



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: Universal Consulting Services, Inc.

File: B-415217.4

Date: August 27, 2018

Antonio R. Franco, Esq., Megan C. Connor, Esq., Kathryn M. Kelley, Esq., Patrick R. Rothwell, Esq., and Meghan F. Leemon, Esq., PilieroMazza PLLC, for the protester. J. Patrick McMahon, Esq., William T. Welch, Esq., and Orest J. Jowyk, Esq., McMahon, Welch and Learned, PLLC, for Zolon Tech, Inc., the intervenor. Scott N. Flesch, Esq., and Major Bruce H. Robinson, Department of the Army, for the agency. Kenneth Kilgour, Esq., and Jennifer Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the reasonableness of an agency's evaluation of technical proposals is denied where the record shows that the agency reasonably evaluated proposals consistent with the solicitation's evaluation criteria.

DECISION

Universal Consulting Services, Inc. (UCS), of Fairfax, Virginia, protests the issuance of a task order to Zolon Tech, Inc., of Herndon, Virginia, under request for proposals (RFP) No. CSE-17-0001, issued by the Department of the Army, U.S. Army Medical Research and Materiel Command (USAMRMC), for information management, information technology, and related support services for various agency programs. The protester challenges the agency's evaluation of technical proposals.

We deny the protest.

BACKGROUND

The procurement was limited to firms holding a Chief Information Officer-Solutions and Partners 3 Small Business Governmentwide Acquisition Contract administered by the National Institutes of Health Information Technology Acquisition and Assessment Center. Agency Report (AR), Tab 6, RFP amend. 3, Conformed RFP at 1. The RFP sought proposals for the issuance of a single fixed-price task order, with a transition

period of approximately 2 months, a 4-month base period, and five 1-year options. The solicitation contemplated the issuance of the order to the firm whose proposal represented the best value to the government, considering technical approach, experience, management approach, quality control approach, past performance, and price. Id. at 1, 23. The non-price factors were more important than price. Id. at 23. Price was to be evaluated for fairness and reasonableness. Id. at 28.

For all non-price evaluation factors other than past performance, the agency was to assign an adjectival rating of unacceptable, marginal, acceptable, good, or outstanding. RFP at 29. The following definitions are relevant to this protest:

- an acceptable proposal “meets requirements and indicates an adequate approach and understanding of the requirements. Strengths and weaknesses are offsetting or will have little or no impact on contract performance. Risk of unsuccessful performance is no worse than moderate”;
- a good proposal “meets requirements and indicates a thorough approach and understanding of the requirements. Proposal contains strengths which outweigh any weaknesses. Risk of unsuccessful performance is low”;
- and an outstanding proposal “meets requirements and indicates an exceptional approach and understanding of the requirements. Strengths far outweigh any weaknesses. Risk of unsuccessful performance is very low.”

Id.

The solicitation provided that proposals would be evaluated for deficiencies, significant weaknesses, weaknesses, strengths, and significant strengths. Id. at 29. As relevant to this protest, a strength was defined as an “aspect of an offeror’s proposal that has merit or exceeds specified performance or capability requirements in a way that will be advantageous to the Government during contract performance.” A significant strength was defined as an “aspect of an offeror’s proposal that has appreciable merit or appreciably exceeds specified performance or capability requirements in a way that will be appreciably advantageous to the Government during contract performance.”¹ Id.

The agency received proposals from six firms, including the protester and awardee. AR, Tab 10, Award Decision Memorandum (ADM) at 4. UCS is the incumbent contractor.

The agency made award to Zolon, and UCS protested the award, challenging the agency’s technical and price evaluations. See Protest B-415217, Sept. 5, 2017. Our Office dismissed the protest when the agency advised us that the Army was taking

¹ Past performance was to be evaluated as very relevant, relevant, somewhat relevant, or not relevant. RFP at 28. The agency was to assess the quality of an offeror’s past performance and assign each firm a rating of substantial, satisfactory, limited, no, or unknown (neutral) confidence. See id.

corrective action. Universal Consulting Servs., Inc., B-415217, Oct. 17, 2017 (unpublished decision). The Army reevaluated proposals in the competitive range and again made award to Zolon, whereupon UCS again protested to our Office. We dismissed the protest when the Army advised our Office that it again would take corrective action by making a new selection decision. Universal Consulting Servs., Inc., B-415217.2, B-415217.3, Apr. 4, 2018 (unpublished decision).

The technical evaluation panel rated the awardee's and the protester's proposals under the non-price factors as follows:

Factor	UCS	Zolon
Technical Approach	Good	Good
Experience	Outstanding	Good
Management Approach	Acceptable	Outstanding
Quality Control Approach	Acceptable	Good
Past Performance	Very Relevant/Substantial	Relevant/Substantial
Overall	Good	Good

AR, Tab 10, ADM at 10. UCS's total price/cost was \$34,832,682, on a level of effort of 358,818 hours, and Zolon's total price/cost was \$29,830,308, on a level of effort of 350,422 hours. Id.

The source selection authority (SSA) made changes to the evaluators' findings, removing a strength from Zolon's proposal evaluation under both the technical approach and management approach factors. Id. at 57. The removal of those strengths did not alter the ratings assigned for either of those factors or the overall technical rating. See id. at 58. The SSA then concluded that Zolon's proposal offered the best value to the government. Id. at 75. The agency notified the protester of Zolon's selection, and this protest followed.²

DISCUSSION

The protester alleges that the agency's evaluation of its technical proposal was unreasonable. Protest at 8-13; Comments at 3-9. Specifically, the protester disputes the agency's evaluation under the technical approach factor, arguing that several of the agency's findings of strengths should have been findings of significant strengths, and that the proposal deserved a rating of outstanding, as opposed to good, for the factor. The protester also disputes the agency's assignment of a weakness and the failure to assign an additional strength to UCS's proposal under the management approach

² As set forth above, the awarded value of the task order at issue exceeds \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders multiple-award indefinite-delivery/indefinite-quantity contracts awarded under the authority of Title 41 of the U.S. Code. 41 U.S.C. § 4106(f)(1)(B).

factor, and the rating of its proposal as merely acceptable under the quality control approach factor. The protester further argues that the evaluation of proposals was unequal. As explained below, we find that the protester's arguments provide no basis on which to sustain the protest.³

The evaluation of technical proposals is a matter within the discretion of the contracting agency, since the agency is responsible for defining its needs and the best method for accommodating them. Cherokee Nation Tech. Solutions, LLC, B-411140, May 22, 2015, 2015 CPD ¶ 170 at 5. In reviewing an agency's evaluation, we will not reevaluate technical proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and with procurement statutes and regulations. Id. A protester's disagreement with an agency's judgment is not sufficient to establish that an agency acted unreasonably. Id. at 6.

Technical Approach

The evaluators identified five strengths and no weaknesses in the protester's proposal under the technical approach factor. AR, Tab 10, ADM at 37. UCS argues that three of these strengths should have been evaluated as significant strengths. Protest at 10-12; Comments at 5-6. The three strengths at issue are as follows: the proposed [DELETED] will help manage file storage; the incorporation of [DELETED] into almost all task areas indicates a clear understanding of support requirements; and an innovative introduction of [DELETED] will reduce development time and provide standardization across web sites. AR, Tab 10, ADM at 37. The agency described each of these approaches as having "merit in a way that will be advantageous to the Government during contract performance." Id. The protester argues that, because the agency concluded that UCS's approach for each of these tasks makes it more likely that the protester will successfully perform the contract, the agency "should have concluded that the approaches presented significant strengths--i.e., they have 'appreciable merit or appreciably exceed specified performance or capability requirements in a way that will be appreciably advantageous to the Government during contract performance.'" Protest at 11, quoting RFP § 12.e.

We disagree. The agency's description of the approaches as "advantageous to the Government during contract performance" is consistent with the definition of a proposal strength as an "aspect of an offeror's proposal that has merit or exceeds specified performance or capability requirements in a way that will be advantageous to the Government during contract performance." RFP at 29. The evaluators did not find--nor has the protester explained why the evaluators reasonably should have found--that any of the proposal aspects in question would be "appreciably advantageous to the Government during contract performance." Id. In the end, the protester's contention

³ While our decision does not specifically address every protest allegation, we have considered all of the protesters' additional assertions and find that none provides any independent basis for sustaining the protests.

that the three strengths at issue should have been evaluated as significant strengths amounts to mere disagreement with the agency evaluation, which, without more, does not provide a basis on which to sustain the protest.

Relatedly, the protester argues that because UCS's proposal contains strengths that far outweigh any weaknesses, the agency should have rated UCS's proposal as outstanding, rather than good, under the technical approach factor. Protest at 11. There is no legal requirement that an agency must award the highest possible rating under an evaluation factor simply because the proposal contains strengths and/or is not evaluated as having any weaknesses. Applied Tech. Sys., Inc., B-404267, B-404267.2, Jan. 25, 2011, 2011 CPD ¶ 36 at 9. Furthermore, the evaluation of proposals and assignment of adjectival ratings should generally not be based upon a simple count of strengths and weaknesses, but on a qualitative assessment of the proposals consistent with the evaluation scheme. Clark/Foulger-Pratt JV, B-406627, B-406627.2, July 23, 2012, 2012 CPD ¶ 213 at 14.

Moreover, where the evaluation and source selection decision reasonably consider the underlying basis for the ratings, including the advantages and disadvantages associated with the specific content of competing proposals, in a manner that is fair and equitable, and consistent with the terms of the solicitation, the protester's disagreement over the actual adjectival rating is essentially inconsequential in that it does not affect the reasonableness of the judgments made in the source selection decision. General Dynamics, American Overseas Marine, B 401874.14, B-401874.15, November 1, 2011, 2012 CPD ¶ 85 at 10. Here, the SSA considered not simply the adjectival ratings, but the substance of the competing proposals, in his source selection decision. Indeed, based on his comparison, he concluded that, while both proposals were rated good under the technical factor, UCS's proposal offered a slight advantage over Zolon's proposal. AR, Tab 10, ADM at 71. In sum, we find no merit to this argument.⁴

Management Approach

The evaluators assigned the protester's proposal one strength and one weakness under the management approach factor. AR, Tab 10, ADM at 40. UCS challenges the agency's assessment of the weakness, asserting that "it is illogical that an approach that has been successful in the past," providing operating continuity and cost savings, "can now present a weakness as that term is defined in the RFP." Comments at 6.

At issue is the performance work statement (PWS) requirement for surge resources and the protester's proposed method of satisfying that requirement. The PWS advised offerors that they should have the ability to surge resources in each of the specific task

⁴ For the same reason, there is no merit to the protester's assertion that the one strength that its proposal received under the quality control factor should have resulted in a rating of good, rather than acceptable, for that factor. Protest at 13; Comments at 9.

areas based on the agency's evolving needs. PWS ¶ 2.3. The protester's proposal stated that UCS would manage surge requirements by authorizing employees to work additional hours, by assigning temporary support from cross-trained personnel, and by "leveraging vetted staffing firms." AR, Tab 7, UCS Technical Proposal at 30. The agency assessed the firm's proposal a weakness because "cross training and using current staff" is "cumbersome and requires the Government to re-prioritize the current workload to address surge tasks/activities which jeopardizes the completion of day-to-day tasks." AR, Tab 9, Consensus Evaluation at 34.

The agency further explains that a staffing plan that relies on cross training and redeploying existing staff jeopardizes the completion of the day-to-day tasks normally performed by those employees. MOL at 31, citing AR, Tab 9, Consensus Evaluation at 34. The protester does not dispute the potentially disruptive impact that cross training and redeploying existing staff could have on day-to-day operations. See Comments at 6. Rather, UCS asserts that its surge support plan also included a third "situation-based staffing option[]," namely, "hiring temporary personnel through vetted staffing firms as necessary." Id. at 6-7. The protester's proposal offers no specifics on the resources that it has at its disposal to hire temporary personnel, however. Based on the content of both proposals, we see no basis to question the reasonableness of the agency's conclusion that, unlike Zolon's proposal, the principal component in UCS's proposed surge support was cross training and redeploying existing personnel, and that such an approach increased the risk of contract performance. See Second Supp. Legal Memorandum at 6-7. As a result, we see no reason to question the agency's assessment of this weakness.⁵

The protester also asserts that the agency improperly failed to assign its proposal an additional strength under the management approach factor for its One Team approach. Comments at 8. In this connection, the agency consensus evaluation noted that "UCS proposed a One Team approach that included an onsite Program Manager which would help to ensure they are responsive to [the agency's] day-to-day mission changes." AR, Tab 9, Consensus Evaluation at 49. The protester argues that, because the RFP advised offerors that proposals would be evaluated on "flexibility in allocating resources based on Government priorities," use of the One Team approach warranted the assignment of a strength. Protest at 10; Comments at 8, citing RFP at 26.⁶

⁵ The protester argues that, absent its one weakness under the management approach factor, the agency would have rated its proposal as good rather than acceptable for that factor. Comments at 7. Because we find no basis on which to question the reasonableness of the agency's assessment of the weakness, we need not consider the likelihood that the absence of the one weakness would have improved the protester's proposal's adjectival rating for the factor.

⁶ The precise requirement to which UCS refers stems from the management approach factor: "[c]hain of command practices that will contribute in a positive manner to
(continued...)

UCS's One Team approach was an overarching methodology for performing the requirement that was referenced throughout the protester's proposal. See AR, Tab 7, UCS Technical Proposal at 1, 2, 26, 28, 30, 31, 74, and 78. Each strength and weakness assigned by the agency references a specific PWS requirement. See AR, Tab 9, Consensus Evaluation. The protester does not identify a specific PWS requirement that is exceeded by UCS's use of the One Team approach, such that the agency's failure to assign the protester's proposal a strength for such an approach was unreasonable. See Protest at 10; Comments at 8. Moreover, the consensus evaluation recognized the advantages of both the One Team approach and the onsite program manager.⁷ See AR, Tab 9, Consensus Evaluation at 49. We thus find without merit the assertion that the agency unreasonably failed to assess the protester's proposal a strength for its One Team approach.

Unequal Treatment

The protester also asserts that the evaluators unequally assigned a weakness to its proposal and a significant strength to Zolon's proposal. Protest at 8-9; Comments at 3-4, citing Protest, B-415217.2 at 3-6. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences in the proposals. Vertical Jobs, Inc., B-415891.2, B-415891.4, Apr. 19, 2018, 2018 CPD ¶ 147 at 7. We consider both of these allegations of unequal treatment below, and we conclude that they lack merit.⁸

(...continued)

ensuring completion of all tasks," which could be demonstrated, in part, by flexibility in allocating resources. RFP at 26.

⁷ UCS also asserts that the Army unreasonably failed to assign its proposal a strength under the management approach factor for proposing a workforce that would arrive on contract day one with the required background investigations, clearances, and training. Comments at 8; see AR, Tab 9, Consensus Evaluation at 43. In this regard, the PWS required that all contractor personnel comply with these requirements within 6 months of employment. PWS ¶ 6.7.5. The protester asserts that, "as the RFP does not require the security requirements to already be held," the proposal should have been assessed a strength for proposing a workforce that met the requirement on day one. Comments at 8. We dismiss this argument as untimely. The protester was on notice as of the receipt of its written debriefing on May 15, 2018, that the agency had not assigned UCS's proposal the strength at issue, but did not raise the allegation until more than 10 days later, in its June 29 comments on the agency report. See 4 C.F.R. § 21.2(a)(2) (protest must be filed within 10 days after the basis is, or should have been, known).

⁸ The protester also challenges as unequal the assessment of a strength to the awardee's proposal under the technical approach factor for an "overall approach [that] has merit and provides details and innovative technical solutions," and a strength under
(continued...)

The protester asserts that UCS's proposal received a weakness under the management approach factor for surge support services that involved cross training and using current staff, but Zolon's proposal, which offered a "substantially identical" approach, did not. Reply to Second Supp. Legal Memorandum at 7. As discussed above, the protester proposed to manage surge support requirements by authorizing employees to work additional hours, assigning temporary support from cross-trained personnel, and leveraging vetted staffing firms. AR, Tab 7, USC Technical Proposal at 30. In the one example of surge support provided, UCS described temporarily reassigning contract personnel and cross-training certain technicians. Id. In contrast, Zolon stated that "particularly effective recruiting processes are needed during these surge events." AR, Tab 8, Zolon Technical Proposal at 23. The awardee explained that it would first realign suitable employees, many of whom "have multiple skill-sets in related services," with the agency's approval. Id. at 23-24. Zolon noted that it has "a corporate reach back to over 250 skilled personnel, who will be available to quickly [scale staff] on very short notice." Id. at 23. In addition, Zolon "maintains a relationship with large recruitment service providers" to "augment its existing recruiting workforce of 25 recruiters." Id. Zolon concluded its discussion of surge support by explaining that Zolon's "experts identify what types of specialists are required and then fill those immediate requirements," and that its "team will ensure individuals with appropriate certifications, training, experience, and security clearances are hired to provide exceptional support to the program." Id. at 24.

In our view, the agency reasonably identified dissimilarities in these two approaches. While both UCS and Zolon proposed to utilize cross-training of the existing workforce, Zolon's proposal was unique in describing the depth of its existing recruiting capabilities--an existing roster of 25 recruiters--and the scope of its outside recruitment capabilities--"corporate reach back" to over 250 skilled personnel and relationships with large recruitment service providers. This allegation of unequal treatment provides no basis on which to sustain the protest.

UCS also challenges the agency's assessment of a significant strength to Zolon's proposal under the technical approach factor for "proactive monitoring of regulatory requirements while identifying those that will affect [the agency's] mission." See AR, Tab 10, ADM at 45. The protester alleges that the evaluators unreasonably failed to assign its proposal a similar significant strength. Comments at 3-5.

(...continued)

the management approach factor for exceeding staffing requirements with respect to clearances, investigations, and training. Protest at 9, citing AR, Tab 10, ADM at 45. The SSA eliminated those two strengths from the evaluation of the awardee's proposal, and so the allegation that those strengths were unequally assessed is without merit. See AR, Tab 10, ADM at 45, 49 (removing two evaluated strengths from awardee's proposal).

Zolon's proposal stated that the awardee would provide "automated, streamlined workflows" to track and respond to a wide variety of "Federal guidance." AR, Tab 8, Zolon Technical Proposal at 13. The awardee proposed an information technology policy analyst who would "proactively monitor requests" coming from the Office of Management and Budget (OMB) and the National Institute of Standards and Technology, as well as other "compliance issues." Id. Zolon also proposed to "track and categorize the response to mandates through their lifecycles." Id. In contrast, the protester's proposal stated that UCS would "support long-range planning by ensuring current investment management systems. . . are reviewed, updated, and in compliance with" statutory and OMB guidelines. AR, Tab 7, UCS Technical Proposal at 13.

In the agency's view, Zolon's proposal contained unique "strategic language," that is, automated and streamlined methods to proactively monitor government requests, analyze those requests, and track and categorize the responses. Second Supp. Legal Memorandum at 5. The agency asserts that it reasonably determined that "while UCS's more reactive, tactical approach met the Solicitation's requirements, it was not as advantageous or risk-reducing as Zolon's proactive, strategic approach." Id. On this record, we have no basis to challenge the reasonableness of the agency's evaluation.⁹

The protest is denied.

Thomas H. Armstrong
General Counsel

⁹ The protester asserts that the agency's tradeoff analysis was flawed where it was based on a flawed technical evaluation. Protest at 13-15; Comments at 10. As discussed above, we find no basis on which to conclude that the agency's technical evaluation was unreasonable, and there is thus no merit to this protest allegation.