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Matter of: SecuriFense Inc.

File: B-421818.2; B-421818.3; B-421818.4

Date: October 23, 2023

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Edward Tolchin, Esq., Offit Kurman, for DarkStar Intelligence, LLC, the intervenor.

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DIGEST

1. Protest that agency treated vendors unequally is sustained where awardee and protester had similar responses to questions during oral presentations, but the agency found that only protester's responses resulted in decreased confidence in the protester's ability to perform the delivery order.

2. Protest that agency applied an unstated evaluation criterion is sustained where agency assessed decreased confidence to an aspect of the protester's quotation based on a failure to address audiovisual and multimedia tasks, which was not required by the solicitation's evaluation criteria.

DECISION

SecuriFense, Inc., of Hendersonville, North Carolina, protests the issuance of a delivery order to DarkStar Intelligence, LLC, of Woodbridge, Virginia, under request for quotations (RFQ) No. HHM402-23-R-0040, issued by the Defense Intelligence Agency (DIA) for joint counterintelligence training activity missions support services.

SecuriFense asserts that the agency unreasonably evaluated its and DarkStar's quotations.

We sustain the protest in part and deny it in part.

BACKGROUND

The RFQ was issued as a small business set-aside under the General Services Administration's (GSA) Human Capital and Training Solutions and Education Support Services multiple award schedule (MAS) via GSA's e-Buy website on April 27, 2023. The procurement was conducted pursuant to Federal Acquisition Regulation (FAR) section 8.405. Contracting Officer's Statement (COS) at 1. The solicitation anticipated the issuance of a single delivery order for a 1-year base period and two 1-year option periods. Quotations were due May 12.

The solicitation provided that the agency would first perform a compliance check to determine if quotations conformed with GSA labor category mapping and security requirements. Agency Report (AR), Tab 4.2, Instructions to Offerors at 7. Those vendors that passed the compliance review would be evaluated under the following two factors, in order of importance: technical approach and capability; and price. The solicitation instructed vendors to submit price quotations and participate in an oral presentation with respect to the technical approach and capability factor.¹ The agency provided vendors with identical questions related to the specific statement of work (SOW) areas that the vendors were to address during the oral presentation. Those questions were divided into two parts with part 1 covering more general questions and part 2 covering specific scenarios the vendors had to respond to. As relevant to the protest, the questions were:

Part 1: The offeror will prepare a slide presentation to address the following:

Overview of Bidding Team to include prime and subs.

Staffing Plan demonstrating a feasible strategy to recruit, assimilate, and/or retain qualified individuals for all labor categories identified in the SOW . . . and mitigation strategies to reduce risk of negatively impacting training execution schedule if staffing falls below 75 [percent].

* * * * *

Relevant experience providing similar support to [Department of Defense (DOD)] or IC [intelligence community] customers.

Part 2: The offeror will address three scenarios listed below to showcase their technical approach. Slide presentations may be used by the offeror as a guide.

¹ The technical approach and capability factor was evaluated solely on the information provided at the oral presentation. AR, Tab 4.2, Instructions to Offerors at 10.

* * * * *

2. The person filling the IT/AV [information technology/audiovisual] support position under this contract just provided his/her 2-week resignation notice. There is only one IT/AV support position on the contract.

a. Describe your approach to ensuring coverage of the IT/AV support task while the position is gapped (goes unfilled).

* * * * *

Looking for vendor to: Vendor has responsibility to perform all support even if the position is gapped. How will they do it? . . .

3. Assume today is January 1, a Federal Holiday, and there is a weather event in the area. Late in the day, OPM [Office of Personnel Management] announces the Federal Government . . . will be shut down on January 2. (Joint Counterintelligence Training Academy (JCITA) is scheduled to begin executing six courses at two locations starting January 2.

a. Identify two tasks from the SOW /FTE [full-time equivalent] labor categories which are, in your opinion, the most critical for taking immediate action to provide support to the Government in handling the situation and describe why you selected those two tasks / labor categories.

b. Describe the actions the assigned FTEs . . . would need to take, given government approval to do so.

* * * * *

AR, Tab 4.9, Oral Presentation Questions at 1-2.

According to the solicitation, under the technical approach and capability factor, the agency would assign vendors' quotations ratings of high confidence, some confidence, or low confidence, based on a determination of whether a vendor's response increased or decreased confidence in the vendor's ability to perform the delivery order. AR, Tab 4.2, Instructions to Offerors at 8-9. The agency would issue the delivery order on a best-value tradeoff basis considering the price and technical approach and capability factors. *Id.* at 7.

The agency received four quotations that passed the compliance check. The agency rated SecuriFense and DarkStar as follows:

| Evaluation Factor | DarkStar | SecuriFense |
|-----------------------------------|-----------------|-----------------|
| Compliance | Pass | Pass |
| Technical Approach and Capability | High Confidence | Some Confidence |
| Price | \$19,801,505.83 | \$19,383,780.97 |

AR, Tab 9, Final Decision Report at 2. The agency selected DarkStar for the delivery order, and this protest followed.

DISCUSSION

SecuriFense argues the agency unreasonably assigned a rating of “some confidence” to the firm’s quotation under the technical approach and capability factor. SecuriFense specifically challenges the findings that reduced DIA’s confidence in SecuriFense’s ability to perform the delivery order. SecuriFense also asserts that the agency used unstated evaluation criteria in evaluating the quotations and treated vendors disparately.² As discussed below, we deny SecuriFense’s challenges to the findings under the technical approach and capability factor that reduced the agency’s confidence in the protester’s ability to perform. However, we agree that the agency used unstated evaluation criteria, and failed to treat SecuriFense and DarkStar equally, and sustain the protest on these bases.³

Evaluation of SecuriFense Under the Technical Approach and Capability Factor

Where an agency issues a solicitation to vendors holding MAS contracts, and conducts a competition among vendors, we will review the record to ensure that the agency’s evaluation is reasonable and consistent with the terms of the solicitation. *Spectrum Comm, Inc.*, B-412395.2, Mar. 4, 2016, 2016 CPD ¶ 82 at 8.

The protester asserts that the agency unreasonably concluded under the technical approach and capability factor that it had reduced confidence in SecuriFense’s ability to

² SecuriFense raised several additional issues in its protest that we deem the protester to have abandoned since the agency addressed the issues in its report, and SecuriFense did not respond to the agency’s report regarding these issues in its comments. See *Yang Enterprises, Inc.*, B-415923, Mar. 12, 2018, 2018 CPD ¶ 109 at 2. These issues include: the agency used an unstated evaluation criterion in evaluating the resumes of key personnel; and DarkStar should have been rated “low confidence” under the technical approach and capability factor because it did not have any experience as a federal contractor. SecuriFense raised two additional issues that were dismissed by GAO for failure to state a valid basis of protest pursuant to 4 C.F.R. § 21.1(f): the agency failed to conduct a reasonable price analysis; and the agency failed to conduct a best-value tradeoff.

³ SecuriFense has raised several collateral issues. We have reviewed all of these collateral issues and find them to be without merit. As such, they are denied.

perform the contract because the protester did not have a clear strategy for reducing risk to the mission if staffing fell below 75 percent.

We disagree.

As noted above, for their oral presentations, vendors were specifically instructed to address how their staffing plan mitigation strategies would reduce the risk of negatively impacting the training execution schedule if staffing fell below 75 percent. AR, Tab 4.9, Oral Presentation Questions at 2. In its oral presentation, SecuriFense discussed how it would deal with gaps that resulted from paid time off, personnel assigned to temporary duty, and resignations. See Comments and Second Supp. Protest, exh. J, Transcript of SecuriFense Oral Presentation. SecuriFense did not, however, specifically mention the strategies it would utilize to reduce the potential negative impacts on the training execution mission if staffing fell below 75 percent. *Id.* at 7.

The agency found that while the protester addressed how it would respond to gaps due to paid time off, temporary duty, and resignations, it did not address whether the same approach would be followed for multiple or simultaneous vacancies. AR, Tab 9, Final Decision Report at 13 (“[t]he offeror stated they have a ‘mitigation plan’ for absences and vacancies but did not address whether they would follow the same approach for multiple simultaneous vacancies.”); see also 2nd Supp. COS/Memorandum of Law (MOL) at 6. The agency further noted that if staffing fell below 75 percent, all tasks would be impacted and a more comprehensive plan than what SecuriFense described would be required to ensure continuity of service. AR, Tab 9, Final Decision Report at 13. Since SecuriFense did not address what it would do if staffing fell below 75 percent, or the possibility of multiple simultaneous absences, on this record we find that the agency could reasonably conclude that the protester did not adequately address the issue and the agency had a reasonable basis for having reduced confidence in the protester’s ability to perform. As such, this ground of protest is denied.⁴

Unequal Treatment

⁴ SecuriFense argues that the agency also unreasonably determined that it had decreased confidence in the protester’s ability to perform the task order because in its response to scenario 3--which required vendors to identify the most critical two tasks needed to take immediate action to provide support in the event the agency was shut down due to inclement weather--lacked depth and showed limited coordination with other personnel that would play a supporting role in the scenario. The protester contends that vendors were not directed to describe coordination with other personnel. The agency did not respond to this protest ground. Since we are sustaining the protest, the agency may wish to consider this issue when it is reevaluating quotations.

SecuriFense also asserts that the agency treated it unequally with respect to DarkStar because DarkStar also failed to address mitigation strategies it would take if its staffing fell below 75 percent, yet the agency did not find that this aspect of Dark Star's quotation led to decreased confidence. We agree with the protester.

It is a fundamental principle of federal procurement law that a contracting agency must treat all offerors equally and evaluate their proposals evenhandedly against the solicitation's requirements and evaluation criteria. *Science Applications International Corp.*, B-417976, Dec. 10, 2019, 2019 CPD ¶ 420 at 8.

During its oral presentation DarkStar stated, "Although we do not expect staffing to fall below 75 percent, DarkStar employs risk mitigation techniques to reduce the risk of negatively impacting JCITA training execution schedule should you experience staffing shortages." Comments and 2nd Supp. Protest, exh. K, Transcript of DarkStar Oral Presentation at 7. Aside from this general mention of mitigation techniques, the record before us does not include a discussion of the mitigation strategies that DarkStar proposed should staffing fall below 75 percent. See *id.* Rather, in response to the protest, the agency explains that the final decision authority determined that based on DarkStar's recruitment strategy and its average time of [DELETED] to fill a vacant position, DarkStar's mitigation strategy should staffing fall below 75 percent "was to never let it occur because they have efficiency in their hiring process." 2nd Supp. COS/MOL at 8.

The agency's position does not account for the solicitation specific request for mitigation strategies in the event staffing fell below 75 percent since the agency was concerned with the potential impact this could have on its mission. In this regard, the question posed to vendors was what they would do if staffing fell below 75 percent, not what they would do to prevent staffing from falling below 75 percent. Given that, it was unreasonable for the agency to conclude that SecuriFense's failure to specifically address its mitigation strategies in the event of multiple vacancies warranted a finding of decreased confidence, while DarkStar's lack of mitigation strategies did not warrant a similar decreased confidence finding because the agency concluded that DarkStar simply would not allow staffing to fall below 75 percent.

SecuriFense also complains that the agency unreasonably concluded that it had increased confidence in DarkStar's ability to retain incumbent staff, while not reaching the same conclusion regarding SecuriFense's quotation. At the oral presentation, in addressing retention of incumbent staff SecuriFense stated, "Team SecuriFense, you know, is proud to say that they've got 100 percent retention for new work." Comments and 2nd Supp. Protest, exh. J, Transcript of SecuriFense Oral Presentation at 7. In comparison, during its oral presentation, DarkStar stated that it "captured 100 percent of JITAP personnel." Comments and Second Supp. Protest, exh. K, Transcript of DarkStar Oral Presentation at 7. In the consensus evaluation report, the agency noted that DarkStar's statement that it retained 100 percent of incumbents on a recent DIA contract "somewhat increased" the agency's confidence in DarkStar's quotation. AR,

Tab 8, DarkStar Consensus Eval. Rep. at 3. The agency did not make a similar finding for SecuriFense.

The agency asserts that DarkStar received the increased confidence because it mentioned a specific contract, while SecuriFense's statement was more generic. 2nd Supp. COS/MOL at 8, 9. The agency also asserts that the increased confidence in DarkStar was not solely the result of retaining 100 percent of incumbent personnel, but also because of DarkStar's ability to fill positions in **[DELETED]**. *Id.* at 9; See AR, Tab 9, Final Decision Report at 4. The evaluation of quotations was based solely on the information presented at the oral presentations. AR, Tab 4.2, Instructions to Offerors at 10. Given that the agency did not verify the vendors' statements made during the oral presentations or require the vendors to provide supporting evidence or documentation, we find that both vendors provided substantially the same information regarding their retention of incumbent personnel.

Moreover, the consensus evaluation report stated that the agency had somewhat increased confidence in DarkStar's quotation based solely on the 100 percent retention statement; there was no reference to the ability to fill positions in **[DELETED]** with respect to this finding. Thus, the agency's claim that the increased confidence was both the 100 percent retention of incumbents and the ability to fill positions in **[DELETED]** is not supported by the record. Accordingly, to the extent the agency found increased confidence in DarkStar's--but not SecuriFense's--ability to retain incumbent personnel based on their respective oral presentations, the agency did not treat the vendors equally. We therefore find that the agency unequally evaluated vendors' mitigation strategies if staffing levels fall below 75 percent, and their ability to retain incumbents, and sustain the protest on this basis.

Unstated Evaluation Criteria

SecuriFense argues that the agency utilized an unstated evaluation criterion where it concluded it had decreased confidence in SecuriFense's quotation because the quotation did not sufficiently address audiovisual or multimedia requirements. SecuriFense maintains that while the solicitation required offerors to address a training plan and a strategy to recruit and retain personnel for all labor categories in the SOW, it did not require vendors to address every aspect of every task in the SOW. Comments & 2nd Supp. Protest at 15-16. The protester therefore asserts that a finding of decreased confidence for failure to address audiovisual or multimedia requirements is the application of an unstated evaluation criterion not contemplated by the solicitation.

Where a protester challenges the evaluation as unfairly utilizing unstated evaluation criteria, our Office will assess whether the solicitation reasonably informs vendors of the basis for the evaluation. *Raytheon Co.*, B-403110.3, Apr. 26, 2011, 2011 CPD ¶ 96 at 5.

As relevant here, the agency found that it had decreased confidence with respect to SecuriFense's oral presentation for both parts 1 and 2 because the protester "barely

mentioned anything for [a]udiovisual or [m]ultimedia requirements” which left the government with “little confidence that [SecuriFense] understand[s] this area of course development and support without significant government intervention.” AR, Tab 7, SecuriFense Consensus Evaluation at 3. In response to the protest, the agency defends this finding by explaining that while SecuriFense “provided relevant experience, it did not provide comprehensive past performance to fully support all areas of the SOW.” 2nd Supp. COS/MOL at 10. The agency further explains that SecuriFense only “briefly mentioned” the audiovisual and multimedia requirements in its response to part 2, scenario 1 where it said it would coordinate with the multimedia team on any graphics or audio that needed to be developed.⁵ *Id.*

SecuriFense asserts that this finding was unreasonable because the solicitation did not require vendors to describe their approach to performing all the tasks listed in the SOW. We agree. As noted above, vendors were instructed that for the oral presentation, the government would provide the exact same questions to each vendor directly related to specific SOW areas to determine the vendor’s ability to meet the requirements. AR, Tab 4.2, Instructions to Offerors at 1. Vendors were further instructed that the government would evaluate the vendor’s proposed approach, similar expertise and substantial understanding of applicable SOW areas as presented by the offeror’s response to questions and scenarios. *Id.* The questions provided to vendors did not specifically require them to address audiovisual or multimedia tasks requirements with respect to course development and support. Nor has the agency advised our Office that during the oral presentation vendors were asked questions that required them to address audiovisual or multimedia requirements. We therefore find that the agency evaluated SecuriFense’s quotation against an unstated evaluation criterion by assessing a decreased confidence finding for SecuriFense’s failure to address audiovisual and multimedia requirements in detail, and sustain the protest on this basis.⁶

Prejudice

⁵ The agency also contrasted SecuriFense’s presentation with DarkStar’s which the agency stated “gave clear examples of how audio/visual could be used to supplement traditional classroom power points to enhance delivery.” 2nd Supp. COS/MOL at 10

⁶ While the final decision authority did not raise this specific finding as an issue that decreased her confidence in SecuriFense’s ability to perform, or in distinguishing the quotations of SecuriFense and DarkStar, it was one of the decreased confidence findings made in the consensus evaluation report and contributed to the overall rating of some confidence under the technical approach and capability factor. Because we recommend that the agency reevaluate quotations and prepare a new final decision, the agency may wish to consider this evaluation error in its reevaluation.

Competitive prejudice is an essential element of a viable protest, and where no prejudice is shown or is otherwise evident, our Office will not sustain a protest, even if a deficiency in the procurement is evident. *Invertix Corp.*, B-411329.2, July 8, 2015, 2015 CPD ¶ 197 at 10. We resolve any doubts regarding prejudice in favor of a protester since a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. *DRS Tech. Servs., Inc.*, B-411573.2, B-411573.3, Nov. 9, 2015, 2015 CPD ¶ 363 at 14.

Here, we find that the agency disparately evaluated the protester and awardee, and applied an unstated evaluation criterion, in assessing both increased and decreased confidence findings to the respective quotations. Had the agency properly evaluated the quotations, SecuriFense may have received a higher rating under the most important factor, technical approach and capability. Because SecuriFense's quoted price was lower than DarkStar's price, there is a reasonable possibility that with a correct evaluation, SecuriFense could have been selected for award. Accordingly, we find SecuriFense was prejudiced by the agency's errors as described above and sustain the protest.

RECOMMENDATION

As discussed above, we sustain SecuriFense's protest that the agency treated SecuriFense and DarkStar unequally in its evaluation of their quotations and applied an unstated evaluation criterion in its evaluation of SecuriFense's oral presentation. We recommend that the agency reevaluate the quotations consistent with this decision and make a new selection decision as appropriate.

We also recommend that SecuriFense be reimbursed its reasonable costs of filing and pursuing its protest, including attorneys' fees with respect to the issues we have sustained. 4 C.F.R. § 21.8(d)(1). The protester's certified claim for costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision. *Id.*

The protest is sustained in part and denied in part.

Edda Emmanuelli Perez
General Counsel