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Decision

Matter of: VMD Systems Integrators, LLC dba VMD Corporation

File: B-422384.3; B-422384.5

Date: March 25, 2025

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DIGEST

1. Protest alleging that the agency erred in eliminating the protester's quotation from the competition for quoting labor categories (LCATs) under special item numbers (SINs) from the protester's Federal Supply Schedule (FSS) contract other than the SIN under which the solicitation was issued is sustained where the solicitation did not limit applicable SINs.
 2. Protest challenging the agency's evaluation of the awardee's quoted labor categories is dismissed in part where the protester fails to allege a violation of statute or regulation, and sustained in part where the agency fails to refute the protester's allegation that the LCAT quoted by the awardee for one position fails to encompass the duties of that position.
 3. Protest challenging the agency's evaluation of the awardee's quotation under experience factor is denied where the evaluation was reasonable and in accordance with the terms of the solicitation.
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DECISION

VMD Systems Integrators, LLC dba VMD Corporation, a women-owned small business of Fairfax, Virginia, protests the elimination of its quotation from the competition and the establishment of a blanket purchase agreement (BPA) with AccelGov, LLC, a women-owned small business of Huntsville, Alabama, under request for quotations (RFQ) No. 70FA3123Q00000045, issued by the Department of Homeland Security, Federal Emergency Management Agency, for project management and cyber security

compliance support services. The protester contends that the agency unreasonably eliminated its quotation from the competition based on unstated evaluation criteria. The protester also argues that the agency unreasonably evaluated the awardee's quotation. In its supplemental protest, the protester contends that the agency unreasonably evaluated its quotation following corrective action.

We sustain the protest.

BACKGROUND

On August 23, 2023, the agency issued the subject solicitation to women-owned small business program vendors under the General Services Administration's (GSA) Multiple Award Schedule (MAS). Contracting Officer's Statement (COS) at 2. The RFQ was solicited under special item number (SIN) 54151HACS.¹ Agency Report (AR), Exh. 16, RFQ at 3. The solicitation contemplated the establishment of a blanket purchase agreement (BPA) using the procedures of FAR subpart 8.4 and sought project management and cyber security compliance services in support of the agency's information technology system owners and key stakeholders. COS at 1-2. The due date for phase one quotations, as amended, was September 25, 2023. *Id.* at 3.

The solicitation provided for the evaluation of quotations in two phases. RFQ at 49. Under phase one, the agency would evaluate the following evaluation factors: facility clearance letter and prior demonstrated experience. *Id.* For the facility clearance letter, vendors were to submit a letter signed by the director of the Defense Security Service as evidence that the vendor possessed a facility clearance at the top secret level. *Id.* at 50. The agency would evaluate this factor on an acceptable/unacceptable basis. *Id.* For prior demonstrated experience, vendors were to submit a report detailing their experience with, among other things, information security support services and supporting multiple systems across multiple offices. *Id.* at 50-51. The agency would assign quotations a rating of high confidence, moderate confidence, or low confidence under this factor. *Id.* at 50. After evaluating phase one quotations, the solicitation provided that the agency would issue advisory notifications that informed vendors whether they should proceed to phase two. *Id.* at 48.

Under phase two, the agency would evaluate the following evaluation factors: technical/management capability, capability of proposed key personnel, and price. *Id.* at 49. For the technical/management capability factor, the agency would evaluate the vendor's ability to plan, organize, access, and manage resources such as personnel and subcontracts. *Id.* at 51. For the capability of proposed key personnel, the agency would evaluate the experience and availability of the proposed key personnel in

¹ A SIN is a group of generically similar (but not identical) supplies or services that are intended to serve the same general purpose or function. Federal Acquisition Regulation (FAR) 8.401. Buyers may use the GSA eBuy system to notify all sellers listed under a particular SIN category or a lesser number of sellers. *Pitney Bowes, Inc.*, B-416787, Dec. 6, 2018, 2018 CPD ¶ 414 at 2 n.2.

providing the services listed in the performance work statement. *Id.* at 52. The agency would assign these factors a rating of high confidence, moderate confidence, or low confidence. *Id.* at 50. For price, vendors were to complete a pricing template that included labor categories and hours needed for each category. *Id.* at 53.

The solicitation anticipated that source selection would be made on a best-value tradeoff basis where the facility clearance letter, prior demonstrated experience, and technical/management capability were all of equal importance; capability of proposed key personnel was the least important evaluation factor. *Id.* at 49. The technical factors, when combined, were more important than price. *Id.*

Initial Evaluation and Protests

The agency received phase one quotations by the solicitation's September 25, 2023 deadline; the agency issued advisory notifications on November 3. COS at 3. Four vendors submitted phase two quotations on November 17. *Id.* After evaluating the quotations, the agency selected one of the vendors, which was also the incumbent, for establishment of the BPA. Memorandum of Law (MOL) at 2. Disappointed vendors subsequently filed protests with our Office and with the U.S. Court of Federal Claims (COFC) challenging the agency's evaluation and source selection decision. COS at 3. In response to the protests, the agency took corrective action, stating that it would reevaluate quotations and make a new source selection decision. *Id.*

Following the agency's corrective action, the agency again selected the incumbent for the BPA. *Id.* Disappointed vendors protested at COFC, and the agency again took corrective action, stating that it would reevaluate quotations and make a new source selection decision. MOL at 2. COFC dismissed the protests on July 19. COS at 3.

Current Evaluation and Protest

As part of the agency's corrective action, the agency requested that vendors, including VMD, complete and submit a crosswalk that compared the RFQ's labor categories (LCATs) with the vendor's GSA MAS LCATs. AR, Exh. 26, VMD LCAT Crosswalk at 1-2. VMD's response indicated that two of its LCATs were on its GSA MAS contract, but under a SIN other than SIN 54151HACS.² *Id.*

Following the agency's second corrective action, the new due date for phase two quotations was November 17, 2024. COS at 3. On December 4, the agency sent an unsuccessful vendor notice to VMD, explaining that VMD's quotation was eliminated from the competition during the phase two evaluation. AR, Exh. 29, Unsuccessful Vendor Notice at 1. The agency stated that it eliminated VMD's quotation from the competition because VMD's quotation provided LCATs and rates outside of

² Specifically, for the solicitation's [DELETED] LCAT and [DELETED] LCAT, VMD proposed labor categories under its GSA MAS contract SIN 54151S, Information Technology Services. AR, Exh. 26, VMD LCAT Crosswalk.

SIN 54151HACS. COS at 3-4. According to the contracting officer, “VMD Systems proposed their [DELETED] and [DELETED] from SIN 54151S which is not allowable.” *Id.* at 3. This protest followed.

DISCUSSION

VMD contends that it was improper for the agency to eliminate its quotation from the competition due to its failure to provide LCATs and rates under SIN 54151HACS. The protester argues that the solicitation did not limit vendors to quote LCATs under SIN 54151HACS but allowed them to quote any LCATs from the vendor’s underlying Federal Supply Schedule (FSS) contract with a scope that met the agency’s requirements, regardless of SIN, which, for the protester, included SIN 54151S. Protest at 10. VMD also challenges the agency’s evaluation of AccelGov’s quotation, arguing that its quotation falls outside of the scope of its GSA MAS contract and that its managing partner, Agovx, lacks relevant cybersecurity compliance experience. Protest at 12-18. In its supplemental protest, VMD contends that the agency failed to reasonably evaluate its quotation under the technical/management capability and capability of proposed key personnel factors. Comments and Supp. Protest at 14-23. For reasons discussed below, we sustain the protest.

Challenge to Elimination of Protester’s Quotation

It is a fundamental principle of federal procurement that an agency must evaluate quotations consistent with the terms of the solicitation and, while the evaluation of vendors’ quotations generally is a matter within the procuring agency’s discretion, our Office will question an agency’s evaluation where it is unreasonable, inconsistent with the solicitation’s stated evaluation criteria, or undocumented. *Tantus Techs., Inc.*, B-411608, B-411608.3, Sept. 14, 2015, 2015 CPD ¶ 299 at 6. In this regard, when an agency issues an RFQ to vendors under FAR subpart 8.4 and conducts a competition for the establishment of a BPA, we will review the record to ensure that the agency’s actions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *Applied Insight, LLC*, B-421221, B-421221.3, Jan. 20, 2023, 2023 CPD ¶ 33 at 6-7.

As we have previously explained, FAR subpart 8.4 does not require an agency to identify an applicable SIN or otherwise restrict a vendor’s ability to propose items only from a single SIN. *Phoenix Env’tl Design, Inc.*, B-422547, July 29, 2024, 2024 CPD ¶ 169 at 5; *Pitney Bowes, Inc.*, *supra*. Specifically, in *Pitney*, we concluded that

[p]ursuant to FAR [] 8.402(b), all GSA schedule contractors must publish an authorized FSS pricelist that contains all supplies and services offered by the contractor under its contract. In addition, this section of the FAR requires the pricelist to include the pricing and terms and conditions pertaining to each SIN that is on the vendor’s schedule contract. Although the FSS contracts are organized by SINs, FAR subpart 8.4 does not include any provision specifically requiring an agency to identify an

applicable SIN when ordering from a schedule contract, or otherwise restrict a vendor's ability to propose items only from a single SIN.

Id. at 4.

In this regard, when a RFQ does not include a provision that specifically limits goods or services to a particular SIN, the relevant question in reviewing an agency's evaluation of quotations is whether the quoted goods or services are on the schedule contractor's applicable underlying FSS contract. *Pitney Bowes, Inc., supra*.

The parties agree that a solicitation can limit vendors to proposing services under a single SIN, but dispute whether the subject solicitation included such a limitation. According to the protester, the solicitation did not specifically limit vendors to proposing LCATs under SIN 54151HACS. Protest at 10. At most, the protester argues, the solicitation contained only a general provision that the agency would issue the solicitation under GSA MAS 54151HACS, meaning that vendors were permitted to quote any LCATs on their underlying FSS contract. *Id.* The agency, however, contends that the solicitation limited vendors to providing LCATs and rates under SIN 54151HACS by providing that the procurement would be "solicited under GSA MAS 54151HACS." MOL at 5, citing RFQ at 3. Contrary to the protester's position, the agency argues that the solicitation would have needed a provision permitting vendors to propose other SINs rather than a provision that limited the applicable SINs. *Id.*

Based on the record, we agree that the agency improperly eliminated the protester's quotation for failing to provide LCATs under SIN 54151HACS. While it is true, as the agency argues, that the solicitation provided that the RFQ would be solicited under GSA MAS 54151HACS, it does not follow that this language limited vendors to quote labor categories from their FSS contracts that were listed under SIN 54151HACS. Indeed, the RFQ only generally provided that the BPA established under the RFQ "will be based on the Quoter's current GSA MAS" without any reference to SIN 54151HACS. RFQ at 3.

As outlined in *Phoenix Env't'l Design, Inc.* and *Pitney Bowes, Inc.*, vendors are free to quote goods or services listed on their underlying FSS contract unless there is a provision in the solicitation that specifically limits vendors to quote products or services under a specific SIN.³ *Phoenix Env't'l Design, Inc., supra*; *Pitney Bowes, Inc., supra*. As in those decisions, the solicitation here did not contain any provision that expressly limited vendors to a particular SIN; therefore, vendors were permitted to quote LCATs from their underlying FSS contract without regard to the particular SIN so long as the

³ In *BAO Systems, LLC*, B-421561.13 *et al.*, Apr. 10, 2024, 2024 CPD ¶ 92, for example, we found that the RFQ limited vendors to quoting LCATs under a specific SIN where it expressly provided that "[t]his BPA is being competed under the GSA MAS schedule 54151S," directed vendors to submit quotations "in accordance with the MAS schedule 54151S," and advised vendors that their labor rates should "align with [vendor's] MAS schedule 54151S schedule rates." *Id.* at 8-9.

quoted items were within the scope of their schedule contracts. See *Pitney Bowes, Inc., supra*. As the protester points out, the LCATs that it identified for its [DELETED] and [DELETED] were listed under SIN 54151S.⁴ Protest at 11. Because these LCATs were listed under the protester's underlying FSS contract and given that there was no solicitation provision that limited their applicability, we conclude that it was unreasonable for the agency to eliminate the protester's quotation from the competition solely on the basis that these LCATs were not listed under SIN 54151HACS. Accordingly, we sustain this protest ground.

Challenge to the Evaluation of AccelGov's Quotation

VMD next challenges the agency's evaluation of AccelGov's quotation as it pertains to the involvement of Agovx, the managing partner for AccelGov's joint venture.⁵ Protest at 12. The protester contends that the agency should have concluded that AccelGov's quotation was outside the scope of AccelGov's GSA MAS contract because Agovx's GSA MAS contract does not contain LCATs that "reasonably encompass" the LCATs listed on the subject solicitation. *Id.* at 13. As a result, the protester argues that either (a) AccelGov will perform outside the scope of the JV's GSA MAS contract or (b) Agovx will not perform at least 40 percent of the work as required by the Small Business Administration's (SBA) regulations because, according to the protester, 72 out of the 74 full-time equivalents (FTEs) required for this procurement involve "experience, expert cybersecurity LCATs" and these LCATs are not listed on Agovx's non-JV GSA MAS contract. *Id.* VMD further argues that the LCAT quoted by AccelGov to fulfill the solicitation's requirement for a technical writer contains "no mention of writing, much less technical writing." Comments and Supp. Protest at 10-11. The protester also challenges the evaluation of the AccelGov's quotation on the basis that Agovx lacks relevant cybersecurity support experience as required by the solicitation. *Id.* at 14.

When, as here, an agency announces its intent to order from an existing FSS contract, all goods or services quoted must be on the vendor's schedule contract as a precondition to it receiving the order. *Spatial Front, Inc.*, B-422058.2, B-422058.3, May 21, 2024, 2024 CPD ¶ 120 at 8. We will review a protester's challenge that the services being procured are outside the scope of an awardee's applicable FSS contract LCATs by considering whether the services sought under a particular solicitation are the same as the services covered under a vendor's schedule contract. *Id.*

⁴ We note that, in evaluating the protester's quotation, the agency concluded that the protester's proposed key personnel for the LCATs at issue possessed "the knowledge, experience, skills, and educational/certification requirements." AR, Exh. 23, Evaluation of VMD's Key Personnel at 1.

⁵ As relevant here, AccelGov is a women-owned small business joint venture (JV) that consists of two partners: Agovx LLC (JV-lead) and 22nd Century Technologies, Inc. (JV-member). MOL at 9.

As mentioned above, VMD first argues that the agency should have eliminated AccelGov's quotation from the competition because, in VMD's view, AccelGov's quotation is outside the scope of its GSA MAS contract. Protest at 12. VMD has not indicated, however, which LCATs are outside of the scope of the GSA MAS contract for the JV. Instead, VMD argues that the LCATs quoted by AccelGov fall outside the scope of Agovx's GSA MAS contract. See Protest at 12-13. It is VMD's position that the agency should have eliminated AccelGov's quotation from the competition because a member of a JV can perform only under the LCATs that correspond to the LCATs on each member's own GSA MAS contract. *Id.* at 13. VMD supports this protest ground by citing GSA's answers to a series of "trending questions" within the industry wherein GSA stated that "JV partners are required to propose and perform under their own awarded [LCATs]." Protest, Exh. G, Frequently Asked Questions for JV Contractors at 131, 133. Accordingly, VMD argues that this guidance indicates that Agovx cannot use LCATs that correspond to 22nd Century's MAS contract. Protest at 12.

We dismiss this protest ground because the protester has not identified any law, regulation, or solicitation provision that requires an agency to look beyond the scope of a JV's GSA MAS contract and consider the scope of any MAS contracts separately held by the individual JV members, when making award. In this regard, our Office is authorized to decide bid protests "concerning an alleged violation of a procurement statute or regulation." 31 U.S.C. § 3552(a). Although VMD asserts that the agency acted contrary to answers provided by GSA in response to frequently asked questions within the industry, Protest at 13, the record does not indicate, nor does the protester argue, that the agency incorporated this guidance into the solicitation. In addition, the protester has not cited any legal authority to support its argument that a member firm of a JV must possess all the LCATS on its GSA MAS contract for the JV itself to perform the contract. Absent such a legal requirement, the relevant inquiry is whether AccelGov, the legal entity that responded to the solicitation, has the required LCATs on its own GSA MSA contract. Thus, even if we were to agree with the protester that the agency did not evaluate quotations in accordance with GSA's frequently asked questions response, we would have no basis to sustain the protest ground because the protester has not identified a violation of a procurement statute, regulation, or the terms of the solicitation. See *NOVAD Management Consulting, LLC*, B-419194.5, July 1, 2021, 2021 CPD ¶ 267 at 8 (dismissing protest for failing to allege a violation of a procurement law or regulation). Therefore, we dismiss this protest ground.⁶

Concerning the protester's argument that AccelGov failed to quote a technical writer in accordance with the requirements of the solicitation, however, we sustain this argument as the agency failed to substantively respond to the protest ground. Where an agency does not respond to a protest allegation and does not contest the merits of a protester's arguments, we view the agency as having effectively conceded that the arguments have

⁶ Similarly, we dismiss the protester's argument that the awardee will not be able to perform at least 40 percent of the work as required by SBA regulations as the protester bases this argument on the premise that the guidance referenced above is controlling authority. See Protest at 13.

merit. *TriCenturion, Inc.; Safeguard Servs., LLC*, B-406032 *et al.*, Jan. 25, 2012, 2012 CPD ¶ 52 at 17. Because the agency does not refute the protester's allegation, we find its argument that the agency's evaluation was unreasonable to be meritorious. Accordingly, this protest ground is sustained.

VMD next contends that Agovx lacks relevant cybersecurity experience and therefore, AccelGov's quotation should not have received a rating of high confidence under the prior demonstrated experience factor. Protest at 14. The agency argues that AccelGov's quotation demonstrated Agovx's relevant experience, and in any event, the agency considered the experience of AccelGov in the aggregate as required by regulations. MOL at 10.

We have no basis to object to the agency's evaluation. SBA regulations governing the submission of offers on women-owned small business (WOSB) program contracts by joint ventures with at least one WOSB partner provide at 13 C.F.R. § 127.506(f) that "a procuring activity must consider work done and qualifications held individually by each partner to the joint venture as well as any work done by the joint venture itself previously" and that "partners to the joint venture in the aggregate must demonstrate the past performance, experience." Contrary to VMD's position, the record shows that AccelGov demonstrated the prior experience of the JV, which included both Agovx and 22nd Century. See AR, Exh. 19, AccelGov Phase One Proposal at 7-16. While VMD may disagree with the weight that the agency assigned to Agovx's experience, such disagreements do not provide a basis to sustain a protest. *Electrosoft Servs., Inc.*, *supra*. This protest ground is denied.⁷

CONCLUSION

As noted above, we conclude that the agency unreasonably eliminated VMD's quotation from the competition for failing to provide LCATs under 54151HACS. We also sustain the protest on the basis the agency failed to refute the protester's allegation that the LCAT quoted by AccelGov for the technical writer position did not reasonably encompass the duties of that position. We further conclude that VMD was competitively prejudiced by these evaluation errors. Competitive prejudice is an essential element of a viable protest, and where no prejudice is shown or is otherwise evident, our Office will not sustain a protest, even if a deficiency in the procurement is evident. *Invertix Corp.*, B-411329.2, July 8, 2015, 2015 CPD ¶ 197 at 10. Here, we conclude that VMD was prejudiced by these evaluation errors, in that but for the agency's actions, the protester would have had a substantial chance of receiving the award. *Up-Side Mgmt. Co.*, B-417440, B-417440.2, July 8, 2019, 2019 CPD ¶ 249 at 7.

⁷ VMD also argues that the agency's evaluation of the technical/management capability factor for AccelGov's quotation was unreasonable because Agovx's purported lack of experience indicates that AccelGov's quotation also contained significant technical risk. Protest at 18. We do not address this protest ground because it is derivative of arguments that we have dismissed or denied.

RECOMMENDATION

Accordingly, we recommend that the agency reevaluate quotations in a manner consistent with this decision and, if warranted, make a new selection decision. To the extent it is the agency's position that the RFQ should have included language limiting vendors to offering labor categories only under SIN 54151HACS, the agency should amend the solicitation to add that language and provide vendors with an opportunity to respond to the revised RFQ prior to reevaluating quotations. We also recommend that VMD be reimbursed the costs associated with filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). VMD should submit its certified claim for such costs, detailing the time spent and the costs incurred, directly to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.⁸

Edda Emmanuelli Perez
General Counsel

⁸ In its supplemental protest, VMD challenges the agency's evaluation of its quotation under the technical/management capability and capability of proposed key personnel factors following the agency's corrective action. Comments and Supp. Protest at 14-23. The agency acknowledges that it did not reevaluate these portions of VMD's quotation because VMD's quotation was eliminated from the competition due to the agency's conclusion that VMD's quotation was noncompliant. Supp. MOL at 10. Because we are recommending that the agency reevaluate VMD's quotation, we dismiss the protester's challenges to the current evaluation as academic. See *Unified Indus. Inc.*, B-237868, Apr. 2, 1990, 90-1 CPD ¶ 346.