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Decision

Matter of: Information Assurance Specialists, Inc. d/b/a Sub U Systems

File: B-420243; B-420243.2

Date: January 7, 2022

W. Jay DeVecchio, Esq., and James A. Tucker, Esq., Morrison & Foerster LLP, for the protester.

Robert L. Miller, Esq., and Debra J. Talley, Esq., Department of the Army, for the agency.

Samantha S. Lee, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the evaluation of its quotation as technically unacceptable is denied where the record shows that the agency reasonably found the protester's quotation failed to meet the solicitation's requirements.

DECISION

Information Assurance Specialists, Inc. d/b/a Sub U Systems (SUB-U), a small business of Turnersville, New Jersey, protests the award of a contract by the Department of the Army, Army Materiel Command, to NewSat North America, LLC, a small business of Indian Harbour Beach, Florida, under request for quotations (RFQ)

No. W91RUS21R0122 for 27 executive communication kits.¹ SUB-U alleges that the agency improperly found SUB-U's quotation technically unacceptable.

We deny the protest.

¹ The solicitation was issued as a request for proposals, but refers to itself as both an RFQ and a request for proposals. During the protest proceedings, the parties, however, refer to the solicitation almost exclusively as an RFQ and the firms that competed here as "vendors" that submitted "quotations." For the sake of consistency with the record, we do so as well.

BACKGROUND

On July 16, 2021, the Army issued the initial solicitation as a small business set-aside for the acquisition of a “brand name or equal” commercial item under Federal Acquisition Regulation part 12. Agency Report (AR), Tab 3, Initial RFQ at 1. The agency, subsequently, issued an amendment to the solicitation on September 21 that, among other things, removed the small business set-aside, removed the brand name, and otherwise modified the salient characteristics for the requirement. AR, Tab 5, RFQ amend. 2.² The solicitation contemplated award of a single fixed-price contract to the lowest-price, technically acceptable vendor, and described the requirement as “27 Executive Communication Kits with all peripherals [and] associated encryption devices” priced to include “remote hardware/software repair support, on-site training, parts and labor, for three years with 24 x 7 support provided.”³ AR, Tab 9, RFQ at 3, 6, 13. In essence, the requirement was for a portable, secure voice and data communications package. The RFQ listed more than two dozen salient characteristics. *Id.* at 6-8. Relevant here, the salient characteristics required, among other things, the communications package to be operable on three different defense network security gateways and also have a specific certification and approval. *Id.* at 7

The agency received quotations from six vendors, including SUB-U and NewSat, by the solicitation’s September 25 due date for receipt of quotations. COS/MOL at 2. The agency evaluated SUB-U’s quotation of its Small Technical Executive Wide Area Network (STEW) as technically unacceptable because SUB-U did not address all three network security gateways and failed to comply with associated configuration requirements. AR, Tab 10, SUB-U Quotation at 3; AR, Tab 12, SUB-U Evaluation at 2-3. The agency also concluded that SUB-U’s quotation was technically unacceptable because SUB-U proposed to maintain a newer, uncertified and unapproved version of its kit (the STEW-R) as a spare. AR, Tab 12, SUB-U Evaluation at 2-3.

The agency then evaluated NewSat’s quotation of a product known as the Klas VoyagerECK and found that it was technically acceptable. AR, Tab 11, NewSat Quotation at 30; AR Tab 13, NewSat Evaluation. On September 27, the contracting officer, as the source selection authority, determined that NewSat had submitted the lowest-priced, technically acceptable quotation and awarded the contract to NewSat. COS/MOL at 3; AR, Tab 14, Contract. This protest followed.

² The agency amended the solicitation five times. Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 2. Unless otherwise noted, citations to the RFQ refer to the conformed copy provided at Tab 9 of the AR.

³ Although the conformed version of the RFQ continues to reflect option year contract line item numbers, the agency removed those from the solicitation through an amendment. See AR, Tab 8, RFQ amend. 5 at 5.

DISCUSSION

SUB-U challenges the agency's evaluation of technical acceptability, arguing that the agency unreasonably found that SUB-U's quoted product did not meet two of the RFQ's salient characteristics. Comments & Supp. Protest at 3-12. SUB-U also contends that the agency applied a different, more relaxed standard, to conclude that the awardee's quoted product met all of the salient characteristics. *Id.* Although we may not address all the protester's arguments here, we have considered all the protester's allegations and find that they do not afford a basis on which to sustain the protest.

Network Gateway Operability and User-Level Configuration

Among the salient characteristics that the agency concluded the SUB-U product did not meet was the requirement for interoperability on three network security gateways and the ability to be configured at the user level. Specifically, the solicitation provided that a quoted product:

Must be able to operate on the Joint Regional Security Stack (JRSS), Secure Network Operations Center (SNOC), [Defense Information Systems Network (DISN)] Enterprise Classified Travel Kit Gateway (DECKTK) without additional configurations and or cost but kits must be able to be configured at the user level.

RFQ at 7. The evaluators identified three reasons that SUB-U's product was noncompliant. AR, Tab 12, SUB-U Evaluation at 2-3 (concluding that SUB-U did "not meet this requirement").

SUB-U challenges each reason, asserting that the agency ignored a plain statement in its quotation that the STEW "Meets" this characteristic while accepting a blanket statement of compliance with all specifications from NewSat. Comments & Supp. Protest at 3-7; Supp. Comments at 5-16. The agency responds that its evaluation was reasonably based on the quotations, where SUB-U submitted a narrative that introduced doubt about its compliance and NewSat did not. Supp. COS/MOL at 4-9.

The evaluation of an offeror's proposal or quotation is a matter within the agency's discretion. *W.W. Grainger, Inc.*, B-420045, B-420045.2, Nov. 4, 2021, 2021 CPD ¶ 358 at 7. In reviewing protests challenging an agency's evaluation of quotations, our Office does not reevaluate quotations or substitute our judgment for that of the agency, but rather examines the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. *22nd Century Techs., Inc.*, B-413210, B-413210.2, Sept. 2, 2016, 2016 CPD ¶ 306 at 8. A vendor's disagreement with the agency's evaluation judgment, without more, is insufficient to establish that the agency acted unreasonably. *Deloitte Consulting, LLP*, B-418485.2, Oct. 26, 2020, 2020 CPD ¶ 375 at 3.

In addition, 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. *Rockwell Elec. Com. Corp.*, B-286201 *et al.*, Dec. 14, 2000, 2001 CPD ¶ 65 at 5. However, when a protester alleges unequal treatment in a technical evaluation, it must show that the differences in the evaluation did not stem from differences between the quotations. *IndraSoft, Inc.*, B-414026, B-414026.2, Jan. 23, 2017, 2017 CPD ¶ 30 at 10; *Paragon Sys., Inc.*; *SecTek, Inc.*, B-409066.2, B-409066.3, June 4, 2014, 2014 CPD ¶ 169 at 8-9.

Here, the solicitation directed vendors to “detail the offered solution” or “attach a data specification sheet.” RFQ at 3. The RFQ continued with instructions to “provide a detailed breakdown or narrative of what is being provided to [m]eet the requirement” rather than a simple identification of a part number. *Id.* at 4.

SUB-U elected to submit a narrative description of its proposed solution, the STEW, in addition to a data specification sheet. AR, Tab 10, SUB-U Quotation at 2-16. SUB-U's narrative included a self-styled “Compliance Table” of the salient characteristics. The table was comprised of three columns with the following headers: (1) Requirement, (2) Meets / Exceeds / Non-Compliant; and (3) Comments. *Id.* at 8-11. For the network security gateway requirement, SUB-U wrote “Meets” in the second column and the following in the third column for comments:

As mentioned previously, the SUB-U STEW offers a Software Definable Network - Appliance™ and a [DELETED].^[4] In the instance where DECTK termination is being performed the Software Definable Network - Appliance™ will be loaded with [DELETED] to support the current DECTK [Authority to Operate]. In support of JRSS the Software Definable Network - Appliance™ will be loaded with [DELETED] to support JRSS's infrastructure use of [DELETED]. *SUB-U has prior experience with JRSS and is aware of the technical challenges of terminating to JRSS.

Id. at 8. Under a separate section of its quotation titled “JRSS,” SUB-U described its experience in a different Army procurement of SUB-U's STEW kits. *Id.* at 5-6. The

⁴ The referenced previous mention was:

SUB-U proposes the use of the Small Tactical Executive WAN (STEW) communications solution to meet the [Executive] Communications Kit solicitation salient characteristics. The SUB-U STEW DECTK Kit is a small, rugged, and easy to use two (2) enclave secure voice and data communications solution that contains:

- (1) STEW dual router/VPN [Virtual Private Network] gateway appliance

AR, Tab 10, SUB-U Quotation at 3. Under this bullet, SUB-U included two sub-bullets identifying a “black enclave” using [DELETED] for JRSS and [DELETED] for DECTK, and a “red enclave” using [DELETED] for JRSS and DECTK. *Id.*

protester explains that when it was discovered that the kits also needed to support JRSS, “SUB-U worked tirelessly” with the Army “to attempt configuring the procured kits with JRSS.” *Id.* Although SUB-U explains that it found a solution and provided a quotation for the price to implement its solution, it represents that the Army “never performed the suggested remedy” to update the configuration. *Id.* at 6.

Quoting the language in the “Comments” section of SUB-U’s “Compliance Table,” the evaluators concluded that SUB-U did not meet the requirement. AR, Tab 12, SUB-U Evaluation at 2-3. The evaluators identified three reasons: SUB-U’s quotation failed to (1) address SNOC; (2) state that network gateway access reconfigurations could be done at the user level; and (3) state that network gateway access reconfigurations could be done at no additional cost to the government. AR, Tab 12, SUB-U Evaluation at 2-3.

In contrast to SUB-U’s narrative approach, NewSat submitted a cover letter stating that “NewSat meets all the terms and conditions and is proposing Klas Executive Communication Kits which are compliant with the salient characteristics included in the solicitation,” and attached a data specification sheet for the Klas VoyagerECK. AR, Tab 11, NewSat Quotation at 30-33, 41-42. The evaluators concluded that NewSat’s offered product satisfied all salient characteristics, including the network security gateway requirement. AR, Tab 13, NewSat Evaluation.

The protester maintains that it was improper for the agency to conclude that SUB-U was unacceptable because its quotation “plainly states that its product ‘**Meets**’ the requirement” within the Compliance Table. Comments & Supp. Protest at 4. According to SUB-U, this was particularly unreasonable given that NewSat “does not even mention SNOC, much less address this requirement,” nor does NewSat directly refer to 11 other salient characteristics.⁵ *Id.*

Our review of the record shows that the agency’s conclusion about SUB-U was reasonably based not only on the “Meets” statement in SUB-U’s “Compliance Table,” but also on the narrative in the same table and SUB-U’s discussion of its previous experience with a similar, but unrelated, Army procurement of STEW kits. Referring to SUB-U’s quotation, the evaluators found repeated confirmation from SUB-U of the STEW’s capability on JRSS and DECKTK, but not on SNOC. See Tab 12, SUB-U Evaluation at 2-3; see also AR, Tab 17, Evaluators’ Decl. at 2-3. For example, the evaluators observed that within the “Compliance Table,” SUB-U discusses “DECTK termination” and how the kit works “[i]n support of JRSS,” but it does not explain or refer to SNOC. Tab 12, SUB-U Evaluation at 1-2; AR Tab 10, SUB-U Quotation at 8.

⁵ Although the protester asserts that its own quotation is clearer and more detailed on this point, SUB-U concedes that NewSat’s quotation evidences that NewSat’s proposed solution can be configured at the user level. Comments & Supp. Protest at 7 (“[NewSat’s solution] allows [personal] portability among systems and enables rapid reconfiguration by an incidental operator.”) (quoting AR, Tab 11, NewSat Quotation at 30).

In addition, SUB-U included in its quotation a detailed discussion of its delivery of STEW kits to the Army in 2020, describing how the kit required additional work by SUB-U and additional cost to “terminate” (*i.e.*, connect) to the JRSS gateway. *Id.* at 4-5. In the absence of an explicit statement that SUB-U’s solution here, unlike there, could be reconfigured at the user level for no additional cost, the evaluators concluded that SUB-U’s quotation was unacceptable. AR, Tab 12, SUB-U Evaluation at 2-3; AR, Tab 17, Evaluators Decl. at 1-2 (describing how SUB-U’s discussion of its earlier effort “included information suggesting that reconfigurations could be done by SUB-U, without mentioning the ability to perform user-level reconfigurations” and “suggest[ed] that reconfigurations would be at additional cost”).

It is a vendor’s responsibility to submit a well-written quotation, with adequately detailed information that clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. *RK Consultancy Servs., Inc.*, B-420030, B-420030.2, Nov. 3, 2021, 2021 CPD ¶ 356 at 3. Here, SUB-U included information, like specific discussion of just two of the three required network security gateways, and challenges in delivery of STEW kits to the Army in a prior procurement, that undercut SUB-U’s statement that its solution satisfied the solicitation. AR, Tab 12, SUB-U Evaluation at 2-3; AR, Tab 17, Evaluators Decl. at 1-2. SUB-U’s contention that the information should not have led the agency to conclude that its product would not meet all of the salient requirements merely represents its disagreement with the agency’s judgment; without more, this argument provides no basis to sustain the protest. See *Vertex Aerospace, LLC, supra*.

SUB-U’s assertions of disparate treatment are unconvincing for the same reason. As discussed above, the agency concluded that SUB-U was noncompliant based on information that SUB-U provided beyond an affirmative statement of compliance with all characteristics and data sheet. The agency concluded that NewSat was compliant because NewSat did not include any information in its quotation that called into question its affirmative statement of compliance with all characteristics and data sheet. Because the agency differently evaluated the vendors based on genuine differences in their quotations, this allegation is denied. See *IndraSoft, Inc., supra*.

Certification and Approval

SUB-U also contests the agency’s conclusion that its quotation did not meet another of the salient characteristics: that the “Specific System model [proposed] must possess current Joint Interoperability Test Command (JITC) certification” and be listed on Department of Defense Information Network Approved Products List. Comments & Supp. Protest at 9-12; Supp. Comments at 2-4; RFQ at 7. SUB-U argues that it was improper for the agency to judge technical acceptability based on its quotation to provide a STEW-R unit--a newer system model that SUB-U admits is not certified or listed--as a spare beyond the required 27 kits. Comments & Supp. Protest at 9-12; Supp. Comments at 2-4.

Competitive prejudice is an essential element of a viable protest, and we will sustain a protest only where the protester demonstrates that, but for the agency's improper actions, it would have had a substantial chance of receiving the award. *Deloitte & Touche LLP*, B-420038, Oct. 28, 2021, 2021 CPD ¶ 353 at 12. Where the record establishes no reasonable possibility of prejudice, we will not sustain a protest irrespective of whether a defect in the procurement is found. *Procentrix, Inc.*, B-414629, B-414629.2, Aug. 4, 2017, 2017 CPD ¶ 255 at 11-12.

Here, we need not decide the merits of SUB-U's challenge to the agency's evaluation conclusion regarding this salient characteristic because, even if we were to agree with the protester, SUB-U fails to demonstrate that it was competitively prejudiced by the error alleged. As discussed above, because we find unobjectionable the agency's conclusion that SUB-U did not meet one of the solicitation's other salient characteristics, *i.e.*, the requirement for interoperability on three network security gateways and the ability to be configured at the user level, SUB-U's quotation would remain technically unacceptable, and an unacceptable quotation cannot form the basis for award. See *Millennium Eng'g & Integration Co.*, B-417359.4, B-417359.5, Dec. 3, 2019, 2019 CPD ¶ 414 at 9-10 (finding it unnecessary to decide whether the rating assigned to awardee's past performance was reasonable where the protester has failed to demonstrate that it was prejudiced as a result thereof). As such, we need not further address this allegation. See *Hera Constructive S.A./ Synthesis S.A., Joint Venture*, B-297367, Dec. 20, 2005, 2005 CPD ¶ 225 at 5 ("We need not address the protester's arguments regarding its past performance rating since it was not prejudiced by any alleged errors in this area.").

The protest is denied.

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General Counsel