U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548
Comptroller General
of the United States

Decision

Matter of: Java Productions, Inc.

File: B-416600

Date: October 29, 2018

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Christian Jordan, Esq., Department of Homeland Security, for the agency.
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DIGEST

Protest challenging exclusion from two-phased competition for the establishment of a blanket purchase agreement is denied where the solicitation specifically informed vendors that the agency would eliminate from further consideration any vendors whose quotations were not deemed to be among the most competitive, and agency's decision to exclude protester's quotation was reasonable and consistent with the solicitation.

DECISION

Java Productions, Inc., of Blacksburg, Virginia, protests the exclusion of its quotation from phase II of the competition conducted under request for quotations (RFQ) No. 70T05018Q9NMED010, issued by the Department of Homeland Security, Transportation Security Administration (TSA), to establish a blanket purchase agreement (BPA) for program management support services. The protester argues that the agency's elimination of its quotation from the competition was based on considerations that were inconsistent with the evaluation scheme set forth in the solicitation and that the agency's evaluation was unreasonable.

We deny the protest.

BACKGROUND

The RFQ, set aside for historically underutilized business zone small businesses, was issued on October 25, 2017, using the procedures set forth in Federal Acquisition

Regulation (FAR) subpart 8.4. RFQ[1] at 1, 241.[2] The solicitation contemplated the establishment of a single BPA with a 1-year base period and four 1-year option periods with the "responsible [vendor] whose [quotation] conforming to the solicitation will be most advantageous to the [g]overnment, price and other factors considered." Id. at 241, 291.

As relevant here, the solicitation advised vendors that quotations would be evaluated in two phases, progressively reducing the number of vendors being considered for award in order to conserve time and resources in the evaluation of quotations. Id. at 291-292. During phase I, the agency would "determine the acceptability of each [vendor] by evaluating the technical submittal for the BPA level, the pricing matrix for labor categories proposed, and experience of similar size, scope and complexity."[3] Id. The RFQ stated that the agency would eliminate from further consideration any vendors that were not deemed to be among the most competitive. Id. With regard to the price factor, the solicitation did not provide any details about how price would be evaluated. Id. In this regard, the solicitation simply listed, among the evaluation factors for phase I, "Price (BPA Labor Rates and Labor Categories)". Id.

The solicitation then explained that once the agency had reduced the number of vendors to what it considered an appropriate number, the agency in phase II would provide vendors with a statement of work (SOW) for a mock task order and request selected vendors to provide a technical quote, management approach, and price submittal for the mock task order. Id. The solicitation further explained that "TSA will then perform a price and technical analysis of the mock task order submittals and evaluate past performance." Id.

The solicitation finally explained that "[u]pon evaluation in accordance with [p]hase I and [p]hase II, considering all factors (i) through (vii), the [g]overment will assess the apparent successful awardee for responsibility."[4] Id.

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[1] The solicitation was issued to vendors holding contracts under the General Services Administration's (GSA) Federal Supply Schedule (FSS), Professional Services Schedule, Mission Oriented Business Integrated Services, Special Item Number (SIN) 874-7, Integrated Business Program Support Services. RFQ at241. The solicitation was amended four times. All references to the solicitation are to a conformed solicitation incorporating changes through amendment 4 and provided by the agency.

[2] The agency used a Bates numbering system in preparing the agency reports. This decision uses the Bates numbers assigned by the agency for its citations.

[3] In this regard, the solicitation advised that during phase I vendors were to submit the following three separate quotation volumes: technical approach; experience; and price and labor matrix. RFQ at 290.

[4] Factors (i) through (vii) are: (i) technical approach of the services offered to meet the government's requirement (BPA SOW sections 3.1 through 3.12); (ii) experience (BPA

(continued...)

As relevant here, for the phase I pricing factor, the solicitation instructions with regard to the price factor were as follows:

> PRICE AND LABOR MATRIX: Contractors shall provide the completed [l]abor [c]ategory [c]ross [r]eference [s]preadsheet with their quote . . . . The contractor shall ensure that a labor category description is included with their submission in sufficient detail for evaluation (does not count toward total page limitation).

Id. at 290.

The price and labor matrix/labor category cross reference spreadsheet, also referred to as "attachment B" or "the labor matrix spreadsheet," listed in one column (titled "SOW job title and description") 14 labor categories and their respective education, experience, and/or certification requirements, which were identical to those in the SOW. See id. at 31-32, 238-239. The next column was titled "contractor equivalent job title and description," and was blank. Id. at 31-32. The labor matrix spreadsheet contained no instructions as to what information the vendors were to provide. Id.

The agency received thirteen quotations, including a quotation from Java Productions. Agency Report (AR), Tab 26, Phase II Selection Determination at 395. The quotations were evaluated by a technical evaluation team and a pricing evaluation team. Java Production's quotation was evaluated as follows:

Technical Approach	**Experience**	**Price andLabor Matrix**		
		Price (at or below GSA rate)	Labor Categories (on required SIN)	Labor Categories (equivalent)
Good	Outstanding	Yes	Yes	No

Id.

As relevant here, the agency assessed four deficiencies under the price factor for Java Productions. AR, Tab 25, Consensus Technical Evaluation Documentation at 385-387.

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SOW sections 3.1 through 3.12); (iii) price (BPA labor rates and labor categories); (iv) technical approach of the services offered to meet the government's requirement (specific to the mock task order only); (v) management approach to include, but not limited to, ingress transition plan, project management plan, and quality control plan; (vi) past performance; and (vii) price (for mock task order only). RFQ at 292. The solicitation advised that factors (i) through (iii) would be evaluated during phase I and factors (iv) through (vii) would be evaluated during phase II. Id.

For example, the agency assessed a deficiency because, while the SOW specified a minimum number of years of experience and education requirements for the various types of personnel that might be required, none of Java Productions' proposed labor categories in its price and labor matrix specified the specific type of experience, minimum amount of experience, or education level it would provide in each of the positions. Compare id. at 385-386 with RFQ at 238-239. While the agency attempted to find additional information in the Java Productions' technical submission in order to determine whether its proposed equivalent labor categories were in fact equivalent (i.e., possessed the requisite education, experience, and certifications), it did not find any. See AR, Tab 26, Phase II Selection Determination at 395, 404.

On July 12, 2018, the agency informed Java Productions that the firm was not determined to be among the most competitive and would not advance to phase II as a result of its failure to provide sufficient information to allow the agency to ascertain whether Java Productions' proposed labor categories met or exceeded the requirements of the solicitation. AR, Tab 27, Preaward Notice of Exclusion from Phase II. This protest followed.

DISCUSSION

Java Productions argues that the agency's elimination of its quotation from the competition was based on considerations that were inconsistent with the evaluation scheme set forth in the solicitation.[5] Protest at 10-11; Protester's Comments at 1-5. Specifically, the protester contends that the solicitation required the agency to perform what the protester characterizes as a "full and qualitative analysis" of the phase I submissions, considering the technical approach, experience, and price factors to determine which quotations were the most competitive for further evaluation under phase II. Protest at 11; Protester's Comments at 2-4. The protester argues that instead of adhering to the evaluation scheme characterized above, the agency utilized unstated "go/no-go" criteria under the price factor to improperly eliminate its quotation from the competition. Id.

In the alternative, the protester argues that the agency's elimination of its quotation was improper because its quotation did, in fact, provide sufficient details to demonstrate that its proposed labor categories would meet or exceed the qualifications set forth in the solicitation. Protest at 12-13; Protester's Comments at 6-8. In this regard, the protester contends that it satisfied the solicitation's requirements because it "mapped" the SOW labor categories to categories on its schedule contract that were appropriate for the work, included a description of the labor categories proposed in its quotation, and therefore met the agency's desired requirements. Protest at 13. The protester also argues that the agency unreasonably ignored information such as Java Productions'

[5] In filing and pursuing its protest, the protester has made arguments that are in addition to, or variations of, those discussed below. We have considered all of the protester's assertions and find no basis to sustain its protest.

underlying schedule contract, as well as other information provided in its quotation, that reflected its intent to provide qualified employees and comply with the requirements of the solicitation. Id. at 6; Protester's Comments at 7-8.

Based on our review of the record, we do not find that the protester has established that the agency's elimination of its quotation--based solely on the agency's determination that its price quotation was not acceptable--was inconsistent with the solicitation's stated evaluation scheme.

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 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. AmVet Techs., LLC, B-415150.2, B-415150.3, June 5, 2018, 2018 CPD ¶ 202 at 3; HP Enter. Servs., LLC, B-411205, B-411205.2, June 16, 2015, 2015 CPD ¶ 202 at 5. A protester's disagreement with the agency's judgment, without more, does not establish that an evaluation was unreasonable. Tesla Labs., Inc., B-414428, June 7, 2017, 2017 CPD ¶ 182 at 4; Electrosoft Servs., Inc., B-413661, B-413661.2, Dec. 8, 2016, 2017 CPD ¶ 7 at 5. 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. Tesla Labs., Inc., supra ; Information Experts, Inc., B-413887, B-413887.2, Dec. 30, 2016, 2017 CPD ¶ 16 at 7.

Here, the solicitation, as described above, specifically advised vendors that the quotations would be evaluated in phases to progressively reduce the number of vendors being considered for award in order to conserve time and resources in the evaluation of quotations. RFQ at 291-292. As relevant here, the solicitation stated that during phase I, the agency would "determine the acceptability of each [vendor] by evaluating . . . the pricing matrix . . . ." Id. at 292. On this record, we do not find that the protester has established that its elimination from the competition, based solely on the agency's determination that its price quotation was unacceptable, was inconsistent with the solicitation's stated evaluation scheme. Accordingly, we deny this protest ground.

Further, a vendor is responsible for submitting a well-written quotation, with adequately detailed information, that clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. FEI Sys., B-414852.2, Nov. 17, 2017, 2017 CPD ¶ 349 at 6. A vendor that fails to do so runs the risk that its quotation will be evaluated unfavorably. See govSolutions, Inc., B-413166.3, Sept. 2, 2016, 2016 CPD ¶ 252 at 3-4; Recogniti, LLP, B-410658, Jan. 21, 2015, 2015 CPD ¶ 49 at 6.

On this record, we have no basis to object to the agency's evaluation. Here, the SOW specifically identified the required education level; type and minimum years of experience; and any certification requirements for each labor category. See RFQ at 238-239. However, none of the descriptions of the equivalent labor category

proposed by Java Productions in its labor matrix spreadsheet indicated the minimum educational, years of experience, or types of experience requirements for any of its labor categories. Compare id. with AR, Tab 19, Java Productions' Labor Matrix Spreadsheet.

Similarly, as discussed above, while the solicitation was not clear as to what level of detail vendors were to provide in their labor matrix spreadsheet,[6] the solicitation specifically instructed vendors to provide in the labor matrix spreadsheet--and not in any other submission--a "completed [l]abor [c]ategory [c]ross [r]eference [s]preadsheet" that included labor category descriptions "in sufficient detail for evaluation." RFQ at 290. To the extent the agency's evaluation relied solely on Java Productions' labor matrix spreadsheet (i.e., the agency did not consider Java Productions' underlying GSA schedule contract or any other statements in Java Productions' other submissions indicating Java Productions' intent to provide qualified employees and to comply with the requirements of the solicitation), we do not find the agency's evaluation to be inconsistent with the solicitation.

The protest is denied.

Thomas H. Armstrong
General Counsel

[6] The protester also maintains that because the solicitation did not provide instructions with regard to the completion of the labor matrix spreadsheet and the spreadsheet contained prepopulated labor category titles and descriptions, it believed that by providing a job title and description for a GSA labor category and pricing in its spreadsheet, it was agreeing to provide a labor category with all of the qualifications identified by the agency at its proposed price. Protester's Comments at 6. It is well-settled that a party who has the opportunity to object to allegedly improper or patently ambiguous terms in a solicitation, but fails to do so prior to the time set for receipt of quotations, waives its ability to raise the same objection later. See, e.g., Baldt Inc., B-402596.3, June 10, 2010, 2010 CPD ¶ 139 at 2. We have noted that this rule prevents an offeror from taking advantage of the government, as well as other offerors, by waiting silently during the procurement process, only to spring forward after award with an alleged defect in an effort to restart the procurement. See, e.g., Del-Jen Educ. & Training Grp./Flour Fed. Sols. LLC, B-406897.3, May 28, 2014, 2014 CPD ¶ 166 at 7 n.9. Accordingly, to the extent Java Productions is now arguing that the agency failed to properly construe the terms of the solicitation, that argument is untimely.