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Decision

Matter of: Spectrum Comm, Inc.

File: B-412395.2

Date: March 4, 2016

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Young H. Cho, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging selection of lower-rated, lower-priced quotation is denied where the agency's source selection authority considered the technical differences between the two vendors' quotations but determined that the superiority of the higher-rated, higher-priced quotation was not worth paying the associated price premium.
 2. Protest arguing that the selection official raised the awardee's past performance rating during corrective action without explanation or support in the record is denied where the record shows that the selection official's rating was reasonable.
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DECISION

Spectrum Comm, Inc. (Spectrum) of Newport News, Virginia, protests the issuance of a task order under Federal Acquisition Regulation (FAR) part 8 to Jacobs Technology, Inc. (Jacobs) of Lincoln, Massachusetts, under request for quotations (RFQ) No. 964303, issued by the Department of the Air Force for product support services for the Air Force Wideband Enterprise Terminals (AFWET) program office. The protester challenges several aspects of the selection decision.

We deny the protest.

The RFQ was issued on June 5, 2015, through the General Services Administration (GSA) e-buy system under the procedures of FAR subpart 8.4 to vendors holding contracts under the GSA's professional engineering services schedule. The RFQ sought product support services for the AFWET program¹ office on Hanscom Air Force Base, its associated geographically-separated units, and operating locations. RFQ at 1.² The RFQ contemplated award of a single task order with a base period of six months and five six-month option periods. Id. Award was to be made on a best-value basis, considering the following factors, listed in descending order of importance: mission capability, past performance, and price. See id. at 2. The non-price factors, when combined, were stated to be significantly more important than price; however, the RFQ stated that price would "contribute substantially to the selection decision." Id.

The RFQ's performance work statement (PWS) described the scope of required services, including, for example, such services as implementation of project management, integration of diverse implementation efforts, and installation expertise to ensure systems are installed correctly. RFQ, PWS at 4. The PWS identified nine specific functions or positions for which the contractor was to provide "trained and capable individuals." Id. at 6. To address these positions, vendors were required to submit only their "GSA schedule labor category/codes and position descriptions."³ RFQ at 3. The RFQ stated that mission capability would be "measured by how well the labor codes and descriptions selected by the offerors match Government requirements as detailed in the PWS."⁴ Id. at 2. With respect to past performance, the RFQ stated that this factor would be measured by relevant Contractor Performance Assessment Reporting System (CPARS) reports submitted within two years of release of the RFQ, and research among other government customers. Id.

Spectrum and Jacobs both submitted timely quotations. A source selection evaluation board (SSEB) was established to evaluate the quotations using a color-

¹ The AFWET program provides worldwide wideband anti-jam, anti-scintillation capable satellite communications in X-band frequencies. RFQ, PWS at 4.

² The RFQ was modified three times. All references to the RFQ are to the final version, as modified on June 25, 2015. All citations to the record are to the pagination provided by the agency.

³ Vendors were not required to propose specific staff by name, or to provide resumes.

⁴ The PWS provided the position title; required level of security clearance; description of the position's primary function(s), responsibilities, and qualifications; and, additional information such as position location and frequency of travel for nine positions. RFQ, PWS at 6-19.

coded adjectival rating scale⁵ for both non-price factors. The overall evaluation results of the two vendors, discussed in further detail below, were as follows:

	Spectrum	Jacobs
Mission Capability	Very Good	Satisfactory
Past Performance	Exceptional	Very Good
Price	\$8,369,751.55	\$7,971,137.36

Agency Report (AR), Tab 17, Proposal Analysis Report (PAR) at 9.

For the mission capability factor, the SSEB assigned sub-ratings for each position description proposed, based on whether the position description met, exceeded, or did not meet the qualifications listed in the PWS in the areas of education, experience, security clearance, and ability.⁶ Id. at 3-4. Using these sub-ratings, the SSEB then assigned an overall position rating based on the mix and number of sub-ratings for each position description.⁷ Id. Using the position ratings, the SSEB assigned an overall rating for the mission capability factor.⁸ Id. at 2.

⁵ These ratings were: exceptional/blue, very good/purple, satisfactory/green, marginal/yellow, and unsatisfactory/red with associated definitions. Agency Report (AR), Tab 9, Signed Evaluation Criteria at 1-3. For clarity, this decision omits the color code and refers only to the associated adjectival rating.

⁶ As relevant here, a very good rating was defined as “able to perform duties at a very high level” and green was defined as “able to perform duties.” AR, Tab 17, Proposal Analysis Report (PAR) at 3-4. Specifically, position descriptions that showed an educational background “far over the minimum requirement (e.g., Master’s vs. Bachelors)” would be assigned a very good rating for the area of education, whereas those that simply met the requirement would be assigned a satisfactory rating. Id. Similarly, for experience, a very good rating would be assigned if the position description’s experience exceeded the desired level of experience by two or more years, whereas a satisfactory would be assigned if the experience was within one to two years (over or under) of the desired experience. Id.

⁷ As relevant here, a very good rating would be assigned to positions with one to two very good sub-ratings and no marginal sub-ratings and a satisfactory if the position had all satisfactory sub-ratings. Id. at 3.

⁸ As relevant here, a very good rating was defined as “[p]erformance meets contractual requirements and exceeds some to the Government’s benefit,” and satisfactory was defined as “[p]erformance meets contractual requirements.” AR, Tab 9, Signed Evaluation Criteria at 1-2.

Spectrum proposed to fill the nine positions identified in the PWS with personnel in three different GSA labor categories (identifying one for each of the positions), and Jacobs proposed personnel in four labor categories. The quotations were evaluated according to the rating scheme described above. Id. at 9-11, 19-22. As a result, Spectrum's quotation received an overall very good rating based on eight very good position ratings and one satisfactory position rating, while Jacobs's quotation was given an overall satisfactory rating based on two very good and seven satisfactory position ratings. Id. at 9, 19. Spectrum's very good ratings were based on a mixture of the position descriptions exceeding the desired education level and/or the desired level of experience. Id. at 20-22. Jacobs's two very good ratings were assigned to one position that exceeded the minimum desired experience and another position that Jacobs proposed to fill with an individual with significantly more than the desired level of experience for the position. Id. at 9, 11.

For the past performance factor, the agency searched for CPARS reports, using the North American Industry Classification System (NAICS) code applicable to this procurement, and each vendor's name, for the two-year period prior to the RFQ release date. See id. at 12, 22. For Jacobs, the search produced 50 CPARS reports, from which 7 samples were selected by using a random number generator. Id. at 12. For Spectrum, five CPARS reports were found. The agency also followed up with a past performance survey for one sample contract for each contractor. Id. at 23. The agency then created a past performance evaluation worksheet that documented the adjectival ratings assigned to five areas in the CPARS reports and the past performance surveys (quality, schedule, cost, business relations, and management). Id. at 12, 22. See also AR, Tab 12, Spectrum Past Performance Evaluation Worksheet; AR, Tab 15, Jacobs Past Performance Evaluation Worksheet.

Jacobs's quotation was rated as very good,⁹ based on the performance ratings from the seven sample CPARS reports which ranged from marginal to exceptional.¹⁰ AR, Tab 17, PAR at 13. In assigning a very good past performance rating, the SSEB explained that:

Although the majority of the ratings were marked as exceptional, the evaluation team felt that even one marginal rating on a government labor contract would put the AFWET Program Office at risk for less than exceptional performance. Therefore, the evaluation team arrived

⁹ A very good rating was defined as “[b]ased on the offeror’s recent/relevant performance record, the Government has a high expectation that the offeror will successfully perform the required effort.” Id.

¹⁰ Jacobs received 1 marginal, 4 satisfactory, 4 very good, and 27 exceptional ratings. AR, Tab 17, PAR at 13.

at a consensus of Very Good (Purple) due to consistent ratings of Exceptional and Very Good in all areas of evaluation, but 1 Marginal Rating that negatively affected the offeror's overall rating.

Id.

Spectrum's quotation was given an exceptional rating,¹¹ based on the CPARS ratings for five contracts, which ranged from satisfactory to exceptional. Id. at 24. In assigning this rating, the SSEB explained that

The evaluation team arrived at a consensus of Exceptional (Blue) due to consistent ratings of Exceptional (Blue) in all areas. Of the possible 22 applicable areas (Spectrum had N/A for some areas in its CPARS, namely Cost Control and Business Relations) there was 1 Satisfactory (Green) Rating, 4 Very Good (Purple) ratings, and 17 Exceptional (Blue) ratings. Due to consistent Exceptional (Blue) performances the Past Performance Evaluation Team is confident in their assessment of Exceptional (Blue).

Id.

On August 17, 2015, the SSEB chairperson recommended award to Spectrum because it received "substantially superior" ratings in the two non-price factors, which, as combined, were significantly more important than price. AR, Tab 16, SSEB Recommendation for Award. The SSEB chairperson, further, explained that the contractor for the AFWET program "must meet an aggressive joint schedule comprised of 25-30 concurrent projects at 22 global locations. Without top-notch support, this incredibly complex schedule is not achievable Therefore, I believe securing the superior contracted support justifies this relatively small premium." Id.

The source selection authority (SSA)¹² disagreed with the SSEB's recommendation and, on September 18, 2015, selected Jacobs for award. AR, Tab 18, Source Selection Decision Document (SSDD) (Pre-Corrective Action) at 5. On October 23, 2015, Spectrum protested the award, alleging that the selection decision improperly converted the basis of award for the procurement from best-value to lowest-priced, technically acceptable (LPTA). AR, Tab 21, Spectrum Protest (B-412395.1). In response to the protest, the agency took corrective action,

¹¹ An exceptional rating was defined as "[b]ased on the offeror's recent/relevant performance record, the Government has a very high expectation that the offeror will successfully perform the required effort." AR, Tab 9, Signed Evaluation Criteria at 2.

¹² The contracting officer for this procurement served as the selection official.

stating that the SSA would review the source selection documentation, make a new best-value determination, and take any other corrective action the agency deemed necessary. AR, Tab 23, Agency Notice of Corrective Action at 1. In response to the agency's proposed corrective action, our Office dismissed the protest as academic.

On November 17, 2015, the SSA again selected Jacobs for award. AR, Tab 25, SSDD at 1, 5-6. While "recogniz[ing] the need for exceptional support for the AFWET Program" in the selection decision, the SSA, nonetheless, determined that Spectrum's higher ratings "did not justify paying an additional \$398,614.19" for this contract. Id. at 5. The SSA explained, further, that she found that while the assigned ratings "provide an appearance that the overall ratings received by [Spectrum] for Mission Capability and Past Performance are significantly higher than the ratings received by [Jacobs]," she found that the vendors' "overall capabilities are close to each other." Id. at 5.

For the mission capability factor, the SSA found that "[w]hile [Spectrum] received a higher overall rating for Mission Capability than [Jacobs], I do not find that the differences between the two offerors is so great as to justify paying an almost \$400K premium for [Spectrum's] marginally superior quote under Mission Capability." Id. In this regard, the SSA found that Spectrum's quotation was rated overall very good for this factor, based on having received eight very good position ratings and one satisfactory, while Jacobs's quotation received an overall satisfactory rating based on having received two very good and seven satisfactory position ratings. Id. The SSA found, however, that four of Spectrum's very good position ratings were "solely based on the fact that [Spectrum] exceeded the desired education level for these positions (Master's Degree offered while Bachelor's Degree was desired)," and "solely on the fact that [Spectrum] proposed to fill the position with an individual who exceeded the desired level of experience by a handful of years (the Mid-Level Project Integrator had 6 years of experience vs. the desired 2 years and the Senior Equipment Training Lead had 12 years vs. the desired 8 years of experience)". Id.

For the past performance factor, the SSA found that the overall ratings were "misleading" because Spectrum's overall exceptional past performance record significantly exceeded Jacobs's overall very good past performance rating, "when in reality their actual Past Performance records are very similar." Id. The SSA compared the number of ratings the two vendors received, and found that Jacobs should have received an exceptional rating for past performance. Id. The SSA explained that, "While I understand the [SSEB]'s concern regarding this one 'Marginal' rating, I find that on the whole [Jacobs's] Past Performance record is 'Exceptional' in that the Government has a very high expectation that [Jacobs] will successfully perform the required effort." Id. at 6.

On November 18, 2015, Spectrum was notified of the agency's decision to re-award the contract to Jacobs. Protest at 7. This protest followed.

DISCUSSION

Spectrum primarily argues that the SSA improperly converted the basis of award for this procurement from best-value to LPTA by making price the deciding factor. The protester argues that this resulted from the SSA's minimizing Spectrum's technical superiority and failing to meaningfully consider the technical differences between the two vendors under the mission capability factor, and raising Jacobs's past performance factor rating from very good to exceptional without explanation or support in the record. As discussed below, we find no basis to conclude that the selection here was made on a LPTA basis.¹³

The mere fact that a reevaluation of proposals after corrective action varies from the original evaluation does not constitute evidence that the reevaluation was unreasonable. Rather, it is implicit that a reevaluation can result in different findings and conclusions. IAP World Servs., Inc., B-406339.2, Oct. 9, 2012, 2012 CPD ¶ 287 at 3-4; QinetiQ North Am., Inc., B-405163.2 et al., Jan. 25, 2012, 2012 CPD ¶ 53 at 13. The overriding concern for our Office's review is not whether the evaluation results are consistent with the earlier evaluation results, but whether they reasonably reflect the relative merit of the offers. See Marcola Meadows VA LLC, B-407078.2 et al., June 4, 2013, 2013 CPD ¶ 141 at 8.

Mission Capability Factor

Spectrum disagrees with the SSA's finding that "the [vendors'] overall capabilities are closer to each other than the color ratings would reveal." See Comments at 18-21. In this regard, Spectrum argues that "the SSA intentionally downplayed the significance of Spectrum's . . . ratings, thereby neutralizing those advantages, and improperly converted the most important evaluation factor into a non-factor in contravention of the evaluation scheme set forth under the RFQ." ¹⁴ Id. at 18.

¹³ Although we do not specifically address all of Spectrum's arguments, we have fully considered all of them and find that they afford no basis on which to sustain the protest.

¹⁴ Spectrum also argues that "[t]he SSA was required to explain why she disagreed with the SSEB's views [in its award recommendation] regarding the importance of schedule risk mitigation under the Mission Capability factor and its role in ensuring the overall success of the mission." See Comments at 21-22. We disagree. It is well settled that source selection officials are not bound by the recommendation of lower-level evaluators. Verify, Inc., B-244401.2, Jan. 24, 1992, 92-1 CPD ¶ 107 at 7.

Spectrum argues, further, that the SSA failed to engage in any meaningful, comparative consideration of the technical differences between the two vendors. Id. at 21.

In response, the agency states that the technical differences between the quotations “were not that vast” and “rested mostly on the fact that Spectrum proposed to fill certain positions with personnel who exceeded a required educational level (Master’s Degree vs. Bachelor’s Degree) or exceeded the desired years of relevant experience by a handful of years.” See Contracting Officer’s Statement of Facts (COSF) at 19-23; Agency Memorandum of Law at 9 n.2, 15. However, in response to questions asked by our Office during the development of the protest record, the agency stated that “this information narrowed the gap between the quality of the quot[at]ions] in Mission Capability and led to [the SSA’s] determination that Spectrum was only ‘marginally’ superior in this area.” CO/SSA Email (Jan. 26, 2016) Responding to GAO Request for Information. The agency stated, further, that the SSA took into consideration that “Spectrum still had four other positions that were rated Very Good . . . but [the SSA] determined that it was not in the best interest of the Government to pay the premium for the additional capability that was found in these four positions.” Id.

Subpart 8.4 of the FAR requires that agencies make their award decisions in accordance with the solicitation’s stated evaluation criteria. FAR § 8.405-2(c)(3). Where, as here, an agency issues a solicitation to Federal Supply Schedule contractors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency’s evaluation is reasonable and consistent with the terms of the solicitation. SRM Group, Inc., B-410571, B-410571.2, Jan. 5, 2015, 2015 CPD ¶ 25 at 4; Digital Solutions, Inc., B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4. Procurements conducted pursuant to FAR subpart 8.4 and requiring a statement of work, such as this one, require minimum documentation expressly described in FAR § 8.405-2(f), including the rationale for any tradeoffs made in the selection. Additionally, source selection decisions must be documented in sufficient detail to show that they are reasonable. See Neopost USA Inc., B-404195, B-404195.2, Jan. 19, 2011, 2011 CPD ¶ 35 at 7; USGC Inc., B-400184.2 et al., Dec. 24, 2008, 2009 CPD ¶ 9 at 8-9; Advanced Tech. Sys., Inc., B-298854, B-298854.2, Dec. 29, 2006, 2007 CPD ¶ 22 at 8.

Mission capability was the most important factor under this RFQ. While the PWS here sought a broad range of services, and indicated that the contractor would be required to provide “trained and capable individuals,” the RFQ did not require the vendors to provide any technical solutions¹⁵ or to identify proposed individuals.

¹⁵ Spectrum, nonetheless, refers to its “proposed solution” as having exceeded the solicitation requirements and being substantially superior to that of Jacobs. See, e.g., Protest at 11; Comments at 17.

RFQ, PWS at 6. Rather, the RFQ stated that the mission capability factor would be evaluated to “measure[] . . . how well the labor codes and descriptions selected by the offerors match Government requirements as detailed in the PWS.” Compare id. with RFQ at 2. As a result, vendors were requested to include “GSA schedule labor category/codes and position descriptions in accordance with the PWS.” Id. at 3.

As noted above, in response to the RFQ, the vendors submitted information about filling the required positions with personnel in three (Spectrum) or four (Jacobs) GSA schedule labor categories. The record shows that the differences that existed between the two vendors’ position descriptions were primarily in the areas of education and experience. In this regard, Jacobs’s position descriptions generally met the desired levels in the PWS, while Spectrum’s position descriptions generally exceeded the desired level of education and/or experience. Compare AR, Tab 17, PAR at 9-11 (Jacobs) with 19-22 (Spectrum). Contrary to the protester’s assertions, the record shows that the SSA not only looked beyond the overall adjectival rating assigned under the mission capability factor, but also considered the position ratings and sub-ratings underlying the overall adjectival ratings. While she concluded that Spectrum’s proposal was superior to that of Jacobs because of those underlying differences, she also was required to consider whether the particular features in Spectrum’s quotation were worth the associated price premium. The record shows that the SSA found no discriminators between the two quotations that would support a tradeoff in favor of Spectrum’s higher-priced quotation. We see no basis to substitute our judgment for the SSA’s in this area.

Past Performance Factor

Spectrum also argues that the SSA improperly raised Jacobs’s past performance factor rating from very good to exceptional without explanation or support in the record.¹⁶ See Protest at 9-10; Comments at 23. Specifically, the protester argues that the record contains no explanation for “this obvious, *post-hoc* change that was made in the heat of litigation” where the SSA “openly and freely” agreed with the SSEB’s very good rating, but raised Jacobs’s rating during corrective action “although no new information regarding Jacobs was made available or reviewed.” See Protest at 9-10; Comments at 23 (*italics in original*).

¹⁶ The protester also argued that the SSA did not conduct an independent analysis because the SSA reviewed only select portions of the SSEB’s recommendation and no other past performance information in upgrading Jacobs’s score. See Comments at 23. Here, the record shows that the SSA considered the same information that the SSEB considered, i.e., the adjectival ratings from the CPARS reports, but reached a different conclusion.

Our Office examines an agency's evaluation of past performance to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations; however, the necessary determinations regarding the relative merits of offerors' quotations are primarily matters within the contracting agency's discretion. Advanced Env'tl. Solutions, Inc., B-401654, Oct. 27, 2009, 2010 CPD ¶ 7 at 5. Our Office will not question an agency's determinations absent evidence that those determinations are unreasonable or contrary to the stated evaluation criteria. Id. As relevant here, a source selection official may disagree with the evaluation ratings of lower-level evaluators, and may make an independent evaluation judgment, provided that the basis for that judgment is reasonable and documented in the contemporaneous record. Halfaker & Assocs., LLC, B-407919, B-407919.2, Apr. 10, 2013, 2013 CPD ¶ 98 at 6.

Here, the agency explains that after reviewing the source selection documentation as part of the corrective action, the SSA no longer agreed with the SSEB's overall rating of Jacobs under the past performance factor. COSF at 14, 17. The SSA disagreed with the SSEB's assignment of a very good rating,¹⁷ based on her disagreement with the SSEB's conclusion that one marginal rating in one area of one CPARS report could put the AFWET program office at risk for less than exceptional performance, notwithstanding the otherwise exceptional and very good ratings. See id. at 14-15, 17-18. Instead, the SSA viewed the single marginal rating for one area as "an outlier and not representative of Jacobs'[s] body of Past Performance." Id. at 17. Further, the SSA found that the area in which Jacobs received its one marginal rating--management of key personnel--was an area for which Jacobs received exceptional ratings in the remaining six CPARS. See id. Based on these considerations, the SSA concluded that "on the whole, Jacobs'[s] Past Performance record was 'Exceptional' in that I had a very high expectation that Jacobs will successfully perform the required effort." Id. at 17-18. In sum, the SSDD shows that the SSA's conclusions were reasonable and appropriately documented; she acknowledged the SSEB's concerns with regard to the marginal rating, but did not share those concerns because "on the whole" she found that Jacobs' past performance was exceptional. See AR, Tab 25, SSDD at 6.

¹⁷ Spectrum contends that the SSA mischaracterized the SSEB's basis for assigning Jacobs a very good rating, which, according to the protester, was "based on a substantive review of the much broader, collective combination of all the ratings that Jacobs received," not "simply because of the one Marginal rating it received." Comments at 24. As discussed above, the SSA reviewed the same information considered by the SSEB and based on the SSA's consideration of Jacobs' past performance information came to a different conclusion.

On this record, we find that the SSA reasonably determined that Jacobs's quotation offered the best value, and adequately documented her conclusions.

The protest is denied

Susan A. Poling
General Counsel