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## Decision

**Matter of:** UltiSat Inc.

**File:** B-418146.2; B-418146.3

**Date:** May 19, 2020

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### DIGEST

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

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### DECISION

UltiSat, Inc., of Gaithersburg, Maryland, protests the issuance of a task order to SES Government Solutions, Inc., (SES GS) of Reston, Virginia, under request for proposals (RFP) No. 1376652/Tracking No. CS30010, issued by the Defense Information Systems Agency (DISA) to support the National Guard Bureau Advanced Liaison (ADVON) and Dismounted Strike Kit (DSK) satellite services requirement.

We deny the protest.

### BACKGROUND

DISA requires satellite services to support the National Guard Bureau's Weapons of Mass Destruction team and the Marine Corp's Chemical Biological Incident Response Force. To that end, the solicitation, which was issued pursuant to Federal Acquisition Regulation part 16, contemplated the issuance of a task order under the General Services Administration's Complex Commercial Satellite Communications (CS3) indefinite-delivery, indefinite-quantity (IDIQ) contract, for satellite services to support

ADVON and DSK terminals in North America and Guam. Agency Report (AR), Tab 1, Conformed RFP at 1; AR, Tab 1A, RFP attach. 1, Performance Work Statement (PWS) at 1-4. The period of performance included a 1-year base period and four 1-year options. RFP at 1. The RFP provided for issuance of the task order to the firm whose proposal represented the best value to the government, considering one technical factor--technical/management approach--and price, with the technical factor being more important than price. *Id.* at 6-7. The technical factor had five subfactors; the agency would assign the first subfactor, iDirect networks, an adjectival rating, and the agency would assign a rating of acceptable or unacceptable to the other four subfactors.<sup>1</sup> RFP at 6-7. A rating of unacceptable on any subfactor would render a proposal ineligible for award. *Id.* at 7.

The solicitation required the contractor to provide two iDirect networks to support North America (NA1 and NA2). Each network was to be supported by a separate satellite, and each satellite supported by a geographically separate teleport. Of relevance to this protest, PWS subparagraph 6.2.1, subtask 2.1 included the following requirement:

Each network shall provide a committed information rate<sup>[2]</sup> (CIR), of 2048 kilobits per second (kbps) out-route from the hub to each remote terminal and 1024 kbps in-route from each remote terminal to the hub, simultaneously to each of eighteen terminals, nine ADVON remote terminals and nine DSK manpacks. Each network shall be provisioned to support 36 terminals, eighteen ADVON remote terminals and eighteen DSK manpacks; it is understood that if more than eighteen terminals are online simultaneously, the listed CIR may not be achieved and terminals may operate at reduced information rates.

PWS at 4. The RFP advised offerors that in evaluating proposals “[t]he Government **may place preference** on solutions that exceed the minimum number of simultaneously supported ADVON and DSK terminals in each of the North America networks, while maintaining the committed information rate outlined in PWS subparagraph 6.2.1., Subtask 2.1.” RFP at 7 (emphasis in original). The RFP further advised that “[t]he Government **may place preference** on solutions that have remaining unoccupied bandwidth once the occupied bandwidth for the maximum number of simultaneously supported terminals has been identified.” *Id.* (emphasis in original).

Multiple offerors, including the protester and the awardee, responded to the solicitation. Both the awardee and the protester proposed more than the minimum required number of terminals. UltiSat proposed a network configuration that would support up to

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<sup>1</sup> The possible ratings were outstanding, good, acceptable, marginal, and unacceptable. *Id.*, attach. 6, Evaluation Tables, Table 1. As stated above, the remaining subfactors were rated as acceptable or unacceptable.

<sup>2</sup> The CIR is a measure of the quality of the transmission. Agency Post-Teleconference Brief at 3.

[DELETED] terminals on NA1, and a configuration that would support up to [DELETED] terminals on NA2. AR, Tab 2, UltiSat Final Technical-Management Proposal at 4-5, 14. SES GS proposed to support up to [DELETED] terminals on each of its North American networks. AR, Tab 3, SES GS Final Technical-Management Proposal at 9.

With regard to bandwidth usage under the iDirect networks subfactor, the awardee's proposal uniquely provided that, for both the NA1 and NA2 networks, SES GS would "implement [DELETED] technology" to "maximize the [DELETED], number of remote terminals supported at the CIR and amount of unoccupied bandwidth." *Id.* The awardee's proposal explained that [DELETED]. *See id.* SES GS's proposal stated that each of its North American networks "comprises [DELETED] [megahertz (MHz)]. . .supporting [DELETED] terminals" and "[DELETED]MHz of capacity remains available on a third transponder." *Id.* at 10.

The agency identified two strengths in the awardee's proposal under the iDirect networks subfactor. The first strength was for proposing to support up to [DELETED] terminals per network while maintaining the CIR, which exceeded the required 18. AR, Tab 4, Selection Recommendation at 11. The agency also assigned a strength to SES GS's proposal for a solution that resulted in [DELETED] MHz of available bandwidth for NA1 and NA2. *Id.* The agency evaluated the awardee's proposal as outstanding under the iDirect networks subfactor and as acceptable under subfactors 2 through 5. *Id.* at 2.

The agency identified one strength in the protester's proposal under the iDirect networks subfactor, for the ability to support up to [DELETED] terminals on NA1 and [DELETED] terminals on NA2 while maintaining the CIR, which exceeded the RFP requirement that offerors support 18 terminals per network. *Id.* at 14. The agency evaluated the protester's proposal as good under the iDirect networks subfactor and as acceptable under subfactors 2 through 5. *Id.* at 2.

The awardee's evaluated price of \$25,619,229 was less than the protester's evaluated price of \$26,392,467. *Id.*

The agency concluded that SES GS's proposal was technically superior to the other proposals and lowest in price; as a result it represented the best value to the government. *Id.* at 18; AR, Tab 5, Price Negotiation Memorandum at 11. The agency provided notice to the parties, and this protest followed.<sup>3</sup>

## DISCUSSION

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<sup>3</sup> Because the expected value of the task order at issue is above \$10 million, these protests are within our jurisdiction to hear protests of task orders placed under civilian agency IDIQ contracts. 41 U.S.C. § 4106(f)(1)(B); *see also Wyle Labs., Inc.*, B-413989, Dec. 5, 2016, 2016 CPD ¶ 345 at 3 (the authority under which we exercise our task order jurisdiction is determined by the agency that awarded the underlying IDIQ task order contract, rather than the agency that issues or funds the task order).

The protester challenges the failure of the agency to award two strengths to the protester's proposal, the failure of the agency to properly assess proposal risk in SES GS's proposal, and the award of a strength for unoccupied bandwidth to SES GS's proposal under the iDirect networks subfactor.

The evaluation of proposals in a task order competition, including the determination of the relative merits of proposals, is primarily a matter within the contracting agency's discretion, because the agency is responsible for defining its needs and the best method of accommodating them. *M.A. Mortenson Co.*, B-413714, Dec. 9, 2016, 2016 CPD ¶ 361 at 4. In reviewing a protest of a task order competition, we do not reevaluate proposals 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. *DynCorp Int'l LLC*, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 7. A protester's disagreement with an agency's judgment, without more, is not sufficient to establish that an agency acted unreasonably. *STG, Inc.*, B-405101.3 *et al.*, Jan. 12, 2012, 2012 CPD ¶ 48 at 7.

The protester contends that the agency unreasonably failed to award its proposal a strength for offering the use of the [DELETED] satellite. The agency documented in its contemporaneous evaluation that UltiSat proposed the use of the [DELETED] satellite, but DISA did not consider the use of that satellite to be a strength. AR, Tab 4, Selection Recommendation Document at 14. The protester argues that the [DELETED] satellite offers these two unique features: "[DELETED]." Protester's Comments, Mar. 16, 2020, at 14. The protester contends that features of its proposed satellite result in "a much more efficient use of the 88 MHz and is a direct benefit to the Government." *Id.* at 15.

The protester acknowledges that these two features were not expressly identified evaluation criteria, and does not claim that they were logically encompassed by the stated criteria. *See id.* at 15-16. Rather, the protester contends that the "fact that the Solicitation states that the Government 'may place preference' on certain features in no way precludes DISA from awarding Strengths for other aspects of an offeror's technical solution." *Id.* at 15. The protester offers no case law in support of its position. *See id.* at 13-16.

The agency program analyst for the Commercial Satellite Communications Office, who was the head of the technical evaluation team (TET) for this procurement, offered a technical explanation for why the TET did not assign the protester's proposal a strength for the proposed use of the [DELETED] satellite. *See* AR, Tab 8, Decl. of TET Chair at 4. She explained that, "[f]or this particular requirement, the Government did not desire, nor seek out, solutions that provided more power efficiency," and therefore did not see the benefits of the satellite, as articulated by the protester's proposal, to be a strength, meaning a feature of particular benefit to the agency. *Id.*

When evaluating proposals in a task order competition, an agency properly may take into account specific, albeit not expressly identified, matters that are logically

encompassed by the stated evaluation criteria. *M.A. Mortenson Co.*, B-413714, *supra* at 5.

Here, the protester has not asserted that the particular power or efficiency of the proposed satellite was logically encompassed by the two stated evaluation criteria under the iDirect networks subfactor for which the agency might assign strengths--the number of terminals proposed and the amount of unoccupied bandwidth available. The RFP's announced evaluation criteria under the iDirect networks subfactor did not include specific characteristics of the satellite, and, as the agency explains, the two enumerated criteria, namely, additional terminals and unoccupied bandwidth, did not anticipate consideration of the available power or efficiency of the proposed satellite. AR, Tab 8, Decl. of TET Chair at 4 (noting that the solicitation "did not desire, nor seek out, solutions that provided more power efficiency"). Accordingly, we see nothing unreasonable in the agency's decision not to assign the protester's proposal a strength for proposing the [DELETED] satellite, and this allegation is without merit.

The protester argues that the agency also unreasonably failed to assign the protester's proposal a strength for [DELETED]. Protester's Comments, Mar. 16, 2020, at 16-17. The protester contends that, by including an [DELETED] in its proposal, UltiSat effectively mitigated the risk of primary satellite failure, and that mitigation merited an evaluated strength. *Id.* at 16. DISA argues that it did not consider UltiSat's proposal of [DELETED] to be a strength "because an awarded [ ] contract, by default, requires the contractor to provide the service in the PWS," and, "in the event of a satellite failure, the contractor is legally obligated to restore service and provide the required satellite coverage." AR, Tab 8, Decl. of TET Chair at 4-5.

Again, as set forth above, the iDirect networks subfactor is the only subfactor under which the agency could assign a proposal strength. As the agency explained, neither of the expressly identified evaluation criteria under which a strength could be assigned relates to [DELETED]. Thus, we see nothing unreasonable in the agency's decision not to assign the protester's proposal a strength for proposing [DELETED], and this allegation is also without merit.

The protester next asserts that the agency unreasonably failed to identify transition risk inherent in the awardee's proposal. SES GS proposed the use of [DELETED] satellite. Tab 3, SES GS Final Technical-Management Proposal at 10. UltiSat does not contend that SES GS will be unable to provide--after the transition--the required 88 MHz capacity on the [DELETED]. Rather, UltiSat argues that, during the transition, the [DELETED] satellite will not have enough capacity [DELETED] to offer the 88 MHz capacity required by the solicitation. Protester's Comments at 17-18. SES GS's proposal to [DELETED], the protester contends, will necessarily result in a disruption of service during the transition. *Id.*

SES-GS's proposal stated that "100% of the required coverage and capacity on both satellites will be available at service start and will be met throughout the life of the task order." AR, Tab 3, SES GS Final Technical-Management Proposal at 9. Additionally,

SES GS's proposal included a signed letter of supply for the [DELETED] satellite, confirming that the satellite owner/operator would provide SES GS with the required 88MHz capacity as set forth in the RFP. AR, Tab 8, Decl. of TET Chair at 5. The TET Chair explains that, based on the content of the awardee's proposal, the TET "did not determine [SES GS's] proposed approach to represent more than minimal transition risk and did not assign [SES GS] a weakness." *Id.*

As a general matter, in evaluating proposals, an agency may reasonably accept as accurate information provided by an offeror in its proposal. *FEDSYNC BEI, LLC*, B-417492, B-417492.2, July 23, 2019, 2019 CPD ¶ 303 at 7. Nonetheless, an agency may not accept proposal representations at face value where there is significant countervailing evidence reasonably known to the agency evaluators that should create doubt as to whether the representations were accurate. *Id.* at 7-8.

We see nothing unreasonable here in the agency's reliance on the representations in the awardee's proposal, one of which was independently provided by the satellite vendor. Presumably, the agency knew what representations would suffice, and SES GS's proposal provided them. Moreover, the protester has not explained how it determined that the [DELETED] satellite lacks the capacity required during the transition. See Protest at 12-13; Protester's Comments, Mar. 16, 2020, at 17-18. Without knowing the basis for the protester's allegation, GAO will not assume that there was significant evidence--that should have been known to the agency evaluators--that SES GS's representations were inaccurate. This allegation therefore provides no basis on which to sustain the protest.

Lastly, the protester asserts that the agency unreasonably awarded SES GS's proposal a strength for providing unoccupied bandwidth under the iDirect networks subfactor.<sup>4</sup>

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<sup>4</sup> To the extent the protester also alleges that the solicitation contains a latent ambiguity pertaining to the preference for unoccupied bandwidth, we dismiss the allegation as untimely. The agency produced its technical evaluation on March 6, which credited the awardee's proposal with a strength for providing available bandwidth. AR, Tab 4, Selection Recommendation at 11. UltiSat knew that SES GS proposed [DELETED] MHz of unoccupied bandwidth [DELETED] when it received a less redacted version of SES GS's technical proposal on March 10. AR, Tab 3, SES GS Final Technical-Management Proposal at 29. Thus, the protester had all facts relevant to an allegation that the RFP contained a latent ambiguity on March 10, when it learned the agency's interpretation of the iDirect networks subfactor requirements. The protester knew, unequivocally, on March 25--with the filing of the supplemental agency report--that the agency viewed SES GS's proposed approach as consistent with the RFP requirements. See Supp. AR at 4-5 (quoting SES GS's proposal to use [DELETED] MHz on each satellite to support [DELETED] terminals with "[DELETED] MHz of capacity...available [DELETED]" and stating that it was clear from SES GS's proposal that "it did propose to provide [DELETED] MHz of unoccupied bandwidth on each proposed North American satellite while supporting a total of [DELETED] terminals on each satellite"). UltiSat

SES GS proposed to configure NA1 and NA2 with 88 MHz of capacity each, with [DELETED] MHz of that capacity to support a maximum of [DELETED] satellite terminals on each network at the required CIR, and with the remaining [DELETED] MHz of capacity on each network as unoccupied bandwidth [DELETED]. AR, Tab 3, SES GS Final Technical-Management Proposal at 8-10. The agency awarded SES GS's proposal one strength for exceeding the RFP's minimum number of simultaneously supported terminals and a second strength for offering a significant amount of remaining unoccupied bandwidth once the occupied bandwidth for the maximum number of simultaneously supported terminals had been identified. AR, Tab 4, Selection Recommendation at 11.

UltiSat alleges that the agency's assignment of a strength to SES GS's proposal for providing unoccupied bandwidth was unreasonable because SES GS did not allocate bandwidth for the maximum number of simultaneously supported terminals before determining the amount of remaining unoccupied bandwidth. The protester asserts that SES GS's proposal indicated it was using [DELETED] technology to reduce the number of simultaneously supported terminals. Protester's Comments, April 23, 2020, at 7. According to the protester, "SES GS' proposal [would] leave a large number of [its proposed] terminals *idle--i.e., not* simultaneously supported." *Id.* at 3 (emphasis in original). The protester further asserts that idle, unoccupied terminals "cannot be 'simultaneously supported'--*i.e., 'simultaneously online.'*" *Id.* at 5. UltiSat argues that "the Solicitation instructed offerors to maximize the number of *simultaneously supported* terminals--*i.e., to allocate bandwidth across as many terminals as possible.*" *Id.* at 6 (emphasis in original). UltiSat concludes that, while it followed the RFP instructions and calculated the unoccupied bandwidth remaining after allocating bandwidth across the maximum number of terminals, SES GS did precisely the opposite.

The record fails to support the protester's argument. While it shows that SES GS proposed a technology to [DELETED], it fails to show that the awardee proposed to use this technology to reduce the number of simultaneously supported terminals. Similarly, the record fails to show that SES GS proposed to keep some of its terminals idle. Indeed, the record shows that SES GS proposed to support up to [DELETED] terminals on each network. See, e.g. AR, Tab 3, SES GS Final Technical-Management Proposal at 9 ("[e]ach satellite will be configured with 88 MHz of capacity supporting the networking requirements for [DELETED] remote Very Small Aperture Terminal (VSAT) terminals, [DELETED] ADVON and [DELETED] DSK manpacks distributed throughout the coverage").

The protester further argues that by providing that the agency "**may place preference** on solutions that have remaining unoccupied bandwidth once the occupied bandwidth for the maximum number of simultaneously supported terminals has been identified,"

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waited until April 8--14 days after March 25--to assert that the RFP contained a latent ambiguity. Protester's Comments, Apr. 8, 2020, at 3. UltiSat's latent ambiguity allegation, filed more than 10 days after it knew or should have known its grounds for protest, is therefore untimely. 4 C.F.R. § 21.2(a)(2).

RFP at 7 (emphasis in original), the solicitation in essence required offerors to allocate all of their transponder bandwidth to support as many terminals as possible. In other words, per the protester's interpretation, if an offeror (such as SES GS) proposed a solution that--[DELETED]--allowed it to support simultaneously [DELETED] terminals on each network and still have remaining unoccupied bandwidth, it was required to propose to support more than [DELETED] terminals on each network.

We agree with the intervenor that the protester's interpretation of the RFP requirements is squarely at odds with the express intent of the iDirect networks subfactor, which placed offerors on notice that the agency viewed unoccupied bandwidth as desirable. The intervenor asserts that, under the protester's interpretation of the RFP, "unoccupied bandwidth would be an arbitrary remainder determined solely by how neatly an offeror's total proposed bandwidth divided out between the maximum number of terminals an offeror could possibly support." Intervenor's Comments, Apr. 23, 2020, at 6. Interpreting the RFP to limit the amount of unoccupied bandwidth an offeror could propose in this manner, the intervenor contends, "would be inconsistent with the RFP's clearly stated preference for solutions that maximize unoccupied bandwidth and renders that evaluation preference meaningless." *Id.*, citing *ActioNet, Inc.*, B-417173, B-417173.2, Mar. 5, 2019, 2019 CPD ¶ 100 (finding that "the protester's interpretation is unreasonable because it narrowly construes the cited provision and would not give full effect to all of the evaluation criteria").

We agree. Under the protester's interpretation, it would be impossible for an offeror to propose a meaningful amount of unoccupied bandwidth. We find that the record provides no support for a decision to sustain the protest on the basis that the agency unreasonably assigned the awardee's proposal a strength under the iDirect networks subfactor for proposing unoccupied bandwidth.

The protest is denied.

Thomas H. Armstrong  
General Counsel