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Decision

Matter of: AWS Convergence Technologies, Inc.

File: B-404002.2; B-404002.3

Date: April 20, 2011

James H. Roberts III, Esq., Van Scoyoc Kelly PLLC, for the protester.
John E. Jensen, Esq., and Nicole Y. Beeler, Esq., Pillsbury Winthrop Shaw Pittman LLP, for the intervenor.
Mark Langstein, Esq., Richard Brown, Esq., and Florence N. Bridges, Esq., Department of Commerce, for the agency.
Cherie J. Owen, Esq., Glenn G. Wolcott, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the acceptability of awardee's quote is denied where the record shows that the agency's judgment was reasonable and consistent with the solicitation's evaluation criteria and with procurement statutes and regulations
 2. Where a competition is conducted among Federal Supply Schedule vendors pursuant to Federal Acquisition Regulation (FAR) part 8, there is no requirement for agencies to conduct discussions in accordance with FAR § 15.306; exchanges with vendors need only be fair and equitable.
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DECISION

AWS Convergence Technologies, Inc., of Germantown, Maryland, protests the award of a contract by the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA) to Global Science & Technology, Inc. (GSTI), of Greenbelt, Maryland, under request for quotes (RFQ) No. 488421, for expanding the National Mesonet Pilot Project of 2009 by building an infrastructure in urban and non-urban areas throughout the United States capable of collecting environmental data. The protester contends that the agency made numerous errors in its evaluation of quotes and in the subsequent selection decision.

We deny the protest.

BACKGROUND

The agency issued the RFQ pursuant to Federal Supply Schedule (FSS) procedures on August 3, 2010, via the GSA e-Buy website.¹ The RFQ sought a contractor to expand the National Mesonet Pilot Project of 2009 to all National Weather Service regions in the continental United States. The pilot project was undertaken to leverage existing surface-based observing networks, referred to as “mesonets,” that are owned and operated by non-federal parties (including academic institutions, state facilities, and private companies), and use this infrastructure to expand the capability of the National Weather Service to collect environmental data. This data—which includes weather forecasting, plume dispersion, climate monitoring, and air quality analyses—will be used to predict high-impact, local scale weather events. Contracting Officer’s Statement at 1. The RFQ states that fiscal year 2010 appropriation language (which earmarked \$5.5 million to expand the pilot program) “directs NOAA to expand the effort to ‘existing networks, with 75 percent of the funds for . . . urban and 25 percent from non-urban (rural, mountainous, and coastal) areas.’” RFQ at 2; Contracting Officer’s Statement at 2.

The RFQ provided that award would be made to the vendor with acceptable past performance whose quote was found to represent the best value to the government, based on the evaluation of technical/management quotes and price. The technical/management evaluation factor had nine subfactors: (1) performance characteristics of the proposed system design; (2) production plan; (3) implementation plan; (4) maintenance plan; (5) software engineering; (6) security and system certification and accreditation requirements; (7) management plan; (8) network operator relationships; and (9) key personnel qualifications. RFQ at 7-8.² Subfactor 8 (network operation relationships) directed vendors to provide a plan that, among other things, described the vendor’s approach to addressing the “Congressional direction to expand the effort to include 75 [percent] urban and 25 [percent] rural, mountainous, and coastal areas.” RFQ at 8.

The RFQ instructed vendors to submit a technical/management quote and a price quote by August 20, which combined were limited to a total of 25 pages. RFQ at 7.

¹ The GSA e-Buy website allows agencies to request information, find sources, and prepare online requests for proposals and requests for quotes for services and products offered through GSA’s multiple award schedule and GSA technology contracts.

² Subfactors 1, 3, 7, and 8 were of equal value, and were considered significantly more important than the remaining subfactors, which were also of equal value to each other. RFQ at 9.

For pricing, the RFQ was divided into two contract line item numbers (CLINs), titled “urban” and “rural, mountainous, coastal.” RFQ at 5. Each CLIN had the same four sub-CLINs: in situ meteorological observations in the lowest 10 meters of the atmosphere; soil temperature and soil moisture; wind speed and direction in the boundary layer at heights above 10 meters; and solar radiation at the surface. Id. at 5-6. Each of these sub-CLINs had eight sub-sub-CLINs.³ Vendors were instructed to provide a price for each CLIN, sub-CLIN, and sub-sub-CLIN, as well as an overall price. RFQ at 5, 8.

AWS and GSTI both submitted quotes by the RFQ closing date. A technical evaluation team (TET) evaluated the technical/management quotes using an adjectival rating system of excellent, satisfactory, marginal, and unsatisfactory. Agency Report (AR), Tab 12c, TET Consensus Report, at 2. The final ratings were as follows:

Factor/Subfactor	AWS	GSTI
Overall Technical/Management	Marginal	Satisfactory
(1) Performance Characteristics	Satisfactory	Satisfactory
(2) Production Plan	Marginal	Satisfactory
(3) Implementation Plan	Marginal	Satisfactory
(4) Maintenance Plan	Marginal	Satisfactory
(5) Software Engineering	Satisfactory	Excellent
(6) Security & System C&A Requirements	Satisfactory	Satisfactory
(7) Management Plan	Marginal	Satisfactory
(8) Network Operator Relationships	Marginal	Excellent
(9) Key Personnel Qualifications	Satisfactory	Satisfactory

AR, Tab 12c, TET Consensus Report, at 4-14.

With regard to the network operator relationships subfactor (subfactor 8), which was one of the most important subfactors, AWS’s quote was rated marginal. The TET found that AWS’s quote did not include a definition of the vendor’s interpretation of urban and non-urban areas, which was a “significant detractor” to understanding how AWS’s approach satisfied the fiscal year 2010 appropriation language that required 75 percent of the funds to be used to expand urban areas. Id. at 7. In contrast, GSTI’s quote was rated excellent under the network operator relationships subfactor, because the quote “offered a current and vetted definition of urban” from a recent National Academy of Sciences publication and identified a

³ As relevant here, one of the sub-sub-CLINs was for the delivery of a report for implementing a national, extensible capability for provision of data and associated enhanced metadata, information, and services. RFQ at 9.

procedure to apply this definition to the allocation of sites, to ensure that 75 percent of the funds would be spent on expansion in urban areas. Id. at 12.

The contracting officer conducted the price evaluation and summarized the vendors' prices as follows:

	AWS	GSTI
Price for CLIN 1 (urban)	\$4,747,503	\$3,447,254
Price for CLIN 2 (non-urban)	\$4,582,503	\$1,149,085
Price for both CLINs⁴	\$5,149,623	\$4,596,339

AR, Tab 12d, Price Evaluation, at 1. The contracting officer determined that AWS's price did not demonstrate an understanding of the 75/25 percent distribution of funds requirement, and that AWS's quoted price was therefore unreasonable. Id. In contrast, GSTI's lower price was found to be reasonable.

The contracting officer, who was also the source selection authority, reviewed and adopted the ratings assigned by the TET. Based on his review, the contracting officer concluded that GSTI's quote identified a more favorable technical solution and showed a better understanding of the requirement than AWS's quote, as illustrated by GSTI's higher ratings under each of the technical/management subfactors. AR, Tab 12f, Source Selection Decision, at 3-4. Based on GSTI's higher technical rating, lower price, and acceptable past performance, the contracting officer determined that GSTI's quote offered the best value to the government. Id. After receiving notice that the contract was awarded to GSTI, AWS protested.

DISCUSSION

AWS asserts that GSTI's quote should have been evaluated as unacceptable on several grounds. Specifically, AWS argues that GSTI's quote failed to comply with the solicitation's 75 percent funding requirement; failed to comply with a solicitation requirement concerning spatial and temporal resolution; exceeded page limits; was not submitted through the E-Buy portal; and included services that were not on the firm's FSS contract. AWS also asserts that the agency conducted unequal discussions.

⁴ The price for both CLINs in AWS's quote did not amount to the sum of the prices for CLIN 1 and CLIN 2. Instead, AWS anticipated efficiencies of \$4,180,383 if both CLIN 1 and CLIN 2 were combined. AR, Tab 12d, Price Evaluation, at 1. The contracting officer found that, even considering overhead costs associated with each CLIN individually, and efficiencies if both CLINs were combined, it was unreasonable for AWS to conclude that a \$4.2 million efficiency would be realized if CLIN 1 and CLIN 2 were combined. Id.

In reviewing protests challenging an agency's evaluation of quotes, we will not conduct a new evaluation or substitute our judgment for that of the agency; rather we will examine the record to determine whether the agency's judgment was reasonable and consistent with the solicitation's evaluation criteria, and with procurement statutes and regulations. George T. Brown Assoc., B-404398, Jan. 26, 2011, 2011 CPD ¶ 28 at 3; All Points Int'l Distrib., Inc., B-402993, B-402993.2, Sept. 3, 2010, 2010 CPD ¶ 209 at 2-3.

As discussed below, we find no basis to sustain AWS's protest.

Funding and other Solicitation Requirements

AWS first asserts that GSTI's quote should have been evaluated as technically unacceptable "for its failure to comply with mandatory NOAA requirements for 75 percent of data acquisitions from urban geographical areas." Protest at 4. However, AWS's argument misinterprets the solicitation. The RFQ did not require that 75 percent of "data acquisition" come from urban areas; rather, the solicitation required only that 75 percent of the appropriated "funds" be allocated to urban areas. RFQ at 2. The record confirms that GSTI's quote complied with this requirement. AR, Tab 12d, Contracting Officer's Price Evaluation, at 1; AR, Tab 12f, Source Selection Decision, at 4-5.

AWS also objects to GSTI's reliance on Census data to define what constitutes urban areas, contending that this essentially "eliminates any distinction between 'Urban' and 'Rural'" and defeats the Congressional mandate that 75 percent of the funding be used for expansion of the pilot program in urban areas. Supp. Protest and Comments at 16. AWS argues that vendors were required to use a definition of urban established by the Department of Homeland Security Federal Emergency Management Administration's Urban Area Security Initiative, which is what AWS used to develop its quote.⁵ Id. at 12-17; Supplemental Comments at 17-22.

The RFQ did not define the term "urban," but left the definition to the vendors to explain when describing how they were going to meet the expansion requirement. The protester has not shown that its preferred definition was required by the RFQ, or that GSTI's definition was prohibited or unreasonable. To the extent that the protester asserts that the agency's failure to define the term "urban" created an ambiguity in the RFQ, the ambiguity was patent and is untimely raised. See Pitney Bowes, Inc., B-294868, B-294868.2, Jan. 4, 2005, 2005 CPD ¶ 10 at 5 (patent ambiguity is a solicitation defect that must be raised prior to receipt of proposal submission to be timely).

⁵ We note that AWS's quote did not explain to the agency that it was using this definition to develop its quote. Contracting Officer's Statement at 6.

AWS next contends that GSTI's quote should have been disqualified because it did not provide for a spatial resolution of less than 5 kilometers every 15 minutes or less, which the protester claims was required by the RFQ. Protest at 5; Supp. Protest and Comments at 10-11.

As the agency explains, spatial and temporal resolution parameters were provided on the first page of the RFQ as background information regarding the long term goals of the National Mesonet Pilot Project and were not requirements of the RFQ. Agency Memorandum at 11. In this regard, the RFQ states, in a section titled "Summary":

In 2008, the National Academy of Sciences (NAS) released [a study that] provides a strategy for filling gaps in the Nation's meteorological, hydrologic and related environmental observing capabilities that must be filled to enable significantly improved prediction of high-impact, local scale weather events. . . .

Subsequently, in FY 2009, the National Weather Service (NWS) undertook the National Mesonet Pilot Project (NMPP) to build an infrastructure that will extend its backbone [to] surface-based observing capabilities to nationwide coverage for observations of low-level atmospheric conditions, at a spatial resolution less than 5 km, every 15 minutes or less; and observations of soil temperature and moisture at 50 km resolution or less.

RFQ at 1.

This appears to be the RFQ's only reference to these parameters. Reading the RFQ section as a whole, we find that it was reasonable for the agency to interpret this RFQ provision as a statement of long term goals, and not as an expression of a formal solicitation requirement.⁶ See Miranda Assoc., B-245974, Jan. 30, 1992, 92-1 CPD ¶ 142 at 4-5 (finding that the solicitation's statement of goals did not represent a requirement of the solicitation); see also Ionics, Inc., B-211180, Mar. 13, 1984, 84-1 CPD ¶ 290 at 11 (description in solicitation of agency goals, and reference to certain technical approaches "merely to provide background information," held not to constitute statement of solicitation requirements or of criteria under which quotes were to be evaluated).

⁶ The agency also notes that, while the protester now contends that these parameters were a requirement of the solicitation, the protester's quote did not contain any detailed references to these parameters or descriptions of the protester's ability to meet these goals. Supp. Agency Memorandum at 8 n.7.

The protester also contends that GSTI's quote exceeded the 25-page limit set forth in the solicitation, because it included a 26th page containing price information. Supp. Protest and Comments at 2-3. However, the contracting officer explains that GSTI's quote complied with the 25-page limit; the additional page was provided in response to the agency's request for supplemental information and was not included in the page count. Since AWS also provided supplemental information that was not included in the page count, the protester was not prejudiced by the agency's actions.⁷ Supp. Contracting Officer's Statement at 2.

Federal Supply Schedule

AWS contends that the award was improper because GSTI's FSS contract does not specifically include preparing implementation reports, which is a required CLIN here. Protest at 7-8; Supp. Protest and Comments at 21-24.

An agency may not use FSS procedures to purchase items that are not listed on a vendor's GSA schedule. American Warehouse Sys., B-402292, Jan. 28, 2010, 2010 CPD ¶ 41 at 2. When a concern arises that a vendor is offering services outside the scope of its FSS contract, the relevant inquiry is whether the services offered are actually included on the vendor's FSS contract, as reasonably interpreted. American Sec. Programs, Inc., B-402069, B-402069.2, Jan. 15, 2010, 2010 CPD ¶ 2 at 3.

Here, GSTI stated that it would satisfy the solicitation's requirements using its GSA schedule 871 contract for professional engineering services. AR, Tab 3b, GSTI's Quote, Professional Engineering Services Contract, at 5. This contract includes special item numbers (SINs) for, among other things, strategic planning for technology programs and activities (SIN 871-1); concept development and requirements analysis (SIN 871-2); and system design, engineering and integration (SIN 871-3). These SINs includes the following activities:

SIN 871-1 Strategic Planning for Technology Programs and Activities:
Services required under this SIN involve the definition and interpretation of high level organizational engineering performance requirements such as projects, systems, missions, etc., and the objectives and approaches to their achievement. . . .

⁷ In supplemental comments filed 5 weeks after receipt of the agency report, the protester asserts that GSTI's quote, included in the agency report, did not contain a cover letter or table of contents. AWS contends that these pages may have been omitted by the agency in its report; however, there is nothing in the record suggesting that the GSTI quote contained a cover letter or table of contents. Moreover, these arguments, first raised 5 weeks after receipt of the agency report, are untimely. 4 C.F.R. § 21.2(a)(2) (2010).

SIN 871-2 Concept Development and Requirements Analysis: Services required under this SIN involve abstract or concept studies and analysis, requirements definition, preliminary planning, the evaluation of alternative technical approaches and associated costs for the development of enhancement of high level general performance specifications of a system, project, mission or activity. . . .

SIN 871-3 System Design, Engineering and Integration: Services required under this SIN involve the translation of a system (or subsystem, program, project, activity) concept into a preliminary and detailed design (engineering plans and specifications), performing risk identification/analysis, mitigation, traceability, and then integrating the various components to produce a working prototype or model of the system. . . .

GSA Website, SIN Description⁸; see also Agency Legal Memorandum at 15.

As the agency explains, and we agree, these SINs provide for the performance of various analysis and studies that implicitly include drafting and submitting reports, including implementation reports of the type required here. Since the preparation of implementation reports is within SINs listed on GSTI's FSS contract, we deny this aspect of AWS's protest.⁹

AWS also contends that the agency should have rejected GSTI's quote because it was not properly submitted through the E-Buy portal.¹⁰ Supp. Protest and Comments at 6. However, the protester does not cite to, and we cannot find, any provision in the solicitation requiring that vendors submit their quotes only through the e-Buy portal. In fact, the RFQ requires only that vendors submit 1 original and 10 copies of their technical quotes, and is silent on the method of delivery. RFQ at 7. Because the protester has not sufficiently alleged that the awardee's method of submission

⁸ Available at <http://www.gsaelibrary.gsa.gov/ElibMain/scheduleSummary.do?schedul eNumber=871>.

⁹ The agency notes that AWS similarly does not list implementation reports as a separate item on its FSS contract. Agency Legal Memorandum at 16.

¹⁰ As noted above, GSTI submitted its quote under its professional engineering services schedule contract. However, at the time quotes were due, the firm's access to the internet portal through which it could submit its quote was temporarily suspended. Therefore, GSTI submitted its quote thorough another portal for IT services and informed the agency that, although the quote was submitted through the portal for IT services, the quote was made pursuant to GSTI's valid schedule contract for professional engineering. Agency Supp. Legal Memorandum, at 5-6.

was prohibited by the terms of the solicitation or by any procurement law or regulation, we deny this protest ground.¹¹

Unequal Discussions

Finally, the protester contends that the agency conducted improper discussions only with GSTI. Specifically, the protester complains that the agency requested that GSTI separately price each sub-CLIN, and inquired how a possible reduction in funding for CLIN 1 would affect performance. AWS asserts it was not provided a similar opportunity for discussions. Supp. Protest and Comments at 4-5, 8-10.

Where, as here, a competition is conducted among FSS vendors pursuant to Federal Acquisition Regulation (FAR) part 8, there is no requirement for agencies to conduct discussions in accordance with FAR § 15.306. However, exchanges with vendors in a FAR part 8 procurement, like all other aspects of an FSS evaluation, must be fair and equitable. TreCom Sys. Group, Inc., B-404676; B-404676.2, Mar. 29, 2011, 2011 CPD ¶ __ at 4; TCBA Watson Rice, LLP, B-402086.6, B-402086.7, Sept. 8, 2010, 2010 CPD ¶ 229 at 10.

Here, the record confirms that the agency engaged in nearly identical exchanges with AWS and GSTI on these issues. In this regard, the protester was asked both to separately price each sub-CLIN, and to discuss how a possible reduction in CLIN 1 funding would affect performance. AR, Tab 20A, AWS Exchanges, at 39; Supp. Contracting Officer's Statement at 4. Therefore, we find no basis to conclude the exchanges were other than fair and equitable.

The protest is denied.

Lynn H. Gibson
General Counsel

¹¹ The protester cites Computer Literacy World, Inc., B-299744, B-299744.4, Aug. 6, 2007, 2007 CPD ¶ 154, in support of its argument. However, the facts of that case are distinguishable from the facts here. In Computer Literacy World, the RFQ specifically required that all quote submissions be submitted through the GSA Advantage e-Buy website. Id. at 9.