



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: VAE, Inc.

File: B-416933; B-416933.2; B-416933.3

Date: January 11, 2019

Albert B. Krachman, Esq., Scott Arnold, Esq., Luke W. Meier, Esq., Brian S. Gocial, Esq., Michael J. Slattery, Esq., and Robyn N. Burrows, Esq., Blank Rome LLP, for the protester.

Michael D. McGill, Esq., Christine Reynolds, Esq., and Adilene Rosales, Esq., Hogan Lovells US LLP, for CSRA LLC, the intervenor.

Anthony E. Marrone, Esq., Department of Health and Human Services, for the agency.

Paula J. Haurilesko, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. The agency reasonably assessed a significant weakness to the protester's proposal where the issue was encompassed within the stated evaluation factors.
 2. The agency reasonably included in the competitive range proposals that presented superior technical approaches, where the agency concluded that the weaknesses assessed were minor in nature.
-

DECISION

VAE, Inc., of Springfield, Virginia, protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. 18-233-SOL-00004, issued by the Department of Health and Human Services (HHS) for software defined networking services. VAE contends that HHS misevaluated its proposal and challenges the evaluation of the other offerors' proposals, including the proposals of CSRA, LLC, of Falls Church, Virginia, and [DELETED], of Fairfax, Virginia--the two offerors included in the competitive range.

We deny the protest.

BACKGROUND

HHS issued the RFP on March 20, 2018, on behalf of the Department of Defense Joint Service Provider, for software defined networking services. Agency Report (AR), Tab 3.36, RFP (Conformed) at 1; Contracting Officer's Statement (COS) at 1. The RFP sought a fully mission-capable (*i.e.*, turnkey solution), modernized, unclassified network that would include service processes, tools, and workflow integration across the entire complement of the Pentagon's 80,000 unclassified ports. RFP at 6. The RFP contemplated a hybrid contract with fixed-price contract line item numbers (CLIN) for discovery and design, build and test, and implementation activities; and time-and-materials CLINs for transition activities and annual system maintenance. Id. at 6-7.

The RFP stated that award would be made to the responsible offeror whose proposal offered the best value to the government, considering (in descending order of importance): technical, past performance, and cost or price. Id. at 71. The technical factor consisted of four subfactors: technical capabilities and management approach (technical capabilities); corporate experience and personnel qualifications (experience); facility clearance; and section 508 compliance.¹ Id. at 71-72. The technical capabilities and experience subfactors were of equal importance; the facility clearance and section 508 compliance subfactors were to be evaluated as either acceptable or unacceptable. Id. at 71.

For the technical capabilities subfactor, offerors were to provide an approach to meeting the statement of objectives through the submission of a contractor performance work statement. Id. at 63. With respect to this subfactor, the government was to evaluate the offeror's approach to conformance with contract requirements, specifications, and standards of good workmanship, and the contractor's performance work statement. Id. at 71. Under the experience factor, among other things, offerors were to identify key personnel and submit resumes and commitment letters for the key personnel. Id. at 66. For this subfactor, the government would evaluate the offeror's capability to accomplish the proposed work, including but not limited to an evaluation of the corporation's overall approach for managing the contract, contracting resources, and deliverables that are outlined in the statement of objectives and the contractor's performance work statement. Id. at 71.

With respect to price, the RFP stated that the fixed-price and time-and-materials CLINs would be evaluated for reasonableness. Id. at 74. In addition, the RFP stated that the government would consider whether the proposed labor mix, level of effort, and materials were consistent with the technical proposal. Id.

¹ Section 508 of the Rehabilitation Act of 1973, as amended, generally requires that agencies' electronic and information technology be accessible to people with disabilities. See 29 U.S.C. § 794d.

HHS received seven proposals in response to the RFP. AR, Tab 7.1, Technical Evaluation Summary, at 1. After the technical evaluation panel (TEP) evaluated proposals, offerors received the following adjectival ratings for each subfactor under the technical capabilities factor:²

	Technical Capabilities	Experience	Facilities Clearance	Section 508 Compliance
Offeror 1	Marginal	Acceptable	Acceptable	Acceptable
[DELETED]	Exceptional	Acceptable	Acceptable	Acceptable
Offeror 3	Marginal	Marginal	Acceptable	Acceptable
Offeror 4	Marginal	Acceptable	Acceptable	Acceptable
Offeror 5	Marginal	Marginal	Acceptable	Acceptable
CSRA	Exceptional	Acceptable	Acceptable	Acceptable
VAE	Marginal	Marginal	Acceptable	Acceptable

AR, Tab 7.1, Technical Evaluation Summary, at 2. All offerors, except for Offeror 5 received a low performance risk rating under the past performance factor.³ Id.

As relevant here, the TEP assigned VAE’s proposal a marginal rating under both the technical capabilities and experience subfactors. AR, Tab 7.2, VAE Technical Evaluation, at 9, 11. Under the technical capabilities subfactor, the TEP identified two significant strengths, three strengths, four weaknesses, and one significant weakness. Id. at 8-9. The TEP assessed a significant weakness to VAE’s proposal for failing to

² The RFP provided for the following adjectival ratings to be assigned to proposals under the technical factor: superior, exceptional, acceptable, marginal, and unacceptable. RFP at 72. As relevant here, an exceptional rating meant that the proposal met the requirements outlined in the solicitation, had at least one significant strength that would benefit the government, did not have any significant weaknesses or deficiencies, and demonstrated a high likelihood of fully successful contract performance. Id. An acceptable rating meant that the proposal met the requirements outlined in the solicitation, had no significant weaknesses or deficiencies, and demonstrated minimal risk and likelihood of fully successful contract performance. Id. A marginal rating meant that the proposal marginally met the requirements outlined in the solicitation, had at least one significant weakness, would require revision in order to meet the requirements outlined in the solicitation, and demonstrated moderate risk of unsuccessful contract performance. Id.

³ The RFP provided for the following risk ratings to be assigned to proposals under the past performance factor: very low performance risk; low performance risk; moderate performance risk; high performance risk; and unknown performance risk. RFP at 73-74.

provide a plan for obtaining an authority to operate (ATO) certification. Id. at 9. Under the experience subfactor, the TEP identified one strength, one weakness, and one significant weakness. Id. at 11. The TEP assessed a significant weakness to VAE's proposal for failing to provide the required letters of commitment from its proposed key personnel. Id.

With respect to CSRA's proposal, the TEP assigned an exceptional rating under the technical capabilities subfactor. AR, Tab 7.3, CSRA Technical Evaluation, at 9. The TEP assessed five significant strengths, six strengths, five weaknesses, and no significant weaknesses or deficiencies to CSRA's proposal. Id. at 8-9. As relevant here, the TEP assessed one weakness for CSRA's proposal for stating that the agency would fund cabling infrastructure changes as required. Id. at 9. The TEP concluded that the statement indicated that CSRA's solution was not truly turnkey and would introduce risk to the government of incurring additional time and increased costs. Id. Under the experience subfactor, the TEP assigned an acceptable rating, and assessed two weaknesses and no significant strengths, strengths, significant weaknesses, or deficiencies. Id. at 10-11.

With respect to [DELETED] proposal, the TEP assigned an exceptional rating under the technical capabilities subfactor. AR, Tab 7.4, [DELETED] Technical Evaluation, at 10. The TEP assessed three significant strengths, nine strengths, and three weaknesses to [DELETED] proposal under the subfactor. Id. at 8-10. As relevant here, the TEP assessed one weakness for [DELETED] proposal for containing a statement that the agency would be responsible for [DELETED]. Id. at 9. The TEP concluded that this statement indicated that [DELETED] solution was not truly turnkey and would introduce risk to the government of additional time and increased costs. Id. at 10. Under the experience factor, the TEP assigned an acceptable rating, and assessed two strengths, and no significant strengths, weaknesses, significant weaknesses, or deficiencies. Id. at 12.

The contracting officer reviewed the TEP's evaluation of proposals prior to determining the competitive range. See AR, Tab 9, Competitive Range Determination, at 3-33. The contracting officer determined that the competitive range would be comprised of CSRA and [DELETED] as offering the highest technically-rated proposals. Id. at 35. In this regard, the contracting officer concluded that, despite the performance risk of CSRA's low price of \$17,781,508, its superior technical approach presented one of the highest-rated proposals. Id. at 36. Similarly, with respect to [DELETED] proposal, the contracting officer acknowledged that [DELETED] price of \$28,801,199 was the second highest price, but concluded that its superior technical approach merited inclusion in the competitive range. Id. at 35. With respect to VAE's proposal, the contracting officer noted that VAE's proposal was the second lowest-ranked proposal from a technical standpoint. Id. at 36. The contracting officer acknowledged that VAE's proposed price (\$14,354,927) was the second lowest, but concluded that because of the significant weakness related to its failure to address its plan to obtain an ATO and because of the multiple weaknesses identified in VAE's proposal, VAE did not represent one of the

highest-rated offerors and therefore would not be included in the competitive range. Id. at 36-37.

After a debriefing, VAE protested to our Office.

DISCUSSION

VAE challenges the significant weaknesses and weaknesses the agency identified in its proposal, as well as the evaluation of other, higher-rated proposals. We have considered all of VAE's arguments, and conclude that none provide a basis for sustaining the protest, although we address only a selection of VAE's arguments below.

At the outset, we note that under Federal Acquisition Regulation (FAR) § 15.306(c)(1), the "contracting officer shall establish a competitive range comprised of all of the most highly rated proposals," based on "the ratings of each proposal against all evaluation criteria" unless the range is further reduced for purposes of efficiency. FAR § 15.306(c)(1). Where a protest challenges an agency's evaluation, and its decision to exclude a proposal from a competitive range, we first review the propriety of the agency's evaluation of the proposal, and then turn to the agency's competitive range determination. KSC BOSS Alliance, LLC, B-416334, B-416334.2, July 27, 2018, 2018 CPD ¶ 267 at 5. In so doing, we do not conduct a new evaluation or substitute our judgment for that of the agency, but examine the record to determine whether the agency's judgment was reasonable and in accord with the solicitation's evaluation criteria. Beretta USA Corp., B-406376.2, B-406376.3, July 12, 2013, 2013 CPD ¶ 186 at 5. An offeror's disagreement with the agency's evaluation, without more, is not sufficient to render the evaluation unreasonable. KSC BOSS Alliance, LLC, supra.

Challenges to the Evaluation of VAE's Proposal

Significant Weakness: Technical Capabilities Subfactor

VAE contends that HHS improperly assessed a significant weakness to its proposal under the technical capabilities subfactor for failing to address its plan for obtaining an ATO prior to the solution being operational. Protest at 17. VAE argues that the solicitation does not require offerors to provide a plan for obtaining an ATO, but instead, requires offerors to provide "supporting documentation" on various critical decision points, including an ATO. Id.; Comments & Supp. Protest at 30. VAE also argues that it clearly documented its process for [DELETED] framework, which is a prerequisite to obtaining an ATO from the government. Protest at 17-18; Protester Comments & Supp. Protest at 31. VAE contends that the framework set forth in its proposal demonstrates its ability to obtain an ATO. Id.

HHS explains that an ATO is a certification that is needed before the software-defined network can become operational. COS at 5. The agency states that in the statement of objectives, obtaining an ATO was identified as a critical decision point in the performance of the contract. Memorandum of Law (MOL) at 27. The agency also

states that the RFP required offerors to provide a contractor performance work statement and contractor work breakdown structure, which must provide sufficient details for the agency to be able to evaluate an offeror's methodology in terms of compliance, completeness, and clarity. Id. at 28 (citing to RFP at 65). HHS asserts that despite the RFP's instructions, VAE's proposal did not clearly identify how it would obtain an ATO. Id.

It is axiomatic that in a negotiated procurement an agency must evaluate proposals based on the solicitation's enumerated evaluation factors. FAR § 15.305(a); RTI Int'l, B-411268, June 26, 2015, 2015 CPD ¶ 206 at 12. Agencies, however, properly may evaluate proposals based on considerations not expressly stated in the solicitation where those considerations are reasonably and logically encompassed within the stated evaluation factor, and where there is a clear nexus between the stated and unstated criteria. Straughan Envtl., Inc., B-411650 et al., Sept. 18, 2015, 2015 CPD ¶ 287 at 8.

We conclude that the agency reasonably considered whether VAE had a plan to obtain an ATO. Here, the RFP advised offerors that, under the technical capabilities factor, the government would evaluate the offeror's approach to implementing a successful software-defined networking solution consistent with the statement of objectives. RFP at 71. The statement of objectives required offerors to provide a fully mission-capable solution. AR, Tab 3.34, Statement of Objectives, at 1. As noted by the agency, an ATO is required before the networking solution can become operational, and the statement of objectives identified the ATO as an element of a critical decision point. COS at 5; AR, Tab 3.34, Statement of Objectives, at 5. In view of the RFP language and the criticality of the ATO to successfully providing a mission-capable software-defined networking solution, we conclude that a plan for obtaining an ATO is reasonably encompassed by the technical capabilities factor. Therefore, we conclude that the agency reasonably assessed a significant weakness to VAE's proposal for not explaining its approach to obtaining an ATO.

Significant Weakness: Experience Subfactor

VAE also contends that HHS improperly assessed its proposal a significant weakness for failing to submit commitment letters for its key personnel. Protest at 20; Protester Comments & Supp. Protest at 41. VAE argues that it was not required to provide commitment letters because its proposed key personnel are current employees of VAE. Protest at 20. VAE asserts that its proposed key personnel have demonstrated their commitment through their tenure at VAE. Protester Comments & Supp. Protest at 42. HHS states that the RFP clearly required commitment letters for key personnel and did not include any statements that qualified the requirement with respect to an offeror's current employees. MOL at 39-40.

Where a dispute exists as to a solicitation's actual requirements, we will first examine the plain language of the solicitation. Point Blank Enters., Inc., B-411839, B-411839.2, Nov. 4, 2015, 2015 CPD ¶ 345 at 4. Here, the plain language of the solicitation does not support the protester's interpretation of the requirement with respect to commitment

letters. The RFP required offerors to identify key personnel and to “[p]rovide brief resumes and letters of commitment for key personnel only.” RFP at 66. This requirement is unqualified. The RFP did not differentiate between proposed key personnel currently employed by the offeror and proposed key personnel not currently employed by the offeror. See id. Accordingly, we conclude that the agency reasonably assigned a significant weakness to VAE’s proposal for failing to provide commitment letters for its proposed key personnel as required by the solicitation. See BICALLIS, LLC, B-415639, Feb. 1, 2018, 2018 CPD ¶ 90 at 4-5 (agency reasonably rejected protester’s proposal for failing to provide commitment letters for proposed staff currently employed by protester).

Past Performance

VAE argues that HHS unreasonably failed to consider one of its past performance references under the past performance factor. Protest at 21. VAE contends that, had HHS considered the past performance reference, the agency would have determined that VAE’s past performance demonstrated very low performance risk and therefore would have altered the agency’s overall analysis and competitive range determination. Protester Comments & Supp. Protest at 24-25. HHS admits that it received the past performance reference for the contract in question, but states that the reference had not been forwarded to the TEP for review. Supp. MOL at 27. HHS nonetheless contends that VAE suffered no competitive prejudice because VAE cannot show that consideration of the past performance reference would have given VAE a substantial chance to be included in the competitive range in light of VAE’s marginal ratings under the technical factor. Id. at 30.

Prejudice is an essential element of every viable protest; we will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency’s actions. Arktis Detection Sys., Inc., B-416339, B-416339.2, Aug. 10, 2018, 2018 CPD ¶ 303 at 8. Here, as discussed above, we find no basis to question the agency’s evaluation of VAE’s proposal under the technical factor--the most important evaluation factor. In addition, as noted, the contracting officer determined that the competitive range would be comprised of CSRA and [DELETED] because each offered the highest technically rated proposals. AR, Tab 9, Competitive Range Determination, at 35. The contracting officer concluded that because of the significant weakness related to VAE’s failure to address its plan to obtain an ATO and because of the multiple weaknesses identified in VAE’s proposal, VAE would not be included in the competitive range. Id. at 36-37.

Given that the agency’s exclusion of VAE’s proposal from the competitive range was based primarily on the evaluation of VAE’s technical proposal, the protester has not demonstrated how an improved rating under the past performance factor would have improved its chance of being included in the competitive range. See Presidio Networked Solutions, Inc., et al., B-408128.33 et al., Oct. 31, 2014, 2014 CPD ¶ 316 at 16 (protester is not prejudiced by the evaluation of its past performance because its

proposal evaluation under another factor formed the basis for the protester's exclusion from the competitive range).

Challenges to Proposals in Competitive Range

VAE raises multiple challenges to HHS's evaluation of the proposals included in the competitive range. For example, VAE argues that neither CSRA nor [DELETED] proposed fixed-price, turnkey solutions as required by the RFP and therefore were ineligible to be included in the competitive range. Protester Comments & Supp. Protest at 10-11. VAE contends that both CSRA and [DELETED] proposed solutions that were contingent on the agency paying additional sums for components of the proposed solutions. Protester Supp. Comments, Dec. 4, 2018, at 4. More specifically, VAE argues that CSRA's proposal to use [DELETED] as part of its proposed solution, at government expense, was in violation of the requirement for a fixed-price, turnkey solution. Id. at 5-6.

HHS assessed a weakness to CSRA's proposal for stating that the agency will fund cabling infrastructure changes as required. AR, Tab 9, Competitive Range Determination, at 10. The agency concluded that this statement indicated that the solution is not truly turnkey and introduces risk to the government of incurring additional costs and time. Id. Similarly, HHS assessed a weakness to [DELETED] proposal for stating that the government would be responsible for [DELETED]. Id. at 6.

HHS states that the RFP did not require the agency to reject proposals for failing to propose a turnkey solution. Supp. MOL at 4. The agency also states the issues of which VAE complains were not material and thus did not reach the severity of being a significant weakness or deficiency. Id. at 6; Supp. COS at 2. In this regard, HHS explains that it concluded that CSRA's proposed solution was a turnkey solution, with the exception of this minor concern. With respect to [DELETED] proposal, the agency explains that it did not view the risk of these potential additional costs and time appreciably increased the risk of unsuccessful performance, and thus did not merit a deficiency. Supp. MOL at 9; Supp. COS at 2.

The determination of whether a proposal is in the competitive range is principally a matter within the sound judgment of the procuring agency. TransAtlantic Lines, LLC, B-414148, Feb. 7, 2017, 2017 CPD ¶ 163 at 3. Our review is limited to whether the agency's evaluation and competitive range determination were reasonable and consistent with applicable procurement statutes and regulations. Straughan Env'tl., Inc., surpa, at 13. Even if we were to agree with the protester, which we do not, an agency is not required to exclude from the competitive range a proposal containing a deficiency. See, e.g., PTSI Managed Servs., Inc., B-411412, July 20, 2015, 2015 CPD ¶ 236 at 13; Beyel Bros., Inc., B-406640, B-406640.2, July 18, 2012, 2012 CPD ¶ 211 at 5. A fundamental purpose in conducting discussions is to determine whether deficient proposals are reasonably susceptible of being made acceptable. Grove Resource Solutions, Inc., B-296228, B-296228.2, July 1, 2005, 2005 CPD ¶ 133 at 4.

Here, the record shows that the contracting officer considered the strengths and weaknesses assessed to each proposal. Although the agency identified these concerns with CSRA's and [DELETED] proposals, VAE has not demonstrated that the agency erred in concluding that these were minor issues that could easily be addressed in discussions. Moreover, the nature of these issues--proposing that the agency pay for certain aspects of the proposed solutions--does not impact the soundness of the offerors' technical proposals. In addition, the contracting officer, in establishing the competitive range, concluded that the many significant strengths and strengths assessed to CSRA's and [DELETED] proposals demonstrated superior technical approaches that merited inclusion in the competitive range. See AR, Tab 9, Competitive Range Determination, at 35-36. In contrast, the contracting officer concluded that the significant weaknesses and multiple weaknesses assessed to VAE's proposal did not render it one of the highest-rated offerors and thus VAE's proposal would not be included in the competitive range. Id. at 36-37. VAE has not demonstrated that the contracting officer erred in his consideration of the technical merits of CSRA's and [DELETED] proposals. Accordingly, we deny these protest grounds.

Multiple Proposals

Finally, VAE argues that HHS improperly accepted multiple proposals from the same entity, in violation of the terms of the solicitation. Protester Comments & Supp. Protest at 22. In this regard, the solicitation stated that: "Offerors shall only submit one proposal in response to this solicitation. Alternate proposals and/or solutions will be rejected." RFP at 59. VAE contends that the submission of proposals by CSRA and [DELETED] was tantamount to the submission of multiple proposals by a single entity as a result of [DELETED] acquisition of CSRA, Inc., the parent company of CSRA LLC. Protester Comments & Supp. Protest at 22. VAE argues that it was prejudiced by the inclusion of what amounts to a "single offeror" in the competitive range. Id. at 23.

As discussed above, we have considered all of VAE's challenges to the evaluation of its, CSRA's, and [DELETED] proposals, and find no basis to conclude that the contracting officer erred in his evaluation of VAE's proposal or the proposals included in the competitive range. Our Office has stated before that there is nothing inherently improper in a competitive range of one. Cobra Techs., Inc., B-272041, B-272041.2, Aug. 20, 1996, 96-2 CPD ¶ 73 at 3. Thus, even if we were to conclude that an offeror improperly submitted two proposals and the agency was required to reject one proposal, one proposal would still remain in the competitive range. Therefore, we need not address VAE's allegation that HHS improperly accepted multiple proposals from the same entity.

The protest is denied.

Thomas H. Armstrong
General Counsel