



Decision

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Matter of: Advanced Software Systems, Inc.

File: B-414892.2; B-414892.3; B-414892.4; B-414892.5; B-414892.6

Date: January 7, 2019

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DIGEST

Protest challenging the exclusion of protester's proposal from the competitive range is denied where the agency reasonably found that the proposal failed to address material requirements and was therefore technically unacceptable.

DECISION

Advanced Software Systems, Inc. (ASSYST), a small business located in Sterling, Virginia, challenges the exclusion of its proposal from the competitive range under request for proposals (RFP) No. SAQMMA16R0029, issued by the Department of State (DOS) to provide technology services for software development lifecycle support, information technology services management (ITSM) and business process improvement for DOS's Bureau of Consular Affairs (CA), Office of Consular Systems and Technology (CST). The protester contends that the agency unreasonably evaluated its proposal under the RFP's technical approach, past performance, management approach, and key personnel evaluation factors.¹

¹ ASSYST further protested the award of a contract under the RFP to NetCentric Technology, LLC, alleging that the awardee possesses an unmitigable organizational conflict of interest (OCI). In response to this protest ground, the agency announced that it would take corrective action by reviewing and assessing whether an OCI existed, and would then determine if further action is required. Based on this announced corrective action, we dismissed this protest ground as academic.

We deny the protest.

BACKGROUND

The solicitation was issued on September 16, 2016, seeking proposals to provide service transition support services for the software development lifecycle in support of DOS CA/CST systems, as well as ITSM and business process improvement for CA/CST. The main activities for the agency's requirement encompassed facility and transition management, independent validation and verification (IV&V) services, quality management, and configuration management. Contracting Officer's Statement (COS) at 2.

The solicitation contemplated issuing a contract with fixed-price and labor-hour line items, with a base period of approximately 12 months,² with four 1-year option periods. The RFP anticipated that offerors would be evaluated based on price and five technical factors, listed in descending order of importance as follows: technical approach, past performance, management approach, key personnel, and transition-in plan. RFP at 70. When combined, the non-price factors were significantly more important than price. Id. at 70.

For the technical approach factor, the solicitation instructed offerors to demonstrate their technical understanding of each task outlined in the statement of work (SOW) "without simply repeating the requirements." Id. The RFP anticipated that each offeror would be evaluated based on its overall technical approach, including its proposed methodology, its demonstrated understanding of the scope of work and the requirements, and the technical risk associated with its proposal. Id. Offerors were instructed to structure their proposals to align with the SOW, and to "explain how [they] will meet the Government's technical requirements as specified in the SOW tasks." Id.

On March 14, 2017, the agency received timely proposals from seven offerors, including ASSYST. The agency evaluated ASSYST's proposal as follows:

	Technical Approach	Past Performance	Management Approach	Key Personnel	Transition-In Plan
ASSYST	Unacceptable	Limited Confidence	Marginal	Marginal	Good

Agency Report (AR), Tab 5, Technical Evaluation Team (TET) Consensus Report, at 5-6.

² The base period for contract line item numbers 003 through 012 (which was set for 8 months) was not to begin until after the transition period (which was not to exceed 120 calendar days after the date of award) was completed. See RFP at 20.

As relevant to this protest, ASSYST's unacceptable technical approach rating was based on the agency's assessment of seven weaknesses, one significant weakness, and three deficiencies under this factor, as well as no strengths or significant strengths. Id. at 21-23.

On the basis of the above ratings, ASSYST's proposal received an unacceptable overall technical acceptability rating. AR, Tab 6, Competitive Range Determination, at 10. ASSYST was therefore eliminated from the competitive range along with the proposals of four other offerors, which similarly were found unacceptable under both the technical approach factor and overall. See id. at 9-10.

On September 7, 2018, the agency notified ASSYST that its proposal had been excluded from the competitive range. On September 24, the agency provided ASSYST with a debriefing explaining DOS's basis for excluding the offeror's proposal from the competitive range. On September 30, the agency announced that it had awarded a contract for the requirement to NetCentric for \$99,374,479.

On October 3, ASSYST filed this protest.

DISCUSSION

ASSYST challenges the evaluation of its proposal under the technical approach, past performance, management approach, and key personnel factors.³ With respect to the technical approach factor, the protester contends that the agency unreasonably assessed various weaknesses, deficiencies, and a significant weakness, which were not justified in light of the evaluation criteria and the content of ASSYST's proposal. The protester additionally argues that the agency evaluated its proposal unequally because it penalized ASSYST for not providing certain details in its proposal, but did not penalize NetCentric for failing to provide the same details in its proposal.

An agency is not required to include a proposal in the competitive range where the proposal is not among the "most highly rated" proposals. Federal Acquisition Regulation § 15.306(c)(1). The evaluation of proposals and resulting determination as to whether a particular offer is in the competitive range are matters within the discretion of the contracting agency. ECC Renewables, LLC; Pac. Power, LLC, B-408907 et al., Dec. 18, 2013, 2014 CPD ¶ 9 at 6. 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 Envtl., Inc., B-411650 et al., Sept. 18, 2015, 2015 CPD ¶ 287 at 13. Further, it is an offeror's responsibility to submit an adequately written proposal that demonstrates the merits of its approach; an

³ While we do not address in detail every argument raised by ASSYST in its protest, we have reviewed each issue and do not find any basis to sustain the protest.

offeror runs the risk of having its proposal downgraded or rejected if the proposal is inadequately written. ARBEIT, LLC, B-411049, Apr. 27, 2015, 2015 CPD ¶ 146 at 4.

Technical Approach

ASSYST challenges three deficiencies assessed in its proposal under the technical approach factor. As discussed below, we find each of the agency's deficiency findings to be reasonable.

DOS assessed the first deficiency under task four (formal IV&V services), noting that ASSYST's proposal "does not address dependencies and IV&V priorities." AR, Tab 5, TET Consensus Report, at 22. Dependencies describe the relationship of IV&V activities to each other, where the start or end date of one activity depends on the start or end of another activity. COS at 35. Where activities impact one another's start dates, end dates, and durations, IV&V priorities describe how these IV&V activities will be prioritized to develop a comprehensive IV&V test plan. See id. at 35-36. The SOW required that the IV&V test plan include required test resources, including dependencies, and also noted that the test plan may "need to address IV&V priority with other ongoing IV&V activities." SOW § 3.4.2.2. Critical and high priority projects were to receive preference when multiple IV&V activities require the same limited resources. Id. In reviewing ASSYST's proposal, the agency concluded that the proposal's failure to address these areas created a risk that ASSYST would not be able to adequately schedule tasks, which could "lead to resources not being available and accountable." AR, Tab 5, TET Consensus Report, at 22.

The protester argues that although its proposal did not use the "buzz word 'dependencies,'" it left little doubt that the test plans it proposed would identify dependencies, as well as priorities and obstacles to the success of IV&V testing. Protest at 24. In this regard, the protester notes that its proposal stated that its test plan "addresses staffing of the testing including [DELETED], and prioritization of competing tasks." AR, Tab 3a, ASSYST Technical Proposal, at 1-17. The protester contends that the proposal thereby addressed the prioritization of IV&V tasks, which obviated the concern identified by the agency that resources would not be available and accountable.

Based on our review of the record, we conclude that the agency reasonably assigned ASSYST a deficiency in this area. In this regard, we note that while ASSYST's proposal summarily mentioned the prioritization of competing tasks, it did not discuss IV&V priorities in relation to other ongoing IV&V activities, and therefore did not discuss the prioritization of critical and high priority projects when multiple IV&V activities require the same resources. These were all areas included in the SOW section detailing the preparation of the IV&V test plan. See SOW § 3.4.2.2. The proposal also did not include any discussion of the protester's specific technical approach for addressing such prioritization. Moreover, the proposal did not mention dependencies at all. Thus, the proposal did not demonstrate that ASSYST's approach understood and accounted for such dependencies within the IV&V activities, which would require prioritization of

resources in order to ensure the successful accomplishment of high priority projects. In light of the protester's failure to address its approach to meeting these SOW requirements, we find the agency's assessment of a deficiency to be reasonable.

The protester additionally challenges a deficiency assigned to its proposal by DOS under tasks four (formal IV&V services) and seven (user acceptance testing (UAT) services) for failing "to address mobile testing, as well as submissions to the [Configuration Management (CM)] repository," and configuring and setting up systems within 24 hours of the UAT schedule start. AR, Tab 5, TET Consensus Report, at 22; see also COS at 38. In assessing this deficiency, the TET explained that if the agency "can't test mobile services, it can't provide [these mobile services] to our customers as CST cannot deploy untested solutions." AR, Tab 5, TET Consensus Report, at 22. The protester challenges this conclusion, arguing that, while it did not mention mobile testing specifically, its strategy was broad enough to encompass such testing. The protester further argues that the agency assigned it a deficiency simply for failing "to use the words 'including mobile and smart devices' in its discussion of Tasks 4 and 7." Protest at 25. In support of this argument, the protester notes that, for another task (task six), simply using those same words, within a cursory proposal description, was sufficient to avoid the assignment of a weakness. Protest at 25. In the protester's view, this undercuts the agency's representation that the failure to address mobile testing was important enough to warrant the assessment of a deficiency, as ASSYST's bare mention of mobile testing elsewhere was enough to avoid being assessed any weakness at all. The protester additionally contends that providing more detail regarding mobile testing would not have been possible given the limited information provided in the solicitation and the SOW.

Based on our review, we find that the agency reasonably determined that ASSYST's proposal failed to address mobile testing within its technical approach for tasks four and seven. In this regard, we note that the SOW required the contractor to utilize mobile and smart device testing solutions and analysis as part of its execution of IV&V testing, and similarly stated that the contractor should prepare the UAT environment by "incorporat[ing] mobile and smart devices into test solutions and analysis, as necessary." SOW §§ 3.4.1 and 3.7.2.2. Despite this requirement, ASSYST's proposal did not mention mobile testing in either of the proposal sections corresponding to these SOW sections. See AR, Tab 3a, ASSYST Technical Proposal, at 1-16-17 and 1-29-30.

While the protester contends that its general discussion of IV&V testing "was broad enough to encompass this form of testing," Protest at 25, we find nothing unreasonable about the agency's faulting of ASSYST's proposal for failing to specifically address this requirement. As previously noted, it was the protester's responsibility to submit an adequately written proposal that demonstrated the merits of its approach, and by failing to do so, it ran the risk of having its proposal downgraded or rejected. ARBEIT, LLC, supra. Here, ASSYST did not address mobile testing, despite the above SOW requirements, an omission that creates uncertainty about whether mobile testing would be covered under its approach. As the contracting officer noted in response to this protest ground, mobile application testing is "uniquely different from non-mobile

application testing since the platform itself is different,” COS at 37; thus, the protester’s broad discussion of testing does not necessarily encompass mobile application testing as the framework for the latter testing is uniquely different. Nor was the agency required to assume that such mobile application testing was encompassed within ASSYST’s broad testing approach.

Additionally, although the protester is correct that the agency did not assess a weakness for a different task (task six), where the protester merely referenced incorporating mobile and smart device environments in its approach to that task, this circumstance did not compel the agency to overlook ASSYST’s failure to mention mobile application testing within tasks four and seven. For the latter SOW requirements, ASSYST did not reference mobile application testing at all, briefly or otherwise, thus creating an open question as to whether such applications would be part of ASSYST’s technical approach for these tasks.⁴

The protester further challenges this deficiency, arguing that its assessment is evidence of unequal treatment. In this regard, the protester contends that DOS did not assess a weakness or deficiency in NetCentric’s proposal despite the proposal’s omission of many of the same details the agency faulted ASSYST’s proposal for not including. For example, the protester contends that NetCentric’s proposal did not address the requirement to configure and set up systems using artifacts provided by CM within 24 hours, and also did not address any of the “unique security concerns” the agency represented were an important rationale for addressing mobile application testing. Third Supp. Protest at 5.

It is a fundamental principle of federal procurement law that a contracting agency must treat all offerors equally and evaluate their proposals evenhandedly against the solicitation’s requirements and evaluation criteria. LASEOD Grp., LLC, B-405888, Jan. 10, 2012, 2012 CPD ¶ 45 at 4. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors’ proposals. Abacus Tech. Corp.; SMS Data Prods. Grp., Inc., B-413421 et al., Oct. 28, 2016, 2016 CPD ¶ 317 at 11.

⁴ We also find to be correctly assessed the second portion of the deficiency, which noted that ASSYST did not address the submission of artifacts to the CM repository for tasks four and seven, and also did not address configuring and setting up systems using artifacts provided by CM within 24 hours prior to the scheduled start day for UAT. Here, the protester adequately addressed submissions to the CM repository for tasks five and six, but neglected to address it for tasks four and seven. See AR, Tab 3a, ASSYST Technical Proposal, at 1-16-20 and 1-29-32. Similarly, ASSYST did not address the SOW § 3.7.2.2 requirement to “configur[e] and set[] up systems using 100% of the artifacts provided by CM, by 24 hours prior or one business day to UAT schedule.” See AR, Tab 3a, ASSYST Technical Proposal, at 1-29-30.

Based on our review of the record, we see no basis to conclude that the differences in the evaluation findings resulted from unequal treatment rather than from differences in the respective proposals. In this regard, we note that, NetCentric's proposal, unlike ASSYST's proposal, expressly stated that the offeror would "incorporate mobile and smart devices, as well as applicable peripheral devices, into test solutions and analysis, as needed." AR, Tab 11, NetCentric Technical Proposal, at 1-31. Similarly, NetCentric's proposal stated that the company would "[p]repare and maintain a production-like test environment using 100 percent CM-baselined artifacts by one day prior to the UAT." Id.⁵ Accordingly, NetCentric's proposal, unlike ASSYST's proposal, expressly addressed mobile testing, as well as setting up a test environment using CM-baselined artifacts within one day.

The protester also challenges the third deficiency, which was assessed for failing to address various SOW requirements relating to ITSM availability, specifically the requirements: (1) to ensure ITSM availability at a minimum of 98 percent, (2) to ensure that the ITSM system incident response time impacting user service resolutions is no more than eight business hours, and (3) to ensure that the ITSM service request response time is no more than three business days. See AR, Tab 5, TET Consensus Report, at 22-23. In assessing this deficiency, the agency noted that "[i]f ITSM system availability is not maintained at an acceptable level, incidents and changes in the environment cannot be properly tracked and documented [and] [m]anagement will be unable to make informed decisions." Id. at 23.

ASSYST argues that its proposal did address these requirements, noting that the proposal touted ASSYST's understanding of, and experience in meeting, ITSM high availability requirements. For example, the proposal stated that ASSYST had "the engineering capability and detailed knowledge that supports the high availability requirements because we understand [DELETED]." AR, Tab 3a, ASSYST Technical Proposal, at 1-36. The protester further contends that its proposal committed it to meeting the ITSM requirements by stating that ASSYST has "the necessary skills, experience, and knowledge to provide CST with a very high level of required [operations and maintenance] service for ITSM, including meeting all [service level agreement] and system availability targets." Id. at 1-36-37.

Based on our review, we find the agency's assessment of this deficiency to be reasonable. The solicitation advised offerors that their proposals would be evaluated on

⁵ While NetCentric did not specifically detail the unique security concerns to be accounted for in mobile application testing, we note that this was not an RFP requirement, and the record does not support the protester's contention that this was the reason ASSYST was assigned a deficiency under tasks four and seven. Instead, the record supports the agency's position that the reference to "unique security concerns" in the contracting officer's response to the protest was intended as a rebuttal point to the protester's assertion that "[m]obile testing does not require a unique testing approach. . . ." Protest at 25.

their technical approach, including their proposed methodology, and therefore it asked each offeror to “explain how it will meet the Government’s technical requirements as specified in the SOW tasks.” RFP at 70. While ASSYST’s proposal did contain some discussion of its experience meeting high availability requirements, it did not detail the offeror’s technical approach to meeting the ITSM requirements at issue. That is, ASSYST’s proposal discussed its knowledge of, and experience in meeting, ITSM requirements and also generally committed to meeting all service level agreement and system availability targets, but did not contain a technical approach to actually meeting these requirements. In light of this omission, we find that the agency reasonably found a deficiency based on the proposal’s failure to meet a material requirement.

Prejudice

The protester additionally challenges numerous other aspects of the agency’s evaluation, including the evaluation of ASSYST’s technical approach, past performance, management approach, and key personnel. The protester also asserts that the agency evaluated proposals unequally by assigning weaknesses, including a significant weakness, to ASSYST’s proposal, but not to the proposal of NetCentric, the eventual awardee. We find, however, that the protester has failed to demonstrate it was prejudiced by these alleged errors.

In this respect, competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency’s actions, it 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, even if errors in the procurement are found. HP Enter. Servs., LLC, B-411205, B-411205.2, June 16, 2015, 2015 CPD ¶ 202 at 6. Where, as here, the protester challenges the exclusion of its proposal from the competitive range, the protester must demonstrate that, but for the alleged errors, its proposal would have been included in the competitive range. See 22nd Century Techs., Inc., B-413210, B-413210.2, Sept. 2, 2016, 2016 CPD ¶ 306 at 10.

The protester argues that the above alleged errors caused it prejudice because, but for such errors, the agency would have rated its proposal higher, and therefore might have included it within the competitive range. In support of this point, the protester argues that nothing in the solicitation required a proposal with deficiencies to be found technically unacceptable or to be excluded from the competitive range.

Based on our review of the record, we find no reasonable possibility of prejudice. In this regard, we note that the agency excluded all technically unacceptable proposals from the competitive range, stating that such proposals “failed to meet . . . all the mandatory technical requirements set forth in the solicitation. . . [and] these offerors’ proposals were not sufficient enough to be considered acceptable proposals.” AR, Tab 6, Competitive Range Determination, at 41. This rationale would remain unaffected, even if we were to credit the protester’s remaining challenges to various weaknesses (including a significant weakness) assessed in its proposal.

As noted above, the agency reasonably assessed three deficiencies in ASSYST's proposal under the technical approach factor. A deficiency was defined under the source selection plan as "a material failure of a solution to meet a Government requirement or a combination of weaknesses (a flaw that appreciably increases the risk of unsuccessful task performance) in a solution that increases the risk of unsuccessful task performance to an unacceptable level." AR, Tab 1, Source Selection Plan, at 24. The presence of these deficiencies therefore means that the agency would still consider the protester's proposal to have materially failed to meet requirements and/or contain flaws that increase the risk of performance to an unacceptable level, even if ASSYST's proposal did not have any of the other weaknesses being challenged by the protester. Based on this assessment, as well as the agency's uniform elimination of technically unacceptable proposals from the competitive range, we see no reasonable possibility that ASSYST's proposal would have been included in the competitive range, even if the protester were successful in its remaining protest challenges.

The protest is denied.

Thomas H. Armstrong
General Counsel