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Decision

Matter of: Bauer Technologies, Inc.

File: B-415717.2; B-415717.3

Date: June 22, 2018

Steven J. Koprince, Esq., Matthew T. Schoonover, Esq., Shane J. McCall, Esq., and Nicole D. Pottroff, Esq., Koprince Law, LLC, for the protester.

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Mark B. Grebel, Esq., and Colleen M. Eagan, Esq., Defense Information Systems Agency, for the agency.

April Y. Shields, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging acceptability of awardee's quotation for allegedly departing from administrative requirements is denied with regard to its inclusion of a document where the solicitation did not prohibit such submission; and dismissed with regard to the alleged use of a non-conforming type font where the record does not support the allegation.
 2. Protest alleging agency conducted a flawed and inadequately documented price realism analysis of awardee's quotation is dismissed where the record shows that a price realism analysis was neither required by the solicitation nor conducted.
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DECISION

Bauer Technologies, Inc., of Arlington, Virginia, protests the issuance of a task order to Taurean General Services, Inc., of San Antonio, Texas, under request for quotations (RFQ) No. 831710439, issued by the Defense Information Systems Agency (DISA) for technical support services. The protester contends that the agency should have excluded the awardee's quotation from consideration because it allegedly departed from the RFQ's administrative requirements. The protester also contends that the agency conducted a flawed and inadequately documented price realism analysis of the awardee's quotation.

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

BACKGROUND

The RFQ was issued on October 12, 2017, as a small business set-aside under Federal Acquisition Regulation (FAR) subpart 8.4 and sought quotations from vendors holding Information Technology contracts under the General Services Administration (GSA) Federal Supply Schedule (FSS) No. 70. The RFQ contemplated the issuance of a fixed-price task order titled “Enterprise Backbone and Border Sensors,” which would involve technical support services and subject matter experts for DISA’s Cyber Security Infrastructure Branch. Agency Report (AR), Tab 1A, RFQ Attachment 1 – Performance Work Statement, at 1-2. The RFQ provided for performance of a base year, two option years, and a possible 6-month extension period. AR, Tab 1, RFQ, at 4.

The RFQ required vendors to submit “a written technical and price quotation” and reserved for the agency “the right not to consider for award any quotation that does not adhere to the administrative requirements of this RFQ.” RFQ at 2-3. Of relevance here, the RFQ instructed vendors to “ensure price quotations include detailed information regarding the resources required to accomplish the task (e.g., labor categories, labor hours, number of employees for each labor category, rates, travel, incidental equipment, contract access fees, etc.)” Id. at 4. The RFQ did not set a page limitation in this regard, but required vendors to include a price quotation spreadsheet as “a separate document from the technical quotation” and required that it be submitted “in MS [Microsoft] Excel 2007 or newer format.” Id. at 3. For the technical quotation, the RFQ limited the length to 25 pages and specified the minimum margin and font size, and warned that excess pages would not be read or considered in the evaluation of the quotation. Id.

The RFQ stated that award would be made on a lowest-price, technically acceptable basis. RFQ at 3. Quotations would be evaluated based on two factors: technical/management approach¹ and price.² Id. Of relevance here, the RFQ advised that price quotations would be “evaluated to determine if they are reasonable and complete,” and noted that the agency reserved the right, but was not obligated, to conduct a realism analysis. Id. at 4. The RFQ provided that the agency would first

¹ The technical/management approach factor contained three subfactors under which quotations would be rated either acceptable or unacceptable. A quotation would only be rated overall technically acceptable if it received “acceptable” ratings under each subfactor. RFQ at 3.

² The total evaluated price would “consist of the contractor’s proposed price for the base period, all option periods, the option pricing for the additional 6-month period, and surge pricing.” RFQ at 4. With regard to the surge pricing, the agency “may require surge support during the base or any option period” and instructed vendors to propose exactly 30 percent for the appropriate contract line item number “for the base and all option periods, excluding any 6-month extension of services.” Id. at 5.

evaluate the lowest-priced quotation; if the lowest-priced quotation was determined to be technically acceptable and otherwise properly awardable, award would be made to that vendor. Id.

The RFQ was amended four times and closed on January 8, 2018. RFQ at 1. DISA received quotations from three vendors, including Bauer and Taurean. AR, Tab 7, Price Negotiation Memorandum (PNM), at 3. The agency first evaluated Taurean's quotation, which offered the lowest price.³ The technical evaluation team (TET) rated Taurean's technical quotation overall technically acceptable. AR, Tab 6, Selection Recommendation Document (SRD), at 3-7. The TET then concluded that Taurean's price quotation was "reasonable and complete" based on adequate price competition, comparison to Taurean's GSA schedule pricing, and comparison to an independent government cost estimate. Id. at 9-10.

The source selection authority (SSA), who was also the contracting officer, reviewed and concurred with the TET's technical and price evaluation, independently evaluated Taurean's price as "fair and reasonable," and selected Taurean for award. PNM at 5-7. After receiving notice of award on March 27, Bauer protested to our Office.

DISCUSSION

Bauer contends that the agency should have rejected Taurean's quotation from consideration because it allegedly departed from the RFQ's administrative requirements. Bauer further alleges that the agency conducted a flawed and inadequately documented price realism analysis of Taurean's quotation.⁴

³ Taurean's proposed price was \$6,157,712. Bauer's proposed price was \$7,571,180, which was next-lowest. PNM at 6.

⁴ Bauer's initial protest alleged that Taurean's quotation failed to include the surge pricing required by the RFQ and should have been deemed technically unacceptable. Protest, Apr. 2, 2018, at 3-4. The record shows that Taurean's quotation included the required surge pricing and that Taurean responded to a clarification evaluation notice affirming that its quotation included the required surge pricing. AR, Apr. 16, 2018, at 7-8; see also SRD at 3. The agency also discussed its technical evaluation of Taurean's quotation in its report. AR at 11-15. Since Bauer did not respond to or rebut the agency's response in its comments, and instead raised new challenges to the agency's evaluation of Taurean's quotation, Bauer's failure to comment on the agency's response renders these initial arguments abandoned and we will not consider them further. 22nd Century Techs., Inc., B-412547 et al., Mar. 18, 2016, 2016 CPD ¶ 93 at 10. Furthermore, where Bauer has raised arguments that are in addition to, or variations of, those specifically discussed herein, we have reviewed all of Bauer's arguments and find no basis to sustain its protest.

Administrative Requirements

Bauer contends that the agency should have rejected Taurean's quotation from consideration because it allegedly departed from the RFQ's administrative requirements in two respects. First, Bauer complains that Taurean's price quotation included a price volume narrative that the protester believes was not permitted by the RFQ. Supp. Protest, Apr. 23, 2018, at 6. In this regard, Bauer notes the following instruction in the RFQ: "The price quotation spreadsheet shall be a separate document from the technical quotation and shall be submitted in MS Excel 2007 or newer format." Id., citing RFQ at 3. Bauer interprets this instruction to mean: "If the solicitation says put the price volume in a spreadsheet file, it means only in a spreadsheet file and excludes everything else." Supp. Comments, May 14, 2018, at 7. Bauer then contends that it was improper for the agency to consider Taurean's price volume narrative in its price evaluation. Supp. Protest at 6; see also SRD at 9.

The agency asserts that the RFQ "did not prohibit offerors from submitting an additional price narrative document" along with the required price quotation spreadsheet. Supp. AR, May 8, 2018, at 13. In its response, the agency explains that the RFQ "invited offerors to submit an additional price narrative" where it instructed offerors to "ensure price quotations include detailed information regarding the resources required to accomplish the tasks." Id., citing RFQ at 4. The agency also notes that the RFQ did not prescribe any page limitations for the price quotation. Id. at 14. Ultimately, in the agency's view, "[t]here is no significant distinction between an offeror using the spreadsheet versus a PDF [portable document format] to submit additional pricing data." Id.

As a general matter, offerors must prepare their proposals within the format limitations set out in an agency's solicitation. ManTech Advanced Sys. Int'l, Inc., B-409596, B-409596.2, June 13, 2014, 2014 CPD ¶ 178 at 3. Where a protester and agency disagree over the meaning of solicitation language, we will 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. Alluviam LLC, B-297280, Dec. 15, 2005, 2005 CPD ¶ 223 at 2. Where a dispute exists as to a solicitation's actual requirements, we will first examine the plain language of the solicitation. Point Blank Enters., Inc., B-411839, B-411839.2, Nov. 4, 2015, 2015 CPD ¶ 345 at 3.

Here, we find reasonable the agency's view that the RFQ did not prohibit offerors from submitting other price documentation in addition to the required price quotation spreadsheet. The RFQ specifically advised that vendors "should ensure price quotations include detailed information," which we think reasonably includes narrative information. RFQ at 4 (emphasis added). Further, the RFQ did not set a page limitation for the price quotation and did not state that offerors could only submit the required

price quotation spreadsheet or that quotations would be automatically rejected for submitting more than the required price quotation spreadsheet.⁵ Thus, we find Taurean's inclusion of a price volume narrative was not prohibited by the RFQ, and it was not improper for the agency to consider the price volume narrative in its price evaluation. Accordingly, we deny this basis of protest.

Second, Bauer alleges that Taurean's technical quotation used 10-point font and had substantive text inside the one-inch margins, such that "important information . . . likely would have appeared beyond page 25 and, thus, been excluded from competition." Supp. Protest at 5. Bauer bases its allegation solely on a declaration from a legal assistant who converted an Adobe PDF copy of Taurean's quotation included in the agency report into a Microsoft Word document and states that she "believe[s] that Taurean's [quotation] included a significant amount of 10-[point] font." Supp. Protest, Exhibit A, Declaration of Legal Assistant, Apr. 23, 2018, at 1. Bauer did not further specify what parts of Taurean's quotation allegedly contained questionable formatting.

The agency explains that when the contract specialist initially received Taurean's quotation, which was submitted in Adobe PDF format, "he visually inspected it and concluded the font was 11-point." Supp. AR at 12. In response to the supplemental protest, the contract specialist requested a Microsoft Word copy of Taurean's technical quotation and again verified that the quotation complied with the font and page limitations set by the RFQ. Supp. AR, Tab 8, Declaration of Contract Specialist, May 7, 2018, at 1-2. As an additional step, the contract specialist repeated the conversion methodology described by Bauer; although the agency does not dispute that font inconsistencies appear when Taurean's technical quotation is converted from Adobe PDF to Microsoft Word, the agency points out that similar font inconsistencies appear when the same conversion exercise is performed on Bauer's technical quotation. Id. Both the agency and the intervenor reference instructions on the Adobe and Microsoft webpages and assert that "[i]t is well known that errors may occur when a MS Word document is converted to PDF or *vice versa*." Supp. AR at 12 (emphasis original); see also Intervenor's Supp. Comments, May 14, 2018, at 13 (stating that "formatting issues can occur when a document is converted from PDF to [MS] Word" and "[t]his is common knowledge").

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551-3556. In that regard, our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. Pacific Photocopy and Research Servs., B-278698, B-278698.3, Mar. 4, 1998, 98-1 CPD ¶ 69 at 4. To achieve this end, our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) and (f), require that a protest include a detailed

⁵ We also note that Bauer included two written pages as additional tabs in its price quotation spreadsheet, which we view as comparable to Taurean's use of a separate price volume to provide similar narrative information. Compare AR, Tab 2B, Bauer Price Quotation with AR, Tab 3H, Taurean Price Volume.

statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. These requirements contemplate that the protester will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action.

Here, Bauer's single piece of evidence--a broad declaration based on a conversion exercise from which errors are known to occur--does not provide sufficient detail in support of its allegation for our Office to consider. Further, we note that Bauer does not contest the agency's response that similar font inconsistencies appear when the same conversion exercise is performed on Bauer's technical quotation. Thus, we dismiss this allegation for failure to state a valid basis of protest.

Price Evaluation

Finally, Bauer contends that the agency conducted a flawed and inadequately documented price realism analysis on Taurean's quotation. Supp. Protest at 2. In this regard, Bauer proclaims that its protest is "not whether DISA *should have* conducted a realism evaluation[,] . . . [but] that DISA ignored the findings of the realism evaluation [that] it was authorized to and did perform." Supp. Comments at 2 (emphasis original). Bauer bases its allegation on the following section of the PNM:

The evaluation team was provided the pricing information for [Taurean's] quote on February 2, 2018, and questioned [Taurean's] ability to successfully perform the requirements of the effort. After several meetings with the contracting officer and the general counsel, providing additional source selection training to ensure comprehension of the price evaluation process, the mission partner found that [Taurean] could successfully perform the requirements of the effort as outlined in the performance work statement.

PNM at 6. Bauer interprets this section to mean: "In other words, DISA conducted a price realism evaluation." Supp. Protest at 2.

The agency affirms that it did not perform a price realism analysis. Supp. AR at 2. The RFQ did not require the agency to perform a price realism analysis, and the agency states that it exercised its "discretion" to not perform one. *Id.*; RFQ at 4 (stating the agency "reserves the right, but is not obligated, to conduct a realism analysis"). In accordance with FAR § 15.404-1, the agency evaluated Taurean's quotation for price reasonableness based on adequate price competition, comparison to Taurean's GSA schedule pricing, and comparison to an independent government cost estimate. SRD at 9-10; PNM at 6-7. The agency concluded that Taurean's price was "fair and reasonable." PNM at 7.

As a general matter, when awarding a fixed-price contract, an agency is only required to determine whether the offered prices are fair and reasonable, that is, whether proposed prices are too high. FAR § 15.402(a). A price realism evaluation, in contrast, applies

cost realism analysis techniques to fixed prices for the limited purpose of assessing an offeror's understanding of the requirements or to assess the risk associated with an offeror's low price. FAR § 15.404-1(d)(3); Ball Aerospace & Techs. Corp., B-402148, Jan. 25, 2010, 2010 CPD ¶ 37 at 8. Where, as here, an agency states in a solicitation that it "reserves the right" to conduct a price realism analysis, the decision to conduct such an analysis is a matter within the agency's discretion. Guident Techs., Inc., B-405112.3, June 4, 2012, 2012 CPD ¶ 166 at 13 n.9; Bering Straits Logistics Servs., LLC, B-403799, B-403799.3, Dec. 15, 2010, 2011 CPD ¶ 9 at 3.

We find no reason to question the agency's assertion that it did not conduct a price realism analysis here, because price realism analyses are not required for fixed-price contracts, the RFP did not require the agency to conduct such an analysis, and the record shows that the agency evaluated Taurean's price for reasonableness. While Bauer repeatedly queries why the evaluators initially "questioned [Taurean's] ability to successfully perform the requirements of the effort," Supp. Protest at 2-4, citing PNM at 6, we note that we will not find an evaluation record to be inadequately documented simply because it does not explain the existence of differences between the evaluators' preliminary findings and the final consensus evaluation findings. See, e.g., Booz Allen Hamilton, Inc., B-409355, B-409355.2, Mar. 19, 2014, 2014 CPD ¶ 100 at 9 ("the overriding concern for our purposes is not whether an agency's final evaluation conclusions are consistent with earlier evaluation conclusions [individual or group], but whether they are reasonable and consistent with the stated evaluation criteria and reasonably reflect the relative merits of the proposals"). Here, the record supports the agency's assertion that it evaluated Taurean's price for reasonableness and did not conduct a price realism analysis. Because Bauer's protest is based on the unsupported assertion that the agency performed a price realism analysis, we dismiss this allegation for failure to state a valid basis of protest.

The protest is denied in part and dismissed in part.

Thomas H. Armstrong
General Counsel