



Decision

Matter of: Iron Vine Security, LLC - Costs

File: B-403578.3

Date: April 15, 2011

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DIGEST

Protester is not entitled to reimbursement of protest costs after agency took corrective action where protest was not clearly meritorious.

DECISION

Iron Vine Security, LLC, of Annandale, Virginia, requests that our Office recommend that the U.S. Agency for International Development (USAID) reimburse its costs of filing and pursuing its protest of the award of a blanket purchase agreement (BPA) to Open System Sciences (OSS), of Newington, Virginia, under request for quotations (RFQ) No. REQ-CIO-10-000069 for information system security services.

We deny the request.

BACKGROUND

The RFQ provided for the award of a BPA under the General Services Administration's Federal Supply Schedule 70 for information security support services for the USAID Chief Information Security Officer and Chief Privacy Officer. RFQ at 3. Vendors were informed that award would be made on a best value basis, considering price and the following evaluation factors: technical approach and competencies, key and support personnel, and past performance. *Id.* at 3, 5. The non-price factors, when taken together, were stated to be more important than price, but as the technical factors became more equal price may become the determining factor. *Id.* at 5.

With regard to the technical approach and competencies factor, the RFQ required vendors to provide technical approaches and solutions that define a clear and complete description of its technical approach for performing tasks identified in the performance work statement (PWS). Id. at 5. The RFQ further stated that under the technical approach and competencies factor, vendors would be evaluated on their ability to demonstrate knowledge and experience to perform the functional tasks outlined in the PWS. Id. at 10.

With regard to the key and support personnel factor, the RFQ required vendors to demonstrate that key personnel hold current industry standard certifications such as Project Management Professional, Certified Information Security Manager, and Certified Information System Security Professional. Id. at 6. The RFQ further stated that vendors would be evaluated on the competency of the key technical and program management personnel to the degree they possess the qualifications to perform the job well. Id. at 11.

The BPA scope of work encompassed a broad range of tasks to support the Information System Security Program and the USAID Privacy Program, including providing subject matter expertise on federal information system security and privacy policies, regulations and standards, and providing audit and compliance support. Id. at 14. The PWS also identified specific tasks the contractor would be required to perform. For example, under the intrusion detection and incident response task, the contractor would be required to perform data loss prevention and server audit logging activities. Id. at 18. With regard to privacy issues, the PWS required the contractor to provide privacy impact assessment services under the risk management support task and to develop, facilitate, track, and report on privacy awareness training under the training management task. Id. at 16, 17.

USAID received quotations from four vendors, including Iron Vine and OSS. Contracting Officer's (CO) Statement at 2. The technical evaluation team (TET) individually reviewed and assigned numeric scores to the quotations for each of the non-price evaluation factors, which were used to calculate consensus scores. Id. at 3-4. The TET then ranked the quotations based on the scores for each evaluation factor and overall scores. Id. at 4; Agency Report (AR), Tab 13, TET Final Report, at 1-2. Quotation prices were evaluated by the price evaluation team. CO Statement at 4. The contracting officer, who also was the source selection authority, reviewed the TET's final report, conducted a trade-off analysis, and concluded that OSS's quotation reflected the best value to the government. Id. at 4-5, 9. The BPA was awarded to OSS. Id. at 5.

Following a debriefing, Iron Vine protested to our Office challenging the evaluation of quotations and the award decision. The protester raised a number of arguments in its initial protest, including, as relevant here, that USAID failed to evaluate quotations in accordance with solicitation, failed to properly document its tradeoff

analysis and source selection decision, and made an unreasonable award decision.¹ See Protest at 2.

Following receipt of the agency's report, Iron Vine filed a supplemental protest, arguing that USAID improperly assessed a deficiency in evaluating Iron Vine's proposal under the technical approach and competencies factor, and unreasonably compared the prices offered by Iron Vine and OSS. See Supp. Protest at 2-7. As relevant here, Iron Vine also asserted, in its comments on the agency report, that OSS's quotation exceeded the page limitation in the RFQ. Comments at 14. On October 1, prior to the due date for its supplemental report, USAID advised our Office that it was taking corrective action because of an ambiguity in the RFQ's page limitation. Request for Dismissal at 1. We dismissed Iron Vine's protest as academic.

DISCUSSION

Iron Vine requests that we recommend that the agency reimburse its costs of pursuing its initial and supplemental protests. Iron Vine argues that USAID unduly delayed taking corrective action where Iron Vine's protest grounds were clearly meritorious. Based on the record before us, we cannot conclude that Iron Vine's initial protest grounds were clearly meritorious.

When a procuring agency takes corrective action in response to a protest, our Office may recommend reimbursement of protest costs, including reasonable attorneys' fees, if, based on the circumstances of the case, we determine that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest, thereby causing the protester to expend unnecessary time and resources to make further use of the protest process in order to obtain relief. 31 U.S.C. § 3554(c)(1)(A) (2006); Bid Protest Regulations, 4 C.F.R. § 21.8(e) (2010); AAR Aircraft Servs.--Costs, B-291670.6, May 12, 2003, 2003 CPD ¶ 100 at 5. The mere fact that an agency decides to take corrective action does not also establish that a statute or regulation clearly has been violated. Contrack Int'l, Inc.--Costs, B-401871.3, Feb. 17, 2010, 2010 CPD ¶ 122 at 4. Thus, as a prerequisite to our recommending the reimbursement of costs where a protest has been settled by corrective action, not only must the protest have been meritorious, but it also must have been clearly meritorious, *i.e.*, not a close question. Apptis Inc.--Costs, B-402146.3, Mar. 31, 2010, 2010 CPD ¶ 123 at 4. A protest is clearly meritorious where a reasonable agency inquiry into the protester's allegations would reveal facts showing the absence of a defensible legal position. Yardney Technical Prods., Inc.--Costs, B-297648.3, Mar. 28, 2006, 2006 CPD ¶ 65 at 4.

¹ Iron Vine also argued in its initial protest that USAID may have conducted improper discussions and shown favoritism toward OSS. In our view, however, Iron Vine abandoned these arguments when it did not address the agency's answer to these allegations, when it submitted in its comments on the agency report. See Cedar Elec., Inc., B-402284.2, Mar. 19, 2010, 2010 CPD ¶ 79 at 3 n.4.

Here, we find no basis to conclude that Iron Vine's initial protest grounds were clearly meritorious, which is an essential prerequisite to its request for costs. See Taylor Consultants, Inc.-Costs, B-400324.3, Feb. 2, 2009, 2009 CPD ¶ 37 at 3. Although Iron Vine argued in its initial protest that USAID failed to evaluate quotations in accordance with identified evaluation factors, the agency responded that its evaluated weaknesses corresponded to PWS tasks and the solicitation provided for evaluating vendors' approaches to performing PWS tasks. On this record, we do not find that the protest was clearly meritorious with respect to whether the agency used unstated factors in evaluating Iron Vine's quotation.

Iron Vine also argues that its assertion that USAID failed to document its tradeoff analysis and selection decision was clearly meritorious. The protester argues, specifically, that certain requirements of Federal Acquisition Regulation (FAR) Part 15 were not met here. However, as the agency argues, the procurement was conducted under FAR Subpart 8.4, not FAR Part 15. For procurements conducted under FAR Subpart 8.4 and requiring a statement of work, FAR § 8.405-2(e) designates the minimum documentation requirements. USGC Inc., B-400184.2 et al., Dec. 24, 2008, 2009 CPD ¶ 9 at 8-9.

We have reviewed the documentation--and the rationale for the selection decision set forth therein--and we are not prepared to conclude that the documentation was inadequate. As a result, we do not find this protest ground to be clearly meritorious.

The request for entitlement to protest costs is denied.

Lynn H. Gibson
General Counsel