



Decision

Matter of: One Community Auto, LLC

File: B-419311

Date: December 16, 2020

Gary Peterson for the protester.
Captain Ethan Chae, Sean Connolly, Esq., and Andrew J. Smith, Esq., Department of the Army, for the agency.
Hannah G. Barnes, and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging an agency's evaluation of protester's quotation under the price evaluation factor is dismissed where the record shows that the solicitation contained a patent ambiguity that the vendor did not raise prior to submission of its quotation.

DECISION

One Community Auto, LLC (OCA), a small business of Albuquerque, New Mexico, protests the issuance of a requirements contract to Iron Horse Logistics, a small business of Durango, Colorado, under request for quotations (RFQ) No. W911S720Q0024, issued by the Department of the Army, U.S. Army Mission and Installation Contracting Command, to purchase what the agency terms "contact cars" for use at Fort Leonard Wood, Missouri.¹ The protester argues that the solicitation's evaluation factors were "ambiguous or indefinite," and challenges the agency's evaluation of its quotation. Protest at 1.

We dismiss the protest.

¹ The solicitation describes these cars as mid-sized or larger four-door sedans or station wagons required to meet certain minimum specifications that were detailed in the solicitation. RFQ at 3, 11.

BACKGROUND

On August 28, 2020, the agency posted on the System for Award Management (SAM) website an RFQ to purchase cars with certain specifications for use at Fort Leonard Wood, Missouri. Req. for Dismissal at 1. The solicitation, issued under the commercial item procedures of Federal Acquisition Regulation part 12, contemplated awarding a requirements contract to supply the contact cars and provided for a 1-year base period and four 1-year option periods. Req. for Dismissal at 2. The agency issued the RFQ as a service-disabled veteran-owned small business set-aside. RFQ at 1, 25.

The RFQ stated that the contract would be awarded to the vendor whose quotation conformed to the solicitation and was “most advantageous to the Government, price and other factors considered.” RFQ at 23. The solicitation listed three factors that the agency would use to evaluate quotations: technical, past performance, and price. *Id.* For the technical factor, the solicitation provided that quotations would be evaluated to ensure both that “the technical capability of the items meet the requirements stated in the Technical evaluation” and that “the timelines established in the technical evaluation for delivery and pick up are addressed and if they can be met.” *Id.* The past performance factor stated that the quotation would “be evaluated to see if the contractor has a history of past performance in supplying a similar need for the Government” and clarified that “[a] lack of past performance will not eliminate anyone from consideration.” *Id.* With regard to price, the RFQ stated only that responses would be evaluated to ensure that the price is fair and reasonable. *Id.*

The solicitation provided that the three factors were listed “in order of importance . . . as follows,” with technical capability listed first, past performance listed next, and price listed last. RFQ at 23. Finally, the solicitation emphasized that “Technical and past performance, when combined, are NOT more important than price.” *Id.*

The agency received quotations from five vendors, including the protester and the awardee. Agency Debriefing letter at 1. On October 2, the Army notified the protester that the contract had been awarded to another vendor. Req. for Dismissal at 2. The agency provided a written post-award debriefing to the protester on October 7, explaining that the protester’s quotation was rated as acceptable for the technical and past performance factors, but it did not offer the lowest price. Agency Debriefing letter at 1. OCA submitted a price of \$1,199,390, while the awardee submitted a price of \$1,048,500. *Id.* The debriefing noted that the protester’s price was considered “fair and reasonable in accordance with the average market price,” but that the quotation was not the lowest-priced, technically acceptable (LPTA) one. *Id.* This protest followed.

DISCUSSION

OCA states that it is “protesting the award based on ambiguous or indefinite evaluation factors.” Protest at 1. With regard to the non-price factors, the protester notes that the solicitation did not “state how [the agency] would grade,” and argues that these factors

should have been evaluated qualitatively², instead of being rated acceptable or unacceptable. *Id.* With regard to price, OCA complains that the agency should not have evaluated its quotation on an LPTA basis when the solicitation stated that price would be evaluated to ensure it was “fair and reasonable.” *Id.* In its request for relief, the protester asks that the evaluation criteria be revised, and the solicitation reissued. *Id.* at 2.

The Army requests that we dismiss the protest, asserting that OCA’s protest is based on alleged improprieties in the solicitation that were apparent prior to the time set for receipt of quotations, and therefore had to be raised before the closing time for receipt of quotations. Req. for Dismissal at 3. For the reasons that follow, we agree and dismiss the protest.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. See 4 C.F.R. § 21.2. These rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. *Verizon Wireless*, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. Our timeliness rules require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals or quotations be filed before that time. 4 C.F.R. § 21.2(a)(1); see *AmaTerra Env'tl. Inc.*, B-408290.2, Oct. 23, 2013, 2013 CPD ¶ 242 at 3. It is well-settled that a party who has the opportunity to object to allegedly improper or patently ambiguous terms in a solicitation, but fails to do so prior to the time set for receipt of proposals, waives its ability to raise the same objection later. *Right Direction Technology Solutions, LLC*, B-416615.2, Oct. 26, 2018, 2018 CPD ¶ 405 at 5. The purpose of our timeliness rule in this regard is to afford the parties an opportunity to resolve ambiguities prior to the submission of offers, so that such provisions can be remedied before offerors formulate their proposals. *Bank of America*, B-287608, B-287608.2, July 26, 2001, 2001 CPD ¶ 137 at 10.

At issue here is whether the solicitation’s terms were patently ambiguous and consequently disclosed the basis for OCA’s protest, or whether that basis first became apparent during the debriefing. In this regard, the protester states that it had “no way of knowing” that the agency would evaluate its quotation in the manner that it did, on an LPTA basis, and insists that the ambiguity in the solicitation was not apparent until the debriefing. Resp. to Req. for Dismissal at 2. The agency argues that the evaluation scheme set forth in the solicitation was internally inconsistent and contradictory on its face, and thus, patently ambiguous. Req. for Dismissal at 4. As a result, the agency contends that the protester had sufficient information to challenge the ambiguity prior to the time set for receipt of proposals, and that the protest is consequently untimely. *Id.* at 5.

² Although the protester argues that the factors should have been evaluated “quantitatively,” we believe its intended argument was that the evaluation should have been based on a qualitative assessment.

An ambiguity exists where two or more reasonable interpretations of the terms of the solicitation are possible. *FEI Systems*, B-414852.2, Nov. 17, 2017, 2017 CPD ¶ 349 at 4. A patent ambiguity exists where the solicitation contains an obvious, gross, or glaring error, while a latent ambiguity is more subtle. *Id.* Here, the language in the solicitation is internally inconsistent. For example, some terms appear to support an LPTA source selection methodology, while other terms seem to support a best-value tradeoff approach.

For the technical factor, the solicitation stated that responses would be evaluated “to ensure that the technical capability of the items *meet* the requirements stated in the [t]echnical evaluation,” and whether the required timelines “*are addressed* and *if* they can be met.” RFQ at 23 (emphasis added). This language establishes a pass/fail standard; it does not state that the evaluation would assess how well the requirements were met or addressed, but only whether they were met. Moreover, the technical evaluation to which this language refers, located in section C of the RFQ (“Technical Evaluation”) lists specifications that are also expressed as pass/fail requirements.³ RFQ at 11-12.

The solicitation language for the past performance factor similarly provided that responses would be evaluated to determine whether vendors had relevant past performance history. *Id.* Notably, the solicitation language with respect to the non-price factors did not include adjectival ratings or statements about strengths and weaknesses, nor did it indicate that quotations would be evaluated on the basis of how well they met the technical and past performance requirements. Instead, the solicitation stated that the non-price factors would be evaluated on the basis of whether or not they met the requirements. See RFQ at 11, 23.

On the other hand, other terms in the solicitation appeared to support a best-value tradeoff approach. For example, the solicitation indicated that non-price factors would be weighted differently from the price factor, although the relative weights were not entirely clear. It provided that all three factors would “be used to evaluate offers [i]n order of importance as follows[,]” with the technical factor listed first, past performance listed second, and price listed last. RFQ at 23. This language suggested a best-value tradeoff approach, and it is at odds with the previously discussed language, which suggested an LPTA evaluation.

³ For example, one requirement stated that cars must have two-wheel drive, but cannot have all-wheel drive or four-wheel drive. RFQ at 11. Another required that “[a]ll suspension components . . . must function reasonably with no more than 1/8 inch of looseness.” *Id.* Yet another requirement stated that cars must have “five matching rims, not bent or cracked with proper amount of lug nuts and with non-leaking tires of factory recommended size.” *Id.* These examples are representative of all the technical evaluation requirements.

In addition to this internally inconsistent language, the basis for award was not expressly stated in the solicitation. The language provided that award would be made to the “offer conforming to the solicitation [that] will be most advantageous to the Government, price and other factors considered.” RFQ at 23. However, the solicitation did not sufficiently explain how the agency would use the price and non-price factors to evaluate vendors’ quotations. The solicitation listed these factors in order of importance, but it did so without specifying whether it was in ascending or descending order of importance.⁴ Moreover, immediately following that statement, the solicitation provided that “[t]echnical and past performance, when combined, are NOT more important than price,” *Id.* at 23, without explaining how important each factor would be in the source selection. Ultimately, the solicitation did not establish the basis on which award would be made, whether on an LPTA basis, a best-value tradeoff basis, or some other approach. We conclude that the solicitation’s language is conflicting on its face, and is consequently patently ambiguous. Because OCA did not challenge the solicitation’s terms until after award was made, this protest is untimely.

The protest is dismissed.

Thomas H. Armstrong
General Counsel

⁴ We note the agency’s argument that ranking price as the least important factor suggests that the agency preferred quotations with better technical capacities and past performance, even if vendors offered higher prices, and that ranking price as the most important factor suggests that a lower price was more important than either technical capacity or past performance, respectively. Req. for Dismissal at 4. Because the solicitation did not state whether the factors were being ranked in ascending or descending order, even without addressing the language immediately following this factor ranking. As a result, it is possible to have two reasonable interpretations of the solicitation’s requirements: the agency considered price the most important factor, or the agency considered price the least important factor. Accordingly, we conclude that the solicitation is ambiguous on its face.