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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Recogniti, LLP

File: B-410658

Date: January 21, 2015

George Ianaki for the protester.

Lisa J. Obayashi, Esq., Department of Commerce, for the agency.

Gary R. Allen, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that a contracting agency improperly evaluated the awardee's past performance is denied where the record shows that the agency reasonably considered the past performance of the awardee's founder, whom the awardee proposed as a key person to perform the contract services.

2. Protest challenging the issuance of a purchase order based on a vendor's more highly-rated but higher-priced quotation is denied where the record shows that the agency's evaluation of quotations and best-value tradeoff analysis were reasonable.

DECISION

Recogniti, LLP, of Chevy Chase, Maryland, protests the issuance of a purchase order to Trea Technology Inc., of New York, New York, under request for quotations (RFQ) No. 147P1401735, issued by the Department of Commerce, Patent and Trademark Office (PTO), for a replicable methodology for disambiguating and identifying unique PTO entities from patent and trademark owner and assignee records.¹

We deny the protest.

¹Disambiguation in this context means the process of data cleansing by eliminating name ambiguity and name variation. "PTO entities" refers generically to any owner, applicant, registrant, or assignee of a patent or trademark property. RFQ at 3.

BACKGROUND

The RFQ, issued as a combined synopsis/solicitation on August 21, 2014, was set aside for small business concerns, utilizing North American Industry Classification System Code 541690 (Other Scientific and Technical Consulting Services). RFQ at 1. The RFQ explains that a major obstacle to conducting research with PTO patent and trademark data is the inherent difficulty in identifying ownership, because of names that are inconsistently recorded, alternatively abbreviated, misspelled, or inaccurately listed, among other things. The objective of this procurement is to acquire a means for removing the ambiguity concerning assignee data in order to provide researchers and other interested parties access to more complete and reliable data on patent and trademark ownership. Id. at 3.

The solicitation lists four contract line item numbers (CLINs), identifying CLIN 1 as the “basic effort” and the remaining CLINs as option items. The RFQ announced the agency’s intention to initially award at least the basic effort CLIN.² RFQ at 4. The RFQ contemplated the issuance of one or more fixed-price purchase orders for the acquisition of a replicable methodology for resolving ambiguities from existing records and identifying unique PTO entities from patent and trademark owner and assignee records.

The RFQ provided for the use of simplified acquisition procedures listed in Federal Acquisition Regulation (FAR) subpart 13.106-2(b), and listed the following three evaluation factors: technical capability, past performance, and price. RFQ at 1. The RFQ also provided for the issuance of an initial purchase order(s) to one or more vendors whose quotations were the most advantageous to the government, price and other factors considered. Id.

With respect to the technical capability factor, the RFQ instructed vendors to provide sufficient detail in their quotations to demonstrate their capability of performing the tasks identified in the statement of work. RFQ at 6. With regard to past performance, the RFQ provided past performance report forms to be completed and submitted by vendors’ references for each experience described in the technical capability portion of its quotation, showing similar type and complexity of PTO assignee disambiguation requirements. RFQ at 7.

Ten vendors, including Recogniti and Trea, responded to the RFQ. Contracting Officer’s (CO) Statement (COS) at 3. Trea’s quotation price for CLIN 1 was \$350,000 (with a total quotation price of \$820,000), whereas Recogniti’s price for CLIN 1 was \$179,250 (with a total of \$299,000). Id. at 4. The government’s

² CLIN 0001 was for “Disambiguated USPTO entities based on USPTO micro-data,” and included a list of tasks to be performed. RFP at 4-5.

estimated value for CLIN 1 is \$360,564. COS at 4; AR, Tab 11, Price Analysis Memo., at 1.

The agency's technical evaluation team (TET) initially evaluated each quotation as to technical capability and past performance. COS at 4. After receiving responses to clarification questions, the TET completed a final technical evaluation memorandum. AR, Tab 10, TET Eval. Memo.

Under the technical capability factor, the TET found that Trea's quotation provided a clear description of its methodology. The evaluation report identifies several advantages in Trea's quotation, including, for example, a process described by Trea that was deemed technically superior, and an application program interface that the TET assessed to be more detailed and developed than any of the other vendors' solutions. In addition, the evaluation report noted that because Trea had a product in place that would already meet many of the requirements, Trea would require a much shorter time to perform the work, which would also reduce any risk of nonperformance. AR, Tab 10, TET Eval. Memo., at 3.

For past performance, the TET report notes that one of Trea's references submitted a past performance form for both Trea and its founder, describing financial data and related services that were performed. AR, Tab 10, TET Eval. Memo., at 4. Most of the performance categories on the form were rated outstanding, the highest rating available. Any remaining categories were rated good. AR, Tab 7, Trea Quotation, at 59-60. The TET also noted that Trea's past performance included related experience with linking owner-name data to financial and corporate structure data. AR, Tab 10, TET Eval. Memo., at 4.; see AR, Tab 7, Trea Quotation, at 9.

With respect to the evaluation of Recogniti's technical quotation (not directly at issue here), the TET expressed a number of concerns, especially as to its clarity, specificity, and lack of complete solutions, and noted, particularly, that Recogniti did not appear to have any trademark experience. AR, Tab 10, TET Eval. Memo., at 2. Id. With respect to past performance, the TET found that Recogniti's three past performance reports rated Recogniti outstanding all around. Id. at 3. The TET noted, however, that Recogniti's past performance was generally not targeted towards owner name disambiguation and linking to corporate data. Id.

The agency performed a price analysis and found that there was a large disparity in quoted prices, ranging from approximately \$300,000 to \$14 million.³ AR, Tab 11, Price Analysis Memo., at 1. The CO recognized that three quotations were lower-priced than Trea's quotation, including Recogniti's lowest-priced quotation, but

³ The CO decided that all price quotations in excess of \$4.9 million far exceeded the government estimate for CLIN 1 of \$360,564, and, therefore, eliminated those quotations from further consideration. Id.

observed that those quotations offered solutions that did not entirely conform to the requirement, and entailed certain risks that the evaluation team identified. In addition, the CO concluded that Trea's price for CLIN 1 was fair and reasonable because it was lower than the government estimate. Moreover, the CO determined that the particular features, benefits, and advantages of Trea's technical capabilities and past performance justified paying more to satisfy the requirement's overall objectives. AR, Tab 11, Price Analysis Memo., at 2.

The CO found that Trea's quotation was the most advantageous to the government. AR, Tab 12, Award Decision, at 2. A purchase order for CLIN 1 was issued to Trea on September 30, 2014, and the agency notified unsuccessful vendors on October 1. This protest followed.

DISCUSSION

Recogniti challenges the agency's evaluation of Trea's past performance and the ensuing best value determination. Protest at 1-2. The crux of Recogniti's protest is that Trea could not have shown adequate past performance because it was incorporated only eight days before the deadline for submission of past performance questionnaires, and that its evaluation was therefore unreasonable. Protest at 1.

Our Office examines an agency's evaluation of past performance to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations; however, the necessary determinations regarding the relative merits of offerors' proposals are primarily matters within the contracting agency's discretion. Advanced Environmental Solutions, Inc. B-401654, Oct. 27, 2009, 2010 CPD ¶ 7 at 5. In this regard, our Office will not question an agency's determinations absent evidence that those determinations are unreasonable or contrary to the stated evaluation criteria. Id.

Despite the protester's concerns about Trea's recent incorporation, we note that Trea provided at least one past performance reference. AR, Tab 7, Trea Quotation, at 59-61. Furthermore, the agency's consideration of past performance attributable to Trea's founder was consistent with the FAR, which specifically permits agencies "to take into account past performance information regarding . . . key personnel, who have relevant experience . . ." ⁴ See FAR § 15.305(a)(2)(iii) (2014). Here, Trea's quotation names the firm's founder and describes his role in developing the technology and methodology Trea uses. AR, Tab 7, Trea Quotation, at 7, 9. With respect to the founder's proposed role in performing this work, the founder is listed

⁴ In any event, under FAR § 15.305(a)(2)(iv), Trea would have been entitled to a neutral past performance rating, even if it had no record of relevant past performance or if there were no information available on its past performance.

among Trea's key members and is identified as the program manger and software architect. Id. at 7. On this record, we find no basis to question the reasonableness of the agency's past performance evaluation of Trea's quotation.

The protester also disputes the agency's best value determination, arguing that the agency should have made award to the protester because it was technically acceptable, had outstanding past performance, and offered a significantly lower price than Trea. Protest at 2.

As noted above, the RFQ provided for evaluating quotations under the simplified acquisition evaluation procedures listed in FAR § 13.106-2(b). When using these procedures, an agency must conduct the procurement consistent with a concern for fair and equitable competition and must evaluate quotations in accordance with the terms of the solicitation. Emergency Vehicle Installations Corp., B-408682, Nov. 27, 2013, 2013 CPD ¶ 273 at 4. In reviewing protests of an allegedly improper simplified acquisition evaluation and award selection, we examine the record to determine whether the agency met this standard and exercised its discretion reasonably. JRS Staffing Services, B-409360 et al., Mar. 27, 2014, 2014 CPD ¶ 105 at 5.

The record reflects that the agency evaluated both Recogniti's and Trea's quotations as to technical capability, past performance and price, in accordance with the RFQ criteria, and reasonably found Trea's quotation to be technically superior. Recogniti does not challenge the agency's evaluation of Trea's technical capability, nor does the protester provide any basis to question the manner in which the protester's own quotation was evaluated. In response to the agency's detailed discussion of weaknesses in the protester's quotation, Recogniti, in many instances, does not dispute the agency's findings, or otherwise show that the agency's evaluation was not consistent with the RFQ requirements. Instead, the protester seeks to explain why it omitted certain information from its quotation. Protester's November 4, 2014 Comments on Agency's October 31 E-Mail.⁵ For example, where the agency found weaknesses in Recogniti's quotation based on a lack of clarity or specificity, Recogniti states that it would provide more comprehensive data and information as part of its CLIN 1 deliverables. Id. at 2, 3. In another example, where the agency noted that the protester's quotation lacked a complete solution, Recogniti responds that "details were intentionally not provided in our [quotation] to allow [an] easier read." Id. at 2.

⁵ On October 31, 2014, two weeks prior to submitting its agency report, the agency provided an e-mail to the protester that detailed the agency's technical evaluation of the protester's quotation contained in the TET Evaluation Memorandum. The protester responded with an e-mail on November 4.

It is a vendor's responsibility to submit a well-written quotation with adequately detailed information that clearly demonstrates compliance with the solicitation requirements. IBM Global Business Serv. - U.S. Federal, B-409029, B-409029.2, Jan. 27, 2014, 2014 CPD ¶ 43 at 8. Here, the RFQ required vendors to demonstrate understanding of and capability to meet the requirements of the RFQ, including the relevant methodologies for identifying PTO entities from patent and trademark owner and assignee records. Consequently, the protester was on notice that the agency would evaluate such considerations, and the onus was on Recogniti to submit sufficiently detailed information in its quotation to meet these requirements.

While Recogniti contends that its low price should have been the determining factor, the RFQ did not make price more significant than the technical factors. On the contrary, the RFQ did not specify the relative importance of the individual evaluation factors and, in the absence of any indication in the RFQ of the relative importance among the individual evaluation factors, they are presumed to be of equal importance. See Hyperbaric Techs., Inc., B-293047.2, B-293047.3, Feb. 11, 2004, 2004 CPD ¶ 87 at 4; Maryland Office Relocators, B-291092, Nov. 12, 2002, 2002 CPD ¶ 198 at 5.

Agency officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Price/technical tradeoffs may be made, and the extent to which one is sacrificed for the other is governed by the test of rationality and consistency with the established factors. Dew Drop Sprinklers & Landscaping, B- 293963, July 15, 2004, 2004 CPD ¶ 171 at 4; Structural Preservation Sys., Inc., B-285085, July 14, 2000, 2000 CPD ¶ 131 at 7. An agency may properly select a more highly-rated quotation over one offering a lower price where it has reasonably determined that the technical superiority outweighs the price difference. Dew Drop Sprinklers & Landscaping, *supra*; Sawtooth Enters., Inc., B-281218, Dec. 7, 1998, 98-2 CPD ¶ 139 at 4.

Here, the CO selected Trea's quotation as the most advantageous to the government based on the superior technical capability and minimal risk identified in its evaluation, its past performance, and its reasonable price. AR, Tab 12, Award Decision, at 2. In making this determination, the CO specifically found that the conforming features, benefits, and advantages identified in Trea's quotation's capability description and past performance justified paying the quotation's higher price. AR, Tab 11, Price Analysis Memo., at 2; *Id.*, Tab 12, Award Decision at 6. Recogniti has furnished no basis for our Office to question this determination.

The protest is denied.

Susan A. Poling
General Counsel