



**G A O**

Accountability \* Integrity \* Reliability

**Comptroller General  
of the United States**

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

## Decision

**Matter of:** XtremeConcepts Systems

**File:** B-406804

**Date:** August 31, 2012

---

Carmel Alasagas for the protester.

Andre Long, Esq., Department of the Navy, for the agency.

Frank Maguire, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### **DIGEST**

Protest is denied where protester's proposal was evaluated as inferior to awardee's under every evaluation factor and subfactor and protester fails to show that the evaluation or agency actions were unreasonable or improper.

---

### **DECISION**

XtremeConcepts Systems (Xtreme), of Arlington, Virginia, protests the Department of the Navy's issuance of a task order to GBL Systems Corporation (GBL), of Camarillo, California, under request for proposals (RFP) No. N00024-11-R-3411, for engineering support for the development of test capabilities associated with net-centric testing of joint mission areas. Xtreme asserts that the agency did not comply with small business set-aside requirements and that its proposal was unreasonably evaluated.<sup>1</sup>

We deny the protest.

---

<sup>1</sup> Since the protester was not represented by counsel who could be admitted to a protective order, we did not issue a protective order in this matter. Accordingly, the agency was not able to produce protected information to the protester, and the discussion in this decision is necessarily general in nature in several respects. In cases such as this, however, we review the entire record, including any information not furnished to the protester, and base our decision on this full review. Bid Protest Regulations, 4 C.F.R. § 21.4 (2012).

## BACKGROUND

The RFP, issued on September 19, 2011, was limited to contractors who are contract holders under the Navy SeaPort-e contract. The acquisition was a 100 percent small business set-aside. AR, exh. A, RFP, amend. 2 at 79. The RFP provided for the award of a cost-plus-fixed-fee level-of-effort type task order to the offeror whose proposal, conforming to the solicitation, offered the best value to the government considering three evaluation factors: (1) technical, including subfactors for workforce, understanding of the work, and management plan; (2) past performance; and (3) cost/price. The technical factor was more important than the past performance factor, and the technical and past performance factors when combined were significantly more important than cost/price. RFP, amend. 2 at 95-96.

The Navy received timely proposals from Xtreme and GBL. Both proposals were included in the competitive range. AR, exh. F, Competitive Range Determination, Jan. 16, 2012. After conducting several rounds of discussions with the offerors and receiving final proposal revisions (FPR), the agency requested revised FPRs.

The revised FPRs were evaluated as follows:

	GBL	Xtreme
Overall Technical	Outstanding/Low Risk	Acceptable/Moderate Risk
Workforce	Outstanding/Low Risk	Acceptable/Low Risk
Understanding	Good/Low Risk	Marginal/Moderate Risk
Management	Outstanding/Low Risk	Acceptable/Moderate Risk
Past Performance	Substantial Confidence/ Very Relevant Past Performance	Satisfactory Confidence/ Somewhat Relevant Past Performance
Proposed Cost/Price	\$35,483,061	\$38,059,870
Evaluated Cost/Price	\$35,493,687	\$38,059,870

AR, exh. E, Source Selection Evaluation Board Report, May 1, 2012; Chart No 1; Summary of Offerors' Ratings and Risk Assessments; AR, exh. M, Source Selection Decision Document (SSDD), at 2-3.

The source selection authority determined that GBL's proposal represented the best value based on GBL's superiority under both the technical and past performance factors and GBL's lower evaluated cost/price. Upon learning of the resulting award, and after receiving a debriefing on May 17, Xtreme filed this protest with our Office.

## DISCUSSION

Xtreme raises a number of issues regarding the agency's conduct of the acquisition and evaluation of Xtreme's technical and cost/price proposals. In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion since the agency is responsible for defining its needs and the best method of accommodating them. Smiths Detection, Inc.; Am. Sci. and Eng'g, Inc., B-402168.4 et al., Feb. 9, 2011, 2011 CPD ¶ 39 at 6-7. 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. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. A protester's mere disagreement with the agency's evaluation judgments does not render those judgments unreasonable. Smiths Detection, Inc.; Am. Sci. and Eng'g, Inc., supra.

We have reviewed all of Xtreme's arguments and conclude that they do not provide a basis to sustain the protest.<sup>2</sup> We address several of the protest grounds below.

### Corrected Weaknesses/Deficiencies

As an initial matter, we note that in several instances Xtreme challenges weaknesses or deficiencies identified by the agency during discussions, but which were subsequently addressed to the agency's satisfaction in Xtreme's revised proposal or by submission of additional information, and thus were not a factor in the agency's source selection decision. SSEB Report at 5-9, 11-14. Accordingly, Xtreme did not suffer competitive prejudice with regard to these issues, and we therefore will not consider whether the agency's initial concerns were warranted. Nippo Corp., B-402363.2, May 5, 2010, 2010 CPD ¶ 112 at 4; see Alanna Orr, B-310966.2, May 14, 2008, 2008 CPD ¶ 95 at 3 (prejudice is an essential element of every viable protest and, where it is not demonstrated or otherwise evident, GAO will not sustain a protest allegation, even where the record shows that the agency's actions arguably were improper).

---

<sup>2</sup> In its comments on the agency report, Xtreme raised supplemental protest grounds based on information in the SSEB Report. Comments at 6-8. These additional protest grounds, however, are untimely and cannot be considered, since the SSEB Report was first provided to Xtreme in the agency's June 4 request for summary dismissal, but Xtreme's comments on the report were not submitted until July 11, more than 10 days after June 4. 4 C.F.R. § 21.2(a)(2); see AdvanceMed Corp.; TrustSolutions, LLC, B-404910.4 et al., Jan. 17, 2012, 2012 CPD ¶ 25.

## Limitations on Subcontracting

Xtreme asserts that GBL's proposal fails to comply with solicitation restrictions on subcontracting. As noted, the solicitation was set aside for small business concerns. As such, the RFP included a limitation on subcontracting clause which required, in relevant part, that offerors provide "a breakout to demonstrate how the prime contractor will perform at least 50% of the cost of contract incurred for personnel with its own employees for each period of performance in accordance with FAR clause 52.219-14." RFP at 87.

Xtreme asserts that GBL's proposed subcontractors are not small businesses, citing a "Company Listing" for GBL from the SeaPort-e web portal and another web-based source, which appears to indicate "sub-companies" or partners of GBL on SeaPort-e contracts that are not small businesses. Protest exh. B. As noted by the agency, however, GBL's proposal indicated that for this procurement it would use only one subcontractor, which was to perform less than 1 percent of the total cost of performance of the task order. Agency Request for Summary Dismissal (ARSD) at 2; ARSD, exhs. C, D.<sup>3</sup>

## Key Personnel

Xtreme asserts that the qualifications, expertise and capabilities of its "impeccable" management and technical team "were entirely ignored by the source selection board and not mentioned in the Post Award Debriefing in comparison to GBL Systems." Protest at 5; Comments at 8-10. However, it is the agency's contemporaneous documentation, and not the debriefing, that is relevant to whether Xtreme was properly evaluated. See Nippo Corp., supra, at 5. Here, the evaluation record provides ample evidence that, in fact, the agency did evaluate Xtreme's proposed personnel. See, e.g., AR, exh. G, at 5; SSEB Report at 12. In this regard, the agency explains that although "the resumes proposed by Xtreme showed great experience, it did not demonstrate experience relevant to the work for this requirement." AR at 21. According to the agency, the resumes showed that Xtreme met the minimum requirements, but they did not show any strength for the workforce subfactor that warranted a higher rating than the assigned acceptable rating. Id. at 21-22. Xtreme has not shown the agency's actual evaluation in this regard to be unreasonable.

---

<sup>3</sup> To the extent that Xtreme questions whether GBL will comply with the RFP's limitation on subcontracting clause, this is a matter of contract administration not for review by our Office. 4 C.F.R. § 21.5(a); see OMV Medical, Inc., B-281490, Feb. 16, 1999, 99-1 CPD ¶ 38 at 9-10 n.7.

## Cost/Price

Xtreme asserts that it was improperly “duped” into raising its price to its competitive detriment. Protest at 5. First, the protester cites the agency’s competitive range letter, dated January 19, 2012, which advised as follows:

The Government expects to select one offeror on the basis of its proposal providing the “best value” to the Government, all factors considered. . . . Offerors are advised that the proposal meeting the solicitation requirements with the lowest price may not be selected for an award if award to a higher priced offeror is determined to be more beneficial to the Government.

Protest att. J. Xtreme asserts that this document misled it into believing that “cost is not an issue.” Protest at 5. We find nothing misleading in this language, which merely paraphrases key sections of the RFP describing the agency’s approach to making a “best value” determination. RFP at 94. Nothing in this language indicates that cost/price would be given no weight in the source selection.

Xtreme next argues that it was coerced into increasing its proposed cost/price, such that it became noncompetitive, during discussions with the agency regarding its labor rates. We will not find coercion in discussions, however, where the agency in good faith provides accurate information to an offeror, even where the offeror uses that information to its ultimate competitive detriment. EMR, Inc., B-406625, July 17, 2012, 2012 CPD ¶ 209. Here, the record indicates that the agency expressed concerns regarding the realism of Xtreme’s low labor rates in both written and oral discussions. AR at 9-10; SSEB Report at 12, 18-19. Xtreme ultimately raised its labor rates in lieu of providing further information supporting the realism of the rates, leading the SSEB to upgrade Xtreme’s rating under the workforce subfactor from marginal with moderate risk to acceptable with low risk. SSEB Report at 11-12. Xtreme has made no showing that the agency furnished inaccurate or misleading information during discussions, or otherwise acted in bad faith. This protest ground therefore is without merit.

In sum, we find no merit to Xtreme’s challenges to the evaluation and source selection. In this regard, not only has Xtreme failed to show that the challenged evaluation judgments were unreasonable, but in any case, the record indicates that Xtreme’s proposal was evaluated as inferior to GBL’s under every evaluation factor and subfactor. Thus, even were we to agree with Xtreme regarding one of its

challenges to the evaluation, there simply is no reason to believe that this would have called into question the award to GBL.<sup>4</sup>

The protest is denied.

Lynn H. Gibson  
General Counsel

---

<sup>4</sup> The protester requests that GAO conduct a thorough review of what it asserts is the systemic tendencies of government procurement agencies in favoring small business with large companies as subcontractors or benefactors to win small business set-aside procurements. GAO, however, does not conduct investigations as part of our bid protest function. RMI, B-405409, Oct. 20, 2011, 2011 CPD ¶ 224 at 3 n.2.