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Decision

Matter of: Akira Technologies, Inc.; Team ASSIST

File: B-412017; B-412017.2; B-412017.3

Date: December 7, 2015

Matthew T. Schoonover, Esq., Matthew P. Moriarty, Esq., Steven J. Koprince, Esq., Koprince Law LLC, for Team ASSIST; and Christopher Shiplett, Esq., Danielle Hart, Esq., and Nishat Azam, Esq., Randolph Law PLLC; and Kevin P. Mullen, Esq., Jenner & Block LLP, for Akira Technologies, Inc., the protesters. Lawrence S. Sher, Esq., Elizabeth Leavy, Esq., and Lawrence P. Block, Esq., Reed Smith LLP, for HumanTouch, LLC, an intervenor. Brian C. Caney, Esq., and Jonathan A. Baker, Esq., Department of Health and Human Services, Food and Drug Administration, for the agency. Lois Hanshaw, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the elimination of the protester's quotation based on its failure to address a material requirement is denied where the protester failed to include information required for award.
 2. Protester's challenge of the agency's evaluation of assumptions included in the awardee's technical quotation is denied where the protester has not demonstrated that the awardee's assumptions took exception to the solicitation's material requirements, and the agency reasonably concluded that the awardee had agreed to comply with requirements of the solicitation.
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DECISION

Team ASSIST, of McLean, Virginia, and Akira Technologies, Inc. (Akira), of Washington, D.C., protest the establishment of a blanket purchase agreement (BPA) with HumanTouch, LLC, of McLean, Virginia, by the Department of Health and Human Services, Food and Drug Administration (FDA) under request for quotations (RFQ) No. FDA-SOL-15-IT Helpdesk, for information technology (IT)

helpdesk support services.¹ Team ASSIST challenges the exclusion of its quotation based on its failure to include the length of time remaining on its GSA schedule contract. Akira contends that HumanTouch's quotation took exception to the solicitation's performance requirements and should therefore have been ineligible for award.

We deny the protests.

BACKGROUND

The RFQ was issued on March 13, 2015 as a small business set-aside under Federal Acquisition Regulation (FAR) subpart 8.4. RFQ at 3, 13. The RFQ was restricted to small-business vendors holding contracts under GSA's Federal Supply Schedule (FSS) No. 70. Id. at 3. The purpose of the solicitation was to obtain IT support services providing the full range of technical support, project management, and call center management services necessary to maintain a multi-tier IT helpdesk call center; support for account management and peripheral devices; and support for the assessment and validation of new or updated technologies.² BPA Statement of Work (SOW) at 4.

The RFQ sought to establish a single blanket purchase agreement with fixed-price and labor-hour type orders for a one-year base period and four option years. RFQ at 3. The estimated value of the BPA, including option periods, was \$100 million. Id. The RFQ contemplated award on a best-value basis considering technical factors and price, with technical factors considered significantly more important than price. Id. at 10. Vendors were required to submit separate technical quotation and business quotation volumes. Id. at 5.

As relevant to the business quotation, which would include pricing information, the RFQ allowed firms to utilize a CTA and required, if firms chose to utilize such an arrangement, that they clearly indicate that the quotation was proposing a CTA. Id.

¹ Team ASSIST is a General Services Administration (GSA) contract teaming arrangement (CTA) consisting of 22nd Century Technologies, Inc., and Team Technology.

² The tiers of support would include Tier 1, call center support, and Tier 2, deskside support within and outside the Mid-Atlantic area. BPA SOW at 4-6. Additionally, the section of the BPA SOW dealing with new technology and updates required the contractor to evaluate and assess new and updated technologies used by Tier 1 and Tier 2 support to ensure the technology changes would not have a negative impact on the quality of service provided to FDA customers, and indicated that this would provide the contractor the opportunity to update associated Helpdesk standard operating procedures and processes. Id. at 7.

As relevant here, vendors were required to include within the cover page of the business quotation the duration of the FSS schedule contract held by the vendor and, if applicable, by its CTA partner(s), including the date the schedule was awarded and the last date of performance if any remaining option periods were to be exercised. Id. The RFQ advised that per GSA regulations, GSA could not establish a BPA with a vendor whose FSS contract would not be active throughout the entire anticipated life of the BPA contemplated by the RFQ, which would be five years from award. Id. Additionally, with regard to price, the RFQ advised that pricing information in the BPA pricing spreadsheet would be for price evaluation purposes only. Id. at 8.

With respect to the technical quotation, the RFQ established that quotations would be evaluated based on four factors, listed in descending order of importance: (1) technical approach to BPA order #1 (Mid-Atlantic BPA); (2) technical approach to BPA order #2 (Transition-in BPA); (3) relevant experience; and (4) past performance. Id. at 10. The RFQ also stated that the technical factors, excluding past performance, were significantly more important than price; and past performance was significantly less important than price. Id.

For the technical approach to the Mid-Atlantic BPA, offerors were required to provide a workforce management/staffing plan (staffing plan), resumes of qualified key personnel, and a quality assurance plan. Id. at 6. For the staffing plan, firms were required to demonstrate an ability to manage and deliver the services in the Mid-Atlantic BPA SOW, including maintaining continuity of service during surges in demand and maintaining certifications and skills of contractor staff.³ Id. The RFQ required firms to provide the assumptions on which the proposed approach was based and the impact of the identified assumptions on contract performance and the achievement of service-level agreements. Id. As relevant here, the RFQ stated that the government would evaluate the extent to which a vendor's response met the requirements of the mid-Atlantic BPA and presented realistic and valid assumptions. Id. at 10.

The RFQ stated that the government intended to evaluate quotes and make award without discussions. Id.

Thirteen offerors, including Team ASSIST, Akira, and HumanTouch--the incumbent contractor--submitted quotations by the April 15 closing date. Team ASSIST's quotation indicated that it was utilizing a CTA. As relevant here, its quotation included the schedule contract numbers for the firms in the CTA, but failed to

³ The SOW for the Mid-Atlantic BPA included eight tasks, such as project management support, call center support (tier 1), desk-side support (tier 2), and systems administrator (SAT) support. Mid-Atlantic BPA SOW at 4-17.

include the length of each firm's GSA schedule contract. Team ASSIST Agency Report (AR), Tab 5, Team ASSIST Business Quotation, at 2, 4.⁴

As also relevant here, HumanTouch's approach to call center support for the Mid-Atlantic BPA included sections that addressed its recommended approach to satisfying the SOW requirements, its recommended enhancements, and risks and mitigations. Akira Supplemental Agency Report (SAR), Tab 1, HumanTouch Quotation, at 22-26. HumanTouch's quotation also included a section entitled "Assumptions," which included the assumption, among others, that for [deleted], the FDA would implement [deleted] in option year 1. Id. at 48. The quotation also included [deleted] which addressed the assumptions' impact on performance and service level agreements. Id.

As relevant to HumanTouch's evaluation, the agency's technical evaluation report (TER) states that HumanTouch was able to provide the required services included in the Mid-Atlantic BPA SOW while effectively addressing service surge support demands and managing staff certifications and skills. Akira SAR, Tab 5, TER of HumanTouch, at 70. The TER also stated that HumanTouch's quotation offered valid and realistic assumptions that could occur in FDA's IT environment, including the implementation of [deleted]. Id. at 79.

The agency did not conduct discussions or seek clarifications from any firms. Team ASSIST Contracting Officer (CO) Statement at 2. On August 21, the agency notified the firms of the decision to establish the BPA with HumanTouch at an evaluated price of \$45,262,429. Additionally, the agency's notification to Team ASSIST stated that its quotation was not considered for award because it failed to include the required information about the duration of its schedule contract. Team ASSIST AR, Tab 6, Award Notice, at 1.

On August 31, the instant protests were filed with our Office.

DISCUSSION

The protesters both challenge the reasonableness of the agency's evaluation of quotations. We have reviewed the arguments raised by each protester and find that none provides a basis to sustain the protests.

Where, as here, an agency issues an RFQ to FSS vendors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's

⁴ The business quotation as submitted to our Office with the agency report does not include numbering for the pages on which Team ASSIST's schedule information is provided. Accordingly, the page numbers of the business quotation cited in this decision were added serially to the document by our Office.

evaluation is reasonable and consistent with the terms of the solicitation. Systematic Mgmt. Servs. Inc., B-407199 et al., Nov. 29, 2012, 2013 CPD ¶ 155 at 3. 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. Arrington Dixon & Associates, Inc., B-409981, B-409981.2, Oct. 3, 2014, 2014 CPD ¶ 284 at 5. In a competitive FSS procurement, it is the vendor's burden to submit a quotation or proposal that is adequately written and establishes the merits of the quotation or proposal. Nittany Business Movers, Inc., B-411856, Oct. 27, 2015, 2015 CPD ¶ 327 at 2-3. A protester's disagreement with the agency's evaluation, by itself, is not sufficient to sustain the protest. Advanced Tech. Sys., Inc., B-296493.5, Sept. 26, 2006, 2006 CPD ¶ 147 at 5.

Team ASSIST characterizes the omission of the length of its GSA Schedule 70 contract as a "simple clerical error," and argues that the agency's exclusion of its quotation on this basis was improper.⁵ Protest at 1. Team ASSIST also asserts that the agency should have engaged in clarifications to obtain the missing information. Protest at 4.

Here, because Team ASSIST omitted the FSS schedule information for itself and its CTA team, its quotation failed to comply with a material requirement of the RFQ. The RFQ expressly stated that award would not be made to vendors whose GSA schedule contract would not be active for the entire anticipated life of the BPA, and required vendors to submit the length of the GSA schedule contract for the vendor and its CTA members. RFQ at 5. Team ASSIST neither disputes that this information was required by the RFQ, nor that it failed to provide this information. See Team ASSIST Protest at 3; Comments at 2. Accordingly, we find the agency's

⁵ Team ASSIST also raised other challenges, including an argument that the agency must have deemed immaterial the requirement to include the schedule length, because HumanTouch's schedule did not last for the length of the anticipated BPA; and that the agency's decision not to establish the BPA with Team ASSIST constituted a de facto nonresponsibility determination that should have been referred to the Small Business Administration (SBA) under that agency's certificate of competency (COC) program. Protest at 5, 7. The agency filed a dismissal request challenging these protest grounds and included information showing that HumanTouch's quotation [deleted] and did include the length of its schedule, which would not end until more than [deleted] from the end of the term of this BPA, thus exceeding the requirement under the RFQ. On September 25, we notified the parties that we intended to dismiss these grounds for failure to state a valid basis of protest. See 4 C.F.R. § 21.5(f). Accordingly, those protest grounds are dismissed.

rejection of Team ASSIST's quotation, which failed to include information required by the RFQ, unobjectionable.⁶

Akira also raises various challenges regarding an assumption stated in the awardee's quotation.⁷ Specifically, Akira contends that an assumption in

⁶ To the extent Team ASSIST contends that the agency was required to engage in clarifications to obtain this information, we disagree. FAR subpart 8.4 does not require that an agency conduct exchanges with vendors in accordance with FAR part 15. FAR § 8.404(a). However, our Office has looked to the standards in FAR part 15 and decisions interpreting that part for guidance in determining whether exchanges, if any, with vendors under a FAR subpart 8.4 procurement were fair and equitable. See e.g. Ricoh USA, B-411888.2, Nov. 18, 2015, 2015 CPD ¶ 355 at 5-6. As stated above, because the information was necessary to determine whether a vendor was eligible for award, obtaining this information and relying on it in making award would have constituted discussions. See Savvee Consulting, Inc., B-408623, B-408623.2, Nov. 8, 2013, 2013 CPD ¶ 265 at 5-6. In addition, the RFQ advised that the agency reserved the right to make award without discussions, RFQ at 10, and the agency in fact did not conduct discussions with the offerors. Team ASSIST CO Statement at 2. An agency is not required to provide an opportunity for discussions (or clarifications) under such circumstances. Future Techs. Consulting Grp. Inc., B-409867, Aug. 13, 2014, 2014 CPD ¶ 240 at 5.

⁷ Based on the following explanation of the disposition of Akira's protest grounds, the only issue to be resolved here is Akira's challenge to one of the awardee's assumptions. In its original protest, Akira challenged the agency's evaluation of Akira's relevant experience, the evaluation of the awardee's technical and price proposal, and the award decision. Protest at 4-9. On September 28, in response to the agency's request for partial dismissal, we found that the protester's challenge to the awardee's evaluation and the award decision, to the extent it challenged the awardee's technical and price evaluation, failed to state a valid basis of protest. See 4 C.F.R. § 21.5(f). Accordingly, those challenges are dismissed.

Next, Akira's supplemental protest stated that its supplemental protest grounds would "replace the original grounds set forth in Akira's initial protest. See Protest (Aug. 31, 2015) at 4-9." Akira Supp. Protest at 2. Accordingly, we view the challenges that remained in the original protest as withdrawn. Additionally, Akira's supplemental protest timely raised new challenges to the agency's evaluation of the protester's relevant experience, the agency's evaluation of [deleted] assumptions in the awardee's proposal, and a revised challenge to the award decision. Akira Supp. Protest at 2-4, 8-9. The agency provided a substantive response to the various protest grounds. See Akira Supp. Legal Memorandum at 1-9. However, Akira's comments on the supplemental AR continue to challenge only one of the assumptions in the awardee's proposal. Accordingly, we view the remaining

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HumanTouch's quotation--that the FDA will implement [deleted] in option year 1--took exception to a requirement to propose a solution based on FDA's current IT environment, which Akira argues was a material term of the RFQ. Akira Supp. Comments at 5. Akira also argues that HumanTouch's allegedly improper assumptions created an unfair competitive advantage by allowing HumanTouch, alone, to reduce its price over the life of the BPA. Id.; Akira Supp. Protest at 6-7. We find no basis to sustain Akira's protest.

To the extent Akira contends that the awardee failed to comply with a material term of the quotation, we disagree. Akira has not identified the specific "material term" of the RFQ with which the awardee's quotation failed to comply, beyond suggesting that proposing a solution based on the current IT environment was a material RFQ requirement--a suggestion for which Akira has provided no factual support, and for which we find none in the record. The RFQ stated that a vendor's quotation would be evaluated on the extent to which its approach met the requirements of the BPA Mid-Atlantic SOW and listed, as one of the elements of that evaluation, the extent to which the firm's approach presented realistic and valid assumptions. RFQ at 10. Here, the RFQ permitted a firm to present valid and realistic assumptions upon which its approach to the Mid-Atlantic BPA was based, and the BPA SOW allowed firms to propose new technologies.

The record shows that the agency determined that HumanTouch's quotation met the requirements of that SOW. With regard to the assumptions presented in the awardee's quotation, the evaluators concluded that they "present[ed] realistic and valid assumptions that could occur in FDA's IT environment." SAR, Tab 5, TER, at 79. Because assumptions were but one element under one technical evaluation factor, the RFQ did not indicate that a vendor would be eliminated based on its proposed assumptions, cf. Arrington Dixon & Associates, Inc., supra, at 2 (where RFQ indicated that assumptions considered unacceptable by the agency would result in a vendor's removal from the competition); and there is no showing that HumanTouch's quotation failed to comply with the RFQ requirements, we agree with the agency's assertion that Akira's use of the assumption at issue here was not

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arguments--related to the evaluation of Akira's relevant experience; the agency's evaluation of [redacted] assumptions in the awardee's proposal; and the challenge to the award decision--as abandoned. See Regency Inn & Suites, B-411066.2, May 8, 2015, 2015 CPD ¶ 154 at 3 n.4.

fatal under the terms of the RFQ. See Id. at 4. In sum, we find the agency's evaluation reasonable in this regard.⁸

The protests are denied.

Susan A. Poling
General Counsel

⁸ We also find unavailing the protester's bare assertion that the inclusion of an assumption in the awardee's quotation regarding [deleted] resulted from an unfair competitive advantage that HumanTouch had. The record does not indicate that HumanTouch proposed this enhancement based on any information that was not publicly available. Moreover, we find no merit to Akira's argument that this assumption allowed HumanTouch to reduce its proposed pricing, giving it a competitive advantage. Akira originally raised this argument in its supplemental protest, and the premise of its contention was that all [deleted] assumptions--rather than the one remaining assumption--accounted for the price reduction in HumanTouch's quotation.