

# Decision

**Matter of:** RK Consultancy Services, Inc.

**File:** B-420030; B-420030.2

**Date:** November 3, 2021

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Venkat Ramaswamy, RK Consultancy Services, Inc., for the protester.  
Terry L. Elling, Esq., and Amy L. Fuentes, Esq., Holland & Knight LLP, for Nimbus Consulting LLC, the intervenor.  
Karyne Constance Akhtar, Esq., Department of Health and Human Services, for the agency.  
Raymond Richards, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest challenging an agency's technical evaluation of the protester's quotation is denied where the evaluation was reasonable and performed in accordance with the terms of the solicitation, and where the protester is unable to demonstrate competitive prejudice.

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## DECISION

RK Consultancy Services, Inc. of Minneapolis, Minnesota, protests the issuance of a task order to Nimbus Consulting LLC of Columbia, Maryland, under request for quotations (RFQ) No. 210501, issued by the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), for consulting support services. The protester challenges the agency's evaluation of its quotation.

We deny the protest.

## BACKGROUND

On April 19, 2021, CMS issued the RFQ under the procedures of Federal Acquisition Regulation (FAR) subpart 8.4, Federal Supply Schedules (FSS). Agency Report (AR), Tab 2a, RFQ at 1. The RFQ sought quotations for information technology consulting services to support CMS "in implementing national health care transformation." AR, Tab 2c, Statement of Work (SOW) at 3. The SOW explained that services sought under the RFQ will "provide CMS with strategic, analytic and professional consulting support

for organizational change, concept to design planning, acquisition strategy, process improvement, and other transformational activities.” *Id.*

The RFQ contemplated the issuance of a fixed-price order with one 12-month base period and four 12-month option periods. RFQ at 2-3. The task order would be issued on a best-value tradeoff basis considering price and the following non-price factors listed here in order of importance: corporate experience; staffing; and section 508 compliance.<sup>1</sup> *Id.* at 13-14. The non-price factors, when combined, were significantly more important than price. CMS planned to issue an order based on initial quotations without engaging in discussions with vendors. *Id.* at 1, 13. Quotations were due by April 26. *Id.* at 4.

CMS received two quotations in response to the RFQ. Contracting Officer’s Statement (COS) at ¶ 11. The quotations were evaluated as follows:

	<b>Corporate Exp.</b>	<b>Staffing</b>	<b>Section 508</b>	<b>Price</b>
<b>RK</b>	Low Confidence	No Confidence	Unacceptable	\$54,387,134
<b>Nimbus</b>	High Confidence	High Confidence	Acceptable	\$68,474,878

AR, Tab 6f, Award Decision Memo at 9-12. The contracting officer determined that Nimbus’s quotation represented the best value to the government and selected Nimbus for award. COS at ¶ 16.

RK Consultancy requested a brief explanation of the agency’s award decision, which was provided on July 26. Protest, exh. 7, Req. for Explanation at 1; AR, Tab 5a, Brief Explanation at 1. The brief explanation detailed negative findings assessed to RK Consultancy’s quotation under each technical evaluation factor and stated that “negative findings assessed for Factors 1 through 3 increased the level of performance risk to an unacceptable level and made [RK Consultancy’s] quote technically unacceptable.” AR, Tab 5a, Brief Explanation at 3. On July 30, RK Consultancy filed this protest with our Office.

## DISCUSSION

RK Consultancy raises a multitude of challenges against this procurement. The primary issue here is whether RK Consultancy’s quotation was reasonably found to be unacceptable under the section 508 compliance factor and in turn, ineligible for award.

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<sup>1</sup> The agency explains that section 508 compliance refers to section 508 of the Rehabilitation Act of 1973 (29 U.S.C. § 794d). Memorandum of Law (MOL) at 5. The statute requires that when federal agencies develop, procure, maintain, or use electronic and information technology, they ensure that individuals with disabilities have access to and use of information and data that is comparable to the access and use by individuals who are not individuals with disabilities. See 29 U.S.C. § 794d.

Based on our review of the record, we conclude that the agency's evaluation was reasonable.<sup>2</sup>

Where, as here, an agency issues a solicitation to FSS vendors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's evaluation was reasonable and consistent with the terms of the solicitation. *Accenture Fed. Servs., LLC*, B-417857, Nov. 22, 2019, 2019 CPD ¶ 406 at 3. In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate quotations; 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 law and regulation. *Id.*; see also *RIVA Sols., Inc.*, B-418408, Mar. 31, 2020, 2020 CPD ¶ 133 at 3-4.

It is a vendor's responsibility to submit an adequately written quotation. *Harmonia Holdings Grp., LLC*, B-418290.3, B-418290.4, Feb. 27, 2020, 2020 CPD ¶ 89 at 5; *Accenture Fed. Servs., LLC*, *supra*; *HelpingGov Corp.*, B-412257, Dec. 15, 2015, 2015 CPD ¶ 394 at 3. The quotation must contain sufficiently detailed information clearly demonstrating compliance with the solicitation's requirements. *Accenture Fed. Servs., LLC*, *supra*. Where a quotation omits, inadequately addresses, or fails to clearly convey required information, the vendor runs the risk of an adverse agency evaluation. See *id.*; see also *Tridentis, LLC*, B-418690.4, Jan. 5, 2021, 2021 CPD ¶ 186 at 7.

In response to RK Consultancy's protest, CMS argues that the protester's quotation was facially deficient and therefore unacceptable under the section 508 compliance factor. MOL at 1-2, 24. Essentially, the agency contends that the protester failed to meet the RFQ's minimum requirements under this factor because it failed to include a properly completed voluntary product accessibility template (VPAT) with its quotation.<sup>3</sup> CMS therefore maintains that even if its evaluation of RK Consultancy's quotation under the other evaluation factors was otherwise flawed, which it does not concede, such flaws "would not have any impact here since the protester [was] ineligible for award" due to its unacceptable rating under the section 508 compliance factor. MOL at 24.

As explained below, we find that the record supports the unacceptable rating for the section 508 compliance factor. Moreover, RK Consultancy has not rebutted the

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<sup>2</sup> The protester makes several collateral arguments. While we do not address each of the allegations raised, we have reviewed them all and find no basis to sustain the protest.

<sup>3</sup> According to the VPAT form attached to the RFQ, "[t]he VPAT is a template used to document a product's conformance with accessibility standards and guidelines. The purpose of the Accessibility Conformance Report [(the term used for a completed VPAT)] is to assist customers and buyers in making preliminary assessments regarding the availability of commercial 'Electronic and Information Technology' also referred to as 'Information and Communication Technology' (ICT) products and services with features that support accessibility." AR, Tab 2i, VPAT at 2.

agency's position that its quotation is ineligible for award in light of the unacceptable rating under the section 508 compliance factor. Since the protester has not explained how it could possibly be in line for award in light of this unacceptable rating, we find that the protester has failed to establish competitive prejudice with respect to its remaining challenges. Therefore, we have no basis to sustain the protest.

### Section 508 Compliance

Under the section 508 compliance factor, the RFQ explained that when federal agencies "develop, procure, maintain, or use electronic and information technology, Federal employees with disabilities must have access to and use of information and data that is comparable to the access and use by Federal employees who are not individuals with disabilities[.]" RFQ at 7. These access requirements also benefit individuals with disabilities who are members of the public seeking information or services from federal agencies. *Id.* Due to these requirements, the RFQ expressly required that vendors responding to the RFQ comply with the agency's electronic and information technology (EIT) accessibility standards. *Id.*

To facilitate the agency's review of whether quotations met the applicable accessibility standards, vendors were required to submit a VPAT in accordance with the attached completion instructions. *Id.* at 7-8; see AR, Tab 2i, VPAT. The VPAT listed a number of accessibility standards--for each standard, vendors were instructed to describe either (1) how they met the standard; (2) why they were unable to meet the standard; or (3) why the vendor believed the standard was not applicable to this procurement. RFQ at 7, 8, 13.

The RFQ stated that the agency would evaluate the VPAT "to ensure it is compliant with the applicable 508 standards or provides an acceptable explanation as to why an identified standard is not applicable." *Id.* at 14. Compliance with the accessibility standards was assessed by evaluating vendors' VPATs on an acceptable or unacceptable basis. *Id.* at 8, 14; AR, Tab 6f, Award Decision Memo at 10.

As relevant here, for some of the identified accessibility standards, RK Consultancy's VPAT stated only that it "[w]ill comply with the requirements," but provided no further explanation. AR, Tab 3d, RKCS VPAT at 3-10. In addition, RK Consultancy provided no response or explanation for a number of the identified standards. *Id.* at 12-17.

The agency found RK Consultancy's quotation unacceptable under the section 508 compliance factor because its VPAT failed to provide any explanation for how it would meet certain requirements, and failed to address a number of other standards. AR, Tab 6b, VPAT Review at 1-2; see AR, Tab 3d, RKCS VPAT at 3-10, 12-17. As a result, the agency concluded that RK Consultancy's quotation did not demonstrate the capability to comply with section 508 standards. AR, Tab 6f, Award Decision Memo at 10.

The protester does not challenge the actual substance of the agency's evaluation here. Rather, RK Consultancy argues that the VPAT should not have been used to evaluate

quotations. Protest at 12-13; Comments & Supp. Protest at 6-11. According to RK Consultancy, the procurement, and therefore its quotation, was for services, not products, and the VPAT does not apply to services. Protest at 11-12; Comments & Supp. Protest at 6. In this regard, the protester claims that it was unreasonable for the agency to find its quotation unacceptable under the section 508 compliance factor because it was only proposing labor resources and therefore the VPAT did not apply to its quotation. Protest at 12.

Our review of the record provides no basis to object to the agency's evaluation of this factor. The solicitation expressly required vendors to submit a VPAT in accordance with the completion instructions. RFQ at 8. VPATs were required to state "exactly how" vendors met or did not meet the accessibility standards. *Id.* at 7. CMS found that RK Consultancy's VPAT did not fulfil this requirement because it included only the general statement "[w]ill comply with requirements." See AR, Tab 3d, RKCS VPAT at 3-10, 12-17.

Moreover, the RFQ contemplated that some of the accessibility standards may not apply to each quotation and established a procedure for such instances. RFQ at 7-8. The RFQ instructed vendors to explain why they believed that any of the accessibility standards did not apply to their quotation. *Id.*; AR, Tab 2i, VPAT at 5-6. Rather than providing such an explanation, RK Consultancy left certain sections entirely blank. AR, Tab 3d, RKCS VPAT at 12-17.

On this record, we find that CMS reasonably concluded that RK Consultancy's VPAT did not comply with the solicitation's requirements and was therefore unacceptable under the section 508 compliance factor. As the agency explains, RK Consultancy's quotation was facially deficient--the protester failed to submit the information required for the agency to properly assess section 508 compliance. MOL at 1, 25-29. In other words, the protester failed to meet a minimum solicitation requirement by failing to submit information demonstrating its compliance with the 508 accessibility standards. See RFQ at 7; see also *RIVA Sols., Inc., supra* at 2-4.

#### Protester's Challenge to the Applicability of the VPAT is Untimely

Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial quotations, must be filed prior to that time. See 4 C.F.R. § 21.2(a)(1); see *Sea Box, Inc.*, B-401523, B-401523.2, Sept. 25, 2009, 2009 CPD ¶ 190 at 3-4; see also *Metal Works of Montana, Inc.*, B-410377, Dec. 10, 2014, 2014 CPD ¶ 367 at 7 n.5. We will dismiss protest grounds when they are not timely filed.

As noted above, RK Consultancy argues that because this procurement was for services, the VPAT was not applicable to quotations. In this regard, the protester claims that vendors offering only labor resources were not required to fill in the details of the VPAT. Protest at 12-13; Comments & Supp. Protest at 6-7. According to the protester, once a vendor has been awarded an order, it can then work with agency business

owners and developers to fill in the details and complete the VPAT form. *Id.* RK Consultancy reasons that its submitted VPAT was sufficient for the purposes of this procurement because it indicated an intent to comply with section 508 standards which is all that vendors could reasonably do during the source selection stage of the procurement. See *id.* at 12-13; Comments & Supp. Protest at 6-11.

We find that this is an untimely challenge to the terms of the solicitation. First, the solicitation was clear that CMS sought quotations for services. AR, Tab 2c, SOW at 3 (“The Contractor shall provide continuing, essential services that support forward-thinking requirements. . . . These services are especially needed to ensure that the anticipated abundance of new system development projects follow more efficient processes. . . . Acquiring these Contractor services will provide CMS with strategic, analytic and professional consulting support. . . .”); see *generally id.* at 4-21 (describing the tasks to be performed). Second, the solicitation was clear that vendors responding to the RFQ were required to submit a VPAT stating exactly how they meet or do not meet the applicable standards. RFQ at 7 (vendors “shall prepare and submit a [VPAT].”). Since it was clear that the RFQ sought services and that vendors responding to the RFQ were required to submit completed VPATs, RK Consultancy’s post-award challenge about the applicability of the VPAT to quotations is untimely and is dismissed. 4 C.F.R. § 21.2(a)(1).

#### The Protester Fails to Establish Competitive Prejudice

We need not address the merits of the protester’s remaining challenges to the evaluation of its quotation under the other non-price factors because we conclude that it has not demonstrated competitive prejudice. Competitive prejudice is an essential element of every viable protest. Where the protester fails to demonstrate that, but for the agency’s actions, it would have had a substantial chance of receiving award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. See *e.g.*, *JHC Tech., Inc.*, B-417786, Oct. 23, 2019, 2019 CPD ¶ 376 at 6.

Here, as discussed above, RK Consultancy’s quotation was reasonably rated as unacceptable under the section 508 compliance factor. In response to the protest, the agency argues that this rating rendered RK Consultancy’s quotation ineligible for award. See MOL at 1, 24. In other words, even if the agency made errors with respect to the evaluation of the protester’s quotation under the remaining non-price factors, such errors would have no effect on the results of the procurement.<sup>4</sup>

In evaluating the protester’s quotation, the agency ultimately found that RK Consultancy:

received a rating of Low Confidence for Factor 1, [] a rating of No Confidence for Factor 2, and a rating of Unacceptable for Factor 3.

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<sup>4</sup> RK Consultancy has not challenged the agency’s evaluation of Nimbus’s quotation.

Therefore, the quote submission from [RK Consultancy] was found to be unacceptable, as [RK Consultancy] did not demonstrate capability to adequately understand and perform the [agency's] requirements, which indicated a high and unacceptable level of performance risk to the Government.

AR, Tab 6f, Award Decision Memo at 25-26. The award decision memo further stated that RK Consultancy's quotation carried "high performance risk in terms of ability to comply with the applicable Section 508 standards." *Id.* at 26. The agency concluded that "[t]he high level of performance risk assessed under all factors for [RK Consultancy's] quote made the quote technically unacceptable and ineligible for award." *Id.*

Based on our review of the record, we find the agency's position as to the award eligibility of the protester's quotation to be reasonable. The protester has not explained how it possibly possesses a substantial chance of receiving award in light of the unacceptable rating under the section 508 compliance factor and the corresponding high level of performance risk. See AR, Tab 6f, Award Decision Memo at 26. Since the agency has reasonably shown that it would not be able to make award to RK Consultancy because of the unacceptable rating under the section 508 compliance factor, RK Consultancy is unable to demonstrate competitive prejudice with respect to the remaining protest grounds. RK Consultancy's remaining protest grounds are therefore denied.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel