



Decision

Matter of: Far North Forestry, LLC

File: B-417502.2

Date: September 25, 2019

Daniel Tumenas, Far North Forestry LLC, for the protester.

Antonio Robinson, Esq., Department of Agriculture, for the agency.

Christopher Alwood, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the terms of the solicitation is dismissed as untimely where the alleged solicitation improprieties were apparent from the solicitation but were not protested prior to the closing time for submitting quotations.
2. Protest challenging selection of lower-rated, lower-priced quotation is denied where the source selection authority considered the differences between the two vendors' quotations but determined that the superiority of the higher-rated, higher-priced quotation was not worth paying the associated price premium.

DECISION

Far North Forestry, LLC (Far North), a small business of Girdwood, Alaska, protests the award of a contract to PEAK Engineering LLC, a small business of Sitka, Alaska, under request for quotations (RFQ)¹ No. 12012018Q0011, issued by the Department of Agriculture, United States Forest Service (Forest Service), for timber cruise data

¹ The record is unclear as to whether the solicitation is in fact a request for quotations or proposals. See Agency Report (AR), Tab 4, RFQ at 1 (agency checked box in block 14 noting the method of solicitation was "RFP" and separately instructed vendors to submit proposals despite numbering the solicitation as an RFQ); see also AR, Tab 9, New Award Decision at 1 ("The Contracting Officer conducted a review of all original quotes . . ."). For the purpose of clarity, this decision will refer to the solicitation as an RFQ and the vendor submissions as quotations.

collection services.² The protester challenges the agency's evaluation of quotations and argues that the best-value tradeoff decision was flawed.

We dismiss the protest in part and deny it in part.

BACKGROUND

The Forest Service issued the RFQ on March 5, 2019, under the commercial item procedures of Federal Acquisition Regulation (FAR) part 12. AR, Tab 4, RFQ at 1. The agency conducted the procurement under the simplified acquisition procedures of FAR part 13. AR, Tab 3, Memorandum of Law (MOL) at 2. The RFQ contemplated the award of a fixed-price contract for timber cruising services of 8,789 acres of land in Alaska. RFQ at 1-4. The RFQ required the agency to evaluate quotations under three non-price evaluation factors, in descending order of importance:

- (1) Experience and qualifications to perform work; to include c[r]using old growth and familiarity with Southeast Alaska tree species.
- (2) Capacity to perform work within period of performance.
- (3) Past performance.

RFQ at 12. The solicitation established that non-price evaluation factors, when combined, were of equal importance to price. *Id.* Award was to be made based on a best-value tradeoff. AR, Tab 9, New Award Decision at 2. The Forest Service received questions about the procurement from vendors and, on March 22, 2019, published its responses on the FedBizOpps website. See <https://www.fbo.gov/spg/USDA/FS/109/12012018Q0011/listing.html> (last visited on September 20, 2019).³ In response to one question about certification of timber cruisers, the agency stated, “[t]his project does not require that all timber cruisers be certified.” RFQ at 44.

The agency received four timely-submitted quotations, including ones from Far North and PEAK. See AR, Tab 7 Consensus Evaluation. The agency found that there was no meaningful qualitative difference between the offerors' technical quotations, but found that Far North had superior past performance when compared to PEAK. AR

² Timber cruising is the “process of measuring forest stands to determine stand characteristics, such as average tree sizes, volume, and quality.” <https://www.fs.fed.us/forestmanagement/products/measurement/cruising/index.shtml> (last visited Sept. 20, 2019).

³ In its agency report responding to the protest, the Forest Service included copies of the questions and answers as an attachment to the RFQ. RFQ at 44-45. The record does not show that the questions and answers were incorporated into the RFQ. A review of the FedBizOpps website at the link cited above shows instead that on March 22 the questions and answers were published as a separate document.

Tab 8, Consensus Evaluation Summary at 2-3. Far North's proposed price was \$624,500, while PEAK proposed a price of \$422,637. AR, Tab 7, Consensus Evaluation. In its review of prices, the Forest Service concluded that PEAK's proposed price implied a lack of understanding of the resources needed to complete the requirements; specifically, the amount of charter helicopter time needed, which would lead to "higher post-award expenses through Modification." Id.; AR Tab 8, Consensus Evaluation Summary at 3.

On April 10, 2019, based on the initial evaluation of the quotations received, the Forest Service awarded a contract to Far North in the amount of \$624,000.⁴ Contracting Officer's Statement (COS) at 2. On April 21, 2019, PEAK Engineering, LLC filed a protest with our Office, challenging the April 10 award to Far North. Id. On May 22, 2019, the Forest Service notified our Office that it had identified concerns about the procurement⁵ and intended to take corrective action by re-evaluating the already submitted quotations, making a new award decision, and terminating Far North's contract if a different quotation was selected for award. AR, Tab 5, Notice of Corrective Action at 1. Due to the agency's corrective action, our Office dismissed the protest as academic. PEAK Engineering, LLC, B-417502, May 23, 2019 (unpublished decision).

The Forest Service re-evaluated the quotations as originally submitted, COS at 2, and based on its second review, concluded that PEAK Engineering, LLC offered the best value to the Government. AR, Tab 9, New Award Decision at 2. On June 19, 2019, the Forest Service terminated Far North's contract for the government's convenience and made award to PEAK Engineering. COS at 2. Far North filed this protest with our Office on June 28.

DISCUSSION

Far North argues that the Forest Service failed to evaluate the quotations properly and in accordance with section 2442.03 of the Forest Service Manual, which requires the use of certified cruisers to perform timber cruises for land exchanges; and that the best-value tradeoff decision was flawed. Protest at 3. For the reasons that follow, we find no basis on which to sustain the protest.⁶

⁴ The discrepancy between the proposed price and the amount of the awarded contract is neither challenged nor explained in the record.

⁵ The agency states in its agency report that, after reviewing the record during the prior protest, it concluded that it had analyzed prices for price realism, and that this was inconsistent with the terms of the solicitation. MOL at 4.

⁶ Far North also raises collateral issues. While our decision does not address every issue, we have considered the arguments and find that none provides a basis to sustain the protest.

As an initial matter, Far North raises multiple challenges to the agency's decision to take corrective action and the subsequent termination of Far North's contract. For example, the protester argues that PEAK did not allege in its protest that the agency had impermissibly analyzed quotations for price realism, and that the perceived defect that formed the basis for the agency's corrective action--that the agency performed a price realism analysis when the language of the solicitation did not provide for one--did not exist. Protest at 2; Comments at 1.

In response, the agency states that it recognized the error that was made in the initial award decision and then took the necessary action to correct it; the issue did not need to be raised in a protest in order for the agency to address it. MOL at 3-4.

We agree with the agency. The details of corrective action are within the sound discretion and judgment of the contracting agency, and 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. MSC Indus. Direct Co., Inc., B-411533.2, B-411533.4, Oct. 9, 2015, 2015 CPD ¶ 316 at 5.

The record demonstrates that the agency did perform a price realism analysis of PEAK Engineering's quotation in its initial evaluation. AR, Tab 8, Consensus Evaluation Summary, at 2. Subsequently, the Forest Service properly concluded that because price realism was not included in the solicitation, it had erred in performing such an analysis. COS at 3; AR, Tab 9, New Award Decision, at 2. The protester has not demonstrated that the agency's actions regarding its corrective action and subsequent termination of Far North's contract are in error. Accordingly, these arguments do not provide a basis upon which to sustain a protest.

Regarding the protester's argument that the Forest Service was required to evaluate quotations in a manner consistent with a certification requirement in the Forest Service Manual, we find this protest ground untimely.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Verizon Wireless, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. Our timeliness rules specifically require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals or quotations be filed before that time. 4 C.F.R. § 21.2(a)(1).

On March 22, 2019, the agency notified potential offerors that the appraisal for which the cruise data would be used complied with private industry standards and specifically stated that the project did not require all timber cruisers to be certified. See <https://www.fbo.gov/spg/USDA/FS/109/12012018Q0011/listing.html> (last visited on September 20, 2019); see also RFQ at 44. With this notice, the Forest Service indicated that it did not intend to apply the Forest Service Manual requirement. The due date for receipt of quotations was March 25. RFQ at 1. Accordingly, Far North's protest

that the agency's evaluation failed to comply with section 2442.03 of the Forest Service Manual challenges the terms of the solicitation, which were apparent prior to the closing time for receipt of initial quotations. Far North filed its protest June 28, well after the March 25 deadline for receipt of quotations. Therefore, we dismiss this protest ground as untimely.

Far North also challenges the agency's best-value tradeoff decision, arguing that the agency's decision was inconsistent with the RFQ's evaluation criteria. Protest at 3. The protester maintains that it should have received the award because the solicitation established technical and past performance as equal to price, and Far North's quotation was rated higher than PEAK's under the technical and past performance factors. Id.

The agency responds that its best-value determination was reasonable and in accordance with the solicitation. MOL at 7-8. The agency acknowledged that Far North's quotation was rated higher than PEAK's under the past performance factor, but the agency "concluded that it was not the best value for the government to pay \$200k (or 33%) more for Far North's higher-rated, higher-priced proposal." Id.; see also AR, Tab 9, New Award Decision at 2.

As noted above, the Forest Service conducted this procurement using simplified acquisition procedures for commercial items. Simplified acquisition procedures are designed, among other things, to reduce administrative costs, promote efficiency and economy in contracting, and avoid unnecessary burdens for agencies and contractors. FAR § 13.002. When using these procedures, an agency must conduct the procurement consistent with a concern for fair and equitable competition and must evaluate quotations in accordance with the terms of the solicitation. McLaurin Gen. Maint., Inc., B-411443.2, B-411443.3, Jan. 14, 2016, 2016 CPD ¶ 41 at 3; ERIE Strayer Co., B-406131, Feb. 21, 2012, 2012 CPD ¶ 101 at 4. In reviewing protests of an allegedly improper simplified acquisition evaluation, our Office examines the record to determine whether the agency met this standard and exercised its discretion reasonably. Computers Universal, Inc., B-297552, Feb. 14, 2006, 2006 CPD ¶ 42 at 4-5. An agency may properly select a lower-priced, lower-rated quotation if it reasonably decides that the price premium associated with selecting a higher-rated, higher-priced quotation is not justified. LCLC Inc/CfMRF, B-414357, May 22, 2017, 2017 CPD ¶ 153 at 6.

Here, the record shows that the agency acknowledged in its tradeoff decision that Far North's quotation, specifically its past performance⁷, was superior to PEAK's quotation

⁷ Far North contends that the agency's April 19, 2019 letter to PEAK demonstrates that the agency evaluated Far North's quotation as superior to PEAK's quotation under the two technical factors. Comments at 1-2; see also Protest ex. 7 at 2. However, the record shows that the agency did not consider the differences in the technical quotations to be meaningful enough to be determinative in the best-value tradeoff. AR, (continued...)

and identified the benefits that Far North's quotation offered. See AR, Tab 9, New Award Decision at 2. The agency also acknowledged that under the terms of the solicitation, price was the most important factor and past performance the least important factor. Id.; see also RFQ at 12. However, it concluded that the benefits offered by Far North's past performance were not worth a price that was 33% higher than PEAK's price. Id. Based on our review of the record, we conclude that the source selection decision document reasonably supports the agency's relative assessments of the quotations and its best-value determination. Ultimately, the protester's objections to the source selection decision reflect its disagreement with the agency's assessments but do not demonstrate an unreasonable or otherwise improper award determination.

The protest is dismissed in part and denied in part.

Thomas H. Armstrong
General Counsel

(...continued)

Tab 8, Consensus Evaluation Summary at 2. The protester's arguments have not provided a basis for our Office to disagree with the agency's technical evaluation.