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Decision

Matter of: Hughes Network Systems, LLC

File: B-409666.5; B-409666.6

Date: January 15, 2015

Walter A.I. Wilson, Esq., Daniel J. Donohue, Esq., Claude P. Goddard, Jr., Esq., Grace O. Aduroja, Esq., and Steven J. Weber, Esq., Polsinelli PC, for the protester. Lori Ann Lange, Esq., and Nick R. Hoogstraten, Esq., Peckar & Abramson P.C., for Artel, LLC, an intervenor.

Daniel Hutman, Esq., and Uri R. Ko, Esq., Social Security Administration, for the agency.

Lois Hanshaw, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging the agency erred in evaluating the awardee's technical quotation as acceptable is denied where the evaluation is consistent with the terms of the solicitation.
2. Protest of the agency's best value determination is denied where, consistent with the terms of the solicitation, the agency reasonably concluded that the awardee's lower-priced quotation with lower-rated past performance provided the best value to the government.
3. Protester's allegation that the agency engaged in unequal discussions is denied where our review of the record shows that the agency's exchange with the awardee constituted clarifications, not discussions.

DECISION

Hughes Network Systems, LLC (Hughes), of Germantown, Maryland, protests the issuance of a task order to Artel, LLC, of Herndon, Virginia, by the Social Security Administration (SSA) under request for quotations (RFQ) No. SSA-RFQ-14-1108 for satellite services and maintenance. Hughes argues that the agency miscalculated the awardee's quotation, performed an unreasonable best-value tradeoff, and engaged in unequal discussions.

We deny the protest.

BACKGROUND

The agency issued the RFQ through the General Services Administration's (GSA) e-Buy system on December 20, 2013, to holders of GSA's custom satellite communication II multiple agency contract. The RFQ provided for the issuance of a fixed-price task order with a 1-year base period and four 1-year option periods. RFQ at 8. Pursuant to the RFQ, the agency would issue the task order to the vendor whose quotation was most advantageous to the agency following a graduated three-phase evaluation process. Id. at 114.

Under Phase 1 of the evaluation, the SSA would assess the technical acceptability of quotations; that is, whether the vendor's proposed solution met all of the technical requirements of the RFQ's statement of work (SOW). The RFQ stated that the agency would verify that the vendor stated that it would comply with all requirements without exception. Id. As part of this phase of the evaluation, the RFQ provided as follows:

In review of the Vendor's provided experience information¹, the agency will rate a Vendor as acceptable if it demonstrated both maintenance and implementation experiences combined including at least:

- A minimum of three continuous years prior experience with administration, management, and maintenance of a nationwide network of satellite equipment consisting of 500 downlink sites. Those downlink sites must include offshore locations such as Puerto Rico, Alaska, Hawaii, or Virgin Islands.
- Completed a planned satellite repoint of downlinks antennas nationwide of at least 800 downlinks without service interruption to the customer.²

¹ The RFQ required the vendor to describe no more than two contracts performed within the last five years of similar size, scope, and complexity to the solicitation. RFQ at 101. The prime vendor was required to hold one of the contracts, while the second contract could be held by a teaming partner/subcontractor who would participate in the resultant contract. Id. at 101.

² "Repointing" is defined in the record to mean the process of optimizing the orientation of a satellite antenna's main direction of sensitivity toward the satellite to maximize the received signal level and to minimize the chance of receiving unwanted interference from other satellite systems. AR, Tab 2, Artel's Revised
(continued...)

Id. The RFQ stated that vendors that did not receive an acceptable technical rating at Phase 1 were not eligible for award. Id.

Under Phase 2, the agency would evaluate quotations for “compliance, conformance, and compatibility with the SSA’s accessibility architecture and standards,” and with applicable Section 508 standards³ through adjectival ratings of excellent, good, acceptable, marginal, or unsatisfactory. Id. at 116. Vendors with the highest overall Phase 2 rating would be evaluated under Phase 3. Id. at 114, 116-17. If only one quotation received the highest rating in Phase 2, that quotation would be selected for award “unless award to the highest-rated Vendor will impose an undue burden on the Agency.” Id.

Under Phase 3, the agency would conduct a best-value analysis considering price and past performance.⁴ Id. at 121. Past performance and price were equally weighted; however, the RFQ advised that price would become more important if the vendors past performance ratings were close. Id. The RFQ stated that award to other than the vendor with the lowest price or highest-ranked past performance was possible. Id. The RFQ advised that the agency would be averse to risk in deciding which quote to select. Id.

Three vendors, including Hughes and Artel, submitted initial quotations, and Artel was selected to receive the task order on March 20, 2014. Agency Report (AR), Tab 8, Technical Evaluation Report (TER), at 1, 3. Hughes timely protested that award to our Office, challenging the evaluation of Artel’s experience under Phase 1. The agency concluded that Artel’s quotation was sufficiently ambiguous to warrant obtaining additional information, and proposed corrective action, which included seeking revised quotations and making a new selection decision. The protest was dismissed as academic. Hughes Network Sys., LLC, B-409666.1, B-409666.2, May 6, 2014. On May 6, Hughes protested the agency’s corrective action as improper; we denied the protest. See Hughes Network Sys., LLC, B-409666.3, B-409666.4, Aug. 11, 2014, 2014 CPD ¶ 237. On May 9, Hughes and Artel

(...continued)

Quotation at 121; <http://www.eutelsat.com/en/support/glossary/satellite-terminology.html>.

³ Section 508 refers to 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 (2012).

⁴ The RFQ identified five past performance subfactors and advised that past performance would be evaluated as either exceptional, very good, neutral, satisfactory, or unsatisfactory. Id. at 118-19.

submitted revised quotations. AR, Tab 9, Award Decision, at 7; AR, Contracting Officer's Statement (CO) Statement at 6.

Evaluation of Revised Quotations and Award Decision

The contracting officer, who also served as the selection authority, appointed a source selection evaluation board (SSEB) to evaluate the quotations under the non-price factors. AR, CO Statement at 18. Artel revised the experience, past performance and pricing sections of its quotation, while Hughes revised only its price section. AR, Tab 8, TER, at 3. The SSEB reviewed Phase 1 quotations on a pass/fail basis, consistent with the RFQ. Id. at 2.

Artel's revised quotation listed two contracts: one that was awarded by the Defense Information Systems Agency (DISA) that Artel performed for the Army, and one that Convergent Media, Artel's teaming partner, was performing for the Kroger Television Network. As relevant here, Artel stated in its revised quotation that the DISA contract satisfied the solicitation requirement to have completed planned satellite repoints of downlink antennas nationwide of more than [deleted] downlinks without service interruption to the customer, AR, Tab 2, Artel Revised Quotation, at 121, and also stated that the Kroger contract satisfied this same requirement. Id. at 121-22. Artel's revised quotation described Artel's team's experience as including "the continuous operation of CONUS [Continental United States] and OCONUS [Outside the Continental United States] commercial satellite communication networks with [deleted] sites, with [deleted] repoints without service interruption to the customer, collectively over more than 7 continuous years." AR, Tab 2, Artel Revised Quotation, at 121. With respect to Convergent Media, the revised quotation identified "experience with the Kroger Company satellite telecommunication network, which included over [deleted] remote terminals, with more than [deleted] repoints without services interruption to the customer, over 10 continuous years of performance." Id.

Hughes's and Artel's revised quotations were both found technically acceptable under the Phase 1 evaluation. AR, Tab 8, TER, at 3, 18, 30; AR, Tab 9, Award Decision, at 7.

On May 13, following the receipt and evaluation of final revised quotations, the contracting officer e-mailed five questions to Artel, related to the experience information in Artel's revised technical quotation. AR, Tab 6, SSEB Questions to Artel, at 9. These questions requested additional information about the contracts referenced in Artel's quotation, concerning the type of contract vehicle for one contract, the satellites involved in repointing for both contracts, and the specific

location of the repointing events cited in each contract.⁵ Id. In its response, Artel identified the contract vehicle in question as a fixed-price, indefinite-delivery/indefinite-quantity contract with task orders, and provided short answers to the remaining questions, including appendices that identified the satellites involved and the repoint locations. AR, Tab 7, Artel Response to SSEB Questions.

Having both been found technically acceptable under Phase 1, Artel's and Hughes's quotations advanced to Phase 2. The two quotations received the same rating of good for Phase 2, and were then evaluated under Phase 3.⁶ Under Phase 3, Hughes's past performance was rated exceptional, and Artel's past performance was rated very good. Based on the evaluation of non-price factors, the SSEB recommended issuing the task order to Hughes, stating that it found Hughes's quotation to represent a lower degree of risk as compared to Artel's lower past performance rating. AR, Tab 8, TER, at 3-4.

The selection authority, however, after considering the past performance and price factors under Phase 3, determined that Artel represented the best value for the acquisition. Id. at 13. The final evaluation results were as follows:

		Hughes	Artel
Phase 1	<i>Technical Approach</i>	Pass	Pass
Phase 2	<i>Compatibility with SSA's Standards</i>	Good	Good
Phase 3	<i>Past Performance</i>	Exceptional	Very Good
	<i>Price</i>	\$19.1 million	\$18.5 million

AR, Tab 9, Award Decision, at 7, 9.

After comparing the vendors' past performance ratings and price, the selection authority found that the difference between the quotations did not justify paying a price premium of approximately \$585,000, or 3.1%, despite Hughes's higher past performance rating. Id. Based on the significant confidence assessment of Artel's past performance references, the selection authority concluded that Artel's team could perform the requirement successfully. Id. In selecting Artel's quotation as presenting the best value, the selection authority stated that she considered Artel's potential performance risk, based on its lower past performance rating, to be lower than the financial risk posed by Hughes's higher price. Id. After Hughes was

⁵ The award decision states that the SSEB did not have additional questions for Hughes concerning its technical quotation. AR, Tab 9, Award Decision, at 9.

⁶ The third vendor's quotation was eliminated from consideration in Phase 2 of the initial evaluation. AR, Tab 9, Award Decision, at 6-7.

notified of the selection decision and was debriefed, it filed this protest with our Office.⁷

DISCUSSION

The protester alleges that the agency misevaluated the awardee's quotation, performed an unreasonable best-value analysis, and engaged in unequal discussions with the awardee. We have reviewed the arguments raised by the protester and find no basis to sustain the protest.⁸

In reviewing protests challenging an agency's evaluation of quotations, our Office does not independently evaluate quotations; rather, we review the agency's evaluation to ensure that it is consistent with the terms of the solicitation and applicable statutes and regulations. Nat'l Forensic Sci. Tech. Ctr., Inc., B-409457.2, B-409457.3, July 29, 2014, 2014 CPD ¶ 224 at 4. The evaluation of quotations is a matter within the discretion of the procuring agency; we will not question the agency's evaluation absent a showing that the evaluation is unreasonable or inconsistent with the RFP. Analytical Innovation Solutions, LLC, B-408727, Nov. 6, 2013, 2013 CPD ¶ 263 at 3. A protester's disagreement with the agency's judgment, by itself, is not sufficient to establish that an agency acted unreasonably. See Athena Sciences Corporation, B-409486, B-409486.2, May 14, 2014, 2014 CPD ¶ 154 at 10.

The protester first argues that the agency erred in determining that Artel's quotation demonstrated the experience required by the RFQ to be found technically acceptable under Phase 1. Protest at 22; Supp. Protest at 4. To support its assertions, Hughes has submitted a declaration from an assistant vice president involved in Hughes's performance of the incumbent contract, which states that "it is generally known" that neither Artel nor Convergent have the experience required by the RFQ. Protest at 23; id., attach. 2, Declaration, at 2. More specifically, the protester contends that the SSA waived or relaxed the RFQ's requirement that vendors demonstrate the following two types of experience: (1) administering,

⁷ The value of the task order at issue is in excess of \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award indefinite-delivery, indefinite-quantity contracts. 41 U.S.C. § 4106(f)(1)(B).

⁸ The protester also raised arguments in its protest related to the agency's best-value tradeoff and past performance evaluation. Although the agency responded to these allegations in its agency report, the protester did not respond to the agency's arguments in its comments. Accordingly, we view these arguments as abandoned and do not consider them further. Kipper Tool Co., B-409585.2, B-409585.3, June 19, 2014, 2014 CPD ¶ 184 at 6 n.11.

managing, and maintaining a nationwide network of satellite equipment consisting of 500 downlink sites within a specific geographic region; and (2) having completed a planned repoint of at least 800 downlinks without service interruption to the customer. Protest at 21.

As an initial matter, we note that the RFQ provided that the agency would verify that the vendor stated it would comply with all requirements without exception, RFQ at 114, and that Artel's revised quotation provided unequivocal statements with respect to both of the contracts it listed to demonstrate its experience. AR, Tab 2, Artel Revised Quotation, at 121-22. In its technical evaluation report (TER), the SSEB acknowledges that Artel's initial quotation did not appear to meet the requirement for at least 3 continuous years of experience administering, managing, and maintaining a nationwide network of satellite equipment consisting of 500 downlink sites within a specific geographic region, but observes that Artel provided additional information in its revised quotation that demonstrated compliance with the requirements.⁹ The TER refers to the experience listed for Artel's teaming partner, Convergent Media, in service provided to the Kroger Television Network for more than 10 years, under which Convergent Media administered, managed, and maintained a nationwide network of more than [deleted] downlink sites, including sites in Alaska. TER at 18. The TER also noted that Artel's revised quotation stated that Convergent Media conducted a planned repoint at more than [deleted] locations within the Kroger nationwide network without service interruption to the customer. Id. The report states that the SSEB found Artel's experience exceeded the requirements of the RFQ.¹⁰

⁹ We find unpersuasive Hughes's argument that the general knowledge cited by its vice president should be relied upon in determining whether Artel has the experience required by the RFQ.

¹⁰ The record includes other examples of how Artel revised its quotation to include express statements of compliance with the experience requirements. For example, where Artel's initial quotation referred to contracts performed by Artel and Convergent Media, stating "[b]oth of these experiences support networks larger than [deleted] sites and have transitioned from one satellite to another," Artel revised this statement to more precisely address the RFQ requirement, as "[b]oth of these experiences support networks larger than [deleted] sites and have required more than [deleted] repoints." Id. at 121. Similarly, where the awardee's initial quotation stated that the "Artel Team has transitioned multiple large VSAT [very small aperture terminals] networks," it revised this language to state that it has ". . . repointed, without service interruption to the customer," multiple VSAT networks. Id.

Nonetheless, Hughes insists that the agency's evaluation was based on unreasonable assumptions. For example, Hughes insists that it was unreasonable for the agency to assume that the repointing experience referenced in Artel's quotation meant a single planned repoint, alleging that the quotation showed "numerous planned repoints over time that add up to more than [deleted] repoints of antennas." Supp. Protest at 6. In response, the agency asserts that it had no reason to interpret the awardee's quotation as representing multiple, smaller antenna repoints, as Hughes suggests, and that, in any event, Artel clarified that the [deleted] repoints at issue involved a migration of a television network from one satellite to another, naming the specific two satellites involved. AR, Memo. of Law at 29. The agency asserts that it would be unreasonable to assume this meant anything other than one planned repoint. Id.

The protester argues repeatedly, and in a variety of ways, that Artel's quotation failed to demonstrate compliance with the experience requirements. We have considered each argument, but do not find that they provide any basis to sustain the protest. In short, while the protester disagrees with the agency's Phase 1 evaluation, it has not shown that the agency's evaluation was unreasonable or that the award violated the terms of the RFQ.

The protester next alleges that the agency's best-value determination was inconsistent with the RFQ's evaluation criteria, asserting that it failed to give adequate consideration to risk. Protest at 18-20; Supp. Protest at 11.

The RFQ provided for a best-value determination based on evaluating price and past performance, giving equal weight to both factors. While the RFQ stated that the agency would be "averse to risk" in determining which vendor's quotation represented the best value, risk itself was not a required element in the best-value determination. The protester's argument that the solicitation required a tradeoff decision to "consider an assessment of the relative risks presented by competing proposals," and that the "selection decision would be based on aversion to risk" simply overstate the terms of the RFQ in this regard.

The record shows that the SSA considered the protester's and awardee's past performance and price in making the award determination, as required by the RFQ. See AR, Tab 9, Award Decision, at 12-13. For example, in making her decision, the SSA stated that the protester's higher past performance rating was not worth the nearly \$585,000 price premium considering the substantial confidence indicated by the awardee's past performance references and its significantly lower price. Additionally, the SSA's decision to avoid the financial risk imposed by the protester's higher price aligns with the RFQ statement that the highest-rated vendor may not be selected for award. On this record, we find no merit to the protester's argument.

Finally, the protester asserts that the agency allowed the awardee to revise its quotation after discussions were complete, and that the questions posed to Artel following the submission of revised quotations constituted unequal discussions. Supp. Protest at 10. Specifically, the protester alleges that the agency's questions provided the awardee with guidance on which aspects of its revised quotation could be materially enhanced to increase the potential for award, and that the agency relied on the awardee's responses in finding Artel's revised quotation acceptable. Comments at 2, 7-8. In response, the agency asserts that Artel's revised quotation was already found acceptable when the challenged exchanges took place, and that the agency merely sought clarification of information already contained in Artel's revised quotation. The record supports this assertion.¹¹

Under Federal Acquisition Regulation (FAR) § 15.306(d), discussions are exchanges with offerors after the establishment of a competitive range. Such exchanges are supposed to be tailored to each offeror's unique proposal or quotation, with the intent of obtaining revisions through bargaining, give and take, attempts at persuasion, the alteration of assumptions and positions, and negotiations. FAR § 15.306(d). In contrast, clarifications are not used to cure deficiencies or materially alter the technical or cost elements of a proposal or quotation, but are limited to enhancing the agency's understanding and allowing reasonable interpretation of proposals or facilitating the agency's evaluation process. FAR § 15.306(b)(2). Requesting clarifications from one offeror does not trigger a requirement that the agency seek clarifications from other offerors. Serco Inc., B-406061.1, B-406061.2, Feb. 1, 2012, 2012 CPD ¶ 61.

On this record, including the questions posed to Artel after the submission of revised quotations as well as Artel's responses, we conclude that the agency found Artel's revised quotation acceptable prior to its submission of responses to the agency's questions. Additionally, the record shows that the questions were intended to enhance the agency's understanding of information already contained in the quotation. For example, the questions sought additional information to clarify the type of satellites and satellite locations referenced in Artel's description of its experience in its quotation. Artel did not further revise its quotation in response to the agency's clarification questions or provide any information that was necessary

¹¹ Even if we found these exchanges to constitute discussions, we point out that the agency's questions concerned Phase 1 of the evaluation, under which quotations were to be evaluated as acceptable or unacceptable. In such situations, we have recognized that an agency properly may conduct discussions with only those offerors whose proposals are unacceptable. Presidio Networked Solutions, Inc. et al., B-408128.33 et al., Oct. 31, 2014, 2014 CPD ¶ 316 at 8; see also Zodiac of North America, B-409084 et al., Jan. 17, 2014, 2014 CPD ¶ 79 at 4; Commercial Design Group, Inc., B-400923.4, Aug. 6, 2009, 2009 CPD ¶ 157 at 3.

to make the quotation acceptable. AR, Tab 7, Artel Response to SSEB Questions. Accordingly, we do not view these exchanges as discussions.

The protest is denied.¹²

Susan A. Poling
General Counsel

¹² Hughes raised multiple arguments in addition to those that we discuss in this decision. While we only addressed what we regard as the protester's strongest arguments, we did consider all of the arguments, and find that none provide a basis to sustain the protest.