



Decision

Matter of: Castro & Company, LLC

File: B-415508.10

Date: June 11, 2019

Thomas Castro, Castro & Company, LLC, for the protester.
Victor A. Kubli, Esq., Law Office of Victor A. Kubli, PC, for TFC Consulting, Inc., the intervenor.
Michael Kiffney, Esq., Christopher Reames, Esq., Department of Homeland Security, for the agency.
Robert T. Wu, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency unreasonably evaluated quotations under various evaluation factors is denied where the record shows that the agency's evaluation was reasonable.

DECISION

Castro & Company, LLC, of Alexandria, Virginia, protests the award of a task order to TFC Consulting, Inc., of Rockville, Maryland, by the Department of Homeland Security (DHS), Transportation Security Administration (TSA) under request for quotations (RFQ) No. HSTS01-17-Q-FIN001 for financial and performance audit services. Castro challenges the evaluation of the firm's quotation under various non-price factors.

We deny the protest.

BACKGROUND

The agency issued the RFQ on March 29, 2017, seeking quotations under the Federal Supply Schedule (FSS) from small business concern holders of Professional Services Schedule 520-7 contracts for financial and performance audits. RFQ at 1. The resulting order was to include one base year and four option years to provide internal control support services, financial statement audit support and certain optional services

to the TSA's Office of Finance and Administration, Financial Management Division (FMD).¹ Id. at 2-7. Specifically, the contractor was to assist with planning, testing, and documenting internal controls over financial reporting, assisting with the agency's management control program, work related to the Improper Payments Elimination and Recovery Improvement Act, and supporting financial statement audits. Id. at 10-21.

Award of a single task order was to be made to the responsible vendor whose quotation, conforming to the solicitation, represents the best value to the government, price and other factors considered. Id. at 105. Quotations were to be evaluated considering the following non-price factors, listed in descending order of importance: corporate experience, technical approach, management and staffing approach, and past performance. Id. at 106. The non-price factors, when combined, were significantly more important than price. However, as the non-price factors become more equal, the importance of price increases. Id.

Seven quotations were evaluated, including those of Castro and TFC. Agency Report (AR), Tab 8, Source Selection Decision Document (SSDD), at 2. The relevant evaluation results were as follows:

	TFC	Castro
Corporate Experience	Outstanding	Outstanding
Technical Approach	Outstanding	Acceptable
Management and Staffing Approach	Outstanding	Acceptable
Past Performance	Acceptable	Acceptable
Price	\$13,772,704	\$9,476,903

Id. at 3, 7. The source selection authority (SSA) conducted a detailed tradeoff analysis among the various vendors, and ultimately decided that TFC's quotation represented the best value to the government. Id. at 10-13. As part of her analysis, the SSA recognized the price premium of TFC's quotation over Castros', but found that the premium would be offset by the substantial benefits offered by the non-price factors, and specifically the technical benefits of TFC's quotation. Id. at 13. As part of her award decision, the SSA also highlighted a significant weakness assigned to Castro's

¹ As explained in the RFQ, the Federal Managers' Financial Integrity Act of 1982 requires agencies to evaluate and annually report on their systems of internal accounting and administrative control. Office of Management and Budget (OMB) Circular A-123 and its supporting appendices provide specific requirements for federal agencies to establish internal controls, assess those internal controls, correct internal control deficiencies, and provide an assertion about the reliability of internal controls. Id. at 10.

quotation under the management and staffing approach factor² for providing insufficient labor hours for one of the tasks. The SSA found this significant weakness “may result in TSA not being able to successfully meet . . . DHS requirements based on the volume of work currently required, and will [result in] additional Government intervention.”³ Id.

On March 8, Castro received notice of award to TFC and a written explanation of the award decision. Protest at 3. This protest followed.

DISCUSSION

Castro asserts that language provided in the brief explanation of award is evidence of the agency’s flawed evaluation process, because it indicates the agency’s reliance on an earlier version of the quotation submitted by Castro. The protester also challenges the agency’s evaluation of its quotation under the technical approach and management and staffing approach factors. Although we do not address every argument raised, we have reviewed all of the protester’s assertions and find none provides a basis to sustain the protest.

Brief Explanation of Award

Castro first argues that the evaluation of its quotation was unreasonable because the brief explanation letter it received from the agency quoted language found in Castro’s original quotation, but not the revised quotation submitted by the firm. Protest at 3-4 (referencing AR, Tab 9, Brief Explanation Letter, at 3); Protester’s Comments at 1. According to Castro, this alleged evaluation error “indicates a serious process failure, casting doubt on the validity of not only the evaluation of our proposal, but of the various proposals of all seven firms who bid on the solicitation” Protest at 4. Castro concludes that “the fact that artifacts of the superseded proposal were carried forward into the evaluation of a new proposal is evidence that the Agency’s process was

² The SSDD states that the significant weakness was assigned under the technical approach factor. Id. However, a review of the technical evaluation team’s (TET) Consensus Report shows that the significant weakness was assigned under the management and staffing approach factor. AR, Tab 6, TET Consensus Report, at 6. We do not conclude that this apparent misstatement by the SSA resulted in any prejudicial error to Castro. See Bannum, Inc., B-408838, Dec. 11, 2013, 2013 CPD ¶ 288 at 4 (prejudice is an essential element of any protest).

³ Castro was not represented by counsel in this protest. Accordingly, our Office did not issue a protective order, and Castro and the intervenor were provided only a redacted version of the agency report. In resolving the protest, we reviewed “in camera” unredacted copies of all evaluation and source selection documents and have based our decision on the full record. Because much of the information reviewed by our Office is source selection sensitive and proprietary in nature, our discussion of the evaluation is necessarily limited.

indelibly flawed,” and “is sufficient to justify sustaining this protest.” Protester’s Comments at 1.

Where, as here, an agency issues an RFQ to FSS contractors under Federal Acquisition Regulation (FAR) subpart 8.4 and conducts a competition, we will review the record to ensure that the agency’s evaluation is reasonable and consistent with the terms of the solicitation. Digital Solutions, Inc., B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4; DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2. In reviewing a protest challenging an agency’s technical evaluation, our Office will not reevaluate the quotations; rather, we will examine the record to determine whether the agency’s evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. OPTIMUS Corp., B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4. A protester’s disagreement with the agency’s judgment does not establish that an evaluation was unreasonable. DEI Consulting, supra.

The record shows that the brief explanation letter provided to Castro listed three strengths assigned to the firm’s proposal under the corporate experience factor. AR, Tab 9, Brief Explanation Letter, at 3. The third of these strengths was for the firm’s demonstrated experience supporting “numerous executive branch Federal agencies, including DHS, with many of the functions required from the SOW [statement of work].” Id. The assigned strength was supported by references to three portions of Castro’s quotation; specifically Castro’s experience implementing internal control programs at numerous executive branch agencies similar in size and scope to TSA, Castro’s demonstrated relevant experience at various components within DHS, and the fact that “Castro & Co staff established and led the development of the DHS OMB A-123 Internal Control Program.” Id. Castro asserts that the quoted language related to the firm’s work on DHS’ OMB A-123 internal control program was only found in the firm’s original, and not revised quotation. Protest at 3-4.

Our review of the record reveals that while the evaluators’ first two references to Castro’s quotation were supported by the record, the language quoted by the protester, above, and cited in the brief explanation letter, was not found in Castro’s revised quotation. Protest at 3-4; AR, Tab 9, Brief Explanation Letter, at 3; see generally Tab 4, Castro & Company, LLC Quotation. Moreover, the cited language was also quoted in the technical evaluation of Castro’s quotation, AR, Tab 6, TET Consensus Report, at 2, and referenced in the tradeoff analysis and award recommendation, as well as the SSDD. AR, Tab 7, Tradeoff Analysis and Award Recommendation, at 18; Tab 8, SSDD, at 3.⁴ The agency report does not explain or otherwise address this alleged

⁴ The tradeoff analysis referenced the three strengths assigned to Castro’s proposal under the corporate experience factor as follows: “(1) Experience with TeamMate Software; (2) Reduction in testing through the use of risk-based approach; and (3) Significant Executive Branch federal experience, including implementation of internal control programs at numerous federal executive branch agencies and DHS OMB

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error. As such, we can only conclude that the citation, attributing language to Castro's quotation that was not contained in the quotation is an error in the evaluation. We now turn to whether that error is prejudicial to Castro--which we conclude it was not.⁵

Competitive prejudice is an essential element of every viable protest. See Bannum, Inc., supra. Even accepting Castro's argument as true, the only reasonable conclusion that can be drawn from the agency's evaluative error is that it inured to the benefit of Castro by buttressing an assigned strength. In other words, removal of the erroneous reference to Castro's quotation would only serve to weaken the assigned strength. We therefore conclude that the protester cannot demonstrate any potential prejudice stemming from the alleged error in the agency's evaluation. See Glock, Inc., B-414401, June 5, 2017, 2017 CPD ¶ 180 at 11-12 (finding no prejudice despite identified evaluation error).

More broadly, we do not agree with Castro that this apparent error in the evaluation "indicates a serious process failure, casting doubt on the validity of not only the evaluation of our proposal, but of the various proposals of all seven firms who bid on the solicitation. . . ." Protest at 4. Neither do we agree with the protester that the error "is evidence that the Agency's process was indelibly flawed." Protester's Comments at 1. Both assertions are bare allegations with no support in the record.

Our Bid Protest Regulations require that a protest include a sufficiently detailed statement of the grounds supporting the protest allegations. 4 C.F.R. §§ 21.1(c)(4), 21.1(f), and 21.5(f). That is, a protest must include sufficient factual bases to establish a reasonable potential that the protester's allegations may have merit; bare allegations or speculation are insufficient to meet this requirement. Ahtna Facility Servs., Inc., B-404913, B-404913.2, June 30, 2011, 2011 CPD ¶ 134 at 11. Unsupported assertions that are mere speculation on the part of the protester do not provide an

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A-123." AR, Tab 7, Tradeoff Analysis and Award Recommendation, at 18. The SSDD only refers to Castro's strengths in passing, specifically, "Castro's approach includes some strengths that would provide a benefit to the Government, such as their reduction in testing through the use of a risk-based approach." AR, Tab 8, SSDD, at 3.

⁵ As noted, the agency did not respond to this allegation made by Castro, nor does the record explain why the evaluation documents reference a prior quotation submitted by Castro. Under such circumstances, where an agency fails to produce an agency report that reasonably explains its actions, we may draw an adverse inference from an agency's failure to respond to protest allegations. See, e.g., Walker Development & Trading Group, Inc., B-413924, Jan. 12, 2017, 2017 CPD ¶ 21 at 6. Nonetheless, in this instance, even if we were to draw an adverse inference that the agency's evaluation in this regard was in error, we conclude that such an error was not to the prejudice of Castro.

adequate basis for protest. Science Applications Int'l Corp., B-265607, Sept. 1, 1995, 95-2 CPD ¶ 99 at 2.

Here, Castro provides only speculative allegations against the sufficiency of the agency's evaluation of quotations based only on its identification of one apparent evaluation error, discussed above. The protester provides no other support for its broader allegations, such as reference to information it was provided by the agency or the protest record. Without any support for its allegations we cannot infer as Castro urges, that the apparent procurement error is symptomatic of a broader unreasonable evaluation. Castro's conjecture in this regard is insufficient to meet our Office's standards for pleading, and is therefore dismissed.⁶

Technical Approach

Castro next challenges the agency's evaluation of the firm's proposal under the technical approach and management and staffing factors. In this regard, the protester challenges the assignment of two weaknesses to the firm's quotation under the technical approach factor: (1) for failing to identify a potential gap in an evaluated scenario requiring a gap analysis of agency standard operating procedures (SOPs), and (2) for failing to identify a testing requirement in response to a second scenario. Protest at 5; Protest Addendum at 1-3; AR, Tab 6, TET Consensus Report, at 4-5. Castro also challenges the assignment of a significant weakness to its quotation under the management and staffing approach factor for proposing an insufficient level of effort for Task 1 of the solicitation. Protest at 5; Protest Addendum at 3-4; AR, Tab 6, TET Consensus Report, at 6-7. We have reviewed each allegation and conclude they are equally without merit.⁷

As discussed, in considering a challenge to a task order issued under FAR subpart 8.4, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. Digital Solutions, Inc., supra, at 3-4. In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate the quotations; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the

⁶ In any event, we have reviewed the record, in full, and are provided no basis to question the agency's evaluation or award decision.

⁷ Castro also argues that the agency failed to apply the descending-order-of-importance evaluation scheme articulated in the solicitation when evaluating quotations, and used an outdated cost estimate in its price evaluation. Protest at 5. However, our review confirms that these allegations are not factually supported by the record, and, consequently, are dismissed and will not be considered further. See generally AR, Tab 8, SSDD; see also General Dynamics Land Sys., B-412525, B-412525.2, March 15, 2016, 2016 CPD ¶ 89, at 6 n.8 (dismissing protest allegation for failure to state a valid basis of protest where allegation not supported by record).

solicitation and applicable procurement laws and regulations. OPTIMUS Corp., supra, at 4.

Scenario 1 of the technical approach factor states:

Based on TSA's Internal Standard Operating Procedures for the Fund Balance with Treasury Reconciliation process [enclosed at Attachment 5], develop a test plan with the key controls you would test and how you would test them. In addition, identify any potential design gaps and, if applicable, possible corrective actions to remediate the design gaps.

RFQ at 101.

The agency assigned a weakness to Castro's first scenario response noting, "[a]s the Standard Operating Procedures [(SOP)] provided with the scenario did not mention controls over the approval of TIER [Treasury Information Executive Repository] adjustments, [Castro] should have, at a minimum, identified this as a potential gap." AR, Tab 6, TET Consensus Report, at 4.

Castro argues that the weakness was unreasonable because there was no gap in the SOP. Protest Addendum at 1-2. Specifically, the protester points to a flow chart included in the solicitation, which depicts a monthly requirement to "prepare [a] TIER adjustment," to support its contention that the gap identified by the evaluators did not exist. Protest Addendum at 1-2 (referencing a prior protest document filed with our Office); RFQ at 162. The agency responds that the only mention of TIER adjustments in the flowchart referenced by Castro "refers directly to the preparation of said adjustments and not anything about controlling approvals for those adjustments." Memorandum of Law (MOL) at 4. Consequently, the agency asserts that the TET properly assessed a weakness. Id.

We are provided no basis to question the evaluation. In this regard, consistent with the agency's reading of the solicitation, the reference to TIER adjustments in the disputed chart appears to refer to the requirement to prepare a monthly TIER adjustment, and not tests and controls for the process, which is the focus of the evaluation factor. RFQ at 107, 162. Thus, a review of Castro's quotation shows that the firm did not identify any potential design gaps or actions to remediate those gaps, as required by the evaluation factor. AR, Tab 4, Castro Quotation, at 19; RFQ at 101. Consequently, we can only conclude that the weakness is reasonably assigned.

The second scenario under the technical approach factor required vendors to:

Describe how you would identify key controls at the system-level for a particular financial system. Furthermore, develop a test plan for five (5) key controls you would expect to be present at the system-level. The test plan should list the five (5) key controls and how you would test them.

RFQ at 107. The agency assigned a weakness to Castro's quotation because the firm proposed testing procedures for access control without proposing testing of actual access to the system, which the agency asserts was required. AR, Tab 6, TET Consensus Report, at 4-5. In this regard, the consensus evaluation states, "[t]esting of actual access to the system is required. The Quoter did not demonstrate the technical expertise to perform the functions required in the [statement of work]. This is considered a flaw in the quotation that increases the likelihood of unsuccessful performance." Id. at 5.

Castro basically responds by arguing that external sources such as OMB Circular A-123 and the Federal Information System Controls Audit Manual, that the agency asserts require testing of access, are only suggested, and not required audit procedures. Protest Addendum at 2; Protester's Comments at 5. The protester asserts that there is "no authoritative guidance that requires testing of actual access to the system, as stated by the Government." Protest Addendum at 2. While Castro concedes that "[i]t is possible that less-efficient and/or differently-structured internal controls assessment would require such testing," Castro believes its more efficient approach would not require such testing. Id. at 2-3. However, even accepting Castro's assertions that it proposed a process that did not require access testing, and that relevant resources are only guidance and not binding authority, nothing argued by the protester leads to the conclusion that the agency's concern was unwarranted. In other words, while Castro disagrees with the agency's assessment of the weakness inherent in the firm's proposed approach, it has not shown the agency's assessment to be unreasonable. OPTIMUS Corp., supra, at 4. As such, we deny this protest ground.

Management and Staffing Approach

Finally, Castro challenges the assignment of a significant weakness to the firm's proposal under the management and staffing approach factor for proposing an insufficient level of effort to support the work identified in Task 1 of the statement of work. Protest at 5; Protest Addendum at 3-4. In this regard, the protester contends that the evaluation was unreasonable because the agency acknowledged a strength in the firm's quotation under the corporate experience factor⁸ and found Castro's level of effort to be reasonable under the price factor, but then assigned a significant weakness to Castro's staffing levels. Protest Addendum at 3. Castro essentially argues that the agency improperly assessed the firm's staffing approach against historical data that was

⁸ Specifically, under the corporate experience factor, the evaluators found that Castro's implementation of a top-down, risk-based approach on another agency's contract was "considered a strength because the Quoter created efficiencies by implementing a risk-based approach for determining the level of testing." AR, Tab 6, TET Consensus Report, at 1-2. The evaluators found that Castro "could potentially use the knowledge gained by implementation of a risk-based approach for determining the level of testing to develop a similar, more efficient and innovative approach for TSA." Id. at 2.

based on “less-efficient processes” not required by either Castro’s approach or the solicitation. Id. at 3.

The agency responds that the evaluation was reasonable because the assigned significant weakness was specific to Castro’s response to Task 1, and not the overall level of effort proposed by the firm. MOL at 6. Moreover, the agency asserts that Castro is “comparing apples and oranges” when relying on strengths assigned under the corporate experience factor “for its past work with different agencies performing under different requirements” and the significant weakness assigned to the specific management and staffing approach quoted for this effort. Id. The agency argues that “the TET found that Castro’s Management & Staffing Approach was insufficient with regard to Task 1 of the SOW and the requirements contained therein” and that this evaluation was not based upon “less-efficient processes,” but rather is “representative of TSA’s actual requirements.” Id. at 7. The agency concludes that “Castro’s disagreement with this, absent any showing that TSA acted unreasonably, is insufficient to sustain its protest.” Id. We agree.

The management and staffing approach factor evaluated vendors on:

The extent to which the Quoter’s management and staffing approach clearly demonstrates the Quoter’s ability to provide project management and labor resources to accomplish the requirements of the Statement of Work on time and with high quality, to include the mapping of staff to the task and functional areas they support, work coverage, and labor mix of the proposed staff.

RFQ at 107-108.

Task 1 of the SOW addressed various internal control support services. Id. at 11-19. Included in the various support services were historical estimates to include approximately 90 test plans developed or updated in fiscal year 2016 by FMD’s internal controls branch and the approximate 160 tests of operating effectiveness reviews FMD conducts in a year. RFQ at 14-15. The evaluators found that the level of effort proposed by Castro was insufficient to support these, and other activities outlined in Task 1. AR, Tab 6, TET Consensus Report, at 6. Further, the evaluators found that the “staff mapping proposed by the Quoter may result in TSA not being able to successfully meet DHS requirements based on the volume of work currently required.” Id. at 6-7.

While Castro argues that its management and staffing approach and level of effort for this aspect of the statement of work was based on its more efficient approach, we see no reason why the agency could not rely on its historical estimates and level of effort in evaluating the management and staffing approach proposed by Castro. The protester’s disagreement with the agency’s recognition of risk in Castro’s lower staffing levels is within the broad discretion of the agency, and the protester’s disagreement with that assessment does not render the evaluation unreasonable. DEI Consulting, supra. Moreover, we agree with the agency that the evaluators’ recognition of a strength in

Castro's quotation for creating efficiencies based on implementation of a risk-based approach on a contract with another agency is not incongruous with the agency's concern over the sufficiency of the proposed level of effort for Task 1 here. In this regard, as the agency argues, Castro's statement that it implemented a risk-based approach on another contract does not render unreasonable the agency's assessment that implementing such an approach for this effort could carry performance risk. As such, we are provided no basis to question the agency's evaluation.

The protest is denied.

Thomas H. Armstrong
General Counsel