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Decision

Matter of: CTIS, Inc.

File: B-414852

Date: October 3, 2017

James W. Kim, Esq., McDermott Will & Emery LLP, and Alexander B. Ginsberg, Esq., Pillsbury Winthrop Shaw Pittman LLP, for the protester.
William B. Blake, Esq., Department of the Interior, for the agency.
Young S. Lee, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging that solicitation contained a latent ambiguity is denied where the protester's interpretation of the solicitation language is not reasonable.
 2. Protest challenging agency's evaluation of protester's quotation and its exclusion from the competition is denied where the record shows that the evaluation was reasonable.
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DECISION

CTIS, Inc., a small business of Rockville, Maryland, protests its exclusion from the competition under request for quotations (RFQ) No. D17PS00345, issued by the Department of the Interior for a task order for enterprise software support services. The protester argues that the agency improperly excluded its quotation for failing to respond to two Federal Acquisition Regulation (FAR) provisions that were included in the RFQ. The protester also contends that its quotation should have been evaluated as responding to all the solicitation's requirements.

We deny the protest.

BACKGROUND

The Department of the Interior, on behalf of the Department of Health and Human Services, issued the RFQ on May 3, 2017, to awardees of the National Institutes of Health Information Technology Acquisition and Assessment Center, (NITAAC) Chief Information Office, Solutions and Partners 3 (CIO-SP3) Small Business (SB)

government-wide acquisition contract (GWAC).¹ Contracting Officer Statement (COS) at 1; Agency Report (AR), Tab 4, RFQ, at 1.² The competition was conducted pursuant to FAR subpart 16.5, and sought quotations for the management and provision of a full range of application support services for the Substance Abuse and Mental Health Services Administration's (SAMHSA) internal and external networks. RFQ at 2, 3.

The RFQ contemplated the issuance of a labor-hour task order with a 1-year base period and four 1-year options, to the vendor that submitted the best-value quotation.³ Id. at 2, 30, 52. The solicitation required vendors to submit quotations that complied with the RFQ's instructions. Id. at 51. The instructions notified vendors that their quotations could be rejected if they failed to provide information requested by the RFQ. Id. at 48.

Section 6 of the RFQ contained FAR provisions at sections 52.209-7 - Information Regarding Responsibility Matters (July 2013) and 52.227-15 - Representation of Limited Rights Data and Restricted Computer Software (Dec. 2007). Id. at 54-56. When included in a solicitation, the provision at FAR section 52.209-7 requires vendors to identify whether they have current active federal contracts and grants with a total value greater than \$10 million. Id. at 55; FAR § 52.209-7(b). Likewise, the provision at FAR section 52.227-15 requires vendors to identify whether they intend to use limited rights data or restricted computer software to fulfill a solicitation's data delivery requirements. RFQ at 56; FAR § 52.227-15(b).

The agency received 14 quotations in response to the RFQ, including the one submitted by CTIS. COS at 2. On June 16, 2017, the contracting officer (CO) notified CTIS that its quotation did not provide all the information required by the solicitation and was

¹ The CIO-SP3 SB GWAC is a 10-year, indefinite-delivery, indefinite-quantity, multiple award contract.

² As provided by the agency, certain sections of the solicitation were numbered by page, while other segments were numbered by section and page. For the purposes of this decision, and to avoid confusion, citations to the RFQ are to sequential page numbers only, rather than to section and page numbers.

³ Although not relevant to the protest issues raised here, quotations were to be evaluated using the following five factors: technical and management approach, experience and expertise of proposed staff, corporate capabilities, past performance, and price. RFQ at 51. The non-price factors were of equal importance, while price was considered to be the least important factor. Id. The solicitation notified vendors that the agency reserved the right to issue the task order to the vendor that submitted other than the lowest-priced quotation, if the technical benefits of the higher-priced quotation were determined to be worth the additional price. Id. at 52.

therefore excluded from the competition. Id. CTIS filed its protest with our Office on June 26.⁴

DISCUSSION

CTIS argues that the agency improperly excluded its quotation from the competition for failing to respond to the two FAR provisions. The protester asserts that its quotation provided all the information requested by the solicitation and that if any information was missing, that information was not included because of a latent ambiguity in the RFQ. Protest at 3-8.

Latent Ambiguity

The protester first contends that the agency improperly excluded CTIS's quotation from the competition for failing to provide responses to the FAR provisions at sections 52.209-7 and 52.227-15 because responses to these two FAR provisions were not required. CTIS also asserts that any defects in its quotation were the result of a latent ambiguity in the solicitation. Id. at 3-4. For example, the protester asserts that although there was language in the RFQ which expressly required responses to certain sections in the solicitation, vendors were never notified they had to specifically respond to the solicitation's FAR provisions. Id. at 3.

Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Crew Training Int'l., Inc., B-414126, Feb. 7, 2017, 2017 CPD ¶ 53 at 4. An ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. Id. A patent ambiguity exists where the solicitation contains an obvious, gross, or glaring error, while a latent ambiguity is more subtle. Id.

Here, we disagree with CTIS's assertions that the solicitation did not require vendors to respond to FAR provisions at sections 52.209-7 and 52.227-15, and that the RFQ contained a latent ambiguity. The RFQ's instructions notified vendors that a "failure to submit any of the information requested in this RFQ may lead to the rejection of your quotation."⁵ RFQ at 48. The solicitation contained the FAR provision at section 52.209-7, which requires vendors to provide information with regard to the value of their

⁴ As the estimated value of this proposed task order under the GWAC exceeds \$10 million, this protest is within our jurisdiction. 41 U.S.C. § 4106(f)(2).

⁵ Moreover, the first sentence in section 6 of the RFQ (where the two FAR provisions are found) notified vendors that "[r]equired form(s) must be completed and returned to the contracting office with your quot[ation]." RFQ at 54.

current active federal contracts and grants. Id. at 55; FAR § 52.209-7(b). The RFQ also contained the FAR provision at section 52.227-15, which requires vendors to indicate whether they intend to fulfill the solicitation's data delivery requirements using limited rights data or restricted computer software.⁶ RFQ at 56; FAR § 52.227-15(b). CTIS's quotation did not provide a response to either of these two FAR provisions. AR, Tab 8, CTIS Quotation, at 1-85.

Although CTIS contends that there is nothing in the solicitation to indicate that it had to provide responses to the FAR provisions at sections 52.209-7 and 52.227-15, our review of the express language of the solicitation indicates otherwise. Here, the two FAR provisions (52.209-7 and 52.227-15) included in section 6 of the RFQ clearly required vendors to identify, respectively: (1) whether vendors have "current active [f]ederal contracts and grants with total value greater than \$10,000,000" and (2) whether vendors intend to provide to the government any data or computer software with less than the full rights contemplated under FAR clause 52.227-14. RFQ at 54-56. Each provision included two checkboxes ([]) next to an applicable response to the provision requirement. It was self-evident that vendors were required to mark one of the two available checkboxes indicating the applicable response chosen by the vendor to address the provision requirement. In our view, the solicitation language, read as a whole (including amendment one to the RFQ), does not support CTIS's interpretation that the solicitation was unclear as to whether vendors were required to provide a response to the provision requirements with the submission of their quotations. Crew Training Int'l., Inc., supra, at 4-5. We do not agree that the solicitation language is susceptible to two different reasonable interpretations and, accordingly, find no ambiguity here.

Evaluation of CTIS Quotation

CTIS also argues in the alternative that even if the RFQ required responses to the FAR provisions at sections 52.209-7 and 52.227-15, the agency improperly eliminated its quotation from the competition. In this respect, the protester asserts that responses to both FAR provisions are evident on the face of its quotation and its existing CIO-SP3 SB contract award. The protester also contends that as a CIO-SP3 SB GWAC holder, its existing contract already requires it to comply with the FAR provision at section 52.209-7. We have reviewed all the protester's assertions and find none provide a basis to sustain its protest.

⁶ On May 19, 2017, the agency issued amendment one to the solicitation. COS at 2. This amendment, among other things, notified vendors that "all documents included in [s]ection 6, [a]ttachment 1 that are required to be submitted with your [quotation]" would not count towards the page limitations established by the RFQ for vendors' quotations. AR, Tab 5, Text of RFQ amend. 1, at 1. The text of the FAR provisions at sections 52.209-7 and 52.227-15 was included in section 6 of the solicitation. RFQ at 54-56. CTIS acknowledged receipt of amendment one on the face of its quotation. AR, Tab 8, CTIS Quotation, at 1.

A contracting agency's evaluation of quotations is a matter within the agency's discretion. Technatomy Corp., B-411583, Sept. 4, 2015, 2015 CPD ¶ 282 at 4. In reviewing an agency's evaluation, we will not reevaluate quotations; rather we will examine the evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and with procurement statutes and regulations. Id. at 4-5. It is the agency's role to define both its underlying needs and the best method of accommodating those needs, and it is within the agency's discretion to reject as unacceptable quotations that do not meet the requirements that it defines. Id. at 5.

In contrast, it is the vendor's responsibility to submit a well-written quotation, with adequately detailed information, which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. Technatomy Corp., supra, at 6. Agencies are not required to infer information from an inadequately detailed quotation, or to supply information that the protester elected not to provide. Id.

Despite CTIS's disagreement with the agency's assessment, our review of the record confirms that the protester's quotation did not contain responses to the FAR provisions at sections 52.209-7 and 52.227-15. AR, Tab 8, CTIS Quotation, at 1-85. In this regard, we have no basis to object to the agency's rejection of CTIS's quotation for failing to meet the requirements of the solicitation.

Here, even assuming that CTIS's existing CIO-SP3 SB contract committed it to comply with all of the RFQ's requirements and contained responses to both FAR provisions, the agency was under no obligation to obtain and review a copy of CTIS's CIO-SP3 SB contract to find information that was missing from the protester's quotation.⁷ Rather, it was the protester's responsibility to provide all the information required by the agency and to submit a well written quotation clearly demonstrating CTIS's ability to comply with all the solicitation's requirements.

⁷ The protester also alleges that the solicitation should not have included the FAR provisions at sections 52.209-7 and 52.227-15 because inclusion of these provisions is redundant or unnecessary, or both. For example, CTIS asserts that the inclusion of the FAR provision at section 52.227-15 is unnecessary because the RFQ already prohibits vendors from owning any data rights that might be produced during the performance of the task order. We dismiss these protest allegations as untimely because they challenge alleged improprieties in the RFQ that should have been protested before the initial closing time for submission of quotations. Our timeliness rules specifically require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial quotations be filed before that time. 4 C.F.R. § 21.2(a)(1); see AmaTerra Env'tl. Inc., B-408290.2, Oct. 23, 2013, 2013 CPD ¶ 242 at 3. Here the solicitation was issued on May 3, 2017. RFQ at 1. Initial quotations were due by June 9. AR, Tab 5, Text of RFQ amend. 1, at 1. These protest allegations were not raised until June 26, well after the closing date for receipt of initial quotations.

In sum, because we find no ambiguity in the solicitation's requirement for vendors to provide responses to the included FAR provisions in their quotation submissions, the agency reasonably concluded that the protester's quotation had not met the submission requirements. Consequently, we find nothing objectionable about the agency's decision to exclude the protester from further consideration here.

The protest is denied.

Susan A. Poling
General Counsel