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Decision

Matter of: Eagle Hill Consulting, LLC

File: B-421938.2; B-421938.3

Date: December 20, 2023

H. Todd Whay, Esq., Baker, Cronogue, Tolle & Werfel, LLP, for the protester.
Robert A. Burton, Esq., Zachary H. Schroeder, Esq., and Alex Ward, Esq., Crowell & Moring LLP, for PotomacWave Consulting, Inc., the intervenor.
Matthew Lane, Esq., and Lisa Dilliplane, Esq., Department of Homeland Security, 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

1. Protest challenging the agency's evaluation of the awardee's quotation under the corporate experience factor is dismissed for failing to state a valid basis of protest where the protester's allegations do not demonstrate that the agency's evaluation was inconsistent with the stated evaluation criteria.
 2. Protest challenging the agency's evaluation of quotations is dismissed where the protest grounds are based on an unreasonable interpretation of the solicitation and therefore are legally insufficient.
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DECISION

Eagle Hill Consulting, LLC, of Arlington, Virginia, protests the agency's establishment of a blanket purchase agreement (BPA) with PotomacWave Consulting, Inc., of Alexandria, Virginia, under request for quotations (RFQ) No. RFQ1631725, issued by the Department of Homeland Security, Federal Emergency Management Agency (FEMA) for various administrative support services. The protester contends that the agency unreasonably evaluated the vendors' quotations in multiple respects.

We dismiss the protest.

BACKGROUND

On June 22, 2023, FEMA issued the RFQ under Federal Acquisition Regulation (FAR) subpart 8.4 to holders of General Services Administration (GSA) multiple award schedule contracts with special item number 541611, professional services, business administration services. Req. for Dismissal, exh. 1, RFQ amend. 2 at 1.¹ The agency sought quotations from vendors to provide various support services, including the development and implementation of the agency's strategic plan, establishment of a resource allocation planning process, implementation of change management initiatives, enhancement of internal and external communications, and leading the design and implementation of the agency's workforce readiness cycle. *Id.* The RFQ contemplated the establishment of a fixed-price BPA with a reimbursable travel contract line item number for a 1-year base period and up to four 1-year options. *Id.*

The RFQ advised that FEMA would conduct a two-phase procurement, in which the agency would evaluate corporate experience under phase 1, and oral presentations and price under phase 2. *Id.* at 2. The RFQ stated that following phase 1 of the procurement, the agency would send advisory notifications which would include the agency's recommendation as to whether a particular vendor should proceed with quotation submission under phase 2.² Under the oral presentation factor, the RFQ provided that the agency would "assess its confidence that the [c]ontractor can successfully perform the requirements of the RFQ" based on certain scenario-based questions. *Id.* at 4. The RFQ informed vendors that the agency intended to select a single vendor for the BPA on a best-value tradeoff basis, considering price and the non-price factors. *Id.* at 2. The non-price factors, when combined, were significantly more important than price.

FEMA received quotations from vendors including Eagle Hill and PotomacWave and initially selected PotomacWave for the BPA on August 23 at an estimated value of \$21,389,617; the protester's proposed price was \$33,206,888.15. Protest at 7-8. After Eagle Hill timely filed a protest with our Office on September 1, the agency announced it would take corrective action, pledging to "reconsider the proposal submissions and its award decision." *Eagle Hill Consulting, LLC*, B-421938.1, Sep. 22, 2023 (unpublished decision). Our Office subsequently dismissed the protest as academic on September 22. *Id.*

After reevaluating quotations, FEMA again selected PotomacWave for the BPA at the same estimated value of \$21,389,617. Protest, exh. 2, Notification of Unsuccessful Vendor at 4. On September 25, the agency provided the protester a notification of its

¹ The RFQ was amended and reissued on July 26. Req. for Dismissal at 2 n.1. All references to the RFQ in this decision refer to the RFQ as amended and reissued on July 26, unless otherwise noted.

² Both the protester and awardee were advised to and did submit phase 2 quotations, which were evaluated accordingly.

selection decision, along with a brief explanation of its evaluation of the protester's quotation and best-value tradeoff determination. *Id.* The protester timely filed the instant protest on September 28.

DISCUSSION

Eagle Hill challenges FEMA's evaluation of quotations in multiple respects. Specifically, the protester argues that the agency failed to reasonably evaluate PotomacWave's quotation under the corporate experience factor, and further failed to conduct a reasonable and detailed evaluation of PotomacWave's approach and capability to meet the agency's requirements. Protest at 10-11. The protester also argues that the agency failed to evaluate all vendors' quotations in a manner consistent with the terms of the solicitation and prevented vendors from competing on an equal basis. Supp. Protest at 4-6. Finally, the protester contends that the solicitation was latently ambiguous, that the awardee's quotation should have been found ineligible for award, and that the agency's best-value tradeoff determination was flawed. Supp. Protest at 7.

FEMA requests dismissal of the protest, primarily arguing that the protest grounds fail to state valid bases of protest, fail to demonstrate competitive prejudice, and are otherwise speculative as to the alleged defects contained within PotomacWave's quotation. Req. for Dismissal at 3-5; Req. for Dismissal, Oct. 20, 2023, at 5-9.

For the reasons explained below, we dismiss the protest.

Evaluation of the Corporate Experience Factor

Eagle Hill argues that FEMA failed to reasonably evaluate PotomacWave's quotation under the corporate experience factor. Protest at 11. In this regard, the protester alleges that the awardee "has not performed any work that qualifies as relevant to this procurement." *Id.* Relying on information obtained from USAspending.gov,³ the protester further contends that the awardee's experience "lacks size, scope, and complexity similar to this procurement," and that the agency therefore failed to reasonably evaluate the awardee's experience. *Id.*

FEMA requests dismissal of this protest ground, first arguing that the protester's challenge to the agency's evaluation of PotomacWave's corporate experience is speculative because it fails to account for information that the awardee may have submitted based on non-federal experience, which would not be captured by data from USAspending.gov. Req. for Dismissal at 5. The agency also argues that the protester's argument is insufficient because it fails to allege that the agency's evaluation was inconsistent with the evaluation criteria in the solicitation. *Id.* at 6.

³ USAspending.gov is "the official source for spending data for the U.S. Government," and as relevant here, provides information about the award of contracts over \$25,000. USAspending website, www.usaspending.gov/about (last visited December 14, 2023).

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3557. Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. *Pacific Photocopy & Research Servs.*, B-278698, B-278698.3, Mar. 4, 1998, 98-1 CPD ¶ 69 at 4. To achieve this end, our Bid Protest Regulations require that a protest include a sufficiently detailed statement of the grounds supporting the protest allegations, and that the grounds stated be legally sufficient. 4 C.F.R. §§ 21.1(c)(4), 21.1(f), and 21.5(f). That is, a protest must include sufficient factual bases to establish a reasonable potential that the protester's allegations may have merit; bare allegations or speculation are insufficient to meet this requirement. *Saalex Sols., Inc.*, B-418729.3, July 23, 2021, 2021 CPD ¶ 298 at 5. Allegations that facially do not demonstrate improper agency action (e.g., that the agency violated the terms of the solicitation) are legally insufficient. *INNOVIM, LLC*, B-419912, B-419912.2, Sept. 21, 2021, 2021 CPD ¶ 331 at 6 (dismissing protest ground as legally insufficient where the alleged agency error is specifically contradicted by the evaluation criteria in the solicitation).

With respect to corporate experience, the RFQ provided that FEMA would “evaluate its level of confidence, regarding the Contractor’s experience as it aligns to the requirements of the RFQ,” and that the evaluation would be “[b]ased on an assessment of [the] Contractor’s response to the five (5) questions documented in Appendix A.” RFQ at 3. The questions asked vendors to provide examples of or describe various types of experience, and while federal contract experience was preferred, vendors were not precluded from using experience on commercial or other types of contracts. *Id.*, Appendix A, Corporate Experience Questions at 9. The RFQ also stated that consideration would be given to the “relevancy” of the corporate experience examples.

Here, we find Eagle Hill’s challenge to the agency’s evaluation of PotomacWave’s corporate experience fails to meet the standard required by our regulations because it does not identify an evaluation criterion with which the agency failed to comply. Based solely on the awardee’s federal contracts listed in USAspending.gov, the protester argues that the awardee’s experience “lacks size, scope, and complexity” and that the relevancy of a contract “is typically determined” by these factors. Protest at 11 & n.14. However, the RFQ provided that the evaluation would be based on a vendor’s response to corporate experience questions specifically provided in the solicitation. As noted above, however, vendors could use experience on federal or commercial contracts in addressing these questions. Because the protester’s argument does not consider the fact that the awardee could have submitted experience on non-federal contracts, it is speculative and fails to demonstrate that the agency violated the terms of the solicitation. See *Systems Implementers, Inc.; Transcend Technological Systems, LLC*, B-418963.5 *et al.*, June 1, 2022, 2022 CPD ¶ 138 at 6 n.3 (dismissing as legally insufficient protester’s argument that an offeror with limited federal contract history in the federal procurement data system did not merit proposal strengths, where the protester did not identify any portion of the solicitation that limited the agency’s evaluation to only federal contracting experience). This protest ground is therefore dismissed.

Remaining Challenges to the Evaluation of Vendors' Quotations

Eagle Hill argues FEMA failed to reasonably evaluate PotomacWave's approach and capability to meet the agency's requirements. Protest at 9. In this regard, the protester contends that the "approximate \$12 million difference in pricing between [Eagle Hill] and [PotomacWave] is due to [PotomacWave] unreasonably proposing too few hours to perform the [a]gency's requirements." *Id.* at 10. The protester further argues that the agency evaluated vendors' quotations in a manner inconsistent with the terms of the solicitation and that the agency prevented vendors from competing intelligently and on an equal basis when it amended the RFQ to change the information vendors were required to submit with their quotations. Supp. Protest at 6. The protester also contends that the quotation submitted by PotomacWave was ineligible for award because it was incomplete and lacked certain required information. *Id.*

FEMA requests our Office dismiss Eagle Hill's protest in these respects as well, primarily asserting that the protest is legally insufficient and otherwise speculative. Regarding the protester's challenges to the agency's evaluation of PotomacWave's quotation, the agency contends that the protester's argument that the awardee proposed too few hours to meet the agency's requirement is speculative and is "based on the blind guess that [PotomacWave] did not provide greater discounts" to its hourly rates. Req. for Dismissal at 2. The agency also argues that in any event, the amended solicitation did not require an evaluation of labor hours under either the oral presentations factor, or the price factor, and that the protester's argument that such an evaluation was required was therefore "objectively incorrect." *Id.* at 3. With regard to the protester's remaining challenges, the agency argues that the protest fails to demonstrate competitive prejudice, and further fails to state a valid basis of protest. Supp. Req. for Dismissal at 4-8.

As stated above, our regulations require that a protest include a sufficiently detailed statement of the grounds supporting the protest allegations. 4 C.F.R. §§ 21.1(c)(4), 21.1(f), and 21.5(f). That is, a protest must include sufficient factual bases to establish a reasonable potential that the protester's allegations may have merit; bare allegations or speculation are insufficient to meet this requirement. *Saalex Sols., Inc., supra*. Allegations that facially do not demonstrate improper agency action (*e.g.*, that the agency violated the terms of the solicitation) are legally insufficient. *INNOVIM, LLC, supra*.

As initially issued, for the price factor, the RFQ required vendors to submit information in an excel pricing spreadsheet that was provided with the solicitation. Protest, exh. 1, Pre-Amendment RFQ at 2. The pricing spreadsheet included, among other pricing requirements, the different labor categories required by the solicitation. Protest, exh. 4, RFQ Pricing Spreadsheet. For each labor category, the spreadsheet included columns for vendors to propose the number of personnel for the labor category, the number of

labor hours,⁴ hourly labor rates, and total cost. *Id.* The total cost for each labor category was the product of the hourly labor rate proposed and the number of labor hours. *Id.* Under the initial RFQ's evaluation criteria, the solicitation provided that the agency would "evaluate the reasonableness of the proposed price. The total price evaluation will be used in the final determination of the best value. The [g]overnment may also evaluate the labor rates to ensure consistency with the [c]ontractor's [s]chedule contract rates." Protest, exh. 1, Pre-Amendment RFQ at 7.

FEMA issued an amended RFQ on July 26. Req. for Dismissal, exh. 2, Amendment Posting. The amendment made no changes to the pricing spreadsheet's format. Agency Resp. to GAO Req. for Additional Information at 1. However, the amendment revised the evaluation criteria for the price factor to read as follows:

the [g]overnment will use the hourly rates from the BPA [l]abor [c]ategory [pricing spreadsheet]. The [g]overnment will apply those rates to an estimated number of hours for each labor category. To arrive at a total evaluated price, the total price evaluation for the base and each option year will be used in the final determination of the best value. The [g]overnment may also evaluate the labor rates to ensure consistency with the [c]ontractor's [s]chedule.

RFQ at 7. The amended solicitation did not provide vendors with the estimated number of labor category hours. The amended RFQ was posted to GSA e-Buy⁵ on July 26, along with a description stating that the amendment "reflects updated pricing instructions and evaluation for [t]ime-and[m]aterials or [l]abor-[h]our BPAs under FAR [s]ubpart 8.4. See solicitation [p]g. 7 pricing for the amended change." Req. for Dismissal, exh. 2, Amendment Posting. Eagle Hill "completed the entire [pricing] spreadsheet," including proposing the number of labor hours, and submitted the spreadsheet with its quotation. See Supp. Protest at 6.

Eagle Hill's remaining challenges to FEMA's evaluation of vendors' quotations are all based on Eagle Hill's interpretation of the above-quoted solicitation language and the protester's understanding of the information required to be submitted in the pricing spreadsheet and evaluated by the agency. Where a dispute exists as to a solicitation's actual requirements, we will first examine the plain language of the solicitation. *Intelsat General Corp.*, B-412097, B-412097.2, Dec. 23, 2015, 2016 CPD ¶ 30 at 8. Where a protester and agency disagree about the meaning of solicitation language, we will

⁴ The pricing spreadsheet included columns for vendors to propose for each labor category the number of hours per week, and the number of weeks. Protest, exh. 4, Pricing Spreadsheet. The total number of labor hours for each labor category, a separate column in the spreadsheet, was the product of these two columns. *Id.*

⁵ GSA e-Buy is GSA's electronic request for quotation system, which allows ordering activities to post requirements, obtain quotes, and issue orders electronically. FAR 8.402(d)(1).

resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. *Crew Training, Int'l, Inc.*, B-414126, Feb. 7, 2017, 2017 CPD ¶ 53 at 4.

We have considered the parties' arguments and find that Eagle Hill's interpretation of the solicitation is unreasonable and therefore its remaining protest grounds fail to establish legally sufficient grounds of protest. Accordingly, as explained below, we dismiss the protest grounds.

Eagle Hill first argues that the agency's evaluation of PotomacWave's approach was unreasonable, because the agency failed to determine whether the awardee's lower price indicated that the awardee proposed too few hours to meet the agency's requirements. Protest at 9-10. With respect to this protest ground, the allegation is based on the protester's unreasonable view that the solicitation required the agency to evaluate vendors' proposed labor hours and, thus, Eagle Hill's allegation fails to demonstrate improper agency action.

As stated above, the amended RFQ established that FEMA would use vendors' proposed hourly labor rates and "apply those rates to an estimated number of hours for each labor category." RFQ at 7. Nowhere does the RFQ indicate the agency was required to evaluate vendors' proposed labor hours or would use those hours in calculating total price. The awardee's lower priced quotation therefore could not have resulted from the awardee proposing too few labor hours because the agency used its own estimated number of labor hours for all vendors, including PotomacWave, in its price evaluation. Because the solicitation's evaluation criteria did not require the agency to evaluate vendors' proposed labor hours, the protester's allegation that the agency unreasonably evaluated the awardee's approach in this regard fails to demonstrate improper agency action. The protest ground is thus legally insufficient and is therefore dismissed.⁶

⁶ The protester collaterally argues that the agency failed to consider the awardee's proposed labor hours and approach under the oral presentations factor. Resp. to Req. for Dismissal at 5-6. The protester asserts that because the RFQ required vendors to explain their work breakdown structure and provide the proposed number of hours for each labor category, the agency was "obligated to evaluate the adequacy of the proposed approach to staffing, including by comparing the proposed staffing to the Agency's own estimates for the number of personnel and hours required to perform." Protest at 10. Under the evaluation criteria for the oral presentation factor, the RFQ required vendors to provide during oral presentations their "work breakdown structure[s] and explain [their] hiring, training, and retention strateg[ies]." RFQ at 4. This evaluation criterion does not contemplate the type of evaluation of proposed labor hours asserted by Eagle Hill, and the protester does not otherwise identify where in the RFQ this type of analysis is required. Accordingly, this argument is insufficient to demonstrate improper agency action and is also dismissed.

Eagle Hill also argues that the solicitation required FEMA to compare vendors' proposed staffing, labor hours, and labor category pricing with the agency's own internal estimates as part of its evaluation of quotations. Resp. to Req. for Dismissal at 6. However, as above, the protester's allegation is based on an unreasonable reading of the solicitation and is therefore legally insufficient. The RFQ did not contemplate any such evaluation, and the protester does not identify any evaluation criterion stating the agency would compare vendors' proposed staffing, hourly rates, and labor hours to an internal government estimate. The protester's allegation has no basis in the plain language of the RFQ and is therefore also dismissed.

Eagle Hill next argues that FEMA unreasonably failed to consider certain information in its pricing spreadsheet, such as Eagle Hill's proposed number of labor hours. The protester further contends that the agency's failure to inform vendors that some information was no longer required prevented vendors from competing intelligently and on an equal basis. Supp. Protest at 6. In this regard, the protester explains that it submitted a quotation containing a complete pricing spreadsheet, including the proposed number of labor hours, that it "understood the [s]olicitation to require evaluation of all its submitted information," and that it was unreasonable for the agency to disregard some of the information contained in the spreadsheet. *Id.* at 4, 6.

As explained above, the amended RFQ provided that hourly labor rates proposed in the pricing spreadsheet would be applied to the agency's own estimated number of hours for each labor category. RFQ at 7. All vendors were thus advised that their proposed hourly labor rates--but not their proposed labor hours--would be used for the agency's price evaluation. Where there is no dispute that all vendors were advised of the amendment to the agency's price evaluation scheme, there is no basis for the

protester's contention that the agency did not permit all vendors to compete intelligently and on an equal basis.⁷ This protest ground is dismissed.⁸

Finally, Eagle Hill maintains that its interpretation of the solicitation is the only reasonable interpretation and that the solicitation is therefore latently ambiguous as to how the agency would evaluate vendors proposed labor hours and pricing information. Supp. Protest at 6. In this regard, the protester argues that the solicitation required vendors to submit, and the agency to evaluate, information for all columns of the pricing spreadsheet--that is, information concerning the number of personnel for each labor category, the number of labor hours, and hourly labor rates--as opposed to just hourly labor rate information, as the agency unreasonably contends. *Id.* at 5-6.

An ambiguity exists when two or more reasonable interpretations of the terms or specifications of the solicitation are possible. *Eagle Technologies, Inc.*, B-420135.2 *et al.*, Jun. 22, 2022, 2022 CPD ¶ 198 at 9. A party's interpretation need not be the most reasonable to support a finding of ambiguity; rather, a party need only show that its reading of the solicitation is reasonable and susceptible of the understanding that it reached. *The HP Grp., LLC*, B-415285, Dec. 14, 2017, 2017 CPD ¶ 385 at 5. A patent ambiguity exists where the solicitation contains an obvious, gross, or glaring error, while a latent ambiguity is more subtle. *Colt Def., LLC*, B-406696, July 24, 2012, 2012 CPD ¶ 302 at 8. An offeror has an affirmative obligation to seek clarification of a patent ambiguity prior to the first due date for submissions responding to the solicitation

⁷ In any event, Eagle Hill's protest in this respect does not demonstrate competitive prejudice and is therefore legally insufficient. Competitive prejudice is an essential element of a viable protest, and we will sustain a protest only where the protester demonstrates that, but for the agency's improper actions, it would have had a substantial chance of receiving the award. *Criterion Sys., Inc.*, B-419749 *et al.*, July 21, 2021, 2021 CPD ¶ 261 at 13 (dismissing protest ground as legally insufficient where the allegation fails to demonstrate competitive prejudice). While the protester submitted a complete pricing spreadsheet, the agency explains the surplus information submitted did not impact the evaluation "in either a positive or negative direction," and that the other vendors were "not advantaged in any way by [the protester] providing additional information." Req. for Dismissal, Oct. 20, 2023, at 4. We agree. The protester has not shown how the agency's decision to disregard the labor hour information in the protester's quotation was prejudicial to the protester, when the agency evaluated the required information--hourly labor rates--submitted by the protester as required by the amended solicitation.

⁸ The protester's additional argument that PotomacWave should have been found ineligible for award for submitting an incomplete pricing spreadsheet because it did not provide labor hours for each labor category is similarly based on an unreasonable reading of the solicitation. As explained above, the solicitation provided that the agency's price evaluation would consider only proposed hourly labor rates and not the vendor's own proposed labor hours. There is no dispute that the awardee provided hourly labor rates.

following introduction of the ambiguity into the solicitation. *Credence Mgmt. Solutions, LLC*, B-420408, B-420408.2, Mar. 18, 2022, 2022 CPD ¶ 81 at 7. When a patent ambiguity exists but is not challenged prior to the submission of solicitation responses, we will not consider subsequent untimely arguments asserting the protester's own interpretation of the ambiguous provision. *FFLPro, LLC*, B-411427.2, Sept. 22, 2015, 2015 CPD ¶ 289 at 10.

Even if we agreed that Eagle Hill's interpretation of the solicitation was reasonable, we find that any ambiguities were patent. As previously stated, the amended RFQ provided that FEMA would apply vendors' proposed labor rates to an estimated number of labor category hours in its calculation of vendors' pricing. RFQ at 7. The pricing spreadsheet was not amended when the amendment to the RFQ's evaluation criteria was issued, and still contained columns for number of personnel and labor hours, in addition to hourly labor rates and total cost. Protest, exh. 4, Pricing Spreadsheet. To the extent the protester was unclear as to whether it was still required to submit--and the agency was required to use in its evaluation--all the information on the pricing spreadsheet notwithstanding the plain language of the amended solicitation, such a discrepancy was obvious from the face of the solicitation, and therefore represents a patent ambiguity.⁹ To be considered timely filed with our Office, any such challenges were required to be made prior to the time set for receipt of quotations. *FFLPro LLC, supra* at 10. Because Eagle Hill waited until after PotomacWave was selected for the BPA to challenge the terms of the solicitation in this regard, we conclude the protester's argument is now untimely.

The protest is dismissed.¹⁰

Edda Emmanuelli Perez
General Counsel

⁹ Similarly, to the extent the protester argues that the RFQ's instructions to "submit the information in the provided excel pricing spreadsheet" meant that all vendors were required to complete the pricing spreadsheet in its entirety, this language is facially inconsistent with the amended solicitation language advising that the agency would use an estimated number of labor hours to evaluate quotations, which indicated that the proposed labor hours on the pricing spreadsheet were no longer needed for the evaluation. RFQ at 2.

¹⁰ The protester additionally argues that the agency's best-value tradeoff determination was unreasonable because it was based on a flawed interpretation of the solicitation and a flawed underlying evaluation. Protest at 12; Supp. Protest at 7. This derivative challenge to the agency's best-value determination is similarly dismissed. *Chugach Logistics-Facility Services JV, LLC*, B-421351, Mar. 21, 2023, 2023 CPD ¶ 80 at 11 (dismissing derivative challenge to an agency's best-value determination where our Office found the protester's challenges to the underlying agency evaluation failed to state a valid basis of protest or were untimely).