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Decision

Matter of: Tuknik Government Services, LLC

File: B-422862.2

Date: December 30, 2024

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Thomas K. David, Esq., and Lewis Rhodes, Esq., Reston Law Group, LLP, for Improvix Technologies Inc., the intervenor.

John W. Cox, Esq., Department of State, for the agency.

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DIGEST

Protest challenging the agency's evaluation of quotations is denied where the agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement law.

DECISION

Tuknik Government Services, LLC, a small business of Anchorage, Alaska, challenges the issuance of a task order to Improvix Technologies, Inc., a small business of Reston, Virginia, pursuant to request for quotations (RFQ) No. 19AQMM24Q0049, issued under the General Services Administration's Streamlined Technology Acquisition Resource for Services III governmentwide acquisition contract by the Department of State for cloud program management information technology (IT) services. The protester alleges that the agency erred in evaluating quotations and in the conduct of its best-value tradeoff.

We deny the protest.

BACKGROUND

On July 12, 2024, the agency issued the RFQ seeking cloud program management IT services. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 3. The RFQ contemplated the issuance of a single task order on a primarily labor-hour basis with a 1-year base period of performance and four 1-year options. Agency Report (AR), Tab 30, RFQ at 13, 61. The RFQ contemplated a best-value tradeoff between

cost and seven technical evaluation factors, listed in descending order of importance: (1) present and past experience; (2) recruitment and retention capability; (3) key personnel and staffing; (4) transition plan; (5) technical capability and understanding of the requirements; (6) past performance; and (7) program management and quality assurance. *Id.* at 61. Additionally, the RFQ contemplated an additional cybersecurity supply chain risk management factor that would be evaluated only on a pass/fail basis, and quotations that did not pass this factor would be ineligible for award. *Id.* at 57.

The RFQ contemplated a multi-phased procurement. In phase one, the agency would evaluate quotations to assess whether vendors met the cybersecurity supply chain risk management factor, as well as evaluating vendors' present and past experience and recruitment and retention capability. *Id.* at 57-59. Based on that preliminary evaluation, the RFQ provided that the agency would issue advisory notices to vendors explaining whether each vendor was competitive for award and whether the agency encouraged the vendor to participate in phase two. *Id.* Vendors who proceeded to phase two were required to conduct an oral presentation addressing the remaining non-price evaluation factors as well as prepare a written submission including their presentation slides, key personnel resumes, and a price quotation. RFQ at 59-61.

The agency initially received phase one quotations from ten vendors, including the protester and awardee. COS/MOL at 3. Following the advisory down-select, four vendors opted to continue to phase two, and the vendors conducted oral presentations and submitted phase two quotations. *Id.* The agency evaluated the quotations of Tuknik and Improvix as follows:

	Tuknik	Improvix
Present and Past Experience	Some Confidence	High Confidence
Recruitment and Retention Capability	Some Confidence	High Confidence
Key Personnel and Staffing	Some Confidence	High Confidence
Transition Plan	High Confidence	High Confidence
Technical Capability and Understanding of the Requirements	Some Confidence	High Confidence
Past Performance	High Confidence	High Confidence
Program Management and Quality Assurance	Some Confidence	High Confidence
Total Evaluated Price	\$165,409,638	\$144,991,052

Id. at 6-7.

Improvix was the highest technically rated of the four vendors and was also lower-priced than Tuknik. AR, Tab 53 at 16. By contrast, Tuknik was the lowest-rated of the four vendors and was higher-priced than Improvix. COS/MOL at 8. The agency ultimately concluded that Improvix represented the best value to the government and issued a task order to Improvix on September 29, 2024. *Id.* at 4. This protest followed.¹

DISCUSSION

Tuknik challenges the agency's evaluation in several respects. First, the protester argues that the agency improperly evaluated Improvix's quotation as high confidence with respect to Improvix's transition plan and past performance. Protest at 17-18; Comments at 6-8. Second, the protester contends that the agency erred in evaluating Tuknik's present and past experience, recruitment and retention capability, and key personnel and staffing.² Comments at 2-6. We address these arguments in turn below.

Improvix's Evaluation

Tuknik challenges the agency's evaluation of Improvix's transition plan and past performance as unreasonable and unequal. Protest at 17-18; Comments at 6-8. First, the protester contends that it was irrational to rate Improvix's transition plan as high confidence because Improvix's approach to retaining incumbent personnel was insufficiently detailed and presented risk. *Id.* Second, the protester argues that the

¹ The task order is valued at \$144,991,052, and, accordingly, this protest is within our jurisdiction to hear protests of task orders placed under civilian agency indefinite-delivery, indefinite-quantity contracts valued in excess of \$10 million. 41 U.S.C. § 4106(f)(1)(B).

² The protester raises other arguments that are not addressed in this decision. While we do not address all of the protester's arguments in this decision, we have considered them and conclude that they provide no basis to sustain the protest. For example, Tuknik initially raised two additional protest arguments concerning the agency's evaluation of Tuknik's technical capability and its program management and quality assurance approach. Protest at 14-17. The agency responded to the protester's allegations at length in the agency report, but the protester's comments did not substantively respond to the agency's arguments. See COS/MOL at 14-18. Where an agency provides a detailed response to a protester's assertions and the protester either does not respond to the agency's position or provides a response that merely references or restates the original allegation without substantively rebutting the agency's position, we deem the initially raised arguments abandoned. *Citrus College; KEI Pearson, Inc.*, B-293543 *et al.*, Apr. 9, 2004, 2004 CPD ¶ 104 at 8 n.4. Accordingly, these protest grounds are dismissed. As discussed more fully below, the protester therefore advanced no surviving challenges to the agency's evaluation under those two factors, including as to the agency's determination that the awardee's quotation was technically superior under those factors.

agency erred by assessing Improvix's past performance as high confidence because one of Improvix's subcontractors allegedly had poor past performance. *Id.* Moreover, the protester argues that the past performance submissions demonstrate that two of Improvix's subcontractors lacked experience with certain relevant technologies, such as machine learning and artificial intelligence. *Id.*

The evaluation of technical quotations are generally matters within the agency's discretion, which our Office will not disturb unless they are shown to be unreasonable or inconsistent with the solicitation's evaluation criteria. *American Sys. Corp.*, B-413952.3, B-413952.4, June 23, 2017, 2017 CPD ¶ 204 at 6-7; *NCI Info. Sys., Inc.*, B-412680, B-412680.2, May 5, 2016, 2016 CPD ¶ 125 at 4; *ORBIS Inc.*, B-408033.2, June 3, 2013, 2013 CPD ¶ 140 at 4. Moreover, we have consistently stated that there is no requirement that an incumbent be given extra credit for its status as an incumbent, or that an agency assign or reserve the highest rating for the incumbent contractor. *Integral Consulting Servs., Inc.*, B-415292.2, B-415292.3, May 7, 2018, 2018 CPD ¶ 170 at 7.

Concerning Improvix's transition plan, the protester notes that the solicitation required vendors to describe their approach and plan to retain incumbent staff. Comments at 6-7. Tuknik notes that both it and Improvix received a rating of high confidence for their respective transition plans. However, Tuknik explains that it is the sister company of the incumbent firm, and, as a result, it proposed to furnish all of the incumbent employees. *Id.* The protester argues that Improvix could not have proposed an equally good approach, because Tuknik proposed to furnish all of the incumbent staff. *Id.* Moreover, Tuknik contends that Improvix's approach to incumbent capture lacked meaningful specifics. *Id.*

Preliminarily, we note that, while the protester is correct that vendors were required to describe their approach to retaining incumbent staff, the RFQ contemplated that the agency would evaluate numerous other aspects of vendors' transition plans. See RFQ at 59-60. Indeed, the agency argues that Improvix presented a very detailed transition plan that fulsomely addressed all of the requirements of the solicitation, including step-by-step transition in and out plans as well as identification of transition risks. COS/MOL at 18. We note that the protester does not challenge these other aspects of the agency's evaluation of the awardee's quotation. Accordingly, even if the protester were correct that its approach to incumbent capture was clearly superior to the awardee's approach, it does not follow that Improvix necessarily should have received a lower adjectival rating for its transition plan because the evaluation involved the assessment of numerous factors other than incumbent retention. That is, the agency concluded that Improvix's transition plan merited a rating of high confidence on the basis of how it addressed all of the solicitation's requirements, not merely based on its approach to retaining incumbent staff. See AR, Tab 50, Technical Consensus Evaluation at 11-13.

Moreover, even focusing narrowly on the evaluation of Improvix's approach to retaining incumbent staff, the agency contends that Improvix proposed a "novel" approach to retaining incumbent staff that the technical evaluators felt was a positive feature of

Improvix's quotation. *Id.* Specifically, Improvix proposed to, among other things, match salaries, offer bonuses, and to retain only high-performing staff rather than focusing on 100 percent retention. AR, Tab 39, Improvix Phase 2 Quotation at 34, 38-39. Additionally, Improvix identified incumbent capture as a potential transition risk and proposed several steps to mitigate that risk, including entering into a teaming agreement with the incumbent contractor if critical staff are unwilling to change employers. *Id.* The technical evaluators found Improvix's approach to incumbent retention to be beneficial to the government, and we can see no basis to conclude that the agency was unreasonable in concluding that Improvix's detailed transition plan, as a whole, merited a rating of high confidence.

Turning to Improvix's past performance, these protest grounds are also without merit. As a general matter, the evaluation of a vendor's past performance is within the agency's discretion. We will question the evaluation conclusions where they are unreasonable or undocumented. *Clean Harbors Env'tl. Servs, Inc.*, B-296176.2, Dec. 9, 2005, 2005 CPD ¶ 222 at 3. The critical questions are whether the evaluation was conducted fairly, reasonably, and in accordance with the stated evaluation terms. *Id.*

The RFQ provided that the agency would consider past performance information to determine its level of confidence that the contractor can effectively manage the schedule, cost, quality, and technical performance of the program, including the performance of proposed subcontractors. RFQ at 60. While the protester is correct that one of Improvix's subcontractor's past performance questionnaires (PPQs) included negative past performance information, the contemporaneous evaluation specifically addressed this issue, and the negative ratings represented a relatively small fraction of the rated areas for only one of Improvix's subcontractors.

Specifically, the evaluators acknowledged that one of Improvix's subcontractors exhibited "repeated [m]arginal performance," but explained that this poor performance did not appear to be a trend across team Improvix's past performance. AR, Tab 50, Technical Consensus Evaluation at 16-17. In this regard, the record reflects that the PPQ at issue included one unacceptable rating and four marginal ratings out of 19 total rating areas. See AR, Tab 46, Improvix Subcontractor PPQ at 3-7. More significantly, the other PPQs provided by Improvix, including its own performance as a prime contractor, included overwhelmingly superior ratings with no marginal or unacceptable ratings. See, e.g., AR, Tab 47, Improvix Prime PPQ at 3-7 (showing 15 "superior" ratings and one "good" rating). While the protester is correct that the technical evaluators did not specifically acknowledge the subcontractor's single unacceptable rating, referring only to repeated marginal performance, we see nothing unreasonable or inappropriate about the agency's conclusion that Improvix's submitted past performance, as a whole, merited a rating of high confidence.

Further, the protester's allegations that the agency should have downgraded Improvix because the past performance submissions showed that two of Improvix's subcontractors lacked experience with required technologies, such as machine learning and artificial intelligence, are likewise without merit. First, and most significantly, the

protester attempts to impugn the experience of Improvix's subcontractors using Improvix's past performance submission, an entirely separate portion of Improvix's quotation from Improvix's experience submission. For example, the protester ignores that the experience volume of Improvix's quotation specifically explained that both of the subcontractors the protester challenges have relevant experience with machine learning and artificial intelligence. See AR, Tab 20, Improvix Experience Quotation at 1.

Even setting that point aside, there was no requirement that every subcontractor employed by a vendor must demonstrate experience with all required technologies. See RFQ at 58. For example, the RFQ required that the prime or its subcontractors must demonstrate at least 2 years of experience with artificial intelligence and machine learning. *Id.* In this regard, Improvix itself demonstrated the required experience with machine learning and artificial intelligence, and also received superior ratings for its work in those areas in its PPQ submission. See AR, Tab 20, Improvix Experience Quotation at 1; Tab 47, Improvix Prime PPQ at 4. Accordingly, even if the protester were correct that two of Improvix's subcontractors lacked experience with machine learning and artificial intelligence, which the record does not suggest, Improvix itself clearly demonstrated the necessary experience in that area.

Tuknik's Evaluation

Next, Tuknik alleges that the agency erred in evaluating Tuknik's quotation concerning its present and past experience, recruitment and retention capability, and key personnel and staffing. Comments at 2-6. In this regard, Tuknik argues that the agency misevaluated certain aspects of its quotation, and that Tuknik's quotation should have received ratings of "high confidence" for those three aspects of its quotation rather than ratings of "some confidence." Comments at 2-6.

However, it is not clear that the protester can establish competitive prejudice with respect to its remaining protest grounds. Competitive prejudice is an essential element of every viable protest. *Armorworks Enters., LLC*, B-400394.3, Mar. 31, 2009, 2009 CPD ¶ 79 at 3. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions; that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. *CSI Aviation, Inc.*, B-415631 *et al.*, Feb. 7, 2018, 2018 CPD ¶ 68 at 7. Because Tuknik was both lower technically rated and higher-priced than Improvix, in order to establish a meaningful possibility of competitive prejudice, the protester would need to demonstrate errors that, if corrected, would present a reasonable possibility that its quotation would be evaluated as technically superior to the awardee's quotation. See *Equinoxys, Inc.*, B-419237, B-419237.2, Jan. 6, 2021, 2021 CPD ¶ 16 at 6.

As discussed above, Improvix received ratings of high confidence for all seven technical factors. COS/MOL at 6-7. By contrast, Tuknik received ratings of some confidence for five factors and high confidence for two factors. *Id.* While the protester initially challenged the agency's evaluation with respect to all five evaluation factors for which

its quotation was rated lower than the awardee's quotation, as discussed above, the protester abandoned two of those arguments, concerning the technical capability factor and the program management and quality assurance factor.

Because we conclude above that the agency's evaluation of Improvix's quotation was reasonable, even if we agreed that Tuknik's three remaining challenges to its own evaluation were meritorious, Tuknik would then only have a rating of high confidence for five of seven factors, while Improvix would retain its ratings of high confidence for all seven factors. Significantly, looking behind the adjectival ratings, the source selection authority viewed several features of Improvix's quotation in the two areas that Tuknik no longer contests as meaningful discriminators between the two quotations. See AR, Tab 53, Award Decision Document at 18-20 (identifying specific technical features of Improvix's quotation that "add significant value" and were superior to Tuknik's quotation with regard to the technical capability factor and the program management and quality assurance factor).

Additionally, Tuknik raises no challenge to Improvix's pricing. Accordingly, even if Tuknik's remaining evaluation arguments were meritorious, Tuknik would merely approach technical equivalence to Improvix's technical quotation for five of the seven non-price factors, while remaining inferior for two of the non-price factors, and Improvix's quotation would remain approximately \$20 million (or 13 percent) lower priced than Tuknik's quotation. COS/MOL at 6-7. This is also significant because the solicitation provided that as the technical merit of the vendor's quotations becomes more equal, price would become the determining factor. RFQ at 61.

In sum, even if Tuknik prevailed on its remaining protest grounds, Improvix would remain both higher-rated and lower-priced than Tuknik, and several features that the source selection authority viewed as discriminators between the two quotations would remain unchanged. On the facts present here, we see no reasonable possibility that Tuknik's competitive posture would change if it should it prevail on its remaining protest grounds. See, e.g., *YWCA of Greater Los Angeles*, B-414596.7, B-414596.8, Mar. 11, 2019, 2019 CPD ¶ 104 at 10 (finding no competitive prejudice where even if protest ground were sustained the protester would remain lower-rated and higher-priced than the awardee); see also *Equinoxys, Inc.*, *supra* at 6 (finding no competitive prejudice where protester was both technically inferior and higher priced, and protester could not demonstrate errors that, if corrected, would present a reasonable possibility that its quotation would be evaluated as technically superior). We will not sustain a protest where there is no reasonable possibility of competitive prejudice.

The protest is denied.

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General Counsel