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Decision

Matter of: The HP Group, LLC

File: B-415285

Date: December 14, 2017

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Lucie J. McDonald, Esq., Department of the Navy, for the agency.

Gabriel D. Soll, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that an agency miscalculated offerors' price proposals is denied where the record shows that the evaluation was reasonable and consistent with the terms of the solicitation.
2. Protest alleging an ambiguity in a solicitation is denied where the protester does not demonstrate that its interpretation of the provision is reasonable.

DECISION

The HP Group, LLC (HPG), an 8(a)-certified, service-disabled veteran-owned small business of Dunn, North Carolina, protests the award of a contract to Melgar Janitorial Solutions (Melgar), of San Jose, California, under request for proposals (RFP) No. N40085-17-R-1158, issued by the Department of the Navy, Naval Facilities Engineering Command, for custodial services at the Naval Weapons Station Earle (NWSE), in Colts Neck, New Jersey. HPG challenges the evaluation of its price proposal.

We deny the protest.

BACKGROUND

The RFP was issued on June 30, 2017, as a set-aside procurement under the Small Business Administration's 8(a) program. Contracting Officer's Statement (COS) at 1. The solicitation contemplated the award of a fixed-price, indefinite-delivery/indefinite-quantity (IDIQ) contract for custodial services. Id. The RFP sought proposals to provide all labor, management, supervision, tools, materials and equipment necessary to perform the custodial services sought. These services included, but were not limited to, emptying waste and recycling containers, carpet vacuuming, window cleaning, restroom and shower cleaning, and special floor care for gymnasias and racquetball courts. Id. The solicitation anticipated a base year and four 1-year option periods of performance. RFP at 8.

The solicitation described various levels of service the Navy could order, denoting the frequency of activities within each level of service in an attachment. See RFP at 42-43; 139-140 (Attachment J-1503010-03). Offerors were to submit price proposals by completing a summary bid schedule and pricing schedules for the base year and each option year. Id. at 11. The pricing schedules listed the various service levels and provided a space in which the offeror was to insert a unit price for each line item. Id. at 130; Agency Report (AR), Tab C, Attachment J-0200000-09. These unit prices were then to be multiplied by a quantity, pre-populated on the pricing schedules by the agency, to produce an extended price for each line item. These extended prices were then to be added together to produce a total price for each possible year of performance. Id. at 11. Many of the line items on the schedule were listed with a quantity pre-populated as zero. Id. at 43.¹ The RFP provided that if "there is a difference between a unit price and an extended total amount," the agency would consider the unit price to be the intended offer and would use it to recalculate the extended price. Id. at 9.

The Navy responded to several questions regarding the pricing instructions through amendments to the solicitation. Prior to Amendment 1, a potential offeror asked whether offerors were required to submit prices for the services that listed a quantity of zero, and what quantity should be used. Id., Amendment 1, at 2. The agency responded simply that "all [line items] are to be priced." Id. In response to two subsequent questions seeking clarification on how to price these line items, the Navy responded that the line items were to be priced according to the common output levels shown on the schedule; that the "frequencies of services and costs associated with those frequencies are to be included in the unit price"; that the "subtotal is the quantity multiplied by the unit price, and the total is the individual customer's total price"; and that each line item was to be priced individually. Id., Amendment 2, at 3.

¹ The agency states that its intention was to establish prices for services for which it could not yet determine quantities, so that they could later be ordered on an as-needed basis. AR, Tab F, Contract Specialist/Price Evaluator's Statement, at 1-2.

The RFP advised offerors that award would be made to the responsible offeror that submitted the lowest-priced, technically acceptable (LPTA) proposal. Id. at 167. The solicitation indicated that, in order to permit efficient competition, the Navy would use the following source-selection methodology:

Proposals will initially be screened for price and placed in order of price (lowest to highest price). The Navy will then evaluate the technical factors of the three (3) lowest-priced proposals. The Navy will make award to the lowest-priced, technically acceptable proposal from among the three (3) lowest-priced proposals. However, the Navy, at its sole discretion, reserves the right to increase the number of proposals it will review under this methodology. Accordingly, under this methodology, the technical factors of some proposals may not be evaluated by the Navy. Id. at 9, 167. The solicitation stated that the government intended to make award without discussions. Id. at 162.

The Navy received thirteen proposals, including those submitted by HPG and Melgar. COS at 2. Without conducting a detailed review or evaluation of prices, the Navy arranged the proposals from lowest to highest-priced based on the total price proposed, and proceeded to evaluate the lowest-priced proposals. The Navy states that it evaluated the technical proposals for the three offerors that submitted the lowest prices, and found none to be technically acceptable. The agency repeated this process with the two next-lowest-priced proposals, including Melgar's. Memorandum of Law (MOL) at 3. After the Navy determined that Melgar's proposal was technically acceptable, it did not evaluate any of the remaining technical proposals, including HPG's. Based on the recommendation of the source selection evaluation board, award in the amount of \$3,801,625 was made to Melgar without conducting discussions. Id.

HPG requested a post-award debriefing. Because the protester's proposal, priced at \$15,440,482, offered the highest price among all offers submitted, it was not evaluated beyond the initial screening for price. The Navy states that when it was preparing to debrief HPG, it discovered that the protester had altered the pricing schedule by substituting its own quantities for any services for which the pricing schedule had a zero quantity. COS at 3. The protester was debriefed by teleconference on September 12, 2017, and this protest followed.

DISCUSSION

HPG protests that the agency failed to evaluate price proposals in accordance with the terms of the RFP; that its own proposal was improperly rejected; and that the solicitation contained a latent ambiguity that caused HPG to price its offer on a different basis than the other offerors. The protester complains that the agency "simply lined the proposals up in order from lowest to highest and did not perform any price evaluation until after the competitive range . . . had been established," and that this was contrary to the terms of the solicitation. Protester's Comments at 3. HPG contends that had the Navy conducted a proper evaluation, the agency would have recognized a latent ambiguity in the solicitation regarding how offerors were to propose pricing. Id. at 9-10. The

protester also asserts that the agency abused its discretion by not requesting clarification of HPG's proposed prices. Id. at 10-11.

With regard to the protester's insistence that no meaningful review of price was conducted, the protester asserts that the RFP required the agency to review pricing for reasonableness and completeness. The protester posits that this evaluation was to ensure, in part, that all pricing information required by the solicitation was provided and that all mathematical computations were correct. Protester's Comments at 5. HPG complains in this regard that the agency did not look at anything beyond bottom-line pricing to determine the proposals' relative price positions. HPG essentially argues that even a cursory evaluation of its price proposal should have alerted the agency to the fact that HPG's proposal was prepared on a different basis than the others. The protest is further premised on HPG's belief that had the agency discovered this discrepancy, it would have had an obligation to recompute the protester's proposed pricing or to engage in clarifications of the protester's proposal. We disagree.

In reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria, as well as applicable statutes and regulations. Wolverine Servs., LLC; DL LSS, Joint Venture, B-401133 et al., Oct. 23, 2014, 2014 CPD ¶ 349 at 3.

Here, there is no dispute that HPG altered the quantity multiplier for several lines for each possible year of performance when it completed its pricing proposal. See AR, Tab H, HPG's Price Proposal, at 19-38; Protester's Comments at 8. Specifically, the protester changed the quantity for each of the lines that were pre-populated with a quantity of zero to a higher quantity, resulting in additional sums being added to the price totals for each contract year. Each instance where the quantity of zero was changed was printed in the proposal using red font. See AR, Tab H, HPG's Price Proposal, at 19-38.

First, we find that the agency's initial sorting of price proposals by total price without additional evaluation was consistent with the terms of the solicitation. In setting out the basis for award, the RFP stated that proposals would "initially be screened for price and placed in order of price (lowest to highest price)." RFP at 167. The record demonstrates that this approach was followed and that the protester's proposal was not among the lowest-priced proposals due to its alteration of the quantity multipliers, and was therefore not evaluated further. The solicitation did not elaborate on the meaning of the term "screened," and no protest was filed challenging this term prior to the closing date established for receipt of proposals. See 4 C.F.R. § 21.2(a)(1); Armorworks Enters., LLC, B-400394; B-400394.2, Sept. 23, 2008, 2008 CPD ¶ 176 at 4 (protest based on alleged improprieties in a solicitation that are apparent prior to closing time for receipt of proposals must be filed before that time).

The Navy was not obligated under the terms of the solicitation to recompute the protester's proposal. HPG's argument in this regard relies on an RFP provision that would permit the agency to recalculate pricing where an offeror's submitted schedule includes a discrepancy between the unit price and the extended total for that service. However, no such discrepancy is present here. The extended line item prices in HPG's proposal are the correct mathematical result of multiplying the unit prices in HPG's proposal by the quantities in HPG's proposal (whether pre-populated or inserted by HPG). The total price is the correct sum of those extended line item prices.

Here, the protester took it upon itself to change the quantities in the pricing schedule. The protester does not demonstrate that it followed any instructions from the agency to change the quantities provided in the RFP, nor does the protester provide any explanation in its proposal of why it did so. Because HPG's price proposal did not contain the type of mathematical error contemplated by the RFP provision, the agency was not obligated to recompute HPG's pricing, even had HPG's alteration of the quantities been noticed before award.

The protester also asserts that the solicitation's terms with regard to the pricing instructions were ambiguous, claiming that the RFP was subject to two reasonable interpretations. Protest at 9-10. In this regard, HPG alleges that the answers provided in RFP Amendment 2--instructing offerors to price each line "individually," taking into account the "frequency of services" associated with service levels--could reasonably be interpreted in more than one way. Protester's Comments at 8. To this end, the protester states that it "carried over" pre-populated quantities from other service levels' line items to replace the zero quantities provided in the solicitation. Id. HPG argues that this multiplier represented the square footage of the building to receive service, and that HPG assumed this was the "frequency of service" referred to in the Navy's answer in Amendment 02. Id.

The agency responds that the RFP's instructions were not ambiguous, but to the degree the protester was unclear on the instructions, any request for clarifications had to be made prior to the closing date for receipt of proposals. MOL, at 10-12. We agree.

An ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. Argus Int'l Risk Servs., LLC, B-411682, B-411682.2, Sept. 25, 2015, 2015 CPD ¶ 303 at 5. A patent ambiguity exists where the solicitation contains an obvious, gross, or glaring error, while a latent ambiguity is more subtle. Id. A party's particular interpretation need not be the most reasonable to support a finding of ambiguity; rather, a party need only show that its reading of the solicitation is reasonable and susceptible of the understanding that it reached. Strategic Resources, Inc., B-411024.2, Apr. 29, 2015, 2015 CPD ¶ 200 at 4-5.

We conclude that the protester's interpretation of the RFP was not reasonable, and that it therefore has not shown that the RFP was ambiguous. A table found in RFP indicates frequency of activities on a daily, weekly, monthly or yearly basis, to show the requirements of the varying levels of service; it makes no mention of any building's

square footage. See RFP, at 139, Attachment J-1503010-03. HPG's interpretation, that this chart required offerors to alter the quantities that were pre-populated on the schedules, does not logically flow from the RFP's instructions or the answers provided in the RFP amendments. In fact, the solicitation was explicit in its instruction that offerors were to enter unit prices. Id. at 9. The protester's confusion about the instructions and its assumptions about how to complete the pricing schedule do not demonstrate that the solicitation was ambiguous.² Accordingly, this protest ground is denied.

HPG also asserts that the agency should have engaged in clarifications to better understand its pricing proposal. Protest at 10-11. The protester argues that the agency abused its discretion by not engaging in clarifications regarding the altered quantity multipliers. Protester's Comments, at 11.

Again, we disagree. Where, as here, a solicitation states that the agency intends to make award without discussions, the contracting officer's discretion not to hold discussions is quite broad and is, in general, a matter we will not review. Trace Sys., Inc., B-404811.4, B-404811.7, June 2, 2011, 2011 CPD ¶ 116 at 5. Similarly, while agencies have broad discretion to seek clarifications from offerors, there is simply no requirement that offerors be permitted to clarify their proposals. See Wolverine Servs., LLC; DL LSS, Joint Venture, supra at 5-6. Here, in view of the express terms of the RFP, including the intention to award without discussions and the provided quantity multipliers, the agency was under no obligation to inquire about HPG's proposal, or to offer the opportunity to resolve any errors through clarifications.

The protest is denied.

Thomas H. Armstrong
General Counsel

² While we agree that the agency's responses to prospective offerors' questions regarding pricing were not very clear, no protest of the terms of the solicitation was filed prior to the closing time for receipt of proposals, as required by the timeliness rules in our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(1). Where an ambiguity exists, GAO must determine whether the ambiguity is latent or patent in order to determine whether the protest was timely filed. RELI Group, Inc., B-412380, Jan. 28, 2016, 2016 CPD ¶ 51 at 6. Here, although HPG argues that its allegations concern a latent ambiguity--a more subtle ambiguity, which may be protested after closing--as stated above, we do not agree that the protester's interpretation of the manner in which offerors were to provide pricing was reasonable, and therefore find the protester has not demonstrated an ambiguity. Accordingly, there is no timely-filed challenge to the RFP's terms.