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Decision

Matter of: Sallyport Global Holdings, Inc.--Reconsideration

File: B-415460.5

Date: April 12, 2018

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Kathleen D. Martin, Esq., and Dennis J. Gallagher, Esq., Department of State, for the agency.
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DIGEST

Request for reconsideration is denied where the requesting party has not shown that our decision contains errors of fact or law that warrant reversal or modification of the decision.

DECISION

Sallyport Global Holdings, Inc., of Reston, Virginia, requests that we reconsider our decision in Sallyport Global Holdings, Inc., B-415460, B-415460.4, Jan. 9, 2018, 2018 CPD ¶ 23, in which we denied Sallyport's protest challenge to the Department of State's decision to reject Sallyport's proposal and issue a task order to Triple Canopy, Inc., of Reston, Virginia, pursuant to task order request for proposals (TORFP) No. SAQMMA17R0125, which was issued for security services in support of the United States Embassy in Kabul, Afghanistan. Sallyport argues that our decision contained errors of fact and law that warrant reconsideration.

We deny the request for reconsideration.

BACKGROUND

The TORFP was issued to six companies that hold Department of State Worldwide Protective Services II indefinite-delivery, indefinite-quantity (IDIQ) contracts to provide personal protective services, logistical support services, and specialized security services in support of the United States Embassy in Kabul, Afghanistan. Contracting Officer's Statement (COS) at 1. The solicitation provided that a task order would be

issued on a best-value tradeoff basis based on three factors: technical, past performance, and price. TORFP § M at 1.¹

With respect to price, the solicitation included nine fixed-price contract line item numbers (CLINs), each with multiple sub-CLINs. TORFP § L at 10-14. Offerors were instructed to provide pricing in table 2 of the solicitation, which included cells for all fixed-price CLINs and sub-CLINs. Id. at 10. The solicitation also required offerors to submit a pricing proposal narrative that provides a thorough explanation and rationale for their prices and matches the pricing table. Id. The solicitation advised offerors that the price volume shall consist of all information required to support prices, and required all price breakdown information to be submitted in Microsoft Office Excel read/write format and be viewable in Microsoft Excel to aid in the price evaluation. Id. at 3. Further, all calculations and formulas were required to be unprotected and accessible in the electronic submission documents. Id. Specific instructions were also given for each CLIN. For example, with respect to CLIN X01, mobilization, the solicitation instructed that prices for all mobilization/transition-in activities such as travel, labor, and life support for the mobilization/advance team shall be included under this line item. Id. at 10.

The solicitation cautioned offerors that proposals that were not in accordance with the instructions could be considered unacceptable and rejected. Id. at 4. The solicitation advised that the agency would evaluate the adequacy of the offeror's responses to determine the extent to which each requirement had been addressed in the proposal in accordance with the proposal submission requirements. Id. § M at 1. The solicitation also stated that the agency intended to issue the task order without holding discussions. Id. at 5. The solicitation also provided that for the purposes of award the agency would evaluate whether the offeror's total fixed price was fair and reasonable. Id. at 4.

Task order proposals were due on July 24, 2017. COS at 17. Each of the six firms holding an IDIQ contract submitted a proposal. Id. Sallyport was rated acceptable under each technical subfactor, acceptable overall for the technical factor, and satisfactory for past performance. Agency Report (AR), Tab 13, Source Selection Authority (SSA) Award Determination, at 2, 7. In contrast, Sallyport's fixed-price proposal of \$305,493,261, was rated unacceptable for the price factor, and as a result, its proposal was eliminated from the competition. Id. The agency concluded that Sallyport's price proposal contained a number of inadequacies and omissions, and failed to follow instructions, and therefore the agency did not have sufficient information to determine that the price was fair and reasonable. AR, Tab 9a, Price Evaluation Team (PET) Consensus Evaluation Report, at 3, 8. The task order was issued to Triple Canopy, Inc., which submitted a fixed-price proposal of \$335,563,822. AR, Tab 13, SSA Award Determination, at 12.

¹ All citations to the solicitation are to amendment 06.

In its protest, Sallyport challenged the evaluation of its price and technical proposals, and the evaluation of Triple Canopy's past performance. With respect to the evaluation of its price proposal, Sallyport argued that the agency failed to follow the terms of the solicitation because the agency went beyond evaluating whether the offerors' prices were fair and reasonable. The agency responded that Sallyport failed to follow the solicitation instructions and did not provide the information required, which was needed to evaluate Sallyport's price due to errors and conflicts in Sallyport's price proposal narrative and pricing spreadsheet.

In our decision, we concluded that the agency properly rejected Sallyport's proposal as unacceptable given the agency's difficulty in verifying Sallyport's proposed prices because Sallyport failed to provide accessible tables and back-up data as required by the solicitation. We also concluded that Sallyport could not maintain its other challenges to the agency's evaluation of its technical proposal or the evaluation of the awardee's past performance because it was properly eliminated from the competition based upon its unacceptable price proposal.

DISCUSSION

Sallyport requests that we reconsider our decision due to factual and legal errors. The protester complains that our decision contains a factual error because it misstates the solicitation's Section M evaluation criteria. Sallyport further argues that our decision is legally flawed because it directly contradicts a recent decision by our Office. We have reviewed Sallyport's request and find no basis for us to reconsider our earlier decision.

Under our Bid Protest Regulations, to obtain reconsideration the requesting party must set out factual and legal grounds upon which reversal or modification of the decision is warranted, specifying any errors of law made or information not previously considered. Bid Protest Regulations, 4 C.F.R. § 21.14(a), (c). The repetition of arguments made during our consideration of the original protest and disagreement with our decision do not meet this standard. Id.; Veda, Inc.--Recon., B-278516.3, B-278516.4, July 8, 1998, 98-2 CPD ¶ 12 at 4.

Sallyport first requests that we reconsider our decision due to a factual error. The protester contends that our decision misstates the Section M evaluation criteria. Sallyport argues that the misstatement was critical error because it "swung the entire outcome of the protest." Request at 4. In this regard, Sallyport argues that the decision permitted the Agency to conduct a price realism evaluation, which was not permitted by the terms of the solicitation. Id. at 4-5. While we agree with the protester that our prior decision contained a reference to Section M, rather than Section L, as explained below, this typographical error is not material and does not warrant reversal or modification of our decision.

As we stated in our decision, Sallyport's protest alleged that the agency was not permitted to eliminate Sallyport's proposal from consideration for award based on its analysis of the individual CLINs since its bottom-line price was fair and reasonable.

Sallyport further asserted that nothing in the solicitation put offerors on notice that their price proposals could be rejected as unacceptable for failing to follow the solicitation's instructions. Id. In response, the agency argued that it reasonably eliminated Sallyport's proposal from consideration because it could not validate Sallyport's proposed prices, even though it attempted to do so, due to omissions, errors and failure to provide the required Microsoft Excel read/write format for its calculations and formulas.

We found that the agency properly evaluated Sallyport's price proposal as unacceptable given the agency's difficulty in verifying Sallyport's proposed prices because of the protester's failure to provide accessible tables and back-up data. We also found that the Section L instructions put Sallyport on notice that the agency planned to use the back-up data as part of its price evaluation. In reaching these conclusions, our decision provided:

The solicitation, however, specifically notified offerors in section M that the pricing volume should consist of all information required to support prices, and instructed offerors to provide price breakdown information to be used to aid in the price evaluation. TORFP § L at 3, 10. Specifically, the solicitation instructed offerors to submit all price breakdown information in Microsoft Office Excel Read/Write format and viewable in Microsoft Excel, and advised that all calculations and formulas were required to be unprotected and accessible in the electronic submission documents. Id. at 3.

Sallyport Global Holdings, Inc., at 5 (emphasis added).

The protester alleges that our reference to Section M, underlined above, is a factual error in our decision. The protester is correct that this reference is in error. However, the reference to Section M was not a material error. In this regard, it is clear from the decision that this was a typographical error. Indeed, the record citation immediately following the erroneous reference to Section M clearly references the TORFP Section L instructions, not Section M. Moreover, the relevant Section M evaluation criteria were also provided in the decision. That is, that the solicitation advised offerors that the agency would evaluate the adequacy of the response to determine the extent to which each requirement had been addressed in the proposal in accordance with the proposal submission requirements, TORFP § M at 1, and that the solicitation provided that the agency would evaluate whether the offeror's total fixed price was fair and reasonable for the purposes of award. Id. at 4. Contrary to Sallyport's arguments, the inadvertent typographical error in referencing Section M instead of Section L did not swing the outcome of the procurement nor permit the agency to conduct a realism analysis. While it is clear that Sallyport disagrees with the outcome of our decision, our Office will reverse a decision upon reconsideration only where the requesting party demonstrates that the decision contained a material error of law or fact, or identifies material information that was not previously considered. Veda, Inc.--Recon., supra. Sallyport's allegations here have not met this standard.

Next, Sallyport's asserts that our decision contains a legal error. The protester alleges that our decision misinterprets our recent decision in McCann-Erickson USA, Inc., B-414787. Sept. 18, 2017, 2017 CPD ¶ 300. Sallyport argues that our decision fails to recognize that as a result of McCann-Erickson, the Department of State was not permitted to disqualify Sallyport's proposal based solely on alleged noncompliance with the Section L proposal instructions, where the Section M criteria did not permit such an evaluation.² The protester asserts that our decision's distinction between the agency's evaluation in McCann-Erickson ("a preliminary, pass/fail compliance check" and the Department of State's evaluation of Sallyport that ("attempted to evaluate Sallyport's price proposal") provides no meaningful difference. Request at 7-8 citing Sallyport Global Holdings, Inc., supra at 5. That is, in both instances, an agency improperly eliminated an offeror's proposal solely due to noncompliance with Section L proposal instructions. We find no reason to reconsider our decision because these objections primarily reflect the repetition of arguments previously raised and rejected by our Office.

Specifically, our Office considered the parties numerous arguments with respect to the McCann-Erickson case during Sallyport's protest and concluded that the decision was distinguishable from the agency's evaluation of Sallyport's price proposal. In this respect, our Office previously considered the arguments put forth by Sallyport in its request for reconsideration: similarity in solicitation language and the lack of distinction between the two evaluations, which were raised by the protester and addressed by the agency. Ultimately, we concluded that the Department of State properly rejected Sallyport's proposal. Sallyport's effort to re-argue the merits of the underlying protest does not demonstrate an error of law that warrants reversing or modifying our decision. Veda, Inc.--Recon., supra.

The request for reconsideration is denied.

Thomas H. Armstrong
General Counsel

² In this regard, the protester provides that the relevant portion of the section M evaluation criteria were the same in both the current case and the McCann-Erickson case.