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Decision

Matter of: SKE Italy Srl

File: B-414884.3

Date: January 24, 2018

William F. Savarino, Esq., and Daniel J. Strouse, Esq., Cohen Mohr LLP, for the protester.

Lisa Marchese, Esq., and Kate H. Kennedy, Esq., Davis Wright Tremaine LLP, for Ganter Interior GmbH, the intervenor.

Jeremy D. Burkhardt, Esq., and Scott N. Flesch, Esq., Department of the Army, for the agency.

Joshua R. Gillerman, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the evaluation of the awardee's quotation is denied where the record shows that the evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

SKE Italy Srl, of Vicenza, Italy, protests the award of a contract to Ganter Interior GmbH, of Waldkirch, Germany, under request for quotations (RFQ) No. W912PF-17-T-0030, issued by the Department of the Army for maintenance and repair services for family housing at the United States Army Garrison (USAG) in Vicenza, Italy. The protester, the incumbent contractor, argues that the agency unreasonably evaluated the awardee's company experience and performed an unreasonable price realism analysis.

We deny the protest.

BACKGROUND

The RFQ, issued on April 21, 2017, contemplated the award of a fixed-price contract, with time and materials contract line item numbers (CLINs), for all management, personnel, materials, and services necessary to perform military family housing maintenance and repair services for the USAG-Italy, in Vicenza, Italy. Agency Report (AR), Tab 3, RFQ at 1, 33, 48. The acquisition was conducted in accordance with

Federal Acquisition Regulation (FAR) part 12, "Acquisition of Commercial Items," and FAR subpart 13.5, "Simplified Procedures for Certain Commercial Items." AR, Tab 10, RFQ, amend. No. 0005, at 25.

Award was to be made to the lowest-priced, technically-acceptable (LPTA) quotation. AR, Tab, 10, RFQ, amend. No. 0005, at 27. In order to be eligible for award, the vendor's quotation must be rated as acceptable for both non-price factors: technical and past performance.¹ Id. To make award, the agency would evaluate the apparent lowest-priced quotation for acceptability under the non-price factors. If the apparent lowest-priced quotation was found acceptable for all the non-price factors, the agency would not evaluate the acceptability of any other quotations. Id.

The technical factor was further divided into four subfactors. Relevant here, subfactor 2, company experience, required vendors to demonstrate that they had experience providing similar requirements for the maintenance of residential/commercial areas or communities. RFQ, amend. No. 0005, at 29. To be acceptable under this subfactor, vendors were required to provide contract information of at least one relevant project currently being performed, or completed within three years of the solicitation release date, that was "similar in size, scope, magnitude, and complexity" as the requirements set forth in the RFQ. Id. The RFQ defined "scope" to mean that the project was for the total maintenance of residential/commercial areas. Id. Additionally, the RFQ provided that the project should have a value of at least €1 million per year. Id.

Also relevant to the protest, as part of its performance, the contractor would be required to operate a "U-Do-It" center. RFQ, Performance Work Statement (PWS), at 122. The "U-Do-It" center would issue tools, materials, and supplies necessary for residents to perform normal self-help projects. Id. The contractor would be responsible for maintaining minimum inventories and establishing an electronic-tracking system for managing the center's inventory. Id. at 123.

With regard to price, quotations were to be evaluated for reasonableness. RFQ, amend. No. 0005, at 32. However, vendors were also informed that the agency would evaluate pricing to ensure that a "'buy in' or unbalanced pricing between CLINS or [o]ption [p]eriods" was not occurring. Id. The RFQ additionally states "[t]he Government will examine price quotes for artificially low unit prices. Offers found to be unreasonably high, unrealistically low (an indication of 'buy-in'), or unbalanced, may be considered unacceptable and may be rejected on that basis." Id.

On June 30, SKE filed a pre-award protest with our Office challenging the terms of the RFQ. SKE alleged that the agency should require vendors to submit phase-in plans and should evaluate phase-in prices as part of the overall contract price. AR, Tab 8, Protest, B-414884, at 14-16. In response, the agency stated that it would take

¹ The RFQ defined "acceptable" as the "[q]uote clearly meets the minimum requirements of the solicitation." AR, Tab, 10, RFQ, amend. No. 0005, at 28.

corrective action by amending the RFQ to incorporate a phase-in plan and by evaluating a phase-in CLIN as part of the contract price. AR, Tab 9, Notice of Corrective Action, B-414884, at 2. Our Office dismissed SKE's protest as academic. SKE Italy Srl, B-414884, July 18, 2017 (unpublished decision).

After amending the RFQ, in accordance with its stated corrective action, the agency received six quotations in response to the solicitation. AR, Tab 2, Contracting Officer's Statement (COS), at 1. Ganter submitted the lowest-priced quotation, with a total price of €3,583,112.93. Id. The Technical Evaluation Board (TEB) evaluated Ganter's quotation as technically acceptable under the non-price factors. AR, Tab 17, TEB Evaluations, at 1. The CO then performed an independent analysis of the TEB's findings, as well as an analysis of Ganter's price. AR, Tab 2, COS at 2. On August 23, the agency made award to Ganter. Id.

SKE protested the award of the contract to Ganter, alleging that the agency unreasonably evaluated Ganter's company experience and failed to properly evaluate the realism of Ganter's price. AR, Tab 20, Protest, B-414884.2, at 10-13. In response, the agency indicated that it would take corrective action by setting aside the source selection decision, reevaluating Ganter's price as the apparent lowest-priced quotation, and rendering a new source selection decision. AR, Tab 22, Notice of Corrective Action, B-414884.2, at 1. Our Office also dismissed SKE's second protest as academic. SKE Italy Srl, B-414884.2, Oct. 6, 2017 (unpublished decision).

The CO subsequently reevaluated Ganter's quotation under each of the technical subfactors. AR, Tab 2, COS at 2. After completing the reevaluation, the CO again found that Ganter's company experience was acceptable under the company experience subfactor. Id. The CO also reevaluated Ganter's price, finding it to be fair, reasonable, and realistic, and to reflect a clear understanding of the requirements. Id. at 3. On October 10, award was again made to Ganter as the lowest-priced, technically-acceptable quotation. Id. at 3. After receiving a post-award debriefing on October 19, SKE filed the instant protest on October 23.²

² Ganter argues that SKE is not an interested party to challenge the award because SKE quoted a higher price than the next-lowest priced vendor. Intervenor's Comments at 2-3. The intervenor argues, therefore, that even if SKE's protest had merit, this vendor, rather than the protester, would be next in line for award. Id. A disappointed vendor is not an interested party to challenge an award where, if the protester's challenge had merit, a different vendor would be next in line for award ahead of the protester. Bid Protest Regulations, 4 C.F. R. 21.0(a)(1); Coley & Assocs., Inc., B-404034 et al., Dec. 7, 2010, 2011 CPD ¶ 6 at 7. However, as discussed above, the agency evaluated only Ganter's quotation for technical acceptability. Accordingly, the protester is an interested party to challenge the award in this LPTA procurement because the record does not establish that the intervening vendor is technically acceptable, and thus would necessarily be next in line for award ahead of the protester.

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DISCUSSION

SKE challenges the agency's evaluation of Ganter's quotation under both the technical and price factors. We note at the outset that, in reviewing protests challenging an agency's evaluation of quotations, our Office does not reevaluate quotations or substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria, as well as applicable statutes and regulations. MSN Services, LLC, B-414900 et al., Oct. 4, 2017, 2017 CPD ¶ 310 at 3. We have reviewed all of SKE's arguments and, while we do not discuss all of them, we find that none of the arguments provide a basis to sustain the protest.

Technical Evaluation

As noted above, to be found acceptable under the company experience subfactor, the RFQ required vendors to provide contract information of at least one relevant project currently being performed, or completed within three years of the solicitation release date, that was "similar in size, scope, magnitude, and complexity" as the requirements set forth in the RFQ. RFQ, amend. No. 0005, at 29. Additionally, the RFQ stated that the project should have a value of at least €1 million per year. Id. The RFQ defined "scope" to mean the total maintenance of residential/commercial areas, but it did not otherwise define "size," "magnitude," or "complexity."

SKE alleges that the agency unreasonably found Ganter's quotation acceptable under this subfactor. Comments at 9-10. To support its allegation, SKE argues that the agency unreasonably concluded that Ganter's project was similar in magnitude to the requirements of the RFQ. Specifically, the protester contends that Ganter's submitted project only involved facilities maintenance for 86 units, as opposed to the over 800 units contemplated by the current requirement. Comments at 9. Additionally, SKE argues that the agency failed to even consider the complexity of the RFQ's requirements against Ganter's project. Comments at 10. SKE asserts that, had the agency properly considered complexity, it would have found that Ganter's project was not similarly complex because the project contained no experience related to running a "U-Do-it Center" and handling government furnished equipment. Comments at 11-13. For the reasons discussed below, we have no basis to object to the agency's conclusion that Ganter's experience, when viewed against all the criteria set forth in the RFQ, was sufficiently similar to be acceptable.

We now turn to SKE's specific allegations regarding the agency's conclusions that Ganter's project was similar in magnitude and complexity. With regard to magnitude, the record reflects that the CO concluded that Ganter's project was similar in magnitude

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See AllWorld Language Consultants, Inc., B-414244, B-414244.2, Apr. 3, 2017, 2017 CPD ¶ 111 at 3 n.2.

because it was valued at € [DELETED] million, well in excess of the RFQ's minimum requirements, and encompassed the same facility maintenance and repair services contemplated by the RFQ. AR, Tab 24, Source Selection Decision (SSD), at 7. To support this conclusion, the CO noted Ganter's experience on this project, which included the performance of maintenance and repairs for major building systems, equipment and tool storage, and the coordination of multiple trades in the performance of simultaneous work. Id. Further, the CO highlighted features of the project which he believed made it greater in magnitude than the present requirements, including that Ganter also had to maintain a spa area which contained a swimming pool, sauna, and fitness center. AR, Tab 48, Contracting Officer's Supplemental Statement of Facts, at 2.

On this record, we conclude that the CO acted within the reasonable exercise of his discretion in finding that Ganter's project was of sufficiently similar magnitude to be acceptable. To assess the project's similarity in magnitude, the record demonstrates that the CO considered the extent of the services performed on the contract and the total value of the contract. Id. In doing so, the CO found that Ganter had performed the same array of facility repair services contemplated by the RFQ, and even some additional services noted above, at a monetary value that exceeded the minimum threshold required by the RFQ. In sum, while Ganter's submitted project may have provided for fewer total units, the RFQ did not mandate a minimum number of units, nor did it define magnitude in such a manner. Id. As such, we have no basis to object to the CO's determination.

We also find SKE's assertion that the agency failed to consider the complexity of Ganter's experience to be without merit. The agency represents, and the record confirms, that the agency considered the complexity of Ganter's project against the requirements of the RFQ. AR, Tab 24, CO SSD, at 7; AR, Tab 48, Contracting Officer's Supplemental Statement of Facts, at 1. In his SSD, the CO expressly stated that he found the project similar "in terms of size, scope, and complexity" because the work performed included the same services contemplated by the current RFQ, including maintenance and repair services for residential facilities, implementation of safety and quality systems, and the utilization of software for facility maintenance work. AR, Tab 24, CO SSD, at 7 (emphasis added).

While the CO did not directly mention the "U-Do-It Center" in comparing the complexity of the projects, the CO's failure to document his consideration of every aspect of the PWS when comparing projects does not, by itself, render his evaluation unreasonable or inconsistent with the solicitation's evaluation criteria. To the contrary, the record shows that the CO considered the complexity of Ganter's project and found it to be acceptable because Ganter had performed many of the same requirements contemplated by the RFQ. Moreover, we note that in procurements conducted under simplified acquisition procedures for commercial items, limited documentation of a source selection is permissible, as long as the agency provides a sufficient record to show that the source selection was reasonable. McLaurin Gen. Maint., Inc.,

B-411443.2, B-411443.3, Jan. 14, 2016, 2016 CPD ¶ 41 at 5. The documentation is sufficient here for us to conclude that the CO reasonably considered the complexity of Ganter's project in finding Ganter's company experience acceptable.

Price Realism Evaluation

SKE also challenges the agency's evaluation of the realism of Ganter's quoted price. As noted above, the RFQ stated that the agency would evaluate price quotations for artificially low unit prices and that price quotations that were found to be unrealistically low, or indicative of a "buy-in," could be considered unacceptable and rejected. Protest at 12-13. Accordingly, the RFQ here required the agency to review the realism of vendors' prices. See Optex Systems, Inc., B-408591, Oct. 30, 2013, 2013 CPD ¶ 244 at 4 (solicitation language giving the agency discretion to reject a proposal that included unrealistically low prices that reflected the offeror's inherent lack of technical understanding requires agency to review the realism of offeror's prices).

SKE argues that the price realism analysis conducted by the agency lacked a rational basis and violated the terms of the RFQ. In this regard, SKE asserts that Ganter's quotation should have been rejected because its quoted price was unrealistically low and evidenced an attempt to "buy in," which was expressly prohibited by the RFQ. Protest at 13. In support of its argument, SKE notes that as the incumbent, it submitted a price of €4,148,574, which is approximately 16 percent more than Ganter's price of €3,583,112.93. Id. SKE argues that, based on its experience as the incumbent, Ganter cannot perform the work at the price proposed and that the agency failed to consider the technical risk associated with Ganter's price quote. Protest at 13.

Where, as here, an RFQ contemplates the award of a fixed-price contract, or a fixed-price portion of a contract, an agency may provide in the solicitation for the use of a price realism analysis for the limited purpose of measuring an offeror's understanding of the requirements or to assess the risk inherent in an offeror's proposal or quotation. Ball Aerospace & Techs. Corp., B-402148, Jan. 25, 2010, 2010 CPD ¶ 37 at 8. The nature of the analysis required to assess whether an offeror's proposed price is so low as to reflect a lack of competence or understanding is generally a matter within the agency's discretion. AMEC Earth & Envtl., Inc., B-404959.2, July 12, 2011, 2011 CPD ¶ 168 at 8; Star Mountain, Inc., B-285883, Oct. 25, 2000, 2000 CPD ¶ 189 at 6. Further, there is no general requirement that an agency base its analysis on a comparison to the incumbent contractor's prices, see Science & Mgmt. Res., Inc., B-291803, Mar. 17, 2003, 2003 CPD ¶ 61 at 3, and our review of a price realism analysis is limited to determining whether it was reasonable and consistent with the terms of the solicitation. Smiths Detection, Inc.; Am. Sci. & Eng'g, Inc., B-402168.4 et al., Feb. 9, 2011, 2011 CPD ¶ 39 at 17. Based on our review of the record, we cannot conclude that the agency's price realism analysis was either inadequate or unreasonable.

The CO compared Ganter's price quotation to the independent government cost estimate (IGCE) and noted that Ganter's price was only [DELETED] percent lower than

the IGCE. AR, Tab 24, SSD at 10. The CO also examined Ganter's quotation for artificially low unit prices. Id. The CO noted that Ganter quoted a lower price for 7 of the 13 CLINs on the contract, but stated that he did not consider any of these prices to be artificially low or to present a significant risk. Id. at 11.

With regard to labor hour rates, the CO compared Ganter's quoted labor rates with the average local labor rates for Vicenza.³ Id. Ganter's quoted labor rates were higher than the average rate in Vicenza for 8 of the 12 labor categories, and above the Italian average for 9 of the 12 labor categories. Id. Of those categories where Ganter's rates were lower than the average in Vicenza, none were lower than 80 percent of the Vicenza average. Id. Based on this analysis, the CO concluded that Ganter's prices were not unrealistically low, nor were indicative of a "buy-in," and that Ganter's prices indicated a clear understanding of the requirements. Id. at 11,13.

In its comments, SKE maintains that the agency's price realism analysis was unreasonable. In particular, SKE argues that the CO did not explain his rationale as to why he found Ganter's lower-priced CLINs realistic, nor did the CO consider the risks attendant to the lower-priced CLINs. Comments at 18. SKE also alleges the CO failed to adequately explain why Ganter's prices were neither unrealistically low, nor indicative of a "buy-in." Id. at 19. In essence, SKE argues that the agency should have engaged in a more robust realism analysis. However, as our Office has consistently explained, a protester's disagreement with the nature and extent of the agency's price realism methodology does not provide a basis on which to sustain a protest. See BillSmart Solutions, LLC, B-413272.4, B-413272.5, Oct. 23, 2017, 2017 CPD ¶ 325 at 10; Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 4-5 (noting that the depth of an agency's evaluation in this regard is a matter within the sound exercise of the agency's discretion). As the record reflects that the CO reasonably exercised his discretion in evaluating the realism of Ganter's price, SKE's protest challenging the agency's price realism analysis is denied.

We deny the protest.

Thomas H. Armstrong
General Counsel

³ The agency notes that labor rates in Vicenza are typically 5 percent higher than the national costs of labor throughout Italy.