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Decision

Matter of: DirectViz Solutions, LLC

File: B-421598; B-421598.4

Date: July 19, 2023

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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 the agency's rejection of the protester's proposal as unacceptable is denied where each proposal was to include a video; the agency was unable to view the entirety of the protester's video during its evaluation; and the agency was not legally required to allow the protester to resubmit its video.
 2. Protest challenging the agency's decision to exclude the protester from interchanges is denied where the agency's exclusion of the protester's proposal was in accordance with the terms of the solicitation.
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DECISION

DirectViz Solutions, LLC (DVS), of Vienna, Virginia, protests the issuance of a task order to Vectrus Systems Corporation (Vectrus), of Colorado Springs, Colorado, under fair opportunity request for proposals (FORP) No. 390586, for information technology (IT) services and support for the Department of the Army. The protester argues that the agency unreasonably evaluated its proposal as technically unacceptable and improperly failed to conduct interchanges with it.

We deny the protest.

BACKGROUND

On January 3, 2022, the Army issued the solicitation to holders of the computer, hardware, enterprise software and solutions information technology enterprise solutions 3 services multiple-award, indefinite-delivery, indefinite-quantity (IDIQ) contract, which is the Army's mandatory source for IT services and solutions. AR, Tab 18, FORP amend. 3 at 1; see also Agency Report (AR), Tab 3, Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 2 n.2.¹ The procurement was conducted in accordance with Federal Acquisition Regulation (FAR) subpart 16.5, and sought a variety of IT services and support requirements for the Army's regional cyber command for the continental United States located at Fort Huachuca, Arizona. *Id.* at 2-3.

The solicitation contemplated issuance of a task order with fixed-price and cost-based contract line item numbers (CLINs) for a 1-month transition period, an 11-month base period, two 12-month option periods, and a 6-month extension period.² *Id.* at 1-2, 11. The agency would conduct a best-value tradeoff analysis between technical and price, with the technical factor of significantly greater importance than price. *Id.* at 13, 15. The technical factor was comprised of three subfactors: (1) technical ability; (2) scenario-based video; and (3) management approach. The technical ability and scenario-based video subfactors were equally important and more important than the management approach subfactor. *Id.* at 13. To receive consideration for award, the solicitation required an offeror to submit a complete proposal, which also had to be rated acceptable for the technical factor and each subfactor.³ *Id.* at 2, 13.

The FORP expressly advised offerors that because the procurement was being conducted using the procedures established under FAR subpart 16.5, the agency did not need to establish a competitive range or conduct discussions or solicit final proposals. Specifically, the solicitation indicated as follows:

This acquisition is being conducted under FAR 16.505; therefore, the contracting techniques under FAR part 15.3 do not apply. As such, the [g]overnment is not obligated to determine a competitive range, conduct discussions with all [c]ontractors, or solicit final revised proposals.

Id. at 3.

¹ Citations to the record use the Adobe PDF pagination of documents produced in the agency report. Additionally, the solicitation was amended four times; all references to the FORP are to the third amended version.

² The cost-reimbursable CLINs were for travel and overtime.

³ The FORP provided that proposals would be evaluated as outstanding, good, acceptable, marginal, or unacceptable for each technical subfactor. FORP amend. 3 at 13-14. Offerors were also assigned an overall technical rating.

The solicitation also informed offerors that the government could reject a proposal as initially submitted and that a deficiency could only be cured through discussions, but that the government intended to make award without discussions. Specifically, the solicitation provided as follows:

The Government reserves the right to reject a response upon initial submission and to not consider it for task order award if required data is absent or the data received conveys a misunderstanding of the requirement. An Offeror may eliminate a deficiency in its response only through discussions; however, the Government intends to award the task order without discussions.

Id. at 16. In fact, throughout the FORP, the Army indicated its intent to issue the task order without discussions. *Id.* at 3, 6, 13, & 16.

As relevant to this protest, the solicitation instructed offerors to submit a video addressing two different scenarios. *Id.* at 8-9. The length of the video was not to exceed 30 minutes, with no more than 15 minutes dedicated to each scenario. *Id.* at 9. The FORP “strongly encouraged” “low-cost video production . . . formatted as [an] MP4 recorded medium [DVD].” *Id.* Although the solicitation required offerors to submit the other elements of their proposals electronically, offerors were instructed to mail their video submissions to Fort Huachuca.⁴ *Id.* at 4-6.

The Army received timely proposals from 11 offerors, including DVS, the incumbent contractor. According to the protester, “multiple people tested [its] DVD on separate computers” before it submitted the video to the Army, and “the .mp4 file was fully viewable each time.” Comments, exh. 1, Second Decl. of DVS Senior Proposal Manager at 1; see also Protest, exh. M, Decl. of DVS Senior Proposal Manager at 1-2. The Army placed the DVDs that it received “in a locked file cabinet until the evaluation team was ready to evaluate,” at which time, “the videos were placed on a secure share drive for review by the technical team.” AR, Tab 45, Decl. of Contracting Officer at 1.

When the technical team tried to evaluate DVS’s video submission, the video stopped at 12:04 minutes of DVS’s response to scenario one. *Id.* at 1. The Army was not able to review the rest of DVS’s video submission for scenario one, nor was it able to review any of the video submission for scenario two. *Id.* at 2. The contracting officer notes that the Army “exhausted multiple attempts to play the DVD directly with multiple [g]overnment computers, a stand-alon[e] DVD player, copying the video to a share drive, and the video would not play past 12:04” of scenario one. *Id.*

The technical evaluation board (TEB) evaluated offers, assigned ratings, and issued a consensus report. The TEB assigned DVS’s proposal a significant weakness for DVS’s

⁴ The agency also accepted video submissions from FedEx.

response to scenario one because the evaluators were unable to evaluate DVS's complete response. The TEB found that the "proposal contains a flaw that appreciably increases the risk of unsuccessful contract performance."⁵ AR, Tab 35a, TEB Consensus Report at 24-25. As the video was not functional after 12:04, the evaluators were unable to evaluate DVS for scenario question two and they found that DVS "failed to provide the required video response," which "increase[d] the risk of unsuccessful contract performance to an unacceptable level."⁶ *Id.* at 25. The agency therefore assigned DVS a deficiency for its response to scenario question two, which resulted in a rating of unacceptable for the scenario-based video subfactor, and an overall rating of unacceptable for the technical factor.⁷ *Id.* at 24-25.

The agency conducted interchanges with three offerors, including Vectrus, but not DVS. AR, Tab 38a, Pre-Negotiation Objectives Memo. (POM) at 5. After evaluating final proposal revisions from the selected firms, the contracting officer, who was the source selection authority (SSA), performed a tradeoff analysis and concluded that Vectrus's proposal represented the best value to the agency. AR, Tab 40a, Task Order Decision Document (TODD) at 30-31. The Army issued a task order for \$106,344,018 to Vectrus on March 22, 2023. AR, Tab 41, Notice of Unsuccessful Offeror at 1. Following a debriefing, DVS filed this protest.⁸

DISCUSSION

The protester argues that the agency improperly determined that its video submission was unacceptable based on the agency's inability to view the DVD beyond 12:04 minutes. The protester maintains that the DVD was fully functional when submitted to the agency and that any problems the evaluators had viewing the DVD resulted from the agency's handling of it. Protest at 16-17. The protester further contends that once the agency discovered the DVD was damaged, it was obligated to

⁵ The FORP defined a significant weakness as "[a] flaw that appreciably increases the risk of unsuccessful contract performance." FORP amend. 3 at 15.

⁶ A deficiency was defined as "[a] material failure of a proposal to meet a [g]overnment requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level." FORP amend. 3 at 15.

⁷ The solicitation described a rating of unacceptable to apply when the "[p]roposal does not meet requirements of the solicitation, and thus, contains one or more deficiencies, and/or risk of unsuccessful performance is unacceptable. Proposal is unawardable." *Id.* at 14.

⁸ Because the value of the task order at issue exceeds \$25 million, the protest is within our jurisdiction to hear protests of task order awards under multiple-award IDIQ contracts established within the Department of Defense. 10 U.S.C. § 3406(f)(B).

contact the protester immediately for a replacement. *Id.* at 18-19. DVS also argues that the agency's decision to exclude it from interchanges was unreasonable and unequal. Protest at 20-23. For the reasons discussed below, we conclude that the protester's arguments do not provide a basis to sustain the protest.⁹

Unacceptable Rating for Video Submission

An agency's evaluation is dependent upon information furnished in a proposal, and it is the offeror's burden to submit an adequately written proposal for the agency to evaluate. *Johnson Controls, Inc.*, B-282326, Jun. 28, 1999, 99-2 CPD ¶ 6 at 5-6; see *Diversified Servs. Grp., Inc.*, B-418375.2, May 28, 2020, 2020 CPD ¶ 207 at 4; *Joint Venture Penauillie Italia S.p.A et al.*, B-298865, B-298865.2, Jan. 3, 2007, 2007 CPD ¶ 7 at 4-5. As discussed above, the FORP required offerors to submit a DVD responding to two scenario-based questions, with the responses not to exceed 15 minutes per question.¹⁰ FORP amend. 3 at 9.

DVS contends it submitted a fully functional video with 28:55 minutes of content addressing both questions as required by the solicitation. As noted above, the protester maintains that multiple people tested the video on separate computers before DVS submitted it to the Army, and "the [video] file was fully viewable each time." Comments, exh. 1, Second Decl. of DVS Senior Proposal Manager at 2. DVS contends that there are numerous reasons why a DVD may be inoperable past a certain point, including the possibility that the Army itself may have inadvertently damaged the DVD. Protest at 17. DVS also provided our Office with a copy of the video file it had "burned on a DVD to

⁹ The protester also challenges the agency's evaluation of its technical proposal under subfactor 1, technical ability, and subfactor 3, management approach, and the agency's best-value determination. Because we conclude that the agency reasonably found that DVS's proposal was unacceptable and reasonably determined not to conduct interchanges with DVS, we need not address issues concerning the agency's evaluation of DVS's proposal under other subfactors or the best-value determination. Competitive prejudice is an essential element of a viable protest, and we will sustain a protest only where the protester demonstrates that, but for the agency's improper actions, it would have had a substantial chance of receiving the award. *American Fuel Cell & Coated Fabrics Co.*, B-420551, B-420551.2, June 2, 2022, 2022 CPD ¶ 139 at 14. DVS cannot demonstrate it would have had a substantial chance of award absent the agency's alleged unreasonable evaluation of subfactors 1 and 3, because as discussed below, the agency reasonably found DVS's response unacceptable under subfactor 2, the scenario-based video subfactor, and as a result, DVS's proposal was unawardable. DVS also raises other collateral arguments not discussed in this decision; we have reviewed them all and find no basis for sustaining the protest.

¹⁰ For scenario one, offerors were to explain their approach to addressing a hypothetical cyber threat incident and for scenario two, offerors were to describe how they monitor the network and systems to "identify, remediate, document and verify the security posture of the network." FORP amend. 3 at 9.

submit as DVS'[s] video proposal." Comments, exh. 1, Second Decl. of DVS Senior Proposal Manager at 2. This video file does not end at 12:04, but instead, runs for the full 28:55 minutes. Comments, exh. 2, DVS Video File. DVS asserts that if the agency had notified it that the DVD was not fully functional, DVS could have timely delivered another copy of the video submission prior to the deadline for receipt of proposals. Protest, exh. M, Decl. of DVS Senior Proposal Manager at 3.

The agency responds that all offerors' DVDs were locked in a file cabinet until the TEB was ready to evaluate them. AR, Tab 45, Decl. of Contracting Officer at 1. The videos were then transferred from the DVDs to a secure share drive. *Id.* The agency could not view the protester's video after 12:04 of scenario one and made multiple attempts to access the information. *Id.* at 1-2. Specifically, the agency tried to play the DVD directly on multiple government computers and a stand-alone DVD player, as well as by copying the video to a share drive, but the video would not play past 12:04 minutes. *Id.* at 2. The agency also produced the video file from the protester's DVD as part of the record. Our review of the video file shows that there is 28:55 minutes of content; however, the video stops at 12:04 minutes and the remainder of the video is inaccessible. AR, Tab 34, DVS Solutions DVD Video File.

The record includes declarations from the protester that it submitted a fully functional DVD and declarations from the agency that the video only played for 12:04 minutes. Protest, exh. M, Decl. of DVS Senior Proposal Manager; Comments, exh. 1, Second Decl. of DVS Senior Proposal Manager; AR, Tab 45, Decl. of Contracting Officer at 1. Although the agency did not immediately review the DVD upon receiving it, the record indicates neither that the agency deliberately mishandled DVS's submission, nor that the agency encountered this issue with other offerors' DVDs. Absent evidence of deliberate mishandling or a systemic failure on the part of the agency to safeguard proposals, we find no basis upon which to sustain the protest.

In this regard, agencies have a fundamental obligation to have procedures in place to receive submissions from competitors under a solicitation, to reasonably safeguard submissions received, and to fairly consider all submissions. *Islands Mech. Contractor, Inc.*, B-404275, Jan. 24, 2011, 2011 CPD ¶ 26 at 4. As a practical matter, however, even with appropriate procedures in place, an agency may occasionally lose or misplace a submission and such occasional loss does not generally entitle an aggrieved competitor to relief. *Joint Venture Penauillie Italia S.p.A et al.*, *supra* at 6; *Shubhada, Inc.*, B-292437, Sept. 18, 2003, 2003 CPD ¶ 161 at 3-4. That is, absent evidence of a deliberate agency attempt to exclude an offeror or a systemic failure to safeguard proposals, the loss of a proposal (or a portion thereof) does not entitle an offeror to relief. See *American Material Handling, Inc.*, B-281556, Feb. 24, 1999, 99-1 CPD ¶ 46 at 2. This arguably draconian result is justified by the unique circumstances arising in protests concerning lost information because the only means generally available to establish the content of allegedly lost information is for an offeror to reconstruct that information. *Shubhada, Inc.*, *supra* at 4. However, allowing an offeror to establish the contents of its lost proposal after the closing date has passed is inconsistent with maintaining a fair competitive system. *Id.*

Here, while we cannot determine if the protester's DVD was fully operable when submitted, there is simply no evidence of a deliberate agency attempt to exclude the protester or a systemic failure on the part of the agency to receive and safeguard proposals. Given that the Army was unable to play the protester's DVD and view its video submission, it was not unreasonable for the agency to find the protester's proposal unacceptable under the scenario-based video subfactor. Accordingly, this ground of protest is denied.

The protester also argues that even if its DVD was damaged--in transit or in the Army's possession--FAR section 15.207(c) required the agency to immediately notify the protester that the DVD was unreadable and allow the protester to resubmit the DVD. Protest at 18-19. Section 15.207(c) of the FAR states:

If any portion of a proposal received by the contracting officer electronically or by facsimile is unreadable, the contracting officer immediately shall notify the offeror and permit the offeror to resubmit the unreadable portion of the proposal.

DVS maintains that the DVD was an electronic submission and the agency unreasonably and improperly excluded DVS from the competition without first seeking resubmission and evaluation of the non-functioning DVD. Protest at 19. In this regard, the protester argues, citing FAR section 5.102(b)(1), that "if an [a]gency may 'provide[] electronically' solicitations on 'CD-ROMs' and 'disks,' then plainly a contracting officer has received a proposal electronically when the [a]gency solicits and receives proposals on a DVD." Second Comments & Supp. Protest at 8. We disagree.

The FORP directed offerors to mail their video submissions, which the protester did via FedEx. Moreover, the contracting officer did not receive the video submission electronically or by facsimile; the contracting officer received a FedEx package containing the DVD. To the extent that the protester argues the DVD is an electronic submission because FAR section 5.102(b)(1) references a CD-ROM or electronic mail as an electronic means, we are unpersuaded. Section 5.102(b)(1) of the FAR also indicates that disks are physical media, on which electronic information is stored.

Here, the agency received the protester's DVD, which is a disk, *i.e.* physical media; indeed, the solicitation prohibited electronic transmission of this part of the proposal, even as other parts of the proposal were received electronically. Moreover, the Army is conducting the procurement pursuant to FAR subpart 16.5, and the rules for handling information as set forth in FAR part 15 do not apply here. On this record, we find that the agency was not required to permit the protester to resubmit the DVD in accordance with FAR section 15.207(c). Accordingly, we have no basis on which to sustain this protest ground.

Interchanges

The protester next argues that it was unequal and unfair for the agency to exclude the protester from interchanges with the agency. DVS maintains that the rules of fair opportunity under FAR section 16.505 required the Army to conduct interchanges with DVS because of its deficiency when it conducted interchanges that rose to the level of discussions with other offerors that had deficiencies. Protest 19-22.

The evaluation of proposals in a task order competition in accordance with FAR section 16.505, including the determination of the relative merits of proposals, is primarily a matter within the agency's discretion. *Logistics Mgmt. Inst.*, B-417601 *et al.*, Aug. 30, 2019, 2019 CPD ¶¶ 311 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. *Gunnison Consulting Grp., Inc.*, B-418876 *et al.*, Oct. 5, 2020, 2020 CPD ¶¶ 344 at 10. A protester's disagreement with the agency's judgment, without more, is not sufficient to establish that an agency acted unreasonably. *Id.* While FAR section 16.505 does not establish specific requirements for discussions in task order competitions, interchanges in that context, like other aspects of such a procurement, must be fair and not misleading. See *CGI Fed. Inc.*, B-403570 *et al.*, Nov. 5, 2010, 2011 CPD ¶¶ 32 at 9.

The Army conducted this procurement under FAR section 16.505 and unequivocally advised offerors that the procurement methods of FAR subpart 15.3, including establishing a competitive range, conducting discussions with all offerors, and soliciting final proposals, would not be used for this acquisition. FORP amend. 3 at 3. The solicitation advised offerors that their proposals could be rejected "upon initial submission" and would not be considered for award if required information was missing. *Id.* at 16. After evaluating all the proposals, the SSA determined to conduct interchanges with Vectrus and Offerors A and K, because "[t]hese three [o]fferors provided the best values to the [g]overnment considering their technical and price" proposals. AR, Tab 40a, TODD at 19. The SSA also "considered the ease in which any deficiencies and/or weaknesses could be mitigated through interchanges." *Id.*; see also AR, Tab 38a, POM at 5 (finding that "Offerors A and [Vectrus] have easily fixable deficiencies" and "Offeror K has an acceptably rated technical proposal, but there are weaknesses that will be addressed.").

The agency explains in its report that it considered Vectrus's deficiency "very minor" and "easily corrected through interchanges." COS/MOL at 16. For example, Vectrus received a deficiency for failing to include the required certification on the resume for one of its key personnel. Specifically,

[Vectrus]'s resume for the [DELETED] Analyst does not have the required [DELETED] certification on proposal page M, paragraph 'KP Resumes [No.] 6: [DELETED] Analyst'. PWS, paragraph 5.2.1.3 of the PWS, and paragraph 5.2.1.5, Table 1 provide the key personnel requirements for

certifications. This lack of certification results in an increased risk of unsuccessful performance that is unacceptable.

AR, Tab 38a, POM at 8-9. Offeror A also received a deficiency because its [DELETED] analyst did not have the required [DELETED] certification. *Id.* at 6.

The agency further explains that it excluded DVS from interchanges because of the missing portions of its video. COS/MOL at 12-13, 16. As DVS's video submission was unreadable past 12:04 minutes, the agency considered the proposal incomplete. *Id.* at 13-14; Supp. COS/MOL at 15-16. Because the agency did not consider the deficiency in the protester's proposal from the missing video to be easily fixable, the agency did not include the proposal in interchanges.

The protester maintains that the deficiency could have been easily corrected "because it is difficult to imagine an 'easier' deficiency to address than simply providing a new copy of a DVD." Comments at 17. DVS asserts that it maintained a secure copy of the DVD submitted to the Army, of which it could have easily made and resubmitted a copy. Protest, exh. M, Decl. of DVS Senior Proposal Manager at 3.

Although the protester argues the agency conducted unequal interchanges because other offerors were permitted to resolve proposal deficiencies through interchanges with the agency, the record establishes that the agency treated offerors differently based on differences in their proposals. It is a fundamental principle of government procurement that competition must be conducted on an equal basis; that is, the contracting agency must treat all offerors equally, and even-handedly evaluate proposals and quotations against common requirements and evaluation criteria. *Kingfisher Sys., Inc.; Blue Glacier Mgmt. Grp., Inc.*, B-417149 *et al.*, Apr. 1, 2019, 2019 CPD ¶ 118 at 8. Where a protester alleges disparate treatment in a technical evaluation, it must show that the difference in treatment did not stem from differences between the offerors' proposals. See *Sigmatech, Inc.*, B-419565 *et al.*, May 7, 2021, 2021 CPD ¶ 241 at 20.

As discussed above, the protester's video submission was not fully readable and the agency was unable to evaluate part of the protester's response to scenario question one and all of its response to scenario question two. Because the proposal was missing data and failed to respond to a solicitation requirement, the agency assigned it a deficiency and a rating of unacceptable. AR, Tab 38a, POM at 7. In this regard, the agency concluded that the government was unable to evaluate the protester's approach to performing continuous monitoring of the network and systems as required by the solicitation, and there was "risk that the [o]fferor's approach used to perform continuous monitoring of the network and systems increases security risk for the network." AR, Tab 35a, TEB Consensus Report at 25. Conversely, the offerors with whom the agency entered into interchanges submitted either complete proposals, with flaws that needed to be resolved through more explanation, or proposals that the agency anticipated could be easily corrected via the submission of revised key personnel resumes for the proposals to be eligible for award.

It is clear from the record here that in determining which proposals were easily correctable and which were not, the SSA distinguished between the relative degree of the information that required correction. Specifically, the SSA found that some offerors had to resolve relatively straight forward matters through the submission of supplemental information about the status of specific certifications, whereas the protester's deficiency required the submission of a major section of its proposal that was missing in its entirety. While the protester claims that it could have easily addressed the missing information by resubmitting the DVD, because the entirety of the question two response was missing, the extent of deficiencies between the offerors' proposals were vastly different. Because the agency had a reasonable basis for distinguishing between the two types of deficiencies, the protester's arguments of unequal treatment are without merit.¹¹

As noted above, we will not substitute our judgment for that of the agency when reviewing protests challenging an agency's evaluation of task order proposals. *Logistics Mgmt. Inst., supra*. Here, the agency's decision to reject DVS's proposal without interchanges does not violate applicable procurement laws and regulations, and we deny this allegation. *NTT DATA Servs. Fed. Gov't, Inc.*, B-416123 *et al.*, June 20, 2018, 2018 CPD ¶ 215 at 7-8 (denying protest where agency "effectively" establishes a competitive range of "firms the agency determined had a reasonable chance for award.").

The protest is denied.

Edda Emmanuelli Perez
General Counsel

¹¹ We note that where, as here, an agency conducts a task order competition as a negotiated procurement, our analysis regarding fairness, will, in large part, reflect the standards applicable to negotiated procurements. *Technatomy Corp.*, B-411583, Sept. 4, 2015, 2015 CPD ¶ 282 at 7. In this connection, we have previously found that an agency did not treat offerors unequally by including in the competitive range proposals with deficiencies that the agency considered to be easily correctable, while excluding proposals with deficiencies that the agency did not consider to be easily correctable. See, e.g., *ECC Renewables, LLC; Pacific Power, LLC*, B-408907 *et al.*, Dec. 18, 2013, 2014 CPD ¶ 9 at 6 (agency did not treat offerors unequally by including in the competitive range proposals with deficiencies that it considered to be easily correctable, while excluding proposals with deficiencies that the agency did not consider to be easily correctable).