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Decision

Matter of: V3Gate

File: B-413001; B-413001.2; B-413001.3

Date: July 22, 2016

Jonathan D. Shaffer, Esq., Mary Pat Buckenmeyer, Esq., and Nicholas J. Surace, Esq., Smith Pachter McWhorter PLC, for the protester.
James F. Ford, Esq., and Lea E. Duerinck, Esq., Department of Veterans Affairs, for the agency.
John R. Tolle, Esq., Baker, Cronogue, Tolle & Werfel, LLP, for Education Management Solutions, LLC, an intervenor.
Lois Hanshaw, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

A protest challenging the agency's evaluation of the protester's technical quotation, the awardee's past performance, and the source selection decision is denied where the agency's evaluation was consistent with the terms of the request for quotations.

DECISION

V3Gate (V3), of Colorado Springs, Colorado, protests the award of a contract to Education Management Solutions, LLC (EMS) under request for quotations (RFQ) No. VA118-16-R-0768 issued by the Department of Veterans Affairs (VA) for a video simulation management system. The protester challenges the agency's technical and past performance evaluations and its best-value determination.

We deny the protest.

BACKGROUND

In order to provide comprehensive, virtual, education-focused training to all employees, the Veterans Health Administration (VHA) created the Simulation Learning Education and Research Network (SimLEARN), a national simulation training, education, and research program focused on developing the strategic vision and system-wide plan for simulation process modeling, training, education,

and research for the VHA. RFQ, Performance Work Statement (PWS), at 50-51.¹ The SimLEARN program will include the creation of a SimLEARN National Simulation Center (NSC), which will serve as a high-technology simulation-based training facility and as the operational hub for the coordination of national VHA clinical simulation activities. Id. at 51. To support SimLEARN NSC training, the VA sought a vendor to create a video simulation management system (VSMS) to include procurement, installation, integration, and testing of VSMS equipment within the VHA-SimLEARN facility. Id.

The RFQ, issued on October 29, 2015, was set aside for small businesses. RFQ at 40. The RFQ contemplated the award of a fixed-price contract with an eight month period of performance. Id. at 40, 44. Proposals would be evaluated on a best-value basis considering four evaluation factors, listed in descending order of importance: technical, past performance, price, and veterans' involvement.² Id. at 95. As relevant here, the RFQ stated that the technical factor was significantly more important than the past performance factor, which was significantly more important than price, which was slightly more important than the veterans involvement factor. Id. The non-price factors when combined were significantly more important than price. Id.

For the technical factor, offerors were required to address two areas, including as relevant here, understanding the problem, which required a detailed description of the offeror's technical approach to the VSMS solution requirements. Id. at 95, 98. These requirements were outlined in the PWS, and included: simulation recording, debriefing, and assessment; simulation session control and data integration; video storage and playback (video storage); and recording/playback format specifications (recording/playback). RFP, PWS, at 57-60. As relevant here, the recording/playback section of the PWS required offerors to address four areas, including archiving.³ Id. at 59-60. A protester's understanding of the problem would be evaluated to determine the extent to which the proposal demonstrated a clear understanding of all features involved in solving the problems and meeting and/or exceeding the requirements presented in the solicitation. Id. at 95.

¹ The agency used a Bates numbering system in preparing the agency report; citations in this decision use the Bates numbers assigned by the agency.

² Here, and in many other instances, the record refers to the vendors' responses to the request for quotations as proposals, rather than quotations.

³ For archiving, firms were required to demonstrate the ability to retain metadata after audio/videos were deleted from the archive and a duration of 10 day maximum local storage with automatic audio/video file deletion/erasure functionality upon reaching the maximum apportioned archive space. RFQ, PWS, at 60. The other three areas of the recording/playback section were audio and video format, and playback. Id. at 59-60.

For past performance, offerors were required to submit three contracts performed within the last three years that were relevant to the required efforts. Id. at 99. The RFQ also stated that the government would conduct a performance risk assessment based on the quality, relevancy, and recency of the past performance of a proposed prime contractor and its major subcontractor(s). Id. at 96. The RFQ also cautioned vendors that the government would review available past performance data available in the Past Performance Information Retrieval System (PPIRS). Id.

On November 5, three vendors, including the protester and awardee submitted quotations. After an initial evaluation, the agency found two deficiencies and two weaknesses in V3's quotation. Agency Report (AR), Tab 11, V3 Initial Technical Evaluation Report (TER), at 289-290. As relevant here, the agency assessed V3 a weakness in the area of understanding the problem based on its demonstration of a minimal understanding of the approach to implement a VSMS solution that met the RFQ requirements. Id. at 289. The agency engaged in discussions with V3, highlighting the lack of details in areas such as simulation recording, debriefing, and assessment; simulation session control and data integration; and specifically stated that the lack of details in the four areas of recording/playback (audio/video format, playback, and archiving) increased V3's performance risk. AR, Tab 12, V3 Discussions and Responses, at 304-306. V3's response to discussions, however, did not address the agency's concerns. Id. Specifically, although V3's response to discussions indicates that it addressed the recording/playback section, its revised proposal failed to provide any meaningful responses for the four areas within this section.⁴ AR, Tab 7, V3 Quotation, at 222-24. Accordingly, the agency found that a weakness remained in V3's approach to implementing a VSMS solution. In this regard, the agency stated that minimal details in the areas of video storage and recording/playback constituted an increased performance risk. AR, Tab 12, V3 Discussions and Responses, at 306; Tab 13, V3 Final TER, at 309.

For past performance, EMS and V3 were both determined to be low risk. EMS submitted four contracts, which were found to be recent and relevant; in accordance with the solicitation, only three were evaluated. AR, Tab 19, EMS Past Performance Report (PPR), at 386. Additionally, the agency sent out two past performance questionnaires and received one completed questionnaire in which the quality of EMS's performance was found to either exceed or meet contractual requirements. Id. The record also shows that, for EMS and its major subcontractor, the agency conducted a search utilizing the PPIRS and found no contractor performance assessment reports (CPARs). Id. V3 provided three contracts, however, one was determined to be not relevant. AR, Tab 14, V3 PPR, at 312.

⁴ The record also shows that V3's revised quotation no longer includes the section related to video storage. Id. at 208, 224.

Similar to EMS, the agency sent two past performance questionnaires for V3 and received one completed questionnaire in which the quality of V3's performance was found to exceed contractual requirements. Id.

The final ratings were as follows:

Vendor	Technical⁵	Past Performance	Price	Veterans Involvement
EMS	Good	Low Risk	\$5,000,337	No Credit
V3	Acceptable	Low Risk	\$4,395,848	Full Credit

AR, Tab 20, Source Selection Decision Document (SSDD), at 390.

The contracting officer, acting as the source selection authority (SSA), determined that EMS offered the best value to the government. Id. at 393. The SSDD notes that the SSA reviewed the source selection evaluation board's "evaluation reports for all factors in detail and concur[red] with the findings." Id. at 390. Additionally, the SSDD summarized the evaluation results for each vendor and compared EMS's results to V3 and the other vendor. Id. at 390-92. Specifically, the SSA stated that it found EMS's technical superiority to be worth the 12.1% price premium, and "given the weight of the evaluation factors," determined that EMS represented a better value to the government than V3. Id. at 392.

On April 18, after requesting a debriefing, V3 protested to our Office.⁶

⁵ Technical factors rating were, from highest to lowest, outstanding, good, acceptable, susceptible to being made acceptable, or unacceptable. AR, Tab 6, Source Selection Plan, at 177. A good rating was defined as a proposal that meets or exceeds all of the government's requirements, contains at least adequate detail, demonstrates at least an understanding of the problem, and is at least feasible (low to moderate risk). Id. An acceptable rating was defined as a proposal that meets or exceeds all of the government's requirements, contains at least minimal detail, demonstrates at least a minimal understanding of the problems, and is at least minimally feasible (moderate to high risk). Id.

⁶ On April 21, the agency responded to V3's request for debriefing. Based on the information in the debriefing, V3 timely filed a supplemental protest on May 2 (B-413001.2). The agency responded to these protests in a consolidated agency report.

DISCUSSION

V3 contends that the agency improperly evaluated V3's technical quotation and EMS's past performance quotation and contends that the agency's best-value determination was improper.⁷ We find no basis to sustain the protest.⁸

V3 Technical Evaluation

The protester contends that its proposal should have been rated good rather than acceptable, and that the agency improperly assessed V3 a weakness for its approach to implementing a VSMS solution. Supp. Protest (B-413001.2) at 6. In response, the agency explains that it found that the protester's quotation and responses to discussions lacked detail in addressing the solicitation requirements. Legal Memorandum at 5. Specifically, the agency asserts that the agency's determination was reasonable since the protester failed to address specific video and audio encoding requirements and made "absolutely no mention" of a response regarding archiving. *Id.* In its comments, the protester reiterates the areas of its original proposal that it believes satisfy the requirements. Comments at 14.

The evaluation of an offeror's or vendor's proposal or quotation is matter within the agency's discretion. SOURCECORP BPS Inc., B-406792, Aug. 24, 2012, 2012 CPD ¶ 250 at 3. A protester's disagreement with the agency's evaluation

⁷ The protester initially challenged the agency's evaluation of EMS's technical proposal asserting that EMS could not meet material requirements of the RFQ, such as the remote services requirement and various other functions. Protest (B-413001) at 11-14. The legal memorandum and contracting officer's (CO) statement fully responded to each argument raised by the protester. Legal Memorandum at 9; CO Statement at 20-28. Rather than addressing the agency's detailed response, the protester summarily claimed that the agency's evaluation was unreasonable, and raised new arguments challenging EMS's technical evaluation in its supplemental protest. Comments and Supplemental Protest (B-413001.3) at 9. Accordingly, we view as abandoned the protester's original challenges to EMS's technical evaluation. See Open Sys. Sci. of Virginia, Inc., B-410572, B-410572.2, Jan. 14, 2015, 2015 CPD ¶ 37 at 10 n.5. To the extent the protester claims that the agency failed to address its supplemental challenges to the awardee's technical evaluation, we disagree as these grounds were subsequently withdrawn in the protester's supplemental comments. See Supp. Comments at 2 n.2. Accordingly, we do not view any viable challenges to remain regarding the technical evaluation of the awardee.

⁸ In filing and pursuing this protest, V3 has raised arguments in addition to, or variations of, those discussed below. We have considered all of V3's arguments and find no basis to sustain its protest.

judgments, without more, does not establish that the evaluation was unreasonable. ThermoAir Spray Booths, B-411358, July 2, 2015, 2015 CPD ¶ 195 at 4. In reviewing protests challenging an agency's evaluation, our Office does not reevaluate quotations; rather, we review the agency's evaluation to determine whether it was reasonable and consistent with the solicitation, as well as applicable statutes and regulations. Ascella Techs. Inc., B-412679, B-412679.2, Apr. 27, 2016, 2016 CPD ¶ 123 at 3. A vendor is responsible for affirmatively demonstrating the merits of its quotation and risks the rejection of its quotation if it fails to do so. See Info. Ventures, Inc., B-407478.4, July 17, 2013, 2013 CPD ¶ 176 at 5-6.

Based on our review of the record, we find the agency's determinations unobjectionable. The RFQ required a vendor to provide a detailed description of its technical approach, including how it would address various PWS requirements. RFQ at 95, 98. The record shows that the agency found the protester's original responses for various PWS sections lacked detail, and despite requesting additional details during discussion, V3's responses failed to adequately address the agency's concerns. Specifically, and as noted by the agency, the record shows that V3's original quotation and its responses to discussions did not address archiving, an area that was specifically required by the solicitation and brought to V3's attention during discussions. V3 provides no rebuttal regarding this matter. Further, V3's continued reliance on the responses in its original quotation neither shows how it provided the details necessary to address the requirements, nor how the agency's evaluation was improper. Accordingly, the protester's challenge to the agency's evaluation amounts to no more than disagreement with the agency's judgment, and we find no merit to this protest.⁹

Evaluation of EMS's Past Performance

Next, the protester contends that the agency's evaluation of the awardee's past performance failed to comply with the solicitation requirement to evaluate the quality, relevancy, and recency of EMS's past performance and maintains that reviewing scores on CPARs or PPIRS did not meet those requirements. Protest at 21; Comments and Supplemental Protest (B-413001.3) at 20.

Where a protester challenges an agency's past performance evaluation, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's stated requirements. Deloitte & Touche LLP, B-406563, B-406563.2, June 27, 2012, 2012 CPD ¶ 198 at 6. A protester's disagreement with the agency's

⁹ To the extent the protester suggests that its response to discussions did not include an extensive discussion because of the page limits set by the agency, as stated above, the vendor bears the risk for submitting an inadequately written quotation.

judgment, without more, is insufficient to establish that an evaluation was improper. SoniTech NDT, B-407115, Nov. 2, 2012, 2012 CPD ¶ 311 at 5.

Here, the RFQ stated that the government would evaluate risk based on the, quality, relevancy, and recency of three prior contracts, and a review of PPIRS. RFQ at 96, 99. The record shows that the agency found EMS's past performance to be low risk based on EMS's submission of three recent and relevant contracts, the agency's receipt of favorable responses to EMS's past performance questionnaire, and the lack of adverse past performance information in PPIRS. On this record, we fail to see how the agency's evaluation was improper.

Best-Value Determination

Finally, V3 raises various challenges to the agency's best-value determination based on assertions that the evaluation was proposals was improper. As discussed above, we have concluded that the agency's evaluation was reasonable and consistent with the evaluation criteria. Further, the SSA selected EMS for award because EMS's quotation received a technical rating that was superior to the technical rating of V3's, and the agency was willing to pay a price premium for EMS's technical superiority. Specifically, in making the best-value determination, the SSA referenced an evaluated strength in EMS's proposal, compared the demonstrated understanding of the two offerors, and referenced the evaluated weakness in V3's proposal. AR, Tab 20, SSDD, at 392. Finally, the agency specifically considered the relative importance of the evaluation factors in determining that EMS presented a better value to the government. On this record, we have no basis to question this determination.¹⁰

The protest is denied.

Susan A. Poling
General Counsel

¹⁰ We find unavailing the protester's unsupported assertions that the best-value determination is flawed because, in evaluating past performance, the agency did not assess actual discriminators or differences. Comments at 19. Essentially, the protester argues that its low risk past performance rating should be viewed as even lower risk than EMS's based on receiving more "exceeds contractual requirements" responses on the past performance questionnaires. Id. at 17-19. This argument does not align with the plain language of the RFQ, which states that firms would receive a performance risk assessment based on the recency, relevancy, and quality of the firm's past performance.