



Decision

Matter of: SamKnows Inc.

File: B-421595

Date: July 17, 2023

Alex Salter for the protester.

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DIGEST

Protester's challenge to the agency's technical evaluation is denied where the record shows that the evaluation was reasonable and consistent with the solicitation's terms.

DECISION

SamKnows Inc., of Washington, DC, protests the award of a contract to MOZARK PTE Ltd., of Singapore, under request for quotations (RFQ) No. 273FCC23Q0004, issued by the Federal Communications Commission (FCC), for a broadband data collection (BDC) speed test mobile application. The protester challenges the agency's evaluation of its technical submission and the resulting award decision.

We deny the protest.

BACKGROUND

The agency issued the RFQ on February 17, 2023, as a combined synopsis/solicitation in accordance with Federal Acquisition Regulation (FAR) part 12, in conjunction with the simplified acquisition procedures prescribed in FAR subpart 13.5. Agency Report (AR), Tab 4.a, RFQ at 1.¹ Issued as an unrestricted, full and open competition, the solicitation

¹ Unless otherwise noted, references are to the Adobe PDF document page numbers.

sought fixed-price offers² for a BDC speed test mobile application. *Id.*; AR, Tab 4.a.1, Performance Work Statement (PWS) at 4. Specifically, the agency sought a contractor with the capability to develop, operate, and maintain a publicly available mobile speed test application (“app”) for Google’s Android and Apple’s iOS operated devices. PWS at 4. This app would measure and collect data on mobile wireless broadband availability and connectivity performance throughout the United States. *Id.*

The RFQ contemplated the award of a single contract, with an anticipated period of performance consisting of a 1-year base period and up to four 1-year option periods. RFQ at 1. Using the comparative evaluation process outlined in FAR section 13.106-2(b)(3), the agency intended to select the offer that was “most advantageous to the Government,” when considering the following two evaluation factors: technical capability and price. *Id.* at 2-3.

Five firms, including the protester and awardee, submitted offers by the March 14, 2023 due date. Contracting Officer’s Statement (COS) at 3. The contracting officer, who was the source selection authority (SSA), concluded that MOZARK’s offer represented the best value to the government. Memorandum of Law (MOL) at 2. On March 31, the agency awarded the contract to MOZARK, in the amount of \$5,224,000. AR, Tab 10.b, Brief Explanation of Award at 1. On the same day, the agency notified disappointed offerors of the award decision. COS at 3.

On April 3, the agency provided SamKnows with a brief explanation of the basis of award pursuant to section 13.106-3(d) of the FAR. *Id.* SamKnows filed an agency-level protest, challenging the award decision, which the agency subsequently denied on April 7. AR, Tab 8.c, Agency-Level Protest Denial at 1, 8. On April 10, SamKnows filed this protest with our Office.

DISCUSSION

The protester challenges the evaluation of its technical offer, as well as the resulting award decision. Specifically, SamKnows argues that the agency unreasonably identified three disadvantages with its offer. Protest at 5. Had the agency performed a proper evaluation, the protester claims its lower-priced offer would have been selected for award. *Id.* at 1. We have considered the arguments and issues raised by SamKnows, and while we do not address them all, we find no basis on which to sustain the protest.

² Although issued as an RFQ for the acquisition of commercial items under FAR part 12 and the simplified acquisition procedures of FAR part 13, the solicitation refers to firms as both “vendors” and “offerors,” and the responses submitted as “quotations” and “offers.” For the sake of consistency with the record, and because the result of the competition is an award of a contract with a base and option years, we refer to firms that competed here as offerors who submitted offers for award of a contract.

Technical Evaluation

SamKnows contends the evaluation of its technical offer was unreasonable because, according to the protester, none of the three assessed disadvantages was warranted. Protest at 5. The agency responds that it reasonably evaluated SamKnows's offer consistent with the solicitation's stated evaluation criteria. COS at 13-21.

When using simplified acquisition procedures, an agency must conduct the procurement in a fair and equitable manner, and must evaluate offers in accordance with the solicitation's terms. *SSI Tech., Inc.*, B-412765.2, July 13, 2016, 2016 CPD ¶ 184 at 3. In reviewing a protest challenging an agency's evaluation under simplified procedures, our Office does not reevaluate offers; rather, we review the record to determine if the evaluation was reasonable, consistent with the solicitation's evaluation scheme, as well as procurement statutes and regulations, and adequately documented. *Antico Cantiere Del Legno Giovanni Aprea Di Cataldo S.R.L.*, B-414112, Feb. 21, 2017, 2017 CPD ¶ 58 at 4. A protester's disagreement with the agency's judgment, without more, is not sufficient to establish that the agency acted unreasonably. *Id.*

Data Storage

First, SamKnows challenges the agency's assessment of a disadvantage related to the firm's failure to satisfy the solicitation's data storage requirements. Protest at 5. Under the technical capability factor, the RFQ required offerors to demonstrate their "[t]echnical solution and understanding of the overall and specific requirements in the PWS Section 4." RFQ at 3. Section 4.3 of the PWS, technical management, stated that "[t]he Contractor shall maintain and process all FCC Information containing PII [Personal Identifiable Information] on servers located in the United States." PWS at 11. In addition, the technical capability factor required an offeror to submit a master plan that described the firm's comprehensive approach and timeline for meeting the objectives and requirements outlined in the PWS. RFQ at 3; PWS at 6. This master plan was to include a security/privacy compliance plan. PWS at 7. When describing this compliance plan, the PWS stated that "[t]he Contractor will restrict the processing and storage of FCC Information containing PII to facilities within the legal jurisdictional boundary of the United States." PWS at 22.

After reviewing SamKnows's offer, the agency questioned whether the firm intended to use data centers within the United States to maintain, process, and store FCC information containing PII. In this instance, SamKnows's security/privacy compliance plan stated: "SamKnows stores data on servers located in PCI DSS [payment card industry data security standard] compliant datacentres. Data is encrypted both at rest and in-transit *and is not stored outside of the EU [European Union] or GDPR [General Data Protection Regulation] 'third-countries'.*"³ AR, Tab 5.a, SamKnows Technical Offer

³ The agency explains that neither the EU nor GDPR "third-countries" are within the legal jurisdictional boundary of the United States. AR, Tab 7.a, Technical Evaluation

at 60 (emphasis added). The agency’s technical evaluation team (TET) found this approach “pose[d] risk to the Government due to the Offeror possibly using a Data Center in the EU or GDPR ‘third-countries’.” AR, Tab 7.a, Technical Evaluation Report at 5-6. Consequently, the TET identified this as a disadvantage with SamKnows’s offer. *Id.*

At the outset, the protester identifies itself as the “incumbent supplier[,] having built the current [app] solution, which is fully operational.” Protest at 2. The protester contends that the RFQ “is for a continuation of the solution with the addition of a few minor features.” *Id.* Regarding the particular assessed disadvantage, the protester does not dispute that the RFQ required FCC information containing PII to be maintained, processed, and stored within the United States. Nor does the protester contest that its master plan stated it would store data within the EU or GDPR third-countries. Instead, SamKnows argues that the disadvantage was unwarranted because the firm’s data storage method has been “validated by the FCC” since its current incumbent solution is “100 [percent] compliant with the data processing and storage requirements.”⁴ Protest at 5; Comments at 2. The agency, however, denies it has validated the protester’s *data storage* methods, asserting that the “only known validation is . . . whether *data transmission* complies with the BDC Mobile Speed Test Data Specification document . . . for acceptance by the BDC System.” COS at 15 (emphasis added).

Our review of the record finds nothing objectionable with the agency’s identification of a disadvantage relating to the protester’s proposed approach to data storage as stated in SamKnows’s technical offer. To the extent the protester expected the agency to have evaluated its offer based on an understanding of how its current solution works, as opposed to the contents of its offer, we find such an assumption misplaced. While our decisions have concluded that, in some cases, past performance information in the agency’s possession cannot be ignored, we have specifically declined to extend that principle to an agency’s evaluation of technical proposals. See *Earth Res. Tech. Inc.*, B-416415, B-416415.2, Aug. 31, 2018, 2018 CPD ¶ 312 at 6; *Enterprise Solutions Realized, Inc.*; *Unissant, Inc.*, B-409642, B-409642.2, June 23, 2014, 2014 CPD ¶ 201

Report at 6; MOL at 9 (“It is also undisputed that the [United States] is not a GDPR third-country.”).

⁴ SamKnows also claims that the agency’s assignment of a disadvantage was unreasonable considering the agency elsewhere assessed SamKnows with an advantage because its “system’s data transmission has been validated by the FCC’s BDC API [Application Programming Interface] team.” Protest at 5; AR, Tab 7.a, Technical Evaluation Report at 5. The agency responds that SamKnows wrongly equates PII processing/storage with PII transmission, explaining that the assessed disadvantage specifically related to data storage. COS at 18. We have no basis to question the agency’s technical judgment, particularly where the PWS itself appears to differentiate between these terms. AR, Tab 7.a, Technical Evaluation Report at 5 (“Failed to meet data storage requirement.”); PWS at 4 (“The Contractor must store, compile, and transmit the collected data”).

at 9. In this regard, it is an offeror's responsibility to submit a well-written offer, with adequately detailed information that clearly demonstrates compliance with the solicitation requirements, and an offeror risks having its offer evaluated unfavorably where it fails to submit an adequately written proposal. *PEAKE*, B-417744, Oct. 11, 2019, 2019 CPD ¶ 359 at 4. Agencies are not required to infer information from an inadequately detailed proposal, or to supply information that the protester elected not to provide. *Id.* Accordingly, to the extent SamKnows's argument challenging the technical evaluation relies on the agency's familiarity with its incumbent performance, rather than the information included in its offer, it is without merit.⁵

Whiteboxes

Second, SamKnows argues that the agency unreasonably determined that its offer deserved a disadvantage due to the proposed placement of a physical device. Protest at 5. Here, the record reflects that SamKnows's offer indicates the use of a physical device, called a "Whitebox," in users' home networks for traffic detection. Specifically, the protester's offer explained that it used these Whiteboxes as measurement agents to "report test results." AR, Tab 5.a, SamKnows Technical Offer at 59. SamKnows's master plan, in a section entitled "Whitebox Placement in The Home Network," added that "Whiteboxes are typically installed in-line (i.e. 'man in the middle') in the user's

⁵ In its comment on the agency report, the protester now points to two statements in its offer that SamKnows believes make clear it intends to store data in the United States. Comments at 3. Our Bid Protest Regulations require that protests other than those challenging the terms of the solicitation be filed within 10 days of when a protester knew, or should have known, of its basis for protest. See 4 C.F.R. § 21.2(a)(2). Our regulations do not contemplate the piecemeal presentation or development of protest issues through later submissions citing examples or providing alternate or more specific legal arguments missing from earlier general allegations of impropriety. *Spatial Front, Inc.*, B-417985, B-417985.2, Dec. 18, 2019, 2020 CPD ¶ 8 at 11 n.13.

Here, based on the disadvantages identified by the agency in the brief explanation of award, as well as in the FCC's decision denying the agency-level protest, the protester knew the operative facts underlying this allegation prior to filing its protest with our Office. Thus, the information upon which the new argument made by the protester in its comments was known or should have been known prior to the filing of SamKnows's protest. Because the protester waited until its comments to raise this new argument, which could have been raised in its initial protest, it is untimely and will not be considered. 4 C.F.R. § 21.2(a)(2); *Spatial Front, supra*. Moreover, even if this argument had been timely raised, it still would not have provided a basis to sustain the protest. To the extent that SamKnows's offer contained contradictory statements, an offeror runs the risk of having its offer evaluated unfavorably because it failed to clearly demonstrate compliance with the solicitation requirements. *PEAKE, supra*.

home network.” *Id.* at 60. The evaluators expressed the following concern regarding SamKnows’s plan to use in-home Whiteboxes:

[T]he PWS only requires mobile wireless broadband network performance to be measured, not the home networks. Measurements must not be conducted on a home network or require a placement of a physical device in the homes other than availability of a mobile app in app stores for mobile devices.

AR, Tab 7.a, Technical Evaluation Report at 6.

The protester contends that the agency was mistaken in its evaluation because its solution only utilizes Whiteboxes for testing its mobile applications in a laboratory, adding that the firm did not actually plan to deploy them in consumer homes for this mobile project. Protest at 5. However, a review of the protester’s offer does not support this claim. Instead, SamKnows’s offer clearly spoke to installing Whiteboxes “in the user’s home network,” not in a laboratory, as the protester claims. AR, Tab 5.a, SamKnows Technical Offer at 60.

Additionally, the protester argues that the agency should have known that the firm did not plan to install Whiteboxes in homes because SamKnows is “already running this project for the FCC and there are no physical devices (Whiteboxes).” Protest at 5. Our Office has explained, however, that an incumbent contractor is not excused for writing an unclear or inadequately detailed technical offer by arguing that the procuring agency’s knowledge of the incumbent’s performance should serve as a substitute for information missing from the offer. *Delta Bldg. Servs., Inc.*, B-405327.2, B-405327.3, Oct. 21, 2011, 2012 CPD ¶ 4 at 7 (denying argument that protester’s incumbency undermines agency’s criticism of protester’s quotation). Here, the PWS fundamentally required a mobile speed testing app, yet a portion of the SamKnows master plan for implementing the PWS requirements clearly described the employment of a physical device for measuring home network performance, which was not contemplated by the solicitation. AR, Tab 5.a, SamKnows Technical Offer at 59-60. Accordingly, we find no merit to the protester’s argument here.

Experience

Third, the protester alleges that the agency unreasonably assessed its offer with a disadvantage due to an unclear description of the firm’s experience with mobile wireless networks. Protest at 5. The agency defends that its evaluation was reasonable, based on the information presented in the protester’s offer. We agree.

In reviewing SamKnows’s offer, the evaluators had concerns with the lack of specifics or details related to the firm’s experience with the mobile speed test app. Specifically, SamKnows’s offer included various statements referencing previous fixed-line work in homes, as opposed to mobile wireless experience. For example, the offer stated that the firm’s previous measurement work was “[e]mbedded in 90+ million *homes*, enabled

in 60+ million *homes*, active in 20+ million.” AR, Tab 5.a, SamKnows Technical Offer at 18 (emphasis added). The protester’s offer also described that “2.2 million speed tests are run every month across the existing FCC *fixed-line* and mobile measurements.” *Id.* at 12 (emphasis added). Based on these statements, the TET found that the protester’s description of its prior experience was “unclear and mixed with fixed broadband network measurement and app development experiences, and the measurement statistics and subscriber base are convoluted with fixed services.” AR, Tab 7.a, Technical Evaluation Report at 5. The evaluators identified this as a disadvantage, finding that the offer “lacks specifics about speed test app experience and subscriber base.” *Id.*

The protester argues that SamKnows’s “comprehensive experience” should not have been evaluated as a disadvantage. Protest at 5. In the protester’s view, it has the “unique experience of completing government internet measurement projects for both mobile and fixed internet performance.” *Id.* SamKnows tries to paint its offer as clearly demonstrating its experience under the technical capability factor. However, our review of the record finds nothing objectionable with the agency’s assessment of a disadvantage here, especially where the evaluation criterion expressly required offerors to demonstrate “[d]ocumented experience providing the capabilities / services *outlined in the PWS Section 4.*” RFQ at 3 (emphasis added). While the protester heralds its “comprehensive experience”--which includes experience with fixed-line measurements--the PWS here required a mobile speed test app, without any fixed-line work. As the agency points out, due to the unclear aggregate metrics presented in SamKnows’s offer (both fixed-line and mobile), it was not readily discernable exactly how many mobile measurements SamKnows had previously conducted. MOL at 16.

To the extent SamKnows’s protest now attempts to more clearly demonstrate its mobile experience, our review of the agency’s evaluation is limited to the protester’s offer, as submitted. *eKuber Ventures, Inc.*, B-420877, B-420877.2, Oct. 13, 2022, 2022 CPD ¶ 256 at 6. Accordingly, we find the agency’s conclusions to be reasonable and find the protester’s arguments to amount to no more than disagreement with the agency’s evaluation findings.⁶ *iSenpai, LLC*, B-421123, Dec. 28, 2022, 2022 CPD ¶ 322 at 4 (finding nothing objectionable with agency’s conclusion that protester failed to connect its experience “specifically to the objectives in the RFQ.”).

⁶ The protester also claims that the agency failed to provide it with “meaningful discussions” about its offer, stating that any misunderstood aspects “could have been resolved by dialogue.” Protest at 1, 4. Under a FAR part 13 procurement, “[f]ormal evaluation plans and establishing a competitive range, *conducting discussions*, and scoring quotations or offers are not required.” FAR 13.106-2(b)(3) (emphasis added). An agency is not required to conduct discussions in procurements under simplified acquisition procedures, such as the one here. *Houston Air, Inc.*, B-292382, Aug. 25, 2003, 2003 CPD ¶ 144 at 5. Because there was no requirement to conduct discussions, we find no merit to this allegation.

Award Decision

Finally, with regards to the award decision, SamKnows asserts: “We believe that the award is made either because of the errors made in assessing our proposal or because the evaluation criteria has not been followed.” Protest at 4. This allegation is derivative of the protester’s challenges to the agency’s evaluation of the firm’s offer. As discussed above, however, we find no basis to object to the agency’s evaluation of the protester’s technical offer. Accordingly, we dismiss this allegation because derivative allegations do not establish independent bases of protest. *DirectViz Solutions, LLC*, B-417565.3, B-417565.4, Oct. 25, 2019, 2019 CPD ¶ 372 at 9.

The protest is denied.

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