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Decision

Matter of: Async-Nu Microsystems, Inc.

File: B-419614.5; B-419614.6

Date: September 30, 2022

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DIGEST

Protest alleging that agency misevaluated quotations and made an unreasonable source selection decision is denied where the record shows that the agency's evaluation and source selection were reasonable and consistent with the terms of the solicitation and applicable statutes and regulations.

DECISION

Async-Nu Microsystems, Inc. (ANM), of Fredericksburg, Virginia, protests the establishment of a blanket purchase agreement (BPA) with Mobomo, LLC, of Vienna, Virginia, under request for quotations (RFQ) No. 19AQMM20Q0100, issued by the Department of State for media communications and messaging support services.¹ ANM argues that the agency misevaluated quotations and made an unreasonable source selection decision.

We deny the protest.

BACKGROUND

¹ The entity submitting the winning quotation is referred to in the record as Team Mobomo, which was established as a contract teaming agreement (CTA) entity comprised of more than one contractor under the General Services Administration's (GSA) Federal Supply Schedule (FSS) program. ANM also submitted its quotation as a CTA entity.

The RFQ contemplates the establishment of a BPA on a best-value tradeoff basis for a 1-year base period, four 1-year option periods, and an additional three 1-year call order periods of performance. The resulting BPA will be to provide communications operations support services for the agency's Bureau of Educational Cultural Affairs (ECA). Competition for the requirement was confined to firms holding underlying GSA FSS contracts. Firms were required to provide fully burdened, fixed-price labor rates for a number of specified labor categories.

The RFQ advised that the agency's selection decision would consider price and two equally weighted non-price factors, technical experience² and management approach, which together were deemed significantly more important than price.³ RFQ at 23. The RFQ provided that prices would be evaluated for reasonableness. RFQ at 24.

In response to the solicitation, the agency received a number of quotations. The agency established a BPA with OnPoint Consulting, Inc. on the basis of initial quotations, and two firms filed protests with our Office challenging the agency's selection decision.

In response to those protests, the agency advised our Office that it intended to take corrective action by engaging in discussions, soliciting and evaluating revised quotations, and making a new source selection decision. Based on the agency's proposed corrective action, we dismissed those protests as academic. *Barbaricum, LLC*, B-419614, Mar. 15, 2021 (unpublished decision); *MetroStar Systems, Inc.*, B-419614.2, Mar. 15, 2021 (unpublished decision).

² The RFQ makes reference to an "experience" evaluation factor, and--separately--identifies a "technical" factor. *Compare*, RFQ at 23 *with* RFQ at-23-24. The narrative portion of the technical factor states that, in evaluating quotations, the agency would consider the following:

The Government will evaluate the extent to which the Offeror has demonstrated experience and qualification in performing work of the same of similar nature as that of the requirements of the PWS [performance work statement]. . . . Evaluation of technical experience will also be based on approaches to PWS tasks the Offeror utilizes, based on experience and expertise, that heighten or lower overall performance, schedule, and/or price risk in that given task area.

RFQ at 23-24. Throughout this decision, we refer to this factor as the technical experience factor.

³ The record shows that, in evaluating quotations under the non-price factors, the agency assigned adjectival ratings of superior, acceptable, marginal or unacceptable. Agency Report (AR), exh. 15, Initial Award Determination, at 3-4.

Thereafter, the agency performed its corrective action as described and selected Mobomo for establishment of the BPA. After learning of that source selection, two more protests were filed with our Office. In response to those protests, the agency again advised that it intended to take corrective action by reevaluating quotations and making a new source selection.

One of the protesters (OnPoint Consulting, Inc.) withdrew its protest after learning of the agency's proposed corrective action. (Confirmation of Withdrawal Notice, B-419614.3, Apr. 15, 2022). ANM--the other protester--objected to dismissal of its protest based on the agency's proposed corrective action. ANM maintained the contracting officer had made certain representations in a filing pre-dating the agency's corrective action notice that, according to ANM, showed the agency did not intend to evaluate quotations in accordance with the terms of the RFQ. We dismissed ANM's protest challenging the selection of Mobomo as academic, and concluded that its objection to the agency's proposed corrective action merely anticipated improper agency action, and was therefore premature. *Async-Nu Microsystems, Inc.*, B-419614.4, Apr. 12, 2022 (unpublished decision).

The agency performed a reevaluation of quotations, and assigned ANM's quotation a rating of superior under the technical experience factor, and a rating of acceptable under the management factor. AR, exh. 16, Award Determination Addendum, at 4-5. The agency assigned the Mobomo quotation ratings of superior under both the technical experience and management factors. *Id.* at 3-4.⁴ Mobomo's evaluated price was \$146,432, while ANM's evaluated price was \$222,061. AR, Exh. 15, Initial Award Determination, at 6. Based on these evaluation results, the agency again selected Mobomo, concluding that establishment of the BPA with that firm was in the best interests of the government because its quotation was both technically superior and lower in price compared to ANM's quotation. AR, Exh. 16, Award Determination Addendum, at 6. After being advised of the agency's selection decision ANM filed the instant protest.

DISCUSSION

ANM makes a number of arguments relating to the agency's evaluation of quotations. First, ANM argues that the agency should have rejected the Mobomo quotation for failing to comply with an RFQ requirement relating to the experience levels of its employees. Second, ANM argues that the agency should have rejected the Mobomo quotation for offering prices that were unrealistically low. Third, ANM argues that the agency committed various errors in its evaluation of the non-price aspects of the firms' quotations. Finally, ANM argues that the agency impermissibly relaxed certain security requirements associated with the BPA.

⁴ This was a reaffirmation of the adjectival ratings assigned to the quotations during the agency's earlier evaluation. See AR, Exh. 15, Initial Award Determination, at 6.

We have reviewed all of ANM's allegations and find no basis to object to the agency's evaluation of quotations or source selection decision for any of the reasons advanced by the protester. We discuss ANM's principal allegations below, but note at the outset that in reviewing challenges to an agency's evaluation of quotations, our Office does not substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation scheme and applicable statutes and regulations. *Candor Solutions, LLC*, B-420308, *et al.* Jan. 19, 2022, 2022 CPD ¶ 36 at 3.

Experience Levels of Mobomo's Personnel

As noted, this acquisition was confined to firms holding GSA FSS contracts. In preparing their quotations, firms were required to provide the agency with fully burdened labor rates for 22 separate labor categories. Within each of the labor categories, there were four levels of employee specified (levels I through IV); the four levels of employees had graduated requirements in terms of years of experience.

ANM argues that the agency erred in not rejecting the Mobomo quotation for failing to include personnel that met the RFQ's experience requirements. According to the protester, some of Mobomo's level II personnel and all of its level III and IV personnel did not meet the RFQ's experience requirements. ANM therefore argues that the agency should have rejected Mobomo's quotation as unacceptable.

We find no merit to this aspect of ANM's protest. Where an FSS solicitation requires vendors to perform using personnel that meet certain minimum qualification requirements (such as, for example, years of experience), and requires vendors to map their FSS 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. *ISHPI Information Technologies, Inc.*, B-420718.2, B-420718.3, July 29, 2022, 2022 CPD ¶ 195 at 8. Here, the record shows that Mobomo affirmatively represented that its FSS labor categories met the RFQ's minimum requirements in terms of the required levels of experience.

In order to facilitate preparing quotations, the RFQ included a pricing template. Firms were required to provide fully burdened labor rates for each of the 88 labor categories and levels, and firms also were required to prepare a "crosswalk" between the labor categories specified in the RFQ and the labor categories from their respective FSS contracts. In effect, firms were required to demonstrate that employees from each of their FSS labor categories met the educational, skillset, and experience requirements for each of the RFQ's specified labor categories.

The record shows that, in evaluating the pricing templates, the agency initially concluded that both Mobomo's and ANM's quotations failed to affirmatively demonstrate that all of their FSS labor categories met all of the minimum requirements of the labor categories specified in the RFQ. AR, Exh. 11, Contracting Officer's Crosswalk evaluation of the Quotations. In the case of Mobomo, the record shows that the agency

had concerns relating to the minimum number of years of experience required for certain of Mobomo's identified FSS labor categories. *Id.* Mobomo Worksheet.

Based on these concerns, the agency engaged in discussions with the two firms in order to clarify the issue. As is pertinent to Mobomo, the agency provided the firm with the following discussion question:

The vast majority of proposed labor categories (LCATs) from each team member's Multiple Award Schedule (MAS) do not expressly state that the positions will be filled by personnel that meet the minimum qualification requirement. For example, Communications Consultant II is quoted for many functional areas and levels, and the MAS PD [position description] states that the position requires "5+ years" of experience. This could be interpreted as not having the required experience for Levels III (7-10 years) or IV (10+), and there are instances of this across much of your crosswalk submission. **Therefore, Mobomo must be able to affirmatively state that each position cross-walked to the PWS [performance work statement] LCATs will meet the minimum experience for each PWS LCAT level (I through IV).**

AR, Exh. 12, Discussion Letter to Mobomo, at 1.

In response to the agency's discussion question, Mobomo replied as follows: "As requested, Mobomo confirms that each position cross-walked to the PWS LCATs will meet the minimum experience for each PWS LCAT level (I through IV)." AR, Exh. 9, Mobomo Final Proposal Revision, at 1, 4-5. The record therefore shows that Mobomo provided precisely what was required: an affirmative representation that its cross-walked FSS labor categories met the RFQ's minimum requirements for personnel with the specified level of experience for each of the solicitation's labor categories. *ISHPI Information Technologies, Inc., supra.*

ANM has not alleged or shown that Mobomo's cross-walked FSS labor categories somehow otherwise failed to meet any RFQ minimum requirements. For example, ANM has not alleged or shown that Mobomo's cross-walked FSS labor categories do not include all of the RFQ's identified education or skillset requirements. We therefore have no basis to object to the agency's establishment of a BPA with Mobomo for this reason, and accordingly, we deny this aspect of ANM's protest.

Price Realism Evaluation

ANM argues that the agency failed to perform a price realism evaluation of the firms' hourly rates. According to ANM, the RFQ required the agency to perform such an evaluation, and the protester maintains that, had the agency conducted such an evaluation, it would have concluded that Mobomo's prices were unrealistically low.

We find no merit to this aspect of ANM's protest because the RFQ did not require--or even permit--the agency to perform a price realism evaluation. As a general rule, when

awarding a fixed-price contract (or in this instance, establishing a fixed-unit-price BPA), agencies are only required to determine whether the prices are fair and reasonable. See Federal Acquisition Regulation (FAR) 15.402(a); 8.404(d); 8.405-2(d). Where there is no evaluation factor providing for the review of prices for realism, a determination that a firm's prices are too low generally concerns a matter of responsibility. *Dyncorp International, LLC*, B-407762.3, June 7, 2013, 2013 CPD ¶ 160 at 8.

We have recognized that, in certain limited circumstances, a solicitation that does not expressly call for a price realism evaluation may nonetheless require such an evaluation. However, we will only conclude that a solicitation contemplates a price realism evaluation where (1) the solicitation expressly states that the agency will review prices to determine whether they are so low that they reflect a lack of technical understanding, and (2) the solicitation states that a quotation can be rejected for offering unrealistically low prices. *DynCorp International, LLC, supra at 9*.

Here, the RFQ does not include an express price realism evaluation factor. The protester directs our attention to certain language in the RFQ that it maintains requires a price realism evaluation, but the language at issue neither expressly states that the agency will review prices to determine whether they are so low that they reflect a lack of technical understanding, nor does it contemplate the rejection of a quotation for offering unrealistically low prices.

The price evaluation factor language relied on by the protester provides as follows:

The government will separately evaluate all relevant pricing information contained within the Price submittal (including discounted prices offered to DoS [Department of State]). The Government will evaluate all assumptions or exceptions and determine the risk associated with each offeror's (whether CTA or Prime's) quote. Reasonableness will be determined by receiving adequate price competition, and also by comparison of total prices (base and four option years).

RFQ at 24. ANM focuses on the second sentence of this provision, which makes reference to the "risk" associated with each firm's quotation, but that language is confined to consideration of the risk posed by any "assumptions or exceptions" that may have been included in a quotation. ANM has not alleged or demonstrated that Mobomo's quotation included any "assumptions or exceptions"; ANM's allegation is confined to a generalized assertion that Mobomo's prices are too low.

ANM also directs our attention to language in the RFQ's technical experience evaluation factor, which provides as follows: "Evaluation of technical experience will also be based on approaches to PWS tasks the Offeror utilizes, based on experience and expertise, that heighten or lower overall performance, schedule, and/or price risk in that given task area." RFQ at 24. This language requires only that the agency consider the firms' "approaches to PWS tasks" in assessing whether there is a higher or lower overall price risk. There is no mention of the nature of the price risk to be considered (whether the risk is that prices will be too high or too low), or any suggestion that a quotation could be

rejected for including prices that are too low. Similar to its challenge based on the language identified in the price evaluation factor, ANM does not argue that Mobomo's "approaches to PWS tasks" introduced any price risk; ANM's allegation is confined to a generalized assertion that Mobomo's prices are too low.⁵

In the final analysis, there is no reference in the RFQ to consideration of whether prices are so low as to indicate a lack of technical understanding, nor is there any statement to the effect that the agency could reject a quotation for including unrealistically low prices. In light of these considerations, we dismiss this aspect of ANM's protest for failing to state a cognizable basis for protest. *DynCorp International, LLC, supra at 9.*

Non-Price Evaluation

ANM argues that the agency misevaluated the firms' non-price quotations. ANM challenges the agency's evaluation under both the technical and management factors, maintaining variously that the agency either improperly assigned a given adjectival rating or strength to one or the other quotation, or otherwise engaged in disparate evaluation of the two quotations. We have reviewed all of ANM's challenges to the agency's non-price evaluation and find no merit to this aspect of its protest. We briefly discuss two examples for illustrative purposes.

Under the technical experience factor, ANM argues that the agency evaluated the quotations disparately by assigning three particular strengths to the Mobomo quotation for features ANM claims it also offered. ANM argues that its quotation also should have been assigned these same strengths.

This aspect of ANM's protest is based on a faulty underlying premise, namely, that the assignment of these three additional strengths would, by some unstated calculus, render its quotation technically superior to the Mobomo quotation. The record shows, however, that the agency assigned ratings of superior to both quotations--the highest adjectival rating available--identified no weaknesses in either quotation, and identified a number of strengths in each quotation in support of the assigned ratings. In assigning strengths to the quotations, the record shows that the agency actually assigned more strengths to the ANM quotation (a total of 21 strengths), AR, Exh. 13, ANM Technical Evaluation Report, at 5-7, than it did to the Mobomo quotation (a total of 19 strengths). AR, Exh. 14, Mobomo Technical Evaluation Report, at 5-8. Notwithstanding the assignment of more strengths to the ANM quotation, the agency ultimately concluded that the quotations were--broadly speaking--both superior in merit, and relatively equal

⁵ The record shows that the agency did consider whether the firms' quotations reflected price risk as arising from their respective "approaches to PWS tasks" based on their "experience and expertise" (as stipulated in the technical experience factor) and concluded that neither quotation presented any price risk based on those considerations. AR, Exh. 19, Post-Corrective-Action Price Report. As noted, ANM does not take issue with any of the agency's findings relating to its review of the firms' "approaches to PWS tasks."

and comparable under the technical experience factor, with what the agency described as “very little to separate the two approaches, in terms of which proved most beneficial to ECA.” AR, Exh. 16, Award Determination Addendum, at 5.

ANM does not argue that the three additional strengths it claims should have been assigned were for unique features of its quotation, but only that its quotation also should have been recognized as offering these same features identified in the Mobomo quotation. It necessarily follows that assigning the additional strengths to the ANM quotation would have done no more than reinforced the agency’s overall conclusion that the quotations were largely comparable and offered “very little to separate the two approaches.” In other words, it would have led the agency to conclude, at most, that both quotations included these same features and--consequently--were technically comparable, even as to these three features.

Under the circumstances, we conclude that there is no reasonable possibility that ANM could have been prejudiced by the agency’s alleged failure to assign its quotation these same three strengths, especially given the firm’s significantly higher price compared to Mobomo’s price (as noted, ANM’s price was approximately 51 percent higher than Mobomo’s price). Competitive prejudice is an essential element of every viable protest, and where none is shown or otherwise evident, our Office will not sustain a protest even where the record arguably may show an error on the part of an agency. *Bodell Construction Company*, B-419213, B-419213.2, Dec. 28, 2020, 2021 CPD ¶ 44 at 5. Under these circumstances, we have no basis to object to the agency’s evaluation of proposals under the technical experience factor for the reasons advanced by ANM.

ANM also challenges the agency’s conclusion that the Mobomo quotation was superior under the management factor compared to the ANM quotation. ANM raises various challenges to the agency’s evaluation (for example, ANM argues that the agency evaluated quotations disparately and also that the agency erred in assigning a particular strength to the Mobomo quotation). We have reviewed all of ANM’s allegations made in connection with this aspect of its protest, and find no merit to any of them.

For example, the record shows the agency assigned the Mobomo quotation a strength under the management factor because the firms comprising the Mobomo team have a 10-year history of working together. According to ANM, the Mobomo quotation is vague on this point and did not merit the assignment of a strength. However, ANM has not shown that the agency’s conclusion is factually incorrect; rather, its argument amounts to a disagreement about whether the Mobomo quotation includes sufficient information for the agency to have reached its finding; a review of the Mobomo quotation supports the agency’s finding. For example, the Mobomo quotation provides as follows:

As mentioned, Team Mobomo is a best-in-class team of companies who have worked with each other over the past ten years. As such, our team has a history of working across functional task areas to ensure a unified communication approach and integrate capabilities to maximize messaging impact [deleted].

AR, Exh. 6, Mobomo Management Proposal, at 10-11; *see also id.*, at 1 (referencing Team Mobomo's 10-years' of experience and specifically identifying the constituent team members and subcontractors); *id.*, at 4 (referencing the team's three decades of experience together, as well as the team's ten years of experience performing work for the Department of State).

ANM also has not given any explanation for why the agency could not properly have identified this as a strength in the Mobomo quotation. The management evaluation factor provided that the agency would evaluate quotations to determine the extent to which the firms' management and organization approach demonstrated sound business practices and processes, including an itemized list of business practices and processes outlined elsewhere in the RFQ. RFQ at 24. This itemized list included consideration of, among other things, the firm's "overall teaming strategy, including how the Offeror Team . . . will be managed, organize itself, and integrate capabilities to ensure . . . PWS requirements are consistently satisfied." RFQ at 20. This RFQ language clearly encompassed consideration of the longevity of the Mobomo team's affiliation, which the agency found would save time and money because of its established working relationship. AR, Exh. 14, Mobomo Technical Evaluation Report, at 11.

In the final analysis, ANM's challenges to the evaluation of quotations under the management factor amounts to little more than disagreement with the agency's evaluation findings. Such disagreement, without more, does not provide a basis for our

Office to object to the agency's evaluation for any of the reasons advanced by ANM. *Federal Acquisition Services Team OASIS JV, LLC*, B-418776.6, B-418776.7, June 22, 2021, 2021 CPD ¶ 244 at 6.⁶

The protest is denied.

Edda Emmanuelli Perez
General Counsel

⁶ As a final matter, ANM argues that the agency relaxed certain security clearance requirements in connection with the first two task orders to be issued under the BPA. ANM relies on information included in an industry day briefing presented approximately 5 months before the RFQ was issued.

The RFQ provides only that security clearance requirements--if applicable--will be identified when the agency issues actual task orders against the BPA, and only requires the contractor to provide personnel with appropriate clearances at the time of task order performance. RFQ at 7, 10. The RFQ itself did not solicit quotations in response to any anticipated task orders; the object of the RFQ is only to establish a BPA that can be used to issue task orders in the future. In short, the RFQ did not include any specific security clearance requirements that might be applicable to any as-yet unsolicited and unissued task orders.

In light of these considerations, we dismiss this aspect of ANM's protest for failing to state a cognizable basis for protest. 4 C.F.R. § 21.5(f).