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Decision

Matter of: CGS-SSG Joint Venture

File: B-420397; B-420397.2

Date: March 16, 2022

Robert Nichols, Esq., Andrew Victor, Esq., Nichols Liu LLP, for the protester.
H. Todd Whay, Esq., Baker, Cronogue, Tolle & Werfel, LLP, for the intervenor.
John W. Cox, Esq., Department of State, for the agency.
Michael P. Price, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that an agency's price evaluation unreasonably failed to convert the protester's proposal from local currency to U.S. dollars is denied where the evaluation was reasonable, consistent with the solicitation criteria, and treated offerors equally.

DECISION

CGS-SSG Joint Venture (CGS-SSG) of Falls Church, Virginia, protests the award of a contract to Max Enterprises, of Mbabane, Eswatini, pursuant to request for proposals (RFP) No. 19AQMM21R0149, issued by the Department of State for local guard services. The protester challenges the agency's evaluation of price proposals and alleges that the agency conducted misleading discussions.

We deny the protest.

BACKGROUND

On May 5, 2021, the agency issued the RFP seeking proposals for local guard services at the U.S. Embassy in Mbabane, Eswatini. Agency Report (AR), Tab 12, Conformed RFP at 10. The RFP contemplated the award of a contract with a base period of 1-year and four 1-year options. *Id.* The RFP requested that offerors submit technical and price proposals and provided for award to be made on a lowest-price, technically acceptable

basis.¹ *Id.* at 110, 113. The RFP required foreign-based firms to submit offers in local currency (Lilangeni), but provided that U.S. firms could submit proposals in either local currency or U.S. dollars (USD). See *id.* at 100. As discussed below, the RFP also incorporated Federal Acquisition Regulation (FAR) provision 52.225-17, which explained how the agency would evaluate prices in the event the agency received offers in multiple currencies. *Id.* at 110.

The agency received initial proposals from four offerors, including CGS-SSG and Max Enterprises, by the initial closing date for receipt of proposals of June 7. See AR, Tab 35, Award Determination at 2. After its initial evaluation of proposals, the agency opened discussions with offerors. The agency held three rounds of discussions, culminating in the receipt of final proposal revisions by the closing date of September 30. AR, Tab 34, Price Analysis at 16. The agency's final evaluation was limited to an evaluation of the proposals submitted by CGS-SSG and Max Enterprises, after the proposals of the other two offerors were eliminated from the competition for reasons unrelated to this protest. *Id.*

After receiving final proposals, the contracting officer noted that Max Enterprises, as a foreign firm, submitted its proposal in local currency, as required. *Id.* Further, the contracting officer noted that CGS-SSG proposed in both dollars and local currency, but because CGS-SSG requested to be paid in dollars, the firm's proposed dollar pricing would be used for the evaluation. *Id.*

The contracting officer converted Max Enterprises's local currency offer to dollars, using the exchange rate in effect on September 30, the due date for receipt of final proposal revisions, as required by the RFP.² *Id.* at 16-17. The agency then evaluated Max Enterprises's converted pricing against the protester's offered dollars pricing.³ *Id.* at 16. Max Enterprises's evaluated price of \$6,301,931.61 was lower than CGS-SSG's evaluated price of \$6,489,105.97. *Id.* Because the agency also found Max Enterprises to be a technically acceptable offeror, the agency awarded the contract to Max Enterprises on November 30. AR, Tab 35, Award Determination at 11.

The agency provided CGS-SSG with a written debriefing on December 3 and responded to follow-on questions concerning the debriefing on December 7. AR,

¹ The RFP identified three technical evaluation factors, which were to be evaluated on an "acceptable" or "unacceptable" basis: (1) management plan; (2) past performance and experience; and (3) preliminary transition plan. RFP at 110-111.

² The exchange rate resulted in a conversion rate of 15.0831 Lilangeni to \$1.00. AR, Tab 34, Price Analysis at 16-17.

³ In accordance with 22 U.S.C. § 4864 and the RFP, the agency also applied a 10 percent discount for evaluation purposes to CGS-SSG's dollars offer, because CGS-SSG proposed as a U.S. firm. AR, Tab 34, Price Analysis at 16.

Tab 37, Debriefing. CGS-SSG then timely filed its initial protest with our Office on December 8.

DISCUSSION

CGS-SSG raises two primary challenges to the award of the contract to Max Enterprises: (1) the agency unreasonably failed to convert CGS-SSG's proposed local currency pricing to dollars during the evaluation of price proposals and thus evaluated proposals on an unequal basis; and (2) the agency conducted misleading discussions with the protester.⁴ For the reasons stated below, we conclude that the agency reasonably evaluated the price proposals in a manner consistent with the solicitation criteria and regulation, and on an equal basis. We further conclude that the protester's arguments concerning discussions are untimely.

Evaluation of Price Proposals

The protester argues that the RFP and the FAR required the agency to convert its proposed local currency pricing to dollars, using the exchange rate in effect on the due date for receipt of final proposal revisions, but the agency failed to do so. Protest at 4. The protester contends that this failure to convert its local currency pricing was unreasonable and resulted in the award of the contract to a higher priced offeror. *Id.*; Comments & Supp. Protest at 3. Additionally, the protester argues that the agency's failure to convert its pricing resulted in an unequal comparison of proposals based on the offerors' differing assumptions regarding the exchange rates. Protest at 6; Comments & Supp. Protest at 4. For the reasons stated below, we disagree.

The evaluation of an offeror's proposal is a matter within the agency's discretion. *CenturyLink QGS*, B-408384, Aug. 27, 2013, 2013 CPD ¶ 217 at 6. In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulation. *First Fin. Assocs., Inc.*, B-415713, B-415713.2, Feb. 16, 2018, 2018 CPD ¶ 76 at 3.

Additional Background on Pricing

The RFP here required offerors to complete pricing tables for each contract line item number (CLIN), to be submitted as Exhibit S. RFP at 100. Proposed pricing for each CLIN was to include a rate as well as a total ceiling price based on the proposed rate and estimated quantities provided by the agency. *Id.* at 100, 111. Importantly, the RFP advised that the proposed total ceiling price in Exhibit S would be the price that the agency evaluated. *Id.* at 100. The RFP also required offerors to complete an "Other

⁴ The protester raises additional collateral arguments in its protest. Although we do not address each of CGS-SSG's arguments, we have considered all of the protester's contentions and find that none provides a basis to sustain the protest.

Than Cost and Pricing Spreadsheet,” to be submitted as Exhibit M, which was to “depict the development” of the Exhibit S pricing. *Id.* at 100.

With respect to the required currency for pricing, the RFP required foreign firms to submit proposals in local currency; U.S. firms had the option of submitting proposals in local currency or in dollars, as follows:

L.11.1.2 OFFERS AND PAYMENT IN U.S. DOLLARS

In accordance with 22 USC 4864,^[5] U.S. firms are eligible to be paid in U.S. dollars if the payment in local currency represents a barrier to competition. U.S. firms desiring to be paid in U.S. dollars must demonstrate how payment in local currency represents a barrier to competition . . . [i]f a U.S. firm submits an offer in local currency and receives a subsequent contract award in local currency, the contract will remain in local currency . . . [i]f the Contracting Officer determines that a barrier to competition exists, Sections B.1, B.4 and Exhibits C and S will be converted to U.S. dollars in accordance with FAR 52.225-17.

Id. at 100. The RFP also provided that U.S. firms submitting offers in dollars must make a “definitive statement” confirming that offering and being paid in dollars is not in violation of any host country laws. *Id.* at 102. The RFP stated that alternative offers and pricing strategies would not be considered. *Id.* at 97, 110.

With respect to the evaluation of proposals, section M of the RFP advised that the agency could reject proposals that did not include both rates and total prices for all CLINs. *Id.* at 110. Additionally, the RFP included FAR provision 52.225-17, Evaluation of Foreign Currency Offers, which addressed how the agency would evaluate proposals that were priced using foreign currency. That provision, as implemented by the RFP, stated:

If the Government receives offers in more than one currency, the Government will evaluate offers by converting the foreign currency to United States currency using the exchange rate used by the U.S. Embassy Mbabne, Eswatini in effect as follows:

1. On the date specified for receipt of offers, if award is based on initial offers; otherwise

⁵ 22 U.S.C. § 4864 provides a statutory objective of “improve[ing] the efficiency of the local guard programs abroad administered by the Bureau of Diplomatic Security of the Department of State and [ensuring] maximum competition for local guard contracts abroad concerning Foreign Service buildings,” by allowing certain U.S. based firms to obtain a pricing discount during evaluation and by also allowing those firms to be paid in dollars. 22 U.S.C. §§ 4864(b), (c)(3-4).

2. On the date specified for receipt of proposal revisions.

Id. at 110.

CGS-SSG's initial proposal included the required CLIN pricing tables in Exhibit S; the firm completed this exhibit using only pricing in dollars. AR, Tab 6, CGS-SSG Initial Exhibit S. CGS-SSG's proposal also included a completed Exhibit M, which showed more detailed pricing information and how the firm calculated the labor rates proposed in Exhibit S; unlike Exhibit S, CGS-SSG's completed Exhibit M was priced using local currency figures. AR, Tab 5, CGS-SSG Initial Exhibit M. Additionally, the protester's proposal stated that "[t]he use of local currency for payments adversely affects U.S. firms in several ways and will serve as a barrier to competition." AR, Tab 3, CGS-SSG Initial Price Proposal at 11. Further, CGS-SSG's proposal included a statement confirming that "bidding and being paid in U.S. dollars is not in violation of any host country laws," as required by the RFP for firms submitting proposals in dollars. *Id.* at 43.

In the first round of discussions, the agency provided the following to CGS-SSG, with respect to its submitted Exhibit M: "Although local currency offers are accepted, CGS-SSG requested a USD offer, which is acceptable. For clarity and consistency, can CGS-SSG provide a USD exhibit M?" AR, Tab 10, CGS-SSG First Discussion Letter at 2.

In its subsequent proposal revision, CGS-SSG provided new information in its Exhibit M spreadsheet, including prices in dollars to supplement the local currency prices previously submitted. See AR, Tab 13, CGS-SSG Price Final Proposal Revision-1 (FPR-1); see *also* AR, Tab 14, CGS-SSG Exhibit M FPR-1. Notably, the protester also revised its Exhibit S pricing table, adding total ceiling price equivalents in local currency while continuing to show all rate and total ceiling pricing in dollars, as it had done previously. *Id.* CGS-SSG formatted its Exhibit S submission in this way for subsequent proposal revisions, including for the final proposal revision submitted for agency evaluation.

Max Enterprises's initial proposal, like the protester's, included the required pricing in Exhibit M and Exhibit S. AR, Tab 8, Max Enterprises Initial Exhibit M; AR, Tab 9, Max Enterprises Initial Exhibit S. All of Max Enterprises's pricing on these exhibits was stated in the local currency, not dollars. *Id.* Additionally, as a foreign firm, the awardee made no request that it be paid in dollars, and no representation about any hardship arising from being paid in local currency, or about whether payment in dollars would violate any host country laws. See *generally* AR, Tab 7, Max Enterprises Initial Price Proposal. The awardee's revised and final proposals made no changes relevant to the issues raised by CGS-SSG in this protest. See *generally* AR, Tab 16, Max Enterprises Price FPR-1; AR, Tab 26, Max Enterprises Price FPR-2.

Price Evaluation

As set forth above, CGS-SSG argues that the agency's price evaluation violated the terms of the RFP and FAR provision 52.225-17, because the agency failed to convert the protester's proposed local currency pricing to dollars and instead "simply relied on the amount CGS-SSG had proposed in USD." Protest at 5. Specifically, the protester argues that the RFP and FAR provision 52.225-17 required the agency to convert its local currency pricing to dollars, notwithstanding the fact that the protester also submitted dollar pricing in its proposal, because doing so would ensure that the agency was evaluating proposals using the same currency and exchange rates. Comments & Supp. Protest at 2.

The agency contends converting CGS-SSG's proposal pricing was not necessary for its evaluation because the proposed price was already stated in dollars, rather than the local currency. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 7. In this regard, the agency argues that FAR provision 52.225-17 "dictates how the government should establish a level playing field" when the solicitation does not require all offerors to use the same currency and the agency receives proposals in more than one currency, but that the FAR provision does not "govern the evaluation of a *single* offer containing pricing in more than one currency." *Id.* at 6.

The record here shows that, in its initial proposal, CGS-SSG included the "definitive statement," required by the RFP for firms submitting offers in dollars, confirming that offering and being paid in dollars is not in violation of any host country laws. AR, Tab 3, CGS Initial Proposal at 43; RFP at 102. The protester contends that the agency should not have understood its proposal to be priced in dollars, because asking to be paid in dollars is different than proposing in dollars. Supp. Comments at 3. We find the agency reasonably concluded that the protester submitted a proposal in dollars because the "definitive statement" was only required for U.S. and joint venture firms submitting offers in dollars. RFP at 102.

Further, the agency expressly advised the protester during the first round of discussions that it understood CGS-SSG's proposal to be an offer in U.S. dollars with no correction or objections from the protester. AR, Tab 10, CGS-SSG First Round Discussion Letter at 2.

The agency's finding is also supported by the RFP's price evaluation criteria, which advised that the total ceiling price proposed in Exhibit S would be the price the agency would use to evaluate offers in accordance with section M of the RFP. *Id.* at 100. This total ceiling price was to be calculated by taking the sum of each CLIN, and each CLIN's total price was to be calculated by multiplying the proposed rate by estimated quantities provided by the agency. *Id.* The RFP additionally informed offerors that the agency could reject proposals that failed to include both rates and prices for all CLINs. *Id.* at 110.

The protester's Exhibit S pricing schedule was initially only submitted in dollars. Though its revisions to Exhibit S, following the first round of discussions, included both dollar and local currency total ceiling prices, the rate pricing continued to be exclusively in dollars. See AR, Tab 33, CGS-SSG FPR-3. In fact, CGS-SSG provided no local currency rate pricing in Exhibit S at any point in the proposal submission process. The RFP advised that the agency would evaluate the price proposed in Exhibit S and that proposals that failed to include rates for all line items may be rejected. For this reason, we find the agency exercised reasonable judgment in deciding to evaluate the price CGS-SSG submitted in dollars.

Taking this all into account, we find that the contracting officer reasonably concluded that CGS-SSG's pricing was submitted in dollars and that the firm should be viewed as having submitted an offer in dollars. COS/MOL at 4.

Next, CGS-SSG argues that because its proposal contained prices in dollars and local currency, the agency was obligated by the terms of the RFP to convert the local currency prices to dollars using the exchange rate that applied at the time of final proposal submission. Protest at 5. The agency contends that the RFP did not require it to convert the protester's local currency pricing to dollars for evaluation purposes; rather, the solicitation provided for the evaluation of the price proposed in dollars. COS/MOL at 7.

Where a protester and agency disagree over the meaning of solicitation language, we resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions. *DAI Global, LLC*, B-416992, Jan. 17, 2019, 2019 CPD ¶ 25 at 4. To be valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. *American West Laundry Distribs.*, B-413377, Sept. 27, 2016, 2016 CPD ¶ 275 at 3; *Miracle Sys., LLC*, B-408947, Dec. 24, 2013, 2013 CPD ¶ 15 at 3.

We agree with the agency that the solicitation did not require the agency to convert local currency pricing included within a proposal, when that proposal also already contained pricing in dollars and where the agency reasonably concluded the offeror submitted a proposal in dollars. When read as a whole, the RFP allowed U.S. firms seeking payment in dollars to either: (1) submit proposals priced completely with local currency (which would be converted into dollars based on the exchange rate on the due date for final proposal revisions); or (2) submit proposals priced using U.S. dollars. See RFP at 100. In order to receive payment in dollars under either option, a U.S. firm had to demonstrate that a barrier to competition would exist if the contract was to be paid out in local currency. See *id.*

With respect to the price evaluation, FAR provision 52.225-17, as implemented in the RFP, required the agency to convert local currency offers to dollars. RFP at 110. By specifying that local currency offers would be converted to dollars and compared to other offers in dollars, the solicitation provided for a comparison of prices on an equal basis. Because the protester's offer was already in dollars and Max Enterprises

submitted a local currency offer, the RFP and the FAR only required the agency to convert Max Enterprises's offer to dollars for evaluation purposes.

The protester contends that because its proposal contained pricing in both currencies, the RFP and FAR provision 52.225-17 required the agency to convert the local currency price. We find that this interpretation is not reasonable, because it would require the agency to ignore the complete dollars CLIN and ceiling pricing proposed by the protester in Exhibit S--which contained the total price for evaluation. See RFP at 100. The agency, as stated above, reasonably concluded that CGS-SSG had submitted an offer in U.S. dollars. Therefore, no conversion of CGS-SSG's local currency price was required, because it was not a local currency offer.⁶

In sum, we conclude that the agency's interpretation of the solicitation and evaluation of proposals was reasonable. The agency exercised reasonable judgment in concluding that CGS-SSG submitted an offer in U.S. dollars. Its price analysis evaluation comparing the protester and Max Enterprises's proposals was similarly reasonable and was performed in a manner consistent with the solicitation and regulation.

In a related argument, CGS-SSG contends that the agency evaluated proposals on an unequal basis by making an improper "apples to oranges" comparison because the agency did not use the same currency exchange rate to evaluate both proposals. We find no merit to this argument.

The protester contends that the agency applied an exchange rate in effect on September 30 to Max Enterprises's proposal and did not apply the same rate to CGS-SSG's proposal. Protest at 6. In this regard, the protester contends that because its prices were calculated using the exchange rate in effect on June 4-5, the dates just prior to the due date for receipt of initial proposals, the agency, in effect, used different exchange rates to evaluate proposals. *Id.*; AR, Tab 34, Price Analysis at 17. Further, the protester argues that any price comparison made by the agency "was superficial and based on differing assumptions," because the agency was aware of the way in which CGS-SSG calculated its prices; that is, because CGS-SSG used a different exchange rate to calculate the pricing in its price proposal. Comments & Supp. Protest at 3-4.

⁶ To the extent that the protester argues that the language of FAR provision 52.225-17 (and therefore the RFP) is latently ambiguous with respect to converting currency within a single offer, we find this argument to be without merit. An ambiguity exists where two or more reasonable interpretations of the terms or specifications of a solicitation are possible. *Office Design Grp.*, B-415411, Jan. 3, 2018, 2018 CPD ¶ 43 at 5. We conclude that CGS-SSG's interpretation of the FAR and the RFP, when read as a whole, is unreasonable because it would allow a firm to submit a proposal with multiple prices. In our view, this is not a reasonable interpretation of the provision, and does not support a conclusion that this provision was latently ambiguous.

An agency is required to evaluate offerors on an equal basis and in a manner such that the total cost to the government for required services can be meaningfully assessed. *SOS Interpreting, LTD*, B-293026 *et al.*, Jan. 20, 2004, 2005 CPD ¶ 26 at 12. An agency's cost or price evaluation that compares the cost or price of proposals that are based on differing assumptions, *i.e.*, an "apples to oranges" comparison, is not a meaningful comparison of offerors' pricing. *Environmental Chem. Corp.*, B-416166.3 *et al.*, June 12, 2019, 2019 CPD ¶ 217 at 17.

For the reasons discussed above, we conclude that the agency reasonably interpreted FAR provision 52.225-17 to require the agency to convert proposed prices to dollars where the agency receives multiple proposals in different currencies, to ensure an evaluation on an equal basis. That is, the solicitation expressly advised that all non-dollar based offers were to be converted to dollars on the date that final proposal revisions were due. RFP at 110. Because CGS-SSG submitted an offer in dollars, there was no need for the agency to convert to dollars the separate local currency prices included in the protester's proposal. In contrast, the RFP and the FAR required the agency to convert Max Enterprises's local currency proposal to dollars so that the proposals would be evaluated on an equal (dollar to dollar) basis. Because the agency conducted its evaluation as stated in its solicitation, we see no basis to conclude that the agency's actions were improper.

Misleading Discussions

Finally, CGS-SSG argues that the agency engaged in misleading discussions. Specifically, the protester alleges that discussions were misleading because the agency knew, following initial proposal submissions, it only intended to evaluate CGS-SSG's dollar pricing, despite CGS-SSG's belief that its local currency pricing would be used. Comments & Supp. Protest at 5. The protester raised this argument for the first time on January 18, following the agency's submission of the agency report. Comments & Supp. Protest at 1. We find this protest allegation to be untimely.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These rules require that a protest based on other than alleged improprieties in a solicitation be filed no later than 10 calendar days after the protester knew or should have known its basis of protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2); *Vetterra, LLC*, B-417991 *et. al.*, Dec. 29, 2019, 2020 CPD ¶ 15 at 2.

CGS-SSG argues that it first became aware of the basis of its misleading discussions argument, that is, the agency failed to advise the protester of its intent to evaluate the protester's proposal as an offer in dollars, through the contracting officer's statement in the agency report, in which the contracting officer stated he believed that the protester had submitted an offer in dollars. Supp. Comments at 3; see COS/MOL at 4. However the agency expressly informed the protester, in its discussion letter of July 29, of its belief that the protester requested an acceptable "USD offer." AR, Tab 10, CGS-SSG First Discussion Letter at 2. Further, the agency's responses to CGS-SSG's debriefing questions clearly explained that the agency exclusively evaluated the protester's

proposal based on its offered price in U.S. dollars, and that price was evaluated against Max Enterprises's converted U.S. dollar price. AR, Tab 38, Debriefing Questions and Responses at 1.

From this information, the protester knew or should have known at the time it filed its initial protest that: (1) the agency had concluded that CGS-SSG's initial proposal submission was a "USD offer" following CGS-SSG's initial proposal submission; and (2) the agency then performed its final evaluation of the CGS-SSG proposal based on CGS-SSG's proposed price in dollars. As stated, the protester did not raise this allegation until it filed comments in response to the agency report. We therefore conclude that this argument is untimely because it was not raised within 10 days of the post-award debriefing. 4 C.F.R. § 21.2(a)(2). Accordingly, this protest allegation is dismissed.

The protest is denied.

Edda Emmanuelli Perez
General Counsel