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Decision

Matter of: DKW Communications, Inc.
File: B-411853.2; B-411853.3; B-411853.4
Date: January 8, 2016

Joseph P. Hornyak, Esq., and Gregory R. Hallmark, Esq., Holland & Knight LLP, for the protester.

Antonio R. Franco, Esq., Kathryn V. Flood, Esq., Alexander O. Levine, Esq., and Jacqueline K. Unger, Esq., Piliero Mazza PLLC, for the intervenor.

Antonio T. Robinson, Esq., Department of Agriculture, for the agency.

Robert T. Wu, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency unreasonably failed to conduct a price realism analysis is denied where the record shows that a price realism analysis was not required under the terms of the solicitation.
 2. Protest is denied where a review of the record shows that the agency's best-value award decision was reasonable.
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DECISION

DKW Communications, Inc., of Washington, D.C., protests the award of a blanket purchase agreement (BPA) to Harmonia Holdings Group LLC, of Blacksburg, Virginia, by the Department of Agriculture under request for quotations (RFQ) No. 3A94-S-15-0070 for support to the agency's Public Health Information System (PHIS). DKW challenges the agency's evaluation of Harmonia's price proposal and the evaluation of its own proposal under the non-price evaluation factors.

We deny the protest.

BACKGROUND

The RFQ, issued on July 22, 2015, sought quotations from General Services Administration (GSA) Federal Supply Schedule (FSS) Schedule 70 Special Item Number (SIN) 132 51 contract holders to perform PHIS design and development

services. Agency Report (AR), exh. 12, Award Decision Document, at 2. The RFQ contemplated the award of one BPA on a best-value basis considering six non-price factors and price.

The evaluation factors set forth in Section M of the RFQ, Evaluation Factors for Award, listed in descending order of importance, were: technical approach - BPA setup; technical work plan - BPA task order; corporate experience; past performance; management plan; personnel, qualifications and staffing; and price. RFQ at 68. Price was to be evaluated to “ensure that the proposed price is fair and reasonable and consistent with the contractor’s [GSA FSS] contract pricing.” Id. at 72-73. Moreover, the government was to “consider the level of effort and the mix of labor quoted for hourly rate services to determine that the overall price is fair and reasonable.” Id. at 73. Finally, the RFQ instructed offerors that the government was “more concerned with obtaining a superior Technical Capability quotation than making an award at the lowest evaluated price.” Id. at 68.

As relevant here, the instructions to vendors also included the following language:

The quoter shall also provide pricing congruent with their proposed technical work plan solution for task order 1 based on the milestone/delivery plan schedule provided in [the Statement of Objectives], including a milestone payment schedule that includes and clearly identifies all labor categories and levels of effort necessary to meet each milestone payment, which must reconcile with offered prices.

Id. at 67.

Quotations were received from 11 vendors, including those from Harmonia and DKW. AR, exh. 12, Award Decision Document at 3. After an evaluation of quotations, the relevant results were as follows:

	Harmonia	DKW
Technical Approach	Excellent	Satisfactory
Technical Work Plan	Excellent	Good
Corporate Experience	Excellent	Excellent
Past Performance	Very Good	Excellent
Management Plan	Excellent	Good
Personnel, Qualifications and Staffing	Excellent	Excellent
Overall	Excellent	Good
Price	\$2,106,296	\$2,934,533

Id. at 9, 12. The source selection authority (SSA) conducted a trade-off analysis among the five highest-rated offerors; DKW was not among these. Id. at 20-24.

The majority of the SSA's analysis was a comparison of Harmonia's proposal to that of the two lower-priced proposals and to one other higher-priced proposal that received the same overall adjectival rating as Harmonia. Id. at 20-24. Ultimately, the SSA determined that Harmonia's proposal represented the best value to the government. After receiving a brief explanation of the agency's award decision, this protest followed.

DISCUSSION

DKW first challenges the agency's evaluation of Harmonia's price proposal, arguing that the agency failed to conduct a price realism analysis required by the RFQ. Protester's Comments at 25. Specifically, the protester argues that the agency failed to determine whether Harmonia's price was congruent with its proposed technical approach and with the necessary staffing and level of effort. Id.

Where a solicitation contemplates the award of a fixed-price contract, an agency may provide in the solicitation for the use of a price realism analysis for the purpose of measuring an offeror's understanding of the requirements or to assess price risk in its proposal. IBM Corp., B-299504, B-299504.2, June 4, 2007, 2008 CPD ¶ 64 at 10-11. In the absence of an express price realism provision, we will only conclude that a solicitation contemplates a price realism evaluation where the RFP expressly states that the agency will review prices to determine whether they are so low that they reflect a lack of technical understanding, and the RFP states that a proposal can be rejected for offering low prices. Dyncorp Int'l LLC, B-407762.3, June 7, 2013, 2013 CPD ¶ 160 at 9.

The agency argues that a price realism analysis was not required by the terms of the RFQ. Legal Memorandum at 7. In this regard, the agency argues that Section M of the RFQ, Evaluation Factors for Award, only required the government to analyze price to ensure that it is fair and reasonable, and that level of effort and labor mix was to only be analyzed to determine that the overall price is fair and reasonable. Id. We agree with the agency.¹

¹ The agency concedes that the award decision contained what it termed a "mistakenly transposed clerical error" where it referenced a price realism analysis in the award decision. Legal Memorandum at 7; AR, exh. 12, Award Decision Document, at 11. However, the agency states that the contracting officer did not perform a price realism analysis. Contracting Officer's Statement at 15. Our review of the entire record does not lead us to question the agency's statement. Importantly, the award decision references a price realism analysis in the technical evaluation board's summary, yet a review of that document does not mention such a review. See generally AR, exh. 11, Consensus Evaluation Summary.

The crux of DKW's argument is that the agency failed to consider Harmonia's low pricing, staffing levels and level of effort. However, under the price evaluation factor proposals were to be evaluated to determine if the proposed prices were fair, reasonable and consistent with the contractor's GSA FSS contract pricing, including an analysis of level of effort and labor mix for that purpose. Id. at 72-73. Thus, contrary to DKW's allegation, in focusing on price reasonableness, the price factor was to only evaluate whether the offered prices are too high, rather than too low. See Vital Link, Inc., B-405123, Aug. 26, 2011, 2011 CPD ¶ 233 at 6. DKW also cites to language in Section L--that vendors were to provide pricing congruent with their proposed technical work plan solution--to support its argument that a price realism analysis was required. Protester's Comments at 15. We do not agree.

The reference to congruence between pricing and technical work plan solution on which the protester relies, appears in the context of a milestone/delivery plan schedule. RFQ, Section L, Quotation Instructions, at 67. This reference appears to discuss the reconciliation of price and technical to a payment schedule for the purpose of correlating work performed to meet each milestone payment. This language does not require an analysis of price realism as the protester alleges. Moreover, to the extent there is incongruity between the language in Section L on which the protester relies and the clear language in Section M, which only permits a price reasonableness analysis, this creates an ambiguity apparent on the face of the solicitation. As such, to the extent that DKW believed a price realism analysis should have been required, it was required to file protest prior to the time set for receipt of initial proposals, which it did not. See 4 C.F.R. § 21.2(a)(1).

DKW next challenges the agency's evaluation of its own proposal under various non-price factors. In this regard, the protester challenges all of the weaknesses assigned to the firm's proposal, including four weaknesses under the technical approach factor, three weaknesses under the technical work plan factor, and one weakness under the management plan factor. Protester's Comments at 2-14. DKW also asserts that the agency unreasonably failed to assign at least four strengths to the firm's proposal. Id. at 12-13. While we only discuss a few of the protester's arguments here, we have considered each of the allegations, and find no basis to sustain the protest.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. Analytical Innovative Solutions, LLC, B-408727, Nov. 6, 2013, 2013 CPD ¶ 263 at 2. Rather, we will review the record only to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. Id.

For instance, DKW challenges the assignment of a weakness for failing to identify a specific stakeholder office in its proposal. Protester's Comments at 7. The

protester argues that there was no requirement in the RFQ to identify stakeholders by name, and it was unreasonable for the agency to treat the firm's listing of certain stakeholders as "a test of DKW's understanding of the end-user stakeholders." Protester's Supp. Comments at 7-8. The agency argues that the weakness was reasonable because even though not required, DKW undertook to list other stakeholders in its proposal, yet omitted the specific office in its discussion. Supp. Legal Memorandum at 5. Given that the office was a primary stakeholder, and DKW specifically acknowledged other stakeholders, the agency argues that DKW's proposal did not demonstrate sufficient enough understanding and acknowledgement of the office's role in the mission and objectives of the scope of work. Id.

We are provided no basis to question the reasonableness of the agency's evaluation in this regard. Offerors are responsible for submitting a well-written proposal with adequately-detailed information that allows for a meaningful review by the procuring agency. Hallmark Capital Grp. LLC, B-408661.3 et al., Mar. 31, 2014, 2014 CPD ¶ 115 at 9. As the agency argues, even if offerors were not required to list stakeholders as DKW alleges, the protester chose to do so. Having chosen to do so, the omission of a primary stakeholder supports the assignment of a weakness to DKW's proposal.

Next, the protester disputes a weakness assigned to the firm's utilization of the term operations and maintenance (O&M) in the place of support services in a specific task that called for support services and not O&M. Protester's Comments at 10. The evaluators found the use of the term O&M instead of support services to be risky because it showed a lack of understanding of the scope of the work. AR, exh. 11, Consensus Evaluation Summary, at 7. The protester apparently acknowledges the use of the term O&M in place of support services, but argues that the agency's "superficial focus on DKW's use of the term . . . to describe the overarching type of services provided . . . and the Agency's disregard for the quotation's actual approach to accomplishing the tasks . . . render this weakness unreasonable." Protester's Comments at 11.

We are provided no basis to question the agency's assignment of this weakness. As stated previously, our Office will not substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. Moreover, as the burden is on DKW to submit a well-written proposal with adequately-detailed information that allows for a meaningful review by the procuring agency, the erroneous reference to O&M, even if contradicted by the substance of DKW's articulated approach to satisfy the scope of work, inserts sufficient ambiguity into DKW's proposal to reasonably cause the evaluators to question the firm's understanding of the requirement in this regard.

Finally, the protester argues that the agency unreasonably failed to assign certain strengths to its technical work plan, such as incorporating elements [DELETED],

and possessing an advantage in transitioning as the incumbent. Protest at 14-15. Based on the arguments made by DKW, we conclude that the protester has expressed its disagreement with the agency's evaluation, but has not shown that its evaluation was unreasonable. In this regard, the protester does not provide support for why any of these purported benefits should have been considered strengths, and instead asks that we sustain the protest on this basis because the agency has not shown why they are not strengths. As it is the protester's burden of proof, absent more, we decline to do so. In any event, given Harmonia's unchallenged and exceptionally high non-price ratings, coupled with its significantly lower, and reasonably evaluated price, we conclude that even if the protester has caused us to question certain aspects of the agency's evaluation,² it has not shown that it was prejudiced. Bannum, Inc., B-408838, Dec. 11, 2013, 2013 CPD ¶ 288 at 4 (prejudice is an element of every viable protest).

The protest is denied.

Susan A. Poling
General Counsel

² For instance, the protester alleges that the agency unreasonably assigned a weakness to the firm's proposal for neglecting to identify any inherent problems or obstacles associated with the objectives of the procurement. Supp. Protest at 7. The agency argues that DKW's proposal on this aspect was not sufficient to be awarded a strength because its proposed approach was viewed as offering the status quo. Legal Memorandum at 8-9. However, the agency then argues that since the proposal did not warrant a strength, the agency reasonably determined that this was a flaw, and assigned DKW's proposal a weakness. Id. at 9. It does not follow that if some aspect of a proposal is not a strength, it is a weakness, and the record does not adequately support the agency's rationale in this regard.