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Decision

Matter of: Sarandrea Associates Group Corporation

File: B-418728

Date: June 29, 2020

Edward J. Tolchin, Esq., Offit Kurman, P.A., for the protester.
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DIGEST

1. Protest challenging the agency’s determination that protester’s quotation was technically unacceptable is denied where the record shows that the evaluation was reasonable and in accordance with the terms of the solicitation.
 2. Protest alleging that the awardee’s brand name product does not meet the salient characteristics in a “brand name or equal” solicitation is dismissed as untimely; any alleged inconsistency between a brand name item and the salient characteristics used to define an “or equal” product must be protested prior to the closing time for receipt of quotations.
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DECISION

Sarandrea Associates Group Corporation, a service-disabled veteran-owned small business (SDVOSB) of Sunrise, Florida, protests the issuance of a purchase order to BWhit Infrastructure Solutions, LLC, of New York, New York, under request for quotations (RFQ) No. 36C10X20Q0078, issued by the Department of Veterans Affairs (VA) for paper shredders. The protester contends that the agency’s evaluation of vendors’ quotations and resulting award decision were improper.¹

We deny the protest.

¹ Notwithstanding the terminology used by the parties, we refer to firms competing for a purchase order under an RFQ as “vendors” that submitted “quotations” in response to the solicitation.

BACKGROUND

The RFQ was issued on April 6, 2020 as a competitive SDVOSB set-aside, pursuant to the procedures of Federal Acquisition Regulation (FAR) subpart 12.6 (acquisition of commercial items) and part 13 (simplified acquisition procedures).² Agency Report (AR), Tab 4, RFQ at 3; Contracting Officer's Statement (COS) at 3. The solicitation contemplated the issuance of a fixed-price purchase order, for seven high security, cross-cut paper shredders and related accessories, on a brand name or equal basis. RFQ at 6; Memorandum of Law (MOL) at 1. The RFQ identified two evaluation criteria--technical and price--and provided that award was to be made on a lowest-price, technically acceptable basis. RFQ at 31.

The RFQ described the brand name or equal requirement as follows: "Shredders are required to be . . . brand name or equal to Datastroyer 1628 MS High Security Shredder and meet or exceed the salient characteristics provided below. . . ." AR, Tab 6, RFQ amend. 2 at 5. The solicitation listed 10 salient characteristics. Relevant here, one of the salient characteristics required the offered item to "[h]ave a maximum sheet capacity between 13-20 pages." *Id.*

The VA received quotations from three vendors, including Sarandrea and BWhit, by the solicitation's April 20 due date. AR, Tab 14, Best-Value Determination (BVD) at 3; COS at 5. The agency evaluated Sarandrea's quotation and found that its offered product (DAHLE 20394) was technically unacceptable because it did not meet the RFQ's specification for sheet capacity between 13-20 pages.³ AR, Tab 14, BVD at 5-6. The VA then evaluated BWhit's quotation, which offered the specified brand name item (Datastroyer 1628 MS), and found it to be technically acceptable. AR, Tab 10, BWhit Quotation at 3; Tab 14, BVD at 6. On April 29, the contracting officer, as the source selection authority, determined that BWhit had submitted the lowest-priced, technically acceptable quotation. AR, Tab 14, BVD at 8-9; COS at 5-6. The agency issued a purchase order to BWhit on April 30, and published notice of award on May 1. COS at 5-6; AR, Tab 17, Award Notice. This protest followed.

DISCUSSION

Sarandrea challenges the agency's evaluation in two respects. First, the protester argues that the VA miscalculated its quotation with regard to one of the RFQ's salient characteristics. Protest at 4. Second, Sarandrea contends that the brand name product quoted by the awardee does not meet all of the RFQ's salient characteristics, which led

² The solicitation was amended twice in response to questions submitted by vendors. All citations are to the final version of the RFQ.

³ The catalogue excerpt which Sarandrea included with its quotation indicated that the shredding capacity of its quoted product was "9/11" sheets of paper, depending upon the paper thickness. AR, Tab 8, Sarandrea Quotation at 4; Protest at 3.

to an unequal evaluation. *Id.* at 5. Though we may not address all the protester's arguments here, we have considered all the protester's allegations and find that they do not afford a basis on which to sustain the protest. We address each relevant argument, in turn.

Evaluation of Sarandrea's Quotation

Sarandrea first challenges the agency's evaluation that the protester's quoted product did not meet all of the RFQ's salient characteristics. Sarandrea does not dispute that the stated capacity of its offered shedder (DAHLE 20394) was "9/11" sheets of paper, or that the RFQ established a salient characteristic of having "a maximum sheet capacity between 13-20 pages." Protest at 4; *citing* RFQ amend. 2 at 5. Rather, the protester argues that "'9/11' is within the maximum sheet capacity of '13-20' pages." *Id.* Based on conversations with the agency after award, Sarandrea contends it became evident the agency had "determined that the salient characteristic was not a 'maximum' of 13-20 sheets as stated in the solicitation, but was a 'minimum' of '13-20' sheets." *Id.* The protester also argues that the agency's misinterpretation of this salient characteristic resulted in an unstated evaluation criterion. *Id.* According to the protester, had the agency evaluated Sarandrea's quotation consistent with the terms of the solicitation, Sarandrea would have been selected for award. *Id.*

In response, the agency explains that Sarandrea's quotation was found to be technically unacceptable because the offered item's capacity was "9-11 pages which does not meet [the] specified 13-20 pages." MOL at 16, *citing* AR, Tab 9, Technical Acceptability Checklist for Sarandrea. The agency maintains it interpreted the salient characteristic here, consistent with the language of the solicitation, to mean that "any maximum sheet capacity below thirteen (13) pages did not meet VA's requirements, and VA did not require a maximum sheet capacity of greater than twenty (20) pages." *Id.* at 11. The agency also argues that "the language of the salient characteristic is clear," and that any other interpretation of the RFQ requirement is "misguided." *Id.* at 10. Our review of the record does not cause us to question the agency's determination that Sarandrea's quotation was technically unacceptable.

Where a protester and agency disagree over the meaning of solicitation language, we 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. *Crew Training Int'l, Inc.*, B-414126, Feb. 7, 2017, 2017 CPD ¶ 53 at 4. An ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. *Colf. Def., LLC*, B-406696, July 24, 2012, 2012 CPD ¶ 302 at 8. A solicitation is not ambiguous unless it is susceptible to two or more reasonable interpretations. *See WingGate Travel, Inc.*, B-412921, July 1, 2016, 2016 CPD ¶ 179 at 7. If the solicitation language is unambiguous, our inquiry ceases. *Desbuild Inc.*, B-413613.2, Jan. 13, 2017, 2017 CPD ¶ 23 at 5.

As a preliminary matter, a “brand name or equal” purchase description defines the agency’s need by identifying a particular brand name item, as well as a general description of those salient physical, functional, or performance characteristics that an “equal” item must meet to be acceptable for award. FAR 11.104(b); RFQ at 52 (incorporating FAR provision 52.211-6 by reference); see *Glem Gas S.p.A.*, B-414179, Feb. 23, 2017, 2017 CPD ¶ 60 at 4 n.6.

The parties’ differ on the interpretation of one of the RFQ’s “brand name or equal” salient characteristics, specifically, the “[h]ave a maximum sheet capacity between 13-20 pages” requirement. The agency interprets this salient characteristic to mean that the quoted item must have a maximum capacity to handle up to 13-20 pages at one time. The protester, by contrast, interprets the salient characteristic as a ceiling rather than a floor; that is, the quoted item had no minimum page capacity requirement, only that the machine’s maximum capacity could not exceed 13-20 pages at one time.

We do not find Sarandrea’s interpretation of the salient characteristic here to be reasonable, as it is not consistent with the solicitation when read as a whole or in a manner that gives effect to all of its provisions. As set forth above, the RFQ established that quoted shredders were required to “meet or exceed” the requirement of “[h]aving a maximum sheet capacity between 13-20 pages.” RFQ amend. 2 at 5. Sarandrea’s contention that “‘9/11’ is within the maximum sheet capacity of ‘13-20’ pages,” is essentially an assertion that 9-11 pages meets the RFQ’s maximum sheet capacity requirement because it is less than 13-20 pages. Protest at 4; Comments at 5. As the VA correctly points out, the protester’s interpretation fails to account for the word “between” in the salient characteristic; specifically, the RFQ required that quoted shredders “[h]ave a maximum sheet capacity *between* 13-20 pages.” MOL at 16 (emphasis added). The protester’s interpretation would render the word “between” meaningless.

In essence, the protester argues that the solicitation establishes no minimum requirement; *i.e.*, a maximum sheet shredding capacity of one page would be acceptable (because it is a number less than the stated maximum of 13-20), and that models with a capacity of more than 13 pages would go beyond the RFQ’s “maximum” requirement. Similar to the word “between,” under Sarandrea’s interpretation, the number “20” would also have no meaning if the maximum allowable capacity was “13-20 pages.” In this regard, the protester’s interpretation myopically focuses upon the word “maximum,” while the agency interprets the salient characteristic as a whole. As capacity refers to the highest level of potential output or input of an item or system, it is clear that the agency was seeking a shredder that had the maximum shredding capacity of 13-20 pages at a time. Sarandrea’s interpretation would result in a salient characteristic that essentially provides the following specification: the offered product could have a sheet capacity of 13-20 pages at a time; but it was not required to do so.

As discussed above, the purpose of a solicitation’s salient characteristics is to define the characteristics that a quoted alternative to the specified brand name must meet. FAR 11.104(b). Therefore, salient characteristics, by their very nature, establish

minimum requirements for what is an acceptable, alternate product. RFQ amend. 2 at 5 (“meet or exceed the salient characteristics”); *Creative Custom Prods.*, B-417761, Oct. 18, 2019, 2019 CPD ¶ 371 at 8; see also FAR provision 52.211-6. Thus, the only reasonable interpretation of the salient characteristic here is that advanced by the VA--that the agency required shredders which had, at least, a maximum sheet capacity between 13 and 20 pages.

In sum, we find the agency’s interpretation of the RFQ’s salient characteristics to be reasonable, and the protester’s interpretation to be unreasonable. As a result, we find the agency’s evaluation of Sarandrea’s quotation to be consistent with the terms of the solicitation, and thus unobjectionable.

Evaluation of BWhit’s Quotation

Sarandrea also challenges the agency’s technical evaluation of BWhit’s quotation. The protester does not dispute that BWhit offered the specified brand name product, *i.e.*, the Datastroyer 1628 MS High Security Shredder. Rather, the protester argues that the specified brand name--and by extension, BWhit’s quotation--does not meet a certain salient characteristic identified in the solicitation. Protest at 5; Comments at 1-5. The agency denies this allegation, and argues that BWhit’s quotation was properly evaluated. MOL at 22. We find the protester’s assertion here to be an untimely challenge to the terms of the solicitation.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. They specifically require that a protest based on alleged improprieties in a solicitation that are apparent prior to bid opening be filed before that time. 4 C.F.R. § 21.2(a)(1). Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. *Verizon Wireless*, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4.

As set forth above, the purpose of a solicitation’s statement of salient characteristics is to define the minimum characteristics of the brand name product that an alternative equal product must meet. FAR 11.104(b); *Creative Custom Prods.*, *supra* at 8. Thus, by definition, the salient characteristics should be derived from, and should reflect, the essential characteristics of the brand name product. A contention that the solicitation-identified brand name product does not meet the salient characteristics is an argument that the solicitation is defective, because the solicitation essentially represents that the brand name product possesses the salient characteristics, when in the protester’s view, it does not. *Creative Custom Prods.*, *supra* at 8-9; *Capture, LLC*, B-409792, June 16, 2014, 2014 CPD ¶ 180 at 3 (finding that in a procurement for shredders, protester’s argument that the brand name did not meet salient characteristics was an untimely challenge to the solicitation). Any alleged inconsistency between the brand name product and the salient characteristics used to define an “or equal” product must be protested prior to the closing time for receipt of quotations, consistent with our

regulations for challenging solicitation improprieties. 4 C.F.R. § 21.1(a)(1); *Creative Custom Prods.*, *supra* at 8-9. Accordingly, the allegation here is an untimely one.

In sum, while Sarandrea raises various challenges related to the RFQ's brand name or equal requirements, we find these challenges to be untimely and/or without merit. A protester simply may not wait until after an award has been made to protest alleged flaws in the procurement's ground rules that are apparent prior to submission of quotations. See *DynCorp Int'l LLC*, B-415349, Jan. 3, 2018, 2018 CPD ¶ 12 at 9.

The protest is denied.

Thomas H. Armstrong
General Counsel