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Decision

Matter of: Wilson 5 Service Company, Inc.

File: B-418650.1

Date: June 17, 2020

James S. DeSordo, Esq., Argus Legal LLC, for the protester.
Benjamin D. Lorber, Esq., General Services Administration, for the agency.
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DIGEST

Protest arguing that agency unreasonably evaluated protester's quotation as unacceptable for proposing to use a single position to satisfy a full-time manager position as well as a full-time productive position is denied because the protest is based on an unreasonable reading of the solicitation.

DECISION

Wilson 5 Service Company, Inc., a small business of Kittery, Maine, protests the establishment of a blanket purchase agreement (BPA) with South Dade Air Conditioning and Refrigerant (SDAC) of Homestead, Florida, under request for quotations (RFQ) No. 47PE0520Q0008, issued by the General Services Administration (GSA), Public Buildings Service, Acquisition Management Division, Alabama/Mississippi Property Management Center to support operations and maintenance (O&M) services at federal office buildings in Montgomery, Dothan, Selma, and Opelika, Alabama. Wilson 5 argues that GSA unreasonably evaluated its quotation as technically unacceptable for failing to meet the staffing requirements set forth in the RFQ's Performance Work Statement (PWS).

We deny the protest.

BACKGROUND

GSA issued the RFQ on February 4, 2020, seeking quotations from small business vendors with GSA's Federal Supply Schedule (FSS) No. 03FAC (Facilities Maintenance and Management) contracts, to establish a BPA for facilities maintenance services under the rules prescribed in Federal Acquisition Regulation (FAR) 8.405-3. Agency

Report (AR), Tab 3, RFQ at 1-2. The solicitation contemplated the establishment of a single BPA with a 12-month base period, and nine 12-month option periods with a vendor to provide O&M support services at six federal buildings in Alabama.¹ RFQ at 3-5; AR, Tab 4, PWS at 23. Among other things, the vendor will be responsible for operating and maintaining equipment, systems, and services to include: heating, ventilation, and air conditioning (HVAC) systems; kitchen hoods, toilets, and exhaust systems; electrical systems; control systems; plumbing and domestic water equipment and systems; landscape irrigation systems; sanitary sewage systems; storm drainage systems; fire protection and life safety systems; special suppression systems; smoke control systems; perimeter and security systems; architectural systems; flag pole systems; roofing systems; bollard systems; fire doors and windows; parking lots and sidewalks; and parking control and loading dock equipment. PWS at 24-25.

In the PWS, GSA stressed the importance of forming a successful partnership between the government and the contractor. PWS at 22-23. To this end, GSA required the contractor to provide, at a minimum, a full-time on-site Project Manager. *Id.* at 23. Section C.1.2, Personnel, stated that the contractor “shall designate a Contract Project Manager / Onsite Supervisor or both in writing.” *Id.* at 26. The PWS went on to say that “[t]he Contract Project Manager or On-site Supervisor shall have complete authority to act for the Contractor in every detail during the terms of the Contract. . . [t]he Contractor can fulfill this requirement by having the Contract Project Manager located onsite or having an additional onsite Supervisor.” *Id.* at 27.

After stating the management requirement, the PWS specified a minimum of 9 full-time equivalent (FTE) (40 hours per week) productive staff (7 HVAC personnel, 1 electrician, and 1 production control clerk). *Id.* at 28. The PWS advised that the “[m]anagement staff does not count towards productive FTE hours.” *Id.*

The RFQ anticipated establishment of the BPA with the vendor submitting the lowest-priced technically acceptable quotation. RFQ at 3, 14. The technical factors included: (1) O&M minimum performance standards; (2) past performance; and (3) management plan/approach. *Id.* at 14-15. As relevant, under factor 3, the RFQ required vendors to submit a staffing plan with the “required minimum staffing and on-site management” per the PWS. *Id.* at 17. The RFQ advised vendors that their management plan and staffing approach should reflect a “clear understanding of the staffing requirements” required by the PWS. *Id.* According to the RFQ, an “acceptable” management plan/approach “at a minimum includes the required minimum staffing, onsite management, [and] key personnel. . . .” *Id.* On the other hand, the RFQ warned that an “unacceptable” management plan/approach “does not include the required minimum staffing and/or on-site management or any of the required staffing plan submissions.” *Id.*

¹ Simultaneous to the establishment of the BPA, the RFQ indicated that the agency would issue an initial 12-month task order for the agency’s required services. RFQ at 3.

Wilson 5 and SDAC, as well as several other vendors, submitted timely quotations in response to the RFQ. In response to factor 3, management plan/approach, Wilson 5's quotation included a staffing plan, which it presented through an organizational chart. AR, Tab 5, Wilson 5 Technical Proposal at 3-1. Wilson 5's plan included the requisite nine FTEs (seven HVAC mechanics, one electrician, and one production control clerk). One of the O&M HVAC mechanics, however, was assigned the dual role of "Senior Supervisor/HVAC Mechanic"; Wilson 5's quotation did not further delineate an independent project manager or on-site supervisor. *Id.*

Beginning on March 10, 2020, GSA evaluated the submitted quotations in order according to price, beginning with the lowest. Contracting Officer's Statement (COS) at 1. The agency reviewed Wilson 5's quotation second, after GSA found the first quotation technically unacceptable. *Id.* GSA evaluated Wilson 5's quotation as technically unacceptable under factor 3, management plan/approach. COS at 1. Specifically, the agency found that the protester "failed to include a full-time on-site Project Manager as required and instead offered an HVAC technician working in dual capacity as the site supervisor." COS at 1. Ultimately, GSA selected SDAC for the BPA with a total evaluated price of \$11,437,237.64. On March 31, 2020, GSA notified Wilson 5 and the other unsuccessful vendors of its selection decision, and Wilson 5's timely filed a protest with our Office. *Id.* at 2.

DISCUSSION

Wilson 5 argues that the agency's evaluation of its quotation as technically unacceptable was inconsistent with the RFQ's stated terms. Protest at 1. Specifically, the protester argues that "contrary to the Agency's interpretation of the RFQ, the position of the Project Manager could be filled by a qualified, on site supervisor," that the "project manager/on-site supervisor could be one individual," and that this staffing could be done with an on-site supervisor/HVAC mechanic dual position. Comments at 13-14.² Put differently, Wilson 5 contends that it reasonably interpreted the RFQ to allow for one of its HVAC mechanics to simultaneously perform the role of project manager/onsite supervisor. GSA disagrees with the protester's interpretation of the RFQ, arguing the PWS established the requirement for a full-time on-site project manager. Memorandum of Law at 8. The agency argues the PWS made clear the distinction between productive FTEs and management staff, and that it should have

² Wilson 5 also asserts, on "information and belief" that the agency evaluated the awardee as technically acceptable even though the awardee proposed the same staffing plan as Wilson 5, and that this amounted to a "modification to the terms" of the solicitation which required a formal amendment. Protest at 7-8. Setting aside the speculative nature of the argument, it is not supported by the record, which shows that contrary to the protester's staffing plan (which only provided for nine productive staff FTEs with one of those FTEs serving as a project manager), the awardee's staffing plan included nine FTEs of productive staff in addition to a separate "project manager." See AR, Tab 6, Awardee Technical Proposal at 1.

been apparent to Wilson 5 that a full-time HVAC employee working 40 hours per week could not also fill the position of a full-time project manager. *Id.* Thus, the agency argues it reasonably evaluated Wilson 5's staffing plan as technically unacceptable for failing to identify a full-time on-site manager.

When, as here, an agency issues an RFQ to FSS vendors under FAR subpart 8.4, we will review the record to ensure that the agency's evaluation was reasonable and consistent with the terms of the solicitation. Where a dispute exists as to a solicitation's requirements, we begin by examining the plain language of the solicitation. See *Bluehorse Corp.*, B-414809, Aug. 18, 2017, 2017 CPD ¶ 262 at 5. When a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. *Alluviam LLC*, B-297280, Dec. 15, 2005, 2005 CPD ¶ 223 at 2.

Here, Wilson 5's argument that the RFQ's requirement for an on-site project manager/site supervisor could be satisfied by a full-time HVAC technician performing in a dual role capacity is not reasonably supported by the plain terms of the solicitation. To the contrary, as argued by the agency, the solicitation required vendors to propose nine productive FTEs in addition to a full-time on-site manager.

As noted above, the RFQ identified 9 productive positions, requiring them to work on a full-time basis for 40 hours a week. The RFQ also separately referenced a required project manager/on-site supervisor position as a full-time qualified manager or supervisor position serving in a distinct management capacity on-site. See PWS at 23 (requiring the contractor to provide "at a minimum, a full-time on-site Project Manager"); *id.* at 26 (stating that the "Project Manager or On-site Supervisor is considered essential to the work being done under this Contract"); *id.* at 27 (requiring vendors to identify the project manager or on-site supervisor in writing along with a detailed resume which included management/supervisory experience); *id.* (stating that the "Contract Project Manager or On-site supervisor shall have complete authority to act for the Contractor in every detail. . . and shall have the authority to exercise financial expenditures and controls"). *Id.* at 27. The protester has failed to reasonably explain how these provisions suggest that vendors could propose a single individual to simultaneously perform in both a full-time managerial and full-time non-managerial productive capacity.³

³ In support of its protest, Wilson 5 cites a question and answer exchange between offerors and the agency in which a firm inquired about the number of hours the full-time employees were expected to work. See Comments, Exh. 2, Question and Answers at 2. Imbedded in the question from the offeror, however, was an erroneous statement that the solicitation required eight rather than the nine full-time employees specified in the PWS. *Compare id.* (offeror asked "Please confirm that the minimum staffing requirement detailed on page of the PWS means that each of the 8 employees . . . will (continued...)

In reaching our conclusion, we note that the protester's interpretation ignores the RFQ language indicating that the agency sought a successful partnering relationship through a project manager, and that management staffing was separate from the productive FTE staffing. *Id.* at 23, 28. Lastly, the protester's interpretation fails to comport with the RFQ's clearly stated requirement that the contractor fulfill the Project Manager / Supervisor requirement "by having the Contract Project Manager located on-site or having an *additional* on-site Supervisor." *Id.* at 27 (emphasis added). The use of the modifier "additional" in this context supports the conclusion that vendors were to identify an independent manager working on-site, who was separate and apart from the productive FTE positions.⁴ Accordingly, we conclude that the protest is without merit.

The protest is denied.

Thomas H. Armstrong
General Counsel

(...continued)

be Full Time at 40 hrs per week") *with* PWS at 28 (identifying 9 positions in total). This exchange does not support the protester's position for two reasons. First, the agency's answer merely confirmed that the full-time employees were to perform 40 hours per week; it did not affirmatively change the number of required FTEs from 9 to 8. Comments, Exh. 2, Question and Answers at 2 (agency answered "Yes, all FTE's are 40 Hours per week employees"). Second, even if the protester believed the agency's answer suggested that the PWS required eight employees, the answer created a patent ambiguity in the solicitation due to the difference between this answer and the PWS's clear statement that the agency required nine FTEs. PWS at 28. The protester would have needed to challenge this patent ambiguity prior to the solicitation's closing date for it to be considered by our Office. See *Office Design Group*, B-415411, Jan. 3, 2018, 2018 CPD ¶ 43 at 3.

⁴ Wilson 5 also points to language in a collective bargaining agreement attached to the PWS, identifying a "site supervisor" position generally as a non-management position. This reference, however, does not address the protester's failure to include an "additional" management position in its staffing plan, beyond the nine required full-time productive employees.