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

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Decision

Matter of: DKW Communications, Inc.

File: B-412652.3; B-412652.6

Date: May 2, 2016

Joseph P. Hornyak, Esq., Elizabeth N. Jochum, Esq., and Gregory R. Hallmark, Esq., Holland & Knight LLP, for the protester.

Edward J. Tolchin, Esq., Offit Kurman P.A., for Criterion Systems, Inc., an intervenor.

JiSan A. Lopez, Esq., Department of Energy, for the agency.

Gary R. Allen, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protests challenging agency's evaluations of successful vendor's quotations are sustained where record shows that vendor's quotations failed to comply with certain material solicitation requirements.

DECISION

DKW Communications, Inc., of Washington, D.C., protests the issuance of three fixed-price task orders (Performance Work Statement (PWS) #1, PWS #2, and PWS #3) to Criterion Systems, Inc., of Vienna, Virginia, by the Department of Energy, National Nuclear Security Agency (NNSA), under request for quotations (RFQ) No. DE-SOL-0008812, for cyber security support services (PWS #1), information technology support services (PWS #2), and policy and governance services (PWS #3). The protester challenges the three task orders issued to Criterion on the basis that Criterion's quotations violated the RFQ's formatting requirements, and thereby exceeded the RFQ's page limitations for technical quotations. DKW also makes various additional assertions concerning the agency's evaluation of the technical proposals and its source selection decision.

We sustain the protests in part and deny them in part.

BACKGROUND

The RFQ was issued on August 31, 2015 to blanket purchase agreement holders under multiple federal supply schedules, including information technology (IT) schedule 70.¹ Combined Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 1. The RFQ contemplated issuing task orders for four separate requirements, each with its own performance work statement: (1) PWS #1--cybersecurity support services; (2) PWS #2--information technology support services; (3) PWS #3--policy governance support services; and (4) PWS #4--project management support services. RFQ at 77. The period of performance for each task order is a 1-year base period and four 1-year option periods, with the possibility of an additional six months of performance under an option to extend services clause. Id. at 79.

The RFQ anticipated the issuance of the task orders on a best-value basis, considering the following three evaluation factors, listed in descending order of importance: (1) demonstrated expertise, understanding, and ability to perform (the technical factor); (2) past performance; and (3) price. RFQ at 25. The technical and past performance factors, when combined, were significantly more important than price. Id.

The RFQ informed the vendors that their quotations should be submitted in three volumes, with the technical quotation limited to 10 pages. RFQ at 19-20. As relevant here, for the technical quotation, the RFQ informed vendors that pages in excess of the 10-page limitation would not be evaluated, and also stated that "the text shall be 12 point (or larger), single-spaced, using Times New Roman Courier, Geneva, Arial or Universal font type." Id. at 20. The RFQ further stated that "[t]he quotation must . . . follow the prescribed format . . ." Id. at 19.

¹ The agency provided separate reports responding to the protests. Since the same RFQ is the basis for all of the task orders, our references to the RFQ are applicable to all of the protests. Further, the record indicates that Criterion submitted quotations that were identical in format covering all of the PWSs. See Agency Report (AR), Tab 3, Criterion Quotation Cover Letter. Therefore, regarding the formatting issues, for the purposes of this decision, we will use the B-412652.3 tab references for citations to Criterion's quotations. Similarly, we will use single references (also from B-412652.3) to the supplemental protests (Supp. Protest), the agency's supplemental combined contracting officer's statement and memorandum of law (Supp. COS/MOL), and comments by the protester or intervenor (Protester Supp. Comments; Intervenor Supp. Comments), where they concern the formatting issues with respect to Criterion's quotations.

The agency received three quotations for each of the task orders, including those of DKW and Criterion.² COS/MOL at 3. In performing its evaluations, the agency's technical evaluation panel identified various strengths and weaknesses in the quotations, and assigned adjectival ratings and evaluated prices as follows:³

Vendor	Technical	Past Performance	Price
Criterion	Excellent	Very Good	\$260,791,741.39
DKW	Satisfactory	Very Good	\$210,928,052.19

COS/MOL, PWS #1 (B-412652.5), at 3.

Vendor	Technical	Past Performance	Price
Criterion	Excellent	Very Good	\$66,682,276.20
DKW	Marginal	Very Good	\$75,761,782.58

COS/MOL, PWS #2 (B-412652.3), at 8.

Vendor	Technical	Past Performance	Price
Criterion	Excellent	Very Good	\$20,654,487
DKW	Marginal	Very Good	\$17,792,619

COS/MOL, PWS #3 (B-412652.4), at 8.

The agency issued all three task orders to Criterion, and these protests followed.

The initial protests concern the agency's evaluations of the quotations and source selection decisions. The protest regarding the issuance of PWS #1 was dismissed as untimely because it was filed more than 10 days after DKW received notice of the issuance of the task order to Criterion and the evaluation of its own quotation. DKW Communications, Inc., B-412652.2, Feb. 16, 2016. Task orders PWS #2 and PWS #3 were issued at a later date, and protests B-412652.3 and B-412652.4 were timely filed.

In its initial protest, DKW primarily protested that its proposal was improperly downgraded under the technical evaluation factor because the examples it provided for experience performing similar requirements were insufficiently detailed. The protester argued, in this regard, that the evaluation was inconsistent with the terms

² Information concerning the quotation from the third vendor was not included in the agency report, is not relevant to these protests, and is not further discussed.

³ The RFQ provided a rating scheme under which adjectival ratings of excellent, good, satisfactory, marginal, or unsatisfactory were to be assigned to the technical quotations. RFQ at 99-100.

of the RFP and that the evaluators were requiring a level of detail that could not be achieved within the 10-page limit.

After receiving the agency reports for B-412652.3 and B-412652.4, DKW filed supplemental protests challenging Criterion's apparent violations of the RFQ's formatting requirements. DKW also filed protest B-412652.5 as a supplemental protest to the dismissed protest, arguing that DKW learned from the agency reports for these two protests that Criterion's quotation for PWS #1 had the same formatting deficiencies as the other two quotations.⁴

Finally, DKW filed second supplemental protests to B-412652.3 and B-412652.5, raising additional evaluation challenges. These protests were numbered B-412652.6 and B-412652.7, respectively.

DISCUSSION

DKW asserts that Criterion's quotations for all three task orders violated the RFQ's explicit provisions regarding page limitations by compressing the line spacing of its technical quotation's text to be less than the "single-spacing" that the RFQ required. The protester maintains that the agency's acceptance of Criterion's noncompliant technical quotations, which filled the full 10 permissible pages in this manner, afforded Criterion an unfair competitive advantage. Supp. Protest at 2-5. For the reasons discussed below, we agree, and sustain the protests on this basis.

DKW also contends that Criterion violated the formatting requirements by including large tables that addressed substantive matters, using a 10-point font size. Supp. Protest at 5. We note that the RFQ states only that "spreadsheets, charts, tables, diagrams or design drawings, [and] graphs" are exempt from the font size, spacing and other requirements listed for the remainder of the quotations. RFQ at 19. The RFQ does not address the size of tables (or the other listed exceptions) or limit their content. Accordingly, we find no basis to sustain the protester's challenges concerning these issues, and deny them.

Agencies are required to evaluate quotations consistently, and in accordance with a solicitation's instructions, including any instructions relating to a quotation's format and page limitations. See DPK Consulting, B-404042, B-404042.2, Dec. 29, 2010, 2011 CPD ¶ 12 at 4-6. As a general matter, firms competing for government contracts must prepare their submissions in a manner consistent with the format limitations established by the agency's solicitation, including any applicable page

⁴ As noted above, Criterion submitted quotations that were identical in format for all of the PWSs here. Accordingly, though Criterion's PWS #1 quotation was not a part of any record, our Office found DKW's claim in this regard to be colorable, and declined the agency's request that we dismiss B-412652.5 as speculative.

limits. IBM U.S. Federal, a div. of IBM Corp.; Presidio Networked Solutions, Inc., B-409806 et al., Aug. 15, 2014, 2014 CPD ¶ 241 at 12. Consideration of submissions that exceed established page limitations is improper in that it provides an unfair competitive advantage to a competitor that fails to adhere to the stated requirements. Id. at 12-13.

Here, while acknowledging that the RFQ specifically required quotations to be single-spaced, the agency argues that applying the “common meaning” of “single-spaced” simply requires that there be no blank lines between lines of text. Supp. COS/MOL at 7. Therefore, the agency contends that vendors were free to choose whatever word-processing application suited them, along with that application’s default single-space setting. Id. The agency also asserts that it performed a detailed analysis of Criterion’s quotation, and found that the quotation conforms to the definition of single-spaced. Id.

A comparison of samples of text from Criterion’s and DKW’s technical quotations, respectively, within the section limited to 10 pages, demonstrates the competitive advantage Criterion gained by its noncompliance with the formatting instructions.

Criterion’s quotation:

AR, Tab 3, Criterion’s Quotation, at 62.

Introduction

The National Nuclear Security Administration’s policy and governance program provides standards and guidance to streamline and unify Information Technology (IT) and cybersecurity program activities and initiatives under a single strategic, operational, and technological framework. With effective support from an established contracting team with proven success working together to advance the National Nuclear Security Administration (NNSA) objectives, the Policy and Governance Order [deleted].

DKW’s quotation:

A Proactive Methodology Delivers Results — Team DKW brings recognized processes, industry best practices, and access to state of the art [deleted] for continuous improvement that will directly benefit NNSA. For example, Team DKW partner [deleted] DKW as prime contractor has more than 14 years of business operations providing IT services to Federal agencies. The benefit to NNSA is a mature back-office with systems and processes already in place to provide exemplary support for agile program management and contract administration on a contract of this magnitude. Our highly experienced key personnel [deleted].

AR, Tab 2, DKW’s Quotation, at 204.

The formatting requirements here, especially as they affect page limitations, were established as mandatory requirements in the RFP, and therefore may not be

viewed as mere suggestions that may be disregarded. Rather, their consistent application establishes a fair and level playing field for all parties.

Here, even using the agency's definition of single-spacing, the record shows that Criterion used multiple space settings. Although the RFQ required single-spacing for the entire quotation,⁵ Criterion used different spacing for both volumes 1 and 3, which had no page limitations, than it did for the technical volume, which had a 10-page limit. For example, in both volumes 1 and 3, Criterion used spacing that yielded approximately 44 lines per page. See, e.g., AR, Tab 3, Criterion Quotation, at 25, 92; Tab 8 at 9.⁶ However, for the technical volume, Criterion used dramatically smaller line-spacing for every line of the 10 pages, resulting in approximately 66 lines per page. See, e.g., Id. at 70. Accordingly, it appears that Criterion implemented compressed line-spacing in a deliberate and intentional effort to evade the page limitation imposed by the RFQ, especially when compared to the other parts of its quotation. Criterion's significant deviation from the other two volumes of its quotation effectively added approximately three to four pages to the 10-page limitation. In our view, this was a material change from the RFQ's instructions that gave Criterion a competitive advantage.⁷

The intervenor argues that even if Criterion failed to comply with the RFQ's formatting provision, exclusion of its quotation for such failure was not required because of the provision's comment that if a quotation did not follow the prescribed format, the agency "may" consider such failure a material omission and "may" adversely evaluate or eliminate the quotation from the competition. Intervenor Supp. Comments at 4, citing RFP at 19.

⁵ The RFQ listed specific exceptions to the formatting requirements, for such things as tables of contents, title pages, and key personnel resumes; these are not at issue here. RFQ at 20.

⁶ B-412652.5 has a slightly different volume 3. Hence, the different tab and page numbers. The cited page is identical to tab 3, page 92, of the other two agency reports.

⁷ The agency also asserts that DKW cannot complain because its quotation also did not fully comply with the single-spacing requirement. The agency notes that the last paragraph of DKW's 10-page technical quotation (approximately three and a half lines) is spaced 0.9, rather than 1.0 in Microsoft Word. Supp. COS/MOL at 8, citing AR, Tab 2, DKW Quotation at 213. The protester has not shown how such a small variation in such a small part of the technical volume gave DKW a competitive advantage. We view this variation as de minimus, in comparison to the magnitude of the effect of Criterion's compression of every line of its 10-page technical quotation.

To be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. See Raytheon Co., B-404998, July 25, 2011, 2011 CPD ¶ 232 at 17; Alluviam LLC, B-297280, Dec. 15, 2005, 2005 CPD ¶ 223 at 2. When a dispute exists as to the actual meaning of a solicitation provision, we will resolve the dispute by reading the solicitation as a whole and in manner that gives effect to all its provisions. Id.

Here, notwithstanding the use of the word “may” in the provision, it is clear, given the context in which it appears, that compliance with the instructions regarding the printing of quotations was mandatory (see, e.g., the RFQ requirements that technical quotations be limited to 10 pages, with single-spaced text, and that the quotations “must . . . follow the prescribed format.” RFQ at 19-20). To conclude otherwise would not be consistent with the purpose of the quotation preparation instructions--to ensure that quotations are submitted in a similar format and are limited as to the amount of information and data they contain on an equal basis. Thus, we find that the RFQ’s quotation preparation instructions were clear that the quotations be single-spaced.

We sustain the protests on this basis.⁸

RECOMMENDATION

We recommend that NNSA review the RFQ to ascertain whether the RFQ page limitation for the technical volume reflects NNSA’s actual requirements. If the agency concludes that the page limitation does reflect NNSA’s actual needs, we recommend NNSA review the quotations consistent with this decision, and reject Criterion’s quotations as noncompliant and place the orders with DKW, if otherwise appropriate. If the agency determines that RFQ does not reflect its actual requirements, it should amend the RFQ, obtain revised quotations, conduct discussions as necessary, and place orders with the vendor whose quotation is found to offer the best value under the RFQ.

We also recommend that the protester be reimbursed its reasonable costs of filing and pursuing the protests, including attorneys’ fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1). The protester’s certified claim for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

⁸ DKW also challenges multiple aspects of the agency’s evaluations and source selection decisions. Because we are sustaining DKW’s protest and recommending that the agency take corrective action that will render the prior evaluation and source selection academic, we need not examine the flaws alleged with respect to the current evaluations, and we do not address them here.

The protests are sustained in part and denied in part.

Susan A. Poling
General Counsel