



Decision

Matter of: Trade Links Logistics General Trading Company

File: B-416571; B-416571.2

Date: September 24, 2018

Jafer Tanda, for the protester.

Colonel C. Taylor Smith, and Danielle A. Runyan, Esq., Department of the Air Force, for the agency.

Jonathan L. Kang, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the rejection of the protester's quotation as unacceptable is denied where the record shows that the agency reasonably found that the quotation failed to address a mandatory requirement in the technical quotation.
2. Protest that the solicitation contained latent ambiguities is dismissed for lack of prejudice where the alleged ambiguities were unrelated to the reasons for rejecting the protester's quotation as unacceptable.
3. Protest that the agency improperly accepted quotations from vendors that were not directly solicited, and that the agency improperly accepted late quotations, is dismissed for lack of prejudice where none of the vendors who submitted the challenged quotations received awards.

DECISION

Trade Links Logistics General Trading Company, of Kuwait, protests the establishment of blanket purchase agreements (BPAs) with British Link Kuwait, The Bridge Co., Dou'A Al Kuwait, and Gulf Pioneer, all of Kuwait, under request for quotations (RFQ) No. FA5819-18-Q-0008, for sand removal at Ahmed Al Jaber Air Base, Kuwait. The protester argues that the agency unreasonably found its quotation unacceptable, the solicitation contained latent ambiguities, and the agency improperly accepted quotations from vendors who were not directly solicited and also improperly accepted late quotations.

We deny in part and dismiss in part the protest.

BACKGROUND

The Air Force issued the solicitation on May 4, 2018, seeking quotations¹ for the establishment of up to four BPAs. Agency Report (AR), Tab 3, RFQ, at 2; Tab 7, RFQ amend. 3, at 2.² The solicitation was issued using the simplified acquisition procedures of Federal Acquisition Regulation (FAR) subpart 13.5. RFQ at 6. The solicitation will require the successful vendors to “haul, relocate, regrade, and shape sand” at Ahmed Al Jaber Air Base. RFQ at 2. The RFQ stated that the ordering period under the BPAs would be 3 years and the maximum value of orders under all BPAs would be \$2 million. RFQ amend. 3 at 7.

The RFQ advised that quotations would be evaluated based on two factors: (1) price, and (2) technical approach and quality control plan. RFQ at 6. Award was to be made to the vendors that submitted the lowest-priced, technically acceptable quotations. Id. The technical approach and quality control plan factor was to be evaluated on a pass/fail basis and required vendors’ technical quotations to “describe the offeror’s understanding of its technical and management approach, principles, practices and demonstrate its ability to apply them to this requirement.” Id. Additionally, as relevant here, the solicitation required vendors to “submit a Quality Control Plan to convey its approach to satisfying the requirements outlined in the [statement of work (SOW)],” and stated that the agency would evaluate quotations to ensure they “demonstrate proper planning, organizing, and reporting procedures to provide quality control/quality assurance measures.” Id. at 5-6.

The RFQ initially required vendors to propose fixed prices for four contract line item numbers (CLINs): (1) hauling 1,000 cubic meters of sand from the interior, (2) hauling 1,000 cubic meters of sand from the exterior, (3) relocating 1,000 cubic meters of sand, and (4) regrading and reshaping 1,000 square meters of sand. Id. at 5. The RFQ was subsequently amended to require prices for three CLINs, the first of which consolidated former CLINs 1 and 2 into a single CLIN for hauling sand. RFQ amend. 2 at 5.

The Air Force issued the initial solicitation to eight local Kuwaiti firms via email. AR, Tab 3, RFQ, Email, at 1; Contracting Officer’s Statement (COS) at 2, 4. These eight firms were also included on emails transmitting the solicitation amendments. AR, Tab 4, RFQ amend. 1, Email, at 1; Tab 6, RFQ amend. 2, Email, at 1; Tab 7, RFQ amend. 3, Email, at 1. The Air Force received timely quotations from eight vendors, including Trade Links, prior to the closing time of 1:00 p.m. (Kuwait local time), on June 4. COS at 4. Seven of these quotations were submitted by firms included on the

¹ Although firms who compete for the issuance of BPAs are generally referred to as “vendors” that submit “quotations,” the record here uses the terms “offerors” and “vendors,” and “quotations” and “proposals,” interchangeably.

² Citations to documents refer to the page numbers added by the agency in its report.

agency's emails transmitting the RFQ and amendments, and one was submitted by a firm not included on those emails. Id. The agency also received three late quotations that were "submitted within minutes of the submission closing time." Id. One of the three late quotations was submitted by a firm included on the agency's emails transmitting the RFQ and amendments, and the other two late quotations were submitted by firms not included on those emails. Id.

The Air Force evaluated the 11 quotations and found that four were technically acceptable. AR, Tab 11, Technical Evaluation, at 3-6. With regard to Trade Links, the agency concluded that the protester's quotation was unacceptable because it did not include a quality control plan, as required by the RFQ. Id. at 5. The agency also found that the protester's price quotation was unacceptable because it was based on the four CLINs set forth in the initial RFQ, rather than the three CLINs set forth in RFQ amend. No. 2.³ AR, Tab 12, Abstract of Quotations, at 1; COS at 6. The evaluation of the awardees' and the protester's quotations was as follows:

	British Link Kuwait	The Bridge Co.	Dou'A Al Kuwait	Gulf Pioneer	Trade Links
Technical Approach / Quality Control Plan	Pass	Pass	Pass	Pass	Fail
Price	\$40,143	\$16,817	\$29,475	\$8,499	\$7,956 ⁴

AR, Tab 12, Abstract of Quotations, at 1.

The agency made award to the four vendors whose quotations were acceptable on June 25. COS at 6. The agency advised vendors of the awards on June 26, and provided Trade Links a debriefing on July 1. AR, Tab 15, Trade Links Debriefing, at 1. This protest followed.

DISCUSSION

Trade Links raises three primary arguments: (1) the agency unreasonably rejected its quotation as unacceptable; (2) the solicitation contained latent ambiguities which

³ Trade Links' quotation included prices for original CLIN 1 (interior hauling) and original CLIN 2 (exterior hauling); each of these CLINs had a different price. AR, Tab 9, Trade Links Quotation, at 24. As noted above, the RFQ was amended to consolidate original CLINs 1 and 2 into amended CLIN 1 for hauling sand (without regard to interior or exterior). RFQ amend. 2 at 5. The protester's quotation, therefore, did not offer a price for amended CLIN 1.

⁴ The protester's price was listed in the evaluation documents as 2,220 Kuwaiti Dollars, or \$7,956. AR, Tab 12, Abstract of Quotations, at 1. The protest lists the protester's price as \$2,500 Kuwaiti Dollars, without a U.S. dollar conversion. Protest at 1.

rendered the evaluation of its quotation unreasonable; and (3) the agency improperly accepted quotations from vendors who were not directly solicited by the agency and also improperly accepted late quotations.⁵ For the reasons discussed below, we conclude that the agency reasonably rejected the protester's quotation as unacceptable. We also dismiss the second and third arguments because the protester cannot demonstrate any potential prejudice in light of the protester's unacceptable quotation.

As noted above, the Air Force conducted this procurement using simplified acquisition procedures. Simplified acquisition procedures are designed, among other things, to reduce administrative costs, promote efficiency and economy in contracting, and avoid unnecessary burdens for agencies and contractors. FAR § 13.002. When using these procedures, an agency must conduct the procurement consistent with a concern for fair and equitable competition and must evaluate proposals or quotations in accordance with the terms of the solicitation. ERIE Strayer Co., B-406131, Feb. 21, 2012, 2012 CPD ¶ 101 at 4. In reviewing protests of an allegedly improper simplified acquisition evaluation, our Office examines the record to determine whether the agency met this standard and exercised its discretion reasonably. Emergency Vehicle Installations Corp., B-408682, Nov. 27, 2013, 2013 CPD ¶ 273 at 4. An offeror's or vendor's disagreement with an agency's evaluation, without more, does not provide a basis to sustain a protest. Regency Inn & Suites, B-411066.2, May 8, 2015, 2015 CPD ¶ 154 at 4. Competitive prejudice is an essential element of a viable protest, and we will sustain a protest only where the protester demonstrates that, but for the agency's improper actions, it would have had a substantial chance of receiving the award. Oak Grove Techs., LLC, B-415772, B-415772.2, Mar. 15, 2018, 2018 CPD ¶ 127 at 4.

Technical Acceptability

Trade Links argues that the Air Force unreasonably found its quotation technically unacceptable and excluded it from award. For the reasons discussed below, we find no merit to this argument.

As discussed above, the technical approach and quality control plan evaluation factor required vendors to "submit a Quality Control Plan to convey its approach to satisfying the requirements outlined in the SOW," and stated that the agency would evaluate

⁵ The protester raises other collateral arguments. Although we do not address every argument, we have reviewed them all and find no basis to sustain the protest. For example, the protester contends that the agency failed to evaluate the reasonableness of the awardees' proposed prices, arguing that three of the four awardees' prices were significantly higher than the protester's. Protester's Comments at 14-15. This argument, however, is untimely because although the protester was advised of the awardees' prices on July 1, the protester first raised this allegation in its August 20 comments on the agency report. 4 C.F.R. § 21.2(a)(2) (protests challenging other than the terms of a solicitation must be raised within 10 days after the protester knew or should have known of their basis).

quotations to ensure they “demonstrate proper planning, organizing, and reporting procedures to provide quality control/quality assurance measures.” RFQ at 5-6. The protester’s quotation stated the following with respect to its quality control plan:

Trade Links shall develop and maintain & deliver[] a quality control plan within Five (5) days after contract award to ensure Sand Removal at [Al Jaber Air Base] is performed in accordance with commonly accepted commercial practices and services identified in this PWS. We will develop and implement procedures to identify, prevent, and ensure non-performance and continual repeat of defective service does not occur. . . . We will establish and maintain a quality control (QC) program that has been reviewed and accepted by the Government for compliance with this contract. . . .

AR, Tab 9, Trade Links Quotation, at 11.

The Air Force found that the protester’s quotation was unacceptable for the following reason: “The technical volume presented resources available, but the quality control plan states that their quality control program will be reviewed and accepted by the Government for compliance with the contract. This statement does not suffice as a presentation of a quality control plan.” AR, Tab 11, Technical Evaluation, at 5.

Trade Links argues that the Air Force’s evaluation resulted in the elimination of its quotation for “reasons not identified as weighted factors” in the solicitation, and further argued that its quotation “met all the patent evaluation criteria.” Protest at 12. In response to the agency report, however, the protester did not specifically dispute the agency’s conclusion that its quotation did not represent a quality control plan, and instead reiterated its view that its quotation “met all the patent evaluation criteria.” Comments at 6.

Based on our review of the record, we agree with the Air Force that the RFQ specifically required vendors to propose a quality control plan that explains how the vendor will ensure quality performance. RFQ at 5-6. We also agree with the agency that it reasonably found that the protester’s quotation only proposed to develop and deliver the required quality control plan within 5 days after the award to ensure that the solicitation requirements are met, rather than provide a plan in its quotation. AR, Tab 9, Trade Links Quotation, at 11. We therefore find no basis to sustain the protest.⁶

⁶ As discussed above, the Air Force also found that Trade Links’ price quotation was unacceptable because it used the four-CLIN schedule set forth in the initial RFQ, rather than the three-CLIN schedule set forth in RFP amendment No. 2. AR, Tab 12, Abstract of Quotations, at 1; COS at 6. Because we conclude that the agency reasonably rejected the protester’s quotation as unacceptable in connection with the failure to submit a quality control plan, we need not address the issue of the price schedule. We (continued...)

Solicitation Ambiguities

Next, Trade Links argues that the solicitation contained latent ambiguities.⁷ Specifically, the protester argues that the RFQ was not clear regarding the relative weight of the evaluation factors or the basis for award, and that the RFQ also did not adequately explain how the agency would evaluate quotations regarding the requirement to explain how the vendor would quantify the amount of sand hauled, relocated, or regraded.⁸ RFQ amend. 3 at 6. We need not resolve Trade Links' arguments because, even if they had merit, the protester cannot establish any possible prejudice.⁹

As discussed above, the Air Force rejected Trade Links' quotation because it failed to provide a quality control plan and because its price was based on the incorrect schedule. None of the ambiguities alleged by the protester relate to the bases upon which the agency found its quotation unacceptable. We therefore conclude that, even if the protester's argument that the solicitation contained latent ambiguities had merit, the

(...continued)

note, however, that the protester does not specifically dispute the agency's basis for rejecting its quotation for this reason.

⁷ An ambiguity exists where two or more reasonable interpretations of solicitation terms are possible. Crew Training Int'l, Inc., B-414126, Feb. 7, 2017, 2017 CPD ¶ 53 at 4. A patent ambiguity exists where the solicitation contains an obvious, gross, or glaring error, while a latent ambiguity is more subtle. RELI Grp., Inc., B-412380, Jan. 28, 2016, 2016 CPD ¶ 51 at 6. Patent ambiguities must be challenged prior to the time for receipt of initial proposals or quotations. 4 C.F.R. § 21.2(a)(1); U.S. Facilities, Inc., B-293029, B-293029.2, Jan. 16, 2004, 2004 CPD ¶ 17 at 10.

⁸ The agency also found that the protester failed to "present means of quantifying the amount of sand" to be hauled, relocated, or regraded, as required by the solicitation. AR, Tab 11, Technical Evaluation, at 5. The protester argues that this aspect of the evaluation was unreasonable because the RFQ did not require vendors to address how they would quantify the amount of sand during performance. Protest at 6. The agency contends that the protester's failure to address the quality control plan requirement was the basis for finding the quotation technically unacceptable. See COS at 5-6; Memorandum of Law (MOL) at 7. For the reasons discussed above, we agree that the agency's evaluation of the protester's quality control plan was reasonable, and further agree that this concern provided a reasonable, independent basis to find the protester's quotation unacceptable. We note, in any event, that the RFQ expressly required that vendors quotations "present means of quantifying the amount of sand, which may include, but [is] not limited to, precision surveying equipment or equivalent tools that produce a written report to be verified by the Government." RFQ amend. 3 at 6.

⁹ We note for the record that the agency argues that the solicitation was not ambiguous, or was, at best, patently ambiguous. MOL at 9-12.

protester could not have been prejudiced by such ambiguities because the protester does not demonstrate that its quotation was found unacceptable in areas related to these ambiguities. We therefore dismiss this argument for lack of prejudice. See Oak Grove Techs., LLC, supra.

Acceptance of Quotations

Next, Trade Links argues that the Air Force improperly accepted quotations from vendors who were not directly solicited by the agency, and that the agency improperly accepted late quotations from three vendors. The protester argues that these actions reflected unequal treatment of vendors and a lack of integrity on the part of the agency. Protest at 6; Protester's Comments at 1-2. We need not resolve Trade Links' arguments because, even if they had merit, the protester cannot establish any possible prejudice.¹⁰

As discussed above, the Air Force directly solicited eight vendors, including the protester, by sending them copies of the RFQ via email. AR, Tab 3, RFQ, Email, at 1. The agency received quotations from eight vendors prior to the 1 p.m. local closing time on May 4, including one quotation from a vendor that was not directly solicited by the agency. AR, Tab 9, Timely Vendor Quotations. The agency also received and accepted quotations from three vendors after the closing time, one of which was from a vendor not directly solicited. AR, Tab 10, Late Vendor Quotations.

The record shows that all four of the awardees were vendors that were directly solicited by the agency via email. See AR, Tab 3, RFQ, Email, at 1; Tab 9, Timely Vendor Quotations, at 17-18, 20-21. The record also shows that none of the awardees submitted late quotations. See AR, Tab 10, Late Vendor Quotations. As discussed above, the quotations from all vendors other than the awardees were rejected as unacceptable; in other words, the quotations from the vendors who were not directly solicited, as well as all of the late quotations, were rejected as unacceptable. AR, Tab 11, Technical Evaluation, at 3-6. For these reasons, the protester cannot establish that the acceptance of the quotations from the vendors not directly solicited by the agency, or the acceptance of the three late quotations, had any effect on the evaluation

¹⁰ We note for the record that the agency argues that the acceptance of the late quotations was appropriate because, as our Office has explained, under simplified acquisition procedures, agencies may consider late quotations where the solicitation does not bar consideration of late quotations. MOL at 19-20 (citing John Blood, B-274624, Dec. 19, 1996, 96-2 CPD ¶ 233 at 2); see also PricewaterhouseCoopers Pub. Sector, LLP, B-415504, B-415504.2, Jan. 18, 2018, 2018 CPD ¶ 35 at 5. We also note that the RFQ did not prohibit vendors who were not included on the agency's emails from submitting quotations, and the protester does not cite any procurement laws or regulations that prohibit the submission or acceptance of quotations from firms not directly solicited by the agency.

of its own quotation or the selection of the four quotations for award. We therefore dismiss this argument for lack of prejudice. See Oak Grove Techs., LLC, supra.

The protest is denied in part and dismissed in part.

Thomas H. Armstrong
General Counsel