

July 24, 1996

P.S. Protest No. 96-10

GUSTAFSON ENTERPRISES, INC.

Solicitation No. 102590-96-A-0076

DIGEST

Protest against award of an acrylic retail fixtures supply contract to higher-priced offeror is denied where protester's low technical score precluded its proposal from being considered the best value.

DECISION

Gustafson Enterprises, Inc., timely protests the award of a contract for the delivery of acrylic retail fixtures to a higher-priced offeror.

Headquarters Purchasing issued Solicitation 102590-96-A-0076 on May 7, 1996, seeking offers to provide the fixtures (sometimes referred to in the solicitation as "acrylics") for four market test geographical areas under the Retail Market Upgrade Pilot Program.¹ The solicitation stated that the acrylics were to be delivered in five phases between June 1 and August 1, 1997, but Amendment A01 acknowledged that June 1 was too soon after the May 21 offer due date to allow for fabrication of the supplies, and requested offerors which were unable to meet that date to "submit with your proposal the best acceptable date that you will be able to achieve for Phase I."

Section J.3 of the solicitation stated:

¹ The solicitation identified 52 different fixtures, of which 47 were to be supplied in quantities ranging from 84 to 4,520.

It is essential that the offeror's proposal be complete and contain all of the information required herein. The effectiveness and accuracy of the evaluation process depend heavily upon the adequacy of information and the extent of understanding of the requirements by prospective contractors. The proposal shall be arranged in sections and must include all the information required and be in the same sequence as the evaluation factors and subfactors set forth in Section M.

The same section went on to list the "acceptable minimum requirements for the format and content of proposals." Technical proposals were to "contain a detailed technical discussion and description of the offeror's methodology to be used. . . ." Management proposals were to provide "detailed information to demonstrate [the offeror's] capability to manage the program and achieve stated objectives" Section J.3 instructed offerors to give details of their plans for organizing resources for the project and for problem solving, their quality control procedures, and their management techniques and controls.

Section M.1 stated:

Any award(s) to be made shall be based on the best overall proposal with appropriate consideration given to the major factors: Management (with specific attention to schedule and past performance), Technical and Price. The best overall proposal is considered to be one which has the lowest risk and highest degree of credibility among the Management, Technical and Price factors. Of these three factors, Management is the most important, and is of greater weight than the other two factors. Selection of the contractor(s) shall be made on the basis of an integrated assessment of each offeror's ability to satisfy the requirements of this solicitation. In essence the integrated assessment shall involve a determination by the USPS of the overall value of each proposal judged in terms of capability in concert with price to the USPS. . . . The USPS reserves the right to award to other than the lowest price offeror.

The solicitation was sent to eight potential sources, three of which, Polyfab, Scope and Gustafson, submitted proposals. On May 23, the technical evaluation committee evaluated the three proposals. Polyfab received high technical marks but offered the highest price; Scope's price was lower than Polyfab's, as was its technical score; and Gustafson, the lowest-priced offeror, received the lowest technical score. The difference between Gustafson's and Scope's technical scores was significant. The contracting officer chose Scope as the best value, making a "trade-off" judgment involving price and other factors in accordance with Procurement Manual (PM) 4.2.5 b.2.

The technical evaluators explained in a May 29 memorandum that they had downgraded

Gustafson because its proposal "was lacking in significant detail on the 'approach' section under the Management category. In addition, their submission did not address the 'quality control' section to fully evaluate Gustafson against the factors called for in the solicitation." Gustafson's proposal stated that it would manufacture "and have all products for Phase I in appropriate warehouses within nine (9) days after contract award." However, the contracting officer felt that Gustafson's explanation of how it intended to accomplish that delivery was inadequate.² Award to Scope occurred on May 29. This protest followed.

The protester asserts that the ranking of the proposals was flawed because its price was significantly less than Scope's and its proposal met the solicitation requirements. The protester states that it was told in a telephone debriefing on June 4 that the reason that it did not receive the award was that its proposal did not explain how it could make delivery within nine days after award. The protester states that it did include such an explanation and that it was in the correct section of its proposal. The protester asserts that although it was informed in its debriefing that the Postal Service understood the "industry standard" for delivery to be four to six weeks, Gustafson's "production schedule [for other Postal Service orders] would have allowed [it] to produce the products within the nine (9) day time frame." Finally, the protester asserts that it was told that the awardee's delivery schedule was 10 days, and asks why that was acceptable while nine was not.³

The contracting officer's statement on the protest asserts that the fact that Gustafson received the lowest technical evaluation score of the three offerors "clearly indicates that Gustafson was not in the technically acceptable range." The contracting officer asserts that the protest is without merit also because:

- The solicitation stated that award would go to the proposal offering the best value to the Postal Service, not the lowest price. Gustafson's low technical score precluded its consideration as the best value.

- Gustafson's statement that it could have all Phase I products delivered within nine days did not give the evaluation committee sufficient information to judge whether Gustafson actually could meet that date.

² Gustafson's proposal stated:

Over 96 % of all orders are capable of being shipped immediately since minimum inventory levels are maintained based on usage figures and expected orders. At order entry time the computer will generate an inventory status report on any items that cannot be shipped. We have a constant "feel" for incoming orders because [the manager] is in daily contact with district offices.

³ According to the contracting officer, Scope's proposal actually stated that the first shipment would be made two weeks after award and that it would take six weeks to complete Phase I.

-- The proposal did not meet the requirements of section J.3 b.1.(b) to furnish information "on the overall management techniques and controls that [it] would apply to the program" so that its "entire overall management techniques and controls [planned in order] to meet [the] delivery date" could be evaluated.

-- The protester's proposal failed to address the section on quality control at all. "We could not request . . . clarification on this section without having Gustafson do a major revision to their proposal."

The protester did not reply to the contracting officer's statement.

DISCUSSION

The determination of the relative merits of technical proposals is the responsibility of the contracting office, which has considerable discretion in making that determination. It is not the function of our office to evaluate technical proposals or resolve disputes on the scoring of technical proposals.

In reviewing a technical evaluation, we will not evaluate the proposal *de novo*, but instead will only examine the contracting officer's evaluation to ensure that it had a reasonable basis. The protester bears the burden of showing that the technical evaluation was unreasonable.

Standard Register; Moore Business Forms, Inc., P.S. Protest No. 92-68, November 23, 1992. The protester has not met its burden of proof. Gustafson failed to submit information specifically required by the solicitation for quality control, and did not provide the "detailed" information listed in section J.3 b. in the format which that section required it. For example, section J.3 b.1.(a)(2) asked offerors to send "examples, samples and list" for "Instructions for installation of acrylic fixture units." Gustafson responded that "[w]e have not supplied instruction sheets for acrylic fixture units to date. [W]e have included instruction sheets of some of our other Postal Products." Section J.3 b.1.(b)(2) stated that to demonstrate its capability to deliver, the offeror "shall submit" the "production schedule for the initial order." Gustafson's proposal merely stated that it would make the delivery within nine days (footnote 3). Similarly, Gustafson's proposal attached only a narrative summarizing its management structure and philosophy regarding quality and safety, and discussing the qualification of its personnel, rather than information describing its management proposal in the format directed by section J.3. Scope's proposal, on the other hand, was consistent with that format.

The consequences of an incomplete or inadequately written proposal fall on the offeror; the contracting officer is not obligated to seek information which should have been included in the proposal. *Service America Corporation*, P.S. Protest No. 91-56, October 30, 1991. Here, it was not unreasonable for Gustafson's proposal to be given a low technical score; since the solicitation required a quality control plan and other omitted information

pertaining to management plans and capabilities, the evaluators also could have rejected Gustafson's proposal as technically unacceptable without assigning it a score and without any consideration of its price.⁴

The protest is denied.

William J. Jones
Senior Counsel
Contract Protests and Policies

⁴ A technically unacceptable proposal cannot offer the "best value" even if it has the lowest price. *CIR Industrial Automation, Inc.*, P.S. Protest No. 95-47, April 29, 1996.

That is not to say, however, that Gustafson's proposal was, in fact, found technically deficient in this case. Section K.6 stated that the Postal Service intended to make award without discussions, and the protest file indicates that no substantive discussion of the technical and management proposals occurred. However, the purchasing specialist assigned to the procurement did request offerors to submit best and final price offers (BAFOs). That request for BAFOs constituted discussions (see, e.g., *Government Contract Advisory Services, Inc.; B & B General Contracting, Inc.*, P.S. Protest Nos. 93-21; 93-25, December 16, 1993). Discussions are to be held only with offerors whose offers are within the competitive range, which consists of "all proposals that have a reasonable chance of being selected for award, either as submitted or as revised following discussions." PM 4.2.5.g 2.(a). That Gustafson was asked to submit a price BAFO without being requested to address technical aspects of its proposal suggests that its proposal was not regarded as technically deficient, since proper discussions in such a case would have addressed any identified deficiencies. PM 4.2.5 g.3.(a).