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## Decision

**Matter of:** Tabcon, Inc.

**File:** B-411554

**Date:** August 18, 2015

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Helen Y. Kearns, Esq., General Services Administration, for the agency.

Robert T. Wu, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest that the agency unreasonably evaluated the protester's non-price proposal is denied where the record shows that the evaluation was reasonable and consistent with the solicitation's evaluation criteria.

2. Protest challenging the source selection authority's best value tradeoff decision is denied where the record shows that the decision was rational and adequately documents the agency's decision to select a higher-rated, higher-priced offeror.

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### DECISION

Tabcon, Inc., of Gilbert, Arizona, protests the issuance of a task order to Brasfield & Gorrie LLC, of Birmingham, Alabama, by the General Services Administration (GSA) under contract No. GS-07P-99-HHD-0062<sup>1</sup> for design-build services at land ports of entry in Texas and New Mexico. Tabcon argues that the agency miscalculated its technical proposal and made a flawed best-value tradeoff decision.

We deny the protest.

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<sup>1</sup> A review of the record shows that the procurement was identified by the contract number and was sent to each contract holder requesting proposals, but without an identifying task order solicitation number.

## BACKGROUND

The request for proposals (RFP), issued on January 28, 2015, sought proposals from various indefinite-delivery, indefinite-quantity (ID/IQ) contract holders to provide design-build services to construct inspection canopies, support offices and associated truck circulation for the land ports of entry at five locations in Texas and New Mexico for the Federal Motor Carrier Safety Administration. Agency Report (AR), exh. 21, Source Selection Evaluation Board (SSEB) Report, at 1. Award was to be made to the responsible offeror whose proposal was most advantageous to the government, technical and price factors considered. RFP at 2. Offerors were instructed that the RFP set forth minimum requirements, and invited them to increase the quantity and quality of services to be provided with their proposals. Id.

The technical evaluation factors were as follows, listed in descending order of importance: (1) technical and management approach, (2) design build team past performance and experience, and (3) key personnel past performance and experience. Id. at 3. Technical quality was to be significantly more important than price. However, the RFP instructed that as “proposals become equal in their technical merit, the cost or price becomes more important.” Id.

The technical and management approach factor was concerned with the offeror’s “understanding of the project requirements and the management approach.” Id. Offerors were required to submit written plans to address 11 specific elements under the factor, including: (1) approach to managing and coordinating simultaneous construction activities at multiple construction sites; (2) approach to managing and delivering a project of the magnitude and complexity of this project under budgetary and time constraints; and (3) identifying risks associated with this project and how the offeror planned to manage and mitigate identified risks as well as how they managed similar risks on previous projects. Id. at 6. Offerors were also instructed to describe their long range plans for securing and maintaining the resources necessary to complete the project, and to provide an organizational chart, design and construction quality control plan (QCP), safety plan, management plan and project schedule. Id. at 6-7.

Under the design build team past performance and experience factor, the agency was to consider the ability of the design firm, the construction firm and the modular building manufacturing firm to provide design and construction services for multiple projects/programs at separate geographically dispersed locations. Id. at 7. Offerors were to provide at least two similar projects for the design and construction firms, and six similar modular building projects completed by the modular building manufacturing firm. Id. at 7-8. Among other things, offerors were required to explain how the characteristics of the project related to the characteristics of this project. In evaluating past performance references, similarity to this project was to be more important than the quantity of projects presented. Id. at 8.

Under the key personnel past performance and experience factor, the agency was to assess the qualifications, performance and experience of at least four key personnel categories enumerated in the RFP. Id. at 9-10. Specific experience requirements were included for each key personnel category listed in the RFP, namely, the design firm’s project manager, the general contractor’s project manager, the general superintendent(s), and the designers of record. Id. Unless determined not to be in the government’s best interest to do so, price was to be evaluated by adding the total price for all options to the total price for the basic requirement. Id. at 11.

Two proposals were received in response to the RFP, one from Tabcon and one from Brasfield & Gorrie. AR, exh. 21, SSEB Report, at 2. After an initial evaluation, it was determined that both firms’ proposals contained deficiencies, and the agency decided to open discussions. Id. at 15-17. After the conclusion of discussions, the agency evaluated revised proposals, with the following evaluation results:

	<b>Brasfield &amp; Gorrie</b>	<b>Tabcon</b>
<b>Technical Approach</b>	7	6
<b>Design Build Team</b>	8	6
<b>Key Personnel</b>	8	6
<b>Consensus Technical</b>	7.5	6
<b>Base Price</b>	\$17,061,406	\$15,820,550
<b>Base Price Plus Options</b>	\$21,121,831	\$18,773,550

Id. at 17-22.<sup>2</sup>

The agency determined that Tabcon was ineligible for award based on its inability to provide documentation demonstrating its ability to obtain bonding for the amount of its proposal. Id. at 19-20. Consequently, GSA decided to award a task order to Brasfield & Gorrie on March 12. Tabcon protested this decision to our Office. AR, exh. 22, Notice of Award, at 1; exh. 29, Protest of March 23, 2015. In response to that protest, the agency decided to undertake corrective action, which resulted in the protester withdrawing its protest. AR, exh. 30, Notice of Corrective Action, at 1.

As part of the corrective action, the Source Selection Authority (SSA) reviewed proposals and decided to engage in a second round of discussions. Contracting Officer’s Statement at 13; AR, exh. 32, Discussion Questions, at 1. After receiving responses from both offerors, the SSA conducted a new evaluation upgrading

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<sup>2</sup> The evaluators used a numerical scoring methodology for each factor, accompanied by narratives of strengths, weaknesses and deficiencies. The scale used was a numerical rating of “0” equated to an adjectival rating of unacceptable, 1 or 2 equated to poor, 3 or 4 to marginal, 5 or 6 to acceptable, 7 or 8 to very good, and 9 or 10 to excellent. Id. at 14.

Brasfield & Gorrie's technical approach rating from 7 to 8, while also downgrading Tabcon's design build team rating from 6 to 5, and its key personnel rating from 6 to 4. AR, exh. 32, SSA's Independent Evaluation, at 3. Based on her review, the SSA again decided to award the task order to Brasfield & Gorrie. Id. at 8.

The SSA's award decision stated that, in comparing the two proposals, "the Design Build team's experience on projects that had similar characteristics to this project and key personnel performing the projects became key evaluation discriminators." Id. at 6. In this regard, the SSA noted that Tabcon's proposal did not provide explanations as to how the characteristics of its reference projects related to the characteristics of this project, as required by the RFP. The SSA also observed that Tabcon's proposal did not indicate its proposed design firm and construction firm had worked together on previous projects. Id. With respect to key personnel, the SSA stated that some required information was not included in the proposal, such as project dollar values, which the agency was to use in its analysis of whether their experience was similar, and none of the key personnel made any reference to having design-build experience. Id. at 7.

The SSA ultimately concluded that Brasfield & Gorrie's proposed design build team and key personnel "had significantly more experience on projects with characteristics that related to and were very similar to this . . . project and all of Brasfield & Gorrie's key personnel have design-build experience." Id. at 8. When combined with Brasfield & Gorrie's higher rating under the technical and management factor, the SSA found that the technical merits of the awardee's proposal significantly outweighed the price premium that the agency would pay for the firm's proposal. Id. After Tabcon received a debriefing, it filed this protest.<sup>3</sup>

## DISCUSSION

Tabcon challenges various aspects of the evaluation of its non-price proposal. Tabcon also argues that GSA's best value tradeoff decision was flawed. In this regard, the protester argues that the source selection decision neither adequately documents the agency's best-value tradeoff, nor rationally explains the agency's reason for choosing Brasfield & Gorrie's higher-priced, higher-proposal. We address each argument in turn.

### Evaluation of Tabcon's Proposal

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<sup>3</sup> The value of the task order at issue is in excess of \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award indefinite-delivery, indefinite-quantity contracts. 41 U.S.C. § 4106(f)(1)(B).

Tabcon challenges the agency's evaluation of the firm's proposal under every element of every evaluation factor in the RFP. We have reviewed all of the protester's allegations and, while we only discuss a few here by way of example, we find all of them to be without merit.

In reviewing a protest challenging an agency's evaluation, our Office will neither reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. Analytical Innovative Solutions, LLC, B-408727, Nov. 6, 2013, 2013 CPD ¶ 263 at 3. Rather, we will review the record only to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. Id.

Tabcon argues that its proposal should have been found to exceed the standards set forth in the RFP because it provided six examples of potential risks that may be encountered on the project, and provided well-thought-out descriptions of the potential risks. Protest at 17. The standard set forth in the RFP was that offerors "shall identify what they believe are the most significant risks associated with this project." RFP at 6. The agency contends that Tabcon's proposal did not exceed the standard because its brief descriptions of six examples of potential risks were general in nature. Contracting Officer's Statement at 5. The agency asserts that this aspect of the protester's proposal was properly found to be acceptable, and not rated higher, because the firm only provided the information requested to meet the minimum requirement of the RFP. Id.

Tabcon's proposal identifies six risks identified for this project: (1) unforeseen underground site conditions; (2) connecting to the existing utilities will require turning off the utilities to the port; (3) delays encountered by local utility companies are a possibility; (4) vehicle and/or pedestrian traffic may have to be redirected during trenching work phases; (5) the government is responsible for providing information technology (IT) equipment that will be installed and connected by Tabcon; and (6) "as always, the end user at each location must be happy with the end result." AR, exh. 8, Tabcon Technical Proposal, at 8-9. Each identified risk was followed by one or two sentences explaining the risk, and one sentence describing how the protester will manage and mitigate the risk. For instance, with respect to risk number 5, above, Tabcon explains that in order to mitigate the risk, "TABCON will work closely with the Government to ensure delivery of the equipment according to the project schedule." Id. at 9. Our review of Tabcon's proposal provides us no basis to question the agency's determination that the protester's proposal did not exceed the evaluation standard in this regard.

Tabcon also argues that its proposal should have been evaluated as exceeding the standards set forth in the RFP under the design build team past performance and experience for various reasons. Protest at 19-20. The agency's justification of its

lower rating of Tabcon's proposal is that the firm failed to expressly explain how the characteristics of the projects included in its proposal were similar to the instant project, as required by the RFP. As relevant here, the RFP states, "[f]or each project presented . . . the Offeror must explain how the characteristics of the project relate to the characteristics of **this** project. The similarity to **this** project is more important than the quantity of projects presented." RFP at 8 (emphasis in original). Our review of Tabcon's proposal confirms the agency's evaluation in that, while the protester's references describe the work performed in some detail, they do not explain how the characteristics of those projects relate to the characteristics of this project, as required by the RFP. AR, exh. 18, Tabcon Revised Technical Proposal, at attachment 2; exh. 33, Tabcon Second Revised Technical Proposal, at 3-4. Thus, we are provided no basis to question the agency's evaluation in this regard.

As a final example, Tabcon argues that its proposal should have been evaluated more favorably under the key personnel past performance and experience factor, because its proposed key personnel exceeded the minimum requirements. Protest at 20-21. The agency responds that there was insufficient information to determine whether certain of Tabcon's key personnel met the similar experience requirements in the RFP, and that certain key personnel did not meet the RFP's minimum requirements. Contracting Officer's Statement at 9-10. In this regard, the agency states that Tabcon's proposed general contractor's program manager, and most of the designers of record, did not provide any design-build projects, and thus did not meet the minimum requirements. Id. at 9-10. As the protester does not adequately respond<sup>4</sup> to the agency's position, and our review of the record is consistent with the agency's evaluation, we have no basis to object to the evaluation.

Finally, Tabcon objects that the explanations in the contracting officer's statement are not in the contemporaneous evaluation record. The Federal Acquisition Regulation (FAR) requires the contracting officer to document in the contract file the rationale for placement of a task order, including the basis for award and the rationale for any tradeoffs among cost or price and non-cost considerations in making the award decision. FAR § 16.505(b)(7)(i). Additionally, we have held that agencies are required to adequately document the final evaluation conclusions on which their source selection decision was based. Booz Allen Hamilton, Inc., B-409355, B-409355.2, Mar. 19, 2014, 2014 CPD ¶ 100 at 7. However, where the agency offers post-protest explanations that provide a detailed rationale for contemporaneous conclusions and simply fill in previously unrecorded details, as here, such explanations will generally be considered in our review of the rationality of selection decisions, so long as those explanations are credible and consistent

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<sup>4</sup> Tabcon's comments neither respond to the agency's position that certain of its designers of record do not meet the minimum requirements, nor address the allegation that its general contractor's program manager did not list design-build experience. Protester's Comments at 10.

with the contemporaneous record. Management Sys. Int'l, Inc., B-409415, B-409415.2, Apr. 2, 2014, 2014 CPD ¶ 117 at 6.

We conclude that the contemporaneous record here is adequately documented, and the contracting officer's post-protest statement is both credible and consistent with the contemporaneous record. A review of the SSEB's report shows that the evaluators sought to document in detail strengths, weaknesses and deficiencies found in Tabcon's proposal. Likewise, the SSA's decision focuses on what she felt were the strengths and weaknesses of each proposal, relying in part on the SSEB's evaluation, but also describing what she felt were the key discriminators between the two proposals. We have no basis to find the agency's record to be insufficiently documented, nor do we have any basis to question the substance of the agency's evaluation of Tabcon's proposal.

#### Tradeoff Decision

Tabcon argues that the agency's best value tradeoff decision was flawed. The protester asserts that the tradeoff merely discusses the second and third evaluation factor, but does not mention the technical and management approach factor. Comments at 6-7. The protester also argues that the SSA improperly failed to explicitly account for the weight of each factor in her decision. Id. Tabcon concludes that, "[d]ue to the fact that the agency wholly ignored Factor 1 in its trade-off analysis as well as the descending importance of the factors in determining the dollar per point analysis, the trade-off analysis does not rationally explain why the higher rated and higher cost proposal is the best value determination for the Agency." Comments at 7. We disagree.

In a best value procurement, it is the function of the source selection authority to perform a tradeoff between price and non-price factors, that is, to determine whether one proposal's superiority under the non-price factors is worth a higher price. Even where, as here, price is stated to be of less importance than the non-price factors, an agency must meaningfully consider cost to the government in making its selection decision. See e-LYNXX Corp., B-292761, Dec. 3, 2003, 2003 CPD ¶ 219 at 7; see also 10 U.S.C. § 2304c(d)(3) (requiring consideration of cost in the award of orders under multiple-award contracts). Before an agency can select a higher-price proposal that has been rated technically superior to a lower-price, but acceptable one, the award decision must be supported by a rational explanation of why the higher-rated proposal is, in fact, superior, and explain why its technical superiority warrants paying a price premium. See ACCESS Sys., Inc., B-400623.3, Mar. 4, 2009, 2009 CPD ¶ 56 at 7.

As discussed above, the SSA's best value decision focused on two aspects of the competing proposals as the key evaluation discriminators between the two proposals, namely, the experience of Brasfield & Gorrie's design build team on projects that had similar characteristics to this project and key personnel performing

the projects. AR, exh. 32, SSA's Independent Evaluation, at 6. The SSA concluded that the technical merits of the awardee's proposal significantly outweighed the price premium that the agency would pay for the firm's proposal. Id. at 8.

While the protester appears to take issue with the SSA's focus on these two key evaluation discriminators, both of which fall under the two lesser weighted factors, instead of focusing on the more important technical and management approach factor, we are provided no basis to object to the agency's evaluation in this regard. An agency, in making its tradeoff analysis, may ultimately focus on a particular discriminator, even if it not one of the most heavily weighted factors, where it has a reasonable basis to do so. See Keane Fed. Sys., Inc., B-280595, Oct. 23, 1998, 98-2 CPD ¶ 132 at 16. The protester's only basis for challenging this aspect of the agency's evaluation is that the technical and management factor was more important, and therefore it should have been the focus of the evaluation. Such an argument amounts to nothing more than disagreement with the agency's considered technical judgments regarding the specific elements of an offeror's proposal. ITT Indus. Space Sys., LLC, B-309964, B-309964.2, Nov. 9, 2007, 2007 CPD ¶ 217 at 12-13.

Moreover, the record does not support the protester's assertion that the SSA did not mention, and by implication did not consider the technical and management approach factor in her best value tradeoff decision. See Comments at 6-7. Contrary to the protester's assertion, the SSA's decision does, in fact, discuss the evaluation of proposals under the technical and management factor in the context of the SSEB's evaluation of proposals. AR, exh. 32, SSA's Independent Evaluation, at 3. The SSA also explicitly recognized Brasfield & Gorrie's superiority under the technical and management approach factor in deciding that the firm's technical superiority warranted paying a price premium. Id.

In any event, the protester has not shown that it was prejudiced by the agency's evaluation, as it has not shown why the SSA's focus on the technical and management factor would have led to a different result. The record shows that Tabcon's proposal was inferior to the awardee's proposal under that factor as well and, as discussed above, none of the protester's challenges to its own evaluation have merit. In sum, we have no basis to question the agency's best-value tradeoff decision.

The protest is denied.

Susan A. Poling  
General Counsel