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**Comptroller General
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**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: The Dixon Group, Inc.

File: B-406201; B-406201.2

Date: March 9, 2012

Gerald H. Werfel, Esq., Pompan, Murray & Werfel, P.L.C., and H. Todd Whay, Esq., Whay Law Firm, for the protester.

Richard G. Bergeron, Department of Health and Human Services, for the agency.
Nora K. Adkins, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's exclusion of protester's quotation from further consideration for a procurement using the General Services Administration Federal Supply Schedule conducted under Federal Acquisition Regulation subpart 8.4 is denied, where the record shows that the evaluation of the protester's quotation was reasonable and consistent with the solicitation's evaluation terms, and where the agency reasonably determined that the protester did not have a realistic prospect of award given its significantly lower technical rating and significantly higher price.

DECISION

The Dixon Group, Inc., of Washington, D.C., protests the decision of the Department of Health and Human Services, National Institutes of Health, National Institute of Allergy and Infectious Diseases (NIAID) to exclude Dixon's quotation from further consideration under request for quotations (RFQ) No. NIHA12011133, for meeting and technical support services.

We deny the protest.

On September 13, 2011, NIAID issued the RFQ under the General Services Administration's (GSA) Federal Supply Schedule (FSS) to three vendors with contracts under schedule 541, advertising and marketing solutions. The solicitation contemplated the issuance of a task order on a time and materials basis for a base period with four 1-year options. Award would be made on a best-value basis with technical merit considered significantly more important than price. RFQ § M.1.

Three technical evaluation criteria were weighted for a total of 100 points: staffing/management approach (40 points); facilities and resources (40 points); and feasibility of the approach (20 points). The RFQ informed vendors that quotations must document the feasibility of successful implementation of the RFQ requirements and provide information sufficient to evaluate the proposals under the three evaluation criteria. RFQ § M.3. Price would be evaluated for reasonableness and realism. RFQ § M.2.

The agency received two quotations by the October 14 deadline from Dixon and Palladian Partners, Inc. The agency's technical evaluation panel evaluated the technical quotations and rated both quotations technically acceptable, with Dixon's quotation receiving a total of 72.3 points, and Palladian's a total of 86.7 points. Agency Report (AR), Tab 7, Technical Evaluation, at 1. Dixon quoted a price of \$14,292,024, while Palladian quoted a price of \$6,278,570. Contracting Officer's (CO) Statement at 2. The agency's independent government estimate (IGE) was \$3,738,279. Id.

Given Palladian's significant technical advantage and significantly lower price, the contracting officer concluded that Dixon's quotation did not have a reasonable chance of receiving an award and eliminated it from the "competitive range." Id.; AR, Tab 10, Competitive Range Determination, at 1. Dixon was notified that its quote was excluded from further consideration by the agency on November 8. After further negotiations with Palladian, a task order was issued to that firm on November 18 for \$3,999,999. Dixon was notified of the award on December 7. This protest followed.

DISCUSSION

Dixon contends that the agency failed to reasonably evaluate its technical quotation in accordance with the solicitation criteria and unreasonably eliminated its proposal from the competition.

Technical Evaluation

Where, as here, an agency issues an RFQ to GSA FSS contractors under Federal Acquisition Regulation (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. A protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. DEI Consulting, supra.

Staffing/Management Approach

The RFQ provided that a vendor's staffing/management approach would be evaluated for documented availability, qualifications, experience, education, and competence of professional, technical, and other personnel assigned to work on the contract; managerial ability to achieve delivery or performance requirements; the project staffing strategy; estimated hours and labor mix; and the experience, skills, and qualifications of the proposed personnel to adequately minimize risk and successfully complete the requirements. RFQ § M.3.A.

The agency summarized its evaluation of Dixon's quotation for staffing/management approach as follows:

The STAFFING/MANAGEMENT APPROACH of the RFQ did not appear to be well understood. [The quotation] was considered weak and incomplete in its description for managing safety oversight meetings and teleconferences as well as no evidence of key staff members working with these types of meetings. There was no attempt to anticipate the workload planned in the first three months of a new support contract. There was no discussion on how the Dixon Group would "come up to speed quickly" in the initial transition of working with [the Division of Allergy, Immunology, and Transplantation (DAIT)], NIAID on meeting[s] and teleconferences.

AR, Tab 13, Letter from NIAID to Dixon, Nov. 22, 2011, at 1; see Tab 7, Technical Evaluation of Dixon's Quotation.

Dixon contends that its quotation addressed the management of safety oversight meetings and teleconferences; included information regarding how it has tailored its services for small scientific meetings based upon its prior experiences; and specifically provided for personnel qualifications and experience, including experience with scientific meetings.

The agency found that while Dixon's prior scientific meetings and publications support experience chart notations did list its personnel's relevant experience, the back-up documentation provided did not evidence direct previous experience in working with safety oversight type review meetings or teleconferences. AR at 5. The agency also found that Dixon's proposed project director and travel and reimbursement specialist did not have a college degree. AR at 4. Moreover, even though Dixon stated that it had a long history of providing the agency the exact services sought and referenced more than 200 events that Dixon had planned for the agency, the agency determined that simply checking off vague references to scientific meetings and publications support, and presenting NIH work assignment processes by staff member name, did not document the feasibility of successful

implementation of the solicitation as required by the RFQ. AR at 5. Based on our review, we find the agency's evaluation to be reasonable.

Nevertheless, Dixon contends that the agency's evaluation under this factor was based upon unstated evaluation criteria. In this regard, Dixon alleges that the RFQ did not require an offeror to present a plan addressing its workload for the first 3 months or how it would come up to speed quickly during transition.

Although agencies are required to identify in a solicitation all major evaluation factors, they are not required to identify all areas of each factor that might be taken into account in an evaluation, provided that the unidentified areas are reasonably related to or encompassed by the stated factors. Information Ventures, Inc., B-401448.5, B-401448.6, May 13, 2010, 2010 CPD ¶ 180 at 7. While the RFQ did not expressly provide that the agency would take into consideration a vendor's plans for workload in the first 3 months and coming up to speed quickly during transition, it did provide that vendors must document the feasibility of successful implementation of the RFQ requirements. Here, Dixon's proposal noted that its staff was available to work immediately upon award of the contract, but did not address how its management strategy would accommodate multiple concurrent tasks, particularly if the surge in workload occurred during the opening months of its performance, to present a viable strategy for minimizing performance risk. Based on Dixon's approach, it was appropriate for the agency to evaluate the start-up challenges of workload in the first 3 months and its ability to come up to speed, which we find was reasonably encompassed in the agency's analysis of the feasibility of successful implementation of the RFQ requirements.

Facilities and Resources

The RFQ provided that a vendor's facilities and resources would be evaluated for documented availability of adequate facilities, equipment, and other resources to meet the requirements of the project as well as the quality, applicability, and significance of the vendor's relevant experience as it relates to the requirements of the RFQ. RFQ § M.3.B. The agency summarized its evaluation of Dixon's quotation for facilities and resources as follows:

The FACILITIES AND RESOURCES [section of the quotation] identified the use of [REDACTED] but provided no background information on this software tool. It was left unclear if DAIT's smaller conventional scientific meetings and safety oversight meetings will be supported by the "Cvent" software or by the less well known [REDACTED] software systems.

AR, Tab 13, Letter from NIAID to Dixon, Nov. 22, 2011, at 1; see Tab 7, Technical Evaluation of Dixon's Quotation.

Dixon contends that the agency failed to properly evaluate its quotation because it provided sufficient background information on its proposed use of the [REDACTED] software tool for all meetings. However, the agency determined that while Dixon's quotation referred to the [REDACTED] software, it failed to describe what it is, how it works, and how it would satisfy the requirements of the RFQ. AR at 6. Furthermore, it was unclear to the agency if Dixon proposed the use of the [REDACTED] software for NIH's smaller conventional scientific meetings and safety oversight meetings because Dixon's quotation also referred to the use of the Cvent software. AR at 5. Based on our review, we find the agency's evaluation to be reasonable.

Feasibility of the Approach

The RFQ provided that a vendor's feasibility of the approach would be evaluated for how well it demonstrates understanding of the functional and technical requirements as well as the methodology for fulfilling the requirements. The approach would be evaluated by assessing the degree to which the proposal meets the stated goals and objectives of the statement of work and provides sound methods for achieving timely and acceptable performance. RFQ § M.3.C. The agency summarized its evaluation of Dixon's quotation for the feasibility of the approach as follows:

The FEASIBILITY OF THE APPROACH was not addressed with detailed information regarding the carrier for teleconferences defining the amenities that are available to the sponsor. The need for standing call numbers as defined in the RFQ w[as] [not] addressed.

AR, Tab 13, Letter from NIAID to Dixon, Nov. 22, 2011, at 1; see Tab 7, Technical Evaluation of Dixon's Quotation.

While Dixon again claims that sufficient information was provided within its quotation, the agency disagrees. For example, the agency found that Dixon's brief description of its approach to conference calls failed to provide the necessary details to satisfy the requirements for operator assisted teleconferences, and failed to address how its use of the "intercall platform" would satisfy the agency's requirements. AR at 7. Based on our review of the record, we conclude that the agency's evaluation was reasonable.¹

¹ Dixon also asserts that the RFQ did not require the need for standing call numbers. The agency in its report addressed Dixon's claims in this regard, and Dixon did not respond to the NIH's explanation in its comments, thus it abandoned this aspect of its protest. See Symplicity Corp., B-297060, Nov. 8, 2005, 2005 CPD ¶ 203 at 5 n.6.

Technical Evaluation Conclusion

In short, with regard to each of the technical factors, Dixon failed to provide sufficient detail in its quotation to document the feasibility of successful implementation of the RFQ requirements. In a competitive FSS procurement, it is the vendor's burden to submit a quotation that is adequately written and establishes the merits of the quotation. See DEI Consulting, supra, at 2. We find that Dixon's assertions regarding the content of its proposal amount to no more than mere disagreements with the agency's judgment, which do not establish that the evaluation was unreasonable.

Exclusion of Dixon's Quotation

Dixon finally contends that the agency unreasonably excluded its quote from further consideration while continuing to negotiate with Palladian. As noted above, Dixon's proposal was excluded from consideration in view of Palladian's significant technical advantage and significantly lower price, such that the contracting officer concluded that Dixon did not have a reasonable chance of receiving the award and decided to only negotiate with Palladian.

In these circumstances, we view the contracting officer's decision to exclude Dixon from further consideration in this FSS procurement to be comparable to an exclusion of a proposal from the competitive range under FAR Part 15, which governs contracting by negotiation. Venturi Tech. Partners, B-292060, June 10, 2003, 2003 CPD ¶ 114 at 5-6.

The determination of whether a proposal is in the competitive range is principally a matter within the discretion of the procuring agency. Dismas Charities, Inc., B-284754, May 22, 2000, 2000 CPD ¶ 84 at 3. Our Office will review an agency's evaluation of quotations and determination to exclude a quotation from the competitive range for reasonableness and consistency with the terms of the solicitation. Novavax Inc., B-286167, B-286167.2, Dec. 4, 2000, 2000 CPD ¶ 202 at 13.

As a preliminary matter, while Dixon challenges the agency's decision to limit the competitive range here to one firm, we have held that there is nothing inherently improper in a competitive range of one. Cobra Techs., Inc., B-272041, B-272041.2, Aug. 20, 1996, 96-2 CPD ¶ 73 at 3. Contrary to Dixon's suggestion, agencies are not required to retain in the competitive range a proposal that the agency reasonably concludes has no realistic prospect of award compared to a substantially lower priced and higher technically rated proposal, even if that proposal is, as here, the second highest-rated. M&M Investigations, Inc., B-299369.2, B-299369.3, Oct. 24, 2007, 2007 CPD ¶ 200 at 3.

Here, Dixon's quotation was excluded from further consideration due to its significantly higher price and its lower technical rating. Dixon's price was three times the government's IGE, and two times Palladian's price. In addition, Dixon's technical score was 20 percent lower than Palladian's score, which we think is a significant difference, particularly considering that technical merit was significantly more important than price. Our review of the record confirms that in accordance with the best value evaluation terms of the solicitation, it was wholly reasonable for the agency to conclude that Dixon had no realistic prospect of award here in light of its significantly lower technical ratings and its significantly higher price.

Dixon nevertheless contends that the competitive range determination was unreasonable because Palladian significantly lowered its price during discussions, yet Dixon was not given a similar opportunity. However, given the vast disparity in prices between Dixon and Palladian, there is no reason to believe, and Dixon does not allege, that it would have lowered its price to a level less than Palladian's ultimate offer. See WHY R & D, Inc., B-221817, Apr. 16, 1986, 86-1 CPD ¶ 375 at 3. (finding protester's bare statement that it may have offered a lower price is not sufficient.) In any case, this argument is irrelevant, given that Dixon was properly excluded from the competition.

The protest is denied.

Lynn H. Gibson
General Counsel