



## Decision

**Matter of:** Utech Products, dba EndoSoft LLC

**File:** B-418060

**Date:** December 20, 2019

---

Abhishek Bajaj, EndoSoft LLC, for the protester.  
Christine Longe, Esq., Provation Medical, Inc., for the intervenor.  
Lisa C. House, Esq., and Tyler W. Brown, Esq., Department of Veterans Affairs, for the agency.  
Joshua R. Gillerman, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### DIGEST

Protest challenging the agency's evaluation of the protester's offer is denied where the record shows that the evaluation was consistent with the solicitation and applicable statutes and regulations.

---

### DECISION

Utech Products, Inc., dba EndoSoft, LLC, of Schenectady, New York, protests the award of a contract to Provation Medical, Inc., of Minneapolis, Minnesota, under request for quotations (RFQ) No. 36C25019Q0191, issued by the Department of Veterans Affairs (VA) for an endoscopy software solution. The protester challenges the agency's evaluation of its offer.

We deny the protest.

### BACKGROUND

The solicitation, issued on February 1, 2019, under the procedures of Federal Acquisition Regulation (FAR) part 13, contemplated the award of a contract, for a 1-year base period and four 1-year option periods, for the implementation of a replacement endoscopy software solution for the Louis Stokes Cleveland VA Medical Center.<sup>1</sup>

---

<sup>1</sup> Although issued as an RFQ, the solicitation refers to firms as "offerors" and "vendors" interchangeably, and responses submitted as simply "offers." For the sake of

(continued...)

Agency Report (AR), Tab 3, RFQ at 1. Award was to be made on a best-value tradeoff basis, considering three factors: technical capability, past performance, and price. RFQ at 64-67. The non-price factors, when combined, were deemed more important than price. Id. at 67.

The solicitation utilized a tiered, or “cascading,” evaluation approach, where the agency solicited offers on an unrestricted basis, but would evaluate offers received in the following tier order: (1) service-disabled veteran-owned small businesses; (2) veteran-owned small businesses; (3) all other small business concerns; and (4) other than small business. RFQ at 64; AR, Tab 4, Source Selection Decision Document (SSDD), at 1.

The agency initially received three offers in response to the solicitation, including from Endosoft and Provation. AR, Tab 2, Contracting Officer’s Statement (COS) at 1. After a review of initial offers, the VA allowed offerors to submit revised offers. Id. Only Endosoft and Provation submitted revised offers. Id.

In accordance with the solicitation’s tiered evaluation approach, the agency first evaluated Endosoft’s offer, as Endosoft is a small business concern and Provation is a large business. AR, Tab 4, SSDD at 2, 8. The agency found that Endosoft’s technical approach contained several “[s]ignificant weaknesses and/or deficiencies.”<sup>2</sup> Id. Thus, the agency assigned the protester’s offer an unsatisfactory rating, explaining that the risk associated with the offer’s technical approach was unacceptable. AR, Tab 4, SSDD, at 6.

The VA then evaluated Provation’s offer. AR, Tab 4, SSDD at 10-12. The agency found Provation’s offer technically acceptable and made award to the firm for \$891,340. Id. After receiving notice that award had been made to Provation, Endosoft filed an agency-level protest. COS at 1. The agency denied Endosoft’s agency-level protest and this protest to our Office followed.

## DISCUSSION

Endosoft challenges each instance where the agency found that Endosoft’s offer failed to address the requirements of the solicitation. We have considered all of Endosoft’s arguments and find that none provide a basis to sustain its protest. We address two of

---

(...continued)

consistency with the record and because the result of the competition is the award of a contract with a base period and option years, we refer to firms that competed here as offerors who submitted offers for award of a contract.

<sup>2</sup> While the agency labeled these five failures collectively as “weaknesses and/or deficiencies,” it did not identify whether each failure was a weakness or a deficiency. AR, Tab 4, SSDD at 6-8. Neither the solicitation, nor the evaluation materials, provide a definition for a weakness or for a deficiency.

Endosoft's allegations below for illustrative purposes. We note at the outset that, when reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate offers; 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. See ManTech Advanced Sys. Int'l, Inc., B-413717, Dec. 16, 2016, 2016 CPD ¶ 370 at 3.

The technical capability factor delineated (and numbered) 23 separate technical requirements. RFQ at 64-66. The VA found that Endosoft's offer failed to adequately address five of the 23 technical requirements. As the agency found that Endosoft's offer had "[s]ignificant weaknesses and/or deficiencies," the agency assigned Endosoft's offer an unsatisfactory rating.<sup>3</sup> AR, Tab 4, SSDD at 6-8. The VA concluded that the risk associated with Endosoft's technical approach was unacceptable. Id. at 6.

#### Technical Requirement Four

Technical requirement four mandated that the offered software solution provide "intuitive navigation" for report competition. RFQ at 65. The solicitation explained that the software must be able to intuitively guide clinicians through the drafting of reports by prompting clinicians with procedure specific medical content. Id.

The agency found that Endosoft's offer did not "clearly illustrate [the] ability to provide procedure specific navigation that intuitively prompts clinicians to the next logical step in procedural documentation." AR, Tab 4, SSDD at 6. The agency noted that while Endosoft's offer stated that its software includes both "tree-based" and "non-tree-based" navigation for report completion, its offer did not adequately illustrate how these navigational methods would actually make report completion more intuitive for clinicians. Id. With regard to tree-based navigation, the agency explains that this form of navigation provides a fixed-context structure which does not allow for the input of context sensitive material. Id. at 7. As a result, according to the agency, tree-based navigation actually increases the time it takes to complete reports by requiring users to complete additional windows for data entry. Id.

---

<sup>3</sup> An "unsatisfactory" rating was defined as:

[t]he proposed approach indicates a lack of understanding of the program goals and the methods, resources, schedules, and other aspects essential to the performance of the program. Significant weaknesses and/or deficiencies exist. The relative risk associated with the proposed [t]echnical [a]pproach is unacceptable.

AR, Tab 4, SSDD, at 6.

Endosoft disputes this finding, arguing that its offer adequately explained how its software would support intuitive navigation for report completion. Comments at 1. The firm argues that its software guides clinicians through report completion, even automatically completing different report quality metrics. Id. Endosoft asserts that its software helps populate 75-85 percent of the report, which makes “the reporting very intuitive.” Id. Endosoft also explains that its software provided both tree-based and non tree-based navigation because tree-based navigation provides the additional utility of guiding physicians using “[m]inimal [s]tandard [t]erminology.” Id.

The agency counters, arguing that Endosoft’s offer’s conclusory assertion that its software provides intuitive navigation was not actually supported by any information in the firm’s submission. Supp. Memorandum of Law (MOL) at 2. In addition, the agency responds that Endosoft’s tree-based navigation requires that the clinician make a manual choice for each step of a procedure when completing a report. Id. The agency explains that, in contrast, intuitive navigation utilizes business logic--rather than the context-sensitive navigation--which eliminates certain choices and facilitates efficient report creation. Id.

An offeror has the responsibility to submit a well-written offer which clearly demonstrates compliance with the solicitation requirements and allows meaningful review by the procuring agency. Bryan Constr., Inc., B-409135, Jan. 14, 2014, 2014 CPD ¶ 51 at 6. An offeror that does not affirmatively demonstrate the merits of its proposal assumes the risk that its proposal will be evaluated unfavorably. Id. at 7.

On this record, we find that we have no basis to object to the agency’s conclusion that Endosoft’s offer failed to fully address this requirement. First, we agree with the agency that beyond asserting that its software can provide intuitive navigation, and alluding to its tree-based and non-tree based approach, Endosoft’s offer makes no effort to explain how its software solution would actually provide intuitive navigation for report completion. AR, Tab 5, Endosoft Offer, at 103. In this connection, our Office has found blanket assertions of compliance with stated requirements are not an adequate substitute for detailed information necessary to establish how a vendor proposes to meet agency requirements. See, e.g., Ervin & Assocs., Inc., B-280993, Dec. 17, 1998, 98-2 CPD ¶ 151 at 6. Moreover, the agency has reasonably explained why Endosoft’s tree-based software approach would not provide the desired intuitive navigation.

In sum, Endosoft bore the responsibility to submit an adequately written offer that established its software’s ability to provide intuitive navigation, and risked that its quotation would be evaluated unfavorably for failure to do so. Bryan Constr., Inc., supra. The record fails to support Endosoft’s position that the agency’s evaluation was unreasonable, and Endosoft’s arguments to the contrary amount to nothing more than disagreement with the agency’s evaluation. See MSN Services, LLC, B-414900, et al., Oct. 4, 2017, 2017 CPD ¶ 310 at 5.

## Technical Requirement 14

The agency also found that Endosoft's offer failed to satisfy technical requirement 14. AR, Tab 4, SSDD, at 8. To satisfy this requirement, offerors needed to demonstrate that their software solutions could perform a variety of document completion tasks, including the capacity to electronically sign reports. RFQ at 66. This requirement also stated that the software needed to "track[] and analy[ze] capabilities that support pay for performance, quality indicators, and other reporting initiatives." Id. The agency concluded that Endosoft's offer provided only a "superficial" and "vague" explanation of how its software would satisfy these different performance requirements. AR, Tab 4, SSDD, at 7.

Endosoft responds that its offer demonstrated its software's compliance with this technical requirement. Comments at 3. The firm also alludes to its software's performance on other VA medical center efforts, essentially asserting that this successful performance should have been sufficient for the agency to conclude that its software complied with this solicitation's requirements. Id.; Protest at 4.

Again, the record fails to support Endosoft's position that the agency's evaluation was unreasonable. The record shows that beyond asserting that its software complies with these requirements, and confirming the ability for clinicians to electronically sign reports, Endosoft's offer did not further detail how its software would address the above mentioned performance requirements related to tracking and analysis capabilities. AR, Tab 5, Endosoft Offer, at 107-108. As noted above, such assertions of compliance are not an adequate substitute for detailed information necessary to establish how an offeror proposes to meet agency requirements. See Ervin & Assocs., Inc., supra. In addition, Endosoft's allusion to its past successful performance on other contracts is not relevant, as Endosoft has not demonstrated that its software met the requirements of the instant solicitation or that the agency's evaluation was otherwise unreasonable. See ASPEC Eng'g, B-406423, May 22, 2012, 2012 CPD ¶ 176 at 3 n.5. Thus, Endosoft's challenges provide no basis to question the agency's conclusion that the firm's offer failed to fully address this technical requirement.<sup>4</sup>

---

<sup>4</sup> The VA also found that Endosoft's offer failed to meet technical requirement six, which mandated that the offered software have the ability to automatically calculate Adenoma Detection Rates ("ADRs"). AR, Tab 4, SSDD at 7. In response, Endosoft requests "proof" that Provation's offer could meet this requirement, and also asserts that this requirement is essentially impossible to meet. Protest at 3. To the extent this response is construed as a challenge to the technical acceptability of Provation's offer, we find that it fails to provide a sufficiently detailed statement of the legal and factual grounds for protest, as Endosoft has not actually attempted to articulate how the agency unreasonably evaluated Provation's offer in this regard. 4 C.F.R. §§ 21.1(c)(4) and (f). To the extent this is construed as alleging the terms of the solicitation are unduly restrictive, this allegation is untimely because it was filed after the due date for receipt of offers. 4 C.F.R. § 21.2(a)(1); see AmaTerra Env'tl. Inc., B-408290.2, Oct. 23, 2013,

(continued...)

In sum, our review of the record shows that the agency reasonably found that Endosoft's offer failed to adequately address several requirements of the solicitation. See Bryan Constr., Inc., supra. It follows that Endosoft's offer was reasonably assigned an unsatisfactory rating and found to be technically unacceptable.<sup>5</sup> AR, Tab 4, SSDD, at 8.

The protest is denied.

Thomas H. Armstrong  
General Counsel

---

(...continued)

2013 CPD ¶ 242 at 3 (protest challenging solicitation's methodology for evaluating price proposals is untimely when filed after the closing time for receipt of proposals).

<sup>5</sup> Endosoft also argues throughout its protest that the agency was biased against the firm. Protest at 1-5. Our Office has stated that government officials are presumed to act in good faith, and a protester's contention that procurement officials were motivated by bias or bad faith must be supported by convincing proof. Cyberdata Techs., Inc., B-417084, Feb. 6, 2019, 2019 CPD ¶ 34 at 6. We will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Id. The burden of establishing bad faith is a heavy one. Evidence establishing a possible defect in an agency's actions generally is not sufficient in itself to establish that the agency acted in bad faith; the protester must also present facts reasonably indicating, beyond mere inference and suspicion, that the actions complained of were motivated by a specific malicious intent to harm the protest. Lawson Envtl. Servs. LLC, B-416892, B-416892.2, Jan. 8, 2019, 2019 CPD ¶ 17 at 5 n.5. Here, Endosoft has not presented facts reasonably indicating that the agency's actions were motivated by bias, and thus has not met its burden to support such an allegation.