



Decision

Matter of: Airline Data Inc, LLC

File: B-418472

Date: April 7, 2020

Jeff Pelletier, Airline Data Inc, LLC, for the protester.

Gary Allen, Esq., and Lincoln Schroth, Esq., Government Accountability Office, for the agency.

Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency misevaluated protester's quotation as unacceptable and improperly selected higher-priced quotation for award is dismissed where the protester was not competitively prejudiced by the award even assuming that the agency waived one requirement unequally in favor of the awardee; the protester conceded that its product did not meet another requirement.

DECISION

Airline Data Inc, LLC, of Dallas, Texas, a small business, protests the issuance of a subscription agreement and purchase order to Relx, Inc., doing business as Reed Business Information, of New York, New York, under request for quotations (RFQ) No. 05GA0A20Q0002, issued by the Government Accountability Office, Acquisition Management, (GAO-AM)¹, for a commercial subscription agreement to airline flight data, flight data analysis, and related online tools. Airline argues that GAO-AM misevaluated its quotation as unacceptable and Reed's quotation as acceptable, and improperly issued the order to Reed at a higher price.

¹ The GAO Procurement Law Division reviewed this protest after implementing a firewall between our protest attorneys on one side and the procurement arm of the agency and its counsel, which was structured to ensure maximum independence and to prevent ex parte communication. Our bid protest decisions traditionally refer to the bid protest function as simply "GAO" or "our Office," so in this decision we refer to the contracting function whose actions are challenged as "GAO-AM" to provide a clear distinction.

We dismiss the protest.

BACKGROUND

The RFQ, posted on beta.sam.gov on October 30, 2019, sought fixed-price quotations to provide a subscription to commercial off-the-shelf airline flight data (principally schedule and fare information) for a 1-year base period and 4 option years. Agency Report (AR), Tab 1, RFQ, at 6. The RFQ provided a statement of work describing the data, analysis, and tools that the agency sought. The RFQ also stated that a single purchase order would be issued to the source that submitted the lowest-priced technically acceptable quotation. Id. at 5.

Among the requirements for data was that the data include worldwide airline schedules “includ[ing] historical data going back to January 2000, current data, and future worldwide schedule data out twelve months” Id. at 5. Additionally, the list of required tools included “demographics reporting capabilities.” Id. at 6.

GAO-AM received two quotations, one from Airline at a total price of \$140,000 (i.e., \$28,000 annually) and one from Reed at a total price of \$185,000 (i.e., \$37,000 annually). Protest at 1. As relevant to the protest issues, in its quotation, Airline made no reference to demographic tools. It described the extent of its airline schedule data as starting in 2004, and stated that “users can query Schedules up to 11 months into the future from the current date.” AR, Tab 2, Airline Technical Quotation, at 3.

The GAO-AM technical evaluator reviewed both quotations and concluded that Reed’s product satisfied all RFQ requirements, but that Airline’s failed to meet two requirements. Specifically, the product offered in Airline’s quotation:

. . . did not meet Section 2: Requirements, A. Data, 1. Worldwide airline schedule data. The RFP requires that historical schedule data going back to January 2000 and future data for 12 months with estimates of schedules for carriers who have not filed with DOT [Department of Transportation]. The proposal only has schedule data back to January 2004 and future data for 11 months.

The proposal did not meet Section 2: Requirements, C. Online Tools, 2. Demographic reporting capabilities. There is no mention of this capability in the proposal.

AR, Tab 3, Email from Technical Evaluator to Contracting Officer (Nov. 20, 2019), at 1.

GAO-AM awarded the subscription agreement to Reed and issued a purchase order. After receiving notice of the award, Airline filed this protest.

DISCUSSION

Airline argues that its product is superior to Reed's; that it is a domestic firm unlike Reed; and that Reed's price was significantly higher than its own. Protest at 1. In response, GAO-AM argues that Airline's quotation was rejected as unacceptable because, even though it offered its product at a lower price, its product did not meet one requirement for data and one requirement for tools. Agency Report Combined Memorandum of Law & Contracting Officer's Statement at 3.

In response to the agency report, Airline argues that the requirement for future data was applied unequally because no vendor--including Reed in particular--is able to provide airline schedule data fully 12 months into the future because airlines do not release their schedules that far out. Furthermore, Airline asserts that Reed's historical data similarly goes back no more than late 2003 or early 2004. Comments at 1. Airline argues that if the requirement were applied equally, then Reed's quotation should also have been rejected. Id. Yet, with regard to the evaluation of its quotation as lacking the required demographic tools, Airline acknowledges candidly that "[i]t is true that we do not provide that data." Id.

In reviewing a protest of an allegedly improper evaluation, our Office does not reevaluate quotations; rather, we review the record to determine if the evaluation was reasonable, consistent with the solicitation's evaluation scheme, as well as procurement statutes and regulations, and adequately documented. TransAtlantic Lines, LLC, B-411242, B-411242.2, June 23, 2015, 2015 CPD ¶ 204 at 9. Clearly stated solicitation technical requirements are considered material to the needs of the government, and a quotation that fails to conform to such material terms is technically unacceptable and may not form the basis for award. Antico Cantiere Del Legno Giovanni Aprea Di Cataldo S.R.L., B-414112, Feb. 21, 2017, 2017 CPD ¶ 58 at 4.

For purposes of this decision, we start by assuming that Airline correctly asserts that the historical/future schedule data requirement was waived unequally, in favor of Reed. That assumption is not sufficient to sustain the protest under the circumstances here, however, because Airline also concedes that it did not offer the required demographic capability, which the RFQ included among the tools specifications.²

Competitive prejudice is an essential element of a viable protest; where a protester fails to demonstrate that, but for the agency's actions, it would have a substantial chance of receiving award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. Smartronix, Inc.; ManTech Advanced Sys. Int'l, Inc., B-411970.9 et al., Dec. 9, 2016, 2016 CPD ¶ 362 at 10. In the present context, even where an agency waives a requirement, and then should have amended a solicitation or otherwise apprised vendors that it had done so, our Office will not sustain a protest unless the protester demonstrates a reasonable

² As indicated above, the GAO-AM technical evaluation concluded that Reed's product provided all of the tools specified in the RFQ, and Airline does not argue otherwise.

possibility that it was prejudiced by the agency's actions. Complete Packaging & Shipping Supplies, Inc., B-412392, et al., Feb. 1, 2016, 2016 CPD ¶ 28 at 9.

Even assuming that GAO-AM improperly failed to waive the historical/future schedule data requirement equally for both firms, Airline's quotation was still unacceptable because it clearly did not have demographic reporting capability among its tools as the RFQ specified. Consequently, Airline's quotation was unacceptable under the terms of the RFQ. In short, the protester cannot show that it has a substantial chance of receiving the award, so it was not competitively prejudiced by what we assume was an unequal evaluation under the historical/future data requirement.

The protest is dismissed.³

Edda Emmanuelli-Perez
Deputy General Counsel

³ Although Airline also argues that the award is improper because it is based in the United States, while Reed is based in the United Kingdom, the RFQ indicated that the Buy American Act did not apply. See AR, Tab 1, RFQ, at 9-10 (incorporating clause at Federal Acquisition Regulation § 52.212-5(b)(46)). To the extent that Airline is arguing that the omission of the Buy American Act was a defect in the RFQ, that argument had to be raised by the due date for submitting quotations in order to be timely under our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(1). The protest was filed after the award, so we also dismiss as untimely Airline's argument that a preference for a United States firm should have been considered in awarding the purchase order.