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Decision

Matter of: SecTek, Inc.

File: B-417852.2

Date: January 13, 2020

Donald J. Walsh, Esq., Wright, Constable & Skeen, LLP, for the protester.
Daniel J. Strouse, Esq., David S. Cohen, Esq., Laurel A. Hockey, Esq., and John J. O'Brien, Esq., Cordatis LLP, for Centerra, the intervenor.
Abigail Nawrocki, Esq., Department of Commerce, for the agency.
Katherine I. Riback, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency unreasonably evaluated quotations is denied where the record reflects that the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations.

DECISION

SecTek, Inc., of Reston, Virginia, protests the award of a task order to Centerra Group, LLC, of Palm Beach Gardens, Florida, under request for quotations (RFQ) No. 1333BJ19Q00052009, issued by the Department of Commerce, Patent and Trademark Office (PTO), for armed security guards. SecTek argues that the agency miscalculated the quotations.

We deny the protest.

BACKGROUND

On June 11, 2019, pursuant to Federal Acquisition Regulation (FAR) subpart 8.4, the agency issued the RFQ to vendors holding General Services Administration professional services Federal Supply Schedule contracts with special item number 246-54 for protective service operations. Contracting Officer Statement (COS) at 1. The solicitation contemplated the issuance of a time-and-materials task order to provide armed security guards for PTO facilities for a 12-month base period and four 12-month option periods. Agency Report (AR), Tab 2, RFQ at 4.

The RFQ provided for award on a best-value tradeoff basis, using the following evaluation factors, listed in descending order of importance: technical approach, staffing plan, past performance, and price.¹ RFQ at 75.

The agency received quotations from SecTek and Centerra by the July 9 closing date. COS at 4. The agency evaluated quotations and on August 9, selected Centerra for award on the basis that the firm represented the best overall value to the PTO in accordance with the RFQ’s evaluation approach. Id. at 5.

On August 14, SecTek filed a protest with our Office contesting the award to Centerra. On September 10, the agency notified our Office that it intended to take corrective action by reevaluating the technical and price quotations of SecTek and Centerra. On September 13, our Office dismissed the protest as academic. SecTek, Inc., B-417852, Sept. 10, 2019 (unpublished decision).

The agency reevaluated SecTek and Centerra’s quotations, rating them as follows:

	Tech. Approach	Staffing Plan	Past Performance	Total Price
Centerra	Outstanding	Outstanding	Substantial Confidence	\$69,114,958
SecTek	Satisfactory	Satisfactory	Satisfactory Confidence	\$63,812,890

AR, Tab 11, Post-Corrective Action Evaluation Memorandum at 3-4. On October 1, the agency again selected Centerra as the awardee. AR, Tab 12, Post-Corrective Action Agency Award Decision, at 2. This protest to our Office followed.

DISCUSSION

SecTek, the incumbent contractor, challenges the agency’s evaluation of quotations under the technical approach, past performance, and price factors.² Protester’s Comments at 3-8. The protester also argues that the agency’s best-value tradeoff

¹ Under the technical approach and staffing plan factors, the agency assigned adjectival ratings of outstanding, satisfactory, and unsatisfactory. AR, Tab 9, Evaluation Plan, at 4. Under the past performance factor, quotations were rated as substantial confidence, satisfactory confidence, limited confidence, and neutral. Id.

² SecTek initially contended that the agency conducted misleading or unequal discussions. Protest at 8-9. However, the agency provided a substantive response to this protest ground in its agency report, Memorandum of Law (MOL) at 14-21, and SecTek failed to respond to this argument in its comments. Protester’s Comments at 2-3. We therefore dismiss this protest ground as abandoned. CHE Consulting, Inc., B-297534.4, May 17, 2006, 2006 CPD ¶ 84 at 4 n.6; see 4 C.F.R. § 21.3(i)(3).

decision was unreasonable. Although we do not discuss each ground raised by SecTek below, we have reviewed them all and find that none provide a basis to sustain the protest.

The evaluation of quotations is a matter within the agency's discretion. Advisory Technical Consultants, B-416981.3, June 4, 2019, 2019 CPD ¶ 209 at 3. In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate quotations, 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 regulations. OPTIMUS Corp., B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4. A protester's disagreement with an agency's judgment, without more, is insufficient to establish that an agency acted unreasonably. Converge Networks Corp., B-415915.2, B-415915.3, Aug. 20, 2018, 2018 CPD ¶ 334 at 5.

Assignment of Strengths

SecTek contends that the agency unreasonably and unequally evaluated quotations in assigning multiple strengths to Centerra's quotation. For example, the protester argues that the agency assigned Centerra's quotation a strength for its limited arrest authority, and unreasonably failed to assign SecTek's quotation a similar strength.³ Protester's Comments at 3. SecTek argues that limited arrest authority is consistent with the role of the security officers working for PTO and not based on a special designation or unique feature of Centerra. Id. Therefore, if Centerra's quotation received a strength for offering limited arrest authority, SecTek's should have also received this strength.

The agency states that its assignment of a strength to Centerra's quotation and not SecTek's for limited arrest authority reflected the difference in the two quotations, not unequal treatment. Supp. AR at 3. Centerra's quotation stated that its "armed personnel are empowered with limited arrest authority while on-duty under this contract." AR, Tab 5, Centerra Technical Quotation, at 3. The agency viewed this as a strength that exceeded the solicitation requirements because officers being licensed for limited arrest authority by the relevant states where PTO is located would help alleviate legal issues related to the authority of the officers to detain suspects, and would provide additional training regarding use of force. AR, Tab 10, Post-Corrective Action Technical Evaluation Team (TET) Consensus Report; Tab 11, Post-Corrective Action Evaluation

³ A strength was defined in the evaluation plan as "[a]n element of a quote that exceeds a requirement of the solicitation in a beneficial way to the Government." AR, Tab 9, Evaluation Plan, at 4 (emphasis in original). To the extent that SecTek argues that the RFQ lacked a definition of strength (Protester's Comments at 3 n.2), protests of alleged apparent solicitation improprieties must be filed prior to the closing time for receipt of quotations. See 4 C.F.R. § 21.2(a)(1); Allied Tech. Group, Inc., B-402135, B-402135.2, Jan. 21, 2010, 2010 CPD ¶ 152 at 9 n.10. We therefore dismiss this protest ground as untimely.

Memorandum, at 2. SecTek's quotation did not include similar language regarding limited arrest authority. Supp. AR at 3.

It is a fundamental principle of government procurement that competitions must be conducted on an equal basis; that is, the contracting agency must treat all vendors equally; it must even-handedly evaluate offers against common requirements and evaluation criteria. Electrosoft Servs., Inc., B-409065 et al., Jan. 27, 2014, 2014 CPD ¶ 252 at 9. Where a protester alleges unequal treatment in a technical evaluation it must show that the differences in ratings did not stem from differences between the vendor's quotations. Camber Corp., B-413505, Nov. 10, 2016, 2016 CPD ¶ 350 at 8.

Based on our review of the record, we find the agency's evaluation to be equal.⁴ The agency articulated why it viewed limited arrest authority as a feature that exceeded the requirements of the solicitation and assigned a strength to Centerra's quotation based on the language in its quotation. Conversely, SecTek did not specifically reference such a feature in its quotation. It is a vendor's responsibility to submit a well-written quotation, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements, and its runs the risk that the agency will unfavorably evaluate its quotation where it failed to do so. The Concourse Group, LLC, B-411962.5, Jan. 6, 2017, 2017 CPD ¶ 36 at 7. Here, the protester has not shown that the differences in ratings are not a result of the differences between the quotations. While the protester disagrees with the agency's conclusion, we find no basis to sustain the protest.

The protester asserts, in its supplemental comments, that the agency unreasonably assigned a strength regarding limited arrest authority because each of the vendors, under the terms of the solicitation, were responsible for obtaining all relevant licenses to perform the work, and that a vendor's limited arrest authority arose, not out of a

⁴ SecTek, the incumbent, contests the assignment of a strength to Centerra for its transition plan and argues that it should have received a similar strength for what it contends would be a lower-priced transition plan due to its incumbent status. Protester's Supp. Comments at 6. First, SecTek's argument is at odds with the language in SecTek's quotation. We note that SecTek in its quotation stated that it would not be complacent in its transition plan, but instead "[o]ur approach to starting operations under the new contract will still be rigorous," and that it would "use the transition to implement the NWDTP [National Weapons Defense Training Program] training which is a significant change." AR, Tab 7, SecTek Technical Proposal, at 4. We therefore find no basis to question the agency's assignment of strengths in this regard. Second, SecTek's argument, that seeks credit under the technical factor for what it believes would be a lower-priced transition, is essentially an untimely challenge to the terms of the solicitation; specifically, that the agency would separately evaluate the technical factors and price. RFQ at 73-74. Protests of alleged apparent solicitation improprieties must be filed prior to the closing time for receipt of quotations. See 4 C.F.R. § 21.2(a)(1); Allied Tech. Group, Inc., supra.

particular license, but due to the award of the contract. Protester's Supp. Comments at 2. We dismiss this argument as untimely. Here, SecTek initially argued that the agency unequally evaluated quotations and that if Centerra's quotation received a strength for limited arrest authority SecTek's should have too. Protester's Comments at 3. In its supplemental comments, SecTek argues that a vendor's limited arrest authority arose, not out of a particular license, but due to the award of the contract. Protester's Supp. Comments at 2. Thus, to the extent that the protester raised what amounts to a secondary-new-aspect of its challenge to the agency award of a strength to Centerra for limited arrest authority, this new challenge constitutes an improper piecemeal presentation of a protest allegation, and will not be considered further. Noble Supply & Logistics, B-417269, Apr. 19, 2019, 2019 CPD ¶ 167 at 12.

Past Performance

SecTek next argues that the agency unreasonably assigned Centerra's quotation a substantial confidence rating under the past performance factor.⁵ For example, the protester asserts that the agency unreasonably concluded that one of Centerra's past performance references met the requirements of the solicitation because, according to the protester, the reference was "not of similar size as the RFQ and was less than half the size of the effort needed." Protester's Comments at 6.

The evaluation of past performance, including the agency's determination of the relevance and size of a vendor's performance history, is a matter of agency discretion, which we will not find improper unless it is unreasonable or inconsistent with the solicitation's evaluation criteria. LOUI Consulting Grp., Inc., B-413703.9, Aug. 28, 2017, 2017 CPD ¶ 277 at 3-4. Evaluating the relative merits of vendors' past performance information is generally within the broad discretion of the contracting agency. Id. Our Office will review the record to ensure that the evaluation was reasonable and conducted in accordance with the solicitation terms. Atlantic Systems Group, Inc., B-413901, B-413901.2, Jan. 9, 2017, 2017 CPD ¶ 38 at 3.

The RFQ required vendors to provide at least three examples of past performance of work of a "similar scope, size, and complexity to the SOW [statement of work]

⁵ SecTek also argues that the agency's assignment of a significant confidence rating to Centerra's quotation while its quotation received a satisfactory confidence rating evidenced unequal treatment. Based on our review of the record, we find no merit to this argument. In addition, we dismiss SecTek's contention, raised for the first time in its supplemental comments, that the assignment of strengths under past performance did not comply with the solicitation's evaluation plan as untimely. Protester's Supp. Comments at 5. SecTek received the agency's evaluation documents as part of the agency report but not did raise this challenge until its supplemental comments, more than 10 days after SecTek received the information forming the basis of its protest. 4 C.F.R. § 21.2(a)(2); IR Technologies, B-414430 et al., June 6, 2017, 2017 CPD ¶ 162 at 5.

requirements.” RFQ at 75. The agency’s independent government estimate was \$82,000,000. AR, Tab 10, Post-Corrective Action TET Consensus Report. SecTek submitted past performance information for three contracts valued at \$51,797,206, \$60,568,788, and \$50,560,720, all of which were determined to meet the solicitation requirements. AR, Tab 7, SecTek’s Technical Quotation, at 29-33; Tab 10, Post-Corrective Action TET Consensus Report. The agency assigned SecTek’s quotation a satisfactory confidence rating. Id. Centerra submitted past performance information regarding three contracts valued at \$105,651,505, \$413,586,961, and \$26,117,639, all of which were determined to meet the solicitation requirements. AR, Tab 5, Centerra’s Technical Quotation, at 33-35; Tab 10, Post-Corrective Action TET Consensus Report. The agency assigned Centerra’s quotation two strengths, one for each of the contracts that exceeded the value and number of personnel and facilities of the current effort, and a rating of substantial confidence. Id. The agency noted the following regarding Centerra’s work on the contract valued at \$26,117,639 for the Department of Interior (DOI) headquarters, in its evaluation:

The size of this contract is similar but not as large as [PTO’s] requirement and the scope and complexity are quite similar being an agency HQ [with] similar level of protection as [PTO]. The value is [(\$)]26 million, [with] 65 officer[s], and two facilities. It is equivalent in that the facilities are executive agency headquarters with high value occupants.

Id.

The agency argues that it evaluated quotations consistently under the past performance factor, and its evaluation “highlighted the underlying merits of the proposals.” Supp. AR at 9. With regard to the size of references, the agency notes that Centerra had one smaller dollar value reference, and SecTek had two. Id. The agency argues, and the record demonstrates, that in each instance it identified the size disparity, identified the similarities to the current effort and the vendor’s ability to perform the work under the contract, and determined the contract to be relevant in terms of size. Id.; AR, Tab 10, Post-Corrective Action TET Consensus Report. The agency further contends that Centerra’s higher past performance rating arose from the benefits that it provided as a result of the two strengths that it received because two of its references were larger in size than the current effort. Id.

We find nothing unreasonable with the agency’s evaluation of past performance. Here, the agency evaluated Centerra’s DOI contract, and in doing so, expressly acknowledged the difference in magnitude of the dollar value between Centerra’s DOI contract and the instant requirement, and identified similarities with the current effort. AR, Tab 10, Post-Corrective Action TET Consensus Report. The record reflects that SecTek’s references were evaluated in a similar manner. On this record, we find no basis to conclude that the agency’s past performance evaluation was unreasonable. See Vector Planning & Servs., Inc., B-415005, Nov. 8, 2017, 2017 CPD ¶ 360 at 8.

Price Evaluation

SecTek next asserts that the solicitation required the agency to evaluate prices for reasonableness (RFQ at 75), but the agency provided no analysis verifying that the prices were fair and reasonable. The protester also contends that the agency should have taken into account that Centerra's quotation stated that it may request equitable adjustments for certain items, for example, using unarmed security officer wages for pricing armed security officer rates for Dallas and Denver. Protester's Comments at 8. The protester argues that the agency could not rationally perform price reasonableness analysis while ignoring these upward adjustments. Id.

When an agency issues an RFQ to vendors holding Federal Supply Schedule contracts for the delivery of services at hourly rates, and, as here, a statement of work is included, the ordering agency must evaluate the quotations received consistent with the stated evaluation criteria. FAR § 8.405-2(d). The FAR also requires the agency to consider the level of effort and the mix of labor proposed to perform the task being ordered, determine that the total price is reasonable, and document the agency's price reasonableness determination. Id., Technology and Telecommunications Consultants, Inc., B-413301, B-413301.2, Sept. 28, 2016, 2016 CPD ¶ 276 at 11.

The agency responds that the record reflects that it evaluated the labor mix and level of effort associated with the requirement and determined that the rates were consistent with the collective bargaining agreement. AR, Tab 11, Post-Corrective Action Evaluation Memorandum, at 3-4. The agency also compared offerors total prices to each other. Id. at 4. Regarding the fact that Centerra stated that it would be requesting equitable adjustments for changes to the collective bargaining agreements, (AR, Tab 6, Centerra's Business Quotation at 5), the agency states that this was consistent with the solicitation and the solicitation questions and answers, which stated that the schedule included in the solicitation was for evaluation purposes and was subject to equitable adjustment.⁶ Supp. AR at 11; AR, Tab 2, Questions and Answers, at 5.

⁶ In its supplemental comments, SecTek argues for the first time that Centerra's pricing was "artificially low because it used a rate *which it did not intend to pay*," because the firm admitted it did not intend to pay the [DELETED]. Protester's Supp. Comments at 7 (italics in original). SecTek contends that this exceeds the equitable adjustments allowed under the contract and that Centerra should have used the rate that it intended to pay armed guards at these locations and then requested equitable adjustments of that rate. Id. We dismiss this protest ground as untimely. SecTek received Centerra's price quotation as part of the agency report but did not file this challenge within 10 days of when it received the information forming the basis of its protest. 4 C.F.R. § 21.2(a)(2). Our regulations do not contemplate the piecemeal presentation or development of protest issues; where a protester raised a broad ground of protest in its initial submission but failed to provide details within its knowledge until later, so that a further response from the agency would be needed to adequately review the matter,

(continued...)

Contrary to the protester's contention that the agency provided no analysis verifying that the prices were fair and reasonable, in fact the agency evaluated the labor mix and level of effort associated with the requirement, and determined that the rates were consistent with the collective bargaining agreement. On this record, we conclude that the evaluation of vendors' proposed labor mixes, as described in the record, was reasonable and met the agency's obligations under the solicitation and the FAR. Technology and Telecommunications Consultants, Inc., supra.

Best-Value Determination

Finally, SecTek argues that the agency's evaluation errors under the technical approach, past performance and price factors rendered the agency's best-value decision unreasonable. Protest at 5-8; Protester's Comments at 8-9; and Protester's Supp. Comments at 7-8. Since, as discussed above, we find the protester's arguments concerning the evaluation of SecTek's and Centerra's quotations to be without merit, we have no basis to conclude that the agency's best-value decision was unreasonable. CW Government Travel, Inc., B-416091, B-416091.2, June 13, 2018, 2018 CPD ¶ 225 at 11.

The protest is denied.

Thomas H. Armstrong
General Counsel

(...continued)

these later raised issues will not be considered. Salient Federal Solutions, Inc., B-410174.3, B-410174.4, Apr. 1, 2016, 2016 CPD ¶ 104 at 9.