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Decision

Matter of: Empirical Concept, Inc.

File: B-415213

Date: December 6, 2017

Raymond C. McCann, Esq., Thomas O. Mason, Esq., Francis E. Purcell, Esq., and Joseph R. Berger, Esq., Thompson Hine LLP, for the protester.
Donald J. Walsh, Esq., Wright, Constable & Skeen, LLP, for Intelligent Fiscal Optimal Solutions, LLC, an intervenor.
Peter J. Dickson, Esq., Savannah L. Wilson, Esq., Department of Labor, for the agency.
Young H. Cho, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of the protester's quotation is denied where the record shows that the evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

Empirical Concept, Inc., of National Harbor, Maryland, protests the issuance of a task order under Federal Acquisition Regulation (FAR) subpart 8.4 to Intelligent Fiscal Optimal Solutions, LLC (iFOS), of Columbia, Maryland, under request for quotations (RFQ) No. 1201143, issued by the Department of Labor for budget execution support services. The protester, the incumbent contractor providing these services, challenges the evaluation of quotations and the selection decision.

We deny the protest.

BACKGROUND

The RFQ was issued on June 9, 2017, through the General Services Administration (GSA) e-buy system under the procedures of FAR subpart 8.4 to vendors holding contracts under the GSA's schedule 70, as a total 8(a) set-aside for budget execution

support services. RFQ¹ at 1; Id., Performance Work Statement (PWS), at 1; Agency Report (AR), Contracting Officer's Statement (COS) at 1. The RFQ contemplated award of a single fixed-priced task order with a 1-year base period and four 1-year options. RFQ, PWS at 2. Award was to be made on a best-value tradeoff basis, considering the following factors: technical approach, past performance, and price. RFQ, Evaluation Criteria, at 1. The technical approach included the following subfactors: relevant corporate experience, project management, staffing, and quality control. Id. The non-price factors were of equal importance and when combined, were stated to be significantly more important than price; however, the RFQ stated that "if two [quotes] are determined to be relatively equal with respect to non-price evaluation factors, price may become the determining factor in the award decision."² Id.

The solicitation advised that the quotations would be adjectivally rated against the evaluation factors³ and that price would be evaluated for completeness and reasonableness. RFQ, Instructions to Vendors, at 3-4.

Five vendors submitted quotations, including Empirical and iFOS. A source selection evaluation board (SSEB) was established to evaluate the technical submissions. The results of the agency's evaluation are as follows:

	Overall Technical	Past Performance	Price
iFOS	Good/Low Risk	Low Risk	\$4,994,650.00
Vendor A	Outstanding/Low Risk	Moderate Risk	\$6,140,976.00
Vendor B	Good/Low Risk	Low Risk	\$6,925,343.73
Vendor C	Good/Low Risk	Moderate Risk	\$8,977,406.00
Empirical	Good/Low Risk	Low Risk	\$10,449,539.80

See Supp. AR at 3.

¹ The RFQ was modified once. All references to the RFQ are to the final version, as modified on June 15, 2017. All citations to the record are to the pagination provided by the agency.

² Although the solicitation was issued under FAR subpart 8.4, throughout the record the parties use the term "proposal" rather than "quotation" to refer to the vendors' responses to the solicitation. The distinction between a quotation and proposal is not relevant to our analysis. For purposes of this decision, we use the term quotation throughout.

³ The technical approach factor was to be rated using the following adjectival ratings: outstanding, good, acceptable, and unacceptable. RFQ, Instructions to Vendors, at 3; The past performance factor was to be rated using the following adjectival ratings: low, moderate, high, and unknown risk. Id. at 3-4.

The contracting officer (CO), who was the source selection official for the procurement, found that while the vendors were very close on the non-price factors, there was a wide variation among the quotations on price, which became a major discriminator. See COS at 3. As between iFOS and Empirical, whose quotations received identical ratings, the CO did not identify anything in Empirical's quotation that justified a 109 percent or \$5.5 million price premium. Id. The CO found that because iFOS's quotation was one of the highest rated and was the lowest-priced, no tradeoff analysis was necessary. AR, Tab 13, Source Selection Decision Document (SSDD) at 4. As a result, the CO found iFOS's quotation to represent the best value to the government. Id. Empirical was notified of the award on August 24, 2017. This protest followed.

DISCUSSION

The protester challenges the agency's evaluation of the vendors' technical quotations and the resulting selection decision.⁴ In this regard, the protester argues that it should have been assigned an outstanding overall rating for the technical approach factor,⁵ as well as higher ratings for all the subfactors.⁶ Protester's Comments at 14-20. The protester also challenges the agency's evaluation of the awardee under the technical approach factor and past performance factor. See Protester's Comments at 1-15. The protester further argues that based on these alleged flaws in the evaluation, the selection decision was unreasonable, and was also inconsistent with the solicitation (which stated a tradeoff analysis would be utilized). See Protest at 20-21; Protester's Comments at 120-25.

For the reasons discussed below, we conclude that the agency's evaluation of Empirical was reasonable. Because we find that the agency's evaluation was reasonable in this regard, Empirical is not an interested party to challenge the evaluation of iFOS's quotation. Bid Protest Regulations, 4 C.F.R. § 21.0(a); see CSC Gov't Solutions LLC, B-413064, B-413064.2, Aug. 10, 2016, 2016 CPD ¶ 347 at 4, 12; First Coast Serv.

⁴ In filing and pursuing its protest, Empirical has made arguments that are in addition to, or variations of, those discussed below. Although we do not specifically address all of Empirical's arguments, we have fully considered all of them and find that they afford no basis on which to sustain the protest.

⁵ We note that the protester did not timely challenge the overall rating assigned to its quotation in its initial protest despite being informed of the rating on August 31, 2017; however, the protester timely challenged the underlying aspects of the rating based on information first obtained from the agency report.

⁶ The protester argues that it should have received outstanding ratings instead of good ratings for the relevant corporate experience and staffing subfactors; an outstanding rating instead of an adequate rating for the project management qualification subfactor; and a good or outstanding rating for the quality control plan subfactor. See Protester's Comments at 14-20.

Options, Inc., B-409295.4, B-409295.5, Jan. 8, 2015, 2015 CPD ¶ 33 at 8-9 (a protester is not an interested party to challenge the evaluation of the awardee's proposal where it would not be in line for award were its protest sustained).

Where, as here, an agency issues a solicitation to Federal Supply Schedule contractors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. SRM Group, Inc., B-410571, B-410571.2, Jan. 5, 2015, 2015 CPD ¶ 25 at 4; Digital Solutions, Inc., B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4.

Underlying the protester's challenges is its belief that its quotation should have received higher subfactor ratings due to Empirical's status as an incumbent. For example, in its challenges to the agency's evaluation under the relevant corporate experience subfactor, the protester argues that there can be no more relevant experience than the work Empirical performed for four years as the incumbent, and that it "should have properly benefitted from its four year 'advantage of incumbency'" but did not, "primarily because two of the [a]gency's three technical evaluators" assigned individual ratings of good. See Protester's Comments at 16; see also AR, Tab 5, Technical Evaluation Consensus Report at 2.

Here, the record shows that the agency credited Empirical for its relevant experience on the incumbent contract and in fact assessed a strength for this experience. See AR, Tab 5, Technical Evaluation Consensus Report at 11. However, the evaluators assessed no significant strengths in this area of Empirical's quotation, and we note in this regard that the RFQ's definition of an outstanding rating contemplated a quotation offering "numerous significant strengths" that are not offset by weaknesses. RFQ, Instruction to Offerors, at 3. The protester's argument that it should have received even more credit amounts to disagreement with the agency's evaluation, which does not make the evaluation unreasonable.⁷ See Alphaport, Inc., B-414086; B-414086.2, Feb. 10, 2017, 2017 CPD ¶ 69 at 7; CACI-WGI, Inc., B-408520.2, Dec. 16, 2013, 2013 CPD ¶ 293 at 12.

The protester also argues that the agency ignored "extensive information" contained in Empirical's quotation, which should have resulted in additional strengths or higher

⁷ We note that the protester argues that its rating for the relevant corporate experience subfactor was downgraded due to the individual evaluations of two of the three evaluators, while also arguing that for the quality control plan subfactor, the agency inexplicably assigned an acceptable rating where two of the three evaluators assigned good ratings. Compare Protester's Comments at 16 with id. at 19. Notwithstanding the protester's inconsistent arguments, the protester's suggestion that the SSEB did not assign any adjectival ratings for the subfactors that was better than the lowest adjectival rating assigned by an individual evaluator is not supported by the record. Such a mechanical or formulaic approach was not contemplated by the solicitation nor did the SSEB perform the evaluation in such a manner.

ratings. See Protester's Comments at 16-18. In this regard, pointing to two subfactors that were assigned adequate ratings, the protester argues that these ratings were unreasonable because, contrary to the definition of adequate, its quotation provided much more than just minimal detail.⁸ Id.

For example, for the project management qualifications subfactor, the protester argues that the agency in its evaluation "merely note[d]" some of Empirical's proposed project manager's qualifications, while "ignor[ing] the rest of the highly relevant information [in Empirical's quotation]" as well as the project manager's "extensive [8] page resume . . . which reflects his work and significant accomplishments for the [a]gency as an incumbent employee." Id. at 16-17. Similarly, for the quality control plan subfactor, the protester argues that it should have received a higher rating based on its "complete and thorough proposal with regard to each of the RFQ's requirements," as well as the evaluators' comments about its quality control plan. Id. at 19.

In response, the agency explains that the SSEB reviewed the information provided in Empirical's quotation and, for the project management qualifications subfactor, recognized that Empirical's proposed project manager did appear to exceed the minimum qualifications set forth in the solicitation. However, the agency contends that the SSEB exercised its judgment to determine whether the proposed manager's skills, qualifications, and significant accomplishments beyond those required by the RFQ offered a benefit to the agency in terms of an increased likelihood of successful contract performance. Thus, in documenting the evaluation, the evaluators identified only the attributes seen to offer significant advantages to the government. Agency's Response to GAO Request for Information (RFI) at 6. With regard to the quality control plan, the agency states that Empirical described its quality control plan in very broad terms, in one-and-a-half pages. Id. at 8. The agency also explains that the evaluators' statements on which the protester relies merely acknowledge that Empirical met the RFQ's minimum requirements for the subfactor; and notes, further, that the protester does not point to specific numerous strengths--or anything else in its quotation--that would satisfy the RFQ's definition of a good or outstanding rating.⁹ Id.; see also AR, Tab 5, Technical Evaluation Consensus Report at 14. As a result, the agency states that assigning an acceptable rating to this subfactor was reasonable.

⁸ As relevant here, adequate was defined as a quotation that satisfies all of the government's requirements with minimal detail to indicate feasibility of the approach and shows a minimal understanding of the problems, with an overall moderate to high degree of risk in meeting the government's requirements. RFQ, Instructions to Vendors, at 2.

⁹ A good rating was defined as a quotation that satisfied all of the government's requirements with adequate detail to indicate feasibility of the approach and shows an understanding of the problems and offers some significant strengths or numerous minor strengths, which are not offset by weaknesses, with an overall low to moderate degree of risk in meeting the government's requirements. RFQ, Instructions to Vendors, at 3.

Here, the record shows that in assigning an adequate rating to Empirical's quotation under the project management qualification subfactor, the agency acknowledged the proposed project manager's qualifications and experience. See AR, Tab 5, Technical Evaluation Consensus Report at 12. While the protester challenges this rating on the basis that the agency failed to credit the proposed project manager's "work and significant accomplishments for the [a]gency as an incumbent employee," here the agency did not find those attributes to offer significant advantages to the government. See Agency Response to GAO RFI at 6. Similarly, in assigning an adequate rating to Empirical's quotation under the quality control plan subfactor, while the agency noted its observations with regard to Empirical's short description and concluded that Empirical satisfied the government's requirements, these attributes did not rise to significant strengths or strengths. See id. at 8; AR, Tab 5, Technical Evaluation Consensus Report at 14. As a result, we find the agency's evaluation both reasonable and consistent with the RFQ's evaluation scheme and conclude that the protester's arguments do not provide any bases to sustain the protest.

Based on our conclusion that the agency reasonably evaluated Empirical's quotation, we find that Empirical is not an interested party to pursue its remaining challenges regarding the evaluation of iFOS's quotation and the propriety of the agency's selection decision. As discussed above, a protester is not an interested party where it would not be in line for contract award, were its protest to be sustained. See 4 C.F.R. § 21.0(a)(1); CSC Gov't Solutions LLC, supra; First Coast Serv. Options, Inc., supra. Here, the record reflects that there was an intervening vendor (Vendor B) with a lower price than Empirical's, and with the same good/low risk technical approach factor ratings and low risk past performance rating as Empirical. The protester does not challenge the agency's evaluation of this intervening vendor's quotation. Accordingly, we find that Empirical is not an interested party to maintain its protest of the agency's evaluation of iFOS's quotation or the selection decision.

The protest is denied.

Thomas H. Armstrong
General Counsel