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United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: TCBA Watson Rice, LLP

File: B-402086.6; B-402086.7

Date: September 8, 2010

Janice Davis, Esq., Davis & Steele, for the protester.
Joseph P. Hornyak, Esq., and Megan Mocho Jeschke, Esq., Holland & Knight LLP, for Diversified Capital, Inc., an intervenor.
Sam Q. Le, Esq., Small Business Administration, for the agency.
Linda C. Glass, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably rated protester's quotation for loan review services as marginal under the management approach/personnel/experience and technical approach evaluation factors, where the agency reasonably determined that protester's proposed staffing, a critical requirement, was unrealistically low for the work to be performed.

DECISION

TCBA Watson Rice, LLP (TCBA), of New York, New York, protests the issuance of a blanket purchase agreement (BPA) and task order to Diversified Capital, Inc. (DCI), of Pasadena, California, under request for quotations (RFQ) No. SBAHQ-09-A-0024, issued by the Small Business Administration (SBA) for risk-based loan review services. TCBA challenges the SBA's evaluation and selection decision as unreasonable.

We deny the protest.

BACKGROUND

Section 7(a) of the Small Business Act, 15 U.S.C. § 636 (2006), authorizes the SBA to make or guarantee loans to eligible small business concerns. In furtherance of this purpose, the SBA has entered into agreements with private lenders and certified development companies, permitting them to make SBA-guaranteed loans to small businesses. The SBA conducts periodic "on-site risk-based reviews" of these institutions as part of its oversight of the loan program activities. The purpose of each on-site risk-based review is to assess portfolio performance, SBA management and administration, credit administration, and regulatory compliance of each lender or certified development company. The review includes review of policies, procedures, internal controls, and individual loan files. RFQ at 6-7, 9.

The RFQ was issued on June 12, 2009, in accordance with FAR part 8, and sought quotes from vendors holding General Services Administration Federal Supply Schedule contracts. The selected vendor was to provide all qualified personnel, facilities, equipment, logistical support, and other materials and/or services necessary to perform on-site risk-based reviews in accordance with a statement of work and standard operating procedures. The solicitation contemplated issuance of a BPA for a 1-year base period with two 1-year "extension" or option periods. RFQ at 3.

The RFQ provided that the SBA would schedule the reviews for each fiscal year no later than 15 days after the beginning of each fiscal year, and advised vendors that the SBA may periodically make changes to the schedule. RFQ at 11. The reviews were to be performed primarily at the lender's place of business during the lender's normal business hours. Id.; Standard Operating Procedures, at 43. The RFQ stated in multiple places that reviews were to start on site on Monday of the review week, and be completed by Friday of the review week. RFQ at 11, 15.

With regard to personnel, the RFQ required the contractor to provide "trained specialists in sufficient quantity to participate in the assigned review activities," and the solicitation established minimum experience requirements for the project manager, "reviewer-in-charge," and reviewers. RFQ at 14. The RFQ further stated that the:

> Contractor is required to supply sufficient qualified staff to conduct on-site risk-based reviews nationwide, at sufficient locations so as to **meet the requirement of starting each on-site review on Monday of the review week**, and completing the on-site review by Friday of the review week. **Approach on how contractor plans to meet this requirement is critical**.

Id. at 15 (emphasis added).

The RFQ categorized the lending institutions subject to review as small, medium, and large lenders, and identified the number of loan files to be reviewed for each category of lenders.[1] For small lenders, with outstanding loans of less than $20 million and fewer than 30 loans, a vendor was required to review 15 loan files per lender. For medium lenders, with $20 million to $100 million in outstanding loans and up to 100 loans, a vendor was required to review 16 to 23 loan files per lender. For large lenders, with over $100 million in outstanding loans or more than 100 loans, a vendor was required to review up to 36 loan files per lender. RFQ at 12. For pricing purposes, the RFQ estimated that the selected contractor would perform 45 large lender reviews, 150 medium lender reviews, and 30 small lender reviews, for a total of 225 reviews per year. Id. at 3. Vendors were required to provide fixed unit prices based on these quantities for the base and each option period. Id. at 3-5.

The RFQ stated that quotations would be evaluated on a "best value" basis, considering four evaluation factors, listed in descending order of importance: management approach/personnel/experience; technical approach for sample task order; past performance; and price. The RFQ stated that the non-price factors, when combined, were slightly more important than the price factor. RFQ at 24.

Under the management approach/personnel/experience evaluation factor, the RFQ provided that quotations would be evaluated to determine the soundness of the proposed management approach, its suitability, and the ability of the vendor to deliver within the required timeframe. Personnel qualifications and how well the management approach met or exceeded the requirements were also to be evaluated under this factor. RFQ. at 23. Under the technical approach factor, the RFQ provided that quotations would be evaluated to assess the vendor's understanding of, and capability to perform, the requirements of the BPA, including the vendor's proposed "methodology (i.e., labor mix)." Id.

The RFQ provided that each vendor's price proposal would be evaluated to determine if it was complete and reasonable. As part of the price evaluation, the RFQ stated that the government would consider not only the labor rates and discounts quoted for the base and option periods, but also the specific labor mix, hours, and other costs associated with each BPA task. RFQ at 24. The RFQ warned vendors that the award would be made "only to a vendor whose technical proposal establishes that it can meet the needs of the Government." Id.

The RFQ stated that adjectival ratings would be assigned to quotations for each of the evaluation factors. Possible adjectival ratings were exceptional, highly acceptable, acceptable, marginal, and unacceptable. RFQ at 25. The agency also assigned risk levels to past performance, and assigned a neutral rating where no

[1] The RFQ also identified a fourth category--"504 Lender Reviews"--which pertained to certified development companies with outstanding loans of $30 million to $100 million and up to 100 loans. The RFQ states that these would be subject to the medium size lender reviews. RFQ at 12.

past performance was available. See, e.g., Agency Report (AR), Tab 5, Source Selection Decision (May 17, 2010), at 15.

Six vendors, including TCBA and DCI, submitted timely quotations. As is relevant here, TCBA quoted a total of [DELETED] reviewers and reviewers-in-charge and stated that it "will conduct [DELETED] reviews per week" to achieve the designated number of reviews. AR, Tab 14, TCBA's Final Quotation, at 23. DCI planned to use [DELETED] reviewers and did not limit the number of reviews it would conduct per week. AR, Tab 13, DCI's Final Quotation, at 28.

Quotations were evaluated by a technical evaluation board (TEB). Based on the initial evaluation, four vendors, including TCBA and DCI, were included in the competitive range, and discussions were held with these vendors. As is relevant here, during discussions, TCBA was specifically requested, among other things, to:

> Explain your technical approach in supplying sufficient staff to accommodate 225 reviews a year including labor mix and a calculation of how the vendor arrived at its proposed price.

AR, Tab 20, TCBA Discussion Questions.

The TEB reviewed the discussion responses and determined that DCI's quotation presented the best value. AR, Tab 19, Source Selection Decision (Sept. 28, 2009), at 23. On September 28, a BPA was issued to DCI. Ahmad Associates, Ltd., the incumbent, protested the SBA's selection decision to our Office on the grounds that the SBA failed to treat vendors equally and failed to request final proposal revisions. On November 4, we dismissed that protest after the SBA advised our Office that it would request final proposal revisions from vendors in the competitive range and evaluate the revised proposals with a new TEB and a new source selection authority (SSA). Ahmad Assocs., Ltd., B-402086, Nov. 4, 2009.

On November 4, the SBA requested final quotation revisions from the vendors in the competitive range. The revised quotations were reviewed by a new TEB and SSA. DCI's quotation was again selected as presenting the best value to the government. AR, Tab 12, Basis of Award Recommendation (Jan. 20, 2010), at 42. The SBA then modified DCI's BPA to reflect the lower prices contained in DCI's revised quotation. AR, Tab 9, BPA amend. 1.

TCBA and Ahmad both filed protests with our Office, challenging the SBA's evaluation and selection decision. After reviewing the protests, the SBA discovered that it had used the wrong evaluation criteria and advised our Office that it would reevaluate quotations using the correct evaluation criteria. The SBA also advised that it would assign a new SSA to make the final selection decision. On May 12, we dismissed both protests. Ahmad Assocs., Ltd. et al., B-402086.2 et al., May 12, 2010.

The TEB members completed new individual evaluations of the revised quotations. As relevant here, the TEB individual evaluation summary for TCBA's quotation was as follows:

TCBA				
	Management Approach/Personnel/ Experience	**Technical Approach**	**Past Performance**	**Overall**
Evaluator 1	Marginal	Marginal	High Acceptable/ No Risk	Marginal
Evaluator 2	Marginal	Marginal	Neutral	Marginal
Evaluator 3	Marginal	Acceptable	Unacceptable/ High Risk	Marginal

AR, Tab 5, Source Selection Decision (May 17, 2010), at 15.

The TEB individual evaluation summary for DCI's quotation was as follows:

DCI				
	Management Approach/Personnel/ Experience	**Technical Approach**	**Past Performance**	**Overall**
Evaluator 1	High Acceptable	High Acceptable	Acceptable/ Little Risk	High Acceptable
Evaluator 2	High Acceptable	High Acceptable	High Acceptable/ No Risk	High Acceptable
Evaluator 3	Exceptional	High Acceptable	High Acceptable/ No Risk	High Acceptable

Id. at 11.

TCBA quoted the lowest total price of $11,839,017.04; DCI's quoted price was $13,669,735. Id. at 17. The TEB did not make a consensus recommendation, but rather, provided the SSA with the evaluation results from the individual members.

In the source selection decision, the new SSA stated that his selection decision was based on a comparative assessment of the final quotations presented by the four vendors in the competitive range, the latest individual evaluations completed by members of the TEB, and the RFQ. Id. at 1. The SSA stated that he did not review the decisions of the prior SSAs or the prior versions of the vendors' quotations. Id.

The SSA agreed with the individual evaluators' assessment that TCBA's quotation presented a low probability of success because of inadequate staffing. Id. at 15. The SSA determined that TCBA's proposed staff of [DELETED] reviewers and reviewers-in-charge was insufficient to cover all the reviews, noting that one evaluator determined that TCBA's staffing estimates were approximately 50 percent of what was needed, which demonstrated a "major misunderstanding of the work required." Id. at 41. The SSA found, also, that TCBA's plan to conduct [DELETED] reviews per week was insufficient to meet the requirement of conducting 225 reviews per year. In this regard, the SSA noted that the SBA may order more than [DELETED] reviews per week because some weeks were too short (due to holidays) to conduct full reviews. In sum, the SSA agreed with the TEB that these weaknesses warranted marginal ratings under the management approach/personnel/experience and technical approach factors, and an overall marginal rating for the quotation, because the quotation did not meet requirements of the RFQ to provide sufficient staff to conduct 225 reviews per year. However, despite the quotation's marginal rating, the SSA recognized that TCBA submitted the lowest price. Accordingly, the SSA performed a best analysis between the quotations of TCBA and DCI. Id.

In performing the tradeoff analysis between TCBA's and DCI's quotation, the SSA recognized that TCBA's quotation presented the lowest total price and lowest level of effort of the four quotations received. However, the SSA concluded that TCBA's low price did not justify the low level of effort. In this regard, the SSA agreed with the TEB evaluators that TCBA's labor mix was "totally unrealistic," showed a lack of understanding of the requirement, and would be a risk for the SBA. Id. at 42. In contrast, the SSA commended DCI's strong staffing plan, DCI's cost reducing travel plan, and its innovative use of technology. Id. at 19-20. Comparing the two quotations, the SSA concluded that TCBA's unrealistic labor mix, its staffing capacity, and the [DELETED] reviews-per-week expectation "place its quotation squarely behind DCI's in technical quality." Id. at 43. Furthermore, when comparing TCBA's proposed prices to DCI's on a price-per-reviewer, price-per-reviewer-hour, and price-per-labor-hour basis, the SSA noted the TCBA's prices were actually more expensive than DCI's prices. Id. at 42-43.

For the reasons stated above, the SSA concluded that DCI's quotation represented the best value to the government and notified TCBA of the award determination on May 19.[2] TCBA filed this protest on June 1 and a supplemental protest on July 12, both of which are the subject of this decision.

DISCUSSION

TCBA protests the agency's assessment of its staffing, which was the primary reason why its quotation received marginal ratings under the management approach/

[2] When it was notified of the award, TCBA was also provided redacted copies of the TEB evaluation summary and the SSA's source selection decision.

personnel/experience and technical approach factors.[3] TCBA further contends that the agency failed to hold meaningful discussions with the firm.

Where, as here, an agency conducts a formal competition under the Federal Supply Schedule program for the issuance of a BPA or task order, we will review the agency's actions to ensure that the evaluation was reasonable and consistent with the solicitation and applicable procurement statutes and regulations. Worldwide Language Res., Inc., B-297210 et al., Nov. 28, 2005, 2005 CPD ¶ 211 at 3. In reviewing an agency's evaluation, we will not reevaluate vendors' quotations, and a protester's mere disagreement with the agency's evaluation is not sufficient to render the evaluation unreasonable. Advanced Tech. Sys., Inc., B-296493.5, Sept. 26, 2006, 2006 CPD ¶ 147 at 5. Ultimately, it is a vendor's responsibility to submit a well-written quotation, with adequately detailed information, that clearly demonstrates compliance with the solicitation requirements. Domain Name Alliance Registry, B-310803.2, Aug. 18, 2008, 2008 CPD ¶ 168 at 10.

Staffing

TCBA argues that the agency's determination that the firm's estimate of labor to complete the required tasks was too low, had no rational basis, and was unreasonable. Our review of the record, however, confirms that the agency's determination, that TCBA's quotation did not meet the "critical" requirement of providing adequate staffing to perform the estimated 225 reviews per year, was reasonable. In this regard, the agency found insufficient TCBA's plan to perform [DELETED] reviews per week in 43 weeks with its staff of [DELETED] reviewers and reviewers-in-charge, because the plan would result in fewer than 225 reviews per year.

TCBA maintains that it planned to perform an average of [DELETED] reviews per week, and that the agency's conclusion that it would perform a maximum of [DELETED] reviews per week was unreasonable. Comments at 3. However, TCBA's quotation states only that it "will conduct [DELETED] reviews per week" and does not indicate that this number is an "average" or that the firm will perform additional reviews as needed. AR, Tab 14, TCBA's Final Quotation, at 23. The SBA contends that reviews are not evenly spread throughout the year, so some weeks will require more than five reviews. AR at 15. Furthermore, the SBA states that 4 years of

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[3] TCBA challenges numerous other assessments made by individual TEB evaluators concerning the evaluation of TCBA's quotation under each of the evaluation factors, alleging, in some instance, unequal treatment. However, our review of the record confirms that these assessments were not significant discriminators in the award decision; rather, TCBA's staffing was the primary reason for the marginal ratings and why it was not selected for award. Given the absence of prejudice with regard to these other issues, we do not address them in this decision.

history shows that more than [DELETED] reviews per week will have to be performed. AR, Tab 10, Award Notification to TCBA, at 3. Since the SBA and not the contractor is responsible for scheduling reviews, see RFQ at 11, the agency concluded that [DELETED] reviews per week would not be sufficient. Given the vendor's burden to submit an adequately written quotation, we cannot find unreasonable the agency's interpretation of TCBA's quotation.[4]

TCBA also challenges the agency's estimate that the firm would only be conducting reviews during 43 weeks each year, arguing that the agency's 43-week estimate was too low. Supplemental Comments at 3-6. As noted above, the RFQ required all reviews to start on Monday and end on Friday. RFQ at 11. Thus, in accordance with the RFQ, reviews will not be conducted during the 6 weeks in 2010 when there is a Monday holiday, thereby reducing the total number of weeks where reviews will be conducted to 46.[5] TCBA also identified 3 additional weeks where reviews likely will not be conducted, further reducing the total number of weeks to 43 by stating as follows:

> The week of Christmas and the week after are usually difficult times to perform reviews. The week of Thanksgiving is also usually not conducive to performing on-site reviews. There may be other times when a holiday such as Veterans' Day occurs in the middle of a week.

AR, Tab 14, TCBA's Final Quotation, at 22. Although TCBA stated in its quotation that it would conduct reviews "approximately 46-48 weeks out of the year," id., we find, based on the RFQ requirements and TCBA's own quotation statements, that the agency could reasonably conclude that it was more likely that the firm would be performing reviews for only 43 weeks during the year.

TCBA also challenges the agency's conclusion that [DELETED] reviewers and reviewers-in-charge are insufficient to meet the RFQ requirements. TCBA maintains that the quality and experience of its team members, and the use of technology to quickly and accurately gather information from loan files and to serve as a reporting vehicle for use in the on-site review report, will enable TCBA to perform at the

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[4] In addition, TCBA's estimate of [DELETED] reviews per week is based on the assumption that the majority of the reviews in any given week will involve small and medium lenders. AR, Tab 14, TCBA's Final Quotation, at 22. TCBA's quotation fails to demonstrate how it would meet those requirements if, in any one week, the majority of reviews scheduled by the SBA involved medium and large lenders.

[5] Although TCBA notes that the agency's current practice includes allowing reviews during 4-day work weeks, Supplemental Comments at 3, the RFQ did not contemplate a 4-day work week and expressly required that reviews begin on a Monday. RFQ at 11.

projected rates stated in its proposal. Protest at 17. TCBA maintains that, if allowed to conduct reviews during 4-day work weeks, it has sufficient personnel to staff all reviews; if prohibited from conducting review during 4-day work weeks, only two additional people will be required. Id. at 18. TCBA also contends that it offered to provide additional staff, at no cost, during the first round of reviews to ensure the timely completion of reviews. Id. at 21.

However, the agency determined that TCBA's labor estimates were "totally unrealistic." In this regard, the record shows that TCBA quoted fewer labor hours than all other vendors by substantial margins. For example, TCBA identified a staff of [DELETED] reviewers, while DCI identified a staff of [DELETED] reviewers. For large lender reviews, TCBA identified only [DELETED] reviewers, while the other vendors identified [DELETED] reviewers. For medium lender reviews, TCBA identified [DELETED] reviewers, while other vendors identified [DELETED] reviewers; and for small lender reviews, TCBA identified [DELETED] reviewers, while other vendor identified [DELETED] reviewers.[6] AR, Tab 5, Source Selection Decision (May 17, 2010), at 42. Based on this record, we find reasonable the agency's conclusion that TCBA's low staff level was insufficient to realistically perform the work. Although TCBA disagrees with this assessment, it has not shown it to be unreasonable. See Wackenhut Servs., Inc., B-400240, B-400240.2, Sept. 10, 2008, 2008 CPD ¶ 184 at 6.

In sum, based on our review of the record, we find that the agency's evaluation of TCBA's staffing was reasonable.[7]

Discussions

TCBA asserts that the SBA should have held discussions with the firm regarding the agency's concerns with TCBA's staffing. TCBA contends that since its quotation received an overall acceptable rating in the previous evaluation, and because a new SSA and TEB were appointed here that identified staffing deficiencies and lowered

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[6] In addition, as noted above, the agency found that even though TCBA quoted fewer labor hours as compared to the other vendors, TCBA's quotation was actually more expensive than the other vendors on a labor-hour basis. AR, TAB 5, Source Selection Decision (May 17, 2010), at 42-43.

[7] TCBA argues that the agency's conclusion that TCBA's staffing was inadequate is tantamount to imposing a minimum mandatory staffing requirement that should have been disclosed to the vendors. Comment at 36. However, the agency did not impose a minimum mandatory requirement and was not required to disclose a minimum staffing level in order to evaluate the adequacy of vendors' approaches. See Intelcom Support Servs., Inc., B-257037, Aug. 23, 1994, 94-2 CPD ¶ 77 at 6.

the rating to marginal, discussions were required. Comments at 8-14; See Mechanical Contractors, S.A., B-277916.2, Mar. 4, 1998, 98-1 CPD ¶ 68 at 5.

Where, as here, a competition is conducted among Federal Supply Schedule vendors pursuant to FAR part 8, there is no requirement for agencies to conduct discussions in accordance with FAR § 15.306. However, exchanges that do occur with vendors in a FAR part 8 procurement, like all other aspects of such procurement, must be fair and equitable. USGC, Inc., B-400184.2 et al., Dec. 24, 2008, 2008 CPD ¶ 9 at 3. The record here shows that the agency met this standard.

As noted above, during a prior round of evaluations, TCBA was asked by the agency to explain how it would "supply[] sufficient staff to accommodate 225 reviews a year including labor mix." AR, Tab 20, TCBA Questions. This question identified agency concern about the proposed staffing, and gave the protester an opportunity to respond. After considering the firm's response, the agency (in the prior evaluation) identified a weakness that TCBA's staffing "while adequate . . . may not be sufficient" to conduct more than [DELETED] reviews. AR, Tab 18, Source Selection Decision (May 26, 2009), at 18. This is essentially the same concern as found by the new TEB and SSA, albeit the more recent evaluation ratings were lowered from acceptable to marginal. The fact that TCBA failed to adequately justify its staffing approach after the issue was raised during discussions does not require the agency to continue to discuss the staffing issue with the protester.[8] See LIS, Inc., B-400646.4, Jan. 4, 2010, 2010 CPD ¶ 18 at 11.

Best Value

TCBA also challenges the agency's best value decision, essentially arguing that its lower-priced quotation provides the best value to the government.

Where, as here, the RFQ allows for a price-technical tradeoff, the selection official retains discretion to select a higher-priced but also technically higher-rated submission, if doing so is in the government's best interest and is consistent with the solicitation's stated evaluation and source selection scheme. Buckley & Kaldenbach, Inc., B-298572, Oct. 4, 2006, 2006 CPD ¶ 138 at 3.

In our view, the detailed record, including the comprehensive source selection decision, confirms the reasonableness of the evaluation and best value decision. As explained in the source selection decision, and as the record confirms, TCBA's quotation did not adequately address the RFQ requirement to provide sufficient staff

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[8] The protester's reliance on Mechanical Contractors, S.A., supra, is not persuasive. That case involved a negotiated procurement, where discussions were held yet the deficiencies were not raised with the protester. Here, the area of concern was sufficiently raised during the prior discussions.

to complete 225 reviews per year. As a result, the quotation was reasonably rated marginal. The SSA determined that DCI's stronger staffing plan and higher-rated quotation was worth the price premium associated with DCI's quotation. Based on our review of the record, we find this selection decision to be reasonable and consistent with the evaluation criteria.

The protest is denied.

Lynn H. Gibson
Acting General Counsel