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Decision

Matter of: Navarre Corporation

File: B-419088.4

Date: July 29, 2022

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DIGEST

Protest challenging the agency's technical evaluations of the protester's and awardee's quotations is denied where the agency reasonably evaluated quotations in accordance with the terms of the solicitation.

DECISION

Navarre Corporation, a service-disabled veteran-owned small business (SDVOSB) of Navarre, Florida, protests the issuance of an order to KTS Solutions, Inc., of Portsmouth, Virginia, under request for quotations (RFQ) No. 36C24620Q0421, issued by the Department of Veterans Affairs (VA) for wheelchair van transportation services. Navarre contends the agency's evaluation of quotations and the resulting award decision were unreasonable.

We deny the protest.

BACKGROUND

The solicitation was issued pursuant to the simplified acquisition procedures set forth in Federal Acquisition Regulation (FAR) part 13. Agency Report (AR), Tab 3, RFQ at 43. The RFQ, issued on June 4, 2020, as a SDVOSB set-aside, contemplated the award of a fixed-priced contract for a base period and one 1-year option. *Id.* at 1, 4-7. Award would be made on a best-value tradeoff basis, using the following evaluation factors: technical, past performance, and price. *Id.* at 43, 46. Technical and past performance, when combined, were significantly more important than price. *Id.* at 46.

The procurement here has been a long and contentious one.¹ The VA completed its most recent reevaluation of quotations on April 28, 2022, with the final evaluation ratings and prices of KTS and Navarre as follows:²

	KTS	Navarre
Technical	Good	Satisfactory
Past Performance	Substantial Confidence	Satisfactory Confidence
Price	\$2,510,820	\$2,863,875

AR, Tab 6, Source Selection Decision (SSD) at 21. The contracting officer, who also served as the source selection authority (SSA), determined that KTS’s quotation provided the best value to the government and issued an order to KTS. *Id.* at 22. After receiving a brief explanation of award from the VA on May 3, 2022, Navarre filed this protest with our Office on May 6.³ Contracting Officer’s Statement at 3.

¹ For context, the original order was issued to KTS on August 27, 2020. Memorandum of Law (MOL) at 3. Navarre filed its first protest with our Office on September 4. The agency filed a notice of corrective action, and we dismissed the protest as academic. *Navarre Corp.*, B 419088, Oct. 2, 2020 (unpublished decision). The agency reevaluated quotations and again issued an order to KTS on December 2. MOL at 4. Navarre filed its second protest with GAO on December 10, which our Office denied on March 24, 2021. *Navarre Corp.*, B-419088.2, Mar. 24, 2021, 2021 CPD ¶ 113. The protester then filed a complaint with the U.S. Court of Federal Claims (COFC) on April 28, 2021, which challenged the same award, but also raised new protest grounds. MOL at 4. The VA filed a notice of corrective action at the COFC on July 15. *Id.* On July 16, the COFC issued an order staying the case until the VA completed its corrective action. *Id.* As part of the corrective action before the COFC, the VA issued an amendment to the solicitation, and indicated that revised quotations would be due by November 9, 2021. *Id.* On November 8, Navarre filed a pre-award protest with GAO, challenging the terms of the solicitation amendment. *Id.* On November 16, our Office dismissed Navarre’s protest because of the related protest that was still pending (although stayed) before the COFC. *Navarre Corp.*, B-419088.3, November 16, 2021 (unpublished decision).

² The available adjectival ratings for the technical factor were: excellent, good, satisfactory, and unsatisfactory. For past performance, vendors would be assessed based on one of the following confidence ratings: substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence. RFQ at 47-49.

³ Before submitting this protest to GAO, Navarre filed a motion to voluntarily dismiss its related protest at the COFC on May 2. On May 3, the COFC granted the motion and dismissed Navarre’s protest without prejudice. MOL at 5.

DISCUSSION

The protester argues that the agency unreasonably evaluated quotations from KTS and Navarre. Specifically, Navarre asserts that the VA improperly found KTS to be financially responsible, and that the agency's technical and past performance evaluations of KTS's quotation were flawed. Protest at 2, 4-6. The protester also challenges the evaluation of Navarre's technical quotation. *Id.* at 2. Based on these alleged evaluation errors, Navarre contends the VA's best-value tradeoff determination was improper. *Id.* at 2, 6. We have reviewed all of the protest claims. For the reasons discussed below, we find no basis upon which to sustain this protest.

Affirmative Responsibility Determination

Prior to the agency report due date, the VA requested dismissal of the protest on several grounds. Relevant here, the agency asserted that the protest claim regarding KTS's financial responsibility should be dismissed because a challenge to the agency's affirmative determination of responsibility is not a matter for GAO review. Req. for Dismissal at 4. In this respect, we agree.

Navarre claims that KTS is not financially responsible and that financial responsibility was a material condition of contract award. Protest at 3-4. The VA responds that financial capability was not a separate, material solicitation requirement--as the protester argues--but that the solicitation's instruction simply "reminded offerors of the responsibility assessment, which occurs upon selection as the best value offeror." Req. for Dismissal at 5.

As a general matter, our Office does not review affirmative determinations of responsibility, since the determination that an offeror is capable of performing a contract is largely committed to the contracting officer's discretion. 4 C.F.R. § 21.5(c); *A-B Comput. Sols., Inc.*, B-415819, Mar. 22, 2018, 2018 CPD ¶ 128 at 4. The exceptions to this rule are protests that allege that definitive responsibility criteria in the solicitation were not met and those that identify evidence raising serious concerns that, in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation. *FN Mfg., Inc.*, B-297172, B-297172.2, Dec. 1, 2005, 2005 CPD ¶ 212 at 8-9.

Here, the solicitation instructions advised that for the technical portion of the quotation, "[q]uotes will be considered only from offerors who are regularly established in the business called for and who are financially responsible and have the necessary equipment and personnel to furnish service in the volume required for all items under this contract." RFQ at 44-45. The protester argues that this instruction language "was either an actual evaluation criteria . . . or was, *de facto*, the type of definitive responsibility criteria that 4 C.F.R. § 21.5(c) allow[s] to be protested." Resp. to Req. for Dismissal at 2.

Other than the lone assertion, Navarre has offered no evidence to support its claim that financial responsibility was an “actual evaluation criterion.” Moreover, nowhere in the RFQ does it provide for an evaluation of a vendor’s financial responsibility under the technical factor. See RFQ at 46-50. As such, we agree with the agency that there was no requirement to evaluate financial responsibility as part of the technical evaluation. See *Flight Int’l Grp., Inc.*, B-238953.4, Sept. 28, 1990, 90-2 CPD ¶ 257 at 8 (finding there was no evaluation criterion where the solicitation did not specifically advise offerors that financial condition would be considered in evaluation of proposals); *Delta Data Sys. Corp.*, B-213396, Apr. 17, 1984, 84-1 CPD ¶ 430 at 5 (“An offerors’ financial condition is ordinarily considered a matter of contractor responsibility.”). Rather, the solicitation instruction here simply reminded vendors that a responsibility determination would be made before award--consistent with the requirements of the FAR. See FAR 9.103(b) (“No purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility.”).

Furthermore, the solicitation’s instructions do not constitute a definitive responsibility criterion as the protester also suggests. Definitive responsibility criteria are specific and objective standards, established by an agency for a particular procurement, for use in measuring a bidder’s ability to perform the contract. *Reyna-Capital Joint Venture*, B-408541, Nov. 1, 2013, 2013 CPD ¶ 253 at 2. These special standards limit the class of bidders to those meeting specified qualitative and quantitative qualifications necessary for adequate contract performance. *Id.*; *NEIE Med. Waste Servs., LLC*, B-412793.2, Aug. 5, 2016, 2016 CPD ¶ 213 at 4. Thus, definitive responsibility criteria involve a vendor’s eligibility for award and not its performance obligations under the contract. *ARI Phoenix, Inc.*, B-416878, Oct. 24, 2018, 2018 CPD ¶ 363 at 2-3.

Here, the language regarding vendors’ financial responsibility is included in the RFQ’s instructions to vendors--not in the evaluation criteria--and does not set out a specific, objective standard for measuring a vendor’s ability to perform. Moreover, the RFQ does not otherwise require vendors to establish their qualifications to perform these requirements prior to award. Thus, the solicitation language in question is not a definitive responsibility criterion. As discussed above, the provision expresses, in general terms, a consideration which is encompassed by the contracting officer’s subjective responsibility determination. Our Bid Protest Regulations preclude us from reviewing an affirmative responsibility determination absent a showing that the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation. See *Oceaneering Int’l, Inc.*, B-278126, B-278126.2, Dec. 31, 1997, 98-1 CPD ¶ 133 at 11-12. Since these circumstances are not present here, we will not consider Navarre’s claim. 4 C.F.R. § 21.5(c). As such, this allegation is dismissed.

Past Performance Evaluation

Next, Navarre challenges the evaluation of KTS’s past performance. According to Navarre, the VA should have downgraded KTS’s past performance rating, because “it is

well known in the patient transportation industry that KTS has experienced significant performance issues on a variety of VA contracts.” Protest at 5.

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3557. Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. *Cybermedia Techs., Inc.*, B-405511.3, Sept. 22, 2011, 2011 CPD ¶ 180 at 2. To achieve this end, our regulations, 4 C.F.R. §§ 21.1(c)(4) and (f), require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. *Midwest Tube Fabricators, Inc.*, B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3. Where a protester relies on bare assertion, without further supporting details or evidence, our Office will find that the protest ground essentially amounts to no more than speculation and does not meet the standard contemplated by our regulations for a legally sufficient protest. *PricewaterhouseCoopers Pub. Sector LLP*, B-415129.3, July 31, 2018, 2018 CPD ¶ 272 at 3.

Here, the protester provides no supporting details--let alone *any* evidence--to support its bald assertions regarding KTS’s alleged “well known” performance issues on past contracts.⁴ Speculation, which is not supported to any degree by fact or evidence, cannot form a valid basis of protest. *Advanced Alliant Sols Team, LLC*, B-417334, Apr. 10, 2019, 2019 CPD ¶ 144 at 5 n.3. As such, this protest ground is also dismissed.

Technical Evaluation

Navarre argues that the VA’s evaluation of KTS’s and Navarre’s technical quotations was unreasonable, and as a result, the best value tradeoff decision was improper. For the following reasons, we deny these protest grounds.

KTS’s Evaluation

Navarre first contends that the evaluation of KTS’s quotation was unreasonable and that the VA failed to evaluate the quotation in accordance with the solicitation because KTS failed to meet the requirement for vehicle availability. Protest at 5-6. Specifically, the protester asserts that KTS could not have certified that it would have all required vehicles needed for the contract because KTS’s existing vehicles were being used for

⁴ As part of its challenge to the evaluation of KTS’s past performance, the protester also lodges various unsupported assertions regarding KTS’s ability to perform on the solicited contract. For example, the protester speculates, without any evidence, that “KTS simply lacks the required equipment to perform the contract, and, given global supply issues, lacks the ability to timely obtain that equipment.” Protest at 5. We note that these assertions--even if supported--bear no relevance to whether the agency’s evaluation of KTS’s quotation under the past performance factor was reasonable.

other contracts, and “due to supply chain shortages,” KTS would not be able to obtain additional vehicles. *Id.* at 4.

As noted above, the agency conducted this procurement using simplified acquisition procedures. RFQ at 43. When using simplified acquisition procedures, an agency must conduct the procurement consistent with a concern for fair and equitable competition and must evaluate quotations in accordance with the terms of the solicitation. *Wellspring Worldwide, Inc.*, B-417282.2 *et al.*, Dec. 20, 2019, 2020 CPD ¶ 10 at 4. In reviewing a protest challenging an agency's evaluation under simplified acquisition procedures, our Office will not reevaluate quotations, but instead, will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. *ERP Servs., Inc.*, B-419315, Feb. 24, 2021, 2021 CPD ¶ 85 at 3. A protester's disagreement with an agency's judgment, without more, is insufficient to establish that an agency acted unreasonably. *PN&A, Inc.*, B-406368, Apr. 23, 2012, 2012 CPD ¶ 145 at 4.

Under the technical evaluation factor, the RFQ provided:

Capability to Perform - Offeror must demonstrate that it currently possesses or have the ability to obtain the personnel, equipment, standards, work processes, and general resources to accomplish the requirements of the Performance Work Statement. Provide a list of all vehicles in fleet to include make, model, age, and equipment description (GPS, Lifts) of each vehicle and/or the ability to obtain such vehicles (i.e. business plan).

RFQ at 47. It is clear that the RFQ did not require vendors to possess the vehicles at the time of proposal submission. Vendors were only required to demonstrate an “ability to obtain” those vehicles by providing a list of all vehicles that would make up the fleet. *Id.* In its quotation, KTS provided a list of vehicles that it planned to use for the contract. AR, Tab 8, KTS Quotation at 12, 22 (“We currently have the vehicles listed below to start the contract with NC State inspection on each.”). The agency asserts--and our review of the record confirms--that KTS provided the information necessary to meet this solicitation requirement.⁵ See AR, Tab 7, Technical Evaluation Document at 4 (“KTS provides a list of vehicles it plans to use on this Requirement and has 87 vehicles in its fleet equipped with communication equipment, tracking, monitoring, GPS and lift capabilities” and “KTS provided the make, model, age, and equipment description of their vehicles they plan to use on this Requirement”). Here, the record shows that the agency evaluated KTS's quotation reasonably and in accordance with the terms of the solicitation. Thus this allegation has no merit.

⁵ To the extent that Navarre argues that KTS will not actually be able to perform the contract because KTS will not have the listed vehicles available at the time of performance, this is a matter of contract administration, which our Office will not review. 4 C.F.R. § 21.5(a); *Sky Quest Aviation LLC*, B-415383, Dec. 4, 2017, 2017 CPD ¶ 374 at 3 n.3.

Navarre's Evaluation

The protester also argues that the agency's evaluation of Navarre's technical quotation was unreasonable. Navarre claims that the evaluators should not have considered it to be a weakness that Navarre failed to demonstrate how the vendor would have direct communication with its vehicle drivers. According to Navarre, as the incumbent, the agency already knew how the drivers would communicate with Navarre and the agency. Protest at 2; Comments at 3 ("The VA knows--through actual knowledge--that every Navarre driver has a cellular telephone, and uses it to communicate with the VA on a routine and continual basis.").

It is a vendor's obligation to submit an adequately written quotation for the agency to evaluate. *Wellspring Worldwide, Inc., supra* at 7. A vendor, including an incumbent contractor, must furnish, within its quotation, all information that was requested or necessary to demonstrate its capabilities in response to the solicitation. See *HealthStar VA, PLLC*, B-299737, June 22, 2007, 2007 CPD ¶ 114 at 2. A vendor's technical evaluation is dependent upon the information furnished; there is no legal basis for favoring a firm with presumptions on the basis of its incumbent status. See *Apextech LLC*, B-415153.2, B-415153.3, Mar. 15, 2018, 2018 CPD ¶ 112 at 7.

Under the technical evaluation factor, the RFQ instructed vendors to "[p]rovide/ submit a detailed technical and management approach for completing all requirements of the PERFORMANCE WORK STATEMENT (PWS)." RFQ at 47. The solicitation advised that "[t]he technical quote should be as detailed as necessary to fully explain the proposed methods and rationale." *Id.* at 44. The "Vehicle Requirements" section of the PWS required the following:

All vehicles shall be equipped to allow for direct communication, at all times, between the drivers and staff of the VA Medical Center. This equipment may be a mobile telephone, which would allow a direct communication link to the VA medical facility. Contractor shall provide any telephone numbers or special access codes or devices to the VA facility Travel Section in order to comply with the provision for direct communication.

Id. at 16 (PWS Section H.2). The protester's quotation provides no description, let alone a detailed one, of its approach to meet this PWS requirement. See *id.* at 47; AR, Tab 9, Navarre Quotation at 4. In the only narrative addressing this driver communication requirement, Navarre merely asserts that:

Upon award, Navarre Corporation will carry out this management approach by ensuring that properly trained staff, adequate equipment, proper procedures, and enhanced protocols are [in] place for a successful performance of required services. Having these resources in place

currently allows Navarre Corporation to continue its improvement of services for our nation's veterans.

Navarre Quotation at 4. Navarre's quotation, however, provides no information demonstrating how Navarre's vehicles would be equipped to allow for direct communication between its drivers and VA staff.

As a result, the evaluators found Navarre's failure to address the driver communications requirement to be a weakness in the firm's quotation. In assessing the weakness, the evaluators noted that the requirement was "an important element for daily operations, wait times, weather related events, and emergencies," and that the "ability to easily communicate between a van service and the [VA Medical Center] is paramount for this contract." AR, Tab 7, Technical Evaluation at 6. The evaluators concluded that Navarre's "failure to explain how they intended to communicate leaves some questions about their understanding of the requirements." *Id.* The SSA agreed with the evaluators and mirrored their concerns in the SSD, noting that Navarre received a satisfactory technical rating because, while Navarre's quotation met most of the technical requirements, Navarre "failed to state in their proposal how they intend on ensuring direct communication between the drivers and the staff of VA Medical Center." SSD at 13.

Relevant here, Navarre does not argue that its quotation included a detailed technical and management approach that indicated how vehicles would be equipped to allow for direct communication between drivers and VA staff. Rather, the protester merely asserts that, as the incumbent contractor, the VA already knew how the protester communicated with its drivers. Protest at 2. Simply put, Navarre's reliance on its incumbency status in place of submitting an adequately written quotation that met the solicitation requirements, does not render the agency's evaluation unreasonable. *Apextech LLC, supra*. As such, we find no merit to the protester's challenge to the evaluation of its quotation, and the allegation is denied.

Tradeoff Decision

Lastly, the protester argues that the agency's best-value determination was flawed because of the underlying errors in the agency's technical evaluation of quotations.⁶

⁶ In its comments, the protester also claims that the source selection decision was unreasonable because the agency failed to adequately document its past performance evaluations. Comments at 3 ("The VA's basis for Navarre's past performance is discussed and analyzed . . . nowhere."). We find no merit to this argument. Our review of the record indicates that the SSA reviewed 15 Contractor Performance Assessment Reporting System (CPARS) reports for Navarre and 5 CPARS reports for KTS. For Navarre, the SSA noted that despite the majority of its CPARS ratings indicating satisfactory or occasionally better performance in quality, schedule, and management, "[t]he Past Performance trend in Cost Control erodes from a Satisfactory rating to

Protest at 6. Here, KTS's technical and past performance ratings were higher than Navarre's technical and past performance ratings. SSD at 21. Additionally, KTS's price was lower than Navarre's price. *Id.* Because we have denied the protester's challenges to the agency's evaluation, we conclude that there is no basis to question the agency's best-value determination. Where, as here, the highest-rated, lowest-priced offer is selected for award, a tradeoff is not required. *Segovia, Inc. d/b/a Inmarsat Gov't*, B-408376, B-408376.2, Sept. 3, 2013, 2013 CPD ¶ 203 at 10; *Procentrix, Inc.*, B-414629, B-414629.2, Aug. 4, 2017, 2017 CPD ¶ 255 at 15. Accordingly, we find no basis to disturb the agency's decision to issue an order to KTS.

The protest is denied.

Edda Emmanuelli Perez
General Counsel

Marginal and then to Unsatisfactory as the contractor continued to perform." SSD at 19. The SSA also noted that Navarre's "invoicing discrepancies led to delays and backlog in the VAMC's invoice certification activity for the Wheelchair Van Transportation Services." *Id.* at 21. For KTS, the VA observed that "[b]ased on [KTS's] Past Performance ratings shown above from Satisfactory to Very Good without any negative ratings, it is perceived that [KTS] will continue to perform in superior manner as identified above." *Id.* at 16. We find that the agency's past performance evaluation was adequately documented in the source selection decision document.