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Decision

Matter of: Kingfisher Systems, Inc.; Blue Glacier Management Group, Inc.

File: B-417149; B-417149.2; B-417149.3; B-417149.4; B-417149.5

Date: April 1, 2019

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Milton C. Johns, Esq., and Emily A. Spence, Esq., FH+H, PLLC, for Customer Value Partners, Inc., the intervenor.

Elin M. Dugan, Esq., Department of Agriculture, for the agency.

Heather Weiner, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging evaluation of experience is denied where the agency reasonably assessed the relevance of the experience as required by the solicitation.

2. Protest challenging technical acceptability of vendor's quotation is denied where agency reasonably determined that information provided in vendor's quotation showed that proposed personnel satisfied the "go/no go" qualifications specified in the solicitation, and thus, evaluation of vendor's quotation as acceptable was reasonable, supported by the record, and consistent with the solicitation.

2. Protest challenging technical acceptability of awardee's quotation is denied where the evaluation was reasonable and consistent with the terms of the solicitation and protester's objection to the evaluation reflects the protester's untimely disagreement with the plain, unambiguous language of the solicitation.

DECISION

Kingfisher Systems, Inc., a small business located in Falls Church, Virginia, and Blue Glacier Management Group, Inc., a small business located in Arlington, Virginia, protest the establishment of a Federal Supply Schedule (FSS) blanket purchase agreement (BPA) with Customer Value Partners, Inc. (CVP), a small business located in Fairfax, Virginia, under request for quotations (RFQ) No. 12314418Q0055, issued by the Department of Agriculture (USDA), for information technology (IT) security services.

The protesters challenge the agency's evaluation of quotations under the RFQ's go/no go criteria.

We deny in part and dismiss in part the protests.

BACKGROUND

On August 29, 2018, USDA issued the RFQ, as a small business set-aside under Federal Acquisition Regulation (FAR) subpart 8.4, to small business vendors holding General Services Administration (GSA) FSS contracts under Information Technology Schedule 70. Contracting Officer Statement (COS) at 1. The solicitation contemplated the establishment of a single, fixed-price BPA, for a base year and four 12-month options.¹ RFQ at 5, 9.

The RFQ anticipated award to the vendor submitting the lowest-priced, technically acceptable (LPTA) quotation. Id. at 9. The solicitation provided for evaluation under two factors: technical and price. Id. at 8-9. The technical factor was to be evaluated using a go/no go checklist to determine a vendor's understanding of the required services and potential for successfully accomplishing the services described in the performance work statement (PWS). Id. at 10. The RFQ provided that quotations must receive a "go" rating for all of the go/no go criteria to be technically acceptable and considered for award. Id.

The go/no go technical checklist was comprised of 27 criteria. Id. at 10-12. Pertinent to the protests here and as discussed in greater detail below, these included criteria pertaining to the vendor's experience and proposed personnel. Id. at 10-11. For the price factor, the RFQ provided that the agency would evaluate all quotations by total price. The solicitation also provided for evaluation of the price quotations to determine if they are reasonable for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the quotation. Id. at 12.

On September 28, the agency received quotations from eight vendors, including Blue Glacier, Kingfisher, and CVP. COS at 1. All three of these quotations passed the 27 technical go/no go criteria and were considered technically acceptable. AR, Tab 12, Evaluation Report, at 6.² The total price of the quotations submitted by these three vendors were as follows:

¹ While the RFQ provided that the government anticipated issuance of a "Blanket Purchase Agreement Call," RFQ at 9, the protesters and the agency appear to have understood that establishment of a BPA was contemplated. Blue Glacier Protest at 1; Kingfisher Protest at 2; Agency Report (AR), Tabs 13 and 14, Blue Glacier and Kingfisher Unsuccessful Offeror Notices.

² The other five quotations were all rated as "no go." Id. at 4-6.

	Blue Glacier	Kingfisher	CVP
Total Price	\$24,987,997	\$24,093,367	\$20,227,480

Id. at 1.

The agency concluded that CVP's quotation was the lowest-priced, technically acceptable quotation, and therefore, offered the best overall value to the government. Id. at 7. Accordingly, the agency established the BPA with CVP. Id. These protests followed.

DISCUSSION

Blue Glacier, which is the third lowest-priced vendor, and Kingfisher, which is the second lowest-priced vendor, challenge the evaluation of the awardee, arguing that its quotation should have been found technically unacceptable.³ In response to assertions that Blue Glacier, as the third lowest-priced vendor, is not an interested party to challenge the evaluation of the awardee, Blue Glacier also challenges the evaluation of Kingfisher's quotation, arguing that it too should have been found technically unacceptable based on the failure to meet various go/no go criteria.

For the reasons discussed below, we conclude that the agency reasonably evaluated Kingfisher's quotation as technically acceptable. Since we find that the USDA's evaluation was reasonable in this regard, we conclude that Blue Glacier is not an interested party to challenge the evaluation of CVP's quotation. Bid Protest Regulations, 4 C.F.R. § 21.0(a); see CACI Dynamic Sys., Inc., B-406130, Feb. 28, 2012, 2012 CPD ¶ 77 at 8 (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). With regard to the remaining protest grounds, we have considered all of Blue Glacier's and Kingfisher's arguments, and conclude that none provides a basis to sustain the protests.

Basis for Award

As an initial matter, we note that Blue Glacier and the agency disagree regarding the solicitation's stated basis for award. The protester contends that the solicitation provided for a best-value tradeoff analysis, while the agency argues that the solicitation provided for award on a lowest-priced, technically acceptable basis. For the reasons discussed below, we conclude that the solicitation clearly articulated that award would be made on the basis of the lowest-priced, technically acceptable quotation. Despite the fact that the RFQ advised that "[t]his acquisition will utilize a LPTA approach to make a best value award decision," RFQ at 9, Blue Glacier argues that the agency was required to conduct a tradeoff between technically acceptable quotations because the solicitation provided that the agency would "proceed to the best value decision phase" after the price evaluation. Id. at 10. In the protester's view, the RFQ's inclusion

³ Both protesters also argue that the evaluation is inadequately documented.

of a “best value decision phase” after the price evaluation constitutes a deviation from a standard LPTA evaluation where “[t]echnical ceases to weigh in the award decision after the determination of technical acceptability has been made.” Blue Glacier Protest at 23. Further, as evidence that the agency “made clear that it intended to use a best value tradeoff approach,” the protester points to the agency’s statement in response to a pre-award question about the price evaluation that “[p]rice shall be considered in conjunction with Technical” after completion of the go/no go assessment. Id.; AR, Tab 4, RFQ Q&As, Sept. 10, 2018, at 5.

The USDA responds that the provisions cited by Blue Glacier are consistent with making award on a lowest-priced, technically acceptable basis, as well as consistent with the RFQ provision that unambiguously provided that award would be made on a lowest-priced, technically acceptable basis. We agree with the agency.

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. Alluviam LLC, B-297280, Dec. 15, 2005, 2005 CPD ¶ 223 at 2; Fox Dev. Corp., B-287118.2, Aug. 3, 2001, 2001 CPD ¶ 140 at 2.

We conclude that the agency’s interpretation of the RFQ, when read as a whole, is reasonable, and that the protester’s interpretation is not reasonable. As noted above, the solicitation clearly provided that “[t]his acquisition will utilize a LPTA approach to make a best value award decision.” RFQ at 9. In addition, the technical evaluation consisted solely of an assessment of whether vendors were go/no go on a list of 27 criteria. The protester has failed to identify any provision in the RFQ supporting its argument that the agency was required to conduct a tradeoff between technical and price.

The fact that the solicitation provided that the agency would proceed to a “best value decision phase” after evaluation of price, does not signify that the evaluation was to include a tradeoff analysis. As the FAR explains, even lowest-priced, technically acceptable procurements involve a best value decision. FAR § 15.101 (both the tradeoff process and lowest-priced, technically acceptable process are part of the best value continuum); id. § 15.101-2 (“The lowest price technically acceptable source selection process is appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price.”).

In addition, contrary to the protester’s assertion, the agency’s statement that price would be considered in conjunction with technical after completion of the technical go/no go assessment, does not necessarily trigger a requirement for the agency to conduct a tradeoff. Rather, this language can reasonably be read as indicating that the agency will consider price and technical when identifying the lowest-priced, technically acceptable vendor that represents best value. Furthermore, Blue Glacier does not explain how the agency would even be able to differentiate between technically acceptable quotations for purposes of conducting a tradeoff analysis, considering that

the agency was limited to evaluating technical quotations based solely on pass/fail criteria.

In sum, the solicitation specified that the evaluation would be conducted on a lowest-priced, technically acceptable basis, and the protester has failed to cite to, or demonstrate that any RFQ provisions required a tradeoff analysis or were otherwise inconsistent with a lowest-priced, technically acceptable approach. On this record, we find the agency's interpretation reasonable, and conclude that the RFQ provided for evaluation on a lowest-priced, technically acceptable basis.

Evaluation of Kingfisher's Quotation

Blue Glacier challenges the technical acceptability of Kingfisher's quotation, arguing that Kingfisher failed to meet various go/no go criteria. Blue Glacier maintains that, if the agency had properly evaluated Kingfisher's quotation as technically unacceptable, its quotation (not Kingfisher's) would be next in line for award behind the awardee's.⁴ While we recognize Blue Glacier's numerous arguments regarding Kingfisher's evaluation, these allegations are an attempt to dislodge the second-in-line vendor for the purpose of establishing Blue Glacier's status as an interested party with standing to challenge the evaluation of the awardee. In this context, although we do not address all of Blue Glacier's arguments regarding the evaluation of Kingfisher, we have considered each and find that none provides a basis for concluding that the agency's evaluation was unreasonable. We address several representative arguments below.

Where, as here, an agency issues an RFQ to FSS vendors 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. Digital Sols., Inc., B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4; DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2. In reviewing an agency's evaluation of quotations, it is not our role to reevaluate submissions; rather, we will examine the record to ensure that the evaluation was reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. OPTIMUS Corp., B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4. The evaluation of experience, by its very nature, is subjective, and a vendor's disagreement with an agency's evaluation judgments does not demonstrate that those judgments are unreasonable. Amyx, Inc., *supra*. Finally, for procurements conducted under FAR subpart 8.4 that require a statement of work, such as this one, FAR § 8.405-2(e) designates limited documentation requirements, requiring only that the agency's evaluation judgments be documented in sufficient detail to show they are reasonable. Arrington Dixon & Assocs., Inc., B-409981, B-409981.2, Oct. 3, 2014, 2014 CPD ¶ 284 at 5.

⁴ Blue Glacier's assertions regarding Kingfisher's quotation were raised in response to the agency's request that our Office dismiss Blue Glacier's protest because Blue Glacier, as the third lowest-priced vendor, is not an interested party to challenge the evaluation of the awardee.

Blue Glacier contends that Kingfisher's experience was not sufficiently similar in complexity and magnitude to merit an acceptable rating for the experience criterion.⁵ As relevant here, the RFQ provided that the agency would evaluate whether a vendor's quotation identified work similar in complexity and magnitude to the instant BPA and that could be tied to the work described in the PWS. RFQ at 10. The PWS seeks a contractor to assist the USDA Office of the Chief Information Officer in providing information security services to USDA. See RFQ at 18-19.

Kingfisher's quotation identified two experience references for Kingfisher itself.⁶ The first provided Kingfisher's experience as a prime contractor servicing the USDA security operations center (ASOC). AR, Tab 9, Kingfisher Tech. Quotation, at 35. The second reference included Kingfisher's prime contractor experience for work at a security operations center, but for a different federal agency. The consensus evaluation reflects that the evaluators found that Kingfisher's references demonstrated sufficiently relevant experience to earn a "go" rating under the experience criterion.

⁵ Blue Glacier also asserts that the agency was required to assess past performance, rather than experience. We disagree. As we have consistently explained, an agency's evaluation of experience focuses on the degree to which a vendor has actually performed similar work, whereas the evaluation of past performance focuses on the quality of the work. Amyx, Inc., B-410623, B-410623.2, Jan. 16, 2015, 2015 CPD ¶ 45 at 14. Here, the solicitation did not provide for an assessment of the quality of a vendor's work. Rather, the RFQ provided that the agency would evaluate whether a vendor "demonstrate[d] recent and relevant experience for the effort." RFQ at 10.

⁶ Blue Glacier also contends that Kingfisher's quotation improperly relied on subcontractor experience to satisfy the RFQ's experience criterion. We find no merit to this argument. The technical evaluation panel (TEP) team leader explains, in response to the protest, that in evaluating Kingfisher's quotation, the experience of Kingfisher's subcontractor was not considered because "the evaluation team believed the onus of the work being performed [would] fall on the prime regardless of any named subcontractors." Declaration of TEP Leader, at 4. Consistent with this statement, the administrative contracting officer (ACO) further explains that "[t]he [technical evaluation] board did not consider [the subcontractor's] past performance when evaluating Kingfisher's proposal because [the company] was a subcontractor and not a team member via a teaming agreement." Supp. COS at 3. In sum, there is no indication in the record that the evaluators relied on the experience referenced for Kingfisher's subcontractor in evaluating Kingfisher's quotation under the experience criterion. While the protester maintains that our Office should give no weight to the statements of the technical evaluator and ACO, we find that their statements reasonably support the contemporaneous record, and the protester has failed to provide any basis to question these individuals in this regard. See Lynxnet, LLC, B-409791, B-409791.2, Aug. 4, 2014, 2014 CPD ¶ 233 at 6 (explaining that our Office generally considers post-protest explanations, such as these, where the explanations merely provide a detailed rationale for contemporaneous conclusions and fill in previously unrecorded details, so long as the explanations are credible and consistent with the contemporaneous record). As a result, we find no basis to sustain the protest.

Blue Glacier disagrees with the “go” rating assessed for Kingfisher’s quotation under the experience criterion, arguing that neither of Kingfisher’s two references provided similar contract value, staffing level, or number of agency personnel as the instant requirement.

The agency responds that it did not view total contract value or size as a perfect measure for magnitude. In this regard, the ACO⁷ states in response to the protest that “[e]xperience with a SOC [security operations center] was more important [to the evaluators] than the size of the SOC.” Kingfisher Supp. COS at 3. The ACO explains that the agency did not view the “number of employees at an organization” as necessarily having any bearing on “the relevance of the past performance” because “the number of employees at an agency does not necessarily translate into a less and/or more difficult scope.” Id. Similarly, with regard to value and staffing levels, the ACO explains that neither is necessarily an indicator of complexity or acumen because, for example, a complex contract may have a short period of performance that results in a relatively low contract value. Kingfisher Supp. AR at 10.

Based on our review, we find nothing unreasonable regarding the agency’s evaluation. The agency states that it evaluated complexity and magnitude based on the scope of work identified in Kingfisher’s references, and concluded that Kingfisher submitted sufficiently relevant experience to merit a “go” rating under the experience criterion. In this regard, the record reflects that both of Kingfisher’s references were for SOC work, and that one reference concerns the same ASOC as the instant requirement. AR, Tab 9, Kingfisher Tech. Quotation, at 35-49. It also shows that the contracting officer for Kingfisher’s ASOC reference is the same individual who is the ACO for the instant procurement. Id. In addition, the record reflects that Kingfisher’s ASOC reference included fifteen pages detailing the correlation of Kingfisher’s experience to the PWS.

Although Blue Glacier argues that the agency should have based its relevancy determination solely on value or size, the protester has failed to identify any provision in the RFQ that required the agency to limit its evaluation of complexity and magnitude in this manner.⁸ Further, as the agency notes and Blue Glacier does not dispute, the

⁷ The ACO explains that he has been the ACO for this procurement since its inception in August 2018, and was the primary advisor to USDA’s Office of Chief Information Officer with respect to determining the best procurement approach, and that he also drafted the RFQ for the contracting officer’s review and approval. Affidavit of ACO (Feb. 27, 2019) ¶ 8. The ACO states that, among other things, he reviewed the consensus evaluation and award recommendation, and drafted the Evaluation Team and Selection Official Report, which he based on a combination of the notes in the Consensus Evaluation and his own conversations with the team after receiving the Consensus Evaluation. Id. ¶ 12. In addition, the ACO states that the individual who served as the contracting officer and source selection authority for this procurement retired from the USDA effective January 4, 2019. COS at 1.

⁸ Similarly, to the extent Blue Glacier argues that Kingfisher’s experience is not relevant because Kingfisher’s references do not address every PWS requirement, we see
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experience references submitted with Blue Glacier's quotation did not provide information concerning total value or size. Blue Glacier Supp. AR at 10-11; Blue Glacier Supp. Comments at 22-23. As such, the protester's argument effectively maintains that Kingfisher's quotation should have been held to a higher standard, or evaluated with greater scrutiny, than its own. As we have consistently stated, however, it is a fundamental principle of government procurement that competition must be conducted on an equal basis; that is, the contracting agency must treat all vendors equally; it must even-handedly evaluate quotations against common requirements and evaluation criteria. Electrosoft Servs., Inc., B-409065 et al., Jan. 27, 2014, 2014 CPD ¶ 252 at 9. On this record, we find no basis to sustain the protest.

Blue Glacier also argues that Kingfisher's quotation should have been assessed a "no go" rating with regard to two other go/no go criteria, both of which concern personnel requirements. Specifically, Blue Glacier argues that Kingfisher failed to satisfy the RFQ's requirements for 24/7 analysts and tier 1 analysts because its quotation identified only one individual for each category. Instead, the protester maintains that the RFQ required vendors to identify individuals for as many positions as the vendor proposed for a particular labor category. As discussed below, we find no merit to this argument.⁹

As relevant here, the 24/7 analyst criterion provided that a vendor's quotation should "provide 24x7 personnel at the [SOC] located in Kansas City, Missouri, with the minimum requirement of a Secret clearance." RFQ at 11. The tier 1 analyst criterion provided that a vendor should "identif[y] Tier 1 personnel with a minimum of a NACI [National Agency Check with Inquiries] background investigation and experience in the Cyber Security field that will support the [SOC] located in Kansas City, Missouri." Id.

The agency clarified during preaward questions and answers that the government was "NOT dictating a certain format for documenting the personnel qualification requirements." AR, Tab 4, Q&As, at 2. Rather, it explained that "[r]esumes or matrix as well as any other preferred format will be accepted and can be incorporated into the [quotation]." Id. The agency also explained that "[it is] up to the [vendor] to determine the appropriate labor mix and level of effort for this requirement." Id. at 4. In addition,

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nothing in the RFQ that required experience in all PWS requirements to merit a "go" rating under the experience criterion.

⁹ We also find no merit to Blue Glacier's assertion that Kingfisher's quotation failed to provide adequate substantiating information about the individual proposed for the hunt team analyst position under the go/no go hunt team analyst/data scientist criterion. The record reflects that the individual identified had a secret clearance, and experience in data science and machine learning as it pertains to information security analysis, as required by the RFQ. RFQ at 11; AR, Tab 9, Kingfisher Tech. Quotation, at 58. Contrary to Blue Glacier's assertion, the RFQ did not require additional detail to satisfy this pass/fail criterion. The protester's disagreement with the agency's evaluation does not render the evaluation unreasonable or otherwise improper. DEI Consulting, supra.

when asked to confirm whether it was “asking contractors to provide 1 named person for each labor category identified in the go/no go items list, whether in a resume or matrix, to fulfill the PWS,” the agency responded “Yes.” Id. at 10.

In arguing that the solicitation required vendors to identify individuals for as many positions as the vendor proposed for a particular labor category, Blue Glacier points to language in the solicitation that provided that the agency “may consider the extent to which [a vendor’s] responses [to the evaluation criteria] are substantiated in that any claims, approaches, and contents are supported by clear, objective, documented evidence in that the [vendor] provides a practical approach to meeting the requirements[.]” RFQ at 10. Blue Glacier reads this provision to mean that any proposed approach (including the number of full time equivalents (FTEs) proposed for a labor category) must be substantiated by documented evidence (such as the identification of individuals to fulfill each FTE position proposed for the labor categories and demonstration that all individuals satisfy the RFQ’s pertinent qualification requirements). See Blue Glacier Supp. Comments at 16 (asserting that the RFQ stated that “[vendors] must substantiate[] any ‘claims, approaches, and contents’ with ‘clear, objective, documented evidence.’”).

The agency disagrees with Blue Glacier’s interpretation of the solicitation, and points to the preaward questions and answers, quoted above, which confirmed that contractors need only provide “1 named person for each labor category identified in the go/no go items list.” AR, Tab 4, Q&As, at 10. The agency asserts that, consistent with this Q&A instruction, vendors were required to identify only one compliant individual for each labor category.

In our view, the solicitation language, read as a whole, including the agency’s questions and answers, supports the agency’s interpretation and fails to support Blue Glacier’s interpretation.¹⁰ Alluviam LLC, supra. Although the go/no go criteria at issue indicated that vendors must provide multiple personnel under both the 24/7 analyst and tier 1 analyst categories, and the solicitation required that vendors provide documentation to validate the personnel qualifications requirements, the pertinent portion of the questions and answers specified that vendors need only provide “1 named person for each labor category identified in the go/no go items list . . . to fulfill this PWS” requirement. AR, Tab 4, Q&As, at 10. We think this statement clearly advised vendors that they were not

¹⁰ If we were to accept Blue Glacier’s interpretation as reasonable, the interpretation would be in direct conflict with the information provided in the questions and answers, such that the disconnect would represent a patent ambiguity. See Crew Training Int’l, Inc., B-414126, Feb.7, 2017, 2017 CPD ¶ 53 at 5 n.9 (noting that where the protester’s interpretation of a solicitation requirement was in direct conflict with information provided by the agency in the questions and answers, the resulting disconnect represented a patent ambiguity). A patent ambiguity must be protested prior to the closing date for the submission of quotations to be considered timely. 4 C.F.R. § 21.2(a)(1); The AEgis Techs. Grp.; Wingbrace LLC, B-412884 et al., June 28, 2016, 2016 CPD ¶ 175 at 9.

obligated to identify multiple individuals for each labor category, as Blue Glacier asserts.¹¹

In sum, Blue Glacier has failed to demonstrate that the USDA's evaluation of Kingfisher's quotation was unreasonable or otherwise improper. In light of our conclusion that the agency's evaluation of Kingfisher's quotation was reasonable, Blue Glacier, which was not the next-in-line vendor, is not an interested party to challenge the evaluation of the awardee's quotation. 4 C.F.R. § 21.0(a). We therefore dismiss Blue Glacier's arguments challenging the evaluation of CVP.

Evaluation of CVP's Quotation

Kingfisher, as the second lowest-priced vendor, was the next in line for award, and therefore is an interested party to challenge the evaluation of CVP's technical quotation. Specifically, Kingfisher asserts that CVP's quotation relied on insufficient staffing, insufficient salaries, and unreasonably low labor hours for its proposed technical approach. Kingfisher argues that, had the agency evaluated CVP's quotation in accordance with the terms of the RFQ, it would have recognized the risk of CVP's proposed approach, and found CVP's quotation technically unacceptable. For the reasons discussed below, we conclude that the USDA reasonably evaluated CVP's technical quotation in accordance with the solicitation.

As noted above, the RFQ provided that the agency would assess the technical acceptability of quotations based on 27 go/no go criteria. RFQ at 10-11. In addition, as relevant here, the solicitation advised vendors that the agency would "[r]eview, analyze, and consider all information received in response to the evaluation factors and any information obtained from written communications." Id. at 10. In this regard, the RFQ provided that "the [g]overnment may consider the extent to which the [vendor's] responses are substantiated in that any claims, approaches, and contents are supported by clear, objective, documented evidence in that the [vendor] provides a practical approach to meeting the requirements, and [are] viable in that the proposed approach is capable of functioning while still meeting the requirements of the RFQ." Id.

¹¹ In addition, as noted above, Blue Glacier's interpretation relies on an assumption that the RFQ provided that vendors "must substantiate" any approaches with clear, objective, documented evidence, and in this regard was a mandatory requirement. See Blue Glacier Supp. Comments at 16. This interpretation, however, is inconsistent with the plain language in the solicitation, which provided that the agency "may consider the extent to which [a vendor's] responses [to the evaluation criteria] are substantiated in that any claims, approaches, and contents are supported by clear, objective, documented evidence[.]" RFQ at 10. The use of the word "may" in this context indicates that the agency could, but was not required to, assess whether a vendor's proposed claims, approaches, and contents were substantiated with documented evidence. We find that this permissive language, however, can be read consistently with the language in the questions and answers advising that vendors need only document one individual for each go/no go labor category.

Kingfisher interprets the above solicitation language as mandating that the USDA assess aspects of a vendor's proposed technical approach that were not included in the 27 go/no go Criteria, such as proposed staffing and labor mix. Kingfisher Protest at 6-8; Kingfisher Comments at 2-7. In Kingfisher's view, the USDA failed to evaluate CVP's quotation in accordance with this provision because the agency did not assess whether CVP's proposed technical approach--which, the protester asserts, relied on cutting incumbent staffing levels, salaries, and labor hours--was supported with clear, objective, documented evidence, or whether CVP's proposed staffing, salaries, and labor hours were viable and sufficient to meet the contract requirements. Kingfisher Comments at 1.

The agency disagrees with Kingfisher's interpretation of the above language. In response to the protest, the ACO explains that the provision "was meant to highlight that the government would use all the information [the vendors] provided in [their quotations] to determine whether the go/no go criteria had been met." Kingfisher Supp. COS at 1. Specifically, the ACO states: "That is, the government would, 'Review, analyze, and consider all information received in response to the evaluation factors'" and then "[t]he evaluators applied the go/no go criteria to determine whether 'responses are substantiated,' whether 'contents are supported by clear, objective, documented evidence,' and whether proposed approaches were 'capable of functioning while still meeting the requirements of the RFQ.'" Id.

Here, we find the agency's interpretation of the RFQ language is reasonable, and that the protester's is not. The solicitation clearly provided that technical quotations would be evaluated for acceptability based solely on using the go/no go checklist. RFQ at 10-11. Although several of the go/no go criteria indicated that the agency would assess whether a technical quotation adequately proposed personnel who satisfied pertinent personnel qualification requirements, vendors were not required to submit pricing or labor mix information with their technical quotations, and none of the go/no go criteria provided for the evaluation of this information. Id. While Kingfisher argues that the allegedly low staffing levels, low labor rates, and low salaries proposed by CVP should have raised concerns regarding CVP's ability to perform as proposed, the RFQ did not require that the agency evaluate whether proposed prices were too low.¹²

The protester's argument in this regard is tantamount to requiring that the agency conduct a price realism analysis. As relevant here, the RFQ provided that prices would be evaluated for reasonableness, completeness, accuracy, and to determine whether pricing appeared balanced; it did not provide for a price realism analysis. Id. at 12. An agency's concern in making a price reasonableness determination focuses on whether

¹² We also note that, although Kingfisher argues that the allegedly low labor rates proposed by CVP should have raised concerns regarding whether CVP's proposed salaries were much lower than incumbent salaries, the RFQ required only that vendors propose fully-burdened GSA schedule labor rates for specified labor categories. RFQ at 9. As such, the RFQ did not require that vendors provide salary information, and the agency did not have access to vendors' salary information, as the protester asserts.

the offered prices are too high, rather than too low. Jardon & Howard Techs., Inc., B-415330.3, B-415330.4, May 24, 2018, 2018 ¶ 195 at 7. Arguments that the agency did not perform an appropriate analysis to determine whether prices are too low, such that there may be a risk of poor performance, concern price realism not price reasonableness; price realism is not required to be evaluated by the agency unless the solicitation provides for such an analysis. Id.

Here, Kingfisher acknowledges that the solicitation did not require a price realism evaluation. Kingfisher Supp. Comments at 3. The protester argues, however, that “CVP relied on both insufficient staffing and insufficient salaries” and “undercut the proposed labor hours for the performance effort,” and the “USDA failed to recognize the substantial risk to performance such an approach presented.” Kingfisher Comments at 2. To the extent Kingfisher contends that the agency failed to consider whether CVP’s proposed labor rates were too low, such an evaluation was not permitted by the RFQ, and as such, the protester has failed to provide a valid basis of protest.¹³ 4 C.F.R. §§ 21.1(c)(4) and (f) (a protest must include a detailed statement of the legal and factual grounds for the protest, and the grounds stated must be legally sufficient).

The protests are denied in part and dismissed in part.

Thomas H. Armstrong
General Counsel

¹³ In addition, to the extent Kingfisher believed, based on its reading of the solicitation, that the agency would consider a vendor’s proposed staffing levels, proposed labor mix, or proposed salaries in evaluating technical acceptability, such an interpretation clearly conflicted with the RFP’s go/no go evaluation scheme. RFQ at 10-11. Any ambiguity regarding these provisions was patent, i.e., clear or obvious on the face of the RFQ, rather than latent, and as such, a protest on this ground was required to be filed prior to the submission of proposals. 4 C.F.R. § 21.2(a)(1); Planned Sys. Int’l, Inc., B-413028.5, Feb. 21, 2018, 2018 CPD ¶ 126 at 6-7. The protester’s failure to do so renders it untimely now.