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Decision

Matter of: RiverNorth, Inc.

File: B-423274.2; B-423274.3

Date: April 18, 2025

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Janis R. Millete, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's rejection of the protester's quotation is denied where the agency reasonably eliminated the protester's quotation in accordance with the solicitation requirements.
 2. Protest alleging unequal treatment because the agency engaged in discussions with only one vendor is denied where the record shows that the agency did not engage in discussions.
 3. Protest alleging that the agency was required to refer the firm's eligibility for award to the Small Business Administration for a certificate of competency determination is denied where the agency's elimination of the protester's quotation for failure to comply with solicitation instructions did not constitute a responsibility determination.
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DECISION

RiverNorth, Inc., a small business of Sterling, Virginia, protests the elimination of its quotation under request for quotations (RFQ) No. 12SAD225Q0001, issued by the Department of Agriculture (USDA) for program support to various USDA missions, including farm production and conservation. The protester argues that the agency's decision to eliminate its quotation for failing to comply with the solicitation's font size requirements was (1) unreasonable and contrary to the terms of the solicitation, (2) improper because it resulted from a latent ambiguity with the terms of the solicitation, (3) unfair because USDA treated vendors unequally when it allowed another vendor to correct an error with its quotation through discussions but did not also hold discussions with the protester, and (4) contrary to applicable procurement regulations

because the agency was required to obtain a certificate of the protester's competency from the Small Business Administration (SBA) before eliminating its quotation and the agency failed to do so. See Protest at 1-2; Supp. Protest at 1.

We deny the protest.

BACKGROUND

On October 15, 2024, USDA issued the RFQ through the General Services Administration's electronic system, eBuy, as a small business set-aside pursuant to the federal supply schedule (FSS) procedures of Federal Acquisition Regulation (FAR) subpart 8.4. Agency Report (AR), Exh. 7.2, RFQ amend. 0002 at 47-48; AR, Exh. 3, Determination of Compliance Review at 1.¹ The solicitation contemplated the establishment of a multiple award, blanket purchase agreement (BPA) for a 5-year period of performance. RFQ at 1, 48.

The RFQ advised that USDA would establish up to seven BPAs with award to be made on a best-value tradeoff basis. RFQ at 63. The following factors would be used to evaluate quotations: past performance, technical approach, and price. *Id.* Past performance was to be rated acceptable or unacceptable; a vendor had to receive an acceptable rating under this factor to be eligible for award. *Id.* The technical approach factor had two subfactors, project and portfolio management, and organizational conflicts of interest. *Id.* at 65. Each subfactor would receive a combined technical and risk rating. *Id.* The solicitation explained that these two subfactors were of equal importance, and when combined were more important than price. *Id.* at 63.

Relevant here, under the general instructions for quotations, the RFQ provided:

The [vendor]'s quot[ation] represents the quality of the performance the Government can expect in the performance of work under this BPA. Therefore, the [vendor]'s ability to present a quality quot[ation], free of spelling and grammatical errors is a reflection of the quality of work the Government will expect from awardees. The [vendor]'s ability to follow the instructions contained herein is a demonstration of the [vendor]'s ability to follow instructions in general, which is paramount to acceptable performance.

The [vendor]'s attention to detail is important to the Government as a significant amount of work under the attached PWS [performance work statement] will require the [vendor] to follow detailed instructions, including quality control. **If a [vendor]'s quot[ation] has errors attributed to not following the directions contained herein, the [vendor]'s quot[ation] shall be ineligible for award.**

¹ Citations to the record reference the Adobe PDF document page numbers.

RFQ at 47.

The RFQ included specific instructions regarding quotation formatting. As relevant to this protest, the solicitation required vendors to submit quotations “in accordance with the format and content specified in the solicitation.” *Id.* at 51. Specifically, text size “must be 12-point or larger, using Times New Roman font” and “[o]nly page numbers, headers and footers may be within the page margins and must use the same [] 12-point, Times New Roman[] font requirement. *Id.*

The solicitation also repeatedly warned vendors of the importance of following the formatting instructions and that failure to do so would result in elimination of the quotation from the competition. For example, the solicitation stated:

Any [Vendor][] quot[at]ions determined non-compliant with the terms noted in this RFQ will not be evaluated and further considered for award. In addition, a quot[at]ion may be eliminated from further consideration before the initial rating if the quot[at]ion has one or more deficiencies. . . .

* * * * *

The [vendor]’s quot[at]ion must include all information requested and must be submitted in accordance with these instructions. **Compliance with these instructions is mandatory and failure to furnish a complete quot[at]ion . . . shall result in the quot[at]ion being unacceptable to the Government and will eliminate the [Vendor] from further consideration for award.**

* * * * *

[Vendor]s that do not comply with the detailed instructions for the format and content of the quot[at]ion will be considered non-responsive or deficient and will be considered ineligible for award.

* * * * *

A quot[at]ion will be deemed unacceptable if it does not represent a reasonable effort to address the essential requirements of the solicitation, or if it does not comply with the quot[at]ion preparation instructions of this solicitation.

Id. at 47-48, 51, 64.

In the section explaining how the agency would evaluate quotations, the solicitation defined deficiency, and again warned vendors of the failure to follow instructions, as follows:

A deficiency is a material failure of a quotation to meet a requirement of the Request for Quotation. A deficiency is also called noncompliant or unacceptable within this solicitation. No award will be made to a [Vendor] whose quotation is determined to have a deficiency. **[Vendor]s are cautioned to ensure all the solicitation requirements are met. [Vendor]s are cautioned to pay attention to the details of this solicitation, as a [] [Vendor]’s ability to follow explicit instructions is critical to the performance of the resulting orders from this award.**

A quotation will be eliminated from further consideration before complete evaluation if the quotation is deficient. . . .”

* * * * *

A failure to provide the information called for . . . or a failure to provide the information in the format with the content as prescribed will be considered a deficiency. . . . The evaluation of a [Vendor]’s quotation will end upon a determination that the [Vendor]’s quotation has a deficiency.

Id. at 63-64.

The agency received 48 quotations. AR, Exh. 3, Determination of Compliance Review at 1. On December 30, 2024, after the agency completed contract compliance reviews to determine whether quotations were “compliant with the criteria and instructions of the RFQ,” unsuccessful notices were sent to vendors whose quotations were determined deficient and removed from further consideration for BPA award. Memorandum of Law (MOL) at 2; AR, Exh. 3, Determination of Compliance Review at 5; AR, Exh. 11.2, Notice of Elimination.

After the initial compliance review of RiverNorth’s quotation, the agency determined that the protester’s quotation failed to comply with the formatting instructions because it included page numbers in font sizes less than 12-point font in the page footers of the “subfactor 1 portion of [its] Volume III [quotation]. . . .” AR, Exh. 11.2, Notice of Elimination. Upon notification of its elimination, RiverNorth filed this protest on January 10, 2025.

DISCUSSION

The protester alleges that the agency “acted unreasonably by improperly rejecting RiverNorth’s quotation as *materially* non-compliant.” Protest at 12. In this regard, RiverNorth claims the agency deviated from the solicitation’s terms when it eliminated the protester’s quotation over an “incredibly minor” and “non-material” font size in “one portion of one volume” of its quotation that “could not have been anticipated from the express language of the RFQ.” *Id.* In the alternative, the protester contends the solicitation contained a latent ambiguity. *Id.* at 15. RiverNorth also argues that the agency engaged in unequal treatment and lastly that the agency failed to refer its

quotation to the SBA for a certificate of competency (COC) determination. Supp. Protest at 2-3; Protest at 12.

For the reasons explained below, we find no basis to sustain any of the challenges raised by the protester.²

Solicitation Formatting Instructions

The protester alleges that the agency acted unreasonably and deviated from the evaluation criteria in eliminating its quotation from the competition because the solicitation instructions did not “clearly put [vendor]s on notice that something as non-material as a font in a footer would result in quot[ation] rejection.” Protest at 13. RiverNorth explains that while the solicitation discusses font size requirements, the RFQ fails to explain that non-compliance with the font formatting instructions would be treated as a “deficiency or as a “material non-compliance.” *Id.* By comparison, the protester points to other sections of the solicitation--e.g., page limits and prohibition of pictures with text, that clearly inform vendors that errors would lead to a quotation deficiency. *Id.* at 14 (citing RFQ at 64). Furthermore, the protester asserts that the RFQ “makes it clear” that a quotation must include multiple errors related to “directions” to be deemed ineligible. *Id.* (citing RFQ at 47); Comments at 6. Stated otherwise, the RFQ did not “directly state that a single error in font size in a footer was a criterion for automatic rejection.” Protest at 14.

The agency contends that the RFQ instructions for font size and type requirements were clear and that it properly eliminated RiverNorth’s quotation because the solicitation warned that vendors would be ineligible for award if vendors did not comply with the RFQ’s detailed formatting instructions. See Contracting Officer’s Statement (COS) at 3-4. Furthermore, the contracting officer states that the solicitation “was designed to select only those contractors capable of following detailed instructions” and that the RFQ “states the importance of a [vendor’s] ability to follow detailed instructions.” *Id.* at 2, 6. Moreover, the agency explains that the instructions used words such as “must” and “shall” instead of discretionary terms such as “may” which was an “intentional and deliberate deviation” from previous solicitations that was “made to emphasize the criticality of the [vendor’s] ability to follow directions.” *Id.* at 6-7.

Where, as here, an agency issues a solicitation to FSS vendors under the provisions of FAR subpart 8.4 and conducts a competition for the establishment of a BPA, our Office will not reevaluate the quotations; rather, we review the record to ensure that the agency’s evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *Innovative Mgmt. & Tech. Approaches, Inc.*, B-418823.3, B-418823.4, Jan. 8, 2021, 2021 CPD ¶ 18 at 4.

² RiverNorth raises additional collateral protest arguments. While we do not address every argument raised, we have considered all of the protest allegations and conclude that none provides a basis to sustain the protest.

On this record, we find that the agency's rejection of RiverNorth's quotation was in accordance with the terms of the solicitation. As explained above, the RFQ addressed formatting instructions for text size and fonts, specifically stating that "[t]ext size must be 12-point or larger, using Times New Roman font" and "[o]nly page numbers, headers and footers may be within the page margins and must use the same [] 12-point, Times New Roman[] font requirement." RFQ at 51. On the same page as these formatting instructions, the solicitation stated that "[vendors] that do not comply with the detailed instructions for the format and content of the quot[ation] will be considered non-responsive or deficient and will be considered ineligible for award." *Id.*

Furthermore, as noted above, the RFQ included several other sections, emphasizing that failure to follow the detailed solicitation instructions would be considered a deficiency," which mandated elimination from the competition. See RFQ at 47, 63. Given this language, the agency's decision to eliminate RiverNorth's quotation for its failure, however minor, to follow the quotation formatting instructions, was in accordance with the solicitation terms. While the protester argues that quotations would be deficient, and eliminated, under the terms of the RFQ only if they had multiple errors, we do not agree with RiverNorth's contention that the solicitation required "multiple errors" to be eliminated from the competition. The solicitation instead referred to the requirement that vendors follow all solicitation instructions, and that any error attributed to a vendor's failure to follow solicitation instructions would result in its elimination from the competition. Stated otherwise, the plural form of errors in the RFQ instructions, "[i]f a [Vendor]'s quot[ation] has errors attributed to not following the directions contained herein, the [Vendor]'s quot[ation] shall be ineligible for award," refers to either *single* or *multiple* errors. See RFQ at 47.

The protester also contends that the solicitation contained a latent ambiguity because it was unclear what constituted a "deficiency" that warranted rejection of a quotation. Protest at 15. RiverNorth argues that "the RFQ stated a deficiency could lead to quot[ation] rejection. However, it doesn't directly define such term until multiple pages later, indicating these two RFQ terms aren't even related." *Id.*

In response, the agency contends that the solicitation was clear and unambiguous. The agency maintains that RiverNorth's argument regarding the definition of a deficiency "makes no sense, as throughout the RFQ the definition of deficiency, and its location relative to its use in the RFQ, is referenced consistently." MOL at 7.

Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. *Bastion Techs., Inc.*, B-418432, May 5, 2020, 2020 CPD ¶ 163 at 5. An ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. *The HP Grp., LLC*, B-415285, Dec. 14, 2017, 2017 CPD ¶ 385 at 5. A patent ambiguity exists where the solicitation contains an obvious, gross, or glaring error, while a latent ambiguity is more subtle. *Id.* Where

there is a latent ambiguity, both parties' interpretations of the provision may be reasonable, and the appropriate course of action is to clarify the requirement and afford offerors an opportunity to submit proposals based on the clarified requirement. *Qwest Gov't Servs., Inc. d/b/a CenturyLink QGS*, B-419597, B-419597.2, May 24, 2021, 2021 CPD ¶ 217 at 5 n.7.

Based on our review of the record, the solicitation does not contain a latent ambiguity as alleged by RiverNorth. The protester's interpretation ignores the clear and unequivocal solicitation language that explained the required font size and type requirements. See RFQ at 51. As explained above, the RFQ informed vendors that "a failure to provide the information in the format with the content as prescribed will be considered a deficiency." RFQ at 64. The fact that the definition of deficiency was found multiple pages after the solicitation first notified vendors that a deficiency would lead to elimination of a quotation does not create any ambiguity. Moreover, as the agency points out, RiverNorth's argument ignores the multiple different places where the solicitation stated that failure to follow quotation formatting instructions would be considered a deficiency. Consequently, the solicitation was not latently ambiguous as alleged by the protester and this protest allegation is denied.

Unequal Treatment

RiverNorth alleges that the USDA treated vendors unequally by engaging in discussions with only one vendor. Supp. Protest at 2. In this regard, the protester contends that one of the vendors was permitted to provide explanations for why it should not have been eliminated and eventually the agency allowed that vendor back in the competition. *Id.* at 4. RiverNorth asserts that the eliminated vendor provided: "A detailed walkthrough of a quot[ation] that no other [vendor] was given the opportunity to provide. It is essentially a presentation and argument – a sales pitch essentially – of the RFQ compliance of the quot[ation], in written form." Supp. Comments at 4. Furthermore, RiverNorth contends that it should have been provided the "same opportunity to revise its quot[ation] through discussions" to resolve "any lingering concerns from the USDA, including any footer text size issues found in its quot[ation]." Supp. Protest at 5-6.

As explained above, after an initial compliance review, the agency sent unsuccessful notices to vendors whose quotations were determined deficient and removed from further consideration for the BPA. As relevant to this protest ground, the agency eliminated another vendor for including a chart in its quotation "as an image with text." AR, Exh. 3, Determination of Compliance Review at 5. The unsuccessful notices to vendors, including to RiverNorth, did not request or otherwise invite a response. However, the other vendor sent a letter to the agency arguing that its quotation was compliant with the solicitation and that the agency's decision for elimination of its quotation was erroneous. AR, Exh. 13.1, Rebuttal Letter at 1. In this regard, the vendor explained that the chart at issue was not a prohibited picture with text, but instead a chart that was "fully editable in [Microsoft] Word as text" which was compliant with solicitation instructions. *Id.* at 5; see RFQ at 51. The vendor asked that the agency reconsider its decision to eliminate the vendor's quotation. AR, Exh. 13.1, Rebuttal

Letter at 1. Following receipt and review of this vendor's rebuttal letter, the agency concluded that the table was editable and permitted the vendor back in the competition. AR, Exh. 13.2, Agency Response to Vendor Rebuttal Letter; AR, Exh. 3, Determination of Compliance Review at 5.

The protester asserts that above-described communications constituted discussions because the eliminated vendor's "explanations, arguments, and sales-pitch of compliance and [the] RFQ terms to the USDA caused the [agency] to take separate actions to test items and further evaluate the quot[ation] for acceptability." Supp. Comments at 4. In support of its argument, RiverNorth relies on our decision *Spry Methods, Inc.*, where our Office found that "discussions occur when an agency communicates with a vendor for the purpose of obtaining information essential to determine the acceptability of a quotation, or provides the vendor with an opportunity to revise or modify its quotation in some material respect." *Id.* at 3 (quoting *Spry Methods, Inc.-Costs*, B-417800.3, Feb. 14, 2020, 2020 CPD ¶ 83 at 6). RiverNorth maintains that this constitutes unequal treatment because it was not provided with an opportunity to respond to the unsuccessful notice.

In response, USDA contends that it did not engage in discussions with the re-admitted vendor because it did not permit the vendor to revise its quotation. Supp. MOL at 1-2. The agency explains that "the agency's evaluation team determined that the error that was originally assigned to the re-admitted [vendor]'s quot[ation] was incorrectly assigned, as the chart include[d] in the re-admitted [vendor]'s quot[ation] was in fact not a prohibited picture with text." *Id.* at 2. Instead, the agency contends that it "upheld its responsibility to treat all [vendors] fairly under the RFQ instructions" when it decided to re-admit the vendor. *Id.*

There is no requirement in FAR subpart 8.4 that an agency seek clarifications or otherwise conduct discussions with vendors. *Atlantic Diving Supply, Inc.*, B-421979.4, May 7, 2024, 2024 CPD ¶ 114 at 5 n.4; *Aurotech, Inc.*, B-413861.4, June 23, 2017, 2017 CPD ¶ 205 at 10. However, exchanges that do occur with vendors in a FAR subpart 8.4 procurement, like all other aspects of such a procurement, must be fair and equitable; our Office has looked to the standards in FAR part 15 for guidance in making this determination. *Id.* In this regard, FAR part 15 defines clarifications as "limited exchanges" that agencies may use to allow offerors to clarify certain aspects of their proposals (or in this case quotations) or to resolve minor or clerical mistakes. See FAR 15.306(a)(1), (2); *Diversified Collection Servs., Inc.*, B-406958.3, B-406958.4, Jan. 8, 2013, 2013 CPD ¶ 23 at 11 (using FAR part 15 definitions of post-proposal communications, or exchanges, as guidance in FSS context). Discussions allow an agency to communicate with offerors to obtain information essential for determining the acceptability of proposals, or to provide offerors an opportunity to revise or modify their proposals. See FAR 15.306(d); *JHC Technology, Inc.*, B-417786, Oct. 23, 2019, 2019 CPD ¶ 376 at 4-5; *Pontiac Flying LLC*, B-414433 *et al.*, June 12, 2017, 2017 CPD ¶ 188 at 6-7.

Based on our review of the record, we disagree with RiverNorth's interpretation that discussions occurred here. As provided above, discussions allow an agency to communicate with vendors to obtain information essential for determining the acceptability of quotations, or to provide offerors an opportunity to revise or modify its quotations. See FAR § 15.306(d); see also *JHC Technology, Inc.*, *supra* at 4-5. Here, the re-admitted vendor did not change its quotation, rather, it notified the USDA of an error with its evaluation and requested relief.³ In comparison, RiverNorth's quotation would have required a change, a correction to font size errors, to be considered compliant with the solicitation requirements.

Moreover, we find RiverNorth's reliance on the *Spry Methods* decision misplaced. This case is distinguishable as the agency in *Spry Methods* initiated communications with the vendor, whereas here, the agency did not request any response from the vendors, but rather the other vendor independently contacted USDA. See *Spry Methods, Inc.-Costs*, *supra* at 6-8. Furthermore, RiverNorth's argument that the re-admitted vendor's explanation of why its quotation complied with the solicitation constituted discussions ignores the "acid test" explained in *Spry Methods* to determine whether discussions have occurred --e.g., "whether a vendor has been afforded an opportunity to revise or modify its quotation." *Id.* at 6. Here, the eliminated vendor did not revise or modify its quotation in response to the unsuccessful notice. On this record, RiverNorth has failed to establish that the agency engaged in unequal discussions or treatment; as a result, this protest allegation is denied.

SBA Referral

Finally, RiverNorth asserts that the agency could not eliminate its quotation without first referring its eligibility for award to the SBA for a COC determination. Protest at 19-20. The protester alleges that USDA eliminated its quotation based on a "pass/fail" basis that was aimed at capability and responsibility and therefore it is analogous to a responsibility determination that required the agency to refer the protester to the SBA for a COC. *Id.* at 19; Comments at 14. The agency contends it was not required to seek a COC as RiverNorth's quotation was eliminated for failing to follow the solicitation's instructions, rather than a matter of responsibility. COS at 7; MOL at 11-12.

Under the SBA's COC program, agencies must refer a determination that a small business is not responsible to the SBA, if that determination would preclude the small

³ In this regard, we find that the re-admitted vendor's notice to the USDA is more analogous to an agency-level protest, where the re-admitted vendor identified an error with the agency evaluation and requested relief. See *Science & Tech. Corp.*, B-420216, Jan. 3, 2022, 2022 CPD ¶ 1 at 5 (concluding that "to be regarded as a protest, a written statement need not state explicitly that it is or is intended to be a protest, but must convey the intent to protest by a specific expression of dissatisfaction with the agency's procurement actions and a request for relief").

business from receiving award.⁴ 15 U.S.C. § 637(b)(7); 13 C.F.R. § 125.5, *Futron, Inc.*, B-420703, July 25, 2022, 2022 CPD ¶ 189 at 8; *Specialty Marine, Inc.*, B-292053, May 19, 2003, 2003 CPD ¶ 106 at 3. The SBA's regulations require a contracting officer to refer a small business concern to the SBA for a COC determination when the contracting officer has refused to consider a small business concern for award of a contract or order "after evaluating the concern's offer on a non-comparative basis (e.g., pass/fail, go/no go, or acceptable/unacceptable) under one or more responsibility type evaluation factors (such as experience of the company or key personnel or past performance)." 13 C.F.R. § 125.5(a)(2)(ii); *EA Engineering, Sci. & Tech. Inc.*, B-417361, B-417361.2, June 13, 2019, 2019 CPD ¶ 218 at 9.

Where an agency rejects a quotation as technically unacceptable on the basis of factors not related to responsibility, however, referral to the SBA is not required. See *EA Engineering, Sci. & Tech. Inc.*, *supra*. Along these same lines, where an agency finds a quotation to be unacceptable based on a vendor's failure to adhere to the solicitation's font size instructions, the finding does not constitute a determination that the vendor is not a responsible prospective contractor. *Id.*

On the record here, we do not agree with the protester's assertion that the agency's rejection of its quotation involved a responsibility determination that required referral to the SBA. The elimination of RiverNorth's quotation because it failed to follow solicitation instructions regarding quotation formatting is not elimination under a responsibility type evaluation factor. Accordingly, the agency was not required to refer the protester to the SBA for a COC and we deny this protest ground.

The protest is denied.

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General Counsel

⁴ A COC is a certificate issued by the SBA stating that the holder is responsible for the purpose of receiving and performing a specific government contract. FAR 19.601(a).