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Decision

Matter of: Technatomy Corporation

File: B-411583

Date: September 4, 2015

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DIGEST

1. Protest challenging agency's evaluation of protester's quotation and its exclusion from the competition is denied where the record shows that the evaluation was reasonable and consistent with the solicitation's evaluation criteria.
 2. Protest alleging that agency conducted unequal clarifications is denied where the record shows that agency was not required to request clarifications from protester.
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DECISION

Technatomy Corporation, a small business, of Fairfax, Virginia, protests its exclusion from the competition under request for quotations (RFQ) No. D15PS00160, issued by the Department of the Interior, for program support services. The protester argues that the agency unreasonably evaluated aspects of its quotation and treated vendors unequally.

We deny the protest.

BACKGROUND

The Department of the Interior, on behalf of the Department of Defense (DoD), issued the RFQ on March 5, 2015, under the provisions of Federal Acquisition Regulation (FAR) subpart 16.5, to existing small business holders of the National Institutes of Health, Information Technology Acquisition and Assessment Center

Chief Information Officer--Solutions and Partners 3 (CIO-SP3) government-wide acquisition contract (GWAC).¹ RFQ at 1.² The solicitation sought quotations for a full range of business and technical management services for DoD's program executive office for the Defense Healthcare Management Systems (PEO DHMS). Id. at 2.

The RFQ contemplated the issuance of a hybrid fixed-price, time and materials, and cost-plus-fixed-fee (CPFF) task order with a 1-year base period and four 1-year options, to the vendor submitting the best value quotation. Id. at 2, 15. Quotations were to be evaluated using the following six factors: management approach, technical approach, corporate experience, personnel qualifications, past performance, and price. Id. at 16. All non-price factors were, individually, more important than price. Id.

The solicitation required vendors to submit their quotations in two volumes, a technical volume and a price volume. Id. at 2. With regard to the technical volume, vendors were instructed to submit a worksheet establishing that their quotation met certain minimum requirements for technical acceptability. Id. Similarly, the solicitation also required that vendors' price volumes include a completed pricing template.³ Id. at 12-13. The solicitation cautioned vendors that "[a]ny quotation that is non-compliant with any requested submission requirements of this RFQ may

¹ The CIP-SP3 GWAC is a 10-year, indefinite-delivery, indefinite-quantity (ID/IQ) multiple award contract. As the estimated value of this proposed task order under the GWAC exceeds \$10 million, this protest is within our jurisdiction. 10 U.S.C. § 2304c(e)(1)(B).

² Citations to the RFQ are to the final version issued as amendment 6, unless otherwise noted.

³ The RFQ included the pricing template as an attachment, in the form of a Microsoft Excel spreadsheet. RFQ at 12. The agency amended the solicitation on March 27, 2015, and included an updated pricing template, which added to the template an additional tab titled, statement of work labor category descriptions. RFQ amend. 3. The pricing template worksheet was subsequently changed again on April 9, by RFQ amendment 4, and updated to include two additional tabs titled "CPFF Labor Rate Buildup" and "CIO SP3 Labor Descriptions." RFQ amend. 4. This final version required vendors to input their direct labor rates and their percentage rates for fringe, overhead, general and administrative (G&A), and fixed-fee costs. Agency Report (AR), Tab 5d.5, Pricing Template amend. 004, at Tab 4. Although the agency provided formulas in the tables to assist vendors with the required calculations for the information required, the RFQ also advised vendors to change the formulas if a vendor's particular business practice was different than what was being assumed by the government's formulas. RFQ at 12; AR, Tab 5d.5, Pricing Template amend. 004, at Tab 4.

immediately be removed from further consideration,” and “[f]ailure to use the Excel template as provided . . . will be viewed as unacceptable and the Offeror will be removed from consideration for award.”⁴ Id. at 2, 13.

The solicitation stated that quotations would first be evaluated to determine whether the technical volume demonstrated compliance with the minimum requirements provided in the technical volume worksheet. Id. at 6. It also warned that if a vendor’s quotation failed to demonstrate compliance with these three key minimum requirements, it would be deemed technically unacceptable and rejected by the agency. Id. at 6, 7. The RFQ further advised that if a quotation was found to be technically unacceptable, no further evaluation would be conducted and the vendor would be eliminated from the competition. Id.

The agency received multiple quotations in response to the RFQ, including Technatomy’s.⁵ Contracting Officer (CO) Statement at 2. During the CO’s initial compliance review of the quotations, the CO determined that Technatomy’s quotation contained an incorrect version of the pricing template. Id. at 4. In this regard, the CO found that Technatomy submitted the version of the pricing template that was issued under RFQ amendment 3, and not the updated version provided by RFQ amendment 4. AR, Tab 6b.2, Technatomy Pricing Template. Based on the CO’s compliance review findings, the agency eliminated Technatomy’s quotation because it failed to comply with the RFQ requirements to submit certain pricing information (i.e. direct labor rates, and percentage rates for fringe, overhead, G&A, and fixed-fee costs).⁶

The agency notified the protester that it was being eliminated from the competition on May 8. AR, Tab 8, Elimination Letter, at 1-2. On May 15, Technatomy filed an agency-level protest challenging the agency’s decision to remove it from the competition. AR, Tab 9, Agency Level Protest, at 1-5. The agency dismissed the protest on May 19, assuming it lacked jurisdiction to hear task order protests. AR, Tab 10, Agency Dismissal Letter, at 1-2. This protest followed.

⁴ Similar language was found throughout the RFQ. For example, the RFQ stated that the agency could reject any quote that was evaluated to be significantly non-compliant with the solicitation’s requirements. RFQ at 15.

⁵ References to the “agency” herein are to the Department of the Interior.

⁶ Independent of, but contemporaneous with, the CO’s compliance review, the agency also evaluated Technatomy’s technical quotation and found the quotation to be technically unacceptable because it failed to meet the RFQ’s key minimum requirements. CO Statement at 2.

DISCUSSION

The protester raises multiple challenges to the Department of the Interior's decision to remove its quotation from the competition. Technatomy argues that the agency unreasonably rejected its quotation based on its failure to submit the correct version of the pricing template. The protester also contends that its technical quotation was improperly evaluated by the Department of the Interior as unacceptable. Finally, Technatomy asserts that the agency unfairly allowed at least one other vendor to clarify its technical quotation, and that Technatomy should have been given a similar opportunity.

Evaluation of Technatomy's Price Quotation

The protester argues that it was improper for the agency to reject its quotation based on Technatomy's failure to provide a completed copy of the pricing template issued to vendors with amendment 4. The protester first contends that this failure should be excused because the agency did not make vendors aware, when it issued amendment 6, that amendment 4 included any updates to the pricing template.⁷ Technatomy also argues that it is improper for the agency to eliminate it from the competition at this stage of the evaluation, based on defects with its price quotation, because the solicitation's evaluation terms require that technical quotations be evaluated first, not price quotations. Finally, the protester asserts that although it did not complete the pricing template issued with amendment 4, this failure was a minor informality that should have been waived by the agency. Technatomy alleges that the information that was missing from the pricing template "can be easily derived by backing out the fringe, overhead, G&A, and fee information" from the total CPFF labor rates, which it provided to the agency in other parts of its quotation. Protester's Comments at 7.

A contracting agency's evaluation of quotations is a matter within the agency's discretion. Companion Data Servs., LLC, B-410022, B-410022.2, Oct. 9, 2014, 2014 CPD ¶ 300 at 8. In reviewing an agency's evaluation, we will not reevaluate quotations; rather we will examine the evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and with procurement

⁷ Specifically, the protester argues that all changes to the solicitation were identified by the agency in different colored highlighted text, and that the final amendment issued by the agency constituted a conformed copy of the RFQ. Technatomy argues that it was not required to use the updated pricing template that was issued with amendment 4, because the RFQ text identifying the pricing template in the agency's last amendment was not highlighted. The protester asserts that it was therefore reasonable for it to "conclude that the [p]ricing [s]preadsheet had not changed and [that it] reasonably relied on the older version of the [p]ricing [s]preadsheet as a part of its submission." Protest at 10.

statutes and regulations. Id. It is the agency's role to define both its underlying needs and the best method of accommodating those needs, and it is within the agency's discretion to reject as unacceptable quotations that do not meet the requirements that it defines. Id. A vendor's disagreement with the agency's actions is insufficient to render those actions unreasonable. Id.

We find that the agency reasonably eliminated Technatomy's quotation from the competition. First, we find no merit to the protester's argument that its failure to provide the final version of the pricing template should be attributed to the agency, simply because the agency did not highlight the fact that the pricing template had been updated by amendment 4, in the final RFQ amendment. Technatomy acknowledged receipt of all RFQ amendments, including amendment 004, which contained the updated pricing template.⁸ AR, Tab 6a.2, Technatomy Cover Letter, at 2. The protester does not dispute that amendment 4 provided vendors with an updated version of the pricing template. Furthermore, amendment 4 added highlighted text to the underlying RFQ, which notified vendors that they had to provide additional information, required by the updated pricing template. RFQ amend. 4, at 12. Additionally, all vendors, other than Technatomy, successfully identified and submitted the correct version of the pricing template with their quotations. CO Statement at 15. Thus, we have no basis to conclude that the last RFQ amendment's lack of highlighting in any way affected Technatomy's ability to submit a compliant quotation.

Next, Technatomy argues that the Department of the Interior could not properly exclude its quotation based upon information contained in its price quotation because the RFQ required the agency to first evaluate technical acceptability. The terms of the RFQ provided that "[e]ach vendor's quotation will first be evaluated to determine if it meets the criteria under the minimum requirements for technical acceptability." RFQ at 6. Technatomy alleges that the agency impermissibly expanded its review to Technatomy's price quotation, when the agency should have instead limited its review solely to whether Technatomy's technical quotation met the solicitation's minimum requirements.

The protester's argument is without merit. The Department of the Interior's decision to review Technatomy's price quotation is a matter within the agency's discretion. See Companion Data Servs., LLC, supra. While the RFQ provides that the agency would first conduct an initial evaluation to determine whether a vendor's quotation met the minimum technical requirements of the solicitation before evaluating other factors, there is nothing in the solicitation that prohibited the agency from concurrently conducting a compliance review of the entire quotation. RFQ at 1-47.

⁸ In the cover letter that it submitted with its quotation, Technatomy stated: "Technatomy acknowledges all amendments for this RFQ, including . . . Amendment 4 issued on 04/09/15." AR, Tab 6a.2, Technatomy Cover Letter, at 2.

Moreover, the agency's decision to reject Technatomy's quotation is consistent with the stated evaluation terms, which cautioned vendors to submit quotations that were compliant with the solicitation's requirements. Indeed, the solicitation established that a vendor's failure to materially comply with the RFQ's submission requirements could be a basis for rejection of a vendor's quotation. Id. at 2, 15, 17. Additionally, one of the mandatory bases for rejection of a vendor's quotation was a vendor's failure to use the pricing template, as provided by the agency. Id. at 13. Accordingly, we find nothing objectionable about the agency's decision to conduct an initial review of Technatomy's price quotation, or its rejection of the protester's quotation based upon that review.

Finally, we find unworkable the protester's contention that its failure to use the correct version of the pricing template should have been waived by the agency as a minor informality. Technatomy asserts that waiver is appropriate because it provided everything necessary for the agency to infer the information required by the correct version of the RFQ's pricing template. The protester alleges that it provided the agency with overall fringe, overhead, G&A, and fee information, which in conjunction with the incorrect version of the pricing template that it submitted, could have been used to calculate the direct and fully-burdened labor rates that were required by the correct version of the pricing template.

It is a vendor's responsibility to submit a well-written quotation, with adequately detailed information, which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. See International Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 7. Agencies are not required to infer information from an inadequately detailed quotation, or to supply information that the protester elected not to provide. See Optimization Consulting, Inc., B-407377, B-407377.2, Dec. 28, 2012, 2013 CPD ¶ 16 at 9 n.17; see Affolter Contracting Co., Inc., B-410878, B-410878.2, Mar. 4, 2015, 2015 CPD ¶ 101 at 7.

The solicitation informed vendors that they had to provide the information required by the CPFF labor rate buildup tab that was included in the most recent version of the pricing template. RFQ at 12-13. Technatomy does not dispute that it failed to provide the required information and concedes that "it is true that vendors may 'take differing approaches to how they build their cost plus fixed fee rates.'" Protester's Supplemental Comments at 3. Despite this concession, the protester goes on to argue that the agency could presume what approach Technatomy took because the agency was provided with the "end resulting rate in Technatomy's price proposal." Id.

Here, we find that Technatomy's error could not be waived as a minor informality because the agency was not required to go in search of the required information or infer what the protester intended to submit. Indeed, the protester agrees that

vendors could use a different approach when proposing their CPFF rates. Id. Based on our review of the entire record, we find that the agency's evaluation was reasonable.

Evaluation of Technatomy's Technical Quotation and Unequal Treatment

Technatomy also contends that the agency improperly evaluated its technical quotation as unacceptable, and that it should have been given a chance to address the concerns raised by the agency because at least one other vendor was afforded such an opportunity.

We need not address whether the agency reasonably evaluated Technatomy's technical quotation because we find reasonable the agency's decision to reject the protester's quotation based on its failure to comply with the RFQ's requirements for the submission of its price quotation. In this regard, even if we found merit to the protester's arguments challenging the agency's evaluation of its technical quotation, the agency's decision to remove Technatomy from the competition would still be grounded on a valid separate and independent basis--the failure to submit the correct pricing template. See ITT Corp. – Electronic Sys., B-402808, Aug. 6, 2010, 2010 CPD ¶ 178 at 7 (prejudice is an essential element of every viable protest, and where none is shown or otherwise evident, we will not sustain a protest, even where a protester may have shown that an agency's actions arguably were improper.)

With regard to the protester's allegations that the agency treated Technatomy disparately with regard to clarifications, we have reviewed the entire record and find no basis to sustain the protest on this ground. As noted above, this task order procurement was conducted as a competition between CIO-SP3 contract holders and, as such, was subject to the provisions of FAR subpart 16.5, which does not establish specific requirements for conducting clarifications or discussions. See Companion Data Servs., LLC, supra, at 12. Where, as here, however, an agency conducts a task order competition as a negotiated procurement, our analysis regarding fairness, will, in large part, reflect the standards applicable to negotiated procurements. See, e.g., TDS, Inc., B-292674, Nov. 12, 2003, 2003 CPD ¶ 204 at 4; Uniband, Inc., B-289305, Feb. 8, 2002, 2002 CPD ¶ 51 at 3-4.

Here, the protester recognizes that the communications between the agency and the other vendor should be characterized as clarifications, and not discussions. Nevertheless, the protester argues that this case presents one of the "rare . . . situation[s] where it would be unfair to request clarification from one offeror but not from another" because the agency requested clarifications from a vendor regarding its ability to meet the RFQ's minimum technical requirements. Protester's Comments at 4. The protester asserts that the agency's failure to seek clarification from Technatomy, on a substantially similar concern, constitutes unequal treatment.

In a negotiated procurement conducted pursuant to FAR part 15 (which is not applicable here), clarifications are “limited exchanges” between the government and vendors that may occur when award without discussions is contemplated. FAR § 15.306(a)(1). Such exchanges may allow vendors to clarify certain aspects of their quotations or to resolve minor clerical errors. See FAR § 15.306(a)(2). In contrast to discussions, requesting clarifications from one vendor does not trigger a requirement that the agency seek clarifications from other vendors. See Priority One Servs., Inc., B-288836, B-288836.2, Dec. 17, 2001, 2002 CPD ¶ 79 at 5. Although agencies have broad discretion as to whether to seek clarifications from vendors, vendors have no automatic right to clarifications regarding quotations. See A.G. Cullen Constr., Inc., B-284049.2, Feb. 22, 2000, 2000 CPD ¶ 45 at 5-6.

Here, we find that the agency was not required to request clarifications from Technatomy. Technatomy correctly notes that the record reflects that the agency requested clarifications from at least one other vendor on a matter similar to the concern raised by the agency about Technatomy’s technical quotation (and which the agency used as a basis for finding Technatomy’s quotation to be technically unacceptable). Technatomy does not allege, and the record does not reflect, however, that the other vendor failed to comply with the solicitation’s requirements for submission of its price quotation. Because Technatomy’s quotation was removed from the competition based on its failure to comply with the RFQ’s requirements for the submission of pricing information, we find that the agency was acting within its discretion when it chose to allow another vendor to clarify its technical quotation without giving Technatomy a similar opportunity.

The protest is denied.

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General Counsel