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Decision

Matter of: G2 Global Solutions, LLC

File: B-416981.5

Date: January 24, 2020

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DIGEST

Protest challenging the agency's decision to take corrective action by terminating the award of a task order to the protester, cancelling the solicitation, and devising a new acquisition strategy is denied where the record shows that the agency's decision to take corrective action was reasonable and supported by the record.

DECISION

G2 Global Solutions, LLC (G2), a small business of Gainesville, Virginia, protests the decision by the Department of Defense (DoD), Defense Intelligence Agency (DIA), to take corrective action in response to a protest filed by Grand Ground Enterprise, LLC, d/b/a Advisory Technical Consultants (ATC), a small business of Washington, D.C., under request for quotations (RFQ) No. HHM402-18-Q-0002, for operational counter-intelligence (CI) analysis support services. G2 argues that the agency's decision to terminate the firm's order and cancel the solicitation is unreasonable.

We deny the protest.

BACKGROUND

On May 3, 2018, DIA posted the RFQ through the General Services Administration's (GSA) e-Buy system. Agency Report (AR), Tab 2.1, Contracting Officer's Statement (COS), at 1; Tab 9, Contracting Officer's Memorandum for Record (CO MFR), at 1. The RFQ was set aside for 8(a) small business vendors holding a GSA Federal Supply Schedule (FSS), Professional Services Schedule, Mission Oriented Business Integrated

Services (MOBIS), Special Item Number (SIN) 874-1, Integrated Consulting Services contract. CO's MFR at 1. The solicitation contemplated the issuance of a time-and-materials task order for a full range of CI support services, with a 1-year base period and four 1-year options. AR, Tab 4.1, RFQ, at 3, 78.

The RFQ notified vendors that the competition would be conducted in accordance with Federal Acquisition Regulation (FAR) subpart 8.4, and that the resulting task order would be issued to the vendor that submitted the lowest-priced quotation meeting the government's needs. Id. at 119. Quotations were to be evaluated for technical acceptability under the solicitation's two non-price factors, which were identified as security/8(a) verification and technical capability. Id. The security/8(a) verification factor was to be evaluated on a pass or fail basis, while quotations were to be rated either acceptable or unacceptable under the technical capability factor. Id. at 119, 121. The solicitation cautioned vendors that "[a]ny unacceptable rating in any non-price factor or subfactor will result in an overall technically unacceptable rating in which such [quotation] will not be considered." Id. at 119.

On June 5, 2018, four quotations were received, including one from ATC and one from G2. COS at 2. After an evaluation of quotations, the agency issued the task order to ATC on September 27. Id. G2 filed a protest with our Office challenging the agency's award decision. Id. On November 28, the agency notified our Office that it intended to take corrective action, and, as a result, we dismissed the protest as academic. See G2 Global Solutions, LLC, B-416981, B-416981.2, Dec. 3, 2018 (unpublished decision) at 1-2. As a part of its corrective action, DIA sent a clarification e-mail to the various vendors, including ATC and G2, requesting that each vendor identify which of the labor categories from their FSS contract the vendor intended to use to fill the solicitation's program manager, senior analyst and mid-level analyst positions. COS at 2. Both ATC and G2 provided responses to the agency's clarification request. Id.

On February 21, 2019, the agency's technical evaluation board (TEB) completed its evaluation of ATC's proposal, and found that the requirements of this order were outside the scope of the labor categories ATC identified on its FSS contract. Id. at 3. Based on the TEB's findings, the contracting officer concluded that ATC's quotation was not awardable, and that the previously issued task order would be terminated. Id. ATC filed a protest with our Office on February 25 challenging the agency's termination decision. We denied ATC's protest after our review of the contemporaneous record confirmed that DIA's conclusions and its decision to reject ATC's quotation were unobjectionable. Advisory Technical Consultants, B-416981.3, June 4, 2019, 2019 CPD ¶ 209.

The agency also conducted a review of G2's response to the request for clarification, discussed above. The TEB found that G2's FSS labor categories met the requirements for the proposed order, and the contracting officer decided to make award to G2. COS at 3. On August 22, ATC protested the agency's award decision to our Office.

By the time of that protest, a new contracting officer had been assigned to the procurement. Id. at 4. The new contracting officer reviewed the procurement record, including ATC's protest, and determined that corrective action was again warranted. Id. According to the agency, the contracting officer's review found that "the same flaw that existed in ATC's quote (i.e. that their labor categories were out of scope of the requirements of the SOW [statement of work]) also exists in G2's quote because [G2's] labor categories [were] also outside the scope of the requirements of the SOW." Id. at 4. On October 8, the agency notified our Office that it intended to take corrective action by terminating the award to G2, cancelling the solicitation, and developing a new acquisition strategy, which resulted in our Office dismissing ATC's protest as academic. Advisory Technical Consultants, B-416981.4, Oct. 10, 2019 (unpublished decision). This protest followed.

DISCUSSION

G2 challenges as unreasonable: (1) the contracting officer's decision to take corrective action; (2) the termination of the firm's order; and (3) the cancellation of the RFQ. Protest at 7. In this regard, the protester argues that its FSS contract encompasses the labor categories contemplated by the solicitation, and "through these labor categories, G2 can more than meet the Agency's needs." Id. G2 asserts that, following award, the firm "exerted substantial effort to staff the order and was fully ready to meet and exceed the Agency's requirements." Id. Alternatively, G2 argues that "DIA's actions also likely evidence that it failed to reasonably and adequately engage in advance planning, as required by CICA [Competition in Contracting Act]." Id. at 8.

The agency responds that its decision to take corrective action by terminating the order awarded to G2 and cancelling the RFQ was reasonable and adequately documented. Memorandum of Law (MOL) at 3. The agency asserts that the "contemporaneous documentation includes robust analysis by the [contracting officer] of all four offeror's proposals, and explains in detail why none of the proposals are eligible for award." Id. at 4. According to the agency, the record "clearly supports the Agency's position that the RFQ. . . does not reflect the agency's needs because the complex CI analytical work to be performed is not within the scope of the [FSS]." Id.

Agencies have broad discretion to take corrective action where the agency has determined that such action is necessary to ensure fair and impartial competition. MSC Indus. Direct Co., Inc., B-411533.2, B-411533.4, Oct. 9, 2015, 2015 CPD ¶ 316 at 5. The details of implementing the corrective action are within the sound discretion and judgment of the contracting agency. We will not object to any particular corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. DGC Int'l, B-410364.2, Nov. 26, 2014, 2014 CPD ¶ 343 at 3. Moreover, a contracting agency has broad discretion in deciding whether to cancel a solicitation, and need only establish a reasonable basis for doing so. KNAPP Logistics Automation, Inc.-Protest & Costs, B-404887.2, B-404887.3, July 27, 2011, 2011 CPD ¶ 141 at 3. A reasonable basis to cancel exists when an agency determines that a

solicitation does not accurately reflect its needs. Zegler, LLC, B-410877, B-410983, Mar. 4, 2015, 2015 CPD ¶ 168 at 3.

The solicitation required vendors to propose three labor categories to perform various tasks described in the SOW: program manager, senior analyst, and mid-level analyst. RFQ at 3-24, 78-87. The SOW set forth education and experience criteria for each labor category, as well as detailed responsibilities for each. Id. at 92. The senior analyst category was further separated into six categories depending on the work to be supported. The mid-level analysts were similarly separated into five categories for the same reason. Id. at 92-95. Senior analysts were required to have a Bachelor's degree with seven years of experience, or ten years' experience without a degree, in various CI-related areas, with the type of experience dependent on the scope of work supported.¹ Id. at 92-93. Likewise, mid-level analysts also had defined education and experience requirements, depending on the work to be supported.² Id. at 93-95.

Here, the record shows that the agency's decision to take corrective action was based on the new contracting officer's independent review of these labor categories against the FSS labor categories proposed by each vendor to perform the relevant requirements, including G2. While the contracting officer concurred with the prior determination that the requirements for the senior analyst and mid-level analyst positions articulated in the SOW were "not properly within the scope of the [FSS senior consultant] labor categories identified in ATC's proposal," the contracting officer disagreed with the prior determination that the type of work to be performed under this requirement was within the scope of the labor categories identified by G2 from its FSS contract. AR, Tab 9, CO MFR, at 3-4.

With respect to G2's proposed labor categories, the contracting officer found that the firm's subject matter expert (SME) I (proposed to meet the mid-level analyst requirement) and SME II (proposed to meet the senior analyst requirement) labor categories from G2's FSS contract were "focused on business process or consulting activities, rather than the complex counterintelligence analysis required by the SOW." Id. at 6, 8. The contracting officer found that G2's proposed SME I labor category only required experience in non-analytical duties, and the only experience referenced in G2's

¹ For example, senior analysts supporting the agency's operations review branch were required to have experience "in CI or HUMINT [human intelligence] policy, analysis or operational experience of DoD processes and terminology." RFQ at 92. Correspondingly, senior analysts in support of the embedded agent program of the counter-espionage division were required to have CI or all-source analytical experience, CI-specific operational support experience, as well as experience and knowledge of DoD processes and terminology. Id. at 93.

² For example, mid-level analysts supporting the operational risk management analysis branch were required to have experience including writing finished intelligence at the strategic, operational and tactical levels for various specified individuals and media. Id. at 94.

SME II labor category description related to the “development of solutions, recommendations, or outcomes across multiple complex tasks and/or organizations.” Id. at 6. The contracting officer found this description to be “extremely generic,” and did not encompass the type of CI analysis experience that the SOW requires. Id.

In her review, the contracting officer also noted that the MOBIS integrated consulting services SIN (874-1)--under which this requirement was to be procured--was intended to “provide expert advice and assistance in support of an agency’s mission-oriented business functions.” Id. at 11. The contracting officer acknowledged that while analysis was part of the scope of the SIN, she determined that the function was discussed in the context of management or strategy consulting, and survey services. Id. Based on her reading of the SIN description, the contracting officer concluded that the SIN “was not intended to encompass the type of complex CI analysis services or experience necessary to meet the SOW requirements.” Id.

Our review of the record does not cause us to question the basis for the agency taking corrective action here. As discussed in our prior decision, we concluded that the agency’s decision to reject ATC’s quotation was unobjectionable. See Advisory Technical Consultants, B-416981.3, June 4, 2019, 2019 CPD ¶ 209, at 5. There, the agency found that ATC’s labor categories were focused more on management functions, rather than CI analysis. Id. Likewise, here we conclude that the agency’s rejection of G2’s quotation was unobjectionable for the same reason, and the protester’s disagreement with a procuring agency’s judgment, without more, is insufficient to establish that the agency acted unreasonably. WingGate Travel, Inc., B-412921, July 1, 2016, 2016 CPD ¶ 179 at 4-5.

While G2 argues that its FSS contract appropriately covered analytical services as required under the RFQ, our review confirms the agency’s position that the requirements articulated in the SOW do not reasonably fall within the scope of the labor categories identified by G2 on the firm’s FSS contract. For example, G2 argues that the analytical services required by senior analysts under the SOW:

aligns directly with the . . . SME II labor category’s functional responsibility to “support . . . project objectives through activities such as conducting interviews, gathering data, and developing recommendations in support of project objectives[,]” and the SME II’s responsibilities to “evaluate . . . option[s] in the context of project objectives and contributes to the implementation of strategic direction.”

Comments at 10.

Consistent with the contracting officer’s conclusion, however, we find these labor category descriptions in G2’s FSS contract to be generic. AR, Tab 9, CO MFR, at 6. When taken in context that G2’s FSS contract was for integrated consulting services under a schedule related to mission-oriented business integrated services, the

contracting officer was reasonable in concluding that these generic descriptions did not contemplate the specific CI analytical scope of work required by the SOW.

The protester further argues, for example, that its SME I labor category aligns with the experience of the mid-level analyst, in that the SME I is required to “possess demonstrated knowledge, experience, and ability in the development of solutions, recommendations, or outcomes across multiple complex tasks and/or organizations.” Comments at 12. As with the other example discussed above, we find that the record supports the contracting officer’s conclusion that this language found in G2’s FSS contract is generic and not sufficiently specific to address the requirements of the SOW. AR, Tab 9, CO MFR, at 6. Moreover, as the agency’s determination with respect to the scope of G2’s FSS contract was reasonable, we are provided no basis to question the agency’s decision to take corrective action by terminating the award to G2, canceling the solicitation, and developing a new acquisition strategy. See Zegler, LLC, supra, (finding that there was a reasonable basis to cancel the solicitation when the solicitation does not accurately reflect agency’s needs).

G2 also argues, in the alternative, that even if the agency is required to develop a new acquisition strategy, we should still sustain the protest because the agency failed to conduct reasonable advance planning in compliance with CICA. Protest at 11. In this regard, the protester argues that “the Agency Report shows that the impetus for cancelling the RFQ is actually the [a]gency’s belief that the GSA Schedule was the incorrect vehicle to use for this procurement.” Comments at 15-16. G2 argues that the agency knew, or should have known, of this conclusion prior to issuance of the RFQ, or “at the very least at some point over the past year while defending multiple protests.” Id. at 16. The protester concludes that while errors are permitted, “the [a]gency’s actions here are entirely unreasonable and show that the Agency did not engage in reasonable or adequate advance planning before issuing the RFQ.” Id. at 16.

The agency responds that the record demonstrates that it took a “proactive, step-by-step approach” to resolve issues related to this procurement. MOL at 9. The agency asserts that, “[i]nformation that triggered the cancellation clearly arose after the solicitation was issued and noncompliant offers were received.” Id. at 9. The agency points to the fact that it worked with vendors to clarify the labor categories to be used “in an attempt to make an award using the then current acquisition strategy.” Id. The agency asserts, however, that “[d]espite these efforts[,] DIA could not turn noncompliant [quotations] into compliant [quotations].” Id.

In fashioning its argument, G2 relies on our decision in XTec, Inc., B-410778.3, Oct. 1, 2015, 2015 CPD ¶ 292, to support its position. Our decision in XTec, Inc., however, involved an agency’s decision to cancel a solicitation, which necessitated the use of non-competitive procedures in order to meet the agency’s immediate requirements. Id. at 6-9. That decision rested on the consistently-stated principle that, under CICA, noncompetitive procedures may not be used due to a lack of advance planning by contracting officials. Id. at 10. Here, the protest does not involve a noncompetitive

procurement, and thus XTec, and the principles underlying that decision, do not provide support for the protester's position.

In any event, our review of the record does not provide a basis to sustain the protest. As the agency explains, the information that led to the decision to take corrective action was only evident after reviewing quotations, and clarification sought from vendors after G2's original protest. MOL at 9. Although agencies are obligated to engage in reasonable advance planning prior to conducting procurements, our Office has recognized that the specific activities associated with this requirement may vary from procurement to procurement, and that the obligation does not constitute a requirement that procurement planning be perfect, that is, completely error-free. See, e.g., New Breed Leasing Corp., B-274201, B-274202, Nov. 26, 1996, 96-2 CPD ¶ 202 at 6. Here, we conclude that the agency's acquisition planning was reasonable under the circumstances, and does not warrant sustaining the protest as G2 urges.

The protest is denied.

Thomas H. Armstrong
General Counsel