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Decision

Matter of: Advanced Technology Systems, Inc.

File: B-298854; B-298854.2

Date: December 29, 2006

William A. Roberts, III, Esq., Richard B. O’Keeffe, Jr., Esq., Michael S. Caldwell, Esq., and Jon W. Burd, Esq., Wiley Rein & Fielding LLP, for the protester.

John Bell, Esq., John Bell Law Office, for Binary Information Technology, Inc., an intervenor.

Faisal Siddiqui, Esq., Export-Import Bank of the United States, for the agency.

Paula A. Williams, Esq., and Glenn G. Wolcott, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging evaluation of quotations for information technology (IT) services is denied where the record establishes that the agency’s evaluation was reasonable and consistent with the evaluation criteria and the record supports the agency’s source selection decision.

DECISION

Advanced Technology Systems, Inc. (ATS) protests the issuance of a task order by the Export-Import Bank of the United States (Ex-Im Bank)¹ to Binary Information Technology, Inc. (BIT) under that firm’s General Services Administration (GSA) Federal Supply Schedule (FSS) contract, pursuant to request for quotations (RFQ) No. EXIM-06-Q-0019 to obtain IT support services.² ATS challenges the agency’s

¹ The stated objective of the Ex-Im Bank is to “work towards leveling the playing field for American exporters by matching officially supported foreign competition and filling financing gaps.” RFQ Statement of Work (SOW), at 1. In this regard, the Ex-Im Bank provides working capital guarantees (pre-export financing), export credit insurance (post-export financing), and loan guarantees and direct loans (buyer financing). *Id.*

² Ex-Im Bank conducted this procurement as an FSS purchase under Federal Acquisition Regulation (FAR) Part 8. However, in various places the solicitation refers to vendors’ responses to the solicitation as “proposals.” This inconsistency

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evaluation of quotations and the subsequent decision to issue a task order to BIT, a vendor submitting a higher technically rated, higher priced quotation.

We deny the protest.

BACKGROUND

On July 28, 2006, the Ex-Im Bank issued RFQ No. EXIM-06-Q-0019 to vendors holding FSS contracts for IT services, stating that the agency intended to award a fixed-price, labor-hour, level-of-effort task order for a base year with four 1-year option periods. A primary objective of the solicitation is to obtain IT support services for “EXIM Online”—that is, the agency’s recently-developed “fully integrated web-based transaction processing system for the insurance and medium term guarantee business.”³ RFQ SOW, at 2. The solicitation reflected a combination of requirements previously performed under other contracts by three vendors: ATS, BIT, and BearingPoint, Inc. BearingPoint built and developed the EXIM Online system under a contract that ran from September 2001 to September 2006; BIT and ATS are each incumbent contractors that have performed various IT services for the Ex-Im Bank, including: Oracle database administration support, software quality assurance (QA) services, J2EE (Java 2 Platform Enterprise Edition) development and workflow support for the EXIM Online system, Lotus Notes efforts, and website support.

The solicitation’s SOW described the principal objectives of this requirement as follows: (1) to acquire system development life cycle (SDLC) support to sustain and enhance the agency’s unique and custom-designed EXIM Online system; and (2) to provide programming, maintenance and enhancement support for the content of Ex-Im Bank’s internal and external websites. RFQ SOW, at 2. The SOW advised vendors that the anticipated scope of work would cover three software development environments: (1) Java applications,⁴ including the primary application J2EE and

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does not affect our analysis in this decision. For purposes of accuracy, our decision refers to the vendors’ responses as “quotations.”

³ The solicitation elaborated that “EXIM Online supports the processes necessary to manage the entire life cycle of an insurance policy from application through underwriting to policy generation.” RFQ SOW, at 5.

⁴ The RFQ advised vendors that “The primary Java application at Ex-Im Bank is the Exim Online system.” RFQ SOW, at 2.

four Documentum applications;⁵ (2) Lotus Notes applications; and (3) Ex-Im Bank's internal and external websites. Id. at 2-3.

The SOW required vendors to propose personnel, materials, and equipment to perform the following functions--transition, SDLC support,⁶ web maintenance, and QA testing--and provided the following estimated levels of effort projected for each function:

<u>Function</u>	<u>Hours</u>
1. J2EE	13440
2. Lotus Notes	3840
3. Web Maintenance	3360
4. QA Testing	1920

RFQ SOW, at 4-9, 18.

The solicitation advised vendors that award would be based on the quotation determined to be the "best value" to the government, price and other factors considered, and established the following evaluation factors: (1) resumes and references of proposed staff; (2) proposed staffing mix; (3) management/technical approach; (4) corporate experience/past performance; and (5) price. RFQ SOW, at 18-19. The solicitation provided that the evaluation factor regarding the resumes of proposed staff was considerably more important than any other evaluation factor, stating that consideration of this factor alone would reflect "roughly half of the value of all technical criteria." Id. at 18. The solicitation further stated that the next evaluation factor, proposed staffing mix, was "more important than management approach and corporate experience/past performance combined." Finally, the solicitation provided that "[p]rice is a significantly less important consideration than technical capabilities." Id. at 18-19.

⁵ The solicitation referenced "Documentum eContent Server," "Documentum Captiva InputAccel," "Documentum Rendition Server," and "Documentum Media Server." Id. at 2.

⁶ The requirement for SDLC support requires the contractor to provide engineering support for J2EE and Lotus Notes applications. RFQ SOW, at 4.

In addressing the specific criteria against which proposed personnel would be evaluated, the solicitation stated:

Key Personnel:^[7] The Government will evaluate the offeror on the experience skills and qualifications of the proposed Key personnel to successfully complete the requirements of this SOW. The Government will evaluate the proposed Key Personnel's ability to successfully complete the requirements based upon their recent past success and productivity on relevant projects.^[8]

RFQ SOW, at 16.

ATS and BIT each submitted quotations responding to the RFQ.⁹ A technical evaluation panel (TEP) rated the vendors' quotations under the non-price criteria using a qualitative adjectival rating system.¹⁰

In its quotation, BIT proposed a total of 13 personnel. Of these, six were proposed to support the EXIM Online system, and five had direct experience, as former employees of BearingPoint, in building and developing the EXIM Online system. Additionally, five individuals had experience with Documentum applications, and all had provided executed letters of commitment to BIT. BIT's initial quotation reflected a price of [DELETED] for the base year and a total price of [DELETED].

ATS's quotation proposed a total of 12 personnel, six of whom were dedicated to support the EXIM Online system. However, in contrast to BIT's quotation, none of the six proposed personnel had any experience in developing or building the EXIM Online system; rather, three were ATS incumbent personnel with only limited experience with EXIM Online through ATS's prior support contract, and three were

⁷ As amended, the solicitation provided that all proposed personnel were considered key personnel and required submission of resumes for all personnel.

⁸ The solicitation further provided: "Letters of commitment from proposed individuals will have an impact on the Government's assessment of the stability of the proposed staffing plan." RFQ SOW, at 19.

⁹ BearingPoint also submitted a quotation. That quotation was not selected for award, BearingPoint has not protested its nonselection, and the agency's evaluation of its quotation is not relevant to the issues raised in ATS' protest. Accordingly, BearingPoint's quotation is not further discussed.

¹⁰ Quotations were rated as either "outstanding" (outstanding in all aspects); "very good" (above average in all aspects); "average" (adequate overall/needs some improvement); or "poor" (inadequate proposal/does not meet SOW). Agency Report (AR) exh. 7, Evaluators' Worksheet.

newly-hired personnel with no institutional knowledge of the EXIM Online system. ATS's initial quotation reflected a task order price of [DELETED] for the base year and a total price of [DELETED].

Following the initial evaluation of quotations, Ex-Im Bank opened discussions with the vendors during which the agency identified certain weaknesses in the vendors' quotations. In conducting written discussions with ATS, the agency stated:

The proposal contains the following weaknesses:

- A well written transition plan which generally offsets a need for greater depth and breadth of knowledge of EXIM Online in the total proposed staffing picture. But lacking commitments of any significant contribution by additional incumbent EXIM-On-Line contractor personnel in the staffing mix, support capability in this area is a concern in terms of possible disruption to current delivery schedules and commitments.
- No documented Documentum experience outside of exposure provided by the Bank's EXIM Online. JAVA developer experience is weak. QTP [QuickTest Pro] experience not evident.

AR exh. 9, Discussion Letter to ATS.

In conducting written discussions with BIT, the agency advised BIT that:

The proposal contains the following weakness:

- Proposed staff does not reflect the required skills and experience for Lotus Notes support and Web support described in the [SOW].
- The proposal reflects a feasible approach to EXIM Online support via a significant contribution from incumbent contractor staff; however, the offeror appears to be relying heavily on this at the expense of providing a detailed transition plan. The transition plan is not adequate.

AR exh. 9, Discussion Letter to BIT.

Thereafter, ATS and BIT each submitted final revised quotations. In its revised quotation, ATS acknowledged the agency's concern regarding the lack of incumbent personnel, stating that it had "entered into preliminary discussions with several of

these personnel,” and had “made contingent offers to two,” but added that “all of these incumbent personnel were unable to commit to ATS.”¹¹ AR exh. 18, ATS’s Revised Quotation, at 1-1. As it had in its initial quotation, ATS continued to propose its own personnel to support EXIM Online, only three of whom had any experience with the EXIM Online system. Id.

In responding to the agency’s concern regarding lack of personnel with Documentum experience, ATS asserted that two of the proposed individuals had experience “beyond the exposure that our current ATS staff have in support[ing] EXIM Online.” ATS maintained that one of the individuals—who had never worked on the EXIM online system—had gained Documentum experience under another contract, and that a second proposed individual had “completed a three-day Documentum Boot Camp.”¹² AR exh. 18, ATS’s Revised Quotation, at 1-6.

Finally, in responding to the need for personnel with QTP expertise, ATS stated that one of the individuals it proposed “has significant experience using automated testing tools but does not have direct experience using QuickTest Pro,” adding that this individual “is currently undergoing training on QuickTest Pro in anticipation of the EXIM award.” AR exh. 18, ATS’s Revised Quotation, at 1-8.¹³ ATS asserted that the individual that was “currently undergoing training on QuickTest Pro” would be “fully capable of handling all QTP requirements by the completion of the transition period.” Id. ATS made no changes with respect to its task order prices.

In its revised quotation, BIT provided a more detailed transition plan and changed its entire personnel proposed for the Lotus Notes and web support functions. In doing so, BIT added two Lotus Notes specialists with nine and ten years experience, respectively, and two web development specialists with seven and five years experience, respectively. In its revised quotation BIT raised its task order prices from [DELETED] to \$1,897,919.60 for the base year, and its total price increased from [DELETED] to \$10,487,203.86. AR exh. 24, BIT’s Revised Quotation, at 5, 7, 8-12, 18, 25.

¹¹ In its revised quotation, ATS elaborated that it “was not prepared to offer employment to the entire BearingPoint team but rather just a subset of that team.” AR exh. 18, ATS’s Revised Quotation, at 1-1.

¹² ATS elaborated that the “Boot Camp” had “provided a technical introduction to the basic operations of the Documentum Content Server platform and a general overview of Documentum technology and products.” AR exh. 18, ATS’s Revised Quotation, at 1-6.

¹³ ATS’s revised quotation also proposed a second individual with QTP experience, to be used only as a consultant “to provide additional support” on a limited basis. Id. at 1-8.

Thereafter, the revised quotations were evaluated by the TEP and assigned consensus ratings. ATS's quotation was rated "average;" BIT's quotation was rated "very good." Contracting Officer's Statement (COS) at 24. In documenting the basis for the ratings, the agency evaluators repeatedly referenced the greater experience of BIT's personnel regarding the solicitation requirements requiring capabilities with J2EE and Documentum.¹⁴ For example, the agency evaluators described BIT's quotation as having "Strong J2EE, [and] Documentum . . . experience," and noted that "[BIT's] [p]roposed staff consists of mostly incumbents very knowledgeable on EXIM Online system." AR exhs. 12 and 13, Evaluator Worksheets. In contrast, in evaluating ATS's quotation, while the evaluators recognized the "Strong" experience of ATS's personnel with regard to Lotus Notes,¹⁵ they also repeatedly documented their assessments that ATS's proposed personnel were "less Experienced Java Developers." Id.

The contracting officer, who served as the source selection authority, determined that BIT's quotation offered a technical advantage over ATS's quotation because the agency "would secure the best EXIM Online team for the best price" even though BIT's quotation "was not the cheapest proposal." COS at 28; AR exh. 6, Contracting Officer's Determination and Findings. Accordingly, BIT's quotation was selected for award and ATS was notified of the selection. This protest followed.

DISCUSSION

At the outset, ATS complains that the agency record contains limited contemporaneous documentation indicating how the agency reached the evaluation ratings and, similarly, that the source selection decision was insufficiently documented. In response, the agency notes that the members of the TEP reviewed the vendors' submissions and individually documented their ratings of each quotation, then met as a group, discussed their assessments of each vendor's submissions, and documented a consensus rating for each vendor.

In reviewing protests against allegedly improper evaluations, we examine the record to determine whether the agency's judgment was reasonable and in accord with the

¹⁴ As noted above, the solicitation specifically advised vendors that the anticipated level of effort involving J2EE was more than 3 times the anticipated level of effort involving Lotus Notes, web maintenance, or QA testing; and nearly 50 percent greater than the requirements for all of these other functions combined. RFQ SOW, at 18.

¹⁵ As noted above, the solicitation advised vendors that the level of effort anticipated to provide support services for Lotus Notes was significantly less than the level of effort anticipated to be required to support J2EE.

evaluation criteria listed in the solicitation. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. Implicit in the requirement that the agency's judgment be reasonable is the requirement that these judgments be documented in sufficient detail to show they are reasonable. Advanced Tech. Sys. Inc., B-296493.6, Oct. 6, 2006, 2006 CPD ¶ 151; FAR § 8.405-2.

Here, the evaluation documentation is sufficient in that it includes the TEP evaluators' individual worksheets, the TEP's consensus ratings, and the contracting officer's notes. This evaluation record identifies the various evaluated strengths and weaknesses of the vendors' quotations and clearly formed the basis for the agency's ratings for each quotation, as well as for the source selection decision. See AR exh. 6, CO Determinations and Findings; AR exhs. 10-13, Evaluation Notes. As discussed above, the solicitation provided that the non-price evaluation criteria were more important than price, and the record shows that ATS's quotation was evaluated as offering less experienced personnel with regard to the solicitation requirements that are anticipated to make up the significant majority of the overall contract effort. In this context, the record establishes that the agency concluded that the technical superiority of BIT's quotation warranted payment of a somewhat higher price,¹⁶ and accordingly, represented the best overall value to the government. Based on this record, ATS's assertion that the agency failed to adequately document its evaluation and source selection decision is without merit.

ATS also protests the substance of the agency's evaluation and source selection decisions, first challenging the agency's assessment of various strengths and weaknesses with regard to its own and to BIT's quotations. ATS maintains that but for the allegedly improper assessments, ATS's quotation would have been selected for award.

In the context of an RFQ, where an agency solicits FSS vendor responses and uses an evaluation approach similar to that used in FAR Part 15 negotiated procurements, our Office will review the agency's actions to ensure that the evaluation of vendors' submissions was reasonable and consistent with the solicitation's evaluation criteria and applicable procurement statutes and regulations. Labat-Anderson, Inc., B-287081 *et al.*, Apr. 16, 2001, 2001 CPD ¶ 79 at 5-6; Digital Sys. Group, Inc., B-286931, B-286931.2, Mar. 7, 2001, 2001 CPD ¶ 50 at 6. A protester's mere disagreement with the agency's judgment or its belief that its quotation deserved a higher technical

¹⁶ In the agency report responding to ATS's initial protest, the contracting officer mistakenly referenced a price for BIT's quotation that was slightly less than BIT's final revised price; the contracting officer states that this was a clerical error in preparing the agency's response to ATS's protest. Supplemental COS at 21-23 (Nov. 21, 2006). There is no indication that the agency relied on the erroneous price in making its source selection decision, and we do not view this post-protest clerical error as affecting the merits of the agency's source selection decision.

rating alone is not sufficient to establish that the agency acted unreasonably. Worldwide Language Res., Inc., B-297210 *et al.*, Nov. 28, 2005, 2005 CPD ¶ 211 at 3; Applied Mgmt. Solutions, Inc., B-291191, Nov. 15, 2002, 2002 CPD ¶ 202 at 2.

ATS first complains that the agency unreasonably assigned an “average” rating to ATS’s quotation, as opposed to BIT’s “very good” rating, on the basis that ATS proposed three employees who were new to the EXIM Online portion of the requirements. ATS asserts that this assessment evidences disparate and unequal treatment of ATS in that BIT must have proposed individuals who would be new to the Lotus Notes and web support requirements. Protest at 2; Protester’s Comments at 7 (Nov. 6, 2006). These arguments are without merit.

The RFQ required vendors to describe in their quotations how they intended to “transition the necessary knowledge, skills and understanding of the various systems” from incumbent personnel to the vendors’ staff to avoid disruption of “the flow of existing work tasks in progress and planned for the future.” RFQ amend. 1, at 2. Further, the solicitation provided that the skills and qualifications of proposed personnel would be assessed on the basis of their recent experience with related projects. RFQ SOW, at 16. As noted above, the SOW stated that “[t]he primary Java application at Ex-Im Bank is the Exim Online system,” and provided that work involving the Java application, J2EE, would require approximately 13,440 hours per year—nearly 10,000 hours per year more than the level of effort associated with performance of the Lotus Notes requirements.

Here, as discussed above, the record shows that the agency concluded that BIT’s quotation proposed use of BearingPoint incumbents and, thus, offered strengths and advantages not offered by ATS’s quotation, since the personnel proposed by BIT had created and developed the EXIM Online system. In contrast, the evaluated weaknesses in ATS’s revised quotation included the following: (1) ATS’s proposed personnel lacked direct experience with the EXIM Online system requirements; therefore, ATS’s transition approach posed greater risk of performance; and (2) ATS’s proposed personnel were weak in the areas of Documentum support and QTP experience. The record indicates these distinctions were the primary basis for rating BIT’s quotation as “very good,” and ATS’s quotation as only “average.” Our review provides no basis to question the agency’s assessments in this regard.

ATS also asserts that the agency’s “myopic focus” on simply counting the number of BearingPoint incumbents proposed by each vendor impermissibly led the agency to double-count the same weakness—that is, ATS’s lack of committed BearingPoint incumbents—under more than one evaluation criteria. In ATS’s view, under the stated evaluation scheme, the agency was required to give less weight to this aspect of ATS’s quotation (its lack of committed BearingPoint incumbents) and give “proper credit to the fact that ATS was as good as or better than the other [vendors] in every other facet of this competition.” Protester’s Comments at 2, 12-13 (Nov. 6, 2006).

The record does not support ATS's contentions. Rather, as discussed above, the solicitation identified the various evaluation criteria that would be considered in the agency's overall determination regarding each vendor's likelihood of success in performing the solicitation requirements, and the vendor's ability to do so in a manner that will provide maximum value to the government. ATS was specifically put on notice that the agency would make qualitative distinctions between competing submissions. See RAI, Inc.; The Endmark Corp., B-250663 et al., Feb, 16, 1993, 93-1 CPD ¶ 140 at 6. ATS's complaints regarding alleged evaluation deficiencies offer little more than disagreement with the agency's judgments regarding the relative merits of the competing quotations.

Finally, in its supplemental protest filed with our Office on November 6, ATS alleges that BIT engaged in an impermissible "bait and switch" of the personnel it proposed to perform the Lotus Notes and web maintenance tasks. According to the protester, it allegedly learned that three of the four individuals proposed for these tasks "never showed up to work on the project" and allegedly were replaced by "three entirely new individuals." Supplemental Protest at 22-25 (Nov. 6, 2006).

To establish an impermissible "bait and switch," a protester must show that a firm either knowingly or negligently represented that it would rely on specific personnel that it did not expect to furnish during contract performance, and that the misrepresentation was relied on by the agency and had a material effect on the evaluation results. See Worldwide Language Res., Inc., supra at 5.

As required by the solicitation, BIT proposed four specific individuals to perform the Lotus Notes and web maintenance requirements, and the agency relied on these representations in evaluating the quotation. Our review of the record provides no basis for concluding that BIT misrepresented the availability of the personnel proposed. Rather, the record shows that, after issuance of the task order contract to BIT, one of the two personnel positions proposed by BIT for the Lotus Notes task was eliminated at the request of the agency, and one of the two individuals originally proposed for the web maintenance task by BIT accepted another position and was replaced, with Ex-Im Bank's approval, by an individual considered by the agency to be equally qualified. Supplemental AR at 24-28; Intervenor's Comments at 3-4 (Dec. 5, 2006).

The protest is denied.¹⁷

Gary L. Kepplinger
General Counsel

¹⁷ In pursuing this protest, ATS has made various other collateral arguments regarding the agency's evaluation and source selection decisions. We have reviewed all of ATS's arguments and find no basis for sustaining its protest.