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Decision

Matter of: FedResults, Inc.

File: B-414641

Date: August 8, 2017

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DIGEST

1. Protest challenging the agency’s finding that the protester’s price was not fair and reasonable is denied, where the protester’s price proposal was incomplete and its evaluated price was over 20 times the agency’s estimated price.
 2. Protest is denied where the agency reasonably concluded that the awardee’s proposal satisfied the solicitation requirements, and where the protester fails to address how it was prejudiced by any possible waiver of such requirements.
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DECISION

FedResults, Inc. (FedResults), of Reston, Virginia, protests the establishment of a blanket purchase agreement (BPA) with Cybermedia Technologies, Inc. (CTEC), of Reston, Virginia, by the Department of the Interior (DOI), under request for quotations (RFQ) No. RFQ1156958. The protester raises multiple challenges to the establishment of the BPA, including allegations that the agency’s price evaluation was flawed and that the awardee’s proposal failed to satisfy certain solicitation requirements.

We deny the protest.

BACKGROUND

On January 6, 2017, DOI issued the RFQ under the Federal Supply Schedule (FSS) procedures of Federal Acquisition Regulation (FAR) subpart 8.4, to current holders of General Services Administration (GSA) schedule 70 contracts, with a response date of

February 6, 2017. The solicitation sought support services for the Federal Consulting Group, a DOI component that provides digital communication services throughout the federal government. The RFQ anticipated the establishment of one BPA, with one base year period and four 1-year option periods, for orders of email marketing services as well as for technical, management, training, and administrative support activities for planning and delivering digital communications management services to the federal government. Agency Report (AR), Tab 3, RFQ at 4-6.

The solicitation provided for a best-value tradeoff, considering the following three factors in descending order of importance: technical and management approach, past performance, and price. Id. at 38. The RFQ provided for a 2-phase evaluation under the technical and management approach factor, where phase 1 was an evaluation of written quotations and phase 2 was a live demonstration of the vendor's subscription management solution. Id. at 36. Phases 1 and 2, when combined, comprised the entire evaluation for the technical and management factor. Id. However, quotations receiving a rating of unsatisfactory after phase 1 were deemed ineligible for further consideration. Id. at 37. The following adjectival ratings were used in both phases of the technical and management factor evaluation:

EXCELLENT - Quoted capability exceeds the requirements in a way that yields some additional benefits beyond the stated requirements. There are no significant weaknesses or deficiencies. Risk of unsuccessful performance is Very Low.

SATISFACTORY - Quoted capability meets all minimum requirements and offers no benefits beyond the stated requirements. Strengths and weaknesses are offsetting or will have little or no impact on performance. Risk of unsuccessful performance is Low.

MARGINAL - Quoted capability meets the minimum requirements however, it has one or more significant weakness. Risk of unsuccessful performance is High.

UNSATISFACTORY - Quoted capability fails to meet the minimum requirements and has one or more significant weakness or deficiency. [sic] Award cannot be made with this rating.

Id.

Under the price factor, the RFQ required vendors to submit--for themselves and any proposed teaming partners--their GSA Schedules and a list of the GSA schedule items and prices required to accomplish the tasks listed in the statement of work (SOW). Id. at 35. Vendors were also required to provide prices for individual tasks shown in each of three sample scenarios representing a new dashboard requirement, a small agency requirement, and a large agency requirement, as well as a total price for each sample scenario. Id. Further, "[o]fferors must describe all (if any) assumptions upon which the

Sample SOW [statement of work] price quote or BPA Price List is based.” Id. Vendors were advised as follows regarding the agency’s intended price evaluation:

Price will be evaluated in accordance with FAR 8.404(d). The Government will evaluate the reasonableness of the Offeror’s price quote as outlined in Section L.2.3 to, in part, determine the overall best value.

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The Government will evaluate the Offeror’s quote as provided in response to Sample SOW Scenarios 1-3.

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In addition, the Government will evaluate the individual Scenario Task prices and the total quoted price for each Scenario to make a fair and reasonable determination. The evaluation will include a determination of which offeror has provided the Government the most advantageous overall pricing considering the magnitude of discounts offered from their GSA Schedule 70 pricing, tiered price discounts based on Call Order¹ value, or other available discounts.

The Government intends to evaluate pricing for a five (5) year term.

RFQ at 38.

The agency received timely responses from three vendors, including CTEC and FedResults. AR, Tab 36, Award Summary, at 2-3. Under phase 1 of the technical and management factor evaluation, FedResults received a marginal rating and CTEC received a rating of satisfactory. Id. at 4. The third vendor received a rating of unsatisfactory after the phase 1 evaluation and was removed from further consideration. Id. at 4-5. The agency’s final evaluation of the proposals was as follows:

¹ A “call order” is an order placed against a BPA pursuant to the authority in Federal Acquisition Regulation (FAR) § 8.405-3(c)(2)(iii).

Factor	CTEC	FedResults	IGCE²
Technical and Management	Satisfactory	Marginal	
<i>Significant Strengths</i>	3	0	
<i>Strengths</i>	5	0	
<i>Weaknesses</i>	6	5	
<i>Significant Weaknesses</i>	3	6	
Past Performance	Acceptable	Acceptable	
Total Evaluated Scenario Price	\$123,835	\$2,754,778	\$134,898
Estimated Total BPA Value	\$42,227,820	\$939,379,298	\$46,000,000

Id. at 2-4, 12-14.

As to price, DOI initially found several problems in CTEC’s quotation, but the contracting officer decided that these could be addressed through clarifications. Id. at 15. CTEC responded to the agency’s concerns, and the contracting officer concluded that CTEC’s pricing was fair and reasonable. Id.

DOI also requested clarifications from FedResults after identifying an assumption in FedResults’ price proposal that the agency could not substantiate. AR, Tab 29, FedResults Clarification Request Response, at 1. FedResults responded that the assumption was included in its teaming partner’s “GSA Schedule Attachment VIII” with the other pricing materials from the teaming partner, but DOI was unable to locate this document in FedResults’ price proposal. Id., AR, Tab 36, Award Summary at 16. The agency determined that FedResults’ proposed pricing was not fair and reasonable on the basis of the incomplete proposal and FedResults’ scenario pricing, which was over 20 times higher than the agency’s estimate. Id. at 17.

DOI made award to CTEC as the higher-rated, lower-priced vendor, and this protest followed. Id. at 19.

² The agency’s independent government cost estimate (IGCE) of \$46,000,000 and 341 total call orders encompassed the base period and all option years. The agency’s estimates were based on actual obligations from the recently-expired incumbent BPA held by FedResults, adjusted for anticipated program growth, additional BPA requirements and inflation. Contracting Officer Statement (COS) at 4; AR, Tab 36, Award Summary, at 17. At 341 call orders and an IGCE of \$46 million, the scenario call order pricing is \$134,898. FedResults did not challenge either the basis for the agency’s IGCE nor its estimate of the scenario pricing.

DISCUSSION

FedResults challenges the agency's evaluation of its price proposal and alleges that CTEC's proposal contained various factors that rendered CTEC ineligible for a BPA. For the reasons below, the protest is denied.³

Price Evaluation

FedResults argues that DOI ignored FedResults' pricing assumptions and misevaluated its price by using an improper evaluation method. Protester's Comments at 12. The agency contends that it properly found FedResults' pricing to be unreasonable. Memorandum of Law (MOL) at 4.

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. Beltway Transp. Serv., B-411458, July 28, 2015, 2015 CPD ¶ 225 at 3. In reviewing protests challenging an agency's evaluation, our Office will examine the record to determine whether the agency's judgments were reasonable and in accordance with the solicitation criteria along with applicable statutes and regulations. Wizdom Sys., Inc., B-299829, Aug. 3, 2007, 2007 CPD ¶ 145 at 9; Verizon Fed., Inc., B-293527, Mar. 26, 2004, 2004 CPD ¶ 186 at 4. A protester's disagreement with the agency's judgment, without more, does not establish that an evaluation was unreasonable. Wizdom Sys., supra.

Incomplete Proposal

FedResults argues that DOI ignored its pricing assumptions and, as a result, overestimated the total potential cost to the agency of FedResults' quotation. Protester's Comments at 12. The agency contends that it properly concluded that the protester's proposed pricing method was not fair and reasonable because "FedResults' response to the solicitation did not contain all of the information to substantiate its pricing terms and conditions." MOL at 4. We agree.

FedResults proposed prices based on bandwidths of the number of potential users. See, e.g., AR, Tab 9, FedResults Price Proposal, at 8. The proposal included the following assumption regarding the calculation of the number of potential users, i.e., the basis of its pricing: "Potential Users are based on the greater of quarterly website visits

³ Because we find that the agency reasonably concluded that FedResults' price method relied on an unverified price assumption and was thus not fair and reasonable under FAR 8.404(d), we need not address the protester's challenges to the agency's evaluation of its technical proposal. FedResults also raised various other arguments; we have reviewed them, but find that none provides a basis to sustain the protest.

to the domains covered by a license or the subscriber base multiplied by 12, less 20% to account for inactive subscribers.” Id. at 8-9. The agency was concerned that this assumption did not capture accurately how this work would be performed because the assumption “indicates that the offerors’ basis for pricing may be established on the number of website visits in lieu of a relevant basis such as number of subscribers or number of email sends.” AR, Tab 36, Award Summary, at 16. DOI asked FedResults to clarify “where or if this formula for calculating Potential Users is located within FedResults’ or [its teaming partner’s] GSA schedule or pricing” and whether “this formula and/or basis for the formula [has] been approved by GSA?” AR, Tab 29, FedResults Clarification Request Response, at 1. In response, FedResults directed DOI to the teaming partner’s “GSA Schedule Attachment VIII.” Id. DOI was unable to locate this attachment within the FedResults’ price proposal. AR, Tab 36, Award Summary, at 16. The agency accordingly concluded that “the clarifications provided by the Offeror failed to alleviate the CO’s concerns, rather they served to substantiate the CO’s and TET’s [technical evaluation team’s] pricing method concern,” and thus, “the total price quoted by FedResults cannot be found to be fair and reasonable.” Id. at 17.

The agency argues that it had a reasonable basis for concluding that the protester’s proposed price was not fair and reasonable because “FedResults pointed the Agency to an attachment that it did not submit and, as far as the Agency knows, does not even exist.”⁴ MOL at 4. A vendor has the responsibility to submit an adequately written quotation that includes sufficiently detailed information to affirmatively demonstrate that the vendor will comply with the solicitation requirements. Wizdom Sys., supra; see also ADC, Ltd., B-297061, Oct. 14, 2005, 2005 CPD ¶ 178 at 5. Vendors bear the burden for failing to submit an adequately written quotation, and contracting agencies are not obligated to go in search of needed information which the vendor has omitted or failed adequately to present. The Severson Grp., B-298195, June 9, 2006, 2006 CPD ¶ 94 at 3.

The record shows that FedResults failed to direct DOI to documentation allegedly responsive to the agency’s request for clarifications regarding its pricing assumptions. Without this documentation, FedResults’ proposal is incomplete. In responding to a solicitation such as the one here, it is the FSS contract holder’s responsibility to submit an adequately written proposal, and where a proposal omits, inadequately addresses, or fails to clearly convey required information, the schedule holder runs the risk of an adverse agency evaluation. Beltway Transp. Serv., supra, at 4; K & V Limousine Serv., LLC, B-409668, July 10, 2014, 2014 CPD ¶ 209 at 3. On this record, the agency had a

⁴ Although the issue of attachment VIII was raised by the agency, in the course of this protest, the protester failed to respond to the agency’s arguments in its comments. Supp. MOL at 3. Furthermore, FedResults did not identify the alleged attachment in the record or provide it our Office as part of any filing.

reasonable basis to conclude that FedResults' pricing was not fair and reasonable. Id. This protest ground is denied.⁵

Unreasonable Proposed Price

FedResults also disputes DOI's evaluation of its proposed pricing. DOI argues that FedResults' pricing was simply high, and that the agency was at risk of substantially overpaying for services if a BPA were established with FedResults. COS at 7.

The RFQ provided for evaluation of "the individual Scenario Task prices and the total quoted price for each Scenario to make a fair and reasonable determination," as well as for an evaluation of 5-year pricing. RFQ at 38. In establishing a BPA, DOI concluded that "FedResults [sample scenario] pricing at \$2,754,778.07 was found to have a flawed pricing basis [i.e., that the pricing assumption was not sufficiently linked to performance] which would likely artificially inflate prices." AR, Tab 36, Award Summary, at 18. FedResults does not address how the information in the missing attachment would have affected its scenario pricing. Protester's Comments at 13. Because the RFQ provides for an evaluation of scenario pricing, we find that the considerable difference between FedResults' pricing and the IGCE, as well as the insufficient support provided to explain FedResults' approach, supports the agency's conclusion that FedResults' pricing was not fair and reasonable.

However, FedResults largely challenges the agency's decision to multiply vendors' scenario pricing by 341 to arrive at an estimated total cost for the BPA. For FedResults, this method resulted in an estimated BPA cost of approximately \$939 million, as compared to the IGCE of \$46 million. Id. The protester generally disputes approximately \$518 million of this amount, which leaves unchallenged the remaining \$421 million, i.e., a value still 9 times more than the IGCE. Id. at 16-17. Yet FedResults does not specifically identify the alleged flaws in the agency's calculation because it "would have to analyze each of its pricing assumptions and apply them both individually and in tandem (since multiple assumptions can overlap or apply simultaneously) to DOI's price determination . . . to arrive at the full amount by which DOI improperly inflated FedResults price." Id. at 16. The protester declines to perform this recalculation because "[s]uch a determination may not even be possible . . . [and] [i]ndeed, a single unified analysis is likely unobtainable." Id. The agency estimated the total cost over the life of the BPA by multiplying the pricing scenario, which the agency contends is a reasonable estimate of an average call order, by the total estimated number of call orders. The protester's arguments provide insufficient grounds to question this methodology.

⁵ We have similarly denied protests where the agency concluded that an incomplete proposal was technically unacceptable. See, e.g., Bridges Sys. Integration, LLC, B-411020, Apr. 23, 2015, 2015 CPD ¶ 144 at 5.

In sum, FedResults' scenario pricing was high and the company failed to adequately respond to the agency's clarification request, such that its price proposal was incomplete. Accordingly, the agency had a reasonable basis to conclude that FedResults' quotation was not fair and reasonable. AR, Tab 36, Award Summary, at 17. Although the protester disagrees with the agency's conclusions, it has not shown that the agency's evaluation was unreasonable or inconsistent with the solicitation or applicable rules and regulations. Aurotech, Inc., B-413861.4, June 23, 2017, 2017 CPD ¶ __ at 9. This protest ground is denied.

Challenges to CTEC's Eligibility for a BPA

FedResults also argues that CTEC's technical proposal fails to meet--and takes exception to--various solicitation requirements. Protester's Comments at 33. For the reasons below, this protest ground is denied.

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 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. AllWorld Language Consultants, Inc., B-414244, B-414244.2, Apr. 3, 2017, 2017 CPD ¶ 111 at 3. An agency's evaluation of technical quotations is primarily the responsibility of the contracting agency, since the agency is responsible for defining its needs and identifying the best method of accommodating them. Complete Packaging & Shipping Supplies, Inc., B-412392 et al., Feb. 1, 2016, 2016 CPD ¶ 28 at 4. In reviewing an agency's evaluation, we will not reevaluate vendors' quotations, and a protester's disagreement with the agency's evaluation, without more, is not sufficient to render the evaluation reasonable. Advanced Tech. Sys., Inc., B-296493.5, Sept. 26, 2006, 2006 CPD ¶ 147 at 5.

Federal Risk and Authorization Management Program (FedRAMP) Certification

Among its various requirements, the RFQ SOW provides that:

The Contractor shall ensure that the solution is compliant with all applicable Department of the Interior and Federal Information Technology guidance and regulations, including FedRAMP, Federal Information Security Management Act (FISMA), and National Institute of Standards and Technology (NIST) publications.

The Contractor shall ensure that the solution is properly certified under FedRAMP or that they have submitted final materials for certification prior to start of service performance under this BPA.

RFQ at 9. FedResults argues that aspects of CTEC's proposed data hosting structure fail to comply with FedRAMP requirements, which "demonstrates that [CTEC's] proposal is non-responsive" to the solicitation. Protester's Comments at 19, 35. The

protester argues that CTEC's proposal also fails under this RFQ requirement because CTEC has not submitted its final materials for FedRAMP certification. Id.

DOI responds that "[t]he Technical Evaluation Team confirmed in their Summary Report on page 2, that CTEC proposed a FedRAMP certified solution and therefore, meets security requirements of the RFQ." Supp. COS at 5, citing AR, Tab 23, Final Tech. Evaluation Summary-CTEC. The agency further asserts that it has "verified with CTEC that all layers of their cloud solution would be properly certified under FedRAMP or that they have submitted final materials for certification prior to start of service performance under this BPA per the RFQ." Id.

We find that the protester has failed to rebut the agency's explanation or substantiate its own arguments with reference to the record. Accordingly, we find no merit to the allegations that CTEC's proposal fails to meet any specific FedRAMP requirement or the RFQ's submission requirements regarding certification. This protest ground is denied. AllWorld Language Consultants, Inc., supra, at 4.

Site Inspection

FedResults next argues that CTEC's proposal contains an improper limitation on the agency's right to conduct site inspections and improperly took exception to the solicitation. Protester's Supp. Comments at 6-9. The RFQ SOW provided as follows regarding site inspections:

The contractor shall provide access to Government representatives when requested in order to verify compliance with the requirements for an Information Technology security program. The Government reserves the right to conduct on-site inspections. The contractor shall make appropriate personnel available for interviews and provide all necessary documentation during this review.

RFQ at 9. CTEC's proposal stated as follows regarding the audit and access rights of its teaming partner:

As a multi-tenant cloud service provider, Salesforce does not typically offer a Right to Audit clause as part of the base service offering. As a multi-tenant service, compartmentalization is virtual, not physical. Annual site visits can be arranged at the customer's expense, but in consideration of our other customers, random access cannot be permitted. Salesforce has third party auditors that inspect and review our security. Salesforce undergoes annual audits for compliance with additional frameworks such as SSAE 16 SOC 1, SOC 2, SOC 3, ISO 27001, and PCI-DSS Level 1. The results of these audits can be provided to the customer as desired under [an] NDA.

If negotiated in an agreement, and should the customer desire to conduct an annual site visit, the customer can do so once annually upon

contractual agreement by the relevant parties in a final contract and after completing Salesforce's Security Assessment Agreement. The customer may conduct, either itself or through a third party independent contractor selected by the customer at their expense, an on-site audit and review of Salesforce's architecture, systems and procedures used in connection with the Services. Such audit and review shall be conducted up to once per year, with one week's advance notice. After conducting an audit, the customer must notify Salesforce of the manner in which Salesforce does not comply with any of the security, confidentiality or privacy obligations herein, if applicable.

AR, Tab 10, CTEC Technical Proposal, at 24.

We agree with the protester that the language herein appears to limit the agency's access rights beyond what is contemplated by the solicitation.

The agency contends first that CTEC's restrictions are "commercially reasonable," but also argues that "[e]ven if the site inspection requirement is viewed as a material term that the [a]gency relaxed," the protester has nonetheless failed to show that it was prejudiced by such "waiver or relaxation," as provided in our decisions. Supp. MOL at 18-19, citing ExecuTech Strategic Consulting, LLC; TRI-COR Indus., Inc., B-410893 et al., Mar. 9, 2015, 2015 CPD ¶ 103 at 12-13; Vocus Inc., B-402391, Mar. 25, 2010, 2010 CPD ¶ 80 at 6.

With regard to the agency's position that it waived or relaxed the RFQ access provision, our decisions provide that, where an agency arguably may have waived or relaxed a solicitation requirement, a protester must still show that it was prejudiced by the agency's actions. See Penn Parking, Inc., B-412280.2, Feb. 17, 2016, 2016 CPD ¶ 60 at 5; Desbuild Inc., B-413613.2, Jan. 13, 2017, 2017 CPD ¶ 23 at 7; Alphaport, Inc., B-414086, B-414086.2, Feb. 10, 2017, 2017 CPD ¶ 69 at 11. In order to demonstrate prejudice from the waiver or relaxation of the terms and conditions of a solicitation, a protester must show that it would have altered its proposal to its competitive advantage, id., or that the agency did not apply a similar waiver to the protester's proposal. See Zodiac of N. Am., B-409084 et al., Jan. 17, 2014, 2014 CPD ¶ 79 at 6.

In response, FedResults asserts that "[i]t is irrelevant whether FedResults would have amended its response to the RFQ because the fact remains that it was the only bidder who offered a proposal that complied with the RFQ's stated requirements." Protester's Supp. Comments at 22. This argument is circular because it presumes its intended conclusion, i.e., that CTEC's proposal remains non-compliant. It also fails to respond to the agency's argument and our decisions providing that, where an agency waives or relaxes a solicitation provision, the protester must demonstrate that it was prejudiced. See, e.g., Penn Parking, Inc., supra. FedResults does not allege that had it known that the agency ultimately might waive or relax the site inspection provisions, it would have changed its quotation to improve its competitive position. Instead, the protester asserts

simply that such inquiry is “irrelevant.” We find no merit to this argument and conclude that FedResults has failed to demonstrate prejudice. Desbuild Inc., supra.

The protest is denied.

Susan A. Poling
General Counsel