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Decision

Matter of: Deloitte Consulting, LLP

File: B-418485.2

Date: October 26, 2020

Daniel J. Strouse, Esq., David S. Cohen, Esq., and John J. O'Brien, Esq., Cordatis LLP, for the protester.

Karyne Akhtar, Esq., and Douglas Kornreich, Esq., Department of Health and Human Services, for the agency.

Jacob M. Talcott, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's elimination of the protester's quotation from the competition is denied where the agency's evaluation was reasonable and in accordance with the terms of the solicitation.

DECISION

Deloitte Consulting, LLP, of Arlington, Virginia, protests the decision of the Department of Health and Human Services, Food and Drug Administration (FDA), to eliminate Deloitte's quotation from the competition, under request for quotations (RFQ) No. FDA-RFQ-20-00002, to provide technical and management services for the FDA's Office of Regulatory Affairs (ORA). The protester contends that the agency unreasonably found the protester's quotation unacceptable.

We deny the protest.

BACKGROUND

On December 30, 2019, the FDA issued the RFQ to vendors holding General Services Administration (GSA) Federal Supply Schedule (FSS) contracts under Schedule 70. Agency Report (AR), Tab 1, Contracting Officer's Statement (COS) at 2. The solicitation sought development, modernization, and enhancement (DME) support, and software applications operation and maintenance (O&M), for the FDA's ORA. AR, Tab 4b, RFQ at 2. The FDA intended to establish a single blanket purchase agreement (BPA) under the GSA FSS with the responsible vendor whose quotation represented

the best value to the government, considering four factors: relevant experience to the BPA, technical approach to technical scenario one, technical approach to technical scenario two, and price. *Id.* at 2-3. The due date for quotations was February 3, 2020. *Id.* at 4.

For the evaluation, the RFQ required vendors to submit their quotations in three separate volumes: volume one, relevant experience; volume two, technical; and volume three, business/price quote. *Id.* at 5. As relevant here, volume one, relevant experience¹ required vendors to provide a copy of a single indefinite-delivery, indefinite-quantity (IDIQ) contract, BPA, or basic ordering agreement (BOA) under which the vendor performed at least “three (3) concurrent orders/modifications/ tasks on the same Award IDIQ/BPA/BOA within the last five (5) years” from the RFQ release date.² *Id.* at 7. The RFQ provided that the agency would assign a vendor’s relevant experience a rating of acceptable or unacceptable, and that if a quotation received a rating of unacceptable under relevant experience, the agency would eliminate that quotation from the competition. RFQ at 3. The RFQ further required that the work submitted under relevant experience encompass a “similar scope” to the work required under the RFQ. *Id.*

To demonstrate relevant experience, the RFQ required vendors to complete and submit a task matrix with their quotations. *Id.* The RFQ required vendors to use the task matrix to identify areas in the statement of work (SOW) of their submitted orders that were similar in scope to task areas under ¶ 2.2 (Systems Integration and Engineering Services), ¶ 2.6 (DME), and ¶ 2.7 (O&M and support services) of the RFQ’s SOW. RFQ at 7. The relevant task matrix identified five task areas under ¶ 2.2; five task areas under ¶ 2.6; and six task areas under ¶ 2.7; it also identified four task areas under ¶ 2.3. AR, Tab 4f, Relevant Experience Task Matrix. Of relevance to this protest, one of the task areas under ¶ 2.6 was “[d]evelop and test the required system components.” *Id.*

Deloitte timely submitted its quotation. Protest at 2. Following Deloitte’s submission, the technical evaluation team (TET) determined that Deloitte failed to demonstrate relevant experience. AR, Tab 6a, TET Report at 16-17. Specifically, the TET determined that although Deloitte provided three task orders (Order 0016, Order TEPB16-34674, and Order 0014) to demonstrate its experience with developing and testing the required system components, none of the three orders demonstrated experience developing system components. *Id.* On July 13, the FDA notified Deloitte that its quotation was unacceptable due to its failure to identify relevant experience.

¹ This protest concerns only the agency’s evaluation of Deloitte’s quotation under the relevant experience factor. Protest at 2

² The RFQ also required that the collective value of the orders be at least \$30 million and within a twelve-month period. *Id.* Neither of these requirements is at issue in this protest.

Agency Report, Tab 7, Notification of Elimination at 3-6. Deloitte filed this protest with our Office on July 17.

DISCUSSION

Deloitte alleges that the agency unreasonably evaluated its quotation under the relevant experience factor. Specifically, Deloitte contends that Order 0016 and Order TEPB16-34674 demonstrated Deloitte's experience developing system components, and the TET's determination to the contrary was unreasonable.³ In the alternative, Deloitte argues that even if the identified work failed to show experience developing system components, the work was similar enough to the work required under the RFQ, and therefore, the agency should have rated Deloitte's quotation as acceptable under the relevant experience factor. Finally, Deloitte argues that the agency's evaluation was internally inconsistent. For the reasons discussed below, we deny the protest.

The evaluation of quotations is a matter within the discretion of the procuring agency. *Peregrine Integrated Mgmt., Inc.*, B-414788, B-414788.2, Sept. 11, 2017, 2017 CPD ¶ 286 at 2. In reviewing a protest of an agency's evaluation of quotations, it is not our role to reevaluate quotations; rather, our Office will examine the record to determine whether the agency's judgment was reasonable and consistent with the solicitation criteria. *Id.* A vendor's disagreement with the agency, without more, does not render the evaluation unreasonable. *Encorp-Samcrete Joint Venture*, B-284171, B-284171.2, Mar. 2, 2000, 2000 CPD ¶ 55 at 4.

Here, Deloitte first argues that Order 0016 demonstrated its experience developing system components and thus, it should have received a rating of acceptable under the relevant experience factor. Protest at 6; AR, Tab 5b, Deloitte Volume One at 160. The agency, however, argues that although Order 0016 demonstrated that Deloitte had experience developing system requirements, it failed to demonstrate that Deloitte had experience developing system components. Memorandum of Law (MOL) at 7. Under the circumstances here, the record fails to support Deloitte's contention that the evaluation was unreasonable.

In its task matrix, Deloitte cited to pages 162-164 of Order 0016 to demonstrate experience in developing system components. AR, Tab 5c, Deloitte Task Matrix at 1. In reviewing this section, the TET determined that Deloitte served only as an independent verification and validation (IV&V) contractor. AR, Tab 6a, TET Report at 16. According to the TET, IV&V contractors "provide objective assessments of software products and processes" and "are by definition, not involved in the development." *Id.* In other words, the agency determined that the cited pages of Order 0016 did not demonstrate that Deloitte had been involved in the development of system

³ Although Deloitte initially contended that the agency unreasonably evaluated Order 0016, Order TEPB16-34674, and Order 14, Deloitte failed to raise any specific errors in the evaluation of Order 14. Protest at 6. Therefore, this decision addresses only the agency's evaluation of Order 0016 and Order TEPB16-34674.

components. *Id.* We have no basis to object to the agency's determination here. Although Task Order 0016 required Deloitte to perform various "development" tasks, AR, Tab 5b, Deloitte Volume One at 164, it is unclear from the cited language that these tasks were to include the development of system components. This ground of protest is denied.

Deloitte also argues that the agency's evaluation of Order TEPB16-34674 was unreasonable because the agency failed to consider the "full DME description in the RFQ." Protest at 9. Essentially, Deloitte argues that the agency failed to properly interpret the SOW of the RFQ and but for this alleged failure, the agency would have determined that this SOW and the SOW for Order TEPB16-34674 were similar in scope. *Id.* We disagree.

In reviewing Deloitte's submission, the TET stated that Order TEPB16-34674 involved "resolv[ing] functional defects," "implement[ing] minor [] change requests," and "complete[ing] . . . configuration updates [and] source code development." AR, Tab 6a, TET Report at 16. According to the TET, this work qualified as only "minor upgrades" in that the work was less complex than the development of component parts. *Id.* As mentioned above, our Office does not reevaluate quotations; we determine only whether the evaluation was reasonable and in accordance with the solicitation's terms. *Peregrine Integrated Mgmt., Inc., supra*, at 4. The record indicates that the agency fully considered the tasks performed by Deloitte under Order TEPB16-34674 before determining they were not similar in scope to the SOW of the RFQ. Under these circumstances, we have no basis to find the evaluation unreasonable. This protest ground is also denied.

Deloitte next argues that even if it failed to demonstrate experience developing system components, its quotation should have been found acceptable because the work it submitted, as a whole, was similar in scope to the SOW for the RFQ. Comments at 8. Specifically, Deloitte argues "[b]y hitting 19.5 out of 20 task areas completely, Deloitte demonstrated that it had experience that encompassed a 'similar scope to the task areas of the BPA.'" Protest at 11. We disagree. Here, the RFQ required that the submitted orders "[c]ollectively . . . encompass a similar scope to the task areas of the BPA" provided in the relevant task matrix. RFQ at 7. We think that the agency reasonably viewed this language as requiring that the submitted orders demonstrate a similar scope for each task area. Therefore, we have no basis to conclude the evaluation deviated from the evaluation criteria. This protest ground is also denied.

Finally, Deloitte argues that the agency's evaluation was internally inconsistent because in one area it determined that Deloitte had experience across the entire development lifecycle while in another section it determined that Deloitte lacked experience developing system components. Protest at 10. According to Deloitte, both of these things cannot be true. *Id.* The agency, however, contends that to the extent any internal inconsistency existed, the responsibility lies with Deloitte. We agree with the agency.

As relevant here, one task area under ¶ 2.6 required Deloitte to cite areas of its submitted orders that demonstrated its experience developing system components; a separate task area under ¶ 2.6 required Deloitte to demonstrate experience with the “complete range of system development lifecycle support services.” AR, Tab 4f, Relevant Experience Task Matrix. Notably, Deloitte provided only two common citations for these sections. AR, Tab 5c, Deloitte Task Matrix. One of the common citations referenced page 164 of Order 0016, which, as discussed above, failed to demonstrate Deloitte’s experience developing system components. *Id.* The second common citation referenced Order 0014, the evaluation of which Deloitte failed to challenge here. *Id.* There was no overlap among the remaining citations. *Id.*

In other words, the citations Deloitte provided to demonstrate its experience with the complete range of system development lifecycle support services were different than the citations Deloitte provided to demonstrate experience developing system components. See *id.* Because the RFQ provided that “[f]or each Task Area, the Government will only evaluate the references in orders/modifications/tasks that the Quoter has listed in . . . [the] Relevant Experience Task Matrix,” RFQ at 8, the agency had no obligation to look beyond the referenced citations in each section. Deloitte’s failure to provide the same citations in each section does not render the agency’s evaluation unreasonable. This protest ground is also denied.

The protest is denied.

Thomas H. Armstrong
General Counsel