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Decision

Matter of: REG Products, LLC

File: B-414638

Date: July 3, 2017

Joseph A. Whitcomb, Esq., Whitcomb, Selinsky, McAuliffe, PC, for the protester.
Harold W. Askins III, Esq., Department of Veterans Affairs, for the agency.
Evan D. Wesser, Esq., and Edward Goldstein, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's non-selection of the protester's quotation is denied where the quotation lacked required pricing information.

DECISION

REG Products, LLC, a small business, of Ponte Vedra Beach, Florida, protests the award of a contract to NEIE Medical Waste Services, LLC, a small business, of Blairsville, Pennsylvania, under request for quotations (RFQ) No. VA241-17-Q-0196, which was issued by the Department of Veterans Affairs, for biomedical waste removal services. REG challenges the agency's determination that the protester submitted a non-compliant pricing quotation, and the evaluation of the protester's past performance.

We deny the protest.

BACKGROUND

The RFQ, which was issued on February 27, 2017, and subsequently amended three times, contemplated the award of a fixed-price contract with a 1-year base period and four 1-year option periods. RFQ at 1, 40. Additionally, the RFQ incorporated Federal Acquisition Regulation (FAR) clause 52.217-8, Option to Extend Services, which provides that the agency may require continued performance of the contract for up to six additional months. Id. at 19. Relevant to the issues presented in REG's protest, the RFQ instructed vendors that the agency would evaluate price by adding the total price for all options to the total price for the basic requirement. Id. at 44. The RFQ directed vendors to propose contract line item number (CLIN) prices in the appropriate spaces for the CLINs set forth in RFQ Section B.4, Supplies or Services and Prices/Costs. Id.

at 43. RFQ Section B.4 required vendors to propose pricing for 18 CLINs, comprised of 3 CLINs for the base year (CLINs 0001-0003), 3 CLINs for each option year (CLINs 1001-1003, 2001-2003, 3001-3003, and 4001-4003), and 3 CLINs for the FAR clause 52.217-8 option-to-extend period (CLINs 5001-5003). Id. at 10-16. The RFQ advised vendors that “[f]ailure to provide all information and documents will render the offer noncompliant with the solicitation requirements and the Quoter will be eliminated from consideration.” Id. at 45.

On March 21, REG timely submitted a quotation in response to the RFQ. While the protester proposed pricing for the base and option years (CLINs 0001-4003), REG did not propose any pricing information for the FAR clause 52.217-8 option-to-extend period (CLINs 5001-5003). Agency Report, Tab 3, REG Quotation, Section 2 – Pricing, Price/Cost Schedule. On April 18, the agency notified REG that NEIE’s quotation was selected for award at a total proposed price of \$337,518.76, inclusive of the potential 6-month option-to-extend period pursuant to FAR clause 52.217-8. Protest, exh. B, Notice of Award, at 1. The notice further advised that the pricing schedule in REG’s quotation was unacceptable because it failed to include pricing for CLINs 5001-5003, and included additional unauthorized line items. Id. at 2. The notice also indicated that the agency was unable to obtain any past performance information for REG. Id. This protest followed.

DECISION

REG challenges the agency’s evaluation of its pricing and past performance quotations. With respect to the price evaluation, the protester contends that the RFQ was ambiguous with respect to the resulting contract’s period of performance. Specifically, REG argues that it reasonably did not include pricing for the fifth option period corresponding to the six month option-to-extend period because the RFQ indicated that the resulting contract’s period of performance inclusive of options would only be five years. For the reasons that follow, the protest is without merit.¹

As an initial matter, we disagree with REG’s argument that the RFQ’s anticipated period of performance for the resulting contract was ambiguous. In this regard, there is no inconsistency between the RFQ’s stated 5-year period of performance and the option-to-extend period contemplated by FAR clause 52.217-8. The RFQ defines the overall potential term (with options) of the contract as five years; FAR clause 52.217-8 merely provides the agency with a right to seek up to an additional six months of contract performance beyond the 5-year term where exigent circumstances (such as a delay in award of a follow-on contract) create the need for continued performance. See Akal Security, Inc., B-244386, Oct. 16, 1991, 91-2 CPD ¶ 336 at 5.

¹ The agency also argues, and REG contests, that the protester’s pricing quotation included additional deficiencies. In light of our determination that REG’s failure to price all CLINs rendered its quotation unacceptable, we need not resolve the other disputed issues.

Furthermore, the omission of a portion of the required price information rendered the quotation unacceptable. RFQ at 45. In this regard, since vendors were required to provide option prices and those prices were to be evaluated for purposes of determining the total evaluated price, option prices were a material solicitation requirement. RightStar Sys., B-407597, Jan. 16, 2013, 2013 CPD ¶ 35 at 5; Manthos Eng'g, LLC, B-401751, Oct. 16, 2009, 2009 CPD ¶ 216 at 2. A vendor bears the burden of submitting an adequately written quotation that contains all of the information required under a solicitation, and an agency may reject a quotation that omits required pricing. RightStar Sys., *supra*; Capitol Supply, Inc., B-309999.3, Jan. 22, 2008, 2008 CPD ¶ 35 at 5-6. Since REG did not provide the required option pricing for CLINs 5001-5003, its quotation did not conform to the material terms of the RFQ, and therefore could not be accepted for award.

Finally, based on our determination that REG's quotation was ineligible for award based on its failure to price all required CLINs, we need not address the protester's challenge to the agency's past performance evaluation because any error under that factor would have been harmless. Competitive 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. DNC Parks & Resorts at Yosemite, Inc., B-410998, Apr. 14, 2015, 2015 CPD ¶ 127 at 12. Even accepting for the sake of argument that the agency's evaluation of REG's past performance was unreasonable, the protester's quotation was ineligible for award for failing to include all required pricing.

The protest is denied.

Susan A. Poling
General Counsel