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Decision

Matter of: Department of the Air Force

File: B-416728.3

Date: March 20, 2019

Colonel C. Taylor Smith, Jason R. Smith, Esq., and Major George Mathew, Department of the Air Force, for the requester.

David Y. Yang, Esq., Alix K. Town, Esq., and Daniel P. Radthorne, Esq., Oles Morrison Rinker & Baker, LLP, for Barbaricum LLC, the protester.

Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's request for reconsideration is denied and dismissed where the agency fails to identify errors of law or fact in our prior decision, and repeats previously-made arguments which our Office considered and rejected.

DECISION

The Department of the Air Force requests reconsideration of our decision in Barbaricum LLC, B-416728, B-416728.2, Dec. 3, 2018,¹ wherein we sustained Barbaricum's protest challenging the Air Force's issuance of a task order (TO) to Fors Marsh Group (FMG), pursuant to request for quotations (RFQ) No. 1281807, for opinion research support services. The Air Force asserts that our decision contains errors of fact and law.

We deny the reconsideration request.

BACKGROUND

The solicitation, which was set aside for small businesses and issued pursuant to the Federal Supply Schedule procedures of Federal Acquisition Regulation subpart 8.4,

¹ Our citations to the decision refer to the protected decision that was issued in this matter; our Office has not yet released a public/redacted version of the decision.

contemplated the award of a single TO that was primarily fixed-priced.² The solicitation established three evaluation factors--technical,³ past performance, and price; provided that, under the technical factor, quotations would be evaluated as either acceptable or unacceptable;⁴ and contemplated a tradeoff between past performance and price. Agency Report (AR), Tab 4, RFQ, at 72-76.⁵

The solicitation provided that each vendor's technical quotation must include a "detailed staffing plan," elaborating that the plan must identify the number and labor categories of personnel that were proposed and address "how the mix will be successful in performing the tasks outlined in the PWS [performance work statement]." RFQ at 75. With regard to required tasks, the PWS provided that: the awardee must provide one individual to serve as both the program manager (PM) and subject matter expert (SME); the PM/SME must be "significantly involved" in all survey and focus group deliverables; and the PM/SME will be the primary interface between the vendor and the agency. Id. at 6-7. Consistent with these staffing requirements, the agency's independent government cost estimate (IGCE) was based on contract performance by two personnel--the PM/SME and a junior statistician--and estimated a total of [redacted] labor hours per year for the PM/SME, and [redacted] labor hours per year for the junior statistician.⁶ AR, Tab 11, IGCE; see AR, Tab 28, Source Selection Decision Document, at 13.

With regard to price, the solicitation provided that vendors' prices would be evaluated to determine whether they "are consistent with the skill sets required for the work to be performed, the geographical locations where the work will be performed, reflect a clear understanding of the requirements, and are consistent with various aspects of the [vendor's] technical submission." RFQ at 75.

Finally, in providing quotation submission instructions to vendors under the heading "Page Limitations," the solicitation: limited technical quotations to 20 pages; established font size and margin requirements; advised that a vendor must "provide convincing rationale" for its proposed approach; reminded vendors not to assume the agency had prior knowledge of their capabilities; and, in this context, noted that the agency would

² Travel was priced on a time-and-materials basis.

³ The solicitation established two technical subfactors: deliverables and staffing plan.

⁴ The solicitation defined an acceptable quotation as one that "meets requirements and indicates an adequate approach and understanding of the requirements," and defined an unacceptable quotation as one that "does not meet requirements and contains one or more deficiencies." RFQ at 74-75.

⁵ Citations to the AR refer to the AR produced in response to Barbaricum's protest.

⁶ An exception was that, for the third option year, the IGCE reflected a total of [redacted] labor hours for the PM/SME.

base its technical evaluation solely on information presented in the vendor's technical quotation. Id. at 24.

Four firms, including FMG and Barbaricum, submitted quotations.⁷ The agency evaluated both FMG's and Barbaricum's quotations as acceptable under the technical factor, and assigned both quotations substantial confidence ratings under the past performance factor. Id. at 4, 9-10. FMG's total evaluated price was \$1,878,080; Barbaricum's total evaluated price was \$2,982,808. Id. at 13. However, FMG's price was based on a substantially lower level of PM/SME effort than Barbaricum's; specifically, FMG's quotation reflected approximately one-fifth of the PM/SME labor hours on which the agency based its IGCE.⁸ Further, despite the solicitation requirement that the PM/SME be "significantly involved in all survey and focus group deliverables," and the requirement that a vendor's staffing plan identify the proposed number/categories of personnel being proposed and address "how the mix will be successful in performing the tasks outlined in the PWS," nothing in FMG's technical quotation discussed how FMG intended to meet the solicitation requirements with only minimal PM/SME involvement. RFQ at 7, 75. Consistent with FMG's failure to meaningfully address the solicitation's staffing requirements, the entirety of the agency's evaluation of FMG's staffing plan stated:

Proposed team includes a solid mix of social scientists, statisticians, survey methodologist as well as experts in marketing and public policy who possess either bachelors or masters degrees. Proposed personnel for leading tasks have a vast amount of experience supporting the military in the field of communication research. Proposed plan is robust and includes a contingency plan for surge requirements.

AR, Tab 28, Source Selection Decision Document, at 9.

Based on the evaluation summarized above, the agency concluded that FMG's and Barbaricum's quotations were essentially equal under the technical and past performance factors, and selected FMG for award on the basis of its lower price. Barbaricum's protest followed.

The protest began as a challenge to the agency's price evaluation. Following the agency's request that we dismiss the protest without an agency report--and our Office's denial of that request--the agency submitted a report that included, among other things,

⁷ The other two quotations were subsequently deemed ineligible for award. AR, Tab 28, Source Selection Decision Document, at 23.

⁸ The record indicates that FMG proposed [redacted] PM/SME labor hours for the base year and [redacted] PM/SME labor hours for the option years, or approximately [redacted] hours per week for the base year and [redacted] hours per week for the option years. Barbaricum LLC at 7.

its evaluation record.⁹ Based on its review of the agency report, Barbaricum filed a supplemental protest asserting, among other things, that FMG's proposal failed to comply with the solicitation's requirements and that the agency failed to reasonably evaluate FMG's staffing plan. Supp. Protest at 2-8.

In our decision, we rejected several of Barbaricum's protest assertions, but sustained the protest on the basis of FMG's failure to address, and the agency's failure to meaningfully evaluate, FMG's compliance with the solicitation's requirements in the context of its proposed staffing, concluding that: "the [agency's] evaluation record lacks an assessment of the acceptability of FMG's staffing plan commensurate with the RFQ's requirements." Barbaricum LLC at 5. More specifically, our decision included the following explanation and recommendation:

[T]he evaluation of technical acceptability contemplated by the solicitation anticipated a more comprehensive review than can be found in this record. The RFQ required vendors to provide detailed staffing plans, discussed above, that required, in part: a cross matrix that assigned the quoted labor categories to specific tasks outlined in the PWS; the quoted number and categories of personnel, to include how the mix of personnel would be successful in the performance of the PWS; and a summary of positions identifying the personnel resources and skill sets proposed for fulfillment of the PWS. RFQ at 75. The cursory technical evaluation performed by the agency contained no analysis of FMG's staffing plan. Rather, the evaluation noted that the "[p]roposed team includes a solid mix of social scientists, statisticians, survey methodologist as well as experts in marketing and public policy," that the "[p]roposed personnel for leading tasks have a vast amount of experience supporting the military in the field of communication research," and that the "[p]roposed plan is robust and includes a contingency plan for surge requirements." [Citation omitted.]

The RFQ contained specific requirements for vendors' staffing plans. The solicitation advised vendors that the agency would review and rate each subfactor before assigning an overall technical rating of acceptable or unacceptable. RFQ at 74-75. The RFQ further advised vendors that the technical rating of their quotations would reflect the degree to which the proposed approach met or did not meet the minimum performance or capability requirements through an assessment of the quotation's strengths, weaknesses, deficiencies, and risks. Id. at 74. The record fails to show

⁹ The agency's reconsideration request includes several arguments that it previously presented as part of its dismissal request, including assertions challenging the timeliness and legal sufficiency of Barbaricum's initial protest. The agency's repetition of previously-made arguments, which our Office considered and rejected, provides no basis for us to reconsider those arguments, and they are summarily dismissed. See, e.g., Veda, Inc.--Recon., B-278516.43, B-278516.4, July 8, 1998, 98-2 CPD ¶ 12 at 4.

that the agency considered the reasonableness of FMG's quoted labor hours. Nor does the record demonstrate that the agency performed any analysis of FMG's staffing plan to determine whether FMG's proposed approach met the minimum performance or capability requirements. Given the lack of an evaluation record, we have no basis on which to conclude that the agency reasonably evaluated the awardee's quotation as technically acceptable, and we sustain this ground of protest. [Footnote omitted.]

RECOMMENDATION

We sustain Barbaricum's protest challenging the agency's evaluation of FMG's quotation as acceptable under the technical factor. We recommend that the agency reevaluate FMG's quotation and make a new best-value tradeoff decision. In addition, we recommend that the Air Force reimburse Barbaricum the costs associated with filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d).

Id. at 9-10.

The agency's request for reconsideration followed.

DISCUSSION

The agency's reconsideration request is based primarily on the assertion that, in evaluating the technical portion of FMG's quotation, the specific terms of this solicitation "did not allow" the agency to consider the level of effort/extent of FMG's proposed PM/SME staffing. Reconsideration Request at 2. More specifically, the agency relies on the solicitation provisions, contained in the section headed "Page Limitations" that, as discussed above: limited technical quotations to 20 pages; established font size and margin requirements; advised that a vendor must "provide convincing rationale" for its proposed approach; reminded vendors not to assume the agency had prior knowledge of their capabilities; and noted that the agency would base its technical evaluation solely on information presented in the vendor's technical quotation. See RFQ at 24. Based on its interpretation of this provision, and its view that the solicitation did not provide for price realism analysis,¹⁰ the agency maintains that the solicitation precluded the agency's consideration of FMG's stated intent to provide only a fraction of the PM/SME involvement reflected in the agency's own IGCE.

¹⁰ The agency's contemporaneous evaluation record is contrary to its assertion that the solicitation did not provide for price realism analysis, as the agency eliminated one of the other vendor's quotations from the competition after considering the level of effort reflected in its proposed price and concluding, on that basis, that the vendor's price was "unreasonably low." AR, Tab 28, Award Decision Document, at 15.

Under our Bid Protest Regulations, to obtain reconsideration the requesting party must set out factual and legal grounds upon which reversal or modification of the decision is warranted, specifying any errors of law made or information not previously considered. Bid Protest Regulations, 4 C.F.R. § 21.14(a), (c). The repetition of arguments made during our consideration of the original protest and disagreement with our decision do not meet this standard. Id.; Veda, Inc.--Recon., supra. Our prior decision rejected the agency's interpretation of the solicitation's provisions. Nothing in this request has established that the prior decision was based on an error of fact or law requiring that the decision be reversed or modified.

As discussed above, in addition to the "Page Limitation" provisions, the solicitation contained extensive requirements regarding the required content of a vendor's technical quotation, specifically including the requirements for a "detailed staffing plan" that identified the number/categories of proposed personnel and addressed "how the mix will be successful in performing the tasks outlined in the PWS." RFQ at 75. Further, the PWS provided that the PM/SME must be "significantly involved in all survey and focus group deliverables," as well as functioning as the primary interface between the vendor and the agency. Id. at 6-7. Finally, the solicitation specifically provided that the agency would compare the contents of the price and technical portions of vendors' quotations, stating, among other things, that the agency would consider whether a vendor's price was "consistent with the various aspects of the [vendor's] technical submission." Id. at 7.

Reading the solicitation as a whole, we reject the agency's assertion that it was neither required nor permitted to consider the level of PM/SME involvement reflected in FMG's quotation. In this regard, the agency's post-award interpretation of the "Page Limitation" provisions takes those provisions out of context and, considering the solicitation as a whole, is unreasonable.¹¹ More specifically, the solicitation's warning to vendors under the "Page Limitation" provision that the agency would not consider a vendor's attempts to augment the page-limited portion of its technical submission did not preclude the agency from making reasonable assessments regarding the adequacy of the vendor's proposed technical approach, including its compliance with the requirement to discuss how it would comply with the PWS requirements--including the requirement for significant PM/SME involvement. To the contrary, the solicitation placed an affirmative obligation on the agency to perform a meaningful assessment of whether a vendor's technical quotation complied with those requirements.

As discussed above--and in our prior decision--FMG's technical quotation failed to meaningfully address how FMG intended to successfully perform the required PWS tasks with only limited PM/SME involvement and, in that context, the agency's evaluation failed to meaningfully consider FMG's compliance with the solicitation's

¹¹ Indeed, as noted above, the agency's own contemporaneous interpretation of the solicitation provisions is directly contrary to its post-award assertions.

various requirements. Accordingly, the agency's reconsideration request fails to identify any errors of fact or law in our prior decision.¹²

The reconsideration request is denied.

Thomas A. Armstrong
General Counsel

¹² The agency's assertion that our decision sustained the protest on the basis of issues that were not raised by the protest is contrary to the record. See Supp. Protest at 2-8. As discussed above, our decision sustained the protest on the basis of FMG's failure to adequately address the solicitation requirements, and the agency's failure to meaningfully evaluate FMG's quotation in that regard.