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# Decision

**Matter of:** South Dade Air Conditioning and Refrigeration, Inc.

**File:** B-421406

**Date:** April 25, 2023

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Michelle F. Kantor, Esq., and Sanford E. Watson, Esq., McDonald Hopkins LLC, for the protester.

W. Benjamin Phillips, III, Esq., and John Prairie, Esq., Wiley Rein, LLP, for Raven Services Corporation, the intervenor.

Robert Notigan, Esq., and Benjamin D. Lorber, Esq., General Services Administration, for the agency.

Michelle F. Kantor, Esq., McDonald Hopkins LLC, for the protester.

Mary G. Curcio, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest that agency used risk as an unstated evaluation factor is dismissed since performance risk is intrinsic to stated evaluation factors.
  2. Protest that agency unreasonably evaluated protester's quotation under four technical elements as unacceptable is dismissed where protester is not an interested party because it abandoned challenges about two of the elements that make the protester's quotation ineligible for award.
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## DECISION

South Dade Air Conditioning and Refrigeration, Inc., of Selma, Alabama, protests the establishment of a blanket purchase agreement (BPA) with Raven Services Corporation, of Manassas, Virginia, under solicitation No. 47PD0322Q0004, issued by the General Services Administration (GSA) for facilities engineering, operations and maintenance, and related services at fourteen locations throughout the state of Alabama. South Dade asserts that the agency unreasonably evaluated its quotation as unacceptable and ineligible for the BPA.

We dismiss the protest.

## BACKGROUND

The solicitation, issued on April 28, 2022, contemplated the establishment of one BPA against GSA's Multiple Award Schedule Facilities--Facilities Maintenance and Repair contract in accordance with Federal Acquisition Regulation (FAR) subpart 8.4. Agency Report (AR), Exh. 3, Request for Quotation (RFQ) at 1, 5. The solicitation provided that the BPA would be established with the vendor that submitted the quotation that provided the best value to the government considering price, and the following non-price factors listed in descending order of importance: management plan, prior experience, past performance, and small business socioeconomic category designation. RFQ at 14. The management plan factor included two components with a total of ten elements that vendors were required to address as follows: (1) management approach with elements for staffing plan; monthly progress and communications plan; and quality control plan, and (2) technical approach with elements for preventive/predictive maintenance plan; National Computerized Maintenance Management System (NCMMS) usage and data management plan; repair plan; service request and administrative support plan; energy and water management approach; technical program, property, and project support plan; and elevator support plan. *Id.*

Quotations were submitted and evaluated in two phases. During phase 1, vendors responded to the prior experience, past performance, small business socioeconomic category designation, and price factors, and submitted other eligibility information. RFQ at 15-16; AR, Exh. 11, Evaluation Panel Preliminary Report Phase 1 at 5.<sup>1</sup> Vendors that progressed to phase 2 submitted their responses to the management plan factor. RFQ at 16. In evaluating the management plan factor, the evaluators considered whether the vendor's response to each element met the solicitation requirements or included favorable or unfavorable aspects.<sup>2</sup> AR, Exh. 10, Evaluation Panel Preliminary Report Phase 2 at 12, 59-64; Response to GAO Request for Additional Briefing at 1. The evaluators then assigned an overall rating of excellent, very good, acceptable, or

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<sup>1</sup> Following the phase 1 evaluation, GSA notified those vendors that had a low probability of success. RFQ at 16. Those vendors were not eliminated from the competition, and could choose to participate in phase 2. *Id.*

<sup>2</sup> Evaluators used the following definitions:

Meets requirements--an aspect of a quotation in which a requirement of the stated evaluation criteria has been met, without additional positive benefit or advantage.

Favorable--an aspect of a quotation which provides a positive benefit or advantage to the Government.

Unfavorable--an aspect of a quotation in which a requirement of the stated evaluation criteria has not been met, increasing the risk of unsuccessful contract performance. AR, Exh. 10, Evaluation Panel Preliminary Report Phase 2 at 12.

unacceptable to the management plan factor. AR, Exh. 10, Evaluation Panel Preliminary Report Phase 2 at 13. As relevant to this protest, unacceptable is defined as:

The factor/quote indicated the Contractor is unlikely to meet some or all of the requirements of the BPA. An “unacceptable” quote cannot be awarded. The overall quality of the quote is not acceptable, there is a limited probability of success and a high level of overall risk to the Government is recognized. *Id.*

The agency evaluated South Dade’s quotation and concluded that it did not meet the solicitation requirements for four elements: staffing plan with six unfavorable aspects; quality control plan with four unfavorable aspects; NCMMS usage and data management plan with two unfavorable aspects; and service request and administrative support plan with five unfavorable aspects.<sup>3</sup> See AR, Exh. 10, Evaluation Panel Preliminary Report, Phase 2 at 60-64. As a result of its failure to meet these requirements, South Dade was rated unacceptable under the management plan factor, and unacceptable overall under the technical factor.<sup>4</sup> As a result, South Dade was considered ineligible for award. *Id.* at 64; AR, Exh. 8, Best-Value Tradeoff at 5.

The agency notified South Dade that it was an unsuccessful offeror on January 4; this protest followed.

## DISCUSSION

South Dade protests that the agency used unstated evaluation criteria, unreasonably assessed as unfavorable a number of aspects of its quotation, and failed to reasonably evaluate the quotation considering that the solicitation provides for performance based contracting. As discussed below, we dismiss all of South Dade’s protest grounds.

### Unstated Evaluation Criteria

South Dade asserted that the agency used an unstated evaluation factor in finding that certain of its proposed solutions created risk since risk was not identified in the solicitation as an evaluation factor. According to South Dade, this error broadly impacted the entire evaluation. This allegation, however, lacks a valid legal basis because even when performance risk is not specifically listed in the solicitation as an

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<sup>3</sup> We do not address or otherwise discuss the assigned unfavorable aspects of South Dade’s quotation since we conclude that the protester abandoned its challenges to the assigned unfavorable aspects of its quotation, or is otherwise not an interested party to pursue them.

<sup>4</sup> The agency assigned South Dade’s quotation ratings of acceptable under the prior experience and past performance factors and excellent under the small business designation factor. South Dade’s evaluated price was \$49,601,180.60. AR, Exh. 8, Best-Value Tradeoff at 5; Exh. 7, Price and Technical Analysis at 7.

evaluation criterion, an agency may always consider risk intrinsic to the stated evaluation factors, that is, risk that arises, for example, from the vendor's proposed approach or demonstrated lack of understanding. *Ridoc Enterprise Inc.*, B-292962.4, July 6, 2004, 2004 CPD ¶ 169 at 6. We therefore dismiss this allegation. 4 C.F.R. § 21.1(c)(4), (f); § 21.5(f).

#### Evaluation of Unfavorable Aspects

South Dade also protested each of the unfavorable aspects assigned to its quotation under each of the four elements for which it was found not to meet the solicitation requirements. In its report responding to the protest, the agency addressed each of South Dade's allegations, explaining why it reasonably found that the aspects of South Dade's quotation were unfavorable. In its comments responding to the agency report, South Dade did not substantively respond to the agency's justification for any of the unfavorable findings assigned to South Dade's quotation under two elements--the NCMMS usage and data management plan and the service request and administrative support plan. Instead South Dade stated that "to the extent that [South Dade] has not responded to each and every conclusion" made in the agency's report, South Dade "stands on its detailed [p]rotest as to every [u]nfavorable bullet point made by the GSA." Comments at 7 n.7. We dismiss these allegations.

In responding to an agency report, protesters are required to provide a substantive response to the arguments advanced by the agency. *enrGies, Inc.*, B-408609.9, May 21, 2014, 2014 CPD ¶ 158 at 4. Where a protester merely references earlier arguments advanced in an initial protest without providing a substantive response to the agency's position, our Office will dismiss the referenced allegations as abandoned. *Id*; *Yang Enterprises, Inc.*, B-415923, March 12, 2018, 2018 CPD ¶ 109 at 2. Since South Dade did not substantively respond to the agency's explanation of why it evaluated aspects of the protester's quotation as unfavorable under (1) the NCMMS usage and data management plan and (2) the service request and administrative support plan, we conclude that South Dade has abandoned its challenges to the unfavorable ratings that the agency found under these elements, and the agency's conclusion that these elements did not meet the solicitation requirements. These allegations are dismissed.<sup>5</sup>

In the comments South Dade submitted in response to the agency report, South Dade did address the agency's justification with respect to four of the six assigned

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<sup>5</sup> South Dade also challenged unfavorable aspects assigned to its quotation under the following elements for which its quotation met the solicitation requirements; monthly progress and communications plan; preventive/predictive maintenance plan; repair plan; and elevator support plan. In its report on the protest, the agency responded to each of South Dade's allegations. In its comments on the agency report South Dade did not substantively respond to the agency's justification for assigning the unfavorable aspects to these elements. We therefore consider these arguments abandoned. See *Yang Enterprises, Inc.*, B-415923, Mar. 12, 2018, 2018 CPD ¶ 109 at 2.

unfavorable aspects under the staffing plan element, and one of the four assigned unfavorable aspects under the quality control element.<sup>6</sup> South Dade is not an interested party to object to the agency's assignment of these unfavorable aspects to its quotation. In this regard, under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3557, only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1). A protester is not an interested party where it would not be in line for award if its protest were to be sustained. *RELM Wireless Corp.*, B-405358, Oct. 7, 2011, 2011 CPD ¶ 211 at 2.

Here, South Dade's quotation failed to meet the solicitation requirements with respect to two elements: the NCMMS usage and data management plan and the service request and administrative support plan. According to the contemporaneous evaluation documents, a quotation that failed to meet some or all of the solicitation requirements was unacceptable, and an unacceptable quotation was ineligible for award. AR, Exh. 10, Evaluation Panel Preliminary Report Phase 2 at 12. The agency explains that South Dade's failure to meet the solicitation requirements for the NCMMS usage and data management plan or the service request and administrative support plan elements made its quotation unacceptable, and South Dade is therefore not eligible for award. As noted above, South Dade abandoned its challenges to the agency's evaluation of these two elements. Accordingly, we find that the agency properly found South Dade's

quotation to be unacceptable and therefore the protester is not an interested party to challenge the evaluation of its management approach with respect to the staffing plan

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<sup>6</sup> South Dade also did not respond to three of the four unfavorable aspects the agency assigned under the quality control plan element and two of the six unfavorable aspects the agency assigned under the staffing plan element. We similarly dismiss these challenges to the evaluation as abandoned. See *Yang Enterprises, Inc.*, B-415923, Mar. 12, 2018, 2018 CPD ¶ 109 at 2. In addition, in its protest South Dade listed strengths that it believed its quotation should have been assigned. Protest at 18. The agency explained why it did not assign these strengths, and in its comments on the report South Dade relisted the strengths, but did not substantively address the agency's explanation. Accordingly, we also consider that South Dade abandoned the allegation that its quotation should have been assigned additional strengths and dismiss this basis of protest. See *Yang Enterprises, Inc.*, B-415923, *supra* at 2.

and quality control elements.<sup>7</sup>

The protest is dismissed.

Edda Emmanuelli Perez  
General Counsel

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<sup>7</sup> South Dade also protests the evaluation of its quotation under the prior experience, past performance, and socioeconomic category factors. In addition, South Dade asserts that since the solicitation provides for performance based contracting the agency improperly used a quantitative measure to evaluate its quotation. Because we find that the agency properly found South Dade's quotation to be unacceptable under the evaluation of the management plan factor, it is similarly not an interested party to raise these issues.