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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Argus International Risk Services, LLC

File: B-411682; B-411682.2

Date: September 25, 2015

Jon Snyder, Argus International Risk Services, LLC, for the protester.
Denise A. McLane, Esq., Department of Homeland Security, and Amy A. Cook, Esq., General Services Administration, for the agencies.
Matthew T. Crosby, Esq., Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging awardee's eligibility for blanket purchase agreement is denied where record shows that awardee's quotation complied with the solicitation requirements.
 2. Protest against agency's evaluation of realism of awardee's labor rates is denied where record shows that the evaluation was reasonable and consistent with the terms of the solicitation.
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DECISION

Argus International Risk Services, LLC, of Stuart, Florida, protests the establishment of a blanket purchase agreement (BPA) with The Cogar Group, Ltd., of Falls Church, Virginia, by the Department of Homeland Security, Federal Protective Services (FPS), under request for quotations (RFQ) No. HSHQE4-15-Q-00002 for protective security officer services in South Florida. Argus alleges that Cogar was ineligible for award and that the agency's evaluation of quotations was unreasonable in various respects.

We deny the protest.

BACKGROUND

On April 17, 2015, and pursuant to the procedures set forth in Federal Acquisition Regulation (FAR) subpart 8.4, the agency issued the solicitation as a total small business set-aside to vendors holding contracts under General Services

Administration (GSA) Federal Supply Schedule (FSS) 84, Special Item Number (SIN) 246-54, Protective Service Occupations. RFQ at 1. The solicitation contemplated the establishment of a fixed hourly rate BPA with a base ordering period of one year, and four one-year option periods. Id. at 6.

The solicitation provided that the BPA would be established based on the quotation representing the “best value” to the government, considering price and the following two nonprice factors, listed in descending order of importance: past performance; and management approach. RFQ at 1, 9. The nonprice factors, when combined, were stated to be significantly more important than price. Id.

For both the nonprice and price factors, the solicitation set forth various evaluation criteria. RFQ at 3-7. With regard to the evaluation of pricing, and as relevant here, the solicitation stated that the agency “may” evaluate the realism of the vendors’ price elements to measure their understanding of the requirements and to assess performance risk. Id. at 7.

As also relevant here, the solicitation stated: “To be eligible for award, a Vendor’s GSA Schedule contract must include the entire geographic area required by this solicitation by the closing date of the RFQ.”¹ RFQ at 9. GSA’s standing solicitation for Schedule 84 contracts includes the following provision for SIN 246-54 (i.e., the SIN for the protective security officer services being procured here):

[A]ll contract holders must submit current, valid copies of all business and corporate licenses required to operate as a commercial security services contractor within the specific geographic areas covered under the contract, or verifiable proof of an exemption. Failure to obtain and provide this information . . . may result in removing specific geographic areas from the contract or cancellation of the contract in its entirety.

GSA Agency Report (AR), Tab 1a, SIN 246-54 Solicitation Requirements, at 3-4. Thus, under this provision, for a geographic area to be included under SIN 246-54 of a vendor’s Schedule 84 contract, the vendor must obtain any necessary licenses and provide them to GSA. The solicitation at issue in this protest, however, did not include this requirement. Instead, the solicitation included a requirement that the successful contractor obtain any necessary licenses—including state and local licenses—before performance commenced.² Statement of Work (SOW) §§ 4.1, 4.2.

¹ The solicitation’s closing date, as amended, was May 13. RFQ, amend. No. 0002, at 3.

² The solicitation provided that performance was to commence on October 1, 2015. RFQ, amend. No. 0002, at 1.

The agency received three quotations by the solicitation's closing date, including quotations from Argus and Cogar. FPS AR, Tab 9, Source Selection Decision Document (SSDD), at 1. The contracting officer--who also served as the source selection authority in this procurement--evaluated the vendors' pricing and concluded, among other things, that Cogar's pricing was realistic. Id. at 1-2. A technical evaluation team (TET) evaluated the vendors' quotations under the two nonprice factors and assigned adjectival ratings. FPS AR, Tab 7, TET Rep., at 7-22. The available ratings were highly acceptable, acceptable, unacceptable(a), unacceptable(b), and neutral.³ Id. at 6. The vendors' evaluated pricing and nonprice factor ratings are shown in the table below.

	<u>Argus</u>	<u>Cogar</u>	<u>Vendor 3</u>
Past Performance	Acceptable	Highly Acceptable	Acceptable
Management Approach	Unacceptable(a)	Highly Acceptable	Unacceptable(b)
Evaluated Price	\$108,220,270	\$102,141,390	\$104,341,070

FPS AR, Tab 9, SSDD, at 2.

After documenting a detailed comparative analysis of the evaluation findings, the contracting officer determined that Cogar's higher-technically-rated, lower-priced quotation represented the best value to the government. FPS AR, Tab 8, Pre-Award Business Mem., at 10-18. On June 16, the agency established the BPA with Cogar. After being notified that its quotation was not selected for the BPA, Argus filed a protest with our Office.

³ The TET report included definitions for each evaluation rating. FPS AR, Tab 7, TET Rep., at 5-6. The definitions distinguished the unacceptable(a) and unacceptable(b) ratings as follows: unacceptable(a) applied to a quotation having deficiencies considered correctable, whereas unacceptable(b) applied to a quotation having deficiencies considered not correctable without submission of, in essence, an entirely new proposal; unacceptable(a) applied to a quotation reflecting an understanding of "most" of the solicitation requirements, whereas unacceptable(b) applied to a quotation reflecting a "general lack of understanding of the solicitation requirements"; and unacceptable(a) applied to a quotation with a greater-than-normal level of performance risk, whereas unacceptable(b) applied to a quotation with a level of performance risk so high that satisfactory performance was "unlikely." Id. at 6. The rating definitions also provided that the neutral rating was applicable only to the past performance factor. Id.

DISCUSSION

Argus alleges that Cogar was ineligible to receive the BPA and that the agency's evaluation of quotations was unreasonable in various respects. We have considered all of Argus's arguments, and we conclude, based on the record, that none furnishes a basis on which to sustain the protest. Below we discuss Argus's principal contentions.⁴

Cogar's Eligibility for the BPA

As discussed above, the solicitation provided that "[t]o be eligible for award, a Vendor's GSA Schedule contract must include the entire geographic area required by this solicitation by the closing date of the RFQ." RFQ at 9. As also discussed above, the Schedule 84 solicitation requires a vendor to obtain and submit any necessary licenses before a geographic area can be added to the vendor's contract under SIN 246-54. See GSA AR, Tab 1a, SIN 246-54 Solicitation Requirements, at 3-4. Argus alleges that on the date the solicitation closed, Cogar was not licensed to provide security services in the state of Florida, and, therefore, Cogar's Schedule 84 contract could not have included South Florida, as required by the solicitation. Protest at 5; Comments at 5-8. Based on this, Argus argues Cogar was ineligible to receive the BPA.

Where, as here, an agency issues an RFQ to GSA 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 and applicable procurement laws and regulations. Digital Solutions, Inc., B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4; DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2.

In response to Argus's claim, the agency points out that Cogar's quotation stated the firm currently provides protective security officer services in Florida. FPS Ltr. to

⁴ We note that the agency has argued that based on Argus's rating of unacceptable(a) under the management factor, Argus is not an interested party to pursue the protest. Request for Dismissal at 9. We decline to dismiss the protest on this basis for two reasons. First, we see nothing in the record to show that the TET or the contracting officer considered the unacceptable(a) rating to preclude establishment of the BPA with the firm; in fact, the TET drafted--and the contracting officer adopted--a lengthy analysis comparing the attributes of two firms' quotations. FPS AR, Tab 7, TET Rep., at 24-26; FPS AR, Tab 8, Pre-Award Business Mem., at 12-14. Second, even if the unacceptable(a) rating were to preclude establishment of the BPA with Argus, the firm is still an interested party because if it were to prevail in the protest, the agency potentially would have to recompute the requirement, and Argus would be eligible to participate in the recompetition.

GAO (Aug. 25, 2015) at 1 (citing FPS AR, Tab 6, Cogar Quotation, Package 1, Technical, at 7). The agency also points out that Cogar's quotation included a Schedule 84 contract pricelist with rates for protective security officer services in South Florida. Id. at 2 (citing FPS AR, Tab 6, Cogar Quotation, Package 2, Price, at 7). Finally, the agency states that after receiving Argus's protest, it obtained a copy of a modification to Cogar's Schedule 84 contract showing that the area of South Florida had been added. Id. at 1 (citing FPS AR, Tab 11, Cogar FSS Schedule 84 Contract, modification No. PO-0006, at 1). The agency notes that the modification took effect on May 1, which was before the solicitation's May 13 closing date. FPS AR at 11.

Based on this record, we see no basis to sustain Argus's claim. The above-discussed modification shows that before the solicitation's closing date, Cogar's Schedule 84 contract included South Florida. Thus, Cogar was compliant with the solicitation's requirement that by the solicitation's closing date, the firm's Schedule 84 contract include the geographic area where performance was to occur.

Argus argues that Cogar nevertheless was ineligible for the BPA because after issuing the above-discussed modification, GSA learned that although Cogar had applied for a Florida security services license, the state of Florida had not yet approved the application. See Supp. Protest at 1-2; Comments at 5-8. For the reasons discussed below, we dismiss this claim as untimely.

As previously stated, the Schedule 84 solicitation provides that in order for a geographic area to be included on a vendor's contract, the vendor must obtain and submit to GSA a valid security services license for the geographic area. See GSA AR, Tab 1a, SIN 246-54 Solicitation Requirements, at 3-4. As also previously stated, while the solicitation at issue in this protest required vendors' Schedule 84 contracts to include the geographic area of South Florida prior to the solicitation's closing date, it included a separate requirement for the date by which a vendor must obtain any licenses necessary for performance. In particular, it expressly provided that such licenses must be obtained before the date that performance was to commence. SOW §§ 4.1, 4.2.

An ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. Colt Def., LLC, B-406696, July 24, 2012, 2012 CPD ¶ 302 at 8. A patent ambiguity exists where the solicitation contains an obvious, gross, or glaring error, while a latent ambiguity is more subtle. Id. Where a patent ambiguity is not challenged prior to the submission of proposals, we will dismiss as untimely any subsequent challenge to the meaning of the term. 4 C.F.R. § 21.2(a)(1) (2015); U.S. Facilities, Inc., B-293029, B-293029.2, Jan. 16, 2004, 2004 CPD ¶ 17 at 10.

Here, Argus is in essence claiming that Cogar was required to obtain its Florida security license before the solicitation's closing date. This claim, however, is

predicated on the belief that the licensing provision in the Schedule 84 solicitation would control, rather than the licensing provision in the solicitation for the BPA under protest. Since the licensing provisions in the two solicitations are expressly at odds with each other, we view any ambiguity regarding the deadline for licensing to have been obvious, or patent. Since Argus did not protest this issue prior to the solicitation's closing date, its claim that Cogar was ineligible because the firm did not obtain a Florida security license before the solicitation's closing date is untimely.⁵

Price Realism

Next, Argus challenges the agency's determination that Cogar's pricing was realistic. Before addressing Argus's argument, we observe that where a solicitation anticipates an award based on fixed-price, fully-burdened labor rates, an agency may provide for the use of a price realism analysis for the limited purpose of measuring a vendor's understanding of the requirements or assess the risk inherent in a vendor's quotation. See Ball Aerospace & Techs. Corp., B-402148, Jan. 25, 2010, 2010 CPD ¶ 37 at 8. The nature and extent of an agency's price realism analysis are matters within the agency's discretion. Star Mountain, Inc., B-285883, Oct. 25, 2000, 2000 CPD ¶ 189 at 6. 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.

Returning to Argus's claim, the firm argues that the agency's price realism evaluation was flawed because the agency's independent government estimate (IGE) of the contract's value allegedly was not based on the current applicable collective bargaining agreement (CBA). See Comments at 3-4. However, the record reflects that the agency's price realism evaluation was based not on a comparison of Cogar's pricing to the IGE, but instead was based on an evaluation of Cogar's pricing elements, as well as a favorable comparison of the elements to

⁵ We note that the record reflects that within days after issuing the modification that added South Florida to Cogar's Schedule 84 contract, GSA became aware of the issue and requested that Cogar provide a valid Florida security services license. See GSA AR, Tab 4, GSA E-Mail to Cogar (May 7, 2015), at 1. The record further reflects that during the ensuing weeks, GSA and Cogar regularly communicated regarding the issue, and that ultimately, on June 17, Cogar's Florida security services license application was approved, and a copy of the license was provided to GSA. See GSA AR, Tab 11a, Florida Licensing Ltr. to Cogar (June 17, 2015), at 1.

various pricing metrics.⁶ The record also reflects that the determination that Cogar's pricing was realistic was based in part on the finding that Cogar currently is successfully performing another protective security officer contract for the agency. FPS AR, Tab 9, SSDD at 2. While Argus raises various other arguments regarding the agency's price realism analysis, on the record here, we see no basis to sustain the claims.

The protest is denied.⁷

Susan A. Poling
General Counsel

⁶ One of the metrics was the CBA cited by Argus, and the record reflects that the agency applied the CBA rates that were to go into effect on February 1, 2015 and February 1, 2016. FPS AR, Tab 8, Pre-Award Business Mem., at 15-16.

⁷ Argus's submissions to our Office include numerous remarks to the effect that FPS and GSA acted in bad faith. Government officials are presumed to act in good faith, and a protester's contention that procurement officials are motivated by bias or bad faith must be supported by convincing proof; our Office will not consider allegations based on mere inference, supposition, or unsupported speculation. Career Innovations, LLC, B-404377.4, May 24, 2011, 2011 CPD ¶ 111 at 7-8; Shinwha Elecs., B-290603 et al., Sept. 3, 2002, 2002 CPD ¶ 154 at 5 n.6. We see no evidence in the record, other than Argus's speculation, to support the allegations of bad faith. Accordingly, we will not further consider this aspect of Argus's protest.