analysis supported reconstitution of the furniture, since TRT's prices for the work were found by TRT to be lower than the cost of purchasing new furniture. The agency discounted the analysis, however, because the prices cited by TRT for purchasing new furniture were deemed to be extremely high; this apparently also gave the agency some concern about the adequacy of the prices for furniture reconstitution in TRT's analysis.

Although the agency had initially considered procuring the services under the General Services Administration Federal Supply Schedule (FSS), the RFQ was ultimately issued as an open market competitive small business set-aside, since TRT had been the only FSS vendor to express any interest in the work. The agency issued the RFQ with a scope of work derived from some of the general provisions in TRT's FSS contract for furniture refinishing services. Specific technical information or methodologies were not sought from the vendors; rather, the scope of work included only general performance-based requirements. For example, vendors were advised of the following general requirements: to "[r]efinish/[rel]aminate and reupholster all pieces based on volume count and building count provided"; that "[a]ll work is to be performed on site"; that "[a]ll surfaces shall be cleaned with suitable water based solvent to remove oils, grease, wax, films and dirt to ensure good adhesion of finishing materials"; and that the vendor use "standard commercial laminate replacement specifications to achieve a commercial quality installation." RFQ at 33-34.

Two vendors, TRT and CMC, submitted quotes under the RFQ after having been given the opportunity at separate site visits to observe the furniture to be serviced. TRT's quote (at \$404,619.02) was significantly higher than CMC's quote (at \$184,394). After requesting that vendors confirm the accuracy of their prices, the agency issued a purchase order to CMC based on its lower price. This protest followed.

Although TRT generally argues that the agency was required to reject CMC's quote because it is substantially lower than TRT's quote, we see no basis to question CMC's eligibility based upon its price. First, in a fixed-price procurement, the fact that a firm, in its business judgment, submits a price that is low because it may not include any profit, is below-cost, or may be an attempted buy-in, does not render the firm

¹ Vendors were provided a pricing schedule for their line item prices and were specifically instructed that quotes "will be based on cost per line item." RFQ at 2-4, 33.

ineligible for award, since below-cost pricing is not prohibited. See Property Analysts, Inc., B-277266, Sept. 12, 1997, 97-2 CPD ¶ 77 at 6. Second, to the extent TRT alleges that the RFQ required higher-priced, specialized TRT refinishing products and services that are not reflected in CMC's price, TRT is factually incorrect. The solicitation did not require any specific approach to accomplish the scope of work's general performance specifications. While the RFQ's work statement was derived from TRT's FSS contract, that contract's references to TRT-specific approaches and products were deleted by the agency.² Thus, since the RFQ contains only general performance-based specifications and did not require any unique or specialized TRT methods, TRT's argument that CMC intends an approach substantially lower in price or different from TRT's provides no basis to question the firm's selection.

TRT also generally challenges the agency's affirmative determination of responsibility for CMC. CMC asserts that the agency failed to consider that CMC's web site (as well as a Dunn and Bradstreet report provided by TRT) does not indicate that CMC provides furniture refinishing services. TRT suggests that CMC therefore should have been found nonresponsible for lacking the capability to do the work.

Because the determination that an offeror is capable of performing a contract is largely committed to the contracting officer's discretion, our Office generally will not consider a protest challenging an affirmative determination of responsibility, except under limited circumstances. Bid Protest Regulations, 4 C.F.R. § 21.5(c) (2004). One specific exception is where a protest identifies "evidence raising serious concerns that, in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation." Id. This include protests where, for example, the protest includes specific evidence that the contracting officer may have ignored information that, by its nature, would be expected to have a strong bearing on whether the awardee should be found responsible. Universal Marine & Indus. Servs., Inc., B-292964, Dec. 23, 2003, 2004 CPD ¶ 7 at 2; Verestar Gov't Servs. Group, B-291854, B-291854.2, Apr. 3, 2003, 2003 CPD ¶ 68 at 4.

While TRT's protest was sufficient to satisfy the threshold requirement that a protest raise serious concerns that the contracting officer may have failed to consider

² As TRT notes, the warranty provision of the RFQ sets out the name "Touch Textiles" as a sub-heading, followed by the warranty terms for the fabric used in performing the work. RFQ at 35. According to TRT, "Touch Textiles" is the name of a division of TRT and a registered trademark. It appears that this reference reflects an oversight by the agency; in any event, read as a whole, it is simply unreasonable to interpret this sole reference in the warranty terms as establishing a requirement that the contractor use Touch Textiles fabrics.

relevant responsibility information, the fully developed record in this case shows that TRT's challenge is unfounded, since it demonstrates that the contracting officer duly considered the available information and reasonably confirmed the vendor's capability to perform.

In this regard, the record shows that prior to issuing the purchase order to CMC as the apparent successful vendor, the agency contacted the firm to confirm its understanding of the RFQ's requirements, particularly regarding replacement parts, sanding, refinishing, reupholstering, laminating, and painting, as well as the required timelines for the work. Contracting Officer's Statement of Facts at 3. Further, the record shows that the contracting officer noted that CMC's web site did not mention specific furniture refinishing work. She also noted, however, that it showed that the firm does business in a wide variety of fields, including supplying institutional interior products and services involving furniture and furnishings, food service equipment, construction services and marine products. The firm's web site also demonstrated that much of its business involved CMC's representation of specialized firms performing various contract requirements. The contracting officer reasoned that, as an experienced prime contractor, CMC would likely be able to obtain additional technical capability by subcontracting a substantial amount of the work in accordance with the RFQ's allowance to do so. Moreover, CMC confirmed for the contracting officer that it had recently performed furniture refinishing work for the Department of the Navy aboard vessels in port. Noting CMC's receipt of government contracts, and the fact that the firm holds an FSS contract (although not for furniture refinishing services), the contracting officer also recognized that other government agencies had affirmatively determined the firm to be responsible.

Given all of the supporting information available to the contracting officer, it is clear from the record that not only did the contracting officer indeed consider the information TRT argues was ignored, but that its significance was reasonably considered in conjunction with the overall information she obtained supporting the firm's responsibility.

The protest is dismissed.

Anthony H. Gamboa
General Counsel