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Decision

Matter of: Castellano Cobra UTE- MACC LEY 18-1982

File: B-421146.2

Date: January 19, 2024

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DIGEST

Protest challenging the agency's evaluation of the protester's proposal is denied where the agency's evaluation was reasonable and consistent with the terms of the solicitation and where the agency did not have a duty to engage in clarifications.

DECISION

Castellano Cobra UTE MACC LEY 18-1982, of Rota, Spain, protests the issuance of a task order to Dragados Sociedad Anonima, of Madrid, Spain, under request for proposals (RFP) No. N62470-22-R-0001, issued by the Department of the Navy, Naval Facilities Engineering System Command, for construction services. Castellano contends that the agency unreasonably evaluated its proposal and that the agency should have engaged in clarifications with the protester.

We deny the protest.

BACKGROUND

The RFP, issued on September 16, 2022, pursuant the procedures of Federal Acquisition Regulation (FAR) subpart 16.5, sought proposals from holders of the agency's indefinite-delivery, indefinite-quantity (IDIQ), unrestricted multiple-award construction contract (MACC) for design-build construction projects primarily located at the naval station in Rota, Spain. Agency Report (AR), Exh. 1, IDIQ MACC at 2; AR, Exh. 5, Solicitation Email at 2. The project contemplated by the task order included

construction of an administrative building and a training building with offices, conference rooms, break rooms, and restrooms; construction of a joint mobility center with an air passenger terminal, transit personnel center, food services, and a playground; demolition of various site features and facilities; and renovation of administrative offices within an existing facility. AR, Exh. 2, RFP at 3.

The resulting firm-fixed-price task order was to be awarded “to the responsible offer[or] submitting the lowest reasonable total price.” RFP at 5. The solicitation required offerors to complete a pricing form, to include total prices for the following contract line item numbers (CLINs): 0001AA, 0001AB, 0001AC, 0001AD, 0001AE, 0001AF, 0001AG, 0001AH, 0001AI, 0001AJ, 0001AK, 0001AL, and CLINs 0002 through 0020.¹ *Id.*; AR, Exh. 3, RFP Attachments at 5-14. In addition to requiring total prices for each CLIN, offerors were directed to provide unit prices for the following CLINs: 0001AI, 0001AJ, 0001AK, 0001AL, and 0007 through 0014. AR, Exh. 3, RFP Attachments at 7-11. The solicitation advised that the agency would evaluate price based on the total price for all CLINs. RFP at 7. As relevant here, an RFP attachment labeled “supplementary instructions to offerors” warned that “[i]f there is a difference between a unit price and the extended total, the unit price will be held to be the intended bid and the total recomputed accordingly.” AR, Exh. 3, RFP Attachments at 14.

As also relevant here, the IDIQ base contract included FAR clause 52.225-14, which states that “[i]n the event of inconsistency between any terms of this contract and any translation into another language, the English language meaning shall control.” AR, Exh. 1, IDIQ MACC at 108. The RFP advised that the “[c]lauses incorporated in [the] [b]ase [c]ontract apply to this solicitation.”² RFP at 3.

The solicitation also advised offerors that the agency “intends to evaluate proposals and award a contract without discussions with offerors (except clarifications as described in FAR 15.306(a)).” RFP at 7. As relevant here, FAR section 15.306(a)(2) states that “[i]f award will be made without conducting discussions, offerors *may* be given the opportunity to clarify certain aspects of proposals.” FAR 15.306(a)(2) (emphasis added).

The agency received timely proposals from four IDIQ MACC holders, including Castellano and Dragados. Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 4. Evaluators documented pricing discrepancies in Castellano’s proposal for CLINs 0001AI and 0001AJ, finding that the total price for each of these

¹ Offerors were directed to combine prices for twelve CLINs, numbered 0001AA through 0001AL, to create the total price for CLIN 0001. Exh. 3, RFP Attachments at 5-8.

² The RFP also informed offerors that “[a]ward will be made in U.S. dollars” and directed offerors to submit pricing for each CLIN in dollars. RFP at 3; AR, Exh. 3, RFP Attachments at 5-14.

CLINs conflicted with the listed unit prices.³ *Id.* Consequently, evaluators recalculated the total price for these two CLINs in accordance with the RFP supplementary instructions to offerors, resulting in a total offered price for Castellano of \$2,522,218,536, “which was the highest offered price” out of all four proposals. *Id.* The agency determined that Dragados submitted the lowest-priced responsive offer, at a total price of \$81,208,499, and issued the task order to Dragados. AR, Exh. 7, Business Clearance Memorandum at 3; COS/MOL at 4. On October 20, 2023, following an October 4 debriefing that concluded on October 16, Castellano timely filed this protest with our Office.⁴

DISCUSSION

Castellano contends, first, that the agency unreasonably relied on the CLIN unit prices instead of the total prices Castellano listed for CLINs 0001AI and 0001AJ. Protest at 17. Specifically, Castellano states that its price technician first calculated the total price for each CLIN, and then calculated the unit prices for each CLIN based on the number of units. *Id.* at 19. The protester explains that its price technician saw the number of units for CLINs 0001AI and 0001AJ -- 5,588 and 3,475, respectively -- and read those numbers as 5.588 and 3.475, per Spanish numbering convention, resulting in the two pricing discrepancies the agency discovered. *Id.* Consequently, the protester argues that evaluators should not have adjusted the total price for CLINs 0001AI and 0001AJ, contending that the agency’s adjustment was inconsistent with the terms of the solicitation “because the provision in the [p]ricing [f]orm upon which the [a]gency relies is meant to address bad math while what is going on here is a cultural difference in mathematical expression that resulted in an apparent error that is so absurd it is obviously a mistake.”⁵ *Id.* at 17 (citing AR, Exh. 3, RFP Attachments at 14).

Alternatively, Castellano asserts that even if it was reasonable for the agency to use unit prices, the agency “had an obligation to engage in clarifications regarding what [it] believed to be Castellano Cobra’s \$2.5 billion price, which was seriously out of line with any other prices that could have been proposed.” Protest at 21. The protester contends that it is “an experienced, high-quality construction contractor, well familiar with the Rota site,” and given this contextual experience, the agency’s price calculation “is patently absurd.” *Id.* at 23. Ultimately, Castellano argues that the agency had a duty “to properly construe Castellano Cobra’s proposed price or to exercise its discretion to conduct clarifications,” particularly given the protester’s assertion that “there was no

³ For example, Castellano listed the unit price for CLIN 0001AI as \$256,319.32, the number of units as 5,588, and the total price as \$1,432,312.36. AR, Exh. 6, Protester’s Proposal at 7. However, the unit price multiplied by the number of units for CLIN 0001AI produces a total price of \$1,432,312,360.16. See COS/MOL at 4.

⁴ Because the value of the protested task order exceeds \$25 million, this protest is within our jurisdiction to hear protests of task orders placed under defense agency IDIQ contracts. 10 U.S.C. § 3406(f)(1)(B).

difference between the [u]nit [p]rices and the extended total when the European practice of commas is factored.” Comments at 8-9.

The agency responds that the specific terms of the solicitation required the evaluators to consider the unit prices to be the intended prices, given the inconsistency between Castellano’s unit prices and total prices for CLINs 0001AI and 0001AJ. COS/MOL at 6. The agency observes, accurately, that the solicitation cautioned offerors “[i]f there is a difference between a unit price and the extended total, the unit price will be held to be the intended bid and the total recomputed accordingly.” *Id.* (quoting AR, Exh. 3, RFP Attachment at 14). Further, the agency contends that the FAR provisions incorporated into the solicitation required Castellano to submit its offer in the English language, not according to Spanish numbering conventions. COS/MOL at 6-7. Finally, the agency argues that it was not required to engage in clarifications because the agency had the sole discretion to decide whether to enter into clarifications, as evidenced by the use of “may” in FAR 15.306(a)(2). *Id.* at 9. The agency adds that Castellano had the responsibility to submit an adequately written proposal, and in failing to do so, ran the risk of having its proposal rejected as unacceptable. *Id.* at 8.

In reviewing a protest against the propriety of an evaluation, it is not our role to independently evaluate proposals and substitute our judgment for that of the contracting activity. *ABBA Construction, Inc.*, B-408630.2, Oct. 30, 2014, 2014 CPD ¶ 315 at 4. Rather, we will review an evaluation to ensure that it was reasonable and consistent with the evaluation criteria in the solicitation and applicable procurement statutes and regulations; a protester’s disagreement with the evaluation does not show it lacked a reasonable basis. *Id.* Further, it is an offeror’s responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. *Mike Kesler Enters.*, B-401633, Oct. 23, 2009, 2009 CPD ¶ 205 at 2-3. Finally, agencies have broad discretion as to whether to seek clarifications from offerors, and offerors have no automatic right to clarifications regarding proposals. *Valkyrie Enterprises, LLC*, B-414516, June 30, 2017, 2017 CPD ¶ 212 at 5. Clarifications cannot be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, or otherwise revise the proposal. *Alltech Eng’g Corp.*, B-414002.2, Feb. 6, 2017, 2017 CPD ¶ 49 at 6.

We find that the agency reasonably evaluated Castellano’s proposal. The base IDIQ MACC specifically incorporated a FAR clause warning offerors that “the English language meaning shall control” in the event of inconsistency “between any terms of this contract and any translation into another language.” AR, Exh. 1, IDIQ MACC at 108 (citing FAR clause 52.225-14). The RFP also made clear that these FAR clauses applied to the task order at issue, advising offerors that the “[c]lauses incorporated in [the] [b]ase [c]ontract apply to this solicitation.” RFP at 3. Moreover, offerors were specifically on notice that “[i]f there is a difference between a unit price and the extended total, the unit price will be held to be the intended bid and the total recomputed accordingly.” AR, Exh. 3, RFP Attachment at 14. In other words, the plain language of the solicitation supports and even compelled the agency’s decision to

resolve the pricing discrepancy in Castellano's proposal for CLINs 0001AI and 0001AJ by using the unit prices to recompute the extended total price. See COS/MOL at 6-7. We do not find convincing--or relevant--the protester's argument that "there was no difference between the [u]nit [p]rices and the extended total *when the European practice of commas is factored*." Comments at 8-9 (emphasis added). Despite the protester's arguments to the contrary, the "European practice of commas" was never meant to be "factored" into evaluations, as evidenced by the multiple FAR provisions and RFP statements advising offerors that the English language meaning was controlling. AR, Exh. 1, IDIQ MACC at 108; RFP at 3; AR, Exh. 3, RFP Attachment at 14.

Moreover, on this record, the agency's assertion that it has broad discretion regarding the decision to seek or not to seek clarifications is correct. As previously noted, the FAR states that "[i]f award will be made without conducting discussions, offerors *may* be given the opportunity to clarify certain aspects of proposals." FAR 15.306(a)(2) (emphasis added). In other words, the agency was not required to clarify price discrepancies for the two CLINs at issue with Castellano. See *Valkyrie Enterprises, LLC, supra*.

It was Castellano's responsibility to submit a well-written, adequately detailed proposal that clearly demonstrates compliance with the solicitation; and Castellano's failure to properly write unit prices for two CLINs according to the English language conventions mandated by the solicitation demonstrates Castellano's neglect of that responsibility. We do not agree that the protester can shift this burden to the agency by suggesting that the Navy had a duty "to properly construe Castellano Cobra's proposed price or to exercise its discretion to conduct clarifications." Comments at 8-9. The agency had no such duty and was not required to exercise its discretion to conduct clarifications with Castellano to remedy its self-admitted errors. In sum, we find no basis to question the agency's evaluation of Castellano's proposal, and the protester's allegations to the contrary reflect Castellano's disagreement with the agency's judgment, which does not provide us with a basis to sustain the protest. See *ABBA Construction, Inc., supra*.

The protest is denied.

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General Counsel