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Decision

Matter of: Blue Ridge Wildlife & Pest Management, LLC

File: B-413043.3; B-413043.4

Date: October 12, 2016

Joshua C. Johnson, Esq., Johnson, Rosen & O’Keeffe, LLC, for the protester.
Tyler W. Brown, Esq., Department of Veterans Affairs, for the agency.
Matthew T. Crosby, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency’s corrective action, which includes soliciting and evaluating revised quotations, is denied where the record shows the agency reasonably determined the solicitation did not accurately reflect its needs.

DECISION

Blue Ridge Wildlife & Pest Management, LLC, of Roanoke, Virginia, protests corrective action taken by the Department of Veterans Affairs (VA) in response to the firm’s prior protest of a VA order issued to Timothy Stevens d/b/a A All Animal Control, also of Roanoke, Virginia, under request for quotations (RFQ) No. VA246-16-Q-0661 for nuisance wildlife removal and pond management services at the VA Medical Center in Salem, Virginia. Blue Ridge alleges that the agency’s corrective action is unreasonable.

We deny the protest.

BACKGROUND

On March 15, 2016, the agency issued the solicitation as a total small business set-aside. RFQ at 1. The solicitation contemplated the award of a single, fixed-price contract with a base period of one year and four one-year options. *Id.* at 5, 23. The solicitation provided that the award would be made on a “best value”

basis considering the following four factors: technical; past performance; socio-economic status and usage; and price.¹ RFQ at 23.

The solicitation included a performance work statement (PWS) outlining requirements for the needed nuisance wildlife removal and pond management services.² RFQ at 5-9. As relevant here, the PWS included the following requirement regarding pond management: “[The c]ontractor shall provide, yearly as needed, an algaecide to the ponds to eliminate algae growth and an aquatic herbicide to selectively reduce the cattail and nuisance wildlife habitat overabundance.” Id. at 7.

The solicitation provided evaluation criteria for each of the evaluation factors. RFQ at 24-25. The evaluation criteria for the technical factor stated that the “[o]fferor must provide a detailed five [year] plan which detail[s] how wildlife and pond management will be maintained as stated in section 2.1(c) of the PWS.” Id. at 24. Additionally, the technical factor evaluation criteria established the following requirements regarding certifications:

[The o]fferor must include a copy of their Virginia Department of Game and Inland Fisheries Commercial Nuisance Annual Permit showing that they are certified.

Offers shall provide proof of trained, certified and licensed nuisance/wildlife control operators performing service in any and all categories of this requirement as required by the State of Virginia.

Id.

After receiving and evaluating quotations, the agency selected A All Animal Control’s quotation as the best value to the government and issued that firm an order valued at \$209,559. Blue Ridge then filed a protest with our Office.

Blue Ridge’s protest alleged that A All Animal Control did not hold the certifications specified under the technical factor evaluation criteria. Blue Ridge later supplemented its protest with other allegations regarding A All Animal Control’s

¹ The solicitation did not discuss the relative weight of the evaluation factors. Also, although the solicitation was an RFQ, it included references to “offerors” and “proposals.” Because the distinction between a vendor’s submission of a quotation and an offeror’s submission of a proposal has no bearing on our analysis in this protest, we use the terms as they appear in the record.

² The nuisance wildlife to be removed was said to include woodchucks, groundhogs, skunks, raccoons, foxes, and geese. RFQ at 6.

quotation, including an allegation that the quotation did not include a five-year plan, as required by the solicitation.

In response to the protest, the agency notified our Office that it would take corrective action by canceling the order, reevaluating the quotations, and making a new source selection decision. Based on the agency's corrective action, our Office dismissed Blue Ridge's protest as academic. Blue Ridge Wildlife & Pest Mgmt., LLC, B-413043, B-413043.2, June 7, 2016 (unpublished decision).

Following a reevaluation of the quotations, the agency affirmed its selection of A All Animal Control's quotation for the order. Blue Ridge then filed another protest with our Office, again asserting that A All Animal Control lacks the certifications and that its technical quotation was defective in various respects.

In response to Blue Ridge's second protest, the agency notified our Office that "[d]ue to a number of irregularities in this procurement," it again would take corrective action. Notice of Corrective Action (Aug. 8, 2016) at 1. In response to an inquiry from our Office, the agency described the irregularities as follows:

(1) [T]he proposed awardee did not provide a detailed five year plan as required by the solicitation, rendering the quote technically unacceptable; (2) [the p]rotestor's proposed price was determined to be unreasonable; and, (3) the solicitation limited the management of algae and pond weeds to the use of algaecide and herbicide, and VA became aware of the possibility to control the aquatic weeds and algae without the use of harmful chemicals.

Agency Response to GAO Inquiry (Aug. 18, 2016) at 1. The agency further stated that pursuant to the corrective action, it intended to "cancel the award then revise and issue a new solicitation at a later date." Id. After receiving this information, Blue Ridge raised another protest with our Office, this time alleging that the corrective action was unreasonable.

DISCUSSION

As outlined above, two sets of protest claims are before our Office. First, Blue Ridge challenges the agency's reselection of A All Animal Control's quotation for the order. Second, Blue Ridge challenges the second round of corrective action proposed by the agency. We address the two matters below in turn.

Regarding the agency's reselection of A All Animal Control's quotation for the order, Blue Ridge argues that the agency's reevaluation was improper because A All Animal Control allegedly lacks certifications specified in the solicitation and because A All Animal Control's quotation allegedly was defective in various respects. As discussed above, the agency responded to these claims by stating that it would

undertake a second round of corrective action through which the order to A All Animal Control would be canceled and through which the solicitation would be revised and reissued.

When an agency cancels the solicitation under which an award was made, a protest challenging that award is rendered academic. See Dyna-Air Eng'g Corp., B-278037, Nov. 7, 1997, 97-2 CPD ¶ 132 at 1. We do not consider academic protests because to do so would serve no useful public policy purpose. Id. Accordingly, we will not further consider Blue Ridge's allegations regarding the agency's reselection of A All Animal Control for the order.

We turn now to Blue Ridge's claims regarding the agency's proposed second round of corrective action. Blue Ridge argues that the corrective action is unreasonable because, according to Blue Ridge, there "were no irregularities in the procurement." Supp. Response to Notice of Corrective Action (Aug. 22, 2016) at 1-3. In support of this argument, Blue Ridge offers various reasons why, in its view, none of the three irregularities identified by the agency warrant revising the solicitation or requesting revised quotations. Id. Instead, Blue Ridge contends, the appropriate course of action would be simply canceling the order to A All Animal Control, and reissuing it to Blue Ridge. See id. at 4.

Before addressing Blue Ridge's claim, we observe that as a general rule, an agency has broad discretion to take corrective action where the agency has determined that such action is necessary to ensure fair and impartial competition. See Hughes Network Sys., LLC, B-409666.3, B-409666.4, Aug. 11, 2014, 2014 CPD ¶ 237 at 3. The details of implementing the corrective action are within the sound discretion and judgment of the contracting agency, and we will not object to any particular corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. Id.

Returning to Blue Ridge's claim, we find that while the agency identified three issues as the basis for taking corrective action, one of the issues alone shows the corrective action to be reasonable. In particular, the record shows that the solicitation did not accurately reflect the agency's needs. As discussed above, the agency has asserted that the solicitation's requirement for the use of herbicide and algaecide overstated its needs.³ With regard to this issue, the contracting officer explains that before the evaluation of the quotations, the agency was "not aware that there were natural, non-chemical, and environmentally friendly methods available" to control aquatic weeds and algae. Contracting Officer's Statement at 1.

³ As stated at the outset, the PWS included a requirement that "[the c]ontractor shall provide, yearly as needed, an algaecide to the ponds to eliminate algae growth and an aquatic herbicide to selectively reduce the cattail and nuisance wildlife habitat overabundance." RFQ at 7.

The contracting officer further explains that based on the new information, the agency wishes to revise the PWS “to allow for the use of [environmentally-friendly] methods.” Id. Where an agency issues a purchase order to a firm based on a solicitation that does not accurately reflect the agency’s needs, the purchase order should be canceled, and the procurement reopened to allow competing firms an opportunity to respond to the agency’s actual requirements. See Quality Software Servs., Inc., B-400206.2, Nov. 19, 2008, 2009 CPD ¶ 99 at 3. Here, we find that the record supports the agency’s determination that the solicitation did not accurately reflect its needs, and we see the contemplated corrective action as a reasonable method of addressing the issue.

Blue Ridge also argues that the corrective action is unreasonable because it will not “remedy the issues” identified in the firm’s protest. Response to Notice of Corrective Action (Aug. 9, 2016) at 4-5. In this regard, Blue Ridge asserts that the alleged defects with A All Animal Control’s quotation should have precluded that firm from receiving the order. See id. Blue Ridge also asserts that Blue Ridge was “the sole remaining bidder” in the competition. Id. at 5. Based on these circumstances, Blue Ridge again argues that the only appropriate action would be for the agency to cancel the order to A All Animal Control and reissue it to Blue Ridge. See id. at 4-5. For the reasons discussed below, this argument also furnishes no basis on which to sustain the protest.

Blue Ridge argues, in essence, that by revising the solicitation and resoliciting quotations, the agency is improperly giving A All Animal Control an opportunity to cure the alleged deficiencies in its quotation, to the competitive prejudice of Blue Ridge. As discussed above, however, the agency has identified flaws in the procurement, including a flaw that Blue Ridge itself raised as a protest allegation (A All Animal Control’s failure to include a five-year plan in its quotation). Where an agency has reasonable concerns that there were errors in the procurement, corrective action appropriately may include requesting revised quotations, followed by a reevaluation. See Hughes Network Sys., LLC, supra, at 3-4. This is precisely what the agency has proposed to do here, except that in addition to requesting revised quotations, the agency also is revising the solicitation to accurately reflect its needs.

In sum, we see no basis to question the agency’s proposed corrective action because the record shows that the agency identified flaws in the procurement, including the solicitation’s failure to accurately reflect its needs, and because the corrective action is appropriate to remedy the flaws.

The protest is denied.

Susan A. Poling
General Counsel