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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: National Disability Rights Network, Inc.

File: B-413528

Date: November 16, 2016

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DIGEST

1. Protest is denied where the record demonstrates reasonable technical evaluation despite protester's disagreement.
2. Protest of past performance evaluation is denied where the record shows the agency reasonably considered prior performance references and was not required to ignore negative information merely because positive information also existed.
3. Protest of inadequate best value determination and improper conversion of award criteria is denied when the record demonstrates properly documented consideration of price and technical evaluations.
4. Protest that agency failed to analyze awardee's proposal for price realism is denied when the solicitation did not announce the intent to conduct such an evaluation.

DECISION

National Disability Rights Network, Inc., (NDRN) of Washington, D.C., protests the award of a contract to Information Systems and Networks Corporation (ISN), of Bethesda, Maryland, under request for proposals (RFP) No. SSA-RFP-16-1009, issued by the Social Security Administration for the management of the agency's representative payee program. NDRN primarily challenges the agency's evaluation

of both the awardee's and the protester's own proposal, and argues that the best-value decision was unreasonable.

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

BACKGROUND

On December 21, 2015, the agency issued the RFP to acquire services for monitoring the management of Social Security benefits allotted to individuals with special needs, *i.e.*, the Social Security Administration's "Representative Payee Program."¹ RFP, Statement of Work (SOW), at 85. The RFP contemplated the award of a single requirements contract under which fixed-price task orders would be issued to complete the required effort. RFP at 10, 68.

The solicitation was amended twice in the course of the procurement. The first amendment, on January 19, 2016, made minor changes to the RFP and included answers to questions from prospective offerors. AR, Tab 2, RFP amend. 1. The second amendment, issued on January 27, 2016, extended the time for receipt of proposals until February 3, 2016.² AR, Tab 3, RFP amend. 2.

The RFP provided for award to the offeror whose proposal represented the best value to the government, price and non-price factors considered. RFP at 81. The RFP described five non-price evaluation factors which, when combined, were considered significantly more important than price. *Id.* at 76. These factors, in descending order of importance, were: technical approach, corporate/organizational experience, management plan, key personnel qualifications and experience, and past performance. *Id.* at 76-80.

As relevant here, with regard to technical approach, the RFP instructed offerors to describe their technical approach with sufficient detail to demonstrate their

¹ The Social Security Administration is responsible for administering old-age, survivors, and disability insurance and supplemental security income programs. The RFP explains that when beneficiaries of these programs need help in managing their benefits, the agency can appoint an individual or organization to act as a representative payee to help these beneficiaries manage their monthly payments. RFP at 85. The services being solicited here are primarily for the purpose of monitoring the representative payees' performance. *Id.*

² The RFP initially established a closing time for receipt of proposals at 9:00 a.m., Eastern Time on January 26, 2016. Due to a major snow event, federal offices were closed in the National Capital region on January 25 and 26. <https://www.opm.gov/policy-data-oversight/snow-dismissal-procedures/status-archives/> (last viewed Oct. 17, 2016).

understanding of the statement of work, including the major components of the SOW and all tasks and deliverables. RFP at 70. This factor was to be evaluated as excellent, good, fair, or poor.³

Regarding the corporate/organizational experience factor, offerors were required to identify and describe up to three projects or contracts completed in the past five years or currently being performed, that were similar in size, scope, and complexity to the current requirement. This factor was to be evaluated in terms of the depth, breadth, and relevance of the work performed, as measured by the extent to which the work involved a variety of specific types of work listed in the RFP.

With regard to past performance, the RFP stated that the projects an offeror referenced to demonstrate corporate/organizational experience would also be used to evaluate past performance, in addition to any past performance information that might be obtained from other sources known to the agency.

The solicitation announced that price would be evaluated based on adding prices submitted for the base, all option periods, and an optional task. Id. at 80. The RFP reserved the right to reject prices determined to be unbalanced. Id.

NDRN submitted its proposal on January 25, 2016, one day before the initial closing date for receipt of proposals. After federal offices in the Washington, D.C. and Baltimore metropolitan areas were closed on January 25 and 26 in response to a blizzard, the agency extended the initial closing date (which had just passed) to February 3. Eight proposals were submitted by that date, including NDRN's. AR at 12.

³ As relevant here, an excellent rating was to reflect a proposal showing a "comprehensive and thorough technical approach of significant merit that greatly exceeds the Government's requirements of the RFP in a way that benefits the Government; or meets requirements and contains at least one exceptional enhancing feature that benefits the Government." AR, Tab 6, Technical Evaluation Panel (TEP) Consensus Report, at 51. Such a proposal was to be "exceptional in essentially all respects, and represent the best that could be expected of a contractor, with no weaknesses, significant weaknesses, or deficiencies." Id. A good rating was to reflect a "reasonable, logical, and technically sound response, meeting the minimum requirements of the RFP; with strengths and weaknesses, or both, but with strengths exceeding weaknesses." Id. Any weaknesses were to appear "easily correctable, with little or no impact on contract performance;" and with no existing deficiencies. Id. A rating of good would "represent the norm from a qualified contractor." Id.

The protester's and awardee's proposals were evaluated as follows:

	NDRN	ISN
Technical Approach	Good	Excellent
Corporate/Organizational Management Plan	Excellent	Good
Key Personnel	Excellent	Excellent
Past Performance	Good	Excellent
Evaluated Price	\$54,667,940	\$25,085,621

AR, Tab 7, Tradeoff Analysis, at 1.

In its evaluation, the agency identified two areas of weakness in NDRN's proposal under the technical approach factor: (1) an apparent lack of understanding of the business process in certain areas, demonstrated by various unexplained inconsistencies between NDRN's proposal and the RFP's SOW; and, (2) the lack of any clear plan for handling training regarding new financial requirements, and the related failure to show how any such training plan would be implemented, or by whom. AR at 22; AR, Tab 6, TEP Consensus Report, at 9-10.

Among the eight proposals submitted, ISN's received the highest technical rating. With regard to price, four proposals offered prices that were lower than ISN's, and three, including NDRN's (which received the second-highest technical rating), were priced higher. AR at 50.

The contracting officer, acting as the source selection authority, concluded that ISN's proposal represented the best value to the government and announced the award of the contract to ISN on July 25, 2016. AR, Tab 9, Source Selection Decision; AR, Tab 11, Agency Notice to NDRN. After receiving a requested and required debriefing, NDRN filed this protest with our Office.

DISCUSSION

NDRN protests several aspects of the evaluation, primarily arguing that its proposal was assessed improper weaknesses under the technical and past performance factors, and that its overall ratings for these factors were unreasonably low and inconsistent with the terms of the RFP. Protest at 8-17. In addition, NDRN states that the agency evaluated the awardee's corporate experience unreasonably, and ignored readily-available negative information about the awardee. *Id.* at 16-17; 18-19. Finally, the protester argues that the agency improperly converted the basis of award from best value tradeoff to lowest-priced, technically-acceptable. *Id.* at 19. We have reviewed these arguments, and find that none provides a basis to sustain the protest.

In matters of technical evaluation, we will not substitute our judgment for that of the agency; rather, we will consider the agency's conclusions to ensure they are consistent with the solicitation, applicable statutes and regulations, adequately documented, and reasonably based. National Gov't Servs. Inc., B-401063.2 et al., Jan. 30, 2012, 2012 CPD ¶ 59 at 4. An agency is afforded discretion in technical evaluations, as the agency is responsible for defining its needs and for identifying the best method for accomplishing them in performance. Ahtna Facility Servs., Inc., B-404913, B-404913.2, June 30, 2011, 2011 CPD ¶ 134 at 7. Concerning both technical and past performance evaluations, an offeror's disagreement with an agency's evaluation judgments does not demonstrate that those judgments are unreasonable. Hygeia Solutions Partners, LLC; STG, Inc., B-411459 et al., July 30, 2015, 2015 CPD ¶ 244 at 6; FN Mfg., LLC, B-402059, B-402059.5, Mar. 22, 2010, 2010 CPD ¶ 104.

The crux of NDRN's protest is that its proposal should have received the highest ratings available for each evaluation factor. Regarding technical approach, NDRN challenges three specific weaknesses identified in its technical approach, and its overall rating of good. Protest at 8-12. Similarly, the protester challenges the evaluation of its two past performance contracts and the overall rating of good under that evaluation factor. Protest at 12-16. We discuss representative examples below.

For example, NDRN challenges the agency's decision to assign its proposal a weakness regarding its understanding of the business process. Protest at 10-12. The weakness, as summarized to NDRN in its debriefing, notes inconsistencies between the proposal and the RFP's SOW. Id. at 10; AR, Tab 13, Debriefing Slides, at 17. The evaluation record shows that the technical TEP concluded NDRN's proposal included several statements that were unclear or varied from the RFP's requirements. In this regard, the agency noted that the proposal included a statement that NDRN would "make every effort" to schedule beneficiary and payee interviews on the same day and concluded that this representation appeared inconsistent with the RFP's requirement that the contractor conduct the representative payee review and beneficiary interview on the same day. AR, Tab 4, NDRN Technical Proposal, at 11; RFP, SOW, Business Process, at 111. This apparent inconsistency was evaluated as a weakness. AR, Tab 6, TEP Consensus Report, at 58-60.

We find the agency acted reasonably in assessing this weakness, given that the RFP required the interviews to occur on the same day. Additional statements concerning the evaluation of payee bank accounts, and the conduct of interviews when a beneficiary is legally incompetent, raised similar concerns. Id. The evaluation record also reflects the TEP's view that, in many areas, NDRN's proposal failed to provide a detailed explanation of NDRN's approach, and that the protester had "insert[ed] just enough ambiguity to cause a concern for the Agency." Id.; AR at 30.

The protester disagrees and contends that its proposal reflects the business process it has used as the incumbent since 2009. The protester also argues that its proposal should have been viewed as sufficiently specific to meet the RFP's requirement for a detailed description of its technical approach. We disagree. As an initial matter, and despite the protester's contentions about its status as the incumbent, there is no requirement that an agency supplement its review of an incumbent's proposal by supplying information that was not provided. Simply put, NDRN had a responsibility to submit a well-written proposal that adequately details the proposed methods of complying with the solicitation's requirements. Aerostar Perma-Fix TRU Services, LLC, B-411733, B-411733.4, Oct. 8, 2015, 2015 CPD ¶ 338 at 8. Where a proposal is unclear or inconsistent with those requirements, the offeror risks having its proposal evaluated unfavorably. Id., citing STG, Inc., B-411415, B-411415.2, July 22, 2015, 2015 CPD ¶ 240 at 5-6.

NDRN also objects to the agency's finding that its proposal did not demonstrate a clear plan for handling new financial requirements. Protest at 9-10. This comment reads:

It was not clear if NDRN has a clear plan on handling the new financial requirements (i.e., different from current processes in payee reviews NDRN conducts). The proposal also did not present a clear plan on how or who will implement that plan, especially when it came to training reviewers, particularly in the area of corrective action plans.

Id. at 9, quoting AR, Tab 13, Debriefing Slides, at 16.

The agency responds that the protester has misinterpreted the assigned weakness, and that, in any event, the agency's assessment of a weakness was reasonable in light of the RFP's requirements. AR at 23-25. The agency first notes that the proposal did not adequately describe a clear and detailed plan for handling new financial review requirements, especially with regard to training its employees about the new requirements. Id. at 23. In this regard, the RFP required offerors to ensure that all staff are trained and can perform the review tasks required by section 3.3 of the RFP, including interviewing representative payees regarding recordkeeping and money management, observing and identifying health and safety issues, reporting any such issues to the appropriate outside agency, and creating corrective action plans. RFP at 89-90. The agency argues that it was reasonable to assess a weakness when no plan for this training was identified in the proposal. AR at 23-24.

In our view, this weakness, too, was reasonable. The agency documents several instances in the NDRN proposal where vague language regarding the training of employees increased the risk of program failure. See AR, Ex. 6, TEP Consensus Report, at 8-9. For example, despite two references in the NDRN proposal regarding updating training, the agency notes that NDRN simply proposed to update training as directed by the contracting officer's technical representative. Id., citing

AR, Tab 4, NDRN Technical Proposal, at 13, 28. Likewise, the consensus report points to language in the proposal promising training on recordkeeping and money management that fails to provide any details on the conduct or content of the training. Id., citing AR, Tab 4, NDRN Technical Proposal, at 28, 29. In both of these examples, the TEP documented areas where NDRN did not adequately articulate its method of complying with the solicitation. Given our conclusion that the weaknesses identified for NDRN's technical proposal were reasonable, the proposal was ineligible to receive an excellent rating.

NDRN also protests the evaluation of its past performance. Protest at 12-16. The protester identified, as examples of its prior projects, its prior Social Security Administration contract for these same services, and a contract performed for the Department of Education. NDRN complains that the past performance evaluation relative to its performance of the incumbent contract did not take into account more recent performance ratings. The protester also disagrees with certain assessments in the performance review provided by the Department of Education. Id.

Here, the record shows that the agency reasonably considered both positive and negative information regarding NDRN's past performance, and expressly noted positive feedback on NDRN's performance relating to work on the prior Social Security Administration contract. AR, Tab 6, TEP Consensus Report, at 39-40. Nonetheless, the record also reflects that the agency considered the negative aspects of performance including invoicing problems, which were identified by multiple references.⁴ Id. at 41-42.

Based on our review of the record, none of NDRN's various complaints and disagreements with the agency's past performance evaluation determinations renders them unreasonable. An agency is not required to ignore instances of negative past performance, even if considering corrective actions. Science Applications International Corp., B-408690.2, B-408690.3, Dec. 17, 2014, 2015 CPD ¶ 12 at 7. NDRN's complaints about its evaluation here amount to little more than disagreement over the negative conclusions reached. Such disagreements do not render an agency's evaluation improper. Id. at 6, citing AT&T Corp., B-299542.3, B-299542.4, Nov. 16, 2007, 2008 CPD ¶ 65 at 19. In our view, the agency properly considered the potential impact of past performance information when determining the relative risk associated with the proposal.

⁴ With regard to the poor past performance ratings related to NDRN's referenced Department of Education contract, the agency notes that NDRN's complaint in fact concerns the performance assessment by Department of Education, and not the propriety of the Social Security Administration's review of that evaluation. AR at 39. As such, NDRN's argument fails to explain why the Social Security Administration's evaluation was unreasonable.

While NDRN also alleges that the agency converted the basis for award to lowest-price, technically-acceptable, there is no evidence that the agency conducted an improper tradeoff evaluation or that its best value decision lacked detail. In this regard, the record demonstrates that the source selection official relied upon a very detailed best-value analysis that compared the technical evaluations of all offerors relative to the pricing proposed. See AR, Tab 7, Best Value Tradeoff. Moreover, no tradeoff between ISN and NDRN was required, given that ISN's proposal received the highest technical rating and offered the lower price.

Finally, in addition to the matters discussed above, the protester raised a number of issues for which the agency requested dismissal, and we agreed with the agency. For example, the protester argues that the agency's extension of the closing date for receipt of initial proposals was improper because it occurred after the initial closing date had passed. This assertion fails to state a valid basis for protest because there is no prohibition against a procuring agency issuing an amendment to extend the closing time for receipt of proposals after that time has passed to accommodate even one offeror, where the motivation for the extension is enhanced competition. Geo-Seis Helicopters, Inc., B-299175, B-299175.2, Mar. 5, 2007, 2007 CPD ¶ 135 at 5. Similarly, the protester contends that the Social Security Administration failed to follow Congressional mandates regarding the award of this contract. We find this argument legally and factually unsupported. See 4 C.F.R. §§ 21.1(c)(4), 21.1(f). In any event, this concern is untimely as it relates to the stated evaluation scheme; protesters are required to raise challenges to the terms of a solicitation prior to the stated closing time for the receipt of proposals. 4 C.F.R. § 21.2(a)(1).

In addition, NDRN argued that ISN's proposal should have been rated only fair, and not good, under the corporate/organizational experience factor. Protest at 16. The protester argues that a review of ISN's current and prior work does not demonstrate an ability to communicate with disabled individuals--a consideration that was not contemplated by the RFP's evaluation scheme.⁵ Id. As the protester did not

⁵ The RFP provided for the evaluation of offerors' corporate/organizational experience based upon a review of offeror-submitted prior projects or contracts performed within the past five years. RFP at § 71-72. These project references were to be used to evaluate the degree to which offerors have prior experience implementing, managing, and conducting projects of a similar nature as described in the SOW. Id. at § 77-78. The RFP specified that this review would include evaluating the extent offerors had performed compliance reviews, reviews of financial records, reviews requiring home visits, projects requiring interviews of diverse populations, projects involving the identification and possible referral to outside agencies of health, safety and/or wage related issues, and projects involving national coordination for a similar quantity of reviews. Id.

include any supporting information regarding this allegation, it too is dismissed as unsupported.

Similarly, NDRN argues that ISN's rating for the corporate/organization experience factor should have been lower because NDRN uncovered purportedly negative information about ISN through an internet search. Id. at 18-19. The protester argues that several law suits (none decided more recently than 10 years ago) indicate that ISN's experience rating should have been lower. Id. Even were we to assume these allegations to be accurate, and we do not, NDRN is arguing that the agency should consider information contrary to the evaluation scheme and not logically encompassed by the evaluation criteria, which would have been improper. See Raytheon Co., B-404998, July 25, 2011, 2011 CPD ¶ 232 at 15-16. As the protester does not explain how the information it seeks to introduce bore a reasonable relationship to this evaluation factor we do not find the argument to be legally sufficient and dismiss it as well.

NDRN finally complains that the agency failed to conduct a price realism analysis. Protest at 16-17; 18-19. The RFP did not, however, provide for a price realism analysis. Generally, for fixed-price contracts, an agency may conduct a price realism analysis for the limited purpose of assessing whether an offeror's low price reflects a lack of technical understanding or risk (see FAR § 15.404-1(d)(3)), but it may do so only when offerors have been advised that the agency will conduct such an analysis. Emergint Techs., Inc., B-407006, Oct. 18, 2012, 2012 CPD ¶ 295 at 5-6. Absent a solicitation provision advising offerors that the agency intends to conduct a price realism analysis, agencies are neither required nor permitted to conduct such an analysis in awarding a fixed-price contract. Id.

The protest is denied in part and dismissed in part.

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General Counsel