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Decision

Matter of: Quality Control International, LLC

File: B-417984

Date: December 20, 2019

David A. Rose, Esq., Law Offices of Rose Consulting, LLC, for the protester.
Kristin E. Zachman, Esq., and Johnathan M. Bailey, Esq., Bailey & Bailey, PC, for Phoenix Management, Inc., the intervenor.
Robert W. Schlattman, Esq., General Services Administration, for the agency.
Evan C. Williams, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency misled and coerced protester to increase its price is denied where record shows the agency accurately and in good faith, expressed its concern related to the realism of the protester's proposed price, and that the protester exercised its own business judgment in raising its prices.

DECISION

Quality Control International, LLC (QCI), a small business of Federal Heights, Colorado, protests the General Service Administration (GSA), Public Buildings Service's award of a contract to Phoenix Management Inc., of Austin, Texas, under request for proposals (RFP) No. 47PJ0018R0027, for facilities maintenance services. QCI challenges the agency's conduct of discussions, and the source selection decision.

BACKGROUND

On May 1, 2018, the agency issued the RFP, as a small business set-aside, pursuant to the procedures of Federal Acquisition Regulation parts 12 and 15. Agency Report (AR), Tab 1, RFP at 1. The RFP sought proposals to provide maintenance services for multiple GSA facilities in Montana. RFP at 3. Under the solicitation, services were to include mechanical maintenance, custodial services, grounds maintenance, snow removal, and pest control services. Id. at 3, 21.

The RFP contemplated the award of a fixed price contract--to include an indefinite delivery component--with a base period of one year and four option years. Id.

at 99, 133. The RFP provided that award was to be made on a best-value tradeoff basis to the offeror whose proposal “provides the greatest overall value to the Government, price and other factors considered.” Id. at 220.

Proposals were to be evaluated based on the following non-price factors of equal importance: staffing plan, management plan, experience, and past performance. Id. at 220. The non-price factors, when combined, were to be considered approximately equal to price. Id. at 220.

As relevant to this protest, the RFP stated that proposals would be evaluated for “low price, price reasonableness, price realism and balance.” Id. at 222. The RFP further advised that offerors whose prices were unbalanced, unreasonable, or unrealistic, could be rejected as unacceptable. Id.

The agency received multiple proposals prior to the June 6, 2018 closing date, including those of QCI and Phoenix. Combined Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 2. The Source Selection Evaluation Board (SSEB) evaluated proposals and established a competitive range, including QCI and Phoenix. Id. at 4.

The agency evaluated QCI’s initial proposal, and as relevant here, the agency’s price evaluation of QCI’s proposal noted multiple issues. First, the agency found QCI’s proposed general and administrative (commonly referred to as “G&A”), overhead, and profit rates to be unreasonably high. AR, Tab 3, SSEB Report (Initial Proposals), at 1, 3. Second, the agency found that several of QCI’s cost elements were potentially unrealistic, and that QCI’s overall proposed price of \$6,009,580 was unrealistically low. Id. at 2-3; COS/MOL at 3. During the first round of discussions, the agency notified QCI of its concerns related to the reasonableness and realism of its proposed price, and advised QCI that “any items raised by the [g]overnment during the discussions must be addressed in writing in QCI’s revised proposal.” AR, Tab 6, Confirmation of Discussions (First Round), at 1, 3.

In response, QCI revised its proposal, including increasing its proposed price to \$7,461,340. AR, Tab 9, QCI First Revised Proposal, at 8. The agency evaluated QCI’s revised proposal and found that all of the concerns regarding QCI’s price were addressed except that QCI’s “markup costs remain[ed] too high.” COS/MOL at 6 quoting AR, Tab 10, SSEB Report (First Revised Proposals), at 1.

During the second round of discussions, the agency notified QCI that its markup rates remained high. AR, Tab 12, Confirmation of Discussions (Second Round), at 2. At this time, the agency also warned that it did not intend to conduct another round of

discussions, and that offerors should submit their most competitive offers in their final revised proposals (FRPs).¹ Id.

The agency received FRPs from QCI and Phoenix on July 29, 2019. COS/MOL at 7. In its FRP, QCI proposed \$7,247,080, which is lower than the price it proposed in response to the first round of discussions. Id. Both the SSEB and the source selection authority concluded that QCI's final revised price appeared to be reasonable and realistic. AR, Tab 14, SSEB Report (Final Revised Proposals), at 1; AR, Tab 15, Source Selection Decision Document, at 1. Regarding the non-price factors, the agency concluded that Phoenix's proposal was slightly better than QCI's. Protest exh. 1, Unsuccessful Offeror Letter (QCI), at 1. The agency made award to Phoenix in the amount of \$7,138,087.20, which was lower than QCI's final proposed price of \$7,247,080. COS/MOL at 7.

On September 6, the agency notified QCI that it was an unsuccessful offeror. After receiving a written debriefing, QCI filed this protest on September 16.

DISCUSSION

QCI contends that the agency's conduct during discussions was misleading in a manner that caused it competitive harm. In this regard, the protester asserts that during discussions, the agency mandated that it increase its price, and when it raised its price to comply with the agency's directive, the agency awarded the contract to a lower-priced offeror. In response, the agency maintains that it provided accurate information to QCI about its price proposal in good faith, and that it never required QCI to raise its price. COS/MOL at 9, 11. For the reasons discussed below, we deny the protest.²

¹ Offerors were again reminded to address any items raised in discussions in writing in their FRPs. Id. at 1.

² QCI also alleged that the agency erred by evaluating its revised price because the changes were not submitted in tracked changes. Protest at 7. That is, the protester contends that because it failed to properly identify the changes in its revised proposal, the agency should have disregarded its revised price, and should have instead evaluated its original price. Id. In response, the agency explained that the solicitation contained permissive language, which permitted it to accept QCI's revised pricing, despite the apparent failure to properly track the changes in its proposal. COS/MOL at 11-22 citing AR, Tab 7, RFP, amend. 0006. In its comments, however, the protester did not take issue with or seek to rebut the agency's explanation. Accordingly, we consider any challenge to the agency's consideration of QCI's revised price proposal to have been abandoned. Organizational Strategies, Inc., B-406155, Feb. 17, 2012, 2012 CPD ¶ 100 at 4 n.3. Additionally, QCI withdrew its challenge to the validity of an amendment related to the page limit for proposals. Protester's Comments at 1.

During discussions, agencies may not consciously mislead or coerce an offeror into raising its prices. Academy Facilities Management--Advisory Opinion, B-401094.3, May 21, 2009, 2009 CPD ¶ 139 at 6. Our Office will not find coercion in discussions, however, where an agency in good faith provides accurate information to an offeror about its concern, and provides the offeror with the opportunity to explain or revise its rates or prices. See Crystal Clear Maintenance, Inc., B-417482, June 28, 2019, 2019 CPD ¶ 244 at 3-4. We have declined to find coercion even where the offeror uses that information to its ultimate disadvantage. Id.

Based upon our review of the record, we find that the agency's communications were not misleading or coercive. As described in detail above, the record demonstrates that, during discussions, the agency accurately raised its concerns regarding QCI's proposed price, and then simply asked QCI to address issues the agency had identified with respect to QCI's price proposal. For example, during the first round of discussions, the agency advised QCI that its overall price--and some of its price elements--were unrealistically low, and informed QCI that "any items raised by the [g]overnment during the discussions must be addressed in writing in QCI's revised proposal."³ AR, Tab 6, Confirmation of Discussions (First Round), at 1, 3. After receipt of this information, QCI raised its price in its first revised proposal, before electing to lower its price in its FRP. COS/MOL at 3, 6.

First, QCI has not established that the information provided by the agency was inaccurate or communicated in bad faith.⁴ Additionally, QCI has not demonstrated that

³ As stated above, during the first round of discussions, the agency also notified QCI that some elements of its proposed price were unreasonably high. AR, Tab 6, Confirmation of Discussions (First Round), at 1.

⁴ The protester argues in its comments--for the first time--that the agency's concerns about the realism of QCI's price lacked a reasonable basis. Protester's Comments at 5-8. While the initial protest challenged the agency's conduct of discussions based solely on the allegation that the agency forced QCI to raise its price, the protester's comments raise new challenges to the reasonableness of the agency's concerns with QCI's proposed pricing. Compare Protest at 2, 7 with Protester's Comments at 5-8. During both rounds of discussions, QCI received notice of the specific concerns the agency had with respect to the realism and reasonableness of QCI's proposed price. AR, Tab 6, Confirmation of Discussions (First Round), at 1, 3; AR, Tab 12, Confirmation of Discussions (Second Round), at 2. Our Bid Protest Regulations do not contemplate the piecemeal presentation or development of protest issues through later submissions citing examples or providing alternate or more specific legal arguments missing from earlier general allegations of impropriety. See J5 Systems, Inc., B-406800, Aug. 31, 2012, 2012 CPD ¶ 252 at 5. Since these newly raised arguments could have been raised in QCI's initial protest, but were not raised until its comments, they are dismissed as untimely. 4 C.F.R. § 21.2(a)(2). In any event, even if we were to consider these

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it was actually mandated, or required, to raise its price. Rather, the agency stated that the items discussed must be addressed, but not how they were to be addressed. The protester's argument that it was coerced by the agency to raise its price is not supported by the record. Instead, the record shows that QCI was free to propose any price it wished, so long as the agency's concerns were addressed in the revised proposal. Accordingly, we find that the increase in QCI's price was a result of QCI's exercise of its business judgment, and not improper agency conduct. See Crystal Clear Maintenance, Inc., supra.

The protest is denied.

Thomas H. Armstrong
General Counsel

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arguments, based upon our review of the record, we find no basis to determine that the agency's concerns were unreasonable.