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Decision

Matter of: Sky Solutions, LLC

File: B-421139.2; B-421139.3

Date: June 30, 2023

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DIGEST

1. Protest arguing the agency conducted unequal discussions is denied where the agency engaged in exchanges with the awardee to allow the awardee to modify proposed labor categories in its quotation pursuant to a solicitation provision broadly permitting the agency to conduct exchanges with the best-suited vendor to address any remaining issues.
 2. Protest challenging the agency's post-corrective action evaluation as unreasonable for not reconciling the results of that evaluation with the results of an earlier evaluation is denied where there is generally no requirement that an agency reconcile a later evaluation with an earlier one and where the record demonstrates that this aspect of the reevaluation was reasonable and consistent with the terms of the solicitation.
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DECISION

Sky Solutions LLC of Chantilly, Virginia, protests the establishment of a blanket purchase agreement (BPA) with iTech AG, LLC, of Arlington, Virginia, by the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), under request for quotations (RFQ) No. 75FCMC21Q0014 for information technology (IT) services. Sky protests various aspects of the agency's evaluation and source selection decision.

We deny the protest.

BACKGROUND

On July 15, 2021, pursuant to Federal Acquisition Regulation (FAR) subpart 8.4, the agency issued the RFQ, seeking IT services to support Center for Clinical Standards and Quality ServiceNow¹ processes and services, using agile development iterations and methodology. Agency Report (AR), Tab 30, Performance Work Statement (PWS) at 3. The solicitation anticipates the establishment of a single BPA, with a base period of one year and two option years, under which fixed-price and time-and-materials task orders will be issued. AR, Tab 1, Solicitation Terms and Conditions at 1, 5.²

The RFQ established a three-phase process. In phase one, the agency would consider one evaluation factor, federal helpdesk ServiceNow experience; vendors were required to demonstrate their prior experience under this factor. AR, Tab 57, RFQ at 9, 13. Vendors were advised that the agency would inform them of their likelihood of success based on the phase one evaluation results, and vendors were then required to notify the agency of their intent to participate in phase two. *Id.* at 9.

In phase two, the RFQ required vendors to provide a video, thirty minutes long at most, demonstrating one example of prior experience providing ServiceNow training for a federal customer. *Id.* at 13. The solicitation advised that the evaluation would focus on the content of the video, but that the audio, images, and text contained in the video must be reasonably clear. *Id.* As with phase one, the agency conducted a voluntary “down-select” after phase two. See Memorandum of Law (MOL) at 2 n.1.

In phase three, vendors were required to respond to a technical challenge and submit a variety of remaining documents, including a business proposal, a conflict of interest submission, and an accessibility template pertaining to compliance with section 508³ accessibility standards. RFQ at 13-17. The technical challenge consisted of a scenario detailing a hypothetical government project to which vendors would respond with a video.⁴ *Id.* at 14. Of significance here, in submitting business proposals, each vendor

¹ ServiceNow is an IT platform that automates management workflows.

² While the document provided by the agency at Tab 1 is labeled as the conformed copy of the request for proposals, CMS clarified that this document represents the RFQ terms and conditions. The agency explained that the document provided at Tab 57 of the agency report is the conformed solicitation. Citations to the RFQ are to this conformed RFQ, provided at Tab 57.

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 challenge would “provide[] an opportunity for vendors to demonstrate their familiarity, technical expertise and capability developing a ServiceNow product using

was required to provide a crosswalk between certain labor categories required by the solicitation and the labor categories on the vendor's General Services Administration (GSA) schedule contract. *Id.* at 16.

The RFQ provided for award on a best-value tradeoff basis, considering five evaluation factors: federal helpdesk ServiceNow experience, federal training experience video demonstration, technical challenge, section 508 product accessibility template compliance, and price.⁵ RFQ at 18; AR, Tab 2, Initial Source Selection Decision (SSD) at 4. The solicitation specified that the first three factors were of equal importance, that the section 508 factor was "the least important non-priced" factor, and that "[a]ll evaluation factors other than cost or price, when combined, are significantly more important than cost or price." RFQ at 18. As relevant here, in phase three, the solicitation provided that once the agency identified "the best-suited [vendor] (i.e., the apparent successful contractor[])," the agency "reserve[d] the right to communicate with only that contractor, to address any remaining issues, if necessary," including "technical and price" issues. *Id.* at 7. The solicitation also advised that vendors "assessed as inadequate [or] unacceptable for any reason will not automatically be considered ineligible for award" and that the best-suited vendor "will be offered the opportunity to remedy issues, if they exist, prior to contract award." *Id.* at 20.

For the first three non-price factors, the solicitation provided that the agency would assign a confidence rating of high confidence, moderate confidence, low confidence, or no confidence. RFQ at 19-20. Vendors' business proposals, which included price, would be reviewed for price reasonableness and for "compliance [with] solicitation requirements." *Id.* at 20.

As relevant here, under the federal training experience video demonstration factor, the solicitation advised that the agency could consider the vendor's ability to demonstrate expertise in certain key areas, including: the vendor's ability to display "strong communication skills"; to provide "simple, intuitive, easy to understand" training; and to demonstrate adaptability skills to different personas, including the general public interacting with the public-facing ServiceNow portal and helpdesk agents interacting with the Service Now platform. RFP at 19. The RFQ provided for all three non-price factors to be evaluated for any risks or potential benefits identified in the vendor's quotation. *Id.* at 18-20.

Eleven vendors submitted quotations under phase one, the federal helpdesk ServiceNow experience factor. Contracting Officer's Statement (COS) at 2. Five of those vendors decided not to continue to phase two. *Id.* Of the remaining six vendors,

Human Centered Design [] and SAFE Agile development practices," and was limited to one hour in length. RFQ at 14.

⁵ The RFQ also advised that business ethics and conflicts of interest would be evaluated on a pass/fail basis. RFQ at 18.

only iTech and Sky submitted business proposals and completed the technical challenge under phase three. *Id.*

On September 23, 2022, the agency finalized the SSD, made award to iTech, and provided Sky with a brief explanation of award. COS at 3. On October 3, Sky protested the award decision before our Office, arguing, among other things, that iTech’s proposed labor categories did not properly map to the solicitation’s labor categories. *Id.* On November 18, the agency notified our Office that it intended to take corrective action by reevaluating quotations and making a new best-value award decision; consequently, our Office dismissed the protest as academic. See *Sky Solutions, LLC*, B-421139, Dec. 2, 2022 (unpublished decision).

On March 15, 2023, CMS reaffirmed the award decision to iTech, having reevaluated the quotations as follows:

	Federal Helpdesk ServiceNow Experience	Federal Training Experience Video Demonstration	Technical Challenge Evaluation Criteria	508 Compliance	Price
Sky Solutions	High Confidence	Moderate Confidence	Moderate Confidence	Unacceptable ⁶	\$22,222,371
iTech AG, LLC	High Confidence	High Confidence	Moderate Confidence	Acceptable	\$25,976,489

AR, Tab 60, Corrective Action SSD at 3.⁷

In performing its reevaluation, the agency determined that it would “enter into exchanges with Team iTech to address the labor category mapping,” due to its finding that “several labor category mappings . . . did not map or align precisely to the function of the [solicitation’s] labor category descriptions.” AR, Tab 60, Corrective Action SSD at 30, 52. The agency made the decision to enter into exchanges with iTech after finding that its quotation “represent[ed] the best value” to CMS, based on a “review of the technical evaluation and . . . the positive remarks, negative remarks, risks and benefits associated with each [quotation.]” *Id.* at 52. In deciding to conduct exchanges, the agency specifically concluded that iTech’s “Senior Content Writer and Systems Administrator lead does not map due to iTech proposing a junior level position when the [solicitation’s] labor category requested a Senior.” *Id.* at 30. In conducting exchanges with iTech, the agency also sought “[a]dditional clarification” regarding whether iTech’s

⁶ The agency explained that it rated Sky unacceptable “because they did not complete the correct [p]roduct [a]ccessibility [t]emplate form.” AR, Tab 2, Initial SSD at 30.

⁷ In the initial evaluation, Sky received a rating of high confidence under the training video factor. AR, Tab 2, Initial SSD at 6.

proposed junior IT specialist had sufficient expertise and mapped properly to the solicitation's knowledge manager category. *Id.*

In comparing the two quotations, the source selection authority (SSA) noted that iTech "has more technical merit when compared to [] Sky" under the first three non-price factors and presents "more impactful significant benefits." AR, Tab 60, Corrective Action SSD at 48. The SSA reasoned that despite Sky's lower quoted price, the agency could face "the potential price of rework and strain on [g]overnment resources" given the likelihood that iTech would "get the [g]overnment requirements right the first time . . . [compared to] Sky Solutions, who is likely to get [g]overnment requirements right *with* [g]overnment intervention." *Id.* at 50-51. Ultimately, CMS again determined that iTech's quotation presented the best value to the agency.

Sky was subsequently notified of the SSA's source selection decision. This protest followed.

DISCUSSION

Sky argues that the agency conducted unreasonable and unequal exchanges during the corrective action reevaluation by allowing only iTech to revise its quotation. Sky further contends that the agency unreasonably downgraded Sky's quotation under the federal training experience video demonstration factor during the corrective action reevaluation.

Where, as here, an agency issues an RFQ to federal supply schedule (FSS) vendors under FAR subpart 8.4 and conducts a competition for the issuance of an order or establishment of a BPA, we will review the record to ensure that the agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *Digital Solutions, Inc.*, B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4; *DEI Consulting*, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2. In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate the quotations; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *OPTIMUS Corp.*, B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4. A protester's disagreement with the agency's judgment, without more, does not establish that an evaluation was unreasonable. *DEI Consulting, supra.*

For the reasons explained below, we deny the protest.⁸

⁸ Our decision does not address every argument raised by the protester. For example, the protester contends that the agency unreasonably evaluated iTech's quotation by failing to recognize that iTech's revised quotation proposed a junior IT technician labor category that did not align precisely with the solicitation's documentation specialist labor category. Comments and Supp. Protest at 10-11. We have considered all of Sky's arguments and find that none establishes a basis on which to sustain the protest.

Unequal Discussions

Sky argues that the agency conducted unequal exchanges during the corrective action reevaluation. Comments and Supp. Protest at 4. Sky asserts that the agency's decision to hold exchanges only with iTech and to subsequently allow iTech to submit a revised quotation constituted unequal "discussions," despite the solicitation's provision that allowed the government to "address any remaining issues, [] includ[ing] technical and price," with what the government decided was the best-suited vendor. *Id.* at 8 (quoting RFQ at 7). The protester contends that the awardee could not have been the best-suited vendor "because its quotation was ineligible for award based on its inclusion of [] labor categories that did not align with the [s]olicitation's requirements." Comments and Supp. Protest at 8. Further, the protester asserts that the agency effectively acknowledged that the awardee's business proposal did not meet the solicitation's requirements when the agency requested a revised quotation from iTech with regard to its proposed labor categories. *Id.* at 6. Ultimately, Sky contends that the solicitation's best-suited vendor provision does not justify the agency's choice to engage in discussions with only the awardee. *Id.*

The agency asserts that it acted in concert with the terms of the solicitation when it initiated exchanges with only iTech, given the solicitation's provision for the government to "communicate with only [the best-suited] contractor" regarding any remaining issues. Supp. MOL (quoting RFQ at 7).

Exchanges that occur with vendors in a FAR subpart 8.4 procurement, like all other aspects of such a procurement, must be fair and equitable; our Office has looked to the standards in FAR part 15 for guidance in making this determination. *Aurotech, Inc.*, B-413861.4, June 23, 2017, 2017 CPD ¶ 205 at 10. In this regard, FAR part 15 defines clarifications as "limited exchanges" that agencies may use to allow offerors to clarify certain aspects of their proposals (or in this case quotations), or to resolve minor or clerical mistakes. See FAR 15.306(a)(1), (2); *Aurotech, Inc.*, *supra*. In contrast, under FAR part 15, discussions occur when an agency communicates with an offeror for the purpose of obtaining information essential to determine the acceptability of a proposal or quotation, or provides the offeror with an opportunity to revise or modify its proposal or quotation. *Innovative Mgmt. & Tech. Approaches, Inc.*, B-418823.3, B-418823.4, Jan. 8, 2021, 2021 CPD ¶ 18 at 8; see FAR § 15.306(d).

The issue presented in Sky's protest is not unique; we have previously resolved a protest involving a similarly-worded solicitation provision that allowed the agency to address any issues, including technical or price, with the best-suited contractor. In that case, our Office concluded that the agency's communications were proper and permissible when it conducted exchanges with the apparent successful vendor. See *VariQ-CV JV, LLC*, B-418551, B-418551.3, June 15, 2020, 2020 CPD ¶ 196 at 18-20.

Based on our review of the record, we find that the agency reasonably engaged in exchanges with iTech, consistent with the terms of the solicitation. The solicitation advised vendors that the agency "reserve[d] the right to communicate with only [the

apparent successful] contractor, to address any remaining issues, if necessary,” including “technical and price” issues. RFQ at 7. The solicitation also advised that vendors would “not automatically be considered ineligible for award” even if they had been “assessed as unacceptable.” *Id.* at 20. Consequently, we reject the protester’s argument that the agency could not have reasonably found iTech to be the best-suited vendor if its quotation failed to comply with the solicitation requirements. See Comments and Supp. Protest at 8. Further, the record shows that the agency determined iTech’s quotation “represent[ed] the best value” to CMS, finding that iTech “has more technical merit when compared to [] Sky” under the first three non-price factors and presents “more impactful significant benefits.” AR, Tab 60, Corrective Action SSD at 48, 52. Having determined that iTech was the best-suited vendor, in accordance with the solicitation, we find that the agency reasonably entered into exchanges with iTech, in which the agency gave iTech the opportunity to modify its quotation by revising its proposed labor categories. Ultimately, we agree that the agency acted in a manner consistent with the solicitation.⁹ Accordingly, this protest ground is denied.

Training Video Rating Change

Next, the protester argues that the agency unreasonably downgraded Sky’s quotation under the federal training experience video demonstration factor from a rating of “high confidence” to a rating of “moderate confidence,” contending that the reevaluation findings contradict the initial evaluators’ findings. Protest at 21. Sky points out that when evaluators initially assigned a “high confidence” rating to the quotation, they found that Sky offered a “simple and intuitive” training “[a]dapted [] well to the trainees” with “slow and deliberate” communication that made it “easy for the customer to follow along.” *Id.* at 22 (quoting AR, Tab 89, Sky Phase Two Technical Evaluation at 3). In contrast, during the reevaluation, the agency assigned a rating of moderate confidence, finding that the training was “not simple, intuitive, [or] easy to understand,” that the video “[a]udio, images, and text [] are not reasonably clear to [the] viewer,” and that the vendor “was unable to demonstrate expertise in key areas which includes adaptability skills to different personas” of help desk agents. Protest at 23 (quoting AR, Tab 67, Corrective Action Sky Phase Two at 2-4). The protester argues that the reevaluation directly contradicts the findings in the initial evaluation and asserts that the agency unreasonably failed to explain this discrepancy. *Id.* at 22-25.

The agency responds that it reasonably assigned Sky’s quotation a lower rating under the training video factor, as the technical evaluation panel more closely examined the

⁹ In addition, we note that although the solicitation put vendors on notice that the agency reserved the right to conduct exchanges with the best-suited vendor, the protester did not challenge this language prior to award. To the extent the protester is now challenging the scope of the exchanges permitted by the solicitation, such an argument is untimely. 4 C.F.R. § 21.2(a)(1); see *VariQ-CV JV, supra* at 20-21; *ASRC Fed. Data Sols., LLC, B-417655 et al.*, Sept. 18, 2019, 2019 CPD ¶ 325 at 7.

quotations upon reevaluation and found several negative aspects of the protester's training video. MOL at 10. Specifically, the SSA asked the technical evaluation panel to review the initial, individual evaluation reports, and the panel discovered that "certain aspects that had reduced confidence in Sky Solutions' proposal had not been thoroughly documented in the initial evaluation report for Factor 2." COS at 5. Based on a closer examination of Sky's video, the agency documented concerns regarding adaptability to different help desk personas, communication skills, and auditory and visual clarity.¹⁰ *Id.* at 6-9. For example, the agency found that the protester's video did not exhibit "expertise in key areas which includes adaptability skills to different personas of Help Desk Agents interacting with the ServiceNow platform and Public ServiceNow Web portal for the [g]eneral public." AR, Tab 67, Corrective Action Sky Phase Two at 2. Evaluators elaborated that the training primarily focused on a high-level overview of a case ticket workflow rather than aligning training to the various "roles and personas" using the platform, "such as Helpdesk Leadership, Queue managers, [and] helpdesk agents," an approach which the agency found introduced "some risk." *Id.* at 3.

Sky responds that individual evaluators' documents "should be given little, if any, weight." Comments and Supp. Protest at 28. The protester contends such documents are "incomplete" and don't allow for the possibility "that the evaluator's opinions evolved upon further review of Sky's quotation." *Id.* at 28-29.

Our Office will review the record to ensure that the agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *Digital Solutions, Inc., supra*. We have consistently stated that the fact that a reevaluation of proposals, or in this case, quotations, after corrective action varies from the original evaluation does not constitute evidence that the reevaluation was unreasonable, since it is implicit that a reevaluation can result in different findings and conclusions. *HeiTech-PAE, LLC*, B-420049.9, B-420049.10, June 8, 2022, 2022 CPD ¶ 162 at 11. Further, we have also generally found the argument that a reevaluation following corrective action was *per se* unreasonable because it was not reconciled with an earlier evaluation to be without legal basis, as there is generally no requirement that an agency reconcile a later evaluation with an earlier one or explain why the evaluation changed. *Glacier Technologies, LLC*, B-420775.5, Dec. 30, 2022, 2023 CPD ¶ 15 at 6. The overriding concern in our review is not whether an agency's final evaluation is consistent with an earlier evaluation, but rather, whether the final evaluation is reasonable and consistent with the solicitation's stated evaluation criteria. *Id.* at 6-7.

Based on our review of the record, we agree with the agency that its post-corrective action evaluation rating of Sky's quotation under the training video factor was reasonable. While the rating did change from "high confidence" to "moderate confidence," such changes may occur in a reevaluation. The membership of the

¹⁰ The agency documented a fourth concern related to contractor performance assessment reporting system validation, but noted that this concern "had little to no impact on [the] award decision." COS at 12.

technical evaluation panel changed between the initial evaluation and the corrective action reevaluation; a fact that could have impacted the rating difference. See AR, Tab 101, Memorandum to Panel Change at 1. In addition, a review of the record shows this rating change to be not unreasonable. For example, the solicitation advised that the agency could consider a vendor's ability to demonstrate communication skills through its training video presentation. RFQ at 19. In the reevaluation, the agency documented concerns regarding communication skills, specifically pointing to the fact that a participant asked the presenter a clarifying question and the presenter responded by asking the participant to hold their question until the end of the presentation. AR, Tab 67, Corrective Action Sky Phase Two at 4. Evaluators reasoned that this response could "negatively affect participant engagement and retention of concepts" by preventing viewers who are struggling to understand the training from comprehending and following along with the rest of the presentation. *Id.* at 3-4. On this basis, we find the agency's explanation reasonable and in accordance with the terms of the solicitation.¹¹ See *Digital Solutions, Inc., supra*.

We also note the agency's argument that, in its initial evaluation, the agency missed several negative remarks in the documentation of individual evaluators. MOL at 10. In this regard, the agency did reconcile its reevaluation with the original by providing individual evaluators' documents and giving a reason for the rating downgrade, despite precedent stating that an agency generally has no requirement to explain why an evaluation changed. See *Glacier Technologies, LLC, supra* at 6. Ultimately, based on our review of the record, including our review of Sky's video, we agree with the agency that its reevaluation of quotations, resulting in the assignment of a "moderate confidence" rating to Sky's quotation under the training video factor, was reasonable and consistent with the solicitation evaluation criteria.

The protest is denied.

Edda Emmanuelli Perez
General Counsel

¹¹ We also do not find convincing the protester's attempt to dismiss the contemporaneous findings of individual evaluators because these documented findings are not "the signed and agreed-upon final [] consensus evaluation report." Comments and Supp. Protest at 29.