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Decision

Matter of: Raith Engineering and Manufacturing Company, WLL

File: B-419023.4

Date: July 19, 2021

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Lawrence J. Sklute, Esq., and Lana Meller, Esq., Sklute & Associates, for Cargo Transport Systems Company, an intervenor.
Erika Whelan Retta, Esq., Isabelle P. Cutting, Esq., Rebecca MarquetteTatum, Esq., Colonel Patricia S. Wiegman-Lenz, Todd P. Federici, Esq., and Robert D. Bowers, Esq., Department of the Air Force, for the agency.
Mercedes Wilson-Barthes and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging an agency's evaluation of the awardee's quotation under a solicitation's technical factors is denied where the record shows that the evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

Raith Engineering & Manufacturing Company W.L.L., of Sharq, Kuwait, protests the award of a fixed-priced contract to Cargo Transport Systems Company (CTS) of Safat, Kuwait, under request for quotations (RFQ) No. HTC71120QW001, issued by the United States Transportation Command (USTRANSCOM) for deployment and distribution support services. Raith challenges the evaluation of the awardee's technical approach.

We deny the protest.

BACKGROUND

On June 17, 2020, the agency issued the RFQ, which contemplated a fixed-price contract on a lowest-price, technically acceptable basis for a base year and four 1-year option periods. Agency Report (AR), Tab 6, RFQ at 1-7; AR, Tab 9, RFQ Evaluation Criteria at 4. The RFQ, issued pursuant to Federal Acquisition Regulation (FAR)

subpart 13.5, Simplified Acquisition Procedures, and FAR part 12, Acquisition of Commercial Items, sought a contractor to provide deployment and distribution services in support of the 595th Transportation Brigade and support units' operations missions throughout the USTRANSCOM area of responsibility. AR, Tab 7, RFQ Performance Work Statement (PWS) at 3. The agency received eight quotations in response to the RFQ, including those submitted by Raith and CTS. AR, Memorandum of Law (MOL) at 2. On August 13, 2020, the agency awarded the contract to Raith. AR, Tab 10, Contract Awarded to Raith at 1.

CTS subsequently filed two protests with our Office, which were dismissed.¹ In response to the second of these protests, the agency decided, among other things, to amend the solicitation to remove a requirement that prices be analyzed for realism. AR, Tab 23, RFQ amend. 1 at 4-5.

The amended RFQ revised the evaluation factors and basis for award.² AR, Tab 23, RFQ amend. 1, Evaluation Criteria at 3-5. The solicitation stated that, as the first step in the evaluation process, the agency would review each quotation for "compliance," which the RFQ defined as including "the required introductory document and complete technical and price volumes." *Id.* at 5. The RFQ clarified that only quotations that were found compliant would be evaluated. *Id.*

The RFQ provided that the agency would first evaluate the technical volume of the compliant quotation offering the lowest price. *Id.* The technical volume would be rated as acceptable or unacceptable.³ *Id.* The RFQ stated that "[i]f the quot[ation] with the lowest proposed price is deemed unacceptable for their technical volume, then the next-lowest priced quot[ation]'s technical volume will be evaluated, if deemed compliant." *Id.* Next, the agency would review the price volume from the vendor that submitted the lowest-priced, technically acceptable quotation to determine whether the price was fair and reasonable, using the guidance provided in section 13.106-2 of the FAR. *Id.* If the lowest-priced quotation was deemed to have fair and reasonable prices, the agency

¹ CTS filed its first protest, B-419023, on August 19, 2020, which was dismissed as academic after the agency advised that it would re-evaluate the quotations in accordance with the solicitation and make a new award decision. *Cargo Transport Sys. Co.*, B-419023, Aug. 31, 2020 (unpublished decision). CTS filed its second protest on December 3, 2020 along with a request for reimbursement of costs (B-419023.2 and B-419023.3). The agency again proposed to take corrective action, in this instance stating that it would amend the solicitation to reflect its actual requirements, and our Office dismissed the protest as academic; we also dismissed the request for costs for failure to state a valid basis. *Cargo Transport Sys. Co.*, B-419023.2, B-419023.3, Jan. 22, 2021 (unpublished decision).

² Hereinafter, references to the RFQ are to the RFQ as amended on February 12, 2021.

³ The evaluation criteria describe "acceptable" as a quotation that "meets the requirements of the solicitation" and "unacceptable" as a quotation that "does not meet the requirements of the solicitation." AR, Tab 23, RFQ amend. 1 Evaluation Criteria at 5.

would complete a responsibility determination, and if the agency found the vendor responsible, then “the evaluation process stops at this point as that quot[ation] represents the best value to the Government. Award shall be made to that quoter without further consideration of any other quot[ation]s.” *Id.*

The agency received five quotations in response to the amended RFQ. AR, Tab 51, Best-Value Decision Document at 1. The agency concluded that only the quotations submitted by CTS and Raith were compliant. *Id.* at 2. Because the agency found CTS’s compliant quotation to offer the lowest price, it reviewed this quotation’s technical volume first. AR, Tab 51, Best-Value Decision Document at 2. The agency evaluated CTS’s technical volume as acceptable. *Id.*

The agency then reviewed CTS’s price volume and found that CTS offered a fair and reasonable price. Thereafter, the agency found CTS to be a responsible vendor. *Id.* In accordance with the solicitation, the agency determined that CTS’s quotation represented the best value to the government. *Id.* at 3. Also in accordance with the RFQ, the agency did not evaluate Raith’s quotation. *Id.* at 2.

The agency notified Raith on April 14, 2021, that its previously awarded contract was terminated for convenience. AR, Tab 53, Raith Contract Termination for Convenience at 1-2. On April 15, pursuant to FAR section 13.106-3, the agency announced on beta.sam.gov that the contract had been awarded to CTS in the amount of \$660,000. AR, Tab 56, Confirmation of CTS Award at 1-3. Raith requested a debriefing in writing the same day of the award announcement. AR, Tab 57, Raith Post-Award De-Brief at 1. After receiving a written debriefing, Raith timely filed this protest with our Office. *Id.*; Protest at 1.

DISCUSSION

Raith challenges the agency’s award of a contract to CTS based on the evaluation of quotations under the technical factors.⁴ Protest at 2, 12-13. Specifically, Raith contends that USTRANSCOM’s determination that CTS’s quotation was technically acceptable was “arbitrary, unreasonable and contrary to the RFQ’s evaluation scheme.” *Id.* at 2.

In reviewing a protest challenging an agency’s evaluation, our Office will not reevaluate quotations, nor substitute our judgment for that of the agency, as the evaluation of quotations is a matter within the agency’s discretion. Rather, we will review the record to determine whether the agency’s evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. *Computer World Servs. Corp.*, B-410513, B-410513.2, Dec. 31, 2014, 2015 CPD ¶ 21 at 6. A protester’s disagreement with the agency’s judgment, without more, is

⁴ Raith also argued, in its initial protest, that the award to CTW was flawed due to an impermissible organizational conflict of interest. Protest at 6-11. The protester subsequently withdrew this first protest issue. Raith Comments on AR at 2 n. 1.

insufficient to establish that the agency acted unreasonably. *Vertex Aerospace, LLC*, B-417065, B-417065.2, Feb. 5, 2019, 2019 CPD ¶ 75 at 8.

Raith argues the agency's evaluation of CTS's technical volume is unreasonable because:

[t]here is undoubtedly a substantial risk of staff retention that is inherent in proposing to perform the required tasks with as few as half of the staff traditionally required for the same services, and/or to compensate staff at a fraction of the wages that have been paid for such work. Under this model, staff will unquestionably be severely overworked and/or significantly underpaid. There are no "techniques" or "actions" that could have been explained in CTS's technical volume that would demonstrate how staff performing under these circumstances could reasonably be retained "over the entire period of performance."

Protest at 13.

The agency defends as reasonable its conclusion that CTS's technical volume was acceptable. AR, Tab 51, Best-Value Decision Document at 2. Regarding the requirements of the technical volume that informed this determination, the agency relies on the following provisions in the RFQ:

The quoter shall provide in detail, a management approach that will successfully accomplish the requirements of the solicitation, including the performance work statement [PWS]. Included within the management approach, the quoter shall provide a personnel matrix that identifies the personnel resources to be utilized in performing each of the specific deployment and distribution service support tasks outlined in the PWS. Quoters shall also identify the necessary qualifications (education, experience, security, or special skills) it will require for its personnel performing the PWS tasks. Quoter shall discuss the procedures that will be used to establish and retain a workforce sufficient to satisfy the requirements of the purchase order over the entire period of performance. Furthermore, the quoter shall discuss phasing-in and demonstrate the ability to be fully staffed and operational by the start date of the contract, to include contract management requirements, anticipated tasks, and projected completion dates. The quoter should provide any other information the quoter considers relevant to the solicitation. The quoter should describe any risks associated with implementation of the quoter's management approach; describe any techniques and actions to mitigate such risks; and explain whether the techniques and actions identified for risk mitigation have been successfully used by the quoter.

AR, Tab 23, RFQ amend. 1 Evaluation Criteria at 3-4.

The agency evaluated CTS's technical volume using the agency's "Technical Evaluation Checklist," which organized the above solicitation requirements into five separate evaluation criteria. AR, Tab 37, [DELETED] Technical Evaluation Worksheet at 1-2; AR, Tab 38, Updated [DELETED] Technical Evaluation Worksheet at 1-2. The evaluators' worksheets reflect that the standard under which CTS's technical quotation was evaluated was taken verbatim from the RFQ, as quoted above, and that the evaluators indicated that each requirement was met. Using this evaluation approach, the agency rated CTS's technical volume acceptable. AR, Tab 51, Best-Value Decision Document at 2. One reviewer provided comments in addition to the acceptable rating given for each of the requirements, stating, for example, "CTS explains through the proposal that they have an understanding of the SDDC [Surface Deployment and Distribution Command] systems mentioned in the PWS by providing exquisite details of the process and procedures"; and "CTS illustrates through their personnel matrix that they have employees ready to perform the services and deliverables that are outlined in the PWS"; and, further, "[t]heir proposal also notes their plan to train employees where gaps present themselves." AR, Tab 38, Updated [DELETED] Technical Evaluation Worksheet at 1-2.

We have fully considered the record and the parties' arguments and find no basis to question the agency's evaluation. Contrary to the protester's contention that the agency's evaluation of CTS's technical volume as acceptable was "unreasonable and contrary to the RFQ's evaluation scheme," the record shows that the agency concluded that CTS's technical proposal satisfied all the RFQ requirements and was therefore acceptable. Protest at 13; AR, Tab 51, Best-Value Decision Document at 2.

Moreover, as Raith acknowledges in its comments, [DELETED] and proposed to hire the incumbent staff members. Comments at 2. Despite these aspects of the awardee's staffing approach, Raith argues that CTS's technical quotation presented an unacceptable level of risk that the agency overlooked in its evaluation. The protester's arguments in this regard, however, are based on the quoted price at which the awardee proposed to provide the services, which Raith alleges is too low. This contention, however, does not state a legally sufficient ground of protest, as discussed below.

The protester asserts that CTS's final revised price of \$660,000, which is significantly lower than CTS's original price of [DELETED], could negatively impact CTS's contract performance. Protester's Comments at 6, 10-11. Raith argues that "[g]iven the sheer enormity of CTS's price reduction, it was unreasonable for USTRANSCOM to fail to consider the risk that salaries would be cut and employee dissatisfaction and attrition would rise, and the potential impact that this would have on performance." Raith Comments on AR at 10-11. Therefore, Raith argues that CTS's price quotation results in "a significantly higher risk of performance and staff retention problems." Raith Resp. to Intervenor's Req. to Dismiss at 3.

Where, as here, a solicitation contemplates the award of a fixed-price contract, price realism is not ordinarily considered, because a fixed-price type contract places the risk and responsibility for costs and resulting profit or loss on the contractor. *Louis Berger Power, LLC*, B-416059, May 24, 2018, 2018 CPD ¶ 196 at 8. While an agency may

conduct a price realism analysis in awarding a fixed-price contract, it is for the limited purpose of measuring an offeror's understanding of the requirements or to assess the risk inherent in the offeror's quotation. FAR 15.404-1(d)(3); *Jefferson Consulting Grp.*, B-417555.2, Aug. 16, 2019, 2019 CPD ¶ 293 at 12. In the absence of an express price realism provision, we will conclude that a solicitation contemplates a price realism evaluation only where the solicitation states that the agency will review prices to determine whether they are so low that they reflect a lack of technical understanding, and the solicitation states that a quotation can be rejected for offering low prices. See *id.* Absent a solicitation provision providing for a price realism evaluation, agencies are neither required nor permitted to conduct one in awarding a fixed-price or labor-hour contract. See *id.*

Here, the RFQ contained neither an express price realism provision nor any statement that the agency would review prices to determine whether they are so low as to reflect a lack of technical understanding. AR, Tab 23, RFQ amend. 1 Evaluation Criteria at 4-5. In this circumstance, we conclude that Raith has failed to make the threshold showing required to prevail on its allegation that the agency was required to consider the potential impact of CTS's low price in its evaluation--in other words, to conduct a price realism analysis. Accordingly, we dismiss this ground for failure to state a valid basis of protest. 4 C.F.R. §§ 21.1(c)(4), (f); 21.5(f); *Midwest Tube Fabricators, Inc.*, B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 2.

The protest is denied.

Thomas H. Armstrong
General Counsel