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Decision

Matter of: ISHPI Information Technologies, Inc.

File: B-420718.2; B-420718.3

Date: July 29, 2022

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DIGEST

Protest challenging agency's evaluation and source selection is sustained where record shows agency improperly made award to firm submitting quotation that failed to meet material solicitation requirements.

DECISION

ISHPI Information Technologies, Inc., of Suffolk, Virginia, protests the establishment of a blanket purchase agreement (BPA) and the issuance of two task orders to AmVet Technologies, LLC, of Las Vegas, Nevada, under request for quotations (RFQ) No. 89303021RIM000005, issued by the Department of Energy for cybersecurity assessment and authorization support services. ISHPI argues that the agency misevaluated quotations and made an unreasonable source selection decision.

We sustain the protest.

BACKGROUND

Competition for this requirement was confined to federal supply schedule (FSS) vendors holding appropriate FSS schedules, and the RFQ contemplates the establishment of a master BPA, along with the issuance of two initial task orders for the solicited services, for a base year and four 1-year options. The RFQ advised that the successful firm

would be determined using best-value tradeoff source selection procedures. The initial task orders are to be performed on a fixed-price basis, although the RFQ contemplates the possibility of additional task orders to be issued on either a fixed-price basis, a time-and-materials basis, or labor-hours basis. RFQ at 3.¹ Firms were required to include fully burdened labor-hour rates for three specified labor categories to be used under the master BPA for pricing individual task orders, and also were required to price the two initial task orders using those rates. The RFQ included “not-to exceed” levels of effort, along with “surge” levels of effort, for the two initial task orders.² RFQ at 104. In addition, the RFQ included three specific labor categories (described below) and required firms either to “map” their FSS labor categories to the RFQ-specified labor categories, or to explain any deviations from the three specified labor categories. RFQ at 105.

Firms were advised that the agency would evaluate quotations considering price and several non-price factors. The non-price factors, in descending order of importance, were technical approach, corporate experience, and management approach.³ RFQ at 53. The non-price factors collectively were significantly more important than price. *Id.*

In addition, the RFQ specified that the agency would evaluate the firms’ proposed labor rates for the BPA overall, as well as for the two task orders, and also advised that the agency would calculate the total price for the two task orders to arrive at a price to be used in making its best-value tradeoff decision. RFQ at 56-57. The RFQ also advised that in its price evaluation, the agency would evaluate the firms’ level of effort and labor mix to determine whether the staffing quoted was reasonable and commensurate with the firms’ technical quotations, and whether the level of effort and labor mix presented a risk to contract performance in light of the firms’ technical quotations. *Id.*

In response to the RFQ, the agency received a number of quotations, including those submitted by ISHPI and AmVet. The agency evaluated the quotations, engaged in discussions and solicited, obtained and evaluated revised quotations. After completing

¹ All references to the RFQ are to the conformed version of the solicitation provided by the agency in its report. That version of the RFQ includes page numbers that were inserted by the agency (as opposed to the original page numbers included on the document), and all citations are to the agency’s inserted page numbers.

² The record shows that all firms except one prepared their quotations using the agency’s specified level of effort for the two task orders. This translated to firms proposing to perform the two task orders using a total of 354,816 labor hours. Agency Report (AR) Exh. B.2, Source Selection Decision Document (SSDD) at 31. Both ISHPI and AmVet used the agency’s specified level of effort in preparing their quotations for the two initial task orders. *Id.*

³ The RFQ stated that the agency would assign adjectival ratings for the non-price factors of outstanding, good, acceptable, marginal or unacceptable. RFQ at 54-55.

its evaluation of revised quotations, the agency assigned the following ratings to the quotations of ISHPI and AmVet:

	ISHPI	AmVet
Technical Approach	Good	Outstanding
Corporate Experience	Good	Good
Management Approach	Good	Outstanding
Price	\$29,029,378	\$46,327,561

AR, Exh. B.2, SSDD, at 32. On the basis of these evaluation results, the agency made award to AmVet, concluding that its quotation represented the best value to the government. After being advised of the agency's source selection and receiving a brief explanation of the agency's decision, ISHPI filed the instant protest.

DISCUSSION

ISHPI raises various challenges to the agency's evaluation of quotations and source selection decision. ISHPI contends that the agency should have disqualified the AmVet quotation from award consideration because the firm did not propose to perform using personnel meeting the minimum educational and experience requirements of the labor categories called for under the RFQ; that the agency made various errors in evaluating the ISHPI and AMVet technical quotations; that the agency failed to make award to the quotation representing the lowest overall cost alternative; that the agency should have determined that AmVet's price was unreasonably high; and that the agency's source selection decision was unreasonable.⁴

We have considered all of ISHPI's assertions and discuss its principal allegations below; we sustain its protest based on our conclusion that AmVet's quotation failed to meet the minimum requirements detailed in the RFQ. We note at the outset that, in reviewing protests of an agency's evaluation and source selection decision, our Office will not reevaluate proposals or quotations; rather, we review the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria, and applicable procurement laws and regulations. *Marquis Solutions, LLC*, B-419891, B-419891.2, Sept. 14, 2021, 2021 CPD ¶ 316 at 3. While we will not substitute our judgment for that of the agency, we will sustain a protest where the agency's conclusions are inconsistent with the solicitation criteria and applicable procurement statutes and regulations, or not reasonably based. *Id.*

⁴ In its protest, ISHPI also argued that the agency failed to engage in adequate discussions, failed to adequately consider a potential organizational conflict of interest on the part of AmVet, and unequally assigned strengths to the AmVet quotation without also assigning similar strengths to its quotation. ISHPI subsequently withdrew these allegations. Protester's Comments at 1.

AmVet's Proposed Labor Categories

ISHPI argues that the agency should have rejected the AmVet quotation because the firm did not quote labor categories from its FSS schedule that met the minimum qualifications for personnel specified in the RFQ. The protester maintains that AmVet quoted personnel to perform more than half of the required level of effort for the first two task orders that do not meet the minimum qualifications specified in the solicitation. We sustain this aspect of ISHPI's protest.⁵

The RFQ identified three labor categories that were required to be used during performance: (1) program manager; (2) assessment and authorization (A&A) team leader, senior; and (3) A&A specialist mid. The RFQ further stipulated that all contractor personnel were required to meet, at a minimum, the educational and experience requirements specified for the three identified positions. RFQ at 18. To demonstrate compliance with these requirements, firms were required to "map" the labor categories from their FSS schedules to the position descriptions and minimum qualifications identified for each specified labor category. RFQ at 104. Firms were permitted to include additional information in their quotations (such as the functional responsibilities of the FSS labor category) to show that their quoted labor categories met the requirements of the labor categories identified in the RFQ, *id.*, but nothing in the RFQ permitted them to quote personnel that did not meet at least the minimum qualifications identified in the solicitation for each labor category.⁶

⁵ As a threshold matter, the agency argues that we should dismiss this allegation as untimely. The agency argues that all of AmVet's labor categories are included in the firm's publicly-available FSS catalog. According to the agency, ISHPI could have--but did not--raise this allegation in its initial protest, despite having access to AmVet's published FSS catalog. The agency maintains that, since ISHPI only made this argument after being provided a copy of the AmVet quotation, rather than in its initial protest, we should dismiss the issue as untimely.

The agency's position ignores the fact that--notwithstanding the availability of AmVet's published FSS catalog--ISHPI could not have known what labor categories AmVet actually offered without the benefit of having AmVet's quotation to review. Accordingly, there is no basis for us to dismiss this aspect of ISHPI's protest as untimely.

⁶ The RFQ includes what appear to be inconsistent provisions. On the one hand, the RFQ included the performance requirement noted above, which specified that all task orders performed under the BPA were required to be staffed with personnel that met at least the minimum qualifications, including educational and experience requirements, of the labor categories stipulated in the solicitation. RFQ at 18. Elsewhere, under the heading "level of effort" the RFQ included the following language:

Quoters' proposed level of effort shall, at a minimum, include the three (3) labor categories described attachment F [program manager, A&A team lead senior and A&A specialist mid], Position Description, listed below. If

As is pertinent here, the minimum qualifications specified for the A&A team leader senior were as follows:

The A&A Team Leaders shall have at least a Bachelor's Degree or equivalent from an accredited university in Computer Science, Software Engineering, Business Administration, Management, or another scientific or technical discipline, and shall have at least ten (10) years of relevant experience. **A Bachelor's degree may be substituted with a minimum additional four (4) years of relevant experience.**

RFQ at 102. The minimum qualifications for the A&A specialist mid were as follows

A&A Specialists shall possess at least 5 years of relevant work experience and a Bachelor's degree in a related field from an accredited university. **A Bachelor's degree may be substituted with a minimum additional four (4) years of relevant experience.**

RFQ at 103.

For task order No. 1, the RFQ specified that the base level of effort required a total of 19,200 labor hours annually, for a total level of effort of 105,600 labor hours. RFQ at 104. For task order No. 2, the RFQ specified that the base level of effort totaled 34,560 hours annually, or a total level of effort of 190,080 labor hours.⁷ *Id.* The record shows that, in responding to the solicitation, AmVet proposed to perform the two solicited task orders using various labor categories from its FSS schedule. While some of AmVet's labor categories were mapped to the three required labor categories, some were not mapped to the three labor categories at all, and the labor category descriptions for these unmapped positions did not meet the minimum qualifications for the three labor categories required by the RFQ. In addition, the qualifications "mapped" for AmVet's A&A Team Leader senior position do not meet the minimum qualifications for that position specified in the RFQ.

In responding to the first task order, the record shows that AmVet's quotation included [deleted] labor hours annually for personnel that met the minimum qualifications for two of the three labor categories identified in the RFQ (program manager and A&A

Quoters deviate from the three (3) minimum labor categories, Quoters shall provide an explanation for the variance.

RFQ at 105. As discussed below, the record shows that AmVet deviated from the specified labor categories, but provided no explanation for its actions.

⁷ Each task order also called for an additional "surge" level of effort totaling 20 percent of the specified level of effort. RFQ at 104-105.

specialist mid), but also included [deleted] labor hours annually for personnel that did not meet the minimum qualifications for any of the labor categories specified in the RFQ.⁸

Specifically, AmVet's quotation includes [deleted] labor hours annually divided among three labor categories that AmVet titles cyber security analyst I, II and III. AR, Exh. C.2, AmVet Price Proposal, at 36. None of these three labor categories are mapped to any of the three required minimum labor categories, none of them are identified as otherwise meeting the minimum qualifications for any of the three the labor categories specified in the RFQ, and AmVet's quotation contains no explanation for its inclusion of these labor categories.

For example, the qualifications for the cyber security analyst III position description (the most senior of three cyber security analyst positions identified by AmVet in its quotation) states that individuals performing in this labor category are required to have an associate's degree and 3 years of experience. AR, Exh. C.2, AmVet Price Proposal, at 31. This is less than the minimum educational and experience requirements for the RFQ's most junior labor category, A&A specialist mid, which required a minimum of a bachelor's degree and 5 years of experience (or, alternatively, a total of 9 years of experience for an individual without a bachelor's degree). RFQ at 103.

As a second example, the cyber security analyst I position, the most junior of the labor categories included in AmVet's quotation for performance of the task order, does not specify any educational requirements at all, and specifies only that personnel performing in that labor category have just 1 year of experience. AR, Exh.C.2, AmVet Price Proposal, at 31.

The record also shows that AmVet quoted [deleted] labor hours annually for the A&A team leader senior position. AR, Exh. C.2, AmVet Price Proposal, at 36. However, in the portion of its quotation that "mapped" its FSS labor categories to the RFQ's labor categories, the position description for AmVet's A&A team leader senior position specifies that the individual in question will only be required to have 8 years of experience, rather than the 10 years of experience required for the A&A team leader senior position.⁹ *Id.* at 31.

⁸ The remaining [deleted] annual labor hours that AmVet proposed for task order 1 are comprised of four other labor categories: senior cyber security subject matter expert; cyber security subject matter expert, cyber forensics expert; and cyber risk and vulnerability lead. AR, Exh. C.2 AmVet Price Proposal, at 36. None of these labor categories is mapped to any of the RFQ's enumerated labor categories. *Id.* at 31.

⁹ AmVet "mapped" a labor category from its FSS catalog labor category called "cyber security functional lead" to the A&A team lead senior labor category. AR, Exh. C.2, AmVet price Proposal, at 31.

The record shows a similar pattern for AmVet's labor to perform task order 2, with AmVet's quotation identifying more than half of the total labor hours to be performed annually using personnel that do not meet the RFQ's minimum educational and experience requirements. Specifically, the record shows that, for task order 2, AmVet's quotation identified [deleted] labor hours annually divided among five labor categories that appear to meet at least the minimum qualifications for the RFQ's labor categories.¹⁰ However, AmVet identified [deleted] labor hours annually that were divided among four labor categories, three of which were not mapped to any of the RFQ's three required labor categories, and a fourth category--cyber security functional lead that was mapped to the A&A team leader senior labor category--that does not otherwise meet the RFQ's minimum requirements for that position.¹¹ AR, Exh. C.2, AmVet Price Proposal, at 37.

In sum, the record shows that AmVet's quotation included a number of labor categories that were not mapped to any of the RFQ's three required minimum labor categories. Some of the labor categories that were not mapped to the RFQ's labor categories appear to meet the qualifications of at least the A&A specialist mid position description. For the remaining labor categories that were not mapped to the RFQ's position descriptions (specifically, the cyber analyst I II and III labor categories) the qualifications identified for these positions did not meet any of the required minimum qualifications mandated by the RFQ for performance of the agency's requirements. In addition, AmVet mapped the A&A team leader senior to a position description from its FSS catalog (cyber security functional lead) that did not meet the minimum requirements for the A&A team leader senior position.

In response to this issue, the agency argues that it properly accepted AmVet's quotation. The agency directs our attention to a prior decision of our Office, *Grant Thornton, LLC*, B-416733, Nov. 29, 2018, 2018 CPD ¶ 411, *aff'd.*, *Dept. of Defense, Recon.*, B-416733.2, Mar. 18, 2019, 2019 CPD ¶ 110. In that case, we considered a pre-closing challenge to a solicitation that required the offerors' FSS labor categories to precisely align with the educational and experience requirements specified in the

¹⁰ The five labor categories that appear to meet at least the RFQ's minimum requirements for the RFQ's labor categories include cyber security program manager (mapped to the RFQ's program manager labor category), and cyber security analyst IV (mapped to the RFQ's A&A specialist mid labor category). The three other labor categories that appear to at least meet the minimum requirements of the RFQ's labor categories are senior cyber security subject matter expert, cyber security subject matter expert, and cyber risk and vulnerability lead. AR, Exh. C.2, AmVet Price Proposal, at 31. These latter three labor categories are not mapped to any of the RFQ's labor categories, but all three position descriptions appear to include educational and experience requirements that meet at least the minimum requirements of the A&A specialist mid position description.

¹¹ The four labor categories that do not meet the RFQ's minimum requirements for any of the labor categories are A&A team leader senior, and cyber security analyst I, II and III. AR, Exh. C.2, AmVet Price Proposal, at 31.

solicitation. Grant Thornton argued that this requirement was unduly restrictive of competition because a vendor's FSS labor categories might not necessarily align precisely with the solicitation educational and experience requirements.

We sustained Grant Thornton's protest, finding that a requirement for an offeror's FSS labor categories to align precisely with the solicitation's educational and experience requirements was unduly restrictive of competition. We concluded that FSS labor categories that expressed educational or experience requirements as "minimums" effectively allowed vendors to propose using that labor category, provided that the firm actually identified the use of personnel that met the solicitation's more stringent educational and experience requirements. The agency specifically relies on the following language from our decision:

Grant Thornton and GSA [the General Services Administration] argue that an FSS contract with a labor category that states that the vendor may provide personnel with "a minimum of 10 years of experience," "10+ years of experience," or "at least 10 years of experience," is within the scope of a requirement for 12 years of experience. We agree. The terms of such a labor category provide a price for personnel with a stated minimum level of experience; but nothing prohibits the vendor--*expressly or implicitly*--from providing personnel with more than that level of experience.

Grant Thornton, LLC, supra. at 8 (emphasis supplied).

Here, the agency argues that it determined that the AmVet quotation included an "implicit promise" to provide personnel meeting the RFQ's minimum educational and experience requirements for two reasons.

In support of its position, the agency first argues that, with respect to at least the program manager position, AmVet submitted resumes for individuals that met the RFQ's stated experience requirements. The RFQ required firms to include one or more resumes for the program manager position (which was designated as a key position). RFQ at 28-29. The agency argues that the resumes for AmVet's program managers show that the individuals quoted each have 20 years of experience, which exceeds the RFQ's 15 years of experience requirement for the program manager position. The agency also points out that AmVet's FSS schedule position description for its cyber security program manager (which AmVet "mapped" to the program manager requirement) only calls for a minimum of 10 years of experience, but that the resumes effectively made clear that AmVet's program managers would have 20 years of experience.

The agency is correct that AmVet's program managers each have 20 years of experience, and that they effectively met the RFQ's 15-year experience requirement. The agency also is correct that, notwithstanding that AmVet's FSS position description for the cyber security program manager specifies only a minimum of 10 years of experience, AmVet actually quoted (by submitting the program managers' resumes) program managers that met the RFQ's experience requirement for that position. See

RFQ at 101; AR, Exh. C.1, AmVet Technical Proposal, Attachment 2, Program Manager Resumes; Exh. C.2, AmVet Price Proposal, at 31 (showing that AmVet “mapped” its cyber security program manager position to the program manager position) and at 53 (showing AMVet’s FSS schedule position description for cyber security program manager). However, nothing in these materials shows that AmVet mapped the other positions to the RFQ’s required minimum labor categories or affirmatively quoted personnel for any of the remaining positions that exceeded the educational and experience requirements stated in AmVet’s FSS labor category position descriptions.

Second, the agency argues that it also determined that AmVet’s quotation included an “implicit promise” to provide personnel meeting the RFQ’s educational and experience requirements for all of the remaining positions because its FSS schedule generically identifies the educational requirement for each position as “minimum education” and the years of experience for each position as “minimum years [of] experience.” See AR, Exh C.2, AmVet Cost Proposal at 47-55. According to the agency, this was sufficient for it to find that AmVet “implicitly promised” that it would actually provide personnel that would have the necessary education and experience.

Nothing in the record before our Office shows that AmVet actually included any information in its quotation to show that it would perform with personnel meeting the RFQ’s more stringent educational and experience requirements.¹² As we explained in *Dept. of Defense--Recon.*, *supra.* at 6 (a decision where we addressed the Department of Defense’s request for reconsideration of our *Grant Thornton* decision):

As addressed above, nothing in our [Grant Thornton] decision diminishes a vendor’s requirement to satisfy a solicitation’s material qualification

¹² The agency claims that the AmVet quotation generically represented that, in compliance with its FSS contract, educational and experience minimums would be agreed upon with the customer based on order requirements. Notwithstanding the agency’s claim, no such language actually is included in the AmVet quotation. In any event, a generic prospective promise to provide appropriately qualified personnel (perhaps in connection with subsequently-issued task orders) would not excuse AmVet’s failure to quote personnel meeting the RFQ’s educational and experience requirements for the two task orders actually solicited.

We note as well that the labor category narrative descriptions actually included in the mapping document provided by AmVet in its quotation varied from the labor category descriptions in its FSS catalog. While AmVet’s FSS labor catalog includes the phrases “minimum education” and “minimum experience years” at the top of the columns detailing the requirements for each position, the actual narratives in the mapping document do not include any reference to “minimums.” For example the labor category narrative for the A&A team lead senior position states: “A Bachelor’s degree and eight (8) years of experience in Information Technology.” Compare AR, Exh. C.2, AmVet Price Proposal at 31, with AR, Exh. C.2, AmVet Price Proposal, at 53.

requirements, or would impede a procuring agency from implementing reasonable measures to ensure a vendor's compliance with such material requirements. For example, an agency can request that a vendor affirmatively state its understanding of and requirement to comply with the solicitation's enumerated qualification requirements, or request representative resumes[,] or [require] that the vendor address its approach to staffing the prospective order in accordance with the solicitation's specific qualification requirements.

In other words, nothing in *Grant Thornton* allows an agency simply to ignore a solicitation's material educational and experience requirements based on what the agency here characterizes as an "implicit promise" contained in a vendor's FSS schedule. Where a solicitation requires vendors to perform using personnel that meet certain minimum qualification requirements, and requires vendors to map their labor categories to those minimum requirements, the record must include some sort of affirmative showing that the vendor intends to meet the RFQ's minimum requirements. Where, as here, a vendor introduces new, unmapped labor categories with educational and experience requirements far below those required by the solicitation, there is simply no basis for the agency to presume that the personnel quoted to perform a requirement will actually meet the RFQ's more stringent educational and experience requirements.¹³

In light of the foregoing discussion, we sustain this aspect of ISHPI's protest.

Technical Evaluation of the ISHPI Quotation

ISHPI raises a variety of challenges to the agency's evaluation of its quotation under each of the three non-price evaluation factors. The overwhelming majority of ISHPI's allegations in this connection may be described as challenges to the agency's "scoring" of the ISHPI quotation during the evaluation.¹⁴

¹³ As noted, our decision in *Grant Thornton, LLC, supra* at 8, states: "The terms of such a [FSS] labor category provide a price for personnel with a stated minimum level of experience; but nothing prohibits the vendor--expressly or implicitly--from providing personnel with more than that level of experience." Consistent with our decision in *Dept. of Defense--Recon., supra* at 6, we reiterate that, when required by the solicitation, a proposal or quotation must include some kind of affirmative representation or showing that the personnel offered will meet the solicitation's specified experience and education requirements; nothing in *Grant Thornton, supra* permits a firm to "implicitly" meet a solicitation's requirements.

¹⁴ ISHPI also argues--derivatively--that AmVet's offer to staff the task orders with personnel that did not meet the RFQ's minimum requirements (discussed in detail above) should have resulted in a finding that its quotation was technically unacceptable. As noted, AmVet's quotation failed to quote personnel that met the RFQ's minimum requirements. It necessarily follows that AmVet's quotation was technically unacceptable and could not properly form the basis either for the establishment of the

For example, ISHPI argues that the agency unreasonably assigned its quotation only a single strength with six separate elements under the technical approach factor when, according to ISHPI, it should have assigned its quotation either seven separate strengths, or at least one significant strength. According to ISHPI, this would have resulted in the assignment of a rating of outstanding rather than an adjectival rating of good to its quotation under that factor. ISHPI argues that this shows the agency unreasonably evaluated its quotation, and that it disparately evaluated its quotation in comparison to AmVet's quotation because, according to ISHPI, the agency "more generously" assigned five separate strengths to the AmVet quotation.

As a second example, ISHPI argues that the language used by the agency in its evaluation report detailing its findings under the management factor should have resulted in the assignment of a rating of outstanding rather than a rating of good under that factor based on the RFQ's definition for outstanding.¹⁵

As we have consistently stated, evaluation scores--whether they are numeric or adjectival ratings, or whether they involve the assignment of strengths--are merely guides to intelligent decision making. *L-3 Communications, L-3 Link Simulations and Training*, B-410644.2, Jan. 20, 2016, 2016 CPD ¶ 44 at 5. The scores or the number of strengths assigned to proposals or quotations are not dispositive metrics for an agency to express a quotation's merit. What is important is not the scores themselves, but the underlying substantive merits of the quotations as embodied in, or reflected by, the scores, along with the underlying narrative description that supports the assignment of those scores. Just as we noted in *L-3 Communications, L-3 Link Simulations and Training, supra.*, all of the protester's allegations here rely on a faulty premise, namely, that, by assigning these additional strengths or higher adjectival ratings, the ISHPI's quotation would be, by some unstated calculus, found to be more technically superior than it already was found to be. *Id.*

ISHPI does not allege that the agency improperly assigned weaknesses or deficiencies to its quotation, but only that the agency did not assign enough strengths, or that the agency did not assign the appropriate adjectival ratings to its quotation. In addition, ISHPI does not allege that the agency failed to assign strengths to its quotation for features it claims it offered but for which it allegedly was not given credit. (As noted, ISHPI originally argued that it had offered features that were similar or identical to

BPA, or issuance of the underlying task orders. We therefore need not discuss this aspect of ISHPI's protest in any detail.

¹⁵ The record shows that ISHPI's quotation was found slightly technically superior to the AmVet quotation under the second most important evaluation factor, corporate experience. ISHPI does not challenge the agency's overall conclusion that its quotation was superior under that factor, but maintains instead that the agency's finding that its corporate experience was only 'slightly' superior to AmVet's was unreasonable; ISHPI argues its corporate experience is more than slightly superior..

features offered by AmVet, but that the agency had erroneously credited AmVet--but not ISHPI--for these features. ISHPI subsequently withdrew these allegations.)

In the final analysis, it is immaterial how many strengths (or what adjectival ratings) were assigned to the ISHPI quotation. What matters is whether the agency recognized the qualitative features of ISHPI's quotation that were desirable, and memorialized those findings during its evaluation. On this record, we have no basis to object to the agency's evaluation of ISHPI's quotation under the non-price factors. We therefore deny this aspect of ISHPI's protest.

Failure to Make Award to the Lowest Overall Cost Alternative

ISHPI argues that the agency failed to establish the BPA and issue task orders to the firm offering the lowest overall cost alternative. According to the protester, because the agency is using the FSS to meet its requirements, it is legally obligated to establish the BPA and issue task orders to the firm determined to offer the services at the lowest overall cost alternative. In support of its position, ISHPI directs our attention to our decision in *Noble Supply & Logistics, Inc.*, B-418141, Jan. 16, 2020, 2020 CPD ¶ 32. We deny this aspect of ISHPI's protest.

In *Noble Supply & Logistics, Inc.*, *supra*, we considered a protest challenging the terms of a solicitation issued to make awards under the FSS. The protester challenged the basis for making the source selection outlined in the solicitation, which contemplated the use of a highest-technically-rated reasonably-priced selection methodology.

The solicitation in that case required only that the agency consider whether the vendors' unit prices were fair and reasonable, and did not contemplate a comparison of the firms' total prices--in effect the overall cost to the government--in selecting the successful firms. *Noble Supply & Logistics, Inc.*, *supra* at 8 ("The agency, however, amended the solicitation to remove the market basket approach, and settled on a price evaluation that solely considers the reasonableness of each product's unit price in each vendor's product catalog.") In effect, the RFQ in that case contemplated establishing BPAs based on the highest-technically-rated quotations offering reasonable unit prices, without considering the overall cost of competing quotations.¹⁶

Here, the record shows that the agency did give consideration to the total prices submitted for the two task orders--in other words, the overall cost to the government--in making its source selection. AR, Exh. B.2, SSDD, at 31; Exh. B.3, Price Evaluation

¹⁶ ISHPI also directs our attention to our decision in *FreeAlliance.com, LLC; Radus Software LLC/Radus CTA; Mobomo, LLC*, B-419201.3, *et al.*, Jan. 19, 2021, 2021 CPD ¶ 56. In that case, we sustained a post-selection challenge to an agency's establishment of BPAs in an FSS acquisition because the agency's source selections were similarly based only on consideration of the firms' unit prices, without consideration of the overall cost to the government. *Id.* at 23-24.

Report, at 36. ISHPI is therefore incorrect that the agency failed to meet its obligation to consider overall cost to the government in issuing the BPAs and task orders.

Notwithstanding ISHPI's characterization of this issue, ISHPI's real allegation appears to be that, because its quotation received a rating of good under all of the non-price factors, the agency necessarily should have established the BPAs with, and issued task orders to, the firm because of its comparatively lower price. In effect, ISHPI suggests that, because its quotation "met" the agency's requirements (because it was rated good) it necessarily did so at the lowest overall cost alternative.

As noted, the RFQ here contemplated that the agency would make a best-value tradeoff selection decision. RFQ at 53. It necessarily follows that the agency properly could select a higher-priced, higher-rated quotation based on a finding that the added benefits available only from the higher rated quotation merited the price premium associated with such a selection decision.

Agencies properly may use best-value tradeoff procedures in an FSS acquisition, provided that the agency's ultimate selection decision represents the lowest overall cost to the government. In arriving at such a determination in a best-value tradeoff context, the record must demonstrate that the quotation selected--in terms of non-price considerations--is the one that meets the needs of the government, and results in the lowest overall cost. 41 U.S.C. §152(3)(B); Federal Acquisition Regulation 8.404(d). In other words, the selected quotation or proposal must provide something not available in another quotation or proposal that is essential to the agency's requirements, and must do so at the lowest overall cost to the government. We therefore deny this aspect of ISHPI's protest.

Price Reasonableness of the AmVet Quotation and Source Selection Decision

ISHPI argues that the agency improperly determined AmVet's price to be reasonable. The protester points out that its price was substantially lower than AmVet's price, and that the agency failed to analyze the differences between these prices and the reasons therefor. ISHPI also argues that the source selection decision lacks a reasonable basis. The protester argues that the agency selected AmVet without explaining the basis of its decision, beyond a mechanical comparison of strengths and adjectival ratings.

We dismiss these aspects of ISHPI's protest as academic. The agency's establishment of the BPA and issuance of the task orders to AmVet was improper because AmVet's quotation failed to meet the material requirements of the solicitation, namely the educational and experience requirements for its offered personnel. A quotation or proposal that fails to meet one or more of a solicitation's material requirements may not properly form the basis for the award of a contract or the issuance of a task or delivery order. *High Noon Unlimited, Inc.*, B-417830, Nov. 15, 2019, 2019 CPD 387 at 6, *aff'd*. *United States Marine Corps--Recon.*, B-417830.2, Mar. 6, 2020, 2020 CPD ¶ 99.

Since our decision sustains ISHPI's protests on the grounds stated above, we need not consider the propriety of the agency's determination that AmVet's price was reasonable, or ISHPI's overall challenge to the current source selection decision. In making its new source selection decision, the agency necessarily will make a determination regarding whether the vendor it selects has offered a reasonable price; it necessarily follows that we need not consider the propriety of the agency's current determination that AmVet's price was reasonable. Similarly, ISHPI's challenge to the current source selection decision also is academic, since the agency will be making a new selection decision. We therefore dismiss these aspects of ISHPI's protest as academic.

RECOMMENDATION

In light of the foregoing discussion, we sustain ISHPI's protest. We recommend that the agency cancel the BPA and terminate the task orders issued to AmVet, and reevaluate the vendors' quotations consistent with this decision. We further recommend that the agency make a new source selection decision, and establish the BPA and issue task orders to the firm whose quotation is selected, if otherwise proper. Finally, we recommend that the agency pay ISHPI the costs associated with filing and pursuing its protest, including reasonable attorneys' fees. The protester should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

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