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Decision

Matter of: Loyal Source Government Services, LLC

File: B-420959.6

Date: March 31, 2023

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DIGEST

Protest of solicitation amendment is denied where the record shows that the agency's action was reasonable and within the scope of the announced corrective action notice.

DECISION

Loyal Source Government Services, LLC (Loyal Source), of Orlando, Florida, protests the terms of request for quotations (RFQ) No. 70B03C22Q00000081, issued by the Department of Homeland Security, United States Customs and Border Protection (CBP) for medical screening services. The protester argues that the terms of an amendment, issued as part of the agency's corrective action in response to previous protests, are inconsistent with applicable procurement law and the scope of the agency's announced corrective action.

We deny the protest.

BACKGROUND

The agency issued the RFQ on August 3, 2022, to holders of the Department of Veterans Affairs (VA) Federal Supply Schedule (FSS) Contract 621 I, Professional and Allied Healthcare Staffing Services, pursuant to the procedures of Federal Acquisition Regulation (FAR) subpart 8.4. Agency Report (AR), Tab 7, RFQ amend. A06 at 1-2.¹

¹ Citations to page numbers for documents in the agency report are to the Adobe PDF page numbers. The agency amended the RFQ eleven times. References to the RFQ (continued...)

The RFQ seeks to procure medical screening services for persons in CBP custody at over 80 locations along the southwestern United States border. *Id.* at 38. The RFQ contemplates the issuance of a single task order, and anticipates a potential 5-year period of performance, inclusive of options. *Id.* at 52. As initially issued, the RFQ stated that the agency would make award on a “best value” basis, using four evaluation factors in descending order of importance: (1) corporate experience; (2) technical capabilities and approach; (3) past experience; and (4) cost/price. *Id.* at 94.

On September 28, the agency awarded the task order to Vighter, LLC. Contracting Officer’s Statement (COS) at 1. Loyal Source, along with two other vendors, challenged that award in three separate post-award bid protests before our Office (B-420959 *et al.*). On November 2, in response to those protests, the agency advised our Office that it intended to take corrective action by issuing a new source selection decision. AR, Tab 2, Notice of Corrective Action at 1. In its notice of corrective action, the agency stated that it “reserves the right to amend the solicitation based on agency needs, seek revised quotes from offerors who submitted initial quotes, evaluate offeror’s final quotes, and issue a new source selection decision.” *Id.* Accordingly, we dismissed the protests as academic. See e.g., *Loyal Source Gov’t Servs., LLC*, B-420959.3, Nov. 14, 2022 (unpublished decision).

The agency thereafter issued amendment A08 to the RFQ on December 23. AR, Tab 9, RFQ amend. A08 at 1; COS at 4-5. Among other changes, this amendment consolidated the evaluation criteria from four to three factors, again in descending order of importance: (1) technical approach, capabilities, and experience; (2) past performance; and (3) price. AR, Tab 9, RFQ amend. A08 at 113-14. In addition, the agency revised the RFQ to explicitly require that proposed labor categories must fall under an applicable special item number (SIN) in the vendor’s schedule contract and advised that vendors could “propose a Contractor Team Arrangement (CTA) to meet this requirement.” *Id.* at 3.

On December 30, before the due date for quotations, Loyal Source filed the present protest challenging the terms of amendment A08. Protest at 1. Since that time, the agency has issued three additional amendments to the solicitation. Other than what is noted below, the subsequent amendments are not relevant to this protest.

DISCUSSION

Loyal Source raises several challenges to amendment A08 to the solicitation--revisions which the protester claims are “unreasonable, an abuse of discretion, contrary to law,

(...continued)

from before the agency’s corrective action are to the amendment A06 version found at AR, Tab 7. Loyal Source’s protest challenges the language in the amendment A08 version found at AR, Tab 9. Unless otherwise noted, our decision discusses the RFQ’s current language, through amendment A11 found at AR, Tab 13.

and inconsistent with the Agency's stated scope of corrective action." Comments at 1. Among other things, the protester contests the agency's decision to merge two of the solicitation's original evaluation factors (corporate experience; technical capabilities and approach) into a single evaluation factor (technical approach, capabilities, and experience). Protest at 11-14. The protester also claims that the amended RFQ conflicts with the agency's stated scope of corrective action by allowing new vendors to submit quotations through contractor team arrangements (CTAs). *Id.* at 15-16. Although we do not specifically address all of Loyal Source's arguments, we have fully considered them and conclude that none furnishes a basis to sustain the protest.²

Consolidation of Evaluation Factors

Loyal Source argues that CBP unreasonably diminished the importance of corporate experience when it merged the corporate experience factor (factor 1) with the technical capabilities and approach factor (factor 2), to create a consolidated technical approach, capabilities, and experience evaluation factor. Protest at 11-14. In the protester's view, the agency lacked a rational basis for this change in the evaluation criteria since it was "unrelated to any actual or alleged errors in the initial procurement and award decision." *Id.* at 12. The agency responds that it "acted reasonably and within its discretion in amending the RFQ during corrective action to better meet its needs, remedy areas in the prior RFQ language, clarify requirements, and further promote competition." Memorandum of Law (MOL) at 1-2.

Contracting officers in negotiated procurements have broad discretion to take corrective action where the agency determines that such action is necessary to ensure a fair and impartial competition. *360 IT Integrated Solutions; VariQ Corp.*, B-414650.19 *et al.*, Oct. 15, 2018, 2018 CPD ¶ 359 at 6. The details of implementing the corrective action are within the sound discretion and judgment of the contracting agency, and we will not

² The protester initially argued that the RFQ's licensure requirements are ambiguous. Protest at 17-18. Loyal Source later conceded that its argument was moot in light of subsequent RFQ amendments that "resolved the protest ground." Resp. to Req. for Dismissal at 1. In addition, the protester withdrew its allegations regarding the RFQ's 20-page limitation and the agency's compliance with FAR publicizing requirements. Protest at 14-15, 18-19; Resp. to Req. for Dismissal at 1. Finally, we previously dismissed the allegation that the solicitation's lack of evaluation rating definitions "does not sufficiently establish the basis for evaluating [quotations]." Protest at 20; Resolution of Req. for Dismissal at 2. An agency's chosen evaluation rating scheme, however, is distinct from the stated evaluation criteria and does not need to be disclosed in a solicitation. *URS Fed. Tech. Servs., Inc.*, B-405922.2, B-405922.3, May 9, 2012, 2012 CPD ¶ 155 at 10 n.17. Since Loyal Source's protest failed to otherwise explain how the lack of evaluation definitions violated procurement law or regulation, we dismissed this allegation as lacking a sufficient factual and legal basis. *LS3 Inc.*, B-415635.2, Nov. 2, 2018, 2018 CPD ¶ 380 at 3-4 (dismissing protest that did not identify any violation of procurement law or regulation); 4 C.F.R. § 21.5(f).

object to any particular corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. *MSC Indus. Direct Co.*, B-411533.2, B-411533.4, Oct. 9, 2015, 2015 CPD ¶ 316 at 5. Thus, agencies are afforded the discretion to determine how to appropriately remedy their reasonable concerns, absent a showing that this discretion is being abused in some way. *360 IT Integrated Solutions*, *supra* at 6.

Here, in response to the earlier protests, the agency notified our Office that it intended to take corrective action by issuing a new source selection decision, and that it “reserve[d] the right to amend the solicitation based on agency needs.” AR, Tab 2, Notice of Corrective Action at 1. The agency explains that after reviewing the protests challenging the initial task order award, the contracting officer concluded that it was in the agency’s best interest to amend the terms of the solicitation, to include revising the RFQ’s evaluation criteria to clarify “areas that may have created confusion, and modify requirements to better meet the agency’s needs,” and allow for submission of revised quotations. AR, Tab 15, Contracting Officer (CO) Memorandum at 1.

As part of this process, the agency reviewed the quotations submitted in response to the initial RFQ. The contracting officer found that “[d]uring the initial competition, there was overlap in the quotes in all three technical factors concerning the vendor’s experience.” *Id.* According to the agency, although the RFQ addressed experience under factor 1 (corporate experience), many of the vendors had also discussed experience under factor 2 (technical capabilities and approach), as well as their experience under factor 3 (past experience). COS at 1. As a result, “experience was addressed in all three factors but not in a consistent manner among quoters or consistently within the same quotes, leading to confusion and creating difficulties with evaluations.” *Id.* at 1-2.

Consequently, the agency sought to avoid creating this confusion for vendors and the resultant evaluation difficulties by amending the RFQ to “streamline the evaluation factors and criteria.” AR, Tab 15, CO Memorandum at 1. The agency explains that, “[t]o better meet its needs,” it decided to merge the previous corporate experience factor with the technical capabilities and approach factor to create a single, consolidated technical approach, capabilities, and experience factor to help “eliminate confusion and duplication in assessing factors that are overlapping.” *Id.*; COS at 2. According to the agency, “[t]he changes to the evaluation criteria were necessary to ensure the agency’s needs could be met in choosing a contractor that will best serve the government’s interest.” COS at 2.

Loyal Source acknowledges that while the agency has “discretion to combine the technical evaluation factors for purposes of submission efficiency and potential overlapping,” the protester objects on the grounds that the agency has allegedly “failed

to provide any meaningful rationale for diminishing the relative importance of experience, and how such a formulation better serves its needs.”³ Comments at 2, 4.

Our Office has consistently stated that a contracting agency has the discretion to determine its needs and the best method to accommodate them, and we will not question an agency’s determination of its needs unless that determination has no reasonable basis. *Trigent Solutions, Inc.*, B-419801, Aug. 6, 2021, 2021 CPD ¶ 279 at 4; *Grant Thornton LLP*, B-408464, Sept. 25, 2013, 2013 CPD ¶ 238 at 5. Agency acquisition officials also have broad discretion in the selection of the evaluation criteria that will be used in an acquisition, and we will not object to the absence or presence of a particular evaluation criterion (or the removal of one), so long as the criteria used reasonably relate to the agency’s needs in choosing a contractor that will best serve the government’s interests. See *Platinum Servs., Inc.; WIT Assocs., Inc.*, B-409288.3 *et al.*, Aug. 21, 2014, 2014 CPD ¶ 261 at 5-6 (denying protest that solicitation amendment improperly deleted corporate experience subfactor).

While Loyal Source claims that the amended criteria unreasonably diminished the importance of corporate experience, the protester fails to explain how the consolidated factor--which remains the most important evaluation factor--fails to adequately consider experience. A simple review of the revised evaluation criterion shows that, in asking vendors to provide their “operational approach” to performing the listed technical elements, these elements largely request the same experience information as was previously requested under the prior corporate experience factor. *Compare* AR, Tab 13, RFQ amend. A11 at 110-12 *with* AR, Tab 7, RFQ amend. A06 at 91.

For example, the initial RFQ had asked vendors, under factor 1 (corporate experience), to “[d]escribe your *experience providing staff in remote and/or austere environments*, such as the southwest United States border.” AR, Tab 7, RFQ amend. A06 at 91 (emphasis added). The revised RFQ similarly asks vendors, under factor 1 (technical approach, capabilities, and experience) to describe “[t]he team’s approach, capabilities and *experience* related to the supervision and provision of medical services in *austere areas, remote locations*, expansive and dispersed geographical areas, and highly dynamic operational environments, including surge operations with short turn-around times (48-72 hours).” AR, Tab 13, RFQ amend. A11 at 111 (emphasis added). Experience remains a central part of the revised technical approach, capabilities, and experience evaluation factor, which asks vendors to “provide examples of relevant experience of the quoter or their teaming partners/subcontractors that supports the proposed approach and capabilities.” *Id.* at 110.

³ In making this argument, the protester attempts to oversimplify the agency’s concerns by characterizing these issues as related to a simple “overlap” in vendor quotations. Comments at 3. This simplification, however, ignores the agency’s substantive concerns that the RFQ’s prior evaluation criteria had caused vendor confusion and difficulties in the evaluation of quotations under these separate evaluation factors. AR, Tab 15, CO Memorandum at 1; COS at 2.

The protester has not established--nor do we find--that the agency abused its discretion when it decided to consolidate the evaluation criteria. We find nothing objectionable with the agency's decision to amend its evaluation criteria to "better meet its needs; address concerns raised in the prior evaluation; and lead to stronger, more competitive quotes." MOL at 7. Loyal Source's protest amounts to little more than the protester's preference for the original RFQ evaluation factors, and its disagreement with the agency's rationale for amending them. Without more, we have no basis to sustain this allegation.⁴ *Systems Plus, Inc.*, B-413703.8, May 10, 2017, 2017 CPD ¶ 141 at 5 (denying challenge to the agency's corrective action amending the solicitation's terms where the agency had a reasonable basis for the changes).

Contractor Team Arrangements (CTAs)

Next, Loyal Source argues that the amended RFQ conflicts with CBP's stated scope of corrective action by allowing new vendors to submit quotations through the use of CTAs.⁵ Protest at 15-16. The protester claims that where two or more schedule contractors form a CTA, those contractors become the "prime" entities that are submitting the quotation. *Id.* at 16. Thus, in the protester's view, "[a]llowing offerors to submit revised quotes that utilize CTAs would potentially result in new offerors submitting quotes as part of the corrective action competition, which conflicts with the Agency's stated intention of only allowing the original offerors to submit quotes in

⁴ In a corollary argument, Loyal Source contends that the amended criteria unfairly *increased* the relative weight of the previous factor 2 (technical capabilities and approach) to be of equal importance to the previous factor 1 (corporate experience). Protest at 12. As discussed above, the agency determined that consolidating the evaluation factors "would better meet its needs by considering experience as it relates to the various technical elements and the quoter's proposed approaches and capabilities." COS at 3. Under this new consolidated factor, "vendors must now describe their technical approach to various elements and provide relevant examples of past experience for additional support and context." AR, Tab 15, CO Memorandum at 1. We likewise conclude that the agency has provided a reasonable explanation for how the consolidated evaluation factor better meets its needs since it "will allow for consideration of experience related to specific technical requirements of the solicitation." *Id.* at 2.

⁵ A CTA under General Services Administration (GSA) FSS contracts is a written agreement between two or more schedule contractors to work together to meet an agency's requirements and to maximize a vendor's competitiveness. *Softrams, LLC; Chags Health Info. Tech., LLC*, B-419927.4 *et al.*, Feb. 7, 2022, 2022 CPD ¶ 57 at 4 n.6. Ordering activities may, because of the existence of CTAs, procure a total solution rather than making separate buys for each part of a requirement. *Id.* Under GSA guidelines, the formation of a CTA between FSS vendors does not create a separate legal entity. *Id.*

response to the amended Solicitation.” *Id.* The agency responds that its amendment to the RFQ is intended to clarify CBP’s requirements regarding CTAs in order to better serve the agency’s needs, and is wholly in line with the notice of corrective action. MOL at 11-14; COS at 4-5. The agency contends that the protester is seeking to restrict competition “in a way that was not previously restricted and contrary to the agency’s interests.” MOL at 11. We agree.

Here, the initial RFQ did not specifically address CTAs, but it also did not prohibit their use. AR, Tab 7, RFQ amend. A06. As part of its corrective action, the agency revised the RFQ to explicitly address the requirement that vendors must hold SINs for all proposed labor categories, while also clarifying that vendors could use a CTA to satisfy this requirement. Specifically, the amended RFQ provides:

Except for Open Market Labor Categories, identified below, all labor categories proposed must fall under the vendor’s VA Schedule Contract 621 I, under an applicable Special Item Number (SIN). The vendor must identify the SINs for each labor category quoted, which must be tied to the Position Descriptions, Exhibit C. A vendor can propose a Contractor Team Arrangement (CTA) to meet this requirement. The CTA must be submitted with the quote.

AR, Tab 13, RFQ amend. A11 at 3. The agency explains that it “wanted to specifically address CTAs in the amended RFQ to avoid any uncertainty that existed during the first round of quotes and to require quoters to submit the CTAs for the agency review, if applicable, in accordance with GSA guidance.” COS at 4; MOL at 13.

Loyal Source, for its part, concedes that “offerors could have formed a CTA in submitting initial offers,” but the protester nevertheless objects to the amendment, arguing that the agency should not allow vendors to use new CTAs when submitting revised quotations. Comments at 6 n.2. Specifically, the protester seeks to limit the use of CTAs in quotation revisions to only “existing CTA offerors that submitted quotations in the initial competition.” *Id.* at 8.

An agency’s discretion when taking corrective action extends to the scope of quotation revisions. *NCS Techs., Inc.*, B-413500.2, Feb. 14, 2017, 2017 CPD ¶ 123 at 6. Moreover, where an agency amends a solicitation and permits vendors to revise their quotations in response, we have generally stated that vendors should be permitted to revise any aspect of their quotations—including those that were not the subject of the amendment—unless the agency offers evidence that the amendment could not reasonably have any effect on other aspects of quotations, or that allowing such revisions would have a detrimental impact on the competitive process. *Alliant Enter. JV, LLC*, B-410352.4, Feb. 25, 2015, 2015 CPD ¶ 82 at 4 n.10.

Here, the agency’s notice of corrective action reserved the right to “amend the solicitation based on agency needs,” and “seek revised quotes from offerors who submitted initial quotes.” AR, Tab 2, Notice of Corrective Action at 1. Consistent with

this notice, the agency limited distribution of the amended RFQ to only those vendors that had initially submitted quotations. Protest at 1 n.2 (acknowledging agency issued amended RFQ only to vendors “who responded to the initial CBP Solicitation with compliant offers.”). Further, after concluding there had been “uncertainty” amongst initial vendors regarding whether CTAs were permitted, the agency sought to clarify its requirements and reasonably permitted those same initial vendors to utilize CTAs in their revised quotations to enhance competition, and better meet the agency’s needs. COS at 4. The agency’s corrective action thus permitted existing vendors to submit revised quotations in response to amendments to the RFQ. As the agency points out, “[a]ll vendors had the same and equal opportunity to revise any aspect of their initial quotes, including proposing any teaming and subcontracting relationships it believed necessary to successfully execute its proposed technical approach to satisfying the agency’s requirement.” MOL at 12. The protester’s attempt to limit which vendors may submit revised quotations with regard to the use of CTAs is neither supported by the plain language of the agency’s notice of corrective action nor by any procurement law or regulation.⁶ As such, we find no merit to this argument, and the allegation is denied.

Finally, to the extent the protester advocates for a more restrictive reading of the agency’s corrective action in order to limit competition, we will not consider the argument. In negotiated procurements, agencies have broad discretion to take corrective action where they determine that such action is necessary to ensure fair and impartial competition. *Alaska Structures, Inc.*, B-402648.3, Aug. 10, 2010, 2010 CPD ¶ 190 at 3. The role of our Office in reviewing bid protests is to ensure that the statutory requirements for full and open competition are met, not to protect any interest a protester may have in more restrictive specifications. See *Al Baz 2000 Trading & Contracting Co., W.L.C.*, B-416622.2, Dec. 12, 2018, 2018 CPD ¶ 422 at 4. This Office generally does not permit a protester to advocate for more restrictive, rather than more open, competitions for government requirements. *Id.* We decline to do so here, and conclude that the amendment reasonably permitted all initial vendors to utilize CTAs in their revised quotations.

⁶ Loyal Source claims that the agency’s corrective action is “based on a legally erroneous understanding of how CTAs work,” citing to our decision in *Softrams, LLC; Chags Health Info. Tech., LLC, supra*. Comments at 7-8. In *Softrams*, the quotation that formed the basis of the selection decision was actually submitted by two different vendor configurations, Omni-Prime and Bana-Omni CTA. *Id.* at 7. We found that, in a two-phase evaluation process, it was improper for the agency to have relied on a phase one presentation made by the Bana-Omni CTA configuration in selecting the Omni-Prime configuration for award based on the phase two reevaluation, where the Bana-Omni CTA configuration had been eliminated from the competition during corrective action. *Id.* at 8. Here, by contrast, the competition is now a one-step process, and--in response to the amendments to the RFQ--CBP sought revised quotations from all vendors that had submitted initial quotations. AR, Tab 2, Notice of Corrective Action at 1. Thus, award would be made from only the submitted revised quotations. Loyal Source’s reliance on our decision in *Softrams* is misplaced, and its claim has no merit.

In our view, the amendment issued here as part of the announced corrective action was well within the broad discretion afforded to contracting agencies. *360 IT Integrated Solutions, supra* at 6. Loyal Source's protest fails to demonstrate that the agency was unreasonable in the exercise of that discretion.

The protest is denied.

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General Counsel