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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Antico Cantiere Del Legno Giovanni Aprea Di Cataldo S.R.L.

File: B-414112

Date: February 21, 2017

Matteo Zappile for the protester.

Robert L. Kois, Esq., and Eva Escalante, Esq., Department of the Navy, for the agency.

Louis A. Chiarella, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the technical unacceptability of the protester's quotation is denied where the protester proposed an alternate approach, and the agency reasonably evaluated the quotation in accordance with the solicitation's terms.

DECISION

Antico Cantiere Del Legno Giovanni Aprea Di Cataldo S.R.L., of Sorrento, Italy, protests the issuance of a purchase order to Cantiere Navale Basilio Postigliione S.R.L., of Bacoli, Italy, under request for quotations (RFQ) No. N68171-17-T-0008, issued by the Department of the Navy, Naval Supply Systems Command, Fleet Logistics Center Sigonella, for the storage and teak deck repair of the Grazie II Admiral's Barge.¹ Antico argues that the agency's evaluation of its quotation and resulting award decision were improper.

We deny the protest.

¹ The solicitation was also referred to, in various documents, as RFQ No. N68171-17-R-0008 (with the "R" designation rather than the "T" designation).

BACKGROUND

The procurement was conducted using the simplified acquisition procedures set forth in Federal Acquisition Regulation (FAR) part 13. Contracting Officer's Statement (COS) at 1. The RFQ, issued on October 25, 2016, contemplated the issuance of a fixed-price purchase order for the storage and teak deck repair of the Grazie II Admiral's Barge (described as a 52-foot Chris Craft, 14 7/8-inch beam, with a hoisting weight of 40,000 pounds). RFQ at 2, 5. Relevant to the protest here, the RFQ included "[c]riteria for removing Craft from the water" as follows:

1. A boat cradle with suitable dimension to satisfy [the] requirement[s] of [the identified Craft] is to be utilized to transfer the craft in designated storage site.
2. Boat ramp with winch heaving system.

The craft will be removed thru the use of a boat ramp and winch heaving system.

Id. at 5.

The RFQ also established that purchase order award would be made on a lowest-priced, technically acceptable basis, and that technical acceptability would consist of: (1) an explanation of "the proposed method the offeror intends to use to take the [A]dmiral[']s [B]arge out of the water and transported to the storage area, which meets the criteria established in the Statement of Work," and (2) a statement confirming the availability of a boat ramp in their facility . . . , which meets the criteria established in the Statement of Work." Id. at 2.

Both Antico and Cantiere Navale submitted quotations by the October 27 closing date. Antico's quotation set forth the vendor's intended dry-docking procedures and stated that "our Shipyard WILL NOT utilize wire cables and a sheave transfer/slipway hauling system to remove the Grazie II Admiral Barge from the water [using] a wooden boat cradle" Protest, attach. 7, Antico Quotation, at 3 (emphasis in original). Antico explained that use of an inclined slipway hauling system was "obsolete," "lacking of approved technical, engineering & safety certifications issued by the competent Italian Port Authorities," and "known to transfer a great amount of undesired tensional stress [to] the boat's wooden hull and superstructure elements."² Id. As a result, Antico stated that "our Shipyard will indeed utilize a dedicated wooden boat cradle specifically designed to fit the underwater keel and

² Antico also stated that the "wire cables and sheave transfer/slipway hauling system (boat ramp) recommended by your Solicitation['s] [statement of work]" was noncompliant with various Italian and European Union regulations. Id.

hull structure of the Grazie II Admiral Barge during its removal from the water, but utilizing a suitable and certified boat travel lift which guarantees a safe and vertical removal of the Barge from the water.” Id. at 4.

On October 28, after finding it to be the lowest-priced, technically acceptable vendor, the agency made award to Cantiere Navale. COS at 1-2. By contrast, Antico’s quotation (which was lower-priced) was found to be technically unacceptable. Id. at 1. On November 10, after receiving notice of award and a debriefing, Antico filed its protest with our Office.

DISCUSSION

Antico protests the Navy’s evaluation of its quotation. The protester contends that the determination of technical unacceptability was unreasonable because it was based on an incomplete evaluation of the vendor’s proposed boat lifting system/method. Antico also maintains that the Navy’s technical evaluation was conducted by an individual who did not possess the qualifications necessary to determine the acceptability of its boat lifting system/method. Had the Navy performed a proper evaluation, Antico argues, its lower-priced quotation would have been selected for award.

As a preliminary matter, the agency argues that Antico’s protest is untimely. Specifically, the Navy contends that Antico knew of its basis of protest--that it had been found to be technically unacceptable--on October 28, but did not file its protest with our Office until November 10, more than 10 days later.³ Agency Dismissal Request at 3-4. We disagree.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without disrupting or delaying the procurement process. Gorod Shtor, supra, at 2-3; Dominion Aviation, Inc.--Recon., B-275419.4, Feb. 24, 1998, 98-1 CPD ¶ 62 at 3. Concerning the timeliness of Antico’s challenge to the agency’s evaluation of its quotation, our Bid Protest Regulations generally require that protests not based upon alleged improprieties in a solicitation “shall be filed not later than 10 days after the basis of protest is known or should have been known (whichever is earlier)” 4 C.F.R. § 21.2(a)(2).

³ The Navy also contends that because the procurement here was not one involving a required debriefing (i.e., FAR part 13), our timeliness rules based on protests which challenge a procurement involving a required debriefing are not applicable. Memorandum of Law (MOL) at 2, citing Gorod Shtor, B-411284, May 22, 2015, 2015 CPD ¶ 162.

Here the record reflects that the agency informed Antico on October 28 that its quotation was found to be technically unacceptable. Agency Dismissal Request, encl. 1, Declaration of Purchasing Agent. However, it was not until the November 2 debriefing that the Navy informed Antico of the reasons why it had been found to be technically unacceptable. Protest, attach 6, Debriefing at 2; see also MOL at 1-2 (“[t]he debriefing informed Antico of the reasons the Agency had found it to be technically unacceptable”). While the agency asserts that the debriefing “simply provided Antico with more detailed information to clarify and support the agency’s evaluation of technical unacceptability,” Agency Dismissal Request at 3-4, the record shows that the Navy had not previously provided Antico with any information, detailed or otherwise, regarding why the vendor had been determined technically unacceptable. Thus, Antico first learned of its reason for protest on November 2 and filed its protest with our Office within 10 days thereof. Vendors are simply not required to speculate as to their reasons for protest, see, e.g., DGC Int’l, B-410364.2, Nov. 26, 2014, 2014 CPD ¶ 343 at 3, and we fail to see how Antico would have been able to “set forth a detailed statement of the legal and factual ground of protest,” as required by our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4), prior to the information it received on November 2.

We next consider the Navy’s evaluation of Antico’s quotation and resulting unacceptability determination. When using simplified acquisition procedures, an agency must conduct the procurement consistent with a concern for fair and equitable competition and must evaluate quotations in accordance with the terms of the solicitation. SSI Tech., Inc., B-412765.2, July 13, 2016, 2016 CPD ¶ 184 at 3. In reviewing a protest of an allegedly improper simplified acquisition evaluation, our Office does not reevaluate quotations; rather, we review the record to determine if the evaluation was reasonable, consistent with the solicitation’s evaluation scheme, as well as procurement statutes and regulations, and adequately documented. TransAtlantic Lines, LLC, B-411242, B-411242.2, June 23, 2015, 2015 CPD ¶ 204 at 9. A protester’s disagreement with the agency’s judgment, without more, is not sufficient to establish that the agency acted unreasonably. URS Federal Servs., Inc., B-413333, Oct. 11, 2016, 2016 CPD ¶ 286 at 6.

As set forth above, the solicitation expressly established that “[t]he craft will be removed [from the water] thru the use of a boat ramp and winch heaving system.” RFQ at 5. Antico’s quotation, by contrast, stated that the vendor “will not” utilize a boat ramp and winch heaving system, but would instead utilize a vertical removal of the craft from the water with a boat travel lift. Protest, attach. 7, Antico Quotation, at 3-4. The Navy found Antico’s quotation was noncompliant with the RFQ’s stated dry-docking requirements and, in light thereof, technically unacceptable. We find this determination to be reasonable and consistent with the stated evaluation criteria. Clearly stated solicitation technical requirements are considered material to the needs of the government, and a quotation that fails to conform to such material terms is technically unacceptable and may not form the basis for award. 4D Sec. Solutions, Inc., B-400351.2, B-400351.3, Dec. 8, 2008, 2009 CPD ¶ 5 at 4.

Antico does not dispute that its proposed dry-docking procedures were not those required by the solicitation. Rather, the protester argues that its alternate approach was preferable to--in fact, better than--those required by the RFQ. Contracting agencies, however, have broad discretion to determine their needs and the best way to meet them.⁴ See, e.g., Trandes Corp., B-411742.4, Feb. 22, 2016, 2016 CPD ¶ 61 at 6; URS Fed. Support Servs., Inc., B-407573, Jan. 14, 2013, 2013 CPD ¶ 31 at 4. Here, the RFQ's dry-docking requirements were unambiguous. To the extent Antico believed that these requirements were improper, or that vendors should have been permitted to propose alternate dry-docking approaches, it was required to challenge this perceived solicitation defect prior to the closing date for receipt of quotations. See 4 C.F.R. § 21.2(a)(1); DOER Marine, B-295087, Dec. 21, 2004, 2004 CPD ¶ 252 at 4 n.3. A vendor simply cannot wait until after award to dispute the merits of solicitation requirements with which it disagrees.

The protest is denied.

Susan A. Poling
General Counsel

⁴ We therefore express no opinion on the merits of Antico's proposed dry-docking system--only that it was noncompliant with the RFQ's mandatory requirements.