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Decision

Matter of: K2 Aerial Applications, LLC

File: B-421376; B-421376.2

Date: April 12, 2023

David W. Cramer, Esq., MB Law Group, LLP, for the protester.
William B. Blake, Esq., Department of the Interior, for the agency.
Kyle E. Gilbertson, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's challenge of the agency's evaluation of its quotation as technically unacceptable is denied where the record shows that the evaluation was reasonable and in accordance with the terms of the solicitation.
 2. Protest challenging the evaluation of awardee's quotation is dismissed where the protester is not an interested party to maintain its allegations.
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DECISION

K2 Aerial Applications, LLC (K2), a service-disabled veteran-owned small business of Echo, Oregon, protests the award of a contract to Valley Air, LLC (Valley Air), of Caldwell, Idaho, under request for quotations (RFQ) No. 140L2623Q0003, issued by the Department of the Interior, Bureau of Land Management (BLM), for the distribution of sagebrush and other plant seed. The protester challenges the agency's evaluation of quotations and resulting award decision.

We deny the protest in part, and dismiss it in part.

BACKGROUND

The agency issued the RFQ on December 5, 2022, as a combined synopsis/solicitation for the acquisition of commercial items under Federal Acquisition Regulation (FAR) subpart 12.6, using the simplified acquisition procedures set forth in FAR part 13.

Agency Report (AR), Tab 3, RFQ at 1, 3.¹ Issued as a total small business set-aside, the RFQ sought fixed-price quotations for the distribution of sagebrush and other plant seed on 11 tracts of agency-managed land in Idaho. *Id.* at 1, 3, 29-39. The solicitation contemplated the award of a single contract, with an anticipated period of performance from January 18 through February 10, 2023. *Id.* at 1, 12.

Under the RFQ, the agency would make award to the “responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered.” *Id.* at 12. The solicitation stated that the agency’s award decision would be based on three evaluation factors: technical capability; prior experience and past performance; and price. *Id.* at 12-14. The RFQ established December 26, 2022, as the due date for quotations. *Id.* at 1. Three vendors submitted quotations in response to the solicitation. AR, Tab 7, Award Determination at 1.

After review of quotations, the technical evaluator recommended Valley Air’s quotation for award. *Id.* The contracting officer, as the source selection authority, agreed that Valley Air’s quotation represented the best value to the government. *Id.* at 2. On January 3, 2023, the agency awarded the contract to Valley Air, in the amount of \$109,967.15. AR, Tab 12, Contract Award at 1.

The agency provided K2 with a brief explanation of the basis of award pursuant to section 13.106-3(d) of the FAR. AR, Tab 13, Post-Award Correspondence at 7. The agency informed K2 that its evaluation had concluded that K2’s quotation “did not demonstrate adequate technical capability,” and was therefore technically unacceptable. *Id.* On January 6, K2 filed this protest with our Office.²

DISCUSSION

The protester challenges the agency’s evaluation of K2’s and Valley Air’s quotations, as well as the resulting award decision. K2 argues that BLM unreasonably evaluated its quotation as technically unacceptable. Protest at 1. Had the agency performed a proper evaluation, K2 claims, its lowest-priced quotation would have been selected for award. *Id.* The protester also challenges the agency’s evaluation of Valley Air’s quotation, arguing that the contracting officer should have disqualified Valley Air from award. Comments & Supp. Protest at 6. We have considered the arguments and issues raised by K2, and while we do not address them all, we find no basis on which to sustain the protest.

¹ Unless otherwise noted, references to page numbers of documents in the agency report are to the Adobe PDF document page numbers.

² On February 6, the head of contracting activity for BLM notified GAO that it had authorized an override of the stay required by the Competition in Contracting Act, based upon a determination that such action was in the “best interests” of the United States. Notice of Performance Stay Override at 4; 31 U.S.C. § 3553(d)(3)(C).

Challenges to Evaluation of K2's Quotation

K2 protests the agency's evaluation of its quotation as technically unacceptable, arguing that its quotation satisfied all of the solicitation's technical requirements. Protest at 2-3. The agency responds that it reasonably evaluated K2's quotation consistent with the RFQ's stated evaluation criteria. Memorandum of Law (MOL) at 7.

When using simplified acquisition procedures, an agency must conduct the procurement consistent with a concern for fair and equitable competition, and must evaluate quotations in accordance with the solicitation's terms. *SSI Tech., Inc.*, B-412765.2, July 13, 2016, 2016 CPD ¶ 184 at 3. In reviewing a protest of an allegedly improper simplified acquisition evaluation, our Office does not reevaluate quotations; rather, we review the record to determine if the evaluation was reasonable, consistent with the solicitation's evaluation scheme, as well as procurement statutes and regulations, and adequately documented. *Antico Cantiere Del Legno Giovanni Aprea Di Cataldo S.R.L.*, B-414112, Feb. 21, 2017, 2017 CPD ¶ 58 at 4. A protester's disagreement with the agency's judgment, without more, is not sufficient to establish that the agency acted unreasonably. *Id.*

Under the technical capability evaluation factor, the solicitation required vendors to "clearly demonstrate the ability to complete the contract within the required period of performance." RFQ at 12. As part of that requirement, the RFQ instructed vendors that quotations must address their "technical capability of applying sagebrush seed at a rate as low as one half (0.5) pound bulk seed per acre," cautioning that vendors "must clearly demonstrate the capability to uniformly apply sagebrush seed at the specified rates." *Id.* (emphasis omitted). In addition, the RFQ required vendors to describe their available seeding equipment, to include the equipment "type and capabilities." *Id.* at 13.

In reviewing K2's quotation, the agency questioned the firm's capability to satisfy the required sagebrush seeding rate. AR, Tab 5, K2 Technical Evaluation at 1. Although K2's quotation "provided a good description of the equipment that will be used," the agency evaluator found that there were "no examples given (including in the past performance) of this equipment being used to seed at rates as low as 0.5 lbs of sagebrush per acre." *Id.* In addition, the evaluator had concerns with K2's plan to use a fixed wing aircraft with a "variable rate rotary gate," finding that "this type of equipment has not been proven to seed sagebrush at 0.5 lbs per acre." *Id.* at 2. The evaluator ultimately determined that K2's quotation "did not demonstrate adequate technical capability" because it failed to "address how the contractor's equipment will be able to seed sagebrush at rates as low as required for this contract." AR, Tab 7, Award Determination at 1-2. The contracting officer agreed with the technical evaluation and concluded that K2's quotation did not meet the "technical part of the requirement," and was therefore "[n]ot technically sufficient." AR, Tab 10, Pricing Memorandum at 1; AR, Tab 11, Abstract of Offers at 1.

Here, though the RFQ specifications listed seed application rates for each of the 11 sites, the evaluation criteria specifically required vendors to address their "technical

capability of applying sagebrush seed at a rate as low as one half (0.5) pound bulk seed per acre.” RFQ at 12. Indeed, the solicitation explained that the listed application rates for the individual sites “could be lower depending on seed availability.” *Id.* Therefore, the evaluation criteria’s required sagebrush seeding rate--not the individual application rates listed in the specifications--properly governed the agency’s evaluation.

As K2 itself concedes, the firm’s quotation did not specifically address the technical capability to apply sagebrush seed at the 0.5 pound per acre rate. Comments & Supp. Protest at 1. Instead, K2’s quotation generally claimed that the company possessed “the required equipment and technologies,” without directly addressing the required seeding rate. AR, Tab 4, K2 Quotation at 24. With regard to equipment, K2 explained that it would utilize a “variable rate rotary gate,” claiming that this “rotary gate has proven to be the most reliable low volume distribution system.” *Id.* at 3, 7 (emphasis omitted). Again, K2’s quotation did not state, or otherwise explain, how this equipment could meet the evaluation criteria’s required seeding rate for sagebrush.

It is a vendor’s responsibility to submit a well-written quotation, with adequately detailed information, which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. *iSenpai, LLC*, B-421123, Dec. 28, 2022, 2022 CPD ¶ 322 at 4. Additionally, clearly stated solicitation technical requirements are considered material to the needs of the government, and a quotation that fails to conform to such material terms is technically unacceptable and may not form the basis for award. *4D Sec. Solutions, Inc.*, B-400351.2, B-400351.3, Dec. 8, 2008, 2009 CPD ¶ 5 at 4. In this connection, our Office has found blanket assertions of compliance with stated requirements are not an adequate substitute for detailed information necessary to establish how a vendor proposes to meet the agency’s requirements. *Utech Prods., d/b/a EndoSoft LLC*, B-418060, Dec. 20, 2019, 2019 CPD ¶ 430 at 4.

On this record, we have no basis to object to the agency’s conclusion that K2’s quotation failed to demonstrate that it was technically acceptable, particularly where the evaluation criteria expressly asked vendors to “clearly demonstrate the capability to uniformly apply sagebrush seed” at a “rate as low as one half (0.5) pound bulk seed per acre.” RFQ at 12 (emphasis omitted).

Furthermore, we reject K2’s contention that the agency improperly relied on K2’s submitted prior experience as a basis to find K2’s quotation unacceptable under the technical capability factor. Comments & Supp. Protest at 2. The protester claims that the agency used K2’s prior experience with seeding at 1.6 pounds/acre--the required rate under that effort--as evidence K2 was unable to meet the evaluation criteria’s required sagebrush rate of 0.5 pound/acre. *Id.* The agency responds that it properly and independently assessed the technical capability of K2’s seeding equipment. Supp. Contracting Officer’s Statement (COS) at 2.

The evaluation record shows that the agency reviewed the technical capability portion of K2’s quotation and concluded the firm failed to demonstrate the capability to meet the

required seeding rate for sagebrush. The agency then noted that its unacceptability determination was further supported by K2's lack of prior experience performing service at the required seeding rate. Specifically, the evaluator found that K2's quotation "claims that [its] equipment is capable of seeding at the rates required, but there are no examples given (including in the past performance) of this equipment being used to seed at rates as low as 0.5 lbs of sagebrush per acre." AR, Tab 5, K2 Technical Evaluation at 1.

The evaluator's reference to a lack of evidence "including in the past performance" indicates that not only had the evaluator reviewed the technical capability portion of K2's quotation, but also the prior experience and past performance section. *Id.* After reviewing both sections, the evaluator was unable to find any evidence of "this equipment being used to seed at rates as low as 0.5 lbs of sagebrush per acre." *Id.* Instead, K2's quotation generally claimed, without support, that "the equipment is capable of seeding at the rates required." *Id.* Thus, to the extent the agency also looked to K2's prior experience and past performance information, the record is clear that it did so because the agency could not find any information in K2's technical quotation to demonstrate its capability to meet the agency's low rate seeding requirements. Accordingly, there is no basis for the protester's assertion that the agency improperly relied on its past performance and experience information to find its quotation technically unacceptable.

Challenges to Evaluation of Valley Air

K2 also challenges the agency's failure to disqualify Valley Air's quotation from award. Specifically, the protester claims that the contracting officer was "well aware" that Valley Air is a "shell company" that is "being utilized as a front for non-small businesses to win government contracts." Comments & Supp. Protest at 6. The protester claims that the contracting officer, cognizant of this information, unreasonably relied on Valley Air's self-certification as a small business. Supp. Comments at 3. In addition, K2 raises a litany of other allegations regarding Valley Air's performance of the awarded contract, as well as Valley Air's small business size status. Comments & Supp. Protest at 2-6. The agency responds that K2's supplemental protest allegations are based on misstated facts, inapplicable subcontracting limitations, or otherwise concern matters exclusively reserved for the Small Business Administration (SBA). Supp. COS at 3.

We need not reach the merits of these allegations, however, because K2 is not an interested party to challenge the agency's evaluation of Valley Air. Under the bid protest provisions of the Competition in Contracting Act, 31 U.S.C. §§ 3551-3557, only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. 4 C.F.R. § 21.0(a)(1). Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. *AIS Eng'g, Inc.*, B-420431.2, Jan. 19, 2022, 2022 CPD ¶ 35 at 3. A protester is not an interested party if it is ineligible to

receive award under the protested solicitation, or if it would not be in line for award if the protest was sustained. *Id.* at 4.

Since we find that the agency reasonably determined that K2's quotation was technically unacceptable, K2 is ineligible for award and consequently not an interested party to raise its allegations challenging the awardee, Valley Air. *Coley & Assocs., Inc.*, B-404034 *et al.*, Dec. 7, 2010, 2011 CPD ¶ 6 at 7. Even if we were to conclude that the agency's evaluation of Valley Air's quotation or source selection decision was in error, the protester would remain ineligible for award because the agency reasonably determined that K2's quotation was unacceptable for failing to meet the RFQ's required seeding rate. *Global-PPE, Inc.*, B-419536, Mar. 10, 2021, 2021 CPD ¶ 118 at 4.

Moreover, the evaluation record confirms that K2 would not be next in line for award even if its challenges to the evaluation of Valley Air's quotation were sustained. Where there is an intervening vendor who would be in line for the award even if the protester's challenges were sustained, the intervening vendor has a greater interest in the procurement than the protester, and we generally consider the protester's interest to be too remote to qualify it as an interested party. *NCS Techs., Inc.*, B-416936, Jan. 11, 2019, 2019 CPD ¶ 56 at 3.

Here, three vendors submitted quotations in response to the solicitation. AR, Tab 7, Award Determination at 1. The agency concluded that both Valley Air, and a third vendor, were "technically capable of completing this type of seeding application." *Id.* In contrast, the agency determined that K2's quotation "did not demonstrate adequate technical capability." *Id.* The agency then considered the third vendor's quotation as part of its best-value tradeoff. *Id.* While the record shows that this third vendor's quotation was assessed as less beneficial than Valley Air's, the quotation was deemed to be acceptable, unlike K2's quotation. *Id.* The inclusion of this third vendor's quotation in the tradeoff decision provides contemporaneous evidence that this was the quotation next in line for award. *Kearney & Co., PC*, B-420331, B-420331.2, Feb. 4, 2022, 2022 CPD ¶ 56 at 11.

Despite being made aware of this intervening third vendor from the agency's disclosure of the evaluation record in its agency report, K2 has not challenged the eligibility of that quotation for award. AR, Tab 7, Award Determination at 1; AR, Tab 11, Abstract of Offers at 1. Thus, even if we were to conclude that the agency's evaluation of Valley Air's quotation was in error, or find Valley Air ineligible for award, K2 would not be in line for award. Instead, the intervening third vendor's quotation would have been next in line for award. *Coley & Assocs., Inc.*, *supra* at 7.

Consequently, the protester is not an interested party to raise these challenges to the agency's evaluation of Valley Air's quotation, and these allegations are dismissed.³

³ We note that even if K2 had been an interested party to challenge the evaluation of Valley Air, we would have dismissed many of its arguments. For instance, our Office

4 C.F.R. § 21.0(a)(1); *Dee Monbo, CPA*, B-412820, May 23, 2016, 2016 CPD ¶ 140 at 4 (concluding that, where agency reasonably determined that protester’s quotation was technically unacceptable, protester was not an interested party to challenge the agency’s evaluation of the awardee’s quotation).

The protest is denied in part and dismissed in part.

Edda Emmanuelli Perez
General Counsel

does not consider arguments related to the administration of an awarded contract. 4 C.F.R. § 21.5(a); *J. Squared Inc., d/b/a Univ. Loft Co.*, B-417010, B-417010.2, Jan. 22, 2019, 2019 CPD ¶ 65 at 2 n.2 (concluding allegation that awardee “will not comply with applicable small business requirements during performance of the awarded delivery order” is a matter of contract administration, which we will not review). Nor does our Office consider challenges to the awardee’s size status, as the protester itself concedes. Comments & Supp. Protest at 6 (acknowledging “size determinations are not within the ambit of the GAO”). The Small Business Act, 15 U.S.C. § 637(b)(6), gives the SBA, not our Office, conclusive authority to determine matters of small business size status for federal procurements. 4 C.F.R. § 21.5(b)(1).