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Decision

Matter of: Protection Strategies, Inc.

File: B-414648.2; B-414648.3

Date: November 20, 2017

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DIGEST

1. Protest challenging the evaluation of the awardee’s quotation is sustained where the record does not demonstrate that the agency had a reasonable basis to assign a strength for the awardee’s proposed personnel.
2. Protest that the agency unreasonably ignored the protester’s pricing “assumptions” is denied where the assumptions were inconsistent with the solicitation’s requirements and were expressly barred by the evaluation criteria.
3. Protest challenging the award to the vendor that submitted a lower-technically-rated, lower-priced quotation, as compared to the protester, is sustained where the source selection authority did not have a reasonable basis for concluding that the evaluated differences between the vendors’ quotations under the non-price factors were “negligible.”

DECISION

Protection Strategies, Inc. (PSI), of Oak Ridge, Tennessee, protests the establishment of a blanket purchase agreement (BPA) with Skyhawk Logistics, Inc., of Laurel, Maryland, by the Department of Health and Human Services (HHS) under request for quotations (RFQ) No. 16-233-SOL-00560 for background investigation services. PSI argues that the agency unreasonably evaluated the vendors under the technical, past performance, and price factors, and that the agency made an unreasonable tradeoff decision in selecting Skyhawk’s lower-technically-rated, lower-priced quotation for award.

We sustain the protest.

BACKGROUND

HHS issued the solicitation on July 28, 2016, under the Federal Supply Schedule (FSS) provisions of Federal Acquisition Regulation (FAR) subpart 8.4. The solicitation was limited to FSS vendors and anticipated the establishment of a BPA with fixed-price and time-and-materials task orders, for a base period of 1 year and four 1-year options. Agency Report (AR), Tab 30, RFQ at 3, 23.¹ The maximum value of the BPA was to be \$25 million. Id. at 3. The RFQ sought quotations to provide personnel security and badging services for the HHS Office of Security and Strategic Information (OSSI) in Washington, DC, and Rockville, Maryland. Id. at 5. The services will include background investigation initiation and processing, Homeland Security Presidential Directive 12 credentialing functions, case management, and fingerprinting. Id.

The RFQ advised vendors that their quotations would be evaluated based on the following three factors, which were listed in descending order of importance: (1) technical, (2) price, and (3) past performance. Id. at 45. The technical factor had three equally-weighted subfactors: (1) technical approach, (2) management approach, and (3) corporate capability. Id. at 47-49. For purposes of award, the solicitation stated that “[a]ll evaluation factors other than cost or price, when combined, are significantly more important than cost or price.” Id. at 46.

HHS received quotations from four vendors, including PSI and Skyhawk, by the revised closing date of January 12, 2017. Contracting Officer’s Statement (COS) at 2. On April 23, the agency selected Skyhawk’s quotation for award and establishment of the BPA. PSI filed a protest with our Office on May 3, challenging the award to Skyhawk. On May 23, HHS advised our Office that it would take corrective action in response to PSI’s protest. Based on the agency’s notice, we dismissed the protest as academic on May 24.

As part of its corrective action, HHS reevaluated vendors’ quotations under the technical and past performance factors. AR, Tab 10, Award Decision, at 7. The final evaluation ratings for the vendors’ quotations² were as follows:³

¹ References to the RFQ are to the final version in amendment 13 at AR, Tab 30.

² The fourth vendor was excluded from the competition based on its proposed pricing. AR, Tab 10, Award Decision, at 9.

³ For the technical evaluation factor, the agency was to assign one of the following ratings: outstanding, better, acceptable, marginal, or unacceptable. RFQ § M.4 at 46-47. For the past performance factor, the agency was to assign one of the following ratings: very low performance risk, low performance risk, moderate performance risk, high performance risk, or unknown performance risk. Id. at 50.

	PSI	Skyhawk	VENDOR 3
TECHNICAL FACTOR	ACCEPTABLE	ACCEPTABLE	BETTER
Technical Approach	Acceptable	Acceptable	Acceptable
Management Approach	Better	Acceptable	Outstanding
Corporate Capability	Acceptable	Acceptable	Better
PAST PERFORMANCE	VERY LOW RISK	LOW RISK	LOW RISK
PRICE	\$13,484,659	\$13,235,173	\$17,123,265

AR, Tab 10, Award Decision, at 8-10.

The contracting officer for the procurement was also the source selection authority (SSA). Id. at 18. The award decision compared the quotations of PSI, Skyhawk, and Vendor 3. As relevant here, the contracting officer concluded that although PSI's quotation had strengths which merited higher ratings under the technical and past performance factors as compared to Skyhawk's quotation, those strengths represented only a "only a negligible technical and past performance advantage" which did not merit award to PSI, whose quotation was priced \$249,485 higher. Id. at 14. The agency advised PSI of the award to Skyhawk on August 7, and this protest followed.

DISCUSSION

PSI raises five primary challenges to the award to Skyhawk: (1) the agency unreasonably evaluated Skyhawk's quotation under the technical evaluation factor; (2) the agency unreasonably evaluated PSI's quotation under the technical evaluation factor; (3) the agency unreasonably evaluated Skyhawk's past performance; (4) the agency unreasonably evaluated PSI's proposed price because it failed to consider assumptions set forth in the protester's quotation, and (5) the best-value tradeoff supporting the award decision was unreasonable because it improperly discounted or ignored advantages in PSI's quotation. For the reasons discussed below, we conclude that the agency's evaluation of the awardee's technical quotation and the best-value tradeoff were unreasonable, and sustain the protest on these bases.⁴

Where, as here, an agency issues an RFQ to FSS vendors under the provisions of FAR subpart 8.4 and conducts a competition for the issuance of an order or establishment of a BPA, our Office will not reevaluate the quotations; rather, we review the record to ensure that the agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. Digital Solutions, Inc., B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4; DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2. A protester's disagreement with the agency's judgment, without more, does not establish that an evaluation was unreasonable. DEI Consulting,

⁴ PSI also raises other collateral arguments. Although we do not address every argument, we have reviewed them all and find no basis to sustain the protest on grounds other than those identified herein.

supra. Additionally, competitive prejudice is an essential element of a viable protest and we will sustain a protest only where the protester demonstrates that, but for the agency's improper actions, it would have had a substantial chance of receiving the award. DRS ICAS, LLC, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 21.

Technical Factor Evaluation--Skyhawk

PSI argues that HHS unreasonably evaluated Skyhawk's quotation with regard to several areas of its quotation under the technical evaluation factor. For the reasons discussed below, we conclude that the agency unreasonably assigned the awardee a strength under the management approach subfactor of the technical evaluation factor and sustain the protest on this basis. We conclude that none of the other arguments raised by the protester challenging the agency's evaluation under this factor provide a basis to sustain the protest.

The management approach subfactor required vendors to "provide detailed information regarding the personnel proposed for the first task order." RFQ § M.4 at 47. Vendors were required to provide information for 33 full-time equivalent (FTE) positions in nine labor categories. Id. at 47-48. The RFQ advised that a quotation would be evaluated based "on how well it demonstrates that assigned contractor personnel will have the ability to meet contract deliverables, resolve issues in a timely manner, and successfully complete the requirements on schedule, within budget and within acceptable quality levels." Id. at 48. The solicitation identified the following criteria under which quotations would be evaluated:

- 1) Resources/Staffing – the ability to deliver quality staff and consistent coverage for the specified hours over the life of the BPA with the required certifications, retention of quality staff, ability to turnaround staff quickly and efficiently when necessary. The more specifically named and qualified personnel quoted [] for the first task order, the more favorably the quoter will be rated under this subfactor.
- 2) Quality of Personnel - the technical strength and industry expertise of the resources presented by a vendor to include the expertise and experience of individual team members with services that are directly relevant to the requirements described in the Statement of Work.
- 3) Quality control – quality control method should be addressed in the quote.

Id.

The RFQ stated that vendors should provide resumes for "any specifically-named personnel it proposes for the first task order other than the following positions: Case Management Specialist – Junior, Badging Specialist, and Administrative Assistant-[Division of Child Services (DCS)]." Id. The solicitation further stated that "[i]f the proposed person is not currently employed by the quoter, the quoter must include a

signed letter of commitment to demonstrate the person's availability and intent to work on the task order." Id. As relevant here, HHS assigned Skyhawk's quotation the following strength under this factor: "Some of the specifically named personnel exceeded the agency's requirements for experience (Quality of Personnel)." AR, Tab 14, Technical Evaluation Panel (TEP) Report, at 19.

PSI argues that the agency unreasonably assigned this strength to Skyhawk's quotation because although it stated that all of the 37 specifically named individuals proposed for the first task order were "current employees," 11 of the 37 resumes provided by the awardee for these individuals showed that they were not current Skyhawk employees. AR, Tab 5A, Skyhawk Quotation Vol. I, at 25; id., App. I, at 8, 14, 16, 18, 21, 26, 29, 31, 35, 38-39. The protester contends that under the terms of the solicitation, the agency could not reasonably give credit to Skyhawk for proposing any "specifically-named personnel" who exceeded the RFQ's requirements unless that individual was a current employee or the protester provided a "signed letter of commitment to demonstrate the person's availability and intent to work on the task order." See RFQ § M.4 at 48.

Although the contemporaneous record does not identify which Skyhawk personnel exceeded the agency's requirements for experience, the agency's response to the protest states that the agency concluded that three individuals were considered "specifically-named personnel" and were credited as exceeding the agency's requirements: (1) an adjudicator/program manager, (2) an administrative assistant--personnel security services (PSS), and (3) an administrative assistant--DCS. Agency Supp. (Memorandum of Law) MOL, Oct. 12, 2017, at 2. The agency's response to the protest does not dispute that the awardee's quotation did not provide any letters of commitment for personnel whose resumes stated that they did not currently work for Skyhawk. Instead, the agency explains that, in evaluating whether specifically named personnel were available to work on the contract, it relied on the awardee's statement in its quotation that "the qualified candidates are readily available for all of the functional areas, positions and at locations across the country for the contract." Agency Supp. MOL, Oct. 2, at 14 (quoting AR, Tab 5A, Skyhawk Quotation Vol. I, at 14); see also, AR, Tab 17, TEP Statement, at ¶ 8.

We agree with PSI that the record does not support HHS's assignment of a strength to Skyhawk's quotation. Agencies must adequately document their evaluations, and, where an agency fails to do so, it runs the risk that our Office will be unable to determine whether the agency's evaluation was reasonable. IBM Global Bus. Serv.--U.S. Fed., B-409029, B-409029.2, Jan. 27, 2014, 2014 CPD ¶ 43 at 4. Moreover, where an agency offers an explanation of its evaluation during the heat of litigation that is not borne out by the contemporaneous record, we generally give little weight to the later explanation. Solers Inc., B-409079, B-409079.2, Jan. 27, 2014, 2014 CPD ¶ 74 at 11-12; System Eng'g Int'l, Inc., B-402754, July 20, 2010, 2010 CPD ¶ 167 at 5 n.3.

Here, nothing in the contemporaneous record supports the agency's representation that the strength assigned for "[s]ome" of Skyhawk's specifically named personnel referred to three individuals, or who those three individuals were. AR, Tab 14, TEP Report, at 19. Moreover, even if we were to credit the agency's unsupported representations in its response to the protest, the contemporaneous record shows that at least two of the three proposed personnel did not meet the RFQ's requirements to receive credit as specifically named individuals.

One of the three individuals (administrative assistant-PSS) provided a resume which showed that she was not a current Skyhawk employee, but did not provide a letter of commitment. AR, Tab 5A, Skyhawk Quotation Vol. I, App. 2, at 39. As discussed above, the RFQ specifically required vendors to provide letters of commitment for specifically named personnel who were not current employees. RFQ § M.4 at 48.

With regard to a second proposed individual (administrative assistant--DCS), the awardee's quotation did not provide a resume. AR, Tab 5A, Skyhawk Quotation Vol. I, at 25. Although the RFQ did not require vendors to submit resumes for this position, the agency does not explain how it was able to assess the qualifications of the individual in the absence of a resume detailing the individual's experience. Additionally, as discussed above, Skyhawk's quotation stated that all of the 37 individuals identified in its quotation were current employees; in fact, the awardee's quotation distinguished an individual proposed as a "current employee" from one proposed as a "letter of intent" hire, indicating that none of the individuals were the latter. AR, Tab 5A, Skyhawk Quotation Vol. I, at 25. Thus, in the absence of a resume for this individual, it is not clear how the agency reasonably concluded that the individual was a current employee based on the awardee's representations--which were clearly inaccurate with regard to other proposed personnel.

Finally, PSI contends that the experience of the three individuals' did not exceed the solicitation's requirements, and that the agency therefore did not have a reasonable basis to assign a strength to Skyhawk's quotation. See AR, Tab 14, TEP Report, at 19. We conclude that nothing in the contemporaneous record or the agency's response to the protest addresses or explains why the agency found that the individuals' experience exceeded the requirements.⁵

In sum, we find that, at best, only one of the three individuals could be reasonably considered a specifically named individual in Skyhawk's quotation; we also find that the record does not explain why the agency found that the three individuals' experience exceeded the RFQ's requirements. For these reasons, we conclude that the record does not demonstrate that HHS had a reasonable basis for assigning a strength to

⁵ For the record, we also note that HHS's evaluation of PSI's and Vendor 3's quotations did not identify the number of specifically named personnel who exceeded the solicitation's requirements or the basis for finding that these individuals exceeded the requirements. See AR, Tab 14, TEP Report, at 6, 13.

Skyhawk's quotation based on its proposed personnel. We therefore sustain the protest on this basis.

Technical Factor Evaluation--PSI

Next, PSI argues that HHS unreasonably evaluated its quotation under the technical evaluation factor. The protester contends that several of the strengths that the agency assigned its quotation should have been considered significant strengths, and that the agency assigned Skyhawk strengths for features of its quotation that the protester also offered. We have reviewed the record and find that none of the protester's arguments here has merit. We discuss one representative example.

The technical approach subfactor of the technical evaluation factor stated that quotations would be evaluated based on "[t]he extent to which the quoter demonstrates an understanding of the tasks to be performed and highlights their technical capabilities required to successfully complete the requirements in the Statement of Work (SOW)." RFQ § M.4 at 47. The solicitation identified two criteria for evaluation under this subfactor: (1) demonstration of an "understanding of the work to be performed, and the ability to perform the work under the contract in a timely manner," and (2) a "[t]echnical approach that adequately addresses all aspects of the work and inherent complexities, as well as compliance with the contract terms (quality control, security, etc.)." Id.

HHS assigned PSI's quotation the following two strengths under the technical approach subfactor:

PSI demonstrates an understanding of the requirements stated in the SOW by outlining the process work flow for the various task areas and explaining their familiarity with the agency requirements as the incumbent that is currently performing the services.

PSI demonstrated a comprehensive understanding of the [Office of Refugee Resettlement (ORR)]/DCS program operations. They explain their familiarity with the agency requirements as the incumbent that is currently performing the services, and on Page 7 of the Technical Volume they provide a work flow specific to Task Area 2.

AR, Tab 14, TEP Report, at 11.

PSI argues that HHS should have assigned its quotation significant strengths, rather than strengths, based on its experience as the incumbent contractor. The protester contends that its quotation reflected "intricate knowledge of the ORR/DCS program," and that "PSI developed the processes for the ORR/DCS program with HHS and has used them in performance on the incumbent contract." Protester's Comments, Sept. 21, 2017, at 10 (citing AR, Tab 4A, PSI Quotation Vol. I, at 5-11).

The RFQ did not define the terms strength or significant strength; however, to the extent the protester argues that it should have received additional credit for its quotation under

the technical evaluation factor, we conclude that the record does not show that the agency's evaluation was unreasonable. The agency states that although PSI was "critical to helping HHS establish the ORR/DCS program," the program and the RFQ's requirements now focus on "basic data entry and records checking, with no need for specialized knowledge or high tech database or software requirements." AR, Tab 17, TEP Statement, at 1-2. The agency notes that, currently, "[t]he processes used by HHS are unified by law throughout the federal [g]overnment, and the internal systems noted are composed of the same personnel case management tools used universally across the federal government." Id. at 2. For these reasons, the agency states that the protester's quotation did not provide a significant strength because "there is nothing special, unique or technical about the programs, process, or software utilized to conduct the ORR/DCS work required by the RFQ." Id.

The record shows that the agency specifically credited PSI's experience and familiarity with the ORR/DCS program operations as the incumbent contractor. AR, Tab 14, TEP Report, at 11. To the extent the protester believes that its experience merited more heavily or significantly-weighted strengths, the protester's disagreement with the agency's judgment, without more, does not provide a basis to sustain the protest.

Past Performance Evaluation

Next, PSI argues that HHS unreasonably assigned Skyhawk a low risk rating under the past performance evaluation factor. The protester contends that the awardee should have received a lower rating (i.e., higher performance risk or unknown risk) because the single contract reference reviewed by the agency to assess the awardee's performance record was not relevant to the RFQ's requirements. For the reasons discussed below, we find no basis to sustain the protest.

The RFQ provided that the agency would evaluate the relevance and quality of a vendor's past performance to "assess the risk of unsuccessful contract performance." RFQ § M.6 at 49. For the relevance assessment, the agency was to assign one of the following ratings for each past performance reference:

Very Relevant -- Performance effort involved essentially the same scope and magnitude of effort and complexities this solicitation requires.

Relevant -- Performance effort involved similar scope and magnitude of effort and complexities this solicitation requires.

Somewhat Relevant -- Performance effort involved some of the scope and magnitude of effort and complexities this solicitation requires.

Not Relevant -- Performance effort involved little or none of the scope and magnitude of effort and complexities this solicitation requires.

Id.

Based on the relevance and quality of performance assessment, the agency was to assign one of the following risk ratings for the vendor's overall past performance record:

Very Low Performance Risk -- Based on the Quoter's performance record, no doubt exists that the Quoter will successfully perform the required effort.

Low Performance Risk -- Based on the Quoter's performance record, minimal doubt exists that the Quoter will successfully perform the required effort.

Moderate Performance Risk -- Based on the Quoter's performance record, some doubt exists that the Quoter will successfully perform the required effort. Normal contractor emphasis should preclude any problems.

High Performance Risk -- Based on the Quoter's performance record, substantial doubt exists that the Quoter will successfully perform the required effort.

Unknown Performance Risk -- No performance record is identifiable, past performance is not relevant to the required effort, or the past performance information is inconclusive[.]

Id. at 50.

Skyhawk's quotation identified three past performance references. HHS's evaluation states that the agency received questionnaires from only one of those references, involving a contract with the U.S. Customs and Border Protection (CBP) agency. AR, Tab 9, Past Performance Evaluation Report, at 8. For the other two references, the agency did not receive questionnaires and did not find information available in the Past Performance Information Retrieval System (PPIRS).⁶ Id. at 8-9.

For the CBP contract, the agency found that although the "duties and responsibilities . . . seem to be similar in scope and complexity to those required by the OSSI SOW," it was "not clear from the description that all of the requirements of the OSSI solicitation are covered in the project." Id. During the agency's corrective action in response to PSI's initial protest, the agency contacted the contracting officer for the CBP contract reference to ask about the duties covered by that contract. AR, Tab 13, Past Performance Information Request, July 6, 2017, at 1. The CBP contracting officer stated that the contract addressed the following duties: "Case Management, File Management, Reviewing Security Forms for Accuracy, Initiating Security Pre-

⁶ PPIRS is a web-enabled, government-wide application that collects quantifiable delivery and quality past performance information. See FAR § 42.1503.

Employment Security Investigations, Document Collection/Case Review, and Administrative Services.” AR, Tab 9, Past Performance Evaluation Report, at 8. Based on this information, HHS concluded that the contract reference “covers many, but not all the duties under the OSSI SOW,” which, combined with the \$25 million contract value, was consistent with a relevant rating. Id.

The agency assigned an overall low performance risk to Skyhawk’s quotation for the following reason:

A risk rating of Low Performance Risk is appropriate for Skyhawk since based on performance under one relevant project, Skyhawk successfully performed with a Good rating. While there is not a lot of past performance information on which to base a risk rating, it would be inappropriate to negatively impact Skyhawk’s risk rating by assigning a Moderate Performance Risk due to a lack of past performance information. That is prohibited by the regulations.⁷

AR, Tab 10, Award Decision, at 10.

PSI argues that the agency should have assigned a rating of somewhat relevant or not relevant to Skyhawk’s past performance reference, and that, in turn, the agency should have assigned a performance risk of unknown performance risk. In support of its argument, the protester contends that the CBP contract did not address the majority of what the protester considers to be 12 general performance tasks identified in the RFQ’s SOW. As the agency notes, however, the protester’s characterization of the number and identity of the SOW requirements was not based on an enumerated list, but rather the protester’s own calculation of the requirements. See Agency Supp. MOL, Oct. 2, 2017, at 17; RFQ at 8-10. Moreover, the agency notes that its review of the awardee’s quotation and exchanges with CBP specifically acknowledged that the awardee’s CBP contract addressed “many, but not all the duties under the OSSI SOW.” AR, Tab 9, Past Performance Evaluation Report, at 8. The agency contends that it was within its discretion to conclude that this finding supported assignment of a relevant, rather than a somewhat relevant rating.

Based on our review of the record, we conclude that the agency’s evaluation of Skyhawk’s past performance reasonably found that the awardee’s contract with CBP had a “similar scope” to the RFQ’s requirements and therefore merited a relevant rating.

⁷ Although not specifically argued by the protester, we note that FAR § 15.305(a)(2)(iv), which applies to negotiated procurement, and 41 U.S.C. § 1126(b), prohibit an agency from assigning a negative or positive rating for a vendor without relevant past performance. Thus, the agency could not reasonably assign Skyhawk a higher performance risk rating than otherwise merited based on a lack of a relevant performance record since, as discussed herein, the record shows that the agency had a reasonable basis for assigning a relevant rating for Skyhawk’s performance record.

See RFQ § M.6 at 49. We also conclude that the relevant rating for this contract reference provided a reasonable basis for the agency to assign an overall low performance risk rating for Skyhawk's quotation under the past performance factor. See id. The protester's disagreement with the agency's judgment, without more, does not provide a basis to sustain the protest.

Price Evaluation

Next, PSI argues that HHS unreasonably evaluated its proposed price because it did not accept what the protester contends were assumptions that affected its price. The protester argues that, had the agency accepted those assumptions, its proposed price would have been lower than the awardee's price. For the reasons discussed below, we find no basis to sustain the protest.

The RFQ advised vendors that their quotations would be evaluated based on the price proposed for the first task order, including the base and four option periods. RFQ § L.6 at 41. Vendors were required to complete a table by proposing "loaded hourly rates" for various labor positions; a table in the RFQ provided that an FTE position would be 2,080 hours per year. Id. at 41-42, 47-48. Vendors were required to "provide a table for each BPA period and use the same estimated hours and travel assumption for each BPA period (i.e. Base Period, Option Period 1...)." Id. at 42.

As relevant here, the RFQ's instructions stated as follows: "Provide a list of all assumptions and constraints used in the preparation of the business volume. All assumptions and constraints will be taken into consideration when determining best value." RFQ § L.6.6 at 43. The RFQ's evaluation factors, however, prohibited vendors from proposing a price in a manner inconsistent with the pricing scenario instructions, as follows: "The total evaluated price for the BPA shall be the cumulative total for all contract years from the first task order provided in Section L.9.2. Quoters that propose pricing in a way that differs from the proposed pricing scenario instructions will not be eligible for award." RFQ § M.6 at 50.

PSI's quotation completed the pricing scenario included in the RFQ for the base and all four option periods, and listed a total price for all periods of \$13,484,559.20. AR, Tab 4B, PSI Quotation Vol. II, at 13. In the notes below the pricing scenario, the protester stated that although it completed the scenario using 2,080 hours for an FTE position as required by the RFQ, the protester was "concerned that evaluation of the fully burdened rate across 2080 hours for each FTE may artificially inflate the evaluated price and create inequities in evaluating multiple offers if different approaches are used by offerors." Id. The protester explained that "[f]ully burdened rates are typically calculated [DELETED]," which for the protester would result in a [DELETED] annual hour amount for FTEs, which would reduce the protester's overall proposed price to \$12,051,398. Id.

PSI argues that HHS was required under the terms of the RFQ to accept its "assumption" that an FTE should be calculated on the basis of [DELETED], rather than

2,080 hours. The protester contends that if the agency had accepted this assumption, its proposed price would have been lower than Skyhawk's.

We agree with HHS that the RFQ advised vendors that they could not "propose pricing in a way that differs from the proposed pricing scenario instructions." RFQ § M.6 at 50. Although the protester characterizes as an "assumption" its view that the pricing scenario should have used [DELETED] rather than 2,080 hours, such an assumption was clearly different from the pricing scenario's instructions and thus was impermissible under RFQ § M.6.⁸ We therefore conclude that the agency reasonably relied on the protester's proposed price in its tables, rather than the alternative amount reflected in the protester's notes below those tables.

Even if there is a conflict between the RFQ's provisions regarding "assumptions and constraints" in the business volume and the evaluation criteria's prohibition on submitting a quotation that differed from the pricing scenario instructions, we find that such a conflict would be, at best, an ambiguity in the solicitation. See Colt Def., LLC, B-406696, July 24, 2012, 2012 CPD ¶ 302 at 8 (an ambiguity exists where two or more reasonable interpretations of the solicitation are possible). Any such ambiguity, however, would be obvious on the face of the solicitation, and therefore would constitute a patent ambiguity that should have been challenged prior to the time for receipt of initial quotations. See 4 C.F.R. § 21.2(a)(1); Allied Tech. Grp., Inc., B-402135, B-402135.2, Jan. 21, 2010, 2010 CPD ¶ 152 at 9 n.10 (solicitation provisions in direct conflict demonstrate a patent ambiguity that must be challenged prior to the time for receipt of initial quotations or proposals). On this record we find no basis to sustain the protest.

Award Decision

Finally, PSI argues that HHS's award decision was unreasonable because it relied on an improper discounting of strengths in the protester's quotation. Specifically, PSI contends that, to the extent the agency recognized advantages in its quotation as compared to the awardee's, the agency unreasonably concluded that those strengths were "negligible" and did not provide a basis to select the protester's higher-priced quotation for award. For the reasons discussed below, we agree and sustain the protest.

Generally, in a negotiated procurement--including FSS procurements that use negotiated procurement techniques--an agency may properly select a lower-rated,

⁸ We note in this regard that acceptance of PSI "assumption" by HHS would have created an unequal and unfair evaluation wherein the protester, and no other vendor, would have been allowed to submit a quotation based on fewer hours per FTE. Although the protester contends that the hours for an FTE should have been calculated differently in the RFQ, the solicitation provided all vendors a common basis upon which to submit quotations.

lower-priced quotation where it reasonably concludes that the price premium involved in selecting a higher-rated quotation is not justified in light of the acceptable level of technical competence available at a lower price. PricewaterhouseCoopers LLP, B-409537, B-409537.2, June 4, 2014, 2014 CPD ¶ 255 at 10. While an agency has broad discretion in making a tradeoff between price and non-price factors, an award decision in favor of a lower-rated, lower-priced quotation must acknowledge and document any significant advantages of the higher-priced, higher-rated quotation, and explain why they are not worth the price premium. Id. A protester's disagreement with the agency's determination, without more, does not establish that the evaluation or source selection was unreasonable. Id.

Here, the award decision identified strengths for PSI's quotation under the management approach subfactor of the technical factor and the past performance factor and explained that these strengths were the basis for assigning higher ratings to PSI's quotation, as compared to Skyhawk's. AR, Tab 10, Award Decision, at 14. The award decision also stated that Skyhawk's proposed price was \$13,484,659, whereas PSI's proposed price was \$13,235,173. Id. at 13. Thus, the agency's selection decision was obligated to explain why PSI's higher-rated quotation was not worth a price premium as compared to Skyhawk's lower-priced quotation. See DynCorp Int'l, LLC, B-412451, B-412451.2, Feb 16, 2016, 2016 CPD ¶ 75 at 22. The contracting officer concluded that PSI's quotation provided "only a negligible technical and past performance advantage" over Skyhawk's quotation, and therefore did not merit what the agency termed a "2% price premium." AR, Tab 10, Award Decision, at 14; see also Supp. COS, Oct. 2, 2017, at ¶ 4.

The record here shows that the contracting officer concluded that there were only "negligible" or "minimal" differences between the vendors' quotations under the non-price evaluation factors. AR, Tab 10, Award Decision, at 14-15. The common dictionary definition of the term "negligible" means "so small or unimportant or of so little consequence as to warrant little or no attention." Merriam-Webster Dictionary, www.merriam-webster.com (last visited Nov. 6, 2017). The term "minimal" means "the least possible," "barely adequate," or "very small or slight." Id. We conclude that, in light of the contracting officer's use of these terms, the award decision was not a tradeoff decision in the sense of finding that a higher technically-rated quotation was not worth a price premium. Rather, it was a finding that the higher-rated quotation does not actually provide any benefits because the evaluated strengths identified did not, in fact, provide any meaningful benefits as compared to the quotation that did not have those strengths. Because we conclude that the contracting officer's basis for finding the evaluated strengths "negligible" or "minimal" was not reasonable, we cannot conclude that the award was reasonable.

For the management approach subfactor of the technical evaluation factor, HHS identified six strengths for PSI and four strengths and one weakness for Skyhawk. AR, Tab 10, Award Decision, at 13-14. The six strengths for PSI were as follows:

Strength: Offers the incumbent staff and indicates a large pool of [DELETED] current resumes. This demonstrates readiness to fully staff upon award. (Resources/Staffing)

Strength: PSI proposed a qualified named person for almost every position that will be included in the first task order. Only [DELETED] out of 33 staff members need to be hired. (Resources/Staffing)

Strength: The pool of specifically named and qualified personnel exceeded the agency's requirements because most personnel exceed the experience requirements. (Quality of Personnel)

Strength: The incumbent staff included by name in the technical volume has experience that is directly relevant to the requirements described in the Statement of Work. (Quality of Personnel)

Strength: The incumbent staff included by name in the technical volume has already been trained by HHS on agency processes and are proficient in OSSI's workflow. (Quality of Personnel)

Strength: PSI provided a summary of their quality assurance process, and they have a comprehensive system to solicit and process feedback from the government. When necessary they will do additional training. (Quality Control)

Id. at 13-14; see also AR, Tab 14, TEP Report, at 13.

The contracting officer noted that “[b]oth quoters have a large pool of resumes to draw from, readiness to fully staff upon award, proposed named staff that exceed solicitation requirements, and have quality control processes that exceeded solicitation requirements.”⁹ AR, Tab 10, Award Decision, at 14. The contracting officer explained, however, that the protester's quotation merited a higher evaluation rating for three reasons: (1) PSI “specifically named more qualified personnel that exceeded the agency's requirements than Skyhawk,” (2) PSI “proposed a qualified named person for almost every position that will be included in the first task order,” and (3) PSI proposed “incumbent staff that have already been trained by HHS on agency processes and are proficient in OSSI's workflow.” Id. For these reasons, the agency assigned PSI's quotation a rating of better, and Skyhawk's quotation a rating of acceptable. Id.

The contracting officer also found, however, that the strengths for PSI's quotation under the management approach subfactor were “not as meaningful as they might seem” for the following reason: “When the individual technical strengths are broken down, PSI

⁹ As discussed above, we conclude that HHS did not have a reasonable basis to assign Skyhawk's quotation a strength based on the experience of its proposed personnel.

was more highly rated under Management Approach due to incumbent staff already being trained by HHS and proficient in the OSSI workflow.” Id. In this regard, the contracting officer stated that all personnel, including those supporting the incumbent contract, would need to be trained to address changing requirements that “are continuing to evolve with the new administration and previous legislative changes resulting from the OPM breaches and Cyber Security Executive Orders.”¹⁰ Id.

To the extent the contracting officer discounted advantages in PSI’s quotation solely because the protester was the incumbent contractor, we find nothing in the record which demonstrates that this finding was reasonable. The strengths assigned to PSI’s quotation were consistent with the RFQ’s evaluation criteria, based on availability of personnel and quality of named individuals. AR, Tab 10, Award Decision, at 14; RFQ § M.4 at 48. Although these strengths appear to have arisen from the protester’s status as the incumbent contractor, the agency does not explain why they are unique to the protester because of its incumbent status. Nothing in the RFQ advised vendors that the credit to be assigned for available personnel or for personnel whose qualifications exceed those of the RFQ would be discounted or found “negligible” because they were associated with the incumbent personnel. Rather, as set forth in the solicitation, any vendor who proposed available and high-quality personnel was to be favorably evaluated. RFQ § M.4 at 48.

¹⁰ The award decision also noted the following statement: “PSI’s incumbent contract includes FAR Clause 52.222-17, Nondisplacement of Qualified Workers. This means that many of the incumbent staff will have the option of continuing on the project under a new contractor even though they were not proposed by name.” AR, Tab 10, Award Decision, at 15. The agency’s response to the protest does not specifically cite or rely upon this basis in support of its conclusion that the strengths associated with PSI’s quotation were negligible. In any event, the award decision does not address why a right of first refusal provides a basis to conclude that PSI’s evaluated strengths were of “negligible” benefit. In this regard, the agency does not address which of PSI’s personnel were subject to the clause, or whether there was any basis to conclude that incumbent staff would necessarily seek employment with Skyhawk. Moreover, a question to the agency regarding the RFQ specifically addressed this issue, requesting that the requirement for resumes be removed from the solicitation because “it is a huge advantage to the incumbent contracting company to require offerors to produce 33 resumes as part of the response. . . .” RFQ amend. 13 at 3. In support of this position, the question cited the nondisplacement of qualified workers requirements. Id. at 3-4. The agency answered that resumes were not required, but that “pursuant to the evaluation criteria for resources/staffing, quoters providing more specifically named, qualified personnel for the first task order will be rated more favorably than quoters without named personnel.” Id. at 4. Thus, the agency’s response to the question advised vendors that credit would be given to vendors who identified specifically named, qualified personnel, notwithstanding any right of first refusal concerns. On this record, we find no basis to conclude the nondisplacement provision demonstrates that the agency’s evaluation here was reasonable.

To the extent the agency believed that advantages regarding the availability of personnel and/or the quality of proposed personnel should have been discounted because of the need for additional training during contract performance, this view was either inconsistent with the terms of the solicitation--which stated that credit would be given--or was an undisclosed evaluation criterion which did not advise vendors that advantages under these evaluation criteria would be discounted or viewed as "negligible." In fact, under the contracting officer's reasoning, all personnel would require training, and thus no vendor could offer strengths.¹¹ This view is not consistent with the solicitation, which provided for evaluation of the relative quality of proposed personnel. RFQ § M.4 at 48. On this record, we do not find reasonable the agency's stated basis that the evaluated differences between PSI's and Skyhawk's quotation under the management and approach factor were "negligible."

With regard to past performance, PSI argues that HHS also unreasonably ignored or minimized the differences between the vendors' past performance records, despite the agency's evaluations which showed an advantage for PSI under this factor. We agree.

The contracting officer noted that "PSI received a more favorable past performance rating than Skyhawk due to having performed well on more relevant/very relevant projects." AR, Tab 10, Award Decision, at 14. Based on these evaluations, the agency assigned PSI a past performance rating of very low risk, and Skyhawk a rating of low risk. Id. at 9-10. Notwithstanding these differences, the contracting officer concluded that "[t]he additional risk from a past performance perspective, if any, of selecting Skyhawk over PSI is minimal." Id. at 15. In support of this view, the contracting officer explained as follows: "Past performance is the least important factor to the government when determining best value under this solicitation, [and] Skyhawk has performed well on another large government contract for similar services." Id. The contracting officer further noted that Skyhawk "did not receive the highest past performance rating, but they still present a low risk to the government." Id.

HHS's distinction between PSI's and Skyhawk's performance focuses on what the contracting officer terms a "minimal" additional performance risk for Skyhawk as compared to PSI. Id. As discussed above, however, a very low performance risk rating was to be assigned where there is "no doubt" that a vendor will successfully perform the RFQ's requirements, whereas a low performance risk rating was to be assigned where there is "minimal doubt" that the vendor will successful perform. RFQ § M.6 at 50. Thus, the contracting officer's conclusion that there was a "minimal" difference between the vendors' past performance ratings was only a reflection of the ratings themselves, as opposed to an analysis as to why the difference between the vendors' past

¹¹ Additionally, as the protester notes, the strengths assigned to Vendor 3's quotation for its personnel were not similarly discounted or described as "negligible" based on a need for additional training. See AR, Tab 10, Award Decision, at 12-13, 16-17.

performance records, on their merits, was “negligible” and therefore did not merit a price premium.

In sum, we conclude that the award decision does not reasonably explain why PSI’s higher-rated quotation was not worth a price premium as compared to Skyhawk’s lower-rated quotation. In evaluating quotations, it is well established that adjectival ratings are merely guides for intelligent decision making in the procurement process.

Environmental Restoration, LLC, B-406917, Sept. 28, 2012, 2012 CPD ¶ 266 at 5.

Moreover, an SSA may disagree with the evaluation judgments of evaluators, provided the SSA’s basis for his or her independent judgment is reasonable and documented.

The Arcanum Grp., Inc., B-413682.2, B-413682.3, March 29, 2017, 2017 CPD ¶ 270

at 6. Here, although the contracting officer looked behind the adjectival ratings and considered the underlying strengths assigned by the evaluators to the vendors’ quotations, the record here shows that the contracting officer minimized the significance of the evaluated strengths--by deeming them negligible or minimal--without a reasonable basis to do so.

CONCLUSION AND RECOMMENDATION

For the reasons discussed above, we conclude that HHS unreasonably assigned a strength to Skyhawk’s quotation under the management approach subfactor and unreasonably discounted strengths in PSI’s quotation in the tradeoff decision without providing an adequate explanation for its conclusion. We further conclude that the protester was prejudiced by the agency’s evaluation because, but for these errors, the protester could have had a substantial chance for award. See DRS ICAS, LLC, supra. We recommend that the agency reevaluate Skyhawk’s quotation under the management approach subfactor and make a new tradeoff award decision consistent with this decision.

Finally, we recommend that the agency reimburse PSI the reasonable costs of filing and pursuing the protest, including attorneys’ fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1). PSI should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days of this decision.

The protest is sustained

Susan A. Poling
General Counsel