

Decision

Matter of: People, Technology and Processes, LLC

File: B-418726.5; B-418726.6

Date: August 17, 2021

Victor L. Buonamia, for the protester.

Major Mark T. Robinson, and Major Aaron K. McCartney, Department of the Army, for the agency.

Raymond Richards, Esq., Edward Goldstein, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest arguing that an agency's evaluation of quotations conducted pursuant to Federal Acquisition Regulation provision 52.222-46 is insufficient to satisfy the solicitation's express requirement to conduct a price realism analysis is denied where the record shows that the agency's evaluation was reasonable, consistent with the terms of the unique solicitation at issue, and the protester fails to demonstrate competitive prejudice.

DECISION

People, Technology & Processes, LLC (PTP), a service-disabled veteran-owned small business (SDVOSB) of Tampa, Florida, protests the issuance of a task order to Cornerstone Signals & Cyber Technologies, LLC (Cornerstone), an SDVOSB of Christoval, Texas, by the Department of the Army under request for quotations (RFQ) No. W9124L20R0016, for personnel to support the joint fire support specialist (13F)¹ course at Fort Sill, Oklahoma. The protester argues that the agency's evaluation of quotations was flawed because it did not include a price realism analysis, and that a

¹ The solicitation refers to this course as the "13F" program of instruction. Agency Report (AR), Tab 6, Conformed RFQ at 3. We note that 13F refers to the Army's military occupation specialty (MOS) code for joint fire support specialists. For consistency, our decision will refer to the joint fire support specialist course as the 13F course.

latent ambiguity in the solicitation prevented vendors from competing on an equal basis.²

We deny the protest.

BACKGROUND

The Army issued the RFQ through the General Services Administration's (GSA) e-Buy system using the Federal Supply Schedule procedures of Federal Acquisition Regulation (FAR) subpart 8.4, and the commercial item procedures of FAR part 12. AR, Tab 2, Contracting Officer's Statement (COS) at 1; Conformed RFQ at 82. The RFQ contemplated the issuance of a fixed-price task order with a 1-year base period and one 1-year option period. Conformed RFQ at 36.

The RFQ sought quotations to provide 15 fully qualified personnel to instruct the resident and mobile training team 13F courses based at Fort Sill.³ *Id.* Vendors were instructed to prepare their quotations using a baseline of 1,920 labor hours per year so the agency would have a common baseline for comparing the relative prices of quotations. *Id.* at 80. The solicitation established minimum instructor qualifications which included minimum experience requirements in specified occupations. For example, the RFQ explained that all 13F instructors shall have a minimum of three years of experience as a joint fire support specialist, and at least one year of experience with Army equipment used within the 13F MOS. *Id.* at 37.

The solicitation described "the full spectrum of training" as including, but not being limited to, "classroom, hands-on, simulation/virtual, field environment and exercises, combat scenario driven," and performing safety observation tasks during live fire exercises. *Id.* at 39. In addition to the primary tasks associated with delivering 13F instruction such as teaching from the approved plan of instruction, ensuring course surveys are completed, and evaluating students' performance, the prospective instructors would also be required to perform secondary tasks such as performing preventive maintenance on assigned equipment, keeping vehicles clean, and assisting in the review and development of course material. *Id.* at 39-44. The RFQ explained that the government would furnish office space, supplies, telephone service,

² The protester here proceeded without legal counsel and no protective order was issued in this protest. The agency filed both a protected and a redacted version of its report with our Office. Our discussion here references the redacted version of the report, when possible, and is necessarily general in nature to avoid reference to non-public information.

³ The RFQ also contained optional contract line item numbers (CLINs) which covered surge operations; these CLINs provided for the provision of up to six additional certified 13F instructors and four certified "[c]all [f]or [f]ire [t]rainer [o]perators" to be utilized in support of surge operations. Conformed RFQ at 5-9, 36-37. The CLINs were "optional" in the sense that the government reserved the option to exercise them.

workstations, computers, system access, and storage space for the prospective contractor. *Id.* at 44.

The RFQ included only one evaluation factor, price, and stated that the Army would issue a task order to the vendor whose quotation would be most advantageous to the government considering price alone. *Id.* at 82. The RFQ's anticipated evaluation of price read, in relevant part, as follows:

The Government will evaluate [vendors'] prices for reasonableness using price analysis techniques. Prices evaluated as incomplete, unbalanced, unrealistically high or low . . . inaccurate, or any combination thereof, may be grounds for eliminating a quote from further consideration. The Government will evaluate the price reasonableness of the [vendor's] quoted price and fee/profit. The Contracting Officer may consider comparing the prices received on quotes received, comparison of the proposed prices to historical prices paid, comparing the prices received to the Independent Government cost estimate, or market research to evaluate reasonableness.

Id. at 83. Additionally, the RFQ contained FAR provision 52.222-46, Evaluation of Compensation for Professional Employees. *Id.* at 101. Quotations were due on January 25, 2021. COS at 2.

The Army received four quotations in response to the RFQ. *Id.* On February 12, the Army issued a task order to Cornerstone. *Id.* at 3. On February 21, PTP filed a protest with our Office docketed as B-418726.4. After being notified that a bid protest implicating the solicitation at issue had been filed at the U.S. Court of Federal Claims, our Office dismissed that protest. *People, Technology & Processes, LLC*, B-418726.4, Mar. 11, 2021 (unpublished decision).

The Army took corrective action in response to the protest filed at the court. COS at 4. The Army's corrective action consisted of terminating the task order issued to Cornerstone and reevaluating the four quotations received in response to the RFQ. *Id.* As part of the Army's reevaluation of quotations, the four quotations received were evaluated pursuant to FAR provision 52.222-46; a price realism analysis pursuant to FAR subsection 15.404-1(d)(3) was not performed. *Id.* PTP and Cornerstone were evaluated as follows:

	Total Evaluated Price ⁴	Realistic Pursuant to FAR provision 52.222-46	Reasonable
PTP	\$4,673,673	Yes	Yes
Cornerstone	\$4,381,776	Yes	Yes

AR, Tab 22, Task Order Decision Document at 6-9, 13-14, 16-17. On May 13, the Army issued a task order to Cornerstone. COS at 5; Protest, Tab 4, Unsuccessful Vendor Notice. On May 19, PTP filed this protest with our Office.

DISCUSSION

PTP challenges the Army's evaluation of quotations and source selection decision. Protest at 9-15;⁵ Comments & Supp. Protest at 2-10. PTP argues that the Army's evaluation of quotations was flawed because the agency did not conduct a price realism analysis pursuant to FAR 15.404-1(d)(3), which the protester asserts was required by the solicitation. Protest at 9-14; Comments & Supp. Protest at 2-8. PTP asks our Office to recommend that the Army rescind the task order issued to Cornerstone, issue an amended solicitation, request revised quotations, and make a new source selection decision.⁶ Protest at 19.

The Army argues that its evaluation of quotations and source selection decision were reasonable, and asks our Office to dismiss or deny the protest. Memorandum of Law (MOL) at 6. The agency asserts that the solicitation did not include a requirement to conduct a price realism analysis pursuant to FAR subsection 15.404-1(d)(3), and that

⁴ The total evaluated price included proposed pricing on all CLINs for the base period, option period, and the 6-month option to extend services. See AR, Tab 22, Task Order Decision Document at 6-7.

⁵ PTP's original protest was filed on May 19. PTP filed an errata on May 21 which removed editorial comments inadvertently included in the original filing; the errata did not contain substantive edits. Our references to the protest cite to the errata.

⁶ In its comments, PTP raises a supplemental protest ground arguing that Cornerstone is ineligible for award because its GSA schedule catalog does not include North American Industry Classification System (NAICS) code 541990, which is the NAICS code listed in the RFQ. Comments & Supp. Protest at 10; Conformed RFQ at 1, 3. The Army provided a substantive response to this allegation, Supp. MOL at 4-8, however, the protester did not file supplemental comments by the time set by our Office. The protester requested an extension to file supplemental comments, however, the request was filed after the deadline to file supplemental comments had passed. Our Office does not provide for extensions of time after the time for filing has passed. Accordingly, the supplemental protest allegation is dismissed. 4 C.F.R. § 21.3(i)(1); see *Geiler/Schrudde & Zimmerman*, B-412219 *et al.*, Jan. 7, 2016, 2016 CPD ¶ 16 at 6, 11-12.

the decision to evaluate proposed pricing pursuant to FAR provision 52.222-46 was sufficient to satisfy the terms of the RFQ. *Id.* at 10-12. For the reasons discussed below, we deny the protest.⁷

For procurements contemplating fixed-price contracts (or orders), an agency may conduct a price realism analysis for the limited purpose of assessing whether a vendor's low price reflects a lack of technical understanding or risk, or assessing a vendor's responsibility. See FAR 15.404-1(d)(3). In a fixed-price environment, this analysis may be conducted only when offerors have been advised that the agency will conduct such an analysis. *IR Techs.*, B-414430 *et al.*, June 6, 2017, 2017 CPD ¶ 162 at 7 (*citing American Access, Inc.*, B-414137, B-414137.2, Feb. 28, 2017, 2017 CPD ¶ 78 at 4-5). Absent a solicitation provision advising vendors that the agency intends to conduct a price realism analysis, agencies are neither required nor permitted to conduct such an analysis in issuing a fixed-price order. See *id.*

PTP argues that the RFQ expressly required the Army to conduct a price realism analysis pursuant to FAR subsection 15.404-1(d)(3), and that the Army's evaluation of quotations was unreasonable for not conducting that analysis. Protest at 10, 14.

As explained above, the solicitation requested quotations for the services of 15 professional employees with specifically defined qualifications, and set a baseline for evaluation purposes of 1,920 labor hours per year. Conformed RFQ at 36-37, 80. No technical quotations were requested. Quotations were to be based solely on the proposed price to supply 15 professional employees to teach the required 13F courses.⁸ See *id.* at 86-89; see *also* Protest at 2 ("price is a function of labor rates and hours alone in this competition"). As noted above, the solicitation advised that the agency would "evaluate [vendors'] prices for reasonableness using price analysis techniques. Prices evaluated as incomplete, unbalanced, unrealistically high or low . . . inaccurate, or any combination thereof, may be grounds for eliminating a quote from further consideration." Conformed RFQ at 83.

On the issue of whether the solicitation required a price realism analysis, we agree with PTP; the language of the RFQ clearly put vendors on notice that the agency would

⁷ PTP raises other collateral arguments. Although our decision does not address every argument, we have reviewed them all and find no basis to sustain the protest.

⁸ We note that the solicitation allowed vendors to choose whether or not to price a "phase-in" period. The phase-in period was encompassed within the 1-year base period, and allowed vendors to propose separate pricing for the time required to transition from task order issuance to full performance. Conformed RFQ at 36-37, 80-81. The phase-in period was set to run from March 1 to April 29, 2021; the full performance period of the base year was set to run from April 30, 2021, to February 28, 2022. *Id.* at 36. The RFQ advised that vendors quoting fewer hours during the phase-in period "shall reduce the total number of hours (*i.e.* 1,920 hours) to reflect the hours which will be invoiced" during the phase-in period. *Id.* at 81.

evaluate pricing, and that pricing found unrealistically low could result in a quotation's elimination from the competition. *Id.* at 89. This language therefore required the agency to conduct a price realism evaluation. *Esegur-Empresa de Seguranca, SA*, B-407947, B-407947.2, Apr. 26, 2013, 2013 CPD ¶ 109 at 4 (solicitation contemplated price realism evaluation where it notified offerors that unrealistically low prices may serve as a basis for rejection of a proposal).

Given that the solicitation required a price realism analysis generally, and given that the Army's evaluation of quotations included only an analysis conducted pursuant to FAR provision 52.222-46, we turn to the question of whether the Army's evaluation was reasonable. For the reasons explained below, we answer this question in the affirmative and therefore deny the protest.

Here, the Army is buying only the services of 15 specifically defined professional employees. Technical quotations were not requested, and price was the only evaluation factor. We think that the analysis of the proposed professional compensation conducted pursuant to FAR provision 52.222-46, under the circumstances of this procurement, was sufficient to meet the price realism requirements of the solicitation. In this regard, the analysis required by FAR provision 52.222-46 resulted in a realism review of the only thing required in these quotations--*i.e.*, the amount to be paid to these 15 professional employees.

FAR provision 52.222-46 states in relevant part:

The Government will evaluate [a vendor's total compensation plan] to assure that it reflects a sound management approach and understanding of the contract requirements. This evaluation will include an assessment of the offeror's ability to provide uninterrupted high-quality work. The professional compensation proposed will be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation.

* * * * *

The compensation levels proposed should reflect a clear understanding of work to be performed and should indicate the capability of the proposed compensation structure to obtain and keep suitably qualified personnel to meet mission objectives. . . . [P]roposals envisioning compensation levels lower than those of predecessor contractors for the same work will be evaluated on the basis of maintaining program continuity, uninterrupted high-quality work, and availability of required competent professional service employees.

* * * * *

Professional compensation that is unrealistically low or not in reasonable relationship to the various job categories, since it may impair the [c]ontractor's ability to attract and retain competent professional service employees, may be viewed as evidence of failure to comprehend the complexity of the contract requirements.

FAR 52.222-46.

We conclude that the agency's evaluation of quotations consistent with FAR provision 52.222-46 was reasonable given the unique terms of this solicitation. The Army's evaluation conducted pursuant to FAR provision 52.222-46 assessed vendors' understanding of the requirement, considered whether the vendors could perform the requirements of the contract, and assessed whether vendors would be able to recruit and retain qualified personnel. AR, Tab 21, Professional Compensation Analysis at 1-9 (detailing the agency's evaluation of salaries and fringe benefits proposed for the professional employees to be supplied by each vendor); AR, Tab 22, Task Order Decision Document at 7, 12-16, 18 (showing that each quotation was found to reflect a sound management approach and understanding of the contract requirements, and that each vendor would be able to provide uninterrupted, high-quality work without negatively impacting recruiting and retention).

This essentially is the same analysis that the agency would conduct for a price realism evaluation pursuant to FAR subsection 15.404-1(d)(3) under the terms of the RFQ here. See FAR 15.404-1(d)(3) (price realism analysis on fixed-price contract assesses whether a vendor's low price reflects a lack of technical understanding). Further, this analysis addresses the exact concerns expressed by the protester. Protest at 2, 10, 12, 16 (arguing that a price realism analysis pursuant to FAR subsection 15.404-1(d)(3) was required to ensure that employee turnover remains low, full staffing levels will be maintained, and that the prospective contractor will be able to recruit and retain qualified personnel); Comments & Supp. Protest at 3, 5, 7-8.

Moreover, PTP has not explained what a price realism evaluation conducted pursuant to FAR subsection 15.404-1(d)(3) would review, under these RFQ terms, that was not already reviewed in the evaluation conducted pursuant to FAR provision 52.222-46. Therefore, PTP's allegation does not establish competitive prejudice. Competitive prejudice is an essential element of every viable protest. We will sustain a protest only where the protester demonstrates that, but for the agency's improper action, the protester would have a substantial chance of receiving the award. *Ruchman & Assocs., Inc.*, B-415400 *et al.*, Jan 2, 2018, 2018 CPD ¶ 1 at 6-7.

On this point we reiterate our finding that under the terms of this solicitation, the agency's evaluation of quotations was reasonable. Our review of the record shows that the agency's evaluation of quotations was evenly conducted across all competing quotations. While PTP argues that it would have lowered its price if it had known that a FAR subsection 15.404-1(d)(3) price realism analysis would not occur, we do not think this demonstrates prejudice. See Comments & Supp. Protest at 10-11. As explained

above, the agency's evaluation of quotations conducted pursuant to FAR provision 52.222-46 resulted in a realism review of the only thing required to be priced in the quotations, that is, the amount to be paid to the professional employees. Based on the protester's filings, practically, the agency did exactly what PTP expected.

The protest is denied.

Edda Emmanuelli Perez
General Counsel