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Decision

Matter of: Barbaricum LLC

File: B-416728; B-416728.2

Date: December 3, 2018

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DIGEST

1. Protest challenging the agency's price evaluation is denied where the evaluation was reasonable and consistent with the terms of the solicitation.
 2. Protest that the agency engaged in discussions with the awardee and not the protester is denied where the exchange with the awardee constituted clarifications.
 3. Protest that the agency unreasonably evaluated the awardee's quotation as technically acceptable is sustained where the record fails to show that the agency's evaluation conformed to the solicitation's requirements.
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DECISION

Barbaricum LLC, of Washington, D.C., protests the issuance of a task order (TO) to Fors Marsh Group (FMG), of Arlington, Virginia, under request for quotations (RFQ) No. 1281807, issued by the Department of the Air Force for opinion research support services. Barbaricum challenges the reasonableness of the agency's evaluation of its proposed price, and asserts that the agency improperly engaged in discussions regarding price with the awardee only. The protester also challenges the reasonableness of the agency's evaluation of FMG's quotation as technically acceptable.

We sustain the protest in part and deny it in part.

BACKGROUND

The solicitation, set aside for small businesses and conducted under the Federal Supply Schedule procedures set forth in Federal Acquisition Regulation (FAR) subpart 8.4, contemplated the issuance of one fixed-priced TO with time-and-material contract line item numbers (CLINs) for travel. Agency Report (AR), Tab 04, RFQ at 72. The TO was for a term of 1 year with four 1-year options. Id. at 19. The solicitation provided for the issuance of the TO to the firm whose technically acceptable quotation represented the best value to the government considering past performance¹ and price, which were equally important. Id.

The RFQ included two price attachments and instructed firms that “[a]ll information related to price should be completed in accordance with Attachment 2, CLIN [s]tructure, and Attachment 5, [p]ricing [s]heet, of this RFQ.” RFQ at 24. The following table contains an excerpt from attachment 2, the CLIN structure sheet:

CLIN Number	CLIN Type	Qty	Unit of Issue	Unit Price	Extended Amount
CLIN 0001-Labor	Firm Fixed-Price	12	Month		\$
CLIN 0002-Deliverables	Firm Fixed-Price	1	Lot		\$
CLIN 0003-Travel	Time and Materials	1	Lot	\$12,000	\$12,000

RFQ, attach. 2, CLIN Structure Sheet, base period. The CLIN structure sheet had four similar sections for each of the four option periods. Id. Attachment 5, the pricing sheet, required the following information related to labor category costs for the base year and each option year:

Labor Category	Number of Full Time Equivalents (FTEs)	Year	Fully Burdened Labor Rate	Estimated Hours	Total Cost
					\$00
					\$00
					\$00
					\$00
Total Cost for Year					\$00

RFQ, attach. 5, Follow-on Pricing Sheet. Firms were to use this information--the number of hours per labor category and the fully burdened labor rates for those

¹ The RFQ advised firms that their past performance examples would be assigned a relevancy rating of very relevant, relevant, somewhat relevant, or not relevant. Id. at 73. Based on the quality and relevance of past performance, the agency would assign each firm a performance confidence rating of substantial, satisfactory, limited, neutral, or no confidence. Id. at 74.

categories--to calculate a "Total Cost" for the base year, each of the option years, and the "Total Cost of Effort (Base + Four (4) Option Years)."² Id.

The RFQ advised firms that the agency would evaluate prices to ensure that they were fair and reasonable. Id. at 75. The RFQ further advised firms that quoted prices would be evaluated to determine whether prices are consistent with the skill sets required for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the various aspects of the vendor's technical submission. Id.

The technical factor had two subfactors--deliverables plan and staffing plan. Id. at 75. The agency was to "review[]" and "rate[]" each subfactor before assigning an overall technical rating of acceptable or unacceptable. Id. at 74-75. The solicitation defined an acceptable quotation as one that "meets requirements and indicates an adequate approach and understanding of the requirements," and an unacceptable quotation as one that "does not meet requirements and contains one or more deficiencies." Id.

The RFQ required vendors to quote one individual to serve as both the program manager and subject matter expert (SME). Id. at 6. The program manager was required to be the primary technical and managerial interface between the contractor and the contracting officer's representative. Id. The program manager or an alternate or alternates was required to be reachable during normal business hours whenever the contractor was working on one or more deliverables. When the contractor was not working on a deliverable, that individual was required to be reachable within one business day. Id. The SME was required to be "significantly involved" in all survey and focus group activities. Id. at 7. A significant portion of the requirement involved survey and focus group activities. See RFQ, attach. 3, PWS at 3-4 (noting that the fee schedule should include pricing for, among other activities, the following: focus group topic planning; focus groups of airmen; focus groups of the general public; web-based surveys of airmen; and surveys of the general public by telephone and on the web). The solicitation also required vendors to provide a junior statistician "and other personnel not directly specified in this section." Id. at 9.

As relevant to this protest, the staffing plan was to include the following:

² Attachment 5 presumably is limited to the cost of labor per labor category, and does not reflect a total price for this contract. In fairness, the protester contends that the total sum of the entries in attachment 5 reflects the total price for this effort; however, the solicitation does not explain whether the sum of the CLINs in attachment 2 reflects the total price for this effort (as in most solicitations), or the sum of the labor categories in attachment 5 reflects the total price for this effort. There is no evidence in the record, including in the questions and answers ultimately incorporated into the solicitation, that any party sought clarification about which of these documents would reflect the total price.

- A cross matrix that assigns 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
- Demonstration of a recruiting and retention process that clearly establishes how the vendor will obtain the necessary personnel, and
- A summary of positions identifying the personnel resources and skill sets proposed for fulfillment of the PWS.

Id. at 75. The RFQ advised vendors that the technical rating of their quotations would “reflect[] the degree to which the proposed approach meets or does not meet the minimum performance or capability requirements through an assessment of the strengths, weaknesses, deficiencies, and risks of a quote.” Id. at 74.

Four firms, including the protester and the awardee, submitted quotations. The awardee completed attachment 5, displaying its total labor cost. The labor costs from attachment 5 mirrored the labor cost figures in FMG’s attachment 2, the CLIN structure sheet, except that the awardee’s labor cost for the base year--CLIN 0001--was \$[DELETED] on attachment 2, the CLIN structure sheet, and \$[DELETED] on attachment 5. Compare AR, Tab 15, FMG attach. 2, CLIN Structure Price Sheet at 1, with AR, Tab 16, FMG attach. 5, Follow-on Pricing Sheet (noting slightly different prices for total base-year labor). The protester’s attachments 2 and 5 contained the same figures for the labor CLINs, without exception.

Under the past performance factor, the agency evaluated the quotations of FMG and Barbaricum as substantial confidence. AR, Tab 28, Award Decision and Price Evaluation Document (Award Decision) at 4. The agency did not assign ratings to the technical subfactors; both quotations were evaluated as technically acceptable. Id. at 9-10. The entirety of the agency’s evaluation of FMG’s quotation under the staffing plan subfactor of the technical acceptability factor was as follows:

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.

Id. at 9.

The agency concluded that, based on the past performance and technical factors, FMG’s and Barbaricum’s quotations were superior to the quotations of the other vendors, but that neither the protester’s nor the intervenor’s quotation was superior to

the other.³ Id. at 11. Thus, according to the agency, price would “be the distinguishing factor to determine the most successful offeror overall for this requirement.” Id. FMG’s total evaluated price/cost was \$1,878,080, compared to a total evaluated price/cost for Barbaricum of \$2,982,808. Id. at 13. Award was made to FMG, and this protest followed.

DISCUSSION

This protest began as a challenge to the agency’s evaluation of the protester’s price. As explained below, we find no basis to sustain the protest that the agency should have used the total price on attachment 5 of Barbaricum’s quotation, rather than the price/cost from attachment 2, the CLIN structure sheet, which contained CLINs for labor, deliverables, and travel. The protester also argues that the agency engaged in unequal discussions with the awardee regarding FMG’s price. We disagree; we conclude that the exchange was a permissible clarification and deny this allegation. Lastly, we address the protester’s argument that the agency failed to evaluate FMG’s quotation under the staffing plan subfactor of the technical acceptability factor in accordance with the terms of the solicitation. Because the evaluation record lacks an assessment of the acceptability of FMG’s staffing plan commensurate with the RFQ’s requirements, we sustain this allegation.

Evaluation of Barbaricum’s Price

Barbaricum challenges the reasonableness of the agency’s evaluation of the company’s price. Specifically, the protester asserts that the agency should have used the total cost on attachment 5 of Barbaricum’s quotation, rather than the sum of the CLINs identified in attachment 2. Comments at 2. The protester argues that “labor is the driver for price evaluation purposes.” Id. A proper agency price evaluation, Barbaricum asserts, would have correctly determined that the protester’s total price/cost was “only \$1,359,900,” the total from attachment 5. Id.

It is a vendor’s responsibility to submit a well-written quotation, with adequately detailed information, which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. Technatomy Corp., B-411583, Sept. 4, 2015, 2015 CPD ¶ 282 at 6. An agency is not required to infer what a vendor intended to submit. Id.

As noted above, the RFQ contained two pricing attachments: attachment 2, the CLIN structure sheet, contained CLINs for labor, deliverables, and travel for the base year and each option year; and attachment 5, the pricing sheet for labor category costs, contained per-year total labor costs with the following components: category of labor, hours per category, and a fully burdened labor rate for each category. The protester’s argument that the agency should have considered Barbaricum’s total labor cost on

³ The only two other quotations were deemed ineligible for award. Id. at 23.

attachment 5, the pricing sheet for labor category costs, as its total contract price/cost ignores the existence of attachment 2, the CLIN structure sheet, and the obvious differences in content between the two attachments. Attachment 5 required costs for labor only; it does not include prices for deliverable or a cost for travel. In our view, only attachment 2, the CLIN structure sheet, contained CLINs that, when added together, would provide the vendor's total cost/price of performance. For these reasons, we see no merit to the protester's argument that the agency should have used the total labor cost from attachment 5 as Barbaricum's total cost of performance. As a result, we deny this ground of protest.⁴

Exchange Regarding FMG's Price

Barbaricum also asserts that the agency unfairly engaged in discussions with the awardee alone regarding its labor cost. In an email to the awardee, the agency noted a minor discrepancy in FMG's price attachments, where the awardee's labor cost for the base year--CLIN 0001--was \$[DELETED] on attachment 2, the CLIN structure sheet, and \$[DELETED] on attachment 5, the pricing sheet for labor category costs. The email instructed FMG to "[p]lease clarify which is the correct price." AR, Tab 17, Email Exchange, Air Force and FFG, May 30, 2018. The awardee replied that same day that attachment 2, the CLIN structure sheet, was correct; the response included a corrected attachment 5. Id. Barbaricum asserts that this exchange constituted unfair discussions, not permitted clarifications.

Where an agency conducts exchanges with vendors in a FAR subpart 8.4 procurement, those communications--like all other aspects of such a procurement--must be fair and equitable. USGC, Inc., B-400184.2 et al., Dec. 24, 2008, 2009 CPD ¶ 9 at 3. Our Office does not import the standards in FAR part 15, but looks to the standards set out there, and the decisions interpreting that part, for guidance in determining whether exchanges with vendors under a FAR subpart 8.4 procurement were fair and equitable. Id. Section 15.306 of the FAR describes a spectrum of exchanges that may take place between an agency and an offeror during negotiated procurements. Clarifications are "limited exchanges" between the agency and offerors that may allow offerors to clarify certain aspects of proposals or "to resolve minor or clerical errors." FAR § 15.306(a)(2). Where a mistake is minor, apparent, and easily correctable, we see no basis to

⁴ The protester also asserts that the agency used an inaccurate independent government cost estimate (IGCE) in evaluating Barbaricum's price/cost and deciding to issue the TO to FMG. Comments and Supp. Protest at 4-5. Barbaricum's price was substantially higher than FMG's, and the two vendors' quotations received identical past performance ratings. The protester thus cannot demonstrate competitive prejudice from any possible error in the agency IGCE. AMTIS-Advantage, LLC, B-411623, B-411623.2, Sept. 16, 2015, 2015 CPD ¶ 360 at 11 (noting that competitive prejudice is an essential element of a viable protest, and that the protester had not shown prejudice when the reasonableness of the agency's evaluation was evident from the entire record, notwithstanding allegations of deficiencies in the calculation of the IGCE).

conclude that an agency held discussions. Pioneering Evolution, LLC, B-412016, B-412016.2, Dec. 8, 2015, 2015 CPD ¶ 385 at 11.

FMG's attachment 2, the CLIN structure sheet, contained a base-year labor amount that differed immaterially from the base-year labor amount in FMG's attachment 5, the pricing sheet for labor category costs. The difference between the two figures-- \$[DELETED] and \$[DELETED]--was less than two tenths of one percent. The agency asserts that it knew from FMG's quotation that the correct price for base-year labor was one of two figures, and that the difference between the two possible costs was insignificant--\$[DELETED]--where the total base-year labor cost was over \$[DELETED] and FMG's total price/cost was more than \$[DELETED] lower than Barbaricum's. In our view, the identification of which of the two base-year labor costs was correct is a clarification of a minor clerical error, not discussions. The protester's contention provides no basis to sustain this ground of protest and is denied.

Technical Evaluation of FMG's Quotation

The protester also asserts that the agency's evaluation of the awardee's quotation as technically acceptable was unreasonable when the Air Force failed to consider whether the program manager/SME hours were sufficient to perform the solicitation's requirements.⁵

A contracting agency's evaluation of quotations is a matter within the agency's discretion. Technatomy Corp., supra, at 4. In reviewing an agency's evaluation, we will not reevaluate quotations; rather we will examine the evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and with procurement statutes and regulations. Id. at 4-5.

The protester asserts that the [DELETED] labor hours FMG quoted for the program manager/SME position for the base year and [DELETED] labor hours FMG quoted for the program manager/SME position for the option years equate to only [DELETED] hours per week in the base year and [DELETED] hours per week in the option years respectively. Comments and Supp. Protest at 6. Barbaricum also asserts that FMG's labor hours--[DELETED] for the base year and [DELETED] for the option years--were significantly less than the estimated [DELETED] hours a year reflected in the IGCE. Id. Barbaricum contends that the agency provided "nothing that shows the government evaluated the [program manager/SME's] ability to perform the work or how FMG, or the

⁵ The protester also asserted that the agency did not evaluate FMG's failure to provide a junior statistician. Comments and Supp. Protest at 7. The agency provided a substantive response to that allegation. See Supp. AR at 9. The protester did not respond to the agency's defense of this protest allegation, see Protester's Comments on Supp. AR, and so we consider abandoned the allegation that the agency's evaluation ignored FMG's failure to provide a junior statistician. Forest City Military Cmtys., LLC, B-299577, June 29, 2007, 2007 CPD ¶ 128 at 6.

agency for that matter, believed that the individual, with just [DELETED] hours for the base year, and even fewer hours for the option years ([DELETED]), could be expected to be on immediate call.” Comments on Supp. AR at 3. Barbaricum argues that the agency’s “silence on [the issue of the adequacy of FMG’s quoted labor hours] is fatal to its ability to reasonably find [FMG’s quotation] technically acceptable.” Id.

We agree. While the record shows that the agency assessed some vendors’ quoted labor hours for acceptability,⁶ nowhere in the evaluation of the awardee’s price or its technical quotation did the agency assess FMG’s quoted labor hours for acceptability. As noted above, the agency’s IGCE contained [DELETED] labor hours for the program manager/SME position for each year of performance.⁷ AR, Tab 11, IGCE. The agency asserts that the IGCE labor hours were based on the current contract. AR, Tab 28, Award Decision at 17. For the option years, the IGCE labor hours for the program manager/SME were over [DELETED] the labor hours quoted by FMG.⁸ Yet the agency’s evaluation made no note of this significant disparity in the number of labor hours, nor did the agency assess whether the awardee could successfully perform the contract with less than [DELETED] of the IGCE labor hours, which were purported to reflect the current level of effort.⁹

As noted above, the program manager was required to be the primary technical and managerial interface between the contractor and the agency, and to be reachable on fairly short notice. RFQ at 6. The SME was required to be “significantly involved” in all survey and focus group activities, which were a significant portion of the requirement. Id. at 7; see PWS at 3-4. Given the critical, wide-ranging responsibilities of this position, and given that the evaluators scrutinized the number of labor hours other vendors quoted for the program manager/SME, we find the agency’s failure to consider the adequacy of the labor hours quoted by FMG to be unreasonable, as well as to be

⁶ The evaluators noted, for example, that Barbaricum’s quoted labor hours “were considerably higher than [those] estimated in the IGCE,” and that another vendor’s hours were more than [DELETED] the number of hours in the IGCE for the third option year. Supp. AR at 10, quoting AR, Tab 28, Award Decision at 14, 17.

⁷ An exception was that, for the third option year, the IGCE contained [DELETED] labor hours for the program manager/SME.

⁸ As the agency noted, other vendors quoted significantly more labor hours than the IGCE.

⁹ The awardee also quoted [DELETED]. AR, Tab 26, FMG Quotation, attach. 2. Even if the [DELETED] spent all of her time as [DELETED], in the option years the awardee would still have quoted [DELETED] of the labor hours in the IGCE for this key position. (The solicitation contains no provision for the vendor to designate [DELETED]; FMG nevertheless identifies [DELETED]. Id.) There is no record of the agency having given any consideration to the reasonableness of the quoted labor hours, regardless of the position performing the requirement.

disparate treatment of vendors. VariQ Corp., B-414650.11, B-414650.15, May 30, 2018, 2018 CPD ¶ 199 at 9-10 (sustaining protest and noting that it is axiomatic that “agencies may not properly engage in disparate treatment of vendors in the evaluation of quotations”); CSR, Inc., B-413973, B-413973.2, Jan. 13, 2017, 2017 CPD ¶ 64 at 7-8 (sustaining protest and noting that agencies are “required to treat vendors equally” and evaluate technical proposals “evenhandedly”).

Moreover, the 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.” Award Decision at 4.

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 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.¹⁰

¹⁰ The agency asserts three other bases on which to find reasonable its evaluation of FMG’s technical quotation. With little elaboration, the agency argues that: because the PWS was performance based, individual vendors could customize their approaches to meeting the requirement; that the labor hour CLINs were fixed-price; and that the agency would accord significant weight to past performance in the tradeoff analysis. Supp. AR at 11. All of these assertions are accurate, but none of them relieve the

(continued...)

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). Barbaricum's certified claim for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is sustained in part and denied in part.

Thomas H. Armstrong
General Counsel

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agency of the obligation to treat vendors fairly and to assess the reasonableness of the vendors' quoted labor hours.