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Decision

Matter of: L3 Security and Detection Systems, Inc.

File: B-417463; B-417463.2

Date: July 8, 2019

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DIGEST

Protest challenging the agency's evaluation of proposals is denied where the agency's evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

L3 Security and Detection Systems, Inc., of Tewksbury, Massachusetts, protests the award of a contract to Smiths Detection, Inc., of Edgewood, Maryland, under Request for Proposals (RFP) No. 70T04018R9DAP2080, which was issued by the Department of Homeland Security, Transportation Security Administration (TSA), for advanced technology/computed tomography (AT/CT) systems, simulators, program management, warranties, configuration management services, and shipping and installation services. L3 challenges the agency's evaluation of proposals, and resulting source selection decision.

We deny the protest.

BACKGROUND

The RFP, which was issued on September 18, 2018, and subsequently amended six times, sought proposals for AT/CT systems. TSA employs computed tomography (CT), which utilizes x-ray imaging technology and sophisticated computer algorithms to develop a three dimensional image, to conduct checkpoint screening of carry-on bags at

U.S. airports. When passengers submit their property for screening, a series of rolling tables and conveyors direct the property through the CT system where multiple x-ray images are captured and assembled into a three dimensional image. This CT system procurement is part of TSA's carry-on baggage screening program known as the Advanced Technology or "AT" screening program. Agency Legal Memo at 1. In addition to delivering up to 300 AT/CT systems, the RFP contemplates that the contractor will also provide simulators and ancillary equipment and services. RFP, amend. No. 5, Statement of Work (SOW), at 2. The RFP contemplated the award of a fixed-price contract, with a 1-year base period, and four, 1-year option periods. RFP at 4, 8.

Award was to be made on a best-value tradeoff basis, considering the following evaluation factors: (1) production and deployment capability; (2) technical capability; (3) past performance; and (4) price. Id. at 92-95. The factors were of descending importance, with the non-price factors, when combined, significantly more important than price. Id. at 94. Only the production and deployment capability factor is directly relevant to the issues presented in the protest.

With respect to the production and deployment capability factor, an offeror was required to demonstrate its ability to meet TSA's desired production and deployment requirements listed in the SOW. Id. at 89. Specifically, the SOW anticipates that no later than 60 days after award the contractor will deliver a scanner for first article testing and evaluation. RFP, amend. No. 5, SOW, at 4. Upon TSA's approval of the contractor's test scanner, the contractor will then deploy an additional 30 AT/CT systems within 30 days, with an additional 30 systems to be deployed monthly thereafter. Id. With respect to this factor, TSA was to evaluate, among other considerations, whether the offeror can meet TSA's desired production and deployment requirements, as well as the offeror's proposed AT/CT system manufacturing and deployment capabilities per month. RFP, amend. No. 1, at 8.

TSA received five proposals in response to the RFP, but one offeror was subsequently eliminated for offering a non-responsive proposal. Agency Report (AR), Tab 11, Source Selection Decision, at 575-76.¹ Following discussions, the final proposals of the remaining four offerors were evaluated as follows (which are listed in descending order of technical ranking):

¹ For AR exhibits other than the RFP and its amendments, references to page numbers herein are to the Bates numbering provided by TSA.

	Production & Deployment	Technical Capability	Past Performance	Total Evaluated Price
Offeror A	Outstanding	Good	Acceptable	\$6,111,261
Smiths	Outstanding	Good	Acceptable	\$2,895,192
Offeror B	Outstanding	Acceptable	Acceptable	\$5,400,142
L3	Acceptable	Good	Acceptable	\$4,094,353

Id. at 576 (prices rounded to nearest dollar).

The Source Selection Authority (SSA) then proceeded to conduct a tradeoff analysis beginning with the two highest technically rated proposals. After a thorough consideration of the unique strengths and risks associated with Offeror A's and Smiths' respective proposals under each evaluation factor, the SSA ultimately concluded that Offeror A's slight technical advantage over Smiths did not warrant the associated price premium. Id. at 577-581. The SSA then proceeded to conduct best-value analyses with respect to Smiths and Offeror B and L3 respectively. With respect to those offerors, the SSA found that no tradeoff was necessary because Smiths' proposal was technically superior, and offered the lowest proposed price to the government. Id. at 583-85. Based on her analysis, the SSA selected Smiths' proposal for award.² Id. at 586. Following a debriefing, L3 filed this protest with our Office.

DISCUSSION

L3 primarily challenges the agency's evaluation of proposals under the production and deployment capability factor. With respect to L3's proposal under the factor, TSA rated the proposal as acceptable, based on one evaluated strength, no evaluated weaknesses or deficiencies, and one evaluated risk, which the agency viewed as presenting moderate to high risk to the government. AR, Tab 9, Consensus Technical Evaluation Report, at 531. With respect to Smiths' proposal, TSA rated the proposal as outstanding, based on four evaluated strengths, no evaluated weaknesses or deficiencies, and two evaluated risks, which the agency viewed as presenting low risk to the government. Id. at 556.

L3 contends that TSA unreasonably evaluated a risk in L3's proposal, failed to evaluate an additional strength in L3's proposal and at least three weaknesses in Smiths' proposal, and engaged in a disparate evaluation of certain aspects of the offerors' production and deployment capability proposals. As a result of these errors, the protester contends that the agency's best-value selection decision, wherein the agency

² The total awarded value of Smiths' contract is \$96,778,891. AR, Tab 12, Unsuccessful Offeror Letter, at 1. The total awarded value, which reflects the total anticipated price for all AT/CT systems and associated equipment and services, differs from the total evaluated price, which was calculated based on an average price per unit. See RFP at 92.

concluded that Smiths' lower-priced proposal was technically superior to L3's proposal, was unreasonable.

In reviewing a protest challenging an agency's evaluation, our Office will neither reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. Analytical Innovative Solutions, LLC, B-408727, Nov. 6, 2013, 2013 CPD ¶ 263 at 3. Rather, we will review the record only to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Computer World Servs. Corp., B-410513, B-410513.2, Dec. 31, 2014, 2015 CPD ¶ 21 at 6. A protester's disagreement with the agency's evaluation conclusions, without more, does not provide a basis for our Office to object to the evaluation. Jacobs Tech. Inc., B-410441.15, B-410441.16, Sept. 24, 2018, 2018 CPD ¶ 338 at 5.

Additionally, we have consistently found that it is a fundamental principle of government procurement that competition must be conducted on an equal basis; that is, the contracting agency must treat all offerors equally, and even-handedly evaluate proposals and quotations against common requirements and evaluation criteria. Kingfisher Sys., Inc.; Blue Glacier Mgmt. Grp., Inc., B-417149 et al., Apr. 1, 2019, 2019 CPD ¶ 118 at 8. Where a protester alleges disparate treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors' proposals. INDUS Tech., Inc., B-411702 et al., Sept. 29, 2015, 2015 CPD ¶ 304 at 6. For the reasons that follow, we find that L3 has failed to establish that TSA's evaluation was unreasonable or otherwise inconsistent with the terms of the RFP or applicable procurement law or regulation. Therefore, we find no basis upon which to sustain the protest.

Installation and Testing Schedules

L3 challenges the agency's evaluation of the offerors' respective proposed timelines for installing and securing site acceptance test (SAT) approval for their AT/CT systems. With respect to its own evaluation, L3 argues that TSA unreasonably assessed a risk based on the protester's proposed [DELETED] installation timeline. In this regard, the agency found that L3's election to incorporate an automated diverter feature (or "auto-diverter") into its AT/CT system, while being an enhanced feature exceeding the RFP's minimum requirements, would result in additional SAT requirements, as both the AT/CT system and auto-diverter will require separate SAT approval. See Technical Evaluation Team Chair Decl. at 3.³ As a result of the additional SAT requirements, the agency believed that L3's proposed timeline may be insufficient, and thus could create schedule risks. Specifically, TSA found that:

³ An auto-diverter is used to segregate carry-on baggage that has traveled through the AT/CT system based on the AT/CT operator's decision. Technical Evaluation Team Chair Decl. at 3.

The timeline provided by [L3] has the potential for disruption in schedule, due to the excessive time it takes to install an individual system. In [its] proposal [L3] states, “L3 anticipates that each lane will take [DELETED] to install with the turn over to operation on the [DELETED].” The TET has identified this as a feature, aspect, or component of [L3’s] proposal that has the potential to cause a disruption of schedule. . . . Here, [L3] states, “Day [DELETED]: Finalize lane installation, complete barrier/cladding installation, final commissioning, L3 readiness testing, and TSA SAT.” Based on current [SAT] Team requirements, it takes two days to perform a SAT on an auto-diverter system. Based on this requirement, this will add an additional day to the installation timeline. In addition, this disruption will cause longer wait times due to the equipment being inoperable during peak times. The [evaluators] consider[] the probability of the schedule delays and operational impacts while the systems are being installed at a slower than anticipated rate to be high.

AR, Tab 9, Consensus Technical Evaluation Report, at 530-31.

L3 primarily challenges the assessed risk arguing that its installation timeline is based upon the protester’s experience successfully installing more than 100 of its AT/CT systems, as well as its proposed use of experienced installation and integration personnel. In light of this experience, the protester contends that the agency’s expectation that SAT will likely take at least two days is unreasonable and represents an unstated evaluation criterion. Notwithstanding L3’s prior experience, we do not find unreasonable the agency considering the potential risks with L3’s unique technical approach to implement an auto-diverter, which will require additional SAT.⁴

In this regard, TSA explains, and the protester does not rebut, that L3’s election to implement an auto-diverter function in its AT/CT system will require additional SAT, one for the AT/CT system and an additional round for the auto-diverter itself. See Technical Evaluation Team Chair Decl. at 3; RFP, amend. No. 5, SOW, at 7 (“All equipment is subject to Government approval for each installation site configuration.”). Additionally,

⁴ L3 also argues that, even assuming there is the possibility of a one-day delay for additional SAT requirements, such a delay would have a negligible impact on passenger screenings and delays in terms of the total number of hours that the AT/CT systems will be in use for over their expected 10-year life spans. Protest at 7. We fail to see how this argument has any bearing under the applicable evaluation criteria. As noted above, under the production and deployment capability factor, the agency was to evaluate whether the offeror can meet TSA’s desired production and deployment requirements, as well as the offeror’s proposed AT/CT system manufacturing and deployment capabilities per month. RFP, amend. No. 1, at 8. Thus, to the extent the agency reasonably evaluated the potential impacts of L3’s installation timeline during deployment, we find no basis to object to the agency’s evaluation.

the agency explains, and L3 does not rebut, that L3's proposal did not specifically differentiate between the SAT for the AT/CT system and the SAT for the auto-diverter. See Legal Memorandum at 5. Although SAT for L3's AT/CT systems may not necessarily always take two days as suggested by L3's prior experience, we find unobjectionable TSA's evaluated concern that delays may arise from the need to conduct the additional SAT for the auto-diverter, and the potential negative consequences for air travelers that may arise from such delays. L3's disagreement with TSA that SAT approval for both the AT/CT system and auto-diverter may present schedule risks, without more, provides no basis to question the agency's evaluation.

L3 next challenges the agency's assessment of a strength for Smiths' proposed [DELETED] installation timeline of its AT/CT system. TSA assessed a strength because Smiths' proposed timeline was fast and efficient, and would reduce schedule risks. Furthermore, the agency found that Smiths had demonstrated its ability to successfully install its identical AT/CT systems in [DELETED] on prior implementations. Specifically, the evaluators found that Smiths:

[I]dentifies a solution for system installation to occur in [DELETED], by [DELETED] service personnel per system. This is an extremely fast and efficient process to install an entire system, and lowers the risk of not being able to install 30 systems per month. The [evaluators] also verified identical systems were installed in [DELETED] by [Smiths] for the two Operational Test and Evaluation systems installed at [St. Louis] and [Lost Angeles] airports. These systems were representative of the installations that will be required for this purchase, where site preparation occurs months in advance. By providing a capability that would exceed the deployment timeline of 30 systems per month, [Smiths] will support TSA in deploying a critical capability to the field in an expedited manner, increasing aviation security effectiveness.

AR, Tab 9, Consensus Technical Evaluation Report, at 551-52.⁵

L3 argues that the assignment of a strength was unreasonable because, rather than a strength, the agency should have assessed two weaknesses. First, L3 argues that Smiths has little relevant experience, thus calling into question its ability to successfully execute [DELETED] installation. Second, the protester argues that the agency failed to consider the relative weight of Smiths' AT/CT system; based on the heaviness of the awardee's system, L3 argues that Smiths will be unable to successfully execute [DELETED] installation. We find no merit to either of these arguments. As addressed above, the evaluators reasonably concluded that Smiths' one-day installation timeline

⁵ Additionally, TSA evaluated a separate strength based on Smiths' proposed utilization of more than [DELETED] field service technicians to support a rapid nationwide deployment. AR, Tab 9, Consensus Technical Evaluation Report, at 552. L3 does not challenge the reasonableness of this separate, related-strength.

was feasible based on Smiths' verified prior implementation experience for the identical systems. AR, Tab 9, Consensus Technical Evaluation Report, at 552. L3's disagreement with the agency's conclusion, without more, provides no basis to second guess the agency's evaluation.⁶

Manufacturing Capabilities

L3 also challenges the assessment of a strength in Smiths' proposal for manufacturing capability under the production and deployment capability factor. In this regard, both L3 and Smiths received strengths for their respective manufacturing capabilities. TSA concluded that both offerors demonstrated a capability exceeding TSA's requested manufacturing and production rate, and thus would support TSA in deploying critical security capabilities in an expeditious manner. AR, Tab 9, Consensus Technical Evaluation Report, at 527, 551. With respect to Smiths, the agency evaluated a strength based on its proposal to utilize two production facilities, one located in Maryland and another in Germany, in order to exceed the SOW's minimum production capabilities. Specifically, the agency found that Smiths:

[I]dentifies a solution that uses two manufacturing facilities to ensure production quantities of the systems can be met. By having two production sites available, each capable of producing between 30-45 systems each, the Offeror lowers the risk to the government of not being able to produce 30 systems per month. Having two sites capable of production allows for the ability to surge one site, use two sites at an increased rate if a faster schedule is needed, or have one site as a backup in case one site loses functionality for an extended period of time.

Id. at 551.

⁶ L3 also argues that TSA engaged in disparate treatment when it verified that Smiths successfully implemented its proposed installation timeline on prior deployments, while not similarly verifying that L3 had secured one-day SAT approval in a recent deployment. See L3's Supp. Comments at 2. Even assuming that TSA should have done more to verify the feasibility of L3's timeline, we fail to see how removal of this risk would materially improve L3's competitive position. Competitive prejudice is an essential element of any viable protest, and where none is shown or otherwise evident, we will not sustain a protest. Interfor US, Inc., B-410622, Dec. 30, 2014, 2015 CPD ¶ 19 at 7. As addressed above, TSA reasonably assessed Smiths strengths for both its proposed [DELETED] installation timeline, as well as its commitment of significant deployment personnel and resources to ensure a rapid nationwide deployment. AR, Tab 9, Consensus Technical Evaluation Report, at 551-552. Assuming that the risk assessed with L3's timeline was removed, such a revision would not negate Smiths' technical advantages in terms of its proposed installation schedule and deployment resources, as well as its more than 40 percent evaluated price advantage. Thus, we find no basis upon which to sustain this aspect of L3's protest.

L3 challenges the reasonableness of the assessed strength, and argues, instead, that the agency should have assessed material risk in Smiths' approach. Specifically, the protester contends that Smiths does not have a domestic manufacturing facility, and, instead, will manufacture all of its AT/CT systems in Germany. L3 contends that the agency should not have considered Smiths' proposal to transition performance to an as-yet-to-be opened domestic facility, and, rather, should have assessed a material risk associated with potential schedule delays associated with having to import the systems from abroad. We find no basis to sustain L3's protest on this basis.

As an initial matter, L3 offers no support for its bare assertions that Smiths "does not have a U.S. manufacturing plant." Protest at 10. Indeed, this unsupported assertion is contrary to Smiths' proposal, which identifies that its domestic manufacturing facility is in fact already in operation, having produced more than 9,000 x-ray systems since 2010, and is certified to International Standards Organization 9001:2015 quality management system for design, development, manufacturing and installation of x-ray systems and other threat detection systems. AR, Tab 5, Smiths' Final Proposal, at 458. In this regard, the proposal indicates that Smiths anticipates converting part of its existing domestic manufacturing facility to accommodate production of up to [DELETED] AT/CT systems per month, and transitioning overall production of its AT/CT systems to its domestic facility, with the German facility providing additional surge capacity. Id. Thus, to the extent that TSA reasonably concluded that Smiths will be able to successfully transition work to its domestic manufacturing facility, we find that L3's objections merely constitute disagreement with the agency's exercise of its business judgment.

Similarly, we find no merit to L3's argument that the assignment of a strength was unreasonable because Smiths' initial production of [DELETED] units will occur in Germany. Smiths proposed that completed final assembly and factory acceptance testing of all systems will occur domestically. AR, Tab 5, Smiths Final Proposal, at 458. This approach is very similar to the approach proposed by L3. Specifically, L3's auto-diverter is manufactured exclusively in the United Kingdom. In order to mitigate schedule delays, the protester proposed to [DELETED] the auto-diverters at its domestic facilities in order to create specific lane-by-lane shipping packages before delivering to U.S. airports for installation. AR, Tab 4, L3 Final Proposal, at 427-28. Thus, as it appears that TSA reasonably evaluated the proposals in a similar fashion, we find no basis to object to the agency's evaluation.

Additionally, Smiths' proposal indicates that after the first [DELETED] units, production will transition to its domestic facility, with its German facility providing additional surge capacity as needed. AR, Tab 5, Smiths Final Proposal, at 458. We find nothing unreasonable in the agency's conclusion that Smiths' proposal to manufacture [DELETED] percent of the required AT/CT systems domestically, with additional surge capacity at Smiths' second German facility, warranted a strength for demonstrating Smiths' capability to exceed the SOW's manufacturing and delivery requirements. Therefore, we find no basis to sustain L3's arguments that TSA should have assessed

material risks in Smiths' proposal for its plan to utilize multiple manufacturing facilities for its AT/CT systems.

Corporate Experience

Finally, L3 also argues that TSA erred in not assessing a strength to L3's proposal based on L3's successful installation of more than 100 AT/CT systems at 12 airports, and in not evaluating a weakness based on Smiths' alleged lack of experience. We disagree. Specifically, we find no support in the RFP's enumerated evaluation criteria that required the agency to evaluate an offeror's prior experience as part of its evaluation of the offeror's production and deployment capabilities.

As discussed above, under the production and deployment capability factor, TSA was to evaluate the offerors' abilities to meet the SOW's production and deployment requirements, including the offerors' proposed AT/CT system manufacturing and deployment capabilities per month. RFP, amend. No. 1, at 8. While the agency arguably could have considered prior experience, we find nothing in the enumerated solicitation criteria that required the agency to consider information beyond the specific production and deployment capabilities proposed for the RFP's specific requirements.

To the extent L3 argues that the agency should have considered the qualitative differences between the offerors' respective relevant experience, the protester's argument presents an untimely challenge to the terms of the solicitation. Our Bid Protest Regulations contain strict rules for the timely submission of protests. They specifically require that a protest based on alleged improprieties in a solicitation which are apparent prior to the time set for the receipt of initial proposals shall be filed prior to the time set for the receipt of initial proposals. 4 C.F.R. § 21.2(a)(1); Dalma Tech² Co., B-411015, Apr. 22, 2015, 2015 CPD ¶ 135 at 9.

Here, the RFP explicitly notified offerors that relevant past performance in terms of size, scope, and complexity would only be evaluated and rated as acceptable, neutral, or unacceptable. RFP at 93-94. Thus, beyond generally evaluating whether an offeror had acceptable relevant past performance, the RFP clearly articulated that the agency did not intend to differentiate offerors' respective prior experience. L3's post-award arguments that TSA was required to evaluate the respective differences in the offerors' relevant experience, therefore, are untimely.

The protest is denied.

Thomas H. Armstrong
General Counsel