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Decision

Matter of: Tesla Laboratories, Inc.

File: B-414428

Date: June 7, 2017

James K. Kearney, Esq., and Joshua L. Rodman, Esq., Womble Carlyle Sandridge & Rice, LLP, for the protester.

James E. Hicks, Esq., and Susan M. Colarco, Esq., Drug Enforcement Administration, for the agency.

Peter D. Verchinski, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of the rejection of the protester's quotation is denied, where the agency reasonably found, consistent with the stated evaluation criteria, that the protester's proposed personnel failed to satisfy the solicitation's minimum requirements.

DECISION

Tesla Laboratories, Inc., of Arlington, Virginia, protests the Department of Justice, Drug Enforcement Administration's (DEA) exclusion of its quotation from the competition under request for quotations (RFQ) No. DJD-16-Q-0102, for financial investigator support services. Tesla challenges the agency's technical evaluation of the firm's quotation.

We deny the protest.

BACKGROUND

DEA issued the RFQ as a small business set-aside on October 18, 2016, using the Federal Supply Schedule (FSS) procedures of Federal Acquisition Regulation (FAR) subpart 8.4. The RFQ anticipated the issuance of a fixed-price blanket purchase agreement (BPA) with a base period of 1 year, and four 1-year options. Agency Report (AR), Tab 4, RFQ, at 19. The competition was limited to vendors holding FSS Professional Services Schedule (PSS) contract 00CORP with special item numbers

(SIN) Nos. 520-1, 520-6, 520-9, 520-12, or 520-14.¹ Id. The RFQ sought quotations to provide financial investigators for DEA's Diversion Control Division, Pharmaceutical Investigations Section. Id. at 6. The RFQ stated that, in order to combat the illicit diversion of pharmaceutical controlled substances and chemicals, the agency examined complex financial transactions and business records. Id. The RFQ sought personnel who possessed financial accounting and analytical skills, and who were able to conduct analysis of complex financial and business records. Id.

Award was to be made on a lowest-price, technically acceptable basis considering three technical evaluation factors: (1) corporate capability; (2) quality control plan; and (3) staffing qualifications and experience/key personnel.² Id. at 23-25, 28. The first and third technical evaluation factors contained numerous subfactors. For example, as relevant to this protest, under the staffing qualifications and experience/key personnel technical evaluation factor, subfactor j required vendors to "provide eight resumes for financial investigators that demonstrate the company's ability to recruit financial investigators meeting the requirements for the position from diverse geographic areas." Id. at 24-25 (emphasis removed). The RFQ provided that, if a vendor did not meet the minimum technical acceptability under any of the technical evaluation subfactors, the vendor would no longer be considered for award. Id. at 29.

With regard to the requirements for the financial investigator positions, the RFQ laid out certain minimum qualifications. RFQ at 9. The RFQ stated that the functional responsibilities for the "Financial Investigator or Equivalent" were

Organizes and conducts detailed examinations of information generated during complex financial criminal/civil investigations and information available through alternative sources for the purpose of conducting financial analyses of personal/business assets of targeted organizations/individuals. Utilizes information obtained as a result of the financial analysis and prepares documentation for use by law enforcement personnel pursuing civil and criminal matters.

Id. The RFQ also stated that the financial investigators had to hold a bachelor's degree, and had to meet two minimum experience requirements: 5 years criminal investigative experience, and 2 years "experience specializing in financial investigations (Section IV, SOW [Statement of Work])." Id.

Section IV of the SOW laid out the required services that the contractor was to perform. Id. at 7. The contractor was to provide qualified personnel to perform financial

¹ Vendors were required to hold only one of the SINs in order to be considered for award. Id.

² The RFQ also stated that a vendor's past performance would be evaluated on a pass/fail basis. RFQ at 28.

investigator functions that included (among other things): analyzing financial records obtained by DEA through subpoenas; preparing, and assisting in preparing, reports of investigations, affidavits in support of search or seizure warrants, and other investigative and legal documents to support financial criminal charges; identifying individuals and entities engaged in financial activities derived from the diversion of controlled substances and identifying financial transactions and assets connected to these individuals; assisting in the interview of suspects and witnesses involved in illegal financial activities for legal proceedings; providing case support in forfeiture matters, such as analyzing and documenting ownership interests, analyzing financial documents to trace ownership and criminal proceeds, preparing search warrants, civil complaints and forfeiture counts; developing an understanding of all applicable federal, state, or local law to make sound decisions on the direction and scope of investigations and the determination of proof required to affix legal responsibility for violations as well as devise methods for obtaining, preserving, and presenting evidence; and providing courtroom testimony and depositions regarding investigative analysis and identification of assets derived from unlawful activities. Id. at 7-9.

The agency received Tesla's quotation by the November 17, 2016 closing time. A technical proposal evaluation panel (TPEP) conducted an evaluation of Tesla's technical quotation and found that the firm had failed to submit a technically acceptable quotation. Agency Report (AR), Tab 3, TPEP Report, attach D, at 1. Specifically, the TPEP found that two of Tesla's resumes "did not meet the minimum requirements for financial investigative and/or criminal investigative experience outlined in the RFQ." Id. at 2, 4, 6. The TPEP also found that a third resume "did not provide sufficient detail on financial investigative experience to conclude the applicant was qualified to serve as a financial investigator." Id. The TPEP concluded that, for these two reasons, Tesla had failed to provide eight resumes that demonstrate the firm's ability to recruit financial investigators that meet the RFQ's requirements (Subfactor (3)(j)).³ Id. at 6.

On February 23, Tesla was notified that its quotation had been eliminated from the competition for failing to pass the technical evaluation subfactors. This protest followed.

³ The agency's evaluation also found that, for the same two reasons, Tesla had failed several other subfactors as well. Specifically, Tesla failed to "demonstrate experience in the ability to recruit and retain qualified candidates on a nationwide level" (subfactor (1)(d)), failed to "demonstrate the ability to recruit, retain and train sufficient numbers of competent and qualified personnel to perform the required services" (subfactor (3)(c)), and failed to "demonstrate its ability to recruit qualified financial investigators in diverse locations across the United States" (subfactor (3)(d)). AR, Tab 3, TPEP Report, attach. D, at 2, 4.

DISCUSSION

Tesla challenges the agency's determination that the firm failed several evaluation subfactors.⁴ As relevant here, Tesla maintains that it submitted eight resumes of financial investigators that met the minimum requirements, as required by subfactor (3)(j)).⁵ Tesla argues that each of the three individuals the agency identified as inadequate possessed the required experience. Tesla asserts that the agency improperly focused on whether its personnel held the title "investigator" in their resumes, and improperly failed to conclude that the individuals' work experience as analysts met the functional responsibilities laid out in the RFQ for the minimum requirements of the position.

Where, as here, an agency issues an RFQ to FSS vendors under FAR subpart 8.4 and conducts a competition for the issuance of an order or establishment of a blanket purchase agreement (BPA), we will review the record to ensure that the agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. Digital Solutions, Inc., B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4. A protester's disagreement with the agency's judgment, without more, does not establish that an evaluation was unreasonable. DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2. Furthermore, where a protester challenges the evaluation as unfairly utilizing unstated evaluation criteria, our Office will assess whether the solicitation reasonably informs vendors of the basis for the evaluation. Information Experts, Inc., B-413887, B-413887.2, Dec. 30, 2016, 2017 CPD ¶ 16 at 7.

We find that the agency's evaluation of Tesla's quotation under subfactor (3)(j) was reasonable. As an initial matter, while the protester argues that the agency used unstated evaluation criteria by requiring "financial investigator" experience--rather than

⁴ Tesla's initial protest challenged the agency's determination that Tesla had failed to demonstrate its ability to recruit on a nationwide level (subfactor 1(d)), from diverse locations across the United States (subfactor 3(d)), or from diverse geographic areas (subfactor 3(j)). However, the agency's report demonstrated that the reason Tesla had failed these subfactors was not because it failed to demonstrate the ability to recruit in accordance with the necessary geographic requirements, but rather because it failed to provide resumes that met the required minimum experience. Consequently, Tesla did not respond to the agency's statements in its comments and abandoned this protest ground.

⁵ Tesla also challenges the agency determination that the firm's proposal failed subfactors (1)(d)--"demonstrate experience in the ability to recruit and retain qualified candidates on a nationwide level"; (3)(c)--"demonstrate the ability to recruit, retain and train sufficient numbers of competent and qualified personnel to perform the required services"; and (3)(d)--"demonstrate its ability to recruit qualified financial investigators in diverse locations across the United States." AR, Tab 3, TPEP Report, attach. D, at 2, 4.

determining whether its proposed personnel's experience as analysts met the "functional responsibilities" of the position--we find that the RFP explicitly informed firms that the agency would evaluate whether proposed personnel had experience "specializing in financial investigations" and referenced SOW section IV, which stated the type of experience the agency was seeking. Given this, we find firms were on notice as to the type of financial investigative experience the agency was looking for, and the agency's evaluation of Tesla's proposed personnel did not use unstated criteria.

As stated above, the proposed financial investigators were to meet the RFQ's functional responsibilities, minimum education requirement, and minimum experience requirements. Here, the record establishes that the protester's resumes failed to demonstrate that the protester's personnel met the minimum experience requirements. For example, with regard to one proposed individual, Mr. K, the record shows that Tesla failed to propose someone with 2 years of demonstrated experience "specializing in financial investigations." AR, Tab 2, Tesla Proposal, Mr. K Resume, at A-22-24. While Tesla asserts generally that Mr. K has the "functional responsibility" experience of financial and investigate analysis through "14 years of national security analyst work across several different government agencies," the protester points to no specific experience in Mr. K's resume that would satisfy the requirement for 2 years experience specializing in financial investigations. See Protester's Comments at 18-19. Indeed, the record shows that Mr. K's resume demonstrates no experience "specializing in financial investigations." Rather, his resume shows that his sole financial investigative experience is limited to 10 months flagging probable anti-money laundering violations for the DEA, and three years as a senior research analyst for the Narcotics and Transnational Crime Support Center flagging probable anti-money laundering violations and "identify[ing] front companies and facilitators for further investigation by the relevant agencies." AR, Tab 2, Tesla Proposal, Mr. K Resume, at A-22.

Given that the agency required 2 years specialized experience, with financial investigative experience as laid out in SOW Section IV, we find nothing improper with the agency's determination that Mr. K's experience here fails to demonstrate such experience. Similarly, the agency found the other two individuals' 2 years specialized financial investigation experience was deficient for similar reasons. Given this, we find nothing unreasonable about the agency's determination that Tesla failed to propose individuals that met the minimum qualifications laid out in the RFP relating to specialized financial investigative experience, and assigned Tesla's proposal a failing rating under evaluation subfactor (3)(j).

The solicitation, as described above, warned offerors that an evaluation finding that it failed to meet the minimal technical acceptability for any subfactor would result in the contractor's quotation no longer being considered for award. Therefore, while Tesla also challenges the agency's finding that it failed other subfactors, we need not

determine whether these findings were reasonable as the agency's reasonable finding that Tesla failed to meet the requirements under subfactor (3)(j) rendered the quotation unawardable.

The protest is denied.

Susan A. Poling
General Counsel