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# Decision

**Matter of:** Clear Global Solutions, LLC

**File:** B-419402

**Date:** February 5, 2021

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## DIGEST

Protest challenging the agency's evaluation of quotations and selection decision is denied where the agency's evaluation and selection decision are reasonable and consistent with the solicitation.

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## DECISION

Clear Global Solutions, LLC (CGS), a small business of Windsor, Colorado, protests the issuance of a task order to Strativia LLC, a small business of Largo, Maryland, under request for quotations (RFQ) No. 89303019QFE000003, issued by the Department of Energy (DOE), for a broad range of logistical, administrative, and management support for DOE's Office of Fossil Energy (FE). The protester contends that the agency unreasonably evaluated its staffing approach and past performance, improperly evaluated the realism of Strativia's price, and issued a flawed selection decision.

We deny the protest.

## BACKGROUND

The RFQ, issued on December 5, 2019, pursuant to Federal Acquisition Regulation (FAR) subpart 8.4, was set aside for 8(a) small businesses with contracts under General Services Administration (GSA), Professional Services Schedule, Special Item Number 874 7, Integrated Business Program Support Services. Agency Report (AR), Tab A.1, RFQ at 1. The RFQ contemplated award of a labor hour task order with a

period of performance consisting of a 1-year base period and four 1-year option periods. *Id.* at 8, 28.

The RFQ stated that quotations would be evaluated under the following factors, listed in descending order of importance: staffing approach, technical capability, past performance, and price. *Id.* at 30. The staffing approach and technical capability factors were to be adjectivally rated as follows: outstanding, good, satisfactory, marginal, or unsatisfactory. *Id.* Past performance was to be rated as favorable, unfavorable, or neutral. *Id.* Price was to be evaluated to determine reasonableness and completeness. *Id.* The RFQ additionally stated as follows:

[T]he Government may conduct a price realism analysis for the purposes of measuring a [vendor's] understanding of the requirements when proposing the compensation for professional employees under federal contracts. The Government may evaluate the price quote to assure that it reflects a sound management approach and understanding of the contract requirements.

*Id.* at 30-31. The RFQ stated that award would be made to the firm whose quotation was determined to be the best value to the government, where “the technical evaluation is significantly more important than the evaluated price.” *Id.* at 30.

The agency received six quotations by the January 14, 2020 due date, including from CGS and Strativia. Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 6. In its quotation, CGS identified the incumbent contractor as its proposed subcontractor. AR, Tab C, CGS Quotation at 4. As required by the RFQ under the staffing approach factor, CGS identified an individual (Ms. A) as its proposed project manager. *Id.* at 21-23. However, in its final evaluation, the agency identified a significant weakness based on the conclusion that CGS’s proposed project manager was no longer available to perform. AR, Tab E.1, Technical Evaluation Report at 6. The overall final evaluation results for CGS and Strativia were as follows:

|                             | <b>CGS</b>   | <b>Strativia</b> |
|-----------------------------|--------------|------------------|
| <b>Staffing Approach</b>    | Marginal     | Outstanding      |
| <b>Technical Capability</b> | Outstanding  | Outstanding      |
| <b>Past Performance</b>     | Favorable    | Favorable        |
| <b>Price</b>                | \$18,544,695 | \$13,696,039     |

*Id.* at 1; Tab E.2, Price Evaluation Report at 5. On October 22, the agency notified CGS that Strativia was selected for award, and provided CGS with a brief explanation of the award decision. COS/MOL at 14. This protest followed.

## DISCUSSION

The protester challenges the agency’s evaluation of CGS’s staffing approach, the price realism analysis of Strativia’s proposed price, and the selection decision. The protest

includes allegations that are in addition to, or variations of, those discussed below. Although we do not specifically address all of CGS's arguments, we have fully considered them, and find no basis to sustain the protest.

### Staffing Approach

The protester argues that the agency's rating of CGS's staffing approach as marginal because the proposed CGS project manager was no longer available is unreasonable. As a predicate, CGS establishes that approximately two weeks prior to the due date for quotations, CGS's proposed project manager, Ms. A, was also selected by the incumbent contractor to become its new project manager on the incumbent contract. Protest at 7-11. CGS argues that DOE unduly delayed approval of a "facilities clearance" such that Ms. A eventually "had no choice but to take another job as she simply needed to have an income for her family and could not wait any longer on the DOE to fulfill its responsibilities." *Id.*; *but see* COS/MOL at 25 (arguing that "to the extent there was any unusual delay in approving [Ms. A's] clearance (and Protester has entirely failed to show that a period of a few weeks is unusually long for a facilities clearance), that is a matter of contract administration under the incumbent contract, not a matter subject to a bid protest.").

Accordingly, the incumbent contractor selected another individual (Mr. M) for the project manager position on the incumbent contract, which DOE approved. As a consequence, CGS argues that DOE's evaluation of its staffing approach as failing to propose an available project manager is unreasonable because DOE should have been aware of and considered the performance of Mr. M, the later-approved and then current project manager on the incumbent contract in the agency's evaluation of the protester's quotation. Protest at 12-14; *see also* Comments at 4-8. CGS also argues that, even without an available project manager, its staffing approach warranted a rating much higher than marginal based on the RFQ's evaluation factors. Protest at 14-16.

The agency argues that CGS failed to properly and timely disclose the unavailability of Ms. A, its proposed project manager, as required by applicable law. COS/MOL at 20-23. DOE argues that during the evaluation it confirmed that CGS's proposed project manager was no longer available to perform, reasonably considered that unavailability to be a significant weakness, and consequently found CGS's overall staffing approach to be marginal. *Id.* at 25-27. DOE further argues that it was not required to consider the performance of Mr. M, the later-approved project manager on the incumbent contract when evaluating CGS's current quotation because CGS did not propose Mr. M as its project manager in its quotation. *Id.* at 22-24.

In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate quotations. *Deloitte Consulting, LLP*, B-416882.4, Jan. 6, 2020, 2020 CPD ¶ 21 at 4. Rather, where, as here, an agency issues a solicitation to GSA schedule contractors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the evaluation was reasonable and consistent with the terms of the solicitation. *Digital Solutions, Inc.*, B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4.

A protester's disagreement with the agency's judgments does not establish that the evaluation was unreasonable. *Amyx, Inc.*, B-410623, B-410623.2, Jan. 16, 2015, 2015 CPD ¶ 45 at 6. As explained below, we find that the agency's evaluation here was reasonable.

Under the staffing approach factor, the RFQ identified only one key personnel position--the project manager. RFQ at 32; see also *id.* at 18 (clause DOE-H-2070, Key Personnel), 21-22 (Department of Energy Acquisition Regulation clause 952.215-70, Key Personnel).<sup>1</sup> The RFQ required that vendors propose an individual for the project manager position, and submit only one resume and letter of commitment. *Id.* at 32. The RFQ further required that vendors provide a staffing plan for all non-key personnel. *Id.* The RFQ stated that the entirety of the staffing approach factor would receive a single rating, and would be evaluated to assess the following:

- The qualifications presented for the Key Person as it relates to position qualifications in Attachment B[, Position Descriptions & Qualifications].
- The availability and commitment of the Key Person.
- The [vendor's] staffing plan's ability to provide Non-Key personnel who meet the Position Qualifications.
- The [vendor's] staffing plan's approach, and ability, to staff the order in a timely manner.
- The [vendor's] staffing plan's ability to provide a stable work force.

*Id.*

In its quotation, CGS identified the incumbent contractor as its proposed subcontractor, and submitted a resume and letter of commitment for its proposed project manager, stating as follows: "Ms. [A] is supporting FE in planning, directing and overall management of administrative and management programs on [the] current contract. She will continue her role on-site full-time, as Project Manager on the new contract." AR, Tab C, CGS Quotation at 21-22. The quotation included a resume for Ms. A, as well as a letter of commitment signed by Ms. A on January 7, 2020, that stated as follows: "I . . . do hereby certify that I have taken appropriate actions to be able to fill the key position listed in Clause 952.215-70 and DOE-H-2070 of this solicitation, and that, to the best of my knowledge and belief, I will be available to perform work under this contract for a minimum of six months from the date of contract award." *Id.* at 41-46; see also RFQ attach. E, Letter of Commitment for Availability of Key Personnel.

During the course of the evaluation, the agency engaged in a communication with CGS regarding the availability of its proposed project manager, which included the following:

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<sup>1</sup> Both task order clause DOE-H-2070, Key Personnel, and Department of Energy Acquisition Regulation clause 952.215-70, Key Personnel, require a named project manager be included in the task order award and state that the contracting officer must approve any removal, replacement, or change to the listed key person. RFQ at 18, 21-22.

[June 24 email from DOE to CGS]: Please confirm that the commitment letter, for [Ms. A] dated January 7, 2020 that Clear Global Solutions, LLC included as an attachment to the quote it submitted in response to [the solicitation] remains valid. Please clarify whether it does or does not remain valid by responding to this email with either a "Yes" (meaning that the commitment letter remains valid) or "No" (meaning that the commitment letter is no longer valid. . . . [A]ny response other than "Yes" or "No" [ ] will be ignored.

[June 25 email from CGS to DOE]: . . . No, as CGS plans to utilize the Key Personnel and team consistent with the approved group that has been in place since early 2020. As you know, [Mr. M] has served as the FE Program Manager [(PM)] since the agency approved the substitution of [Mr. M] as our team PM and as noted on the SF30 dated April 10, 2020. CGS would be pleased to resubmit the resume of [Mr. M], whose skills and experience are clearly in alignment with the expectations of the [solicitation].

AR, Tab F.1, Communications with CGS at 1.

The following significant weakness was identified by DOE in its final evaluation of CGS's staffing approach:

The RFQ instructed the [vendor] to propose a Key Person for the Project Manager position. . . . Team CGS proposes Ms. [A] as the key person. CGS stated that Ms. [A] is supporting FE in planning, directing and overall management of administrative and management programs on [the] current contract. Ms. [A] was proposed to assume the Key Personnel position on the [incumbent] contract, however, [the incumbent contractor] withdrew her appointment and indicated that she left the company. On June 24, 2020, the [contracting officer] asked a clarifying question to CGS if the commitment letter, for [Ms. A] dated January 7, 2020 that Clear Global Solutions, LLC included as an attachment to the quote it submitted in response to [the RFQ] remains valid. CGS responded ["No."] As a result CGS failed to provide a committed key [person].

AR, Tab E.1, Technical Evaluation Report at 6. Considered in conjunction with a significant strength that the agency identified for CGS's "detailed staffing plan that presented an approach for hiring and retaining incumbents[,] the agency assigned a rating of marginal. *Id.*

On this record, we first find no basis for CGS's allegation that DOE's alleged undue delay of approval of a "facilities clearance" for Ms. A on the incumbent contract was the cause of CGS's marginal rating under the staffing subfactor. As noted, the record shows that the incumbent contractor sought approval for Ms. A to be the new project

manager on the incumbent contract just two weeks before CGS submitted its quotation to the agency on January 14, 2020, the date quotations were due. AR, Exh. A, Incumbent Key Personnel Replacement Notice, Dec. 30, 2019; see also Protest at 7 (“[O]n or about December 31, 2019, [the incumbent contractor] sent a formal request to the DOE to substitute its then current program manager [] with an extremely qualified individual (“Ms. A”).”). On January 7, Ms. A signed the letter of commitment included in CGS’s quotation that indicated she had taken appropriate action to be available to fulfill the project manager position for at least six months after contract award. AR, Tab C, CGS Quotation at 46. However, just four weeks later, on February 6, the incumbent contractor submitted a request to replace Ms. A with Mr. M as the project manager on the incumbent contract.<sup>2</sup> AR, Exh. B, Incumbent Program Manager Change Request at 1. In comparison, the record also shows that Mr. M received final agency approval on April 10, a period of approximately two months from the date of request. See AR, Tab F.1, Communications with CGS at 1.

Further, the record shows that CGS did not contact DOE to advise the agency that Ms. A was no longer available to perform as project manager, as proposed in its quotation. When a solicitation (such as this one) requires resumes for key personnel, the resumes form a material requirement of the solicitation; in this context, our Office has explained that offerors or vendors are obligated to advise agencies of changes in proposed staffing and resources, even after submission of quotations. See *General Revenue Corp., et al.*, B-414220.2 *et al.*, March 27, 2017, 2017 CPD ¶ 106 at 22; *Pioneering Evolution, LLC*, B-412016, B-412016.2, Dec. 8, 2015, 2015 CPD ¶ 385 at 9. When the agency learns of the withdrawal of a key person, it has two options: either evaluate the quotation as submitted, or open discussions to permit the offeror or vendor to amend its quotation. See *YWCA of Greater Los Angeles*, B-414596 *et al.*, July 24, 2017, 2017 CPD ¶ 245 at 4.

The agency states that the incumbent contractor requested that DOE approve the substitution of Ms. A with Mr. M under its incumbent contract, but that CGS did not notify DOE that Ms. A was not available to perform as proposed in its quotation. COS/MOL at 21-22. Although CGS knew or should have known that Ms. A was unavailable in early February, the protester did not inform DOE that she was unavailable until its response to the agency’s request for confirmation on June 25. Even so, and especially in the absence of any timely notice from CGS that its proposed project manager was unavailable, the agency was not obligated to engage in discussions to permit CGS to amend its quotation. Rather, the agency found that the unavailability of the proposed project manager presented a significant weakness. The project manager was the only key personnel position required by the RFQ, which stated that the availability and commitment of the proposed key person would be evaluated

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<sup>2</sup> In response to DOE’s inquiry regarding why Ms. A was to be replaced, the incumbent contractor stated that “Ms. [A] accepted another position. Her claim is the security process was too timely and she needed to pull the trigger on accepting. We were about a day late on approval.” AR, Exh. B, Incumbent Program Manager Change Request at 1.

under the staffing approach factor. RFQ at 32. As such, we find no basis upon which to conclude that the agency's assessment of this significant weakness was unreasonable.

We further find no merit in CGS's argument that DOE could or should have simply considered the current project manager performing on the incumbent contract in its evaluation of CGS's quotation. See Protest at 12-13 (" . . . Mr. M was approved and cleared to be the [project manager] in February 2020 based on his resume for the exact same requirements that are listed in the current RFQ, [and] the Agency was in possession of the entire suite of information needed to verify his candidacy to be the [project manager] on the follow-on effort. . . . [CGS] merely clarified the name of the [project manager] in its June 25, 2020 email response to the DOE's request as the Agency was already in possession of Mr. M's resume and credentials."). The solicitation unambiguously indicated that vendors should identify a particular individual to perform as project manager by specifically requiring the submission of only one resume and letter of commitment in the quotation. RFQ at 32. In addition, the RFQ expressly stated as follows:

Quotes are expected to conform to all solicitation requirements and the instructions contained in this section. The Government will evaluate quotes on the basis of the information provided in the quote. The Government will not assume that a [vendor] possesses any capability unless set forth in the quote. This applies even if the [vendor] has existing contracts with the Federal government, including the Department of Energy.

*Id.* at 26. Thus, the agency was bound by the terms of the RFQ to consider only the information contained in CGS's quotation.

The RFQ additionally indicated that the agency did not intend to conduct discussions. *Id.* at 24. Discussions occur when an agency communicates with an offeror or vendor for the purpose of obtaining information essential to determine the acceptability of a proposal or quotations, or provides the offeror or vendor with an opportunity to revise or modify its proposal or quotation. *Aderas, Inc.*, B-418151, Jan. 16, 2020, 2020 CPD ¶ 30 at 5-6. Thus, we conclude that the agency could not have considered the alternate project manager identified in CGS's June 25 communication without engaging in discussions with CGS. As discussed above, the agency was not required to conduct discussions in order to permit CGS to propose an alternate project manager once Ms. A became unavailable.

In sum, we find that CGS proposed a key person for its project manager that became unavailable shortly after submission of its quotation. During the course of its evaluation, the agency confirmed that the proposed project manager was unavailable, and concluded this presented a significant weakness in CGS's staffing approach. On this record, we find the agency's assignment of an overall rating of marginal to be reasonable. Accordingly, this allegation is denied.

## Price Realism

The protester argues that the agency failed to perform a reasonable price realism analysis of the awardee's low price. According to CGS, Strativia's price reflects an overall sum that is lower than the overall sum calculated based on the applicable wage determination, indicating that Strativia will not comply with and does not understand the service contract labor requirements. Protest at 16-18. The agency argues that its price realism analysis identified varying risks in all vendors' quotations, but reasonably found all vendors' proposed prices to be realistic, including Strativia's price. COS/MOL at 36-43. The agency further states that Strativia's quotation clearly states that it is complying with the service contract labor requirements for covered employees. *Id.* at 42 (*quoting* AR, Tab D, Strativia Quotation at 61).

For the price factor, the RFQ required that vendors complete and submit their proposed labor hour rates in RFQ attachment C, a price quotation matrix which provided the direct productive labor hours to be used for evaluation purposes, and other direct costs which were not to be altered. RFQ at 34. The RFQ stated that "[d]iscounts off the established schedule labor rates are encouraged[,]" and required that vendors provide their complete GSA schedules for the agency to verify the rates proposed. *Id.* The RFQ also stated that the agency would evaluate the reasonableness of the overall price and proposed labor rates, and further stated as follows:

The Government may conduct an additional price analysis for the purposes of measuring a [vendor's] understanding of the requirements when proposing the compensation for professional employees under federal contracts. The Government will evaluate the quote to assure that it reflects a sound management approach and understanding of the contract requirements. This evaluation will include an assessment of the [vendor'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.

*Id.*

The record shows that the agency performed a comparison of the six competitive quotations received in response to the RFQ. AR, Tab E.2, Price Evaluation Report at 6. Specifically, DOE performed a standard deviation analysis of the proposed labor rates for each labor category, and identified for each quotation those labor categories in which a proposed labor rate presented risks related to the ability to retain incumbent employees, ability to recruit and retain employees, and cost.<sup>3</sup> *Id.* at 6-11. In its

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<sup>3</sup> The agency also compared proposed labor rates to an independent government cost estimate (IGCE). However, the agency ultimately concluded that such a comparison was inaccurate because unlike the vendors' quotations, the IGCE did not include discounted rates. AR, Tab E.2, Price Evaluation Report at 5.

assessment of Strativia, the agency concluded that some of Strativia's proposed rates presented risk that the incumbent employee would not be retained for 10 of the labor categories, including 6 high risk positions in which there was additional risk in recruitment and retention. *Id.* at 11. Even so, the agency concluded that Strativia's "overall quote is fair-and-reasonable and realistic with notable elements of risk in the [vendor's] ability to provide uninterrupted high-quality work." *Id.* at 11-12.

The nature and extent of an agency's price realism analysis are matters within the agency's discretion. See *Star Mountain, Inc.*, B-285883, Oct. 25, 2000, 2000 CPD ¶ 189 at 6. The FAR recognizes a number of price analysis techniques that may be used to determine whether prices are realistic, including a comparison of proposed prices with each other. See FAR 15.404-1(b)(2)(i); *Epic Systems, Inc.*, B-418104, B-418104.2, Jan. 2, 2020, 2020 CPD ¶ 1 at 6. Our review of a price realism analysis is limited to determining whether it was reasonable and consistent with the terms of the solicitation. *Id.*

The protester argues that the agency's conclusion that Strativia's quotation is realistic is unreasonable because of the risks DOE identified in certain labor categories based on its low compensation rates, and failed to consider whether Strativia understood the RFQ requirements. Comments at 8-10. To the contrary, the record shows that although the agency considered Strativia's proposed rates for some labor categories would present specific risks related to the retention of incumbent employees, and in some labor categories additional risks related to recruitment and retention, the agency did not conclude that Strativia failed to understand the requirements. AR, Tab E.2, Price Evaluation Report at 11.

As discussed above, the agency compared the proposed labor rates of all six quotations using a standard deviation analysis, and concluded that all vendors "provided discounts from their GSA rates" and that overall the quotations were "realistic with notable performance risks associated with each." *Id.* at 12. In addition, the agency's technical evaluators reviewed the price analysis report and concurred with the findings and conclusions. *Id.* at 13. Finally, only two administrative specialist positions were covered by the service contract labor requirements, and Strativia stated in its quotation that it would comply with those requirements. See AR, Tab D, Strativia Quotation at 61, 69. On this record, we find the agency's price realism analysis to be reasonable.

#### Source Selection Decision

Finally, CGS makes a variety of arguments that the selection decision is unreasonable, the gist of which is that it is based on a flawed underlying evaluation. Protest at 20-30. Here, the source selection official (SSO) reviewed the final technical evaluation report for all six quotations received, and agreed with the evaluation results and ratings. AR, Tab E.3, Source Selection Decision at 5. Specifically, the SSO agreed that CGS's staffing approach was marginal and presented a significant risk to successful contract performance because CGS did not propose an available project manager. *Id.* at 8-9. Since CGS was rated as marginal for its staffing approach, the most important factor,

and proposed a price that was significantly higher than the prices of other vendors rated as outstanding under this factor, the SSO concluded that CGS's quotation "could never be considered Best Value." *Id.* at 9-10.

Under our Bid Protest Regulations, a protester must be an interested party to pursue a protest before our Office. 4 C.F.R. § 21.1. An interested party is an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or failure to award a contract. 4 C.F.R. § 21.0(a)(1).

We have concluded that the protester's challenges to the agency's evaluation have no merit. Further, the SSO concluded CGS would not be considered in the best-value tradeoff as a result of its marginal rating under the staffing approach factor. Therefore, the protester is not an interested party to challenge the agency's selection decision and best-value tradeoff and we need not address this argument. *MacAulay-Brown, Inc.*, B-417159, Mar. 13, 2019, 2019 CPD ¶ 108 at 5; *Serka Taahhut Insaat, A.S.*, B-416391.2, B-416391.3, Aug. 13, 2018, 2018 CPD ¶ 284 at 5.

The protest is denied.

Thomas H. Armstrong  
General Counsel