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Decision

Matter of: Raytheon Company

File: B-414354; B-414354.2

Date: May 10, 2017

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DIGEST

Protest challenging the award of a sole-source contract is denied where the record demonstrates that the agency reasonably concluded that there was only one responsible source able to meet the agency's requirements.

DECISION

Raytheon Company, of Sterling, Virginia, protests the award of a sole-source contract to Systematic, Inc., of Centerville, Virginia, which was issued by the General Services Administration (GSA) on behalf of the Department of the Army pursuant to request for proposals (RFP) No. ID03170011 for a software infrastructure package. The protester contends that the agency's sole-source award lacks a reasonable basis.

We deny the protest.

BACKGROUND

On July 19, 2016, the GSA issued a request for information (RFI) on the FedBizOpps.gov website announcing the Army's Project Manager Mission Command's (PM MC) interest in procuring a Commercial-Off-The-Shelf/Non-Developmental Item (COTS/NDI) software infrastructure package, which allows for immediate 3rd party development of integrated command post, mounted, and dismounted tactical computing capabilities to meet the Army Acquisition Executive's requirement for establishing a common operating environment (COE). RFI at 1. The RFI requested the submission of

white papers from interested firms describing the software infrastructure product and its ability to meet fifteen capabilities listed in the RFI, the terms of any license agreements and maintenance programs, and any relevant past performance of the firm. Id. at 3. The RFI also stated that the Army desires that the software package be supported by advanced and mature technical services, including architecture and deployment support, provided by the original equipment manufacturer. Id. at 2. The notice additionally advised that the RFI did not constitute a request for proposal/solicitation, was not binding on the government, and was subject to change. Id.

The agency received five responses by the July 27 closing date, including responses from Systematic and Raytheon. Agency Report (AR), Tab 4, Justification & Approval (J&A), at 3. Systematic offered its SitaWare Command and Control Suite of products and Raytheon offered its C2 Product Line Infrastructure (C2 PLI) product. Id. at 3-4; Tab 3, Acquisition Plan, at 8-9. The agency conducted a review of all five white papers and concluded that Systematic provided the only product that met all requirements of the RFI. Id. at 7-10. The agency concluded that Raytheon's C2 PLI product failed to meet the requirements noting that the product was complicated to install, not user friendly, did not include documentation beyond the initial install, did not [REDACTED] environments, and could only be [REDACTED]. Id. at 9. On November 14, the agency notified Raytheon that the C2 PLI product did not meet the agency's requirements. AR, Tab 6, Agency Notification, at 1.

Based upon the results of the white paper evaluation, the agency concluded that the acquisition should be sole-sourced under the authority of 10 U.S.C. § 2304(c)(1) and Federal Acquisition Regulation (FAR) § 6.302-1, only one responsible source and no other supplies or services will satisfy the agency requirements. AR, Tab 3, Acquisition Plan, at 10. A justification for other than full and open competition for Systematic's solution was approved by the GSA on December 28. AR, Tab 4, J&A.

On January 12, 2017, the GSA posted a combined synopsis/solicitation pursuant to the commercial item procedures of FAR Part 12 for the COTS/NDI software infrastructure package. RFP at 1-2. The RFP notified offerors of the agency's intent to issue a sole-source contract to Systematic for software license and maintenance of the SitaWare suite under the authority of FAR § 6.302-1. Id. at 2. The RFP stated that based upon the GSA's independent market research the agency determined that "only Systematic Inc. can provide the PM MC with software that meets the following requirements." Id. The RFP then listed the fifteen requirements; relevant to this protest were the following:

- allow hosting on server and workstation hardware, including existing US Army vehicle computer systems and commercial desktop/laptop systems, and Army mobile devices of both the tablet and handheld form . . . ;
- deployable on command post, mounted platform, and dismounted user devices, supporting web-clients (i.e. browser based) as well as stand-alone client deployment of user-level capabilities;

- support Client-server and Peer-to-Peer deployment architectures that facilitates reach to enterprise and other server-side services, as well as ad-hoc collaboration and data sharing amongst groups across LAN [local area network] and DIL [disconnected, intermittent, and limited] networks, such as within squads and server-less command posts;
- provide run-time environments that are interoperable with Microsoft Windows Army Gold Master, Linux, and Android Operating System (OS). Linux support should include the ability to run infrastructure components in secure containers.

Id.

The RFP stated that responsible sources may submit a capability statement in response to the solicitation, which “shall be considered by the agency.” Id. The RFP also stated that the information received would be considered solely for the purpose of determining whether to conduct a competitive procurement. Id.

In response to the RFP, the agency received a proposal from Systematic and two capabilities statements from Raytheon. Systematic proposed its SitaWare suite of products and Raytheon offered its C2 PLI product, which was the same product submitted in response to the RFI, and a Distributed Common Ground System (DCGS)-A Lite product. AR, Tab 5, Evaluation of Raytheon’s Capability Statements, at 1-2.

The agency evaluated the capability statements and concluded that only Systematic’s product met the requirements of the RFP. The agency found that Raytheon’s C2 PLI product and DCGS-A Lite product did not possess a majority of the requirements. AR, Tab 5, Evaluation of Raytheon’s Capabilities Statements, at 1-2. The agency notified Raytheon that both capability statements were considered but neither product was determined to be capable of meeting the requirements. AR, Tab 7, Raytheon Notice C2 PLI, at 1; Tab 8, Raytheon Notice DCGS-A Lite, at 1.

On January 31, the agency awarded a fixed-price, time-and-materials contract to Systematic for a 1-year base period with four 1-year options for a total contract value of \$222,077,995. AR, Tab 10, Award Notice, at 1. On February 1, the agency posted the award notice and the agency’s December 28, J&A on the FedBizOpps.gov website. AR, Tab 10, Award Notice, at 1; Tab 4, J&A. On February 10, Raytheon filed this protest with our Office.

DISCUSSION

Raytheon challenges the agency’s sole-source award to Systematic. The protester contends that the agency’s award to Systematic lacks a reasonable basis and that the agency’s justification for departing from full-and-open competition was improper. Based upon our review of the record, we find that the agency provided a reasonable justification for the sole-source award to Systematic as the only responsible source able to meet the agency’s requirement.

The Competition in Contracting Act of 1984 (CICA) requires agencies to obtain full and open competition in procurements through the use of competitive procedures. 10 U.S.C. § 2304(a)(1)(A). However, CICA permits an exception, which allows for the use of other than competitive procedures, where there is only one responsible source able to meet the agency's requirement. 10 U.S.C. § 2304(c)(1); FAR § 6.302-1. When using noncompetitive procedures pursuant to 10 U.S.C. § 2304(c)(1), such as here, agencies must execute a written J&A with sufficient facts and rationale to support the use of the cited authority. 10 U.S.C. § 2304(f)(1)(A), (B); FAR §§ 6.302-1(d)(1), 6.303-1, 6.303-2, 6.304. Our review of an agency's decision to conduct a noncompetitive procurement focuses on the adequacy of the agency's rationale and conclusions set forth in the J&A; where the J&A sets forth a reasonable justification for the agency's actions, we will not object to the award. EBSCO Industries, Inc., B-414150, Mar. 2, 2017, 2017 CPD ¶ 83 at 5.

Here, the protester's challenge to the agency's sole-source award centers on the agency's consideration of Raytheon's and Systematic's proposed products' ability to meet the agency's stated requirements. Raytheon argues that the sole-source award was improper because Raytheon's products met the solicitation's requirements, while Systematic's product did not meet the requirements. In response, the GSA argues that it thoroughly evaluated Raytheon's products and reasonably concluded that they did not meet the solicitation's requirements. The GSA also asserts that Systematic's product was equally evaluated and found to meet each of the RFP's requirements. Thus, the agency contends that its sole-source award was proper and adequately justified. As explained below, we find the agency's evaluation and justification reasonable.¹

Raytheon's Products

With respect to Raytheon's CR PLI and DCGS-A Lite products, the agency evaluators concluded that the products did "not possess a majority of capabilities" needed to meet the government's requirement. AR, Tab 5, Evaluation of Raytheon's Capabilities Statements, at 1-2. Raytheon asserts that the agency's conclusions are unreasonable. We find the agency's evaluation unobjectionable.

As an initial matter, Raytheon contends that the agency's conclusion that the products did not possess a majority of capabilities needed to meet the agency's requirement was unreasonable because not all of the 15 listed capabilities were mandatory requirements. For example, with respect to the run-time environment capability, Raytheon asserts that the RFI provided that "[t]he system should provide run-time environments that are interoperable with Microsoft Windows Army Gold Master, Linux, and Android Operating

¹ In filing and pursuing this protest, Raytheon has raised arguments that are in addition to, or variations of, those discussed herein, including assertions of unequal treatment. We have considered all of Raytheon's arguments and find no basis to sustain its protest.

System (OS).” RFI at 2. As another example, the protester cites to RFI language, which states the “system should allow for hosting on server and workstation hardware, including existing US Army vehicle computer systems and commercial desktop/laptop systems, and Army mobile devices of both the tablet and handheld form” Id. The protester asserts that the agency’s evaluation was improper because the RFI clearly conveys that these capabilities were not essential due to the RFI’s use of the term “should” rather than “shall.” Raytheon Comments at 9, 17-18.

We find no support in the record for Raytheon’s assertion. While we agree that the RFI provided a number of “should” rather than “shall” requirements, including the capabilities cited above, the protester’s reliance on the RFI is misplaced. The RFP, not the RFI, was the controlling document, and each of the 15 requirements was listed as mandatory in the RFP. For example, the RFP’s run-time environment requirement stated “provide run-time environments that are interoperable with Microsoft Windows Army Gold Master, Linux, and Android Operating System (OS).” RFP at 2. Similarly the hosting requirement provided “allow hosting on server and workstation hardware, including existing US Army vehicle computer systems and commercial desktop/laptop systems, and Army mobile devices of both the tablet and handheld form” Id. The protester’s reliance on language used in the non-binding RFI, which the agency indicated was subject to change, is unavailing and fails to demonstrate that the agency’s evaluation was unreasonable.

Raytheon next contends that even if these capabilities were required, Raytheon’s capability statements demonstrated that its products met the requirements. In response, the GSA asserts that the conclusions reached by the agency evaluators were reasonable and in accordance with the solicitation criteria. In this regard, the agency states that the solicitation required a software infrastructure package that, in addition to other requirements: (1) could be hosted on server and workstation hardware, including Army mobile devices of both tablet and handheld form; (2) was deployable on dismounted user devices supporting stand-alone client deployment of user-level capabilities; (3) was capable of supporting peer-to-peer deployment architectures within server-less command posts; and (4) was able to provide run-time environments interoperable with Linux and Android operating systems. Supp. Contracting Officer (CO) Statement at 4-5; RFP at 2. The agency contends that the C2PLI and DCGS-A Lite capability statements did not demonstrate [REDACTED]. As explained below, we find the agency reasonably evaluated Raytheon’s products.

With respect to the C2 PLI product, the agency found that the product could only be [REDACTED] and did not support [REDACTED], as required; the use of [REDACTED] devices [REDACTED] for dismounted situations was not acceptable; and the requirement to meet the client peer-to-peer deployment architectures was not sufficiently demonstrated.² AR, Tab 5, Evaluation of Raytheon’s Capabilities

² The evaluators also concluded that the C2 PLI product was not a COTS product; that the product could not be used to meet the out of the box requirements of the agency

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Statements, at 2. Raytheon challenges each of these findings asserting that the agency's evaluation was unreasonable.

We have reviewed each of the protester's challenges and find that none provide a basis on which to sustain the protest. For example, with respect to the agency's finding that the C2 PLI product could only be [REDACTED] and does not support [REDACTED], the agency explains that its concern was that the C2 PLI product is not capable of stand-alone operating on Army mobile [REDACTED] devices. Raytheon disagrees with this conclusion asserting that the RFP did not impose any minimum requirement related to [REDACTED]. However, this assertion is at odds with the RFP, which required that the software be deployable on user-level devices and interoperate with the [REDACTED] operating system. Indeed, Raytheon's own capability statement provided that "[f]or dismounted situations in which pure [REDACTED] based tablets or hand held devices are used, [REDACTED] on the [REDACTED] device." C2 PLI Capability Statement at 9. From this record, it is clear that the protester understood that the solicitation required the use of [REDACTED] based mobile devices, as Raytheon's capability statement specifically acknowledged the use of these devices. The protester's argument that the solicitation did not provide for an [REDACTED] requirement is unavailing.

We also find no support for the protester's assertion that C2 PLI's ability to interoperate with the [REDACTED] meets the agency's requirement at issue here--stand-alone client deployment on Army mobile devices. In this regard, the agency explains that the C2 PLI product does not support stand-alone deployment to [REDACTED] because the product is proposed to [REDACTED]. Thus, we find reasonable both the agency's finding that the C2 PLI product did not meet this specific capability, as well as the GSA's conclusion that the C2 PLI product did not meet the agency's requirements.³

We likewise find that the agency's evaluation of Raytheon's DCGS-A Lite product was reasonable and in accordance with the solicitation criteria. The evaluators found that "[t]hough the DCGS-A Lite solution claims it can be hosted on the command post and mounted computers, the user facing functions are [REDACTED], and there is no [REDACTED] for the mounted or [REDACTED] solution" and that the product had "[n]o

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without modification; and that there was insufficient discussion in the capability statement about support of 3rd party developers external to Raytheon. Id.

³ We need not address in detail each of the agency's remaining findings because we find that the agency reasonably concluded that the C2 PLI product did not meet the solicitation's mandatory requirement for stand-alone client deployment of user-level capabilities. However, we have reviewed the entire record and find no basis to object to the agency's conclusions with respect to the C2 PLI product. For example, we find that the agency reasonably concluded that Raytheon's proposed use of [REDACTED] for dismounted situations would preclude the required ability to communicate peer-to-peer.

[REDACTED] based capabilities for mounted and handheld solutions.” AR, Tab 5, Evaluation of Raytheon’s Capabilities Statements, at 1. The evaluators also found that Raytheon’s capability statement was unclear as to whether the proposed mediation capability was out-of-the-box or requires further development, and unclear as to how the proposed software development kits can be used by 3rd party developers.⁴ AR, Tab 5, Evaluation of Raytheon’s Capabilities Statements, at 1. The agency asserts that the solicitation requirements for hosting, stand-alone client deployment of user-level capabilities and run-time environments that interoperate with the [REDACTED] operating system are the basis for the agency’s findings with respect to the DCGS-A Lite product. Supp. CO Statement at 4-5.

As with the C2 PLI product, Raytheon contends that there is no stated requirement to support [REDACTED] and argues that the RFP did not define the mounted and dismounted computing environments as necessarily involving [REDACTED] devices. With respect to the agency’s finding that DCGS-A Lite does not provide [REDACTED] for the mounted or [REDACTED] solution, the protester also asserts that the agency’s conclusion was improper because there was no requirement for [REDACTED] for the mounted or [REDACTED] solution, or for [REDACTED] capabilities. We find the protester’s argument with respect to the use of [REDACTED] devices to be unsupported. The solicitation alerted offerors that the solution must be interoperable with the [REDACTED] operating system and be capable of deploying on Army mobile devices in the tablet and handheld form with stand-alone capability, which as stated above included [REDACTED] devices. With respect to [REDACTED], the agency explains that these capabilities are required to demonstrate a run-time environment that interoperates with the [REDACTED] operating system. The run-time environment’s interoperability with the [REDACTED] operating system was a mandatory requirement of the solicitation, as was stand-alone deployment to Army mobile devices. Thus, we find reasonable the agency’s determination that the DCGS-A Lite product did not meet the solicitation’s requirements.

Systematic’s Product

Raytheon asserts that the agency’s sole-source award to Systematic was improper because the SitaWare product requires further development to meet the agency’s requirements. Specifically, the protester alleges that SitaWare is not deployable on mounted devices. We find that the agency’s evaluation of the SitaWare suite was reasonable.

The record demonstrates that the agency conducted a thorough evaluation of the SitaWare product suite, which was documented in a technical evaluation report and an award memorandum. The J&A restated the evaluators’ findings that the product is in full compliance with the agency’s requirements, AR, Tab 9, Award Memorandum, at 3,

⁴ The evaluators also concluded that the DCGS-A Lite product was not a COTS product. AR, Tab 5, Evaluation of Raytheon’s Capabilities Statements, at 1.

and provided that the SitaWare suite is the only product that will satisfy the agency's command post and mounted computing environment requirements. AR, Tab 4, J&A at 2. The J&A noted that the SitaWare suite consists of a unified data environment, extending from command post to dismounted tactical computing environments, addressing both the command post and mounted computing environments. Id. The J&A also documented the evaluators' conclusion that the SitaWare suite delivers a common software infrastructure that the agency can extend and utilize. Id.

Raytheon disagrees with the agency's findings and argues that the evaluators determined that more development work was needed for the SitaWare suite to be deployed on mounted devices. In support of this argument, Raytheon points to a meeting between the Army and 3rd party application developers in which the protester alleges an Army representative stated that the SitaWare suite required further development. In response to Raytheon's allegations, the agency contends that the protester takes the discussion during the meeting out of context. The GSA explains that statements given during the presentation to 3rd party developers were not meant to imply that the SitaWare suite itself needed further development, rather, that further work would need to be done by the Army, or 3rd party developers, to integrate the SitaWare product into the Army's current structure. Agency Report at 11; Supp. CO Statement at 2-3. For example, as stated in the presentations, it was the intent of the Army to use the existing SitaWare solution, adapt it where necessary, and supplement it as required. Based on our review of the record, we find no support for the protester's allegation that the SitaWare product required further development to support the agency's requirement for a software infrastructure that is deployable in the mounted computing environment.

In sum, as discussed in detail above, the record demonstrates that the GSA had a reasonable basis for concluding that only Systematic's product could meet its requirements.⁵ The agency's J&A documented the agency's evaluation and conclusions that Systematic was the only responsible source able to meet the agency's

⁵ Raytheon also argues that the GSA improperly included an associated requirement for engineering support services in the sole-source award to Systematic, without any consideration of whether additional responsible sources exist for those services. In response, the GSA explains that the inclusion of maintenance and engineering support services were incidental and ancillary to the purchase of the software to assist with integration and maintenance of the software. We find no basis to object to the agency's determination. The J&A provided that "Systematic, Inc. is the developer and exclusive owner of the SitaWare suite . . . and the only source that can provide the required maintenance support and engineering services." AR, Tab 4, J&A, at 2. Raytheon's disagreement with the agency's conclusion does not provide a basis to sustain the protest.

requirements. We therefore conclude that the GSA reasonably determined that a sole-source award to Systematic would be appropriate under the circumstances.

The protest is denied.

Susan A. Poling
General Counsel