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Decision

Matter of: Salient Federal Solutions, Inc.

File: B-410174.3; B-410174.4

Date: April 1, 2016

Lawrence P. Block, Esq., and Elizabeth G. Leavy, Esq., Reed Smith LLP, for the protester.

Jeffery M. Chiow, Esq., Neil H. O'Donnell, Esq., and Lucas T. Hanback, Esq., Rogers Joseph O'Donnell, PC, for Primescape Solutions, Inc., the intervenor. Shantay N. Clarke, Esq., Defense Logistics Agency, for the agency.

Paula J. Haurilesko, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency unreasonably found the number of labor hours proposed by the awardee acceptable is denied, where the record shows that the agency considered the level of effort for each task in light of the vendor's technical approach and the protester has not provided a basis to question the agency's conclusions.
 2. Protest that the agency misled the protester by failing to inform it that its proposed labor hours in the base year were too high is denied, where the record shows that the agency found the protester's proposed labor hours to be acceptable.
 3. Where award was to be made on a lowest-priced, technically acceptable basis for a fixed-price task order, protest that the agency improperly found the awardee's low prices to be fair and reasonable is denied, where the solicitation did not require price realism analysis.
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DECISION

Salient Federal Solutions, Inc., of Fairfax, Virginia, protests the issuance of a task order to Primescape Solutions, Inc., of Herndon, Virginia under request for quotations (RFQ) No. SP4701-14-Q-0112, issued by the Defense Logistics Agency (DLA) for sustainment and audit support readiness services. Salient argues that the agency improperly evaluated Primescape's quotation, conducted misleading discussions, and failed to conduct a proper price analysis.

We deny the protest.

BACKGROUND

The RFQ, issued on July 1, 2014 under Federal Acquisition Regulation (FAR) subpart 8.4, Federal Supply Schedules (FSS), contemplated the issuance of a fixed-price task order under the successful firm's General Services Administration (GSA) FSS contract to provide sustainment and audit support services for DLA's Subsistence Total Order and Receipt Electronic System (STORES) for a base year and two one-year option periods.¹ RFQ amend. 5. The RFQ stated that the task order would be issued to the vendor offering the lowest-priced, technically acceptable quotation. The non-price factors were technical approach, key personnel, and past performance. RFQ at 90.

With respect to the technical approach factor, the RFQ required vendors to describe the technical strategy, tools, methods, and procedures to be used to accomplish 13 tasks identified in the performance work statement (PWS). The RFQ also required vendors to provide a work breakdown structure (WBS) that detailed the level of effort in terms of proposed labor categories and labor hours for each task. Id. at 86. The RFQ stated that the WBS would be evaluated to ensure that the labor mix, level of effort, methodology, and processes could successfully meet the RFQ's objectives and mitigate risk. Id. at 92.

The RFQ identified seven positions as key personnel.² Vendors were instructed to provide resumes for these positions to demonstrate that the proposed individual had all of the required certifications and minimum skill sets required in the PWS. Id. at 86.

The RFQ stated that the vendor's price would be evaluated as per FAR §§ 8.404(d) and 8.405-2(d) to determine that pricing was fair and reasonable and in accordance with their GSA FSS rates (with discounts).³ Id. at 93. The RFQ also stated that a

¹ STORES is a catalog, order, and receipt interface for food and related items used to provide food to about 550 worldwide locations, primarily at military bases. RFQ at 3.

² The key personnel positions were: senior project manager, senior principal systems programmer/analyst, senior information assurance engineer, senior database administrator, configuration manager, senior technical manager, and senior financial analyst. RFQ at 80-81.

³ Section 8.404(d) of the FAR states that ordering activities are not required to make a separate determination of fair and reasonable pricing, except for a price evaluation as required by FAR § 8.405-2(d). The latter provision states in relevant
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determination of fair and reasonable pricing would be based on comparison of vendors' prices with the independent government cost estimate (IGCE) and GSA FSS rates, including discounts. Id. at 94.

DLA received three quotations, including Salient's and Primescape's. Agency Report (AR) Legal Memorandum at 4. After evaluating quotations, DLA issued a task order to Salient. Primescape protested to our Office. DLA decided to take corrective action, and Primescape withdrew its protest. Salient continued to perform the task order for the base period (March 30, 2015 to September 30, 2015).⁴

The vendor selection evaluation team (VSET) re-evaluated the quotations of Salient and Primescape, and reopened discussions in August 2015.⁵ The VSET found Primescape's quotation to be technically acceptable with two weaknesses. AR, Tab 7, Primescape Evaluation Report, July 13, 2015, at 13. DLA advised Primescape of its concern that the vendor had proposed an insufficient number of labor hours to perform tasks 8 and 10, and invited Primescape to either explain how it would meet the requirements or revise the proposed level of effort. AR, Tab 9, Primescape Discussion Letter, Aug. 12, 2015, at 1.

The VSET found Salient's quotation to be unacceptable with respect to 11 of the 13 tasks for the two option years. With respect to the base year, the VSET found Salient's plan to be adequate, but recognized that the number of labor hours Salient proposed for the base period "appeared high." The VSET concluded, however, that it was required only to determine whether the proposed labor hours were adequate and not whether they were high. AR, Tab 8, Salient Evaluation Report, July 13, 2015, at 18. DLA advised Salient that, for each of the 11 tasks, it had proposed an insufficient number of labor hours in the option years, and invited the firm to address how its proposed level of effort would meet the requirements and/or to revise the proposed level of effort. See AR, Tab 10, Salient Discussion Letter, Aug. 12, 2015, at 1-3. DLA did not notify Salient of any concerns relating to the base year.

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part that the ordering activity is responsible for considering the level of effort and mix of labor proposed to perform a specific task being ordered, and for determining that the total price is reasonable.

⁴ The RFQ, as issued, provided for a six-month base period. DLA later amended the RFQ to provide for a one-year base period. RFQ amend. 5. After the 6-month base period ended, DLA issued a sole-source task order to Salient to continue performance while DLA re-evaluated proposals and conducted discussions. Protest at 3.

⁵ The third vendor was eliminated from the competitive range. AR Legal Memorandum at 4 n.4.

In response to the discussion letter, Primescape increased its proposed labor hours for tasks 8 and 10, which the VSET found acceptable. AR, Tab 17, Primescape Discussion Response Evaluation Report, Sept. 17, 2015, at 2. Salient explained that the reduced labor hours in the option years reflected its understanding that full development effort would not be required. Nonetheless, Salient increased its proposed labor hours in the option years. The VSET found the number of proposed hours for 3 of the 11 tasks to be acceptable, but found the proposed level of effort for the remaining 8 tasks addressed in the discussion response to be unacceptable. AR, Tab 18, Salient Discussion Response Evaluation Report, Sept. 17, 2015, at 4-7.

In November 2015, DLA again conducted discussions. AR, Tab 20, Salient Discussion Letter, Nov. 6, 2015. After reviewing Salient's response, the VSET found Salient's quotation to be technically acceptable. AR, Tab 21, Salient Discussion Response Evaluation Report, Nov. 20, 2016. In December, DLA requested final revisions. Salient informed DLA that it did not plan to make any changes to its quotation. AR, Tab 25, Salient Response to Final Revisions Request. Primescape provided additional discounts to its labor rates. AR, Tab 38, Primescape Final Price Proposal, Pricing Narrative, at 5.

The source selection official reviewed the quotations and results of discussions. The quotations of both Salient and Primescape were found to be technically acceptable. Salient quoted a price of \$22,703,393.73 and 215,408 labor hours; Primescape quoted a price of \$17,998,500.94 and 189,120 labor hours. AR, Tab 27, Award Decision Document, at 67, 73. The contracting officer determined that the proposed pricing of both vendors was in accordance with their GSA FSS pricing, including discounts, and that pricing was fair and reasonable. Id. at 66. Because Primescape offered the lowest-priced, technically acceptable quotation, the source selection official selected Primescape to receive the task order. Id. at 77.

After a debriefing, Salient protested to our Office.

DISCUSSION

Salient raises multiple challenges to the evaluation of Primescape's proposal and argues that DLA engaged in misleading discussions with Salient. Among other things, Salient argues that DLA improperly evaluated Primescape's proposed labor hours, alleges that the agency engaged in misleading discussions, challenges the agency's price evaluation, and contends that the agency improperly evaluated Primescape's quotation with respect to its key personnel. We have reviewed all of

Salient's arguments, and conclude that none of them provide a basis for sustaining the protest.⁶ The most significant arguments are presented below.

Labor Hours

Salient argues that DLA failed to properly evaluate Primescape's proposed labor hours in the base period. The protester contends that it is unreasonable for the agency to conclude that both Salient's and Primescape's proposals were technically acceptable, where Primescape proposed roughly 30 percent fewer labor hours for the base period than did Salient, the incumbent. In this regard, Salient further contends that the record does not show that DLA engaged in a meaningful analysis of whether the proposed hours were appropriate for the work to be performed. Salient's Comments/Supp. Protest at 3-4.

Where, as here, an agency issues an RFQ to FSS contractors 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. See GC Servs. Ltd. P'ship, B-298102, B-298102.3, June 14, 2006, 2006 CPD ¶ 96 at 6; RVJ Int'l, Inc., B-292161, B-292161.2, July 2, 2003, 2003 CPD ¶ 124 at 5. 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 judgments does not establish that the evaluation was unreasonable. Amyx, Inc., B-410623, B-410623.2, Jan. 16, 2015, 2015 CPD ¶ 45 at 6.

The record shows that DLA reasonably considered whether the number of labor hours proposed by Primescape was sufficient to perform the requirement. For example, in reviewing Primescape's proposal, the VSET assigned a weakness for the number of labor hours Primescape proposed for Task 8, STORES Reports. The

⁶ Salient's initial protest argued that DLA improperly decided to award another task order under the RFQ after Salient had already performed the base period. Protest at 7-8. We dismissed this protest ground as untimely because Salient knew by August 2015 that DLA was reopening discussions as part of its corrective action in response to a protest of the prior award to Salient. See AR, Tab 10, Salient Discussion Letter, Aug. 12, 2015. Moreover, the discussions letter issued to Salient in November--after Salient performed the task order's base period--further demonstrated DLA's intention to issue another task order under the RFQ. See AR, Tab 20, Salient Discussion Letter, Nov. 6, 2015. However, Salient did not protest to our Office until January 16, 2016--more than 10 days after Salient knew, or should have known the basis for its protest. 4 C.F.R. § 21.2(a).

VSET stated that the number of hours proposed “seem[ed] low considering the need for predictive modeling and forecasting required for the task and, also, the importance of this task to our customers.” AR, Tab 7, Primescape Evaluation Report, July 13, 2015, at 7. Similarly, the VSET concluded that the number of labor hours Primescape proposed for Task 10, DOD Laws, Regulations, Policies, and Compliance, were too low, given the major requirements for audit-readiness, 508 accessibility, and other mandates associated with the task. *Id.* at 9. Salient has neither identified any specific task for which DLA erred in its evaluation of the number of labor hours needed to perform the requirement, nor provided anything other than general arguments that Primescape’s labor hours are too low in comparison to Salient’s. As a result, we find no basis to conclude that the agency erred in this regard.

Misleading Discussions

Salient argues that DLA misled it during discussions by failing to inform the firm that it proposed too many labor hours for the base year. Salient’s Comments/Supp. Protest at 5. Salient contends that by questioning its proposed labor hours for the option years, DLA induced it to continue to propose 27,296 more hours than were necessary to be considered technically acceptable.⁷

There is no requirement for agencies to conduct discussions in accordance with FAR § 15.306 where a competition is conducted among FSS vendors pursuant to FAR Part 8. However, exchanges that do occur with vendors in FAR Part 8 procurements, like all other aspects of such procurements, must be fair and equitable. USGC Inc., B-400184.2 et al., Dec. 24, 2008, 2009 CPD ¶ 9 at 3. For discussions to be meaningful they must lead an offeror to areas of the agency’s concern. See Lockheed Martin Corp., B-293679 et al., May 27, 2004, 2004 CPD ¶ 115 at 7. As a general matter, it is within an agency’s discretion to inform a vendor during discussions that its price appears to be high in comparison to other vendors’ proposed prices. See DeTekion Security Sys., Inc., B-298235, B-298235.2, July 31, 2006, 2006 CPD ¶ 130 at 13.

Here, the record shows that DLA did not conclude that Salient’s proposed labor hours were unreasonably high; rather, the VSET concluded that Salient’s labor

⁷ In its initial protest, Salient argued that DLA misled it to increase its proposed labor hours in the option years and treated offerors disparately. Protest at 7. In its comments and supplemental protest, Salient did not address these arguments, but instead raised for the first time its argument concerning base-year labor hours. As the protester did not substantively respond to the agency’s report with respect to Salient’s initial protest ground concerning discussions, we consider that argument to have been abandoned. See Bannum, Inc., B-411586.2, Jan. 6, 2016, 2016 CPD ¶ 13 at 4.

hours in the base year were adequate. For example, after discussions, the VSET concluded that the number of labor hours Salient proposed for Task 1 for the base period (33,600--compared to 14,654 for Primescape) "remained[ed] sufficient to meet the requirements of Task 1." AR, Tab 18, Salient Discussion Response Evaluation Report, Sept. 17, 2015, at 4. At no time did DLA find Salient's proposal technically unacceptable as a result of too many labor hours in the base year. Therefore, the agency was not required to raise Salient's higher labor hours vis-à-vis Primescape's proposed labor hours--and thus higher price--in discussions. See DeTekion Sec. Sys., Inc., supra, at 15 (unless an offeror's proposed cost is so high as to be unreasonable or unacceptable, an agency is not required to tell an offeror during discussions that its proposed cost is high in comparison to a competitor's proposed cost, even where cost is the determinative factor for award).

Price Analysis

Salient also challenges DLA's price analysis, arguing that the agency's side-by-side comparison of vendors' prices was inadequate to determine whether Primescape's low price was fair and reasonable. Salient's Comments/Supp. Protest at 7.

Salient misunderstands the purpose of a price reasonableness determination. An agency's concern in making a price reasonableness determination focuses primarily on whether the offered prices are higher than warranted, as opposed to lower. A1 Procurement, JVG, B-404618, Mar. 14, 2011, 2011 CPD ¶ 53 at 3. Although not required, an agency also may provide for a price realism analysis in a solicitation for the award of a fixed-price contract for the purpose of assessing whether an offeror's low price reflects its understanding of the contract requirements or the risk inherent in an offeror's approach. Id.

Here, Salient acknowledges that the solicitation did not require the agency to conduct a price realism analysis. Salient's Supp. Comments at 8. In this regard, the RFQ stated that the vendor's price would be evaluated to determine whether pricing was fair and reasonable, and that such a determination would be based on comparison with the IGCE and vendors' GSA FSS rates, including discounts. Id. at 93, 94. Salient's argument that Primescape's quoted prices are too low fails to state a valid basis for protest, when the solicitation at issue does not anticipate a price realism analysis. 4 C.F.R. §§ 21.1(c)(4) and (f).

Salient also argues that DLA failed to compare vendors' quoted prices to the IGCE to determine whether Primescape's prices were fair and reasonable, as required by the solicitation. Salient's Comments/Supp. Protest at 6. Salient contends that the IGCE demonstrates that Primescape's proposed prices were not fair and reasonable because they were significantly lower than those in the IGCE. Salient's Supp. Comments at 8.

DLA acknowledges that it did not compare Salient's and Primescape's quoted prices to the IGCE. Supp. AR at 6. However, as noted above, the purpose of a price reasonableness analysis is to determine whether prices are too high, not whether they are too low. A1 Procurement, JVG, supra. Here, the record shows that both Salient and Primescape quoted total prices that were significantly lower than the IGCE. Compare AR, Tab 27, Award Decision Document, at 67 with AR, Tab 37, IGCE, at 1. Moreover, Salient fails to explain how comparing prices to the IGCE in a price reasonableness determination would demonstrate that Primescape's prices are too low, where the solicitation did not provide for price realism analysis.

Key Personnel

Salient argues that Primescape failed to secure letters of commitment from its proposed key personnel. Salient asserts that DLA erroneously found Primescape's proposal to be technically acceptable with respect to the key personnel factor because some of Primescape's proposed key personnel have found other employment since initial proposals were submitted in August 2014. Salient further asserts that the agency failed to document or confirm any commitment from Primescape that its proposed key personnel were available. Salient's Comments/Supp. Protest at 8-10.

Salient's assertions fail to demonstrate that DLA's evaluation of quotations violated the terms of the RFQ with respect to key personnel. As Salient itself acknowledges, the RFQ did not require vendors to submit letters of commitment for each of its proposed key personnel. Salient's Comments/Supp. Protest at 9. Given that the RFQ did not require vendors to submit letters of commitment for their key personnel, Salient fails to state a valid basis for protest. 4 C.F.R. §§ 21.1(c)(4) and (f). Accordingly, we dismiss this protest ground.⁸

⁸ Salient cites to two GAO decisions (Aerospace Design & Fabrication, Inc., B-278896.2 et al, May 4, 1998, 98-1 CPD ¶ 139; ManTech Advanced Sys. Int'l, B-255719.2, May 11, 1994, 94-1 CPD ¶ 326) for the proposition that the RFQ requirement for the contractor to use the named key personnel in the performance of the contract and obtain approval to replace those key personnel implicitly requires the contractor to obtain a written commitment for employment. Salient's Comments/Supp. Protest at 9. Salient misunderstands the facts of those two decisions. In both decisions, GAO explained that the awardees had explicitly represented in their proposals that they had obtained commitments for employment from the named key personnel, despite no solicitation requirement to do so. See Aerospace Design & Fabrication, Inc., supra at 5-6; ManTech Advanced Sys. Int'l, supra, at 10-11.

Salient also raises the argument in its supplemental comments that Primescape misrepresented the availability of its proposed key personnel, and that DLA relied on these material misrepresentations. Salient's Supp. Comments at 8-10.

Under our Bid Protest Regulations, protests based on other than solicitation improprieties must be filed within 10 days of when the protester knew or should have known their bases. 4 C.F.R. § 21.2(a)(2). The regulations do not contemplate the piecemeal presentation or development of protest issues; where a protester raises a broad ground of protest in its initial submission but fails to provide details within its knowledge until later, so that a further response from the agency would be needed to adequately review the matter, these later issues will not be considered. Management Sys. Applications, Inc., B-259628, B-259628.2, Apr. 13, 1995, 95-1 CPD ¶ 216.

We dismiss this protest ground as untimely. As discussed above, Salient argued in its supplemental protest that Primescape failed to secure letters of commitment from its key personnel, and alleged that three of Primescape's seven key personnel had changed employment since initial proposals were submitted. Although Salient's supplemental protest alluded to Primescape failing to inform DLA that its proposed key personnel were unavailable, that reference was in support of Salient's contention that Primescape failed to obtain letters of commitment.⁹ Salient's Comments/ Supp. Protest at 9. It was not until Salient's supplemental comments that it asserted the distinct argument that Primescape misrepresented the availability of its key personnel. Salient's Supp. Comments at 8-10. DLA's initial report identified Primescape's proposed key personnel by name and position-- sufficient information for Salient to present this protest ground in its supplemental protest. See AR, Tab 7, Primescape Evaluation Report, July 13, 2015, at 13-14; Tab 27, Award Decision Document, at 42-43. Accordingly, we will not consider this protest ground.

The protest is denied.

Susan A. Poling
General Counsel

⁹ "By providing resumes, but no letters of intent, Primescape withheld the fact that it did not employ six out of the seven required key personnel and failed to demonstrate that it had obtained a firm commitment from the non-employees named as key personnel." Salient's Comments/Supp. Protest at 9.