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Decision

Matter of: Advisory Technical Consultants

File: B-416981.3

Date: June 4, 2019

Barbara S. Kinosky, Esq., Centre Law and Consulting, LLC, for the protester. Gregory A. Moritz, Esq., Michael Ahl, Esq., Jessica A. Easton, Esq., and Christopher Kovach, Esq., Defense Intelligence Agency, for the agency. Young S. Lee, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of a vendor's labor categories after taking corrective action is denied where the record shows the evaluation was reasonable and in accordance with the solicitation's stated evaluation criteria.

DECISION

Grand Ground Enterprise, LLC, d/b/a Advisory Technical Consultants (ATC), a small business of Washington, DC, protests the Department of Defense, Defense Intelligence Agency's (DIA) decision to exclude ATC's quotation from consideration under request for quotations (RFQ) No. HHM402-18-Q-0002, for operational counter-intelligence analysis support services. The protester challenges the agency's corrective action and its evaluation of certain labor categories under ATC's Federal Supply Schedule (FSS) contract.

We deny the protest.

BACKGROUND

On May 3, 2018, DIA posted the RFQ through the General Services Administration's (GSA) e-Buy system. Contracting Officer Statement (COS) at 1. The RFQ was set aside for 8(a) small business vendors holding a GSA FSS 00CORP Professional Services Schedule, Mission Oriented Business Integrated Services, Special Item Number 874 1 Integrated Consulting Services contract. Id. The solicitation contemplated the issuance of a time-and-materials task order for a full range of

counter-intelligence support services and contained a 1-year base period and four 1-year options. Agency Report (AR), Tab 4.1, RFQ, at 3, 78.

The RFQ notified vendors that the competition would be conducted in accordance with Federal Acquisition Regulation (FAR) subpart 8.4, and that the resulting task order would be issued to the vendor that submitted the lowest-priced quotation meeting the government's needs.¹ Id. at 119. Quotations were to be evaluated for technical acceptability under the solicitation's two non-price factors, which were identified as "security/8(a) verification" and "technical capability." Id. The security/8(a) verification factor was to be evaluated on a pass or fail basis, while quotations were to be rated either acceptable or unacceptable under the technical capability factor. Id. at 119, 121. The solicitation expressly cautioned vendors that "[a]ny unacceptable rating in any non-price factor or subfactor will result in an overall technically unacceptable rating in which such [quotation] will not be considered." Id. at 119.

On June 5, 2018, four quotations were received, including one from ATC and one from G2 Global Solutions, LLC. COS at 2. After an evaluation of quotations, the agency issued the task order to ATC on September 27. Id. G2 Global Solutions was notified of the agency's decision on September 28, and filed a protest with our Office, challenging the agency's evaluation of ATC's quotation and the agency's selection decision. Id. On November 28, the agency notified our Office that it intended to reevaluate ATC's quotation and make a new selection decision. See G2 Global Solutions, LLC, B-416981, B-416981.2, Dec. 3, 2018 (unpublished decision) at 1. As a result of the agency's corrective action, we dismissed the protest as academic. Id. at 1-2.

As a part of its corrective action, DIA sent a clarification e-mail to ATC on January 9, 2019, requesting that ATC identify which of the labor categories from its GSA FSS the vendor intended to use to fill the solicitation's program manager, senior analyst and mid-level analyst positions. COS at 2; AR, Tab 7, Clarification E-mail, at 1. ATC responded the next day, stating that it intended to use its [DELETED] labor category to fill the program manager position; its [DELETED] labor category to fill the senior analyst position; and its [DELETED] labor category to fill the mid-level analyst position. AR, Tab 8, ATC Clarification Response E-mail, at 1.

On February 21, the agency's technical evaluation board (TEB) completed its final evaluation and found that the [DELETED] and [DELETED] labor categories did not meet the experience requirements *necessary* for the solicitation's senior analyst and mid-level analyst positions. AR, Tab 9, TEB Final Evaluation, at 1-7. Based on the TEB's findings, the contracting officer concluded that she could not consider ATC's quotation

¹ In contrast to the sentence above, the RFQ also stated that technical capability was more important than price, and contained language indicating that the agency would issue the task order to the "best overall quotation based on the [t]echnical [c]apability and [p]rice." RFQ at 119. For the purpose of this decision, we need not address the discrepancies contained in the evaluation language of the RFQ.

any further and notified the vendor on February 21, that the previously issued task order would be terminated and that ATC's quotation was found to be "unawardable." COS at 3-4; AR, Tab 10, Notice of Unawardability and Contract Termination, at 1. ATC filed this protest with our Office on February 25.

DISCUSSION

The protester asserts that DIA's evaluation of ATC's labor categories was unreasonable. Protest at 6-7; Comments at 8-10. The protester also contends that the agency should have provided offerors with an opportunity to demonstrate how their staffing plan would meet the RFQ's personnel experience requirements. Protest at 5. Finally, ATC argues that because of these failures, DIA's corrective action is flawed. Id. at 5-7. Although we do not address every argument raised, we have reviewed all of the protester's assertions and find that none provides a basis to sustain the protest.²

A contracting agency's evaluation of quotations is a matter within the agency's discretion. FEI Sys., B-414852.2, Nov. 17, 2017, 2017 CPD ¶ 349 at 6. 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. It is the agency's role to define both its underlying needs and the best method of accommodating those needs, and it is within the agency's discretion to reject as unacceptable, quotations that do not meet the requirements that it defines. Id. A vendor's disagreement with the

² For example, the protester argues that the agency's decision to exclude ATC from the competition is unreasonable because that decision allegedly contradicts the Small Business Administration's (SBA) previously issued determinations of contractor responsibility. Comments at 6. In this regard, the protester contends that because the SBA previously concluded that ATC was a responsible contractor, it is unreasonable for the agency to determine that the labor categories proposed by ATC do not meet the solicitation's minimum requirements. We disagree. Our Office has repeatedly recognized that where a proposal or quotation, on its face, should lead an agency to the conclusion that an offeror has not agreed or cannot agree to comply with a material term of the solicitation, the matter is one of the quotation's acceptability, not a matter of responsibility. MT & Assocs., LLC, B-410066, Oct. 17, 2014, 2014 CPD ¶ 326 at 6; TYBRIN Corp., B-298364.6, B-298364.7, Mar. 13, 2007, 2007 CPD ¶ 51 at 6. Here, the agency did not conclude that ATC was nonresponsible. Rather, DIA determined that two of the labor categories proposed by ATC would not be able to satisfy the material requirements established for two of the three personnel required by the solicitation. Accordingly, we find that this allegation provides no basis to sustain ATC's protest. See MT & Assocs., LLC, supra at 6 (denying protest where protester submitted offer proposing interpreters without requisite clearance, "call[ing] into question [protester's] commitment to comply" with material solicitation term, after our Office had concluded that the matter was one of proposal acceptability, not one of the responsibility).

agency's actions is insufficient to render those actions unreasonable. Technatomy Corp., B-411583, Sept. 4, 2015, 2015 CPD ¶ 282 at 5.

In contrast, it is the 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. CTIS, Inc., B-414852, Oct. 3, 2017, 2017 CPD ¶ 309 at 5.

Our review of the contemporaneous record provides no basis to conclude that the agency's evaluation of ATC's proposed labor categories was unreasonable. Here, the RFQ notified vendors that their quotations would be evaluated for technical acceptability, and that any quotation with an unacceptable rating in any non-price factor or subfactor would no longer be considered for the solicitation's resulting task order. RFQ at 119. Quotations were to be evaluated under the technical capability factor to "determine whether the [vendor's] methods and approach have adequately and completely considered, defined, and satisfied the requirements specified in the solicitation." Id. at 121. In this regard, the RFQ required vendors to provide a program manager, six senior analysts, and five mid-level analysts to perform the services identified in the statement of work (SOW). Id. at 92-94. Certain minimum experience requirements were also established for each of these positions. Id. at 91-94.

As relevant here, the different senior and mid-level analyst positions were required to have minimum levels of experience in counter-intelligence, human-intelligence policy, or analysis and knowledge of Department of Defense (DOD) processes and terminology. Id. at 92-93. The solicitation also notified vendors that the individuals at the senior and mid-level analyst positions would be required to perform various analytical duties under the RFQ's statement of work. Id. For example, the following duties were required for at least one of the senior and mid-level analyst positions: "research, review, edit, plan, prepare, integrate, and publish all-source products, CI [counter-intelligence] studies, plans, and/or products for DIA, the DOD, and national and international intelligence publications and organizations." Id. at 92, 94.

After receiving the protester's response to the agency's clarification e-mail, the TEB evaluated the [DELETED] and the [DELETED] labor category descriptions, proposed by ATC to fulfill the RFQ's senior and mid-level analyst positions. AR, Tab 9, TEB Final Evaluation, at 2-7; Tab 8, ATC Clarification Response E-mail, at 1. The TEB's evaluation concluded that neither of the two consultant labor categories met the requirements for their respective positions. AR, Tab 9, TEB Final Evaluation, at 2-7, at 4, 6. In this regard, the TEB reviewed ATC's FSS contract description for the two consultant labor categories proposed by the protester and concluded that although the proposed labor categories met the minimum education requirements, they did not demonstrate the ability to perform the analytical duties required for their respective RFQ positions. Id. at 4, 6. For example, with regard to ATC's [DELETED] labor category, the TEB found that it "only requires experience in non-analytical duties, such as [DELETED]" Id. at 4.

Based on the FSS contract labor category descriptions, the TEB determined that the services required for the RFQ's senior analyst position could not be performed by the protester because ATC's [DELETED] labor category was "intended to encompass management functions, rather than [counter-intelligence] analysis." Id. at 4. Likewise, with regard to ATC's [DELETED] position, the TEB found that the position duty description, which included [DELETED] indicate that this labor category was intended to encompass management functions, rather than [counter-intelligence] analysis." Id. at 6. Based on her review of the TEB's final evaluation, the solicitation's requirements, and ATC's FSS contract, the contracting officer subsequently concluded that ATC's proposed labor categories would not be able to provide the services required for the RFQ's senior and mid-level analyst positions, and that ATC's quotation should no longer be considered for the resulting task order. COS at 3-4.

In responding to the agency report, ATC contends that its [DELETED] position descriptions are within the scope of the solicitation. Comments at 8. In this regard, the protester asserts that its [DELETED] and [DELETED] labor categories can meet the requirements for the RFQ's senior and mid-level analyst positions, because the consultant positions have "specific experience, in part, in 'methodology development and evaluation.'"³ Id. at 9.

Here, our review of the contemporaneous record confirms that DIA's conclusions and its decision to reject ATC's quotation were unobjectionable. The agency compared ATC's FSS schedule descriptions for the senior and mid-level analyst positions required by the solicitation and concluded that the labor categories proposed by the protester did not meet the RFQ's minimum requirements. Although ATC may disagree with the agency's evaluation, the protester's disagreement is not sufficient to render the evaluation unreasonable. Technatomy Corp., supra. Furthermore, although the protester argues that it should have been provided an opportunity to demonstrate how its staffing plan would meet the solicitation's personnel experience requirements, ATC fails to identify any authority in the FAR or solicitation to support this allegation. Protest at 1-12. Rather, our prior decisions make clear, it is the vendor's responsibility to submit a well-written quotation, with adequately detailed information, which clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency.⁴ CTIS, Inc., supra.

³ ATC argues that because "methodology plainly means 'the analysis of the principles or procedures of inquiry in a particular field,'" its [DELETED] positions include analytic duties. Comments at 9. Based on our review of the record, we find nothing unreasonable with the TEB's conclusions that the [DELETED] position descriptions provided by ATC's FSS contract did not appear to encompass the analytical duties required for the positions identified by the RFQ. FEI Sys., supra.

⁴ To the extent ATC is alleging that DIA was required to conduct discussions with vendors to allow them to revise their proposals, this allegation has no merit because there is no requirement in FAR subpart 8.4 that an agency, soliciting vendor responses
(continued...)

Finally, we also deny ATC's allegation that the corrective action taken by the agency was flawed. As a general matter, the details of a corrective action are within the sound discretion and judgment of the contracting agency. Hughes Network Sys., LLC, B-409666.3, B-409666.4, Aug. 11, 2014, 2014 CPD ¶ 237 at 3. ATC's protest fails to establish why the corrective action taken by the agency was unreasonable. Rather, the protester's challenge here is simply premised on the assumption that DIA improperly evaluated ATC's quotation, and on the notion that vendors should have been given an opportunity to provide additional information to show how their labor categories could meet the RFQ's personnel experience requirements.⁵ Protest at 5-7. As discussed above, we find nothing objectionable with the agency's evaluation or its decision not to allow ATC to supplement its quotation. Because we deny the protester's underlying arguments upon which this allegation is based, this challenge is also denied.⁶ See

(...continued)

prior to issuing an order under an FSS contract, conduct discussions. Avalon Integrated Servs. Corp., B-290185, July 1, 2002, 2002 CPD ¶ 118 at 4.

⁵ In the protester's comments that were filed on April 5, 2019, ATC for the first time asserts that the agency's corrective action was flawed because DIA's evaluation of other offerors had not been completed. Comments at 4-5. We dismiss this allegation as untimely. Our Bid Protest Regulations contain strict rules for the timely submission of protests. Under these rules, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). DIA notified ATC on March 5, 2019, that it had "not yet completed its re-evaluation of the remaining three [quotations] and has not made an award decision with respect to those [vendors]." Agency Dismissal Request at 3. Accordingly, this allegation is dismissed since the protester's new basis for challenging the agency's corrective action was filed more than 30 days after ATC knew that DIA had not finalized the evaluations of any other quotations.

⁶ ATC also argues that to the extent DIA intends to issue a task order to G2 Global Solutions, G2's quotation should have been excluded from the competition because its FSS labor categories are allegedly not germane to the solicitation's personnel experience requirements. Protest at 7-8. Additionally, the protester contends that the agency has failed to treat all vendors equally. We dismiss these protest allegations as premature because they merely anticipate improper action that has not yet taken place. The agency has informed our Office that it has not completed the evaluation of all the other quotations and has not made a new source selection decision. Accordingly, there is no basis for us to consider the protester's claim at this time. Agency Dismissal Request at 3. Protests that merely anticipate improper agency action are speculative and premature. Dayton-Granger, Inc.--Recon., B-246226.2, Feb. 28, 1992, 92-1 CPD ¶ 240 at 2. If, in the future, the agency takes concrete action that may properly form the basis for a valid bid protest, the protester may file with our Office at that time, consistent with our Bid Protest Regulations.

CASS Professional Services Corp., B-415941, B-415941.2, Apr. 27, 2018, 2018 CPD ¶ 163 at 9-10 (denying challenge where protester's argument was premised entirely on allegations that had been discussed earlier and denied).

The protest is denied.

Thomas H. Armstrong
General Counsel