

Office of Dispute Resolution for Acquisition
Federal Aviation Administration
Washington, D.C.

FINDINGS AND RECOMMENDATIONS

**Matter: Protest of Red Salsa Technologies, Inc.
Under Solicitation No. DTFACT-17-R-00003**

Docket No.: 17-ODRA-00783

Appearances:

For the Protester: Sreekiran Vallurupalli, President & CEO

For the FAA Technical Center: Rachel F. Muncey, Esq.

This protest (“Protest”) by Red Salsa Technologies, Inc. (“Red Salsa”) arises out of Solicitation Number DTFAC-17-R-00003 (“Solicitation” or “SIR”) issued by the Federal Aviation Administration’s William J. Hughes Technical Center (“the Center”). The Solicitation sought proposals to provide support services for software applications and databases. *Agency Response* (“AR”) Tab 1 at 1; Tab 6 at ¶ L.4.1. The Center eliminated Red Salsa’s proposal from the competition after finding that it was grossly deficient, non-responsive and unsatisfactory. *Protest* Attachment; AR Tab 13. Red Salsa filed its Protest with the Office of Dispute Resolution for Acquisition (“ODRA”) on February 8, 2017, based on its disagreement with the Center’s factual conclusions and the belief that the proposal was evaluated unfairly. *Protest* at 1.

I. The Standard of Review

Red Salsa, as the protester, bears the burden of proof, and must demonstrate by substantial evidence that the challenged decision lacked a rational basis, was arbitrary, capricious or an abuse of discretion, or otherwise failed in a prejudicial manner to comply with the Acquisition Management System (“AMS”). *Protest of Alutiiq Pacific LLC*, 12-ODRA-00627 (citing *Protest*

of *Adsystem, Inc.*, 09-ODRA-00508). Consistent with the Administrative Procedures Act, 5 U.S.C. §§ 554 and 556, which applies to ODRA adjudications, the phrase “substantial evidence” means that the ODRA considers whether the preponderance of the evidence supports the challenged Agency action. Where the record demonstrates that the challenged decision has a rational basis and is not arbitrary, capricious or an abuse of discretion, and is consistent with the AMS and the underlying solicitation, the ODRA will not substitute its judgment for that of the designated evaluation and source selection officials. 14 C.F.R. § 17.19(m) (2015); *Protest of Potter Electric Co.*, 13-ODRA-00657.

II. Background

The Solicitation, as amended on several occasions, required proposals to be submitted in four separate volumes by December 23, 2016 at 2:00 PM (EST). AR Tab 6, at ¶¶ L.1, L.4.1. The first three volumes were to address technical factors, and the fourth volume was to address price. AR Tab 6 at ¶ L.4.1. As part of a preliminary “compliance review,” the Contracting Officer found four separate issues of non-compliance with the submission requirements of the SIR. AR Tab 12, at 15-16¹. Two issues related to “Corporate Experience” addressed in Volume I, and two other issues related to “Price” addressed in Volume IV. *Id.* In particular:

Factor 1 – Corporate Experience (Volume 1):

- Corporate Experience examples do not provide details of performance periods of each reference. Therefore, it cannot be determined that the references provided are ‘recent’ as required by SIR Section L.5.1.
- The Corporate Experience examples provided within this volume, [sic] do not contain all required information in accordance with SIR Section L.5.1.

...

Price Proposal (Volume 4):

- Offeror did not submit a Price Volume as required by SIR Section L.5.4.
- Offer did not submit an Attachment J-5 as required by Section L.5.4.2.

Id. Based on these findings, the Contracting Officer determined that Red Salsa’s proposal was “grossly deficient, “non-responsive and unsatisfactory,” and therefore, she eliminated the proposal from further consideration. *Id.* at 16.

¹ A Contracting Specialist prepared the Compliance Review. AR Tab 6 at 20. The Contracting Officer approved it. *Id.*

On February 6, 2017, the Contracting Officer informed Red Salsa of her determination to eliminate Red Salsa's proposal from the competition. *Protest* Attachment; AR Tab 13. Red Salsa requested a debriefing on February 7, 2017, and also filed the present Protest on February 8, 2017. *Protest*; AR Tab 16, *Contracting Officer's Decl.*, at ¶¶ 8 and 9. As she prepared for the debriefing, the Contracting Officer discovered and corrected an error in the initial compliance review. Specifically, she found that Red Salsa had submitted Attachment J-5 with its proposal contrary to her previous findings. *See supra*, inset quote above at fourth bullet. She informed Red Salsa of this correction during an in-person debriefing conducted on February 28, 2017, and she states that the "oversight did not change my determination that Red Salsa's proposal was grossly deficient under the SIR section M.2." *Id.* at ¶ 10. Red Salsa neither amended nor supplemented its Protest after that debriefing.

III. Discussion

As originally filed, Red Salsa protested all four of the Center's reasons that led to the finding that the proposal was "grossly deficient," "non-responsive," and "unsatisfactory." As a result of the Contracting Officer's discovery of Red Salsa's J-5 Attachment, and her correction of the Center's conclusion during the debriefing, three issues remain. As discussed below, the ODRA finds a rational basis in the record for the Center's determinations.

A. Corporate Experience – Periods of Performance

Volume I of an offeror's proposal was to address corporate experience. AR Tab 6 at ¶ L.4.1. Offerors were required to provide three to five examples of contracts "similar to this SIR performed with the last five (5) years." *Id.* at ¶ L.5.1. Offerors were specifically directed to provide the "period of performance." *Id.*

Red Salsa's Protest does not direct the ODRA to portions of Volume I of its proposal that state the periods of performance for its examples of corporate experience. Nevertheless, the ODRA has reviewed the volume in question, and finds that Red Salsa did not provide a minimum of three examples of corporate experience that state specific periods of performance. Of the five

enumerated examples, only two had vague references to when performance occurred. The first stated, "... from the past 12 years," and the fourth stated, "Provided multiple personnel since 2006." AR Tab 11, Vol. I, at 3-4. Both of these statements do not provide sufficient detail, and they are not limited to the five-year standard stated in the Solicitation.

The Solicitation places the burden of providing sufficient information for evaluation squarely on the offeror. AR Tab 6 at ¶ L.4.2. Offerors were "not to assume that they will be contacted or afforded an opportunity to clarify, discuss, or revise their proposal if Government evaluators identify omissions or lack of detail." *Id.* Thus, nothing in the Solicitation required the Center to open communications regarding Red Salsa's inadequate responses to the periods of performance, and the ODRA finds that the Center's determination in this regard is supported by a rational basis.

B. Corporate Experience – Other Omissions

In addition to the five-year requirement discussed above, § L.5.1 also required that the examples of corporate experience in Volume I include "the contract number, task/delivery order number (if applicable), period of performance, total contract ceiling price, total dollar value performed and total expended labor hours." AR Tab 6 at ¶ L.5.1. The Contracting Specialist noted in the Compliance Review that Red Salsa's proposal did not meet these requirements because the contract values were estimated, labor hours were not listed, contract numbers were not provided, and there were no periods of performance. AR Tab 12 at table.

Red Salsa does not direct the ODRA to portions of its proposal that contain the information at issue. The ODRA has reviewed Volume I and finds that the evaluation is supported by a rational basis. All of the stated contract values are approximations, and one was not disclosed as it was deemed "confidential." AR Tab 11 B. Expended labor hours are not stated for any of the contracts, and contract identification information (such as a unique contract number) is not provided. *Id.* Finally, as discussed above, all of the contract descriptions were deficient in failing to state a period of performance. *See supra* Part III.A. The ODRA, therefore, finds that the Center's determination in this regard is supported by a rational basis.

C. Deficiencies Regarding the Price Volume

Section L.5.4.2 required offerors to “provide (in narrative format) the Basis of Estimate (BOE) for all proposed base hourly rates, including annual salary (actual or proposed) and the hours used to calculate the annual salary into an hourly rate, e.g., 1,920 direct hours annually for a full-time equivalent.” *AR* Tab 6 at § L.5.4.2. The Contracting Officer clarified at the debriefing that the issue regarding a missing price volume referred to the fact that the Contracting Specialist could not find the narrative Basis of Estimate within Volume IV. *Protest*; *AR* Tab 16, *Contracting Officer’s Decl.*, at ¶ 10.

Red Salsa calls the ODRA’s attention to text found in Volume II rather than Volume IV. *Comments* at 3. The cited text addresses the “Staffing Plan,” which is specifically required by § L.5.2, at paragraph 3. *Compare AR* Tab 11c (Proposal Vol. II) at 10-14 *with* Tab 6 (Solicitation) at § L.5.2. The cited text, however, does not provide a narrative regarding the “base hourly rates, including annual salary (actual or proposed) and the hours used to calculate the annual salary into an hourly rate,” as required for the Basis of Estimate under § L.5.4.2. *Compare AR* Tab 11c (proposal vol. II) at 10-14 *with* Tab 6 (Solicitation) at § L.5.4.2.

Notwithstanding Red Salsa’s reliance on the Staffing Plan in Volume II,² the ODRA finds that the Contracting Officer had a rational basis to conclude that Red Salsa failed to provide the Basis of Estimate as required by the Solicitation.

D. Gross Deficiency

The Contracting Officer based her gross deficiency re-determination (at the debriefing) on the three issues discussed above. *Protest*; *AR* Tab 16, *Contracting Officer’s Decl.*, at ¶¶ 5 and 10. Having already found above that the Contracting Officer had a rational basis for each of her grounds, by extension, the ODRA also finds that a rational basis supported her overall conclusion that Red Salsa’s proposal was grossly deficient.

² Red Salsa’s reliance on Volume II for Volume IV requirements is misplaced. “[I]t is not the responsibility of the Government to search for proposal information which is not addressed in the appropriate section.” *AR* tab 6 at § M.3; *see also Protest of Consecutive Weather*, 99-ODRA-00112 (evaluators are not expected to “intuit” information from other portions of a proposal).

IV. Conclusion

Red Salsa has failed to meet its burden to show that its elimination from the competition lacked a rational basis. The ODRA therefore recommends that the Protest should be denied in its entirety.

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John A. Dietrich
Dispute Resolution Officer and Administrative Judge
FAA Office of Dispute Resolution for Acquisition