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**Comptroller General
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**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Eiden Systems Corporation

File: B-401997.2

Date: January 28, 2010

Daniel J. Donohue, Esq., Husch Blackwell Sanders LLP, and J. Michael Littlejohn, Esq., Akerman Senterfitt LLP, for the protester.

David S. Black, Esq., Allison V. Feierabend, Esq., and Jacob W. Scott, Esq., Holland & Knight, for U.S. Information Technologies Corporation, an intervenor.

Michael P. Chiffolo, Esq., Defense Logistics Agency, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that vendors in Federal Supply Schedule procurement based their quotations on different interpretations of the solicitation requirements regarding key personnel is denied where protester fails to demonstrate that it was prejudiced as a result of any ambiguity in the solicitation.

2. Protest challenging evaluation of quotations is denied where record shows that agency's evaluation was reasonable and consistent with the solicitation.

DECISION

Eiden Systems Corporation of Charlottesville, Virginia protests the issuance of a Federal Supply Schedule (FSS) task order to U.S. Information Technologies Corporation (USIT) of Chantilly, Virginia under request for quotations (RFQ) No. SP4703-09-Q-0032, issued by the Defense Logistics Agency (DLA), Defense Supply Center Richmond (DSCR), to obtain Oracle database and application server technical support services. The protester argues that the evaluation of quotations and the source selection determination were unreasonable.

We deny the protest.

BACKGROUND

The RFQ, issued pursuant to Federal Acquisition Regulation (FAR) Part 8.4 to acquire services under the FSS, contemplated the issuance of a fixed-price task order for a base year, with four 1-year options. The solicitation provided for issuance of the order to the vendor whose quotation was determined to represent the best value to the government, technical factors, past performance, and price considered. Three equally-weighted factors were to be considered in the technical area: management approach and technical capabilities; key personnel qualifications; and organizational experience. Under past performance/experience, quality of historical projects and similarity of prior contracts (equally weighted) were to be considered. The RFQ provided that the technical and past performance factors, when combined, were significantly more important than price, and that within the non-price factors, technical was more important than past performance.

Four quotations were received; two of the four were rejected prior to evaluation. The remaining two quotations (those of the protester and USIT) were evaluated, and discussions were conducted with, and final revised quotations requested from, the two vendors. After reviewing the final quotations, the evaluation team assigned the following ratings:

FACTOR	Eiden	USIT
Factor 1: Technical		
Subfactor 1: Management Approach/Technical Capabilities	HA	E
Subfactor 2: Key Personnel Qualifications	HA	E
Subfactor 3: Organizational Experience	E	E
Overall Technical Rating	HA	E
Factor 2: Past Performance/Experience	HA	E
Subfactor 1: Quality of Historical Projects		
Subfactor 2: Similarity of Prior Contracts	E	E
Overall Past Performance	HA	E

Agency Report at 15.¹ Eiden’s total evaluated price was [deleted], whereas USIT’s was \$8,932,399. The source selection official determined that the technical benefits

¹ The agency evaluation plan defined a technical rating of exceptional (E) as meaning that the vendor’s response contained significant strengths and exceeded stated objectives and/or performance objectives, and that it contained no weaknesses or deficiencies. A rating of highly acceptable (HA) was defined as meaning that the vendor’s response contained strengths that would allow DLA to meet or exceed objectives and/or performance parameters; that weaknesses were not substantial enough to “conversely impact” the response’s strengths; and that the response contained no deficiencies. Evaluation Plan at 10.

associated with USIT's quotation far outweighed the price savings associated with Eiden's and selected USIT's quotation as representing the best value to the government.

The agency issued a task order to USIT on September 23, 2009. After being notified of the selection, Eiden requested and received a debriefing. On October 22, Eiden filed a timely protest with our Office.

ANALYSIS

Key Personnel Qualifications

Eiden complains that the two vendors had differing understandings of the RFQ's requirements pertaining to certifications for key personnel and thus competed on an unequal basis.

Section 2.5.2 of the RFQ, "Key Personnel Requirements," required vendors to provide personnel with knowledge and competency in several areas, one of which was Oracle Database and Application Server software installation, configuration, and administration. The section provided in relevant part as follows:

This section lists Key Personnel that should be representative of the following labor categories types. The experience and education levels are minimums. The labor categories are for certain skilled, experienced, professional and/or technical personnel and are essential for successful accomplishment of the work to be performed under the resultant contract. These are defined as "Key Personnel" and are those persons whose resumes are to be submitted as part of the technical proposal for evaluation purposes. The Vendor agrees to use said key personnel during the performance of the resultant contract and that they shall not be removed from the contract work, replaced, or

(...continued)

A rating of exceptional for past performance/experience signified "generally outstanding experience which is completely relevant in managing and performing tasks pertinent to all requirements of the RFQ, and outstanding experience in implementing similar efforts with clients of similar size, scope and complexity to the agency" and outstanding past performance. A rating of highly acceptable for past performance signified "generally very good experience which is highly relevant in managing and performing tasks pertinent to all requirements in the RFQ, and very good overall experience in implementing similar efforts with clients of similar size, scope and complexity to the agency," and very good overall past performance. Id. at 11.

supplemented with additional personnel, unless authorized in accordance with the following provisions:

* * *

A. Project Manager/Lead Oracle DBA [database administrator]

* * *

B. Senior Oracle DBA

* * *

C. Mid-level Oracle DBA

* * *

RFQ at 18-19. One of the required qualifications for each of the three position listings was “OCP” [Oracle Certified Professional] certification.

Several questions pertaining to section 2.5.2 were raised by vendors prior to the submission of quotations, and the agency furnished the following responses:

Q-9: The RFQ indicates there are 3 Key Personnel positions which are Project Manager/Lead Oracle DBA, Senior Oracle DBA and Mid-Level Oracle DBA. Is it correct to assume that the Government only wants 3 resumes in the proposal or can we submit more in each category to indicate depth and backup? Please clarify.

A-9: Section 2.5.2 . . . states “This section lists Key Personnel that should be representative of the following labor categories types.” The following categories are intended to provide 3 key personnel position descriptions, not 3 positions. Resumes should be submitted for all candidate/candidates proposed in each of those categories. As this is a Firm-fixed price requirement, the vendors are to propose their solutions to perform the PWS taskings and include the labor mix (labor categories, number of personnel and hours).

Q-12: The RFQ requires Key Personnel to be Oracle Certified Professional (OCP) at the time of submission. Some Oracle developers and DBAs are not OCP, because of the time and expense involved, but can easily become certified. We are requesting the Government to change this requirement to read, “OCP will be required within 30 days after contract award” to allow some of our senior DBAs and developers to become certified.

A-12: The government must require the OCP certifications to be valid at the time of award in order to ensure contract requirements can be met. Vendors should at a minimum describe plan to obtain Key Personnel OCP certification by award (estimated by September 01, 2009). Lack of OCP certification for Key Personnel could result in a lower rating.

RFQ, Mods. 2 and 3.

In its quotation, Eiden identified eight individuals under the heading “Proposed Key Personnel.” One individual was proposed for the position of Project Manager/Lead Oracle DBA; four were proposed for the position of Senior Oracle DBA; and three were proposed for the position of Mid-Level Oracle DBA. During discussions, the agency asked the protester to furnish documentation of OCP certification for the proposed individuals and advised Eiden that “any personnel not certified cannot be granted access to the system.” Agency Letter to Eiden, Aug. 31, 2009, at 2. Eiden responded by furnishing the requested documentation.

In its quotation, USIT identified three individuals as “key personnel” and furnished biographical sketches and resumes for the three. It also identified another five individuals (whom it did not identify as either key or non-key) and furnished resumes for them. The quotation indicated that some, but not all, of the proposed individuals had OCP certification. During discussions, the agency asked USIT to “address the four proposed personnel who do not have the required OCP certifications,” and, as with the protester, advised it that any personnel who were not certified would not be granted access to the system. Agency Letter to USIT, Aug. 31, 2009.

USIT responded to the agency request via email message of September 1. USIT explained that the four individuals in question were not key personnel, and that it had understood the RFQ as requiring OCP certification at the time of order issuance for key personnel only. In support of its argument that non-key personnel were not required to have OCP certification at the time the order was issued, USIT cited section 2.8 of the RFQ, which provided that vendor personnel would have 6 months after award to become certified.

The contract specialist replied the following day (also via email message) by furnishing USIT with the following clarifying advice:

Key Personnel identified need to have their OCP certification at time of award. Other personnel who are not identified as key personnel will have up to six months to obtain IA [information assurance] and Computing Environment Certifications . . .

Email message from DLA Contract Specialist to USIT, Sept. 2, 2009. The contract specialist instructed USIT that in its discussion question response it would need to clarify which of its proposed personnel were key and which were non-key. USIT responded by identifying three individuals, all of whom had OCP certification, as key personnel (one in the role of Project Manager/Lead DBA and two in the role of Senior Oracle DBA); another three individuals, all whom had OCP certification “pending,” as “core team members” (one in the role of Senior Oracle DBA and two in the role of Mid-Level DBA); and two final individuals, one with OCP certification and one with certification pending, as “temporary transition team members.”

In an effort to treat the two vendors in an even-handed manner, the contract specialist furnished the protester—which had, of course, not been privy to the exchanges between the agency and USIT leading up to issuance of the clarifying advice—with the same advice that it had furnished USIT.² The protester responded that it was “confused as the bid designated all technical folks as Key Personnel.” Email message from Protester to DLA Contract Specialist, Sept. 2, 2009. The contract specialist replied that the clarification “was sent to ensure all parties understand the certification requirements for key personnel and non-key personnel as this was previously unclear.” Email message from DLA Contract Specialist to Protester, Sept. 3, 2009.

Eiden argues that the two vendors based their quotations on differing understandings of the RFQ’s requirements pertaining to certifications for key personnel and thus competed on an unequal basis. The protester maintains that it reasonably understood the RFQ to require that all proposed personnel in the three labor categories described in section 2.5.2 be key personnel, meaning that they were required to have OCP certification by the time the order was issued, whereas USIT proposed individuals in the three labor categories whom it designated as non-key personnel, thereby avoiding the requirement that they have OCP certification by the order issuance date. The protester argues that it was prejudiced by the agency’s alleged relaxation of the OCP certification requirement for USIT because it could have improved its rating under the key personnel qualifications evaluation factor had

² That is, via email message of Sept. 2, the contract specialist advised the protester as follows:

[S]ome clarification below on Key Personnel requirement for OCP Certification and other than Key Personnel certification requirements:

Key Personnel identified need to have their OCP certification at time of award. Other personnel who are not identified as key personnel will have up to six months to obtain IA and Computing Environment Certifications . . .

Email message from DLA Contract Specialist to Protester, Sept. 2, 2009.

it realized that it could propose an individual who lacked OCP certification at the time the order was issued. Eiden contends in this regard that the RFQ provided for the evaluation of the education and experience of individual key personnel in working on similar projects under the key personnel qualifications factor, and its quotation would have included an individual with 24 years of experience (but no current OCP certification) in place of an OCP-certified individual with 9 years of experience had it realized that could propose individuals in the three labor categories as non-key personnel.

The agency argues in response that section 2.5.2 of the RFQ, its answer to question 9, and the clarification that it furnished to the vendors via email on September 2 made clear that any key personnel proposed by a vendor had to be placed in one of the three key personnel categories, but did not require that all personnel staffed in these categories be designated as key personnel; that is, according to the agency, the RFQ did not prohibit a vendor from proposing non-key personnel, in addition to key personnel, in the labor categories of project manager/Lead Oracle DBA, Senior Oracle DBA, or Mid-Level Oracle DBA.

We are not persuaded that the interpretation advanced by the agency is the only reasonable interpretation of the solicitation language. Given that section 2.5.2 provided that resumes were to be submitted for key personnel (but made no mention of resumes being submitted for non-key personnel) and that the agency stated in response to question 9 that “resumes should be submitted for all candidate/candidates proposed in each of [the above] categories,” we think that a vendor could reasonably have understood that resumes had to be submitted for all individuals proposed for the given positions, and all individuals for whom resumes were submitted would be considered key personnel. Moreover, we think that this interpretation is supported by the agency instruction to vendors during discussions that “any personnel not certified cannot be granted access to the system.”

We are not persuaded, however, that the protester suffered any prejudice as a result of any ambiguity in the RFQ’s requirements pertaining to key personnel certification. See McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3 (prejudice is an essential element of any viable protest). The protester argues that it would have offered a more experienced individual without OCP certification for one of the DBA positions if it had realized that all of the DBAs were not required to be key personnel, and that the individual’s greater experience would have resulted in a higher rating under the key personnel qualifications factor. The flaw in the protester’s argument is that if the individual were proposed as a non-key employee, his experience would not be considered under the key personnel qualifications

evaluation factor.³ In other words, the protester could not have raised its rating under the key personnel factor by offering different individuals as non-key employees.

The protester also argues that the evaluation of quotations under the key personnel qualifications factor was irrational in that its lack of experience on “non-similar” projects was cited as a weakness. Eiden maintains that the fact that most of its experience was on similar projects should have been considered a strength, rather than a weakness.

We will not consider this argument because the protester did not raise it in a timely manner. The protester was furnished with the information forming the basis for this complaint during its debriefing on October 14.⁴ Thus, for its argument to be timely, the protester would have needed to raise it by October 24. See Bid Protest Regulation, 4 C.F.R. § 21.2(a)(2) (protests must be filed within 10 days after the basis of protest is, or should have been, known). Because Eiden did not raise the matter until December 4, when it filed its comments on the agency report, the argument is untimely.

Eiden also argues that USIT failed to demonstrate that its personnel will have the required security clearances prior to issuance of the task order.⁵ The RFQ did not expressly require the vendors to demonstrate in their quotations, nor did the agency state that it would evaluate, whether the proposed personnel will have the appropriate clearances by the time of order issuance. Moreover, whether during

³ The RFQ provided that the evaluators would consider the “quality and depth of experience of individual key personnel in working on similar [and other relevant] projects.” RFQ, § 4.2.1.2. (Emphasis added.)

⁴ Specifically, as pointed out by the agency in its reply to the protester’s comments, the protester was notified at its October 14 debriefing that the evaluators had identified as a weakness in its quotation under the key personnel qualifications factor that “[a]s the incumbent, the majority of experience was obtained locally at DSCR and is limited on similar projects with relevant experience outside of DSCR.” Protest, Attach. 1 (Agency Debriefing Notes).

⁵ Section 2.5.6 of the RFQ, “Security Requirements,” provided as follows:

[DSCR] requires that all Vendor personnel shall be found eligible to perform IT 1 duties through the DSCR Security Office before engaging in any work on this contract. The Vendor’s facility will be required to grant the vendor a SECRET clearance on an as required basis.
Contract requires an IT 1 clearance. *At the time of award, all personnel performing work on this contract shall at a minimum be required to possess an IT 1 or a Secret with SSBI Clearance. . . .*

performance USIT actually will furnish personnel with the appropriate security clearances is a matter of contract administration that we will not consider. Armidir Ltd., B-204075, Aug. 31, 1982, 82-2 CPD ¶ 188 at 7.

Management Approach and Technical Capabilities

The protester also challenges the evaluation of the two quotations under the management approach and technical capabilities factor. Eiden argues that the evaluators improperly considered a new tool proposed by USIT for the tracking of work as an innovative approach that represented a strength under the management approach/technical capabilities factor when the new tool in fact represented a departure from the solicitation requirements for which USIT should not have received favorable consideration. The protester also argues that the evaluators failed to give its quotation credit for proposed innovations.

Where, as here, an agency issues an RFQ to FSS contractors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. Carahsoft Tech. Corp., B-401169, B-401169.2, June 29, 2009, 2009 CPD ¶ 134 at 3. In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate the quotations; rather, we will examine the record to determine whether the agency's conclusions were reasonable and consistent with the terms of the solicitation and applicable laws and regulations. OPTIMUS Corp., B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4.

In response to the protester's first allegation, the agency denied that USIT had departed from the requirements of the RFQ by proposing its new tracking tool; rather, the agency explained, USIT had proposed the new tool as a supplement to the existing system. In response to the second allegation, the agency explained that the evaluators had not considered the innovations that the protester proposed to be sufficiently valuable to merit a finding of significant strength. The protester has not demonstrated that either of these findings was unreasonable; accordingly, we also deny these bases of protest.

Past Performance

Finally, the protester raised several complaints regarding the agency's evaluation of the vendors' past performance. In its initial protest, Eiden asserted that the agency had failed to conduct meaningful discussions with it by failing to advise it that one of its past performance references had failed to answer some of the items on the questionnaire and that some of its contracts were not deemed sufficiently similar to the effort here. The agency responded to these arguments in its report, pointing out that the evaluators had not considered either matter to be a significant weakness and that the protester's quotation had indeed received a rating of highly acceptable for past performance. In responding to the agency report, the protester did not take

issue with or otherwise seek to rebut the agency's explanation; thus, we consider it to have abandoned this argument. AH Computer Consulting, Inc., B-401204, June 25, 2009, 2009 CPD ¶ 132 at 4-5.

In its comments on the agency report, Eiden raised a second past performance argument. The protester alleged that the evaluators had treated the two vendors dissimilarly by noting the following weakness pertaining to the protester's past performance, while failing to note a similar concern pertaining to USIT's past performance:

Once scores were averaged, the overall score was HA. Only one of the responders who provided an across-the-board E or HA response provided any substantiated comments. Of 42 possible responses: 19 were E, 13 ½ were HA, and 3 ½ were A.

Final Evaluation of Eiden's Proposal at 17. The agency explained that what the evaluators meant was that without substantiating comments, the evaluation team lacked the information necessary to raise Eiden's rating from highly acceptable to exceptional. The agency further explained that this was not an issue with USIT's past performance since 52 of 56 ratings by USIT's customers were exceptional. As above, the protester did not seek to rebut the agency's explanation in its comments; we therefore consider this argument to have been abandoned as well.

The protest is denied.

Lynn H. Gibson
Acting General Counsel