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Decision

Matter of: International Center for Language Studies, Inc.

File: B-419737.3

Date: December 20, 2021

David E. Fletcher, Esq., and Brenna D. Duncan, Esq., Perkins Coie LLP, for the protester.

Alexander B. Ginsberg, Esq., Meghan D. Doherty, Esq., Kevin R. Massoudi, Esq., and Robert C. Starling, Esq., Pillsbury Winthrop Shaw Pittman LLP, for Piedmont Global Language Solutions, the intervenor.

James E. Hicks, Esq., and Jeffrey Saylor, Department of Justice, for the agency.

Hannah G. Barnes, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency unreasonably evaluated the awardee's quotation under the solicitation's performance work statement and prior experience factors is denied where the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation.
 2. Protest that the agency failed to engage in meaningful discussions is denied where the record shows that the agency's discussions with the protester led it into the areas of its quotation requiring amplification or revision, and the agency was not required to hold multiple rounds of discussions.
 3. Protest that the agency performed a flawed best-value determination, based on an allegedly improper evaluation of quotations and improper weighting of technical and price factors, is denied where the agency's actions were reasonable and consistent with the terms of the solicitation.
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DECISION

International Center for Language Studies, Inc. (ICLS), a small business of Washington, D.C., protests the establishment of a blanket purchase agreement (BPA) with Piedmont Global Language Solutions (PGLS), a small business of Arlington, Virginia, under request for quotations (RFQ) No. 15DDHQ21Q00000002, issued by the Department of Justice, Drug Enforcement Administration (DEA), for foreign language instruction

services and materials. The protester argues that the agency unreasonably evaluated the awardee's quotation, violated the terms of the solicitation by failing to finalize a delivery order with the protester, and performed a flawed best-value determination.

We deny the protest.

BACKGROUND

On January 26, 2021, the DEA issued the RFQ as a small business set-aside, pursuant to Federal Acquisition Regulation (FAR) subpart 8.4, to "as many vendors as practicable." Contracting Officer's Statement (COS) at 1. The RFQ contemplated the establishment of a single fixed labor-hour rate BPA under General Services Administration Federal Supply Schedule (FSS) Category 611630, for foreign language training and training materials to be provided to personnel throughout the United States and overseas. Agency Report (AR), Tab 1, RFQ at 1, 6. The RFQ provided that the contract would be performed over a 12-month base period, with four 12-month option periods. Memorandum of Law (MOL) at 2.

The RFQ stated that award would be made on a best-value tradeoff basis, considering three factors: prior experience, the vendor's¹ performance work statement (PWS) submitted in response to the RFQ and statement of objectives, and price. RFQ at 2-3. The solicitation directed vendors to submit quotations in two separate volumes, with prior experience and the PWS in the technical volume and price in the business volume. *Id.*

The RFQ advised that the agency anticipated selecting the best-suited vendor from the initial responses, without engaging in exchanges with them, and "strongly encourage[d]" vendors to submit their best technical solutions and price in their quotations. *Id.* at 4. As relevant here, the RFQ advised that the government reserved the right to communicate only with the apparent successful vendor. *Id.* Specifically, the solicitation stated the following regarding such communications:

Once the government determines the contractor that is the best-suited (*i.e.*, the apparent successful contractor), the government reserves the right to communicate with only that contractor to address any remaining issues, if necessary, and finalize a delivery order with that contractor. These issues may include technical and price. If the parties cannot successfully address any remaining issues, as determined pertinent at the sole discretion of the government, the government reserves the right to communicate with the next best-suited contractor based on the original analysis and address any remaining issues.

¹ Although this is a solicitation for quotations to establish a BPA under the FSS, the solicitation refers to the submission of "proposals" from "offerors" instead of quotations from vendors. For consistency, we refer to the submission of "quotations" from "vendors" throughout the decision.

RFQ at 4-5.

The solicitation also advised vendors that the PWS and past performance factors, when combined, were significantly more important than price; that cost could be the determining factor if there were no significant technical differences; and that the agency “may or may not award to the lowest priced [o]fferor or highest technically rated [o]fferor.” RFQ at 5.

On or before the March 3, 2021 closing date, the agency received compliant quotations from four vendors, including ICLS and PGLS. AR, Tab 8, Summary of Award at 94. The technical evaluation team (TET) assigned the awardee’s and the protester’s technical quotations the same “high confidence” rating. *Id.* at 94. The evaluation team initially determined ICLS’s quotation to be technically superior, based on the protester’s “ability to provide proprietary software” for online training. *Id.* at 94-95. Based on its evaluation of the technical quotations, the TET recommended ICLS for award. COS at 1.

ICLS quoted \$13.59 million for onsite foreign language classes and \$12.56 million for virtual classes, while PGLS quoted \$11.91 million for onsite classes and \$11.61 million for virtual classes. AR, Tab 8, Summary of Award at 96. On March 17, the contract specialist sought a price reduction from ICLS, “in accordance with FAR [section] 8.405-4,” and the protester lowered its price to \$13.5 million for onsite classes and \$12.37 million for virtual classes. *Id.* On March 22, the contract specialist requested price discounts from PGLS. *Id.* PGLS reduced its prices to \$11.69 million for onsite classes and \$11.32 million for virtual classes. *Id.* While deciding which quotation represented the best value, the agency noted that PGLS’s lack of proprietary software did not constitute a significant disadvantage or affect the high confidence rating assessed to the firm’s quotation.² COS at 1. Despite the TET’s earlier conclusion, the agency ultimately decided that ICLS’s assessed technical advantage did not merit paying its associated price premium. *Id.* at 2. On March 30, the agency made award to PGLS. AR, Tab 14, Notice of Award at 1.

On April 8, ICLS filed a protest with our Office, alleging that the agency unreasonably evaluated the awardee’s prior experience and PWS. On May 24, after the agency filed its report in response to the protest, ICLS filed its comments and a supplemental protest. Thereafter, before the due date for filing its response to the supplemental protest, the agency announced that it would take corrective action by reviewing the previous evaluations and reevaluating quotations, if necessary. The agency stated that it “opted to take corrective action to reconsider the source selection decision in light of

² The TET reasoned that without its own software, PGLS would need to rely on publicly available applications such as Zoom and Skype, and, while certain evaluators did not favor these programs, the TET noted that “[m]any federal agencies have used Zoom, Skype and other platforms throughout the current COVID-19 pandemic and had little difficulty maintaining a highly productive work environment.” COS at 1-2.

mathematical errors” and appointed a new source selection authority (SSA). MOL at 5. We dismissed those protests, concluding that the agency’s corrective action rendered academic the pending dispute. *International Ctr. for Language Studies, Inc.*, B-419737, B-419737.2, June 22, 2021 (unpublished decision). On September 7, the agency announced its corrective action was complete and that it had again selected PGLS for award. MOL at 5.

In support of the new award determination, the SSA explained that the agency had previously contacted ICLS to request discounted pricing, given ICLS’s initial status as the apparent successful vendor; that the “revised pricing and exchanges with ICLS did not prove satisfactory”; and that as a result, the agency subsequently contacted PGLS to request discounted pricing. AR, Tab 9, SSA’s Statement of Facts at 109. The SSA reasoned that the “sole technical benefit” of ICLS’s propriety software “was not significant enough” to outweigh ICLS’s price premium. *Id.* The SSA concluded that PGLS provided “the best overall value to satisfy [a]gency needs.” *Id.* at 100.

This protest followed on September 10.

DISCUSSION

In its protest, ICLS argues that the agency unreasonably evaluated the awardee’s past performance and PWS.³ The protester also claims that the agency violated the terms of the solicitation by failing to meaningfully address its price concerns with the protester once the agency identified ICLS as the apparent successful vendor. ICLS also asserts more generally that the agency’s best-value determination was improper because it ignored the relative weight of the solicitation evaluation criteria. We have reviewed all of ICLS’s allegations and find no basis to sustain its protest.

Technical Evaluation

With regard to the technical evaluation, the protester repeats two arguments from its initial April 8 protest. ICLS asserts that the agency unreasonably evaluated the awardee’s prior experience, asserting that PGLS’s publicly available history of federal contract awards shows a lack of experience with foreign language training. Protest at 15. The protester points to the solicitation’s requirement that vendors submit at least two examples of prior contracts “of similar scope, complexity, and size of the requirements of this solicitation” completed “within the last three [] years,” asserting that the awardee’s prior experience could not have merited a rating of high confidence. RFQ at 2. The protester also argues that the agency unreasonably assigned the awardee’s quotation a rating of high confidence under the PWS factor, alleging that PGLS lacks experience in providing foreign language instruction and consequently could not have “proposed a feasible PWS that demonstrated its ability to meet [the agency’s] objectives.” Protest at 17.

³ We note that the agency report filed in response to this protest included, as the record of evaluation, the same record that was produced in the first protest.

The agency responds that it evaluated quotations in a manner consistent with the terms of the solicitation. The agency asserts that PGLS submitted three references: one for its subcontractor, one for a company it recently acquired, and one for its own performance as a subcontractor providing foreign language training for the Department of State's Foreign Service Institute. MOL at 11-12. The agency argues that all of these contracts are relevant to the current effort, show experience with foreign language training, and are "well over the \$9.5 million estimated value for this BPA." COS at 2. The agency also asserts that the allegation regarding the PWS evaluation is invalid because the agency reasonably determined the awardee would be able to meet the agency's objectives, especially given the prior experience PGLS demonstrated.⁴ MOL at 12.

⁴ In response to the agency's arguments, the protester provides, for the first time, more specific allegations concerning the agency's evaluation of the awardee's technical quotation. The protester specifically addresses the awardee's PWS and prior contract references. Comments at 5-9. The protester initially received the awardee's technical quotation, including its PWS and prior contract references, in the May 13 agency report prepared in response to the earlier protest. See Req. for Partial Dismissal, Oct. 25, 2021, at 5-11. On September 7, after completing its corrective action, the agency sent both ICLS and PGLS the SSA's statement, which explained that the agency reviewed the prior evaluation record and "found no wrong doing; the Technical Evaluation Team review was conducted as stated in the RFQ and no changes were made to the TET evaluation by the CO." AR, Tab 9, SSA's Statement of Facts at 108. On September 10, ICLS filed the instant protest, alleging protest grounds that did not incorporate information from the awardee's technical quotation or the agency's evaluation.

The agency contends that the protest grounds raised in the protester's comments should be dismissed as untimely because they are based on information the protester received in the May 13 agency report prepared in response to the earlier protest. Req. for Partial Dismissal, Oct. 25, 2021, at 5-11. The protester responds that it could not have known whether the agency's evaluation, performed during corrective action, differed from the previous evaluation record. Resp. to Req. for Partial Dismissal, Sept. 27, 2021, at 2-3. However, on this record, the SSA's September 7 statement put ICLS on notice that the evaluation record remained unchanged. Instead, these allegations were first raised in the instant protest when ICLS filed its comments on the agency report, more than 10 days after the specific basis of protest was known. See 4 C.F.R. § 21.2(a)(2).

Our Bid Protest Regulations do not contemplate the piecemeal presentation or development of protest issues through later submissions providing alternate or more specific legal arguments missing from earlier general allegations of impropriety. *Salient Fed. Sols., Inc.*, B-410174.3, B-410174.4, Apr. 1, 2016, 2016 CPD ¶ 104 at 9. Accordingly, these protest grounds are dismissed.

Where, as here, an agency issues an RFQ to FSS vendors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. *Digital Sols., Inc.*, B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4. In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate the quotations; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *OPTIMUS Corp.*, B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4. A protester's disagreement with the agency's judgment does not establish that an evaluation was unreasonable. *DEI Consulting*, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2.

On this record, the agency reasonably concluded that the protester's prior experience and PWS merited ratings of high confidence. We note the agency's argument that the prior experience references the awardee submitted are relevant to the current effort, demonstrate "similar experience to ICLS," and "exceed[] the size, scope, and complexity of DEA's requirement." COS at 6. While the protester disagrees with the high confidence rating assessed to the awardee's technical quotation, it has not shown the agency's judgment to be unreasonable. See *DEI Consulting, supra*. Similarly, the awardee has not shown that the agency's evaluation of the awardee's PWS is unreasonable. The record refutes the protester's claims of the awardee's complete inexperience delivering foreign language training, and this argument is the basis for the protester's claim that PGLS could not have proposed a feasible PWS. See Protest at 17. As a result, this protest ground is denied.

Meaningful Discussions

The protester also argues that the agency violated the terms of the RFQ by failing to meaningfully address its price concerns and finalize a delivery order with ICLS after it initially identified the protester as the best-suited vendor. Protest at 13-15. Specifically, the protester alleges that the DEA violated the solicitation provision regarding exchanges with the best-suited vendor when, instead of giving ICLS another opportunity to reduce its price, the agency sought a price reduction from PGLS, "the next-in-line for award." *Id.* at 14. The protester contends that the solicitation required the agency to meaningfully engage with the protester once the DEA identified ICLS as the apparent successful vendor, adding that meaningful engagement with the protester meant the agency should have continued to negotiate with ICLS on the issue of price. *Id.* at 13-14.

The agency responds that the protester cannot show that the agency's actions resulted in competitive prejudice to ICLS. MOL at 9. In essence, DEA contends that the "best suited," or "apparently successful" competitor ultimately is not determined until both price and non-price factors have been evaluated, and a best-value determination has been made. Thus, according to the agency, the RFQ provision on which the protester relies did not require the agency to engage in exchanges--*i.e.*, to pursue its price concerns with ICLS or PGLS--before a best-value analysis had taken place. *Id.* at 9-11. The agency asserts that, in fact, the protester was given an "unwarranted" benefit,

because despite ICLS's initial technical advantage, the awardee succeeded in "a best value trade-off that considered only the offerors' initial prices (and technical assessments)." *Id.* at 10-11. The agency points out that the price disparity between the protester's and awardee's quotations increased after the agency sought price reductions. *Id.* at 10. The agency argues that, had it "conducted a best value trade-off that considered [] revised prices, PGLS's trade-off advantage would have been even greater." *Id.* at 11.

In response, ICLS argues it suffered competitive prejudice because it would have further reduced its proposed price if the agency had communicated to the protester that the price discount it offered initially was inadequate. Comments at 5. In this regard, ICLS contends that once the agency identified ICLS as the best-suited vendor, the solicitation required the agency, "upon exercising the [e]xchanges provision of the RFQ, to engage meaningfully with ICLS to address unresolved issues – namely, ICLS's 'unacceptable' price – and finalize the award of a contract." *Id.* at 3.

Discussions occur when an agency communicates with a vendor for the purpose of obtaining information essential to determine the acceptability of a quotation, or provides a vendor with an opportunity to revise or modify its quotation. *Diversified Collection Servs., Inc.*, B-406958.3, B-406958.4, Jan. 8, 2013, 2013 CPD ¶ 23 at 11-12. Discussions must be meaningful, equitable, not misleading, and fair. *Digital Sys. Grp. Inc.*, B-286931, Mar. 7, 2001, 2001 CPD ¶ 50 at 7. For discussions to be "meaningful," they must be sufficiently detailed to lead a vendor into the areas of its quotation requiring amplification or revision. *Aderas, Inc.*, B-418151, Jan. 16, 2020, 2020 CPD ¶ 30 at 6. This requirement does not mean that an agency must "spoon-feed" a vendor each and every item that must be revised or otherwise addressed to improve a quotation. *Digital Sys. Grp. Inc.*, *supra*.

Here, the record shows that the solicitation language on which the protester relies established discretion for the agency to communicate with vendors, but did not require such action. The RFQ advised that the government "reserves the right" to communicate with the apparent successful vendor and address any remaining issues, not that it was required to do so. See RFQ at 4. Similarly, the RFQ stated that any remaining issues would be "determined pertinent at the sole discretion of the government." *Id.* at 5. The solicitation language provided the agency with significant leeway to exercise its ability to communicate with the best-suited vendor.

Furthermore, to the extent that the RFQ did require the agency to engage in discussions with the best-suited vendor, it did not mandate that the agency continue to engage in a price negotiation with the protester until the protester could reduce its price no further. See *Digital Sys. Grp. Inc.*, *supra*. The record shows that the agency led the protester into the area of its quotation requiring revision when the agency requested a price discount. On this record, we find that the agency's exchange with ICLS constituted meaningful discussions. This protest ground is denied.

Best-Value Determination

Finally, the protester argues that the agency performed a flawed best-value determination. Protest at 11. Specifically, the protester asserts that the agency improperly elevated the importance of price when it “unreasonably equaliz[ed]” the awardee’s and protester’s technical quotations by reducing the differences between the two quotations to ICLS’s proprietary software. Protest at 11-12. The protester argues that the best-value determination ignored the “magnitude of ICLS’s technical superiority,” as well as the slight size of ICLS’s price premium, a difference of \$1.68 million over a 5-year period.⁵ *Id.* at 12.

The agency argues that it reasonably considered the price difference between the two quotations, given the absence of any significant technical differences. MOL at 8. The agency notes that the protester’s and awardee’s quotations were substantially similar in terms of years of experience, number of instructors, and number of languages proposed. *Id.* The agency also notes, as the TET found, that the protester’s proprietary software does not provide a significant technical advantage because “all of the contract requirements may be accomplished using commercial platforms such a[s] Zoom or Skype.” *Id.*

In response, the protester reiterates its arguments and responds that the agency’s post-corrective action best-value determination “merely repackages the [March] flawed award decision.” Comments at 9.

As previously stated, our Office will not reevaluate quotations, but will examine the record to determine whether the agency’s evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *OPTIMUS Corp., supra.* A protester’s disagreement with the agency’s judgment does not establish that an evaluation was unreasonable. *DEI Consulting, supra.*

Here, the protester has not shown that the agency’s evaluation is inconsistent with the terms of the solicitation. The record shows that in the absence of any significant technical differences, the solicitation contemplated price as a determining factor. RFQ at 5. The record also shows that the agency considered the benefit of the protester’s proprietary software before ultimately deciding that PGLS’s lower price outweighed this advantage. AR, Tab 8, Summary of Award at 94-96. Given that the agency documented its comparison of the protester’s and awardee’s quotations, its

⁵ The protester also argues that “the significance of the documented risk” associated with the awardee’s technical quotation made the agency’s determination unreasonable. Protest at 11. The protester does not further elaborate upon what this risk is. As with the more specific protest grounds pertaining to the awardee’s technical evaluation, discussed above in n.3, the protester’s September 10 protest failed to raise specific facts the firm learned during the course of the earlier protest. Hence, this argument is untimely.

consideration of the protester's proprietary software advantage, and its determination that this advantage did not warrant paying the associated price premium, we cannot conclude that the agency's evaluation or best-value decision was unreasonable. Accordingly, we deny this ground of protest.

The protest is denied.

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General Counsel