



Decision

Matter of: Castro & Company, LLC

File: B-415508.4

Date: February 13, 2018

Thomas Castro, Castro & Company, LLC, for the protester.
Victor A. Kubli, Esq., Law Office of Victor A. Kubli, PC, for the intervenor.
Michael Kiffney, Esq., Department of Homeland Security, for the agency.
Robert T. Wu, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest challenging an agency's restriction on quotation revisions after amending solicitation in response to an earlier protest is sustained where the amendment materially impacted aspects of the protester's quotation outside of the areas permitted by the agency for revision.

DECISION

Castro & Company, LLC, of Alexandria, Virginia, protests the terms of request for quotations (RFQ) No. HSTS01-17-Q-FIN001, issued by the Department of Homeland Security, Transportation Security Administration (TSA), for financial statement audit and internal control support services. Castro protests a restriction on the scope of quotation revisions included in an amendment to the solicitation issued by the agency.

We sustain the protest.

BACKGROUND

The RFQ, issued on March 29, 2017, sought quotations from holders of the General Services Administration's (GSA) Professional Service Schedule, Special Item Number (SIN) 520-7 (Financial & Performance Audits) contracts. Agency Report (AR), Tab 1, RFQ, at 1. The RFQ, as issued, specified two required tasks: internal control support services (task 1) and financial statement audit support (task 2); and two optional tasks: new guidance surge support (optional task 3) and financial services replacement surge support (optional task 4). Id. at 2-6. Each of the tasks was to be priced as separate contract line item numbers (CLINs) on a fixed-price basis. Id. As relevant to this

protest, Optional Task 3 called for surge support “NTE [not to exceed] 3 FTEs [full-time equivalents].” Id.

Quotations were to be evaluated on a best-value tradeoff basis considering the following factors listed in descending order of importance: corporate experience, technical approach, management and staffing approach, past performance, and price. Id. at 105. The non-price factors, when combined, were significantly more important than price. Id. Under the price factor, quotations were to be evaluated based on “the level of effort and the mix of labor proposed to perform the Tasks” and total price was to be evaluated for balance and to ensure that it is “reasonable based on competition.” Id. at 108.

Seven quotations were received by the May 9 submission date, including one submitted by Castro. Contracting Officer’s Statement (COS) at 2. On August 11, the agency issued amendment A00005, removing optional task 4 from the statement of work. Id. Revised quotations were then solicited and received from all seven vendors. Id. After evaluating revised quotations, the agency decided to award a task order to TFC Consulting for \$14,672,135. Id. at 3.

Castro and one other vendor protested the award to our Office. According to the agency, it “evaluated the merits of the post-award protests and determined that corrective action was necessary to clarify the agency’s intended requirements for Optional Task 3.” Id. Specifically, TSA decided to “revise the language to clarify that it required quoters to provide the agency three full-time individuals to perform the scope of Optional Task 3.” Id. As a result, on November 1, our Office dismissed the protest as academic. Castro & Company, LLC, B-415508.3, Nov. 1, 2017 (unpublished decision).

On November 2, the agency issued amendment A00007, which deleted the “NTE 3 FTEs” language from the optional task 3 CLIN, and modified the CLIN language to read as follows, “**OPTIONAL** – Task 3 –New Guidance - # of Surge Support Members: 3 *Full Time Individuals* – See Attachment 1.” AR, Tab 6, Amendment A00007, at 2 (emphasis in original). Amendment A00007 also contained the following instructions to vendors:

Please update your quotation (BUSINESS & TECHNICAL) as necessary to reflect this change in the Government’s requirement. Changes are restricted to Task 3 ONLY (Technical and Business Volumes). Do not revise any other areas of your quotation. Any revisions outside of Task 3 (Technical and Business Volumes) will not be evaluated.

Id. After the agency issued amendment A00007, this protest followed.

DISCUSSION

Castro protests the restriction in amendment A00007 limiting quotation revisions to optional task 3. Protest at 1. Specifically, the protester argues, “[t]his restriction inherently prejudices the procurement against any offeror whose existing staffing

strategy incorporated taking advantage of perceived efficiencies in Tasks 1 and 2 to address the potential needs of Task 3, as ours did.” Id. Castro further asserts, “[i]n amending the solicitation to require three full-time staff in Task 3 without providing the option to make corresponding adjustments to the remainder of the staffing strategy, the Agency is making decisions on behalf of some (but not all) offerors regarding the hours and staffing mix of those personnel previously proposed across all three tasks.” Id.

The agency responds that amendment A0007 “merely clarified an ambiguity in the agency’s staffing requirement for Optional Task 3,” and, as such, the agency correctly determined that the amendment could not have had any effect on other aspects of the quotation. Memorandum of Law (MOL) at 3. The agency further argues that since task 3 was optional, it is a separate requirement that is “inherently severable from the rest of the scope of work.” Id. at 4. Consequently, according to the agency, “[q]uoters cannot assume that such an optional task will be exercised by the agency, and therefore they cannot assume to propose efficiencies in their staffing and/or pricing premised on the concept that they will perform the optional task.” Id.

Contracting officers in negotiated procurements have broad discretion to take corrective action where the agency determines that such action is necessary to ensure a fair and impartial competition. SMS Data Prods. Group, Inc., B-280970.4, Jan. 29, 1999, 99-1 CPD ¶ 26 at 2. As a general matter, the details of a corrective action are within the sound discretion and judgment of the contracting agency. Rockwell Elec. Commerce Corp., B-286201.6, Aug. 30, 2001, 2001 CPD ¶ 162 at 4. In this regard, an agency’s discretion when taking corrective action extends to a decision on the scope of proposal revisions, and there are circumstances where an agency may reasonably decide to limit the revisions offerors may make to their proposals. See, e.g., Honeywell Tech. Solutions, Inc., B-400771.6, Nov. 23, 2009, 2009 CPD ¶ 240 at 4.

We generally will not object to the specific corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. Networks Elec. Corp., B-290666.3, Sept. 30, 2002, 2002 CPD ¶ 173 at 3. However, even where an agency is justified in restricting revisions in corrective action, the agency may not prohibit offerors from revising related areas of their quotation which are materially impacted. See Deloitte Consulting, LLP, B-412125.6, Nov. 28, 2016, 2016 CPD ¶ 355 at 6 (sustaining protest where, in response to prior protest, agency imposed unreasonably restrictive limitations on scope of proposal revisions, which prohibited revision of proposal information materially impacted by corrective action). When assessing the reasonableness of an agency’s restrictions on proposal revisions, we consider the extent to which the amendment, and the permitted changes in response to amendment, materially impact or are inextricably linked with other aspects of a vendor’s quotation. See id. citing Honeywell Technology Solutions, Inc., supra, at 4.

Here, while the agency argues that optional task 3 is inherently severable from the rest of the scope of work, this fact alone does not preclude any amendment to the optional task 3 scope of work from impacting a vendor’s quotation strategy as Castro alleges. In fact, a review of Castro’s quotation confirms the firm’s assertion that its strategy for

performing optional task 3 included utilizing personnel and labor hours outside of the number of personnel specifically proposed for the optional task 3 CLIN. In this regard, Castro's revised quotation shows that the firm quoted at least two personnel to perform across all three tasks.¹ Castro Revised Quotation at 25. Further evidence of Castro's quotation strategy is found in the firm's revision to its quotation after the agency deleted optional task 4 from the scope of work via amendment A00005. Id.; see also AR, Tab 2, Amendments A00001 to A00006, at 25. In this regard, Castro's revised quotation shows that in response to amendment A00005, the firm not only deleted the personnel it proposed to directly perform on optional task 4, but also revised the labor hours for personnel who were proposed to work across all tasks specified in the scope of work. Castro Revised Quotation at 10, 17, 24-25.

On this record, we conclude that amendment A00007 materially impacted aspects of Castro's quotation outside of the areas permitted by the agency for revision. As the agency may not prohibit offerors from revising related areas of their quotations which are materially impacted, we conclude that the agency's decision to limit quotation revisions to the extent that it has here is unreasonable. See Deloitte Consulting, LLP, supra; Power Connector, Inc., B-404916.2, Aug. 15, 2011, 2011 CPD ¶ 186 at 6-7 (sustaining protest where, in response to prior protest, agency amended solicitation to change a material requirement, but improperly precluded offerors from revising related areas of their proposals that were materially impacted). On this basis, we sustain the protest.²

¹ Castro's revised quotation was not included in the agency report, but was instead provided to our Office for "in camera" review. Castro was not represented by counsel who could obtain access to non-public information pursuant to the terms of a protective order. Accordingly, our discussion of some aspects of the procurement record is necessarily general in nature in order to avoid reference to non-public information. Our conclusions, however, are based on our review of the entire record, including the non-public information.

² While not addressed in this decision, Castro raises other arguments, which we have considered and find without merit. For instance, Castro argues that by opting only to address issues raised with respect to optional task 3, the agency is "effectively conduct[ing] unequal discussions." Protest at 6. In this regard, the protester argues that by providing vendors with explanations after award and then limiting revisions, "the Agency has effectively conducted unequal discussions, permitting offerors with noted weaknesses in Task 3 staffing mix or pricing to remedy their identified deficiencies, while preventing offerors with noted weaknesses in other areas from improving the competitiveness of their offers." Id. However, as stated, we generally will not object to the specific corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. Networks Elec. Corp., supra. Here, the agency has taken corrective action to remedy a specific concern and has reasonably tailored the corrective action to address its concern. We are provided no basis to object to the agency's decision in this regard.

RECOMMENDATION

We find that the agency's limitations on the scope of revisions in response to corrective action are unreasonably restrictive, where the limitations prohibit the protester from revising all aspects of its approach that are materially impacted by the corrective action. We recommend that TSA, at a minimum, amend the solicitation to permit vendors to revise all aspects of their quotations to the extent that the revisions relate to the agency's amendment of the optional task 3 scope of work. We also recommend that Castro be reimbursed the costs of filing and pursuing its protest, including reasonable attorney's fees. 4 C.F.R. § 21.8(d)(1). The protester should submit its certified claim for such costs, detailing the time expended and costs incurred, directly with the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Thomas H. Armstrong
General Counsel