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**Comptroller General
of the United States**

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

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Decision

Matter of: Exegistics, Inc.

File: B-401690

Date: November 5, 2009

Wayne A. Keup, Esq., Wayne A. Keup, PLLC, for the protester.
Adele Ross Vine, Esq., General Services Administration, for the agency.
Linda C. Glass, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of awardee's proposal and agency's determination that awardee's staffing is adequate to meet solicitation requirements is denied, where record shows that agency's evaluation was reasonable and consistent with the solicitation's evaluation factors and where under a fixed-price, performance-based contract, awardee assumes risk if its approach results in higher costs than anticipated.

DECISION

Exegistics, Inc. of Glenview, Illinois, protests the award of a contract to Superior Services, Inc. (SSI) of Fresno, California, under request for proposals (RFP) No. QSDM-K7-090001-N, issued by the General Services Administration (GSA) for logistics support for the Eastern Distribution Center (EDC) in Burlington, New Jersey. The protester essentially argues that the agency's evaluation of SSI's proposal was not in accordance with the factors set forth in the solicitation.

We deny the protest.

BACKGROUND

The solicitation was issued on February 19, 2009 as a HUBZone set-aside and provided for the award of a performance-based, fixed-price contract for a base period with four 1-year option periods. The EDC's primary mission is to plan, program, manage and execute efficient and effective receiving, storage, and shipping of items handled by GSA. RFP, Performance Work Statement (PWS) at 1.

The RFP provided for award to the responsible offeror whose proposal was most advantageous to the government with consideration given to the following evaluation factors listed in descending order of importance: price, technical and past performance. RFP at 10. The RFP provided that when combined the technical and past performance factors were slightly more significant than price.

Under the technical evaluation factor, offerors were to provide a description of the management and technical approach proposed to accomplish the PWS. The RFP provided that the evaluation of the management and technical approach would take into consideration the following subfactors: contractor’s ability and capacity to perform the tasks, a suggested Quality Assurance Surveillance Plan (QASP), transition plan, business process improvement plan, and qualifications of key personnel. Id.

The agency received seven proposals by the closing date. The source selection evaluation board (SSEB) evaluated the proposals and reached a consensus rating for each proposal. The evaluation results with regards to the protester and SSI were as follows:

OFFEROR	TECHNICAL	PAST PERFORMANCE	OVERALL CONSENSUS RATING	PRICE
SSI	Excellent	Good	Excellent	\$35,860,155
Exegistics	Excellent	Neutral	Excellent	\$63,997,547

Agency Report (AR), Tab 10, at 28.

The SSEB, recognizing that SSI and the protester submitted the two highest rated proposals, concluded that since both proposals received a consensus rating of excellent, the SSEB could not determine that Exegistics’ higher price would represent the best value to the government. Consequently, the SSEB recommended award to SSI. The SSEB noted that SSI had an excellent plan for hiring and staffing, provided a comprehensive transition plan, demonstrated substantial business process improvement capabilities, and proposed key personnel with experience providing outstanding distribution center logistics services for contracts of similar size and scope. Id. at 29.

The source selection authority (SSA) reviewed the proposals, the SSEB consensus ratings, as well as the individual comments of the SSEB members. With respect to the SSI proposal, the SSA specifically found that SSI demonstrated a clear understanding of the EDC needs given its performance at the Western Distribution Center (WDC), noted the same strengths as the SSEB noted, and noted that SSI received a good rating for past performance. Because of SSI’s significantly lower price, the SSA reviewed SSI’s proposal to ascertain that no mistake had been made in the SSEB evaluation. The SSA also recognized that SSI has performed similar

services at the WDC, and concluded that SSI's experience in this area might have provided SSI with insight into a more accurate pricing approach than the approach taken by the other vendors. AR, Tab 5, at 27. Finally, the SSA concluded that SSI's excellent technical proposal and low price represented the best value to the government, and award was made to SSI on July 16. After a debriefing, Exegistics filed this protest with our Office.

DISCUSSION

Exegistics maintains that the agency's evaluation of SSI's proposal was irrational and not consistent with the RFP evaluation factors. Specifically, Exegistics contends that SSI's proposed staffing is inadequate to perform the requirement. Exegistics also questions how the agency could rate two proposals "excellent" under the technical/management evaluation factor when the proposals offer such significantly different staffing levels.

Our Office reviews challenges to an agency's evaluation of proposals only to determine whether the agency acted reasonably and in accord with the solicitation's evaluation criteria and applicable procurement statutes and regulations. Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16 at 5. A protester's mere disagreement with the agency's judgment is not sufficient to establish that an agency acted unreasonably. Entz Aerodyne, Inc., B-293531, Mar. 9, 2004, 2004 CPD ¶ 70 at 3.

With respect to the agency's evaluation under the technical factor, the protester essentially disagrees with the agency's judgment about SSI's technical approach. Exegistics objections are primarily based on the fact that SSI proposed to perform the requirement with significantly less staffing than Exegistics and the incumbent contractor. According to the protester, SSI proposes to perform with [DELETED] full time equivalents (FTEs) while Exegistics proposes [DELETED] FTEs.

Based on our review of the record, it is clear that the agency evaluated SSI's proposal in accordance with the RFP evaluation criteria and reasonably concluded that SSI demonstrated its ability and capacity to perform. With respect to the ability and capacity to perform evaluation subfactor, the agency concluded that SSI demonstrated a clear understanding of the EDC needs based on its experience providing similar logistics support to the WDC.¹ The SSEB also noted that SSI

¹ The protester argues that the agency in its evaluation of SSI's proposal relied too heavily on SSI's performance of logistic support at the WDC. It is the protester's position that the WDC requirement is not similar in size or scope to the EDC. However, the record shows that the evaluators focused on SSI's successful performance at the WDC, in part, because it demonstrated SSI's familiarity with the distribution and logistics requirement. While the protester disagrees with the

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proposed a detailed QASP, which is an integral part of a performance-based acquisition. See Federal Acquisition Regulation (FAR) § 37.604. The agency also recognized SSI's commitment to having a floater pool trained and certified to handle workload fluctuations. In addition, the agency found value in SSI's matrix management approach for allowing both corporate personnel and resources to be used to enhance quality control. Agency Report, Exh. 5, SSA Decision at 13-15; Contracting Officer's Statement at 15-18.

As previously stated, SSI received "excellent" ratings for both of the evaluation subfactors that dealt with staffing. Moreover, the RFP contained no established minimum staffing requirement. In fact, the agency states that it specifically decided to switch its acquisition strategy from a labor-hour contract to a performance-based contract in order to encourage vendors to use innovative approaches to satisfy the government's needs in a cost effective manner. The record shows that notwithstanding SSI's proposed low staffing, the agency determined that SSI had demonstrated its capability to perform. While Exegistics' objections to SSI's evaluation reflect the protester's disagreement with the agency's assessments, they do not establish that the evaluation was unreasonable.

The protester also maintains that the SSA was required to use price and/or cost analysis techniques to evaluate these proposals to determine reasonableness and whether the offeror understood the work and had the ability to perform.

Where, as here, a solicitation provides for award of a fixed-price contract--under which the government's liability is fixed, and the contractor bears the risk and responsibility for the actual costs of performance--the agency is only required to evaluate an offeror's price for fairness and reasonableness. FAR §§ 15.402(a), 15.404-1(a); SAMs El Segundo, LLC, B-291620.3, Feb. 25, 2003, 2003 CPD ¶ 48 at 8. It is well-established that price reasonableness in a fixed-price setting relates to whether a firm's prices are too high, not too low. Medical Matrix, LP, B-299526, B-299526.2, June 12, 2007, 2007 ¶ 123 at 9 n.6. Here, Exegistics has provided no basis to question the agency's conclusion that SSI's price was reasonable simply because it was based on staffing levels that Exegistics alleges are insufficient. Even though Exegistics argues that SSI will not be able to perform adequately at its price, the agency determined otherwise--i.e., the agency concluded that SSI understood the requirement and could perform this fixed-price contract at its proposed price.

The protester also argues that under three of the technical subfactors--ability and capacity to perform, QASP, and transition plan--SSI's overall ratings were inconsistent with individual evaluators' findings of weaknesses and deficiencies in

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agency's consideration of SSI's performance at the WDC, the record does not show that the agency acted unreasonably in its evaluation.

these areas. For example, under the ability and capacity to perform subfactor, two of the five evaluators on the SSEB assigned a major weakness to SSI's proposal for its failure to show the frequency of inspections. Among other things, the protester complains that the consensus document does not explain how the concerns of these two evaluators were addressed, or whether the weakness remains in the proposal.

The record here shows that the two evaluators that noted a weakness in SSI's proposal with respect to its proposed QASP--and assigned a marginal rating under this subfactor, nonetheless assigned an overall rating of excellent for the technical evaluation factor. Moreover, the evaluators reached a consensus on their individual ratings and each evaluator signed the consensus report. In addition, the record shows that the evaluators and SSA examined the totality of SSI's approach for each of the evaluation factors.

We also note that the SSA reviewed the SSEB's consensus rating, the individual comments of the SSEB members, and SSI's proposal, before concluding that the assigned ratings were appropriate. Of concern to our Office is whether, as here, the record as a whole supports the reasonableness of the evaluation results and the source selection decision. Orbital Techs. Corp., B-281453 et al., 99-1 CPD ¶ 59 at 9. While the protester disagrees with the agency's conclusions on the basis that SSI had unresolved deficiencies and weaknesses, Exegistics' protest does not demonstrate that the agency's evaluation was unreasonable.

The protest is denied.²

Lynn H. Gibson
Acting General Counsel

² The protester also argues that it was improperly assigned a rating of "neutral" for past performance when it had submitted relevant past performance information for its and its subcontractor's warehouse and distribution operation contracts. Notwithstanding the protester's "neutral" past performance rating, the protester's overall rating was "excellent." We do not find that the protester was prejudiced by this rating since the record shows that the protester and SSI were rated equal technically and SSI was determined to be the most advantageous because of its lower price.