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Decision

Matter of: PricewaterhouseCoopers Public Sector, LLP

File: B-413316.2; B-413316.3

Date: December 27, 2016

Philip J. Davis, Esq., Brian G. Walsh, Esq., Tara L. Ward, Esq., and Moshe B. Broder, Esq., Wiley Rein LLP, for the protester.
Richard J. Webber, Esq., and Patrick R. Quigley, Esq., Arent Fox LLP, for Deloitte Consulting LLP, an intervenor.
John W. Cox, Esq., Department of State, for the agency.
Louis A. Chiarella, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's evaluation of awardee's price quotation is dismissed in part and denied in part where the protester did not timely challenge the terms of the solicitation prior to the time for receipt of quotations, and the evaluation was otherwise consistent with the solicitation's stated evaluation scheme.
 2. Protest arguing that the agency conducted unequal discussions is denied where the record reflects that the agency's communication with the awardee was a clarification.
 3. Protest challenging the agency's evaluation of protester's technical proposal is denied where the record shows that there was no prejudice to the protester as a result of the alleged error.
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DECISION

PricewaterhouseCoopers Public Sector LLP (PwC), of Arlington, Virginia, protests the issuance of a task order to Deloitte Consulting LLC, of Arlington, Virginia, under Deloitte's General Services Administration (GSA) Federal Supply Schedule (FSS) contract, pursuant to request for quotations (RFQ) No. SAQMMA-16-Q-0037 issued by the Department of State (DOS) for business requirements analysis, validation,

and enhancement (BRAVE) support services. PwC argues that the agency's evaluation of vendors' quotations was flawed.¹

We dismiss in part and deny in part the protest.

BACKGROUND

The DOS Bureau of Consular Affairs (CA) operates a worldwide organization on the front line of U.S. diplomacy: it adjudicates tens of millions of passports and visas annually; provides critical support to American citizens overseas; and safeguards the country's borders at home. Protest at 3, citing Agency Report (AR), Tab 14, PwC Final Quotation, Vol. I, Technical, at 1. In order to assist achieving its mission, CA developed the BRAVE statement of work (SOW) consisting of three overarching objectives (i.e., business requirements analysis, business requirements validation, and business requirements enhancement) as well as eight corresponding tasks (e.g., directorate-specific business requirements analysis and validation support: consular management project). RFQ attach. A, SOW, at 1-21.

The RFQ was issued on January 12, 2016, pursuant to the procedures of Federal Acquisition Regulation (FAR) subpart 8.4, and was limited to vendors who have contracts under GSA FSS No. 874 (Professional Services Schedule).² The solicitation contemplated the issuance of a hybrid fixed-price/labor hour task order for a base year with three 1-year options against the successful vendor's FSS contract.³ Id. at 4-5. In general terms, the RFQ required the awardee to provide personnel to perform the required SOW tasks. Id. at 2-5. The RFQ established that task order award would be made on a best-value basis, based on four evaluation factors: technical approach and competencies; key and support personnel; corporate experience and past performance; and cost/price.⁴ RFQ amend. 3, at 24.

¹ For purposes of consistency we refer to the solicitation as an RFQ, the responding firms as vendors, and their responses to the solicitation as quotations.

² The solicitation was subsequently amended three times. Unless stated otherwise, all references are to the final version of the solicitation.

³ The solicitation established that, for each performance period, contract line item numbers (CLIN) 1 and 2 were fixed-price in nature, CLINs 3-9 were labor-hour in nature, and CLIN 10 (other direct costs) was cost-reimbursement in nature--the RFQ provided vendors with a "plug" number to be used for CLIN 10. RFQ amend. 3, at 2-4. The record reflects that labor-hour CLINs 3-9 represented almost the entire cost/price of each vendor. As detailed below, DOS is essentially contracting for discounted FSS labor rates, as the successful vendor will be reimbursed based on the actual labor amounts incurred.

⁴ The relative importance of the evaluation factors individually (as well as the relative importance of cost/price and noncost/price factors) was unstated. Id. at 24.
(continued...)

Three vendors, including Deloitte and PwC (both of which are incumbents on the predecessor effort), submitted quotations by the May 3 closing date.⁵ An agency technical evaluation team (TET) assessed quotations under the non-cost/price factors using various adjectival rating schemes set forth in the solicitation as follows: (1) superior,⁶ acceptable, marginal, or unacceptable for the technical approach and competencies, and key and support personnel, factors; and (2) substantial confidence, satisfactory confidence, unknown confidence (neutral), limited confidence, and no confidence for the corporate experience and past performance factor.⁷ Id. at 24-30. An agency cost evaluation team (CET) assessed, but did not rate, vendors' cost/price submissions. On June 15, based on its evaluation, the agency selected Deloitte's quotation for task order award. Contracting Officer's Statement (COS) at 1-2.

On June 27, after receipt of a brief explanation, PwC filed a protest with our Office challenging the evaluation of vendors' quotations and resulting award decision. In response, the agency advised our Office that it intended to take corrective action by reevaluating vendors' quotations and making a new source selection decision. AR, Tab 19, DOS Letter to GAO, July 18, 2016, at 1-2. Based on the agency's proposed corrective action, we dismissed PwC's protest as academic. PricewaterhouseCoopers Public Sector, LLP, B-413316, July 20, 2016 (unpublished decision).

On September 14, the agency completed its reevaluation of the Deloitte and PwC quotations,⁸ with the final evaluation ratings and costs as follows:

(...continued)

Our Office has recognized that where a solicitation does not disclose the relative weight of evaluation factors, the factors are understood to be of equal importance to each other. See New Directions Techs., Inc., B-412703.2, B-412703.3, Aug. 18, 2016, 2016 CPD ¶ 241 at 9; Bio-Rad Labs., Inc., B-297553, Feb. 15, 2006, 2007 CPD ¶ 58 at 6.

⁵ Vendors initially submitted quotations (consisting of technical and price volumes) by the initial February 8 closing date and, after issuance of a subsequent solicitation amendment, final quotations by May 3.

⁶ The record reflects that the use of "superior" as an adjectival rating often caused misunderstanding, insofar as the agency then used the same terminology to assess the relative merit of the vendors' quotations.

⁷ The TET also evaluated the relevance of vendors' references--very relevant, relevant, somewhat relevant, or not relevant--as part of its past performance evaluation.

⁸ The agency did not reevaluate the third vendor's quotation, which had previously been found to be technically unacceptable. COS at 2.

	Deloitte	PwC
Technical Approach and Competencies	Superior	Superior
Key and Support Personnel	Superior	Superior
Corporate Experience and Past Performance	Very Relevant/ Substantial Confidence	Very Relevant/ Substantial Confidence
Cost/Price	\$59,090,445	\$78,760,353

AR, Tab 20, TET Report, at 5; Tab 23, CET Report, at 1.

The TET also made narrative findings in support of the assigned ratings. For example, under the technical approach and competencies factor, the agency evaluators identified 10 significant strengths, one strength, one weakness, and one risk in Deloitte's quotation, and three significant strengths, and no weaknesses and risks in PwC's quotation. AR, Tab 20, TET Report, at 8-11, 19-20.

The contracting officer thereafter conducted a detailed comparative assessment of the vendors' quotations under the non-cost/price factors. AR, Tab 24, Source Selection Decision, at 12-18, attachs. A-D. Specifically, the contracting officer reviewed the TET's findings and identified the key technical discriminators between the quotations.⁹ Id. The contracting officer concluded that Deloitte's quotation was technically superior to that of PwC, especially with regard to the technical approach and competencies, and key and support personnel factors. Id. at 12-13.

The agency source selection authority (SSA) reviewed and accepted the evaluation findings and ratings, including the contracting officer's comparative assessment of quotations. Id. at 1. The SSA also determined that notwithstanding the identical assigned ratings, Deloitte's quotation was technically superior to that of PwC. Id. at 13-18. The SSA concluded that insofar as Deloitte's quotation was both technically superior to and lower cost than PwC's, Deloitte's quotation represented the best value to the government all factors considered. Id. at 22-23.

After providing PwC with notice of task order award, and a brief explanation, this protest followed.

⁹ The contracting officer determined the significant discriminators between the vendors' quotations by assessing the reasonable impact of each significant technical difference on the mission/support areas of the agency. Id. at 13.

DISCUSSION

PwC argues that DOS's evaluation of the vendors' price and technical quotations was flawed. As a preliminary matter, various challenges raised by the protester argue, in essence, that the price evaluation scheme set forth in the solicitation did not permit vendors to compete on a common basis. As discussed below, we find that these arguments are untimely challenges to the terms of the solicitation, and merit dismissal. With regard to the other price and technical evaluation challenges--which timely address whether the evaluation was consistent with the scheme set forth in the solicitation--we find no merit or prejudice to these arguments and deny the protest. Although we do not specifically address all of PwC's issues and arguments, we have fully considered all of them and find they do not provide a basis on which to sustain the protest.

Cost/Price Evaluation of Deloitte

PwC challenges the agency's evaluation of Deloitte's cost/price quotation. The protester first contends that the vendors had materially different interpretations of the solicitation's cost/price requirements, which the agency failed to recognize or consider in its evaluation. PwC also argues that DOS failed to reasonably consider the performance risks associated with Deloitte's discounted labor rates, which allegedly averaged 50 percent or more lower than Deloitte's listed FSS labor rates. Because the agency was required to consider the risk associated with such low labor rates and failed to reasonably to do, PwC argues, the agency's award decision was improper.

As set forth above, the RFQ contemplated the issuance of a task order in which most CLINs were labor-hour in nature.¹⁰ The solicitation as initially issued, however, did not specify the labor categories or amounts that vendors were to use in their quotations. RFQ at 28. Rather, while DOS provided an estimation of the levels of effort and labor mix needed to perform the BRAVE SOW tasks, the agency informed vendors that "the offeror may develop its proposal however it sees fit." AR, Tab 6, RFQ Questions and Answers, Jan. 22, 2016, at 2. The amended solicitation eventually established the labor categories and amounts that vendors were required to propose for each labor-hour CLIN. RFQ amend. 3, at 28-29. For example, for CLIN 3 (Directorate-Specific Business Requirements Analysis and Validation Support: Consular Management Project), vendors were required to quote staffing as follows:

- One half (0.5) full-time equivalent (FTE) Program Manager (or equivalent)
- One (1) FTE Senior Manager (or equivalent)

¹⁰ In a labor-hour contract or CLIN, a contractor is reimbursed its actual direct labor hours at specified fixed hourly rates. FAR § 16.601(b)(1).

- One (1) FTE Manager (or equivalent)
- Two (2) FTE Senior Level Consultants (or equivalent)
- Three (3) FTE Mid-Level Consultants (or equivalent)

Id. at 28.

The RFQ also established that an FTE was 1,880 hours annually. Id. Overall, for all labor-hour CLINs, vendors were required to propose 78.5 FTEs, or 147,580 hours, annually.

The solicitation, however, provided no description for any of the mandated labor categories: there were no minimum education requirements, no minimum experience requirements, and no description of duties and responsibilities for any of the required positions. Thus, while the RFQ required, for example, vendors to quote “1 FTE Senior Manager (or equivalent)” for CLIN 3, it provided no instruction on how vendors were to determine what “equivalent” meant.¹¹

The RFP established that the agency’s cost/price evaluation would be as follows:

The Government will review and evaluate all information contained within the submitted Cost/Price matrix, i.e., GSA Labor Categories, Schedule Number, negotiated GSA prices, and discounted prices offered DoS. The Government will also review all GSA Schedule HolderGSA [sic] Schedule Contracts, yearly escalation factors, and burdens placed on other direct costs such as material and travel. The Government will also evaluate the information provided on all proposed subcontractors. Finally, the Government will assess risks associated with each GSA Schedule Holder’s proposal.

Id. at 30.

In its cost/price quotation, Deloitte included a table to illustrate the alignment of its proposed FSS labor categories to the RFQ-required ones. AR, Tab 17, Deloitte Final Quotation, Vol. II, Cost/Price, at 2. For example, Deloitte indicated that its “Consultant II” labor category aligned with either the RFQ labor categories of “Senior Level Consultant (or equivalent),” “Mid-Level Consultant (or equivalent),” or “Junior Level Consultant (or equivalent).”¹² Id. As the RFQ established no

¹¹ One vendor asked the agency to confirm whether the RFQ’s levels of effort and labor mix were now mandatory, AR, Tab 13, RFQ Questions and Answers, Apr. 29, 2016, but no one inquired how the “or equivalent” descriptor was to be determined.

¹² In another instance, Deloitte’s quotation indicated that seven different labor categories on the vendor’s FSS contract aligned with the RFQ-required labor category of “Program Manager (or equivalent).” Id.

requirements (e.g., education, experience, responsibilities) for the mandated positions, however, Deloitte provided nothing beyond the table to establish the alignment between its FSS labor categories and the RFQ-required labor categories.¹³ Based on its labor-category equivalency determinations, and the required labor amounts, Deloitte thereafter submitted its pricing for each labor-hour CLIN.¹⁴ Id. at 51-59.

The CET, when evaluating Deloitte's quotation, determined that the vendor had used the RFQ-required labor amounts and labor categories. AR, Tab 23, CET Report, at 2; Tab 22, Labor Category Analysis, at 1-2. The agency evaluators also found Deloitte's labor mix (i.e., labor categories) was consistent with that required by the solicitation ("it's difficult to map the crosswalk with precision[,] [b]ut generally, the level of effort for what would fairly be considered high-, mid- and lower-level resources is in line with what was required"). AR, Tab 27, Level of Effort Analysis--Deloitte, at 1.

The CET also evaluated Deloitte's FSS labor categories and labor rate discounts by analyzing vendors' average minimum experience levels. AR, Tab 22, Labor Category Analysis, at 1-2. The CET found, for example, that for CLIN 3 the average minimum experience level of the labor categories being offered by Deloitte was 4.3 years (and 2.1 years weighted average), while the average minimum experience level of the labor categories being used by PwC was 6.2 years (and 4.0 years weighted average). Id. at 1. The CET concluded that while "various discounts have been offered [by Deloitte and PwC] for the same labor categories," "the reason for the variability is most likely based on the level of experience predicted for the position[s]." Id. at 2.

The CET then considered the risk to performance associated with Deloitte's FSS labor categories and labor rate discounts. Here the agency evaluators found that:

¹³ Similarly, PwC's price quotation also included a table to show the vendor's "mapping" between RFQ-required labor categories and PwC proposed ones. AR, Tab 15, PwC Final Quotation, Vol. II, Cost/Price, at 1. For example, PwC stated that the RFQ position of "Program Manager" aligned with the PwC FSS labor category of "Consulting Manager III," and the RFQ's "Senior Level Consultant" labor category aligned with either PwC's "Senior Consultant I" or Senior Consultant II" labor categories. Id. As with Deloitte, PwC's quotation provided nothing beyond a corresponding nomenclature to establish the alignment between its FSS labor categories and the RFQ-required ones.

¹⁴ As discussed below, Deloitte's cost/price quotation also included a detailed "basis of estimate" (or work breakdown structure) which evidenced the vendor's belief that it could successfully perform all SOW labor-hour tasks with a different labor mix and lower level of effort (71 FTEs) than that mandated by the amended RFQ.

(1) the assessment of minimum experience levels did not necessarily reflect that of the personnel Deloitte actually employed; (2) Deloitte's technical submission demonstrated exceptional knowledge of the BRAVE SOW objectives and tasks, and the vendor has extensive experience performing similar work within the agency; (3) Deloitte's cost/price was comparable to (7.7 percent less than) that of the third vendor that quoted and evidenced both an increasingly competitive marketplace for these types of services and the realism of Deloitte's pricing; (4) the TET verified both the level of effort and labor mix in Deloitte's quotation as being sufficient to perform the work required under this task order;¹⁵ and (5) Deloitte, being one of the larger firms in the industry, possessed the ability to "accept a lower profit margin in one area so as to maintain a strategically important piece of business without posing a risk to the performance of those services." AR, Tab 23, CET Report, at 2, 7-8; Tab 22, CET Labor Category Analysis, at 2. The CET concluded that "while significant discounts in GSA Schedule prices might generally be initially assumed risky, that risk to the Government was thoroughly considered here and, for the reasons above, deemed minimal." AR, Tab 23, CET Report, at 8-9.

Challenge to Evaluation Scheme

PwC first contends that vendors had materially different interpretations of the requisite labor categories to be proposed and priced under the solicitation. As a result, the protester argues, this prevented a fair competition or an "apples to apples" comparison of vendors' prices (*i.e.*, labor rates). PwC also maintains that Deloitte's interpretation of the RFQ "took undue liberties with the 'or equivalent' labor categories language." Protest at 14. We find that these arguments are challenges to the terms of the solicitation, and were not timely raised.

Agencies must consider cost to the government in evaluating competitive proposals or quotations. 41 U.S.C. § 3306(c)(1)(B); Ball Aerospace & Techs. Corp., B-402148, Jan. 25, 2010, 2010 CPD ¶ 37 at 4. In meeting this requirement, an agency's chosen method of evaluation must include some reasonable, common basis for evaluating or comparing the relative costs of proposals or quotations. Qwest Gov't Servs., Inc. dba CenturyLink QGS, B-407835, Mar. 7, 2013, 2013 CPD ¶ 79 at 9; Aalco Forwarding, Inc., et al., B-277241.15, Mar. 11, 1998, 98-1 CPD ¶ 87 at 11. Our Office has sustained pre-award challenges to the terms of solicitations that fail to provide for a meaningful comparison of offerors' proposed prices or costs. *E.g.*, CW Gov't Travel, Inc.--Recon.; CW Gov't Travel, Inc. et al.,

¹⁵ The TET also found that although Deloitte's proposed labor categories did not crosswalk to the RFQ-required labor categories in a simple, one-for-one alignment, "the potential risk here (of having under-qualified resources being utilized in performance and resultant cost and technical goals not being met) is considered minimal." AR, Tab 22, CET Report, at 9.

B-295530.2 et al., July 25, 2005, 2005 CPD ¶ 139 (sustaining pre-award challenge to solicitation that did not require offerors to propose binding prices for an indefinite-delivery/indefinite-quantity contract).

In contrast, our Office has found that post-award challenges to an agency's cost or price evaluation scheme are not timely, if the challenged scheme was set forth in the solicitation, because a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of quotations or proposals must be filed before that time. 4 C.F.R. § 21.2(a)(1); Ball Aerospace & Techs. Corp., supra; General Dynamics-Ordnance & Tactical Sys., B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 6.

As discussed above, the RFQ established that for the labor-hour CLINS, vendors would be evaluated on the basis of their quoted prices for requisite labor categories (e.g., Senior Manager (or equivalent)). The RFQ, however, provided no details as to how vendors would determine equivalence for the required labor categories. The record also reflects that both Deloitte and PwC were aware that there were no requirements for the RFQ-required labor categories: each vendor's price quotation provided nothing other than a name matching between their quoted FSS labor categories and the RFQ-required labor categories. Quite simply, the RFQ left it up to each vendor to determine what "or equivalent" meant for the required labor categories, and thus, labor rate pricing.

While we agree with PwC that the price evaluation conducted by DOS does not account for differences in vendors' quoted labor categories (as indicated by the difference in average minimum experience levels), the agency's price evaluation was clearly consistent with the scheme set forth in the solicitation. The plain language of the RFQ anticipated that vendors' prices would be based on how each vendor interpreted the meaning of the words "or equivalent." To the extent that PwC believed the "or equivalent" language introduced an ambiguity about how vendors would interpret the requirement, that ambiguity was patent because it was clear from the plain language of the solicitation. In our view, a vendor who chooses to compete under a patently ambiguous solicitation does so at its own peril, and where a protester fails to challenge an obviously flawed evaluation scheme prior to the time for receipt of quotations, we will dismiss a post-award challenge to the scheme as untimely. 4 C.F.R. § 21.2(a)(1); Ball Aerospace & Techs. Corp., supra, at 5; Wackenhut Servs., Inc., B-276012.2, Sept. 1, 1998, 98-2 CPD ¶ 75 at 5. Consequently, we find PwC's assertion that Deloitte somehow "took undue liberties" when it interpreted a patently ambiguous term is also untimely.

Evaluation of Risk

PwC also argues that the agency failed to reasonably evaluate the risk to task order performance associated with Deloitte's discounted labor rates. Supp. Protest at 7-8. The agency, by contrast, maintains that it reasonably assessed the

performance risks associated with Deloitte's discounted labor rates. Memorandum of Law (MOL), Oct. 19, 2016, at 8-10.

As set forth above, the solicitation established that the agency's cost/price evaluation would review, among other things, vendors' discounted prices, and assess the risks associated with each vendor's quotation.¹⁶ RFQ amend. 3 at 30. As the RFQ mandated the level of effort that each vendor was required to propose for the labor-hour CLINs--and as the proposed labor rates would be contractually binding--the risk associated with each vendor's quotation would result from the vendor's rates being so low as to endanger performance.

We find the agency's risk assessment of Deloitte's proposed labor rates to be reasonable. The record shows the agency analyzed the minimum experience levels of the FSS labor categories being used by the vendors, and reasonably surmised that a reason for Deloitte's larger labor rate discounts was tied to its lower minimum experience levels. The agency then considered the risk to performance associated with Deloitte's labor rates (and labor categories) and reasonably found that it was mitigated by various factors: (1) the assessment of minimum experience levels did not necessarily reflect that of the personnel Deloitte actually employed; (2) Deloitte's technical submission demonstrated exceptional knowledge of the SOW requirements, and the vendor had extensive experience performing similar work within CA; (3) the level of effort and labor mix in Deloitte's quotation was sufficient to perform the required work; and (4) Deloitte possessed the ability to accept a lower profit margins in select projects without posing undue risk to performance. AR, Tab 23, CET Report, at 2, 7-8; Tab 22, CET Labor Category Analysis, at 2. As a result, the evaluators found that the performance risk of Deloitte's labor rate pricing to be minimal. AR, Tab 23, CET Report, at 8-9.

In sum, the agency recognized and reasonably considered the risk to performance associated with Deloitte's discounted labor rates, and adequately documented its evaluation; we will not substitute our judgment for, as here, reasonably-based assessments. See Burke Consortium, Inc., B-407273.3, B-407273.5, Feb. 7, 2013, 2013 CPD ¶ 74 at 9. While PwC points to the fact that the agency's risk assessment included a comparison of Deloitte's prices to that of a technically-unacceptable vendor, the record reflects that this was but one part of the agency's risk assessment. PwC also contends that the agency was wrong to assume that discounts offered by large business concerns such as Deloitte were somehow less risky. We find this argument amounts to mere disagreement with the agency's

¹⁶ The RFQ also mandated the level of effort that each vendor was required to propose for the labor-hour CLINs; thus, there is no risk associated with this aspect of vendors' submissions.

evaluation judgments, which does not render those judgements unreasonable.¹⁷ ProActive Techs., Inc.; CymSTAR Servs., LLC, B-412957.5 et al., Aug. 23, 2016, 2016 CPD ¶ 244 at 9.

Unequal Discussions with Deloitte

PwC asserts that DOS improperly conducted discussions only with Deloitte, by allowing it to resolve inconsistencies in its cost/price quotation without providing PwC a similar opportunity to revise its quotation. As explained below, we conclude that the exchanges at issue here did not constitute discussions.

As detailed above, Deloitte's cost/price quotation included the vendor's pricing for each labor-hour CLIN based on the RFQ's required labor categories and labor amounts. Specifically, the solicitation required vendors to complete and submit RFQ Attachment E, Cost/Price Tables--consisting of the vendor's labor categories, labor amounts, hourly rates, and extended pricing for each labor-hour CLIN--and Deloitte's quotation included the required cost/price tables. RFQ amend. 3, at 27; RFQ attach. E, Cost/Price Tables, at 31-34; AR, Tab 17, Deloitte Final Quotation, Vol. II, Cost/Price, at 51-59.

Deloitte's price quotation also included a detailed basis of estimate (BOE), showing the resource projections (i.e., levels of effort and staffing mix) the vendor believed necessary for completing the BRAVE SOW.¹⁸ AR, Tab 17, Deloitte Final Quotation, Vol. II, Cost/Price, at 15-50. Deloitte included the BOE in its quotation so as to

¹⁷ We also find no merit to PwC's related assertion that the agency failed to properly consider the risk inherent in Deloitte's labor approach under the non-cost/price evaluation factors. The record reflects that the agency evaluators were aware that Deloitte had quoted a range of FSS labor categories (with different amounts of experience) as equivalent to each RFQ-required labor category, and considered the experience levels of the FSS labor categories that Deloitte utilized in its quotation. Moreover, the TET also considered the experience of the personnel that Deloitte actually proposed for both key and non-key positions--irrespective of the FSS labor categories that these individuals would be positioned against. AR, Tab 20, at 3, 12-13. The TET found, among other things, that Deloitte's proposed personnel "have directly applicable experience and desirable skill sets, and the vendor clearly describes how it will staff this task order, from detailed roles and responsibilities to hiring and maintain qualified staff" Id. at 3. The TET's determination that there was minimal risk of Deloitte using underqualified staffing resources was, we believe, also reasonable.

¹⁸ Deloitte had developed and first submitted its BOE with its initial cost/price quotation, when the RFQ permitted vendors to propose unique staffing strategies. AR, Tab 11, Deloitte Initial Quotation, Vol. II, Cost/Price, at 11-51.

“present[] a well-planned, efficient, tried and tested, low risk approach to successfully meet the RFQ requirements.” Id. at 12. The BOE indicated Deloitte’s belief that it could successfully perform all SOW labor-hour tasks with a different labor mix and lower level of effort (71 FTEs) than that mandated by the amended RFQ. Id. Deloitte’s BOE did not include any labor rates or other pricing.

The cover letter to Deloitte’s final cost/price quotation also stated as follows:

While our original proposal included 71 Full Time Equivalent (FTE) and an optimal mix of staff, to comply with the requirement of Amended A003 to the RFQ, Deloitte hereby submits our revised proposal based on 78.5 FTEs and the requisite Labor mix. . . .

Deloitte reviewed Amendment A003 to the RFQ, and noted that there were neither changes in scope nor complexity in the Statement of Work. Had the flexibility remained to propose a different FTE level and labor mix, we remain confident that we could have performed the work as presented in our original submitted proposed price of \$57,951,835, as justified in our original basis of estimate (included in section 2.3).

Id., Cover Letter, at 1-2.

The CET, when evaluating Deloitte’s cost/price quotation, found that:

Our one concern is the [BOE] detailed in pages 15-50 does not seem to reflect the same level of effort detailed elsewhere My guess – and it’s only a guess – is that the contractor did not update the [BOE] section in the proposal review and what appears in the version of the proposal we evaluated is the same as what was in the original submission. I would think that would need to be clarified/corrected.

AR, Tab 27, Level of Effort Analysis - Deloitte, at 1.

The contracting officer subsequently requested that Deloitte “[p]lease confirm the Department’s understanding that your price and technical approach are based on the labor mix and hours on pages 51-53 of your Price Proposal.” AR, Tab 21, DOS Email to Deloitte, Aug. 16, 2016. Deloitte responded that “[t]his note serves to confirm that our CA/BRAVE price and technical approach are based on the labor mix . . . and hours on pages 51-53 for the base year and then pages 53-59 for the options years.” Id.

PwC argues that Deloitte’s final cost/price quotation was “riddled” with internal contradictions and inconsistencies between the vendor’s cost/price tables and BOE. PwC also contends that the agency evaluators recognized these contradictions and

asked Deloitte to select between two fundamentally different labor mixes. Deloitte's response, the protester argues, effectively deleted 35 pages of labor category data and amounted to a clear and material revision to its quotation.

Section 15.306 of the FAR describes a spectrum of exchanges that may take place between an agency and vendor during negotiated procurements.¹⁹ Clarifications are "limited exchanges" between the agency and a vendor for the purpose of clarifying certain aspects of a quotation or to resolve minor or clerical errors. FAR § 15.306(a)(2); Ricoh USA, *supra*, at 6; Allied Tech. Group, Inc., *supra*, at 5. Discussions, on the other hand, occur when a contracting officer communicates with a vendor for the purpose of obtaining information essential to determine the acceptability of a quotation, or provides the vendor with an opportunity to revise or modify its quotation in some material respect. Diversified Collection Servs., Inc., B-406958.3, B-406958.4, Jan. 8, 2013, 2013 CPD ¶ 23 at 11-12; *see* FAR § 15.306(d).

In situations where there is a dispute regarding whether exchanges between an agency and a vendor constituted discussions, the acid test is whether a vendor has been afforded an opportunity to revise or modify its quotation. Allied Tech. Group, Inc., *supra*, at 6; *see* Booz Allen Hamilton, Inc., B-405993; B-405993.2, Jan. 19, 2012, 2012 CPD ¶ 30 at 13. Communications that do not permit a vendor to revise or modify its quotation, but rather request that the vendor confirm, explain, or clarify what it has already proposed to do, are clarifications and not discussions. Diversified Collection Servs., Inc., *supra*, at 13; Allied Tech. Group, Inc., *supra*. In our view, the premise of PwC's argument is erroneous, and the agency's exchange with Deloitte did not constitute discussions.

The record reflects that vendors were required to base their cost/price submissions on the RFQ-required labor categories and amounts (using the Attachment E cost/price tables), and that Deloitte did so. Moreover, Deloitte's quotation contained but one set of prices; there was no second set of prices, or labor rates, within its BOE.²⁰

¹⁹ This procurement was conducted under the provisions of FAR subpart 8.4, and thus the negotiated procurement provisions of FAR part 15 do not directly apply. However, our Office has held that where agencies use the negotiated procurement techniques of FAR part 15 in FSS buys, such as discussions, we will review the agency's actions to ensure they are fair and equitable. In making this determination, we will review using the standards applicable to negotiated procurements as a guide. Ricoh USA, B-411888.2, Nov. 18, 2015, 2015 CPD ¶ 355 at 5-6; Allied Tech. Group, Inc., B-402135, B-402135.2, Jan. 21, 2010, 2010 CPD ¶ 152 at 5 n.8.

²⁰ While PwC's comments quantified what Deloitte's pricing would have been based on the awardee's BOE, Supp. Protest and Comments, exh. 1, BOE-Attachment E Comparison Chart, the protester acknowledges that Deloitte's quotation included
(continued...)

While Deloitte kept the BOE in its final cost/price quotation, and remained of the view that it could successfully perform the SOW tasks based on the BOE labor mix, it is clear that the awardee's pricing was based exclusively on labor categories and amounts required by the RFQ. The cover letter for Deloitte's final cost/price quotation also makes clear the relationship between the vendor's BOE and its RFQ Attachment E pricing: "[w]hile our original proposal included 71 [FTEs] and an optimal mix of staff, to comply with the requirement of Amended A003 to the RFQ, Deloitte hereby submits our revised proposal based on 78.5 FTEs and the requisite Labor mix." AR, Tab 17, Deloitte Final Quotation, Vol. II, Cost/Price, Cover Letter, at 1. Quite simply, Deloitte's cost/price quotation was anything but "riddled" with internal contradictions and inconsistencies regarding the awardee's pricing, as the protester suggests.

The record also reflects that the agency's exchange with Deloitte was undertaken to confirm what was already in Deloitte's quotation, as well as what the agency already understood the case to be: "[p]lease confirm the Department's understanding that your price and technical approach are based on the labor mix and hours on pages 51-53 of your Price Proposal." AR, Tab 21, DOS Email to Deloitte, Aug. 16, 2016. The exchange was not undertaken with the intent of allowing the vendor to revise its proposal. See FAR § 15.306(d); Booz Allen Hamilton, Inc., *supra*; Warden Assocs., Inc., B-291238, Dec. 9, 2002, 2002 CPD ¶ 215 at 3. Similarly, Deloitte's response was limited to confirming what the agency then understood. Deloitte did not revise its quotation so as to cure a deficiency or material omission, materially alter the technical or cost elements of the quotation, or otherwise revise the quotation to make it acceptable, see eMind, B-289902, May 8, 2002, 2002 CPD ¶ 82 at 5, but provided additional explanation for what it had previously submitted. The awardee also did not effectively remove or delete the BOE from its cost/price quotation as the protester argues, but rather, confirmed that it was not the BOE on which the vendor's pricing was based. In our view, this exchange falls quintessentially within the nature of clarifications; the agency merely sought confirmation of what it already understood regarding Deloitte's pricing, and the firm was not given an opportunity to materially change its quotation. In these circumstances, there is no basis to conclude that the agency improperly conducted discussions with only one vendor.

Technical Evaluation of PwC

Lastly, PwC challenges the evaluation of its quotation under the key and support personnel factor. The protester contends that the agency's identification of one

(...continued)

only one set of pricing, and that Deloitte's pricing was based on the RFQ-mandated labor mix (*i.e.*, Attachment E). PwC Email to GAO, Dec. 7, 2016.

weakness and two risks was unreasonable.²¹ We need not decide, however, whether the agency's evaluation of PwC's key and support personnel was unreasonable because we find that PwC was not prejudiced by any such error.

Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest. Swets Info. Servs., B-410078, Oct. 20, 2014, 2014 CPD ¶ 311 at 14; Lockheed Martin Integrated Sys., Inc., B-408134.3, B-408134.5, July 3, 2013, 2013 CPD ¶ 169 at 8; see Statistica, Inc. v. Christopher, 102 F.3d 1577 (Fed. Cir. 1996).

The record reflects that the agency evaluators found the challenged shortcomings in PwC's quotation under the key and support personnel factor were few and minor: they did not alter the TET's view that PwC's quotation met or exceeded all RFQ requirements; that the advantages and strengths clearly outweighed the risks and weaknesses; and that there was full confidence in the vendor's ability to perform successfully. AR, Tab 20, TET Report, at 21-22. The TET, in fact, assigned PwC the highest-possible, "superior" rating to the vendor's quotation here. Id. at 21. Further, the agency's comparative assessment found that it was Deloitte's strengths in areas other than key and support personnel, and not any PwC weaknesses, that were the significant discriminators between the vendors' quotations. AR, Tab 24, Source Selection Decision, at 13-17. The SSA also did not rely on the challenged shortcomings in PwC's quotation when finding Deloitte to be technically superior to the protester. Id. at 22-23. In sum, even without the weakness and risks which PwC disputes, the record reflects that Deloitte would remain technically superior to PwC overall, and lower cost.

The protest is denied.

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General Counsel

²¹ PwC does not challenge any other aspect of the evaluation of its own technical quotation (nor does it dispute any part of the evaluation of Deloitte's technical quotation other than labor approach risk).