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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Alliant Enterprise JV, LLC

File: B-410352.4

Date: February 25, 2015

Alexander J. Brittin, Esq., Brittin Law Group, PLLC, and Jonathan D. Shaffer, Esq., and Mary Pat Buckenmeyer, Esq., Smith Pachter McWhorter PLC, for the protester. Andrew Bramnick, Esq., Department of Defense, Washington Headquarters Services, for the agency. Louis A. Chiarella, Esq., and Nora K. Adkins, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's corrective action, which includes the clarification of existing price quotations, is denied where the agency reasonably concluded that ambiguities identified as a result of protester's initial protest are susceptible to correction through the submission of clarifications.

DECISION

Alliant Enterprise JV, LLC (AEJV), protests the corrective action being taken by the Department of Defense, Washington Headquarters Services (WHS), under request for quotations (RFQ) No. 874576 for information technology (IT) support services for the Defense Acquisition University. AEJV maintains that the agency's corrective action is improper.

We deny the protest.

The RFQ contemplated the issuance of a hybrid fixed-price/labor-hour task order for a base year with four 1-year options against the successful vendor's General Services Administration Alliant small business government-wide acquisition contract (GWAC).¹ The solicitation established three evaluation criteria--technical approach,

¹ The Alliant GWAC is a multiple-award indefinite-delivery, indefinite-quantity (ID/IQ) contract for various IT services. The estimated value of the task order at issue is in excess of \$10 million. Accordingly, this procurement is within our jurisdiction to

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past performance, and price--and stated that task order award was to be made on a best value basis. The agency received and evaluated quotations from five vendors, including AEJV and SBD Alliant Joint Venture, and ultimately selected the quotation submitted by SBD for task order award.²

AEJV filed a protest with our Office challenging the propriety of the award to SBD. AEJV argued that the agency's evaluation of vendors' quotations under the technical, past performance, and price factors, and the resulting award decision, were improper. In response to that protest the agency advised our Office that it intended to take corrective action by reevaluating vendors' existing quotations³ (or alternatively by amending the solicitation and seeking revised quotations), and making a new source selection decision. WHS Email to GAO, Nov. 20, 2014. Based on the agency's proposed corrective action, we dismissed AEJV's protest as academic. Alliant Enter. JV, LLC, B-410352, B-410352.2, Nov. 21, 2014.

WHS thereafter informed vendors that, as part of its corrective action, the agency was seeking clarification of vendors' prices as follows:

The government has decided to re-evaluate proposals and make a new award. To facilitate the re-evaluation, the Government requests that each offeror submit additional narrative information not exceeding 10 total single-spaced pages, . . . explaining how and why its proposed price (including the not-to-exceed amounts), labor hours and labor categories/mix for each task/[contract line item number] and for the base year and each option year satisfies and is consistent with the solicitation/[performance work statement] requirements.⁴

RFQ Amend. 5 (emphasis omitted).

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hear protests related to the issuance of task orders under multiple-award ID/IQ contracts. 10 U.S.C. § 2304c(e).

² For purposes of consistency we refer to the solicitation as an RFQ, the responding firms as vendors, and the responses to the solicitation as quotations.

³ The agency also stated that its reevaluation may include seeking additional information from vendors and reevaluating the quotations with the additional information. WHS Email to GAO, Nov. 20, 2014.

⁴ The agency stated that, given the variance in vendors' pricing approaches, it decided to seek additional information to help determine whether vendors' prices were consistent with the PWS requirements. Agency Dismissal Request, Jan. 7, 2015, at 3-4. The solicitation amendment also stated that the agency would not permit or consider any other revisions to vendors' quotations. RFQ Amend. 5.

In response, AEJV filed this protest objecting to the scope of the agency's corrective action. As detailed below, we find no merit in any of the protester's assertions.

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. The Matthews Group, Inc. t/a TMG Constr. Corp., B-408003.2, B-408004.2, June 17, 2013, 2013 CPD ¶ 148 at 5; Domain Name Alliance Registry, B-310803.2, Aug. 18, 2008, 2008 CPD ¶ 168 at 7. As a general matter, the details of a corrective action are within the sound discretion and judgment of the contracting agency. Rockwell Elec. Commerce Corp., B-286201.6, Aug. 30, 2001, 2001 CPD ¶ 162 at 4. We generally will not object to the specific corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. Networks Elec. Corp., B-290666.3, Sept. 30, 2002, 2002 CPD ¶ 173 at 3. Where an agency has reasonable concerns that there were errors in the procurement, corrective action may appropriately include seeking clarifications of existing quotations before reevaluating. See Hughes Network Sys., LLC, B-409666.3, B-409666.4, Aug. 11, 2014, 2014 CPD ¶ 237 at 3.

In our view, the corrective action taken here is well within the broad discretion afforded to contracting agencies.⁵ Because it was not clear to WHS (in light of the quotations received) whether each vendor's prices were consistent with the PWS requirements, the agency had a reasonable basis to seek clarifications. To ensure a fair competition, all vendors were provided with the opportunity to clarify their price quotations by means of a solicitation amendment.⁶ AEJV argues that the corrective action only benefits SBD because the protester submitted a higher price, and therefore cannot improve its competitive position. See Protest at 6-13. We disagree because all offerors, including the protester, have the opportunity to clarify the appropriateness of their quoted prices.

AEJV alleges that the corrective action is unreasonable because it fails to address any of AEJV's original protest issues. Protest at 6-8. AEJV essentially argues that because its allegations regarding the agency's evaluation are (self-proclaimed) meritorious ones, and because the agency's corrective action does not remedy these errors, the corrective action is thereby deficient.⁷ Unlike the decisions cited by the protester, however, our Office has not previously concluded that any of the

⁵ Although we did not request a report from WHS, we found the agency's dismissal request and protester's response thereto sufficient to brief the issues here.

⁶ It appears the agency could have also engaged in clarifications with vendors without having amended the solicitation. See Federal Acquisition Regulation (FAR) § 15.306(a).

⁷ Our Office did not issue a decision in AEJV's initial protest, nor otherwise render an opinion regarding the merits of any of the issues raised.

issues raised by AEJV were meritorious. Quite simply, an agency's corrective action is reasonable if it is appropriate to remedy the flaw which the agency believes exists in its procurement process. Louisiana Clearwater, Inc.--Recon. & Costs, B-283081.4, B-283081.5, Apr. 14, 2000, 2000 CPD ¶ 209 at 5 n.2; Aquidneck Sys. Int'l, Inc., B-257170.2, Sept. 30, 1999, 94-2 CPD ¶ 122 at 4-5.

AEJV also contends that the clarification asks for information that was already required by the RFQ to be submitted. Protest at 8-9. As such, AEJV argues, it is not new or "additional information" as stated in the agency's corrective action notice.⁸ Although AEJV complains that SBD is being given "a second bite at same apple" to provide information previously required by the RFQ, Protest at 9, the protester has not shown that the solicitation precluded the agency from seeking clarifications from vendors as part of corrective action or otherwise.⁹ Moreover, we find no merit to the protester's assertion that the agency's action is somehow improper even if it was inconsistent with the corrective action notice.

AEJV also alleges the scope of the corrective action is improper because it does not permit vendors to revise their quotations.¹⁰ Protest at 9-11. An agency's broad discretion when taking corrective action extends to the scope of any quotation revisions, and there are circumstances where an agency reasonably may decide to limit the revisions vendors may make to their proposals. See, e.g., Domain Name Alliance Registry, supra; Computer Assocs. Int'l, Inc., B-292077.2, Sept. 4, 2003,

⁸ WHS disputes the protester's assertion that the information sought by Amendment 5 was previously required by the solicitation. Agency Dismissal Request, Jan. 7, 2015, at 4.

⁹ AEJV's argument here is related to one raised in its original protest--that the agency should simply find SBD's price excessively low and ineligible for award. See Protest, Oct. 20, 2014, at 16-18. While an agency is not required to conduct clarifications with vendors, we find that neither is it precluded from doing so. See FAR § 15.306(a). Because WHS is conducting a new evaluation following clarifications, and because the record here does not include the results of any reevaluation, it is premature for AEJV to raise objections to the agency's evaluation results in this protest.

¹⁰ Where an agency amends a solicitation and permits vendors to revise their proposals in response, we have generally held that vendors should be permitted to revise any aspect of their proposals, 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 proposals, or that allowing such revisions would have a detrimental impact on the competitive process. See Lockheed Martin Sys. Integration-Owego; Sikorsky Aircraft Co., B-299145.5, B-299145.6, Aug. 30, 2007, 2007 CPD ¶ 155 at 5; Cooperativa Muratori Riuniti, B-294980.5, July 27, 2005, 2005 CPD ¶ 144 at 7.

2003 CPD ¶ 157 at 4. We also find the cases cited by AEJV, see footnote 10, supra, to be inapposite; here, the agency neither amended the PWS requirements or evaluation methodology.¹¹

AEJV also alleges that the RFQ amendment constitutes “de facto” discussions with SBD only. Protest at 11-13. Discussions occur when an agency communicates with a vendor for the purpose of obtaining information essential to determine the acceptability of a proposal, or provides the vendor with an opportunity to revise or modify its proposal in some material respect. Highmark Medicare Servs., Inc. et al., B-401062.5 et al., Oct. 29, 2010, 2010 CPD ¶ 285 at 11; see FAR § 15.306(d). In situations where there is a dispute regarding whether an exchange between an agency and a vendor constituted discussions, the acid test is whether a vendor has been afforded an opportunity to revise or modify its proposal. Archer W. Fed. JV, B-410168.2, B-410168.3, Nov. 12, 2014, 2014 CPD ¶ 351 at 6. Here, we find no merit in AEJV’s assertion that the agency’s exchanges with vendors are limited to SBD.¹²

Lastly, AEJV alleges that the RFQ amendment introduces a patent ambiguity into the solicitation. Protest at 13-14. The protester contends that Amendment 5 “can only be interpreted as evidence that the agency now wants vendors to submit lower prices,” while the RFQ did not indicate or suggest same to vendors. Id. at 13. We find the protester’s argument nonsensical, as the amendment requests only that vendors explain whether previously-quoted prices are consistent with the PWS requirements. Moreover, we find no merit in AEJV’s argument that the amendment introduces an ambiguity into the RFQ. An ambiguity exists if a solicitation term is susceptible to more than one reasonable interpretation that is consistent with the solicitation, when read as a whole, Poly-Pacific Techs., Inc., B-293925.3, May 16, 2005, 2005 CPD ¶ 100 at 3, and AEJV’s interpretation of Amendment 5 is not a reasonable one.

The protest is denied.

Susan A. Poling
General Counsel

¹¹ In fact, even the protester acknowledges that Amendment 5 does not contain any new or substantive changes to the RFQ. Protest at 9.

¹² If AEJV believes that the agency improperly held discussions with only SBD, it can bring this challenge after task order award.