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Decision

Matter of: HII Mission Driven Innovative Solutions, Inc.

File: B-421221.4; B-421221.5

Date: April 25, 2023

Kenneth B. Weckstein, Esq., and Shlomo D. Katz, Esq., Brown Rudnick LLP, for the protester.

Edward J. Tolchin, Esq., Offit Kurman, P.A., for Gunnison Consulting Group, Inc., the intervenor.

Julie A. Neville, Esq., Administrative Office of the United States Courts, for the agency.

Michelle E. Litteken, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest of agency's technical evaluation is denied where the evaluation was reasonable and consistent with the solicitation.
2. Challenge to agency's best-value tradeoff decision is denied where the record shows that the decision was reasonable and consistent with the terms of the solicitation.

DECISION

HII Mission Driven Innovative Solutions, Inc. (HII Mission), of Fairfax, Virginia, protests its non-selection for the establishment of a multiple-award blanket purchase agreement (BPA), under request for quotations (RFQ) No. USCA21Q0014, which was issued by the Administrative Office of the United States Courts (AOUSC) for information technology (IT) support and services.¹ HII Mission challenges the AOUSC's evaluation of its technical quotation, as well as the agency's best-value tradeoff decision.

¹ The AOUSC established BPAs with the following firms: Accenture Federal Services LLC (Accenture); General Dynamics Information Technology, Inc. (GDIT); Gunnison Consulting Group, Inc. (Gunnison); Lamb Informatics Limited (Lamb); and 22nd Century Technologies, Inc. (22nd Century). Contracting Officer's Statement (COS) at 4; Memorandum of Law (MOL) at 2.

We deny the protest.

On April 1, 2021, the AOUSC issued the RFQ to firms holding General Services Administration federal supply schedule contracts pursuant to Federal Acquisition Regulation (FAR) subpart 8.4. The solicitation contemplated the establishment of at least three BPAs to provide IT support and services to the federal judiciary nationwide. Agency Report (AR), Tab 3.0.1, RFQ at 2.²

Vendors were instructed to submit quotations in three volumes, to contain a business quotation, technical quotation, and price quotation. *Id.* at 14. Technical quotations were to have three parts: the vendor's technical approach for sample BPA call one (Enterprise Operations Center, or EOC); the vendor's technical approach for sample BPA call two (Case Management Systems Office, or CMSO); and the vendor's BPA management approach. *Id.*

The solicitation provided that the agency would make its source selection decision using a best-value tradeoff, which would consider four factors, each corresponding to one of the three parts of the technical quotation volume, and price (*i.e.*, technical approach for call one; technical approach for call two; and BPA management approach). *Id.* at 15. The RFQ established that the two sample BPA call factors were equally important, and when combined, were more important than the BPA management approach factor. *Id.* The nonprice factors, when combined, were significantly more important than price. *Id.*

The AOUSC received quotations from 23 vendors, including HII Mission, by the deadline for submission. See COS at 3. The agency formed separate technical evaluation teams (TETs) to evaluate quotations under each of the technical factors. Supp. COS at 1. As relevant here, the evaluators rated HII Mission's quotation as marginal under the sample BPA call technical approach EOC factor. COS at 3. After evaluating the quotations, the AOUSC established BPAs with four of the vendors and informed the other vendors, including HII Mission, that their quotations had not been selected. *Id.* at 4-5.

On October 11, 2022, HII Mission filed a protest with the AOUSC.³ *Id.* at 1; see also AR, Tab 7.1, AOUSC Protest. The AOUSC took corrective action in response to that

² The AOUSC issued six amendments to the RFQ. COS at 2. Unless stated otherwise, this decision cites the conformed version of the RFQ, submitted as tab 3.0.1 of the agency report.

³ Two other vendors, 22nd Century and Applied Insight, LLC, also filed protests with our Office. MOL at 2. The AOUSC elected to take voluntary corrective action in response to the protest filed by 22nd Century. See *22nd Century Technologies, Inc.*, B-421221.2, Nov. 30, 2022 (unpublished decision). The corrective action resulted in the establishment of a BPA with 22nd Century. MOL at 2 n.3. Our Office denied the

protest, in the form of reevaluating the protester’s quotation under the technical approach for call one factor. COS at 1. The reevaluation, which occurred while the agency-level protest was pending, confirmed the TET’s prior findings, and on January 9, 2023, the AOUSC denied the protest and advised HII Mission of the decision. *Id.*; see *also* AR, Tab 7.2, AOUSC Protest Decision. The AOUSC evaluated the protester’s and the awardees’ quotations as follows:

	Technical Approach for Call One	Technical Approach for Call Two	BPA Management Approach	Price
HII Mission	Marginal	Acceptable	Acceptable	\$99,935,817
Accenture	Good	Good	Acceptable	\$229,759,432
GDIT	Acceptable	Good	Acceptable	\$130,214,449
Gunnison	Acceptable	Acceptable	Outstanding	\$219,400,271
22nd Century	Acceptable	Good	Acceptable	\$206,348,385
Lamb	Acceptable	Acceptable	Good	\$158,135,807

AR, Tab 4, Source Selection Memorandum (SSM) at 59-60; Supp. COS at 4.

On January 19, 2023, HII Mission filed this protest with our Office.⁴

DISCUSSION

HII Mission challenges the AOUSC’s evaluation of its quotation under the sample BPA call technical approach EOC factor. The protester also alleges that the AOUSC improperly failed to include HII Mission’s quotation in the best-value tradeoff. Although

protest filed by Applied Insight, LLC. *Applied Insight, LLC*, B-421221, B-421221.3, Jan. 20, 2023, 2023 CPD ¶ 33.

⁴ Under the Competition in Contracting Act of 1984 (CICA), our Office has jurisdiction to resolve bid protests concerning solicitations and contract awards that are issued “by a Federal agency.” 31 U.S.C. § 3551(1)(A). CICA provides that the term “Federal agency” has the meaning “given such term by section 102 of title 40.” 31 U.S.C. § 3551(3). Section 102 of title 40 of the United States Code defines the term “Federal agency” as including any “establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol, and any activities under the direction of the Architect of the Capitol).” The AOUSC, as an establishment in the judicial branch, is subject to our bid protest jurisdiction under CICA.

we do not discuss in detail below every permutation of the protester's arguments, we have considered them all and find that none provides a basis to sustain the protest.⁵

Technical Evaluation

HII Mission's protest centers on the AOUSC's assessment of a weakness to its quotation under the sample BPA call technical approach EOC factor, which led to the protester's quotation being rated as marginal under that factor. For this factor, vendors were to propose a technical approach for a sample call order. RFQ at 14. The AOUSC would evaluate quotations for demonstration of relevant expertise, understanding of the requirements and best practices, and level of effort. *Id.* at 16.

In its technical evaluation consensus report, the TET explained the basis for the weakness that the TET assessed to the protester's quotation as follows:

The quoter[']s proposed staffing is insufficient. This resource plan does not sufficiently meet the level of effort presented in the SOW [statement of work] and demonstrates a lack of understanding of the skilled resources needed to accomplish the work. This significantly increases performance risk and would impact the EOC's mission to deliver and support the court community and the judiciary's infrastructure.

AR, Tab 4.2, EOC TET Consensus Report at 12. The TET noted that the historical level-of-effort data showed that approximately 90 contractor personnel were leveraged to support the National Service Desk (NSD) and approximately 80 contractor personnel were leveraged to support infrastructure operations division (IOD)/Network Operations Center (NOC) operations. *Id.* The TET wrote: "The proposed staffing level of 44.5 will not sufficiently support enterprise operations for a 30,000+ user base in a 24x7x365 [24 hours/day, 7 days/week, 365 days/year] dynamic operational environment with multiple support and escalation Tiers." *Id.*

The protester contends that the AOUSC applied an unstated evaluation criterion when the TET assessed this weakness. Protest at 9. HII Mission argues that the solicitation did not require vendors to propose a specific number of full-time equivalents. *Id.* at 10.

We find nothing objectionable about the AOUSC's evaluation. Our review of the evaluators' judgment in assessing HII Mission's quotation is limited to assessing whether the record shows that those evaluation judgments were reasonable, based on

⁵ In HII Mission's initial protest, the protester also alleged that the AOUSC (1) failed to assess a strength to its quotation for its experience with ServiceNow and (2) improperly downgraded HII Mission's quotation in the price evaluation. Protest at 11-13. The agency provided a substantive response to each protest argument, but HII Mission did not respond to the agency's arguments in its comments on the agency report. Thus, we dismiss these allegations as abandoned. *Medical Staffing Sols. USA*, B-415571, B-415571.2, Dec. 13, 2017, 2017 CPD ¶ 384 at 3.

the quotation and the solicitation criteria, and we do not substitute our judgment for that of the evaluators. *BSI, Inc.*, B-420418, Mar. 3, 2022, 2022 CPD ¶ 73 at 4. The protester has not pointed to any evidence in the record indicating that the TET required vendors to propose a specific number of personnel. Rather, the evaluators considered HII Mission's proposed staffing level of 44.5 personnel and determined that it was unlikely that the protester would be able to accomplish the work, and that HII Mission's resource plan also demonstrated a lack of understanding of the skilled resources needed to accomplish the work, thereby significantly increasing performance risk. AR, Tab 4.2, EOC TET Consensus Report at 12; COS at 3. To the extent the protester disagrees and contends that its proposed staffing level was sufficient to perform the requirements, we find such an argument to be no more than disagreement with the agency's reasoned judgment, which does not constitute a basis to sustain the protest. *Octo Consulting Grp., Inc.*, B-420988, B-420988.2, Nov. 30, 2022, 2023 CPD ¶ 2 at 7 (denying challenge to agency's assessment of a weakness for proposing insufficient staffing).

Additionally, the protester complains that the AOUSC unreasonably criticized HII Mission for not proposing personnel to perform the tasks associated with tier II and III functions within the AOUSC's IOD when, in the protester's view, tasks supporting the IOD are outside the scope of the sample call order.⁶ Protest at 10; see *also* Comments & Supp. Protest at 12-13.

The protester's argument is unavailing because the RFQ establishes that functions related to the IOD are within the scope of the sample call. As part of the questions and answers incorporated in the solicitation, a potential offeror asked for the historical level of effort or other staffing data for the sample EOC call. AR, Tab 3.4, Questions & Answers No. 56. The AOUSC responded, in relevant part: "Contractor personnel leveraged to manage NSD operations is [approximately] 90 personnel. Contractor personnel leveraged to manage IOD/NOC operations is [approximately] 80." *Id.* Additionally, another potential offeror asked about the levels of government and contractor support for the EOC effort, and the AOUSC responded: "Both Government and contractor personnel are used to manage the NSD; [approximately] 130 combined personnel (90 are contractors). Both Government and contractor personnel are used to manage the IOD/NOC; [approximately] 102 combined personnel ([approximately]80 are contractors)." *Id.* No. 100. These responses advised vendors that the IOD was within the scope of work for the EOC sample call. Accordingly, we deny this argument.⁷

⁶ The AOUSC states that the IOD is a division of the EOC. MOL at 6. The AOUSC explains that tier II and tier III work include more complex support tasks that proactively ensure that IT operations run smoothly, such as incident management and root cause analysis. *Id.* n.6.

⁷ HII Mission also argues that the AOUSC failed to document the assessment of the marginal rating because in the draft consensus report, the TET rated the protester's quotation as acceptable under the sample BPA call technical approach EOC factor, yet

Best-Value Tradeoff

The protester argues that the AOUSC failed to comply with the RFQ when it made the best-value tradeoff decision because the contracting officer (who acted as the source selection authority) excluded HII Mission's quotation from the analysis and did not consider the price advantage it offered. Protest at 8; Comments & Supp. Protest at 6-8. The AOUSC responds that the SSM demonstrates that the contracting officer considered all of the quotations, understood that 13 quotations received higher ratings under the technical factors than the protester's quotation, and determined that HII Mission's lower proposed price did not offset the risks posed by its lack of understanding. MOL at 4; COS at 5.

The protester points to our decision in *System Engineering International, Inc.*, B-402754, July 20, 2010, 2010 CPD ¶ 167 at 5, in which our Office sustained a protest challenging a best-value tradeoff where the record showed that the agency performed a tradeoff between two higher-rated, higher-priced quotations but did not consider the lower prices submitted by other lower-rated, technically acceptable vendors. Protest at 8; Comments & Supp. Protest at 6-8. In *System Engineering, supra*, there was no evidence in the record that the agency considered the protester's offer for award. Here, however, the record demonstrates that the AOUSC considered the protester's lower-rated, technically acceptable quotation. The SSM includes the following summary of the evaluation of HII Mission's quotation:

HII [Mission] was rated Marginal for Factor 1 BPA Call EOC, Acceptable for Factor 2 BPA Call 2 CMSO and Acceptable for Factor 3 BPA Management Approach and did not clearly demonstrate an understanding of the requirements. Although the quote is the 3rd lowest price quote evaluated, they are not highly rated technically as detailed above. Therefore, HII does not represent the overall best value to the government.

the TET rated the quotation as marginal under the same factor in the final consensus report. Comments & Supp. Protest at 17. An evaluation record must show the rationale for the agency's decision and evaluation determinations. *Gartner, Inc.*, B-419190, B-419190.2, Dec. 14, 2020, 2020 CPD ¶ 401 at 3-4. With respect to draft evaluation documents, the overriding concern for our review is not whether an agency's final evaluation conclusions are consistent with earlier evaluation conclusions, but rather whether they are reasonable and consistent with the stated evaluation criteria, and reasonably reflect the relative merits of the submissions. See, e.g., *Level 3 Commc'ns LLC*, B-412854 *et al.*, June 21, 2016, 2016 CPD ¶ 171 at 10 n.14. Based on our review, as described above, we conclude that the record contains sufficient documentation to identify the rationale for why the AOUSC evaluated HII Mission's quotation as marginal, and the TET's findings were consistent with the evaluation criteria. We find the documentation of the AOUSC's evaluation to be unobjectionable.

AR, Tab 4, SSM at 61. The record demonstrates that the AOUSC considered the protester's quotation, was aware of the fact that the protester offered a lower price, and concluded that the protester's quotation did not offer the best value. Accordingly, we reject the protester's argument that the AOUSC improperly excluded its quotation from the tradeoff.

HII Mission also argues that although the AOUSC was required to compare the protester's quotation to 22nd Century's quotation when the AOUSC conducted a tradeoff as part of the voluntary corrective action, the agency report did not include such a tradeoff. Comments & Supp. Protest at 18. The AOUSC states that the contracting officer prepared a tradeoff decision, but a technical failure caused the file to be lost. Supp. COS at 3. In the agency's response to the supplemental protest, the contracting officer explained why the AOUSC selected 22nd Century for award. *Id.* at 3-4.

For procurements conducted pursuant to FAR subpart 8.4 and requiring a statement of work, such as this one, FAR section 8.405-2(f) establishes minimum documentation requirements. *RIVA Sols., Inc.*, B-418952, B-418952.2, Oct. 27, 2020, 2020 CPD ¶ 353 at 10. Our Office has also found that in the context of a FAR subpart 8.4 procurement, an agency's evaluation judgments must be documented in sufficient detail to show that they are reasonable. *Id.* An agency may select the higher-rated, higher-priced quotation as reflecting the best value to the agency where that decision is consistent with the evaluation criteria and the agency reasonably determines that the technical superiority of the higher-priced quotation outweighs the price difference. *Amyx, Inc.*, B-410623, B-410623.2, Jan. 16, 2015, 2015 CPD ¶ 45 at 17.

Here, we think that the AOUSC sufficiently documented its judgments and conclusions in such a manner that, when the record is considered as a whole, there is no basis to find the best-value tradeoff decision unreasonable. The record demonstrates that the contracting officer was aware of the strengths, weaknesses, deficiencies, and uncertainties assessed to each quotation. See *generally* AR, Tab 4, SSM; Supp. COS at 2. For example, the contracting officer noted that the AOUSC would benefit from 22nd Century's proactive approach to security as code, as well as its approach to technical debt. Supp. COS at 2. The contracting officer found that although HII Mission's quotation was one of the lowest priced, "the proposed price . . . could not be considered as a benefit in a rational trade-off analysis, as it was founded upon flawed assumptions based on a misunderstanding of the requirements, resulting in an unrealistic [level of effort] provided in the technical proposal." *Id.* at 5.

In sum, the contracting officer considered the underlying evaluation and provided a well-reasoned explanation for a tradeoff that considered the advantages provided by each of the vendors' quotations and justified paying 22nd Century's higher price, as well as the higher prices of the other awardees. AR, Tab 4, SSM at 60-66; Supp. COS at 2. Based on this record, we find that the SSM sufficiently documented the AOUSC's

consideration of the relative merits and prices of the competing quotations, as well as a reasonable basis for the AOUSC's decision.

The protest is denied.

Edda Emmanuelli Perez
General Counsel