



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Singhal & Company, Inc.

File: B-412787

Date: May 31, 2016

Kanan Thaker, Esq., for the protester.
Kara M. Sacilotto, Esq., and Gary S. Ward, Esq., Wiley Rein LLP, for Booz Allen Hamilton, Inc., an intervenor.
Sara E. McGraw, Esq., and Kenneth Pakula, Esq., Environmental Protection Agency, for the agency.
Peter D. Verchinski, Esq., and Noah B. Bleicher, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of the protester's price quotation is denied where agency's evaluation was consistent with the terms of the request for quotations.

DECISION

Singhal & Company, Inc. (SCi), of Reston, Virginia, protests the Environmental Protection Agency's (EPA) rejection of its quotation as unacceptable under request for quotations (RFQ) No. RFQ-HPOD-OA-2015 for comprehensive infrastructure support services. SCi asserts that the agency deemed its quotation ineligible for award based on a flawed price evaluation of its "open market items."

We deny the protest.

BACKGROUND

The RFQ, issued on November 6, 2015, was limited to holders of General Service Administration's (GSA) Federal Supply Schedule (FSS) contracts pursuant to the procedures of Federal Acquisition Regulation (FAR) subpart 8.4. The solicitation sought to obtain a variety of real property asset management services, including facilities management; safety, health and environmental management; security management; and general support. RFQ rev. 4, at 1. In performing these services, the agency expected vendors to rely on services available on the following

schedules: FSS 84 (“Total Solutions for Law Enforcement, Security, Facilities Management, Fire, Rescue, Clothing, Marine Craft and Emergency/Disaster Response”); FSS 899 (“Environmental Services”); FSS 70 (“General Purpose Commercial Information Technology Equipment, Software, and Services”); and FSS 871 (“Professional Engineering Services). Id. at 1-2.

The RFQ anticipated the establishment of up to seven blanket purchase agreements (BPA) for a 7-year period, under which fixed-price orders would be placed in accordance with FAR § 8.405-3.¹ Id. The RFQ contemplated selecting vendors for the BPAs on a best-value basis considering the following three evaluation factors: technical capability and technical approach; corporate experience and management approach; and price. Id. at 5. Vendors were to submit their quotations in two parts: technical and price. Id. at 7.

With regard to the price quotation, the RFQ instructed vendors to provide the quotation in several sections. For example, section 1 was to consist of pricing data from the vendor’s GSA schedule contracts with any proposed discounts. Id. at 20. Section 2 was to consist of an explanation for any other direct costs (ODC), including the estimating methodologies used. Id. Section 3 was to consist of a copy of all GSA schedule pricelists for the proposed labor rates and ODCs. Id.

Of relevance here, for quotation preparation purposes, the RFQ provided the following estimates for labor hours, travel costs, and ODCs:

GSA Schedule	Estimated Hours	Estimated Travel	Estimated ODCs
Schedule 899	319,795	\$1,268,421.06	\$779,060.38
Schedule 871	271,355	\$603,641.05	\$299,798.28
Schedule 84	773,500	\$230,000.00	\$217,000.00
Schedule 70	615,517	\$350,000.00	\$2,856,000.00
Totals	1,980,167	\$2,452,062.11	\$4,151,858.66

Id. at 20. The RFQ advised vendors that all “proposed costs, other than open market items with an aggregate value over the entire BPA that is less than \$3,500.00, shall be quoted from a Schedule pricelist(s) only.” Id. (emphasis in original). The RFQ instructed vendors to provide (in section 1 of price quotations) a table outlining the vendor’s proposed ODCs, including the ODC item, the price for the item in each of the 7 years, the applicable schedule for the item, and the special item number (SIN) for the item. Id. at 22. The RFQ explained that if there was not an applicable schedule for the proposed ODC item, “then the item shall clearly be indicated as an open market item.” Id.

¹ The 7 year period consisted of a 1-year base period, four 1-year option periods, and two 1-year award terms. Id. at 104.

With regard to open market items, the RFQ stated:

All prices quoted must be in accordance with the Vendor's overarching [GSA FSS] contract(s) and equal to or discounted from the Vendor's GSA FSS approved pricing. Additionally, the total of **any and all** open market items quoted inclusive of the full seven (7) years . . . shall not exceed \$3,500.00. If open market items are quoted, the Vendor's price quote shall clearly identify which items/services are available through the Vendor's GSA FSS contract and which are open market items. Any proposed open market items in excess of \$3,500.00 based on the aggregate of **all** open market items proposed under all periods of performance . . . will result in the quotation being ineligible for award.

Id. at 24 (emphasis in original).

Shortly after the RFQ was issued, the agency solicited questions regarding the solicitation. Of relevance here, one of the questions pertained to open market items. The question noted that the RFQ provided a limit of \$3,500 on all open market items across the 7 years of the BPA, remarked that the items at issue here are "diverse and complex," and stated that any dollar limit on "certain ODCs/open market items may impede a vendor's ability to satisfy order requirements." Agency Report (AR), Tab 1, RFQ Questions and Answers, Question 14, at 4. The question requested that the dollar limit for "purchasing ODCs/open market items [] be on the individual order level – not the BPA level." Id. The agency responded that it had conducted "extensive GSA market research" and determined that "a reasonable number of GSA Vendors indicated that the entire statement of objectives (SOO) could be provided all on Schedule." Id. The agency did not change the \$3,500 limit on open market items.

The agency received quotations from several vendors, including SCi, by the January 29, 2016, closing date. In its quotation, SCi included a table in which the vendor identified proposed ODCs totaling \$4,151,858.66, the estimate provided in the RFQ.² AR, Tab 3, SCi Price Quotation, at 11. Significantly, SCi indicated that these ODCs were not included on any particular FSS contract and would instead be provided as open market items. Id. Following an evaluation, the agency concluded that SCi's quotation was ineligible for award because the firm had proposed open

² In its narrative explanation for ODCs (section 2 of its price quotation), SCi explained that its ODCs consisted of items such as printing and publication costs, packing and shipping materials, storage and shipping charges, and mobile phone charges, among other things. AR, Tab 3, SCi Price Quotation, at 14-15.

market items in excess of \$3,500. AR, Tab 4, Source Selection Decision Document, at 43. Following a debriefing, SCi filed this protest.

DISCUSSION

SCi primarily asserts that the agency conducted a flawed price evaluation.³ The protester argues that its price quotation met the RFQ's requirements since the quotation stated SCi would utilize all the items available on its schedule, and if an item was not available, SCi marked the item as open market, in accordance with the RFQ's instructions. Comments at 5. For the reasons discussed below, we find no basis to sustain the protest.

Where, as here, an agency issues an RFQ 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 and applicable procurement laws and regulations. Digital Solutions, Inc., B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4; DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2.

As stated above, the RFQ informed vendors that "[a]ny proposed open market items in excess of \$3,500.00 based on the aggregate of **all** open market items proposed under all periods of performance . . . will result in the quotation being ineligible for award." RFQ at 24 (emphasis in original). Here, SCi quoted \$4,151,858.66, in aggregate, of open market items. AR, Tab 3, SCi Price Quotation, at 11. Given this, we find nothing improper with the EPA's determination that SCi's quotation was ineligible here.

Moreover, we find persuasive EPA's explanation that ODCs did not need to be procured as open market items; rather, ODCs could be procured under each schedule's SIN for "Ancillary Supplies and/or Services." See Legal Memorandum at 5. In support of this, the contracting officer cites additional information from GSA's website:

Other Direct Costs (ODCs) are charges in direct support of a service. They are commercial items. To the extent possible, all anticipated ODCs associated with performance and within the scope of the GSA Schedule contract should be offered, and have an established

³ SCi's initial protest asserted that the solicitation was defective because the RFQ required ODCs to be procured as open market items, yet the RFQ only allowed the total of the open market items to be less than \$3,500 across the life of the BPA. SCi was required to raise this challenge to the terms of the RFQ prior to the initial closing date for receipt of quotations; consequently, this protest ground is untimely. 4 C.F.R. § 21.2(a)(1).

contract price. [ODCs] must not be the primary purpose of the task order. GSA Schedules currently provide an Ancillary Supplies and/or Services [SIN] that can support supplies or services from a specific Schedule. Note these supplies and services can only be purchased in support of other supplies/services available through that specific schedule or SIN listed in the description.

Contracting Officer's (CO) Statement at 2 n.2, citing GSA Ordering Guidelines, Other Direct Costs (available at www.gsa.gov/portal/content/200369 (last visited May 31, 2016)).

SCi subsequently challenged, in its comments on the agency's report, the agency's position that ODCs could be quoted under the FSS contracts' "Ancillary Supplies and/or Services" SINs. SCi provides several reasons why, in its view, this is improper. Comments at 6-9. For example, SCi notes that the descriptions for these SINs state that the ancillary supplies must "be an integral part of the total solution offered." Id. at 6, quoting AR, Tab 7, GSA Website Information on Schedule 70, SIN 132 100, at 1. According to SCi, ODCs in this procurement are purchased at the discretion of EPA, and thus ODCs cannot be considered "integral" to the solution offered. Id. at 7.

We need not address the merits of SCi's arguments, because we find SCi's complaints to be untimely objections to the solicitation; SCi was required to raise these issues prior to the closing time for receipt of quotations. See 4 C.F.R. § 21.2(a)(1). Specifically, SCi knew, prior to the solicitation's closing time, that the RFQ precluded vendors from quoting ODCs as open market items if the total price of the ODCs exceeded \$3,500 over the 7 years of the BPA. See RFQ rev. 4, at 20, 24. Since the estimated cost of ODCs in the RFQ was \$4,151,858--well beyond \$3,500--SCi was on notice that the agency expected vendors to quote almost all of the ODCs off of their FSS contracts and not as open market items. See RFQ rev. 4, at 20 (requiring vendors to include in quotations copies of their schedule contracts pricelists for labor and ODCs). While SCi may have learned in the agency's report the specific mechanism by which vendors could submit ODCs pursuant to their FSS contracts, this does not render timely the protester's overarching objections to the RFQ's open market item limitations. Accordingly, to the extent that SCi objects to having to rely on items available on its FSS contracts for ODCs, it should have filed its protest on this basis prior to the solicitation's submission deadline.

Lastly, we also find no merit to SCi's assertion that EPA's alleged lack of certainty as to whether the ancillary supplies SINs could be used to procure ODCs constitutes a latent ambiguity in the solicitation. See Comments at 5-6. In this regard, an ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. Colt Defense, LLC, B-406696, July 24, 2012, 2012 CPD ¶ 302 at 8. Here, the protester does not offer a reasonable interpretation of the terms of the RFQ that would permit a vendor to

propose a total price for open market items that is greater than \$3,500, or that would preclude a vendor from using the ancillary supplies SINs for ODCs. Indeed, other than asserting that, in its view, SCi complied with the terms of the RFQ, SCi does not offer a compelling explanation as to how it was consistent with the RFQ for it to quote a total of \$4,151,858 in open market items in the face of express RFQ provisions limiting open market items to \$3,500.⁴ See Comments at 5-6.

The protest is denied.

Susan A. Poling
General Counsel

⁴ SCi also asserts that it reasonably interpreted the RFQ to permit open market ODCs to be ordered at the specific task order level, so long as the open market ODC was less than \$3,500. Comments at 10. We find no merit to SCi's contention. First, the RFQ explicitly stated that the \$3,500 limit applied in aggregate across the 7 years of the BPA. Second, the agency explained, in the question and answers, that it was not permitting vendors to propose solutions where the ODCs would be ordered as open market items at the task order level even if the ODC did not exceed \$3,500. AR, Tab 1, RFQ Questions and Answers, Question 14, at 4. Thus, SCi's interpretation is not supported by the plain language of the RFQ.