



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Ricoh USA
File: B-411888.2
Date: November 18, 2015

Charles Traugh, for the protester.
Debra J. Talley, Esq., and Kenneth Gilliland, Esq., Department of the Army, for the agency.
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DIGEST

1. Protest challenging the agency's determination that the protester submitted an unacceptable proposal is denied where the record confirms that the protester failed to describe its approach to transition during the phase-out period, as required by the solicitation.
 2. In a competition conducted among firms holding General Services Administration (GSA) Federal Supply Schedule (FSS) contracts, agency's request for confirmation regarding whether proposed items and prices were included on offerors' schedules constituted clarifications; agency was not required to conduct discussions where the solicitation contemplated making the award without discussions.
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DECISION

Ricoh USA, of Malvern, Pennsylvania, protests the issuance of a delivery order to Lexmark International, Inc., of Lexington, Kentucky, pursuant to request for delivery order proposals (RFP) No. W15QKN-15-R-1032, issued by the Department of the Army, U.S. Army Contracting Command, for the lease of multi-functional devices. Ricoh challenges the agency's determination that its proposal was technically unacceptable and argues that the agency should have communicated with Ricoh any concerns that it had during its evaluation of proposals.

We deny the protest.

BACKGROUND

The Army issued the RFP on May 1, 2015, to contract holders of GSA FSS 36, pursuant to the procedures set forth at Federal Acquisition Regulation (FAR) subpart 8.4.¹ RFP at 1. The RFP sought proposals for the lease of 700 multi-functional devices (MFD) (with fax, scan, print, and copy functionality) in support of the 99th Regional Support Command at facilities in 13 states. Id. The RFP contemplated the issuance of a single, fixed-price delivery order with a 12-month base period and four 12-month option periods. Id. Pursuant to the RFP, the delivery order would be issued on a lowest-priced, technically acceptable basis, considering technical, past performance, and price. RFP, attach. 4, Basis for Award, at 1. To be considered for award, a proposal must be rated acceptable under the technical and past performance factors. Id.

With respect to the technical factor, the RFP instructed offerors to provide a “detailed discussion” of the offeror’s approach to meeting various solicitation requirements. Id. at 8. The RFP specifically identified eight areas that firms were to address in their proposals. Of relevance to this protest, the program management approach required the offeror to “describe its approach for successful transition during the Phase[-]in/Phase[-]out (SOW [Statement of Work] sections C.13 and C.14) of the [order].” Id. With respect to phase-out specifically, the SOW required the following of contractors:

The vendor shall provide all resources required to ensure a smooth transition period, in accordance with contract requirements. The government intends to sustain a maximum level of customer support during this period. The incumbent vendor will be required to cooperate fully with the new vendor to assure a smooth transition period. This cooperation includes, but [is] not limited to, tasks associated with the prompt removal of MFD equipment from all locations as requested

RFP, attach. 1, SOW § C.14.1.

The RFP also required offerors to describe how the proposed MFD model was “compatible with Active Client and [would] support the use of Department of Defense Common Access Card [CAC] for all functions as required under section C.1.2.4 of the SOW.” RFP, attach. 4, Basis for Award, at 8. The cited SOW section provided, among other things, as follows:

¹ FSS 36 offers office imaging and document solutions. Combined Contracting Officer’s Statement of Facts/Legal Memorandum at 1.

All MFDs must be compatible with Active Client and utilize a CAC reader by direct connection into the Universal Serial Bus (USB) port on the MFD. No third party devices or middleware will be authorized for connection between the CAC reader and the MFD.² No third party software is authorized to allow authentication to the Active Directory domain. All MFDs shall be able to utilize government owned and furnished Online Certificate Status Protocol (OCSP) responder(s) as the only means for validation of the user's presentation of his/her [Department of Defense] CAC as currently authentic and valid.

RFP, attach. 1, SOW § C.1.2.4.

The RFP provided that the agency would evaluate technical proposals for "Adequacy of Response" and "Feasibility of Approach" and would assign proposals a single rating of either acceptable or unacceptable. RFP, attach. 4, Basis for Award, at 2. The RFP warned that "[m]arginal levels of detail could indicate a lack of understanding concerning requirements" and that offerors were "responsible for including sufficient details to permit a complete and accurate evaluation of each proposal." Id. In this respect, the RFP cautioned that "[u]nsupported promises to comply with contractual requirements [would] not be sufficient." Id.

The Army received four proposals, including Ricoh's, prior to the submission deadline. Combined Contracting Officer's Statement of Facts/Legal Memorandum (COSF/LM) at 4. First, the agency sought clarifications from the offerors as to whether the proposed MFD models and prices were within each offeror's GSA schedule.³ Id. at 5; see Agency Report (AR), Tab F, Request for Clarifications to Ricoh, at 1. The agency then evaluated proposals, rating Ricoh's \$8,016,540 proposal acceptable under the past performance factor but unacceptable under the technical factor. COSF/LM at 5; AR, Tab E, Ricoh Technical Evaluation, at 1.

The evaluators rated Ricoh's proposal unacceptable on two bases. First, the evaluators highlighted that Ricoh failed to describe its approach for a successful phase-out, as required by the RFP. AR, Tab E, Ricoh Technical Evaluation, at 2. The evaluators also concluded that Ricoh's proposed MFD model contained "proprietary operating system software which uses middleware to authenticate." Id.

² The agency describes middleware as follows: "Middleware is software that enables two separate programs to interact with each other or software layered inside a single application that allows different aspects of the program to work together." Agency Report, Tab J, Technical Declaration of Customer Support Lead, at 1.

³ Offerors were not permitted to revise or modify their proposals. Agency Report, Tab F, Request for Clarifications to Ricoh, at 1.

at 1. Because the SOW prohibited the use of middleware or third-party devices to authorize the connection between the CAC reader and the MFD, the evaluators deemed Ricoh's proposal deficient. Id.; see RFP, attach. 1, SOW § C.1.2.4.

Ultimately, Lexmark's proposal was the lowest-priced, technically acceptable offer, and the delivery order was issued to Lexmark for \$9,540,080 on July 29, 2015. COSF/MOL at 6; AR, Tab G, Delivery Order Decision Document, at 6. Following a brief explanation of the award decision, Ricoh protested to our Office.⁴ See AR, Tab I, Explanation to Ricoh, at 3.

DISCUSSION

Ricoh challenges the evaluation of its proposal. The protester argues that it was not required to provide any additional information regarding its approach to phase-out. Ricoh also objects to the evaluators' conclusion that the firm's proposed MFD used middleware. Lastly, Ricoh contends that the Army should have communicated with Ricoh any issues that the agency had with the firm's proposal. As discussed below, we find no basis to sustain the protest.

Where, as here, an agency issues a solicitation to FSS contractors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. SRM Group, Inc., B-410571, B-410571.2, Jan. 5, 2015, 2015 CPD ¶ 25 at 4. A protester's disagreement with the agency's judgment does not establish that an evaluation was unreasonable. See DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2. In a competitive FSS procurement, it is the offeror's burden to submit a proposal that is adequately written and establishes the merits of the proposal. See Bridges Sys. Integration, LLC, B-411020, Apr. 23, 2015, 2015 CPD ¶ 144 at 4.

Here, the agency's evaluation of Ricoh's technical proposal was unobjectionable. As discussed above, the RFP required offerors to describe their approach for a successful transition during the phase-in and phase-out periods of the delivery order, and the agency was to evaluate the proposed approaches. RFP, attach. 4, Basis for Award, at 8. In addition, the SOW identified separate requirements of the contractor during the phase-in and phase-out transition periods. RFP, attach. 1, SOW § C.14.1. While the protester addressed in its proposal product delivery and installation (*i.e.*, phase-in), Ricoh's proposal did not describe its approach to phase-out or discuss the SOW requirements related to the transition off the contract. See AR, Tab D, Ricoh Technical Proposal, at 12-16. Therefore, we find

⁴ Ricoh initially filed an agency-level protest, which the Army dismissed when a different unsuccessful offeror filed a protest with our Office challenging the same award to Lexmark. See Protest at 2.

reasonable the Army's determination that Ricoh's proposal was deficient in this respect.

Moreover, we find unpersuasive Ricoh's argument that the firm's general agreement to comply with all solicitation requirements sufficiently demonstrated its ability to perform the phase-out tasks. In this regard, as noted above, the RFP expressly warned that "[u]nsupported promises to comply with contractual requirements will not be sufficient." RFP, attach. 4, Basis for Award, at 2. The RFP further advised that "parroting" of the technical requirements or the SOW with a statement of an offeror's intent to perform would not reflect an understanding of the requirements or a firm's capability to perform the contract. Id. It is an offeror's responsibility to submit an adequately written proposal. See Bridges Sys. Integration, LLC, supra. Because Ricoh failed to describe its phase-out strategy in response to the solicitation requirement, the evaluators reasonably assigned the proposal a deficiency, which rendered it unacceptable under the terms of the solicitation.⁵

Next, the protester contends that the agency should have discussed with Ricoh any concerns that it had with respect to the firm's phase-out strategy (or lack thereof) and its use of middleware or third-party devices in its MDFs. Ricoh complains that the agency instead chose to discuss "less meaningful items" with the firm. Protest at 5.

As a preliminary matter, we note that this competition was limited to FSS vendors. As we have previously noted in our decisions, the procedures of FAR part 15 governing contracting by negotiation--including those concerning exchanges with offerors after receipt of proposals--do not govern competitive procurements under the FSS program. FAR § 8.404(a); USGC Inc., B-400184.2 et al., Dec. 24, 2008, 2009 CPD ¶ 9 at 3. There is no requirement in FAR subpart 8.4 that an agency seek clarifications or otherwise conduct discussions with vendors or offerors. See USGC Inc., supra. However, exchanges that do occur with vendors in a FAR subpart 8.4 procurement, like all other aspects of such a procurement, must be fair

⁵ Because we find reasonable the agency's evaluation of Ricoh's proposal with respect to the RFP's phase-out requirement, which resulted in the unacceptable rating, we need not address the other deficiency assigned to the proposal regarding the use of middleware. In this regard, a single deficiency was sufficient to render Ricoh's proposal unacceptable. COSF/MOL at 7; see Bridges Sys. Integration, LLC, supra, at 4 ("Clearly stated solicitation requirements are considered material to the needs of the government, and a proposal that fails to conform to the material terms and conditions of the solicitation is considered unacceptable and may not form the basis for award."); see also Konica Minolta Bus. Solutions U.S.A., Inc., B-411888, Nov. 10, 2015, 2015 CPD ¶ ____ (finding reasonable the Army's assignment of an unacceptable rating where proposal submitted under the same solicitation as here failed to describe an approach to phase-out).

and equitable; our Office has looked to the standards in FAR part 15 for guidance in making this determination. A-Tek, Inc., B-404581.3, Aug. 22, 2011, 2011 CPD ¶ 188; USGC Inc., *supra*.

In this regard, FAR part 15 defines clarifications as “limited exchanges” that agencies may use to allow offerors to clarify certain aspects of their proposals or to resolve minor or clerical mistakes. See FAR § 15.306(a)(1), (2); Diversified Collection Servs., Inc., B-406958.3, B-406958.4, Jan. 8, 2013, 2013 CPD ¶ 23 at 11 (using FAR part 15 definitions of post-proposal communications, or exchanges, as guidance in FSS context). Discussions, by contrast, occur when an agency communicates with an offeror for the purpose of obtaining information essential to determine the acceptability of a proposal or quotations, or provides the offeror with an opportunity to revise or modify its proposal. Diversified Collection Servs., Inc., *supra*, at 11-12; see FAR § 15.306(d).

Our review of the record confirms that the exchanges here were limited to clarifying whether the items offered and the respective unit prices were on the offerors’ GSA schedule. More specifically, an Army contract specialist sought verification from Ricoh that “all part numbers and model numbers proposed” were on Ricoh’s schedule, and she requested that the firm provide the “GSA Schedule number, page number[,] modification etc.” to confirm that the item was on the schedule, as well as the specification sheet for the model proposed.⁶ AR, Tab F, Request for Clarifications to Ricoh, at 1. With respect to pricing, the contract specialist sought the formula and calculation used to arrive at the proposed unit prices, along with the specific portion of Ricoh’s schedule that substantiated the calculation. *Id.* She also requested the GSA Special Item Number under which the proposed prices were authorized. *Id.* The contract specialist’s email expressly stated, “No changes to your company’s proposal are authorized. Any changes made will not be accepted by the government.” *Id.* In our view, these exchanges fall quintessentially within the nature of clarifications; the agency merely sought confirmation and verification to ensure that the items and prices proposed were on Ricoh’s GSA schedule, and the firm was not given an opportunity to materially change its proposal.

On the other hand, had the Army advised Ricoh that its proposal was unacceptable for failing to address its approach to phase-out or for proposing MFDs that used middleware, and provided the firm with an opportunity to submit additional information to make its proposal acceptable, the agency’s actions would have been more analogous to discussions. See Allied Tech. Group, Inc., B-402135, B-402135.2, Jan. 21, 2010, 2010 CPD ¶ 152 at 6 (“The ‘acid test’ for deciding whether discussions have been held is whether it can be said that an offeror was provided the opportunity to modify or revise its proposal.”).

⁶ The contract specialist requested a response from Ricoh by the next day. AR, Tab F, Request for Clarifications to Ricoh, at 1.

To the extent that the protester asserts that the agency should have engaged in discussions with the firm to remedy any issues, the argument is also without merit. The solicitation expressly warned offerors that the agency contemplated making award on the basis of initial proposals, without discussions. RFP, attach. 4, Basis for Award, at 1. Thus, the agency was not required to contact the protester to obtain information regarding its approach to phase-out or discuss its concerns regarding the use of middleware. See Verizon Fed., Inc., B-293527, Mar. 26, 2004, 2004 CPD ¶ 186 at 6. Rather, as discussed above, it was incumbent on Ricoh to affirmatively demonstrate the merits of its proposal, and it risked rejection by failing to do so. See HDL Research Lab, Inc., B-294959, Dec. 21, 2004, 2005 CPD ¶ 8 at 5.

The protest is denied.

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General Counsel