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Decision

Matter of: VariQ Corporation
File: B-407193
Date: November 27, 2012

Scott M. McCaleb, Esq., Jon W. Burd, Esq., and Benjamin J. Kohr, Esq., Wiley Rein LLP, for the protester.

Edmund M. Amorosi, Esq., Jonathan D. Shaffer, Esq., Armani Vadiiee, Esq., and Rhina M. Cardenal, Esq., Smith Pachter McWhorter PLC, for Federal Working Group, an intervenor.

William J. Erle, Esq., Department of the Treasury, for the agency.

Charles W. Morrow, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of the protester's quotation as technically unacceptable is denied where the quotation failed to meet a material solicitation requirement and was reasonably rejected as unacceptable.

DECISION

VariQ Corporation, of Washington, DC, protests the establishment of a blanket purchase agreement (BPA) with Federal Working Group (FWG), of Falls Church, Virginia, under request for quotations (RFQ) No. CC12HQQ0008, issued by the Department of the Treasury, Office of the Comptroller of the Currency (OCC), for data center professional services (DCPS). VariQ challenges the OCC's conclusion that its quotation was unacceptable and ineligible for award consideration.

We deny the protest.

BACKGROUND

The OCC issued the RFQ on March 23, 2012, as a total small business set aside. The solicitation sought quotations and anticipated establishing a BPA with a vendor under General Services Administration Federal Supply Schedule (FSS) No. 70, to provide information and technology (IT) services to support the OCC's

data centers. The acquisition was conducted under Federal Acquisition Regulation (FAR) subpart 8.4. The contractor was required to provide all labor, services and materials for IT support services and to assist in engineering, operating, supporting, maintaining, and transforming the OCC’s data centers and technical infrastructure services. See RFQ at 13. The RFQ contemplated the issuance of a fixed price/labor hour BPA for five years, with a 2-month transition period.

The RFQ provided for award on a best-value basis considering the following seven evaluation factors listed in descending order of importance: (1) technical approach; (2) key personnel and management approach; (3) task order proposal (for the DCPS transition); (4) quality control plan; (5) socio-economic status; (6) past performance; and (7) price. RFQ at 89-91. For purposes of award, the non-price factors were “significantly more important than price.” RFQ at 88.

The RFQ provided for the evaluation of quotations under all factors, with the exception of price, using five qualitative ratings: excellent, good, acceptable, marginal, unacceptable, and neutral if the vendor had no available past performance. Id. at 92-93. As relevant here, a quotation would be found unacceptable if it did not meet one or more of the solicitation’s requirements. Id.

The RFQ included a separate transition statement of work (SOW) which set forth the OCC’s requirement to ensure a seamless transition of the DCPS contract. Transition SOW at 1. As relevant here, the transition SOW stated that the “Contractor Program Manager and the Technical Leads for each core service shall be considered Key Personnel,” and that “all key personnel shall also be 100% dedicated, exclusive, and onsite to support this contract.” Id. at 13. With regard to the transition period (August 1, 2012--September 30, 2012), the RFQ explained that the overarching objective was to provide a low risk and low impact transition as the contractor assumed responsibilities from the incumbent contractors. Id. at 2.

Nine vendors, including VariQ and FWG, responded to the RFQ by the May 14 closing date. A four-member technical evaluation panel (TEP) evaluated the quotations against the evaluation factors. The results for the protester and awardee were as follows:

	VARIQ	FWG
Technical Approach	Marginal	Good
Key Personnel and Management Approach	Marginal	Good
Task Order	Unacceptable	Good
Quality Control Plan	Marginal	Good
Socio-Economic Status	Excellent	Good
Past Performance	Marginal	Neutral
OVERALL	UNACCEPTABLE	GOOD

PRICE	\$16,639,355	\$23,031,176
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See Agency Report (AR), Tab 11, TEP Report at 1.

With regard to VariQ, the agency found that the protester's quotation was unacceptable under the task order evaluation factor because it did not comply with the SOW's key personnel requirements. See AR, Tab 11, TEP Report at 30. Specifically, the TEP found that the protester did not propose to provide its technical leads "on Day 1 of the transitional period," and therefore merited a deficiency. Id. Based on this deficiency, the agency rated the protester's quotation as unacceptable under the task order factor and unacceptable overall, and eliminated the quotation from further award consideration. Id. at 1, 29; Tab 9, Selection Decision, at 4.

OCC limited discussions to two vendors, FWG, and a second vendor. AR, Tab 9, Selection Decision, at 9-10. As a result of these discussions, OCC eliminated the second vendor from further discussions. Id. at 10. OCC made award to FWG on August 1. The agency provided a debriefing to VariQ on August 13, and this protest followed.

DISCUSSION

VariQ argues that OCC unreasonably found its quotation unacceptable under the task order factor, and thus unacceptable overall, based on the agency's finding that the protester did not provide all key personnel on day 1 of the transition period. The protester also challenges the evaluation of its quotation under other evaluation factors. For the reasons discussed below, we find that OCC reasonably found VariQ's quotation unacceptable, and that there is no basis to sustain the protest.

In reviewing an agency's evaluation in a competitive FSS acquisition, we will not reevaluate quotations, but will examine the record to ensure that the agency's evaluation was reasonable and consistent with the terms of the solicitation. Beckman Coulter, Inc., B-405452, Nov. 4, 2011, 2011 CPD ¶ 231 at 5. It is a vendor's burden to submit an adequately written quotation, and the vendor's mere disagreement with an unfavorable rating of a poorly written quotation does not establish that the evaluation was unreasonable. See CMI Mgmt., Inc., B-404645, Mar. 2, 2011, 2011 CPD ¶ 66 at 4-5.

VariQ first argues that the RFQ did not have a requirement for key personnel to be provided on "day 1" of the transition period. The transition task order SOW stated that all technical leads are considered key personnel, and that "all key personnel shall also be 100% dedicated, exclusive, and onsite to support this contract." Task Order SOW at 13. Furthermore, the task order SOW stated that the period of performance for the transition is August 1 through September 30, 2012. Id. at 15.

On this record, we find that OCC's interpretation of the RFQ as requiring all technical leads to be provided on "day 1" of the transition period was reasonable.

Next, VariQ argues that, even if OCC reasonably applied a "day 1" requirement to vendors' quotations, its quotation met the requirement. The protester notes that it proposed the two incumbent contractors, CACI and Jorge Scientific Corporation, as members of its team. AR, Tab 5, VariQ Quotation, at ES-2. The protester's proposed key personnel technical leads were two CACI employees and two Jorge Scientific employees. Id. at ES-4-5. Because the RFQ stated that the incumbent contractors would perform the DCPS requirements during the transition period, the protester argues that the agency should have understood that the four technical leads were, in effect, available as of day 1 of the transition period.

VariQ's quotation plainly states, however, that the technical leads would not begin work on August 1, the first day of the transition period. Instead, the quotation stated as follows: "Starting September 1, 2012, our incumbent Technical Leads will begin participating in planning activities in conjunction with the Transition Team." AR, Tab 5, VariQ Quotation, at 3-2. Additionally, the protester's quotation stated that "[o]ur Transition Team includes four technical Leads that will begin working with the Transition Team 30 days after award." Id. at 3-3. Finally, a chart detailing the "Operational Responsibility and Staffing Levels" shows that while the Transition Team and Program Management staffing begin in August 2012, the Technical Lead staffing does not begin until September 2012. Id. at 3-6.

We think the OCC reasonably found this approach to be unacceptable in light of the plain language of VariQ's quotation. On this record, we find reasonable OCC's evaluation of the quotation as technically unacceptable under the Task Order factor, and technically unacceptable overall.

In addition to its challenge to its unacceptable rating, VariQ raises numerous challenges to OCC's assignment of other weaknesses and deficiencies to its quotation under the other evaluation factors. The protester also argues that the agency failed to consider its price prior to eliminating its quotation from award consideration. Because, as discussed above, we conclude that OCC reasonably found VariQ's quotation unacceptable, we do not address the other issues. In this regard, VariQ is not an interested party to raise the other evaluation issues because its quotation was reasonably rejected as unacceptable. See Allied Tech. Group, Inc., B-402135, B-402135.2, Jan. 21, 2010, 2010 CPD ¶ 152 at 11-12. Furthermore, an agency need not consider an offeror's or vendor's price when establishing a competitive range and conducting discussions with other offerors or vendors, or in making its source selection, where, as here, the quotation is

unacceptable. See TMC Design Corp., B-296194.3, Aug. 10, 2005, 2005 CPD ¶ 158 at 4.

The protest is denied.

Lynn H. Gibson
General Counsel