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Decision

Matter of: Heskett and Heskett Services

File: B-415528; B-415528.2

Date: January 16, 2018

Joseph A. Whitcomb, Esq., Whitcomb, Selinsky, McAuliffe, PC, for the protester. Pawandeep Bhandari, Esq., and William Robinson, Esq., U.S. Department of Justice, for the agency.

Gabriel D. Soll, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Heskett and Heskett Services (H&H), a women-owned small business of Terre Haute, Indiana, protests the award of a contract to Colette M. Shepherd (Shepherd), under request for quotations (RFQ) No. RFQP01141700037, issued by the Department of Justice, Federal Bureau of Prisons (BOP), for a Life Connections Program (LCP) transition coordinator at the Federal Corrections Complex Petersburg, in Hopewell, Virginia. H&H argues that the agency improperly evaluated the quotations and made an erroneous best-value tradeoff determination, and alleges other improprieties in the agency's conduct of the procurement.

We deny the protest.

BACKGROUND

The RFQ was issued on July 11, 2017, under the simplified acquisition procedures of Federal Acquisition Regulation (FAR) part 13. The solicitation contemplated the award of a single indefinite delivery/requirements type contract for a 1-year base period and four 1-year option periods, with fixed-price units. RFQ at 1, 21. The solicitation sought a transition coordinator who would provide religious instruction to a religiously-diverse group of inmates transitioning from incarceration to freedom, in support of the LCP. Id. at 5. The procurement was set aside for women-owned small businesses. Id. at 1.

The RFQ announced that the agency would make an award based on the quotation that was determined to represent the best value to the government considering price, technical capability, and past performance history. Id. at 24. Technical capability was

defined by a list of education and experience requirements by which the agency intended to consider the qualifications of the individual who would be performing the services. Id. at 4. The solicitation stated the following:

The [individual] shall possess an ordination certificate or like document documenting their status as a clergy person in good standing with a recognized faith community and have a minimum of three years of documented experience as a clergy person within their faith community.

The [individual] must possess, at a minimum, a Bachelor's degree from an accredited college or university with a major in religious studies or religious education; however, a Master of Divinity (or equivalent), Doctor of Ministry or PhD is most preferred and will be rated more favorably in terms of technical capability.

An [individual] having documented experience teaching spiritual principles to followers of diverse religions, teaching within a reentry program, and teaching in a correctional setting are preferred and will be rated more favorably in terms of technical capability.

Id. The RFQ also required offerors to provide two personal references and a letter of endorsement from their local religious organization for each individual proposed to provide the services. Id.

The RFQ stated that the agency intended to locate and evaluate past performance information using the past performance information retrieval system (PPIRS), and would give priority to those reports in the evaluation of past performance. Id. at 24. The solicitation noted, however, that if an offeror lacked past performance information in PPIRS, the personal references could be used in the evaluation of past performance. Id.

The solicitation recognized that the resulting contract might be to an individual, not a business, and noted that the agency would be responsible for payment of certain taxes during the performance of a resulting contract. To account for this, the RFQ noted that the prices submitted by individuals would be increased by 7.65 percent for evaluation purposes. Id. at 3. The RFQ did not rank or otherwise provide the relative importance of the evaluation factors in determining the best-value quotation.

Quotations were due on August 11, 2017. In response to the RFQ, the agency received four quotations, including those from H&H¹ and Shepherd. Memorandum of Law (MOL), at 2.

¹ H&H's quotation was submitted under the corporate name Midwest Religious Services. See Contracting Officers Statement of Facts (COSF), at 3.

Shepherd's quotation listed a candidate who was found to meet the minimum requirements and all but one of the preferred qualifications, with a Bachelor's degree in Criminal Justice; a Master's degree in Divinity (and noted current work toward a PhD in Ministry); and documented multiple examples of experience teaching spiritual principles to followers of diverse religions, teaching within a reentry program, and teaching in a correctional setting (the remaining preferred qualifications). Agency Report (AR), Tab 9, Shepherd's Quotation, at 4-8. Shepherd's quotation, priced at \$284,250 (adjusted to \$305,955 for evaluation purposes), was the highest one received, and was found to be 25 percent above the median of prices received. AR, Tab 12, Abstract of Quotations. In its evaluation, the agency noted, in addition to the above qualifications, Shepherd's 20 years of verified and very relevant experience; and professional references with very positive reviews of her work on contacts of identical or very similar nature and scope. AR, Tab 14, Evaluation of Quotations, at 4-5.

H&H's quotation offered a choice of two candidates, both of whom were found to meet the minimum requirements. One proposed candidate had a Bachelor's degree in General Studies, and none of the preferred qualifications except a master's degree in divinity, while the other had a Bachelor's degree in Religion, a Master's degree in Divinity, and listed experience with a variety of religions as an Army chaplain on his resume. AR, Tab 11, H&H's Quotation, at 20-24. H&H's quotation was priced at \$225,000, was the second-lowest received, and was found to be 8.1 percent lower than the median. AR, Tab 9, Abstract of Quotations. In its evaluation, the agency noted that no documentation was submitted for either candidate to indicate or verify experience with diverse religions, teaching within a reentry program, or teaching in a correctional setting. The evaluation noted an absence of past performance information available for H&H, but observed that one of its key personnel (a partner, who submitted the quotation) was identified in the System for Award Management (SAM) registry for both H&H and another vendor, Life Skills. H&H's quotation listed three professional references for Life Skills, instead of H&H. The evaluators noted that Life Skills had positive past performance reviews on a relevant, similar contract, although it also found feedback that raised concerns about this vendor's performance under a different contract. Memorandum of Law, at 3; AR, Tab 14, Evaluation of Quotations, at 9. The evaluation record also reflects some questions concerning Life Skills' performance history.

After the quotations were evaluated, the contracting officer, acting as the source selection authority, determined that Shepherd's quotation would provide the best value to the government. In his source selection decision, the contracting officer acknowledged that Shepherd's quotation was the highest in price, but noted that it was lower than the independent government estimate (IGE), and, after listing the attributes identified in the evaluation record, noted that no other quotation had a technical capability evaluation that was equal to, or more favorable than, Shepherd's. BOP

selected Shepherd to receive the award. After the award of the contract was announced on September 11, H&H filed this protest.²

DISCUSSION

H&H primarily challenges the evaluation of the awardee's quotation. Protest at 4-5. The protester argues that the agency should have rejected Shepherd's quotation as non-responsive to the RFQ, and that the technical evaluation was unreasonable and inconsistent with the evaluation criteria in the solicitation. Supp. Protest at 2-3. H&H further asserts that the agency failed to evaluate the awardee's price in accordance with the stated evaluation methodology and that the best-value determination was flawed because of these errors.³ Protest at 5-6.

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 Technology, Inc., B-412765.2, July 13, 2016, 2016 CPD ¶ 184 at 3. In reviewing a protest of an allegedly improper simplified acquisition evaluation, we examine the record to determine whether the agency met this standard and exercised its discretion reasonably. DOER Marine, B-295087, Dec. 21, 2004, 2004 CPD ¶ 252 at 3. Disagreement with the agency's evaluation, by itself, is not sufficient to sustain the protest. Regency Inn & Suites, B-411066.2, May 8, 2015, 2015 CPD ¶ 154 at 4.

H&H asserts that Shepherd's quotation did not conform to the RFQ because the candidate proposed to provide the services did not meet the solicitation's education requirements. Supp. Protest at 2. The protester notes that the evaluation indicated that the individual does not have a Bachelor's degree with a major in religious studies or religious education, while acknowledging that she holds a Master's degree in Divinity and is enrolled in a program seeking a PhD in Ministry. Id.; AR, Tab 14, Evaluation of Quotations, at 4. In this regard, the protester argues that the quotation was

² H&H initially filed an agency-level protest on September 13, 2017, which the agency dismissed on September 29. This protest was timely filed after H&H received notice of that protest's dismissal.

³ In its various protest submissions, H&H raises arguments that are in addition to, or variations of, those discussed herein, including that Shepherd had an organizational conflict of interest based on unequal access to information; bias on the agency's part; and an improper evaluation of H&H's own quotation. Several of these arguments essentially request that our Office substitute its judgment regarding the quotations' relative technical merits for the judgment of the procuring agency--something this Office declines to do. See, e.g., ManTech Advanced Sys. Int'l, Inc., B-413717, Dec. 16, 2016, 2016 CPD ¶ 370 at 3. We have reviewed all of H&H's various arguments and find no basis to sustain its protest.

unacceptable for having taken exception to the requirement for a Bachelor's degree in Religion, a material requirement of the solicitation. Supp. Comments, at 2. H&H further contends that the agency's recognition of the awardee's enrollment in a PhD program indicates that the agency improperly considered this superior to other candidates possessing a Master's degree. Id. at 2-3.

BOP responds that the evaluation was reasonable and consistent with the terms of the solicitation. Supp. MOL, at 4-5. The agency points out that after quotations were received, the contracting officer conferred with the BOP's program manager regarding the manner in which the education requirements were to be construed, observing that BOP received several quotations that proposed candidates with educational qualifications similar to Shepherd's. Id. at 4; AR, Tab 14, Evaluation of Quotations, at 36. This correspondence led to the determination that a Bachelor's degree in a field not listed in the RFQ was acceptable as long as the candidate also possessed a higher degree (Master's or PhD) in a qualifying religious field. Supp. MOL at 5. Based on this, the contracting officer evaluated the awardee, as well as other offerors, as acceptable even if the quotation did not demonstrate a Bachelor's degree in religious studies or education but showed that the individual earned a higher degree in a qualifying field. Id. The agency contends that this is permissible as it did not affect a material requirement and was applied equally to all offerors. Id. The agency denies any preferential treatment regarding the awardee's enrollment in the PhD program. BOP states that the references to the PhD program in the evaluation document merely reflect the evaluation without a value judgment. Supp. COSF at 1-2.

We have explained that where an agency finds that a quotation proposes personnel who do not meet a solicitation's minimum requirements, the agency may reasonably reject the quotation as unacceptable. Technology and Telecomms. Consultants, Inc., B-413301, B-413301.2, Sept. 28, 2016, 2016 CPD ¶ 276 at 12. A material requirement or term of a solicitation is generally one that affects the price, quantity, quality, or delivery of the goods or services being provided. Bluehorse, B-412494, B-412494.2, Feb. 26, 2016, 2016 CPD ¶ 64 at 2-3. However, an agency may waive compliance with a material solicitation requirement in awarding a contract only if the award will meet the agency's actual needs without prejudice to other offerors. Technology and Telecomms. Consultants, Inc., supra, at 12-13.

Here, the awardee does not have a Bachelor's degree in a field of study listed in the RFQ; however, in our view, the agency could reasonably conclude that the individual's Master's degree in a qualifying field meets the requirement for the lower-level degree, and that its acceptance did not competitively prejudice the protester. Shepherd's quotation does not take exception to the requirement for a qualifying Bachelor's degree, but, rather, provides an advanced degree in a qualifying field. Moreover, the record reflects that the agency applied this standard to all offerors, including H&H. See, e.g., AR, Tab 14, Evaluation of Quotations, at 8. As H&H's quotation included a similarly qualified candidate, possessing an undergraduate degree in a non-religious field who

was also not rejected, the protester does not demonstrate that it was prejudiced by this determination.⁴

Further, we do not agree that the agency placed any undue emphasis on the enrollment of the awardee's proposed candidate in a PhD program. The record shows that the agency noted a detail regarding the candidate's educational qualifications, but that the source selection authority did not use this information as a basis of differentiation from other offerors in making the best-value tradeoff determination. See AR, Tab 15, Basis for Award Decision, at 1. Rather, the source selection authority only states that Shepherd met the requirement, as did all offerors. Id. H&H's arguments in this regard are unsupported by the record and do not amount to more than disagreement with the agency's evaluation, which is not sufficient to render the evaluation unreasonable.

H&H maintains that the agency failed to apply the price adjustment to the awardee's quotation and that it made an improper or inadequately documented best-value tradeoff determination. Both assertions are belied by the record.

In a procurement awarded on the basis of a best-value tradeoff, agency officials have broad discretion in determining the manner and extent to which they will make use of the technical and price evaluation results. Price/technical tradeoffs may be made, and the extent to which one is sacrificed for the other is governed by the test of rationality and consistency with the established factors. Dew Drop Sprinklers & Landscaping, B-293963, July 15, 2004, 2004 CPD ¶ 171 at 4. An agency may properly select a more highly-rated quotation over one offering a lower price where it has reasonably determined that the technical superiority outweighs the price difference. Hydromach, Inc. B-412169, Dec. 28, 2015, 2015 CPD ¶ 402 at 4.

First, the protester's assertion that the agency failed to apply a premium to the awardee's evaluated price is incorrect. The record shows that the agency increased the price of the awardee's quotation by 7.65 percent in its evaluation and recognized this increase in making the best-value tradeoff determination. See AR, Tab 12, Abstract of Quotations; AR, Tab 14, Evaluation of Quotations, at 4; AR, Tab 15, Basis for Award Decision, at 1.⁵

Next, the record shows that the source selection authority considered the respective merits of the individual quotations in accordance with the RFQ criteria, and concluded

⁴ As noted above, one of H&H's proposed candidates had a Bachelor's degree in General Studies, but BOP concluded that it met the solicitation's minimum requirements.

⁵ In this memorandum, the source selection authority compares the awardee's quotation to the IGE. While the memorandum does not state the evaluated price, the difference stated accurately reflects the difference between the IGE and the awardee's evaluated price including the additional percentage.

that Shepherd's quotation represented the best value despite being the highest-priced quotation. AR, Tab 15, Basis for Award Decision, at 2. Specifically, the contracting officer considered the education and experience levels of all candidates proposed by the vendors. The source selection memorandum noted that only the awardee's quotation contained "verifiable evidence" of experience teaching spiritual principles to followers of diverse religious backgrounds in a reentry or correctional setting. Id. Similarly, the contracting officer found that no other quotation's past performance evaluation was equal to or better than Shepherd's. Id. Finally, he concluded that "[t]he value of the technical capability and past performance record...warrant a tradeoff in price over the other quotations received." Id.

Based on this record, we find no merit to the protester's arguments that the agency failed to consider the evaluated differences between the quotations, or that the agency failed to document the tradeoff analysis and selection decision. Here, the source selection authority discusses each of the evaluated benefits of Shepherd's quotation under the stated evaluation criteria and determines that the merit of Shepherd's quotation justifies paying a price premium. H&H has furnished no basis for our Office to question the agency's determination.

The protest is denied.

Thomas H. Armstrong
General Counsel