



Decision

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Matter of: 360 IT Integrated Solutions

File: B-414650.33; B-414650.34

Date: May 24, 2019

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DIGEST

1. Protest challenging a weakness assessed in the protester’s technical approach is denied where the weakness was consistent with the evaluation criteria, reflected the agency’s reasonable evaluation judgment, and had little, if any, effect on the agency’s best-value tradeoff determination.
 2. Protest challenging the agency’s unequal assignment of strengths is dismissed where the protester failed to timely challenge the assessment of such strengths during an earlier protest proceeding.
 3. Protest asserting that agency evaluated quotations unequally is denied where the agency evaluated quotations in accordance with the stated evaluation criteria and did not treat vendors unequally.
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DECISION

360 IT Integrated Solutions (360 ITIS), a small business located in Reston, Virginia, protests the issuance of a task order to Insero Corporation, a small business located in Vienna, Virginia, under request for quotations (RFQ) No. HSCETC-17-Q-00010, issued by the Department of Homeland Security (DHS) for information technology operations support services (ITOSS). The protester argues that the agency unreasonably evaluated quotations and conducted a flawed best-value tradeoff determination.

We deny the protest in part and dismiss the protest in part.

BACKGROUND

The instant protest arises following a lengthy procurement and protest history. On March 31, 2017, DHS issued the RFQ, which consolidated seven separate ITOSS task orders into one task order under DHS's Enterprise Acquisition Gateway for Leading Edge Solutions (EAGLE) II indefinite-delivery, indefinite-quantity (IDIQ) multiple-award contract vehicle. The effort solicited includes the provision of a service desk, information technology field operations, cabling, video teleconferencing, hardware/maintenance, deployment, and financial/travel system support services, all in support of the U.S. Immigration and Customs Enforcement's (ICE), Office of the Chief Information Officer (OCIO) Operations Division.

The RFQ anticipated that the resulting task order would be a hybrid fixed-price, time-and-materials, and labor-hour task order with a 12-month base year and three 12-month option years. RFQ at 1.¹ The solicitation called for the evaluation of four factors, in descending order of importance: management approach, technical approach, past performance, and price. Id. at 10. The non-price factors, when combined, were significantly more important than price. Id.

On May 8, the agency received 11 quotations from interested vendors, including quotations from Insero Corporation and 360 ITIS. On September 29, following discussions with vendors and the submission of revised quotations, DHS issued a task order for the ITOSS requirement to Insero. After the issuance of the task order, our Office received protests from several vendors, including 360 ITIS. DHS subsequently agreed to take corrective action in response to these protests.

On January 31, 2018, following the submission of revised quotations, the agency reaffirmed its decision to issue the subject task order to Insero. Our Office received five protests in response to the agency's award decision, including protests from 360 ITIS, VariQ Corporation, and Ace Info Solutions, Inc.

On May 18, our Office sustained 360 ITIS's protest, concluding that the agency had failed to adequately document its consideration of negative past performance information relating to 360 ITIS's proposed subcontractor, had not provided a meaningful explanation for its unequal treatment of the protester's quotation, and had not provided a meaningful explanation for its failure to assign a strength to 360 ITIS's quotation on the basis of its proposed staffing approach. See 360 IT Integrated Solutions, B-414650.7, B-414650.12, May 18, 2018, 2018 CPD ¶ 188. We recommended that the agency reevaluate quotations consistent with both the terms of

¹ Unless otherwise indicated, citations to the RFQ refer to the amended RFQ provided in Tab 25 of the agency report (AR).

the solicitation and our decision, and make a new source selection decision based on that reevaluation. See id. at 10.²

On May 31, DHS conducted limited discussions with Insero in which the agency raised issues stemming from the above GAO decisions. DHS evaluated Insero’s revised quotation and, on June 14, announced it would again issue the subject task order to Insero. Following the award decision, VariQ, 360 ITIS, and Ace Info filed protests of the award decision. On June 29, DHS announced that it would take corrective action by conducting limited discussions with vendors to permit them to address any outstanding weaknesses, significant weaknesses, or deficiencies, and allow vendors to submit revised price quotations. On July 6, our Office dismissed these protests as academic based on the agency’s announced corrective action.

From July 9 through July 16, our Office received protests of the agency’s corrective action from four vendors, including 360 ITIS. Subsequently, 360 ITIS filed further supplemental protests of the agency’s corrective action measures, discussion items, and pre-award actions. Our Office dismissed or denied these protests, including, on October 15, the protests filed by 360 ITIS. See 360 IT Integrated Solutions; VariQ Corp., B-414650.19 et al., Oct. 15, 2018, 2018 CPD ¶ 359.

On December 4, the agency reaffirmed its award to Insero. Our Office received protests of the award decision from three vendors, including 360 ITIS. Following these protests, DHS announced it would take corrective action, and we therefore dismissed the protests as academic.

Following a reevaluation of quotations, the agency assessed the quotations of Insero and 360 ITIS as follows:

	Insero	360 ITIS
Management Approach	Excellent Strengths=24, Weaknesses=0	Excellent Strengths=14, Weaknesses=0
Technical Approach	Excellent Strengths=12, Weaknesses=0	Good Strengths=6, Weaknesses=1
Past Performance	Substantial Confidence	Substantial Confidence
Total Price	\$131,934,626	\$113,053,511

AR, Tab 244, Source Selection Decision Memo. (SSDM), at 3, 7, 18, 22, 26, 66.

² On May 21, our Office sustained Ace Info’s protest, concluding that the agency’s evaluation of Insero’s past performance contained material errors and was inadequately documented. See Ace Info Solutions, Inc., B-414650.10, B-414650.14, May 21, 2018, 2018 CPD ¶ 189. On May 30, our Office sustained VariQ’s protest, concluding that the agency’s evaluation contained material errors and was inadequately documented. See VariQ Corp., B-414650.11, B-414650.15, May 30, 2018, 2018 CPD ¶ 199.

Based on Inserso's superiority under the non-price factors, the agency determined that Inserso's quotation represented the best value to the government. Accordingly, DHS reaffirmed its award to Inserso in the amount of \$131,934,626.³

Following a debriefing, 360 ITIS filed this protest.

DISCUSSION

360 ITIS argues that the agency unreasonably and unequally evaluated its quotation under the technical approach and management approach factors, and that DHS conducted an unreasonable price assessment during its best-value tradeoff determination. With respect to the evaluation of 360 ITIS's technical approach, the protester argues that the agency unreasonably assigned a weakness based on a flawed interpretation of the quotation and the solicitation requirements. The protester further argues that the agency unequally evaluated quotations by applying a more generous standard in its evaluation of Inserso's approach than in its evaluation of 360 ITIS's approach.⁴

A contracting agency's evaluation of quotations in a task order competition is a matter within the agency's discretion. Technatomy Corp., B-411583, Sept. 4, 2015, 2015 CPD ¶ 282 at 4. In reviewing an agency's evaluation, we will not reevaluate quotations; rather we will examine the evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and with procurement statutes and regulations. Id. at 4-5.

Technical Approach

The protester argues that DHS unreasonably assessed a weakness in 360 ITIS's quotation based on the vendor's plan to have service desk technicians (SDTs) conduct quality assurance calls. In this regard, the technical evaluation team (TET) assigned a weakness to 360 ITIS as follows:

360 ITIS has proposed "[DELETED] The training also includes processes where each SDT is required to dedicate a portion of their time every day to calling back the previous day's customers to check in and ask for additional feedback to continually improve customer service."

³ The value of the task order at issue exceeds \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award IDIQ contracts that were awarded under the authority of Title 41 of the U.S. Code. 41 U.S.C. § 4106(f)(1)(B).

⁴ While we do not address in detail every argument raised by 360 ITIS in its protest, we have reviewed each issue and do not find any basis to sustain the protest.

For the last several years, ICE and the [enterprise operations support services] contract have been dedicated to reducing call volume and outbound calls. ICE OCIO has a dedicated team of federal employees that call customers to get survey results. These additional calls by 360 ITIS will put an undue hardship on ICE customers as ICE customers may be contacted by both federal employees and 360 ITIS for surveys. Furthermore, having the SDT who handled the call conduct the survey may not result in accurate feedback. This has been determined to present a weakness because of the lack of understanding and additional undue hardship placed on ICE Staff.

AR, Tab 235, Final TET Report, at 15 (emphasis omitted).⁵ In reviewing this weakness, the source selection authority (SSA) noted that it “demonstrated a lack of understanding within the technical approach, but was considered a minor weakness.” AR, Tab 244, SSDM, at 25.

360 ITIS argues that the agency misread its quotation as proposing daily callbacks by SDTs, when 360 ITIS instead proposed that such calls would be conducted only as part of a mandatory two-week training course. Based on our review of the record, however, we see no evidence to support the protester’s assertion that the agency misread its quotation. In this respect, the TET quotes the language used in 360 ITIS’s quotation, which discusses the SDT calls in question as occurring during the training. Moreover, as the TET chairman noted in a declaration provided in response to this protest,⁶ the call volume from such calls would “not be insignificant . . . [since the] training of new SDTs or retraining of existing SDTs is on-going with training occurring most every week.” TET Chairman Statement at 4.

The protester additionally asserts that the weakness was unreasonably assessed because the RFQ requires the contractor to conduct out-bound quality assurance calls. In support of this argument, the protester relies on sections of the RFQ, the quality assurance surveillance plan, the performance work statement, and general information technology infrastructure library best practices.

⁵ The Final TET Report does not contain consistent, consecutively numbered page numbers. Our Office separately assigned consecutively numbered pages to the unnumbered pages in this document. The citations to this document in this decision are to the page numbers assigned by our Office.

⁶ In determining the rationality of an agency’s evaluation and award decision, we do not limit our review to contemporaneous evidence, but consider all the information provided, including post-protest explanations that fill in previously unrecorded details, so long as the explanations are credible and consistent with the contemporaneous record. See NCI Info. Sys., Inc., B-412680, B-412680.2, May 5, 2016, 2016 CPD ¶ 125 at 11.

Based on our review of the record, we find that the agency reasonably assessed a minor weakness for this approach. In this regard, the solicitation anticipated that DHS would evaluate quotations to determine how well vendors demonstrate the knowledge, skill, and abilities to fulfill the performance work statement (PWS) requirements. RFQ at 13.⁷ In light of this criterion, we find it reasonable for the agency to evaluate the efficacy of 360 ITIS's proposed approach in light of the PWS requirements and the extent that the approach demonstrated, or failed to demonstrate, the vendor's understanding of those requirements. This is what happened here, with the agency concluding that having SDTs conduct post-closure, quality assurance calls on their own service tickets demonstrated a lack of understanding on the part of 360 ITIS because the proposed SDT calls would be duplicative of the agency's quality assurance efforts, burdensome to government employees, and of dubious value. While 360 ITIS disagrees with these evaluation judgments, we do not find them to be unreasonable.

Ultimately, we note that this weakness was considered minor and had little to no effect on the SSA's best-value tradeoff determination. In that determination, the SSA found that "Inserso's technical approach had more strengths that substantially benefited contract performance than 360 ITIS's." AR, Tab 244, SSDM, at 25. Ultimately, the SSA concluded that the benefits associated with the "totality of 360 ITIS's strengths" did not outweigh the benefits represented by the totality of Inserso's strengths, and that this difference in benefits was worth the 17 percent price premium between the two vendors' quotations. Id.

Timeliness

The protester additionally raises numerous challenges to the agency's failure to credit 360 ITIS's quotation with strengths similar to those credited to Inserso's quotation. We note, however, that several of these Inserso strengths were also assessed during earlier evaluation rounds, and the documentation of this evaluation was provided to the protester in the course of 360 ITIS's prior protest proceedings.⁸ Despite this, the protester did not challenge these strengths until its March 29, 2019, supplemental protest in this proceeding.⁹

⁷ In addition, we find that nothing in the RFQ, or in any other authority cited by the protester, required the contractor to adopt this particular approach of having SDTs conduct quality assurance calls on their own service tickets.

⁸ These strengths include strengths assigned to Inserso for level of transition risk, for proposing various additional personnel, and for requiring certain certifications and training. In addition, the protester challenges the source selection decision's comparison of vendors' pricing to the pricing quoted by Inserso. The agency employed this same type of analysis, however, in its January 2018 SSDM, a fact that the protester was aware of, yet did not challenge, during its prior protest proceedings.

⁹ The protester previously challenged the agency's failure to assign 360 ITIS a strength for proposing two dedicated recruiters, a dedicated security officer, and a dedicated

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For example, the protester argues that the agency evaluated vendors unequally by assigning a strength to Inerso's quotation for its approach to transition risk, while not assigning a similar strength to 360 ITIS's quotation for proposing to retain [DELETED] percent of the incumbent staff at no transition risk to the agency. The TET, however, found this same Inerso strength in the January 2018 TET Report. See AR, Tab 180, Jan. 25, 2018 TET Report, at 10. In a prior protest proceeding, the protester was provided a copy of this TET report, but did not challenge the Inerso strength in question.

Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Cleveland Telecomms. Corp.--Recon., B-247964.4, Nov. 12, 1992, 92-2 CPD ¶ 340 at 3. Under our timeliness rules, protests based on other than alleged improprieties in a solicitation must be filed not later than 10 days after the protester knew or should have known of the basis for its protest, whichever is earlier, or within 10 days of the date a required debriefing is held. 4 C.F.R. § 21.2(a)(2). The fact that an agency conducts a corrective action or makes a new source selection decision does not provide a basis for reviving untimely protest allegations where, as in this case, the otherwise untimely protest allegations are based on aspects of the agency's evaluation that were not subsequently affected by the agency's corrective action. DRS ICAS, LLC, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 21.

Here, we conclude that the above protest grounds are untimely. While the protester argues that there were multiple rounds of corrective action that took place after it initially learned of the strengths credited to Inerso, including rounds requiring the submission of revised quotations, we find that these subsequent events did not affect the assessment of the strengths at issue or the quotation features on which the strengths were based.

The protester also argues that the agency provided new explanations in its most recent evaluation, and that these explanations demonstrate DHS's unequal treatment. These new explanations, however, do not change the underlying basis of 360 ITIS's protest arguments, which stems from the agency's allegedly unequal and unjustified assessment of strengths to Inerso. The protester was aware of the disparity in

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transition lead. However, our Office denied these protest grounds in 360 IT Integrated Solutions, supra, at 3-4 n. 4. We will not consider arguments that were addressed and denied in a prior decision or new arguments based on information that was known to the protester in the prior protest. WAI-Stoller Servs., LLC; Portage, Inc., B-408248.13 et al., May 29, 2015, 2015 CPD ¶ 201 at 11.

strengths during the course of its earlier protests, but the protester did not challenge them at that time.¹⁰ We find that it is untimely to do so now.

Unequal Evaluation

In addition to the above, the protester raises other unequal evaluation challenges arising from DHS's assignment of strengths to Inserso's quotation under the management approach and technical approach evaluation factors.

It is a fundamental principle of government procurement that agencies must treat vendors equally, which means, among other things, that they must evaluate quotations in an even-handed manner. See SRA Int'l, Inc., B-408624, B-408624.2, Nov. 25, 2013, 2013 CPD ¶ 275 at 10. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the vendors' quotations. See Camber Corp., B-413505, Nov. 10, 2016, 2016 CPD ¶ 350 at 5.

Based on our review of the record, we are not persuaded that the agency evaluated 360 ITIS's quotation unequally. In this regard, we find to be reasonable the agency's explanation that the strengths given to Inserso, but not to 360 ITIS, stemmed from the unique approaches proposed by Inserso. The evaluation record reflects that DHS reasonably recognized the benefits of these unique approaches, benefits that were not matched by the approaches proposed by 360 ITIS.

For example, the protester argues that DHS unequally evaluated Inserso's and 360 ITIS's compensation plans despite the similarity of the two vendors' approaches. In this regard, Inserso's quotation received a strength from the agency for proposing higher salaries for [DELETED] and a strength for proposing [DELETED] designed to improve employee morale and retention. AR, Tab 235, Final TET Report, at 129-130. In contrast, 360 ITIS did not receive strengths for a compensation plan that included a plan to increase the salary pool for [DELETED], and to pay [DELETED] bonuses.¹¹

We find reasonable the agency's explanation that the disparity in compensation plan strengths stemmed from meaningful differences in the two vendors' approaches. In this respect, we note that the salary increases proposed by Inserso were [DELETED], while the salary increases proposed by 360 ITIS were only for [DELETED]. Moreover, even looking at the salary increases proposed for [DELETED] staff, Inserso proposed

¹⁰ We note, in addition, that the March 29, 2019, supplemental protest largely ignored these rationales, belying the protester's contention that the agency's provision of such rationales was the event that first apprised the protester of the basis for its protest grounds.

¹¹ 360 ITIS did receive a strength for proposing a [DELETED] increase to the number of [DELETED] staff. See AR, Tab 235, Final TET Report, at 6.

compensation that was, on average, [DELETED] higher than 360 ITIS's proposed compensation. Supp. Memo. of Law at 19 (citing comparison of AR, Tab 216, 360 ITIS Price Workbook with AR, Tab 224, Insero Price Workbook). In short, the two vendors proposed substantively different approaches, and the agency reasonably credited the unique aspects of Insero's approach with strengths not found under 360 ITIS's approach.

Similarly, both Insero's and 360 ITIS's compensation plans proposed means to benefit employee retention and morale, but these approaches were vastly different. Insero proposed [DELETED]. AR, Tab 226, Insero Quotation Vol. I, at 8. 360 ITIS, in contrast, proposed [DELETED] bonuses.¹² Given the disparity in these approaches, we see nothing unreasonable about the agency assigning a strength only to the more innovative Insero approach. The mere fact that both approaches aim to benefit employee retention and morale does not compel DHS to afford both vendors equal credit regardless of the merit of the separate approaches.

In sum, we find the differences in DHS's evaluation of the two quotations to be reasonably attributable to the differences in the two vendors' approaches. Accordingly, we conclude that the agency's evaluation was reasonable.

The protest is dismissed in part and denied in part.

Thomas H. Armstrong
General Counsel

¹² We note that Insero also proposed [DELETED] bonuses, but, similar to 360 ITIS, did not receive a strength for doing so.