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Decision

Matter of: Al Raha Group for Technical Services

File: B-412963.3

Date: September 19, 2016

Gerard I. Doyle, Esq., and Ron R. Hutchinson, Esq., Doyle & Bachman LLP, for the protester.

Anna F. Kurtz, Esq., Department of the Air Force, for the agency.

Michael Willems, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging solicitation as vague and undefined is denied where the solicitation includes best estimates of the agency's needs and sufficiently detailed information for offerors to intelligently prepare their proposals on a common basis.

DECISION

Al Raha Group for Technical Services, of Riyadh, Saudi Arabia, protests the terms of request for proposals (RFP) No. FA8505-16-R-0004, issued by the Department of the Air Force for F-15 supply services, logistics, and other support services for the Royal Saudi Air Force (RSAF). Al Raha challenges the pricing requirements and terms of the solicitation as vague and undefined, and claims that this vagueness prevents offerors from competing on a common basis.

We deny the protest.

BACKGROUND

The Air Force issued the RFP on February 4, 2016, for supply services in support of the RSAF, including logistics support personnel, supply chain management related to consumable items, and print plant operations. See RFP at 1. The RFP contemplates a single-award indefinite-delivery, indefinite-quantity (IDIQ) contract, on a primarily fixed-price incentive basis. Id. at 6 and 72. The RFP provides for a basic ordering period of 24 months, with three 12-month options, but notes that the period of performance for individual orders will vary, with no minimum guaranteed period of performance after the initial order. Id. at 6. The RFP provides that

proposals will be evaluated pursuant to four factors (technical, small business utilization, past performance, and price) using a two-step process. First, proposals would be evaluated for technical acceptability and small business utilization. Second, among those found acceptable, tradeoffs would be made between past performance and price, with past performance being significantly more important than price. Id. at 107.

The RFP instructs offerors to provide prices for two contract line item numbers (CLINs) for the base period and each of the option periods. See RFP at 70-72. CLIN 0001 is to be priced on a fixed-price incentive basis for parts, print plant services, management, and materials, and CLIN 0002 is to be priced on a fixed-price basis for certain labor costs which are not at issue in this protest. Id. at 72. Industry questions and answers (Q&A) clarified that the pricing for CLIN 0001 should include, among other things, all costs to offerors for transportation, management, and acquisition of “catalog parts,” which refers to parts corresponding to 18,168 national stock numbers (NSNs) enumerated in an appendix to the RFP. See Agency Report, Tab 25, Industry Questions and Answers of May 16, 2016 at 2. The RFP instructed offerors to price CLIN 0001 on a monthly basis, and to provide pricing for three ranges: 0-7,000 parts managed, 7,001-14,000 parts managed, and 14,001-20,000 parts managed. RFP at 71. While the total number of actual catalog parts needed under the effort is not known, the RFP provides that the parts requirements to be priced under CLIN 0001 will be primarily based on refilling bench stock¹ to authorized levels as it is depleted, and filling depot supply replenishment orders. Id. at 21.

The CLIN 0001 pricing provisions and related portions of the RFP have been the subject of two prior protests, including one by Al Raha, raising questions concerning the parts ranges and quantity of information provided concerning catalog parts. In response, the Air Force amended the solicitation and clarified the requirements, which rendered academic the two protests. The Boeing Company, B-412963.1, Apr. 28, 2016 (unpublished) and Al Raha Group for Technical Services, B-412963.2, June 13, 2016 (unpublished). Specifically, the Air Force issued several RFP amendments, which, among other things, provide additional data about the annual estimated quantities of catalog parts, and clarify contract provisions that provide for a shift to cost-reimbursement pricing if the quantity of parts increases enough to cause the CLIN value of an issued task order to exceed 5% of the established value for the period. See RFP, amendments 5 and 7. Additionally, the Air Force issued a further clarifying amendment establishing that the CLIN 0001 parts ranges refer to the quantity of NSNs to be managed, not to the quantity of physical parts, and that a given task order may be for any combination of NSNs.

¹ Bench stock refers to specific quantities of parts maintained on-hand at repair sites and refilled on a recurring basis, as distinct from parts that are only ordered on an as-needed basis. See RFP at 21-22.

RFP, amendment 8. That is to say, an awardee issued a task order for 5,000 NSNs would be responsible for acquiring and managing the actual number of physical parts needed for that combination of 5,000 NSNs at the fixed, monthly price offered for the 0-7000 range, unless the quantity of parts significantly exceeds the estimated ordering quantities set forth in the solicitation. This protest followed.

DISCUSSION

In its protest, Al Raha challenges the proposed parts ranges, claiming that the Air Force's failure to specify which NSNs will be included in which ranges renders the Air Force's requirements too vague and undefined for offerors to compete on a common basis. Protest at 19-23. Al Raha notes that the prices of catalog parts corresponding to the NSNs vary widely, from a low of \$0.01 for a lock washer to a high of \$136,776.88 for a deflector assembly.² Id. at 22. Additionally, the anticipated annual requirement for NSNs varies from a low of 1 part to a high of 42,552 parts. Protester's Comments at 9. Because offerors are required to propose on a fixed-price incentive basis for any mix of NSNs, this disparity in prices and part quantities could result in widely varying cost exposure, especially in the 0-7000 part range. Id. at 8. For example, Al Raha notes that if an offeror is called on to supply the 7,000 most expensive NSNs, the parts would range in cost from \$136,776.88 to \$28.88, while the 7,000 least expensive would range from \$7.77 to \$0.01. Id. at 9.

Al Raha argues that the Air Force has provided inadequate guidance to offerors concerning the potential mix of NSNs to be priced into each range, requiring offerors to make "blind guesses." Protester's Comments at 10. According to Al Raha this vagueness, combined with the proposed evaluation criteria, encourages offerors to play the "lowball pricing game," which will disadvantage offerors making more realistic proposals, and differs significantly from previous support contracts, which have been priced based on fixed, unit prices for each NSN. Id. at 12-13.

Protester argues, in sum, that the RFP's pricing requirements are so vague and undefined as to prevent offerors from competing on a common basis, and that the agency has failed to provide any additional guidance that would clarify the issue. Protester's Comments at 12. In response, the agency argues that it has provided all the information available to it, and, in fact, generated additional data to help guide offerors.³ Contracting Officer's Statement of Facts at 15 and Agency

² Approximately 98% of the NSNs have a United States Government source of supply, and prices for those NSNs are included in the catalog provided in the RFP.

³ Additionally, the agency notes that Al Raha, as the incumbent, was in possession of more granular historical information about the RSAF's requirements that it declined to provide at the Air Force's request. Contracting Officer's Statement of Facts at 21.

Memorandum of Law at 4. Furthermore, the Air Force notes that it has included “over and above” provisions in the contract that allow for a switch to cost-based pricing if the quantity of parts required increases significantly, and that these provisions help to provide additional clarity for the offerors concerning the requirements. See Contracting Officer’s Statement of Facts at 25-28.

As a general rule, a solicitation must be drafted in a fashion that enables offerors to intelligently prepare their proposals and must be sufficiently free from ambiguity so that offerors may compete on a common basis. Raymond Express Int’l, B-409872.2, Nov. 6, 2014, 2014 CPD ¶ 317 at 9. However, there is no requirement that a competition be based on specifications drafted in such detail as to completely eliminate all risk or remove every uncertainty from the mind of every prospective offeror; to the contrary, an agency may provide for a competition that imposes maximum risks on the contractor and minimum burdens on the agency, provided the solicitation contains sufficient information for offerors to compete intelligently and on equal terms. Phoenix Environmental Design, Inc., B-411746, Oct. 14, 2015, 2015 CPD ¶ 319 at 3.

In this case, we conclude that the RFP provides adequate detail for offerors to compete intelligently on equal terms. The agency has provided a catalog listing all 18,168 NSNs to be priced under CLIN 0001 with estimated annual requirements for each stock item, and has provided prices for approximately 98% of the items. See RFP, Catalog Appendix. While an offeror cannot know which mixture of NSNs it may be called upon to supply in any given task order, the offeror does know: the universe of items it may be called upon to supply; the quantity of items likely to be needed for any given NSN over the course of a year; and, for the vast majority of items, what the items will cost. Id. This information can be used to estimate the offeror’s likely total cost exposure and, to some extent, the likelihood that any given NSN will be needed in any given month based on the annual expected quantity. Additionally, the RFP includes “over and above” clauses that allow for a switch to cost-reimbursable pricing if the quantity of parts exceeds the established value for the period by more than 5%, which allows an offeror to better estimate its worst-case potential cost exposure.⁴ See Contracting Officer’s Statement of Facts at 26-27.

⁴ Al Raha argues in its comments that the “over and above” clauses only come into play when the agency makes post-award changes to requirements and have no bearing on the issue of the unknown mix of NSNs. Protester’s Comments at 15. We disagree that the clauses have no bearing on the issue. To the extent the clauses provide an effective upper bound on an offeror’s potential cost exposure in the event that the agency’s estimated requirements prove to be inaccurate, they eliminate a significant source of risk.

Al Raha is correct that the RFP's proposed pricing structure allows for significant variation in an offeror's potential cost exposure, but the agency has provided sufficient information to apprise prospective offerors of the nature and approximate scope of that risk. Put another way, the fact that Al Raha is capable of identifying both the worst-case and best-case sampling of NSNs from information provided in the RFP reinforces the fact that adequate information is available to offerors to understand the agency's requirements and to compete intelligently and on equal terms. An offeror playing the "low-ball pricing game" would do so at its peril when the data provided in the RFP makes it clear that there is substantial risk in doing so.

In support of its contention that the proposal is impermissibly vague, Al Raha relies primarily on our prior decision in Global Technical Systems, B-411230.2, September 9, 2015, 2015 CPD ¶ 335, but this reliance is misplaced. Protester's Comments at 10. In Global Technical Systems, the solicitation required that offerors propose a detailed labor mix for a collective 100,000 hours of engineering services, but provided only a vague description of the actual engineering services required. Global Technical Systems, *supra* at 17-19. That fact pattern, however, is the reverse of the instant case; here, the government has provided a detailed catalog that minutely outlines the universe of parts that an offeror will be called on to provide under the fixed-price CLIN.⁵ While, the government does not know when and in what amount those parts will be needed, it has provided estimated annual requirements for all catalog items, and included "over and above" provisions in the RFP allowing for a switch to cost-reimbursable pricing in the event that requirements significantly exceed those estimates.

As noted above, the agency is not required to eliminate all risk or remove every uncertainty, and, in fact, may impose maximum risks on the contractor and minimum burdens on the agency, provided the solicitation contains sufficient information for offerors to compete intelligently and on equal terms. Phoenix Environmental Design, Inc., *supra* at 3. In this case, the agency's provision of a detailed parts catalog with estimated annual quantities provides adequate information for offerors to understand the agency's requirements and to compete intelligently and on equal terms. In this context, we conclude that the fact that the

⁵ While the RFP provides that the catalog may be changed during the course of performance and also provides for spot buys of non-catalog parts, the RFP indicates that such off catalog purchases, other than minor deviations to established requirements, will be handled on a cost-reimbursable basis. See, e.g., RFP at 19-20 and 27.

RFP contemplates task orders with an unknown composition of NSNs is not a lack of definition in the solicitation, but rather an expressly identified element of risk that the agency may reasonably shift to the offeror.

The protest is denied.

Susan A. Poling
General Counsel