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Decision

Matter of: Hughes Network Systems, LLC

File: B-409666.3; B-409666.4

Date: August 11, 2014

Walter A.I. Wilson, Esq., Daniel J. Donohue, Esq., Grace O. Aduroja, Esq., and Claude P. Goddard, Jr., Esq., Polsinelli PC, for the protester.
Lori Ann Lange, Esq., and Nick R. Hoogstraten, Esq., Peckar & Abramson, PC, for Artel, LLC, an intervenor.
Daniel Hutman, Esq., and Uri R. Ko, Esq., Social Security Administration, for the agency.
Noah B. Bleicher, Esq., and Glenn G. Wolcott, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's corrective action, which included the evaluation of revised quotes, is denied where the agency reasonably concluded that ambiguities identified as a result of protester's initial protest are susceptible to correction through the submission of revised quotations.

DECISION

Hughes Network Systems, LLC, of Germantown, Maryland, protests the corrective action taken in connection with request for quotation (RFQ) No. SSA-RFQ-14-1108, issued by the Social Security Administration (SSA) for satellite services and maintenance. Hughes maintains that the submission of revised quotations as part of the agency's corrective action is improper.

We deny the protest

BACKGROUND

SSA issued the RFQ on December 20, 2013, to holders of General Services Administration's (GSA) custom satellite communication II (CS2) multiple agency contract (MAC). The RFQ provided for the issuance of a fixed-price task order with a 1-year base period and four 1-year option periods. RFQ at 8. Pursuant to the RFQ, SSA would issue the task order to the vendor whose quotation was most

advantageous to the agency following a graduated three-phase evaluation process. Id. at 114.

Under Phase 1 of the agency's evaluation of quotations, SSA would assess the technical acceptability of quotations; that is, whether the vendor's proposed solution met all of the technical requirements of the RFQ's statement of work (SOW). Id. As part of this phase of the evaluation, the RFQ provided as follows:

In review of the Vendor's provided experience information, the agency will rate a Vendor as acceptable if it demonstrated both maintenance and implementation experiences combined including at least:

- A minimum of three continuous years prior experience with administration, management, and maintenance of a nationwide network of satellite equipment consisting of 500 downlink sites. Those downlink sites must include offshore locations such as Puerto Rico, Alaska, Hawaii, or Virgin Islands.
- Completed a planned satellite repoint of downlinks antennas nationwide of at least 800 downlinks without service interruption to the customer.

Id. The RFQ stated that vendors that did not receive an acceptable technical rating at Phase 1 were not eligible for award. Id. Under Phase 2, the agency would evaluate quotations for "compliance, conformance, and compatibility with SSA's accessibility architecture and standards," and the vendors with the highest overall Phase 2 rating¹ would be evaluated under Phase 3.² Id. at 114, 116-17. Lastly, under Phase 3, the agency would conduct a best value analysis considering price and past performance.³ Id. at 117.

Hughes and Artel, LLC, of Herndon, Virginia, submitted quotations prior to the RFQ's deadline. After evaluating the quotations, SSA issued the task order to Artel on March 20, 2014. Hughes subsequently filed a protest with our Office, arguing that the agency improperly found Artel technically acceptable in evaluation Phase 1.

¹ In Phase 2, the agency would assign quotations adjectival ratings of either excellent, good, acceptable, marginal, or unsatisfactory. RFQ at 116.

² If only one quotation received the highest rating in Phase 2, that quotation would be selected for award "unless award to the highest rated Vendor will impose an undue burden on the Agency." RFQ at 116.

³ The RFQ identified five past performance subfactors and advised that past performance would be evaluated as either exceptional, very good, neutral, satisfactory, or unsatisfactory. RFQ at 118-19.

Protest, April 2, 2014, at 12. Specifically, Hughes contended that neither Artel nor its proposed subcontractor possessed downlink antenna repointing experience, as required by the RFQ. Supplemental (Supp.) Protest, April 23, 2014, at 3; see RFQ at 114.

In response to the protest, by letter of April 30, 2014, SSA informed our Office that it intended to take corrective action with respect to this procurement. Legal Memorandum, exh. 3, Notice of Corrective Action, at 1. Specifically, the agency advised that it would reevaluate quotations and make a new award determination. Accordingly, we dismissed Hughes' protest as SSA's corrective action rendered the protest academic. Hughes Network Systems, LLC, B-409666, B-409666.2, May 6, 2014.

On May 5, SSA informed Hughes that as part of its corrective action the agency was seeking revised quotations from Hughes and Artel. Protest, exh. 2, Contracting Officer email of May 5, 2014, at 1. In response, Hughes filed this protest objecting to the scope of the agency's corrective action.

DISCUSSION

Hughes argues that allowing Artel to submit a revised quotation is an "improper effort to give Artel an unfair competitive advantage by giving Artel an opportunity to cure its proposal deficiencies after the completion of the competition." Protest at 2. Because SSA did not revise the solicitation, Hughes maintains that the "proper remedy" would be for the agency to reevaluate quotations as originally submitted, find Artel technically unacceptable, and issue the task order to Hughes. Id. at 3.

Contracting officers in negotiated procurements have broad discretion to take corrective action where the agency determines that such action is necessary to ensure a fair and impartial competition. The Matthews Group, Inc. t/a TMG Constr. Corp., B-408003.2, B-408004.2, June 17, 2013, 2013 CPD ¶ 148 at 5; Domain Name Alliance Registry, B-310803.2, Aug. 18, 2008, 2008 CPD ¶ 168 at 8. As a general matter, the details of a corrective action are within the sound discretion and judgment of the contracting agency. Rockwell Elec. Commerce Corp., B-286201.6, Aug. 30, 2001, 2001 CPD ¶ 162 at 4. We generally will not object to the specific corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. Networks Elec. Corp., B-290666.3, Sept. 30, 2002, 2002 CPD ¶ 173 at 3. Where an agency has reasonable concerns that there were errors in the procurement, corrective action may appropriately include reopening discussions and requesting revised proposals before reevaluating. Consortium HSG Technischer Service GmbH and GeBe Gebäude-und Betriebstechnik GmbH Südwest Co., Management KG, B-292699.4, Feb. 24, 2004, 2004 CPD ¶ 44 at 3; Main Bldg. Maint., Inc., B-279191.3, Aug. 5, 1998, 98-2 CPD ¶ 47 at 3.

Here, SSA reports that subsequent to its review of Hughes' initial supplemental protest, the agency determined that language in Artel's quotation related to the vendor's experience was "sufficiently ambiguous to warrant further clarifications." Legal Memorandum at 3. According to the agency, whether Artel met the RFQ's experience requirements was "open to interpretation," which created a concern that there were errors with the procurement. Id. at 4. Thus, to ensure a "fair and impartial competition," SSA explains that it allowed both vendors to revise their quotations. Id.

In our view, the corrective action taken here is well within the broad discretion afforded to contracting agencies.⁴ Because it was not clear to SSA whether the awardee met certain RFQ experience requirements, the agency had a reasonable basis to seek revised quotations from the firm. To ensure a fair competition, Hughes was also provided an opportunity to revise its quotation. We disagree with Hughes' contention that the corrective action only benefits Artel because, as Hughes complains, the firm already met the RFQ's experience requirements and cannot improve its competitive position. See Protest at 2. In this regard, the protester--having previously been provided the agency's original post-award debriefing--has the opportunity to submit an improved technical quotation and make price adjustments as it deems necessary.⁵

Moreover, the corrective action here is not contrary to the evaluation scheme outlined in the RFQ, as Hughes argues. See Supp. Protest at 2; Comments at 6. In this respect, the agency maintains that its reevaluation of quotations will be in accordance with the RFQ's three-phase evaluation process, and Hughes has not demonstrated otherwise. Legal Memorandum at 7. Further, though Hughes

⁴ We have recognized a limited exception under which we will object to an agency's corrective action if the record establishes either that there was no impropriety in the original evaluation and award decision, or where there was an actual impropriety, but it was not prejudicial to any of the offerors. Security Consultants Group, Inc., B-293344.2, Mar. 19, 2004, 2004 CPD ¶ 53 at 2-3. The protester's assertion that the corrective action here falls under this exception is incorrect. As discussed below, the record shows that whether Artel's quotation demonstrated that it possessed the required experience was "open to interpretation." Legal Memorandum at 4. Indeed, Hughes' original protest was predicated on the agency's improper evaluation of Artel's quotation. See Protest, April 2, 2014, at 12. Consequently, we find that the corrective action here does not fall under the limited exception articulated in Security Consultants Group, Inc.

⁵ Hughes' total evaluated price was \$22,035,363.26; Artel's total evaluated price was \$18,539,396.20. Legal Memorandum, exh. 2, Post-Award Debriefing, at 2. Hughes was rated good under Phase 2 and exceptional for past performance as part of Phase 3. Id. at 3.

complains that Artel is being given a “second opportunity to pass” phase 1,⁶ the protester has not shown that the solicitation precludes the agency from seeking clarifications or revised quotations as part of corrective action.⁷ See Supp. Protest at 3. Indeed, given that the apparent impropriety in the evaluation of Artel’s experience brought into question the integrity of the procurement process as a general matter, we see nothing objectionable in the agency’s decision, essentially, to conduct a new evaluation. See generally MayaTech Corp., B-400491.4, Feb. 25, 2009, 2009 CPD ¶ 55 at 2; Patriot Contract Servs., LLC, et al., B-278276.11 et al., Sept. 22, 1998, 98-2 CPD ¶ 77 at 4.

Moreover, the protester’s reliance on the statutory requirement that agencies must award contracts with reasonable promptness to responsible sources is misplaced. Protest at 2 (citing 41 U.S.C. § 3703(c) (2014)). The statute cited by the protester in no way restricts an agency’s ability to take corrective action. Indeed, the agency is correct that 41 U.S.C. § 3708 gives agencies broad discretion to correct perceived flaws in the procurement process. Legal Memorandum at 5. In this regard, we concur with the SSA that the corrective action here is within the agency’s discretion under section 3708. See 41 U.S.C. § 3708.

In sum, we find that the agency’s decision to address the concerns raised in Hughes’ initial protest through corrective action was reasonable, and that the agency was within its discretion to request revised quotations from the vendors. We

⁶ Hughes’ argument that the agency should simply deem Artel’s initial quotation technically unacceptable under Phase 1 because it allegedly failed to demonstrate downlink antenna repointing experience is similar to Hughes’ argument raised in its original protest. See Protest, April 2, 2014, at 12. Because SSA is conducting a new evaluation following the submission of the revised quotations, and because the record here does not include the results of any reevaluation, it is premature for Hughes to raise those objections in this protest.

⁷ For the first time in its comments, Hughes claimed that seeking revised quotations constituted improper discussions because SSA is only permitted to conduct discussions with technically acceptable vendors. Comments at 8. Our Bid Protest Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues, where, as here, the protester raises arguments for the first time in its comments that could and should have been made in its protest. 4 C.F.R. § 21.2(a)(2) (2014); JAVIS Automation & Eng’g, Inc., B-290434, B-290434.2, Aug. 5, 2002, 2002 CPD ¶ 140 at 7 n.11 (piecemeal presentation of protest grounds, raised for the first time in comments, are untimely). Nevertheless, we are not persuaded by Hughes position that the agency’s request for revised quotations constituted improper discussions.

also find nothing objectionable about the agency's determination that the submission of revised quotations would cure errors in the procurement process.

The protest is denied.

Susan A. Poling
General Counsel