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Decision

Matter of: Visual Connections, LLC

File: B-407625

Date: December 31, 2012

Timothy S. Faith, Esq., Faith at Law LLC, for the protester.
Lawrence P. Block, Esq., Stinson Morrison Hecker LLP, for the intervenor.
Ronald D. Sullivan, Esq., and Patricia J. McDaniel, Esq., Department of Veterans Affairs, for the agency.
Cherie J. Owen, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably determined that protester's proposal was technically unacceptable where the protester failed to submit an adequately detailed technical proposal in accordance with the solicitation.

DECISION

Visual Connections, LLC, of Chevy Chase, Maryland protests the rejection of its quotation as unacceptable by the Department of Veterans Affairs (VA) under request for quotations (RFQ) No. VA701-12-Q-0150 for section 508 compliance services, including administrative support, compliance monitoring, reporting, technical support, and training. Visual Connections contends that the agency acted unreasonably in rejecting its quotation.

We deny the protest.

BACKGROUND

Section 508 of the Rehabilitation Act requires federal agencies to ensure that their electronic and information technology provides comparable access to people with and without disabilities whenever an agency develops, procures, maintains, or uses electronic and information technology. The VA states that section 508 violations could expose the agency to extensive liability, including the requirement to repurchase or rebuild an entire IT system that fails to meet the section 508 standards. RFQ at 5. In this regard, the VA sought vendors to provide advanced

technical expertise in identifying and remediating section 508 violations and providing solutions based on current best practices. RFQ at 6.

The solicitation described three main tasks with detailed requirements for each. Task 1 related to program management and planning, task 2 required evaluation and remediation of electronic information, and task 3 involved resource development and maintenance. RFQ at 8-12. With regard to task 2, the RFQ emphasized that “knowledge of the implications of section 508 Refresh standards . . . is critical.” Id. at 10. However, for the scope of work generally, the RFQ required an “in-depth understanding of the provisions of section 508” and stated that “[a]dvanced technical expertise in identifying and remediating Section 508 violations and providing solutions based on current best practices [was] essential.” Id. at 6.

The RFQ informed offerors that the evaluation would be conducted on a best value basis, considering the following four evaluation factors in descending order of importance: technical, past performance, veterans involvement, and price. Id. at 83. The three non-price factors, when combined, were significantly more important than price. Id. With regard to the technical evaluation factor, the solicitation stated that the agency would consider the following: understanding of the problem, feasibility of approach, and completeness. Id. The RFQ also informed offerors that in order to be considered for award, a rating of no less than acceptable must be achieved for the technical factor. Id. The RFQ further cautioned vendors that “Proposals which merely restate the requirement or state that the requirement will be met, without providing supporting rationale, are not sufficient.”¹ Id. at 83.

Five offerors submitted proposals by the September 4 due date. A three-member technical evaluation team (TET) reviewed and individually scored the proposals under the technical factor, then compiled a consensus report that incorporated the ratings and remarks of the individual evaluators. The TET found that Visual Connections’s proposal was technically unacceptable, citing a failure to provide detailed discussion of the tasks sufficient to establish that the vendor had the skills or expertise to meet the solicitation’s requirements. AR, Tab L, Consensus Report, at 5-6.

¹ Although the solicitation is designated as an RFQ, see RFQ at 2, key sections of the solicitation describe the GSA FSS vendors’ responses to the solicitation as “proposals,” id. at 77, 83. Additionally, in its legal memorandum, the agency refers to the vendors’ responses as “proposals.” Agency Report at 1, 3-5. Because the distinction between a quotation and a proposal is not relevant to our analysis in this protest, we adopt the agency’s usage of the term proposal in this decision.

For example, the TET found that the proposal did not demonstrate that the firm possessed the skills necessary to adequately perform the requirements or the requisite awareness of the breadth of section 508. Id. at 5. The TET noted that the proposal did not acknowledge section 508 standards other than those for web and web applications and multi-media, and did not include “basics” like “Software 1194.21 and Functional requirements 1194.31.” Id. at 5-6. The TET also found that the proposal failed to demonstrate in-depth knowledge of the implications of section 508, and it failed to sufficiently address how the firm would handle section 508 remediation or development work. Id. at 6. The TET determined that the proposal demonstrated limited familiarity with section 508 and lacked necessary detail to address the tasks defined in the solicitation.² Id. Accordingly, VC’s proposal was evaluated as technically unacceptable.

The contracting officer concurred with the TET’s evaluation and, based on Visual Connection’s unacceptable rating for the technical factor, eliminated that firm from the competition. AR, Tab H, Best Value Determination, at 7-8, 11. This protest followed.

DISCUSSION

Visual Connections challenges the agency’s determination that the proposal was technically unacceptable. The protester contends that the agency’s insistence that vendors provide sufficiently detailed proposals was “nitpicky.” Protest at 2. The protester argues that the agency’s evaluation of the firm’s proposal is unreasonable and not supported by the record, and therefore the firm’s proposal should not have been eliminated from the competition. Comments at 3. Visual Connections challenges every sentence of the TET’s consensus report of the firm’s proposal evaluation; although our decision does not individually address each and every allegation, we have fully considered all of the protester’s arguments and find no basis to sustain its protest.

The evaluation of technical proposals is a matter within the discretion of the contracting agency, since the agency is responsible for defining its needs and the best method of accommodating them. The Kenjya Group, Inc.; Academy Solutions Group, LLC, B-406314, B-406314.2, Apr. 11, 2012, 2012 CPD ¶ 141 at 4. In reviewing

² For example, the evaluators noted that the firm had incorrectly referred to an assistive technology called Window Eyes as “Window FireEyes.” AR, Tab L, Consensus Report, at 5. The TET found that the proposal “echo[es] back specific wording from our solicitation and say[s] they can do it without offering details on past experience or how they plan to accomplish specific tasks.” Id. The TET also noted that the proposal included a checklist that referred to out-of-date technologies and did not include recent technologies. Id.

an agency's evaluation, we will not reevaluate technical proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and with procurement statutes and regulations. Id. A protester's mere disagreement with the agency's conclusions does not render the evaluation unreasonable. James Constr., B-402429, Apr. 21, 2010, 2010 CPD ¶ 98 at 3.

For example, in challenging the TET's statement that the proposal submitted by Visual Connections "simply regurgitate[ed] information" from the solicitation, AR, Tab L, Consensus Report, at 5, the protester argues that the agency's evaluation constituted nothing more than "a generality, expressed as an opinion by the VA reviewer and not supported by the record." Comments at 5. Although the protester voices disagreement with the agency's evaluation judgments, it fails to identify where in the record the agency's conclusion is refuted. Further, we have held that the evaluation of an offeror's proposal is a matter of agency discretion and, by its very nature, is a subjective judgment. See Six3 Sys., Inc., B-405942.4, B-405942.8, Nov. 2, 2012, 2012 CPD ¶ 312 at 7. Visual Connections has not demonstrated that its proposal included the breadth of detail that the solicitation required. Therefore, we find that the protester's arguments essentially reflect mere disagreement with the agency's subjective evaluation judgments and do not support a conclusion that the judgments were unreasonable.

In another example, the protester cites the agency's conclusion that the checklist provided in the protester's proposal failed to demonstrate strong knowledge of section 508. AR, Tab L, Consensus Report, at 5. In attempting to challenge the agency's evaluation, Visual Connection states that some of the items in its checklist referred to the same tasks that were referenced in a checklist that the agency itself prepared. Comments at 7. The protester notes that both checklists address aspects of captioning for videos, ensuring that alt values are correct, considering requirements for color used on web pages, and addressing web site appearance when cascading style sheets are unavailable or disabled. Id. (comparing AR, Tab F, Protester's Proposal, at 8-11 with Comments, Exh. 1, VA Section 508 Checklist for § 1194.22, Web-based Intranet and Internet Information and Applications at 1-11). The protester contends that "[e]ven if the checklist were completely irrelevant to the Solicitation, it is irrational to determine that VC's proposal was technically unacceptable on the basis of it" because the checklist only comprised three out of the proposal's thirty pages. Comments at 6.

While the protester disagrees with the agency's determination that the checklist failed to demonstrate knowledge of section 508 and was outdated, Visual Connections has not demonstrated that the agency's judgments were unreasonable. Further, noticeably absent from the protester's argument was any refutation of the agency's observation that the checklist referred to out-of-date technologies and did not include recent technologies. See Comments at 6-7. Therefore, we again find that the protester's arguments reflect mere disagreement with the agency's subjective

evaluation judgments and do not support a conclusion that the agency's judgments were unreasonable.

In another example, the protester challenges the following statement from the consensus report: "They do not demonstrate in-depth knowledge of the implications of Section 508 both current and the proposed standards for the Refresh as outlined in the solicitation." AR, Tab L, Consensus Report, at 6. As set forth above, the solicitation emphasized that knowledge of the implications of section 508 Refresh standards was "critical." RFQ at 10. Visual Connections argues that, contrary to the agency's findings, its proposal did demonstrate an in-depth knowledge of the implications of the Refresh. Comments at 8 (citing page 17 of protester's proposal). To support its argument, the protester cites to page 17 of its proposal, which it contends disproves the agency's evaluation statements. Page 17 of the protester's proposal details the qualifications of the key personnel proposed by Visual Connections. That page of the proposal contains only one reference to the Refresh standards. In describing the experience of a proposed accessibility expert, the proposal stated:

In addition, He [sic] has a thorough understanding of the implications of Section 508 Refresh standards as outlined in the ANPR [advance notice of proposed rulemaking].

AR, Tab F, Visual Connections Proposal, at 17. The page contains no other references to the Refresh. The protester also cites to page 23 of its proposal which states that its employees thoroughly understand the implications of the Refresh, that it will review guidance of updated checklists, testing, and remediation practices, and that it obtains updates on advanced notices of proposed rulemaking via the GPO. *Id.* at 23; *cf.* AR, Tab G, BayFirst Proposal, at 22 (stating that the awardee's team has been involved with the Refresh standards from the beginning, members of the team were on committees during "TEITAC" (Telecommunications and Electronic and Information Technology Advisory Committee) and have been involved with the Access Board since that time, attend public information forums and stay up to date on the progress of the Refresh, recently had a webinar with an individual from the Access Board to update customers on the progress of the Refresh, and have already implemented many of the expected changes associated with the Refresh).

Again, the protester has failed to show that its proposal demonstrated that the firm had the type of in-depth knowledge and included the breadth of detail that the solicitation required. Visual Connections' arguments reflect disagreement with the agency's subjective evaluation judgments, but do not support a conclusion that the judgments were unreasonable.

Based on our review of the record here, we see no basis to conclude that the agency's evaluation of the protester's proposal was unreasonable. Accordingly, we find no basis on which to sustain the protest.

The protest is denied.

Susan A. Poling
General Counsel