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Decision

Matter of: 22nd Century Technologies, Inc.

File: B-417336; B-417336.2

Date: May 24, 2019

Daniel J. Strouse, Esq., Cordatis LLP, for the protester.
Colleen A. Eagan, Esq., Nati Silva, Esq., Vera A. Strebel, Esq., and Anthony J. Balestreri, Esq., Defense Information Systems Agency, for the agency.
Stephanie B. Magnell, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging that agency unreasonably failed to assign multiple strengths to protester's quotation is denied where protester fails to demonstrate that the agency's evaluation was unreasonable.
 2. Protest challenging the evaluation of quotations is denied where the awardee's superior ratings stemmed from differences in the quotations and not from disparate treatment.
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DECISION

22nd Century Technologies, Inc., a small business of McLean, Virginia, protests the issuance of a task order to Highlight Technologies, LLC, a small business of Fairfax, Virginia, by the Defense Information Systems Agency (DISA), under request for quotations (RFQ) No. 831711684 which was issued for the acquisition of information support services. The protester contends that the agency unreasonably evaluated the protester's quotation by failing to credit it with various strengths under the technical factor, that quotations were disparately evaluated, and that the agency's best-value tradeoff analysis was flawed.

We deny the protest.

BACKGROUND

On December 20, 2017, DISA issued the RFQ, which was set aside for small businesses, pursuant to Federal Acquisition Regulation subpart 16.5, to holders of the

General Services Administration's (GSA) Streamlined Technology Application Resource for Services (STARS II) governmentwide acquisition contract. DISA sought to acquire support services for the DISA Global Operations Command Information Support Services at Scott Air Force Base and the Defense Enterprise Computing Center in St. Louis, Missouri.

The agency amended the RFQ six times, and quotations were due by October 18, 2018. Contracting Officer's Statement (COS)/Memorandum of Law (MOL) at 4; RFQ at 1. The solicitation provided for the issuance of a fixed-price task order to the vendor whose quotation represented the best value to the agency, considering the following evaluation factors of equal importance: technical/management approach and price. RFQ at 3-4. The period of performance consisted of a 1-year base period and three 1-year option periods. Id. at 2. As relevant to this protest, within the technical/management approach factor, there were four subfactors of equal importance:

Subfactor 1 - Technical: [C]onfigure and maintain a Gigabit Passive Optical Network (GPON) infrastructure and the design, installation, configuration and administration of this technology within the Department of Defense (DoD)

Subfactor 2 - Technical: [C]onfigure and maintain a virtualized server environment and provide server virtualization design, installation, configuration, and administration within the DoD

Subfactor 3 - Technical: [P]rovide network design, installation, configuration, and administration within the DoD

Subfactor 4 - Management and Staffing Approach: [O]fferor's mix of labor categories and labor hours as well as the management approach for meeting all requirements of the [performance work statement]. Specifically, the management approach shall outline how fully-trained personnel are provided/retained In addition to the technical quote, the breakouts in the pricing worksheet will be used to evaluate labor categories/labor hours. . . .

Id. at 4 (internal performance work statement citations omitted). Quotations would be assigned one of five adjectival ratings for each subfactor, ranging from unacceptable to outstanding. Agency Report (AR), Tab 5, RFQ Attach. 4, Evaluation Table.

DISA received quotations from eight vendors, which the agency evaluated as follows:

Vendor	Technical/Management Factor				Price
	Subfactor 1	Subfactor 2	Subfactor 3	Subfactor 4	
Vendor 1	Marginal	Acceptable	Acceptable	Acceptable	\$9,531,664.60
22nd Century	Acceptable	Good	Acceptable	Acceptable	\$9,948,602.40
Vendor 3	Good	Acceptable	Acceptable	Acceptable	\$11,177,415.82
Highlight	Outstanding	Outstanding	Good	Acceptable	\$12,100,756.00
Vendor 5	Acceptable	Good	Acceptable	Acceptable	\$12,238,931.19
Vendor 6	Acceptable	Good	Acceptable	Acceptable	\$13,670,426.40
Vendor 7	Acceptable	Acceptable	Acceptable	Acceptable	\$15,238,077.60
Vendor 8	Acceptable	Acceptable	Acceptable	Acceptable	\$17,996,109.60

AR, Tab 12, Source Selection Recommendation (SSR), at 5.

On February 5, 2019, DISA concluded that the significant technical advantages of Highlight's quotation warranted the associated price premium and selected Highlight as the vendor whose quotation represented the best value to the agency. AR, Tab 13, Price Negotiation Memorandum at 12-13; see also AR, Tab 12, SSR at 56-57. On February 15, the agency provided 22nd Century with responses to its debriefing questions, concluding 22nd Century's debriefing. AR, Tab 15, DISA Debriefing Responses. This protest followed.¹

DISCUSSION

22nd Century argues that the agency improperly evaluated its technical quotation, and accordingly, performed a flawed best-value tradeoff analysis. The protester also alleges that the agency evaluated vendors disparately. While our decision here does not specifically discuss every argument the protester raises, we have considered all of 22nd Century's assertions and find that none furnishes a basis to sustain the protest. For the reasons below, we deny the protest.²

¹ This protest is within our jurisdiction to hear protests of task orders placed under civilian agency indefinite-delivery, indefinite-quantity (IDIQ) contracts valued in excess of \$10 million. 41 U.S.C. § 4106(f)(1)(B); see Booz Allen Hamilton Eng'g Servs., LLC, B-411065, May 1, 2015, 2015 CPD ¶ 138 at 6 n.12; see also Wyle Labs., Inc., B-413989, Dec. 5, 2016, 2016 CPD ¶ 345 at 4 (The authority under which we exercise our task order jurisdiction is determined by the agency that awarded the underlying IDIQ task order contract, here the GSA, rather than the agency that issues or funds the task order.).

² Prior to submitting the agency report, the agency requested that we dismiss as lacking sufficient factual support 22nd Century's allegation that the agency engaged in unequal discussions. Req. for Partial Dismissal at 2-3. The protester argues--without any legal
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Technical Evaluation

22nd Century argues that DISA failed to award it numerous strengths for various meritorious aspects of its quotation under multiple subfactors of the technical/management factor.

In reviewing protests of awards in a task order competition, we do not reevaluate quotations but examine the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria, and applicable procurement laws and regulations. HP Enter. Servs., LLC, B-413888.2 et al., June 21, 2017, 2017 CPD ¶ 239 at 7. The evaluation of quotations in a task order competition, including the determination of the relative merits of quotations, is primarily a matter within the agency's discretion, since the agency is responsible for defining its needs and the best method of accommodating them. Id. A vendor's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. Id.; STG, Inc., B-415580.4, B-415580.5, July 5, 2018, 2018 CPD ¶ 232 at 6 n.7.

The protester first asserts that the agency unreasonably failed to assign a strength to its proposal under technical/management subfactor 4 for 22nd Century's [DELETED] percent retention rate. Comments & Supp. Protest at 13-14. In this regard, the protester asserts that the agency failed to note the retention rate in its evaluation. The protester contends that "[t]here is simply no way a reasonable analysis of 22nd Century[s] quotation] could be conducted without considering the [DELETED]% retention rate over a five year period." Id. at 14, 15 ("There is no reasonable way to conclude that a retention plan resulting in a [DELETED]% retention rate over five years does not warrant a strength. And, the agency has offered no rationale to dispute that fact."). The agency responds that it determined that 22nd Century's proposed solution met the requirements but did not demonstrate merit or exceed the requirements in a way that would have been advantageous to the agency. COS/MOL at 46.

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support--that the agency's fourth round of discussions was improper. Specifically, the protester argues that discussions should have ended after the third round, because by that time 22nd Century's proposal had no weaknesses, significant weaknesses, or deficiencies and was lower-priced than Highlight's proposal. Protest at 16. The protester contends that the agency "simply continued to hold discussions until an offeror could compete with the price proposed by 22nd Century." Id. We dismiss this protest ground because the facts alleged, without more, do not present a legally sufficient protest ground. 4 C.F.R. §§ 21.1(f), 21.5(f).

The protester also withdrew its protest grounds challenging the agency's assessment of its quotation under technical/management subfactor 3 and its protest ground alleging disparate treatment under technical/management subfactor 1. Comments & Supp. Protest at 12; Supp. Comments at 2.

The protester disagrees with the agency's evaluation, yet fails to explain how the agency's evaluation was inconsistent with the stated evaluation criteria. Furthermore, as DISA correctly notes, an agency is not required to document all aspects of its evaluation or explain why a quotation did not receive a strength, weakness, or deficiency for a particular feature. COS/MOL at 28; STG, Inc., *supra*, at 6 n.7. Accordingly, the protester's contention that this aspect of its quotation deserved a strength does not provide a basis to conclude the agency's evaluation was unreasonable. *Id.*; LOGC2, Inc., B-412700.2, May 13, 2016, 2016 CPD ¶ 131 at 8. On this basis, this protest ground is denied. Booz Allen Hamilton, Inc., B-414283, B-414283.2, Apr. 27, 2017, 2017 CPD ¶ 159 at 8.³

Next, 22nd Century argues that it should have received a strength for its experience "managing virtual infrastructure and environments" under technical/management subfactor 2. Comments & Supp. Protest at 19. The protester contends its quotation warranted an additional strength under this subfactor in part based on its experience "in the [DELETED]" for another Department of Defense customer. *Id.* at 21 (citing AR, Tab 11, 22nd Century Quotation at 7). 22nd Century asserts that it not only described its proposed solution, but also how its relevant experience "would place it in a position to excel. . . ." *Id.* at 21. The agency explains that it assigned 22nd Century a strength for proposing [DELETED], but that no other aspect of its proposal merited a strength under this subfactor. COS/MOL at 35-36.

Overall, the protester does not explain how the agency's evaluation was inconsistent with the stated evaluation criteria. 22nd Century's objection reflects its view regarding the merits of its technical solution, but it does not demonstrate an improper evaluation. In this regard, a protester's disagreement with an agency's evaluation judgments about experience does not establish that the evaluation was unreasonable. DV United, LLC, B-411620, B-411620.2, Sept. 16, 2015, 2015 CPD ¶ 300 at 12. This protest ground is denied. LOGC2, Inc., *supra*, at 8.

³ In yet another protest ground, 22nd Century contends that the agency did not properly compare vendors' staffing under subfactor 4. Comments & Supp. Protest at 17. The protester faults the agency for its purported failure to include "any discussion of recruitment or retention" in this analysis. *Id.* at 19. The record shows that, in the tradeoff analysis recommendation, the agency compared vendors' full-time equivalent personnel, but did not include a discussion of recruiting or retention. AR, Tab 12, SSR at 55. However, DISA's evaluation expressly considered the protester's approach to recruitment and retention, noting both where the proposal addressed retention and describing the protester's approach. *Id.* at 7-9. The solicitation did not require the agency to perform a comparison of vendors' recruiting and retention. See Automation Precision Tech., LLC, B-416078, June 5, 2018, 2018 CPD ¶ 203 at 5. As such, the protester fails to demonstrate how such evaluation was in any way inconsistent with the solicitation's stated evaluation criteria. This protest ground is similarly denied. *Id.*

Disparate Treatment

22nd Century next asserts that the agency treated vendors disparately under technical/management subfactor 2, related to server support, because it credited Highlight for working with VMWare ESXi, the architecture in place at DISA, while it failed to give 22nd Century credit for similar experience with VMWare ESXi. Comments & Supp. Protest at 3-4. In this regard, the protester contends that its quotation demonstrated the same competency that earned Highlight a strength, and thus 22nd Century's quotation warranted a similar strength. In the protester's view, a second strength under this subfactor would have improved its adjectival rating from good to excellent. Id.

In conducting procurements, agencies may not generally engage in conduct that amounts to unfair or disparate treatment of competing vendors. Arc Aspicio, LLC, et al., B-412612 et al., Apr. 11, 2016, 2016 CPD ¶ 117 at 13. It is a fundamental principle of federal procurement law that a contracting agency must treat all vendors equally and evaluate their quotations evenhandedly against the solicitation's requirements and evaluation criteria. See Sumaria Sys., Inc.; COLSA Corp., B-412961, B-412961.2, July 21, 2016, 2016 CPD ¶ 188 at 10. 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 quotations. Camber Corp., B-413505, Nov. 10, 2016, 2016 CPD ¶ 350 at 8.

The solicitation provides that, under subfactor 2, an "offeror's solution will be evaluated based on how well it demonstrates the offeror's ability to configure and maintain a virtualized server environment and provide server virtualization design, installation, configuration, and administration" RFQ at 4.

DISA assigned a strength to Highlight's quotation because the firm's "contractor-employees [] already have knowledge of DISA Global's operational server environment." AR, Tab 12, SSR at 27; see also AR, Tab 13, Price Negotiation Memorandum at 13 (identifying this strength among the factors justifying payment of a price premium). Specifically, DISA assigned Highlight this strength because "Highlight had experience at DISA Global." AR, Tab 17, Second Decl. of DISA Information Technology Specialist at 6. The agency explains that "this DISA Global specific experience will be beneficial to the Government during contract performance." Id. DISA assigned Highlight's quotation an adjectival rating of outstanding under this subfactor "because the quote indicates an exceptional approach and . . . contains multiple strengths" AR, Tab 12, SSR at 54.

The protester disputes the agency's characterization, contending that "the distinction of the proposals was not because Highlight's experience was within DISA." Supp. Comments at 5. Instead, the protester argues that "[i]f Highlight deserved credit for its experience with VMWare ESXi, 22nd Century deserved the same credit." Id.

Based on our review of the record, we agree with DISA that the strength at issue was assigned to Highlight as a result of the awardee's experience with DISA. As such, the difference in the assignment of strengths is the result of differences in the vendors' experience and not disparate treatment. Given the inherently subjective nature of the evaluators' judgments at issue here, we conclude that it was within the source selection authority's discretion to assign a strength to one vendor's quotation and not reach the same conclusion with respect to another vendor's different quotation.⁴ UltiSat, Inc., B-416809 et al., Dec. 18, 2018, 2019 CPD ¶ 6 at 9-10.

Finally, relying on its assertion that the agency failed to recognize the underlying strengths of its quotation, the protester contends that the agency's best-value decision was flawed. Protest at 17. Based on our conclusions above, we find no merit to this argument. Additionally, the record shows that the source selection authority provided a well-reasoned basis for a tradeoff that identified discriminators between the quotations and justified paying Highlight's higher price.

The protest is denied.

Thomas H. Armstrong
General Counsel

⁴ The record reflects that Highlight was credited here for its DISA-specific experience, and the protester did not argue that the agency employed unstated evaluation criteria or otherwise misapplied the solicitation evaluation criteria. Therefore, we do not consider such grounds.