



Decision

Matter of: Northstate Heavy Equipment Rental

File: B-416821

Date: December 19, 2018

Aaron Harvey for the protester.
Azine Farzami, Esq., and Mark Garrett, Esq., Department of Agriculture, for the agency.
Elizabeth Witwer, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency's discussions were misleading is denied where the discussions were sufficient to lead the protester into the areas of its quotation which required revision.

DECISION

Northstate Heavy Equipment Rental, a small business concern of Cottonwood, California, protests its failure to receive a blanket purchase agreement (BPA) for handwashing stations under request for quotations (RFQ) No. 129J6118Q7010 issued by the Department of Agriculture, United States Forest Service. The protester contends that the agency unfairly conducted negotiations.¹

We deny the protest.

¹ No protective order was issued in this protest because Northstate elected to proceed with its protest pro se. A full version of the agency report was provided to our Office, while a redacted version of the report was furnished to the protester. We have reviewed the entire unredacted record in camera. Because much of the information reviewed by our Office is source selection sensitive and/or proprietary in nature, our discussion of some aspects of the evaluation is necessarily general in nature.

BACKGROUND

The agency issued the RFQ on January 19, 2018, seeking quotations for potable and gray water trucks and trailer-mounted handwashing stations for the Pacific Southwest Region (Forest Service Region 5).² RFQ at 1. The agency contemplated establishing BPAs under Federal Acquisition Regulation (FAR) § 13.303 with multiple vendors. Id. at 5, 15; Agency Notice, Nov. 7, 2018. The RFQ provided that the agency would evaluate quotations under three factors: price, operational acceptability, and past performance. RFQ at 6. The RFQ further provided that BPAs would be established with vendors with: (a) reasonably priced resources, (b) operationally acceptable resources, and (c) a low or unknown performance risk. Id. The price factor is the only evaluation factor relevant to Northstate's protest.

The RFQ provided that vendors' prices would be evaluated for reasonableness and that "[p]rice reasonableness may be based upon competition, government estimates, commercial pricing, historical data, etc." Id. Important here, prior to the evaluation of quotations, the agency prepared an independent government cost estimate (IGCE), in which the agency established a maximum daily rate that it considered to be reasonable for each type of equipment.³ MOL at 4; Contracting Officer's Statement (COS) at 1; AR, Tab 9, Agency Price Analysis & IGCE. The maximum daily rate served as the upper limit of what the agency considered to be an acceptable price for that piece of equipment.

With regard to discussions, the RFQ provided that, in accordance with FAR provision 52.212-1, the agency intended to establish BPAs without discussions, but reserved the right to conduct discussions if determined to be in the agency's best interest. RFQ at 45.

With respect to the type 1 handwashing stations at issue here, the agency received timely quotations from 18 vendors, including Northstate. COS at 1; AR, Tab 6, Northstate Initial Quotation, at 4-5. The agency identified those vendors proposing prices that exceeded the agency's predetermined maximum daily rate and entered into price negotiations with those vendors. MOL at 4-5.

² The RFQ sought quotations for four different types of water trucks and two types of handwashing stations. RFQ at 18-19. The agency established a BPA with the protester for water trucks, but not for handwashing stations. Agency Report (AR), Tab 13, Northstate BPA; Memorandum of Law (MOL) at 6. Northstate challenges its failure to receive a BPA for type 1 handwashing stations, Protest at 1-2, which are trailer-mounted stations with 12 or more sinks. RFQ at 19. Type 2 handwashing stations are trailer-mounted stations with 8-11 sinks. Id.

³ In the unredacted record provided to our Office, the agency explained the basis for its IGCE and produced the IGCE for the type 1 handwashing stations. MOL at 8; AR, Tab 9, Agency Price Analysis & IGCE.

Northstate's proposed daily rates for its type 1 handwashing stations exceeded the maximum daily rate.⁴ Id. at 5; COS at 1. Accordingly, on August 21, the agency sent a negotiation memorandum to Northstate. AR, Tab 11, Negotiation Memorandum. The memorandum provided, in pertinent part as follows:

[T]he following item(s) need your attention:

Price analysis conducted has found the daily rates submitted for your Equipment ID's, as follows, [] to be TOO HIGH and not within this year's acceptable price range:

- Handwashing Type 1
 - 4RL7747
 - 4NV2794
 - 4DD2142
 - 1WX7155
 - 4RL7750

Recent historic agreement rates (2017) for the Pacific Southwest Region can be viewed at www.fs.fed.us/business/incident/vipr . . . [.]

Id. at 1. Northstate was instructed to respond by August 30. Id.

On August 29, Northstate submitted a revised quotation. AR, Tab 12, Northstate Revised Quotation, at 4-5. Northstate represents that, in its revised quotation, it adjusted its prices to be equal to or less than the prices it proposed in 2017 for handwashing stations in connection with a prior BPA--prices that were determined by the agency to be reasonable for the prior BPA.⁵ Protest at 1.

After reviewing Northstate's revised quotation, the agency determined that the daily rates proposed by Northstate for its handwashing stations still exceeded the agency's IGCE rate and, thus, were considered by the agency to be unreasonable. AR, Tab 10, Price Evaluation, at 1. On September 7, the agency established a BPA with Northstate

⁴ Northstate proposed five type 1 handwashing stations and a different daily rate for each unit. AR, Tab 6, Northstate Initial Quotations, at 4-5.

⁵ From February 2015 through February 2018, Northstate held a BPA for handwashing stations. MOL at 2; AR, Tab 3, Northstate BPA 2015. The agency explains that the BPA was valid for a period of three years. MOL at 2. During the 3-year period, vendors were permitted to adjust their prices on an annual basis by submitting quotations during the BPA "rollover" period. Id. Here, Northstate contends that it adjusted its quotation to reflect the prices agreed upon during the last year of its prior BPA.

for its potable and gray water trucks only, excluding Northstate's handwashing stations. AR, Tab 13, Northstate BPA. This protest followed on September 14.

DISCUSSION

The protester challenges the agency's failure to include Northstate's handwashing stations in its BPA, arguing that the agency's price negotiation was not conducted "fairly." Comments at 1. Specifically, Northstate contends that the agency's negotiation memorandum was misleading and that the contracting officer repeatedly ignored Northstate's requests for additional information to explain why the vendor's initial pricing was considered "too high." Protest at 1, 2; Comments at 1, 2.

The evaluation of quotations is a matter within the discretion of the procuring agency. Procentrix, Inc., B-414629, B-414629.2, Aug. 4, 2017, 2017 CPD ¶ 255 at 5. Our Office does not independently evaluate quotations; rather, we review the agency's evaluation to ensure that it is consistent with the terms of the solicitation and applicable statutes and regulations. Id. A protester's disagreement with the agency's judgment, by itself, is not sufficient to establish that an agency acted unreasonably. Id. We have reviewed the record and find no basis to sustain the protest.⁶

Northstate contends that it was misled by the agency's negotiation memorandum. See Protest at 1. In this respect, the protester argues that it interpreted the memorandum to require the protester to adjust its prices to be equal to or less than its 2017 rates, which Northstate claims it did. Protest at 1. For this reason, the protester believes it was "unfairly denied an award." Id.

The agency disputes this contention, arguing that the memorandum did not instruct Northstate to propose rates equal to or less than its 2017 rates. MOL at 7. Additionally, the agency points out that the memorandum clearly identified Northstate's daily rate for one of its units as being "too high" even though the rate was equal to Northstate's 2017 daily rate. Id. (citing AR, Tab 3, Northstate BPA 2015, at 5-7; Tab 6, Northstate Initial Quotation, at 5; Tab 11, Negotiation Memorandum, at 1). Thus, the agency contends that Northstate knew or should have known prior to submitting its revised quotation that its 2017 daily rate was considered by the agency to be unreasonably high in this procurement. We have reviewed the record and find nothing misleading in the agency's negotiations.

⁶ Although our decision does not address in detail every argument raised by Northstate, we have considered all of the protester's arguments and conclude that none provides a basis upon which to sustain the protest. For instance, the protester also argues that its prices were "cheaper on a per sink basis than some other vendors." Protest at 2. The RFQ, however, did not provide that the agency would consider prices for handwashing stations on a "per sink" basis. Accordingly, this ground does not provide a basis for sustaining the protest.

As an initial matter, there is no requirement to conduct discussions in accordance with FAR § 15.306 where a competition is conducted among vendors pursuant to the simplified acquisition procedures of FAR part 13. FAR § 13.106-2(b)(3); Xtreme Concepts Inc., B-413711, Dec. 19, 2016, 2016 CPD ¶ 372 at 2 n.2. Nonetheless, exchanges that do occur with vendors in FAR part 13 procurements, like all other aspects of such procurements, must be fair and equitable. Xtreme Concepts Inc., supra.

In this regard, agencies may not mislead a vendor--through the framing of a discussion question or a response to a question--into responding in a manner that does not address the agency's concerns. See Raytheon Co., B-416211 et al., July 10, 2018, 2018 CPD ¶ 262 at 19-20; TreCom Sys. Grp., Inc., B-404676, B-404676.2, Mar. 29, 2011, 2011 CPD ¶ 79 at 4. Agencies, however, are not required to "spoon-feed" an offeror or vendor during discussions by identifying every possible area where a proposal or quotation might be improved or suggesting alternative approaches, Raytheon Co., supra, at 20, nor conduct successive rounds of discussions until all defects have been resolved. The Concourse Grp., LLC, B-411962.5, Jan. 6, 2017, 2017 CPD ¶ 36 at 8.

Here, we find that the Forest Service's memorandum was not misleading. The plain language of the agency's negotiation memorandum informed Northstate that the agency determined certain prices in its quotation to be "too high" and "not within this year's acceptable price range." AR, Tab 11, Negotiation Memorandum. On this basis alone, we conclude that the agency imparted sufficient information to afford Northstate a fair and reasonable opportunity to correct the pricing issues in its quotation. See Securiguard, Inc. et al., B-254392.8 et al., Feb. 9, 1994, 94-1 CPD ¶ 92 at 6 (denying allegation that discussions were misleading where agency advised firm that its proposed price exceeded the government estimate and was therefore "too high").

To the extent Northstate believed that the agency's reference in the memorandum to "historic agreement rates" constituted a requirement to adjust its prices to be equal to or less than its 2017 rates, see Comments at 1, we find the protester's interpretation of this language to be unreasonable. Nothing in the plain language of the memorandum indicates that the vendor should adjust its rates in the manner suggested by the protester. In fact, the memorandum expressly refers to "this year's acceptable price range," implying that the agency had established a distinct price range for 2018.

Moreover, as the agency correctly points out, even if Northstate were misled by the agency's reference to historic rates, it knew or should have known prior to submitting its revised quotation that the agency considered its 2017 daily rate to be unreasonably high for this procurement. Specifically, in Northstate's initial quotation, the vendor proposed a rate for one of its units that was equal to its 2017 daily rate. Compare AR, Tab 6, Northstate Initial Quotation, at 5 with AR, Tab 3, Northstate BPA 2015, at 5-7. The agency told Northstate that this proposed rate was "too high." Tab 11, Negotiation Memorandum, at 1. Thus, Northstate was on notice that the agency considered its 2017 rate to be unreasonably high for this procurement.

As a final matter, Northstate alleges that the agency's negotiations were not conducted "fairly" because the contracting officer repeatedly ignored its requests for additional information to explain why Northstate's initial pricing was considered "too high." Protest at 1, 2; Comments at 1, 2. In this regard, Northstate explains that in past negotiations "we were always able to communicate with the contracting officer either by phone or email to get the pricing figured out[.]" Comments at 1. Northstate further explains that, in past negotiations, the agency would provide the "threshold on price analysis" and that Northstate contacted the agency here in order to obtain the current "threshold for maximum price." Id. In sum, Northstate argues that, "[i]f there [are] negotiations, we have the right to fairly negotiate, which means reasonable communication." Id.

To the extent the protester believes that the Forest Service was required to explain more specifically how the protester should have addressed the agency's concerns regarding its prices, the protester is mistaken. When an agency engages in discussions with a vendor, the discussions must be meaningful; that is, sufficiently detailed so as to lead the vendor into the areas of its quotation requiring alteration or explanation in order to enhance materially the quotation's potential for award. See FAR § 15.306(d)(3); The Concourse Grp., LLC, supra, at 8. As noted previously, agencies are not required to "spoon feed" offerors during discussions. Raytheon Co., supra, at 21. Rather, the degree of specificity required in conducting discussions is primarily a matter for the procuring agency to determine. Space Sys./Loral LLC, B-413131, Aug. 22, 2016, 2016 CPD ¶ 242 at 11.

Here, we find no basis to conclude that the agency failed to conduct meaningful discussions. The Forest Service's negotiation memorandum clearly informed Northstate that its prices were "too high" and that they exceeded the acceptable price range for the procurement. Under these circumstances, the agency was under no obligation to reveal its IGCE to vendors or to further assist vendors to revise their rates in order to underbid the agency's predetermined maximum daily rate. For these reasons, we deny this protest ground.

The protest is denied.

Thomas H. Armstrong
General Counsel