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Decision

Matter of: Kratos Defense & Rocket Support Services, Inc.

File: B-418172.2

Date: January 26, 2021

John R. Prairie, Esq., and Cara L. Lasley, Esq., Wiley Rein LLP, for the protester. Theresa S. Keenan, Esq., Department of the Navy, for the agency. Stephanie B. Magnell, Esq., and Evan C. Williams, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's decision not to consider the vendor's quotation is denied, where the protester's cost quotation was incomplete and the solicitation did not permit the agency to consider an incomplete quotation.

DECISION

Kratos Defense & Rocket Support Services, Inc., of San Diego, California, protests the exclusion of its quotation from competition for request for quotations (RFQ) No. N00189-19-R-3037, which was issued by the Department of the Navy, Naval Supply Systems Command, to obtain training, education, engineering, technical and management support services for the Royal Saudi Naval Forces. The protester argues that even though its proposal did not contain certain subcontractor pricing information, the agency unreasonably failed to review Kratos's quotation in full to assess if it nevertheless contained all necessary cost/price elements. The protester argues in the alternative that the agency should have either waived the requirement for this information or requested it from Kratos.

We deny the protest.

BACKGROUND

On May 9, 2019, the Navy issued the RFQ, using Federal Acquisition Regulation (FAR) subpart 16.5 procedures, under the indefinite-delivery, indefinite-quantity (IDIQ)

Seaport-e contract to provide training, education, engineering, technical, and management support services for the Royal Saudi Naval Forces.¹

On September 30, the agency made award to Salient Federal-SGIS, Inc. On October 15, Kratos filed a protest with our Office. In response, the agency advised our Office that it intended to take corrective action by reevaluating quotations and, potentially, revising the solicitation. Notice of Corrective Action & Req. for Dismissal, B-418172, Oct. 30, 2019. On the basis of this proposed corrective action, our Office dismissed the protest as academic. *Kratos Def. & Rocket Support Servs., Inc.*, B-418172, Nov. 6, 2019 (unpublished decision).

The revised solicitation contemplated the issuance of a cost-plus-fixed-fee task order to the vendor whose quotation represented the best value to the agency, considering the factors of performance approach, management approach, corporate experience, past performance, socio-economic plan, and cost/price. RFQ at 53. The performance approach and management approach factors were of equal importance and were more important than both the corporate experience and past performance factors. *Id.* The corporate experience and past performance factors were of equal importance and were significantly more important than the socio-economic plan factor. *Id.* at 53-54. The technical factors were more important than cost/price. *Id.* at 54.

As relevant to this protest, with regard to cost/price, vendors were instructed to include the same information for their subcontractors as for themselves. *Id.* at 47 (“Quoters shall address Subcontracted Costs. Each subcontractor estimate shall be addressed separately, and detailed cost information shall be provided in the same format (including payroll screen shots) as required for the prime contractor.”). Those subcontractors were permitted to provide this information directly to the agency. *Id.*

With respect to the agency’s evaluation, the solicitation advised vendors that the cost information, including the information provided by subcontractors, would be used to perform a cost realism analysis. RFQ at 48 (“In order to verify the realism of the [vendor’s] quoted direct labor rates, all [vendors] should submit, as part of their Cost Quote, documentation substantiating the realism of their quoted direct labor rates. To the extent that a [vendor] is proposing a subcontractor on a cost reimbursement basis, the documentation substantiating the accuracy of the subcontractor’s quoted direct labor rates is also requested.”). Vendors were also on notice that the agency intended to evaluate the realism of vendors’ professional compensation. *Id.* at 49 (“Professional compensation that is unrealistically low or not in reasonable relationship to the various job categories may impair the Contractor’s ability to attract and retain professional service employees, and thus, may be viewed as evidence of failure to comprehend the complexities of the task order requirements.”).

¹ According to the RFQ, the contractor will support all levels of training and also provide comprehensive logistical and advisory support for the Royal Saudi Naval Forces. RFQ at 12-20. Citations to the RFQ are to the document at tab 1 of the agency report (AR).

Section L of the solicitation instructed vendors that “quotes that do not comply with the detailed instructions for the format and content of the quote may be considered non-responsive and may render the quoter ineligible for award.” *Id.* at 42. In addition, the RFQ warned vendors that “[f]ailure to submit a complete quote prior to the solicitation closing date and time will render the quote late and unacceptable.” *Id.*

The Navy issued the final amendment to the solicitation on August 21, 2020. *Id.* at 1. Revised quotations were due August 28. *Id.* at 2. In its proposal, Kratos submitted its own cost information by the August 28 deadline, and also advised the agency that its subcontractor, Cape Henry Associates (CHA), would submit CHA’s own cost information directly to the agency. AR, Tab 4, Kratos Supporting Cost Data at 8 (“CHA has provided detailed cost information in the same format as Kratos directly to the government.”); see also *id.* at 10 (“CHA will provide the indirect rate information in their cost proposal submission directly to the government.”) and *id.* at 13 (“CHA is providing detailed cost/price submission directly to the government.”).

However, CHA did not submit its supporting cost data to the agency by the August 28 deadline. Instead, CHA did not submit this information to the agency until 4:44 p.m. on August 31.² AR, Tab 5, CHA Email to Agency Re: Late Submission at 1. Based on an initial review of Kratos’s proposal, the agency determined that the proposal did not include required cost/price information for CHA. AR, Tab 6, Contracting Officer Memorandum for Record. The contracting officer writes, in part:

I also gave meaningful consideration to Kratos’ quote and lack of supporting cost/price data for its subcontractor [. . .] I also considered the supporting cost/price information our solicitation required . . . which was not provided. I considered the negative impact this lack of information would have on the Agency’s ability to conduct a proper cost realism analysis and to evaluate professional compensation, as set forth in the solicitation.”³

² It appears that CHA first attempted to send its supporting cost data to the agency at 3:39 p.m. on August 29, but used the wrong email address. AR, Tab 5, CHA Email to Agency Re: Late Submission at 1. In addition, Kratos sent CHA’s missing information at 3:54 p.m. on August 31. AR, Tab 12, Emails Between Kratos and Navy, Aug. 31, 2020, at 2. This information contained CHA’s “detailed cost and pricing package [in accordance with] the subject RF[Q] requirements in support of the Government’s evaluation of Kratos’ timely submittal of 28 August 2020.” *Id.* Attached to the email was a cover letter, CHA’s cost summary, and CHA’s cost narrative. *Id.* The cost summary and the cost narrative provided detailed information about CHA’s costs, including professional salaries and the cost and type of personnel benefits. AR, Tab 26, CHA Cost Quotation Spreadsheet; Tab 27, CHA Cost Narrative.

³ The memorandum for record is undated, but no party argues, and the record does not reflect, that it was not drafted contemporaneously with the conclusions reached therein.

Id.

On September 4, the agency informed Kratos that the Navy considered its quotation to be incomplete. AR, Tab 7, Navy Letter to Kratos, Sept. 4, 2020. The Navy explained that Kratos's quotation was excluded from the competition because "CHA failed to submit the cost/price information required by the solicitation by the 28 August deadline."

Id. In this regard, the agency noted that "[b]oth Kratos and CHA acknowledged the [CHA] submission was not provided until after the deadline." *Id.* In making the decision to exclude Kratos from the competition, the contracting officer also explained that "in order to obtain the required information, the Agency would likely have to engage in something akin to discussions, which the Agency did not intend to do And with [CHA] proposed to provide over 6% of the [full-time equivalent personnel] for this requirement, I would want to ensure a proper evaluation of their required supporting cost data." AR, Tab 6, Contracting Officer Memorandum for Record.

On September 11, Kratos filed a protest with the Navy challenging the exclusion of its quotation from consideration for award. AR, Tab 8, Kratos Agency Protest. Kratos argued that the agency was required to consider Kratos's partial quotation, notwithstanding its subcontractor's failure to timely submit the subcontractor's cost information; the agency should have obtained any necessary cost information by conducting clarifications; Kratos's subcontractor's late submission was a minor informality that the agency should have waived; and only Kratos can perform the solicitation requirements due to travel restrictions affecting the Kingdom of Saudi Arabia related to the COVID-19 global pandemic. *Id.*

On October 16, the Navy responded to Kratos's agency-level protest. AR, Tab 10, Navy Response to Agency Protest. The agency concluded that there was no merit to the protester's allegations.⁴ *Id.*

On October 19, Kratos filed the instant protest with our Office.

DISCUSSION

Kratos presents three main protest grounds challenging its exclusion from the competition. First, the protester contends that the agency improperly refused to review Kratos's partial quotation for completeness, despite the protester's and its subcontractor's acknowledgement that the subcontractor's cost submission was untimely. Next, Kratos asserts that the agency should have obtained any missing cost information through clarifications; underpinning this argument is Kratos's assumption

⁴ Because the value of the anticipated task order is over \$25 million, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award IDIQ contracts awarded under the authority granted in Title 10 of the United States Code. 10 U.S.C. § 2304c(e)(1)(B).

that allowing Kratos to supplement its proposal with CHA's cost information would not constitute discussions. Finally, the protester argues that the agency was obliged to waive the quotation submission deadline as a minor informality. As discussed below, we conclude that the agency had a reasonable basis to find that the proposal was incomplete and exclude the proposal from further consideration. In addition, the terms of the solicitation prohibited the agency from considering incomplete proposals. Accordingly, we conclude that the agency, after finding that the proposal was incomplete, was not permitted to obtain the missing information from the protester or waive the deadline for CHA's late submission.⁵

Kratos first argues that the agency failed to reasonably consider whether Kratos's quotation could be evaluated as submitted. Protest at 2. The protester asserts that, as in *SafeGuard Servs., LLC*, B-404910, June 28, 2011, 2011 CPD ¶ 132, the agency improperly rejected Kratos's proposal without considering whether the proposal was nevertheless acceptable without CHA's information. Protest at 3-4.

In response, the agency asserts that it reviewed Kratos's quotation and reasonably concluded that Kratos did not submit a complete quotation. Specifically, the agency asserts that the quotation was incomplete because it failed to include information required by the RFQ that the agency intended to use to conduct its cost realism analysis and evaluate professional compensation. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 17.

As the agency notes, our prior decisions provide that it is the responsibility of the vendor to deliver its quotation to the proper place at the proper time in a manner consistent with the solicitation instructions, and late delivery generally requires rejection of the quotation. COS/MOL at 18; see, e.g., *Advanced Decisions Vectors, Inc.*, B-412307, Jan. 11, 2016, 2016 CPD ¶ 18 at 5. While the protester maintains that the agency erred by failing to consider whether it could evaluate Kratos's quotation, the pertinent question is whether the quotation was in fact complete. In *SafeGuard*, our Office found that an agency improperly rejected a protester's final proposal revision in connection with the failure of a subcontractor to timely submit its revised business proposal spreadsheets because the record demonstrated that the information contained in the subcontractor's late submission also was reflected in the protester's final proposal revision, which was timely received. *SafeGuard, supra* at 5.

In contrast, the record here reflects that Kratos's cost volume did not elsewhere contain the information provided late by CHA. Thus, the agency had a reasonable basis to conclude that Kratos's proposal was missing information required by the solicitation and was therefore incomplete. Accordingly, we conclude that the agency did not improperly reject Kratos's quotation. See *Orion Tech., Inc.*, B-405077, Aug. 12, 2011, 2011 CPD ¶ 159 at 6 (finding that the agency reasonably excluded the protester's proposal from

⁵ Kratos raises several ancillary arguments. While we have considered all of the protest grounds, not all are discussed here and none provides a basis to sustain the protest.

the competition where the proposal did not contain required cost/price information from several teaming members, and also lacked information required for the agency's cost realism evaluation). Furthermore, the agency was not permitted to consider the incomplete quotation. Where, as here, the RFQ contains a late submission provision that complete quotations not timely received will be considered late and unacceptable (RFQ at 42, warning that "[f]ailure to submit a complete quote prior to the solicitation closing date and time will render the quote late and unacceptable"), quotations cannot be considered if received after the deadline. *Advanced Decisions Vectors, Inc., supra* at 5; see also *Turner Consulting Grp., Inc.*, B-400421, Oct. 29, 2008, 2008 CPD ¶ 198 at 3 (finding agency's decision not to consider protester's late quotation proper where RFQ provided that quotations received after the exact time specified for receipt of quotations would not be considered); cf. *Data Integrators, Inc.*, B-310928, Jan. 31, 2008, 2008 CPD ¶ 27 at 2 (finding agency's consideration of late quotation improper where the solicitation incorporated expressly provided that any quotation "received ... after the exact time specified for receipt will not be considered"). In sum, because the record shows that Kratos's quotation, in the form submitted by the deadline, was incomplete, and because the solicitation prohibited the consideration of incomplete quotations, the Navy had a reasonable basis to exclude Kratos's quotation from the competition. *Advanced Decisions Vectors, Inc., supra* at 5-6.

As to the protester's arguments that the agency should have allowed submission of the missing information through either clarifications⁶ or waiver of the deadline for quotations to allow CHA's cost submission to be added to Kratos's proposal, they need not be

⁶ We agree with the agency that supplementing Kratos's proposal with CHA's missing cost information would have constituted discussions and not clarifications. As a general rule, clarifications are limited exchanges between an agency and an offeror for the purpose of eliminating minor uncertainties or irregularities in a proposal, and do not give an offeror the opportunity to revise or modify its proposal. FAR 15.306(a)(2); see *Gulf Copper Ship Repair, Inc.*, B-293706.5, Sept. 10, 2004, 2005 CPD ¶ 108 at 6; *DevTech Syst., Inc.*, B-418273.3, B-418273.4, Dec. 22, 2020, 2021 CPD ¶ 2 at 8 (while the FAR part 15 regulations concerning discussions do not, as a general rule, govern task and delivery order competitions conducted under FAR part 16, our decisions use the requirements under FAR part 15 as a guide when considering the fairness of those communications under FAR part 16).

Discussions, on the other hand, occur when an agency communicates with an offeror for the purpose of obtaining information essential to determine the acceptability of the proposal, or provides the offeror with an opportunity to revise or modify its proposal in some material respect. *Lockheed Martin Simulation, Training & Support*, B-292836.8 *et al.*, Nov. 24, 2004, 2005 CPD ¶ 27 at 8; see FAR 15.306(d). Where there is a dispute regarding whether communications between an agency and an offeror constitute discussions, the test is whether an offeror has been afforded an opportunity to revise or modify its proposal. *Environmental Quality Mgmt., Inc.*, B-402247.2, Mar. 9, 2010, 2010 CPD ¶ 75 at 6.

considered. Because the solicitation unequivocally provided that the “[f]ailure to submit a complete quote prior to the solicitation closing date and time will render the quote late and unacceptable,” the terms of the RFQ did not allow the agency to open discussions in order to permit a vendor to supplement an incomplete quotation or waive the deadline for submission of complete proposals. *Id.* at 42.

The protest is denied.

Thomas H. Armstrong
General Counsel