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Decision

Matter of: eKuber Ventures, Inc.

File: B-420877; B-420877.2

Date: October 13, 2022

Lewis P. Rhodes, Esq., and Orest Jowyk, Esq., McMahon, Welch and Learned LLC, for the protester.

Richard D. Kelley, Esq., Bean, Kinney & Korman P.C., for Highlight Technologies, Inc., the intervenor.

Shirin E. Ahlhauser, Esq., General Services Administration, for the agency.

Sarah T. Zaffina, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's evaluation of the protester's quotation is denied where the evaluation was reasonable and consistent with the stated evaluation criteria.
 2. Protest alleging that the agency engaged in disparate treatment in the evaluation of quotations is denied where the different evaluation results were reasonably based on substantive differences between the quotations.
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DECISION

eKuber Ventures, Inc. (eKuber), a small disadvantaged business of McLean, Virginia, protests the issuance of a call order to Highlight Technologies, Inc. (Highlight), a small business of Fairfax, Virginia, under request for quotations (RFQ) No.

No. 47HAA022Q0093, issued by the General Services Administration (GSA), Office of Public Buildings IT (information technology) Services. The solicitation seeks professional support services for enterprise data analytics shared services (DASS).

eKuber challenges the agency's evaluation of its quotation under the technical capability and staffing approach evaluation factors as unreasonable, unequal, and inconsistent with the evaluation criteria. eKuber also challenges the agency's best-value tradeoff analysis.

We deny the protest.

BACKGROUND

On May 25, 2022, pursuant to Federal Acquisition Regulation subpart 8.4, GSA issued the RFQ to all small business holders of Corporate Information Technology Services blanket purchase agreements. Agency Report (AR), Tab 2, RFQ at 1, 5.¹ The RFQ sought quotations to provide professional support services for DASS including “expertise, best practices/standard operating procedures, and resources to manage and operate GSA’s [DASS] capabilities.” *Id.* at 18. DASS is one of six shared services projects at GSA intended to improve “the delivery of common IT business capabilities in support of GSA’s mission, customers and employees.” *Id.* at 17. This effort includes support for several GSA data environments, such as its Data to Decisions (D2D) platform, GSA business intelligence and reporting solutions for the operations and maintenance activities of several internal platforms and applications, and the Public Buildings Service (PBS) Data Integration and Repository Management System (PDIRM). *Id.* at 18-19.

The RFQ contemplated the placement of a single, fixed-price call order on a best-value tradeoff basis for a 1-year base period and two 1-year option periods. *Id.* at 5, 41. Quotations were to be evaluated based on price and the following three non-price factors, in descending order of importance: (1) technical capability and understanding of requirements; (2) staffing and composition of the technical team; and (3) past performance. *Id.* at 7. The non-price evaluation factors, when combined, were significantly more important than price. *Id.* at 15. The RFQ provided that the agency would assign one of the following adjectival ratings for the technical capability and staffing approach evaluation factors: excellent, good, acceptable, marginal, and unacceptable.² *Id.* at 11-12. Quotations had to be rated acceptable or higher for each non-price factor to be eligible for award and evaluated for price. See *id.* at 9-10.

As relevant here, under the technical capability factor, the solicitation instructed vendors to describe how they would use their proposed resources to support DASS for a number of GSA’s data environments. *Id.* at 8, 18-19. Specifically, vendors will be required to provide operations and maintenance for all components of GSA’s D2D platform, SAP Business Objects,³ and PDIRM. *Id.* at 19. The solicitation provided for the evaluation of the soundness of vendors’ technical approaches to meeting the RFQ’s requirements. *Id.* at 8.

¹ Citations to the record are to the pages of the Adobe PDF documents produced in the agency report and citations to the solicitation are to the conformed RFQ. The RFQ was amended twice; neither amendment is relevant to the issues in this protest. AR, Tab 1, Contracting Officer’s Statement (COS) at 1.

² eKuber does not challenge the agency’s past performance or price evaluations; therefore, we discuss these aspects of the agency’s evaluation no further.

³ SAP Business Objects is the data technology currently supporting DASS. RFQ at 24.

Under the staffing approach factor, the solicitation instructed vendors to provide a staffing plan, narratives explaining the expertise of proposed personnel, and résumés for key personnel and important personnel who have “demonstrated experience and expertise” in the required technologies. *Id.* at 9-10. The solicitation provided that the agency would evaluate résumés to assess expertise and capability to achieve the solicitation’s enumerated goals. *Id.* at 10.

In response to the RFQ, GSA received two quotations, one from eKuber and the second from Highlight. COS at 1. The agency evaluated the quotations as follows:

	eKuber	Highlight
Technical Capability	Marginal	Acceptable
Staffing Approach	Marginal	Acceptable
Past performance		
Relevance	Somewhat Relevant	Relevant
Confidence Assessment	Satisfactory Confidence	Satisfactory Confidence
Total Evaluated Price	\$22,374,983	\$18,682,594

AR, Tab 15, Award Decision at 7-8, 11-12.

The agency rated the protester’s quotation as marginal under the technical capability factor based upon the agency’s assessment of multiple weaknesses and significant weaknesses, and a deficiency. AR, Tab 13, Technical Evaluation Board (TEB) Report at 3-5. In this regard, the agency found that the protester’s quotation did not meet the requirements of the RFQ and the quotation’s weaknesses were not offset by strengths, and that “[s]ignificant weaknesses combined together to demonstrate a deficiency in experience and expertise needed to support the PBS PDIRM environment.” *Id.* at 2, 5.

For the staffing approach factor, the agency also rated the protester’s quotation as marginal based on the agency’s assessment of multiple weaknesses and significant weaknesses, and a deficiency. *Id.* at 6-7. Again, the agency found that the protester’s quotation did not meet the solicitation requirements and that the protester’s weaknesses were not offset by strengths. *Id.* at 5. Further, taken together, the quotation’s significant weaknesses demonstrated a deficiency in proposed personnel having “adequate experience or expertise to deliver [operations and maintenance] of the PDIRM environment.” *Id.* at 7.

Despite assigning ratings of marginal to eKuber’s quotation for the technical capability and staffing approach factors, and contrary to the solicitation’s requirement that firms needed to receive ratings of acceptable or higher for each non-price factor to remain eligible for award, the agency evaluated eKuber’s price and included eKuber’s quotation in the tradeoff analysis. COS at 12. The contracting officer independently reviewed the TEB report and its recommendation in conjunction with the price analysis, and

concluded that Highlight offered the best value to the government because it submitted the highest-rated technical quotation with the lowest price. *Id.* at 11; *see also* AR, Tab 13, TEB Report at 13-14; AR, Tab 15, Award Document at 13. On June 29, GSA notified eKuber that its quotation had not been selected and this protest followed. AR, Tab 6, Notice of Unsuccessful Quotation at 1.

DISCUSSION

The protester challenges the agency's evaluation of its quotation under the technical capability and staffing approach factors. eKuber contends that the agency's evaluation under these factors was unreasonable and inconsistent with the terms of the solicitation. Protest at 3-7; Comments and Supp. Protest at 1-4. Moreover, eKuber argues that GSA engaged in unequal treatment when it disparately evaluated eKuber's and Highlight's résumés for proposed key and important personnel under the staffing evaluation factor. Comments and Supp. Protest at 5-6; Supp. Comments at 2. Finally, the protester contends that, as a result of the alleged underlying flaws in the evaluation, GSA's best-value tradeoff analysis is irrational. Protest at 7; Comments and Supp. Protest at 4-5. For the following reasons, we find no basis on which to sustain the protest.⁴

The evaluation of quotations is matter within the discretion of the procuring agency. *Procentrix, Inc.*, B-414629, B-414629.2, Aug. 4, 2017, 2017 CPD ¶ 255 at 5. Our Office does not independently evaluate quotations; rather, we review the agency's evaluation to ensure that it is consistent with the terms of the solicitation and applicable statutes and regulations. *Id.* A protester's disagreement with the agency's judgment, by itself, is not sufficient to establish that an agency acted unreasonably. *Id.*

Technical Capability Factor

eKuber challenges the evaluation of its quotation under the technical capability factor, contending that several significant weaknesses and weaknesses are unreasonable. Among other things, eKuber argues that the agency did not have a reasonable basis to assign eKuber's quotation several significant weaknesses and weaknesses for not having worked on the PDIRM project. Protest at 4, 6; Comments and Supp. Protest at 2-4. eKuber principally advances two arguments in this regard. First, the protester contends that its quotation demonstrates that it worked, as a subcontractor, on GSA's Enterprise Data Repository Management (EDRM) project, which was the predecessor requirement to the PDIRM project. Protest at 4; Comments and Supp. Protest at 2-3. Second, the protester argues that nothing in the stated evaluation criteria requires vendors to have either EDRM or PDIRM experience. Protest at 6; Comments and Supp. Protest at 4.

⁴ Although we do not discuss all of eKuber's challenges, we have fully considered them and conclude that none are meritorious.

The RFQ required vendors to “describe their technical approach and understanding of the requirements for supporting [DASS] and their business/technical business intelligence analysis experience including technical and qualitative descriptions of the proposed methodology that will be used to accomplish each of the subject areas.” RFQ at 8. Vendors were also required to demonstrate their “depth and breadth of successful experience in working with GSA and non-GSA stakeholders to deliver solutions, and all functionality within the scope” of the DASS requirement. *Id.* Further, the solicitation instructed vendors to “demonstrate insight into PBS’[s] vision of the project, identifying interdependencies, and constraints related to this project as described in the statement of work.” *Id.*

The solicitation notified vendors that their quotations would be “evaluated to determine the soundness of the technical approach most suitable to this effort and the ability to . . . meet the requirements of [s]ection 3.0.” *Id.* Section 3.0 describes the scope of this requirement, including the services required to support DASS. *Id.* at 18-40. Specifically, the RFQ provides that the resulting call order supports the PDIRM environment and informs vendors that one of the agency’s primary objectives for DASS support services is “[o]perations and maintenance of all components of PDIRM,” and maintenance of “[d]ata, dashboards and reports with the PDIRM . . . at a high level of accuracy, availability, and completeness.” *Id.* at 19. Additionally, the solicitation enumerates “typical support services” performed under previous awards for this requirement including PDIRM specific services and database administration for the PDIRM environment. *Id.* at 20-21. Moreover, the solicitation describes the current PDIRM technical environment in detail, *id.* at 32-36, and explicitly identifies the PDIRM environment as mission critical, requiring support outside of normal business hours, *id.* at 41.

The agency assigned the protester’s quotation five significant weaknesses and one weakness pertaining to eKuber’s lack of experience on the EDRM and the PDIRM projects, finding that eKuber had insufficient experience with the PDIRM requirements to be performed under this solicitation. AR, Tab 13, TEB Report at 3-5. The agency determined that the quotation did not “demonstrate[]an adequate approach and technical understanding of the requirements” and that eKuber had a high risk of unsuccessful performance. *Id.* at 2. The TEB observed that eKuber is not a prime contractor or subcontractor on the PDIRM effort. *Id.* at 3-5. The TEB also noted that although eKuber referenced EDRM in its quotation, the original contract for the EDRM project was eight years ago.⁵ *Id.* The evaluators also found that while eKuber referenced supporting and upgrading EDRM, the vendor neither addressed GSA’s goals for DASS nor described how it will achieve the agency’s stated goals. *Id.* at 4.

⁵ In addition, the TEB found that the quotation “mimic[ed] the RFQ,” appears to have been “written to make it appear that vendor does the work or has delivered the [PDIRM] project,” and “perhaps cut/pasted” from a quotation submitted for the previous requirement because it references key performance indicators that are not part of this solicitation. AR, Tab 13, TEB Report at 3-4.

As noted above, eKuber contends that its quotation demonstrated that it worked on EDRM, which was the predecessor project to PDIRM. The protester explains that it was a subcontractor for Vencore, Inc., the prime contractor for the original EDRM project, and that in 2017, GSA transitioned the requirement name from EDRM to PDIRM; the change was memorialized in a modification issued to eKuber by Vencore. Protest at 4; see Protest exh. 4, Vencore Subcontract at 5. eKuber asserts that a plain reading of its quotation demonstrates its experience with this requirement. Protest at 4. eKuber also asserts that several of its proposed personnel had experience on the EDRM project. *Id.*

In response, GSA argues that while the protester's quotation included references to eKuber's EDRM experience, the protester's quotation did not include documentation supporting eKuber's statements that it had prior experience on the EDRM project. COS at 7-8; Memorandum of Law (MOL) at 5-6. The agency contends that although eKuber included a subcontractor agreement between eKuber and Vencore in its protest, this document was not submitted with eKuber's quotation. COS at 7. Moreover, the contracting officer reviewed Vencore's quotation for the PDIRM effort and Vencore did not list any subcontractors in its submission. *Id.* Accordingly, the agency was unable to substantiate eKuber's claims that it had prior experience performing either the EDRM or the PDIRM efforts. *Id.* at 8; see *also* MOL at 11-12.

Here, the record provides no basis to conclude the evaluation of eKuber's quotation was unreasonable or otherwise improper. It is a vendor's responsibility to submit a well-written quotation, with adequately detailed information, which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. *Axxeum, Inc.*, B-420013, B-420013.2, Oct. 29, 2021, 2021 CPD ¶ 354 at 5. eKuber's quotation made a few passing references to the EDRM project; the agency noted these references, but observed the EDRM project contract had been awarded eight years ago. Moreover, while eKuber provided a subcontract agreement with Vencore for work on EDRM/PDIRM in its protest, this information was not included in its quotation. Additionally, eKuber's quotation stated that its personnel have significant experience with PDIRM but did not further elaborate on this experience.

While eKuber's protest submissions attempt to paint its quotation as demonstrating its experience under the technical capability factor, our review of the record supports the reasonableness of the agency's conclusions. A protester's disagreement with the agency's judgment, by itself, is not sufficient to establish that an agency acted unreasonably. *Procentrix, supra*. To the extent eKuber's protest submissions now attempt to more clearly demonstrate its prior experience, our review is limited to the protester's quotation, as submitted. *Creoal Consulting, LLC*, B-419460, B-419460.2, Mar. 4, 2021, 2021 CPD ¶ 148 at 7. Accordingly, we find the agency's conclusions to be reasonable and find the protester's arguments to amount to no more than disagreement with the agency's evaluation findings.

We also find that there is no basis for the protester's claim that the agency applied unstated evaluation criteria when it assessed eKuber's quotation with several significant weaknesses and a weakness pertaining to the protester's lack of experience working on

the EDRM or PDIRM efforts. As the agency explains, the solicitation made clear that PDIRM was essential to this requirement. COS at 9-10; MOL at 10-12. In this regard, the RFQ emphasized that vendors describe their “successful experience” with GSA and non-GSA stakeholders, with particular attention to “demonstrat[ing] insight into PBS’[s] vision of the project.” RFQ at 8. As part of the evaluation, GSA would look to “the soundness of the technical approach most suitable to this effort” and the vendor’s ability to meet the requirements of section 3.0, the statement of objectives, which explicitly states that PDIRM is one of three environments for which the vendor will provide support services under this call order. *Id.* at 8, 18-19. In section 3.0, the solicitation provides extensive detail about the PDIRM environment and the support services the vendor will be required to perform. *Id.* at 18-40.

Based on the above, the solicitation made clear that the agency would evaluate a vendor’s technical approach to providing support services for DASS and the vendor’s ability to provide support in the PDIRM environment. When reviewing whether an agency applied unstated evaluation criteria, our decisions explain that an agency is required to evaluate quotations based solely on the factors identified in the solicitation. *IBM Global Bus. Serv.-U.S. Fed.*, B-409029, B-409029.2, Jan. 27, 2014, 2014 CPD ¶ 43 at 4. While an agency may apply evaluation considerations that are not expressly outlined in the solicitation if those considerations are reasonably and logically encompassed within the stated evaluation criteria, there must be a clear nexus between the stated and unstated criteria. *Id.* Here, the TEB considered eKuber’s lack of experience performing the PDIRM effort in assessing its technical approach; because work under the order was to include PDIRM support, we find that this did not constitute application of an unstated evaluation criterion.

Moreover, we disagree with the protester’s assertion that the agency assigned significant weaknesses and a weakness solely because eKuber lacked experience with the EDRM or PDIRM projects. The record establishes that when the TEB noted that eKuber did not have experience with PDIRM or EDRM, the TEB also found other issues with the quotation, which led the agency to conclude that eKuber would not be able to successfully perform the requirement. On this record, we find the agency’s conclusions to be reasonable and find that the protester’s arguments amount to no more than disagreement with the agency’s evaluation findings. Accordingly, we deny this protest ground.

Staffing Approach Factor

eKuber also challenges the agency’s evaluation of its quotation under the staffing approach factor. As noted above, the agency assigned the protester’s quotation a rating of marginal under this factor due to the assessment of several significant weaknesses, weaknesses, and a deficiency. AR, Tab 13, TEB Report at 6-7. The significant weaknesses were largely attributable to eKuber’s proposed key and important personnel lacking demonstrated experience with Oracle applications and databases, current or otherwise. *Id.* Similarly, the weaknesses assessed to eKuber’s quotation related to the lack of experience with current versions of required technologies

and absence of details about the experience listed in the résumés. *Id.* The agency found that the protester's "[q]uotation does not clearly meet requirements and has not demonstrated an adequate approach and technical understanding of the requirements." *Id.* at 5. The agency concluded that the 3 strengths assessed to eKuber's quotation did not offset the 15 weaknesses and 5 significant weaknesses, which when combined, constituted a deficiency. See *id.* at 5. According to the evaluators, eKuber's quotation demonstrated "a significantly high risk of failure to deliver the requirements of the government due to lack of required expertise, skills[,] and experience in key personnel and proposed team." *Id.* at 7.

The protester contends that its quotation did not merit significant weaknesses, weaknesses, and a deficiency under the staffing approach factor. According to the protester, "GSA ignored the full spectrum of [eKuber's] résumés and focused only on the fact that some of the résumés contained expertise in 'older technologies.'" Protest at 5. In this regard, eKuber argues that it provided résumés for several key personnel with more than 15 years of experience in their respective fields and that the résumés encompassed all the "software systems and programming tools" with which the proposed individuals have experience over the course of their careers. *Id.*

In response to the protester's arguments, the agency points out that the RFQ informed vendors that résumés would be "evaluated to assess the availability and qualifications of the proposed staff, their subject matter expertise, their experience in similar projects and their capability to fully and professionally accomplish the objectives stated in the RFQ." COS at 9-10 (citing RFQ at 10). The agency further points out that while the protester's résumés demonstrated extensive experience working with IT systems, some individuals lacked experience with Oracle and other required technologies, and some individuals listed experience with outdated versions of the required technologies. *Id.* at 10. Because, as the agency explains, the experience and expertise with current and required technologies is critical to ensure successful performance of this effort, the résumés submitted by eKuber decreased the agency's confidence in the vendor's ability to successfully perform this effort. MOL at 14-15; see also COS at 10. As such, the agency contends that the significant weaknesses, weaknesses, and a deficiency assessed to eKuber's quotation were merited.

We find the agency's concerns regarding the proposed key and important personnel under the staffing approach factor to be reasonable. To the extent that the agency's understanding of the expertise and experience of the eKuber's personnel does not accurately reflect the individuals' capabilities, we note that it is a vendor's responsibility to submit a well-written quotation, with adequately detailed information that clearly demonstrates compliance with the solicitation and allows for meaningful review by the procuring agency. *Axxeum, Inc., supra*. We therefore find no basis on which to sustain this protest ground.

Disparate Treatment

The protester also alleges that the agency evaluated eKuber's and Highlight's proposed résumés unequally. eKuber argues that its quotation was found to have multiple weaknesses because it submitted résumés containing outdated technologies and certifications, but that the awardee was not similarly assessed weaknesses for résumés identifying the same outdated technologies. Comments and Supp. Protest at 5-6; Supp. Comments at 2. The protester contends that the agency used a more "lenient evaluation standard" in evaluating Highlight's quotation, which resulted in an unreasonable tradeoff analysis. Supp. Comments at 2-3.

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. *Creoal Consulting, LLC, supra* at 11. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings do not stem from differences between the vendors' quotations. *Systems Integration & Develop., LLC, B-417858.6, B-417858.8, et al.*, Nov. 2, 2020, 2020 CPD ¶ 376 at 7-8.

Here, based on our review of the record, we find that the agency has provided reasonable explanations demonstrating that differences in the evaluators' findings were based on meaningful differences between the quotations. See AR, Tab 16, Supp. COS at 2; Supp. MOL at 2-4. For example, the protester argues that its quotation was assessed a weakness for an individual whose résumé listed experience on older Oracle database versions--Oracle 10gRAC, 10g, 9i, 8i, 8.0, 7.3--while Highlight's résumés also referenced "expertise and experience in nearly the same exact Oracle software systems"--Oracle 12c, 11i, 10g, 9i, 8i--for which Highlight was not assessed a weakness. Comments and Supp. Protest at 5-6 (referencing AR, Tab 13, TEB Report at 6-7; AR, Tab 5, eKuber Technical Quotation at 90; AR, Tab 9, Highlight Technical Quotations at 71).

The record demonstrates that the experience listed in eKuber's quotation and Highlight's quotation was for different versions of the Oracle databases. Moreover, Highlight submitted résumés listing experience with current technologies, whereas eKuber's résumés listed older versions. The contracting officer explained that "[a]s long as there was evidence to support current technology knowledge and experience, the requirement was met and therefore not noted as a weakness." Supp. COS at 2. In other words, the agency contends, the quotations were materially different and therefore, the agency's evaluation was reasonable. *Id.*

Although the protester claims that we should give no weight to the agency's post-protest explanations, Supp. Comments at 1-2, our Office generally considers such statements where the explanations merely provide a detailed rationale for contemporaneous conclusions and fill in previously unrecorded details, so long as the explanations are credible and consistent with the contemporaneous record. *Arrington Dixon & Assocs., Inc.*, B-409981, B-409981.2, Oct. 3, 2014, 2014 CPD ¶ 284 at 8; *The S.M. Stoller Corp.*,

B-400937 *et al.*, Mar. 25, 2009, 2009 CPD ¶ 193 at 13. Here, we find that the contracting officer's statements and agency report are consistent with, and provide a more detailed explanation of, the TEB report and award decision. In this respect, the contracting officer explains why weaknesses were not assessed to quotations with regard to experience listed in résumés submitted for vendors' proposed personnel. As our Office has noted, we do not expect an agency's evaluation report to "prove a negative." See *Strategic Mgmt. Sols., LLC*, B-416598.3, B-416598.4, Dec. 17, 2019, 2019 CPD ¶ 426 at 18 n.13; *BillSmart Sols., LLC*, B-413272.4, B-413272.5, Oct. 23, 2017, 2017 CPD ¶ 325 at 4 n.19. Thus, there was no requirement for the agency's evaluation to document why this aspect of Highlight's quotation did not merit a weakness, and we view the contracting officer's statement to be a post-protest explanation that provides a detailed rationale for contemporaneous conclusions and not a *post-hoc* rationalization. Accordingly, we conclude that the differences in the agency's assessment of quotations here reasonably stem from differences in the quotations themselves and are not the product of disparate treatment. As a result, we deny this protest ground.

Best-Value Tradeoff Analysis

Finally, eKuber argues that the agency's best-value determination is flawed due to underlying errors in the evaluation. Protest at 7. Because we have denied the protester's challenges to the agency's evaluation, we conclude there is no basis to challenge the agency's best-value determination. Where, as here, the highest-rated, lowest-priced quotation is selected for award, a tradeoff is not required. *Procentrix, Inc.*, *supra* at 15.

In sum, we conclude that the agency's evaluation was reasonable and that the agency evaluated vendors even-handedly. We further conclude that the agency's best-value determination was reasonable.

The protest is denied.

Edda Emmanuelli Perez
General Counsel