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Decision

Matter of: CORMAC Corporation

File: B-421532; B-421532.2

Date: June 14, 2023

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DIGEST

Protest challenging the agency's technical evaluation of the protester's quotation is denied where the record shows that the agency reasonably evaluated the protester's responses to oral presentation questions.

DECISION

CORMAC Corporation, of Leesburg, Virginia, protests the issuance of a task order to Explore Digits, Inc., of Silver Spring, Maryland, under request for quotations (RFQ) No. 230390, issued by the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) for legacy systems information technology (IT) modernization and maintenance services. The protester contends that the agency's evaluation of the protester's oral presentation was unreasonable.

We deny the protest.

BACKGROUND

The agency issued the solicitation on December 21, 2022, pursuant to General Services Administration's (GSA) Federal Supply Schedule (FSS) procedures set forth in Federal Acquisition Regulation (FAR) subpart 8.4. Agency Report (AR), Tab 2, RFQ at 1,167.¹

¹ References to page numbers of documents are to the Adobe PDF pagination.

Generally, the agency required maintenance and modernization of existing Medicare legacy IT systems. RFQ at 20. Specifically, the agency sought a contractor to migrate systems from CMS's Baltimore Data Center to the Amazon Web Services cloud and convert code in the programming language of COBOL [common business orientation language] to Java.² *Id.* at 233. Maintenance activities would include "systems analysis, design, development support, programming, testing, data analysis, system documentation, and special projects, such as to a transition to modernized system and/or decommissioning of systems based on user research and CMS business requirements." *Id.* The agency anticipated issuance of a fixed-price task order for one base year and four option years. *Id.* at 167-168.

Award was to be made to the vendor whose quotation represented the best value to the government, with the following evaluation factors considered: oral presentation; concept paper; section 508 compliance³; and price. *Id.* at 171, 174. The two technical factors (oral presentation and concept paper), which were listed in descending order of importance, would be evaluated and assigned a confidence rating of "high," "some," or "low." *Id.* at 171. Section 508 compliance was to be evaluated for acceptability. *Id.* at 177. Price would be evaluated for reasonableness. *Id.* at 182. When combined, the non-price factors were significantly more important than price.⁴ *Id.* at 172.

The agency evaluated the protester and awardee's quotations with the following results:

	Explore Digits	CORMAC
Oral Presentation	High Confidence	Some Confidence
Concept Paper	Some Confidence	High Confidence
Section 508 Compliance	Acceptable	Acceptable
Price	\$15,016,602.30	\$16,152,798.04

AR, Tab 12, Source Selection Decision (SSD) at 10. The contracting officer, who also served as the source selection authority (SSA), determined that Explore Digits provided the best value, considering price and non-price factors. *Id.* at 16.

² Java is a programming language and computing platform. https://www.java.com/en/download/help/whatis_java.html (last visited May 30, 2023).

³ Though not at issue in this decision, section 508 refers to the Rehabilitation Act of 1973, as amended, which generally requires that agencies' electronic and information technology be accessible to people with disabilities. See 29 U.S.C. § 794d.

⁴ The RFQ also included a conflict of interest (COI) evaluation factor. RFQ at 174. Evaluation under the COI factor, however, would "not result in a score/rating as it is only applicable to the apparent successful Offeror," and the factor would "not be considered in terms of best value." *Id.* at 183.

CORMAC was notified of the agency's award decision on March 1, 2023. Contracting Officer's Statement (COS) at 7. The agency provided a brief explanation of the basis for award to CORMAC on March 8. AR, Tab 8, Brief Explanation. This protest followed on March 13.

DISCUSSION

The protester alleges that the agency's evaluation of CORMAC's technical quotation was unreasonable.⁵ We have considered all arguments and find no basis to sustain the protest.

Interested Party

As an initial matter, CMS requests that we dismiss the protest, arguing that CORMAC is not an interested party to challenge the issuance of the order to Explore Digits, because CORMAC "did not submit an acceptable price proposal in response to the RFQ," and was therefore eliminated from competition. Req. for Dismissal, Apr. 6, 2023, at 2. Specifically, the agency notes that CMS had concerns about the protester's failure to price out "24/7 On-Call support" that was required by the performance work statement (PWS). *Id.* The agency contends that because CMS found the protester's price unacceptable and the protester failed to challenge its price evaluation, CORMAC would not be in line for award of the task order, even if our Office were to sustain the protest. *Id.*

Under our Bid Protest Regulations, an interested party is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. 4 C.F.R. § 21.0(a)(1). Determining whether a party is interested involves the consideration of a variety of factors, including the nature of the issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. *Virtual Med. Grp., LLC*, B-418386, Mar. 25, 2020, 2020 CPD ¶ 113 at 3. A protester is an interested party to challenge an agency's evaluation of quotations and award decision where there is a reasonable possibility that the protester would be in line for award if its protest were sustained. *Id.*

Here, the solicitation provided that price would be evaluated for reasonableness. RFQ at 182. The RFQ also advised that quotations "should ensure that the types and quantities of labor, and/or material included in the price volume are consistent with those in other parts of the quote (e.g. the PWS), as CMS may compare those parts in

⁵ The protester also alleged that the RFQ required the agency to give equal weight to technical factors, and CMS did not follow that evaluation scheme when conducting its source selection decision. Protest at 12. CORMAC later withdrew this allegation. Resp. to. Req. for Dismissal at 1. In a supplemental protest, CORMAC later alleged that a typographical error in the technical evaluation panel (TEP) report suggested that the agency had not evaluated quotations in accordance with the solicitation. Comments at 14. The protester also withdrew this allegation. Withdrawal of Supp. Protest at 1.

order to test for performance risk,” and that “[i]nconsistencies may result in a quote being evaluated unfavorably or removed from consideration for award.” *Id.* The agency argues that because the evaluators noted a “concern” regarding an assumption CORMAC made in its price quotation, this concern rendered the firm’s quoted price “unacceptable,” making CORMAC ineligible for award and, thus, not an interested party. Req. for Dismissal, Apr. 6, 2023, at 2. The record, however, demonstrates otherwise.

In evaluating vendors’ prices, the SSA specifically documented that all quoted prices “have been determined to be fair and reasonable for the work to be performed.” AR, Tab 12, SSD at 10. Moreover, nothing in the evaluation record or the source selection decision indicates that the agency had found CORMAC’s quotation to be ineligible for award or that CMS had eliminated the protester’s quotation from the competition based on the agency’s “concern” with CORMAC’s pricing assumption.⁶ See RFQ at 182. Finally, in determining which quotation presented the best value, the SSA performed a comparative analysis of all eligible quotations--an analysis that not only included CORMAC, but specifically discussed the merits of CORMAC’s quotation in relation to the awardee’s quotation.⁷ AR, Tab 12, SSD at 10-16. The record here clearly demonstrates CORMAC had not been found ineligible for award nor had the firm been otherwise eliminated from the competition. As such, there is no basis for us to conclude that CORMAC is not an interested party to protest. *National Fatherhood Initiative*, B-405961.2, B-405961.4, Jan. 10, 2012, 2012 CPD ¶ 46 at 4 (“We will not . . . conclude that the protester is ineligible for award--and thus not an interested party--when the agency, in its contemporaneous review, treated this proposal as viable.”).

Oral Presentations

The protester argues that the agency’s assessment of negative findings to the protester’s technical quotation, based on the protester’s answers to challenge question 1 of CORMAC’s oral presentation, was unreasonable.⁸ CORMAC contends

⁶ Although CMS describes CORMAC’s assumption--regarding the need for 24/7 on-call support service--as “unreasonable” and “unacceptable,” the SSA, nevertheless, found CORMAC’s price to be fair and reasonable. AR, Tab 12, SSD at 10, 16. In other words, the SSA only found the pricing assumption to be unreasonable, not CORMAC’s price, itself.

⁷ For example, the SSA determined: “Although, CORMAC has slightly more technical merit than Explore Digits in Factor 2 [, Concept Paper], this advantage does not overcome Explore Digits’ significant technical advantage in Factor 1 [, Oral Presentation].” AR, Tab 12, SSD at 15.

⁸ In its comments to the agency report, the protester raises, for the first time, challenges to the agency’s assessment of negative findings based on CORMAC’s answers to question 2 of the oral presentation. Comments at 6, 9-10, 12. Our regulations do not contemplate the piecemeal presentation or development of protest issues through later submissions citing examples or providing alternate or more specific legal arguments

that CMS should have assigned the protester's oral presentation a rating of "high confidence" rather than a rating of "some confidence." Protest at 11. The agency responds that its evaluation of the protester's quotation was reasonable. Memorandum of Law at 3.

Where, as here, an agency issues an RFQ to GSA FSS contractors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *UltiSat, Inc.*, B-418769.2, B-418769.3, Feb. 26, 2021, 2021 CPD ¶ 110 at 6. The evaluation of vendors' technical quotations is a matter within the agency's discretion, and GAO will not perform its own technical evaluation, or substitute its judgment for that of the procuring agency. See, e.g., *NextStep Tech., Inc.*, B-416877, Jan. 3, 2019, 2019 CPD ¶ 16 at 4. A protester's disagreement with the agency's judgment, without more, does not establish that an evaluation was unreasonable. *Electrosoft Servs., Inc.*, B-413661, B-413661.2, Dec. 8, 2016, 2016 CPD ¶ 7 at 5-6.

The solicitation required the agency to evaluate two technical factors: an oral presentation and a concept paper. RFQ at 171. The oral presentation was 55 minutes long, with the agency asking two challenge questions to each vendor's team of key personnel. *Id.* at 175. The vendor's team had up to 15 minutes per question to confer about its solution amongst the team, and "the final answer [would] be given by the Program Manager." *Id.* The agency evaluated the oral presentation to determine whether the vendor effectively responded to the questions and whether the overall solution was feasible. *Id.* Additionally, the vendor's team would be evaluated on its ability to work collaboratively in a high-pressure agile environment. *Id.*

Under the oral presentation factor, CMS assigned CORMAC a rating of "some confidence" based on the protester's responses to both challenge questions.⁹ AR,

missing from earlier general allegations of impropriety. *Star Food Serv., Inc.*, B-408535, Nov. 1, 2013, 2013 CPD ¶ 246 at 4. We will dismiss a protester's piecemeal presentation of arguments that could have been raised earlier in the protest process. *Alfa Consult S.A.*, B-298164.2, B-298288, Aug. 3, 2006, 2006 CPD ¶ 127 at 3 n.2.

Here, the March 8 brief explanation of the basis for award listed negative findings found in CORMAC's oral presentation for questions 1 and 2. In its initial protest, however, CORMAC only challenged the agency's assessment of negative findings related to question 1. Protest at 11 ("Consequently, the CMS evaluators failed to understand or properly credit the value of CORMAC's answer to Challenge Question 1."). Accordingly, any allegations related to challenge question 2 are untimely and will not be considered. 4 C.F.R. § 21.2(a)(2); *Tringent Sols., Inc.*, B-419801, Aug. 6, 2021, 2021 CPD ¶ 279 at 8-9 n.8.

⁹ The rating of "some confidence" is defined as: "The Government has some confidence that the Quoter will be successful in performing the contract and will require

Tab 12, SSD at 5. The rating was based on several “decreases in confidence”—i.e., negative findings—that the agency found in the protester’s answers. *Id.* Relevant here, challenge question 1 asked: “What is your process for learning a system and your rationale for the approach? Include in your response how you would address upstream system changes.” AR, Tab 3, Oral Presentation Recording at 2:34. After conferring with the team for several minutes, the team lead presented CORMAC’s answer to the agency. The team lead’s response to the agency, in full, stated:

Our approach to this would begin with leveraging the more than ten years of experience that our team has maintaining the legacy systems, their interactions with those systems that are tangential to those legacy systems. We would begin with knowledge transfer to those on the modernization team, so that they get a good understanding of that history, now we bring to the table. And then we’d want to work with the stakeholders and the users to get their input as well on what they actually need and what they’re using it for. We would, during that process we would pair up our team members, our legacy maintainers are cross-trained, so they would be able to explain the functionality and the data within a particular legacy system, multiple systems, not just a single one. So that would help speed up the time that we’re transferring that knowledge to the team.

And then, in regards to the impacts of the upstream changes, we would leverage our agile methodologies, the communication and collaboration that we’ve built into our processes, and make sure that the full team is discussing what those potential impacts are and how to address them. I think that concludes our answer.

Id. at 12:47-14:31.

Decrease Confidence - Basic Methodologies

The agency assessed a negative finding to the protester’s response to challenge question 1 for failing to include “basic learning methodologies,” such as reviewing documentation and code, when asked to describe the team’s approach to learning a new system. AR, Tab 12, SSD at 5. The TEP noted that “[n]ot utilizing documentation for knowledge transfer would create a scenario where key system details related to security, performance, business requirements, and design details are missed.” AR, Tab 5, TEP Report at 3. The panel further noted that failure to document the knowledge gained during the transition could delay production and modernization efforts. *Id.*

some Government intervention because they have some relevant experience, marginally understand the requirement, or propose an approach that gives the government some concerns.” RFQ at 172.

The protester responds that it proposed a face-to-face learning and knowledge transfer solution because it knew, from prior experience, that there was little documentation from which the vendor would be able to learn the system for this requirement. Protest at 9. CORMAC explains that its approach was based on “the clear assumption that there was no meaningful documentation available for teaching the modernizers about the Legacy system and how its code works.” Comments at 11. Based on a review of the record, however, we find no support for CORMAC’s assertion that such assumption was clear. The protester admits that in its oral presentation, the CORMAC team never mentioned the fact that there was no documentation available in the system to review. *Id.* at 12. The record also confirms that during CORMAC’s oral presentation, the protester never explained the rationale underlying its proposed face-to-face learning approach, or why such solution was the best option for learning a system. In a competitive FSS procurement, it is the vendor’s burden to submit a quotation or proposal that is adequately written and establishes the merits of the quotation or proposal. *SRA Int’l, Inc.; NTT DATA Servs. Fed. Gov’t, Inc., B-413220.4 et al.*, May 19, 2017, 2017 CPD ¶ 173 at 10.

Here, the agency was presented with a solution that it found concerning. See AR, Tab 5, TEP Record at 3. In the agency’s view, while the system’s documentation may have room for improvement, it is still one of the resources used for learning basic information about the system. COS at 12. According to the agency, the review and updating of documentation can ensure that knowledge transfer is not limited to “historical knowledge.” *Id.* The fact that the protester views a face-to-face knowledge transfer approach as a better way to learn a system than reviewing code and documentation, does not render the agency’s evaluation unreasonable. The protester’s disagreement with the agency’s assessment, without more, does not provide a basis to sustain the protest. *Electrosoft Servs., Inc., supra.*

Decrease Confidence - Upstream Changes

The agency also assessed a negative finding to CORMAC’s response to challenge question 1 for failing to provide a thorough explanation of how the vendor would address upstream changes when working to modernize and maintain the required systems. AR, Tab 12, SSD at 5. In response to this part of challenge question 1, CORMAC’s team lead explained: “And then, in regards to the impacts of the upstream changes, we would leverage our agile methodologies, the communication and collaboration that we’ve built into our processes, and make sure that the full team is discussing what those potential impacts are and how to address them.” AR, Tab 3, Oral Presentation Recording at 14:02-14:24.

The evaluators found CORMAC’s response did not adequately address upstream system changes, “which was a point of emphasis in Challenge Question 1.” AR, Tab 5, TEP Report at 3. In assessing the confidence decrease, the TEP explained that the solicitation requirement “involves understanding of upstream systems changes and analysis to implement changes from quarterly releases and ad hoc releases,” and not

properly identifying system changes “could create issues such as data integrity and system abend [abnormal end], creating an impact to downstream systems.” *Id.*

The protester alleges that, in responding to this specific question about upstream changes, CORMAC proposed a method of communicating and working side-by-side with its modernization partner to “anticipate, recognize, and deal with upstream changes.” Comments at 12. CORMAC contends it explained that multiple points of contact, who are equally aware of the system operation, could handle upstream changes. *Id.* Again, the record demonstrates otherwise, revealing that CORMAC neither fully explained its side-by-side collaboration approach in its oral presentation response nor described its rationale for proposing that approach. While CORMAC does refer to its “agile methodologies” in its oral presentation, the protester provides no additional details to explain what those methodologies are, or how CORMAC would use those methodologies to address the changes that are coming from upstream systems. As with the challenge to the first confidence decrease, the elaboration of CORMAC’s response to challenge question 1 is not found in the record of the oral presentation, but only in the arguments of counsel in pursuing the protest.

Here, the record reflects that CMS was concerned with the broad summary and lack of detail that CORMAC provided when explaining how the firm would address upstream changes. AR, Tab 12, SSD at 5; AR, Tab 5, TEP Report at 3. The agency found that it could not confidently determine that CORMAC understood the significance or impact that upstream changes would have on the required effort, or how CORMAC would address such quarterly and ad hoc changes. COS at 10; AR, Tab 5, TEP Report at 3.

Ultimately, the confidence decreases identified in CORMAC’s oral presentation caused the agency to be concerned about CORMAC’s approach and understanding of the solicitation requirement. These negative findings contributed to CMS’s conclusion that the agency had “some confidence” in the protester’s oral presentation. Based on our review of the record, we find nothing unreasonable in the agency’s assessment of confidence decreases to the protester’s quotation based on CORMAC’s responses to challenge question 1 of the oral presentation.

The protest is denied.

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