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Decision

Matter of: DirectViz Solutions, LLC

File: B-417565.3; B-417565.4

Date: October 25, 2019

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DIGEST

1. Protest that the agency did not meaningfully implement corrective action from an earlier protest is denied where the record shows that the agency reevaluated proposals and conducted a new source selection tradeoff analysis.
 2. Protest that the agency unreasonably evaluated protester's proposal is denied where the record shows that the evaluation was consistent with the stated evaluation criteria.
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DECISION

DirectViz Solutions, LLC (DVS), of Chantilly, Virginia, protests the award of a task order to AMAR Health IT, LLC (AHIT), of Fairfax, Virginia, under request for proposals (RFP) No. 831711711, issued by the Defense Information Systems Agency (DISA) for business and technical support services. DVS alleges that DISA did not take meaningful corrective action in response to the firm's previous protest, unreasonably evaluated its proposal, and improperly made the source selection decision.

We deny the protest.

BACKGROUND

On July 24, 2018, DISA issued the RFP for business and technical support services for the agency's Situational Awareness Cybersecurity Network Operations (CyberNetOps). Agency Report (AR), Tab 1A, Conformed RFP, at 1. CyberNetOps provides service assurance capabilities supporting the operations, administration, maintenance, and provisioning of the DISA managed infrastructure, including the Department of Defense Information Network. AR, Tab 1B, RFP, attach. 1, Performance Work Statement (PWS), at 2. The RFP's objective was to deliver new and enhanced CyberNetOps functionality in multiple areas, including, among others, architectural design, solution design, security architecture design, solution implementation engineering, active vulnerability identification and remediation, and Federal Information Security Management Act documentation. Id.

The RFP contemplated the award of a cost-plus-fixed-fee task order with cost-reimbursable components to be performed over a 1-year base period and four 1-year option periods. AR, Tab 1A, RFP, at 2. Award would be made on a best-value tradeoff basis, considering technical/management approach and cost factors. Id. at 5. The technical/management approach factor was more important than the cost factor. Id. at 6. The technical/management approach factor was comprised of three subfactors: systems engineering, cybersecurity, and management approach.

For the systems engineering subfactor, offerors were advised that DISA would evaluate their ability to use systems engineering and design processes to enhance, design, update, and maintain the CyberNetOps System. AR, Tab 1A, RFP, at 6. The RFP further advised that this subfactor corresponded to PWS § 6.4.4. That PWS section requires the selected contractor to enhance the CyberNetOps Systems Engineering Plan (SEP) and incorporate changes to the SEP, as well as conduct preliminary and critical design reviews of the SEP. AR, Tab 1B, RFP, PWS, at 16.

For the cybersecurity subfactor, offerors were advised that DISA would evaluate their ability to provide cybersecurity support services. AR, Tab 1A, Conformed RFP, at 6. The RFP required offerors to provide a cybersecurity risk management plan, and advised that this subfactor corresponded to PWS § 6.11. That PWS section requires the selected contractor to provide cybersecurity support services for DISA's production and pre-production lab. AR, Tab 1B, RFP, PWS, at 30-31. The selected contractor would be required to respond to and comply with information assurance vulnerability alerts, assist in the successful completion of security readiness reviews, ensure that networks and systems being developed are based on evaluated commercially available off-the-shelf and government off-the-shelf products, and perform various other duties. Id. at 30-31.

For the management approach factor, offerors were required to submit a management plan. AR, Tab 1A, Conformed RFP, at 6. That factor would evaluate how well each offeror described a comprehensive management approach that provides an acceptable labor-staffing mix to meet the requirements of the PWS. Id.

After conducting discussions, DISA received final proposal revisions from six offerors by the closing date of April 8, 2019. Combined Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 11. Following its evaluation, the agency made award to AHIT on May 3. Id. On May 13, DVS filed a protest with our Office challenging that award. Id. On May 29, our Office dismissed the protest as academic because the agency planned to take corrective action to reevaluate proposals and make a new source selection decision, or reopen discussions and solicit revised proposals. DirectVizSolutions, LLC, B-417565, May 29, 2019 (unpublished decision).

After the agency reevaluated proposals, it again made award to AHIT on August 14. The relevant results of the reevaluation are as follows:

	AHIT	DVS
Systems Engineering	Purple/Good	Green/Acceptable
Cybersecurity	Green/Acceptable	Green/Acceptable
Management Approach	Green/Acceptable	Green/Acceptable
Evaluated Cost	\$173,090,990	\$176,237,150

AR, Tab 7, Post-Corrective Action Price Negotiation Memorandum (PNM), at 10.¹ After reviewing the results, the source selection authority (SSA) determined that AHIT’s proposal represented the best value. Id. at 14. When comparing DVS’s and AHIT’s proposals, the SSA determined that AHIT’s proposal was technically superior because it offered a technical advantage under the systems engineering subfactor. Id. at 13. The SSA also determined that the two proposals were technically equivalent under the cybersecurity and management approach subfactors. Id. After DVS learned that its proposal was unsuccessful, it filed the instant protest with our Office.²

¹ For the technical ratings, the agency used a color/adjectival rating scheme with the following rating combinations: blue/outstanding, purple/good, green/acceptable, yellow/marginal, and red/unacceptable. AR, Tab 13, Post-Corrective Action Source Recommendation Decision at 2-3.

² The RFP was issued against the National Institutes of Health, Chief Information Officer--Solutions and Partners 3 Small Business Governmentwide Acquisition Contract. AR, Tab 1A, Conformed RFP, at 1. The task order is within our jurisdiction to hear protests related to the issuance of orders under multiple award, indefinite-delivery, indefinite-quantity (IDIQ) contracts established within civilian agencies, since the awarded value exceeds \$10 million. 41 U.S.C. § 4106(f)(1)(B); TCG, Inc., B-417610, B-417610.2, Sept. 3, 2019, 2019 CPD ¶ 312 at 3, n.1; 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 contract vehicle, rather than the agency that issues or funds the task order).

DISCUSSION

DVS argues that DISA did not take meaningful corrective action in response to its earlier protest, unreasonably evaluated its proposal, and improperly made its source selection decision. We have reviewed each of these allegations, and find that none provides us with a basis to sustain the protest.

Corrective Action

DVS alleges that the agency did not implement meaningful corrective action following the dismissal of its earlier protest. DVS points out that the evaluation record does not contain any evidence that the agency reevaluated proposals, or addressed the issues it previously raised. Protester's Supp. Protest and Comments at 15-17.

We have recognized that the mere promise of corrective action has the effect of circumventing the goal of the bid protest system. Research Analysis & Maintenance, Inc., B-410570.6, B-410570.7, July 22, 2015, 2015 CPD ¶ 239 at 7. Thus, where an agency fails to implement the promised corrective action, the agency's action has precluded the timely, economical resolution of the protest. Id. Based on the record, we find no basis to conclude that the agency failed to implement the corrective action from the earlier protest.

We dismissed the earlier protest because the agency elected to take corrective action by reevaluating proposals and making a new award decision, or, if necessary, reopening discussions and soliciting revised proposals. DirectViz Solutions, Inc., B-417565, May 29, 2019 (unpublished decision). Here, the record shows that the agency reevaluated proposals and made a new award decision after we dismissed the earlier protest. See generally AR, Tab 13, Post-Corrective Action Source Recommendation Decision (SRD); AR, Tab 7, Post-Corrective Action PNM. Although the agency's reevaluation reached the same conclusions as the original evaluation, our review of those documents shows that the agency better documented its comparison between AHIT's and the next highest rated offeror's proposals under the cybersecurity and management approach subfactors. Compare AR, Tab 3, SRD, at 49 with AR, Tab 13, Post-Corrective Action SRD, at 50.

The record also shows that the agency investigated a potential organizational conflict of interest during its reevaluation which it had not done earlier. AR, Tab 11, Decl. of Technical Evaluation Team Lead at 2. Moreover, even though the agency's reevaluation may have reached the same conclusions regarding the merit of DVS' proposal, that fact does not mean that the agency did not take meaningful corrective action. See Research Analysis & Maintenance, Inc., supra at 7 ("Although the SSA's conclusions regarding [the protester's] proposal in the recent Source Selection Decision are materially similar to the evaluation findings regarding [the protester's] proposal in the prior evaluation, we find this fact, alone, does not demonstrate that the agency failed to reevaluate proposals and render a new source selection decision."). Accordingly, we deny the protest allegation.

DVS' Technical Evaluation

DVS alleges that DISA should have assigned multiple strengths to its proposal under each of the technical subfactors. We have reviewed all of the protester's challenges to its evaluation; none provide us with a basis to sustain the protest because, in sum, each allegation merely disagrees with the agency's judgment of its proposal. We discuss a few illustrative examples below.³

In reviewing an agency's evaluation, we will not reevaluate offerors' proposals; instead, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and procurement statutes and regulations. The Eloret Corp., B-402696, B-402696.2, July 16, 2010, 2010 CPD ¶ 182 at 5. An offeror's disagreement with the agency's evaluation, without more, does not demonstrate that the evaluation was unreasonable. Id.

DVS argues that the agency should have assigned multiple strengths to its proposal under the systems engineering subfactor. Protest at 17-19. According to DVS, it should have received a strength because it proposed to include a [DELETED] throughout the systems engineering process. Protester's Supp. Protest and Comments at 9-10. The protester also argues that it should have received a strength because its technical approach featured a partnership with another firm which created one of the CyberNetOps applications. Protest at 18. DVS also asserts that it should have received a strength because its proposal featured a high number of incumbent staff. Id.

On this record, we find the agency's evaluation to be unobjectionable. The record shows that the agency reviewed DVS' proposal and determined that it met performance requirements, demonstrated an adequate technical approach, and had a low a risk of unsuccessful performance. AR, Tab 13, Post-Corrective Action SRD, at 38. The record also shows that the agency considered DVS' working knowledge of the current architecture, familiarity with CyberNetOps tools, and understanding of the systems

³ In its protest, DVS also alleges that the agency unreasonably failed to evaluate information contained in its business case. We deny this allegation because, as the agency points out, the RFP specified that the "Business Case is not a specific evaluation factor." AR, Tab 1A, Conformed RFP, at 3. In addition, the technical evaluation criteria provided that the evaluation would be based on each offeror's technical/management proposal, cybersecurity risk management plan, and management plan. Id. at 6. Finally, the agency noted that the RFP also specified that the business case was intended to highlight advantageous features contained in each offeror's technical proposal. COS/MOL at 31. Thus, we deny this allegation because the solicitation did not require the agency to evaluate any information contained in an offeror's business case. Instead, the RFP was clear that this information was to be used as a summary, reference document.

engineering process as evidence of DVS' technical understanding and as demonstrating that DVS will likely meet performance expectations. Id. at 38-39.

While the record includes positive comments about DVS' technical approach to systems engineering, the record also shows that the agency did not find that DVS' proposal contained any strengths. AR, Tab 13, Post-Corrective Action SRD, at 38. The record does, in fact, show that the agency considered that DVS proposed to [DELETED], its partnership with the other firm, and its planned use of incumbent staff during the evaluation. AR, Tab 11, Decl. of TET Lead, at 10-12.⁴ The agency simply determined that the features were not advantageous because they would not result in DVS exceeding performance requirements. Id.

With respect to the [DELETED], the agency explains that this feature would not be advantageous because, ultimately, this would only ensure that DVS' engineered solutions met cybersecurity requirements, which was a PWS requirement. AR, Tab 11, Decl. of TET Lead, at 10. As to DVS' partnership with another firm, the agency concluded that the partnership would not result in exceptional performance because it only meant that DVS would be able to sustain one of the CyberNetOps applications, which also was a PWS requirement. Id. at 11. Finally, with regard to DVS' planned use of incumbent staff, the agency explains that this was not advantageous because simply using incumbent staff would not, by itself, result in exceptional performance. Id. at 11-12. Thus, the record shows that the agency considered all of these features and simply concluded that they were not advantageous or representative of strengths in DVS' proposal. While DVS may argue that these features decrease the likelihood of unsuccessful performance, that allegation simply expresses disagreement with the agency's evaluation because it takes issue with the agency's judgment rather than demonstrates that the agency's evaluation was inconsistent with the stated evaluation criteria or proposal content. See Protester's Supp. Protest and Comments at 9-11.

For the cybersecurity subfactor, DVS argues that it should have been assigned two strengths. Protest at 20-21. First, DVS argues that its [DELETED] represents a strength under this subfactor. Id. Second, DVS also argues that its approach to data management represented a strength under this subfactor. Id. at 21-22.

⁴ DVS argues that we should not consider the TET's declaration because it constitutes post hoc rationalizations made in the heat of litigation. Protester's Supp. Protest and Comments at 5; Protester's Supp. Comments at 5. We disagree. Our Office will consider post-protest explanations that provide a detailed rationale for contemporaneous conclusions and simply fill in previously unrecorded details. See INDUS Tech., Inc., B-411702 et al., Sept. 29, 2015, 2015 CPD ¶ 304 at 5, n.4. Further, we will consider such explanations when the explanations are credible and consistent with the contemporaneous record. Id. Here, we find that the TET's declaration to be credible and consistent because it simply provides unrecorded details that support its evaluation.

After reviewing the record, we find the agency's evaluation of DVS' technical approach to be unobjectionable under the cybersecurity subfactor. The record shows that the agency considered DVS' technical approach as meeting performance requirements because DVS' proposal showed that it could manage the cybersecurity function, mitigate cybersecurity risks, respond quickly to cybersecurity incidents, and manage requisite certifications. AR, Tab 13, Post-Corrective Action SRD, at 40-41. Yet, the record also shows that the agency evaluated DVS' cybersecurity approach as not exhibiting any strengths. Id. at 40. Further, the agency concluded that integrating the [DELETED] or managing cybersecurity data information would not be advantageous because those features would not result in DVS exceeding performance requirements. AR, Tab 11, Decl. of TET Lead, at 17-21. Although DVS argues that these features add value to its proposal, such argument simply disagrees with the agency's evaluation and does not provide a valid basis of protest. See Protester's Supp. Protest and Comments at 11-12.

Under the management approach subfactor, DVS argues that its proposal should have been assigned multiple strengths because it proposed additional features which either decrease the likelihood of unsuccessful performance or exceed performance requirements. For instance, DVS asserts that it proposed additional key personnel in mission critical areas. Protest at 22-23. DVS also argues that it proposed an improvement to contract management communication, and also has an alternative [DELETED]. Id. Finally, DVS points out that it offered a recruiting advantage via its partnership with a large firm, and that it proposed regular [DELETED] reporting. Id.

Based on the record, we find the agency's evaluation of DVS' proposed management approach to be unobjectionable. The record shows that the agency evaluated DVS' approach as adequate and as demonstrating a low risk of unsuccessful performance because its proposed number of full-time employees was appropriate to perform the PWS requirements. AR, Tab 13, Post-Corrective Action SRD, at 41-45. The agency evaluated DVS' management approach as containing no strengths. Id.

As for the alleged strengths, the record shows that the agency reviewed each of these features and determined that none were advantageous. AR, Tab 11, Decl. of TET Lead, at 22-27. For instance, the record shows that the agency did not view the fact that DVS proposed additional key personnel as advantageous because they would be assigned to subareas under other key personnel; the agency explains that DVS' "mission critical areas" were nothing more than subareas already serviced by key personnel, and that therefore these additional key personnel were redundant. Id. The record also shows that the agency considered DVS' approach to contract management communication as not offering any benefit above the communication approach set forth in the PWS, and also considered DVS' alternative [DELETED] as not beneficial because routine and contingent plans to ensure continuous operations is a PWS requirement. Id. at 24. Further, the record shows that the agency considered DVS' recruiting ability as not beneficial because the agency viewed this feature as merely allowing DVS to maintain appropriate staffing levels. Id. at 26. Finally, the record shows that the agency considered DVS' cost management approach as not advantageous because the

selected contractor would be expected to provide regular cost management reporting under the PWS requirements. Id. at 26-27. To the extent DVS argues in its comments that these features reduce the risk of schedule disruption, unsuccessful performance, increase costs, or need for agency oversight, those arguments, like those above, do nothing more than disagree with the agency's judgment and do not provide a valid basis of protest. See Protester's Supp. Protest and Comments at 12-15. Accordingly, we deny the protest allegation.

DVS also argues that the evaluation was unreasonable because the agency did not consider and award strengths to DVS's proposal if a strength crossed multiple PWS sections. Protester's Supp. Protest and Comments at 4. As noted above, our review of the record shows that the agency did not assign strengths for the reasons advanced by DVS because the agency concluded that those features were not advantageous under the stated evaluation criteria. Even though the agency explained that some of the features were applicable to other PWS sections, we do not find the agency's explanation unreasonable because the agency was merely illustrating that the alleged strengths were not beneficial under either PWS §§ 6.4.4 or 6.11. Accordingly, we deny this allegation.

As a final matter, DVS argues that the agency unequally evaluated its and AHIT's proposals under the systems engineering subfactor because AHIT was awarded a strength for its [DELETED] mindset but the protester was not similarly awarded a strength even though its proposal also exhibited a [DELETED] focus. Protester's Supp. Protest and Comments at 2-3. DVS also argues that the evaluation was unequal because AHIT was evaluated favorably for having solid teaming partners but that it was not similarly evaluated even though it also had solid teaming partners. Id. at 3-4.

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. Parsons Gov't Servs., Inc., B-416771 et al., Dec. 12, 2018, 2018 CPD ¶ 425 at 9. On this record, we do not find that DVS has met that burden. The record shows that AHIT's proposal was assigned a strength because it proposed systems engineering process improvements leveraging [DELETED], not because it exhibited a generic focus on [DELETED]. AR, Tab 13, Post-Corrective Action SRD, at 32-33. Furthermore, the agency concluded that AHIT's proposed approach adapted [DELETED] to [DELETED] its networks, and that aspect was advantageous. Id. The agency also concluded that AHIT's technical team approach outlined specific subcontractor tasks that demonstrated a cogent plan to realize this goal (i.e., the agency was more confident in AHIT's approach based on its plan to use specialized teaming partners). AR, Tab 7, Post-Corrective Action PNM, at 10-11.

As the agency points out, DVS has not demonstrated that it was subject to unequal treatment because it has not shown that its proposal likewise contained a plan to [DELETED] the agency's networks through leveraging [DELETED]. Supp. MOL at 7. Instead, the protester has only demonstrated that its proposal would improve the agency's governance structure for systems engineering process and design review, and

also that it contained improvements to the [DELETED]. Protester's Supp. Comments at 2-4. Further, DVS has only demonstrated that it proposed experienced teaming partners, whereas to prove unequal treatment, it needed to show that it planned to use its teaming partners to [DELETED] the agency's networks through the same systems engineering process improvements that AHIT proposed. Id. at 4-5. Thus, DVS has not highlighted any parts of its proposal where it described a [DELETED] strategy similar to AHIT's technical approach. See also AR, Tab 14, Supp. Decl. of TET Lead, at 4 (DVS' proposal did not include a [DELETED] or a [DELETED] to improve the networks). Accordingly, we deny the protest allegation.

Source Selection Decision

Finally, DVS alleges that the agency unreasonably made its source selection decision because the technical evaluation was flawed. Protest at 24. This allegation is derivative of the protester's challenge to the agency's evaluation of its technical proposal. Thus, we dismiss this allegation because derivative allegations do not establish independent bases of protest. Safeguard Base Operations, LLC, B-415588.6, B-415588.7, Dec. 14, 2018, 2018 CPD ¶ 426 at 4.

The protest is denied.

Thomas H. Armstrong
General Counsel