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Decision

Matter of: J's Associates, LLC

File: B-418546.6

Date: August 26, 2021

Robert Nichols, Esq., and Andrew Victor, Esq., Nichols Liu LLP, for the protester. Alexis N. Webster, Esq., and Robert Notigan, Esq., General Services Administration, for the agency. Michael Willems, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging agency erred in its evaluation of the protester's and awardee's quotations is denied where protester's quotation took exception to several material solicitation requirements, rendering the quotation ineligible for award.

DECISION

J's Associates, a woman-owned small business of Dunkirk, Maryland, protests the issuance of a blanket purchase agreement (BPA) to Northern Management Services (NMS), a small business of Sandpoint, Idaho, under request for quotations No. 47PD0120Q0001 pursuant to the General Services Administration's (GSA) Federal Supply Schedule 03FAC, Facilities Maintenance and Management, by the GSA for facility operation and maintenance. The protester alleges the agency misevaluated its quotation and the awardee's quotation, and erred in its best-value tradeoff decision.

We deny the protest.

BACKGROUND

The agency issued the RFQ on November 27, 2019, seeking operation, maintenance, and related services for the GSA Regional Office Building in Washington, D.C. Contracting Officer's Statement (COS) at 1-3. The RFQ contemplated the award of a single BPA with a 1-year base period and nine 1-year option periods. Agency Report (AR), exh. 2B, RFQ at 4. The RFQ provided for award on the basis of a best-value tradeoff considering the following evaluation factors: (1) management plan, (2) prior experience, (3) past performance, and (4) price. *Id.* at 8-9.

As relevant to the issues in the protest, under the management plan factor, the RFQ indicated that the agency would evaluate vendors' approaches to managing the BPA to accomplish the requirements set forth in the solicitation's detailed performance work statement (PWS). RFQ at 9. In particular, the RFQ advised vendors that the agency would evaluate quotations on "the extent to which they provide adequate staffing and communications." *Id.* The RFQ instructed vendors to provide a staffing plan addressing how they would accomplish the requirements of the PWS using in-house and subcontracted resources, and advised, among other things, that they would be evaluated on the extent to which they proposed to provide for a qualified workforce. *Id.* Vendors' staffing plans were, as relevant, to specify personnel positions, titles, responsibilities, and physical locations of personnel, identify positions and individuals that were proposed as "key" personnel, and identify minimum qualifications of each position identified. *Id.*

Although the RFQ afforded vendors flexibility to propose staffing that the vendor deemed appropriate, within the PWS, the RFQ specified minimum qualifications and duties for various staff positions. See AR, exh. 4, PWS at 79-82. For example, the PWS provided the following concerning the role of a project manager:

The project manager is a person, designated in writing by the Contractor, who has complete authority to act for the Contractor in every detail during the term of the contract. The Project Manager must have the authority to accept notices of deductions, inspection reports and all other correspondence on behalf of the Contractor. The Project Manager's physical location and availability must be satisfactory to the COR [contracting officer's representative] Officer or Representative. The Project Manager must have at minimum ten (10) years of O&M [operations and maintenance]/Facilities Management type experience, with at least eight (8) years in a project management/supervisory role. The proposed Project Manager's experience must be in the operation, management, and supervision of building mechanical maintenance operations for buildings of the approximate size, complexity, and characteristics of the buildings and campus to be covered by this contract. A detailed resume containing the information specified in this document must be submitted to the COR for approval prior to the assignment of the project manager to the contract.

Id. at 79.

As additional examples, the PWS also required on-site supervisors to have at least five years of recent supervisory experience, and heating, ventilation and air conditioning (HVAC) technicians to have one of three enumerated professional certifications. *Id.* at 79, 82.

In response to the RFQ, the agency received 12 quotations, and initially made award to NMS on December 28, 2020. COS at 4; AR, exh. 1, Final Evaluation Panel Report at 2. Shortly thereafter, the protester filed a protest of the award with our Office. *Id.* The agency subsequently agreed to reevaluate all quotations, and we dismissed the protest

as academic. *J's Associates, LLC*, B-418546.3, B-418546.5, Jan. 26, 2021 (unpublished decision).

The agency reevaluated all quotations and concluded four of the twelve quotations were technically acceptable, including the awardee's quotation. AR, exh. 1, Final Evaluation Panel Report at 11-12. The evaluators found the protester's quotation technically unacceptable, principally due to various issues identified in the protester's management plan. *Id.* Following the reevaluation, the agency again made award to NMS, and this protest followed.

DISCUSSION

The protester contests the agency's evaluation on a variety of fronts. Specifically, the protester argues the agency applied unstated evaluation criteria, ignored information present in its quotation, and misconstrued its teaming agreement with another firm. Protest at 20-38. Additionally, the protester alleges the agency misevaluated the awardee's quotation and ignored negative past performance information known to the agency. *Id.* at 14-20; 38-45.

In response, the agency argues the protester's quotation was technically unacceptable in numerous respects. See COS at 11-17. For example, the agency noted, among other things, that the quotation only identified two on-site maintenance staff while the prior effort involved seven on-site staff. *Id.* at 14-15; AR, exh. 1, Final Evaluation Panel Report at 13. Additionally, the quotation was ambiguous with respect to the designation of a project manager, and did not adequately address the staffing requirements of the RFQ. *Id.*

Clearly stated solicitation technical requirements are considered material to the needs of the government, and a proposal or quotation that fails to conform to such material terms is technically unacceptable and may not form the basis for award. See, e.g., *Stewart Distributors*, B-298975, Jan. 17, 2007, 2007 CPD ¶ 27 at 3-4. Furthermore, clearly stated qualifications for key personnel are typically material requirements of a solicitation, such that a failure to propose staff meeting those requirements would render a quotation unacceptable, and therefore unawardable. See, e.g., *Agile Defense, Inc.*, B-412811.2, Oct. 17, 2016, 2016 CPD ¶ 292 at 4-5.

In this case, the PWS required that an individual proposed as a project manager must have a minimum of ten years of relevant management experience and the project manager's "physical location and availability" must be satisfactory to the agency. PWS at 79. Additionally, the RFQ required that an individual proposed as an on-site supervisor must have five years of recent relevant experience, and HVAC technicians must have at least one of three enumerated certifications. *Id.* at 79, 82.

In its quotation, the protester identified a lead HVAC mechanic as its sole on-site supervisor. In this regard, the protester's quotation states that the lead HVAC mechanic has a "minimum" of four years of experience. AR, exh. 6, Protester's Technical

Quotation at 11. This does not meet the PWS's stated requirement for on-site supervisors to have at least five years of recent, relevant experience. PWS at 79. Additionally, the protester's quotation describes the lead HVAC mechanic as holding a "professional certification," but does not identify what certification the individual holds. AR, exh. 6, Protester's Technical Quotation at 11. Accordingly, it is also unclear whether the individual holds one of the three certifications specified in the RFQ for HVAC technicians. Vendors are responsible for submitting a well-written quotation with adequately detailed information that allows for meaningful review by the procuring agency. See *WKG & Assocs., LLC*, B-409835, Aug. 26, 2014, 2014 CPD ¶ 250 at 7. By naming an on-site supervisor who lacked the required qualifications for that position, the protester's quotation failed to meet material requirements of the solicitation and was therefore unawardable.

As an additional example, the protester's quotation did not unambiguously identify a project manager. Rather, the quotation includes several references to a "project manager" but does not clearly identify the individual who will fill that role. See, e.g., AR, exh. 6, Protester's Technical Quotation at 50, 54. Further, the protester's quotation notes personnel would be available to supplement on-site personnel to meet emergency or surge requirements. *Id.* at 4. In that context, the quotation explained a specific off-site individual would lead "project management," and could be available within 24 hours. *Id.* However, it is unclear from the protester's quotation whether the off-site individual will be filling the role of project manager on a day-to-day basis in the absence of emergency or surge requirements.

In this regard, the protester argues the RFQ allowed vendors flexibility in staffing the requirement, and while the RFQ provided minimum requirements for a project manager, there was no requirement for a vendor to actually include a project manager position in their staffing plan. Protest at 26; Comments at 15-16. The protester also argues, in the alternative, that its quotation either indicated its onsite supervisor would perform the substantive duties of a project manager, or named an off-site project manager. *Id.*

Preliminarily, we do not agree that the RFQ did not require a project manager. The PWS's description of a project manager includes mandatory duties, and it is unclear how a vendor could comply with those requirements in the absence of a designated project manager. See PWS at 79 ("The project manager is a person, designated in writing by the Contractor, who has complete authority to act for the Contractor in every detail during the term of the contract. The Project Manager must have the authority to accept notices of deductions, inspection reports and all other correspondence on behalf of the Contractor [. . .]").

While the protester argues, in the alternative, that its on-site supervisor could fulfill the responsibilities of the project manager position, as discussed above, the protester's proposed on-site supervisor has only four years of experience, which did not meet the PWS requirements for on-site supervisors. The PWS required project managers to have 10 years of relevant experience, a requirement that the proposed on-site supervisor also could not satisfy. *Id.*

Moreover, while the protester further argues that it, in effect, proposed an off-site project manager, the protester's quotation is ambiguous in this respect because it does not make clear whether the off-site individual will actually work as a project manager in the absence of emergency or surge requirements. AR, exh. 6, Protester's Technical Quotation at 4. Even assuming that the protester's quotation was clear in this respect, the PWS also establishes that the project manager's location and availability must be satisfactory to the agency, and the agency expressed serious concerns about the prospect of an entirely off-site project manager. AR, exh. 1, Final Evaluation Panel Report at 13.

Most significantly, the protester's quotation identifies no credentials or experience of any kind for its putative off-site project manager, so it is also unclear from the protester's quotation whether this individual meets the minimum qualifications for the position. Again, vendors are responsible for submitting a well-written quotation with adequately detailed information that allows for meaningful review by the procuring agency. See *WKG & Assocs., LLC, supra*. We see no basis to conclude the agency erred by evaluating the protester's quotation as unacceptable in this respect.

Because we conclude the agency reasonably found that the protester's staffing plan did not meet the minimum requirements of the solicitation in several respects, we have no basis to question the agency's conclusion that the protester's quotation was technically unacceptable, and therefore unawardable. Accordingly, we do not reach the protester's other arguments concerning the evaluation of its quotation because we conclude the agency properly found the protester's quotation technically unacceptable. In this regard, the protester cannot demonstrate that it suffered any competitively harm stemming from its other allegations as the protester would still be ineligible for award as a result of its technically unacceptable quotation. See *Bashen Corp.*, B-412032.2, Dec. 3, 2015, 2015 CPD ¶ 381 at 4 n.2 (protester cannot show competitive prejudice where agency reasonably found protester otherwise ineligible for award).

Additionally, the protester advances several arguments about the acceptability of the awardee's quotation. However, even if the protester were correct that the awardee's quotation was also technically unacceptable, the protester is not an interested party to advance these arguments.

Our Bid Protest Regulations define an "interested party" as an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1). Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. *Four Winds Servs., Inc.*, B-280714, Aug. 28, 1998, 98-2 CPD ¶ 57. A protester is an interested party to challenge a procurement where there is a reasonable possibility that it would be in line for award if the protest were sustained. See *TENICA & Assocs., LLC et al.*, B-411173.10 *et al.*, Mar. 2, 2016, 2016 CPD ¶ 79 at 7. Conversely, a protester is not an interested party where it would not be in line for

contract award were its protest to be sustained. *See Id.* In this regard, where, as here, there is an intervening vendor who would be in line for the award even if the protester's challenges were sustained, the intervening vendor has a greater interest in the procurement than the protester, and we generally consider the protester's interest to be too remote to qualify it as an interested party. *See SRA Int'l, Inc.; NTT DATA Servs. Fed. Gov't, Inc.*, B-413220.4 *et al.*, May 19, 2017, 2017 CPD ¶ 173 at 28.

In this case, there were three other technically acceptable vendors eligible for award that the protester has not challenged. Given that there were intervening vendors that would be in line for award if the protester's challenges to NMS's award proved meritorious, we conclude the protester lacks the direct economic interest required to maintain these protest allegations. As such, the protest grounds concerning the awardee's proposal are dismissed. *See SRA Int'l, Inc.; NTT DATA Servs. Fed. Gov't, Inc., supra.*

The protest is denied.

Edda Emmanuelli Perez
General Counsel