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Decision

Matter of: IDIS, Corp.

File: B-414429; B-414429.2

Date: June 12, 2017

Ryan J. Klein, Esq., Sherman & Howard LLC, for the protester.
Otto S. Shill III, Esq., Jennings, Strouss & Salmon, PLC, for Metris LLC, the intervenor.
Erin L. Hernandez, Esq., Russell R. Henry, Esq., and John W. Torresala, Esq., United States Marine Corps, for the agency.
Nora K. Adkins, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of the awardee's technical acceptability is denied where the solicitation did not require the agency to conduct its evaluation as alleged by the protester, and where the agency did not consider pages in excess of the solicitation's page limit.

DECISION

IDIS, Corp., a small business, of Parker, Arizona, protests the award of a contract to Metris LLC, a service-disabled veteran-owned, small business, of Gilbert, Arizona, by the Department of the Navy, United States Marine Corps, pursuant to request for quotations (RFQ) No. M00681-17-T-0012, for advanced high-altitude high-opening parachute support services for the 1st Reconnaissance Battalion, 1st Marine Division, I Marine Expeditionary Force. IDIS, the incumbent contractor, argues that the agency's evaluation of Metris' quotation was unreasonable.

We deny the protest.

BACKGROUND

The Marine Corps issued the solicitation on January 26, 2017, under the commercial item acquisition and simplified acquisition procedures of Federal Acquisition Regulations (FAR) part 12 and subpart 13.5. RFQ amend. No. 1 at 5. The RFQ contemplated the award of a single indefinite-delivery, indefinite-quantity (IDIQ) contract for advanced high-altitude high-opening parachute support services. *Id.* at 6. The

solicitation provided that award would be made to the firm that submitted the lowest-priced, technically acceptable quotation. Id. at 16. Orders for the work would be issued on a fixed-price basis during a 12-month base period, and a 12-month option period. Id. at 6.

The solicitation's performance work statement (PWS) detailed the background and scope of the support services, and listed numerous requirements with respect to aircraft support services, training, facilities, and training equipment. Id. at 8-15. The RFQ provided that a vendor's technical approach must demonstrate a clear understanding of the requirements identified in the PWS, and must include a description of the vendor's overall approach and strategy. Id. at 6. The solicitation stated that the agency's evaluation of a vendor's technical acceptability would consider whether the quotation met nine minimum requirements. Id. at 16. As relevant here, the first criterion required a vendor to meet the "[m]inimum aircraft requirement in accordance with (IAW) [PWS] section 4 and provide required FAA [Federal Aviation Administration] or the equivalent foreign Civil Aviation Authority (CAA) air carrier or commercial operator certificates." Id. The third criterion required a vendor to "[p]rovide a minimum of five (5) Zone Availability Reports (ZAR)¹ for the drop zones that will be utilize[d] to satisfy this requirement." ² Id.

In response to the solicitation, the Marine Corps received quotations from IDIS and Metris.³ Agency Report (AR), Tab 20, Agency Decision Document, at 1. The agency's initial evaluation found both quotations technically unacceptable. Id. at 1-2. The agency opened discussions with both vendors to inform them of the areas of their quotations that were deemed technically unacceptable. AR, Tab 12, IDIS Discussion Letter, at 1-2; Tab 13, Metris Discussion Letter, at 1-2.

With respect to IDIS, the agency's discussion letter explained that IDIS' quotation failed to provide airworthiness certificates and zone availability reports in accordance with the

¹ A Zone Availability Report (ZAR) is a comprehensive listing of drop zones and landing zones available for use by the Department of Defense (DoD), and is controlled by the U.S. Air Force, Air Mobility Command (AMC). AR, Tab 5, Air Force Instruction--Drop Zone and Landing Zone Operations, at 6. Zone availability reports are valid for five years. Id. at 39.

² The remaining minimum technical acceptability criteria required vendors to provide: a minimum training area size in accordance with PWS 4.9 (training area); classroom spaces in accordance with PWS 5.1 (classroom); a secured facility in accordance with PWS 5.2 (secured facility); space for billeting in accordance with PWS 5.3 (billeting) and subsections; meals in accordance with PWS 5.4 (meals) and subsections; and place of performance requirements in accordance with PWS section 7 (place of performance). RFQ amend. No. 1 at 16.

³ The agency also received a third quotation, which was submitted late and was not considered by the agency. Agency Report (AR), Tab 20, Agency Decision Document, at 1.

minimum requirements of the solicitation. AR, Tab 12, IDIS Discussion Letter, at 2. With respect to Metris, the agency's discussion letter explained that Metris' quotation failed to provide zone available reports for the drop zones it offered. AR, Tab 13, Metris Discussion Letter, at 2. The letters also reminded both vendors of the solicitation's 20-page technical quotation limit and cautioned that the agency would not consider material in excess of the page limit. AR, Tab 12, IDIS Discussion Letter, at 2; Tab 13, Metris Discussion Letter, at 2. The discussion letters also requested revised quotations. Id.

Both IDIS and Metris submitted revised quotations. AR, Tab 14, IDIS Revised Quotation, at 1-20; Tab 15, Metris Revised Quotation, at 1-45. The agency's evaluation of the revised quotations found both quotations to be acceptable. AR, Tab 20, Agency Decision Document, at 3. Metris submitted the lowest price, \$621,880, while IDIS' prices were \$734,554 and \$886,834.⁴ Id. The agency awarded a contract to Metris based on its lowest-priced, technically-acceptable quotation. Id. at 4.

On February 23, IDIS received notice of the award decision. AR, Tab 33, IDIS Unsuccessful Vendor Notice, at 1. IDIS then filed its protest with our Office on March 6.

DISCUSSION

IDIS challenges the technical acceptability Metris' quotation. Specifically, the protester argues that Metris' quotation failed to meet solicitation requirements with respect to zone availability reports; airworthiness certifications; commercial grade aviation fuel; and maintenance associated with the contractor's aircraft. IDIS also asserts that the agency improperly considered portions of Metris' technical quotation outside of the RFQ's 20-page limit. For the reasons discussed below, we conclude that the Marine Corps reasonably found that Metris' quotation was technically acceptable. While we do not address each of IDIS' arguments, we have considered them all and find no basis to sustain the protest.

As noted above, the Marine Corps conducted this procurement using simplified acquisition procedures for commercial items. Simplified acquisition procedures are designed, among other things, to reduce administrative costs, promote efficiency and economy in contracting, and avoid unnecessary burdens for agencies and contractors. FAR § 13.002. 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. McLaurin Gen. Maint., Inc., B-411443.2, B-411443.3, Jan. 14, 2016, 2016 CPD ¶ 41 at 3. 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. Wilson 5 Serv. Co., Inc., B-412861, B-412861.2, May 27, 2016,

⁴ IDIS' quotation contained two alternative prices, based on the type of aircraft provided. AR, Tab 20, Award Decision Document, at 1.

2016 CPD ¶ 154 at 3. A protester's disagreement with an agency's evaluation is not sufficient to sustain the protest. Id.

IDIS argues that the agency should have rejected Metris' quotation because Metris failed to meet multiple solicitation requirements. First, the protester alleges that Metris did not meet the zone availability report requirement because it did not have permission from either the owner of the land (the Colorado River Indian Tribes (CRIT)) or IDIS, as the controlling agency, to use the drop zone sites listed on the zone available reports Metris submitted with its technical quotation.⁵

In response to the protester's allegations, the Marine Corps argues that it properly found Metris' quotation technically acceptable in accordance with the solicitation's evaluation criteria. In this regard, the agency asserts that the solicitation did not require a vendor to obtain a land use agreement or permits authorizing future jump operations prior to award. The agency explains that the requirement--to provide a minimum of five zone availability reports for the drop zones that will be utilized--was included in the solicitation only to ensure the drop zones proposed by the vendors were previously surveyed by military personnel in accordance with Marine Corps regulations. Contracting Officer (CO) Statement at 2. Thus, the Marine Corps argues that the agency's evaluation of Metris' and IDIS' technical acceptability properly considered only whether a minimum of five zone availability reports were provided by the vendor for the offered drop zones.

⁵ The zone availability report lists a "controlling agency" for each drop zone and refers to those entities that conduct drop zone operations on behalf of the military commander whose personnel are actually conducting the jump operations. AR, Tab 18, Declaration Air Mobility Command Zone Availability Report Representative, at 3. Here, it is not in dispute that IDIS was listed as the current controlling agency, while Metris was the controlling agency at the time the zone availability reports were approved. What is in dispute is whether IDIS, as the current controlling agency, could limit Metris' access to the drop zone listed on the zone availability reports.

The agency asserts that a controlling agency does not have ability to restrict drop zone use by another firm. In this regard, the Marine Corps provided a declaration from the Air Force's AMC zone availability report representative that provided the following: designation as drop zone controlling agency (in block 5 of the zone availability report) does not imply ownership or physical control of the subject drop zone; a controlling agency can be updated by an appropriate military authority; and if a non-Air Force unit is utilizing a different coordinating activity than the one listed on the zone availability report (i.e. where a different contractor is substituted) that non-Air Force unit may inform AMC so that the report can be updated accordingly. Id. at 2-4. Nevertheless, IDIS believes it has the authority to restrict Metris' use of the drop zone. While it appears that IDIS, as the controlling agency can be replaced by the Marine Corps as an administrative matter, and thus has no authority to restrict Metris' use of the drop zones, we need not reach this issue because, as explained below, we find that the solicitation did not require proof of authority to use the drop zones prior to award.

The agency asserts that Metris' performance of the drop zone operations, including obtaining any necessary permissions or authority to use the land, is a matter of contract administration. To the extent that IDIS believes that the agency should have required a vendor to provide proof of permission or authority to use the drop zone sites pre-award, the agency contends that IDIS' assertions are untimely challenges to the terms of the solicitation.

When a dispute arises as to the actual meaning of solicitation language, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all provisions of the solicitation. See Level 3 Commc'ns LLC, B-412854 et al., June 21, 2016, 2016 CPD ¶ 171 at 7. A solicitation is not ambiguous unless it is susceptible to two or more reasonable interpretations. See WingGate Travel, Inc., B-412921, July 1, 2016, 2016 CPD ¶ 179 at 7. If the solicitation language is unambiguous, our inquiry ceases. Id.

In our view, the solicitation language, read as whole is unambiguous and does not support IDIS' interpretation. The solicitation required a vendor to "provide a minimum of five (5) Zone Availability Reports (ZAR) for the drop zones that would be utilize[d] to satisfy this requirement." RFQ amend. No. 1 at 16. We agree with the agency that the solicitation did not require the submission of proof of land use agreements or authority to use the site.⁶ Rather, the RFQ clearly stated that a vendor need only provide five zone availability reports for drop zones that would be utilized. The provision of permission to use or land agreements is a matter of contract administration not for our review.⁷ Accordingly, we find that the agency reasonably evaluated Metris' quotation in accordance with the solicitation's evaluation criteria.

Next, IDIS argues that Metris' quotation failed to provide airworthiness certificates for three of the four aircraft it offered. IDIS also contends that Metris' quotation failed to address the aircraft support services fuel and maintenance requirements of the PWS.

As stated above, the RFQ provided nine minimum requirements for the purposes of the agency's technical acceptability evaluation. IDIS' assertions with respect to the airworthiness certificate and aircraft support services relate to the first of these criteria. In this regard, the solicitation provided that a vendor must meet the "[m]inimum [a]ircraft requirement in accordance with (IAW) section 4 and provide required FAA . . . air carrier

⁶ To the extent that IDIS believes that the agency should have required a vendor to provide proof of permission or authority to use the drop zone sites, these assertions are untimely challenges to the terms of the solicitation. 4 C.F.R. § 21.2(a)(1)

⁷ In this regard, the PWS required that a contractor provide: at least five drop zones capable of meeting the jumps requirements of RFQ attachments 1 & 2; drop zone landing jumper and parachute recovery capability; and approved zone availability reports for drop zones identified and utilized in accordance with PWS 4.10.1-- emergency services. RFQ amend. No. 9.

or commercial operator certificates.” RFQ amend. No. 1 at 16. Section four of the PWS provided the minimum aircraft requirement as follows:

the Contractor shall provide (1) CASA C212 or (1) Skyvan aircraft, capable of conducting Military Free Fall (MFF) configured parachute operations at an altitude minimum of 18,000ft mean sea-level (MSL) utilizing a rear ramp exit. This aircraft must be an approved Air Mobility Command aircraft . . . , which is authorized to conduct parachute operations with DoD [Department of Defense] personnel. The aircraft must be capable of support fourteen (14) combat loaded Marines and two (2) MFF Jumpmasters simultaneously.

RFQ amend. No. 1 at 8-9. This section of the PWS also provided for aircraft support services as follows:

4.1 The contractor shall provide all maintenance, oil, special equipment, airfield storage and any other support services associated with operation of the contractor’s aircraft.

4.2 Contractor will provide commercial grade aviation fuel for their aircraft via pressurized fuel truck.

Id.

IDIS asserts that Metris failed to meet the FAA airworthiness certificate requirement because Metris’ quotation offered four aircraft but provided only one certificate. In response the agency contends that it properly concluded that Metris met the minimum requirements because the quotation demonstrated that it provided an airworthiness certificate for one of the offered aircraft. The agency argues that while a vendor was free to propose above and beyond the minimum requirement, as Metris did, the agency properly based its evaluation on the minimum requirements set forth in the solicitation-- whether a vendor could provide an aircraft, in accordance with the section four criteria (listed above), with an FAA airworthiness certificate.

On this record, we have no basis to question the agency’s evaluation. A vendor was not required to provide more than one FAA certified aircraft to meet the minimum solicitation requirement, and the record demonstrates that Metris provided a FAA airworthiness certificate for an aircraft that met the section four requirements. Thus, we have no basis to sustain the protest.

IDIS also contends that Metris failed to meet the aircraft support services fuel and maintenance requirements because the quotation did not specifically state compliance with these aspects of the PWS. As above, the protester’s allegations are not supported by the solicitation. Again, the solicitation provided that the agency would evaluate nine minimum criteria to determine technical acceptability. The aircraft support services were not listed as one of the nine criteria. In this regard, the solicitation’s evaluation criteria listed only an “aircraft requirement” not aircraft support services, as the protester

argues. While we agree with the protester that these services were listed in the PWS, because the solicitation did not provide for the evaluation of these items as part of the nine minimum technical acceptability criteria, the protester's assertion that Metris' quotation should have been rated technically unacceptable under these requirements is unavailing.⁸

In sum, we find that the agency reasonably evaluated Metris' quotation in accordance with the solicitation's evaluation criteria. IDIS' disagreement with the agency's evaluation does not provide a basis on which to sustain the protest.

IDIS also alleges that the agency improperly considered pages in Metris' technical quotation that were outside the RFQ's 20-page limit. We find no support for IDIS' allegation. As explained above, the agency's evaluation of the initial quotations found both IDIS' and Metris' quotations unacceptable. The agency conducted discussions with both vendors and requested revised quotations. The agency cautioned vendors that their technical quotation was limited to 20 pages. The record demonstrates that Metris' revised quotation contained 45 pages.

In response to the protester's allegation, the agency explains that pages in excess of the 20-page limit were not provided to the technical evaluators. Supp. CO Statement at 1-2. Rather, the agency states that the evaluators were provided Metris' cover page, table of contents and the first 20 pages of the technical quotation.⁹ Id. While the protester objects to the agency's post-protest declarations as to what was provided to the technical evaluators, we have no basis to question the veracity of the agency's statements.¹⁰ In this regard, a review of the agency's evaluation documents demonstrates that the agency's review was limited to the first 20 pages of Metris' quotation and there is nothing in the evaluation documents that shows that the evaluators relied on information in excess of the 20-pages in assigning Metris' technically acceptable rating. See Tab 44; Metris' Quotation as Provided to the

⁸ The agency also explains that Metris' quotation did not take exception to any requirement in the solicitation and affirmatively stated that it was providing "a turnkey solution, which addresses all required tasks, equipment, personnel, and other logistics and support requirements" to meet the agency's requirements. Supp. AR at 11; citing AR, Tab 15, Metris Technical Quotation, at 1.

⁹ The agency provided a copy of the information that was forwarded to the technical evaluators. AR, Tab 44, Metris' Quotation as Provided to the Evaluators.

¹⁰ Government officials are presumed to act in good faith, and a protester's contention that procurement officials are motivated by bias or bad faith must be supported by convincing proof; our Office will not consider allegations based on mere inference, supposition, or unsupported speculation. C&S Corp., B-411725, Oct. 7, 2015, 2015 CPD ¶ 311 at 7.

Evaluators; see also Tab 16, Final Technical Evaluation, at 3, 9 (providing citations to the pages on which Metris' proposal met the nine minimum requirements). Thus, we find the agency's evaluation was reasonable.

The protest is denied.

Susan A. Poling
General Counsel