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Decision

Matter of: The Alamo Travel Group, LP

File: B-422293; B-422293.2

Date: April 19, 2024

Barry Roberts, Esq., Roberts Attorneys, PA, for the protester.
Ambika J. Biggs, Esq., William L. Walsh, Jr., Esq., and Eliza J. Unrein, Esq., Hirschler Fleischer, PC, for Cruise Ventures, Inc., the intervenor.
Hattie Russell DuBois, Esq., and William C. Moorhouse, Esq., Department of Defense, for the agency.
Michael P. Price, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging the agency's evaluation of the protester's quotation was unreasonable and disparate is denied where the record demonstrates the agency's evaluation was consistent with the terms of the solicitation, and differences in evaluation ratings resulted from differences in the protester's and awardee's quotations.

DECISION

The Alamo Travel Group, LP, a women-owned small business of San Antonio, Texas, protests the issuance of an order to Cruise Ventures, Inc., a small business of Virginia Beach, Virginia, under request for quotations (RFQ) No. 1632531, issued by the Department of Defense, Defense Human Resource Activity (DHRA) for servicemember travel management company services. The protester contends that the agency's evaluation of its quotation was unreasonable and that the agency engaged in disparate treatment of quotations.

We deny the protest.

BACKGROUND

On July 3, 2023, DHRA issued¹ the RFQ under FAR subpart 8.4 to holders of GSA federal supply schedule (FSS) contracts with special item number 561510, travel agent services, seeking quotations from vendors to provide travel management company services. Contracting Officer's Statement (COS) at 4; Agency Report (AR), Tab 1D, RFQ at 3.² The RFQ contemplated the issuance of a fixed-price order with a 1-year base period, up to four 1-year options, and an additional 6-month option to extend services. COS at 4.

The RFQ was exclusively set aside for small business concerns and announced a two-phase procurement approach. RFQ at 79. Under phase one, vendors were required to submit a passenger name record validation configuration worksheet, which DHRA would evaluate on a pass/fail basis. *Id.* Under phase two, vendors were required to submit quotations that the agency would evaluate, and subsequently issue an order to the responsible vendor whose quotation conformed to the RFQ and would be most advantageous to the government, considering price and the two non-price factors of technical capability and past performance. *Id.* at 3, 85.

Of the two non-price factors, technical capability was more important than past performance, and when combined, the non-price factors were significantly more important than price. *Id.* at 85. The solicitation advised that quotations would receive an adjectival rating under the technical capability factor. *Id.* at 87. As relevant here, a quotation would receive a rating of marginal where it "has not demonstrated an adequate approach or understanding of the requirements, and/or risk of unsuccessful performance is high." *Id.* The RFQ explained that any quotation receiving a rating of marginal or unacceptable under the technical capability factor would be "deemed to have a risk that is so high that award cannot be made against the quot[ation] and the quot[ation] [would] not be further evaluated." *Id.* at 86, 87.

After selecting vendors to advance to phase two of the competition, including Alamo and Cruise Ventures, DHRA received quotations from three vendors by the November 17 deadline for receipt of quotations.³ COS at 5, 6, 8. The agency's technical evaluation board assigned Alamo's quotation a rating of marginal under the

¹ The RFQ was issued using the General Services Administration (GSA)'s e-Buy system. The system allows ordering activities to post requirements, obtain quotes, and issue orders electronically. Federal Acquisition Regulation (FAR) 8.402(d).

² The RFQ was amended a total of 4 times, with amendment 0003 resulting in the RFQ number changing from RFQ No. 1632531 to RFQ No. 1665305. *Id.* All references to the RFQ in this decision refer to the fourth amendment to the RFQ, unless otherwise noted. All page number citations in this decision refer to the Adobe PDF page numbers of the documents provided by the parties, unless otherwise noted.

³ Alamo is the incumbent contractor providing the agency with similar travel management services to those being procured here. Protest at 2.

technical capability factor, and Alamo's quotation was not further evaluated under the past performance or price factors. *Id.* at 8-9; AR, Tab 4, Alamo Brief Explanation at 5. The agency ultimately selected Cruise Ventures for award on December 21, and this protest followed.

DISCUSSION

Alamo argues that DHRA's evaluation of its quotation was unreasonable in multiple respects. The protester asserts that the agency's "failure to consider and evaluate Alamo's past performance is arbitrary and contrary to law." Protest at 2. The protester also contends that the agency's assessment of a rating of marginal to Alamo's quotation under the technical capability factor "is unreasonable and also arbitrary." *Id.* DHRA argues that the protest is untimely, and alternatively contends that its evaluation of Alamo's quotation was reasonable and consistent with the terms of the solicitation. Memorandum of Law (MOL) at 3-5. As discussed below, we dismiss in part, and deny in part the protest.

Timeliness of the Protest

Prior to filing its agency report, DHRA filed a request to dismiss the protest in its entirety, arguing that Alamo's protest ground that the agency unreasonably failed to evaluate past performance represents an untimely challenge to the terms of the solicitation. Req. for Dismissal at 1-4. In this regard, the agency contends that because the RFQ informed vendors that any quotation that received a rating of marginal or worse under the technical capability factor would not be further evaluated, the protester's argument that the agency unreasonably failed to evaluate Alamo's past performance amounts to an untimely challenge to the terms of the solicitation and should therefore be dismissed. *Id.* at 2.

Furthermore, DHRA argues that the entire protest is untimely because it issued the order to Cruise Ventures on December 21 and vendors received notification of the issuance on the same day through GSA's e-Buy portal.⁴ *Id.* at 3; MOL at 4. The agency contends that although it provided the protester with a brief explanation of its decision to issue the order to Cruise Ventures on January 4, because this was a procurement conducted under FAR subpart 8.4, no debriefing was required--therefore, the protest filed with our Office on January 11 was untimely because it was filed more than 10 days after the order was issued and notifications were sent to vendors. Req. for Dismissal at 3-4.

In response, Alamo argues that "the solicitation was explicit that past performance would be evaluated" and further maintains that evaluation of past performance was "required as a matter of law." Resp. to Req. for Dismissal at 3. In this regard, the

⁴ The contracting officer asserts that "DHRA records support that the protester was notified [of the agency's order decision] via the GSA e-Buy [portal] on 21 December 2023." COS at 11.

protester maintains that “there must always be an evaluation of past performance” because “such evaluation could overcome other evaluation factors.” Protest at 4. In other words, the protester asserts that the agency had to evaluate past performance no matter the result of the evaluation of other factors.

The protester also contends that its protest was timely filed because it “never received any notice from DHRA that the award has been issued” on December 21. *Id.* at 1. The protester maintains that it was only after an Alamo manager searched the internet for information about another solicitation that it became aware of DHRA’s issuance of the order in the current procurement, and that it then requested a “debriefing” on January 3, which was provided on January 4. *Id.* at 1-2. Because the protest was filed with our Office on January 11, within 10 days of the protester’s receipt of the agency’s explanation of its order decision, the protester argues its protest was timely filed.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. 4 C.F.R. § 21.2. These rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. *Verizon Wireless*, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. Protests challenging alleged solicitation improprieties must be filed before proposals or quotations are due in order to be considered timely. 4 C.F.R. § 21.2(a)(1). Similarly, challenges which go to the heart of the underlying ground rules by which a competition is conducted should be resolved as early as practicable during the solicitation process, but certainly in advance of an award decision if possible, not afterwards. *Adams & Assocs., Inc.*, B-417120, B-417125, Jan. 16, 2019, 2019 CPD ¶ 21 at 3.

As stated above, under the technical capability factor, the RFQ expressly stated that “[a]ny quot[ation] receiving an overall rating of ‘[m]arginal’ or ‘[u]nacceptable’ will be deemed to have a risk that is so high that award cannot be made against the quote and the quote will not be further evaluated.” RFQ at 86. DHRA’s technical evaluators assigned Alamo’s quotation a rating of marginal under the technical capability factor and did not further evaluate Alamo’s past performance or price; this information was subsequently conveyed by the agency to the protester on January 4. AR, Tab 19, Technical Evaluation Report at 4-5; AR, Tab 4, Alamo Brief Explanation at 5. The agency’s decision not to evaluate the protester’s past performance or price was thus consistent with the express terms of the solicitation, where the agency assigned a rating of marginal to the protester’s quotation under the technical capability factor.

We therefore find Alamo’s argument that DHRA should have evaluated the past performance information submitted by all vendors, regardless of the ratings assigned under the technical capability factor, goes directly to the ground rules of the

procurement as established by the RFQ and amounts to an untimely challenge to the terms of the solicitation. This protest ground is accordingly dismissed.⁵

However, on this record, we find that Alamo's challenge to DHRA's evaluation of its quotation under the technical capability factor was timely filed. While the agency argues that all unsuccessful vendors were notified via the GSA e-Buy portal of the agency's order decision, the record does not demonstrate that such notice was provided or received by the protester. In this regard, the agency produced only screenshots of a GSA e-Buy webpage that indicated vendors were notified of the agency's decision on December 21. AR, Tab 2, GSA Webpage Notice of Award at 2; AR, Tab 14, GSA Webpage Alamo Travel at 1. Notably, the agency did not produce any actual notification letters that were provided to unsuccessful vendors, nor did it indicate what information the notification letters conveyed to the unsuccessful vendors.⁶

Alamo's protest was specifically based on DHRA's evaluation of its quotation under the technical capability factor, details of which the protester first learned on January 4, when the agency provided a brief explanation of its order decision. On this record, we cannot conclude that the protester knew or should have known its bases of protest on December 21, as alleged by the agency, and instead find the protester first learned its bases of protest on January 4, when the agency provided a brief explanation of its order decision. See *Castro & Co., LLC, supra* at 5-6 (finding protest of an FSS procurement filed more than 10 days after the award decision was made to be timely, where the protester first learned of the information giving rise to the protest through a brief explanation letter and filed its protest within 10 days of receipt of the letter). Accordingly, we conclude the remaining protest ground was timely filed. See 4 C.F.R. § 21.2(a)(2).

⁵ The protester's collateral arguments that the agency was required to evaluate past performance as a matter of law and that the procurement was actually a FAR part 15 procurement are dismissed for similar reasons. The solicitation plainly stated that the acquisition would "utilize[] the procedures under [FAR] [subp]art 8.4 that outlines the ordering procedures for Federal Supply Schedules" and that the agency was "not using [FAR] [p]art 15 procedures." RFQ at 3, 85. Any challenge to the agency's acquisition strategy, including its decision to issue the order against previously established FSS contracts pursuant to FAR subpart 8.4, or the announced evaluation methods that the agency intended to utilize, should have been filed with our Office prior to the due date for receipt of quotations in order to be considered timely. 4 C.F.R. § 21.2(a)(1).

⁶ The contracting officer explains that "the [GSA e-Buy] system automatically sends the vendor an email message notifying them of the 'No Award' decision." COS at 9. However, on this record, it is unclear whether the protester ever received this notification. Furthermore, a general notification regarding the agency's selection of a particular awardee, without more, would not put the protester on notice of concerns with the agency's evaluation of quotations. See *Castro & Co., LLC, B-412398*, Jan. 29, 2016, 2016 CPD ¶ 52 at 6 n.6.

Evaluation of Technical Capability

Alamo argues that DHRA's assessment of a rating of marginal to its quotation under the technical capability factor was arbitrary and unreasonable. In this regard, the protester contends that the agency "wrongfully determined" that the protester's quotation contained a significant weakness and presented "too great a risk" because of its proposed staffing approach, which included a statement that the protester was actively recruiting during its performance of the prior contract to fill one of the on-site positions required by the solicitation. Comments at 1. The protester maintains that, as the incumbent contractor, its level of service has not been affected despite not having an on-site agent in Louisiana and that it was confident it could fill all positions that required on-site agents if it was issued the order in this procurement. AR, Tab 7, Alamo Quotation Vol. II at 33; Alamo Resp. to Addl. Briefing Req. at 2.

Further, Alamo argues that DHRA's evaluation of quotations constituted disparate treatment. Specifically, the protester maintains that its quotation "unequivocally stated" that it would meet all staffing requirements of the solicitation, and that its quotation was "indistinguishable" from Cruise Ventures's quotation. Alamo Resp. to Addl. Briefing Req. at 1. In this regard, based on outreach by Cruise Ventures to Alamo's employees after award, the protester alleges that Cruise Ventures also was actively recruiting personnel to perform under the contract, which demonstrates the agency treated the vendors unequally where it downgraded the protester's quotation for proposing to similarly recruit personnel. Comments at 3.

DHRA argues that its evaluation of Alamo's quotation under the technical capability factor was reasonable and consistent with the terms of the solicitation. Agency Resp. to Addl. Briefing Req. at 6. The agency contends that it reasonably concluded that the protester's "equivocations on its ability to fill the position [required by the solicitation]" created an increased risk for the government. *Id.* at 5. Further, the agency argues that its evaluation of quotations did not amount to disparate treatment, because Cruise Ventures's quotation demonstrated a commitment to meet and exceed on-site staffing requirements, where Alamo's quotation hedged on its ability to do the same; thus, according to the agency, the differences in the ratings assigned stemmed from differences between the vendors' quotations. *Id.* at 8.

Where, as here, an agency issues a solicitation to FSS contract holders under FAR subpart 8.4 procedures and conducts a competition, we will review the record to ensure that the agency's evaluation was reasonable and consistent with the terms of the solicitation. *EA Eng'g, Sci., and Tech., Inc.*, B-417361, B-417361.2, June 13, 2019, 2019 CPD ¶ 218 at 3. A protester's disagreement with the agency's evaluation judgments, without more, does not establish that the evaluation was unreasonable. *Id.*

Further, in conducting procurements, agencies generally may not engage in conduct that amounts to unfair or disparate treatment of competing vendors. *Arc Aspicio, LLC et al.*, B-412612 *et al.*, Apr. 11, 2016, 2016 CPD ¶ 117 at 13. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings

did not stem from differences between the vendors' quotations. *Camber Corp.*, B-413505, Nov. 10, 2016, 2016 CPD ¶ 350 at 8.

The technical capability factor of the RFQ contained two elements, technical approach and corporate experience, and staffing plan. RFQ at 82-83. As relevant here, under the staffing plan element, the RFQ advised that the vendors' quotations "shall include a description of the proposed personnel resources for this RFQ effort, which addresses their capabilities." *Id.* at 83. The RFQ required vendors to include in their quotations a personnel workforce plan that, among other things, addressed "[t]he number of agents dedicated to providing travel services at on-site locations listed [in the performance work statement (PWS)]." *Id.* Section 11 of the PWS required on-site travel agent staffing at two locations, Marine Corps Air Station Yuma, Arizona, and Marine Corps Forces Reserve New Orleans, Louisiana. *Id.* at 71.

The RFQ advised that DHRA would evaluate quotations under the technical capability factor "to assess the vendor's proposed technical capability, approach, and corporate experience, as detailed in its quot[ation] to satisfy the [g]overnment's requirements." *Id.* at 85. The solicitation further provided that an integrated assessment of all factor elements, including risk, would be made to arrive at an adjectival rating. *Id.* at 85-86. The RFQ explained that risk "assesses the degree to which the vendor's proposed technical approach for the requirements of the RFQ may cause disruption of schedule, increased costs, degradation of performance, the need for increased [g]overnment oversight, or the likelihood of unsuccessful contract performance." *Id.* at 86. Finally, the RFQ advised that vendors' staffing plans should "clearly demonstrate" the ability to provide highly qualified, fully trained personnel, "clearly address" the approach for providing services to satisfy urgent, emergency, and short notice requirements, and further address staffing requirements. *Id.* at 86-87.

DHRA assigned Alamo's quotation a rating of marginal under the technical capability factor. AR, Tab 19, Technical Evaluation Report at 4. The protester's quotation received four strengths, five weaknesses, and one significant weakness. *Id.* at 5. In assigning the significant weakness the agency explained that the PWS required vendors to maintain an on-site staffing presence at Marine Corps locations in Arizona and Louisiana, which was mandatory and essential to meeting mission requirements in those locations. *Id.* at 8. The agency recognized that the protester's quotation included a chart that designated Alamo would provide one full-time agent on-site in Louisiana. *Id.*; see also AR, Tab 7, Alamo Quotation Vol. II at 37. However, the agency noted that the quotation also stated in several places that the protester is "currently and continuing to recruit for an on-site agent for [Louisiana]" as part of its performance of the incumbent contract, and that Alamo will "continue recruiting for [Louisiana] on-site agent." AR, Tab 19, Technical Evaluation Report at 8; see also AR, Tab 7, Alamo Quotation Vol. II at 33, 38, and 55. The agency found that the protester's statements regarding the on-site staffing requirement did not "give the [g]overnment confidence that the [vendor] will meet the requirement for full time/onsite support" in Louisiana. AR, Tab 19, Technical Evaluation Report at 8. The agency therefore concluded that it was unclear whether the protester understood the PWS requirement, and thus represented a risk to

the agency with the potential to negatively impact Marine Corps travel services for the Louisiana location. *Id.*

In contrast, DHRA assigned Cruise Ventures's quotation a rating of outstanding under the technical capability factor. AR, Tab 19, Technical Evaluation Report at 2. The awardee's quotation received eight strengths, and no weaknesses or significant weaknesses. *Id.* The awardee's quotation contained multiple representations that it would meet the on-site staffing requirements of the solicitation; for example, the awardee states that it "understands and agrees to provide fully trained government agents for both of the staffed offices listed [in the PWS], 24/7/365" and that it "will provide staffing for on-site locations." AR, Tab 18, Cruise Ventures Quotation at 5, 9. The awardee further provided a rationale for its proposed staffing approach, noting that its staffing plan was based on historical data, its understanding of the agency's "24/7/365" requirements, its recognition that on-site staff are dedicated to their assigned base, and its ability to provide backup on-site coverage in the event of an absence. *Id.* at 10. The awardee also described its approach to increase staffing by [DELETED] percent during the start-up time period, in recognition of the surge in customer requests generally associated with this time period. *Id.*

Critically, the awardee did not make representations in its quotation indicating the possibility of any of the on-site staffing requirements not being met by the time contract performance was set to begin, or otherwise explain a need to recruit for any of the required positions. See *generally id.* DHRA specifically noted a strength in the awardee's quotation under the staffing plan element of the technical capability factor relating to the awardee's proposed capability to meet increased demand during the transition and start-up period. AR, Tab 19, Technical Evaluation Report at 4.

On this record, we find that DHRA reasonably assessed a significant weakness to the protester's quotation under the staffing plan element of the technical capability factor. Though the protester's quotation indicated in some places that it intended to meet the on-site staffing position in Louisiana, the quotation also indicated in multiple other places that Alamo had been unsuccessful in recruiting personnel for that position for over 8 months. See, e.g., AR, Tab 7, Alamo Quotation Vol. II at 33 ("we have been actively recruiting an on-site agent [for Louisiana] for the last 8 months . . ."). We find no basis to question the agency's conclusion that the protester's quotation presented risk to the agency in this regard, where the protester's own quotation contained conflicting information about its ability to meet the requirements of the PWS. Regardless of the protester's assertion that its service as the incumbent contractor has not been affected due to the lack of an on-site agent in Louisiana, the agency reasonably concluded that the protester's quotation presented some risk in meeting the solicitation requirement for on-site staffing.

Further, we find DHRA's evaluation of Cruise Ventures's quotation did not constitute disparate treatment. Here, the record shows that the different ratings assigned to Alamo's and Cruise Ventures's quotations under the technical capability factor was a result of differences in the vendors' quotations. Though the protester argues that

post-award outreach suggested the awardee was actively recruiting travel agents to perform under the contract, the awardee's quotation unequivocally stated that it would meet all the on-site staffing requirements. In contrast, the protester expressly stated in its quotation that it had been recruiting to fill the on-site agent position in Louisiana for 8 months, casting at least some doubt, in the agency's eyes, about its ability to meet the requirements of the solicitation.⁷ Accordingly, we find it was reasonable of the agency not to assess a significant weakness to Cruise Ventures's quotation on this basis.

The protest is denied.

Edda Emmanuelli Perez
General Counsel

⁷ While both the protester's and awardee's quotations essentially stated only that each vendor would comply with the staffing requirements and committed to providing the requisite on-site staffing agents, without any further explanation, the key difference here is that the protester's quotation also stated that the protester had been unsuccessfully recruiting for one of the required on-site agent positions for the past 8 months yet offered no explanation of how it would resolve this recruiting challenge to meet the government's staffing requirements. The record reflects that this difference is the primary reason for the difference in ratings.