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Decision

Matter of: J. Squared Inc., dba University Loft Company

File: B-407302

Date: December 17, 2012

Suzanne Sumner, Esq., Taft Stettinius & Hollister LLP, for the protester.
Sean D. Forbes, Esq., and Bryant S. Banes, Esq., Neel, Hooper & Banes, P.C., for Dehler Manufacturing, Inc., an intervenor.
MAJ Melissa L. Wright and CPT John E. Buis, United States Marine Corps, for the agency.
Pedro E. Briones, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's acceptance of a quotation that failed to conform to a material solicitation requirement is unreasonable; a technically unacceptable quotation may not form the basis for award.

DECISION

J. Squared Inc., dba University Loft Company (University Loft), of Greenfield, Indiana, protests the issuance of a purchase order to Dehler Manufacturing, Inc., of San Antonio, Texas, under request for quotations (RFQ) No. M67001-12-Q-0152, issued by the United States Marine Corps for barracks furniture. The protester argues that the agency improperly waived a material solicitation requirement for Dehler and improperly accepted Dehler's nonconforming quotation for award.

We sustain the protest.

BACKGROUND

The RFQ, issued to vendors holding Federal Supply Schedule (FSS) contracts under Federal Acquisition Regulation (FAR) subpart 8.4, provided for the issuance of a purchase order for various types of furniture for Marine barracks at Camp Lejeune, North Carolina. RFQ at 2. Vendors were informed that the order would be issued on a lowest-priced, technically-acceptable basis to a vendor with a satisfactory performance record. Id. at 14. The RFQ stated that quotations would be evaluated

first by price, after which the lowest-priced quotation would be evaluated for technical acceptability; once a technically acceptable quotation was identified, no further evaluation would be conducted. See id. Vendors were advised that all items quoted were required to appear on the offeror's FSS schedule. Id. at 15.

As relevant here, vendors were required to quote prices for 288 metal beds, complying with the following specifications:

- Metal bed with bunk-able brackets
- Tool Free Hook Assembly metal bunk bed with under bed storage
- Bed Ends with Multiple Position pin settings.

Id. at 9, Contract Line Item No. (CLIN) 10. The RFQ also specified under-bed storage, overall dimensions, and materials, among other things. Id. The solicitation instructed vendors to provide drawings, product literature, pictures, and descriptions of all furniture items (including for the bunk beds), as well as the manufacturer's name and part number, to ensure technical compliance. Id. at 15.

The Marine Corps received quotations from three vendors, including University Loft and Dehler. Contracting Officer's (CO) Statement at 1-2. Dehler's quotation, priced at \$634,054, was the lowest-priced quotation submitted. Id.; see Agency Report (AR), Tab F, Task Order Award Decision, Abstract, at 3. It was evaluated first, and found to be technically acceptable. See CO's Statement at 2.

For CLIN 10, Dehler's quotation reproduced the specifications for the bunk bed as they appeared in the solicitation, and then identified the firm's FSS contract, its applicable blanket purchase agreement (BPA) with the Navy, and the model number of the bunk bed it was offering. AR, Tab C, Dehler Quotation, at 3. In a narrative paragraph, Dehler described its bed, stating, among other things, that the bed ends would "allow for adjustment of height for versatile Assembly/positioning." Id. It provided an "overall range of dimensions" that represented the bed as complying with the RFQ's dimensions requirements. Id. Dehler's quotation also included a one-page technical drawing that depicts front, side, and two-dimensional views of two bunk beds, stacked one atop the other, but the drawing does not depict the bed frame's assembly method. See id. at 6. Specifically, neither the drawing nor the narrative describes the method for attaching the bed's side rails to the end boards in assembling the bed.¹ Id. at 3, 6.

¹ At issue in this protest is how the bed's side rails attach to the end boards to form the bed frame, and whether the method of attachment complies with the RFQ's specification for a bed with a tool-free hook assembly. How the bunk beds attach to each other vertically is not at issue.

The agency determined that Dehler's bunk bed met the required specifications and product type, and that Dehler's quotation was technically acceptable.² AR, Tab D, Technical Evaluation, at 5; CO's Statement at 2. Because Dehler's lower-priced quotation was found technically acceptable, no other quotations (including University Loft's, which was the next low priced quotation) were evaluated for technical acceptability.³ See CO's Statement at 2, citing RFQ at 14. The purchase order was issued to Dehler. See AR, Tab F, Task Order Award Decision, at 2.

University Loft filed an agency-level protest with the Marine Corps, complaining that Dehler's bed did not meet the RFQ's specification for tool-free hook assembly and should have been found technically unacceptable. See Protest, exh. 6, University Loft Agency-level Protest, at 21-24. The protester argued that the beds offered on Dehler's FSS contract must be assembled using nuts and bolts, rather than through a tool-free hook assembly. See id. The agency stayed performance of the purchase order pending the outcome of the agency-level protest. CO's Statement at 3.

The Marine Corps denied University Loft's protest, stating that its review of the bed quoted by Dehler proved that the bed fully complied with the RFQ's requirements. AR, Tab H, Agency Protest Decision, at 1. In the protest decision, the contracting officer stated that he interpreted "a tool-free hook assembly" as meaning "connected and tightened by hand without the use of tools." Id. The decision enclosed a diagram of Dehler's bed, which Dehler had furnished at the request of the contracting officer during the agency-level protest, depicting a bed rail fastened to an end board with two nuts and bolts. Id., Encl. 2. The diagram separately depicts, and appears to suggest, three bolt options in that regard--a wing bolt, tee bolt, and spade bolt. See id. There is no hook shown on the diagram, and the contracting officer's protest decision does not mention the word (or concept) of a hook assembly. See id.; infra n.6

After denying the agency-level protest, the Marine Corps instructed Dehler to resume performance of the purchase order, and this protest followed. CO's Statement at 3. The agency concluded that due to the passage of time, the protester was not entitled to another stay of performance. The Marine Corps

² The technical evaluation record provided in response to the protest consists of a copy of the CLINs as they appeared in the RFQ, a copy of the applicable pages from Dehler's quotation, and an evaluation form with yes-or-no checkmarks to indicate whether the items quoted met the required specifications for product type, quantity, and acceptability. See AR, Tab D, Technical Evaluation, at 4-8. The evaluation sheet for Dehler's bed is blank under the comments section. Id. at 5.

³ ULC asserts that it quoted a tool-free hook assembly bed that met the RFQ's specifications. Protest at 6, 10.

states that it was not willing to further delay renovations and construction of barracks, which would have an impact on pre-deployment training, among other things. See Agency Email to GAO, Sept. 18, 2012; CO's Statement at 2-3.

DISCUSSION

University Loft again protests the Marine Corps' evaluation of Dehler's quotation, arguing that Dehler's bed does not meet the RFQ's specification for a tool-free hook assembly and that the agency improperly relaxed a material requirement when it found the bed technically acceptable.⁴ Protest at 6-9. The protester provides illustrations from various bed vendors and manufacturers, as well as copies of relevant patents, to support its argument that a hook assembly is an industry standard or commonly used term. Protester's Comments at 3, exhs. A-G. According to University Loft, this term refers to a bed railing with curved metal protrusions on its ends that hook into the bed's headboard and footboard without fasteners such as nuts and bolts. See Protest at 5-6. The protester points out that, in contrast, Dehler's bedrails have no hooks, but must be fastened with a nut and bolt. Protest at 5. The protester asserts, therefore, that the agency relaxed the hook assembly specification for the awardee, and that it was improper to do so without amending the RFQ. Id. at 6-9.

The Marine Corps disputes that there is an industry standard for a tool-free hook assembly, and states that the technical evaluator and contracting officer relied on reason and common usage in determining the meaning of this term. AR at 3-4. According to the agency, a hook assembly can, in addition to the protester's construction of the term, also describe a bed rail that, like Dehler's, "catches on" or "hooks over" a protruding bolt. See id. The Marine Corps insists that the agency did not relax or waive the requirement for a tool-free hook assembly, and maintains that the agency reasonably found that Dehler's bed met the specification. See id. at 5-6; Agency Response to GAO Interrogatory at 2.

Where, as here, an agency conducts a competition under FAR subpart 8.4, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. CMI Mgmt., Inc., B-404645, Mar. 2, 2011, 2011 CPD ¶ 66 at 4; GC Servs. Ltd. P'ship, B-298102, B-298102.3, June 14, 2006, 2006 CPD ¶ 96 at 6. In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate the quotations; rather, we will examine the

⁴ University Loft initially argued (including in its agency-level protest) that Dehler's FSS contract did not include a tool-free hook assembly bed, contrary to FAR subpart 8.4 and the RFQ, but has essentially abandoned that argument, asking that the protest be decided on the issue of whether the quoted bed meets the requirement for a tool-free hook assembly. See Protester's Comments at 1.

record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. Maybank Indus., LLC, B-403327, B-403327.2, Oct. 21, 2010, 2010 CPD ¶ 249 at 5; OPTIMUS Corp., B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4.

Clearly stated technical requirements are considered material to the needs of the government, and a quote that fails to conform to material solicitation requirements is technically unacceptable and cannot form the basis for award. Carahsoft Tech. Corp., B-401169, B-401169.2, June 29, 2009, 2009 CPD ¶ 134 at 5. It is well established that a technically unacceptable proposal cannot be considered for award. Analytic Servs., Inc., B-405737, Dec. 28, 2011, 2012 CPD ¶ 16 at 13.

We find that the Marine Corps did not reasonably evaluate the technical acceptability of Dehler's quotation in a manner consistent with the RFQ. The contemporaneous evaluation record does not evidence that the agency considered whether Dehler's bed included a hook assembly.⁵ See AR, Tab D, Technical Evaluation, at 5. While we are mindful that where, as here, an agency places an order under a BPA, limited documentation of the source selection is permissible, the agency must at least provide a sufficient record to show that the source selection was reasonable. See, e.g., e-LYNXX Corp., B-292761, Dec. 3, 2003, 2003 CPD ¶ 219 at 8. Here, as we discuss above, the record consists of the technical evaluator's sheet with three checkmarks and no comments. AR, Tab D, Technical Evaluation, at 5. Moreover, as we also discuss above, Dehler's quotation did not describe (and the quotation's one-page technical drawing did not depict) its bed's assembly method. AR, Tab C, Dehler Quotation, at 3, 6.

To the extent that the agency now purports to explain the basis for its evaluation and source selection decisions, arguing that Dehler's quoted bed complied with the specifications, we find its explanations unpersuasive and unsupported by the contemporaneous evaluation record. The RFQ explicitly required that vendors' bunk beds have a hook assembly. RFQ at 9. As the protester correctly points out, however, Dehler's bed frame assembly simply does not include a curved "hook" as

⁵ In fact, the record suggests that the agency did not consider whether the bed met the dimensional limits specified in the RFQ. Inexplicably, the evaluation record does not address a discrepancy in Dehler's quotation between the dimensions of its bed as indicated on its technical drawing and the dimensions listed in the narrative description, even though both show some degree of noncompliance with the RFQ's specifications. AR, Tab C, Dehler Quotation, at 3, 6. The narrative description indicates that Dehler's bed was narrower, taller, and longer than the dimensional limits specified in the RFQ; while the technical drawing indicates that the bed was taller and longer in that regard. Compare id. with RFQ at 9.

that term is plainly understood.⁶ Further, we agree that the agency's interpretation of the term "tool-free hook assembly" to include "where bed rails catch on a bolt" is unreasonable.⁷ See Carasoft, *supra*, at 4-5 (protest sustained where agency unreasonably found that awardee satisfied RFQ's minimum technical specifications); see, e.g., Window Sys. Eng'g, B-222599, Aug. 27, 1986, 86-2 CPD ¶ 230 at 3 (protest sustained where solicitation specifications may not have reflected agency's need and protester's interpretation of specification as requiring a different item is reasonable).

RECOMMENDATION

The agency reports that all of the required furniture, including the beds, has been delivered and that installation is complete with one exception not relevant here. Agency Email to GAO, Dec. 10, 2012. Under these circumstances, corrective action is not available. See Bosco Contracting, Inc., B-270366, Mar. 4, 1996, 96-1 CPD ¶ 140 at 4. We therefore recommend that University Loft be reimbursed for the costs of preparing its quotation, as well as the reasonable costs of filing and pursuing the protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d) (2012). University Loft should submit its certified claims for costs directly to the contracting agency within 60 days after receipt of this decision. *Id.*, § 21.8(f)(1).

The protest is sustained.

Susan A. Poling
General Counsel

⁶ The ordinary and commonly understood meaning of "hook" is "a curved or bent device for catching, holding, or pulling" or "something curved or bent like a hook," Merriam-Webster's Dictionary, www.merriam-webster.com/dictionary/hook, or "a curved or sharply bent device, usually of metal, used to catch, drag, suspend, or fasten something else." The American Heritage Dictionary, www.ahdictionary.com/word/search.html?q=hook.

⁷ Although we need not (and do not) decide whether a "hook assembly" is an industry standard, the protester has adduced persuasive evidence supporting its argument that the agency's interpretation of the specification is unreasonable.