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Decision

Matter of: Enhanced Veterans Solutions, Inc.

File: B-414189.2

Date: July 25, 2017

Wayne A. Keup, Esq., Wayne A. Keup, PLLC, for the protester.
Tenley A. Carp, Esq., Samauel M. Shapiro, Esq., and Sara M. Lord, Esq., Arnall Golden Gregory LLP, for Focused Management, Inc., the intervenor.
Angela T. Puri, Esq., and Kevin J. Rice, Esq., Consumer Financial Protection Bureau, for the agency.
Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency misevaluated awardee's and protester's quotations, and unreasonably selected lower-priced, lower-rated quotation for award of Federal Supply Schedule task order is denied where evaluation and source selection decision were reasonable and consistent with evaluation criteria in solicitation.

DECISION

Enhanced Veterans Solutions, Inc. (EVS), of Springfield, Virginia, a small business, protests the issuance of a Federal Supply Schedule (FSS) task order to Focused Management, Inc. (FMI), of Alexandria, Virginia, also a small business, under request for quotations (RFQ) No. CFP-16-Q-00032, issued by the Consumer Financial Protection Bureau (CFPB) for information technology support services at CFPB offices in Washington, D.C., New York City, Chicago, and San Francisco.¹ EVS argues that the CFPB misevaluated FMI's quotation and made an unreasonable source selection decision.

We deny the protest.

¹ The RFQ also provides for services for a potential additional regional office in Atlanta.

BACKGROUND

The CFPB posted the RFQ on the General Services Administration (GSA) e-Buy electronic portal as a service-disabled veteran-owned small business (SDVOSB) set-aside,² seeking quotations from FSS contractors under special item No. 132-51 (information technology professional services) of Schedule 70 (the general purpose commercial information technology equipment, software, and services schedule). The RFQ anticipated the issuance of a single hybrid fixed-price/labor-hour task order³ to provide services for a 2-month transition period, a 10-month base period, and four option years.⁴ RFQ amend. 5 at 2 (explanation of revised pricing spreadsheet). The required services were described as service desk support (which was divided into 37 task requirements), asset and inventory management services (17 task requirements), and special projects. Id. at 14-21 (statement of requirements).

The CFPB was to issue the order to the FSS vendor whose quotation provided the best value based on an evaluation of price and three non-price factors, listed in descending order of importance: technical approach/transition strategy, staffing plan/key personnel, and experience. RFQ amend. 5 at 75-76. The non-price factors, when combined, were to be significantly more important than estimated price, but “as factors become closer in rating between offerors,” price was to become more important. Id. at 75.

Under the technical approach/transition strategy factor, the CFPB was to evaluate the vendor’s ability to “provide a complete and integrated solution,” including whether the vendor’s approach would accomplish the RFQ requirements, and the vendor’s identification of risks and mitigation strategies. Id. at 75. Under the staffing plan/key personnel factor, the CFPB was to evaluate the vendor’s staffing plan to assess whether the firm would provide effective management and staffing to accomplish the RFQ objectives without lapses in service, and whether the proposed key personnel met or exceeded the qualifications specified in the RFQ. Id. Under the experience factor, the CFPB was to assess whether the vendor had recent and relevant experience. Id. at 76.

As noted above, the RFQ stated that the FSS order would use a hybrid of fixed pricing and labor hour pricing, and stated that pricing of special projects, when required, would be negotiated. RFQ amend. 5 at 14-21. For the base period and option years, the RFQ

² Although the RFQ was originally posted as a small business set-aside, Amendment 1 changed the set-aside designation to SDVOSB. RFQ amend. 1 at 1.

³ The RFQ identified the contracting action as the issuance of a hybrid task order under which the transition period would be fixed-price, and technical support services would be priced on a labor-hour basis. RFQ amend. 5 at 51 (¶ 15.0).

⁴ Vendors were also directed to provide pricing for an additional 6-month option, and referred to the extension-of-services clause at Federal Acquisition Regulation (FAR) § 52.217-8. Id. at 96-97.

required vendors to fill in an electronic spreadsheet with hourly pricing of an estimated 32 full-time positions distributed among 11 labor categories. Id. at 86-95 (attach. 2 pricing schedules). The spreadsheet provided for vendors to insert fixed prices for the 2-month transition period, and it normalized at \$150,000 the estimated cost per year of the special project tasks.

The CFPB received quotations from five vendors, and concluded that only the quotations from FMI and EVS could be considered for award. The initial evaluation and source selection decision resulted in issuance of the order to EVS. FMI protested the issuance of that order with our Office, and the CFPB decided to take corrective action by reevaluating the two quotations and making a new award decision. We dismissed that protest as academic. Focused Mgmt. Inc., B-414189, Dec. 21, 2016 (unpublished decision).

On April 26, 2017, the technical evaluation panel finalized the reevaluation, which used the following adjectival ratings for the non-price factors: outstanding, good, acceptable, marginal, or unacceptable. AR Tab 13, Technical Evaluation Panel (TEP) Consensus Report, at 4. In reevaluating EVS's proposal under the technical approach/transition strategy factor, the CFPB assessed a significant strength for the firm's use of a dedicated transition manager as part of its transition plan, and four strengths for aspects of its use of a continuous improvement plan, its approach to correcting known support area problems, its automation of asset management, and its automation of inventory. Id. at 4-5. Under the staffing plan/key personnel factor, the evaluators assessed two significant strengths and two strengths, based on the experience and qualifications of four of EVS's proposed key personnel. Id. at 5-6. Under the experience factor, the evaluators assessed a strength for the firm's ongoing work on a similar but much larger contract, and a weakness because its two other experience references were for work by two other firms, but the quotation did not adequately explain the connection between EVS and each of the other referenced firms. Id. at 7.

For FMI, the reevaluation under the technical approach/transition strategy factor identified one significant strength based on the firm's experience derived from subcontracting with the incumbent contractor and planned retention of most of the incumbent employees, as well as one weakness for not adequately explaining its approach to performing 7 of the 37 service desk support task requirements. Id. at 10-11. Under the staffing/key personnel factor, the evaluators identified two significant strengths and two strengths for the experience and qualifications of four of FMI's proposed key personnel. Id. at 12. For the experience factor, the evaluators assessed a significant strength for the experience of the incumbent contractor, proposed for use as a subcontractor, and a strength for FMI's experience providing similar services on a contract with a larger scope. Id. at 13.

As a result of the reevaluation, the evaluators assigned non-price ratings, and calculated the vendors' estimated prices, as follows:

	EVS	FMI
Technical Approach/ Transition Strategy	Good	Acceptable
Staffing Plan/Key Personnel	Good	Good
Experience	Acceptable	Good
Overall Rating (Non-Price)	Good	Acceptable
Evaluated Price	\$20.5 million	\$19.8 million

AR Tab 2, Source Selection Decision Document, at 5, 9.

On April 27, the source selection authority (SSA) prepared a decision based on the reevaluation results. The SSA noted that both quotations were technically acceptable, and that EVS's quotation had been evaluated as superior to FMI's under the technical approach/transition strategy factor. Id. at 11. The SSA stated that both firms' quotations had been rated good under the staffing plan/key personnel factor, and that the quotations were effectively equal under that factor. Id. at 11-12. For experience, the SSA first agreed with the evaluators that EVS had identified one relevant contract of larger size, scope, and complexity. Id. at 12. The SSA also noted that EVS identified two other contracts for which experience was cited as being "via performance by the firm that is its minority owner," but did not show how that experience "would benefit the [g]overnment." Id. Even so, the SSA explained that the evaluators had assumed that the minority owner's resources and experience would be applied toward EVS's performance and that the contracts were relevant. Id. For FMI, the SSA found that its quotation cited experience on a highly relevant contract larger than the CFPB requirement, additional experience under a second contract, and that its subcontractor was the outgoing incumbent contractor at the CFPB. Id. In comparing the two, the SSA considered FMI's experience to be superior to EVS's. Id.

Overall, the SSA noted that EVS's quotation was rated superior to FMI's under the most important factor, technical approach/transition strategy, but rated lower than FMI's under the experience factor, and EVS's evaluated price was approximately 3.6 percent higher than FMI's. Id. The SSA explained that EVS's overall slight advantage was not worth paying its higher price, even when considering the greater importance of the technical approach/transition strategy factor in the RFQ's evaluation scheme. On the basis of that judgment, the SSA selected FMI's quotation for award. Id. at 13.

On April 28, the CFPB notified FMI that the agency was tendering an order to the firm. AR Tab 14, Letter from Contracting Officer to FMI, at 1. On May 4, the CFPB notified EVS that its order was being terminated and that an order had been issued to FMI. AR Tab 17, Letter from Contracting Officer to EVS, at 1 & attachment (order cancellation notice). At EVS's request, the CFPB provided a brief explanation of the selection on May 5. This protest followed.

PROTEST

EVS challenges the evaluation of FMI's quotation, and the CFPB's selection of FMI's lower-rated, lower-priced quotation. We address each of EVS's challenges, and conclude that none has merit.

EVS argues first that the CFPB unreasonably evaluated FMI's quotation as acceptable despite its failure to provide an adequate approach to 7 of the 37 required service desk support tasks under the technical approach/transition strategy factor, and despite the corresponding risks posed by FMI's approach. Protest at 5-7. EVS notes that the required tasks that FMI failed to adequately address included performing and supporting **[DELETED]** management, supporting **[DELETED]** users, and providing **[DELETED]** support. *Id.* EVS argues that the CFPB unreasonably evaluated FMI by not assigning a separate weakness for each task for which FMI failed to provide an adequate response. EVS also contends that since the evaluation of this aspect of FMI's quotation remained unchanged from the original evaluation, the record provides "strong evidence" that the reevaluation was not reasonable. Protester's Comments at 4, 7.

The evaluation of quotations is a matter within the discretion of the procuring agency. Analytical Innovation Sols., LLC, B-408727, Nov. 6, 2013, 2013 CPD ¶ 263 at 3. In reviewing a protest against an allegedly improper evaluation, it is not our role to reevaluate the proposals; rather, our Office will examine the record to determine whether the agency's judgment was reasonable and consistent with the criteria in the solicitation. *Id.*

EVS's protest centers on whether the CFPB properly characterized and considered the issues that the evaluators identified in FMI's quotation. In that regard, it is well established that evaluation ratings are merely guides for intelligent decisionmaking in the procurement process. Where the evaluators and the source selection decision reasonably consider the underlying bases for the ratings, including advantages and disadvantages associated with the specific content of competing proposals, in a manner that is both fair and consistent with the terms of the solicitation, a protester's disagreement with specific adjectival or color ratings is essentially inconsequential, in that it does not affect the reasonableness of the judgments made in the source selection decision. ACS State Healthcare, LLC et al., B-292981 *et al.*, Jan. 9, 2004, 2004 CPD ¶ 57 at 19. Our review of the record confirms that the evaluation of FMI's proposal as having a weakness based on its failure to address these areas of the RFQ was fair and consistent with the RFQ, and that not only the evaluators but also the SSA (as discussed further below) understood the substance of the omissions. Accordingly, EVS's challenges to the number of weaknesses, and to the adjectival rating assigned to FMI's quotation, do not provide a basis to sustain the protest.⁵

⁵ EVS also argues that FMI's quotation should not have been considered acceptable, and should have been ineligible for award. However, the protester's comments do not
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Best-Value Tradeoff

EVS also argues that the source selection decision was unreasonable for multiple reasons: that the SSA failed to appreciate EVS's evaluated superiority under the most important factor, that the SSA's view that EVS and FMI were overall technically equal ignored FMI's weaknesses and the relative weights of the factors in disregard of the selection criteria in the RFQ, and that the SSA arbitrarily selected FMI based on an evaluation record that was essentially the same as had resulted in the selection of EVS previously. Protest at 4-6; Protester's Comments at 2, 5-7.

The CFPB counters that the contemporaneous record demonstrates that the SSA expressly identified the factor weighting and compared the offerors under each factor individually. AR at 10, 13. The CFPB argues that the source selection decision documents a reasoned consideration of the competing quotations, and explains the SSA's judgment that EVS's advantages, particularly under the technical approach/transition strategy factor, were not sufficient to offset the combined advantages of FMI's quotation under the experience and evaluated price factors. Id. at 13-14.

Where, as here, a procurement conducted pursuant to FAR subpart 8.4 provides for issuance of an FSS task order on a best-value tradeoff basis, it is the function of the SSA to perform a price/technical tradeoff; that is, to determine whether one quotation's technical superiority is worth its higher price. VariQ Corp., B-409114 et al., Jan. 27, 2014, 2014 CPD ¶ 58 at 14. Even where a solicitation issued under FAR subpart 8.4 emphasizes technical merit over price, an agency properly may select a lower-priced, lower-rated quotation if the agency reasonably concludes that the price premium involved in selecting a higher-rated, higher-priced quotation is not justified in light of the acceptable level of technical competence available at a lower price. Id. at 15. The extent to which technical superiority is traded for a lower price is governed only by the test of rationality and consistency with the stated evaluation criteria. Id.

Based on the record before us, we conclude that the SSA's decision to select FMI's quotation was reasonable and consistent with the evaluation criteria. The contemporaneous record shows that the SSA compared EVS's and FMI's quotations under each factor, from most important to least. AR Tab 2, Source Selection Decision Document, at 11. The SSA recognized the evaluated superiority of EVS's quotation under the technical approach/transition strategy factor, and expressly noted that technical approach/transition strategy was the most important factor. The SSA went on to note that both quotations were essentially equal under the less-weighted staffing factor, and that although FMI's quotation was considered superior to EVS's under the experience factor, that factor was the least important. Id. at 11-12. The SSA further stated that EVS's quotation had a "slight benefit" over FMI's under the non-price factors,

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persuasively show that FMI's quotation was deficient or otherwise contravened the terms of the RFQ such that CFPB should have considered the quotation unacceptable.

but that the advantage was insufficient to justify paying EVS's higher evaluated price. Id. at 12-13. Accordingly, the SSA concluded that FMI's quotation provided the best value, and selected it for award. Id. at 14.

The contemporaneous record thus reflects both an understanding of the relevant importance of the factors, judgment about the degree to which each vendor's quotation provided value, a reasonable comparison of the quotations under the evaluation criteria, and a documented tradeoff decision to select FMI's quotation over EVS's. The source selection decision was thus reasonable and consistent with the RFQ evaluation criteria.

Issues Raised in EVS's Comments

EVS raises a number of additional issues in its comments on the agency report, which we address briefly. First, EVS challenges the CFPB's decision to take corrective action in response to FMI's earlier protest, arguing that the agency did not specify what aspect of the original evaluation and source selection needed to be corrected. Protester's Comments at 2. We view this argument as an untimely challenge to the agency's decision, announced in a letter dated December 19, 2016, to take corrective action in response to FMI's protest of the original award to EVS. In these circumstances, our Bid Protest Regulations require a protester to raise an issue within 10 days of when it knew or should have known the basis for protest. 4 C.F.R. § 21.2(a)(2). When raised for the first time as part of EVS's June 16, 2017, comments on the agency report, however, the issue is untimely, so we dismiss it.⁶

EVS also argues that the evaluation was improper because CFPB improperly combined what the agency should have recognized as five separate strengths for EVS into a single strength, and should have applied a better adjectival rating than "good" to EVS's quotation under the technical approach/transition strategy factor, in light of its evaluated strengths and the absence of weaknesses or deficiencies. Protester's Comments at 3. As with EVS's challenges to the treatment of omissions in FMI's quotation as a single weakness, rather than multiple individual weaknesses, and to the resulting adjectival rating, the record here reflects that the evaluators and SSA understood the specific aspects of EVS's quotation underlying the strengths. AR Tab 13, TEP Consensus Report, at 4-6; AR Tab 2, Source Selection Decision Document, at 5-6. EVS has not shown that the SSA's consideration of the value of EVS's quotation was unreasonable, only that the protester disagrees with the agency's judgment, which does not provide a basis to sustain the protest. ACS State Healthcare, LLC, supra, at 19.

EVS also argues that the record does not reveal why the corrective action resulted in a change to the selection decision; that is, from the original selection of EVS to the current selection of FMI. Id. The antecedent for EVS's complaint is speculation, however; EVS's complaint is based on an assumption that the initial selection of EVS was

⁶ The CFPB provided the exhibits to the agency report on May 16, which was 6 days after EVS filed its protest.

reasonable and consistent with the RFQ, which EVS has not established and which our Office views as an academic matter in any event. The original source selection decision became academic when the CFPB took corrective action that involved a reevaluation and new selection decision. Therefore, the only issue before our Office is whether the current selection decision, on its own, is reasonable and consistent with the RFQ. The fact that the original selection decision chose EVS's quotation does not give that selection decision greater validity; indeed, this Office expressed no view on the original selection decision when we dismissed FMI's challenge to it, and we express none now. EVS has not shown that either the evaluation or selection of FMI's quotation was unreasonable, so we have no basis to sustain the protest.

The protest is denied.

Susan A. Poling
General Counsel