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Decision

Matter of: Chameleon Integrated Services

File: B-407018.3; B-407018.4

Date: February 15, 2013

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Pamela J. Mazza, Esq., PilieroMazza PLLC, for CSSS.NET, an intervenor.
Melissa D. McClellan, Esq., Department of Agriculture, for the agency.
Noah B. Bleicher, Esq., Glenn G. Wolcott, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In taking corrective action in response to an earlier protest by conducting additional exchanges with vendors and reevaluating quotations, agency did not act improperly in disclosing to the awardee the relation of its price to the other vendors' prices.

DECISION

Chameleon Integrated Services, of St. Louis, Missouri, protests the award of a contract to CSSS.NET, of Bellevue, Nebraska, under request for quotation (RFQ) No. AG-3142-S-12-0009, issued by the U.S. Department of Agriculture (USDA) for information technology (IT) computer operation support services. Chameleon objects to various aspects of the agency's reevaluation of quotations pursuant to corrective action.

We deny the protest.

BACKGROUND

USDA issued the RFQ via the General Services Administration (GSA) e-Buy system on January 19, 2012, to 8(a) vendors holding Streamlined Technology Acquisition Resources for Services (STARS) II contracts. RFQ at 1. The RFQ provided for the issuance of a task order on a labor-hour basis with a 4-month base period, four 1-year option periods, and one 8-month option period. RFQ at 5, 75. The vendor selected to perform the task order will provide various IT support services, including operations support, hardware and systems maintenance, systems administration,

service desk operations, and physical security of computer systems hosted at USDA locations in Kansas City, Missouri, and Beltsville, Maryland. RFQ at 6.

The RFP provided that award would be made to the vendor whose quotation represented the best value to the agency, considering the following factors listed in descending order of importance: technical approach, past performance, and price. RFQ at 74. The RFQ identified three technical approach subfactors: staffing plan for hiring employees, corporate security plan for hiring new contractor employees, and transition plan.¹ RFQ at 98. The technical approach and past performance factors, when combined, were stated to be significantly more important than price. RFQ at 74. As relevant here, the RFQ provided that the agency would review proposed prices for “completeness, reasonableness, and price realism.” RFQ at 102.

Additionally, the solicitation informed vendors that the agency reserved the right to issue the task order based on the initial quotations received, without the benefit of additional exchanges. RFQ at 97. However, the RFQ provided that USDA may request additional information from vendors which “clarifies, supplements, and/or changes any response as submitted.” Id.

The agency received 36 quotations in response to the RFQ, including one from Chameleon and one from CSSS.² Contracting Officer Statement at 2. A USDA technical evaluation team, past performance evaluation team, and price evaluation team evaluated the quotations and submitted consensus ratings to a source selection team (SST). Id. The SST reviewed the ratings and assessed the strengths, weaknesses, and deficiencies identified in the quotations. Agency Report (AR), Tab 27, Source Selection Decision, at 1-31. The SST included three quotations in the competitive range, including Chameleon’s and CSSS’s. Contracting Officer Statement at 2.

The agency conducted exchanges with the competitive range vendors and requested revised quotations. See AR, Tab 6, Exchanges with Chameleon, at 1-8; AR, Tab 7, Exchanges with CSSS, at 1-8. The technical evaluation team evaluated the revised quotations and assigned overall technical ratings of outstanding to Chameleon’s and CSSS’s quotations.³ AR, Tab 8, Technical Evaluation Summary, at 11, 18. Both vendors’ quotations received past performance ratings of

¹ Quotations were evaluated under the technical approach factor and subfactors as outstanding, good, acceptable, marginal or unacceptable. RFQ at 99.

² Chameleon is the incumbent contractor providing the IT services identified in the RFQ. Agency Report, Tab 4.a., Technical Proposal of Chameleon, at 8.

³ The firms’ quotations were rated as outstanding under each technical approach subfactor. AR, Tab 8, Technical Evaluation Summary, at 11, 18.

substantial confidence. AR, Tab 27, Source Selection Decision, at 8. With regard to price, Chameleon's evaluated price was \$12,814,320.72, and CSSS's evaluated price was \$13,771,904.54. AR, Tab 10, Price Evaluation Report, at 14, 19.

After reviewing the evaluation results, the source selection authority, who is also the contracting officer, determined that CSSS's quotation would result in "superior achievement . . . with little or no risk." AR, Tab 27, Source Selection Decision, at 30. Although it was not the lowest-priced quotation, the source selection authority concluded that CSSS's quotation represented the best value to the government, and award was made on June 30, 2012. Id.; Contracting Officer Statement at 4.

On July 12, Chameleon filed a protest with our Office challenging the award to CSSS. See Protest, July 12, 2012, at 1-6. In response, the agency advised our Office that it was taking corrective action and would conduct additional exchanges with the vendors, reevaluate quotations, and make a new award determination. See AR, Tab 11, Notice of Corrective Action, at 1. Accordingly, we dismissed Chameleon's July 12 protest as academic. See Chameleon Integrated Servs., B-407018, Aug. 10, 2012.

In October 2012, the agency conducted additional exchanges with the top three vendors in the competitive range and requested revised quotations from these firms. See AR, Tab 14, Exchanges with Chameleon, at 1-7; AR, Tab 15, Exchanges with CSSS, at 1-4. As part of the exchanges, the agency held telephone conferences with officials from the firms. The record shows that during the call with Chameleon, company officials inquired as to whether the firm's pricing was disclosed to the other vendors being considered for award. AR, Tab 14, Exchanges with Chameleon, at 6. According to notes of the conversation, the agency replied that Chameleon's pricing was not disclosed. Id. The agency also explained that all vendors had the opportunity to revise their quoted prices. Id.

The record also shows that during the call with CSSS, company officials expressed concern that the agency provided other vendors with CSSS's quoted price during debriefings. AR, Tab 15, Exchanges with CSSS, at 4. According to notes of the conversation, the agency explained to CSSS officials that the firm's quotation was not the lowest-priced or the second lowest-priced. Id. The agency also stated that CSSS--and any other vendor--could revise its price. Id.

The agency received revised quotations from the firms, and the USDA evaluation teams reevaluated the revised quotations. Chameleon's and CSSS's quotations were, again, assigned outstanding ratings under the technical approach factor and subfactors. AR, Tab 18, Technical Evaluation Summary Report, at 6, 10. Both quotations also retained their substantial confidence rating under the past performance. With regard to price, Chameleon increased its quoted price by approximately \$621,000 to \$13,435,073; CSSS decreased its quoted price by

approximately \$926,000 to \$12,845,843. AR, Tab 20, Price Evaluation Report, at 14.

In making a new award decision, the source selection authority noted that each of the three quotations was assigned the highest technical ratings and each vendor was “deemed capable of performing the tasks.” AR, Tab 21, Source Selection Recommendation Memorandum, at 3. The source selection authority concluded that it was most advantageous to award to the vendor that submitted the lowest-priced quotation. Accordingly, the task order was issued to CSSS on October 31, 2012. This protest followed.

DISCUSSION

First, Chameleon contends that the agency impermissibly provided CSSS with Chameleon’s quoted price and argues that it was unreasonable for the agency to disclose to CSSS that the two other vendors had proffered lower prices. Protest at 4; Comments/Supplemental (Supp.) Protest at 4. Next, Chameleon argues that, in reevaluating quotations, USDA engaged in disparate treatment of the competing vendors. Chameleon also objects to the agency’s price evaluation, and USDA’s assignment of a strength for CSSS’s ability to retain employees. Comments/Supp. Protest at 6-7.

As a general rule, Federal Acquisition Regulation (FAR) part 15 procedures do not govern task and delivery order competitions conducted under FAR part 16. Thus, our Office will review such task order competitions to ensure that the competition is conducted in accordance with the solicitation and applicable procurement laws and regulations. Imagine One Tech. & Mgmt., Ltd., B-401503.4, Aug. 13, 2010, 2010 CPD ¶ 227 at 7; Bay Area Travel, Inc., et al., B-400442 et al., Nov. 5, 2008, 2009 CPD ¶ 65 at 9 n.13. In this regard, FAR § 16.505 does not establish specific requirements for discussions in a task order competition; exchanges in that context, like other aspects of such a procurement, must be fair and not misleading. Hurricane Consulting, Inc., B-404619 et al., Mar. 17, 2011, 2011 CPD ¶ 70 at 6; CGI Fed. Inc., B-403570 et al., Nov. 5, 2010, 2011 CPD ¶ 32 at 9.

As an initial matter, we note that the record does not support Chameleon’s assertion that the agency disclosed the firm’s quoted price to the awardee. Rather, the record establishes that the awardee was advised that other vendors had submitted lower prices. Despite being told that its price was not disclosed, Chameleon maintains that it was “quite likely” that CSSS received an unredacted version of Chameleon’s initial protest that included price information. Protest at 5. However, the record includes sworn statements from USDA officials affirming that Chameleon’s original protest (with the price information) was not provided to the awardee. See AR, Tab 24, Sworn Statements, at 1-9. Moreover, the protester has presented no support for its claim that its price was disclosed, and its unsubstantiated speculation

does not provide a basis to sustain the protest. See Ahtna Facility Servs., Inc., B-404913, B-404913.2, June 30, 2011, 2011 CPD ¶ 134 at 11.

Next, Chameleon maintains that the agency provided CSSS with an “unfair competitive advantage” when it disclosed to the awardee that the two other vendors in the competitive range had originally quoted lower prices than CSSS. Comments/Supp. Protest at 4. We disagree with the protester that this disclosure was improper or otherwise provided CSSS with an unfair advantage. On the contrary, the agency argues, and we agree, that informing CSSS that the other vendors in the competitive range had quoted lower prices merely leveled the playing field. See Ocean Servs., LLC, B-292511.2, Nov. 6, 2003, 2003 CPD ¶ 206 at 5; Clearwater Instrumentation, Inc., B-286454.2, Sept. 12, 2001, 2001 CPD ¶ 151 at 4 (disclosure of offerors’ prices as part of corrective action is permissible). In this regard, all vendors were privy to the same basic information about the quoted prices; that is, Chameleon knew where its originally-quoted price fell in relation to CSSS’s. (Indeed, Chameleon and the third vendor actually learned in their debriefings the exact price CSSS quoted, whereas, as explained above, CSSS did not have that specific information.) That Chameleon made the business decision to increase its price, and CSSS decided to reduce its price, does not demonstrate that the awardee had an unfair advantage. Moreover, the agency did not mislead Chameleon during its exchanges with the firm, as the protester alleges, because the agency did not provide any false information to the firm. Chameleon only asked whether its specific price had been disclosed to the awardee, and, as discussed above, the agency accurately stated that it had not. See AR, Tab 14, Exchanges with Chameleon, at 6. We find nothing objectionable about the agency’s actions in this respect.

Next, Chameleon argues that the agency engaged in disparate treatment in its reevaluation of CSSS’s quotation pursuant to corrective action. As an example, Chameleon complains that the agency treated offers disparately when it “questioned Chameleon’s ability to perform . . . at its original price,” but did not express any concerns about CSSS’s ability to perform the contract at almost the same price. Comments/Supp. Protest at 6.

We find that the protester’s complaints that the agency did not raise some of the same concerns in its reevaluation that it had in its initial evaluation are without merit. The fact that a reevaluation varies from an original evaluation does not constitute evidence that the reevaluation was unreasonable. IAP World Servs., Inc., B-406339.2, Oct. 9, 2012, 2012 CPD ¶ 287 at 3. It is implicit that a reevaluation could result in different findings and conclusions. QinetiQ North America, Inc., B-405163.2 et al., Jan. 25, 2012, 2012 CPD ¶ 53 at 13; Sabre Sys., Inc., B-402040.2, B-402040.3, June 1, 2010, 2010 CPD ¶ 128 at 5 n.3. In any event, the concerns USDA raised with Chameleon during its initial evaluation related to Chameleon’s proposed price for certain line items in light of Chameleon’s specific technical approach. See AR, Tab 6, Exchanges with Chameleon, at 1. In contrast,

the record shows that CSSS reduced its quoted price by [deleted]. See AR, Tab 20, Price Evaluation Report, at 10. Accordingly, it was reasonable for the agency not to raise the same concerns with CSSS related to its revised price that it did with Chameleon's initial quotation. Indeed, contrary to the protester's assertions, the agency was not required to reach any of the same conclusions in its reevaluation pursuant to its corrective action. See QinetiQ North America, Inc., supra, at 13.

Finally, Chameleon objects to various aspects of the agency's reevaluation of CSSS's quotation. Specifically, Chameleon complains that the agency failed to evaluate any risks associated with CSSS's revised price quote. See Protest at 6; Comments/Supp. Protest at 6.

Where a fixed-price contract--including a fixed-rate contract such as the one here--is to be awarded, a solicitation may provide for a price realism analysis for such purposes as measuring an offeror's understanding of the solicitation requirements and assessing the risk inherent in an offeror's proposal. Legacy Mgmt. Solutions, LLC, B-299981.2, B-299981.4, Oct. 10, 2007, 2007 CPD ¶ 197 at 3; Star Mountain, Inc., B-285883, Oct. 25, 2000, 2000 CPD ¶ 189 at 4. The FAR identifies a number of price analysis techniques that may be used to determine whether prices are reasonable and realistic, including comparison of the prices received with each other and with the independent government estimate, and analysis of pricing information provided by the offeror. FAR § 14.404-1(b)(2). The nature and extent of a realism analysis ultimately are matters within the sound exercise of the agency's discretion, unless the agency commits itself to a particular methodology in the solicitation. Id. We will review an agency's price realism evaluation only to determine whether it was reasonable and consistent with the solicitation requirements. Id.

Here, we have reviewed the record and find that the agency's reevaluation of quotations was reasonable and consistent with the RFQ and applicable regulations. In this regard, the record shows that as part of the agency's corrective action, the price evaluation team reevaluated the vendors' price proposals and prepared a new price evaluation report in October 2012. See AR, Tab 20, Price Evaluation Report, at 1-17. First, the evaluators compared the vendors' proposed prices against the independent government estimate and found that they were 13 to 17 percent below the government estimate. Id. at 13. Then, the evaluators compared the proposed prices against each other for the base and each option period, as well as the total contract cost. Id. The evaluators noted that all three of the vendors' proposed prices were within 5 percent of each other, i.e., the prices were separated by less than \$600,000. Id. at 13-14. The evaluators also prepared detailed assessments comparing the vendors' average proposed rates per hour and the average proposed rates per contract line item. Id. Finally, the evaluators documented the proposed annual escalation of rates and compared the escalation among the vendors and the government estimate. Id.

Chameleon also complains that USDA should have questioned CSSS's ability to perform the contract at its final revised price--and specifically should have questioned the company's ability to recruit and retain personnel--because the agency expressed these concerns when it reviewed Chameleon's initial quotation (which was priced within \$31,000 of CSSS's revised price).⁴ See Protest at 7. As noted above, the agency was not required to reach the same conclusions in its reevaluation as it did in its initial evaluation. See QinetiQ North America, Inc., supra, at 13. In any event, we find the agency's price realism analysis to be unobjectionable. The analysis was based on a comparison of proposed prices (at the line item and overall level), and a comparison of prices to the government estimate. As discussed above, the vendors' quoted prices were within 5 percent of each other. See AR, Tab 20, Price Evaluation Report, at 13. The agency argues, and we agree, that the similarity of proposed prices undermines Chameleon's assertion that CSSS's quotation reflected a lack of understanding of the technical requirements or otherwise presented a risk to employee recruitment and retention. See AR at 9. On this record, we find nothing objectionable about the agency's conclusions that CSSS's prices were reasonable and realistic. Chameleon's disagreement with the agency's evaluation does not provide a basis to sustain the protest.

The protest is denied.

Susan A. Poling
General Counsel

⁴ In a supplemental protest filing, Chameleon similarly complains about the agency's assignment of a strength to CSSS's technical proposal based on the firm's ability to recruit the incumbent workforce. Comments/Supp. Protest at 7. We have reviewed the record and find that Chameleon's objections amount to mere disagreement with the agency's findings and do not provide a basis to sustain the protest.