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Decision

Matter of: Wilson 5 Service Company, Inc.

File: B-412861; B-412861.2

Date: May 27, 2016

James S. DelSordo, Esq., Argus Legal, PLLC, for the protester.
Mark R. Thomas, Esq., and Angeline R. Burke, Esq., Reid Law PC, for Water Treatment Services Inc., the intervenor.
Aleia Barlow, Esq., Department of Veterans Affairs, for the agency.
Nora K. Adkins, Esq., Louis A. Chiarella, Esq., and Noah B. Bleicher, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Challenge to the agency's evaluation of the protester's quotation is denied where the protester's failure to meet one of the solicitation requirements was based on the protester's unreasonable interpretation of the solicitation.

DECISION

Wilson 5 Service Company, Inc., a service-disabled veteran-owned small business (SDVOSB), of Kittery, Maine, protests its exclusion from the competitive range pursuant to request for quotations (RFQ) No. VA119A-16-Q-0007, which was issued by the Department of Veterans Affairs (VA) for facility maintenance support operations at the VA's Capitol Region Readiness Center (CRRC) in Martinsburg, West Virginia. The protester challenges the agency's evaluation of its quotation.

We deny the protest.

The CRRC is a federally-owned office of information technology facility that serves a mission-critical role in the VA National Data Center network. The facility is approximately 66,300 gross square feet in size and includes office space, mechanical and engineering space, and a 9,300 square foot data floor. RFQ, Performance Work Statement (PWS), at 15. The CRRC operates on a 24-hour per day, 7-day per week, 365-days per year (24/7/365) basis. Id.

On October 16, 2015, the VA issued the solicitation as a SDVOSB set-aside pursuant to the commercial item and simplified acquisition procedures of Federal

Acquisition Regulation (FAR) subparts 12.6 and 13.5. RFQ at 2; Contracting Officer Statement at 1. The RFQ contemplated the award of a fixed-price contract for a 1-year base period and four 1-year options. Id. at 2, 15. Vendors were informed that the contract would be awarded on a best-value basis based on the following evaluation factors: technical approach, past performance, and price. Id. at 49. Non-price factors, when combined, were significantly more important than price. Id.

The RFQ provided that the agency's evaluation of a vendor's technical quotation would assess various aspects of the vendor's technical approach including: understanding of the features involved in solving the problems and meeting the requirements of the PWS; feasibility of approach; completeness; key personnel; and staffing strategy. Id. at 49-50. As relevant here, the RFQ provided that a vendor's staffing strategy would be evaluated to determine, among other things, whether the strategy adequately implements the vendor's proposed technical approach. Id. at 50.

The agency issued numerous amendments to the solicitation. Amendments two through five extended the due date for quotations and notified vendors that the VA intended to respond to vendor questions in a future amendment. On December 21, the VA issued amendment six, which revised the PWS and extended the due date for quotations. RFQ amend. 6, 1-87. As relevant here, the revised PWS included a new requirement to "determine the appropriate onsite staffing levels to support a 24/7/365 operation." RFQ amend. 6, PWS, at 22. Also relevant, the amendment provided responses to vendor questions, as follows:

004: Does the contractor have to provide on-site staffing during any particular times of the day and/or week (i.e. 6:00am to 6:00pm, Monday through Friday, excluding Federal holidays)?

ANS. [answer]: The vendor will provide 24/7/365 coverage for this contract.

043: What support staff are part of the Building Engineer Team?

ANS.: There are currently three experienced plant operators (contractors) on first shift.

045: Is it not a requirement for staff to work on-site to provide the 24/7/365 support?

ANS.: It is a requirement for staff to work onsite in support of the CRRC 24/7/365. See PWS for details.

RFQ amend. 6, at 4, 7.

On January 7, 2016, the agency received three quotations, including a quotation from the protester. The agency's evaluation of Wilson 5's quotation determined that the quotation was unsatisfactory under the technical approach factor. In this regard, the agency noted that the protester's technical approach narrative provided an "organizational chart of man-hours with additional workers onsite Monday through Friday between the hours of 0700 and 1700," but the narrative contained "no references to off-hours onsite support." AR, Tab 16, Technical Evaluation Worksheet, at 4. The evaluators found that the protester's "lack of off-hours onsite support represents a material failure to meet the Government's requirement" Id. As a result, the quotation was rated unacceptable and Wilson 5 was excluded from the competitive range. Id.

The protester received notice of its exclusion on March 10. AR, Tab 17, Exclusion Notice, at 1. Wilson 5 received a debriefing on March 11, this protest followed.

DISCUSSION

Wilson 5 challenges the agency's evaluation of its technical approach and the VA's decision to exclude its quotation from the competitive range. Wilson 5 alleges that the VA misinterpreted the solicitation's staffing requirement and failed to evaluate quotations in accordance the terms of the solicitation. The protester contends that the RFQ did not contain a 24/7/365 onsite staffing requirement, and thus, its quotation fully met the solicitation requirements.¹

As noted above, the VA conducted this procurement using simplified acquisition procedures for commercial items. Contracting Officer Statement at 1. When using these procedures, an agency must conduct the procurement consistent with a concern for fair and equitable competition and must evaluate quotations in accordance with the terms of the solicitation. Emergency Vehicle Installations Corp., B-408682, Nov. 27, 2013, 2013 CPD ¶ 273 at 4. In reviewing protests of an allegedly improper simplified acquisition evaluation, our Office examines the record to determine whether the agency met this standard and executed its discretion reasonably. DOER Marine, B-295087, Dec. 21, 2004, 2004 CPD ¶ 252 at 3. A protester's disagreement with an agency's evaluation is not sufficient to sustain the protest. WKG and Assocs., LLC, B-409835, Aug. 26, 2014, 2014 CPD ¶ 250 at 4.

The solicitation required a contractor to have on duty, to perform the work required under the contract, sufficient resources and skills of personnel. Id. at 22. Vendors

¹ The protester filed a supplement protest alleging that the agency used unstated evaluation criteria because it did not disclose its adjectival rating scheme to vendors. Wilson 5 withdrew this challenge in its supplemental comments citing our decision in URS Fed. Tech. Servs., Inc., B-405922.2, B-405922.3, May 9, 2012, 2012 CPD ¶ 155 at n.17. Wilson 5 Email to GAO (Apr. 27, 2016) at 1.

were required to provide a staffing strategy that identified the staffing plan needed to effectively produce and manage the deliverables required by the contract and support its proposed technical approach. RFQ amend. 6, at 71. The RFQ advised that it was the responsibility of the vendor to determine the appropriate onsite staffing levels to support a 24/7/365 operation, and the agency explained this requirement in multiple answers to vendor questions, including, “[i]t is a requirement for staff to work onsite in support of the CRRC 24/7/365.” Id. at 7.

In its quotation, Wilson 5 noted that the CRRC facility is “unique in that it has a mission critical role in the VA’s national data network . . . [,] operates on a 24-7-365 basis[,] and needs to maintain a readiness status at all times.” AR, Tab 13, Wilson 5 Technical Quotation, at I-1. Wilson 5’s staffing charts represented that onsite staff would be available, dependent on the position, between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday. Id. at I-10. The quotation also detailed that the protester would provide a professional, responsive onsite maintenance team who would be fully qualified to fulfill the purposes of the contract. Id. at I-1. In this regard, the quotation provided that the protester’s “personnel will perform scheduled and unscheduled maintenance and repairs, as required, on a 24 hour a day, 7 days a week, 365 days a year basis, to include call back services to mitigate emergency situations.” Id. at I-2. In addition, the protester’s onsite project manager’s resume stated that he will be “on call 24 hours a day, 7 days per week, 365 days per year, by cell phone, for any normal and after-hours emergency situations.” Id. at I-13.

Wilson 5 acknowledges that its quotation did not provide for 24/7/365 onsite support. The protester argues, however, that the VA’s evaluation and decision to exclude the protester’s quotation from the competitive range were unreasonable because the agency misinterpreted the requirement. In this regard, Wilson 5 argues that vendors were not required to provide for onsite off-hours staffing. In support of its interpretation, the protester notes that it is standard industry practice for a contractor to provide 24/7/365 coverage by calling back personnel to the facility for an emergency. Wilson 5 also argues that the agency’s answer to question No. 43, regarding the building engineer team, contradicts the requirement for 24/7/365 onsite staffing.² Finally, the protester also points out that the solicitation’s service request response time requirements for emergency service calls only required a response “not to exceed four (4) hours.” RFQ amend. 6, at 47. For these reasons, Wilson 5 contends that the only possible interpretation of the RFQ was that vendors were free to propose after-hours staffing that met the emergency response time by call back, not onsite staffing.³

² Question: What support staff are part of the Building Engineer Team? Answer: There are currently three experienced plant operators (contractors) on first shift. RFQ amend. 6, at 7.

³ The protester also asserts that the RFQ was ambiguous in its requirement for onsite staffing and contends that the agency should have made this requirement
(continued...)

The VA disagrees with the protester's interpretation that the PWS, in conjunction with the RFQ, required only call back and not onsite staffing during after-hours. The agency contends that the plain language of the PWS, and its answers to vendors' questions, made clear that the requirement was for 24/7/365 onsite staffing.

Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with such a reading. McLaurin Gen. Maint., Inc., B-411443.2, B-411443.3, Jan. 14, 2016, 2016 CPD ¶ 41 at 3.

Based on our review of the record, we conclude that the agency's interpretation of the RFQ, when read as a whole, is reasonable, and the protester's interpretation is not reasonable. The solicitation explained that the CRRC plays a mission-critical role in the VA's national data center network and operates on a 24/7/365 basis. RFQ amend. 6, at 20. The solicitation advised vendors of the responsibility to provide onsite staffing to support the 24/7/365 operation. This requirement was clarified in the agency's multiple responses to vendor's questions. The protester's arguments to the contrary are without merit. In this regard, the RFQ did not permit for call back service as an alternative to the onsite requirement.

Here, the agency followed the clear and unambiguous terms of the solicitation and reasonably concluded that Wilson 5's quotation failed to meet the 24/7/365 onsite requirement. Accordingly, we find the agency's evaluation, and its decision to exclude the protester's quotation from the competition, reasonable.

The protest is denied.

Susan A. Poling
General Counsel

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clearer in the solicitation and in its answers to vendor questions. We dismiss this aspect of Wilson 5's protest because it was not filed prior to the closing date for receipt of quotations provided in RFQ amendment No. 6 (January 7, 2016). Challenges to alleged improprieties that do not exist in the initial solicitation but which are subsequently incorporated into it must be protested not later than the next closing time for receipt of quotations following the incorporation. 4 C.F.R. § 21.2(a)(1); see Innovative Mgmt., Inc., B-291375, Nov. 20, 2002, 2003 CPD ¶ 11 at 4.