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Decision

Matter of: M Inc., d/b/a Minc Interior Design

File: B-413166.2

Date: August 1, 2016

Paul M. Dubbeling, Esq., P.M. Dubbeling, PLLC, for the protester.
Amy Laderberg O’Sullivan, Esq., and Olivia Lynch, Esq., Crowell & Moring LLP, for Corporate Spaces, Inc., the intervenor.
Ashley Dennis Presley, Esq., Department of Veterans Affairs, for the agency.
Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency unreasonably rejected protester’s quotation is denied where, although solicitation allowed vendors to submit quotations utilizing contractor teaming arrangements (CTA) among Federal Supply Schedule (FSS) vendors, protester’s quotation failed to identify an FSS contract for one supplier for whom protester submitted a CTA, and the firm in fact had no current FSS contract.

DECISION

M Inc., doing business as Minc Interior Design, of Fayetteville, North Carolina, a small business, protests the issuance of Federal Supply Schedule (FSS) blanket purchase agreements (BPA) to five vendors¹, and the corresponding rejection of the protester’s quotation as unacceptable, by the Department of Veterans Affairs (VA) under request for quotations (RFQ) No. VA119-16-Q-0072 for healthcare facility furniture and related services for Veterans Health Administration facilities in particular regions or nationwide. The protester argues that the VA improperly rejected the firm’s quotation.

¹ The successful lead vendors were Corporate Spaces, Inc., of Pasadena, California; Goforth & Marti, of San Diego, California; JPL Associates LLC, of Sarasota, Florida; King Business Interiors, Inc., of Columbus, Ohio; and Zoom, Inc., of Potomac, Maryland.

We deny the protest.

BACKGROUND

The VA posted the RFQ on the General Services Administration e-Buy system on December 3, 2015, seeking quotations from vendors holding FSS contracts under Schedules 71 or 71 II K. Additionally, the RFQ indicated that vendors were encouraged to subcontract or to form contractor teaming arrangements (CTA) with other vendors holding FSS contracts under those schedules.²

The RFQ provided that the VA intended to issue multiple BPAs under which the VA intends to place orders with a total value of up to \$546 million over a base year and four option years. RFQ at 24, 26. The RFQ also provided that in selecting vendors to receive BPAs, the agency would determine which quotations offered the best value to the VA considering four factors, in descending order of importance: technical capability, past performance, small business participation plan, and price. Id. at 67. The competition was conducted under Part 8.4 of the Federal Acquisition Regulation. Id. at 24.

For vendors that elected to use CTAs, the RFQ required the lead vendor to submit all teaming agreements, identify all CTA vendors and their respective GSA schedule contract numbers, and specify each CTA vendor's responsibilities for delivery, warranty, and other issues (among other things). Id. at 61. The RFQ also provided a form agreement that could be used in establishing a CTA. RFQ attach. 11, CTA Template. In RFQ amendment 2, the VA also responded to vendor questions and, in doing so, informed vendors that they were not required to use the form CTA, but that the essential elements of a CTA, included that "[e]ach team member must have a GSA Schedule contract." Id. at 2.

With respect to the technical capability evaluation, the RFQ specified that offerors were to certify compliance with minimum technical requirements (MTR) from a list of 126 items,³ and that the evaluation would assess whether the vendor was able to supply at least 88 of the 126 items. RFQ at 67. The RFQ also identified 12 items for which vendors were to submit detailed product literature for evaluation. Id. at 69-70. Vendors were also directed to provide pricing for one each of 13 items,

² For specific items, vendors were permitted to supply the items using Schedules 65 II A, 66, and 72, either from the lead vendor's own FSS contract or through a CTA with another vendor holding any of those schedules. RFQ at 28, 61.

³ As an example, the spreadsheet identifies item SH2 as "shelving, wire, medical supply." RFQ attach. 3, Spreadsheet of Item MTRs, at 10. Although not significant to this decision, we note that the spreadsheet appears to provide MTRs for 128 items or services, not 126.

and also to provide prices to perform services for two jobs, “for evaluation purposes only.” RFQ at 4-23.

The RFQ also specified that the agency would evaluate quotations under the technical capability factor as acceptable, susceptible of being made acceptable,⁴ or unacceptable. Id. at 70. The past performance factor ratings would consist of an assessment of both relevance and of quality, which would be expressed in terms of confidence. Id. at 71-73. The small business participation plan factor evaluation would result in rating of outstanding, acceptable, susceptible of being made acceptable, or unacceptable. Id. at 73.

Minc submitted a quotation as the lead contractor of a team that included a firm identified as Penco Products, Inc. of Greenville, North Carolina. As directed by the RFQ, Minc’s quotation included a copy of the CTA that was based on the template agreement in the RFQ. The agreement provided the name and address of Penco, stated that Penco was “providing _____ to the government” under its FSS contract. VA Response to Protest⁵, exh. 4, CTA between Minc and Penco, at 1 (blank line in original). The agreement then identified the Penco FSS contract as “Number <pending>.” Id. (angle brackets in original). In defining the parties’ specific responsibilities, the CTA stated that Minc would provide “overall contract management, staffing, coordinating and managing the work,” while Penco’s “primary delivery responsibilities will be for furniture.” Id. at 3. Otherwise, the CTA did not describe the items that Penco was to deliver or identify a current FSS contract number for Penco.

The VA received quotations from 30 vendors (or lead vendors), including Minc. During the evaluation of Minc’s quotation, the evaluators found that Minc had certified its team’s ability to supply at least 88 of the MTR items, and thus appeared to be technically acceptable. The evaluators rated the quotation highly for past performance relevance and quality, and also rated it acceptable for its small business participation plan. However, the evaluators concluded that one of Minc’s CTA team members, Penco Products, did not hold an FSS contract, and therefore the quotation was unacceptable. The agency rejected the quotation on that basis. Dismissal Request, exh. 3, Letter from Contracting Officer to Minc, May 24, 2016, at 2.

⁴ A rating of susceptible of being made acceptable was effectively a rating of unacceptable, and thus precluded award, unless the VA conducted communications to allow the vendor to make its quotation acceptable. RFQ at 70.

⁵ The VA filed a “response” to the protest, which provided copies of relevant documents and argued that the protest should be dismissed. As explained further below, in the interest of efficiency we treated that response as sufficient, and did not require an additional agency report.

After receiving a brief explanation of the basis for the VA's decision to reject Minc's quotation as unacceptable, the firm filed this protest with our Office.⁶

ANALYSIS

As indicated above, our Office proposed to close the record after reviewing the agency's initial "response" to the protest and the responses to it from the protester and intervenor. Before doing so, however, we asked the parties whether the merits of the protest had been addressed adequately, and whether the record could then be closed. Minc opposed closing the record, arguing that additional development was needed if any of four factual issues were in dispute: 1) the RFQ did not require a "total solution," 2) Penco's role in Minc's quotation was to supply "only one, non-essential item (wire shelving)," 3) the "non-sourcing" of the wire shelving did not affect the validity or evaluation of Minc's quotation, and 4) the VA engaged in discussions or clarifications with some vendors. Protester's Response to GAO Inquiry, June 26, 2016, at 1-2; Email from Counsel for Protester to GAO, June 28, 2016, at 1.

Our Office closed the record because the issues raised by Penco had been fully addressed even though, as explained below, we disagree that the protester's arguments have merit.

Minc argues that the VA improperly rejected the firm's quotation because its quotation would have been acceptable if it had not included a CTA with Penco. Protest at 2. Minc explains that it only intended to utilize Penco as a supplier for wire shelving, that the RFQ did not require vendors to offer all 126 items, and therefore its quotation would have been acceptable without considering the CTA with Penco. Protester's Response to Agency at 1. Therefore, Minc argues, the VA improperly used Penco's lack of an FSS contract to reject Minc's quotation. Id. at 2.

The VA argues that the procurement was for the issuance of BPAs to FSS contractors (and contractor teams), and thus the RFQ stated that each member of a CTA was required identify a current FSS contract from one of the specified schedules, and to identify the firm's role in the team. Agency Response to Protest at 2-3. The VA argues that it could not revise Minc's quotation by unilaterally excluding Penco, and that the agency was not required to hold discussions. Id. at 3. Accordingly, since Minc's quotation proposed a team of multiple vendors, but did not identify an FSS contract for Penco, the VA argues that it could not issue a BPA to Minc, and instead it properly rejected the quotation. Id. at 3-4.

⁶ Although the VA notified Minc of the rejection of its quotation on May 12, we regard the May 27 protest as timely because it was filed within 10 days of when Minc received a letter dated May 24 that explained the VA's reason for rejecting the quotation.

Where an agency conducts a formal competition for the establishment of a BPA, we will review the agency's actions to ensure that the evaluation was reasonable and consistent with the solicitation and applicable procurement statutes and regulations. Complete Packaging & Shipping Supplies, Inc., B-412392 et al., Feb. 1, 2016, 2016 CPD ¶ 28 at 4. In reviewing an agency's evaluation, we will not reevaluate vendors' quotations, and a protester's disagreement with the agency's evaluation, without more, is not sufficient to render the evaluation reasonable. Id.

To the extent that Minc argues that an acceptable quotation did not have to include wire shelving, that argument is consistent with the terms of the RFQ. Our review identified only one of the 126 CLINs that clearly specified wire shelving, as noted above (additionally one other CLIN appears to permit the use of wire shelving). Thus we agree with Minc to the extent that the terms of the RFQ permitted a quotation that did not include wire shelving to be found acceptable. Nevertheless, that fact is immaterial because Minc did include wire shelving in its quotation as part of its approach to the agency's requirements. Thus, even though the VA could have excluded the wire shelving and issued a BPA to Minc, the agency did not do so, and ultimately, was not required to do so. Id. at 8-9.

The VA reasonably determined that Minc's quotation was unacceptable due to the inclusion of a CTA with a firm that lacked a FSS contract. In that regard, an agency may not use schedule contracting procedures to purchase items that are not listed on a vendor's GSA schedule. Tri-Starr Mgmt. Servs., Inc., B-408827.2, B-408827.4, Jan. 15, 2015, 2015 CPD ¶ 43 at 8. Furthermore, the GSA considers each vendor competing through a CTA to be a prime contractor with respect to the items it would provide in support of the team's quotation, and thus must hold an FSS contract. See Veterans Healthcare Supply Sols., Inc., B-409888, Sept. 5, 2014, 2014 CPD ¶ 269 at 5. Consistent with those principles, the RFQ specified that each CTA member had to show that it held an FSS contract under one of the specified schedules. Minc submitted a CTA with Penco that listed neither the products that it would supply nor an FSS contract number. Issuance of a BPA under Minc's quotation would thus have impermissibly used FSS contracting procedures to enter into a BPA with Penco despite its not having a current FSS contract. Accordingly, the VA properly rejected Minc's quotation as unacceptable.

Nevertheless, in its opposition to dismissal, Minc stated that it had heard from another unsuccessful lead vendor that the VA had allowed unnamed vendors to supply missing or incorrect FSS contract numbers or "other information." Protester's Response to Agency at 2. Minc argues that the VA should have similarly communicated to Minc that Penco had no FSS contract, and thus the CTA with Penco rendered the quotation unacceptable. Id. The VA simply states that it contacted Penco, and confirmed directly that Penco had no current FSS contract. Agency Report to Protest at 3. Our Office has held that even in a competition for a BPA under FAR subpart 8.4, an agency may not obtain information to determine the eligibility of a vendor unless the agency conducts discussions. Akira Techs., Inc.;

Team ASSIST, B-412017 et al., Dec. 7, 2015, 2015 CPD ¶ 383 at 6 n.6. Moreover, even if Minc's allegation had been submitted as a supplemental protest, we would not have developed the protest record further based only on vague second-hand information, allegedly reported by another unsuccessful vendor. Such vague unsupported allegations do not meet the requirements for stating a valid basis of protest under our regulations. 4 C.F.R. § 21.1(c)(4).

The protest is denied.

Susan A. Poling
General Counsel