



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Costello, Hadley and Associates, LLC

File: B-410655

Date: December 10, 2014

Francis Costello Jr., Costello, Hadley and Associates, LLC, for the protester. Lt. Col. James H. Kennedy III, and Maj. Michael G. King, Department of the Air Force, for the agency.

Heather Weiner, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency should have found the awardee's quotation technically unacceptable is denied where the agency's interpretation of the solicitation's terms was reasonable, and any ambiguity regarding the terms was patent based on the face of the solicitation.

DECISION

Costello, Hadley, and Associates, LLC, of Niceville, Florida, a service-disabled, veteran-owned, small business, protests the award of a contract to Jasper Sawyer Company, LLC, of Orlando, Florida, under request for quotations (RFQ) No. FA9301-14-R-0023, issued by the Department of the Air Force, for chapel ministry support services. Costello challenges the agency's evaluation of Jasper's quotation because, the protester contends, the awardee's quotation could not have met the technical requirements of the performance work statement, and therefore should have been rejected as technically unacceptable.

We deny the protest.

BACKGROUND

On September 12, 2014, the Air Force issued the RFQ as a total small business set-aside, pursuant to Federal Acquisition Regulation (FAR) subpart 12.6, Streamlined Procedures for Evaluation and Solicitation for Commercial Items. RFQ at 1. The solicitation sought Protestant and Catholic religious education and youth services on Edwards Air Force Base in California. Id. The RFQ anticipated the

award of a fixed-price indefinite-delivery, indefinite-quantity contract for a period of performance of 5 years. Id.

The RFQ provided for award on a lowest-priced, technically acceptable basis, considering the following three factors: (1) price, (2) prior experience, and (3) process. Id. at 2. The solicitation stated that, “[f]or an offer/quote to be determined Technically Acceptable the offer/quote must receive a rating of Pass for all Technical Factors.” Id. at 4. As relevant here, the solicitation also provided the following information regarding the technical factors:

1. Describe specific resources that will be used to perform the work described in the Performance Work Statement, to include type of experience, length of experience, certifications and training.

- a. Company qualifications
- b. Prior experience

Id.

In addition, the solicitation stated that “[t]echnical acceptability will be based on the offeror’s responsiveness in accordance with Exhibit A (attached) Technical Evaluation Sheet as well as Attachment 1, Performance Work Statement [PWS].” Id. at 2. The referenced technical evaluation sheet listed the following general criteria for the prior experience factor, which it stated would be evaluated on a pass/fail basis: (1) previous experience managing military chapel contracts; (2) previous experience with Protestant and Catholic religious education and youth programs, musicians and music directors; (3) previous experience interacting with a variety of denominations and religious perspectives; and (4) compliance with the PWS. RFQ, exh. A, Technical Evaluation Checklist, at 1.

The technical evaluation checklist also listed pass/fail criteria for the process factor, stating that the “contractor shall have a process in place to provide” the following: (a) a suitable subcontractor/employee substitute of equal or greater qualifications and skills when unable to perform duties; (b) a local law enforcement background check on any employees that work directly with children and youth before any unit of services are performed; and (c) for the Catholic positions, the contractor shall be familiar with the catechetical certification program through the archdiocese for the military services. Id.

On September 22, the agency received quotations from four firms, including Costello and Jasper. Agency Request for Dismissal at 3. Costello submitted a quotation with a total evaluated price of \$997,448.89. Id. The agency concluded that Jasper’s quotation, with a price of \$842,400.00, was the lowest-priced, technically-acceptable quotation, and awarded the contract to that firm.

Ombudsman Review, Contracting Officer (CO) Statement (Oct. 9, 2014), at 2; Agency Request for Dismissal at 3.

On October 8, Costello states that it contacted the Air Force Ombudsman regarding the protester's concerns that the agency did not follow the solicitation's evaluation criteria in evaluating the quotations. Protest at 1. The protester also argued that the PWS required offerors to submit resumes with their quotations, and that the awardee failed to comply with this requirement. Ombudsman Review, CO Statement (Oct. 9, 2014), at 6. On October 9, the Ombudsman responded that he determined that the contracting officer "adhered to the evaluation factors and methods that were set forth within the [RFQ.]" Ombudsman Review (Oct. 9, 2014), at 1. This protest followed.

DISCUSSION

Costello argues that, because Jasper contacted Costello's candidates¹ post-award to try to arrange employment agreements, Jasper's quotation could not have met the technical requirements of the PWS, and therefore, should have been deemed technically unacceptable. For the reasons discussed below, we find no basis to sustain the protest.

Costello asserts the following regarding Jasper's quotation: "[T]he awardee did not contact local area candidates (now performing the tasks) until after award. This indicates the 'specific resources that will be used to perform the work' could not have been described in the submission of the awardee's proposal, as required by the solicitation." Response to Dismissal Request at 1. The protester argues that the RFQ required firms to provide in their quotations information (such as type of experience, length of experience, certifications and training) for the specific individuals (musicians, youth group leaders, and religious educators) proposed to perform the work described in the PWS. In support of this interpretation, the protester points to the following sentence in the RFQ: "Describe specific resources that will be used to perform the work described in the Performance Work Statement, to include type of experience, length of experience, certifications and training." RFQ at 4.

The Air Force disagrees with the protester's interpretation that this RFQ provision refers to specific personnel to conduct the work, and contends that this statement, instead, refers to the qualification and experience the company has with their ability to provide qualified personnel to perform the work described in the PWS. Agency Request for Dismissal at 3. In this regard, the agency points to the Ombudsman's findings which confirmed that "no specific resumes were required to be submitted in

¹ The protester does not state whether the candidates were Costello's employees or independent contractors.

the proposals although sample resumes were provided by the awardee as proof of their ability to secure adequate resources per the PWS.” Ombudsman Review (Oct. 9, 2014), at 1.

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; Fox Dev. Corp., B-287118.2, Aug. 3, 2001, 2001 CPD ¶ 140 at 2.

We conclude that the agency’s interpretation of the RFQ, when read as a whole, is reasonable. First, with regard to the RFQ language relied upon by the protester, when read in context of the solicitation, the provision references “[c]ompany qualifications,” not individual qualifications:

1. Describe specific resources that will be used to perform the work described in the Performance Work Statement, to include type of experience, length of experience, certifications and training.

- a. Company qualifications
- b. Prior experience

RFQ at 4. Reading this provision in its entirety, we think that subparagraphs (a) and (b) demonstrate that the language in paragraph 1 concerns the company’s capability, and did not require offerors to provide information regarding proposed staff.

In addition, as also discussed above, the RFQ’s technical evaluation criteria focused on the qualifications of the company, not on the qualifications of particular individuals. See, e.g., RFQ, exh. A, Technical Evaluation Checklist, at 1 (requiring “[p]revious experience managing military chapel contracts”). While one of the criteria asked that offerors demonstrate compliance with the PWS, this factor did not indicate that offerors must demonstrate that specific individuals complied with the PWS requirements. Id. Rather, the PWS indicated that information regarding the qualifications of specific individuals did not need to be provided until after contract award. See, e.g., PWS, Appx. B, at 19. In this regard, the protester acknowledges that the RFQ did not require that offerors submit resumes with their quotations.²

² We also note that the protester argued to the agency Ombudsman that the PWS required resumes with the submission of quotations, but that the protester did not make this same argument to our Office. See Ombudsman, CO Statement, at 6. The Ombudsman’s response stated that firms do “not have to provide resumes of the personnel they intend to hire as part of the evaluation factors,” but rather, “[a]s
(continued...)

Response to Dismissal Request, at 1. On this record, we conclude that the Air Force's interpretation of the RFQ requirements was reasonable.³

The protest is denied.

Susan A. Poling
General Counsel

(...continued)

noted in the [PWS], resumes are to be provided by the awardee, which is a contract administration effort, after contract award." Id. In responding to the agency's dismissal request in the instant protest, the protester states that the resume issue "was resolved with the Ombudsman." Response to Dismissal Request at 1.

³ In any event, to the extent the language in the RFQ to "describe specific resources" was ambiguous regarding whether the word "resources" referred to the company or to individual personnel, any ambiguity was patent, i.e., clear or obvious on the face of the RFQ, rather than latent, in light of the fact that offerors were not required to submit resumes until after award. Since any alleged ambiguity regarding this provision was apparent on the face of the RFQ itself, a protest on this ground was required to be filed prior to the submission of proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2014); U.S. Facilities, Inc., B-293029, B-293029.2, Jan. 16, 2004, 2004 CPD ¶ 17 at 10. For this reason, even if we were to conclude that the RFQ provision was ambiguous, Costello cannot now timely challenge this matter.