

Decision

Matter of: First American Business Solutions

File: B-420002

Date: September 29, 2021

David Colangelo, First American Business Solutions, for the protester.
Wade L. Brown, Esq., Department of the Army, for the agency.
Emily R. O'Hara, 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 technical evaluation of the awardee's offer is denied where the agency reasonably determined that the awardee attested that it had the proper technical certifications, as was required by the solicitation.

DECISION

First American Business Solutions (First ABS), a small business of New Port Richey, Florida, protests the award of a contract to Cornerstone Communications, Inc., of Fenton, Missouri, under solicitation No. W91RUS21R0078, issued by the Department of the Army, Army Materiel Command, for support to the telephone switching systems and associated equipment installed at Army installations in Alaska. The protester primarily contends that the agency was unreasonable in finding the awardee's proposal to be technically acceptable.

We deny the protest.

BACKGROUND

The solicitation, issued on May 13, 2021, sought to acquire remote technical assistance and support for the Nortel/Avaya telephone switching systems used by the Army as part of the Defense Switched Network voice switches that provided unclassified voice services to personnel located at Fort Wainwright and Fort Greely, Alaska.¹ COS/MOL

¹ The agency initially posted the solicitation on the Army's Computer Hardware, Enterprise Software and Solutions Information Technology Enterprise Solutions – 3 Hardware website on April 28, 2021. Contracting Officer Statement and Memorandum

at 2; Agency Report (AR), Tab 4, Request for Proposals (RFP) at 9. Although not clearly stated in the solicitation, the agency advises that the procurement was conducted as a commercial item acquisition using the procedures of Federal Acquisition Regulation (FAR) parts 12 and 13. Resp. to Req. for Additional Development (AD) (Resp. to AD) at 3. The requirement called for, among other things, providing “remote diagnostics, testing, trouble shooting, problem remediation, and system restoration services, remote software releases/patch administration, repair/replacement, and remote engineering support.”² RFP at 5. The solicitation anticipated award would be made on a lowest-price, technically acceptable basis, considering only two evaluation factors: technical and price. *Id.* at 9.

The Army received three proposals in response to the solicitation. A technical evaluation team evaluated proposals and ultimately found the proposals from Cornerstone and First ABS to be technically acceptable. COS/MOL at 3. Based on the prices proposed by Cornerstone (\$72,000) and First ABS (\$120,278.20), the agency made award to Cornerstone as the lowest-priced, technically acceptable offeror. *Id.* at 3-4.

On July 19, the protester emailed the Army, requesting the status of the procurement. AR, Tab 14, Protester Email to Agency at 9. The next day, the agency notified the protester that award had been made to Cornerstone in the amount of \$72,000. *Id.* at 8. First ABS filed its protest with our Office on July 21.

DISCUSSION

The protester raises multiple challenges to the agency’s actions in relation to this solicitation.³ The protester primarily argues that the agency did not follow the terms of

of Law (COS/MOL) at 2. After receiving no responses to the initial posting, the Army posted the solicitation on SAM.gov via amendment 1 on May 13. *Id.*

² The solicitation refers to firms as both “vendors” and “offerors,” and the responses submitted as “proposals,” “quotations,” and “offers.” For the sake of consistency with the record, and because the result of the competition is an award of a contract, we refer to firms that competed here as offerors who submitted proposals for the award of a contract.

³ The protester also complains that the agency failed to notify First ABS it was an unsuccessful offeror in accordance with FAR section 15.503. Protest at 1. The agency responds that FAR section 15.503 was not applicable to this solicitation, which used simplified acquisition procedures under FAR part 13 to procure the needed services. Req. for Dismissal at 3. The Army notes, rather, that FAR section 13.106-3(c) applies to the solicitation--which the protester does not dispute--and that notification to unsuccessful offerors was not required, unless requested, because the acquisition did not exceed the simplified acquisition threshold. *Id.* (citing FAR 13.106-3(c)). Here, the agency notified the protester of its unsuccessful offer once the protester requested such notice, in accordance with FAR section 13.106-3(c).

the solicitation in making award to Cornerstone because Cornerstone did not have the proper authorization--a Ribbon Communications master services agreement--to service the equipment required by the solicitation. We have considered all of the allegations raised by First ABS and find no basis to sustain the protest.

The protester argues that in order to provide the required software releases and patch administration to the existing SL100 and CS2100 Nortel systems used by the Army, the awardee needed to have a Ribbon Communications master services agreement, as Ribbon Communications was the original equipment manufacturer (OEM) of the legacy Nortel systems. Protest at 1. The protester claims that the required services could not be performed without such an agreement. *Id.* The protester contends that Cornerstone was not a Ribbon authorized partner, and thus, could not perform the solicitation requirements. *Id.* Therefore, according to First ABS, the Army should have found Cornerstone's proposal to be technically unacceptable. *Id.*

The agency responds that its evaluation of the awardee's proposal was not unreasonable because an offeror's possession of a Ribbon Communications services agreement was not a solicitation requirement. COS/MOL at 8. Thus, according to the Army, there was no requirement to consider the possession of, or access to, such an agreement during the technical evaluation of proposals. *Id.* at 9. In the alternative, the agency argues that even if a Ribbon Communications services agreement was required by the solicitation, Cornerstone certified in its proposal that its subcontractor would have all proper experience and certifications to work with the Nortel/Avaya equipment. *Id.* at 7, 10.

Where simplified acquisition procedures are used, the contracting agency has broad discretion in fashioning suitable evaluation procedures. FAR 13.106-2(b)(1). However, the agency must conduct the procurement consistent with a concern for fair and equitable competition and evaluate proposals in accordance with the terms of the solicitation. *Reagent World, Inc.*, B-415490, Oct. 23, 2017, 2017 CPD ¶ 326 at 4. In reviewing protests of allegedly improper simplified acquisition evaluations, we examine the record to determine whether the agency met this standard and exercised its discretion reasonably. *Emergency Vehicle Installations Corp.*, B-408682, Nov. 27, 2013, 2013 CPD ¶ 273 at 4. A protester's disagreement with the agency's judgment, without more, is not sufficient to establish that the agency acted unreasonably. *Antico Cantiere Del Legno Giovanni Aprea Di Cataldo S.R.L.*, B-414112, Feb. 21, 2017, 2017 CPD ¶ 58 at 4.

Here, the record provides no basis to conclude that the agency's evaluation of Cornerstone's proposal was unreasonable. The solicitation required offerors to "meet all terms and conditions of the solicitation" and to "detail the offered solution in their quote or attach a data specification sheet." RFP at 3. As relevant here, the solicitation required offerors to attest, or certify, that they had the certifications and specialization levels required to maintain the existing phone equipment. *Id.* at 4. The agency first argues that "a Ribbon Communications Services Agreement [was] not a requirement of the solicitation." COS/MOL at 9.

Our review of the solicitation indicates that while the Army is accurate in noting that a Ribbon Communications services agreement was not expressly listed as a requirement in the solicitation, the solicitation did, however, require all offerors to certify that they were a “Manufacturer Authorized Channel” and have the certifications and specializations required by the manufacturer to maintain equipment in accordance with manufacturer requirements. RFP at 4. Relevant here, the solicitation instructed offerors of the following:

If the requirement is renewal of hardware / software maintenance support for existing command-owned and operated Manufacturer equipment[,] Seller certifies (and shall provide that certification) that it is a Manufacturer Authorized Channel as of the date of the submission of its Bid, and that it has the certification/specialization level required by Manufacturer to maintain both the equipment [and software], in accordance with applicable Manufacturer certification/specialization requirements.

Id.

The Army confirms that this requirement was for the renewal of hardware and software maintenance support for the existing Nortel/Avaya telephone switching systems in place at Fort Wainwright and Fort Greely. Resp. to AD at 1; RFP at 4. Thus, by the terms of the solicitation, offerors were required to certify that they had all authorizations necessary to access and maintain this equipment--which, in this instance, necessarily included a Ribbon Communications services agreement in order to maintain the existing Nortel/Avaya telephone equipment. See AR, Tab 17, Declaration of Contracting Officer (indicating that the awardee “can provide, through a subcontractor, the *required* Ribbon Communication master service”) (emphasis added); AR, Tab 18, Emails between Ribbon Communications and the Army (confirming between Ribbon Communications and the Army that the awardee’s subcontractor has the proper Ribbon Communications authorization needed to perform the contract requirements). Therefore, the Army’s initial contention that a Ribbon Communications services agreement was not required by the solicitation is not persuasive. Nevertheless, as discussed below, we agree with the agency that the awardee met the requirements of the solicitation and that the agency’s evaluation, in this instance, was unobjectionable. *Id.*

In its proposal, Cornerstone attested that it had all certifications required by the manufacturer to maintain the existing Nortel/Avaya equipment. See AR, Tab 7, Cornerstone Proposal at 3. Cornerstone’s proposal indicated that it had “a vast network of highly qualified telecom professionals with Avaya & Nortel experience and certifications,” and that it could meet all “technical objectives outlined” in the solicitation through a subcontractor.⁴ *Id.* Nothing in the solicitation limited an offeror’s ability to

⁴ The awardee’s initial proposed subcontractor was First ABS, the protester. AR, Tab 7, Cornerstone Proposal at 3. Cornerstone has since partnered with a different

meet requirements through work with a subcontractor, nor did anything in the solicitation require the submission of any necessary certificates or agreements at the time of proposal. Thus, Cornerstone met the solicitation requirement that an offeror attest or “certif[y]” that it was a “Manufacturer Authorized Channel as of the date of the submission of its Bid” and had “the certification/specialization level required by [the] Manufacturer to maintain . . . the equipment.”⁵ See RFP at 4. Based on our review of the record, we find that the Army evaluated Cornerstone’s proposal consistently with the terms of the solicitation. See *Reagent World, Inc.*, *supra*. As such, we do not find the agency’s technical evaluation of the awardee’s proposal to be unreasonable.

We deny the protest.

Edda Emmanuelli Perez
General Counsel

subcontractor, which also has a Ribbon Communications services agreement. AR, Tab 18, Emails between Ribbon Communications and the Army. This change was made after evaluation, and thus does not affect our analysis of whether the Army followed the terms of the solicitation in evaluating Cornerstone’s proposal. See AR, Tab 15, Emails between Cornerstone and the Army.

⁵ The agency explains the requirement to “certify” had the ordinary meaning of attesting or confirming something in a formal statement, and thus certification simply meant “the act of” attesting or confirming something in a formal statement. Resp. to AD at 1-3. Further, the Army states that the term “Manufacturer Authorized Channel,” only referred to the means or “[c]hannel” authorized by the manufacturer to maintain the underlying equipment--which, in this instance, was the awardee’s subcontractor. *Id.* at 3. The protester does not argue that the agency’s interpretation of the provision is incorrect or that the provision is ambiguous. In the absence of a timely challenge to the solicitation terms, we will review the agency’s evaluation to determine whether it was consistent with the agency’s interpretation of the terms of the solicitation. See *Anders Constr., Inc.*, B-414261, Apr. 11, 2017, 2017 CPD ¶ 121 at 6.