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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Dehler Manufacturing Co.

File: B-250850

Date: February 17, 1993

Sam Z. Gdanski, Esq. for the protester.
Christy L. Gherlein, Esq., General Services Administration, for the agency.
Shirley A. Jones, Esq., and Sheila K. Ratzenberger, Esq., Office of the General Counsel, participated in the preparation of the decision.

DIGEST

Agency properly excluded proposal from the competitive range where the agency reasonably concluded that the offeror had no reasonable chance of award because of numerous deficiencies in its preaward sample.

DECISION

Dehler Manufacturing Co. protests the elimination of its proposal from the competitive range under RFP No. 3FNM-91-D201-N(1) as amended, issued by the General Services Administration (GSA) for dormitory furniture for Fort Campbell, Kentucky. We deny the protest.[1]

The RFP contained purchase descriptions for the three types of furniture covered under the solicitation. The three types of furniture include a box bed with headboard and two drawers, a three-door wardrobe, and a one-piece desk-chest wall unit. Although the contractor selected for award would be required to furnish all three types of furniture, offerors were required to submit a preaward sample of only the wall unit to be evaluated.

[1]A protective order was issued in this case, and Dehler's counsel was admitted under the protective order and received access to protected material.

A Source Selection Evaluation Board (SSEB) consisting of three evaluators was formed for the purpose of evaluating the preaward samples. The RFP indicated that the preaward samples would be evaluated by the SSEB for design, finish, operation, and workmanship with each of these four technical factors being of equal importance. The RFP also indicated that technical quality would be more important than price.

The preaward samples for all proposals were initially evaluated by the SSEB and each evaluator gave the samples a technical grade of A (Highly Acceptable), B (Acceptable), C (Marginally Acceptable), or D (Unacceptable). After the proposals were evaluated individually, the SSEB met to determine the consensus score for each sample.

Based on its determination that Dehler's preaward sample was unacceptable, the SSEB recommended that Dehler be excluded from the competitive range. Thereupon, the contracting officer accepted the SSEB's recommendation and excluded Dehler's proposal. By letter dated October 5, 1992, Dehler was informed that no negotiations would take place between it and GSA.

The crux of Dehler's protest is that its proposal should have been included in the competitive range and its evaluated deficiencies made the subject of discussions and the preaward sample corrected. Dehler contends that each of the identified deficiencies were either the result of ambiguous specifications or that they could be easily corrected. Dehler also contends that the prior contractor received an unfair competitive advantage by virtue of having made the items in previous years.

The evaluation of proposals and the resulting determination as to whether an offeror is in the competitive range are matters within the discretion of the contracting activity, since it is responsible for defining its needs and for deciding on the best methods of accommodating them. ARINC Research Corporation, B-248338, Aug. 19, 1992, 92-2 CPD ¶ 172. Offers that are technically unacceptable as submitted and that could require major revisions to become acceptable are not to be included in the competitive range. Id. Even where the deficiencies are minor and readily correctable through discussions, the agency may properly exclude a proposal from the competitive range where, relative to other acceptable offers, the proposal has no reasonable chance of being selected for award. The Temp Club of Virginia, B-247096, Apr. 23, 1992, 92-1 CPD ¶ 386. In reviewing an agency's evaluation, we will not evaluate the technical proposals anew but instead will examine the agency's evaluation to ensure that it was reasonable and in accordance with the RFP criteria. ARINC, supra.

We conclude on the basis of the record that GSA reasonably eliminated Dehler's proposal from the competitive range because the preaward sample contained a large number of deficiencies.

The SSEB identified 17 deficiencies in Dehler's preaward sample. These deficiencies were identified in all four areas listed for evaluation. Of particular note, some of the listed deficiencies were considered dangerous. For example, the magnet and the hasp mechanism which hold the drop lid in place in the closed position were inadequate, which resulted in the lid falling open by itself. The door hinges had sharp edges and protruded past the inside faces of the door. The drawer outstops were also very sharp. Because of its many deficiencies, Dehler's preaward sample received a consensus score of 7.5 out of a possible 100 points, which ranked it significantly lower in technical quality than the offerors included in the competitive range. These deficiencies, when viewed in the aggregate, could only have been remedied through substantial revisions to the preaward sample.

Accordingly, we find from the record that the agency properly could find the protester's proposal contained serious technical deficiencies that were unlikely to improve through discussions. The agency's decision to eliminate the protester's proposal as having no reasonable chance for award appears consistent with the evaluation and award factors established by the solicitation. Therefore, the agency was not required to conduct discussions with Dehler since Dehler's proposal was properly eliminated from the competitive range. Zell Partners, Ltd., B-248489, Aug. 31, 1992, 92-2 CPD ¶ 141.

Regarding Dehler's argument that some of the deficiencies in its preaward sample were due to ambiguities in the specifications, ordinarily, alleged ambiguities in the language of a solicitation must be protested to our Office prior to the solicitation's closing date. 4 C.F.R. § 21.2(a)(1) (1992). Where, however, the protester was reasonably unaware prior to that date that its interpretation was not the only one possible, it must protest not later than 10 working days after learning of a second interpretation. All-Bann Enterprises, Inc., B-221935, Apr. 2, 1986, 86-1 CPD ¶ 315. Here, however, the deficiencies in Dehler's preaward sample basically related to the overall operation and, in some cases, safety of the wall unit. It is difficult to imagine how the protester could have interpreted the specifications to allow, for example, hinges with sharp protruding edges or to not require the magnetic catches to actually secure the doors and drop lid in a closed position. Consequently, we find this aspect of Dehler's protest to be without merit.

Finally, Dehler contends that the scoring system favored the prior contractor by virtue of it having made these items exactly as described for many years. However, while it may have been easier for a contractor who has previously supplied the items to furnish a satisfactory sample, there is nothing legally objectionable about such an advantage so long as it does not result from unfair actions by the government. OPSYS, Inc., B-248260, Aug. 6, 1992, 92-2 CPD ¶ 83. As noted previously, because of its many deficiencies, Dehler's preaward sample received a consensus score that was significantly lower than the offerors included in the competitive range. Dehler has not shown nor do we find that any competitive advantage enjoyed here is the result of preferential or unfair action by the agency, which the agency is obligated to eliminate. Rather, we believe that Dehler's low score is attributable to the sample's many deficiencies.

The protest is denied.

James F. Hinchman
General Counsel