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Decision

Matter of: Criterion Systems, Inc.

File: B-417240

Date: April 16, 2019

David T. Hickey, Esq., William M. Jack, Esq., and Amba M. Datta, Esq., Kelley Drye & Warren LLP, for the protester.

Matthew Butsick, Esq., Department of Energy, for the agency.

John Sorrenti, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where protester's revised quotation is rejected as late, protest alleging that the agency should have evaluated the protester's initial quotation is denied where the initial quotation did not comply with a material term of the amended solicitation.

DECISION

Criterion Systems, Inc. (Criterion) protests the rejection of its quotation under request for quotations (RFQ) No. DE-SOL-0011276, issued by the Department of Energy, National Nuclear Security Administration (NNSA), for cybersecurity operations. Criterion contends that after the agency rejected Criterion's revised quotation as late, the agency improperly failed to evaluate Criterion's initial quotation.

We deny the protest.

BACKGROUND

The agency issued the RFQ on June 22, 2017, under Federal Acquisition Regulation (FAR) subpart 8.4 to three holders of blanket purchase agreements (BPAs).¹ Agency

¹ The BPAs were established with three companies, including Criterion, in May 2015 under multiple Federal Supply Schedules (FSS), including information technology schedule 70.

Report (AR), Tab 1, RFQ at 1.² The initial RFQ had a 1-year base period from February 1, 2018 through January 31, 2019, and four, 1-year option periods. Id. § 5.2, at 10. If the agency exercised all of the options under the initial RFQ, the contract was scheduled to end on January 31, 2023. Id. The RFQ identified six performance objectives: contract management; security operations and maintenance; cyber program operations and maintenance; security services; systems engineering and development; and threat and risk analysis. Id., Statement of Objectives (SOO), §§ 5.1-5.6, at 47-54. For the security operations and maintenance performance objective, the RFQ identified 63 different locations and a variety of services that would be performed at each location. Id., SOO, Appendix A, at 56-58. The RFQ also provided estimated labor hours for each of the six performance objectives. Id., Task/Labor Matrix, at 75-79.

On July 14, 2017, Criterion timely submitted a quotation in response to the initial RFQ. See AR, Tab 4, Criterion Initial Quotation. On November 16, 2018, the NNSA issued amendment 0003 to the RFQ to update the agency's requirements and provide all vendors an opportunity to submit updated quotations. AR, Tab 14, RFQ Amend. 0003, at 1. As relevant to this protest, the amendment shifted the period of performance by one year, so the base period now ran from February 1, 2019 through January 31, 2020, followed by four 1-year option periods.³ Id. at 10. If all the option periods are exercised under the revised period of performance, the contract will end on January 31, 2024. Id.

Amendment 0003 stated that vendors were "required to update their price quotes due to the change in period of performance." Id. at 1. The amendment further instructed that "[a]t a minimum, the vendor shall submit updated versions of its: [General Services Administration] FSS price list . . . to reflect the revised period of performance; attachment #7 task labor matrix . . . to reflect updated estimated hours per [performance work statement] task area; and attachment #6 order price quote." Id. § 11.4(m), at 35. Vendors were not required to submit updated versions of other sections of their quotations, but could do so at their own discretion. Id. at 36. The amendment stated that the agency would "replace and/or supplement portions of the vendor's initial quotation from July 2017 with the revisions and/or supplements submitted in response to amendment 0003." Id. The RFQ provided that revised quotations had to be received "no later than 5:00 pm ET on November 21, 2018" and that "LATE QUOTES WILL NOT BE ACCEPTED." Id. § 11.4(k), at 35 (emphasis in original).

Criterion submitted its revised quotation to the agency on November 21, 2018. On December 7, 2018, the agency advised Criterion that the receipt time stamp for its

² Citations to page numbers are to the NNSA's Bates numbering in the AR.

³ The amendment also revised the number of locations that required services under the security operations and maintenance performance objective, and increased the estimated labor hours by 105,600 hours over the five year period of performance for three of the six performance objectives. RFQ Amend. 0003, SOO, Appendix A, at 58-60; id., Task/Labor Matrix, at 72-77.

revised quotation was 5:01:30 ET on November 21, 2018. AR, Tab 21, Email dated Dec. 7, 2018 from NNSA to Criterion; AR, Tab 19, Screenshot of Receipt Time Stamp. On January 4, 2019, the agency sent Criterion a letter stating that Criterion's revised quotation was late and was not accepted by NNSA; therefore, Criterion would not be considered for award.⁴ AR, Tab 22, Email dated Jan. 4, 2019 from NNSA to Criterion. On January 9, 2019, Criterion timely filed its protest with our Office.

DISCUSSION

Criterion argues that after the agency rejected Criterion's revised quotation as late, the agency should have evaluated Criterion's initial quotation. The agency counters that it could not consider Criterion's initial quotation for award because it did not address certain material requirements identified in amendment 0003, primarily the fact that the amendment shifted the period of performance by an entire year.⁵ For the reasons discussed below, we agree with the agency and deny Criterion's protest.

As noted above, amendment 0003 to the RFQ delayed the period of performance by an entire year. Period of performance is a material solicitation requirement. Integrated Bus. Sols., Inc., B-292239, July 9, 2003, 2003 CPD ¶ 122 at 3; see also AeroSage, LLC; SageCare, Inc., B-415607, et al., Jan. 3, 2018, 2018 CPD ¶ 11 at 5. A quotation that fails to conform to a material term of a solicitation is technically unacceptable and may not form the basis for award. See Windstream Commc'ns, B-409928, Sept. 9, 2014, 2014 CPD ¶ 271 at 3. In Integrated Bus. Sols., we concluded that where an amendment to the solicitation delayed the period of performance by four and a half months, the offeror's initial proposal was not acceptable because it did not commit the offeror to the revised period of performance. See Integrated Bus. Sols., Inc., supra at 3-4. The same is true here. Because Criterion's initial quotation did not commit to the period of performance as revised by amendment 0003, the initial quotation failed to

⁴ Prior to rejecting Criterion's quotation, the agency asked Criterion whether it could provide any evidence that the quotation was timely submitted. AR, Tab 21, Email dated Dec. 7, 2018 from NNSA to Criterion. In response, Criterion stated that it believed that it had uploaded the quotation in a timely manner but that there "may have been latency issues" that caused the quotation to be stamped as received at 5:01 pm. Id., Email dated Dec. 10, 2018 from Criterion to NNSA. Whether Criterion's revised quotation was received after the deadline set in amendment 0003 is not at issue in this protest.

⁵ The agency also argues that Criterion's submission of a revised quotation effectively revoked the portions of its initial quotation that were altered by the revised quotation, and this "demonstrated that Criterion no longer intended for NNSA to rely upon and evaluate the insufficient levels of labor hours or obsolete prices in its July 2017 [q]uotation." Memorandum of Law at 4-5. Because we find that Criterion's initial quotation did not conform to a material term of the amended solicitation and therefore was unacceptable, we need not address whether Criterion's submission of a revised quotation revoked any part of its initial quotation.

conform to a material solicitation requirement and therefore was unacceptable. See id.; see also CHE Consulting, Inc., B-406639, June 28, 2012, 2012 CPD ¶ 190 at 2-3 (agency reasonably rejected protester's quotation as unacceptable where quotation was ambiguous as to whether protester would comply with the period of performance).

Criterion argues that although amendment 0003 shifted the beginning of the period of performance by a year, its initial quotation still covered the same duration of a base year, followed by four 1-year options, and a potential six-month extension. As a result, Criterion contends that its initial quote should be acceptable. Protester Comments at 2. We rejected this same argument in Integrated Bus. Sols. Indeed, Criterion's argument ignores the fact that the initial quotation did not commit Criterion to perform past the original completion date of January 31, 2023, and fails to recognize that the revised period of performance could affect how vendors structure their quotations. Thus, Criterion's initial quotation still was not acceptable even if it covered the same length of time as the revised period of performance.⁶

Criterion also argues that the agency should accept Criterion's late quotation under FAR § 15.208(b)(2), which states that "a late modification of an otherwise successful proposal, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted." FAR § 15.208(b)(2). However, we have found that "otherwise successful" as used in section 15.208(b)(2) means that the government may accept late revisions to a proposal from an offeror that is already in line for award. Integrated Bus. Sols., *supra* at 3; Chem-Spray-South, Inc., B-400928.2, June 25, 2009, 2009 CPD ¶ 144 at 3. Here, Criterion was not in line for award since its initial quotation was not acceptable, and therefore FAR § 15.208(b)(2) did not obligate the agency to consider Criterion's revised quotation.⁷

The protest is denied.

Thomas H. Armstrong
General Counsel

⁶ Criterion's revised quotation added [DELETED] proposed labor hours, and increased the total price by \$[DELETED] as compared to its initial quotation. Compare AR, Tab 4, Criterion Initial Quotation, at 219-33, 240 with AR, Tab 18, Criterion Revised Quotation, at 128-42, 152. Criterion argues that despite these changes, its initial quotation "did not differ materially" from its revised quotation and was responsive to the requirements of amendment 0003. Protester's Comments at 2. Therefore, according to the protester, the agency had to evaluate Criterion's initial quotation. Given our finding that Criterion's initial quotation is unacceptable because it does not conform to the amended solicitation's period of performance, which is a material requirement, we need not address these arguments.

⁷ In any event, we note that the RFQ was issued under FAR subpart 8.4; therefore FAR part 15 would not apply.