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Decision

Matter of: AllWorld Language Consultants, Inc.

File: B-414244; B-414244.2

Date: April 3, 2017

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Richard L. Moorhouse, Esq., and Ryan C. Bradel, Esq., Greenberg Traurig, LLP, for Legal Interpreting Services, Inc., the intervenor.
Andrew J. Sinn, Esq., and Nicole Y. Beeler, Esq., General Services Administration, for the agency.
Jonathan L. Kang, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the evaluation of the awardee's teaming agreement with its proposed subcontractor is denied where the agency reasonably concluded that the agreement met the requirements of the solicitation to show a "binding" commitment between the parties to perform the task order.
 2. Protest challenging the agency's evaluation of the awardee's technical and price quotations is denied where the agency reasonably evaluated the experience and capabilities of both the awardee and its proposed subcontractor, and the evaluations were otherwise reasonable and consistent with the terms of the solicitation.
 3. Protest challenging the agency's request for additional price reductions from only the vendor whose quotation had been selected for award is denied because the request did not prejudice the protester.
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DECISION

AllWorld Language Consultants, Inc., of Rockville, Maryland, protests the issuance of a task order to Legal Interpreting Services, Inc. (LIS), of Brooklyn, New York, under request for quotations (RFQ) No. ID04160102, which was issued by the General Services Administration (GSA), on behalf of the Department of the Air Force, Air Force Central Command, for linguistic support services. AllWorld argues

that GSA unreasonably evaluated the awardee's quotation and also improperly provided the awardee an opportunity to reduce its quoted price without providing the same opportunity to the protester.

We deny the protest.

BACKGROUND

GSA issued the RFQ on September 16, 2016, using the Federal Supply Schedule (FSS) procedures of Federal Acquisition Regulation (FAR) subpart 8.4. The RFQ anticipated the issuance of a fixed-price task order with a base period of approximately 1 year, and two 1-year options. Agency Report (AR), Tab 4A, RFQ Instructions, at 1. The competition was limited to vendors who hold FSS Professional Services Schedule (PSS) contracts with special item number (SIN) No. 382-2. Id. The RFQ sought quotations to provide all personnel, equipment, and materials to locate, screen, hire, and maintain 38 linguists capable of translation and interpretation from local languages to English. Id. at 10. The local language requirements are for the areas of responsibility for the U.S. Central Command (CENTCOM), and include Arabic, Hindi, Pashtun, and Dari. Id.

The RFQ provided for award to the vendor that submitted the lowest-priced, technically acceptable (LPTA) quotation. Id. at 6. Quotations were to be evaluated for acceptability based on 15 minimum critical performance standards. Id. at 10-12. The RFQ stated that the agency would "evaluate the lowest priced technically acceptable quote for price realism to determine if the performance risk associated with that quote is acceptable or unacceptable to the Government." Id. at 8. The RFQ advised that, if the agency found the lowest-priced quotation to be technically acceptable with a realistic and fair and reasonable price, the agency would not evaluate the acceptability of any other quotations. Id. at 6-7.

GSA received quotations from three vendors, AllWorld, LIS, and a third vendor. LIS submitted the lowest price (\$18,426,767), the third vendor the second-lowest price (\$20,264,252), and AllWorld the highest price (\$20,832,424). AR, Tab 19, Fair and Reasonable Price Determination, at 2. The agency evaluated LIS's lowest-priced quotation and found it technically acceptable with a realistic and fair and reasonable price. AR, Tab 18, Price Realism Assessment, at 13, 19. The agency therefore did not evaluate the technical acceptability of the other vendors' quotations. AR, Tab 21, Award Decision Document, at 4. The agency selected LIS's quotation for issuance of the task order, and advised AllWorld of the award on December 19. This protest followed.

DISCUSSION

AllWorld argues that GSA's award to LIS was improper for four primary reasons: (1) the agency unreasonably concluded that LIS's quotation contained a "binding"

agreement with its proposed subcontractor that met the requirements of the RFQ; (2) the agency failed to reasonably evaluate the technical acceptability of LIS's quotation; (3) the agency failed to reasonably evaluate the realism of LIS's quoted price; and (4) the agency improperly permitted LIS to revise its quoted price without providing AllWorld a similar opportunity.¹ For the reasons discussed below, we find no basis to sustain the protest.²

Where, as here, an agency issues an RFQ to FSS vendors under FAR subpart 8.4 and conducts a competition for the issuance of an order or establishment of a blanket purchase agreement (BPA), we will review the record to ensure that the agency's evaluation was 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. A protester's disagreement with the agency's judgment, without more, does not establish that an evaluation was unreasonable. DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2.

LIS's Teaming Agreement

AllWorld argues that GSA unreasonably found that LIS had provided evidence of a "binding agreement" with its proposed subcontractor, Mission Essential Personnel, LLC (MEP), as required by the RFQ. As a consequence, the protester contends, the agency could not have reasonably evaluated any areas of LIS's quotation that relied on the experience or capabilities of MEP. For the reasons discussed below, we find no basis to conclude that the agency's evaluation was unreasonable.

¹ Although this decision does not address every issue raised by AllWorld, we have reviewed all of the protester's arguments and find that none provides a basis to sustain the protest.

² GSA and LIS argue that AllWorld is not an interested party to challenge the award because the protester quoted the highest price of the three vendors that submitted quotations. The agency and intervenor argue, therefore, that even if AllWorld's protest had merit, the third vendor, rather than the protester, would be in line for award. A disappointed vendor or offeror is not an interested party to challenge an award where, if the protest had merit, a different vendor or offeror would be in line for award ahead of the protester. Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1); Coley & Assocs., Inc., B-404034 et al., Dec. 7, 2010, 2011 CPD ¶ 6 at 7. As discussed above, however, the agency evaluated only LIS's quotation for technical acceptability. See AR, Tab 21, Award Decision Document, at 4. Thus, GSA has not determined that the third vendor is technically acceptable. We therefore conclude that the protester is an interested party to challenge the award in this LPTA procurement because the record does not establish that the third vendor would necessarily be in line for award ahead of the protester.

The RFQ advised that GSA would not consider the experience of proposed subcontractors unless vendors provided “evidence of a binding commitment” between the vendor and its proposed subcontractor, and “clearly” detailed the subcontractor’s proposed role. Specifically, the RFQ stated:

The Government will not consider the experience of subcontractor or affiliated offices of the Offeror, unless the Offeror clearly details in its quote the subcontractor or affiliate entity’s contribution to the overall proposed effort from which the experience was obtained, how the subcontractor or affiliate entity will contribute to the ability to meet the solicitation’s requirements, and evidence of a binding commitment between the prime and the subcontractor/affiliate.

RFQ Instructions at 6.

LIS proposed MEP as its subcontractor and included in its quotation a “Teaming Agreement” which set forth the parties’ agreement to prepare a quotation in response to the RFQ, and to address the “allocation of work to be performed under any resulting prime contract.” AR, Tab 11A, LIS Technical Quotation, at B-1. The record shows that GSA evaluated LIS’s quotation as “Team LIS,” which reflected the participation of both LIS and its proposed subcontractor MEP. AR, Tab 16, Technical Evaluation Consensus Report, at 2. Although not specifically addressed in the contemporaneous evaluation, the contracting officer states that she concluded that the teaming agreement between LIS and MEP reflected a binding commitment that satisfied the RFQ requirements.³ Supp. COS at 2. Specifically,

³ In reviewing an agency’s evaluation, we do not limit our consideration to contemporaneously-documented evidence, but instead consider all the information provided, including the parties’ arguments, explanations, and any hearing testimony. Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 10. While we accord greater weight to contemporaneous source selection materials as opposed to judgments made in response to protest contentions, post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, will generally be considered in our review of the rationality of selection decisions--so long as those explanations are credible and consistent with the contemporaneous record. NWT, Inc.; PharmChem Labs., Inc., B-280988, B-280988.2, Dec. 17, 1998, 98-2 CPD ¶ 158 at 16 (citing Quality Elevator Co., Inc., B-276750, July 23, 1997, 97-2 CPD ¶ 28 at 3-4). Here, the contracting officer specifically represents that she considered the teaming agreement and relied upon the provisions cited. Supp. Contracting Officer’s Statement (COS) at 1-2. We find no basis on the record here to question the contracting officer’s representations.

the contracting officer considered the following areas of LIS's and MEP's teaming agreement:

- The teaming agreement stated that the "Team Members desire to enter into this Agreement to provide for the joint preparation of a proposal in response to such solicitation and for the allocation of work to be performed under any resulting prime contract." Supp. COS at 2 (citing AR, Tab 11A, LIS Technical Quotation, at B-1).
- The teaming agreement stated that the quotation submitted to GSA would include the specific allocation of work between the prime and subcontractor, and "shall also indicate that the Prime Contractor intends to award a subcontract to the Subcontract[or] for the work identified as Subcontractor's responsibility." Id. at 2-3 (citing AR, Tab 11A, LIS Technical Quotation, at B-2).
- The parties agreed that they "would not participate in the submission of competitive proposals on the effort," which the contracting officer interpreted as their intent to perform the requirements as a team. Id. at 3 (citing AR, Tab 11A, LIS Technical Quotation, at B-2)
- The teaming agreement provided that in the event that LIS is issued the task order, "a mutually agreed subcontract(s) shall be negotiated between the Parties within sixty (60) days of the Prime's Contract Award," and stated that the "Parties agree to negotiate in good faith toward the execution of a subcontract for the portion of the Program allocated to Subcontractor in Exhibit A, consistent with the Statement(s) of Work, price, and terms and conditions of the prime contract(s) with the Customer." Id. (citing AR, Tab 11A, LIS Technical Quotation, at B-3).

AllWorld contends that the teaming agreement merely requires the parties to "negotiate" a subcontract, and therefore reflects only an "agreement to agree." Protester's Comments (Feb. 21, 2017) at 7-8. For these reasons, the protester argues that the contracting officer could not have reasonably found that the teaming agreement satisfied the RFQ's requirement for a binding commitment between LIS and MEP to perform the task order.

Where a solicitation does not define a term or phrase in an evaluation criterion or requirement, an agency has discretion in making subjective judgments as to whether a quotation or proposal meets that requirement--provided the agency's judgment is reasonable and otherwise not inconsistent with the solicitation. See Complete Packaging & Shipping Supplies, Inc., B-412392 et al., Feb. 1, 2016, 2016 CPD ¶ 28 at 7; Portage, Inc., B-410702, B-410702.4, Jan. 26, 2015, 2015 CPD ¶ 66

at 11 n.10.⁴ Here, the RFQ did not define the term “binding commitment,” or explain how the agency would evaluate this requirement.

As discussed above, the contracting officer states that she considered specific elements of the teaming agreement and concluded that they represented a binding commitment between the parties to perform the contract in the manner set forth in LIS’s quotation. In this regard, we note that the RFQ did not require vendors to enter into a subcontract prior to submission of quotes; instead, the solicitation required “evidence of a binding commitment between the prime and the subcontractor/affiliate” to perform the requirements of the solicitation. RFQ Instructions at 6. On this record, we conclude that the protester’s disagreement with the agency’s judgment in evaluating the commitment between LIS and MEP expressed in the teaming agreement does not provide a basis to sustain the protest.

AllWorld also argues that GSA failed to reasonably consider the following provision of the teaming agreement: “[A] mutually agreed subcontract(s) shall be negotiated between the Parties within sixty (60) days of the Prime’s Contract Award.” AR, Tab 11A, LIS Technical Quotation, at B-3. The protester contends that the agency did not assess the risk that the 60-day period for entering into a subcontract could cause LIS to fail to begin performance within 30 days, as required by the RFQ.

The agency responds that the provision for negotiation of a subcontract within 60 days was not a concern because, in the view of the contracting officer, this provision did not reflect the absence of a binding commitment to perform the task order requirements. See Supp. COS at 5. In this regard, the contracting officer notes that the RFQ does not require the parties to enter into a subcontract within a particular time; rather, the RFQ required the vendor to demonstrate that there was a binding commitment between the parties to perform the task order. See id. Here again, we conclude that the protester’s disagreement with the agency’s judgment as to whether the awardee’s quotation reflects a binding commitment does not provide a basis to sustain the protest.

Additionally, AllWorld argues that LIS’s quotation did not “clearly” detail MEP’s contribution to the overall proposed effort, and that the agency therefore could not have reasonably evaluated the subcontractor’s experience or capabilities. See RFQ Instructions at 6. As discussed above, the agency’s evaluation assessed the

⁴ AllWorld also argues that the teaming agreement is unenforceable under Virginia state law, citing Cyberlock Consulting, Inc. v. Information Experts, Inc., 939 F. Supp. 2d 572 (E.D. Va. 2013). Protester’s Comments & Supp. Protest (Feb. 6, 2017) at 4. Although the agreement states it is governed by the laws of Virginia, the protester does not establish why GSA was bound by Virginia state law in interpreting the RFQ requirement for evidence of a binding commitment.

experience and capabilities of “Team LIS,” which reflected the contributions of both the prime and subcontractor. AR, Tab 16, Technical Evaluation Consensus Report, at 2.

As GSA notes, contrary to the protester’s contention, LIS’s quotation specified the roles that LIS and MEP would play in the performance of the task order. The teaming agreement stated that LIS would perform [DELETED] percent of the effort, and MEP would perform [DELETED] percent. AR, Tab 11A, LIS Technical Quotation, at B-6. The awardee’s technical quotation set forth the division of labor for performance of the task order, as follows:

- LIS is the prime contractor and will provide all program and contract management support as well as staff the contract manager and alternate contract manager.
- LIS will staff [DELETED] of the Base Requirement linguists and [DELETED] of the Elective Task Requirement linguists
- MEP will supplement LIS in the staffing effort with [DELETED] Base linguists and [DELETED] Elective Task Order linguists

AR, Tab 11A, LIS Technical Quotation, at 2. Additionally, the awardee’s quotation identified which party would be providing key personnel and pre-cleared candidates. Id. at 11-21, 20-24.

On this record, we find no merit to AllWorld’s argument that LIS’s quotation failed to identify MEP’s proposed contribution to the performance of the task order. To the extent the protester argues that the information set forth above did not meet the RFQ’s requirement to “clearly” detail MEP’s proposed contribution, the protester’s disagreement with the agency’s judgment does not provide a basis to sustain the protest.

Technical Acceptability Evaluation

Next, AllWorld argues that GSA unreasonably found that LIS’s quotation met the RFQ’s technical acceptability criteria for two primary reasons: (1) MEP could not provide services under the quotation because it did not have a PSS contract with SIN No. 382-2; and (2) LIS’s quotation did not adequately demonstrate that it met the minimum technical acceptability criteria. For the reasons discussed below, we find no basis to conclude that the agency’s evaluation was unreasonable.

First, AllWorld contends that MEP could not provide services under the task order because the subcontractor did not have a PSS contract with SIN 382-2. For this reason, the protester contends, MEP could not perform work under the task order,

and the agency therefore could not reasonably evaluate any experience or capabilities associated with the subcontractor.

GSA states that although the RFQ required the prime contract vendor to have a PSS contract with SIN 382-2, proposed subcontractors were not also required to be contract holders. The agency notes that the RFQ provided the following guidance to vendors: “Sometimes contractors are not familiar with GSA’s definition of a ‘Task Order [Contractor] Teaming Arrangement’ (CTA) and confuse the definitions of a CTA with a ‘Prime Task Order/Subtask Order’ arrangement.” RFQ Instructions at 2.⁵ The guidance further explained that a quotation based on a CTA would result in a task order issued to each team member, wherein each member would be in contractual privity with the government. *Id.* at 3-4. In contrast, the guidance explained that in a prime/subcontractor arrangement, only the prime contractor is issued the order, and the order is limited to the supplies or services on the prime contractor’s schedule contract. *Id.* Our Office has explained that nothing prohibits an FSS contract holder from using a subcontractor to provide services that are included on the prime contractor’s schedule contract. IBM U.S. Fed., a division of IBM Corp.; Presidio Networked Solutions, Inc., B-409806 et al., Aug. 15, 2014, 2014 CPD ¶ 241 at 21.

AllWorld does not contend that LIS’s PSS contract with SIN 382-2 lacks the services quoted in its quotation, but nonetheless contends that MEP is also required to, but does not have, the requisite PSS contract. In light of the guidance cited by GSA for quotations submitted in a prime/subcontractor relationship, and in the absence of any contrary regulations or guidance cited by the protester, we conclude that the agency reasonably found that LIS’s quotation was acceptable based on its submission of a quotation that relied upon its own PSS contract with SIN 382-2, while also proposing to utilize MEP as a subcontractor.

Next, AllWorld argues that GSA unreasonably found LIS’s quotation technically acceptable under several of the RFQ’s minimum criteria. The RFQ required vendors to address 15 minimum critical performance standards, which were set forth in attachment A to the solicitation. The solicitation stated that a quotation must

⁵ This guidance is also on GSA’s website. Supp. AR at 9 (citing Contractor Team Arrangements, available at: <https://www.gsa.gov/portal/content/200553> (last visited March 24, 2017)). Further, as our Office has explained, CTAs under GSA schedule contracts differ from traditional prime contractor/subcontractor arrangements in that: (1) each team member has privity of contract with the government for the goods or services that it is providing, (2) each team member is responsible for its duties laid out in the CTA document, and (3) each team member must have a GSA schedule contract. Veterans Healthcare Supply Solutions, Inc., B-409888, Sept. 5, 2014, 2014 CPD ¶ 269 at 4.

“thoroughly explain in sufficient detail” how the standards will be met, and further advised that “[f]ailure to submit the [] Attachment A checklist with detailed explanation[s] will result in the quote being unresponsive and excluded from further consideration.” RFQ Instructions at 6. The protester contends that the agency unreasonably evaluated the awardee’s quotation under critical performance standard Nos. 1, 3, 8, and 10-14 of the attachment A checklist. We address two representative examples.

For critical performance standard No. 1, the RFQ stated as follows:

Does the offeror have experience in providing personnel, equipment, tools, materials, supervision, and other items and services necessary to locate, screen, hire and maintain 38 linguists capable of translation from the local language, including Arabic, Kurdish, Hindi, Pashtun, Farsi, and Dari, to Standard English?

RFQ Instructions at 10.

GSA found that LIS’s quotation met the requirement because “Team LIS demonstrated experience in providing more than [DELETED] linguists in [DELETED] locations within the CENTCOM [Area of Responsibility] through contracts with U.S. ARMY Intelligence and Security Command (INSCOM),” and further found that the awardee’s quotation “identified [DELETED] potential candidates to meet the 38 personnel requirement, which demonstrated their ability to provide [the Air Force Central Command] with an optimal solution for linguistic support [of] up to 38 qualified linguists.” AR, Tab 16, Technical Evaluation Consensus Report, at 4.

Here, as with several of AllWorld’s arguments regarding the critical performance standards, the protester argues that GSA could not have reasonably found LIS’s quotation acceptable because LIS, alone, cannot perform all of the work, and instead relied in part on MEP’s experience and capabilities. Nothing in the RFQ prohibited a vendor from submitting a quotation in a prime/subcontractor relationship, and nothing in the RFQ required vendors to demonstrate that each member of the prime/subcontract team was able to independently meet every requirement of the solicitation. We therefore find no basis to conclude that the agency’s evaluation of the combined capabilities of MEP and LIS was unreasonable or inconsistent with the RFQ’s evaluation criteria.

Next, for critical performance standard No. 10, the RFQ stated as follows:

Will all linguists assigned to this task be capable of serving during a level of heightened state of threat during extended periods of high pressure and stress, and making best efforts to ensure all translation and interpretation requirements are timely and accurate?

RFQ Instructions at 11-12.

GSA found that “Team LIS discussed in their quote how the proposed linguists have witnessed violent crimes and persevered . . . [and] therefore, understand the dangers that may come along with these services and demonstrate the capability and willingness to support the United States Government and [its] Military in these high risk environments.” AR, Tab 16, Technical Evaluation Consensus Report, at 10. The agency also cited, as evidence of the awardee’s ability to meet the requirements to provide capable linguists, the awardee’s “intensive training program including security, safety, host nation laws/rules, travel and restrictions,” as well as “ongoing, periodic, operational, and performance assessments to ensure employees are properly trained and do not pose a threat to health, safety, security or the general well-being of the installation or populace.” Id.

AllWorld argues that the awardee’s quotation did not “clearly” address the requirement to address a “heightened state of threat during extended periods of high pressure and stress.” As the record shows, however, the agency found that LIS’s quotation adequately described the personal experiences of its proposed personnel, as well as the vendor’s training programs and personnel reviews, and concluded that this information demonstrated that the proposed personnel would be capable of meeting the agency’s requirements. Although the protester disagrees with the agency’s conclusions, this disagreement does not provide a basis to sustain the protest.

Price Realism Evaluation

Next, AllWorld argues that GSA failed to reasonably evaluate the realism of LIS’s quoted price, primarily because its quotation did not include separate price information for its proposed subcontractor, MEP. For the reasons discussed below, we find no basis to conclude that the agency’s evaluation was unreasonable.

While an agency may elect to perform a realism analysis in connection with the issuance of a fixed-price or fixed-rate task order--in order to assess a vendor’s risk or to measure a vendor’s understanding of the solicitation’s requirements--the agency may not evaluate quotations for realism unless it includes such a requirement in the solicitation. VariQ Corp., B-409114 et al., Jan. 27, 2014, 2014 CPD ¶ 58 at 14; Belzon, Inc., B-404416 et al., Feb. 9, 2011, 2011 CPD ¶ 40 at 9. The nature and extent of an agency’s price realism analysis are matters within the

agency's discretion. Arrington Dixon & Assocs., Inc., B-409981, B-409981.2, Oct. 3, 2014, 2014 CPD ¶ 284 at 6. Our review of a price realism analysis is limited to determining whether it was reasonable and consistent with the terms of the solicitation. Id.

Here, the RFQ stated that the agency would evaluate the LPTA quotation "for price realism to determine if the performance risk associated with that quote is acceptable or unacceptable to the Government." RFQ Instructions at 8. LIS's quotation listed labor rates for its own PSS contract under SIN 382-2, as required by the RFQ. AR, Tab 11B, LIS Pricing Template, GSA Crosswalk. The awardee's quotation did not provide separate information or rates for the positions to be filled by MEP personnel. See id. GSA's price realism analysis consisted of comparisons of LIS's price to an independent government estimate (IGE); an analysis of the labor market for linguists, including media reports, historical pricing, and salary surveys; and comparisons of each of the three vendor's quoted rates. AR, Tab 18, Price Realism Assessment, at 4-13. The agency concluded that LIS's quoted price was realistic for the following reasons: the difference between LIS's price and the higher IGE was not relevant because the IGE was based on sole-source awards, rather than competitive awards; the awardee's labor rates were [DELETED] to those quoted by AllWorld, the incumbent for the requirements; and LIS's discounts from its PSS contract rates were [DELETED] than the discounts quoted by AllWorld.⁶ Id. at 13, 19.

AllWorld contends that MEP's rates for a different FSS contract (a PSS contract with SIN 382-4) were higher than those in LIS's quote, and that GSA therefore failed to reasonably evaluate whether it was realistic for MEP to perform the work at the lower rates listed in LIS's quotation. The RFQ, however, did not require a vendor that submitted a quotation as a prime/subcontractor team to submit price information for the subcontractor, unless the vendor was relying on PSS contract SINs other than 382-2. See AR, Tab 4C, Pricing Template, Summary Sheet. In the RFQ's guidance to vendors concerning prime contract/subcontract arrangements, the agency explains that the "ordering activity is invoiced in accordance with the prime task order's GSA Schedule task order, including any applicable reductions." RFQ Instructions at 2. In comparison, under a CTA, the ordering activity would invoice each team member's unit prices or hourly rates as agreed in the task order. Id. Further, the RFQ's pricing template required only that vendors affirm that their quoted prices relied "solely" on SIN 382-2 and, if not, to identify the other SINs. Id. As discussed above, nothing prohibited LIS from submitting a quotation that was

⁶ The price realism analysis noted that each vendor's quoted price reflected discounts from its PSS contract rates. As relevant here, LIS quoted a [DELETED] percent discount from its PSS contract rates, and AllWorld quoted a [DELETED] percent discount. AR, Tab 18, Price Realism Assessment, at 12.

based on its own PSS contract, while also proposing MEP as a subcontractor. See IBM U.S. Fed., supra. On this record, we find no basis to conclude that the awardee's quotation failed to provide information required by the RFQ.

Even though the RFQ did not require LIS to submit price information for MEP, the protester contends that GSA could have independently investigated this matter by determining whether MEP had an FSS contract for the work it was to perform under LIS's quotation. The protester contends that, had the agency done so, it would have discovered that MEP's rates under its PSS contract with SIN 382-4 were higher than the rates quoted by LIS, which should have caused the agency to question whether MEP would be able to perform at the lower rates quoted by LIS.

Although the agency could have considered the additional information for MEP, the agency relied on the evaluation described above. AR, Tab 18, Price Realism Assessment, at 9, 13. Our Office has consistently explained that the depth and manner of an agency's price realism analysis is a matter within the agency's discretion.⁷ See Navistar Def., LLC; BAE Sys., Tactical Vehicles Sys. LP, supra. On this record, we find no basis to sustain the protest.

Price Reductions Requested from LIS

Finally, AllWorld argues that GSA improperly requested that LIS reduce its quoted price because it failed to provide the protester the same opportunity. For the reasons discussed below, we find no basis to conclude that the protester was prejudiced by the agency's request, and thus no basis to sustain the protest.

⁷ In support of its argument, AllWorld cites several cases which involve circumstances materially different from those here. For example, the protester cites Metro Mach. Corp., B-297879.2, May 3, 2006, 2006 CPD ¶ 80, where we sustained a protest because the agency's cost realism analysis failed to evaluate the likely costs to the government arising from a subcontractor's proposed performance of a significant portion of the contract. That decision, however, addressed the award of a cost-reimbursement contract where the government would be required to pay the awardee's actual costs; we concluded that the cost realism evaluation was unreasonable because the agency failed to evaluate costs that it knew would be incurred by the awardee's proposed subcontractor. Id. at 12-15. Here, in contrast, the RFQ anticipated the issuance of a fixed-price task order, and LIS's quotation stated that the price was based on its own PSS contract rates; thus, unlike a cost reimbursement contract, the awardee was bound by the rates it proposed. As discussed above, the agency met its obligations to evaluate whether LIS's quoted price was realistic for its technical approach.

As relevant here, FAR § 8.405-4 permits agencies issuing orders or BPAs under the FSS to request price reductions from vendors “at any time before placing an order, establishing a BPA, or in conjunction with the annual BPA review.” GSA found that LIS submitted the lowest-priced, technically acceptable quotation, and therefore selected that vendor for award.

After selecting LIS’s quotation for issuance of the task order, the agency requested that the vendor submit “additional discounts” to its quoted price. AR, Tab 20, Email From GSA to LIS (Dec. 15, 2016). LIS responded that it was “unable to reduce our prices as the quoted rates are already significantly discounted from our GSA Schedule.” Id., Email from LIS to GSA (Dec. 16, 2016).

The FSS ordering procedures of FAR subpart 8.4 do not require agencies to conduct discussions in accordance with the negotiated procurement rules of FAR § 15.306. Salient Fed. Solutions, Inc., B-410174.3, B-410174.4, Apr. 1, 2016, 2016 CPD ¶ 104 at 6. However, exchanges that do occur with vendors in FAR subpart 8.4 procurements, like all other aspects of such procurements, must be fair and equitable. USGC Inc., B-400184.2 et al., Dec. 24, 2008, 2009 CPD ¶ 9 at 3.

Here, in essence, the agency requested that LIS further improve its already-successful quotation by quoting the agency a lower price. The agency did not, however, permit LIS to improve its quotation in a manner that was prejudicial to AllWorld’s competitive interest because, regardless of whether the request was made, LIS’s LPTA quotation would have been selected for award ahead of AllWorld’s quotation. We conclude that there was no possible prejudice to the protester because the agency requested the price reductions from LIS only after selecting that vendor for award. Competitive prejudice is an essential element of a viable protest, and we will sustain a protest only where the protester demonstrates that, but for the agency’s improper actions, it would have had a substantial chance of receiving the award. DRS ICAS, LLC, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 21. We therefore find no basis to sustain the protest.

The protest is denied.

Susan A. Poling
General Counsel