



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Laducer & Associates, Inc.

File: B-401735.3

Date: February 23, 2010

Wayne A. Keup, Esq., for the protester.
David A. Ingold, Esq., Internal Revenue Service, for the agency.
Glenn G. Wolcott, Esq., and Ralph O. White, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Agency's determination that it needed to provide all offerors with updated volume estimates, as well as to ensure that offerors properly understand the relative value of both proposing innovations and obtaining reliable, accurate, and timely results, constitutes a reasonable basis for reopening the competition.

DECISION

Laducer & Associates, Inc., of Mandan, North Dakota, protests the Internal Revenue Service's (IRS or agency) issuance of amendment No. 5 to request for quotations (RFQ) No. TIRNO-08-Q-00124 for the conversion of paper-based documents to digital format. The agency issued the RFQ amendment in response to a prior protest filed by another offeror, Mandaree Enterprise Corporation; that prior protest challenged the agency's award of a contract to Laducer. The RFQ amendment at issue makes various changes to the terms of the solicitation, and seeks revised proposals from the offerors.¹ Laducer maintains that the agency should be precluded from seeking revised proposals, and argues that the agency's actions should be limited to reevaluating the previously submitted proposals.

¹ Although the solicitation identified itself as an "RFQ," the term "proposal" as opposed to "quotation," appears repeatedly throughout the solicitation, and the solicitation contemplated an evaluation and source selection scheme similar to those used in negotiated procurements. For the sake of consistency, our decision adopts the terminology used by the solicitation.

We deny the protest.

BACKGROUND

The agency initially issued this solicitation in December 2008, seeking proposals to convert sensitive but unclassified information from paper-based documents to digital format for a 1-year base period and four 1-year option periods.² The solicitation provided that proposals would be evaluated on the basis of price and non-price factors, establishing technical capability as the most important non-price factor. With regard to evaluation of the technical capability factor, offerors were advised that:

[The technical capability] factor will be used to determine how thoroughly the offeror understands the needs and objectives of the general requirements and the overall technical approach. The Performance Work Statement³ will be evaluated for the offeror[s] overall understanding of the requirement, industry standards and best business practices. The offeror will be evaluated on the understanding of overall planning and controlling of resources needed for meeting contract requirements; understanding of the requirements for operational support and for processing of scheduled work; understanding the requirement for the development, testing, and implementation of new or modified forms; the ability to implement new or modified forms on a strict schedule; understanding in identifying the root causes of processing problems and the ability to resolve them; understanding of the requirement based on the proposed skill mix and labor hours; ability to meet or exceed accuracy levels in work performance; and ability to meet sensitive time schedules. Any technical innovations relevant to carrying out the scope of work that are proposed by the offeror will be evaluated for their technical merit and cost effectiveness. Where such innovations and any associated efficiencies or cost savings are proposed, their applicability and appropriateness to the scope of work will be evaluated.

RFQ at 58.

Early in 2009, proposals were submitted by Laducer and Mandaree. In September 2009, the agency awarded a contract to Laducer; thereafter, Mandaree protested various aspects of that source selection decision. In November 2009, the agency

² Laducer is currently the incumbent contractor for these requirements.

³ Offerors were required to develop a performance work statement as part of their proposed technical approach.

advised our Office that it intended to cancel Laducer's contract, reevaluate proposals, and make a new source selection decision; thereafter, we dismissed Mandaree's protest.

The agency subsequently concluded that various solicitation requirements needed to be revised, updated, and/or clarified. Accordingly, in December 2009, the agency issued RFQ amendment No. 5, advising offerors as follows:

The IRS has cancelled the award and is amending the RFQ to clarify and revise its requirements and to extend the date and time for submission of proposals. Offerors are required to submit entirely new Technical and Price Proposals if they wish to be considered for the new award.

Letter from IRS to Laducer, Dec. 18, 2009.

Among other things, amendment No. 5 updated the estimated quantities of the various forms that the contractor will be responsible for converting to digital format;⁴ provided an updated schedule for the release/revision of certain forms;⁵ and added the following information regarding evaluation of proposals under the technical capability factor:

Although technological innovation is encouraged to be included in proposals, the production outcome must achieve an accuracy level of 99.0% and must meet all delivery dates 98.0% of the time. Reliable, accurate, and timely performance results are more important than innovations. Innovative technological solutions are less important than meeting the accuracy and timeliness performance requirements of this RFQ.

The offeror(s) will be evaluated on the proposed technological approach, which can include complete keying of data; incremental use of Optical Character Reader (OCR) technology combined with keying;

⁴ The initial solicitation contained estimated annual quantities for each of 12 different paper-based forms that the contractor will be required to convert to digital format; these estimates were based on data experienced during 2006. Amendment No. 5 updates the estimated quantities to reflect the more recent volume that was experienced in 2008 (a volume decrease of approximately 6%)--information that the incumbent, Laducer, knew, but which was unknown to any other offeror.

⁵ For example, contractors were advised that paper-based form FinCEN 101, "Suspicious Activity Report by Securities and Futures Industries," which was originally scheduled for revision in March 2009, will not be revised until April 2012.

full OCR data conversion; and any other proposed approach. The offeror(s) will be evaluated on the proposed timeline; data and number of employees and hours allocated for document preparation and reassembly; keying of data; scanning of data; quality review; error resolution; and the specific rates in each area the offeror(s) expect to achieve. The offeror(s) will be evaluated on historical data/information provided on keying accuracy level and projected data on scanning accuracy level. The offeror(s) will be evaluated on historical or projected data on the time required to conduct the proposed quality reviews and to correct errors.

The variety and complexity of paper forms that are required to be converted are illustrated by, but not restricted to, the forms currently available for inspection at <http://www.fincen.gov> and IRS.gov websites. See RFQ 2.3.1. Offerors(s) are reminded that they are also expected to develop the capability to process new and revised forms as might be scheduled in the future, with appropriate acceptance testing as a requirement before the conversion of the new form goes into production, see RFQ subsection 2.4.1.

RFQ amend. 5, at 9.

DISCUSSION

Laducer protests the agency's issuance of amendment No. 5 and the request for revised proposals, maintaining that, since its price has been disclosed, re-opening of the procurement is inappropriate. Laducer further maintains that the amendment's additional information regarding evaluation of the technical capability factor effectively "reveals Laducer's technical approach." Protest at 9. We reject Laducer's assertions.

Contracting agencies have broad discretion to take corrective action where they determine that such action is necessary to ensure fair and impartial competition. RS Info. Sys., Inc., B-297185.2, B-287185.3, May 16, 2001, 2001 CPD ¶ 98 at 4. Where the corrective action taken by an agency is otherwise unobjectionable, a request for revised proposals is not improper merely because the awardee's price has been exposed. Strand Hunt Constr., Inc., B-292415, Sept. 9, 2003, 2003 CPD ¶ 167 at 6. We have recognized a limited exception to that rule where the record establishes that there was no impropriety in the original evaluation and award, or that an actual impropriety did not result in any prejudice to offerors and that reopening the competition does not provide meaningful benefit to the procurement system. Hawaii Int'l Movers, Inc., B-248131, Aug. 3, 1992, 92-2 CPD ¶ 67 at 6, recon. denied, Gunn Van Lines; Dept. of the Navy-Recon., B-248131.2, B-248131.4, Nov. 10, 1992, 92-2 CPD ¶ 336.

Here, the agency explains that, following review of Mandaree's protest, the agency became concerned that the terms of the initial solicitation were insufficiently clear to the offerors. The agency states that, although it is not certain that Mandaree's protest would have been sustained if it only reevaluated the previously submitted proposals, it concluded that it would be prudent to provide updated volume estimates (data previously known only to Laducer) and clarify the agency's evaluation of the technical capability factor with regard to "the relative value of proposing innovations vs. guaranteeing results that must be reliable, accurate, and timely." Agency Motion to Dismiss at 4. Further, the agency maintains that the solicitation amendment does not disclose any proprietary information regarding Laducer's proposed approach. We agree.⁶

As noted above, this is a matter in which the agency has considerable discretion. RS Info. Sys., Inc., supra. Based on our review of the parties' submissions, we reject Laducer's arguments. Specifically, the need to provide all offerors with updated volume estimates as well as ensuring that offerors properly understand the relative value of both proposing innovations and obtaining reliable, accurate, and timely results, constitutes a reasonable basis for reopening the competition. Further, we have reviewed the information contained in the amendment and find no basis to conclude that it discloses information that is proprietary to Laducer.

The protest is denied.

Lynn H. Gibson
Acting General Counsel

⁶ The agency responded to Laducer's protest by submitting a request for dismissal of the protest. While we did not agree that the protest could be dismissed, we did agree that it should be denied. In keeping with the statutory mandate that our bid protest forum provide for "the inexpensive and expeditious resolution of protests," 31 U.S.C. § 3554(a)(1) (2006), along with our review of Laducer's protest and the amended solicitation, we did not require the agency to submit any further response to Laducer's protest.