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Decision

Matter of: UltiSat, Inc.

File: B-418769.2; B-418769.3

Date: February 26, 2021

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DIGEST

1. Protest challenging the agency's technical evaluation is denied where the record shows that the evaluation was reasonable and consistent with the terms of the solicitation.
 2. Protest challenging the agency's selection of a higher-priced, technically superior quotation is denied where the record shows that the agency's best-value tradeoff decision was reasonable and consistent with the terms of the solicitation, and an error in the documentation was not prejudicial.
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DECISION

UltiSat, Inc., of Gaithersburg, Maryland, protests the issuance of a task order to SES Government Solutions, Inc. (SES-GS), of Reston, Virginia, under request for quotations (RFQ) No. 1411131,¹ issued by the Department of Defense, Defense Information Systems Agency, for satellite bandwidth and related services to support the United States Air Force Central Command (USAFCENT). The protester challenges various aspects of the technical evaluation and best-value tradeoff decision.

We deny the protest.

¹ The solicitation is also referenced by tracking number CTC0329. Agency Report (AR), Tab 2F, RFQ amend. 6 (RFQ), at 1.

BACKGROUND

The RFQ was issued on January 27, 2020, pursuant to Federal Acquisition Regulation (FAR) subpart 8.4, to vendors holding contracts under the General Services Administration (GSA) Federal Supply Schedule (FSS) No. 70 (Information Technology) that included Special Item Number 132-54/Multiple Award Schedule North American Industry Classification System code 517410. RFQ at 1.² The RFQ sought a contractor to provide satellite bandwidth and related services to support USAFCENT requirements in Southwest Asia. The contractor would be required to provide “the ability to activate additional . . . bandwidth as needed, in support of emergent and contingency mission directives,” which would be used to “supplement” and “fill[] gaps in coverage and capability to any location within the [Southwest Asia] [area of responsibility].” AR, Tab 2F1, Performance Work Statement (PWS), at 1.

The RFQ contemplated the issuance of a single fixed-price task order to be performed over a base period of 12 months and four 12-month option periods. RFQ at 1. The RFQ stated that award would be made on a best-value tradeoff basis, considering technical approach and price.³ *Id.* at 4-9. The technical approach factor was more important than price, and included four subfactors of equal importance.⁴ *Id.* at 5.

For technical subfactor 1, space segment coverage and quality, the RFQ required vendors to provide satellite coverage maps depicting their technical solution, and provided that the agency would evaluate the extent to which the technical solution met or exceeded the requirements. RFQ at 5. The RFQ defined “coverage” as “closing the satellite link and meeting the [effective isotropic radiated power] and elevation angle requirements for all terminals operating within the defined coverage area.” *Id.* In this regard, the RFQ also provided that, where the RFQ did not indicate specific terminal locations, “meeting the coverage area shall be demonstrated by closing the satellite link

² The agency amended the RFQ six times. All citations are to the most recent version of the relevant sections of the RFQ.

³ The RFQ also provided that the quotation selected as offering the best value would be reviewed, prior to award, by an authorizing official for compliance with the RFQ. *Id.* at 3-4.

⁴ For technical subfactor 1, space segment coverage and quality, and subfactor 2, space segment capacity, quotations were assigned adjectival ratings of outstanding/blue, good/purple, acceptable/green, marginal/yellow, and unacceptable/red. RFQ at 5; AR, Tab 2F6, RFQ attach. 6, Evaluation Table, at 1. For clarity, this decision omits the color code and refers only to the associated adjectival rating. For technical subfactor 3, space segment reliability, and subfactor 4, information assurance, quotations were assigned acceptable or unacceptable ratings. RFQ at 5; AR, Tab 2F6, RFQ attach. 6, Evaluation Table, at 1.

using a worst-case scenario terminal location.”⁵ *Id.* The RFQ provided that the agency could assess various strengths, including, of relevance here: “The Government *may assign strengths* to the extent an offeror’s solution supports higher achievable throughputs⁶] than those specified in [the] PWS.”⁷ *Id.* at 6 (emphasis original).

On or before February 26, the initial closing date for quotations, the agency received quotations from two vendors, UltiSat and SES-GS. The agency selected SES-GS for award, and UltiSat filed its first protest with our Office on May 22, challenging various aspects of the agency’s evaluation and award decision. The agency proposed to take corrective action, to include reevaluating quotations and making a new award decision, as well as possibly amending the RFQ. We dismissed that protest as academic. *UltiSat, Inc.*, B-418769, June 5, 2020 (unpublished decision).

The agency then amended the RFQ; requested and received revised quotations from UltiSat and SES-GS by August 12; and evaluated the quotations as follows:

	UltiSat	SES-GS
Space Segment Coverage and Quality	Good	Outstanding
Space Segment Capacity	Outstanding	Good
Space Segment Reliability	Acceptable	Acceptable
Information Assurance	Acceptable	Acceptable
RFQ Compliance	Compliant	Compliant
Total Evaluated Price	\$28,422,514	\$37,274,440

AR, Tab 4, Selection Recommendation Document (SRD), Nov. 17, 2020, at 2-3; AR, Tab 5, Price Negotiation Memorandum (PNM), Nov. 24, 2020, at 5.

⁵ A “worst-case scenario terminal location” was defined as “a land[-]based location within the required coverage area with the lowest satellite [effective isotropic radiated power], [gain to noise temperature ratio], and look angle.” RFQ at 5; see also PWS at 2; AR, Tab 2F2, Technical Specification. The agency explains that, “[b]y requesting a worst-case scenario location, the Government is able to ensure that the specified data rates can be met by terminals under the most disadvantaged coverage conditions[.]” AR, Tab 8, Technical Declaration, at 8.

⁶ The agency explains that “throughput is the amount of data that a customer receives,” and “higher throughput amounts to a customer receiving more data.” AR, Tab 8, Technical Declaration, at 13-14.

⁷ A strength was further defined as “an aspect of an offeror’s proposal/quotation that has merit or exceeds specified performance or capability requirements in a way that will be advantageous to the Government during contract performance.” AR, Tab 2F6, RFQ attach. 6, Evaluation Table, at 1.

The contracting officer, who also served as the source-selection authority, considered the evaluation results, including the various strengths presented by each quotation and the price difference, and concluded that SES-GS's quotation represented the best overall value to the agency. In particular, the contracting officer noted the following:

I am willing to pay a premium to award the contract to SES[-]GS based on the SES[-]GS solution's presented strengths in subfactors 1 and 2 and low risk of unsuccessful performance. Maintaining positive communications at a high level of service quality is of utmost importance to ensuring successful execution of the various operational mission directives within the [Southwest Asia] [area of responsibility]. In addition, the characteristics of the quoted satellite afford more flexibility to USAFCENT when deploying terminals with smaller aperture antennas that are typically associated with the requirements of emergent and contingency missions. These benefits to the Government justify the \$8,851,926.00 difference in the total evaluated price. Although the cost difference between the two companies is \$8,851,926.00, with SES[-]GS higher than UltiSat, I have concluded that the higher[-]priced quotation represents the best overall value to the Government.

AR, Tab 5, PNM at 6.

The agency notified UltiSat of its award decision on November 24. This protest followed.

DISCUSSION

UltiSat challenges the agency's technical evaluation and best-value tradeoff decision. We have reviewed all of UltiSat's arguments and discuss below several representative examples of UltiSat's assertions, the agency's responses, and our conclusions. Based on our review, we find no basis to sustain UltiSat's protest.⁸

Technical Evaluation

UltiSat argues that the agency unreasonably failed to assess a strength in its quotation under technical subfactor 1, space segment coverage and quality. UltiSat argues that its technical approach "supports higher throughputs for the vast majority of the coverage area and, therefore, should have received a strength." Comments and Supp. Protest at 17; Supp. Comments at 13. Among its many points of disagreement, UltiSat

⁸ UltiSat also initially raised, but subsequently abandoned, several of its allegations regarding the technical evaluation. Comments and Supp. Protest at 9 n.1 (explaining that, "[a]lthough UltiSat continues to believe it should have received all three remaining strengths identified in the protest, UltiSat has elected to pursue only the strength related to throughputs discussed herein"). We will not consider abandoned arguments. *IntelliDyne, LLC, B-409107 et al.*, Jan. 16, 2014, 2014 CPD ¶ 34 at 3 n.3.

contends that the evaluation was based on an unstated evaluation criterion and “ignore[d] the fact that UltiSat proposed to provide higher achievable throughputs than those specified for almost the *entirety* of the full coverage area.” Comments and Supp. Protest at 15, 17 (emphasis original).

For technical subfactor 1, space segment coverage and quality, the RFQ required vendors to provide satellite coverage maps depicting their technical solution, and provided that the agency would evaluate the extent to which the technical solution met or exceeded the requirements. RFQ at 5. The RFQ defined “coverage” as “closing the satellite link” and meeting certain requirements for “all terminals operating within the defined coverage area.” *Id.* The RFQ also provided that, where the RFQ did not indicate specific terminal locations, “meeting the coverage area shall be demonstrated by closing the satellite link using a worst-case scenario terminal location.” *Id.*

The RFQ provided that “the Government *may assign strengths* to the extent an offeror’s solution supports higher achievable throughputs than those specified in [the] PWS.” RFQ at 6 (emphasis original). UltiSat’s technical approach in this regard was evaluated as follows:

[UltiSat’s] solution did not adequately demonstrate higher achievable throughputs than those specified in the PWS, which is required in order to receive a strength for this portion of the subfactor. [. . .] In reviewing the green tabs within the UltiSat link budgets that were provided to demonstrate higher achievable throughputs, it was noted that UltiSat did not use the same worst[-]case terminal location as used in their baseline link budget analysis. [. . .] Here, UltiSat demonstrated link closure in [REDACTED], which is not the worst-case terminal location that UltiSat had previously identified within their quotation as [REDACTED]. UltiSat has not adequately demonstrated how the quoted solution can provide higher achievable throughputs.

* * * * *

Upon review of the UltiSat link budgets, it was determined the offeror failed to adequately demonstrate how the quoted solution can successfully provide higher achievable throughputs using the same worst-case scenario terminal location as provided in the quotation for the baseline link budget analysis. Additionally, the offeror did not demonstrate the ability to support higher achievable throughputs to the worst-case scenario terminal location, which could affect the ability of the Government to support emergent and contingency operations requiring higher data rates.

AR, Tab 4, SRD at 8-9.

In other words, the agency explains, “UltiSat did not follow the clear guidance provided in the RFQ” and relied on “more favorable locations instead of the worst-case location

as required by the subfactor.” AR, Tab 8, Technical Declaration, at 18; MOL at 55. The agency further explains that it “could not award a strength to UltiSat’s solution under [this] subfactor [] because they did not adequately demonstrate the ability to achieve higher data rates.” AR, Tab 8, Technical Declaration, at 18; MOL at 55.

Where, as here, an agency issues an RFQ to GSA FSS contractors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency’s evaluation is reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *Digital Sols., Inc.*, B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4; *DEI Consulting*, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2. The evaluation of vendors’ technical quotations is a matter within the agency’s discretion, and GAO will not perform its own technical evaluation, or substitute its judgment for that of the procuring agency. See, e.g., *NextStep Tech., Inc.*, B-416877, Jan. 3, 2019, 2019 CPD ¶ 16 at 4. A protester’s disagreement with the agency’s judgment, without more, does not establish that an evaluation was unreasonable. *DEI Consulting, supra*.

On this record, we find no basis to object to the agency’s evaluation. The protester does not meaningfully dispute the agency’s findings that, among other things, it did not use the same worst-case scenario terminal location throughout its quotation to demonstrate coverage and quality, and that this failure “could affect the ability of the Government to support emergent and contingency operations requiring higher data rates.” AR, Tab 4, SRD at 9. We find unpersuasive UltiSat’s complaint that the solicitation did not require vendors to demonstrate a higher throughput “*at every remote point of the full coverage spectrum* in order to receive a strength.” Comments and Supp. Protest at 15 (emphasis original). While UltiSat disagrees with the agency’s evaluation, it has not demonstrated that this aspect of its quotation merited a strength or that any unstated evaluation criterion was used.

UltiSat also contends that the agency’s assessment of a strength in the awardee’s quotation under this technical subfactor reflects disparate treatment. It is a fundamental principle of federal procurement law that a contracting agency must treat all vendors equally and evaluate their quotations evenhandedly against the solicitation’s requirements and evaluation criteria. See *Sumaria Sys., Inc.; COLSA Corp.*, B-412961, B-412961.2, July 21, 2016, 2016 CPD ¶ 188 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 quotations. *Camber Corp.*, B-413505. Nov. 10, 2016, 2016 CPD ¶ 350 at 8.

Here, we find that the protester has not met this burden. UltiSat acknowledges that the vendors proposed different satellites. Protest at 3. The record shows, and the agency explains, that the agency reasonably determined that the awardee’s quotation exceeded the requirements to warrant a strength here. AR, Tab 4, SRD at 15-16; Supp. MOL at 12-14. Moreover, the agency explains that the awardee’s quotation was distinguishable from the protester’s quotation--SES-GS’s “solution adequately demonstrated the ability to provide higher throughputs over the entire coverage area, by

specifically conducting their analysis in accordance with the technical subfactor instructions and using the actual worst-case scenario terminal locations,” in contrast to UltiSat’s solution, as discussed above. Supp. MOL at 14. Accordingly, this protest ground is denied.

Best-Value Tradeoff

UltiSat also challenges various aspects of the agency’s best-value tradeoff decision. Primarily, UltiSat argues that the agency incorrectly calculated the percentage difference between the vendors’ total evaluated prices. While all of the documents in the record reflect a price difference of \$8,851,926 (or 31 percent) between the quotations, the agency’s price negotiation memorandum twice references a 16 percent price difference. In this regard, UltiSat argues that, “[b]ecause the contracting officer based her best value determination on the erroneous premise that SES-GS’[s] price was only 16 percent higher than UltiSat’s, as opposed to approximately 31 percent, the best value trade-off was inherently flawed.” Comments and Supp. Protest at 10; Supp. Comments at 4-5.

The agency argues--and we agree--that the protester was not prejudiced by the error. Supp. MOL at 3-6. Competitive 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; see also, e.g., *GBTI Sols., Inc.*, B-409114.3, B-409114.5, Jan. 29, 2014, 2014 CPD ¶ 45 (finding not prejudicial an erroneous percentage price difference referenced in the decision document).

Here, the contracting officer explains that, notwithstanding the references to the incorrect percentage difference, she “was clearly aware of the price difference between the two solutions expressed in dollars and took that into consideration when making an independent determination on recommendation for award, as referenced multiple times in the PNM.” MOL at 31 n.5; see also Supp. MOL at 5. The rest of the agency record, including the document questioned by the protester, reflects the correct absolute dollar difference between the two vendors’ prices. As documented in the price negotiation memorandum, the contracting officer considered the technical superiority of SES-GS’s quotation and concluded: “These benefits to the Government justify the \$8,851,926.00 difference in the total evaluated price. Although the cost difference between the two companies is \$8,851,926.00, with SES[-]GS higher than UltiSat, I have concluded that the higher[-]priced quotation represents the best overall value to the Government.” AR, Tab 5, PNM at 6.

Ultimately, the record shows that the contracting officer provided a well-reasoned basis for a tradeoff that identified discriminators between the quotations and justified paying SES-GS’s higher price. AR, Tab 5, PNM; see also AR, Tab 4, SRD. Notwithstanding the error discussed above, the record is consistent with the requirement that where, as here, a procurement conducted pursuant to FAR subpart 8.4 provides for award on a best-value tradeoff basis, it is the function of the source selection authority to perform a

price/technical tradeoff, that is, to determine whether one quotation's technical superiority is worth its higher price. *InnovaTech, Inc.*, B-402415, Apr. 8, 2010, 2010 CPD ¶ 94 at 6; *The MIL Corp.*, B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 13. Under these circumstances, this protest ground is also denied.

The protest is denied.

Thomas H. Armstrong
General Counsel