



GAO

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

Comptroller General
of the United States

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Batelco Telecommunications Company B.S.C.

File: B-412783; B-412783.2; B-412804.2; B-412804.3

Date: May 31, 2016

Daniel J. Kelly, Esq., Robert A. Mintz, Esq., and Bonnie A. Vanzler, Esq., McCarter & English, LLP, for the protester.

Shelly L. Ewald, Esq., Scott P. Fitzsimmons, Esq., and Eric M. Liberman, Esq., Watt, Tieder, Hoffar & Fitzgerald, for VIVA Bahrain B.S.C. Closed, an intervenor. Travis L. Vaughan, Esq., Defense Information Systems Agency, for the agency. Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protests challenging agency's evaluation of quotations are denied where record shows that the agency's evaluations were reasonable and consistent with the solicitations' evaluation factors and applicable statutes and regulations.

DECISION

Batelco Telecommunications Company B.S.C., of Manama, Kingdom of Bahrain, protests the issuance of delivery orders to VIVA Bahrain B.S.C. Closed, of Manama, Kingdom of Bahrain, and Qatar Telecom Q.S.C., d/b/a Oredoo (Qtel), of Doha, Qatar, under, respectively, solicitation Nos. RE04MAR155120 and RE05MAR155140, issued by the Defense Information Systems Agency (DISA) to acquire leased fiber optic telecommunications services. The services being acquired under solicitation No. RE04MAR155120 are to be provided between Camp Arifjan, Kuwait, and the Naval Support Activity in Bahrain. The services being acquired under solicitation No. RE05MAR155140 are to be provided between Camp Arifjan, Kuwait and Al Udeid Air Base, Qatar.¹ Batelco maintains that the agency

¹ Competition for these requirements was confined to firms that previously had been awarded a basic agreement by the Defense Information Technology Contracting Organization (DITCO). Agency Reports (ARs) exhs. 1, Solicitations, at Standard Provision No. 01, DITCO Basic Agreement. None of the parties has challenged our jurisdiction to consider these protests against the issuance of the delivery orders

(continued...)

misevaluated quotations in connection with the issuance of the delivery orders.

We deny the protests.

BACKGROUND

Each solicitation contemplates the issuance of a delivery order for fiber optic transmission services between the identified end-points for a minimum period of one month and an anticipated period of 60 months. ARs, exhs. 1, Solicitations, Standard Provision 30, Contract Period--Indefinite Term. Firms were required to provide prices for both non-recurring costs as well as monthly recurring costs, and the solicitations advised that the agency would calculate a total evaluated price by adding the non-recurring costs to the monthly recurring costs, multiplied by the number of months identified for the anticipated period of performance. AR, exhs. 1, Solicitations, Standard Provision 24, Evaluation of Quotes--Technical/Service Date/Past Performance/Price. Firms also were advised that the agency would evaluate quotations for technical acceptability, ability to meet the required service date, and past performance. Id. Firms were advised that the agency would issue a delivery order to the firm whose quotation was determined to be technically acceptable and offered to meet the agency's service date; whose past performance was deemed satisfactory or neutral;² and whose price was the lowest among acceptable quotations. Id.

The agency received numerous quotations in response to the solicitations. After evaluating the quotations, engaging in discussions, and soliciting and evaluating revised quotations, the agency issued delivery orders to VIVA and Qtel, finding that

(...continued)

placed under the recipients' basic agreements. A basic agreement is not a contract, see Federal Acquisition Regulation § 16.702(a). Consequently, these procurements are not governed by the limitation on our jurisdiction, 10 U.S.C. § 2304c(e)(1)(B), to consider protests challenging the issuance of task or delivery order valued at more than \$10 million. See C&B Constr, Inc., B-401988.2, Jan. 6, 2010, 2010 CPD ¶ 1 at 2-5. In any event, both delivery orders are valued at more than \$10 million; the delivery order issued to VIVA is valued at \$10,000,008, and the delivery order issued to Qtel is valued at \$14,504,700.

² Firms were not required to submit past performance information with their quotations, unless they did not have previous contracts with DITCO; the solicitations stated that the agency would evaluate past performance based on information included in the agency's past performance information retrieval system (PIRS), along with any information readily available to the contracting officer. ARs, exhs. 1, Solicitations, Standard Provision 24, Evaluation of Quotes--Technical/Service Date/Past Performance/Price.

those firms submitted the lowest-priced, technically acceptable quotations. After being advised of the agency's source selections, Batelco filed the instant protests.

PROTESTS

Batelco alleges that the agency unreasonably found the quotations submitted by VIVA and Qtel technically acceptable. Batelco also alleges that the agency unreasonably assigned VIVA's past performance a neutral rating. We discuss the details of Batelco's protests below, but note at the outset that, in reviewing protests challenging an agency's evaluation of quotations or proposals, our Office does not reevaluate the quotations or proposals, or substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria, as well as applicable statutes and regulations. FP-FAA Seattle, LLC, B-411544, B-411544.2, Aug. 26, 2015, 2015 CPD ¶ 274 at 7. We have reviewed the records here and find no basis to object to the agency's evaluation of quotations for the reasons advanced in Batelco's protests.

Evaluation of the VIVA Quotation Under Solicitation No. RE04MAR155120

Batelco alleges that VIVA will not be able to meet the solicitation's requirement relating to the date on which service is to commence. In this regard, the solicitation, as amended, required firms to provide service no later than 9 weeks after the agency places the order. VIVA Agency Report (VAR), exh. 7, Amendment No. 6, at 1. Batelco maintains that it will be impossible for VIVA to meet the service commencement date because VIVA is proposing to use an underwater cable that is connected to land in Bahrain, and Batelco, as the national telecommunications provider in Bahrain, controls the connection at the "landing site." Batelco contends that it will take between 12 and 14 weeks for it to provide connectivity to VIVA under a subcontract arrangement established between VIVA and Batelco.

We dismiss this aspect of Batelco's protest. VIVA's quotation specifically and affirmatively commits, without reservation, to meet the service commencement date. VAR, exh. 12, VIVA Proposal, at 12. The question of whether, in fact, VIVA actually meets the service commencement date is a matter of contract administration, not subject to our jurisdiction. 4 C.F.R. § 21.5; Oransi, LLC, B-412061, Dec. 2, 2015, 2015 CPD ¶ 379 at 3-4.³

³ Batelco suggests that the solicitation required VIVA to explain at length in its proposal that it could not meet the service commencement timeframe. In this connection, Batelco directs our attention to Standard Provision 04--Quote Preparation, of the solicitation. However, lengthy technical explanations were not required under that provision of the RFP. Rather, the provision expressly states that an acceptable contractor response to that solicitation provision was

(continued...)

Batelco also maintains that VIVA cannot meet the solicitation's requirement that single event outages cannot exceed 30 minutes. AR, exh. 6, Solicitation Amendment No. 5, at 7. Batelco generally argues that the only way to meet the solicitation's requirement for service restoral within 30 minutes is to use a "protected" link for each segment of the route.⁴ According to Batelco, only one concern, Qualitynet, has what the parties describe as a "protected" link within Kuwait that connects to Camp Arifjan.⁵ Batelco maintains that VIVA has not established an arrangement with Qualitynet, and therefore cannot provide the required protected link within Kuwait that will enable it to meet the 30-minute service restoral requirement.

We find no merit to this aspect of Batelco's protest. As an initial matter, we point out that the solicitation did not require use of a "protected" path for any particular element of the proposed routes, but, rather, only required firms to propose unprotected paths. VAR, exh. 1, Solicitation, at 1; Declaration of DISA's Program Manager, at 4. Consequently, there is no basis to conclude that the VIVA proposal was unacceptable merely because it proposed an unprotected path.

Second, the record shows that VIVA proposed a service provider different than Qualitynet within Kuwait, a concern called Gulfnet. VAR, exh. 12, VIVA Proposal, at 9. In this connection, DISA's program manager explains that, although it previously was the case that only Qualitynet serviced Camp Arifjan, there are now two service providers to the camp, Qualitynet and Gulfnet because, in 2013, the agency initiated

(...continued)

"understand." VAR, exh. 1, Solicitation, Standard Provision 04--Quote Preparation. The VIVA quote, in response to the service commencement timeframe requirement, represented "Fully Compliance." VAR, exh. 12, VIVA Quotation, at 12.

⁴ A "protected" link is a redundant connection that uses diverse paths for traffic that automatically switches from one path to another when service is interrupted on one of the paths. An "unprotected" link is one that similarly provides for redundancy, but requires manually switching from one path to another. See generally Declaration of DISA's Program Manager, at 4-5.

⁵ In its original protest, Batelco maintained that VIVA could not meet this requirement, both because VIVA did not propose to use a "protected" link within Bahrain, and also because it did not propose to use a "protected" link within Kuwait. In its comments responding to the agency report, Batelco made no further mention of its allegation that VIVA could not meet the 30 minute restoral requirement because of the nature of the link it proposed within Bahrain. We deem this aspect of its protest abandoned. enrGies, Inc., B-408609.9, May 21, 2014, 2014 CPD ¶ 158 at 4.

a project to diversify the number of vendors providing service to Camp Arifjan.⁶ Declaration of DISA's Program Manager, at 5. DISA's program manager further points out as follows:

Additionally, it is my understanding and experience that Kuwait's MOC [Ministry of Communications] is the owner of all telecommunications infrastructure in Kuwait, independent of which company pays for an individual fiber. The MOC could allow different vendors share the same fiber at any time. There are no exclusivity clauses to limit access to infrastructure. In other words the MOC could grant Gulfnet access to Qualitynet's cable, or grant Qualitynet access to Gulfnet's cable. Typically and on this Solicitation, DISA acquisitions request the vendor to provide copy of operating licenses for country, not proof of ownership of the fiber as part of the proposal. Ownership of fiber infrastructure is irrelevant in SWA [Southwest Asia] because the national authority can authorize the use of cable "owned" by another vendor.

Id.

Batelco has not submitted evidence to rebut these representations on the part of the agency's program manager. In view of these considerations, we deny this aspect of Batelco's protest.

Batelco asserts that VIVA also will be unable to meet the solicitation's requirement that the contractor restore any outage within 8 hours of it being reported. VAR, exh. 1, Solicitation, at 25. According to the protester, VIVA proposed to use a submarine cable (one that runs underwater), that cannot be repaired within 8 hours. Batelco maintains that such a repair can take days or even weeks.

We find no merit to this aspect of Batelco's protest. As the agency points out, all of the vendors--including Batelco--offered routes that included submarine cables

⁶ In support of its allegation, Batelco provided two letters, one from the Army and Air Force Exchange Service, and one from the Kuwait Ministry of Communications. Batelco maintains that both letters demonstrate that only Qualitynet services Camp Arifjan. However, DISA's program manager explains that the letter from the Kuwait Ministry of Communications is significantly out of date and no longer accurately reflects the current state of affairs (the letter is dated May 9, 2012), and that the letter from the Army and Air Force Exchange Service is irrelevant because it only pertains to personal internet service provided to service members, and not to the services being acquired by the agency. Declaration of DISA's Program Manager at 5. Batelco has not provided evidence to rebut these representations.

because of the “avoidance requirements” of the solicitation.⁷ Declaration of DISA’s Program Manager, at 6. Thus, if the agency had found one vendor technically unacceptable for being unable to meet the 8-hour repair requirement because of its use of a submarine cable, the agency would have been required to find all vendors technically unacceptable for the same reason. Id.⁸ We therefore deny this aspect of Batelco’s protest.

Batelco next alleges that the agency unreasonably assigned VIVA’s past performance a neutral rating. According to the protester, VIVA was previously awarded a task order under which VIVA has not timely performed.

We have no basis to object to the agency’s evaluation of VIVA’s past performance. A review of the record here shows that the agency performed research in connection with its past performance evaluation of VIVA and did not find any past performance examples in its PPIRS data base. VAR, exh. 14, Past Performance Evaluation Materials, Tab 3, PPIRS Search Results for VIVA. The record also shows that the agency considered VIVA’s performance on 5 ongoing task orders, but concluded that none of these shed adequate light on the question to allow the agency to make a substantive judgment concerning VIVA’s past performance. Id., Tab 2, Past Performance Evaluation Report.

As noted, firms did not submit past performance information with their quotations, and the solicitation advised that the agency would confine its past performance evaluation to information included in the agency’s PPIRS database, along with any information readily available to the contracting officer. The agency performed its evaluation in a manner consistent with the terms of the solicitation, and did not find sufficient information to form a judgment regarding the quality of VIVA’s past performance. In addition, the agency states in its report that its review of VIVA’s ongoing task orders revealed that there were no instances where VIVA has failed to

⁷ The solicitation required firms to avoid certain routes. In effect, because of these constraints, all vendors had to propose, to one extent or another, a submarine cable.

⁸ The record shows that the agency had discussions with VIVA concerning its compliance with the 8-hour repair requirement because its proposal was ambiguous, providing as follows: “[deleted]” VAR, exh. 12, VIVA Proposal, Evaluation Notice No. 5 at 1. In response to those discussions, VIVA represented as follows: “[deleted]” VAR, exh. 12, VIVA Proposal, at 39. The agency interpreted this representation as VIVA’s commitment to meet the 8-hour repair requirement. Although the language is not a model of clarity, we have no basis to object to the agency’s acceptance of this language as satisfying the solicitation’s requirement in view of the fact that it clearly references the restoration standard as “8-hour maximum repair time.”

timely perform, or instances where VIVA failed to meet its service date that were not attributable to government action. Agency Report at 9-10. Accordingly, and in a manner consistent with the solicitation, the agency assigned VIVA a neutral rating for its past performance. We therefore deny this aspect of Batelco's protest.⁹

Evaluation of the Qtel Quotation Under Solicitation No. RE05MAR155140

Batelco alleges that Qtel also will not be able to meet the requirement of solicitation No. RE05MAR155140 relating to the date on which service is to commence. In this regard, the solicitation as amended required firms to provide service no later than 9 weeks after the agency places the order. Qtel Agency Report (QAR), exh. 8, Amendment No. 7, at 1. As with its other protest, Batelco originally alleged that only Qualitynet provided service to Camp Arifjan, and that, because Qtel had not entered into an arrangement with Qualitynet, it would be unable to meet the service commencement date. After receiving the agency report, it became apparent that Qtel had made arrangements to use Gulfnet for service to Camp Arifjan. Batelco nonetheless maintains that Qtel will not be able to meet the service commencement date because its quotation states that, in order for it to provide a "protected" link to Camp Arifjan, it will require 6-8 weeks beyond the service commencement date.

We find no merit to this aspect of Batelco's protest. As with solicitation No. RE04MAR155120, solicitation No. RE05MAR155140 requires only an unprotected--rather than a "protected"--link. QAR, exh. 1, Solicitation, at 1. The record here shows that Qtel offered to meet the service commencement date initially with an unprotected link. Qtel's quotation provides:

Gulfnet currently [has a] presence within Camp Arifjan. Ooredoo [Qtel] is able to provide the STM 64 service over the primary path within 6-8 weeks from customer PO. This will cater to customer requirement of unprotected service with single handoff.

QAR, exh. 16, Qtel Quotation, at 27. Qtel also offered to upgrade the service to a "protected" link, albeit after the service commencement date. QAR, exh. 16, Qtel Quotation, at 38. However, since the solicitation did not require the provision of a "protected" link, the fact that Qtel offered an upgrade to its initially-provided service

⁹ As a final matter, Batelco alleges that a page from the VIVA proposal that included a top-level drawing of its intended network paths was blurry and illegible. However, in response to that allegation, DISA's program manager stated that he was able to read and understand the drawing. Declaration of DISA's Program Manager at 2-3. In addition, he prepared and submitted his own hand-drawn version of the VIVA drawing that depicts what was being offered. Id., attach. 1. Batelco has not demonstrated that the program manager was unable to read and understand the drawing submitted by VIVA.

at a subsequent date did not provide a basis for the agency to find its quotation technically unacceptable. We therefore deny this aspect of Batelco's protest.

Batelco maintains that Qtel cannot meet the 30-minute restoral requirement. However, this aspect of its protest is based on its assertion that only Qualitynet is capable of providing a "protected" link to Camp Arifjan in Kuwait. As discussed above, the solicitation did not require a "protected" link, and in any event, Qtel is using Gulfnet, the other concern with service to Camp Arifjan. We therefore find no merit to this aspect of Batelco's protest.¹⁰

Batelco contends that Qtel cannot meet the solicitation's requirement for "diversity." In this connection, Batelco maintains that the solicitation required that the alternate route within Kuwait be different than the route used for the VIVA-awarded route. However, the record shows that, subsequent to the issuance of the solicitation, the agency recognized that it was not technically feasible to require that the alternate route for the Qtel-awarded route be diverse from the route used for the VIVA-awarded route. Consequently, the agency issued an amendment eliminating that requirement. QAR, exh. 12, Amendment No. 11.

Batelco maintains that the terms of the amendment were not clear and that it did not realize that the agency had eliminated this diversity requirement. Batelco argues that, had it understood that the alternate route for solicitation No. RE05MAR155140 could overlap the route proposed under solicitation No. RE04MAR155120, it could have altered its quotation. However, the record shows that Batelco understood the agency's actual requirements, because it offered identical--that is, overlapping--routes in Kuwait in both of its quotations. In this connection, its quotation for solicitation No. RE04MAR155120 provides, with respect to the route within Kuwait, as follows:

[deleted]

VAR, exh. 13, Batelco Quotation, at 14. Its quotation for solicitation No. RE05MAR155140 provides as follows:

[deleted]

QAR, exh. 14, Batelco Quotation, at 14. Since the record shows that Batelco clearly understood that the diversity requirement in question had been eliminated from the solicitation, we deny this aspect of Batelco's protest.

¹⁰ We point out as well that, as described by DISA's program manager, the capabilities of Qualitynet and Gulfnet are somewhat fluid because the Kuwaiti Ministry of Communications can allow different vendors to share the same fiber at any time, and there are no exclusivity clauses to limit access to that infrastructure.

Finally, Batelco argues that Qtel did not commit to meet the solicitation's 8-hour repair requirement. However, the record shows that Batelco's allegation is based entirely on an obvious typographical error in the Qtel quotation. Specifically, Qtel's quotation stated that the firm would "endure to provide 8 hours as maximum repair time" QAR, exh. 16, Qtel Quotation, at 32. It is apparent to us that Qtel intended to state that it would "ensure" rather than "endure" to meet the 8-hour repair requirement. In addition, there are two other references to the 8-hour repair requirement that make it clear that Qtel was unequivocally committing to meet the requirement. More to the point, Batelco has not explained how the actual wording of the quotation would somehow translate to Qtel taking exception to the solicitation's requirement. We therefore deny this aspect of Batelco's protest.

The protests are denied.

Susan A. Poling
General Counsel