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Decision

Matter of: GCC Technologies, LLC

File: B-416459.2

Date: November 19, 2018

Lee Dougherty, Esq., and Katherine S. Saphier, Esq., Effectus, PLLC, for the protester. Antonio R. Franco, Esq., Kathryn V. Flood, Esq., Julia Di Vito, Esq., and Timothy F. Valley, Esq., PilieroMazza PLLC, for The Red Gate Group, Ltd., the intervenor. Aleia Barlow, Esq., Department of Veterans Affairs, for the agency. Todd C. Culliton, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest is denied where the agency did not apply unstated evaluation criteria when comparing protester's proposed employee's substitute qualifications to the approved qualifications contained in the solicitation.
 2. Protest is denied where the agency reasonably evaluated the awardee's performance risk as low in accordance with the terms of the solicitation.
 3. Protest is denied where the protester failed to show that the awardee knowingly or negligently misrepresented its proposed key personnel.
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DECISION

GCC Technologies, LLC (GCC), of Oakland, Maryland, protests the issuance of a Federal Supply Schedule (FSS) task order to The Red Gate Group, Ltd. (RGG), of Chantilly, Virginia, under request for quotations (RFQ) No. 36C10X18Q0126, issued by the Department of Veterans Affairs for human resources support services. The protester alleges that the agency unreasonably evaluated quotations and improperly made its source selection decision.

We deny the protest.

BACKGROUND

The solicitation, issued on May 15, 2018, contemplated the award of a fixed-price task order under Schedule 00CORP (the professional services schedule) to be completed over a 9-month base period and four 1-year option periods. Agency Report (AR), Tab 5g, RFQ, amend. 6 at 4. The selected contractor would be expected to provide human resources support services, including integrated enterprise planning and architecture, capital planning and investment management, resource management, and transition and change management. Id. The solicitation provided for award on a best-value tradeoff basis considering technical capability, performance risk, and price. Tab 5a, RFQ at 49-50.

Nine vendors, including GCC and RGG, submitted quotations prior to the June 25 closing date. Relevant to the instant protest, the agency assigned GCC an unsatisfactory rating under the technical capability factor, and assigned RGG a good rating under the technical capability factor and a low risk rating under the performance risk factor. AR, Tab 4a, Source Selection Decision Document (SSDD), at 10. After comparing quotations, the agency determined that RGG offered the best value and issued the task order to RGG at a price of \$17,628,830. Id. at 54. The instant protest followed.

DISCUSSION

GCC asserts that the agency unreasonably evaluated its quotation as unsatisfactory under the technical capability factor. Protest at 5-7. GCC also asserts that the agency unreasonably evaluated RGG's quotation as low risk under the performance risk factor. Id. at 8-10. GCC further asserts that RGG should have been disqualified for materially misrepresenting its proposed key personnel. Id. at 10-11. Finally, GCC asserts that the agency improperly made its source selection decision. We have considered all of the allegations and find no basis to sustain the protest. We note, at the outset that, in reviewing protests challenging an agency's evaluation of quotations, our Office does not reevaluate quotations or substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's judgment was reasonable and consistent with the solicitation's evaluation criteria, as well as applicable statutes and regulations. TSC Enterprise, LLC, B-415731, Feb. 8, 2018, 2018 CPD ¶ 71 at 2.

GCC's Technical Capability

The solicitation required vendors to propose key personnel as part of their technical quotations, including a contracts and acquisitions team lead. RFQ at 21, 47. The Performance Work Statement (PWS) specified that the contract and acquisition team lead shall have five years of acquisitions experience and possess either: (1) certification in Defense Acquisition Workforce Improvement Act (DAWIA) (Level II) in acquisition; (2) Federal Acquisition Certification in Contracting (FAC/C) (Level II); or (3) equivalent commercial certification (e.g., National Contract Management Association, including Certified Professional Contracts Manager (CPCM) certification). Id. at 20.

GCC's proposed contracts and acquisitions team lead possesses a master's degree in procurement and acquisition management and a graduate certificate in government contracting, and therefore, GCC sought to qualify its employee as possessing an equivalent commercial certification to the DAWIA and FAC/C certifications. AR, Tab 2, GCC Technical Quotation at A-7. The agency determined that the master's degree and graduate certificate did not qualify as equivalent commercial certifications because they did not require any continuing education. AR, Tab 4a, SSDD at 16. Additionally, the agency noted that the master's degree and graduate certificate were not equivalent because they did not require that the proposed employee complete three courses required for the DAWIA or FAC/C certifications. Id.

GCC asserts that the agency applied unstated evaluation criteria because the solicitation did not dictate that equivalent certifications must include a continuing education requirement or include study of particular courses. Protester's Comments at 3. In response, the agency asserts that it evaluated GCC's quotation consistent with the terms of the solicitation. Memorandum of Law at 8.

When reviewing whether an agency applied unstated evaluation criteria, our decisions explain that an agency is required to evaluate quotations based solely on the factors identified in the solicitation. IBM Global Business Serv.--U.S. Federal, B-409029, B-409029.2, Jan. 27, 2014, 2014 CPD ¶ 43 at 4. While an agency may apply evaluation considerations that are not expressly outlined in the solicitation if those considerations are reasonably and logically encompassed within the stated evaluation criteria, there must be a clear nexus between the stated and unstated criteria. Id.

On this record, we find that the agency did not apply unstated evaluation criteria. Specifically, the agency's reasons for finding GCC's proposed contract and acquisitions team lead as unqualified were reasonably and logically encompassed within the stated evaluation criteria. Critical to our finding is that the solicitation specified that each vendor's proposed contracts and acquisition team lead must have a DAWIA certification, an FAC/C certification, or an equivalent commercial certification, such as the CPCM. RFQ at 20. In this manner, the solicitation's terms reasonably contemplated that the agency would evaluate whether any master's degrees or graduate certificates qualified as substitute certifications based on whether they were equivalent (i.e., equal in value or function) to the DAWIA or FAC/C certifications. Accordingly, the agency did not apply unstated evaluation criteria when comparing the courses studied or continuing education requirements of the employee's master's degree or graduate certificate to the requirements of the DAWIA or FAC/C requirements because that sort of comparison was necessary to determine whether the employee's substitute certifications were equivalent to the stated certifications.

Moreover, we find that the record shows that the agency reasonably evaluated the master's degree and graduate certificate as insufficient certifications. The record shows that the DAWIA and FAC/C certifications have continuing education requirements and that GCC's employee's master's degree and graduate certificate do not have equal or similar continuing education requirements. Contracting Officer's Statement of Facts

(COSF) at 9. Similarly, the record shows, and the protester does not dispute, that the master's degree and graduate certificate programs did not have the same course requirements as the DAWIA and FAC/C certification programs. Id. Thus, we find that the agency reasonably evaluated GCC's proposed contracts and acquisition team lead as not having an equivalent commercial certification because the record does not show that her master's degree or graduate certificate have the same continuing education or course requirements as the DAWIA or FAC/C certification.

The protester also asserts that the agency unequally evaluated its and RGG's proposal because the agency did not assess whether the CPCM certification has the same course requirements as the DAWIA or FAC/C when obtaining a CPCM certification. We dismiss this allegation as failing to state a valid basis for protest. Where a protest does not facially demonstrate unreasonable agency action, we will dismiss it for failing to state a valid basis for protest. 4 C.F.R. § 21.5(f); Excalibur Laundries, Inc., B-405814, B-405814.2, Jan. 3, 2012, 2012 CPD ¶ 1 at 6 (allegation fails to state a valid basis when it facially does not demonstrate unreasonable agency action). Here, as noted above, the solicitation specified that a CPCM qualified as an equivalent commercial certification. Thus, the agency was not required to assess whether the CPCM certification had the same course requirements as the other certifications because the solicitation expressly stated that the CPCM was an equivalent commercial certification. To the extent the protester alleges that the CPCM does not constitute an equivalent commercial certification, we dismiss that allegation as untimely because it challenges a solicitation term that was not protested prior to the close of the solicitation period. 4 C.F.R. § 21.2(a)(1).

As a final matter on this issue, the protester alleges that the solicitation contained a latent ambiguity. GCC alleges that the provision, "equivalent commercial certification," was susceptible to two or more reasonable interpretations because it contained a lack of guidance as to what substitute certifications would qualify as equivalent. Protest at 6. In reviewing allegations concerning ambiguities, our decisions establish that an ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. See, e.g., FEI Sys., B-414852.2, Nov. 17, 2017, 2017 CPD ¶ 349 at 4. Further, our decisions generally recognize two types of ambiguities, patent and latent. Id. A patent ambiguity exists where the solicitation contains an obvious or glaring error, and must be protested prior to the close of the solicitation period in order to be timely. Anders Constr., Inc., B-414261, Apr. 11, 2017, 2017 CPD ¶ 121 at 6. In contrast, a latent ambiguity is more subtle, existing when the ambiguity could not be discovered until after the close of the solicitation period, such as an ambiguity that arises during the context of the agency's evaluation. Id.

Here, assuming that the protester's interpretation was reasonable, we dismiss its challenge as untimely because the alleged ambiguity would have been patent. Protest at 6. We think that any lack of clarity as to what substitute certifications would qualify as equivalent would have been obvious from the face of the solicitation because any vendor proposing an employee with substitute certifications would have questioned whether its proposed employee would qualify. Cf. Anders Constr., supra at 6 (confusing

instructions created patent ambiguity); Glock, Inc., B-414401, June 5, 2017, 2017 CPD ¶ 180 at 14 (lack of clarity in solicitation created a patent ambiguity). Accordingly, we dismiss this protest allegation as untimely because it should have been raised prior to the time set for receipt of quotations.

RGG's Performance Risk

As noted above, the solicitation advised that quotations would be evaluated for performance risk (*i.e.*, experience and past performance). Vendors were instructed to provide a list of three contracts. RFQ at 48. The agency would only consider contracts that were timely (*i.e.*, performed within the last three years) and relevant (*i.e.*, "services which, when considered as a whole, meet much of the size, scope, and/or complexity compared to the PWS"). *Id.* at 50. After determining that the contracts were timely and relevant, the agency would assess the contracts for experience and past performance. *Id.* at 51.

RGG submitted three contracts for review. AR, Tab 3b, RGG Performance Risk Quotation. The first contract was valued at \$4.5 million and required RGG to provide performance and change management support, as well as design and implementation of enhanced employee engagement efforts. *Id.* at 1-2. The second contract was valued at \$5.3 million and involved project management services. *Id.* at 2-3. The third contract was valued at \$15 million and involved management consultation services in connection with property redevelopment. *Id.* at 4-5. The agency reviewed these contracts and determined that they were timely and relevant. Tab 4a, SSDD at 44. In regard to relevance, the agency found that, even though two of the contracts were smaller in value, they were relevant because, as a whole, they met much of the scope and complexity of the PWS. *Id.* at 42-44.

GCC argues that the agency unreasonably found RGG's contracts to be relevant because two of the contracts were significantly smaller in value. Protester's Comments at 6. In our view, the agency's evaluation is unobjectionable. Critical to our view is the fact that the solicitation stated that a vendor's past performance would be considered relevant when the identified contracts, as a whole, demonstrated similarity in size, scope, and complexity; this means that each of the vendor's identified contracts did not need to meet all three of the relevance criteria in order for the total experience to be considered relevant. See PricewaterhouseCoopers LLP; IBM U.S. Federal, B-409885 *et al.*, Sept. 5, 2014, 2014 CPD ¶ 289 at 10 (agency reasonably considered identified contracts similar in either size, scope, or complexity, and the solicitation did not require that each contract must meet all three of the relevance criteria in order to be considered).

In our view, RGG's contracts were properly considered relevant because, while only one contract was similar in size, each contract was similar in scope and complexity to the instant acquisition. Indeed, our review shows that each of the contracts involved project management and human resources support services similar to those required under the instant PWS. See RFQ at 8-20 (contractor would be required to provide

project management and human resources support services). Furthermore, the third contract was quite similar in size to the instant acquisition (i.e., \$15 million vs. \$17.6 million). Accordingly, we find unobjectionable the agency's evaluation because all three of the contracts collectively demonstrated similarity to the instant acquisition under the relevance criteria. To the extent that GCC argues that the lower value of the two contracts outweighed the other similarities and should have barred concluding that RGG's contracts were irrelevant, we note that such an argument constitutes a disagreement with the agency's evaluation and does not constitute a sufficient basis to sustain the protest. Champion Service Corp., B-284116, Feb. 22, 2000, 2000 CPD ¶ 28 at 4 (disagreement with agency's performance risk evaluation does not constitute a basis to sustain the protest).

RGG also argues that the agency unreasonably evaluated RGG's performance risk because it did not reasonably consider RGG's negative past performance references. Protester's Comments at 7. After determining that the contracts were timely and relevant, the solicitation advised that vendors' contracts would be evaluated for experience and past performance in order to identify a composite performance risk rating. RFQ at 51. Vendors were advised that the agency would evaluate the quality of past performance based on any information available through past performance questionnaires or any other information available. Id.

The record shows that the agency reviewed past performance questionnaires concerning RGG's performance under the identified contracts and queried RGG in the past performance information retrieval system. Tab 4a, SSDD at 44. The agency identified two additional past performance references where RGG had received marginal ratings. Id. The record shows that the agency considered these references and concluded that they added only minimal risk to RGG's likelihood of successful performance because the reviewing agency noted that RGG's final work products met the government's needs and that it would recommend RGG for future contracts. Id. at 45. Further, the agency noted that the marginal references were for work unrelated to the instant acquisition. Id. Accordingly, we have no basis to object to the agency's evaluation because the record shows that the agency reasonably considered these references as not indicative of a poor likelihood of successful performance. See DynCorp Int'l LLC, B-411126.4 et al., Dec. 20, 2016, 2017 CPD ¶ 333 at 18 ("given the reviewing agency's views regarding the remainder of [the awardee's] performance, and its willingness to consider [the awardee] for future award, we find no merit to the protester's argument that the agency should have interpreted [the marginal ratings] to mandate an overall unacceptable rating for the awardee's past performance.").

Material Misrepresentation

The solicitation required vendors to propose a program manager, a contracts and acquisitions team lead, a strategic planning lead, and a program management office (PMO) operations manager. RFQ at 21. RGG's quotation proposed Employee A as its PMO operations manager, but prior to the start of contract performance, RGG contacted

the agency to substitute Employee B as its new PMO operations manager. AR, Tab 3a, RGG Quotation at 4, 2-7; Supp. COSF at 1.

In response to this development, GCC argues that RGG materially misrepresented its key personnel when it included Employee A as its proposed PMO operations manager.¹ Protester's Comments at 7-9. In other words, GCC asserts that RGG's quotation involved a "bait and switch" scheme. Id. at 7.

Whether key personnel submitted in a vendor's quotation perform under the subsequently awarded task order is generally a matter of contract administration that our Office does not review. 4 C.F.R. § 21.5(a). Nonetheless, our Office will consider allegations that a vendor proposed personnel that it did not have a reasonable basis to expect to provide during task order performance in order to obtain a more favorable evaluation, as such a material misrepresentation has an adverse effect on the integrity of the competitive procurement system. DKW Communications, Inc., B-414476, B-414476.2, June 23, 2017, 2017 CPD ¶ 206 at 9. In order to establish an impermissible "bait and switch," a protester must show that: (1) the awardee either knowingly or negligently represented that it would rely on specific personnel that it did not have a reasonable basis to expect to furnish performance; (2) the misrepresentation was relied on by the agency; and (3) the agency's reliance on the misrepresentation had a material effect on the evaluation results. Id.

Here, there is no basis to find that RGG engaged in a material misrepresentation because the record does not show that RGG either knowingly or negligently misrepresented Employee A's availability. The record shows that Employee A was employed by RGG's subcontractor. AR, Tab 3a, RGG Quotation at 2-7. The record further shows that RGG contacted its subcontractor when it learned that it had been selected for award but that Employee A was no longer available to serve as the PMO operations manager on this task order. Intervenor's Comments, Exh. A, Declaration of RGG's Chief Executive Officer at ¶ 5. Although GCC has proffered evidence that Employee A is still employed by RGG's subcontractor, see Protester's Comments, Exh. 2, Exh. 3, that evidence, without more, does not demonstrate that RGG did not

¹ In its protest, GCC also alleged that RGG materially misrepresented its proposed contracts and acquisition team lead. Protest at 11. The agency responded that RGG has not requested to substitute its proposed contracts and acquisition team lead with another employee. COSF at 15. GCC did not respond to the agency's position in its comments. Thus, we dismiss the allegation as abandoned because the protester failed to rebut the agency's position in its comments and therefore has not provided us with a basis to conclude that the agency's position is unreasonable. Medical Staffing Solutions USA, B-415571, B-415571.2, Dec. 13, 2017, 2017 CPD ¶ 384 at 3 ("Where, as here, an agency provides a detailed response to a protester's assertion and the protester fails to rebut the agency's argument in its comments, the protester fails to provide us with a basis to conclude that the agency's position with respect to the issue in question is unreasonable, and as a result, the protester abandons that assertion.").

have a reasonable basis to expect that Employee A would serve as its PMO operations manager. Accordingly, we deny this protest allegation because GCC has not demonstrated that RGG knowingly or negligently misrepresented Employee A's availability.

Source Selection Decision

Finally, GCC argues that the agency made an unreasonable best-value tradeoff. The protester argues that the tradeoff analysis was flawed because it was based on miscalculations of the protester's and awardee's proposals, as well as RGG's material misrepresentation of its key personnel. Protester's Comments at 10. This allegation is derivative of the challenges to the agency's evaluation. Thus, we dismiss this allegation because derivative allegations do not establish independent bases of protest.² Technology and Telecomms. Consultants, Inc., B-415029, Oct. 16, 2017, 2017 CPD ¶ 320 at 6.

The protest is denied.

Thomas H. Armstrong
General Counsel

² During its evaluation of GCC's quotation, the agency determined that GCC was ineligible for award because GCC had not certified as a small business in the System for Award Management under the applicable North American Industry Classification System code. As a result, GCC protested its ineligibility, arguing that it qualified as a small business under its FSS contract and therefore should be considered small for the purposes of the instant procurement or referred to the Small Business Administration for a size determination. Protest at 7. Because we have concluded that the agency's evaluation and source selection decision were reasonable, we need not address whether GCC was eligible for award.