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Decision

Matter of: Windstream Communications

File: B-409928

Date: September 9, 2014

William Weisberg, Esq., Law Offices of William Weisberg, PLLC, for the protester.
Gail Debra Zirkelbach, Esq. and Robert J. Sneckenberg, Esq., Crowell & Moring, LLP, for the intervenor.

Marie Cochran, Esq., Information Technology Service, for the agency.

Gary R. Allen, Esq., and Glenn G. Wolcott, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of evaluation of quotations is denied where record shows agency's evaluation was reasonable and consistent with the solicitation's evaluation factors and applicable procurement rules.

DECISION

Windstream Communications, of Herndon, Virginia, protests the award of a contract to tw telecom holdings inc.,¹ of McLean, Virginia, under request for quotations (RFQ) No. GSC-QF0B-14-32840, issued by the General Services Administration (GSA), on behalf of the Department of State for diplomatic security internet and related telecommunications services. Windstream challenges the agency's technical evaluation of its quotation.

We deny the protest.

¹ The awardee has identified itself using lower case letters; we adopt its approach in this regard.

BACKGROUND

The RFQ was issued on April 28, 2014, via e-Buy under Federal Acquisition Regulation (FAR) Subpart 8.4. The RFQ sought quotations from vendors holding GSA Federal Supply Schedule (FSS) No. 70 contracts under Special Item Number 132-52, to provide internet service support for Department of State offices throughout the United States for a 1-year base period and four 1-year options. RFQ at 1-1, 2-1, 2-2.

The RFQ provided that a fixed-price task order would be issued to the vendor submitting the lowest-priced technically-acceptable quotation. RFQ at 12-1. As relevant here, the RFQ indicated that the agency would evaluate the quotations for technical acceptability in accordance with RFQ § 2.5, which listed 23 internet service requirements. Id. at 2-2, 2-3, 12-1. Vendors were directed to “provide a detailed response” to each requirement, with a specific explanation of how each was to be met. Id. at 12-1. The RFQ noted that a reiteration of requirements with no basis or information would be deemed technically unacceptable. Id.

The agency received quotations from Windstream and tw telecom. Contracting Officer’s Statement (COS) at 1. The agency established a technical evaluation board (TEB), which evaluated the vendors’ technical quotations as acceptable or unacceptable against each of the 23 RFQ requirements, and assigned overall technical ratings. Id. at 2; see also Agency Report (AR), Tab 9, TEB Report. The contracting officer (CO) reviewed the TEB Report and submitted questions to the TEB chair concerning some of the ratings. COS at 2. The TEB chair conferred with the TEB members and confirmed all of the ratings. AR, Tab 11, TEB Chair Response. The TEB found that Windstream did not meet 12 of the 23 stated technical requirements, and deemed Windstream’s overall technical quotation unacceptable. Based on this finding, the CO determined that Windstream was ineligible for award and only evaluated tw telecom’s price quotation.² COS at 2; AR, Tab 12, Price Negotiation Memorandum, at 4.

On June 3, 2014, the agency issued the task order to tw telecom, and the next day sent Windstream an unsuccessful vendor letter. Windstream requested a debriefing, which the agency provided in writing on June 6. COS at 3. This protest followed.

² Tw telecom’s initial order price was \$3,523,998. AR, Tab 12, Price Negotiation Memorandum, at 13. Windstream had a lower initial order price of \$3,050,252. Protest at 1.

DISCUSSION

Windstream challenges the agency's evaluation of its quotation as technically unacceptable, arguing that it, in fact, met every solicitation requirement.³ Protest at 3. For the reasons discussed below, we find no basis to sustain the protest.

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. Clearly stated solicitation technical requirements are considered material to the needs of the government, and a quotation that fails to conform to such material terms is technically unacceptable and may not form the basis for award. 4D Sec. Solutions, Inc., B-400351.2, B-400351.3, Dec. 8, 2008, 2009 CPD ¶ 5 at 4. A vendor is responsible for affirmatively demonstrating the merits of its quotation and risks the rejection of its quotation if it fails to do so. Id. A protester's disagreement with the evaluation provides no basis to question the reasonableness of the evaluators' judgments. See Precision Lift, Inc., B-310540.4, June 26, 2008, 2008 CPD ¶ 166 at 6.

In addressing Windstream's protest, we have reviewed the record, including the agency's evaluation material, Windstream's quotation, and its arguments challenging the agency's technical evaluation. With respect to Windstream's contentions concerning its unacceptable ratings for 12 of the 23 stated technical requirements, while we only specifically discuss two, we have considered all of Windstream's arguments and conclude that none of them provides a basis to

³ Windstream also complains that any unclear issues in its quotation should have been resolved through clarifications. Protest at 3. Because the provisions of Federal Acquisition Regulation (FAR) subpart 8.4, not FAR part 15, applied to this procurement, RFQ at 1, the agency was not required to engage in any exchanges with the vendors. Even in a FAR part 15 procurement, an agency may, but is not required to, engage in clarifications that give offerors an opportunity to clarify certain aspects of proposals or to resolve minor or clerical errors. FAR § 15.306(a); Satellite Servs., Inc., B-295866, B-295866.2, Apr. 20, 2005, 2005 CPD ¶ 84 at 2 n.2. See also The Severson Group, B-298195, June 9, 2006, 2006 CPD ¶ 94 at 3 (agency not required to give vendor opportunity to supplement quotation in order to make it conform to RFQ's terms). Accordingly, we dismiss this aspect of Windstream's protest as failing to state a valid basis to challenge the agency's actions.

sustain its protest.⁴ In short, the record supports Windstream's unacceptable technical rating.

For example, we reviewed the agency's evaluations of Windstream's submissions concerning requirements 6 and 12. Regarding requirement 6, the RFQ sought discussion of the vendor's capability to protect the agency's network from "Denial of Service" (DOS). In this connection, the RFQ instructed vendors to describe the measures the vendor would take to "ensure, protect and defend against all known interruption of service" and listed the common types of such interruptions: malware, hacker threats, terrorists, etc. RFQ at 2-3. Regarding requirement 6, Windstream's quotation indicated that its primary mission was to monitor for security threats, and, as an option, could provide intrusion prevention and detection. AR, Tab 4, Windstream Technical Quotation, at 21-22. In finding Windstream's quotation unacceptable for this requirement, the TEB noted that while Windstream referred to monitoring attacks, it did not address the requirement for protection and defense against service interruption from DOS.⁵ We find no basis to question the reasonableness of the agency's judgment in this regard.

⁴ For example, with respect to requirement 8, Windstream challenges the agency's concerns stemming from the fact that Windstream leases fiber for a large portion of its network. Specifically, Windstream represented that it only owned and operated its fiber network east of the Rocky Mountains, and that it leased its entire fiber network west of the Rocky Mountains. AR, Tab 4, Windstream Technical Quotation, at 2, 22. According to Windstream, the awardee also leases some of the fiber as part of its network, yet the agency did not identify any concerns in this regard. Setting aside the fact the awardee's quotation represented that that it both owned and operated a national IP backbone meeting all of the required specifications, and also provided redundant IP core architecture allowing for national support on network failures, AR, Tab 8, tw telecom Technical Quotation, at 4, 16, there is no reasonable possibility that Windstream was prejudiced by the agency's evaluation in this regard. As noted above, the agency evaluated Windstream as technically unacceptable for more than half of the technical requirements, two of which are discussed in this decision. Accordingly, notwithstanding Windstream's contention that the agency should have found its network acceptable, based on the other evaluation findings, Windstream would have, nonetheless, remained technically unacceptable. Prejudice is an essential element of every viable protest; we will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions. Armorworks Enters., LLC, B-400394.3, Mar. 31, 2009, 2009 CPD ¶ 79 at 3.

⁵ One of the TEB members explained the agency's rationale for its technical findings concerning the stated requirements in a post-protest declaration. AR, Tab 22, TEB Member Declaration. Regarding requirement 6, the TEB member stated that DOS is an attack by one or more computers controlled by one or more
(continued...)

Requirement 12 presents a similar instance of omission by Windstream. The RFQ informed vendors that the internet protocol (IP) system they offered must be designed to promote availability, survivability and diversity.⁶ RFQ at 2-3. With respect to this requirement, Windstream's quotation merely indicated that it provides diversity, but failed to address availability or survivability. AR, Tab 4, Windstream Technical Quotation, at 24. The TEB found that Windstream's submission did not meet the requirement. AR, Tab 9, TEB Report, at 5. In its protest, Windstream complains that the agency "did not read [Windstream's quotation] as closely as it might have," but Windstream fails to identify any particular discussion of availability

(...continued)

persons (e.g. hackers) to continually request bandwidth, denying legitimate users from being able to access the computer or system under attack and thereby causing an interruption of service. Id. at 3. The TEB member noted that the "intrusion prevention" Windstream offered is different from protection against interruption of service. He explained that intrusion prevention is of minimal concern to the agency because, like most, if not all, federal agencies, its network traffic is encrypted. Id. Windstream contends that the TEB member's declaration is a post hoc explanation of the agency's technical analysis that should not be entitled to any weight. Comments at 3. In reviewing an agency's evaluation, we do not limit our review to contemporaneous evidence, but consider all of the information provided, including the parties' arguments and explanations. Science Applications Int'l Corp., Inc., B-408270, B-408270.2, Aug. 5, 2013, 2013 CPD ¶ 189 at 8 n.12. Although we generally give little weight to reevaluations and judgments prepared in the heat of the adversarial process, see Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15, post-protest explanations that provide a detailed rationale for contemporaneous conclusions and simply fill in previously unrecorded details will generally be considered in our review of the rationality of selection decisions, so long as those explanations are credible and consistent with the contemporaneous record. Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 12. Here, the TEB member's explanations are credible and consistent with the contemporaneous record.

⁶ The declaration of the TEB member is also instructive here. It describes "availability" as having "access to the computer(s) or system(s) when desired or needed," and "survivability" as "the ability to withstand (survive) man-made or natural disasters without disruption." AR, Tab 22, TEB Member Declaration, at 7.

or survivability.⁷ Protest at 6. Accordingly, we have no basis to question the agency's evaluation.

The protest is denied.⁸

Susan A. Poling
General Counsel

⁷ In support of its argument, Windstream cites a three-sentence paragraph from its quote. Protest at 6. This paragraph, however, references only diversity--it does not mention survivability or availability. Although Windstream argues that this portion of its quotation only represents part of its discussion of this requirement, Windstream does not cite any other portion of its quotation.

⁸ The agency sought dismissal of the protest arguing that Windstream is not an interested party. In this regard, the agency notes that Windstream does not hold an IT Schedule 70 Contract--Windstream submitted its price quotation using the IT Schedule 70 Contract of one of its subsidiaries, Cavalier Telephone, LLC. Although this issue was before the agency, the record reflects that the agency did not reject Windstream's quotation on this basis. Where the agency did not contemporaneously address the matter, and, as discussed above, the agency's evaluation of Windstream's technical quotation as unacceptable was both reasonable and in accordance with the evaluation criteria, we do not address the matter further.