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Decision

Matter of: Soft Tech Consulting, Inc.

File: B-416934

Date: January 15, 2019

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William A. Shook, Esq., The Law Offices of William A. Shook PLLC, for Dev Technology Group, Inc., the intervenor.
Stephanie Quade, Esq., Department of Homeland Security, for the agency.
Joshua R. Gillerman, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of quotations is sustained where the agency's evaluation documentation is inadequate to support the reasonableness of the agency's disparate treatment of quotations.

DECISION

Soft Tech Consulting, Inc., of Chantilly, Virginia, protests its elimination from the competition under request for quotations (RFQ) No.70SBUR18Q0000249, issued by the Department of Homeland Security (DHS), United States Citizenship and Immigration Services, for software development services. The protester argues that the agency unreasonably and disparately evaluated quotations.

We sustain the protest.

BACKGROUND

The RFQ was issued on June 15, 2018, via the General Services Administration's (GSA) e-Buy portal, under the procedures of Federal Acquisition Regulation (FAR) subpart 8.4, to small business vendors holding a GSA Federal Supply Schedule (FSS) contract under Schedule 70, special item number 132-51 (Information Technology Professional Services). Agency Report (AR), Tab 13, Contracting Officer's Statement (COS) at 2. The RFQ contemplated the award of a task order for development, security, and operations (DevDecOps) services to support the agency's information technology (IT) systems. AR, Tab 3, Performance Work Statement (PWS), at 1. The

task order required vendors to propose teams of professionals from their FSS contracts to perform software development services, with a specific focus on data aggregation and consolidation services, to be utilized to create a single identity record to enhance the agency's Alien Number validation process. Id.

Award was to be made on a best-value tradeoff basis, using a two-step evaluation process and considering the following factors: relevant experience, staffing approach, technical demonstration, and price. AR, Tab 2, RFQ at 31-34. The agency was to assign an adjectival rating of good, satisfactory, marginal, or unsatisfactory under each non-price factor. Id. at 35. During step one, quotations would be evaluated under the relevant experience and staffing approach factors. Id. at 34. The agency would also assess vendors' prices to determine if they were fair and reasonable. Id. Vendors whose submissions were found to be "most technically superior," and who were determined to have quoted fair and reasonable prices, would be considered for step two of the evaluation. Id. For step two, the agency would evaluate the remaining quotations under the technical demonstration factor, ultimately performing a price/technical tradeoff between this factor and price. Id. at 34-35.

At issue here, under the staffing approach factor, vendors were required to complete a "[V]endor Team Composition Template" which the agency would evaluate to determine whether the proposed personnel were appropriate for the work contemplated by the solicitation. RFQ at 33. The solicitation explained that the evaluation of the vendors' staffing would include an evaluation of the proposed labor categories, in order to ensure the quoted staffing mix provided the knowledge, experience, and level of support required for the task order. Id.

To complete the template, vendors were required to propose one program management team, three DevSecOps teams, five optional DevSecOps teams, and one optional administrative team. RFQ at 28. Additionally, and relevant here, the RFQ required that all personnel must "be mid-level to senior-level labor categories."¹ RFQ at 28; PWS at 5. The PWS further delineated the composition of the respective teams, including the program management team, each member of which was considered to be a key person.² PWS at 4. To complete the Vendor Team Composition Template, vendors were required to quote a role for each position on the team and, in a separate column, indicate both the applicable labor category and experience level from the vendor's FSS schedule contract. AR, Tab 4, Vendor Team Composition Template, at 1.

¹ The RFQ did not define how much experience constituted mid- or senior-level experience.

² Under the staffing approach factor, the agency was also to evaluate the resumes of vendors' key personnel to determine whether they met the minimum specifications detailed in the PWS. RFQ at 33.

The agency timely received 14 quotations in response to the solicitation. AR, Tab 13, COS, at 2. The technical evaluation committee (TEC) convened to perform the first step of the evaluation. Id.

The TEC evaluated Soft Tech's quotation as satisfactory under the relevant experience factor. AR, Tab 11, TEC Report, at 22. However, as discussed below, the agency assigned the firm's quotation a deficiency³ under the staffing approach factor, resulting in a rating of unsatisfactory for this factor, and elimination of the quotation from the competition. Id.

The record shows that in its quotation, Soft Tech proposed a number of [deleted] for certain spots on its DevSecOps team. AR, Tab 5, Soft Tech Quotation, Vendor Team Composition Template, at 1-2. In completing the template, Soft Tech entered the words "Technical Staff-III EL" in the GSA labor category section for this role. Id. Then, for the associated level, Soft Tech entered the abbreviation "Mid." Id. Additionally, Soft Tech proposed a number of Business Analysts, for which it entered "Technical Staff-IV EL" into the GSA labor category section of the template, and entered the word "Senior" in the section provided to denote the level of that position. Id.

The evaluation record reflects the agency's conclusion that a "comparison of Soft Tech's quoted staffing mix to its GSA contract labor categories shows a significant difference between the required . . . [l]abor [c]ategory levels and the experiences provided in the GSA labor category definitions." AR, Tab 11, TEC Report at 22. The TEC noted that, while the solicitation requires all personnel to be mid- to senior-level, "some of Soft Tech's quoted labor categories indicate [e]ntry [l]evel." Id. The TEC also noted that the "[l]abor [c]ategory [d]escriptions defined in Soft Tech's GSA contract include ten levels . . . with three different levels of experience within each labor category" Id. The TEC then stated, however, that while "the notation on the proposed [s]taffing approach lists each labor category as being either mid or senior, Soft Tech's GSA contract identifies the labor categories as either [e]ntry or [m]id [l]evel" Id. The agency concluded that "[t]his disparity is a material failure to meet the solicitation requirement which increases the risk of unsuccessful contract performance to an unacceptable level" Id.

The agency found Dev Tech's staffing approach satisfactory, concluding that its staffing mix was sufficient to meet the solicitation's requirements. Id. at 17. The agency, however, assigned Dev Tech's quotation a weakness⁴ under this factor, noting that it

³ The RFQ defined a deficiency as a "material failure of a quotation to meet a Government requirement or a combination of significant weaknesses in a quotation that increases the risk of unsuccessful contract performance to an unacceptable level." RFQ at 36.

⁴ The RFQ defined a weakness as a "flaw in a quote that increases the chance of unsuccessful performance." RFQ at 35.

was unclear if the [deleted] quoted to fulfill the [deleted] role in the template was intended to be a “508 Tester,”⁵ which the agency explained was an “ancillary role and should not be a dedicated position on each team” Id. The agency concluded, however, that “because the [deleted] is not specified as a dedicated 508 Tester and it is a [deleted], this is considered a weakness that does not substantially impact the [s]taffing [a]pproach.” Id.

On September 25, the agency notified Soft Tech that award had been made to Dev Tech and provided a brief explanation of its award decision. AR, Tab 13, COS, at 2; AR, Tab 16, Notice to Unsuccessful Offeror at 1. Dev Tech, whose quotation was assigned ratings of satisfactory under both the relevant experience and staffing approach factor, and which quoted a price of \$72,831,199,⁶ was found to represent the best value to the agency. AR, Tab 16, Notice to Unsuccessful Offeror, at 1. This protest followed.

DISCUSSION

Soft Tech argues that the agency unreasonably evaluated its quotation as unsatisfactory under the staffing approach factor. The firm maintains that it exclusively quoted mid- to senior-level personnel for each position as indicated in its quotation, and a reasonable review of its FSS schedule contract would have indicated that its proposed personnel satisfied the RFQ’s requirements to be mid-to senior-level. Protest at 8. Soft Tech also contends that the agency disparately evaluated quotations, as it rejected Soft Tech’s quotation due to an apparent failure to quote personnel with the desired level of experience, but found Dev Tech’s quoted personnel acceptable despite Dev Tech’s personnel having the same or lesser experience. Protest at 10-12; Comments at 7-9. Finally, Soft Tech alleges that the agency has not adequately documented the bases for its evaluation of quotations. Comments at 4-7. Based on our review of the record, we sustain the protest because the agency’s evaluation documentation is inadequate to support the reasonableness of its disparate treatment of quotations.

In reviewing protests of an agency’s evaluation and source selection decision in procurements conducted under Federal Supply Schedule procedures, we do not conduct a new evaluation or substitute our judgement for that of the agency. Harmonia Holdings Grp., LLC, B-413464, B-413464.2, Nov. 4, 2016, 2017 CPD ¶ 62 at 7; Research Analysis & Maint., Inc., B-409024, Jan. 23, 2014, 2014 CPD ¶ 39 at 5. Rather, we examine the record to ensure that the agency’s evaluation is reasonable and

⁵ Though not identified in the record, the term “508 Tester” appears to be a reference to section 508 of the Rehabilitation Act of 1973, as amended, which generally requires that agencies’ electronic and information technology be accessible to people with disabilities. See 29 U.S.C. § 794d.

⁶ Soft Tech quoted a price of \$72,740,304. AR, Tab 17, Brief Explanation of Award, at 1.

consistent with the terms of the solicitation. Harmonia Holdings Grp., LLC, *supra*; U.S. Info. Techs. Corp., B-404357, B-404357.2, Feb. 2, 2011, 2011 CPD ¶ 74 at 8-9. For procurements conducted pursuant to FAR subpart 8.4, an agency's evaluation judgments must be documented in sufficient detail to show that they are reasonable. Harmonia Holdings Grp., LLC, *supra*.

Moreover, 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. SRA Int'l, Inc., B-408624, B-408624.2, Nov. 25, 2013, 2013 CPD ¶ 275 at 10. Furthermore, where an agency treats vendors unequally by, for example, reading some vendors' quotations in an expansive manner and resolving doubt in their favor, while reading other vendors' quotations narrowly and applying a more exacting standard to those quotations, we have found such evaluations involve disparate treatment. See Arctic Slope Mission Servs., LLC, B-410992.5, B-410992.6, Jan. 8, 2016, 2016 CPD ¶ 39 at 7-9. Accordingly, where an agency treats vendors unequally, it must provide a reasonable explanation for doing so. See SRA Int'l, Inc., *supra*; 360 IT Integrated Solutions, B-414650.7, B-414650.12, May 18, 2108, 2018 CPD ¶ 188 at 7-8 (sustaining protest where the agency failed to provide a reasonable explanation for its unequal evaluation of quotations).

The agency contends that Soft Tech's quotation was facially non-compliant with the solicitation's requirements, as the positions discussed above contained an entry-level designation for the quoted labor category. AR, Memorandum of Law (MOL), at 3-6. The agency argues that our Office has consistently stated that it is a vendor's responsibility to submit an adequately-written quotation, with adequately detailed information, which clearly demonstrates compliance with the solicitation requirements and allows for a meaningful review by the procuring agency. *Id.* at 6 (citing CACI Techs., Inc., B-296946, Oct. 27, 2005, 2005 CPD ¶ 198 at 5). The agency further contends that it was "confused" as to how Soft Tech's GSA schedule contract's Technical Staff entry-level positions could possibly be considered mid-level or senior-level. MOL at 7-8 (citing AR, Tab 14, TEC Chair Declaration at 1-2). Finally, the agency contends that it was also confused as to whether Soft Tech was quoting the engineer role contemplated by the Technical Staff-III labor category of its GSA contract, which only required one to two years of directly related experience,⁷ and it should not be required to infer whether Soft Tech was quoting the contemplated role. MOL at 9.

⁷ Under each level of experience for Soft Tech's Technical Staff-III and Technical Staff-IV GSA labor categories, Soft Tech's FSS contract noted the level of directly related experience required. Each labor category also included an engineer position which required less years of directly related experience. *Id.*

Based on our review of the record, we cannot conclude that the agency's actions were reasonable. The record, while limited, shows that the agency assigned Soft Tech's quotation a deficiency for failing to propose exclusively mid- or senior-level personnel. However, as noted above, the solicitation provided that the agency would evaluate vendors' underlying FSS labor categories to determine whether the staffing mix provided the required knowledge, experience, and level of support required for performance of the task order. RFQ at 33. A review of Soft Tech's FSS contract shows that it contained several tiers of "Technical Staff" labor categories, ranging from "Technical Staff-I" through "Technical Staff-IX." AR, Tab 6, Soft Tech's GSA Schedule Contract, at 25-32. As the labor category tiers increase, so does the experience and expertise required for that labor category. Id. Additionally, within each of the tiers, the FSS contract identified three discrete experience levels: entry, mid, and high. Id. The levels within each tier corresponded to a range of years of minimum experience. Id.

As noted above, Soft Tech proposed the entry level experience category for its "Technical Staff-III" and "Technical Staff IV" labor categories. AR, Tab 5, Soft Tech Quotation, Vendor Team Composition Template, at 1-2. In completing the vendor template, Soft Tech first identified the FSS labor category, and added the "EL" notation to denote that they were proposing the entry level experience category within that tier of the labor category. Id. Entry level experience within Soft Tech's labor category of "Technical Staff III" from its GSA contract requires two to four years of directly related experience. AR, Tab 6, Soft Tech GSA Schedule Contract, at 28. Entry level experience within the labor category of "Technical Staff IV" requires three to five years of directly related experience. Id.

The record does not explain why, when reviewing Soft Tech's quote of personnel labeled as "Technical Staff-III EL," and "Technical Staff-IV EL," the agency did not recognize that Soft Tech was proposing mid- to senior-level personnel, or senior-level personnel. While the agency acknowledges recognizing that Soft Tech's labor categories were comprised of multiple tiers, AR, Tab 11, TEC Report, at 22, the record does not show that the agency evaluators recognized that Soft Tech was proposing personnel with several years of minimum experience. Rather, the limited record suggests only that the agency evaluators did not look beyond the "EL" notation on the template to recognize that each of the labor category tiers identified varying levels of experience. The record also does not address whether the agency considered two to four years, or three to five years of experience sufficient to constitute mid-level to senior-level.

In contrast, Dev Tech did not denote the corresponding level of experience of its positions when completing the vendor template. Nonetheless, the agency concluded that Dev Tech's quoted personnel satisfied the mid- to senior-level requirement, despite having the same, or less, years of required minimum experience. For the roles for

which Soft Tech quoted GSA labor categories containing the entry level notation,⁸ Dev Tech quoted the positions of [deleted] and [deleted]. AR, Tab 9, Dev Tech Quotation, Vendor Team Composition Template, at 1-4. In the GSA labor category section of the vendor template, Dev Tech entered the titles of [deleted] and [deleted], respectively. A review of Dev Tech's GSA contract shows that its [deleted] requires a minimum of three years of experience. AR, Tab 10, Dev Tech GSA Schedule Contract, at 15. The [deleted] requires a minimum of two years of relevant experience. Id. at 16.

The record therefore shows that the agency found Dev Tech's personnel, who had the same--or fewer--years of minimum experience for the roles at issue, to satisfy the RFQ's minimum experience requirements, while finding Soft Tech's commensurately qualified personnel unacceptable.

In reviewing the record here, we agree with the agency that vendors have the responsibility to write adequately written quotations. In fact, the agency reasonably may have been concerned about the EL notations entered on Soft Tech's template. Nonetheless, the solicitation required that the agency actually review the underlying labor categories of the vendors' FSS contracts. RFQ at 33. It is unclear why, after performing the required review of Soft Tech's FSS contract, the agency failed to recognize that "Technical Staff III-EL" and "Technical Staff-IV EL" each identified several years of minimum experience. The contemporaneous record provides no explanation as to why the agency was unable to ascertain the level of experience for each labor category, nor why the experience requirements applicable to these categories should not have been considered mid- or senior-level. Rather, the record suggests only that the agency assessed a deficiency to Soft Tech's quotation because the positions discussed above contained an "EL" designation in their labor category title in the template--a cursory level of review not permitted by the terms of the solicitation.

Moreover, the record demonstrates that neither firm's vendor team composition templates, by themselves, affirmatively established compliance with the requirement to propose mid- or senior level personnel. While Soft Tech's completed vendor template arguably introduced ambiguity as to the level of experience it was offering--the template entry reflected both "EL" and "(mid)" or "(Senior)"-- Dev Tech's quotation was silent as to the level of experience it was quoting for each labor category. As such, neither of these quotations was clear as to whether it was proposing exclusively mid-to senior- level personnel.

Despite this, when tasked with reviewing Soft Tech and Dev Tech's FSS contracts, the agency reached different conclusions, finding that Soft Tech proposed an unacceptable staffing approach, even though its proposed personnel had just as much experience, if

⁸ The contemporaneous record contains no discussion of which specific roles the agency determined were not mid-or senior-level for Soft Tech. However, these are the only roles which contained the "EL" designation in their GSA labor category name, and are the focus of the agency's post-protest pleadings.

not more so, than Dev Tech's personnel. The net result is that the agency treated the vendors disparately. While there may have been a reason as to why the agency found Soft Tech's entry level experience within its Technical Staff III and IV labor categories lacked the required experience, the contemporaneous record does not provide one, nor does it provide any explanation as to why it may have thought these positions did not satisfy the mid- to senior-level experience requirement.⁹

In a post-comments submission, the agency attempts to fill in the gaps left by the sparse contemporaneous record.¹⁰ AR, Reply to Protester's Comments on the Agency Report, at 1. The agency notes that our Office has found that post-protest explanations can provide additional details about the TEC's evaluation if they are consistent with the contemporaneous record. AR, Reply to Protester's Comments on the Agency Report, at 2 (citing ITT Fed. Servs. Int'l Corp., B-283307, B-283307.2, Nov.3, 1999, 99-2 CPD ¶ 76 at 6). The agency first contends that "Soft Tech's GSA labor categories did not provide an adequate description of the functional responsibilities to be performed by an individual in the category" and that "the deficiency assigned to Soft Tech's [s]taffing [a]pproach was not specifically related to whether the experience qualifications of the labor categories proposed were sufficient to meet the mid or senior level requirement." Id. at 6-7. The agency also attempts to expand upon why it only assigned Dev Tech's quotation a weakness for its confusion over the Tester role discussed above, explaining that the TEC reviewed Dev Tech's schedule contract and determined that the role quoted would have the capacity to perform the requirements of the RFQ. AR, Tab 18, Second Declaration of TEC Chair, at 1.

We find that the contemporaneous record does not support the agency's contentions. See Celta Servs., Inc., B-411835, B-411835.2, Nov.2, 2015, 2015 CPD ¶ 362 at 9

⁹ We agree with DHS that it should not be expected to infer whether Soft Tech was quoting personnel with two to four years of experience, or an engineer position that required less experience. However, even assuming that the agency was uncertain as to the precise role or experience level Soft Tech was quoting, when the agency was faced with similar uncertainties in Dev Tech's quote (regarding to the [deleted] position) the agency assigned Dev Tech a weakness--rather than the deficiency assigned to Soft Tech-- allowing Dev Tech to remain in the competition.

¹⁰ In its reply to Soft Tech's comments, the agency argues that the protester's challenges to the adequacy of the contemporaneous record are untimely, as Soft Tech should have been aware of any such insufficiency when the agency provided it with a brief explanation of award. AR, Reply to Protester's Comments on the Agency Report, at 1-2. We disagree. Soft Tech raised these allegations in its comments, i.e., within 10 days of when it received the agency report and could reasonably be imputed with notice of the adequacy of the evaluation record. Accordingly, Soft Tech's challenges regarding the adequacy of the agency's documentation are timely raised within 10 days of when it knew this basis for protest. 4 C.F.R. §21.2(a)(2).

(finding post-protest defense unpersuasive where not supported by the contemporaneous record); Dismas Charities, Inc., B-292091, June 25, 2003, 2003 CPD ¶ 125 at 8-9; see also VariQ Corp., B-414650.11, B-414650.15, May 30, 2018, 2018 CPD ¶ 199 at 6-7 (affording little weight to post-hoc statements that are inconsistent with the contemporaneous record). The agency's post-comments justification for the assignment of the deficiency based on Soft Tech's GSA labor categories not providing an adequate description of functional responsibilities, as opposed to whether the experience of these associated labor categories were sufficient to meet the mid- or senior-level requirement, is directly inconsistent with the contemporaneous record. As noted above, the record indicates that the agency did not actually undertake the required review of Soft Tech's labor categories, nor engage with the functional responsibilities sections for these labor categories. Rather, the record appears to show only that the agency found Soft Tech's quotation unsatisfactory solely because the entry level experience applicable to the Technical Staff III and IV labor categories did not get reviewed on Soft Tech's FSS contract, and led to the superficial conclusion that the categories would not meet the RFQ's mid- or senior-level experience requirement. AR, Tab 11, TEC Report at 22.

In addition, the TEC Chair's supplemental declaration further demonstrates the agency's disparate treatment of the vendors. According to the supplemental declaration, the agency engaged in a robust evaluation of Dev Tech's GSA schedule contract and had no trouble determining that this position was appropriate for the work to be performed. The agency does not explain, though, why it was unable to perform a similar review for Soft Tech's quoted personnel, nor why comparable confusion arising from Soft Tech's quotation should have merited only a weakness, as opposed to a deficiency.

In sum, the agency's documentation is inadequate to support the reasonableness of its disparate treatment of the vendors. The limited record does not explain why the agency reached disparate results when tasked with reviewing Soft Tech and Dev Tech's FSS contracts. See Immersion Consulting, LLC, B-415155, B-414155.2, Dec. 4, 2017, 2017 CPD ¶ 373 at 5-6 (protest of procurement conducted pursuant to FAR subpart 8.4 is sustained where the contemporaneous record was inadequate to support the reasonableness of the agency's evaluation). Moreover, the agency's post-comments attempts to address gaps in the record are inconsistent with the contemporaneous record. Under the circumstances, this failure renders the agency's evaluation of quotations is unreasonable.

RECOMMENDATION

We recommend that the agency reevaluate quotations and document its evaluation in a manner consistent with this decision and the solicitation. We also recommend that, upon completion of this evaluation, the agency make a new source selection decision. If, after performing the reevaluation, the agency determines that a firm other than Dev Tech represents the best value to the government, we further recommend that the agency terminate the task order awarded for the convenience of the government and

make award to the firm selected, if otherwise proper. Finally, we recommend that Soft Tech be reimbursed the costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). Soft Tech should submit its certified claim, detailing the time expended and costs incurred, directly to the contracting agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Thomas H. Armstrong
General Counsel