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Decision

Matter of: Vista Technical Services, LLC

File: B-413366

Date: October 3, 2016

S. Lane Tucker, Esq., Stoel Rives LLP, for the protester.
Robert K. Tompkins, Esq., Gordon Griffin, Esq., and Leila George-Wheeler, Esq., Holland & Knight, LLP, for Bowhead Professional Solutions, LLC, an intervenor.
Wade L. Brown, Esq., and Brian A. Tuftee, Esq., Department of the Army, for the agency.
Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that agency should have rejected awardee's proposal as noncompliant with the solicitation because it did not offer a particular number of staff hours is denied; solicitation required each offeror to propose its own staffing plan and estimated level of effort, and did not require proposal of a particular number of staff hours.

DECISION

Vista Technical Services, LLC, of San Antonio, Texas, protests the award of a contract to Bowhead Professional Solutions, LLC, of Alexandria, Virginia, under request for proposals (RFP) No. W52P1J-15-R-5000, issued by the Department of the Army for software application development and maintenance services. Vista alleges that the agency should have rejected the proposal of Bowhead as unacceptable.

We deny the protest.

The RFP contemplates the award of a labor-hours type contract for a base year and four 1-year options to provide software application development and maintenance services on an as-needed basis. Firms were advised that the agency would make award on a best-value basis, considering price, and two non-price factors, technical (deemed significantly more important than price) and past performance (deemed slightly more important than price). RFP Attachment 10, Evaluation Factors, at 1.

The RFP also provided that the technical and past performance factors collectively were deemed significantly more important than price, but advised firms that price could become the controlling consideration in the event that proposals were deemed relatively equal under the non-price factors. Id.

The record shows that the agency received a number of proposals in response to the solicitation, and that Vista and Bowhead were found essentially equal under the non-price factors; the remaining offerors were found technically unacceptable. Agency Report (AR) exh. 25, Source Selection Decision Document, at 8. The record further shows that, because Vista and Bowhead were found essentially equal under the non-price factors, the agency made its selection decision based on low price. The agency made award to Bowhead at a price of \$10,581,390, compared to Vista's price of \$11,546,108. Id. at 9. After being advised of the agency's source selection decision and requesting and receiving a debriefing, Vista filed this protest.

PROTEST

Vista alleges that the agency should have rejected the Bowhead proposal as unacceptable because the firm did not propose in accordance with the requirements of the RFP.¹ According to the protester, the RFP required all offerors to propose staffing that was equal to 38,400 staff hours per year for each year of the contract. Vista maintains that, because Bowhead's proposal was based on a level of effort different than that allegedly required by the RFP, the agency erred in making award to Bowhead. The agency, on the other hand, takes the position that the RFP did not require offerors to propose any particular level of effort.

We find no merit to the protest. Vista's argument is based on a fundamental misunderstanding of the RFP's requirements. In this connection, where there is disagreement regarding the meaning of a solicitation, we resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all its provisions; to be reasonable, an interpretation of a solicitation must be consistent

¹ In its initial protest, Vista alleged that the agency must have performed an unreasonable evaluation of Bowhead's proposal under the technical evaluation factor because Bowhead offered an unrealistic staffing mix. Vista also alleged that the agency improperly failed to perform a cost realism evaluation of Bowhead's proposal. In its comments responding to the agency report, Vista appears to have withdrawn these allegations. Protester's Comments at 10. In any event, the agency provided a detailed explanation of its position relating to these allegations in its agency report and Vista did not provide a substantive response to the agency's position. To the extent these allegations were not withdrawn, we deem them abandoned. Batelco Telecomm. Co. B.S.C., B-412783, et al., May 31, 2016, 2016 CPD ¶ 155 at 4 n.5.

with such a reading. One Largo Metro LLC; Metroview Dev. Holdings, LLC; King Farm Assocs., LLC, B-404896 et al., June 20, 2011, 2011 CPD ¶ 128 at 11 n.16.

The RFP instructions advised offerors that the agency intended to award a labor-hours type contract with a not-to-exceed level of effort of 38,400 hours per year. RFP Attachment 9, Instructions to Offerors, at 8.² However, the RFP did not call for offerors to propose any particular level of effort, but instead required offerors to provide their own estimates of the level of effort required to meet the solicitation's requirements. In this connection, offerors were specifically instructed to submit a staffing plan with their proposals that identified the number of personnel being proposed, as well as the labor categories being offered to perform the requirement. RFP Attachment 9, Instructions to Offerors, at 4.

Offerors also were required to complete a pricing spreadsheet that was included with the RFP. RFP, Attachment 1, Pricing Spreadsheet. That pricing spreadsheet did not identify any labor categories or specify a quantity of staff hours, either for any particular labor category, or for the total level of effort, to be proposed. Instead, the pricing spreadsheet was comprised of a grid to be completed by the offeror. Of significance, the grid included two columns pertinent to the protest, one in which the offeror was required to insert the number of full time equivalents being offered in each labor category proposed, and one in which the offeror was required to insert the number of productive hours that each full time equivalent would work per year. (The grid also included columns for the offeror to enter direct labor hourly rates, various indirect costs and a total loaded hourly rate for each labor category.) The "productive hours" column includes a box where the offeror is required to insert the total estimated number of hours for each year of the contract. Conspicuously absent from that box is any pre-established quantity for the total number of productive hours; instead, the offeror was required to insert its own total of the number of productive hours per year.

The RFP instructions explained how the agency would calculate total evaluated price as follows:

The contractor's prices will include a breakout of their loaded labor rates (including any subcontract labor) to include the base hourly rate, indirect rates (e.g. Fringe, Health & Welfare, Labor Overhead, G&A), and Profit. The loaded hourly labor rates will then be applied by their estimated productive hours which will result in a Total Price for that labor category.

² Elsewhere, in section B of the RFP, the 38,400 staff hour estimate is repeated for each year of contract performance. RFP at 3-5; RFP, Amendment No. 2 at 2-3. The offerors did not submit section B with their proposals, but, rather, were required to submit the pricing worksheet, described below.

RFP Attachment 9, Instructions to Offerors, at 8-9 (emphasis supplied). Since the pricing spreadsheet did not include any pre-established estimates of productive hours, it follows that the reference to “their estimated productive hours” in the quotation above is a reference to the offerors’ estimated productive hours for each labor category.

In the final analysis, there is no provision of the RFP that required offerors to propose any particular level of effort, and Vista has not directed our attention to any RFP provision in support of its position. Simply stated, offerors were required to present a staffing plan to the agency that the offeror thought was adequate to perform the requirements being solicited. To the extent that Vista read the RFP as requiring it to propose 38,400 staff hours, its reading was unreasonable and not consistent with the terms of the solicitation read as a whole.³

The protest is denied.

Susan A. Poling
General Counsel

³ Vista suggests that the RFP contained a latent ambiguity. We disagree. An ambiguity exists where two or more reasonable interpretations of the terms of the solicitation are possible. Colt Def., LLC, B-406696, July 24, 2012, 2012 CPD ¶ 302 at 8. Since we conclude that Vista’s interpretation of the RFP is not reasonable, it follows that no ambiguity exists.