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# Decision

**Matter of:** Sierra7, Inc.

**File:** B-421299.2

**Date:** October 11, 2023

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Thomas K. David, Esq., Kenneth D. Brody, Esq., and Katherine A. David, Esq., Reston Law Group, LLP, for the protester.

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Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest challenging agency’s evaluation of protester’s quotation is denied, where the record shows the agency’s evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations.
2. Protest allegations challenging agency’s evaluation of the awardee’s quotation are dismissed because the protester is not an interested party to maintain those allegations.

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## DECISION

Sierra7, Inc., of Falls Church, Virginia, protests the issuance of a task order to TechAnax, LLC (TA), of Woodbridge, Virginia, under request for quotations (RFQ) No. 36C10B22Q0377, issued by the Department of Veterans Affairs to acquire provisioning services to supply the agency with computer hardware. Sierra argues that the agency misevaluated proposals and made an unreasonable source selection decision.

We deny the protest in part and dismiss it in part.

## BACKGROUND

The RFQ contemplates the issuance, on a best-value tradeoff basis, of a hybrid fixed-price, time-and-materials type task order, for a base year and four 1-year options to provide the agency with the solicited provisioning services. RFQ at 6-25.<sup>1</sup> The RFQ divides the requirement between base services (principally project management services and initial services relating to interfacing with agency in-house systems and capabilities) and optional services (principally equipment handling, shipping, storage, configuration with accessories, and “imaging” services (which involve imaging of hard drives on various equipment)) that can be obtained throughout the task order’s period of performance. *Id.*

Firms were advised that the agency would use a two-step evaluation procedure. First, firms were required to submit a technical compliance specification spreadsheet that would be reviewed and evaluated on a pass/fail basis (this pass/fail evaluation is not at issue here). RFQ at 120. Those firms that received a passing rating would have the remainder of their quotations reviewed considering price and two non-price factors, technical quotation and past performance.<sup>2</sup> *Id.* at 120-123. The RFQ stipulated that the technical quotation factor was significantly more important than past performance; past performance was significantly more important than price; and the two non-price factors in combination also were significantly more important than price. *Id.* at 120.

In response to the RFQ, the agency received several quotations. The agency evaluated all quotations and established a competitive range comprised of three firms, Sierra, TA, and Firm B. After establishing the competitive range, the agency engaged in multiple rounds of discussions with those firms and solicited, obtained and evaluated final quotations. The results of the agency’s final evaluation were as follows:

	Technical Factor	Past Performance	Price
Sierra	Acceptable	Low Risk	\$279,394,522
Firm B	Acceptable	Low Risk	\$198,941,404
TA	Acceptable	Low Risk	\$186,212,627

AR, Exh. 10, Source Selection Decision Document (SSDD) at 5.

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<sup>1</sup> All references to the RFQ in this decision are to the conformed version of the solicitation issued as amendment 0001 to the RFQ.

<sup>2</sup> In evaluating quotations under the technical quotation factor, the agency assigned adjectival ratings of outstanding, good, acceptable, susceptible to being made acceptable, or unacceptable. Agency Report (AR), Exh. 4, Source Selection Plan, at 11-12. For the past performance factor, the agency assigned ratings of high risk, moderate risk, low risk, or unknown risk. *Id.* at 12.

On the basis of these evaluation results the agency concluded that TA's quotation represented the best value to the government. The agency's SSDD specifically found that the three quotations were essentially equal under the non-price factors, and made award based, ultimately, on TA's lower price. AR, Exh. 10, SSDD, at 9. After being advised of the agency's selection decision and requesting and receiving a debriefing, Sierra filed the instant protest.<sup>3</sup>

## DISCUSSION

The protester raises various challenges to the agency's evaluation of quotations and source selection decision. Sierra's allegations relate to the agency's evaluation of its own quotation; its evaluation of the TA quotation; its evaluation of Firm B's quotation; and the agency's ultimate source selection decision. We have reviewed all of Sierra's allegations and conclude that they either are without merit, or not for our consideration. We discuss our findings in detail below. We note at the outset that, in reviewing allegations concerning an agency's evaluation of proposals or quotations, our Office does not reevaluate proposals or quotations, or substitute our judgment for that of the agency; rather, we review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. *Comprehensive Health Services, LLC*, B-421108.4, B-421108.5, May 17, 2023, 2023 ¶126 at 3.

### Evaluation of the Sierra Quotation

Sierra argues first that the agency miscalculated its quotation under the technical quotation factor. The protester maintains that the agency should have assigned its quotation a strength because it claims that certain attributes of its quotation could not be offered by any other concern; Sierra appears to suggest that these attributes will contribute to the "timeliness" of its performance, and for that reason alone, its quotation should have been assigned a strength. Sierra states as follows:

In its proposal Sierra<sup>7</sup> unambiguously stated that based on the excellent and well-regarded processes currently employed by its subcontractor to fulfill the VA's nearly identical orders issued under the PVaaS [provisioning as a service] contract, Sierra 7's ability to ramp up immediately ensures *timely* performance of the PWS requirements in a manner that cannot be replicated by any other offeror. Hence, Sierra<sup>7</sup>'s proposal emphasized, 1) an objective verifiable fact (i.e., timeliness) that was detailed in its proposal and known to the VA, 2) the RFQ has

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<sup>3</sup> Competition for this task order was confined to service-disabled veteran-owned small business contractors holding indefinite-delivery, indefinite-quantity contracts under the National Aeronautics and Space Administration's Solutions for Enterprise-Wide Procurement V Government-Wide Acquisition Contract program. Because the value of the task order is in excess of \$25 million, our Office has jurisdiction to consider the protest. 10 U.S.C. § 3406(f)(1)(B).

numerous requirements that must be commenced and performed in a timely manner, and 3) it is undisputed that addressing the Agency's "requirements in a timely manner" was a criterion stated in the RFQ. Coupled with the above noted flaws in the VA's evaluation, it is clear that the Agency's failure to assign a "Strength" to Sierra<sup>7</sup> for its commitment to timeliness was prejudicial to the protestor.

Protestor's Comments at 16.<sup>4</sup>

We find no merit to this aspect of Sierra's protest. Sierra's position relies on a faulty premise, namely, that simply proposing elements that do no more than ensure "timely" performance merits the assignment of a strength to its quotation. Sierra has not suggested that the elements it identified in its protest will result in performance materially exceeding the RFQ's requirements. In other words, Sierra is suggesting that offering simply to meet the solicitation's requirement for "timely" performance somehow merited the assignment of a strength.

Sierra has not explained how merely offering to perform in accordance with the requirements of the RFQ merits the assignment of a strength to its quotation. Under these circumstances, we conclude that this aspect of Sierra's protest amounts to no more than disagreement with the agency's evaluation. Such disagreement--without more--does not demonstrate that the agency's evaluation was unreasonable or inconsistent with the terms of the RFQ.<sup>5</sup> *Async-Nu Microsystems, Inc.*, B-419614.5,

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<sup>4</sup> In its initial protest, Sierra referred to various specific elements of its quotation that it claims are available only from it because one of its subcontractors is an incumbent contractor. Those specific elements include having network and physical infrastructures, specific software tools, workflow processes, operation procedures and work instructions in place, as well as being ready to perform as soon as the task order is issued, as the underlying basis for why its quotation should have been assigned several strengths. In its comments, Sierra refers only generically to these particular elements, and maintains only that, by virtue of these elements, it should have been awarded a single strength for its ability to perform in a "timely" manner.

<sup>5</sup> Sierra also has not explained how the agency's alleged failure to assign just a single strength to its proposal under the technical quotation factor was competitively prejudicial. Competitive prejudice is an essential element of every viable protest allegation, and where none is shown or otherwise evident, we will not sustain a protest, even if the protestor arguably is correct. *Comprehensive Health Services, LLC*, B-421108.4, B-421108.5, May 17, 2023, 2023 CPD ¶ 126 at 5. The protestor's quotation was approximately \$92 million--or approximately 66 percent--higher in price compared to the TA quotation. The source selection decision specifically found the three quotations essentially equal under the technical quotation factor, and Sierra has not explained how the assignment of just a single strength would have materially affected the selection decision in light of TA's significant price advantage.

B-419614.6, Sept. 30, 2022, 2022 CPD ¶251 at 9–10. We therefore deny this aspect of Sierra's protest.

### Sierra's Remaining Protest Allegations

Sierra's remaining protest allegations relate principally to the evaluation of the TA quotation, with one exception discussed below. Sierra argues that, for a variety of reasons, the agency failed to evaluate TA's prices for realism and balance; that TA failed unequivocally to offer what was being sought under the RFQ; that the agency inflated TA's past performance rating and misevaluated its technical quotation; and that TA may have an organizational conflict of interest. Sierra also argues derivatively that as a consequence of the errors it alleges were made in the evaluation of the TA quotation, the agency's source selection decision is similarly flawed.

We dismiss these allegations because we conclude that Sierra is not an interested party to maintain them. Our Bid Protest Regulations, 4 C.F.R. §§ 21.0(a)(1), 21.1(a), provide that only an "interested party," that is, an actual offeror or quoter whose direct economic interest would be affected by the award of a contract or the failure to award a contract, may file a protest. Where a firm would not be in line for the award of a contract (or in this instance, the issuance of a task order) even if its protest were sustained, the firm is not an interested party within the meaning of our Bid Protest Regulations. *Foxhole Technology, LLC*, B-420718, July 29, 2022, 2022 CPD ¶ 203. Here, because all three firms were found technically equal, and because Firm B offered a lower price than Sierra, the record shows that Firm B would be in line for award ahead of Sierra, even if its allegations relating to TA were meritorious.

That said, after Sierra filed its initial protest, the agency requested that we dismiss it, arguing among other things, that Sierra was not an interested party because there was an intervening firm--Firm B--that would be in line for the task order ahead of Sierra, should any of Sierra's allegations relating to TA prove meritorious. As part of that request, the agency submitted an unredacted version of the SSDD, which demonstrated that all three firms had been evaluated as essentially equal under the non-price factors; that the agency's selection decision was therefore based on low price; and that, as an equally rated, lower-priced vendor, Firm B would be in line for award ahead of Sierra.

In response to the agency's request for dismissal, Sierra noted that the SSDD identified a single unbalanced element in Firm B's price quotation, specifically its price for sub-contract line item number (sub-CLIN) 0003AB (which calls for providing proof of the agency's final acceptance of a firm's imaging capability). RFQ at 10-11; AR, Exh. 10, SSDD, at 4. Sierra contended that the agency should have assigned a weakness to Firm B's quotation under the technical quotation factor based on the agency's finding that its price for that sub-CLIN was unbalanced.

Because Sierra's response to the agency's request for dismissal appeared to raise an issue relating to the evaluation of Firm B's quotation, we did not dismiss the protest at that time. Sierra continued to suggest that the agency had erred in not assigning Firm

B's quotation a weakness under the technical quotation factor in its comments and supplemental comments. Accordingly, we consider whether the agency was required to assign a weakness to the Firm B quotation during its evaluation of quotations under the technical quotation factor.

As an initial matter, we point out that nothing in the RFQ made any reference to performing an evaluation of prices for balance, a requirement that ordinarily pertains only to an agency's award of negotiated contracts under Federal Acquisition Regulation (FAR) section 15.404-1(g), unless the requirement is specifically stated in the solicitation. In fact, the RFQ expressly stated that the procedures governing FAR part 15 acquisitions were not applicable:

**Regardless of any language used in this solicitation, to include all attachments hereto, the Government is not conducting this procurement under FAR Part 15. Rather, any resulting task order shall be placed on a competitive basis in accordance with FAR 16.505(b).**

RFQ at 121. Here, because the RFQ did not call for evaluating prices for balance, the agency was not required to conduct such an analysis. See *Allegheny Science & Technology Corporation*, B-421699, B-421699.2, Sept.1 2023, 2023 CPD ¶ 206 at 11 (in acquisition conducted under FAR part 8 (as opposed to FAR part 15) agency is not subject to the requirements of FAR part 15.404-1 to consider whether prices are unbalanced).

In any event, the record shows that, while the agency made a finding that Firm B's price for a single sub-CLIN was unbalanced, it nonetheless concluded that this did not pose an unacceptable risk for the agency. AR, Exh. 10, SSDD, at 4. Such a finding is broadly consistent with the procedures outlined in FAR section 15.404-1(g)(2)(i), which require only that an agency assess the risk associated with unbalanced pricing during its source selection. In the final analysis, there is no basis for our Office to conclude that the agency was required (either by the terms of the RFQ or applicable regulations) to perform an analysis of prices for balance, or that the agency was required to assign a weakness to Firm B's quotation under the technical quotation factor based on its unbalanced price for sub-CLIN 0003AB, as suggested by the protester. We therefore dismiss this allegation for failing to state a cognizable basis of protest. *Allegheny Science & Technology Corporation, supra*.

Because we conclude that Sierra has failed to identify any basis for our Office to question the reasonableness of the agency's evaluation of Firm B's quotation, by extension there is no basis for our Office to question that, in fact, Firm B, rather than Sierra, would be in line for award, should any of Sierra's challenges to the evaluation of TA's quotation prove meritorious. Accordingly, we conclude that Sierra is not an

interested party to maintain any of its challenges to the evaluation of TA's quotation; we therefore dismiss these remaining allegations.

The protest is denied in part and dismissed in part.

Edda Emmanuelli Perez  
General Counsel