



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Kardex Remstar, LLC

File: B-418157

Date: January 16, 2020

Julie M. Nichols, Esq., and James S. Phillips, Esq., Roeder, Cochran, Phillips, PLLC, for the protester.

Timothy J. Ryan, Esq., Defense Logistics Agency, for the agency.

Paula A. Williams, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of the protester's quotation is denied because the record shows that the evaluation was reasonable and consistent with the solicitation's evaluation criteria.

DECISION

Kardex Remstar, LLC (Kardex), of Westbrook, Maine, protests the issuance of a fixed-price purchase order to Werres Corporation, of Frederick, Maryland, by the Defense Logistics Agency (DLA) under request for quotations (RFQ) No. SP3300-19-Q-5026, for commercial vertical lift module (VLM) storage systems. Kardex alleges that the agency unreasonably evaluated its lower-priced quotation as technically unacceptable and impermissibly issued the purchase order to a higher-priced vendor.

We deny the protest.

BACKGROUND

The RFQ, issued on June 10, 2019, and subsequently amended twice, solicited quotations for a contractor to deliver and install four VLM storage systems at DLA's distribution center located at Naval Air Station in Corpus Christi, Texas. The solicitation was issued pursuant to the commercial item acquisition procedures of Federal Acquisition Regulation (FAR) subpart 12.6, and the simplified acquisition procedures of FAR subpart 13.5. RFQ at 1. The VLMs will be used to store small binnable parts for aircraft kitting operations. Statement of Work (SOW) at 3. The selected contractor will be required to deliver and install either its current, commercially designed and available

product, or a commercial product that has been slightly modified to fit the proposed system. Under the heading, 3.1 General Requirements, the solicitation stated that it will be the responsibility of the selected contractor to ensure that the final VLM design meets the “firm performance and Cyber Security requirements” of the solicitation and that “[a]lternate equipment and system architecture may be proposed by the contractor provided all firm performance requirements specified in Sections 1.3 through 1.4 and 3.1 through 3.4 are satisfied by the proposed design.” Id. at 7. As relevant, the performance requirements included: (1) section 3.2.2, Vertical Lift Module; and (2) section 3.2.2.4, Dual Tray Delivery. Id. at 16. Only three sections of the SOW expressly allowed for alternative solutions: for the treatment and painting of surfaces (section 3.1.2), for a self supporting structure (section 3.2.2.1), and for the size of the VLM units and trays (section 3.2.2.6). Id. at 7, 16, 17.

The RFQ stated that the purchase order would be issued to the vendor that submitted the lowest-priced, technically acceptable quotation. RFQ at 20. Quotations would be evaluated based on three evaluation factors: past performance, technical/business, and price. Id. at 21-22. The technical/business evaluation factor was comprised of the following subfactors: (a) project management plan; (b) organizational structure and qualifications; (c) system layout design; (d) reliability/maintainability; and (e) differences/exceptions. Id. at 21. The solicitation provided that quotations would be evaluated under the past performance and technical/business evaluation factors on an acceptable/unacceptable basis. Id. at 20.

With respect to the technical/business quotation, the solicitation advised that this factor: relates to the project design and performance requirements described in the SOW and associated drawings; concerns what the vendor proposes to do and how it will get done; and, includes the vendor’s capabilities, plans, key personnel, labor and equipment resources, and subcontracting efforts. Id. at 21. Vendors were required to structure their technical volume to align with the stated technical/business evaluation subfactors, and for each subfactor, the RFQ required vendors to demonstrate their “understanding of the technical requirements” outlined in the SOW. Id. at 18. As relevant here, under the system layout design subfactor, the agency was to assess the vendor’s technical/business submission based on: the quality of the equipment proposed, the commercial availability of individual components of the system, structural integrity of the design, enhancements to the government design, and completeness of the layout. Id. at 22.

The RFQ also instructed vendors to identify all areas of their quotations that differ from the requirements of the technical specifications and associated drawings and to provide a brief description of the differences. Vendors with no exceptions in their quotations were to include a statement that no exceptions to specified requirements were included in their quotations. Id. at 19.

DLA received quotations from five vendors, including Werres and Kardex by the July 17, 2019 deadline. Joint Contracting Officer’s Statement and Memorandum of Law at 1. Werres’ quotation did not take any exceptions to the RFQ requirements. Agency Report (AR) exh. 14, Werres’ Cover Letter (July 16, 2019). Kardex offered an alternate solution

by offering six smaller VLMs with smaller delivery trays that were built into the VLM units. Id. exh. 12, Kardex's Technical Proposal at 5.

The agency's source selection evaluation board (SSEB) rated Kardex's quotation unacceptable under the system layout design subfactor because its proposed dual tray delivery design was internal, i.e., built into the VLM units, rather than an external dual tray design, as required by sections 3.2.2¹ and 3.2.2.4² of the SOW. Id. exh. 9, SSEB Technical Memorandum at 6 (Sept. 10, 2019). The SSEB also rated Kardex's quotation unacceptable under the reliability/maintainability subfactor for failing to provide any information in this section of its quotation. Id. Thereafter, the agency sent an email to Kardex, stating as follows:

After technical evaluation, your quote has been determined unacceptable due to the following:

1. SOW reference 3.2.2 and 3.2.2.4
Offeror proposes dual tray delivery, but delivery point is internal to the VLM, vice the external access delivery required by the SOW.
2. Solicitation page 19, Factor 2, subfactor (d)
Offeror omitted this section from their proposal.

Id. exh. 23, DLA's Email to Kardex at 3 (Sept. 12, 2019). The agency provided Kardex an opportunity to address these two concerns by September 17. Id.

¹ In relevant part, section 3.2.2, Vertical Lift Module stated:

During manual mode of operation, the employee reviews the paper pick (or stow) list and accesses the VLM operator control panel, and selects the desired VLM tray to be retrieved. The VLM then delivers the tray to the front of the VLM. The operator then picks (or stows) the desired material from (or to) the tray [and] . . . [u]pon completing the pick (or stow), the operator selects the next tray to be retrieved from the VLM operator control panel. In response, the VLM returns the currently displayed tray to an appropriate storage location, and retrieves the next tray to the external tray delivery area.

SOW at 16 (underline added).

² Section 3.2.2.4, Dual Tray Delivery stated:

Once the user has completed the actions required in the first tray, the second tray is delivered automatically to the external access delivery point while the VLM returns the first tray to its first available stored position.

SOW at 16 (underline added).

In an email response, Kardex submitted the omitted information for subfactor (d), the reliability/maintainability subfactor, and addressed the external dual tray delivery requirement as follows:

Our dual delivery is internal to the unit. Only one manufacturer offers a dual tray external delivery so based on this specification being required it would make this a sole source purchase as no other VLM manufacturer will do it for design and functional reasons. We quoted a standard offering of our product that would meet the actual customers [sic] requirements and desires based on our site visit with the end user. Typically, a dual tray delivery is only required for a high output facility. Since this facility is not picking at rates of 200 picks per hour this is an unnecessary feature . . . External dual tray delivery is not an ergonomic, user friendly or reliable/maintainable feature and we strongly urge you to accept a single external delivery as an acceptable alternative.

Id., Email from Kardex at 2 (Sept. 17, 2019).

Based upon the information provided by the vendors in response to the RFQ and the agency’s clarification questions, the agency found that only one quotation was technically acceptable. Id. exh. 22, Price Negotiation Memorandum (PNM) at 5. With regard to Kardex, the agency concluded that its quotation was unacceptable because its proposed VLM did not have an external dual tray delivery system, as required by the RFQ.

The evaluation of Kardex’s and Werres’ quotations was as follows:

	Kardex	Werres
Past Performance	Acceptable	Acceptable
Technical/Business (overall)	Unacceptable	Acceptable
<i>Project Management Plan</i>	Acceptable	Acceptable
<i>Organization Structure & Qualifications</i>	Acceptable	Acceptable
<i>System Layout Design</i>	Unacceptable	Acceptable
<i>Reliability/Maintainability</i>	Acceptable	Acceptable
Price	[DELETED]	\$625,000

Id. exh. 22, PNM at 1, 7-8; 9-10.

On September 27, the agency issued the purchase order to Werres and posted its award decision on the Federal Business Opportunities website. This protest followed.

DISCUSSION

Kardex raises two primary arguments: (1) the agency’s evaluation of its quotation under the system layout design subfactor was inconsistent with the disclosed evaluation criteria; and (2) the requirement for external dual tray delivery was not a “firm”

solicitation requirement, therefore the agency's evaluation of its alternate design approach was unreasonable. As discussed below, we deny the protest.

Where, as here, an agency issues an RFQ using simplified acquisition procedures, an agency must conduct the procurement consistent with a concern for fair and equitable competition and must evaluate proposals or 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. Emergency Vehicle Installations Corp., B-408682, Nov. 27, 2013, 2013 CPD ¶ 273 at 4. By itself, a protester's disagreement with an agency's evaluative judgments does not establish that the evaluation was unreasonable. KinetX Aerospace, Inc., B-406798 et al., Aug. 21, 2012, 2012 CPD ¶ 303 at 7.

With regard to the agency's alleged failure to adhere to the solicitation's disclosed evaluation criteria, Kardex complains that it was not appropriate for the agency to find its VLM solution unacceptable under the system layout design subfactor for failing to have an external dual tray delivery system. Protest at 4-5; Comments at 6-11. According to the protester, under this subfactor, the agency's evaluation was limited to an assessment of "the quality of the equipment proposed, the commercial availability of individual components of the system, structural integrity of the design, enhancements to the Government design, and completeness of the layout." See RFQ at 22. In its view, the agency "used the wrong criteria to evaluate" its alternate VLM dual tray delivery system. Comments at 11.

DLA responds that the evaluators did, in fact, apply the solicitation's stated evaluation criteria, noting that Kardex's quotation was properly evaluated as technically unacceptable for failing to meet the express solicitation requirement for an external dual tray delivery station. Joint Contracting Officer Statement and Memorandum of Law at 13-14. The agency further responds that it explicitly informed Kardex that its VLM design did not comply with the requirements of section 3.2.2, Vertical Lift Module, and section 3.2.2.4, Dual Tray Delivery of the solicitation. The agency notes that the protester's response expressed its disagreement with DLA's requirement for VLMs with external dual tray capabilities as an unnecessary feature, asserted that the SOW requirements were incumbent-specific requirements, and asserted that its proposed VLM system design would meet the actual requirements of the end user. Id. at 12-13.

Where a protest challenges an agency's failure to evaluate quotations on the basis of the solicitation's stated criteria, our Office will review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's stated evaluation factors and applicable statutes and regulations. See, e.g., Metro Mach. Corp., B-402567, B-402567.2 June 3, 2010, 2010 CPD ¶ 132 at 13. While solicitations must inform vendors of the basis for evaluation of quotations and source selection, and the agency's evaluation must be based on the factors identified in the solicitation, the

solicitation need not specifically identify every area that may be taken into account where vendors are reasonably on notice of the areas that the evaluation will encompass. See, e.g., MicroTechnologies, LLC, B 403713.6, June 9, 2011, 2012 CPD ¶ 131 at 3.

The contemporaneous record demonstrates that the agency adhered to the solicitation's stated evaluation factors. Under the technical/business evaluation factor, the solicitation established that DLA would evaluate whether a vendor's offered VLM met "the project design and performance requirements described in the SOW and associated drawings." RFQ at 21. While Kardex contends that a vendor's compliance with this design requirement was not encompassed within the system layout design subfactor, it is undisputed that under the technical/business evaluation factor--of which, system layout design is a subfactor--the solicitation disclosed that the agency would assess a vendor's compliance with the project design and performance requirements of the SOW. Accordingly, we reject Kardex's contention that it was not proper for the agency to assess the compliance of Kardex's product with the SOW requirements.

Next, Kardex argues that because the requirements set forth in section 3.2.2, Vertical Lift Module, and section 3.2.2.4, Dual Tray Delivery, were not labeled as "firm" SOW requirements, Kardex could submit an alternate design approach to meet the agency's needs. Protest at 5-7; Comments at 12-14. In its view, "[n]one of the requirements in the SOW were labeled as 'firm'" therefore, Kardex's alternate VLM design--with its internal dual tray delivery--satisfied the solicitation requirements and should have been deemed technically acceptable by the agency. Protest at 6.

In response, the agency contends that there is nothing in the language of the SOW to suggest that vendors were not required to adhere to the stated performance requirements--such as the external dual tray delivery--delineated in sections 1.3 through 1.4 and 3.1 through 3.4 of the SOW. Joint Contracting Officer's Statement and Memorandum of Law at 2-3, 10-15. In this regard, the agency points out that only three sections of the SOW expressly permitted vendors to propose alternative solutions: section 3.1.2, treatment and painting, allowed for an alternate painting process; section 3.2.2.1, self supporting structure, allowed for alternate designs "provided that the cube and weight capacity are maintained and that there is clear maintenance access to the VLM units proposed"; and section 3.2.2.6, trays, allowed for alternate size VLM units and trays. Id. at 4-5. Kardex interprets the single word "firm" in the sentence "[a]lternate equipment and system architecture may be proposed by the [vendor] provided all firm performance requirements specified in Sections 1.3 through 1.4 and 3.1 through 3.4 are satisfied by the proposed design" see SOW at 7, to mean that all SOW requirements were optional. The agency argues that Kardex is urging an "absurd" interpretation of the SOW. Id. at 15.

When a dispute arises as to the meaning of solicitation language, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all provisions of the solicitation. See, e.g., Level 3 Commc'ns LLC, B-412854 et al.,

June 21, 2016, 2016 CPD ¶ 171 at 7; KAES Enters., LLC, B-411225 et al., June 18, 2015, 2015 CPD ¶ 186 at 5.

Here, Kardex fails to advance a reasonable interpretation of the solicitation requirements. The solicitation identified the agency's requirements as "firm" except for three specific aspects of the SOW. For these three, as indicated above, the solicitation stated that vendors could submit a VLM solution with an alternative method for meeting the government's requirements. On the other hand, the solicitation did not include any language permitting an alternative solution for the external dual tray delivery requirement, or otherwise generally suggest that an alternative solution was permitted.

Moreover, under Kardex's interpretation, the word "firm" would be meaningless since the solicitation did not further specify any other requirement as firm. Here, the protester's interpretation--that none of the requirements were firm unless they were identified as firm--turns the solicitation entirely on its head by rendering the language permitting alternatives superfluous and without independent effect. See Crew Training Int'l, Inc., B-414126, Feb. 7, 2017, 2017 CPD ¶ 53 at 4 (a reading of a solicitation that is inconsistent with other solicitation provisions, and renders some parts of the document extraneous or meaningless cannot be a reasonable reading). On the record before us, we conclude that Kardex's complaints regarding the agency's application of the solicitation's provisions provide no basis to sustain its protest.

The protest is denied.

Thomas H. Armstrong
General Counsel