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Decision

Matter of: Integrity Management Consulting, Inc.

File: B-417942

Date: December 16, 2019

Thomas K. David, Esq., Kenneth D. Brody, Esq., and Katherine A. David, Esq., David, Brody & Dondershine, LLP, for the protester.

Dorothy M. Guy, Esq., and Tal Kedem, Esq., Social Security Administration, for the agency.

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DIGEST

Protester's contention that the agency unreasonably evaluated the protester's price as unrealistic is denied where the record reflects that the agency's evaluation adhered to the solicitation's evaluation scheme.

DECISION

Integrity Management Consultants, Inc., of Tysons, Virginia, protests the establishment of a blanket purchase agreement (BPA) under the Federal Supply Schedule with Booth Management Consulting, LLC, of Columbia, Maryland, under request for quotations (RFQ) No. 28321319Q00000343, issued by the Social Security Administration (SSA) for professional acquisition, budget, and finance support personnel. The protester contends that the agency unreasonably found Integrity's price to be unrealistic.

We deny the protest.

BACKGROUND

The RFQ, issued pursuant to the procedures of Federal Acquisition Regulation § 8.405-3 and set aside for small businesses, contemplated the establishment of a single blanket purchase agreement for professional support services with the vendor whose quotation was most advantageous to the government, considering past performance, corporate experience, and price. Agency Report (AR), exh. 1, RFQ at 40, 94-96. Each vendor's quotation was to be submitted in two volumes--one was termed a technical volume and the other a business volume. Id. at 92. Notwithstanding

the instructions to vendors to provide a “technical volume,” past performance and corporate experience were the only non-price matters to be addressed in the technical volume; the RFQ’s evaluation scheme did not include a technical approach factor. The RFQ provided that past performance was more important than corporate experience; those two non-price factors, when combined, were significantly more important than price. Id. at 96-97. The BPA would have a total possible term of 5 years--a 1-year base period and four 1-year options. Id. at 41.

In their business volumes, the RFQ required vendors to complete a pricing table spreadsheet found at section D, attachment 2 of the RFQ. Vendors were required to identify their labor category that met the RFQ’s requirements for particular positions. The agency provided the estimated required hours. Vendors were to fill in their discounted rates for each labor category. The solicitation requested no other information regarding pricing. See RFQ at 94. The RFQ advised vendors that the agency sought “price reductions” in the vendor’s GSA schedule labor rates. Id. at 94. The RFQ included the following note, in red, regarding price quotations: “Note: **Although we seek price reductions, schedule contractors are strongly discouraged from providing discounts that result in rates that are so low that they could reflect a lack of technical understanding.**” Id. (emphasis in original).

The agency would derive a total price for each vendor by having the spreadsheet multiply the total estimated hours for each labor category by the quoted discounted labor rates to derive an estimated annual price per labor category. Id. at 97. The totals for each labor category would then be added together to arrive at a total price per period. Id. In addition to calculating a total price, the RFQ advised vendors that the agency would perform a price realism analysis to determine whether the hourly rates for each labor category “are so low that they do not accurately reflect the prevailing market rates for individuals with the qualifications” sought, and therefore evidence a lack of technical understanding. Id. at 97-98. The RFQ stated that “[a] quotation will be rejected for offering excessively low rates that demonstrate a lack of technical understanding.” Id. at 98.

While not disclosed in the solicitation, a methodology for conducting the price realism analysis was described in the agency’s acquisition plan. AR, exh. 7, Written Acquisition Plan at 4. This methodology provided that the contracting officer would compare all rates proposed by each schedule contractor to the rates in the independent government cost estimate (IGCE). The rates in the IGCE were generated by averaging the rates for year 2 of the current BPA from the five highest-rated quotations received during the competition that occurred in 2017. Those rates were then escalated by 2.5% every year. According to the contracting officer, the IGCE was an accurate reflection of current market rates because the rates were “based on recent information (escalated accordingly) and include discounts vendors offered from their GSA schedule rates.” Id. The acquisition plan provided that if “more than 40% of the rates proposed are greater than 15% less than the IGCE rates, the schedule contractor will be found to lack the

necessary technical understanding of the requirement and to have offered rates for individuals who do not possess the qualifications we are seeking.”¹ Id.

The protester, the awardee, and three other vendors submitted quotations. See AR, exh. 6, Summary of Award Without Discussions at 3. The agency evaluated Integrity’s quotation--the highest-rated, overall--as excellent under both past performance and corporate experience, and the agency noted that Integrity offered the lowest total price of any vendor, \$5,564,724. Id. at 5. Booth’s quotation received ratings of good and excellent, respectively, and offered a price of \$6,410,877. Id.

Using the methodology set forth in the acquisition plan, the agency compared Integrity’s labor rates to the IGCE rates. The agency found that 36 of the 75 rates quoted by the protester, or 48 percent, were more than 15 percent less than the IGCE rates. AR, exh. 8, Integrity Business Quotation Analysis at 1-2. Because more than 40 percent of the protester’s labor rates were more than 15 percent less than the IGCE, the agency found Integrity’s price to be unrealistic. Id. at 2. The SSA “removed [Integrity’s quotation] from further consideration for award.” AR, exh. 12, Agency-Level Protest Denial at 3. After a tradeoff analysis, the agency made award to Booth’s lower-rated and higher-priced quotation as the best value to the agency. AR, exh. 6, Summary of Award Without Discussions at 8.

In its notice of award to the protester, the agency informed Integrity that the SSA had not accepted its quotation for award, but the SSA did not advise the company that the agency determined that Integrity’s price was unrealistic. See AR, exh. 10, Letter from Agency to Protester, Aug. 19, 2019. The protester filed an agency-level protest challenging the agency’s technical evaluation. See AR, exh. 11, Integrity Agency-Level Protest. Integrity learned for the first time in the agency’s denial of that protest that the SSA had found the protester’s price “excessively low and not realistic” and that, consequently, Integrity’s quotation was not considered for award. See AR, exh. 12, Agency-Level Protest Denial at 1, 3. This protest followed.

DISCUSSION

The protester contends that the agency’s conclusion that Integrity’s price was unrealistic was improperly based on “a price realism exercise which does not consider an offeror’s technical approach.” Protest at 8-9. In response, the agency contends that the RFQ, as structured, did not permit a vendor to offer a unique technical approach, and that the

¹ To provide context for the price realism analysis, the contracting officer describes a history of poor performance on the part of the incumbent contractor, which the contracting officer attributes to low labor rates. Supp. AR at 5. In the contracting officer’s view, the incumbent proposed rates that were too low because it did not fully understand or appreciate the technical requirements. Id. To ensure that the subsequent contractor’s performance will not be similarly hampered by low wage rates, the contracting officer devised what she termed “a price realism analysis.” Id.

agency's realism analysis was both reasonable and consistent with RFQ. We find no basis on which to sustain the protest.

When an RFQ contemplates the award of a fixed-price contract, or a fixed-price portion of a contract, an agency may provide in the solicitation for the use of a price realism analysis for the limited purpose of measuring a vendor's understanding of the requirements, or to assess the risk inherent in a vendor's quotation. SKE Italy Srl, B-414884.3, Jan. 24, 2018, 2018 CPD ¶ 37 at 6. The nature of the analysis required to assess whether a vendor's price is so low as to reflect a lack of competence or understanding is generally a matter within the agency's discretion. Id. Our review of a price realism analysis is limited to determining whether it was reasonable and consistent with the terms of the solicitation. Id.

The protester claims that there were "vast differences" in the technical solutions provided by the vendors and that the agency was required to weigh those differences as part of the price realism analysis. Comments at 4. Specifically, Integrity argues that "none of the respective [labor categories] presented by Booth aligned by name or rate with the [labor categories] presented by Integrity." Id. Integrity also asserts that its quotation contains numerous "technical and business data points that evidence its realism and unique value." Id. at 6. As one of many examples, Integrity argues that its quotation, including its business volume, demonstrates that this requirement is Integrity's core business. Id.

While the protester claims that the agency was required to analyze the quoted labor categories, the RFQ provided for no such evaluation. The RFQ required vendors to quote labor categories that were consistent with those provided in the RFQ. RFQ at 94. The solicitation also requested the vendor's discounted rates for those labor categories and provided labor hours for each category. The solicitation did not, however, indicate that the agency would evaluate the quoted labor categories for consistency with the RFQ's labor categories. See RFQ at 97-98. Accordingly, the RFQ was clear that the price realism analysis would review the vendor's labor rates, and not the labor categories. To the extent that the protester challenges the agency's failure to consider differences in the vendors' quoted labor categories, the protester is raising an untimely challenge to the terms of the solicitation. 4 C.F.R. § 21.2(a)(1); see also, e.g., ASRC Fed. Data Sols., LLC, B-417655, et al., Sept. 18, 2019, 2019 CPD ¶ 325 at 7 (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, citing, Baldt Inc., B-402596.3, June 10, 2010, 2010 CPD ¶ 139 at 2).

Similarly, to the extent the protester argues that the agency failed to consider Integrity's unique technical approach, the RFQ did not contain a technical approach evaluation factor. The RFQ's evaluation factors were past performance, corporate experience, and price. The RFQ did not reasonably inform vendors that the agency either intended or would review the past performance or experience portions of submitted quotations to assess vendors' technical approaches as part of the agency's source selection

evaluation. As noted above, the agency advised vendors that the SSA's price realism analysis would consist of "review[ing] the hour labor rates of each labor category to determine whether they are so low they do not accurately reflect the prevailing market rates for individuals with the qualifications we seek." RFQ at 97.

The contracting officer contends that, because the SSA "established the labor mix and hours," offerors "had no discretion in proposing a technical solution that differed from the requirements that SSA had already defined in the RFQ." Suppl. AR at 7 (emphasis in original). In other words, the contracting officer argues, the "RFQ essentially established the technical requirements of the offerors, thus leveling the playing field where technical approach was concerned." Id. The agency argues that, given this level-of-effort requirement, vendors could not propose unique methods of contract performance, and consequently the agency's price realism analysis need not--and could not--consider a vendor's particular approach to contract performance.²

Finally, we note that nothing in the record suggests that the vendors did, in fact, provide unique technical approaches in response to an RFQ technical approach evaluation factor; instead, they provided information about past performance and corporate experience in their so-called technical quotations. As such, we agree with the agency that it structured the solicitation so that it sought no technical approach to consider in the price realism analysis. Under the unique structure of this procurement, where the solicitation did not inform vendors that the agency would assess competing vendors' technical approaches as part of the agency's source selection evaluation, our decisions that conclude that, to be reasonable, a price realism analysis must consider vendors' technical approaches are inapposite, as is our tendency to disfavor mechanical comparisons as part of a price realism analysis. See GiaCare and MedTrust JV, LLC, B-407966.4, Nov. 2, 2016, 2016 CPD ¶ 321 at 9; Alcazar Trades, Inc.; Sparkle Warner JV, LLC, B-410001.4, B-410001.5, Apr. 1, 2015, 2015 CPD ¶ 123 at 5-6.

The protest is denied.

Thomas H. Armstrong
General Counsel

² Given our conclusions above, we need not and do not reach a decision about whether an agency may reasonably conduct a price realism analysis without requesting and evaluating information sufficient to assess competing vendors' technical approaches as no vendor timely challenged the terms of the solicitation here.