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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Commercial Window Shield

File: B-400154

Date: July 2, 2008

Christopher Hensien, Esq., Kevin J. Kenney & Associates, Ltd., for the protester.
Jonathan S. Baker, Esq., Environmental Protection Agency, for the agency.
Edward Goldstein, Esq., and Christine S. Melody, Esq., Office of General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly evaluated vendor's quotation is denied where the evaluation was consistent with the request for quotations and the protester's arguments reflect mere disagreement with the agency's technical judgments.

DECISION

Commercial Window Shield (CWS) protests the issuance of an order to SOLAR Security Films under request for quotations (RFQ) No. RGSMD121107, issued by the Environment Protection Agency (EPA) for providing and installing security film on windows at various EPA facilities. CWS challenges the agency's evaluation of its quotation and best value award decision.

We deny the protest.

The RFQ, issued on December 11, 2007 to vendors on General Services Administration Federal Supply Schedule (FSS) 56, provided for the issuance of a fixed-price order to provide and install security film to windows at various EPA facilities. An order was to be issued to the vendor whose quotation was evaluated as the "best value" to the government, considering four technical evaluation factors listed in descending order of importance: (1) approach and schedule, (2) experience, (3) organization and staffing, and (4) past performance, as well as price. When combined, the technical evaluation factors were more important than price.

Five quotations, including those from CWS and SOLAR, were received and evaluated. CWS and SOLAR were the two highest technically rated vendors. CWS received technical ratings of "above average" under the first two technical factors (approach and schedule, and experience), a rating of "average" under the third factor

(organization and staffing), and a rating of “outstanding” under the fourth factor (past performance). Overall, CWS was rated as “above average” and had a total evaluated price of \$313,473. SOLAR was also rated “above average” overall and had a substantially lower total evaluated price of \$210,842.53. Given CWS’s and SOLAR’s overall technical ratings of “above average” and SOLAR’s lower price, the agency determined that the quotation submitted by SOLAR represented the best value. Agency Report (AR), Tab 6, Source Selection Determination. After learning of the agency’s decision to issue the order to SOLAR, CWS filed this protest.

In its protest, CWS argues that the EPA’s evaluation of its quotation under the first three technical evaluation factors was flawed. Specifically, under the first technical evaluation factor (approach and schedule), CWS challenges the EPA’s conclusion that its proposed schedule failed to provide details on the major activities at each site and was therefore inadequate. Under the second factor (experience), CWS contends that the “above average” rating it received cannot be reconciled with its “outstanding” rating under the past performance factor since the EPA considered the same information under both factors. Regarding its “average” rating under the third factor (organization and staffing), CWS contends the EPA unreasonably determined that its quotation created a performance risk by failing to identify the installers who will be working on the EPA sites and how the installers are selected. Lastly, CWS asserts that the EPA’s selection decision was inconsistent with the RFQ because it was “based upon the lowest-priced, technically acceptable submission” instead of a tradeoff between the technical factors and price.

In reviewing protests of an agency’s evaluation, our Office does not reevaluate vendors’ quotations; rather, we review the record to ensure that the agency’s evaluation was reasonable and consistent with the terms of the solicitation. See GC Servs. Ltd. P’ship, B-298102, B-298102.3, June 14, 2006, 2006 CPD ¶ 96 at 6; RVJ Int’l, Inc., B-292161, B-292161.2, July 2, 2003, 2003 CPD ¶ 124 at 5. A protester’s mere disagreement with the agency’s judgment is not sufficient to establish that an agency’s judgments are unreasonable.

The evaluation and source selection here were unobjectionable. Regarding the approach and schedule factor, vendors were required to provide information explaining how they would address five steps in applying security window film: (1) preparing the work area, (2) cleaning the glass, (3) cutting the film to size, (4) installing the film, and (5) finishing. In addition, vendors were to provide “an estimated project schedule showing execution of the project from issuance of the Task Order to completion and acceptance of the buildings” and “should provide sufficient information to understand the proposed flow of activities for the project, and the duration and coordination of major activities at each building site, and from location to location.” RFQ at 2. CWS’s quotation addressed the schedule element by providing a summary chart, which listed each site, the number of days required to perform a site visit, the number of panes of glass and square feet of film required at each site, the number of days required to perform the work at each site and the

month in which the site visit and installation were to be occur. CWS's Quotation, Schedule Summary.

In evaluating CWS's schedule information, the EPA found it to be "adequate" and noted that it lacked details on the major activities at each site. AR, Tab 6, Source Selection Determination, at 4. CWS argues that the information it provided was more than adequate given the "simple and straight forward" nature of the work and the fact that a firm schedule would be coordinated after award. Comments, June 19, 2008, at 6. Regarding the latter point, the fact that a firm schedule would be coordinated after award did not negate the requirement in the RFQ for vendors to provide an "estimated project schedule," detailing the vendor's execution of the project from start to finish. As to CWS's former argument, given the discretion afforded the agency in performing its technical evaluation and the fact that the argument is premised entirely on its own opinion of the quality of its quotation, there is nothing to suggest that the EPA acted unreasonably in concluding that CWS's schedule was "adequate" and that CWS was entitled to an "above average" rating for factor 1.

Under the experience factor, CWS was rated "above average." CWS maintains that it could not have reasonably been rated less than "outstanding" since the agency considered the same information it used to rate CWS as "outstanding" under the past performance factor, and because the agency found its experience to be a strength and did not identify any weaknesses under this factor. CWS's argument, however, fails to recognize that the experience and past performance factors reflected separate and distinct concepts. Under the experience factor, the agency examined the degree to which a vendor had experience performing similar projects; under the past performance factor, the agency considered the quality of a vendor's performance history. Given the fundamentally different nature of the evaluations, a rating in one factor would not automatically result in the same rating under the other. In addition, it does not follow that the finding of a strength and the lack of weaknesses automatically entitled CWS to a rating of "outstanding." Rather, such a rating was reserved for submissions determined to "well exceed[]" the requirements and containing "numerous significant outstanding features," while the above average rating assigned to CWS under the experience factor applied where the submission was considered "good with some superior features." AR, Tab 6, Source Selection Determination, at 3. We see nothing in the record, beyond CWS's opinion of its own quotation, to support a conclusion that the agency acted unreasonably in rating CWS's experience "above average."

Regarding the third factor, organization and staffing, the EPA rated CWS's quotation as "average." Under this factor, vendors were required to provide an organizational chart indicating how it would organize and staff the project. RFQ at 3. In addressing this factor, CWS explained that it employs very few full-time installers and that it draws from a "very select group," which has been trained by CWS. CWS Quotation,

Tech. Factor III, at 3. In this regard, CWS indicated that these installers are “not subcontractors, per se.” Id.

The agency, however, had some concerns regarding the lack of clarity regarding the identity of this pool of installers, their employment relationship with CWS, and how they would be selected for each site. In the agency’s view, CWS’s staffing plan to hire installers from an unidentified labor pool presented some risk given the relatively short schedules at each site, ranging from a few days to a few weeks. AR, Tab 6, Source Selection Determination, at 5. CWS argues that the agency’s concerns are unfounded since the specific identify of the installer is insignificant and because its business model actually reduces risk by providing greater flexibility to perform the job on a timely basis. Accordingly, CWS’s maintains that its quotation should have been rated as “outstanding.” CWS’s arguments in this regard, however, amount to mere disagreement with the EPA’s assessment of its quotation on this point. While CWS may believe its business model to be superior, the agency specifically considered this issue, exercised its judgment, and rated CWS’s quotation as “average” under this factor. There simply is no basis for our Office to conclude that the agency’s exercise of its judgment in this regard was unreasonable.

As a final matter, CWS argues that the agency’s best value determination was flawed because it did not give proper weight to the technical factors, instead selecting SOLAR based upon price alone. However, because CWS and SOLAR had the same overall technical rating of “above average,” SOLAR’s substantially lower price properly became the discriminating factor for award. Where selection officials reasonably regard proposals as being essentially equal technically, price may become the determinative factor in making an award notwithstanding the fact that the evaluation criteria assigned price less importance than technical considerations. The MIL Corp., B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 14.

The protest is denied.

Gary L. Kepplinger
General Counsel