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Decision

Matter of: Vizada Inc.

File: B-405251; B-405251.2; B-405251.3

Date: October 5, 2011

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Michael R. Charness, Esq., Jamie F. Tabb, Esq., and Christine N. Roushdy, Esq., Vinson & Elkins LLP, for Stratos Government Services, Inc., an intervenor.

Isaac Johnson, Jr., Esq., Department of Homeland Security, for the agency.

Nora K. Adkins, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably found significantly lower-priced proposal of awardee to be realistic.
 2. Protest that agency improperly failed to find the awardee's proposal technically unacceptable for not complying with various material specification requirements is denied, where the record shows that the agency reasonably determined that the proposal was acceptable.
 3. Protest that awardee's proposal contained a material misrepresentation is denied where there is no convincing evidence of a misrepresentation.
 4. Agency was not required to advise an offeror during discussions of proposal weaknesses that were reasonably not considered significant, even when the weaknesses were noted as a discriminating factor in making the award.
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DECISION

Vizada Inc., of Rockville, Maryland, protests the award of a contract to Stratos Government Services, Inc., of Washington, D.C., under request for proposals (RFP) No. HSCG79-10-R-T10001, issued by the Department of Homeland Security, United States Coast Guard, for a Ku-band maritime data communications system to support the Coast Guard's large cutter fleet. Vizada contends that the agency unreasonably evaluated the proposals and failed to conduct meaningful discussions.

We deny the protest.

The Coast Guard issued the RFP on October 22, 2010, as a commercial item acquisition under Federal Acquisition Regulation (FAR) part 12. The RFP sought fixed-priced proposals for the award of a 5-year indefinite-delivery/indefinite-quantity type contract for Ku-band airtime/bandwidth, installation support service, teleport access, and network operation center (NOC) operations with telephone support and training services for an iDirect-based (or equivalent), Ku-band, maritime data communications system to support the Coast Guard's large cutter fleet.¹

The RFP identified three technical evaluation factors, in descending order of importance: technical approach, management approach, and relevant past performance. These three factors combined were more important than price. The technical approach factor had three subfactors: satellite coverage area, network operation center and support services capabilities, and teleport capabilities. The management capability factor contained two subfactors: management plan and key personnel. RFP at 25. The RFP instructed offerors to prepare their technical proposals addressing the technical approach and management approach factors in the same format, and following the same order as the requirements were presented in the statement of work (SOW) (attached to the RFP). To facilitate the evaluation process, offerors were directed to "number the paragraphs in their technical proposal to match the corresponding SOW paragraph number." RFP at 22. Relevant past performance was to be evaluated on the basis of the contractor's demonstrated performance on relevant contracts of similar size and scope.² RFP at 27.

Price was to be evaluated for reasonableness and realism. According to the RFP, price realism would be evaluated by comparing total prices to the independent government cost estimate (IGCE). The RFP also requested copies of relevant commercial price lists and/or catalogs, which would be used to compare and evaluate any proposed price discounts for realism. The RFP stated: "[p]roposals that are unrealistic in terms of overall price or reflective of an inherent lack of management and/or technical competence or comprehension of the requirements will be further excluded from evaluation." RFP at 27.

On January 18, 2011, the agency received seven proposals in response to the RFP. After the initial evaluation, written discussion questions/comments were sent to the

¹ Satellites transmit information within radio frequency bands. The Ku-band is a portion of the electromagnetic spectrum range of frequencies that is primarily used for satellite communications.

² To be considered relevant for evaluation purposes, the RFP explained that a contract must have been performed in the past 3 years within a maritime environment. RFP at 23.

offerors on March 25, with final proposal revisions due April 6. Final proposals were evaluated by the technical evaluation team (TET), which provided a consensus evaluation to the contracting officer. The contracting officer reviewed and accepted the TET's final evaluation consensus. Vizada's³ and Stratos' proposals were rated as follows:⁴

Vendor		Technical	Management	Past Performance	Price
Stratos	Rating	Satisfactory	Satisfactory	Satisfactory	\$3,523,945.30
	Risk	Low	Low	Low	
Vizada A	Rating	Satisfactory	Satisfactory	Satisfactory	\$5,203,609.00
	Risk	Low	Medium	Low	
Vizada B	Rating	Satisfactory	Satisfactory	Satisfactory	[REDACTED]
	Risk	Low	Medium	Low	

Agency Report, Tab 4, Award Memorandum, at 7. Stratos' proposal offered the lowest price, and Vizada A the second lowest, of the proposals received. The price evaluation team reviewed the final pricing of the offerors and determined that the proposed prices were fair and reasonable due to adequate price competition. *Id.* at 4-5. Based on his review of the technical and price evaluations, the contracting officer determined that Stratos provided the best-value proposal. On June 17, Stratos was awarded the contract.

DISCUSSION

On June 27, Vizada filed its initial protest with our Office; two supplemental protests followed. While our decision only discusses the most relevant of the protest grounds raised in the three protests, all protest issues were fully considered and determined to be without merit.⁵

³ Vizada submitted two proposals for evaluation.

⁴ Technical proposals could receive a rating of superior, satisfactory, marginal and unsatisfactory. Relevant past performance could receive a rating of satisfactory, unsatisfactory, or neutral. Risk was rated low, medium, or high.

⁵ For example, while Vizada's initial protest argued that the agency unreasonably evaluated its proposal, the agency addressed these arguments in detail in its report and the protester did not substantively comment on the agency's response. Thus, we think that Vizada essentially abandoned these bases of protest. Citrus College; KEI Pearson, Inc., B-293543 et al., Apr. 9, 2004, 2004 CPD ¶ 104 at 8 n.4.

Vizada also claims that the agency's award decision was improper because the contracting officer made an award in violation of the agency's acquisition plan

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Price Evaluation

Vizada asserts that the agency failed to conduct a proper price realism analysis and that Stratos' price was unrealistically low.

Where, as here, a fixed-price contract is to be awarded, a solicitation may provide for the use of a price realism analysis to measure an offeror's understanding of the requirements or to assess the risk inherent in a proposal. Puglia Eng'g of California, Inc., B-297413 et al., Jan. 20, 2006, 2006 CPD ¶ 33 at 6. As our Office has repeatedly held, the depth of an agency's price realism analysis is a matter within the agency's discretion. Navistar Def., LLC; BAE Sys., Tactical Vehicle Sys. LP, B-401865 et al., Dec. 14, 2009, 2009 CPD ¶ 258 at 17. In reviewing protests challenging price realism evaluations, our focus is whether the agency's review was reasonable and consistent with the terms of the solicitation. Grove Resource Solutions, Inc., B-296228, B-296228.2, July 1, 2005, 2005 CPD ¶ 133 at 5. As a general matter, it is unobjectionable for an offeror to submit a below-cost proposal for a fixed-price contract, since fixed-price contracts generally are not subject to adjustment during performance, and the contractor, not the agency, bears the financial risk of cost overruns. Crown Title Corp., B-298426, Sept. 21, 2006, 2006 CPD ¶ 145 at 6.

The RFP stated that offerors' fixed-priced proposals would be evaluated for price realism to determine if there were proposals that were unrealistic in terms of overall price or reflective of an inherent lack of management and/or technical competence or comprehension of the requirements. RFP at 27. In accordance with the RFP, the agency's price realism analysis started with a comparison of all offerors' prices to the IGCE. The analysis revealed that all of the offered prices were significantly less than the IGCE of \$9,838,303. Upon further review of the proposals, the agency determined that the difference in price between the IGCE and the offered prices was due to the IGCE's inclusion of costs for providing dedicated staff for the NOC to monitor network systems 24 hours a day, 7 days a week; the cost for dedicated monitoring was not proposed by the offerors. This resulted in an over-estimation by the IGCE of the costs by approximately \$4.12 million. When the over-estimation was accounted for, Stratos' low-priced proposal was within 23 percent of the IGCE. Agency Report, Tab 4, Award Memorandum, at 4-5.

(...continued)

(which was not set out in the RFP, and was never provided to the offerors). This is not a valid basis of protest. Alleged deviations from an agency's acquisition plan do not themselves provide a basis for questioning the validity of the evaluation; such plans are internal agency instructions and as such do not give outside parties any rights. Hubbell Elec. Heater Co., B-289098, Dec. 27, 2001, 2002 CPD ¶ 15 at 5 n.4.

Because Stratos' price was significantly lower than the prices in the other proposals, an additional review of Stratos' price proposal was undertaken to ascertain if it was unrealistically low. Based on the agency's review, it appeared that the price difference resulted from Stratos providing [REDACTED] price for the contract line item (CLIN) for the NOC. To be certain Stratos intended [REDACTED] price, and to insure Stratos understood the requirement, the agency requested that Stratos confirm that it intended to propose [REDACTED] for this line item. Stratos confirmed its price of [REDACTED] for the CLIN and indicated its intent to perform at the offered price. Based on Stratos' response, the agency concluded that the price was realistic, and reflected an exercise of business judgment, rather than a lack of competence, or a lack of understanding the RFP requirements.⁶

Based upon our review of the record, we find that the agency's analysis of Stratos' price was reasonable and consistent with the terms of the solicitation. Contrary to Vizada's claims, the RFP did not require an in-depth CLIN-by-CLIN analysis to the IGCE or a CLIN-by-CLIN comparison among the offered prices. To the extent that Vizada believes that Stratos cannot perform the contract at its proposed price, Vizada's disagreement with the agency's judgment provides no basis to sustain the protest. See Team BOS/Naples–Gemmo S.p.A./DelJen, B-298865.3, Dec. 28, 2007, 2008 CPD ¶ 11 at 14.

Vizada also argues that the RFP required the agency to evaluate the realism of Stratos' price discounts by comparing them to its commercial price lists. The RFP stated in this regard:

To corroborate the accuracy of the stated discounts for services the Offeror should submit copies of relevant commercial price lists and/or catalogs for those services. The offered discounted prices will be compared and evaluated for realism against these catalog list prices.

RFP at 27. Despite this language, none of the offerors submitted commercial price lists with their proposals. For example, Vizada did not submit a commercial price list or any discounts with either of its proposals explaining:

It is Vizada's understanding that such price lists and/or catalogs are not required in this proposal. Vizada is offering a customized solution to the [Coast Guard] . . . Vizada has not previously sold this identical solution to another customer, and therefore it is not possible to offer the government a "stated discount" for its [Large Cutter Connectivity] services.

⁶ The agency noted, with regard to the NOC CLIN, that Stratos already had a Coast Guard contract in place that requires similar setup and staffing.

Agency Report, Tab 5A, Vizada Proposal for Alternate A, § IV, at 5; Tab 5B, Vizada Proposal for Alternate B, § IV, at 5. As indicated by Vizada's responses during the course of this procurement, it did not at that time seem to think that offerors were required to provide discounts or price lists/catalogs with their proposals. Given that Stratos' proposal—like the proposals submitted by Vizada—offered no specific discounts and did not provide price lists/catalogs, the agency was not required to compare non-existent discounted prices with non-existent price lists/catalogs. We find nothing unreasonable about the agency's evaluation because the RFP did not call for the agency to evaluate the realism of offerors' discounted prices if discounted prices and copies of price lists/catalogs were not provided.

Evaluation of Stratos' Proposal

Vizada challenges the agency's evaluation of Stratos asserting that the agency should have disqualified Stratos as technically unacceptable for its failure to meet the mandatory technical requirements of the solicitation.

The evaluation of technical proposals is a matter within the agency's discretion, and our Office will not disturb an agency's judgments regarding the relative merits of competing proposals absent a showing those judgments are unreasonable or inconsistent with the RFP's evaluation criteria. METAG Insaat Ticaret A.S., B-401844, Dec. 4, 2009, 2010 CPD ¶ 86 at 4; Manassas Travel, Inc., B-294867.3, May 3, 2005, 2005 CPD ¶ 113 at 2-3. In this regard, a protester's mere disagreement with the agency's judgments does not render an evaluation unreasonable. METAG Insaat Ticaret A.S., supra.

Stratos' Compliance with Total Bandwidth Requirement

Vizada first claims that Stratos failed to offer hardware sufficient to meet the agency's total bandwidth requirement. As relevant here, the SOW states:

Each Ku-band teleport shall support a physical chassis which will allow 40 concurrent remote users and have the capability of providing up to 36 [megabits per second] Mbps of total bandwidth.

SOW § 5.3.6. Stratos' proposal stated with regard to SOW § 5.3.6:

The Ku-band hubs at [REDACTED] will utilize existing [REDACTED] chassis to provide the requested service. To provide service once it has grown to its maximum bandwidth of 18 Mbps supporting more than 50 simultaneous (concurrent) vessels, Stratos will use up to [REDACTED] slots total, [REDACTED] in each teleport. The remaining slots will be available for [Coast Guard] use to surge capacity, add occasional services for specific missions, or add functionality and capabilities to the network. Each [REDACTED] hub

line card is capable to support up to 156 Mbps in the outbound and multiple 6.5 Mbps inbound carriers.

Agency Report, Tab 6AA, Stratos Proposal, § 1, at 13.

Here, the agency determined that Stratos' proposal to "provide all the necessary equipment at the teleport [REDACTED]" demonstrated Stratos' compliance with the 36 Mbps requirement.⁷ Supp. Contracting Officer's Statement at 2; see Agency Report, Tab 6AA, Stratos Proposal, § 1, at 13. This is so because, as indicated in section 5.3.6 of Stratos' proposal (quoted above), its [REDACTED]-slot chassis can hold multiple line cards, and each of Stratos' proposed hub line cards are capable of supporting up to 156 Mbps. See Agency Supp. Report, Aug. 18, 2011, Declaration of TET Chairperson, at 2.

Vizada's assertion that Stratos cannot comply with the 36 Mbps requirement is based upon the assumption that Stratos' proposal language "maximum of 18 Mbps" in its section 5.3.6 response was meant to limit its total bandwidth capacity to 18 Mbps. The agency, however, did not read and evaluate Stratos' SOW section 5.3.6 in the same manner as Vizada, particularly given that Stratos' proposal otherwise demonstrated compliance with the 36 Mbps requirement. Instead, the agency understood this phrase to address the requirements in section 5.1 of the SOW that required the contractor to provide a total of 6 Mbps of Ku-band bandwidth in year one; a total of 12 Mbps of Ku-band bandwidth in year two; and for years three through five a total of 18 Mbps of Ku-band bandwidth. SOW §§ 5.1.2-5.1.4. The agency viewed the phrase, "service once it has grown to its maximum bandwidth of 18 Mbps," as referring only to the maximum service requested in years 3-5. Agency Supp. Report, Aug. 18, 2011, Declaration of TET Chairperson, at 2. We find the agency's interpretation of Stratos' response to be reasonable.

Based upon our review of the record, we find that the agency reasonably determined that Stratos' proposal met the SOW's 36 Mbps requirement.⁸

⁷ The protester and agency disagree on the underlying requirement at issue here. The disagreement revolves around whether this section required the teleport or the chassis to "have the capability of providing up to 36 Mbps of total bandwidth." The protester asserts that the provision implicates teleport capability, while the agency asserts that the provision implicates chassis capability. We have reviewed the arguments of the parties and have determined that Stratos' proposal met the requirement for 36 Mbps of total bandwidth, whether or not the requirement was fulfilled by the teleport or the chassis.

⁸ We note that that Stratos now advises that its [REDACTED] hub supports a total bandwidth of [REDACTED] Mbps and its [REDACTED] hub a total bandwidth of [REDACTED] Mbps. Stratos' Supp. Comments, Aug. 22, 2011, Declaration of Stratos' Expert, at 4.

Stratos' Compliance with Requirement to Provide Optional Bandwidth

Vizada next claims that Stratos did not offer the required optional, additional bandwidth required by SOW section 5.1.5. That section states:

The Contractor shall be prepared to provide additional Ku-band hub bandwidth for each satellite/hub used to cover the TRADITIONAL Coverage Area, in increments of 1.5Mbps aggregate (1 Mbps outbound to the cutter and 512 Kbps of bandwidth inbound from the cutter). The contractor shall provide this bandwidth within 30 days of the government placing an order.

SOW § 5.1.5. Stratos responded to SOW section 5.1.5 as follows:

Stratos has the capability to provide additional bandwidth in the Ku-band network, on a per-satellite basis, for all satellites within the TRADITIONAL Coverage Area. As instructed by [the Coast Guard], Stratos will increment the bandwidth on the required satellite(s) by 1.5 Mbps aggregate throughput (1 Mbps downlink and 512 Kbps uplink), subject to space segment availability.

Agency Report, Tab 6AA, Stratos Proposal, § 1, at 8.

Vizada claims that Stratos' use of the "subject to space segment availability" language provides only a conditional pledge of compliance based upon future availability, which does not meet the requirement of the SOW. Vizada argues that the agency should have found the proposal unacceptable because it attempts to shift to the agency the risk that Stratos might be unable to provide this optional, additional bandwidth.

In response, the agency contends that Vizada is mischaracterizing Stratos' response to the section requirements. Instead of interpreting Stratos' offer as providing a conditional pledge, the agency understood Stratos' statement as an explanation of the realities of the satellite industry relating to space segment availability. Agency Supp. Report, Aug. 18, 2011, Declaration of Technical Evaluation Team Chairperson, at 3-4. In fact, the agency states that it is widely accepted within the industry that satellite coverage is always subject to space segment availability. Agency Supp. Report, Sept. 2, 2011, at 2.

We find that the agency reasonably interpreted and understood Stratos' explanation "subject to space segment availability" as a realistic statement about the limits of satellite space segment availability. Because the agency did not set a maximum order amount and, at some point, all offerors' satellites would reach their maximum capacity of available space segments, it would be impossible for any offeror to guarantee, based upon only the satellites proposed, that it could meet the agency's

unlimited demand for bandwidth.⁹ Thus, we find that the agency reasonably concluded that Stratos' proposal did not take exception to the solicitation's optional additional bandwidth requirement.

Alleged Stratos Misrepresentation of Satellite Status

Vizada also claims that Stratos misrepresented the status and condition of one of the [REDACTED] satellites it proposed, and that the agency failed to reasonably find and evaluate this misrepresentation. An offeror's misrepresentation that materially influences an agency's consideration of its proposal generally provides a basis for proposal rejection or termination of a contract award based upon the proposal. Mantech Advanced Sys. Int'l, Inc., B-255719.2, May 11, 1994, 94-1 CPD ¶ 326 at 5. For a protester to prevail on a claim of material misrepresentation, the record must show that the information at issue is false. Commercial Design Group, Inc., B-400923.4, Aug. 6, 2009, 2009 CPD ¶ 157 at 6. Here, we find no evidence that Stratos made a material misrepresentation.

The SOW requirement relevant to this issue is section 5.6.3, which states:

The Contractor shall obtain Coast Guard approval of any planned (non-emergency) satellite coverage changes six months prior to implementation. The contractor shall inform the Coast Guard . . . and Coast Guard NOC of any unplanned satellite outages as soon as possible, and no later than one hour, after learning of them.

SOW § 5.6.3. Stratos' proposal responded to this section as follows:

Stratos is not anticipating any satellite coverage changes within the period of this solicitation; however, we will provide notice at least 6 months in advance for any planned satellite changes that may be needed. The end of life for all satellites identified in this proposal is beyond the term of this solicitation. The satellites selected have excellent health report[s] (available upon request), and no technical issue is predicted by the satellite operators in any of the satellites during the term of this task order.

Agency Report, Tab 6AA, Stratos Proposal, § 1, at 18.

⁹ While Vizada asserts that Stratos could have reserved space segment availability on its satellites to meet the SOW requirements for additional coverage, the agency points out that Vizada has provided no indication that it reserved space on its satellites in sufficient amounts to provide for an unlimited amount of space segment availability for the agency. Agency Supp. Report, Aug. 18, 2011, at 3.

Vizada alleges Stratos' misrepresented the status and condition of one of its [REDACTED] proposed satellites [REDACTED]. Vizada claims that the [REDACTED] satellite has reached its end-of-life status and will not be available to fulfill the requirements of the contract because it is scheduled to be replaced in the third quarter of 2011. Vizada contends that the replacement of [REDACTED] must have been known to Stratos prior to contract award since the replacement was planned, according to Vizada, long before Stratos entered its vendor agreements with the satellite operator, and any satellite operator would have told a potential client that it could not get 5 years worth of use out of a satellite reaching its end of service. For these reasons, Vizada contends that Stratos' representations that it did not anticipate any satellite changes within the period of this solicitation, that the [REDACTED] satellite has an excellent health report, and that the satellite operators of [REDACTED] are predicting no technical issues, were knowingly false.

Stratos answers that Vizada's challenge is based upon incorrect facts and assumptions. First, Stratos directs us to the satellite operator's website, which identifies an end-of-life for [REDACTED] of 2018, not 2011. Second, Stratos has submitted a declaration from its director of engineering, advising that he confirmed with the satellite operator, prior to Stratos' proposal submission, that the [REDACTED] satellite was in good health and was performing at the highest availability. Stratos' Supp. Comments, Aug. 22, 2011, Declaration of Stratos' Director of Engineering, at 2. The director also affirmed that the first time he, or anyone on his team, learned of a plan to replace [REDACTED] with another satellite was at a post-award kick-off meeting with the satellite provider on June 22. *Id.* Third, Stratos presented for the record a communication from the satellite operator to Stratos that declared that the operator had reviewed its records, and "[t]o the best of our knowledge, [we] first informed [Stratos] about the transition of . . . [REDACTED] during our first [Coast Guard] Cutter Connectivity implementation meeting on June 22, 2011." Stratos' Supp. Comments, Sept. 6, 2011, Exh. F, Email from Satellite Operator to Stratos (Aug. 31, 2011). Finally, Stratos has provided the Federal Communications Commission first public notice of the satellite operator's application to replace the [REDACTED] satellite on June [REDACTED], 2011.

In sum, the record here provides no convincing evidence, beyond Vizada's speculation and innuendo, that Stratos knew or should have known that the [REDACTED] satellite would be replaced in the near term. The fact that [REDACTED] will in fact be replaced early in the contract does not show that the agency or Stratos knew or should have known of the replacement prior to contract award.

Discussions

Finally, Vizada argues that the discussions were misleading. In this regard, Vizada complains that the agency failed to notify it of its two assigned weaknesses under the management approach evaluation factor, and one weakness under the relevant past performance factor.

The Federal Acquisition Regulation (FAR) requires agencies conducting discussions to inform offerors of deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not had the opportunity to respond. FAR § 15.306(d)(3). Although discussions must address deficiencies and significant weaknesses identified in proposals, the precise content of discussions is largely a matter of the contracting officer's judgment. Honeywell Tech. Solutions, Inc., B-400771, B-400771.2, Jan. 27, 2009, 2009 CPD ¶ 49 at 10. Agencies are not required to “spoon-feed” an offeror during discussions; agencies need only lead offerors into the areas of their proposals that require amplification or revision. Clark/Caddell Joint Venture, B-402055, Jan. 7, 2010, 2010 CPD ¶ 21 at 7. An agency is not required to afford offerors all-encompassing discussions, or to discuss every aspect of a proposal that receives less than the maximum score, and is not required to advise an offeror of a minor weakness that is not considered significant, even where the weakness subsequently becomes a determinative factor in choosing between two closely ranked proposals. MarLaw-Arco MFPD Mgmt., B-291875, Apr. 23, 2003, 2003 CPD ¶ 85 at 4.

Here, we think the record shows that the agency did not conduct misleading discussions. For example, the record shows that none of the proposal weaknesses referenced in the protest were significant weaknesses. While the protester makes much of the agency's terminology in its technical evaluation consensus report to the contracting officer, which listed all strengths and weaknesses as “significant discriminators,” we do not believe that the weaknesses assigned to Vizada under the management approach or relevant past performance evaluation factors were matters that the FAR required to be brought to Vizada's attention. See id.

The protest is denied.

Lynn H. Gibson
General Counsel