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Decision

Matter of: SunGard Data Systems, Inc.

File: B-410025

Date: October 10, 2014

Todd R. Overman, Esq., and Bryan R. King, Esq., Bass, Berry & Sims, PLC, for the protester.

Cyrus E. Phillips, IV, Esq., Albo & Oblon, L.L.P., for Data Management Associates, the intervenor.

Dennis A. Adelson, Esq., David R. Koeppel, Esq., Department of Labor, for the agency.

Peter D. Verchinski, Esq., and Nora K. Adkins, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of the protester's transition approach is denied where the record shows that the agency reasonably downgraded this aspect of the proposal because the protester failed to submit sufficient detail.
2. Protest challenging the agency's evaluation of the awardee's proposal, which in effect alleges a latent ambiguity in the solicitation, is denied where the protester fails to demonstrate it was prejudiced by any ambiguity.
3. Protest asserting that the agency failed to conduct a security review of the awardee's software and hardware is denied where the protester fails to demonstrate it was prejudiced by the agency's actions.

DECISION

SunGard Data Systems, Inc., of Wayne, Pennsylvania, protests the award of a contract to Data Management Associates of Brevard, Inc. (DMA), of Malabar, Florida, under request for proposals (RFP) No. DOL142J12035, issued by the Department of Labor (DOL), Bureau of Labor Statistics (BLS), for mainframe computer services. SunGard, the incumbent contractor, challenges the agency's evaluation and award decision.

We deny the protest.

BACKGROUND

The RFP, issued on March 25, 2014, as a commercial item solicitation, sought mainframe computer services in support of administrative, statistical, developmental, and production applications for the BLS.¹ The solicitation contemplated the award of a time-and-materials contract for a base year and four option years. The RFP informed offerors that award would be made on a best-value basis considering the following evaluation factors (listed in descending order of importance): technical capability; experience/past performance; and price. RFP at E-4. The technical capability factor consisted of four subfactors (listed in descending order of importance): technical approach; transition approach; management approach; and key personnel. The experience/past performance factor consisted of two subfactors (listed in descending order): experience and past performance.

The solicitation established that proposals were to respond to all requirements of the RFP. RFP at E-5. The solicitation stated that the agency would evaluate the technical capability factor to ensure the requirements outlined in the PWS could be met. As relevant here, the PWS stated that offerors were required to provide software that included “the current release of IBM z/OS.”² RFP at C-8. The PWS also stated that, before the agency’s final selection of the awardee, the firm’s proposed software/hardware solution must undergo a “security review” as part of the agency’s approval process before being installed on a production network. RFP at C-4. With regard to the transition approach evaluation subfactor, the RFP stated that an offeror’s narrative should describe its transition approach, including the risks associated with transition and a description of the specific tasks associated with phasing in the new contract. RFP at E-5.

The agency received two proposals in response to the solicitation from DMA and SunGard, which were evaluated as follows:³

¹ These services, which were previously procured and are currently being performed by SunGard as part of a larger DOL contract for IT services, are being procured here under a separate contract in order to address specific requirements of BLS. RFP, Performance Work Statement (PWS), at C-1.

² The z/OS is IBM’s z-series operating system for mainframe computers.

³ Proposals were rated under the technical capability factor as outstanding, good, acceptable, or unacceptable. Past performance received ratings of significant, satisfactory, unknown, or no confidence. RFP at E-8.

		DMA	SunGard
Technical Capability		Outstanding	Good
	Technical Approach	Outstanding	Good
	Transition Approach	Outstanding	Acceptable
	Management Approach	Outstanding	Outstanding
	Key Personnel	Outstanding	Outstanding
Past Performance		Significant Confidence	Significant Confidence
	Experience	Significant Confidence	Significant Confidence
	Past Performance	Significant Confidence	Significant Confidence
Evaluated Price		\$6,044,262	\$11,151,364

Agency Report (AR), Tab 10, Source Selection Decision Document, at 12, 14.

The contracting officer, who was the source selection authority, determined that DMA’s higher-rated, lower-priced proposal offered the best value to the government. Id. at 14-15. The agency made award to DMA, and this protest followed.

DISCUSSION

SunGard raises several challenges to the agency’s evaluation and award decision. Specifically, the protester asserts that the agency improperly evaluated its proposal under the transition approach subfactor; contends that the agency unreasonably concluded that the awardee’s proposal met the minimum requirements of the solicitation; and argues that the agency failed to comply with the solicitation requirement to conduct a security review of the awardee’s technical solution. Based upon our review of the record, we find no basis to sustain the protest.⁴

⁴ SunGard’s protest also alleged that DMA’s mainframe services fail to meet the RFP’s requirements; DMA’s price is unrealistically low; the agency improperly evaluated DMA’s price; and the agency failed to properly evaluate DMA’s past performance. Protest at 1. During the course of the protest, our Office concluded that these four issues were untimely filed and they were dismissed. 4 C.F.R. § 21.2(a)(2) (2014).

We note at the outset that, in reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate the proposals; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. The Kenjya Group, Inc.; Academy Solutions Group, LLC, B-406314, B-406314.2, Apr. 11, 2012, 2012 CPD ¶ 141 at 4. A protester's mere disagreement with the agency's conclusions does not render the evaluation unreasonable. The Eloret Corp., B-402696, B-402696.2, July 16, 2010, 2010 CPD ¶ 182 at 12.

SunGard's Transition Approach

SunGard challenges its "acceptable" rating under the transition approach evaluation subfactor of the technical capability factor. SunGard asserts that, as the incumbent contractor, the firm did not need a transition plan, and it was unreasonable for the agency to conclude that the firm had only a "minimal understanding" of the requirements. Protest at 10.

When an RFP asks firms to provide a discussion of their approach, schedule, transition plan, or the like, the agency evaluation may reasonably consider the level of detail provided in the requested discussion. TtEC-Tesoro, JV, B-405313, B-405313.3, Oct. 07, 2011, 2012 CPD ¶ 2 at 8. We have repeatedly held, where a firm merely indicates that it will meet a particular requirement, thereby discussing only the end results, but provides little or no detail about how it plans to meet or exceed the requirement, the agency may reasonably downgrade the proposal. Leader Commc'ns Inc., B-298734, B-298734.2, Dec. 7, 2006, 2006 CPD ¶ 192 at 6. Ultimately, an agency's evaluation is dependent upon information furnished in a proposal, and it is the firm's burden to submit an adequately written proposal for the agency to evaluate. Id. at 7.

The solicitation required an offeror to demonstrate in its transition approach an in-depth understanding of the nature of the risks associated with the transition process and describe the specific tasks associated with phasing in the new contract. RFP at E-6. The RFP required an offeror's transition approach narrative to include details on plans and approaches for implementing the transition tasks and a detailed timeline identifying timeframes for key deliverables and milestones that must be met during the transition process. Id.

In response to the solicitation's transition approach requirement, SunGard's proposal provided, "[a]s the current Contractor, no Transition Plan is anticipated." AR, Tab 6, SunGard Proposal, at E-7. The agency's evaluation of SunGard transition approach reached the following conclusion:

As for the transition approach, while the offeror is the incumbent and generally would not need a robust transition plan, the offeror did not

address any of the criteria requested in the solicitation. Also, this solicitation has significantly reduced and simplified requirements from the current mainframe services contract, but the offeror did not address how they would incorporate these changes as they transition onto the new contract.

AR, Tab 8, Technical Evaluation, at 3.

Since SunGard's proposal did not demonstrate its understanding or provide details of its transition approach, and instead, simply stated that it need not propose a transition plan because it was the incumbent, we think the agency reasonably rated SunGard's transition approach as "acceptable," rather than assessing it some higher rating.

Operating System Requirement

SunGard challenges the agency's conclusion that the awardee's proposed operating system complied with the terms of the solicitation. SunGard maintains that the RFP requirement to provide "the current release" of IBM's operating system required offerors to propose the most current IBM z/OS. SunGard argues that DMA's proposed operating system (version 1.13) failed to comply with the terms of the RFP because the most current release of IBM's z/OS is version 2.1.⁵ Protester's Comments at 6.

The agency responds that the RFP did not require offerors to propose the most current IBM operating system, but only required offerors to provide an operating system that is currently supported by IBM. AR at 10. The agency asserts that versions 1.12, 1.13, and 2.1 of IBM's z/OS are all currently available from and maintained by IBM. Id. at 10-11. In any case, the agency notes that SunGard also proposed to perform the contract using version 1.13 of the operating system, and thus SunGard was not prejudiced by the agency's actions. We agree.

The portion of the PWS addressing software informed offerors that "BLS is current with most of its software." RFP at C-7. Under this same section, for core IBM software, the solicitation provided "[t]he Contractor shall provide the current release of IBM z/OS with the following features[.]" Id. at C-8. SunGard asserts that "the current release" should be interpreted to mean the latest release--version 2.1. The

⁵ The parties do not dispute that version 2.1 is the latest release of the IBM z/OS. The parties also do not dispute that DMA proposed version 1.13 of IBM's z/OS. Chair of the Technical Evaluation Panel (TEP) Declaration at 2; Protester's Comments at 6. As discussed in greater detail later in the decision, it appears that SunGard also proposed version 1.13 of IBM's z/OS.

agency states that it interpreted this language to mean the current supported releases--versions 1.12, 1.13, and 2.1. AR at 10-11.

SunGard's assertion that DMA failed to meet the solicitation's IBM z/OS requirement is, in effect, a challenge the terms of the solicitation--alleging a latent ambiguity. In this regard, an ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. Colt Defense, LLC, B-406696, July 24, 2012, 2012 CPD ¶ 302 at 8. A patent ambiguity exists where the solicitation contains an obvious, gross, or glaring error, while a latent ambiguity is more subtle. Id. Where there is a latent ambiguity, both parties' interpretation of the provision may be reasonable, and the appropriate course of action is to clarify the requirement and afford offerors an opportunity to submit proposals based on the clarified requirement. Id. We will not sustain a post-award protest against an ambiguous solicitation provision where there is no evidence that any offeror was prejudiced by the ambiguity. See Plum Run, B-256869, July 21, 1994, 94-2 CPD ¶ 38 at 6-7; Rexon Tech. Corp.; Bulova Technologies, Inc., B-243446.2; B-243446.3, Sept. 20, 1991, 91-2 CPD ¶ 262 at 5.

Here, we find that SunGard has not established that it was in any way prejudiced by the agency's interpretation of the solicitation's requirement because it offered the same version as the awardee, IBM's z/OS version 1.13. In this regard, the record shows that SunGard--the incumbent--offered to "continue to provide the current release of IBM z/OS." AR, Tab 6, SunGard Technical Proposal, at C-15. It is undisputed that the version currently used by SunGard at BLS is version 1.13. Chair of the TEP Declaration at 2. Thus, it is clear that at time of proposal submission SunGard believed that version 1.13--the version it proposed to continue to provide BLS--would satisfy the solicitation's requirement for "the current version." Because the record fails to establish that SunGard interpreted the solicitation provisions as it now claims was required (i.e. as requiring the most current (2.1) version) SunGard has failed to establish that it suffered any prejudice associated with the latent ambiguity it now alleges.⁶ Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it

⁶ Alternatively, SunGard argues that if our Office finds that both firms offered version 1.13, then the agency should conclude that neither firm offered an operating system that was compliant with the terms of the RFP, and the agency should amend the solicitation to reflect its actual needs, or be required to enter into discussions to receive the latest version of the operating system. Protester's Comments at 6. We disagree. Here, the record shows that the agency, the protester, and the awardee, all understood that version 1.13 would satisfy the agency's RFP's requirement to provide "the current release" of the IBM z/OS. Given that the term was seemingly unambiguous at the time of proposal submission, we decline to require the agency to reopen the competition.

would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest. Lockheed Martin Integrated Sys., Inc., B-408134.3, B-408134.5, July 3, 2013, 2013 CPD ¶ 169 at 8; see Statistica, Inc. v. Christopher, 102 F.3d 1577 (Fed. Cir. 1996). Accordingly, we find no basis to sustain the protest.

Security Review Requirement

Next, the protester asserts that the award was improper because the agency failed to conduct a security review of the awardee's proposed technical solution. In this regard, the protester points to a solicitation requirement that the offeror's hardware and software must, prior to being selected as the awardee, undergo such a review. Specifically, the solicitation stated that

before final selection of a vendor, the [offeror] must submit the proposed hardware/software solution to the BLS, via the [contracting officer representative], for BLS Product Authorization (PAS) approval and the software/hardware must undergo a security review as part of this approval process before being installed on a production network.

RFP at C-4.

In response, the agency concedes that it did not perform the review but argues that the review was not required here because the contractor is not installing equipment onto DOL's IT network. Agency Legal Memorandum at 5-6. In any event, the agency contends that it waived the requirement for all offerors competing in the solicitation because the review requirement was mistakenly included in the solicitation. Id.

We need not determine whether a security review was required here because, even if we agreed with SunGard that such a review was required, SunGard suffered no prejudice as a result of DOL's decision to waive this requirement. Unfair competitive prejudice from a waiver or relaxation of the terms and conditions of the RFP for one offeror exists only where the protester would have been able to alter its proposal to its competitive advantage, were it given a similar opportunity. RGII Tech., Inc.-- Recon. and Protest, B-278352.2, B-278352.3, Apr. 14, 1998, 98-1 CPD ¶ 130 at 8.

Here, there is no basis for finding that had SunGard known of the waiver it would have changed its proposal to improve its competitive position. DOL maintains that it waived the requirement for all offerors, including SunGard, and SunGard does not argue, and there is no reason to believe, that it could have altered its proposal to its competitive advantage if it had known of the waiver. SunGard does not explain how it would have changed its proposal or what it would have done differently had it been aware that the agency would not require the successful offeror to undergo a security review prior to award of the contract. To the extent SunGard argued, in its initial

protest, that, had offerors known the security review requirement would be waived, “it could have resulted in significant changes to proposals, including offered prices,” such general statements do not satisfy the protester’s obligation to show a reasonable possibility that it was competitively prejudiced. General Dynamics C4 Sys., Inc., B-406965, B-406965.2, Oct. 9, 2012, 2012 CPD ¶ 285 at 10. In this regard, the protester did not provide an explanation as to what these “significant changes” would have been, and did not provide any explanation as to how the waived requirement would have affected its price. Accordingly, we find no basis to sustain the protest.⁷

The protest is denied.

Susan A. Poling
General Counsel

⁷ To the extent that the protester also argues that it was prejudiced because the firm would have been the only remaining offeror had the awardee failed the review, this is insufficient to show prejudice. Optex Sys., Inc., B-408591, Oct. 30, 2013, 2013 CPD ¶ 244 at 9 (“a protester cannot demonstrate prejudice by showing only that the awardee would have been unsuccessful had the agency not waived the requirement; rather, the pertinent question is whether the protester would have submitted a different proposal, had it known that the requirement would be waived”).