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Decision

Matter of: NTT DATA Services Federal Government, Inc.

File: B-416123; B-416123.2; B-416123.3

Date: June 20, 2018

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DIGEST

1. Protest challenging agency's evaluation of proposals is dismissed where record shows that protester was not prejudiced by any evaluation errors allegedly committed in the evaluation of its quotation, and protester is not an interested party to challenge the evaluation of the awardee's quotation.
 2. Protest alleging that agency engaged in unequal discussions is denied where record shows that, in conducting a task order acquisition under Federal Acquisition Regulation part 16, agency effectively established a competitive range that excluded the protester before conducting further negotiations with remaining concerns.
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DECISION

NTT DATA Services Federal Government, Inc. (DSFG),¹ of McLean, Virginia, protests the issuance of a task order to International Business Machines Corporation (IBM), of Bethesda, Maryland, under request for quotations (RFQ) No. ED-CIO-17-Q-0016,

¹ Shortly before submitting its quotation for this acquisition, the protester changed its name from Dell Services Federal Government, Inc. to NTT Data Services Federal Government, Inc. Throughout the record, the protester is referred to as "DSFG" or "NDSFG." For ease of reference, we refer to the protester as DSFG in this decision.

issued by the Department of Education for information technology (IT) support services. DSFG argues that the agency misvaluated quotations and made an unreasonable source selection decision, and also improperly engaged in discussions with some--but not all--of the competitors.

We dismiss the protest in part, and deny it in part.

BACKGROUND

This solicitation is one of a suite of six solicitations the agency is using to meet its IT requirements for the foreseeable future. The agency's name for these acquisitions is the portfolio of integrated value oriented technologies (PIVOT) program. The RFQ here was issued to acquire IT hosting of applications, data, and IT systems services, and is referred to as the PIVOT H solicitation.² The RFQ was issued pursuant to a multiple-award, indefinite-delivery, indefinite-quantity (IDIQ) contract program administered by the National Institutes of Health Information Technology Acquisition and Assessment Center.³ The RFQ contemplates the issuance of a task order for a 6-month base period and four option years that includes both fixed-price-with-performance-based price-adjustments elements, and time-and-materials elements.

For evaluation and award purposes, the RFQ advised firms that the agency would make its selection on a best-value tradeoff basis, considering price and several non-price evaluation factors. The evaluation factors, in descending order of importance, were: technical approach, past performance, and price and subcontracting goals. RFQ at 71. The RFQ identified several subfactors that also were ranked in descending order of importance as follows: technical solution, transition execution, management approach, personnel expertise, contractor past performance, subcontracting plan, and price.⁴ Id.

² The other solicitations are the PIVOT I solicitation to acquire integrator and end user experience services; the PIVOT M solicitation to acquire mobile services; the PIVOT N solicitation to acquire IT network services; the PIVOT O solicitation to acquire IT oversight function services; and the PIVOT P solicitation to acquire printing services.

³ The record shows that the value of the currently-awarded task order is approximately \$75.6 million. Agency Report (AR) exh. 41, Award Summary Memorandum, at 13. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of task or delivery orders under civilian agency multiple-award IDIQ contracts. 41 U.S.C. § 4106(f)(2).

⁴ The subfactors were spread among the factors, so that the technical approach factor included four subfactors, the past performance factor had only one subfactor, and the price and subcontracting plan factor had two subfactors. RFQ at 71.

Finally, the RFQ included a number of criteria under each of the subfactors that were largely equal in importance.⁵

In response to the RFQ, the agency received four quotations. The agency evaluated the quotations, engaged in discussions, and ultimately assigned the following ratings:⁶

| Factors | Subfactors/Criteria | IBM | DSFG | Offeror A | Offeror B |
|--------------------|--|--------------|--------------|--------------|--------------|
| Technical Approach | Technical Solution | | | | |
| | Overall Tech. Solution | Superior | Marginal | Satisfactory | Satisfactory |
| | Risk | Low | Moderate | Low | Low |
| | Provisioning of Hosting Services | Satisfactory | Marginal | Satisfactory | Satisfactory |
| | Risk | Low | Moderate | Low | Low |
| | Collaboration of Hosting Services Delivery Optimization | Satisfactory | Satisfactory | Satisfactory | Satisfactory |
| | Risk | Low | Low | Low | Low |
| | Hosting and Supporting Government-Furnished Physical Servers | Satisfactory | Satisfactory | Satisfactory | Satisfactory |
| | Risk | Low | Low | Low | Low |
| | Enterprise Content Management Solution | Satisfactory | Satisfactory | Satisfactory | Satisfactory |

⁵ The RFQ states that all of the criteria under each subfactor are equal in importance “ . . . with the *exception* of SUB-FACTOR 6 whereby Criteria B.6.a is the most important and all other Criteria (B.6.b, B.6.c, B.6.d, and B.6.e) are of equal importance.” RFQ at 71 (emphasis in original). However, subfactor 6, subcontracting plan, does not include separate criteria designated as B.6.a through B.6.e. We presume this is a typographical error, and that the intended reference was to the criteria under subfactor 5, contractor past performance, which lists five criteria, B.5.a through B.5.e. This apparent typographical error has no bearing on our decision or the outcome of the acquisition.

⁶ The RFQ stated that the agency would assign adjectival ratings of superior, satisfactory, marginal or unsatisfactory; and risk ratings of low, moderate or high under the technical approach factor. RFQ at 75-77. The RFQ advised that the agency would assign adjectival ratings of superior, satisfactory, unsatisfactory or neutral under the past performance factor. RFQ at 78-79. Finally, the RFQ advised that the agency would determine whether each firm’s subcontracting plan would comply with the subcontracting plan outlined in the firm’s underlying IDIQ contract. RFQ at 79.

| Factors | Subfactors/Criteria | IBM | DSFG | Offeror A | Offeror B |
|----------------------------|---|--------------|----------------|--------------|--------------|
| Technical Approach (con't) | Risk | Low | Low | Low | Low |
| | Transition Execution | | | | |
| | Transition-in Approach | Satisfactory | Unsatisfactory | Satisfactory | Satisfactory |
| | Risk | Low | High | Low | Low |
| | Management Approach | | | | |
| | Overall Mgmt. Approach | Satisfactory | Satisfactory | Satisfactory | Satisfactory |
| | Personnel Retention/Recruiting | Satisfactory | Satisfactory | Satisfactory | Satisfactory |
| | Personnel Expertise | | | | |
| | Key Personnel Expertise | Satisfactory | Satisfactory | Satisfactory | Satisfactory |
| | Position Expertise | Satisfactory | Satisfactory | Satisfactory | Satisfactory |
| Past Performance | Contractor Past Performance | | | | |
| | Technical (Quality of Product or Service) | Superior | Satisfactory | Superior | Superior |
| | Schedule/Timeliness | Superior | Satisfactory | Superior | Superior |
| | Mgmt./Business Relations | Superior | Satisfactory | Satisfactory | Superior |
| | Regulatory Compliance | Superior | Satisfactory | Superior | Superior |
| | Small Business Participation | Satisfactory | Superior | Superior | Superior |
| Price/Sub-contracting Goal | Subcontracting Goal | Complies | Complies | Complies | Complies |
| | Total Evaluated Price | \$75,694,539 | \$99,872,099 | \$64,920,216 | \$99,757,117 |

AR, exh. 41, Award Summary, at 13. On the basis of these evaluation results, the agency issued a task order to IBM, finding that its quotation represented the best value to the government. After being advised of the agency's selection decision and receiving a debriefing, DSFG filed the instant protest.

PROTEST

Evaluation of Quotations

DSFG argues that the agency misevaluated its quotation, as well as the quotation of IBM. According to the protester, the agency improperly assigned several weaknesses and deficiencies to its quotation that resulted in it receiving marginal or unacceptable ratings under the technical approach factor. DSFG maintains that, had it not been improperly assigned these weaknesses and deficiencies, its quotation would have merited ratings of at least satisfactory under each of the technical evaluation subfactors. As a corollary, DSFG also maintains that the agency misevaluated the IBM quotation and should have identified several concerns that, according to DSFG, would have rendered IBM's quotation unacceptable and ineligible for award.

In reviewing an agency's evaluation of proposals or quotations, our Office does not perform an independent evaluation; rather, we review the agency's evaluation to ensure that it is reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. n-Link/LSG Joint Venture, B-411352, B-411352.2, July 1, 2015, 2015 CPD ¶ 194 at 2. A protester's disagreement with an agency's evaluation, without more, is inadequate to demonstrate that the agency's evaluation is unreasonable. Id. at 9. Moreover, where a concern other than the protester would properly be in line for award should a protest allegation have merit, the protester is not an interested party to maintain that aspect of its protest. Joint Management & Technology Services, B-294229, B-294229.2, Sept. 22, 2004, 2004 CPD ¶ 208 at 9.

As the evaluation results detailed above demonstrate, DSFG's quotation was ranked the lowest technically among all of the competitors, and also was the highest priced. Even if, as the protester maintains, the agency erroneously assigned all of the weaknesses and deficiencies identified in the protester's quotation--with the result that the DSFG quotation would have received satisfactory ratings under all of the technical evaluation subfactors--its quotation would still be last in line for award behind the remaining three quotations.⁷

⁷ DSFG argues in its comments that the agency disparately evaluated all of the quotations in connection with the firms' ability to obtain an authority to operate (ATO) certificate from the agency. As to IBM, the record shows that the agency assigned its quotation a strength under the transition-in subfactor for its approach to obtaining an ATO. DSFG argues that the agency erroneously assigned its quotation a deficiency under that subfactor, and instead should have assigned it the same strength assigned to the IBM quotation under the transition-in subfactor. Even if DSFG were correct, however, the record shows that its quotation would only have merited a satisfactory rating under the transition-in subfactor. (The record shows that the agency assigned the IBM quotation a satisfactory rating after giving consideration to the strength assigned.) It follows that, even if, as DSFG maintains, it also should have been

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All three of the other concerns were rated technically superior to DSFG and also offered lower prices. IBM's quotation was rated technically superior under the technical approach and past performance factors compared to the DSFG quotation, and the other two quotations were rated superior to the DSFG proposal under the past performance factor.⁸ Accordingly, we conclude that, even if DSFG were correct in all of its allegations relating to the agency's evaluation of its quotation, it was not prejudiced by the agency's actions because it would not be in line for award. We therefore dismiss DSFG's challenges to the agency's evaluation of its quotation.

Similarly, we dismiss all of DSFG's challenges to the agency's evaluation of the IBM quotation. As noted, the other two concerns' quotations were rated technically superior to the DSFG quotation, and also offered lower prices. Thus, even if DSFG were correct that the agency miscalculated IBM and should have eliminated its quotation from the competition, one of the other two concerns--not DSFG--would properly be in line for award. Accordingly, we conclude that DSFG is not an interested party to maintain this aspect of its protest, and we dismiss these contentions.

Unequal Discussions

DSFG argues that the agency erred because it engaged in additional rounds of discussions with IBM and Offeror A, but not with it. The protester maintains that this was improper because the agency never made a competitive range determination.

We find no merit to this aspect of DSFG's protest because the record shows that the agency effectively established a competitive range that did not include DSFG before engaging in the additional discussions. As noted, this is a task order competition being conducted using the firms' multiple-award IDIQ contracts. The RFQ specifically advised firms as follows:

Vendors are hereby instructed that, regardless of any language that may be used in this solicitation, the Department is NOT conducting this procurement under FAR [Federal Acquisition Regulation] Part 15. This procurement is being conducted under the "fair opportunity" requirements of FAR subpart 16.505.

(...continued)

assigned the same strength under the transition-in subfactor, its quotation would not have merited a rating higher than satisfactory.

As for any challenge raised by DSFG to the evaluation of the other two quotations, its arguments amount to mere speculation made without any evidence.

⁸ DSFG does not challenge any aspect of the agency's evaluation of past performance.

RFQ at 57. FAR § 16.505(b) states, among other things, that the requirements of FAR subpart 15.3 are inapplicable to task order competitions such as the instant acquisition.

Although not applicable here, FAR § 15.306: (1) instructs agencies to establish a competitive range comprised of the most highly-rated proposals (unless the range is further reduced for purposes of efficiency); (2) requires agencies to provide notice to firms eliminated from the competitive range; and (3) requires agencies to afford excluded offerors an opportunity to obtain a debriefing.

Here, the record shows that the agency effectively established a competitive range comprised of the firms the agency determined had a reasonable chance for award:

After review of the revised solution[s] submitted on 12/15/2017, the CO [contracting officer] noted that further negotiations with [Offeror B] and NDSFG were not in the interest of the Department. Continued negotiations with NDSFG would have not been beneficial or likely have resulted in an award given the significant technical issues that needed to be addressed as well as the significant price difference. [Offeror B]'s solution did not have the technical issues NDSFG's proposal did, but (similar to NDSFG) [Offeror B]'s solution price was significantly higher than [Offeror A] and IBM. After evaluating the revised solutions, NDSFG's and [Offeror B]'s total evaluated pricing were both approximately \$99 million while IBM's and [Offeror A's] respective pricing at that time were approximately \$78 million and \$65 million.

The Department encouraged all vendors to revisit their pricing after evaluating their initial proposal and requested that they apply further discounts. Therefore, there was no reason to believe that, based on NDSFG's and [Offeror B]'s total evaluated pricing, that either vendor could have reasonably provided more competitive pricing as they would have had to significantly reduce their proposals by approximately \$21 million (21%) to be competitive with IBM and \$35 million (35%) to be competitive with [Offeror A]. It should be noted that the [subsequent] negotiations with IBM and [Offeror A] did not address the technical solutions and only focused on price and past performance.

Given these facts, and that all interested parties were afforded fair opportunity twice (initial solution submission and first round of negotiations), the Department only entered into [further] negotiations with IBM and [Offeror A].

AR, exh. 41, Award Summary, at 6. In light of the evaluation results outlined above, we conclude that the agency acted reasonably in essentially eliminating DSFG from the competitive range after the first round of discussions.⁹

The protester is correct that the agency did not perform the other two elements required under FAR § 15.306 in connection with the establishment of a competitive range. Specifically, the agency did not provide DSFG with contemporaneous notice of its elimination from further consideration, or afford the firm an opportunity to request a debriefing at that time. However, since those procedural requirements are not found in FAR § 16.505, there was no need for the agency to have provided DSFG such notice and opportunity, and DSFG has not alleged or demonstrated that the agency's failure in this regard caused it competitive prejudice. We therefore deny this aspect of DSFG's protest.¹⁰

The protest is dismissed in part and denied in part.

Thomas H. Armstrong
General Counsel

⁹ The record shows that there was only one change to the non-price evaluation findings initially identified by the agency and those ultimately relied on in the source selection decision. Specifically, Offeror A initially had been assigned a rating of superior under the management and business relations criterion of the past performance factor/subfactor; that rating was changed to satisfactory in the agency's final source selection. AR, exh. 41, Award Summary at 5, 13.

¹⁰ DSFG suggests that the agency's rationale for eliminating it from the competitive range was not articulated at the time the competitive range was established, but instead was memorialized in the agency's source selection document prepared later. However, DSFG has not shown, and it is not evident, why this is problematic. DSFG appears to suggest that our Office should give less weight to the agency's findings because it characterizes them as "post hoc." However, there is no reason for our Office to give less weight to the agency's findings simply because they were memorialized at the time of the agency's selection decision, rather than at the time it eliminated the protester's quotation from further consideration. Cf. Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15 (GAO affords less weight to evidence or rationale prepared during the heat of the adversarial process).