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## Decision

**Matter of:** Chimes District of Columbia, Inc.

**File:** B-419972

**Date:** October 18, 2021

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### DIGEST

Protest is dismissed where the protester's quotation was found to be technically unacceptable under all non-price evaluation factors but the firm did not challenge its rating of unacceptable under the most important factor, thus failing to establish that it was competitively prejudiced.

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### DECISION

Chimes District of Columbia, Inc., of Baltimore, Maryland, protests the establishment of a Blanket Purchase Agreement (BPA) with South Dade Air Conditioning and Refrigeration (SDAC), of Homestead, Florida, under Request for Quotations (RFQ) No. 47PD0320Q0008, issued by the General Services Administration (GSA) for engineering, operation and maintenance, and related services for two federal buildings in Washington, D.C. The protester challenges the agency's evaluation of quotations and selection decision.

We dismiss the protest.

### BACKGROUND

The RFQ, issued on March 16, 2020, sought quotations from holders of GSA Federal Supply Schedule No. 03FAC (Facilities Maintenance and Management) contracts, to establish a single fixed-price BPA under the rules prescribed in Federal Acquisition Regulation section 8.405-3 for a 1-year base period and nine 1-year option periods. Contracting Officer's Statement (COS) at 3; Agency Report (AR), Exh. 1A, Revised

RFQ at 3.<sup>1</sup> The RFQ stated that the BPA would be established based on a best-value tradeoff basis, considering price and the following non-price factors, listed in descending order of importance: management plan, prior experience, and past performance. *Id.* at 9, 18. The non-price factors, when combined, were more important than price. *Id.* at 9.

The evaluation was to be conducted in two phases. *Id.* In the first phase, vendors were to be evaluated under the prior experience, past performance, and price factors. *Id.* Vendors whose quotations were deemed as having “low probability of success and a high overall risk” to the government would be notified in writing. *Id.* at 10. Upon receiving such notification, vendors were not automatically eliminated, but were required to affirmatively elect to continue to the next phase of the competition. *Id.* Vendors wishing to continue to the next phase had 10 days from the time of request to submit their phase two quotation, addressing the management plan factor. *Id.*

GSA initially received quotations from 17 vendors by the solicitation closing date. AR, Exh. 3, Phase One Tech. Report at 4. After an initial evaluation, the agency requested management plans from 12 vendors, including SDAC, but not Chimes. *Id.* at 28. The agency informed Chimes that it was not likely to receive the award, and that the agency was not requesting a management plan from Chimes. Protest at 5. Chimes responded by notifying the contracting officer that it wished to continue to the next phase of the competition. *Id.* Fourteen vendors, including Chimes and SDAC, submitted management plans. AR, Exh. 3A, Phase Two Tech. Report at 4.

In its evaluation, the agency (1) identified aspects of the quotations that were favorable, unfavorable, or met requirements; (2) assigned adjectival ratings for each non-price factor, as well as an overall non-price (“technical”) rating; and (3) ranked the non-price quotations. *Id.* at 10-12, 23-24. The evaluation results of Chimes and SDAC’s quotations were as follows:

	<b>Chimes</b>	<b>SDAC</b>
<b>Overall Technical Rating</b>	Unacceptable	Acceptable
<b>Management Plan</b>	Unacceptable	Acceptable
<b>Prior Experience</b>	Unacceptable	Acceptable
<b>Past Performance</b>	Unacceptable	Very Good
<b>Ranking by Technical Rating</b>	13	2
<b>Total Evaluated Price</b>	\$28,119,596	\$29,695,730

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<sup>1</sup> The RFQ was amended 11 times. COS at 3. All references to the RFQ are to the revised version of the RFQ provided by the agency under solicitation amendment 3. All citations to the record are to the consecutive numbering of the pages in the Adobe PDF document.

AR, Exh. 5, Price/Tradeoff Analysis Memo. at 3.<sup>2</sup>

The contracting officer, who was the source selection authority (SSA) for the procurement, considered the results of the evaluation panel reports, exercised her independent judgment, and performed a tradeoff analysis among the six vendors that were assigned overall technical ratings of acceptable or higher, including SDAC. *Id.* at 4-7. The SSA specifically found that due to their lower technical merit, the eight quotations that were assigned overall technical ratings of unacceptable--including Chimes's quotation--contained too much risk for the government to consider, given the option of other, more highly rated submissions. *Id.* at 4.

Based on the SSA's comparative assessment and tradeoff analysis, SDAC's quotation was found to provide the best value to the government and was selected for award. *Id.* at 7-9. On June 29, Chimes was informed that the agency established a BPA with SDAC. AR, Exh. 10, Notice of Award. After Chimes received a brief explanation of the award decision on July 20, it filed this protest.<sup>3</sup>

## DISCUSSION

Chimes's initial protest challenged the agency's evaluation of SDAC's quotation, and its own quotation, under the prior experience and past performance factors, as well as the agency's selection decision. The protester did not challenge the agency's evaluation of its quotation as unacceptable under the most important factor, management plan; indeed, at the time the initial protest was filed Chimes had not been advised that its quotation was assessed as unacceptable under the management plan factor. With regard to the prior experience and past performance factors, Chimes contends that the agency improperly downgraded Chimes's quotation so it would not be considered for award, while inflating the ratings of SDAC's quotation under those two factors to justify making an award at a higher price.

In the agency's report responding to the protest, GSA fully addressed Chimes's arguments and defended its evaluation of the quotations and the selection decision.

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<sup>2</sup> The agency used the following adjectival ratings in evaluating the non-price factors: excellent, very good, good, acceptable, and unacceptable. AR, Exh. 3A, Phase Two Tech. Report at 10.

<sup>3</sup> For the record, the agency's brief explanation to Chimes did not identify the adjectival ratings given to Chimes's quotation, as set forth above. Specifically, Chimes was not advised that its quotation was rated unacceptable under all three of the non-price factors here. Instead, the brief explanation stated that the overall quotation was rated unacceptable, and provided information about favorable and unfavorable aspects assessed under the management plan factor. See *generally* AR, Exh. 9, Explanation of Award Letter. It was not until receipt of the agency report that Chimes learned that it received a rating of unacceptable under each of the evaluation factors.

Most significantly, however, the agency provided contemporaneous evaluation materials showing that Chimes was rated as unacceptable under all three of the evaluation factors, including under the most important evaluation factor, management plan. AR, Exh. 3, Phase One Tech. Report at 27; AR, Exh. 3A, Phase Two Tech. Report at 17. In later filings, GSA also explained that the definition of a rating of unacceptable precludes an award to any quotation found to be unacceptable.<sup>4</sup> See COS at 13 (*citing* AR, Exh. 3, Phase One Tech. Report at 8 which provides definitions of the adjectival ratings); Supp. COS at 8. Despite receiving the information showing that Chimes received a rating of unacceptable under all three evaluation factors, Chimes never amended its protest to challenge its rating under the management plan factor. As a result, even if the protester could show that its ratings under the prior experience and past performance factors were unreasonable, Chimes would remain ineligible for award because it failed to challenge its rating under the management plan factor. Supp. COS at 8; Supp. MOL at 5. As a result, we conclude that Chimes has failed to establish that it could have been prejudiced here.

Competitive prejudice is an essential element of a viable protest, and we will sustain a protest only where the protester demonstrates that, but for the agency's improper actions, it would have had a substantial chance of receiving the award. *Information Mgmt. Res., Inc.*, B-418848, Aug. 24, 2020, 2020 CPD ¶ 279 at 7 n.4. Where the record establishes no reasonable possibility of prejudice, we will not sustain a protest irrespective of whether a defect in the procurement is found. *Procentrix, Inc.*, B-414629, B-414629.2, Aug. 4, 2017, 2017 CPD ¶ 255 at 11-12.

As such, even if we found merit to Chimes's challenges to the evaluation of its quotation under the prior experience and past performance factors--which we need not do here---we see no basis to conclude that Chimes could have been competitively prejudiced by any of its alleged evaluation errors because Chimes's quotation would still remain unacceptable under the most important factor, the management plan factor. See, e.g., *Arc Aspicio, LLC*; *Aveshka Inc.*; *Chakrabarti Mgmt. Consultancy, Inc.*, B-412612 *et al.*, Apr. 11, 2016, 2016 CPD ¶ 117 at 12-13.

Since Chimes has failed to establish that it was prejudiced here, it is not an interested party to raise its further challenges to the evaluation of SDAC's quotation and the agency's best-value analysis. In order for a protest to be considered by our Office, a

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<sup>4</sup> Relevant here, the rating scheme used by the agency defined a rating of unacceptable as follows:

The factor/[quotation] indicates the [vendor] is unlikely to meet some or all of the requirements of the BPA. *An 'unacceptable' [quotation] cannot be awarded.* The overall quality of the [quotation] is not acceptable, there is a limited probability of success and a high level of overall risk to the [g]overnment is recognized."

AR, Exh. 3, Phase One Tech. Report at 8; Exh. 3A, Phase Two Tech. Report at 10 (emphasis added).

protester must be an interested party, that is, an actual or prospective offeror whose direct economic interest would be affected by the award or failure to award a contract. 4 C.F.R. §§ 21.0(a)(1), 21.1(a); *Cattlemen's Meat Co.*, B-296616, Aug. 30, 2005, 2005 CPD ¶ 167 at 2 n.1. A firm is not an interested party if it is ineligible to receive award under the protested solicitation, *Trailblazer Health Enters., LLC*, B-407486.2, B-407486.3, Apr. 16, 2013, 2013 CPD ¶ 103 at 14; *Acquest Dev. LLC*, B-287439, June 6, 2001, 2001 CPD ¶ 101 at 6, or if it would not be in line for award if the protest were sustained. *VSolvit, LLC*, B-418265.2, B-418265.3, July 30, 2020, 2020 CPD ¶ 259 at 6; *Cyberdata Techs., Inc.*, B-411070 *et al.*, May 1, 2015, 2015 CPD ¶ 150 at 9.

Because we have no basis to disturb the agency's conclusions finding Chimes's quotation technically unacceptable, we need not reach its remaining challenges. Even if we were to agree with Chimes that the agency erred in those respects, its quotation is still technically unacceptable, and an unacceptable quotation cannot form the basis for award. *Trailboss Enters. Inc.*, B-419209, Dec. 23, 2020, 2020 CPD ¶ 414 at 8-9. Chimes, therefore, lacks the direct economic interest necessary to be an interested party to otherwise protest the evaluation of SDAC's quotation or the best-value tradeoff analysis. *Id.*

The protest is dismissed.

Edda Emmanuelli Perez  
General Counsel