



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: IBM Corporation

File: B-415798

Date: March 27, 2018

David W. Burgett, Esq., Michael D. McGill, Esq., Brendan M. Lill, Esq., Nicole D. Picard, Esq., and Adilene Rosales, Esq., Hogan Lovells US LLP, for the protester. Amy Laderberg O'Sullivan, Esq., Olivia L. Lynch, Esq., and Elizabeth Buehler, Esq., Crowell & Moring LLP, for Accenture Federal Services, LLC, the intervenor. Christopher J. Reames, Esq., Angela Varner, Esq., and Michael Kiffney, Esq., Department of Homeland Security, for the agency. Eric M. Ransom, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of proposals is denied where the evaluation was reasonable and consistent with the solicitation's evaluation criteria.
 2. Protest that the agency has failed to adequately pursue the investigation of an alleged violation of the procurement integrity provisions of the Office of Federal Procurement Policy Act, 41 U.S.C. §§ 2101-07, is premature where the agency has promptly initiated an investigation and that investigation is ongoing.
-

DECISION

IBM Corporation, of Reston, Virginia, protests the issuance of a task order to Accenture Federal Services, LLC, of Arlington, Virginia, by the Department of Homeland Security (DHS), Transportation Security Administration (TSA), under task order request for proposals (TORP) No. HSTS02-17-R-OIA053, issued under DHS's Enterprise Acquisition Gateway for Leading Edge Solutions (EAGLE) II indefinite-delivery, indefinite-quantity (IDIQ) contract, to acquire a full range of information technology (IT) services to support the TSA Secure Flight system. IBM, the incumbent contractor, alleges that TSA misevaluated the proposals and failed to undertake a reasonable investigation of an alleged violation of the Procurement Integrity Act.

We deny the protest in part, and dismiss the procurement integrity allegations as premature.

BACKGROUND

TSA's secure flight program is a risk-based passenger prescreening program that enhances aviation security by identifying low-risk and high-risk passengers. Agency Report (AR), Tab 2, Statement of Objectives (SOO), at 76. The secure flight program automates comparison of passenger data, provides vetting results to aircraft operators and, as necessary, refers information to intelligence analysts or law enforcement personnel for further analysis or action. Id. at 78. The purpose of this procurement is to obtain IT services to support five overarching goals for the program: sustain mission-critical secure flight operations, deliver new features and capabilities, evolve the secure flight architecture/platform, transition from a waterfall to iterative/Agile methodology,¹ and build and sustain a team of qualified, high-performing personnel. Id. at 77.

TSA issued the TORP on February 14, 2017, anticipating the issuance of a single task order for a 12-month base period, and three 12-month option periods. The TORP provided that the task order would be issued on the basis of a price technical tradeoff to the offeror whose proposal represented the best value to the government. For the purposes of the tradeoff decision, the TORP provided that the agency would consider four evaluation factors: technical approach, management approach, corporate experience, and price. The TORP advised that technical approach was the most important factor, and was more important than management approach and corporate experience both individually and combined. The non-price factors, when combined, were significantly more important than price; though price would become more important as the non-price merits of the proposals become more equal.

TSA received six proposals in response to the TORP, including the proposals submitted by IBM and Accenture. Technical and price evaluation teams evaluated the proposals and concluded that IBM's and Accenture's proposals were the most highly rated. The two proposals were evaluated as follows:

	IBM	Accenture
Technical	Good	Outstanding
Management	Outstanding	Good
Corp. Exp.	Outstanding	Outstanding
Price	\$49.6 Million	\$47.8 Million

¹ "Waterfall" and "Agile" are IT system development methodologies. "Waterfall" is a linear development strategy in which each process is completed before proceeding to the next process in the sequence. See Office of Personnel Management, Chief Information Officer, OPM System Development Life Cycle Policy and Standards (2013) at 27. In contrast, "Agile" development methodologies involve implementation of a number of phases that are repeated in cycles, with a feedback loop after each cycle is complete. The Agile process continuously offers the customer demos of the current solution, and adapts its development plan at the end of each iteration. Id. at 28-29.

AR, Tab 19, Source Selection Decision Document (SSDD), at 1111.

After the evaluation was complete, the technical evaluation team (TET) chairperson and the contracting officer prepared a comprehensive tradeoff analysis and award recommendation report, which considered every strength and weakness assigned to each proposal under each factor. The report also included head-to-head comparisons of the technically acceptable proposals, which identified discriminating strengths and weaknesses.

With respect to the comparison of IBM and Accenture, the report concluded that “Accenture’s benefits for Factor 1 [technical approach], the most important factor, and the many benefits for Factors 2 [management approach] and 3 [corporate experience], along with Accenture proposing the lowest priced proposal makes Accenture the best value to the government.” AR, Tab 16, Award Recommendation, at 1040. More specifically, concerning the technical approach factor, the report concluded that while each proposal had strengths and significant strengths, Accenture’s significant strength for implementing proven technologies under SOO objective 3.7 (options for significantly improving capabilities) was a distinguishing advantage. Id. at 1037. In contrast, IBM’s proposal was distinguished by a weakness due to uncertainty concerning the possible exclusion of certain work elements required by the SOO. Id.

In the SSDD, the source selection authority (SSA) explained that she independently reviewed the results of the technical and price evaluations and the award recommendation report, and agreed with the ratings, evaluated prices, and award recommendation. However, with respect to the evaluation of Accenture’s proposal under the technical approach factor, the SSA noted a clarification to the basis of the significant strength for SOO objective 3.7 (options for significantly improving capabilities) concerning “implementing proven technologies”—the discriminator between Accenture and IBM discussed above. Specifically, the SSA clarified that while the technical evaluation language had described Accenture’s approach to the objective as a “tool or software solution,” she determined that Accenture’s approach was based on “its knowledge/methodology to develop and modify technologies in a manner that can appreciably increase the match effectiveness of the [secure flight] system.” AR, Tab 19, SSDD, at 1113. The SSA explained that:

This view does not change the “Significant Strength” received or the benefits documented by the TET report, it only serves to clarify that we are not purchasing a tool and that the value in this Significant Strength is found in its knowledge/methodology for improving the match effectiveness of systems within DHS.

Id. In her final analysis, the SSA concluded that between IBM and Accenture, “Accenture stood out, by receiving the highest rating for the most important evaluation factor,” and that “after reviewing and assessing the consensus technical report, price

reports and Tradeoff analysis I have independently determined, as documented herein, that Accenture should be awarded the task order.” Id. at 1114, 1115.

TSA issued the task order to Accenture on November 29, 2017. IBM requested a debriefing in accordance with the EAGLE II IDIQ contract, which TSA provided on December 12. This protest followed.²

DISCUSSION

IBM alleges that TSA unreasonably evaluated Accenture’s proposal because it ignored allegedly poor performance on a recent, highly similar TSA IT contract, and because the SSA failed to remove Accenture’s significant strength under objective 3.7, despite recognizing that it was inaccurately-based. IBM also alleges that TSA misevaluated its proposal by improperly assigning and heavily weighting a weakness for an insignificant aspect of its technical approach. Finally, IBM alleges that TSA has failed to reasonably pursue investigation of a potential violation of the Procurement Integrity Act.

The evaluation of an offeror’s proposal is a matter within the agency’s discretion. IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. In reviewing an agency’s evaluation, our Office will not reevaluate proposals; instead, we will examine the record to ensure that it was reasonable and consistent with the solicitation’s stated evaluation criteria and applicable procurement statutes and regulations. Metro Mach. Corp., B-402567, B-402567.2, June 3, 2010, 2010 CPD ¶ 132 at 13; Urban-Meridian Joint Venture, B-287168, B-287168.2, May 7, 2001, 2001 CPD ¶ 91 at 2. An offeror’s disagreement with the agency’s evaluation is not sufficient to render the evaluation unreasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

Here, based on our review as discussed in detail below, we conclude that the agency’s evaluation of the proposal was reasonable and consistent with the TORP, and that IBM’s procurement integrity allegations are premature.³

² The awarded value of the task order exceeds \$10 million. Accordingly, this procurement is within our statutory grant of jurisdiction to hear protests in connection with task and delivery orders valued in excess of \$10 million issued under civilian agency multiple-award IDIQ contracts. 41 U.S.C. § 4106(f).

³ We discuss IBM’s primary protest allegations in this decision. To the extent allegations are not discussed in this decision, we have reviewed the protest record and conclude that none provides a basis to sustain the protest. For example, based on information learned during its debriefing, IBM alleged that the agency’s tradeoff analysis was superficial and failed to look beyond the adjectival ratings. IBM maintained this argument after review of the record, despite the disclosure of the substantial tradeoff analysis and award recommendation report underlying the SSDD. We see nothing unreasonable or inadequate about the tradeoff analysis here. In analyzing competing proposals, a source selection official may rely on evaluation reports provided by technical evaluators. See General Dynamics C4 Sys., Inc., B-406965, B-406965.2,

(continued...)

Accenture Evaluation

IBM alleges that TSA unreasonably evaluated Accenture under the corporate experience factor by ignoring Accenture's poor performance under the TSA technology infrastructure modernization (TIM) contract, which is administered by the same TSA office that administers the secure flight program. IBM asserts that based on the publicly available information concerning delays and cost overruns on the TIM contract between 2012 and early 2016, which resulted in TSA abandoning the original technical approach, no reasonable assessment of Accenture's proposal could assign a rating of outstanding for corporate experience.

TSA responds that corporate experience is distinct from past performance (which was not evaluated here), that there is no requirement for evaluators to consider information outside of the proposals in an evaluation of corporate experience, and that it reasonably assessed the five corporate experience references provided in Accenture's proposal--including a reference for the TIM contract, which highlighted Accenture's recent successes on that program since transitioning from a waterfall program development methodology to an Agile methodology in 2016. AR, Tab 12, Accenture Proposal, at 694, 696. Based on the information in Accenture's proposal, the evaluators concluded that Accenture "significantly exceeds the experience level requirements" identified in the TORP and that, based in part on experience from the TIM contract, the proposal warranted a strength for "repeated success transitioning programs of similar complexity to the Secure Flight program to Agile." AR, Tab 14, Technical Evaluation Team (TET) Report, at 942. The evaluators noted that "[t]his experience will benefit TSA because it can make TSA's transition from our current methodology to an Agile methodology more effective and efficient." Id.

We see no error in the agency's evaluation. First, the agency correctly argues that a corporate experience evaluation is distinct from an evaluation of past performance. Specifically, an experience evaluation focuses on the degree to which an offeror has actually performed similar work, while a past performance evaluation concerns the quality of the work. See Commercial Window Shield, B-400154, July 2, 2008, 2008 CPD ¶ 134 at 3. Second, while our Office has recognized, in certain limited circumstances, that an agency has an obligation (as opposed to the discretion) to consider "outside information" bearing on an offeror's past performance, we have declined to extend that obligation in the context of an experience evaluation. Aerostar Perma-Fix TRU Services, LLC, B-411733, B-411733.4, Oct. 8, 2015, 2015 CPD ¶ 338

(...continued)

Oct. 9, 2012, 2012 CPD ¶ 285; Diemaster Tool, Inc., B-241239, B-241239.2, Jan. 30, 1991, 91-1 CPD ¶ 89 at 6. The record here reflects that the SSA looked beyond the adjectival ratings to the various strengths and weaknesses identified in the award recommendation report, and reasonably engaged in and documented her own independent review of the proposals.

at 10 n.7. An agency may consider information personally known to the evaluators in the evaluation of corporate experience, but there is no requirement for the agency to do so. SNAP, Inc., B-409609, B-409609.3, June 20, 2014, 2014 CPD ¶ 187 at 8.

Accordingly, IBM's allegations that the agency unreasonably failed to consider qualitative performance information and unreasonably failed to consider "outside information" in connection with an evaluation of corporate experience, do not raise a challenge that would cause our Office to question the agency's corporate experience evaluation here. On the basis of the information in Accenture's corporate experience proposal concerning its recent successes in transitioning the TIM program from a waterfall to an Agile methodology, we see nothing unreasonable in the agency's assignment of a strength for that experience, which relates directly to one of the agency's "overarching goals" for the task order, see AR, Tab 12, Accenture Proposal at 695-697; Tab 2, SOO, at 77, or in the agency's assignment of an outstanding rating to Accenture under the corporate experience factor.

IBM next alleges that the SSA erred by failing to remove Accenture's significant strength for objective 3.7 (options for significantly improving capabilities)--a key discriminator under the technical approach factor--despite recognizing that elements of the TET's underlying evaluation finding were inaccurate. IBM asserts that the key to the TET's finding was that Accenture offered an existing "software tool that [DELETED]." IBM Comments at 2. According to IBM, when the SSA clarified that Accenture had not proposed an existing software tool, the significant strength should have been abandoned because the record does not otherwise support the decision to retain the significant strength.

TSA responds that the SSA did not err, and clearly documented her agreement with the TET's conclusions that Accenture's approach to objective 3.7 warranted a significant strength. The agency points to the SSA's contemporaneous documentation that her clarification of the TET report's language did not "change the 'Significant Strength' received or the benefits documented by the TET report." AR, Tab 19, SSDD, at 1113. Accordingly, the agency asserts that the SSA adopted the evaluated benefits of Accenture's approach as documented by the TET report, and merely supplemented the TET's analysis with her own reasoning about why the approach warranted a significant strength.

We agree with the agency that the SSA's independent analysis was consistent with the underlying TET evaluation, reasonable, and well documented. The TET report explained Accenture's significant strength under SOO 3.7 as follows:

The Offeror's approach . . . includes a comprehensive suite of proven technologies (Figure 21, page 34)--tools and algorithms--[DELETED]. The possibility of implementing proven technologies such as [DELETED] exceeds the requirement which constitutes a significant strength that appreciably increases the likelihood of successful task order performance.

Implementing proven technologies will positively benefit Secure Flight by reducing the false positive rate, reducing analyst workload, and identifying bad actors previously unknown to Secure Flight. The benefits of this tool will help improve name matching data with watch list data. This speaks to the core mission of Secure Flight; making sure Known or Suspected Terrorists (KSTs) do not board airplanes or receive the appropriate level of screen, and maintains the security and safety of the traveling public.

AR, Tab 14, TET Report, at 938-939. As explained above, in the SSDD the SSA clarified that, notwithstanding the language in the TET report indicating that Accenture's approach was a "tool," the agency was not purchasing a "tool" and "the value in this Significant Strength is found in its knowledge/methodology for improving the match effectiveness of systems within DHS." AR, Tab 19, SSDD, at 1113.

Our review of the record indicates the TET clearly understood that Accenture's technical approach involved a suite of various technologies [DELETED], which would have significant benefits if implemented in the secure flight program. In our view, the two references to a "tool" or "tools" within the TET's detailed discussion of Accenture's approach under SOO 3.7, do not suggest that the TET misunderstood Accenture's approach. Rather, the SSA's clarification of the TET report served merely to allay the possibility that the TET's language could be misconstrued, and to extend the existing analysis to reflect the SSA's independent review. In any event, even to the extent the SSA independently reevaluated Accenture's proposal, there is no error. Selection officials have inherent authority to independently evaluate proposals. See SAMS EI Segundo, LLC, B-291620, B-291620.2, Feb. 3, 2003, 2003 CPD ¶ 44 at 18.

IBM Evaluation

IBM next alleges that the agency unreasonably assigned its proposal a weakness for potentially excluding work elements that were within the scope of the SOO. The weakness relates to IBM's statement, in the introduction to its work breakdown structure, that:

In addition . . . we also have included work elements that we anticipate as "needed" to maintain a mission critical system at 100% Availability even though the work is not requested in the SOO and not reflected in our price or [basis of estimates]. We have included these elements in the [work breakdown structure] identified with a color coded background for ease of understanding.

AR, Tab 11, IBM Proposal, at 377 (emphasis added). In assigning the weakness, the TET evaluators noted that the SOO required the offeror to provide "the full range of IT services required to plan, manage, architect, engineer, develop, configure, test, and

sustain” the secure flight system, and that IBM’s exclusion of work elements it anticipated as “needed” led to “uncertainty as to what was going to be provided and why it would differ from services that would be required by any reasonable Offeror.” AR, Tab 14, TET Report, at 959.

IBM acknowledges that “needed” was a poor choice of words, but explains that its statement was intended to demonstrate its knowledge of the secure flight environment and independent identification of additional steps that would add value. IBM Comments at 11. IBM asserts that the agency unreasonably read the statement without considering the context of the proposal as a whole, and unreasonably ascribed a disproportionate amount of weight to this “insignificant aspect” of its technical approach. Id. at 1.

We conclude that TSA’s uncertainty as to what work IBM’s technical approach provided was reasonable and supports the assessment of a weakness. It is an offeror’s responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements, and it runs the risk that the agency will unfavorably evaluate its proposal where it fails to do so. United Contracting, LLC, B-408279, June 25, 2013, 2013 CPD ¶ 150 at 4. Here, a plain reading of IBM’s proposal language suggests that certain work elements needed to maintain a mission critical system at 100-percent availability were not included in IBM’s price or basis of estimates, which we agree presented uncertainty as to IBM’s approach and its compliance with the SOO requirements.

IBM also argues that the agency applied excessive weight to the weakness by identifying it as a key discriminator between its own and Accenture’s proposals. IBM contends that the agency unfairly treated IBM’s weakness under the technical approach factor as a significant weakness, while applying far less scrutiny to Accenture’s multiple weaknesses under the management approach factor.

We see nothing to support IBM’s argument that the agency applied excessive weight to its weakness under the technical approach factor. The record shows that both IBM and Accenture were assigned multiple strengths and significant strengths under the technical approach factor, but that only IBM’s evaluation contained a weakness. Since, between IBM and Accenture, only IBM’s proposal contained a weakness under this evaluation factor, it was reasonable for the agency to use this consideration as a discriminator for award purposes. Even a single weakness may provide the key discriminator in making an award decision. See Morpho Detection, Inc., B-410876, Mar. 3, 2015, 2015 CPD ¶ 85 at 5; SGT, Inc., B-405736, B-405736.2, Dec. 27, 2011, 2012 CPD ¶ 149 at 10 (there is no requirement that the key award discriminator also be the most heavily weighted evaluation consideration).

Procurement Integrity Act

The protester also contends that an identified employee of an IBM subcontractor on the incumbent effort apparently obtained IBM’s bid and proposal information from a

restricted-access TSA website and provided that information to the awardee, resulting in a violation of the procurement integrity provisions of the Office of Federal Procurement Policy Act, 41 U.S.C. §§ 2101-07. Protest at 24-26. In response, TSA has informed our Office that it has initiated an investigation into the protester's allegation and that the investigation is ongoing. Contracting Officer's Statement of Facts at 18-19. While the protester asserts that the agency has not promptly pursued its investigation, given the agency's representation that an investigation is already underway and is ongoing, we consider this aspect of IBM's protest to be premature, and will not consider it at this time.⁴ See The Panther Brands, LLC, B-409073, Jan. 17, 2014, 2014 CPD ¶ 54 at 8-9; Career Training Concepts, Inc.-Advisory Opinion, B-311429, B-311429.2, June 27, 2008, 2009 CPD ¶ 97 at 7. The proper time to protest both the agency's conclusions concerning a possible violation of the Procurement Integrity Act, and the procedural sufficiency of the agency's investigation, is after the agency's investigation is complete. Id.

The protest is denied in part and dismissed in part.

Thomas H. Armstrong
General Counsel

⁴ The protester asserts that its procurement integrity allegations are ripe for review because, in response to the protest, TSA requested dismissal on the basis that the Procurement Integrity Act did not apply to facts presented. However, notwithstanding the agency's arguments concerning the sufficiency of IBM's protest allegations, the record shows that the agency continues to investigate the underlying procurement integrity issue. Contracting Officer's Statement of Facts at 18-19. We also note the protester's acknowledgement that it "raises this protest ground to preserve IBM's right to meaningful relief through the protest process and to ensure that TSA conducts a prompt and thorough investigation as required by law." Protest at 26.