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**Comptroller General
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**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Savvee Consulting, Inc.

File: B-408623; B-408623.2

Date: November 8, 2013

C Kristen E. Ittig, Esq., and Dominique L. Casimir, Esq., Arnold & Porter LLP, for the protester.

Thomas O. Mason, Esq., David E. Fletcher, Esq., Francis E. Purcell, Esq., and Christopher J. Kimball, Esq., Cooley LLP, for the intervenor.

Stephen Piel, Esq., and Andrew Bramnick, Esq., Department of Defense, for the agency.

Charles W. Morrow, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of the protester's proposed program manager is denied where the record shows that the agency reasonably found that the proposed individual failed to satisfy the minimum experience qualifications for the position.

DECISION

Savvee Consulting, Inc., of Chantilly, Virginia, protests the award of a contract to E3 Federal Solutions, LLC, of Arlington, Virginia, under request for quotations (RFQ) No. HQ0034-13-R-0076, issued by the Department of Defense, Washington Headquarters Service (WHS), for analytical and technical support services. Savvee challenges the agency's rejection of its quotation as unacceptable, and also challenges the award decision.

We deny the protest.

BACKGROUND

The RFQ was issued on May 21, 2013, under the General Services Administration's Federal Supply Schedule, and sought quotations to provide a full range of support services to the Office of the Under Secretary of Defense Policy, including financial

management, human capital, leadership, organizational development, travel, facilities, and executive secretariat services. Award was to be made on a best-value basis considering technical capability, past performance, and price. The technical capability factor was comprised of two equally-weighted subfactors: (1) technical approach, and (2) staffing qualifications and experience. RFQ at 16.

With respect to the staffing subfactor, the RFQ stated, among other things, that the agency would evaluate the experience and qualifications of a vendor's proposed personnel, as well as the depth and appropriateness of the experience. Id. As relevant here, the performance work statement (PWS) identified the position of program manager as the only key position, and required this individual to possess the following minimum qualifications:

The Program Manager must have a minimum of five (5) years of executive-level management experience, leading multi-disciplined teams of research analysts and various operational departments. The Program Manager must have a minimum of five (5) years of senior level organizational project management experience, including requirement gathering, design, implementation, and ongoing program management.

Agency Report (AR), Tab 2, PWS at 9.

The solicitation advised that vendors' quotations would be assigned one of the following ratings for the technical capability factor: excellent, good, acceptable, marginal, and unacceptable. RFQ at 17. The RFQ further advised that only vendors who received an acceptable or better rating under the technical capability factor would be eligible for award. Id. For purposes of award, the technical capability factor was significantly more important than past performance, and these two factors, when combined, were more important than price. RFQ at 15.

Eight vendors, including Savvee and E3, submitted quotations in response to the RFQ by the closing date on June 11. A technical evaluation board (TEB) rated the quotations, and assigned Savvee's quotation an outstanding rating for the technical capability factor. AR, Tab 4, TEB Report, at 18. The TEB, however, also assigned a weakness to Savvee's quotation under the staffing subfactor because the protester's proposed program manager did not meet the minimum experience requirements. Specifically, the TEB found that the proposed individual did not meet the requirement to have 5 years of executive-level management experience leading multi-disciplined teams of research analyst and various operational departments. Id. at 19.

In reviewing Savvee's quotation, the contracting officer, who also acted as the source selection authority, agreed with the TEB's conclusion that the protester's proposed program manager did not meet the solicitation's minimum experience

requirements. AR, Tab 5, Best Value Decision Memorandum, at 16. The contracting officer, however, concluded that this failure merited a deficiency, rather than a weakness, and revised the TEB's rating under the technical capability factor from outstanding to marginal.¹ Id. at 15-16; Contracting Officer's Statement at 5. Specifically, the contracting officer assessed a deficiency for the following reasons:

Savvee's proposed [program manager] does not appear to include the required executive level management experience. The proposed [program manager's] experience includes time as a Senior Task Manager from 2008-2013 and as a Project Team Lead from 2006-2008 and an Onsite Project Manager from 2005-2006; however, none of these are at the senior executive level. This poses a high risk to the government because the proposed skill set may limit the experience of the [program manager] to effectively manage the contract personnel.

AR, Tab 5, Best Value Decision Memorandum, at 16.

Because Savvee's quotation received a marginal rating under the technical capability factor, the contracting officer excluded the protester from award consideration. On July 25, the contracting officer made award to E3 Federal Solutions, at an evaluated price of \$14,449,925.30. AR at 5. Savvee received a written explanation of the award, and this protest followed.

DISCUSSION

Savvee contends that WHS unreasonably found that its proposed program manager failed to meet the minimum PWS requirements for experience, and therefore unreasonably rated its quotation as marginal for the technical approach factor.

¹ The RFQ defined a marginal rating as follows:

A proposal that satisfies most but not all of the Government's performance and/or capability requirements and/or in some instances fails to provide sufficient detail to demonstrate the feasibility of a proposed approach. The proposal contains weaknesses (to possibly include significant weaknesses) and/or some deficiencies, but the overall approach is sufficiently sound that the weaknesses and/or deficiencies may be corrected without a major rewrite of the proposal. Low probability of success with a high degree of risk.

RFQ at 17.

For the reasons discussed below, we find no basis to sustain the protest.²

Clearly stated technical requirements are considered material to the needs of the government, and a quotation that fails to conform to material solicitation requirements is technically unacceptable and cannot form the basis for award. Carahsoft Tech. Corp., B-401169, B-401169.2, June 29, 2009, 2009 CPD ¶ 134 at 5. Where a protester challenges an agency's evaluation and rejection of its quotation as technically unacceptable, our review is limited to considering whether the evaluation was reasonable and in accordance with the terms of the RFQ and applicable regulations and statutes. See Outdoor Venture Corp., B-288894.2, Dec. 19, 2001, 2002 CPD ¶ 13 at 3. A protester's mere disagreement with the evaluation does not show that it lacked a reasonable basis. 1-A Constr. & Fire, LLP, B-404128, Jan. 7, 2011, 2011 CPD ¶ 15 at 3.

As discussed above, WHS found Savvee's quotation unacceptable because its proposed program manager did not demonstrate the required 5 years of executive-level management experience leading multi-disciplined teams of research analysts and various operational departments. See AR, Tab 2, PWS at 9. First, the agency found that none of the titles of the positions listed in Savvee's proposed program manager's resume reflected experience as a program manager or other executive-level experience: (1) financial manager/senior task manager (2008-present); (2) business systems analyst (2006-2008); and (3) software implementation specialist-defense travel system (2005-2006). AR, Tab 3, Savvee Quotation, Appendix A, Program Manager Resume, at 1-2; Contracting Officer's Statement at 7. We agree that none of the titles for these positions clearly show that this individual served as a program manager, or a manager at an executive level. In fact, the protester concedes that the proposed individual did not serve as the program manager for the current contract, and the protester does not contend that any of the other positions involved work in that role. See Protester's Comments (Sept. 9, 2013) at 4.

Next, the agency found that the descriptions of the work performed by Savvee's proposed program manager did not clearly reflect executive level management experience leading multi-disciplined teams of research analysts and various operational departments, as required by the RFQ. AR, Tab 4, TEB Report, at 19; Tab 5, Best Value Decision Memorandum, at 15; Contracting Officer's Statement

² Savvee also argues that if WHS had properly evaluated Savvee's quotation, the agency would have found that it provided the best value to the government based on its lower price and past performance experience. Because, as discussed below, the record shows that WHS reasonably rated Savvee's quotation marginal under the technical capability factor, and therefore ineligible for award, we need not address the protester's remaining arguments challenging the selection decision and the award to E3.

at 7. Instead, the proposed program manager's resume states that the individual was employed by a subcontractor for the incumbent contractor for the services, and "[m]anages a team of diverse professionals performing financial, travel, security, and administrative support." AR, Tab 3, Savvee Quotation, Appendix A, Program Manager Resume, at 1. The resume also stated that from 2006 to 2008, the individual performed duties including "[s]erv[ing] as a Project Team Lead for the DoD Agencies & Joint Commands Operations," and from 2005 to 2006 performed duties including leading an "onsite team conducting business process meetings to layout the process flow for travel documents and make recommendations to streamline the current processes at sites." Id. at 2. The agency concluded that none of the descriptions of the three positions involved work at the executive level, because the positions did not involve leading or managing multiple multi-disciplined teams of analysts or operational departments. AR at 8; Contracting Officer's Statement at 7; see AR, Tab 4, TEB Report at 19; Tab 5, Best Value Decision Memorandum, at 15. The agency also found that while the proposed positions involved management of various tasks and assignments, this work did not constitute executive-level management. Id.

While Savvee does not dispute that its proposed program manager did not perform work leading or managing multiple teams or departments at the same time, Savvee nonetheless argues that the evaluation was unreasonable because the resume shows that the individual generally possesses the relevant skills necessary to perform the contract requirements. Further, the protester argues that its proposed program manager met the requirement for executive-level experience because the individual led a team under the current contract, and teams under other listed contracts. See Protester's Comments at 3.

The protester also argues that the solicitation did not clearly require that the proposed program manager have experience leading multiple teams at the same time. We disagree, and think that the agency's interpretation of the RFQ was reasonable. Moreover, even if the protester's interpretation of the solicitation is also reasonable, this argument, at best, identifies a potentially patent ambiguity in the solicitation. Because this challenge was not raised prior to the time for receipt of initial quotations, it is now untimely.³ Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1)

³ Even if this argument concerned a latent ambiguity, Savvee did not raise this challenge within 10 days of learning of the agency's interpretation of this requirement; for this reason, the argument would in any case be untimely. See 4 C.F.R. § 21.2(a)(2). WHS stated in its initial response to the protest, on August 29, that it had found the proposed program manager unacceptable because the individual did not show experience leading multiple teams of multi-disciplined research analysts and operational departments. AR at 8; Contracting Officer Statement at 7. The protester did not specifically challenge the agency's interpretation of the solicitation as requiring experience leading multiple teams until
(continued...)

(2013); see Command Mgmt. Servs., Inc., B-292893.2, June 30, 2004, 2004 CPD ¶ 168 at 4.

Savvee also argues that the agency could have resolved any doubts regarding the experience of its proposed program manager by seeking clarification from the protester. Clarifications are limited exchanges between the agency and offerors that may occur when contract award without discussions is contemplated; an agency may, but is not required to, engage in clarifications that give offerors an opportunity to clarify certain aspects of proposals or to resolve minor or clerical errors.⁴ Federal Acquisition Regulation (FAR) § 15.306(a); Satellite Servs., Inc., B-295866, B-295866.2, Apr. 20, 2005, 2005 CPD ¶ 84 at 2 n.2. Here, however, the agency assessed a deficiency based on its evaluation of Savvee's proposed program manager. Providing the protester an opportunity to correct this deficiency would have constituted discussions, not clarifications, as it would have required the submission of information necessary to make the quotation acceptable. See Gemmo-CCC, B-297447.2, July 13, 2006, 2006 CPD ¶ 182 at 5. Agencies are not required to conduct discussions where, as here, the RFQ specifically advised of the agency's intent to issue an order on the basis of initial quotations, without discussions.⁵ Chicago Dryer Inc., B-402340, Feb. 16, 2010, 2010 CPD ¶ 52 at 4.

Finally, Savvee argues that WHS imposed an unstated evaluation factor because the selection decision stated that Savvee's proposed program manager did not demonstrate experience at the "senior executive level," as follows:

The proposed [program manager's] experience includes time as a Senior Task Manager from 2008-2013 and as a Project Team Lead from 2006-2008 and an Onsite Project Manager from 2005-2006; however, none of these are at the senior executive level.

AR, Tab 5, Best Value Decision Memorandum, at 16. The protester asserts that while there is a requirement for executive-level management experience and there is a requirement for senior level organizational project management experience, there is no requirement for senior executive level experience.

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it filed its comments on the supplemental agency report on September 25. Protester's Supp. Comments (Sept. 25, 2013), at 3-4.

⁴ We note also that the competition here was conducted under the Federal Supply Schedule procedures of FAR part 8.4, rather than the negotiated procurement procedures of FAR part 15.

⁵ Here, the RFQ notified vendors that award would be made on initial quotations unless the agency determined the need for revisions. See RFQ at 16.

WHS contends that the term “senior executive level” was an unintended conflation of the executive level management experience and senior level organizational project management experience requirements. See Supp. AR (September 18, 2013), at 6-7. The agency states that it did not impose a requirement for senior executive level experience, that is, experience beyond executive level experience. See id. Instead, the agency found that the protester did not meet the experience requirements for executive level experience, specifically, as discussed above, leading multi-disciplined teams of research analysts and various operational departments. We think that the agency’s explanation for the erroneous reference here is reasonable.

In any event, the record shows, as discussed above, that the agency reasonably concluded that Savvee’s quotation was rated marginal under the technical capability factor because its program manager did not have executive-level management experience leading multi-disciplined teams and various operational departments. Thus, even if the agency had utilized an undisclosed evaluation criterion of senior executive level experience--above and beyond the evaluation criteria set forth in the solicitation--the record shows that the protester nevertheless did not meet the evaluation criteria, as set forth in the solicitation. On this record, we see no possibility of prejudice to the protester. See Supreme Foodservice GmbH, B-405400.3 et al., Oct. 11, 2012, 2012 CPD ¶ 292 at 14; Statistica, Inc. v. Christopher, 102 F.3d 1577 (Fed. Cir. 1996). In sum, we find no basis to sustain the protest.

The protest is denied.⁶

Susan A. Poling
General Counsel

⁶ The protester raises other collateral issues. For example, Savvee argues that the evaluation of its proposed program manager should have considered the agency’s knowledge concerning the individual’s performance on the current contract. In this regard, the protester cites an email by the director of the office within the Under Secretary of Defense Policy, praising the performance of the proposed program manager. See Protest at 6-7. This email, however, does not describe the individual’s role as executive level management, nor does it support the protester’s argument that the individual should have been found to have meet the solicitation’s experience requirements. See id. Instead, the email states that the individual “has real leadership potential and could, if time and resources permitted, contribute to the [office] in a much more expanded role.” Id. We have reviewed all of the protester’s arguments and find no basis to sustain the protest.