



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Iron Vine Security, LLC

File: B-409015

Date: January 22, 2014

Gregory S. Jacobs, Esq., Joelle E.K. Laszlo, Esq., and Carlos A. Valdivia, Esq., Reed Smith LLP, for the protester.

Joseph P. Hornyak, Esq., and Kelly A. Krystyniak, Esq., Holland & Knight LLP, for the intervenor.

Anthony E. Marrone, Esq., and Erin V. Podolny, Esq., Department of Health and Human Services, 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 failed to evaluate the realism of vendors' proposed prices is sustained where the record shows that the agency did not conduct a price realism analysis of proposed labor rates, as required by the solicitation.

DECISION

Iron Vine Security, LLC, of Washington, D.C, protests the issuance of a task order to Spann & Associates, Inc., of Lake Mary, Florida, under request for quotations (RFQ) No. HHSM-500-2013-RFQ-0013, issued by the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), for information system security support. Iron Vine argues that the agency failed to evaluate the realism of the vendors' proposed prices as required by the solicitation.

We sustain the protest.

BACKGROUND

On June 25, 2013, CMS posted the RFQ on the General Services Administration's (GSA) e-Buy website. The solicitation was issued as a total small business set-aside under the Federal Supply Schedule (FSS) procedures of Federal Acquisition Regulation (FAR) subpart 8.4, and sought quotes from vendors holding FSS contracts under Schedule No. 70, General Purpose Commercial Information

Technology Equipment, Software and Services, Special Item Number 132-51, Information Technology, to support CMS's information security program.¹ RFQ at 40-41; RFQ, SOW at 15-16; Contracting Officer's (CO) Statement at 1.

The RFQ sought services, personnel, material equipment, and facilities to support the information security program activities for CMS's Enterprise Information Security Group. RFQ, SOW at 14. The statement of work required the vendor to perform tasks in the following nine areas: (1) program, project & task management; (2) information security program support; (3) information security subject matter expertise technical advisory services; (4) information security awareness & training; (5) audit & risk management; (6) continuous monitoring program; (7) security operations; (8) security operations center system and network architecture, engineering & operations/maintenance; and (9) penetration testing. Id. at 16-17.

The RFQ anticipated the issuance of a time-and-materials task order, with fixed-price, fully-burdened labor rates, with a base period of no more than 12 months, with two 12-month options. RFQ at 9. The RFQ provided for award on a best-value basis, considering five factors: (1) past performance; (2) technical approach; (3) staffing and key personnel; (4) management approach; and (5) cost/price. Id. at 41. For purposes of award, the non-cost/price factors, when combined, were considered equal in importance to cost/price. Id. at 42.

As relevant here, under the cost/price factor, the RFQ required that vendors submit a cost/price volume, divided into two parts: Volume I-A (Pricing), and Volume I-B (Basis of Estimate). Id. at 43. For Volume I-A (Pricing), the solicitation specified that the quote include the following details, broken down by contract line items: (i) proposed labor categories, associated labor rates (both with and without any applicable discounts), and the number of hours by category (monthly and yearly); (ii) proposed materials and the basis for the proposed prices; and (iii) proposed other direct costs (ODCs), and any material handling charges to be applied to such costs. Id. at 43. For Volume I-B, the RFQ required a basis of estimate that "explains the rationale for the proposed costs and that contains a level of detail to fully support the review of the quote." Id. at 43-44. The solicitation further stated that the basis of estimate "shall discuss the methodology used to prepare the cost/price quote," and that within the basis of estimate volume, the vendors "may list assumptions, establish limits, discuss and confirm their basic understanding of the work being priced." Id. at 44.

¹ Although the solicitation anticipated the issuance of a task order under a Federal Supply Schedule contract, the evaluation record and the agency's response to the protest occasionally refer to both "offerors" and "proposals" as well as to "vendors" and "quotations." Because the distinction between a quotation and a proposal has no bearing on our analysis in this protest, references herein are considered interchangeable.

For purposes of award, the RFQ stated that the “cost/price volume of each quote will be analyzed and evaluated to determine . . . realism and/or reasonableness,” and that “[t]he proposed cost/price will also be evaluated to determine if it reflects understanding of the Government’s requirements, and the degree of risk it presents.” Id. at 45. Specifically, the RFQ provided the following regarding cost realism of the cost elements discussed above (e.g., labor categories, rates, and hours):

Cost reimbursable line item quotes (including Labor Hours and Time & Materials) will be evaluated on the basis of cost realism. Within FAR Part 15.404-1, cost realism is explained as the process of independently reviewing and evaluating specific elements of each offeror’s proposed cost estimate to determine whether the estimated proposed work elements are realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the unique methods of performance and materials described in the offeror’s non-price quote. Cost realism is defined in FAR Part 2.101 as the costs in an offeror’s quote--

- i. Are realistic for the work to be performed;
- ii. Reflect a clear understanding of the requirements;
- iii. Are consistent with the various elements of the offeror’s non-price quote.

Id.

CMS received quotes from nine contractors, including Iron Vine and Spann, by the July 17 closing date. CO Statement at 1-2. Following an evaluation of the quotes, the contracting officer conducted negotiations with the contractors that submitted the two most highly-rated quotes, Iron Vine and Spann, and requested revised quotes. Id.

As noted above, the RFQ permitted vendors to offer discounts to their GSA schedule labor rates. Iron Vine quoted [DELETED] labor categories, and offered discounts to its GSA schedule rates for these labor categories, primarily ranging from [DELETED] percent, with one additional rate discounted by [DELETED] percent. Agency Report (AR), Tab 5.B.3, Iron Vine Revised Quote, Volume I-A, Tab 1. Spann [DELETED] quoted [DELETED] labor categories, and offered [DELETED] discounts to its GSA schedule rates for these labor categories. Specifically, Spann [DELETED] offered discounts ranging from [DELETED] percent. AR, Tab 4.B.2, Spann Revised Quote, Vol. 1, at 2-3.

In evaluating the cost/price volumes, CMS evaluated the realism of Spann’s and Iron Vine’s labor categories, labor hours, and other direct costs (ODCs) to verify whether they corresponded with the technical approaches proposed by the vendors, and to ensure that they fit with the technical requirements listed in the statement of work (SOW). AR, Tab 9B, Business Evaluation-Team Final, Comparison; AR at 21. The evaluators also reviewed ODCs, travel costs and the percentage of the contract to be performed by subcontractors. AR at 21.

After evaluating the revised quotes, the technical evaluation panel assigned the following adjectival ratings to Iron Vine’s and Spann’s quotes:²

	IRON VINE	SPANN
OVERALL NON-PRICE RATING	EXCELLENT	HIGHLY ACCEPTABLE
Past Performance	Highly Acceptable	Highly Acceptable
Technical Approach	Excellent	Excellent
Staffing and Key Personnel	Excellent	Highly Acceptable
Management Approach	Acceptable	Acceptable
PRICE	\$30,155,945	\$21,190,031

AR, Tab 13.A, SSDD, at 3.

CMS conducted a tradeoff between Spann’s lower-rated, lower-priced quote and Iron Vine’s higher-rated, higher-priced quote. *Id.* at 4-5. The contracting officer³ stated that Iron Vine’s technical quote was ranked higher than Spann’s because it provided “both excellent operations support, as well as an excellent approach for the IT Security Policy requirements,” while Spann’s quote “lacked similar benefits in addressing the IT Security Policy requirements [as were included in Spann’s quote for operations support].” *Id.* The contracting officer also stated that “award to Iron Vine would result in the lowest risk of EISG not being able to meet its business needs as the reliance on EISG staff to mitigate their lack of CMS-specific experience would be minimal,” and that “the approach proposed by Iron Vine offers minimal federal oversight and little ramp-up time in order to successfully complete the requirements of the contract.” *Id.* Ultimately, however, the contracting officer

² The agency assigned the vendors’ quotes one of the following ratings for the non-price factors: excellent, highly acceptable, acceptable or not acceptable. AR, Tab 8.A, Technical Report (Aug. 8, 2013), at 3.

³ The contracting officer also served as the source selection authority for the procurement. AR, Tab 15.A, Pre/Post-Negotiation Memorandum, at 7.

found that both contractors “demonstrated they understand the government’s requirements and possess the capability to complete the required tasks.” Id. Accordingly, while the Iron Vine quote offered additional benefit to the government in two task areas, the contracting officer concluded that “the Spann proposal includes no weaknesses in its approach and staff proposed in these two task areas,” and therefore, “the minor-to-moderate degree of additional non-price benefit associated with the Iron Vine quote does not support the significant price premium associated with that benefit.” Id.

On September 25, CMS notified Iron Vine of the award to Spann. AR, Tab 18.A, Award Notification. Iron Vine requested a debriefing, which it received on September 27. This protest followed.

DISCUSSION

Iron Vine argues that CMS’s price evaluation was flawed, and that the agency’s best value tradeoff was therefore unreasonable. Specifically, the protester asserts that the RFQ required CMS to evaluate the realism of the offerors’ proposed costs, and that the agency failed to evaluate the realism of the vendors’ proposed labor rates as required by the RFQ.⁴ For the reasons discussed below, we agree that the RFQ required the agency to conduct a price realism analysis of the vendors’ proposed labor rates, and that the agency failed to conduct such an analysis. We sustain the protest on this basis.

Where, as here, a solicitation anticipates award of a time-and-materials contract with fixed-price, fully-burdened labor rates, there is no requirement that an agency conduct a price or cost realism analysis, in the absence of a solicitation provision requiring such an analysis. Ball Aerospace & Tech. Corp., B-402148, Jan. 25, 2010, 2010 CPD ¶ 37 at 8 n.7. An agency may, however, at its discretion, provide for the use of a price realism analysis in a solicitation for the award of a fixed-price contract, or a fixed-price portion of a contract, to assess the risk inherent in an offeror’s proposal. Id. Our review of a price realism analysis is limited to determining whether it was reasonable and consistent with the terms of the solicitation. Smiths Detection, Inc.; Am. Sci. & Eng’g, Inc., B-402168.4 et al., Feb. 9, 2011, 2011 CPD ¶ 39 at 17. The nature and extent of an agency’s price

⁴ In its initial protest, Iron Vine also challenged CMS’s technical evaluation of Spann’s quotation under the RFQ’s staffing and key personnel factor. Protest at 10. The protester, however, did not further discuss this contention in its comments responding to the agency report. We therefore deem this issue abandoned and will not consider it further. See International Mgmt. and Commc’ns Corp., B-272456, Oct. 23, 1996, 96-2 CPD ¶ 156 at 2-3 n.2.

realism analysis are matters within the agency's discretion.⁵ Star Mountain, Inc., B-285883, Oct. 25, 2000, 2000 CPD ¶ 189 at 6.

As discussed above, the RFQ required that vendors provide the following details in their price/cost volumes: proposed labor categories, labor rates (with and without discounts), number of hours by labor category, and the number of hours by category (monthly and yearly). RFQ at 43. The RFQ stated that an offeror's proposed cost/price would be "evaluated to determine if it reflects understanding of the Government's requirements and the degree of risk it presents." RFQ at 45. The solicitation also stated that "[c]ost reimbursable line item quotes (including Labor Hours and Time & Materials) will be evaluated on the basis of cost realism." Id.

As also discussed above, CMS's cost/price evaluation assessed the realism of the vendors' proposed labor categories, labor mix, and labor hours. AR, Tab 9.B, Business Evaluation Team Final, Comparison; AR, Tab 15.A, Pre/Post Negotiation Memorandum, at 6-7. In addition, the evaluators found the proposed labor rates to be reasonable because they were below the rates for each vendor's GSA Schedule 70 pricelist. Id. While the record reflects that the agency evaluated the reasonableness of the vendors' proposed labor rates, the record shows that the agency did not evaluate the labor rates for realism--that is, whether they pose a risk to successful performance. See Decl. of Technical Evaluation Panel Chair (Nov. 18, 2013) ¶ 23; see AR, Tab 9.B, Business Evaluation-Team Final, Comparison. In fact, the agency acknowledges that it did not evaluate the vendors' proposed labor rates for realism. See AR at 20-21 ("CMS did not conduct a cost realism analysis of Spann's proposed labor rates . . . because it was never [the agency's] intention to conduct such an analysis."); CO Statement, attach. 1, at 2 ("[T]he CO did not perform a realism assessment of the proposed rates.").

While CMS concedes that it did not evaluate the realism of the vendors' proposed labor rates, the agency contends that the RFQ's evaluation criteria did not require such an assessment. Specifically, CMS argues that the RFQ "did not provide for mandatory consideration of unrealistic labor rates as part of CMS's performance risk assessment." AR at 24. We find no merit to the agency's interpretation of the solicitation.

⁵ Price reasonableness and price realism are distinct concepts. Logistics 2020, Inc., B-408543; B-408543.3, Nov. 6, 2013, 2013 CPD ¶ 258 at 7. The purpose of a price reasonableness review is to determine whether the prices offered are too high, as opposed to too low. FAR § 15.404-1(b); Sterling Servs., Inc., B-291625, B-291626, Jan. 14, 2003, 2003 CPD ¶ 26 at 3. Conversely, a price realism review is to determine whether prices are too low, such that there may be a risk of poor performance. FAR § 15.404-1(d); C.L. Price & Assocs., Inc., B-403476.2, Jan. 7, 2011, 2011 CPD ¶ 16 at 3.

First, CMS notes that an agency is not required to conduct a price realism analysis when a solicitation anticipates the award of a time-and-materials contract with fixed-price labor rates, because the risk of cost increases are borne by the contractor, rather than the government. See Ball Aerospace & Tech. Corp., supra. As discussed above, however, where a solicitation specifically advises vendors that the agency will conduct such an analysis in order to assess the risk of poor performance, the agency's failure to do so is unreasonable. See General Dynamics One Source, LLC; Unisys Corp., B-400340.5, 400340.6, Jan. 20, 2010, 2010 CPD ¶ 45 at 17.

Here, the RFQ required that vendors provide proposed labor rates (both with and without additional discounts) in their price/cost volumes, and specifically stated that "time and materials" would be "evaluated on the basis of cost realism." RFQ at 43, 45. Further, the RFQ identified the contract line item numbers (CLINs) for the information security support services as "time and materials." Id. at 4-5. We think therefore that the RFQ clearly advised vendors that the agency's evaluation would include a realism assessment of the vendors' proposed "time and materials," which included proposed labor rates.⁶ We note that it would be unreasonable for the agency to exclude the time-and-materials labor rates from its realism assessment because the two largest elements of cost in a time-and-materials line item are labor rates and number of hours.⁷

⁶ The protester also asserts that the following provision in the RFQ concerning personnel compensation required the agency to evaluate the vendors' labor rates for price realism: "Evaluation of personnel compensation will be part of the cost realism evaluation. Unrealistic rates, as determined by the Contracting Officer, may also be considered in risk assessment and the offeror's overall quote may be unfavorably evaluated as a result." RFQ at 46. In response, the contracting officer states that "[t]his statement regarding evaluation of personnel compensation was included in the solicitation in error and was not meant to be utilized as part of the evaluation" and that "[n]either Spann nor Iron Vine provided a formal analysis of personnel compensation with their quote[s]." CO Statement at 2. We agree with the agency that, because the solicitation did not require vendors to disclose the components of the proposed labor rates, such as compensation, there was no basis to evaluate the realism of compensation. Nonetheless, because we find that the RFQ otherwise required CMS to evaluate the realism of the vendors' proposed labor rates, we need not address the dispute over this provision.

⁷ To the extent the agency argues that the protest is an untimely challenge to the terms of the solicitation, we disagree. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2013). The protester had no reason to know, until reviewing the evaluation documents, that the agency did not conduct a price realism evaluation.

Alternatively, CMS contends that, to the extent the RFQ required a price realism analysis of proposed labor rates, the agency's technical and past performance evaluations of Spann's proposal satisfied this requirement. AR at 24. For example, CMS notes that Spann's quote identified [DELETED] staff members who either are currently employed by Spann or have signed letters of intent to be employed by Spann if it was awarded the task order. Id. at 26. CMS argues that the proposal of such staff "shows . . . that this talent is already being provided at Spann's proposed rates." Id. With regard to past performance, CMS contends that Spann's past performance evaluation demonstrates that Spann has a history of staying within budget/target costs, while maintaining good performance, when performing other contracts for other agencies located within the same local metropolitan area. Id. at 24-25. CMS asserts that, based on this past performance information about Spann, the agency had no reason to be concerned about performance risks arising from Spann's proposed labor rates. Id.

We find the agency's arguments here unavailing. In this regard, even assuming that the agency considered the realism of the rates of the [DELETED] staff members, these individuals constituted only [DELETED] of the staff to be provided under the contract, and therefore, could not form the basis for any broad conclusions about Spann's proposed labor rates. See AR, Tab 4.B.4, Spann Tech. Proposal, at 44-45; Tab 4.B.2, Spann Revised Quote, Vol. 1, at 2-3. Moreover, the record does not demonstrate whether the [DELETED] staff members identified in Spann's proposal were currently performing at the discounted rates that would be used for the task order here. Similarly, with regard to the past performance evaluations, the record lacks any support for a conclusion that the discounted labor rates proposed in Spann's quote were similar to the rates from the contracts cited in the past performance evaluation. Moreover, there is no indication that the agency considered any of these points during its contemporaneous evaluation. Based on this record, we find no support that the agency evaluated the realism of Spann's labor rates through Spann's technical and past performance evaluations.

In sum, we conclude that CMS deviated from the RFQ's evaluation scheme by failing to evaluate the realism of the vendors' proposed labor rates, as required by the RFQ, and we sustain the protest on this basis.

SUMMARY AND RECOMMENDATION

Although CMS clearly considered the risk to performance based on the vendors' proposed labor categories, mix, and hours, the agency acknowledges that it did not evaluate the realism of the vendors' proposed labor rates, specifically whether they reflected a lack of technical understanding or risk, as required by the RFQ. The agency's failure to do so was improper, and prejudiced the protester, and we sustain the protest on this basis.

CMS advised our Office of its decision to override the automatic stay of contract performance during the protest on the basis of “best interests” and “urgent and compelling circumstances,” and thus authorized Spann to begin performance of the task order. AR, Tab 19.B, Override Determination & Findings, at 10. In this connection, the Competition in Contracting Act (CICA) requires agencies to suspend performance of an awarded contract until resolution of a protest that is filed within stated time limits, unless the head of the procuring activity responsible for the award has overridden the stay of performance. 31 U.S.C. § 3553(d)(3)(A). The agency noted in its determination and findings supporting the override that, “there will be little impact to the integrity of the procurement process if the protest is subsequently sustained, corrective action taken, and a different awardee selected” because the “contractor delivers a severable service on a monthly basis.” AR, Tab 19.B, Override Determination & Findings, at 10.

Based on these circumstances, we recommend that CMS reevaluate the realism of the vendors’ proposed labor rates in accordance with our decision. Alternatively, if the agency believes that the evaluation of the realism of the proposed labor rates is not necessary, we recommend that the agency revise the RFQ to reflect the agency’s requirements, allow submission of revised quotes, reevaluate the revised quotes, and make a new source selection decision, consistent with our decision and other recommendations, above. If, based on the new selection decision, Spann is not selected for award, the agency should terminate Spann’s task order--either at the end of a month, as indicated in the override notice, or at the end of the base period--and make award to the vendor whose quote is found to represent the best value.

We also recommend that Iron Vine be reimbursed its costs of filing and pursuing the protest. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2013). The protester’s certified claims for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Susan A. Poling
General Counsel