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Decision

Matter of: Bahrain Telecommunications Company, B.S.C.

File: B-407682.2; B-407682.3

Date: January 28, 2013

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Christine Elizabeth Jacoby, Esq., Defense Information Systems Agency, for the agency.

Katherine I. Riback, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is sustained where the awardee took exception to material solicitation requirements and the agency does not reasonably explain how it concluded that the awardee's quotation met the requirements.

DECISION

Bahrain Telecommunications Company, B.S.C., doing business as "Batelco," of Manama, Kingdom of Bahrain, protests the issuance of a delivery order to 2Connect W.L.L., also of Manama, Kingdom of Bahrain, under solicitation No. TSR RE12MAR125241, which was issued by the Defense Information Systems Agency (DISA), Defense Information Technology Contracting Organization (DITCO) for a communications circuit. The protester contends that 2Connect's quotation took exception to material solicitation requirements, and that the agency did not reasonably evaluate the awardee's quotation.

We sustain the protest.

On April 1, 2012, DISA issued the solicitation, which requested quotations from vendors holding existing ordering agreements with DITCO for telecommunications services. The solicitation required vendors to propose solutions for delivery of a

communications circuit between Camp Lemonier, Djibouti and Manama, Bahrain.¹ The solicitation stated that award would be made to the vendor whose quotation proposed the lowest price, provided a solution that was “technically sufficient,” met the required service date, and demonstrated satisfactory past performance. See Solicitation at 8.

As relevant here, Section C of the solicitation provided the following restoration requirement for the proposed circuit:

LEVEL OF COMMERCIAL SERVICE RESTORATION/
RESTORATION PRIORITY: ONCE ACCEPTED, RESTORATION OF THIS CIRCUIT IS REQUIRED ON A 24-HOUR A DAY BASIS WITH ONE HOUR RESPONSE TIME AFTER REPORTING TROUBLE, INCLUDING AFTER DUTY HOURS AND HOLIDAYS, WITH AN 8-HOUR MAXIMUM REPAIR TIME. THE TP SHALL PROVIDE THE US GOVERNMENT 21 DAYS LEAD TIME WHEN REQUESTING DOWNTIME.

Solicitation at 1 (emphasis added).

Section M of the solicitation stated the following:

[M.4.J.] THE TELECOMMUNICATION PROVIDER SHALL PROVIDE PREPLANNED RESTORAL OF THIS CIRCUIT IN THE EVENT OF TERRESTRIAL AND/OR SUBMARINE CABLE SYSTEM FAILURE WITHIN 8 HOURS.

[M.9.] RESTORAL/MAINTENANCE: TELECOMMUNICATIONS PROVIDER (TP) SHALL PROVIDE 24 HOUR A DAY/7DAY A WEEK SERVICE RESTORAL AND MAINTENANCE. THE TP RESTORAL/MAINTENANCE RESPONSE SHALL BE INITIATED WITHIN ONE HOUR OF RECEIPT OF GOVERNMENT OUTAGE REPORT, INCLUDING AFTER DUTY HOURS, WEEKENDS, AND HOLIDAYS. MAXIMUM TIME TO REPAIR IS EIGHT HOURS, INCLUDING AFTER DUTY HOURS, WEEKENDS, AND HOLIDAYS.

Solicitation at 3, 5 (emphasis added).

¹ The technical description of the requirements was as follows: “STM-4 (622Mb) structured AU4 Commercial leased SDH Trunk circuit between DISN ODXC at Camp Lemonier, Djibouti and DISN ODXC at Manama, Bahrain.” Agency Report (AR) at 2.

DISA received quotations from multiple vendors, including Batelco and 2Connect, by the initial closing date of May 1. On May 23, the agency requested clarifications from all vendors regarding the technical feasibility of their initial quotations, as follows: “[P]lease explain in detail preplanned restoral efforts to meet 8 hour requirements.” AR, Exh. 4, Clarifications (May 23, 2012). 2Connect provided a response to this request on May 29.

On May 31, the agency issued solicitation amendment B, which required vendors to address various revised requirements, including the following: “PROVIDE EXPLANATION TO SHOW REQUIREMENTS [for 8-hour restoration time] SHALL BE MET.” AR, Tab 5, Amendment B (May 31, 2012), at 2. Amendment B required vendors to submit revised quotations by June 12, 2012. AR, Tab 5, Amendment B (May 31, 2012). The due date for quotations was extended to June 26 via Amendment C. AR, Exh. 6, Amendment C (June 11, 2012). 2Connect did not respond to the requirement to submit a revised quotation in response to Amendment B.²

DISA initially found that Batelco’s quotation provided the apparent lowest price of \$13.6 million, and provided a “technically sufficient” solution; based on this evaluation, the agency placed an order for the circuit with Batelco on September 26. AR at 2. The agency also concluded that 2Connect’s quotation provided a technically sufficient solution. Id. at 6.

Upon notice of the award, 2Connect contacted the agency and advised that its total price was less than that of Batelco’s. The agency reviewed its calculations and found that it had made an error in evaluating the vendors’ proposed prices, and that 2Connect had proposed a price of \$13.3 million, which was lower than Batelco’s price, and was the lowest price received. AR at 6. On September 29, the agency terminated Batelco’s order, and made award to 2Connect. This protest to our Office

² In its January 4, 2013, supplemental comments, Batelco argued for the first time that 2Connect did not acknowledge Amendment B to the solicitation or submit a revised quote, as required. Supplemental (Supp.) Comments at 3. We dismiss this argument as untimely because Batelco did not raise it within 10 days of its receipt of the initial agency report on November 19, 2012, which disclosed that the agency based its award upon 2Connect’s initial quotation and its May 29 clarification response because 2Connect did not submit a revised quotation in response to Amendment B. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2012). As discussed below, however, we nonetheless sustain the protest because 2Connect’s May 29 response took material exceptions to the solicitation requirements and the record does not demonstrate that the agency’s evaluation of the awardee’s quotation was reasonable.

followed, in which Batelco argued that the termination of its contract was improper,³ and argued that the agency did not reasonably evaluate the awardee's quotation.

DISCUSSION

Batelco argues that DISA's evaluation of 2Connect's quotation was unreasonable because the awardee took exception to material solicitation requirements regarding the 1-hour response and 8-hour maximum restoration times.⁴ For the reasons discussed below, we agree.

2Connect's initial quotation included a compliance matrix which indicated that 2Connect agreed to comply with the 1-hour response and 8-hour restoration requirements specified in the solicitation. Supp. AR, Exh. 1, 2Connect Quotation (May 1, 2012), at 3. As discussed above, however, DISA's May 23 request for clarification required vendors to "explain in detail" their approach to meeting the 8-hour restoration requirement. On May 29, 2Connect's clarification submission included the following statements:

2Connect have fiber maintenance personnel located in [REDACTED] with the necessary infrastructure/equipment located in each of these countries to provide a prompt response to any potential fiber breaks in the network. The mean-time-to-repair (MTTR) target to restore any fiber break within this terrestrial network is set at eight hours or better.

Supp. AR, Exh. 2, 2Connect Clarification (May 29, 2012) at 6.

Batelco argues that although the solicitation required vendors to expressly commit to a 1-hour response time, 2Connect's supplemental response failed to do so, and instead merely stated that it would provide a "prompt response." See id. The protester also argues that while the solicitation required vendors to commit to a "maximum time to repair" of 8 hours, the awardee's quotation stated that its "target" was a "mean-time-to-repair" of eight hours or better. See id. With regard to the latter issue, the protester notes--and the agency does not dispute--that a "mean" or average time for restoration/repair is different than a "maximum" restoration/repair

³ The protester abandoned this argument when it failed to address in its comments the agency's substantive response to this issue in the agency report. 4 C.F.R. § 21.3(i); Knowledge Connections, Inc., B-297986, May 18, 2006, 2006 CPD ¶ 85 at 2 n.2.

⁴ Batelco raises other collateral issues. We find no basis to sustain the protest, apart from the issue concerning 2Connect's technical approach and the agency's evaluation, discussed below.

time. In this regard, a mean restoration/repair time could be several hours more or less than the stated mean.

The contemporaneous record of DISA's evaluation consists of two documents: (1) a summary chart indicating--by a "yes" or "no" designation--whether a vendor proposed to comply with all technical requirements; and (2) a narrative technical evaluation report. AR, Tab 12, Bid Abstract, at 1; Supp. AR, Tab 3, Technical Evaluation. The technical evaluation report concerning the awardee's quotation stated as follows: "Agrees to and addresses how they will meet 8 hour restoration." Supp. AR, Tab 3, Technical Evaluation, at 1.⁵ The contemporaneous evaluation does not specifically address the 1-hour response time.

In its response to the protest, DISA states that it found that the compliance matrix provided in 2Connect's initial quotation demonstrated that the awardee would comply with the material requirements of the solicitation. Supp. AR (Jan. 9, 2012) at 3. The agency further states that 2Connect's May 29 clarification responses provided no basis to question whether the awardee would comply. *Id.* at 3-4. In this regard, DISA states that it interpreted the awardee's May 29 clarification regarding a "prompt response" to satisfy the 1-hour response requirement. *Id.* 3. With regard to the 8-hour maximum restoration time requirement, the agency states that it interpreted the awardee's explanation that it would provide a "mean-time-to-repair target of eight hours or better" for its terrestrial cable to indicate that the awardee would repair any problems with both the terrestrial and submarine cable in no more than 8 hours, as required by the solicitation. *Id.* In support of this conclusion, DISA provided a declaration of an agency specialist who stated as follows: "DISA's Technical Evaluation Team for this procurement determined that 2Connect's proposal provided a technically acceptable solution in response to Solicitation No. TSR RE12MAR125241, to include the eight hour restoration requirement." Decl. of DISA Telecommunication's Specialist (Dec. 6, 2012) ¶ 3.

The evaluation of proposals or quotations is a matter within the discretion of the contracting agency. See Carson Helicopter Servs., Inc., B-299720, B-299720.2, July 30, 2007, 2007 CPD ¶ 142 at 5. In reviewing an agency's evaluation, we will not reevaluate proposals or quotations, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria. *Id.* However, in determining the technical acceptability of a proposal or quotation, an agency may not accept at face value a promise to meet a material requirement, where there is significant countervailing evidence that was,

⁵ DISA provided a heavily-redacted version of the technical evaluation document. The agency represented to our Office that it had provided all of the relevant information concerning this issue, and our review is based on the information provided.

or should have been, reasonably known to the agency evaluators that should create doubt whether the offeror or vendor will or can comply with that requirement. SeaBeam Instruments, Inc., B-253129, Aug. 19, 1993, 93-2 CPD ¶ 106 at 6-7. A proposal or quotation that contains an ambiguity as to whether the offeror will comply with a material requirement of the solicitation renders the proposal unacceptable. Solers, Inc., B-404032.3, B-404032.4, Apr. 6, 2011, 2011 CPD ¶ 83 at 7 n.6.

We conclude that the record does not show that DISA's evaluation was reasonable. Specifically, neither the contemporaneous evaluation nor the agency's response to the protest explains how it concluded that the awardee's May 29 responses demonstrated that the awardee committed to comply with the stated requirements. DISA does not dispute that the 1-hour response and 8-hour restoration times are material requirements of the solicitation, or that vendors were required to both expressly accept and provide details regarding their approaches to these requirements. Because the record here shows that the awardee's quotation contained information which, on its face, took exception to the stated solicitation requirements, and because the record does not explain how the agency reconciled these conflicts, we find that the agency improperly ignored evidence that should have raised a significant concern that the awardee would not meet the required responses times. As a result, we sustain the protest.

RECOMMENDATION

For the reasons discussed above, we conclude that DISA's evaluation of 2Connect's quotation was unreasonable. If the solicitation's requirements for a 1-hour response time and 8-hour "maximum repair time" reflect the agency's actual needs, we recommend that the agency reevaluate 2Connect's quotation to determine whether it complies with these requirements and make a new award decision. If the solicitation does not reflect the agency's actual needs--for example if different standards would satisfy the agency's requirements--we recommend that the agency amend the solicitation, obtain and evaluate new quotations, and make a new award decision.

We further recommend that Batelco be reimbursed the costs of filing and pursuing its protest, including reasonable attorney's fees. 4 C.F.R. § 21.8(d)(1). The protester should submit its certified claim for costs, detailing the time expended and

cost incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Susan A. Poling
General Counsel