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Decision

Matter of: Knight Sky, LLC

File: B-415992; B-415992.2

Date: May 9, 2018

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Heather Weiner, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the evaluation of the awardee's technical quotation is denied where the record establishes that the agency's evaluation was reasonable and consistent with the evaluation criteria.
 2. Protest that awardee's quotation was non-compliant because it failed to provide a letter of supply from the satellite owner is denied where the solicitation did not include such a requirement.
 3. Protest alleging that the awardee's quotation violates the applicable limitation on subcontracting is denied where the awardee's quotation does not show, on its face, that the awardee will not comply with the limitation.
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DECISION

Knight Sky, LLC, of Frederick, Maryland, a small business, protests the issuance of a task order to Simba Enterprises, LLC (SimbaCom), of Leesburg, Virginia, under request for quotations (RFQ) No. RFQ1252750, issued by the Department of Defense, Defense Information Systems Agency (DISA), for satellite and network services. Knight Sky challenges the agency's evaluation of the awardee's technical quotation. The protester also contends that the awardee's quotation failed to include required subcontractor agreements, as well as failed to comply with the applicable limitation on subcontracting.

We deny the protest.

BACKGROUND

On October 4, 2017, DISA posted the RFQ on the General Services Administration's (GSA) e-Buy website.¹ The solicitation was issued as a total small business set-aside under the Federal Supply Schedule (FSS) procedures of Federal Acquisition Regulation (FAR) subpart 8.4. The solicitation was limited to vendors holding FSS contracts under Schedule No. 70, information technology, special item number (SIN) 132-55, commercial satellite communications subscription services; SIN 132-51, information technology professional services; and SIN 132-52, electronic commerce and subscription services. RFQ at 1. The solicitation sought commercial satellite services in support of the U.S. Army North (ARNORTH) network.² The RFQ anticipated the issuance of a fixed-price task order, for a base year and four 1-year options. RFQ at 1.

The RFQ provided for award using a lowest-price, technically acceptable source selection process, considering technical approach and price. RFQ at 3-7. Under the technical approach factor, the RFQ identified six subfactors.³ The solicitation specified that each of the technical approach subfactors would be rated as acceptable or unacceptable. Id. at 4. In addition, the solicitation provided that quotations must receive a rating of at least acceptable under each subfactor to be considered for award. Id. at 4.

As relevant here, under the terrestrial network subfactor, the solicitation identified four standards that would be evaluated: (1) ARNORTH headquarters and disaster recovery site; (2) defense coordination element regions; (3) terminals; and (4) transitions. Id. at 6-7. Specific to the fourth standard--transition--the RFQ specified: "The contractor shall have 90 days from the start of the period of performance to transition ARNORTH users from the incumbent's network to the contractor's network." Id. at 7.

Under subfactor 1 (required space segment coverage) and subfactor 2 (required space segment capacity and quality), the RFQ identified the specific space segment standards necessary to perform the satellite services required under the task order. RFQ at 4-5.

¹ The RFQ was amended six times. References herein are to amendment 0006, which consists of a conformed copy of the RFQ that is inclusive of all amendments. Combined Contracting Officer Statement and Memorandum of Law (COS/MOL) at 2.

² Specifically, the solicitation provided that the scope of the contract would include: commercial satellite bandwidth, redundant geographically separate teleports, internet access, multiprotocol label switching (MPLS) terrestrial network connectivity, Voice over Internet Protocol (VoIP) services, and radio frequency engineering. RFQ, Performance Work Statement (PWS), at 2.

³ These included: subfactor 1 (required space segment coverage); subfactor 2 (required space segment capacity and quality); subfactor 3 (teleport services); subfactor 4 (VoIP services); subfactor 5 (terrestrial network); and subfactor 6 (information assurance). RFQ at 4-7.

The RFQ provided that a contractor's technical solution must meet all of the standards to be rated acceptable, and that the contractor "shall submit interconnect agreements, subcontractor agreements, or other contractual agreements that require space segment owner to provide the identified services in support of the contractor's quote." Id. at 4. The RFQ advised that "[a] quote without such agreement will not be considered." Id.

In addition, of relevance here, the RFQ incorporated, by reference, FAR clause 52.219-14, Limitations on Subcontracting (Jan. 2017). RFQ, attach. 4 (Provisions/Clauses), at 1. This clause provides, in relevant part:

(c) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for--

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(1) Services (except construction). At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.

FAR clause 52.219-14(c)(1).

The agency received quotations from seven vendors, including Knight Sky and SimbaCom. Agency Report (AR), Tab 5, Price Negotiation Memorandum (PNM), at 3. After the evaluation, the agency determined that SimbaCom's quotation was lowest-priced and technically acceptable. AR, Tab 4, Source Recommendation Document (SRD), at 18. Accordingly, the agency issued the task order to that vendor. Id. This protest followed.

DISCUSSION

Knight Sky raises three grounds for protest. First, Knight Sky contends that DISA should have found SimbaCom's quotation technically unacceptable under the terrestrial network subfactor, for failing to comply with the transition standard. Second, the protester asserts that SimbaCom's quotation failed to include required subcontractor agreements, and therefore, should have been found non-compliant with the terms of the RFQ. Third, Knight Sky argues that SimbaCom's quotation, on its face, should have led DISA to conclude that the awardee had specifically taken exception to the subcontracting limitation in FAR clause 52.219-14(c)(1). For the reasons discussed below, we find no basis to sustain the protest.⁴

⁴ Although this decision does not discuss all of the protester's arguments in detail, we have reviewed each and conclude that none provides a basis to sustain the protest.

Evaluation of Transition Standard

Knight Sky first argues that DISA should have rejected SimbaCom's quotation as unacceptable under the technical approach factor. Specifically, the protester contends that SimbaCom's quotation failed to comply with the transition standard under the terrestrial network subfactor.

Where, as here, an agency issues a solicitation to FSS contractors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. Digital Sols., Inc., B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4; DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2. In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate the quotations; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. OPTIMUS Corp., B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4. A protester's disagreement with the agency's judgment does not establish that an evaluation was unreasonable. DEI Consulting, supra.

As noted above, the RFQ specified that, to be rated acceptable, the vendor's technical solution must meet the following transition standard: "The contractor shall have 90 days from the start of the period of performance to transition ARNORTH users from the incumbent's network to the contractor's network." RFQ at 7. The RFQ also provided that "[t]he technical portion of the [quotation] shall include information regarding the [vendor's] ability to conform to all required terms and conditions in the solicitation." Id. at 3.

DISA determined that SimbaCom's quotation met the RFQ's transition standard. AR, Tab 4, SRD, at 12. Specifically, the evaluators explained that "SimbaCom's quotation stated that 'Simba[C]om understands that [it has] 90 calendar days from the start of the period of performance to transition ARNORTH users from the incumbent's network.'" Id. The evaluators also noted that "Simba[C]om will work with the incumbent and the Government to ensure a smooth transition and to maintain network support and services to all ARNORTH satellite terminals and terrestrial locations throughout the transition period." Id.

The protester disagrees with the agency's conclusion that SimbaCom's quotation met the transition standard, arguing that, contrary to the RFQ's requirements, SimbaCom failed to provide any explanation detailing how it would meet the 90-day transition period. Protester's Comments at 3. The protester adds that, in contrast, Knight Sky's quotation "provide[d] significantly greater detail on how it will effectuate the transition." Protester's Comments at 5. The protester maintains that the detail in Knight Sky's quotation "highlights the level of detail missing from SimbaCom's." Id. at 6.

Based on our review of the record, we find reasonable the agency's conclusion that SimbaCom's quotation met the RFQ's transition standard. Although the protester asserts that the section of Knight Sky's quotation addressing transition was longer and

more detailed than SimbaCom's, the information provided in SimbaCom's quotation, as determined by the agency, addressed the vendor's ability to "conform to [the] required terms and conditions in the solicitation," as specified by the RFQ. RFQ at 7. Contrary to the protester's assertion, the RFQ did not require that vendors provide a detailed transition plan. Rather, as the agency notes, the RFQ required only that the contractor demonstrate it would comply with the 90-day requirement. COS/MOL at 4. On this record, we find no basis to sustain the protest.

Compliance with Letter of Supply Requirement

Knight Sky next contends that SimbaCom's quotation failed to include the required letter of supply concerning availability of bandwidth, and therefore, should have been found non-compliant and ineligible for award. Specifically, the protester contends that the RFQ required proof from the "satellite owner," rather than from the "satellite segment owner." As discussed below, we find no merit to the protester's argument.

As relevant here, the RFQ sought "non-pre-emptible, contiguous Ku-band satellite bandwidth on two satellites to support a total aggregate throughput capacity of 34.752 Megabits per second," for two specified coverage areas. AR, Tab 4, SRD, at 1. The RFQ required that the contractor submit "interconnect agreements, subcontractor agreements, or other contractual agreements" that require the "space segment owner" to provide the "identified services in support of the contractor's quote." RFQ at 4. In other words, the RFQ required proof of bandwidth availability.

SimbaCom's quotation included a letter of supply from its subcontractor, [DELETED]. AR, Tab 2E, SimbaCom Tech. Quotation, attach. B-1. This letter stated that, "upon notification from [SimbaCom] that it has received an award from the Government to perform [the] task order," [DELETED] will "supply bandwidth and other network services" pursuant to a subcontract agreement to be executed by the parties.⁵ Id. In evaluating SimbaCom's quotation, the agency determined that SimbaCom's letter of supply from [DELETED] satisfied the RFQ requirement to "submit interconnect agreements, subcontractor agreements, or other contractual agreements" that "require [the] space segment owner to provide the identified services in support of the [vendor's] quote." AR, Tab 4, SRD, at 16. In this regard, the agency explains in response to the protest that [DELETED] is "well-known within the commercial SATCOM industry" and a "known supplier of bandwidth." Declaration of DISA, Infrastructure Enterprise Directorate, Satellite Communications (SATCOM) Division, Acquisition Manager & Program Analyst (Mar. 3, 2018), at 3-4.

⁵ The letter also explained that [DELETED] would provide "[DELETED]" and "[DELETED]." Id. In addition, the letter advised that [DELETED] would provide access to the [DELETED] satellite from the [DELETED], as well as access to the [DELETED] satellite from the [DELETED]. Id.

The protester maintains that the letter of supply from [DELETED] fails to meet the RFQ's requirements "[c]oncerning [a]vailability of [b]andwidth." Protester's Supp. Comments at 4. In making this assertion, the protester does not deny that [DELETED] is a wholesaler of bandwidth. Rather, Knight Sky alleges that "when the letter of supply comes from other than the satellite owner, the Agency has no proof that the entity purporting to provide the bandwidth has purchased that bandwidth from the satellite owner." Id. In this regard, the protester contends that "only [DELETED] [, the satellite owner,] has the ability to certify the provision of bandwidth from the satellites." Id. at 3.

The agency agrees with the protester that [DELETED] is the owner of the relevant satellites. The agency disagrees, however, that the "space segment owner" must be the satellite owner, as the protester asserts. Instead, the agency explains in response to the protest that a "space segment owner" is a supplier of "bandwidth." Supp. AR at 2. In this regard, the agency explains that, in the satellite communications [SATCOM] industry, "[s]atellite owners sell bandwidth on their satellites to end-users and also to wholesalers." Declaration of DISA, Infrastructure Enterprise Directorate, SATCOM Division, Acquisition Manager & Program Analyst (Mar. 3, 2018), at 2. The agency further explains that "[w]holesalers buy bandwidth in bulk and then resell it in smaller increments," and that "[e]nd-users can also resell bandwidth that they do not use." Id. With regard to the term "space segment owner" in the RFQ, the agency states that it intentionally used the term "space segment owner," instead of "satellite owner," to allow for "suppliers other than the satellite owner/operators to provide the bandwidth." Id.

Based on the record, we see no indication that the agency failed to evaluate SimbaCom's quotation in accordance with the RFQ. As noted above, the RFQ required the provision of interconnect agreements, subcontractor agreements, or other contractual agreements that required the "space segment owner" to supply the required bandwidth. RFQ at 4. SimbaCom's subcontractor, [DELETED]--a wholesaler of bandwidth-- provided a letter of supply committing to supply the bandwidth required by the RFQ. Although Knight Sky asserts that this letter of supply was deficient because it did not provide proof that the entity providing the bandwidth (i.e., [DELETED]) had purchased that bandwidth from the satellite owner, we see nothing in the RFQ that required the space segment owner to explain its relationship with, or provide a letter of supply from, the satellite owner.⁶ The protester has failed to demonstrate that the solicitation included such a requirement or that the agency's evaluation was otherwise unreasonable or improper. On this record, we find no basis to sustain the protest.

⁶ We also find the protester's argument that the "space segment owner" equated to "satellite owner" unavailing in light of the fact that Knight Sky's quotation also did not include proof of supply from [DELETED], the satellite owner. Rather, similar to SimbaCom, Knight Sky's quotation included only a letter of supply from the bandwidth wholesaler. Protester's Comments, exh. A, at 1.

Compliance with Subcontracting Limitations

Finally, Knight Sky claims that SimbaCom's quotation, on its face, demonstrates that SimbaCom lacks the experience and personnel necessary to perform the percentage of work required by the subcontracting limitation clause. As such, the protester maintains that SimbaCom's quotation demonstrates that SimbaCom has not agreed to comply with the subcontracting limitation clause.

In support of its argument, Knight Sky asserts that, although SimbaCom's quotation is "purposefully vague" regarding which entities will perform various elements of the task order, details of the awardee's quotation show that SimbaCom's subcontractor, [DELETED], will actually perform key requirements, and provide the direct labor, required for the task order. Protester's Comments at 8-9. For instance, SimbaCom's quotation states that "[t]he Simbacom Network Operations Center (NOC)" will perform the network monitoring and operations support requirements, and also that the "Simba[C]om NOC is located in [DELETED]." AR, Tab 2E, SimbaCom Tech. Quotation, at 4, 12-13. The protester points out, however, that SimbaCom is headquartered in Leesburg, Virginia and also asserts that "publicly available information does not indicate SimbaCom has any other physical facilities." Protester's Comments at 9. The protester also notes that SimbaCom's subcontractor, [DELETED], is "coincidentally" located in [DELETED]. Id. at 9. Thus, the protester claims that this information "shows that [DELETED], not SimbaCom, will be running the Network Operations Center and the associated direct labor."⁷ Id. As another example, the protester contends that, because "it is [DELETED]--not SimbaCom--who has the relationship and required agreements" with the satellite owner, it is [DELETED] "that will be managing the satellite operator and providing the direct labor associated with this key requirement." Id.

DISA responds that none of the statements in SimbaCom's quotation expressly indicates, or even implies, that SimbaCom would not provide at least 50 percent of the labor to perform the contract. Rather, as the agency points out, the references to

⁷ The protester also points to other statements in SimbaCom's quotation, which the protester asserts, demonstrate that [DELETED], rather than SimbaCom, will be providing the direct labor required to perform the work. See, e.g., AR, Tab 2E, SimbaCom Tech. Quotation, at 8 ("SimbaCom will utilize [DELETED]'s MPLS network and [DELETED]-managed edge routers at the teleports and each of the Government sites to provide MPLS terrestrial connectivity between the teleports and all Government locations[.]"); id. ("[Virtual Routing and Forwarding] VRF2 will provide the connectivity between the commercial teleports, ARNORTH [h]eadquarters, and the commercial Internet via the [DELETED] [period of performance] in Herndon, Virginia."); id. at 9 ("Simbacom will work with [DELETED] and ARNORTH network engineers to perform the following: allow Virtual Private Networks over the MPLS network; configure Border Gateway Protocol with authentication and filtering for ARNORTH sites and terminals; and allow required ports, protocols, and Internet Protocol's to and from all ARNORTH subnets.").

[DELETED] indicate that SimbaCom will work with [DELETED], but do not specify how the work will be divided between the two. In addition, the agency points to various statements in SimbaCom's quotation where the vendor states that it will provide the required labor to perform the contract. See, e.g., AR, Tab 2E, SimbaCom Tech. Quotation, at 7, 9, 10-12. Further, the agency notes that [DELETED]'s letter of supply specified that [DELETED] would only be providing the satellite bandwidth and Multi-Protocol Label Switching (MPLS) terrestrial network connectivity, not any labor tied to the PWS requirements. COS/MOL at 8. Thus, DISA disagrees with the protester that SimbaCom's quotation demonstrated that SimbaCom intends to rely primarily upon its subcontractor to perform the contract.

As a general matter, an agency's judgment as to whether a small business vendor will comply with the subcontracting limitation clause is a matter of responsibility, and the contractor's actual compliance is a matter of contract administration. Raloid Corp., B-297176, Nov. 10, 2005, 2005 CPD ¶ 205 at 4. Neither issue is one that our Office generally reviews. 4 C.F.R. § 21.5(a), (c). However, where a quotation, on its face, should lead an agency to conclude that a vendor has not agreed to comply with the subcontracting limitation, the matter is one of the quotation's acceptability. See TYBRIN Corp., B-298364.6, B-298364.7, Mar. 13, 2007, 2007 CPD ¶ 51 at 5-6. This is because the limitation on subcontracting is a material term of the solicitation, and a quotation that fails to conform to a material term or condition of a solicitation is unacceptable and may not form the basis for an award. See Addx Corp., B-404888, May 4, 2011, 2011 CPD ¶ 89 at 3-4.

A vendor, however, need not affirmatively demonstrate compliance with the subcontracting limitations in its quotation. See Express Med. Transporters, Inc., B-412692, Apr. 20, 2016, 2016 CPD ¶ 108 at 6. Rather, such compliance is presumed unless specifically negated by other language in the quotation. Id. While this language may be rebutted by other language in the quotation, it is the protester that bears the burden to affirmatively demonstrate that the awardee's quotation takes exception to the limitations on subcontracting. Id. Mere assumptions, inferences, and speculation are generally insufficient to demonstrate noncompliance. Id. at 7.

Here, based on our review of the record, we conclude that nothing on the face of SimbaCom's quotation would have led DISA to conclude that SimbaCom would not comply with the subcontracting limitation. To the contrary, SimbaCom's quotation included numerous statements that it would provide the NOC and engineering support. See, e.g., AR, Tab 2E SimbaCom Tech. Quotation, at 7 ("SimbaCom will provide procedures, network configuration, and support to the Government for network operations[.]"); id. at 9 ("SimbaCom will provide the Government with a single point of contact (POC) to manage the transition," and "[d]uring the transition period the Simba[C]om POC will provide weekly updates to the ARNORTH G6 IT Director."); id. ("SimbaCom will provide an engineer to serve as the focal point of contact with ARNORTH," and "[t]his Engineering Support liaison will be available to the ARNORTH representative[s] from 7:00 am to 5:00 pm Central time Monday through Friday[.]"); id. ("SimbaCom-provided services will be supported by [electromagnetic interference/radio frequency interference] EMI/RFI identification, characterization, and geo-location

capability to support resolution of purposeful and accidental incidents of interference.”); id. at 10 (“SimbaCom will monitor and test transponder, earth terminal, and associated terrestrial interconnection resources provided under this contract to maintain positive control of the services provided.”); id. (“Simba[C]om will collect operational data and report the fault information as required to the [government].”); and id. at 10 (“Simbacom will electronically report fault information for incident signal parameters, out-of-tolerance alarms, and carrier-related alarms via trouble tickets.”).

In addition, SimbaCom’s quotation expressly stated that its solution was “fully compliant with the Government’s requirements and expectations.” Id. at 4. Furthermore, the letter of supply from SimbaCom’s subcontractor, [DELETED], specified that [DELETED] would provide only the satellite bandwidth and MPLS terrestrial network connectivity, and not any labor in support of the PWS, as the protester asserts. Id., Appendix B, Letters of Supply.

Although Knight Sky challenges whether SimbaCom will perform the majority of the task order work, the protester’s allegations rely, in part, on “publicly available information” not included in SimbaCom’s quotation. Protester’s Comments at 9. Moreover, speculation regarding a vendor’s facility or number of employees does not establish that the vendor takes exception to the subcontracting limitation. See Reliable Builders, Inc., B-402652, B-402652.3, June 28, 2010, 2010 CPD ¶ 260 at 4, 5 (allegations that a firm lacks office space, licenses, and staff does not provide a basis for finding that the firm takes exception to the subcontracting clause in its quotation); see Raloid Corp., supra, at 4 (allegations that a vendor does not have adequate facilities, equipment, or employees to perform the contract does not provide evidence that the firm cannot or will not comply with the subcontracting clause).

In sum, nothing in our review of SimbaCom’s quotation, including those sections highlighted by Knight Sky, would have reasonably led the agency to conclude that the awardee had taken exception to the limitation on subcontracting. Where, as here, a vendor submits a quotation in response to an RFQ that incorporates FAR clause 52.219-14, the vendor agrees to comply with the limitation; in the absence of any contradictory language, the agency may presume that the vendor agrees to comply with the subcontracting limitation. CR/ZWS LLC, B-414766, B-414766.2, Sept. 13, 2017, 2017 CPD ¶ 288 at 9. Here, we have no basis to question the agency’s reliance on SimbaCom’s representations in concluding that SimbaCom agreed to perform as required.

The protest is denied.

Thomas H. Armstrong
General Counsel