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Decision

Matter of: North South Consulting Group, LLC

File: B-416849

Date: December 27, 2018

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Janice Davis, Esq., Davis & Steele, for Dynamic Systems Technology, Inc., the intervenor.
Major Felix S. Mason, Department of the Army, for the agency.
Paula J. Haurilesko, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency unreasonably assigned a weakness to the protester's proposal is denied, where the record shows that the agency reasonably considered the information the protester provided in its proposal.
 2. Selection official reasonably characterized a weakness assigned to the protester's proposal based on language in the protester's proposal and the agency's evaluation report.
 3. Protest that the agency's selection decision was unreasonably is denied, where the selection official looked behind the adjectival ratings and qualitatively assessed proposals.
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DECISION

North South Consulting Group, LLC (NSCG), a small business, of Elizabethtown, Kentucky, protests the award of a contract to Dynamic Systems Technology, Inc. (Dynamic), also a small business, of Fairfax, Virginia, under request for proposals (RFP) No. W9133L-18-R-0001, issued by the Department of the Army, National Guard Bureau, for support to the Army National Guard's child and youth school services (CYSS) program. NSCG argues that the Army miscalculated its proposal and made an unreasonable source selection decision.

We deny the protest.

BACKGROUND

The RFP, issued on February 28, 2018, as a set-aside for small businesses, provided for the award of a fixed-price contract for child and youth program services at Army National Guard installations in 46 states, Puerto Rico, the U.S. Virgin Islands, and the District of Columbia. Agency Report (AR), Tab 3, RFP, Performance Work Statement (PWS), at 12; Tab 21, RFP amend. 1, at 2. The RFP contemplated a period of performance of a base year and four option years. RFP at 12. The RFP stated that award would be made on a best-value basis, considering (in descending order of importance) technical approach, management approach, past performance, and price. RFP amend 1, at 18.

Under the technical approach factor, the RFP stated that the government would, in general terms, evaluate the offeror's understanding of the complexity of the tasks and how well the methodology proposed will accomplish the requirements of the PWS. Id. Under the management approach factor, the RFP advised offerors, among other things, that the government would evaluate proposals to determine the offeror's knowledge, capability, and experience regarding the RFP requirements. Id. at 19. As relevant here, the RFP required offerors to provide a breakout of retention statistics, by labor category, for contracts performed within the past three years. Id. at 9. For any attrition rates that exceeded 8 percent on any labor category under a single contract, offerors were to describe what actions were enacted to effectively address turnover. Id.

The Army National Guard received eight proposals in response to the solicitation, including proposals from NSCG and Dynamic. AR, Tab 26, Source Selection Evaluation Board (SSEB) Report, at 4. The SSEB evaluated proposals and identified significant strengths, strengths, weaknesses, deficiencies, and uncertainties in offerors' proposals. See id. at 6-28. The SSEB assigned the following adjectival ratings:¹

	NSCG	Dynamic
Technical Approach	Outstanding	Outstanding
Management Approach	Good	Outstanding
Past Performance	Substantial Confidence	Satisfactory Confidence
Price	\$45,629,140	\$44,600,442

AR, Tab 27, Source Selection Decision Document (SSDD), at 49.

¹ The RFP provided for the following adjectival ratings in evaluating the technical and management approach factors: outstanding, good, acceptable, marginal, or unacceptable. AR, Tab 21, RFP amend. 1, at 20. For past performance, an overall performance confidence rating would be assessed using the following: substantial confidence, satisfactory confidence, limited confidence, and no confidence. Id. at 22.

As shown in the table above, under the technical approach factor, NSCG's proposal received a rating of outstanding, based on the SSEB's identification of three significant strengths, four strengths, and one weakness. AR, Tab 26, SSEB Report, at 7. Dynamic's proposal also received an outstanding rating under this factor, based on the identification of two significant strengths, and two strengths. Neither proposal was assessed a deficiency or an uncertainty under this factor. Id. at 6.

Under the management approach factor, NSCG's proposal received a rating of good, based on the identification of three strengths, two weaknesses, and one uncertainty. Id. at 27. In contrast, Dynamic's proposal received a rating of outstanding under this factor, based on the identification of two significant strengths, six strengths, one weakness, and one uncertainty. Id. at 24-25.

The source selection authority (SSA), who was also the contracting officer for this procurement, independently reviewed the proposals and the SSEB report and concluded that Dynamic's proposal represented the best value to the government because it posed less risk and provided more positive elements than that of the other offers received, considering price and non-price factors. AR, Tab 27, SSDD, at 56. The agency notified offerors of the award decision on September 10. After receiving a written debriefing on September 17, NSCG filed this protest.

DISCUSSION

NSCG challenges the evaluation of its proposal and the selection decision. Generally, NSCG protests the agency's assessment of a weakness in its proposal, alleges that the SSA mischaracterized a different weakness in the selection decision, and argues that the SSA's comparison of NSCG's proposal with Dynamic's was unreasonable under both the technical and management approach factors.

Challenge to NSCG Weakness for Retention

In evaluating NSCG's proposal, the SSEB identified the following weakness under NSCG's management approach:

Offeror provided retention statistics, for the Prime and subcontractor that showed more than an [DELETED]% attrition rate in some categories. The government is concerned about the instability in the non-program management labor categories reflected in the retention statistics of the major subcontractor, posted at [DELETED]% or less. Offeror also stated the major subcontractor's Family Assistance Coordinators contract had a 3-month gap, when[,] in fact, the gap was considerably less (10 Feb – 6 Mar 2017).

AR, Tab 26, SSEB Report, at 28. The protester contends that the Army unreasonably identified NSCG's retention statistics as a weakness in its proposal. Protest at 15. NSCG argues that the agency failed to consider its explanation for the retention

statistics, and that the information contained in its proposal demonstrated that there was no risk of poor performance from employee turnover. Id. NSCG states that much of its turnover was the result of individuals being promoted to fill other positions under the same contract. Id. at 16. NSCG also argues that, with respect to its subcontractor's attrition rates, the low retention rate was a result of the agency's actions and not by NSCG's actions. Id. at 17-18.

The Army asserts that it considered NSCG's explanations for the retention rates, but, nonetheless, it did not find that NSCG's explanations negated the agency's concerns. Contracting Officer's Statement (COS) at 5; Memorandum of Law (MOL) at 17. The Army explains that the identified weakness relates to the agency's concerns about instability in the labor categories where the major subcontractor's retention rate was [DELETED] percent or less. MOL at 17. The agency also explains that it had considered NSCG's explanation that the low retention rate for the subcontractor's family assistance coordinators resulted from the gap between contracts. The agency, however, found the argument unavailing because the gap between contracts was roughly one month, rather than three months as the protester claimed. COS at 5. In addition, the Army found that, although internal personnel actions and contract actions may reduce the impact of such a weakness, these actions did not negate the agency's concerns. Id.

The evaluation of proposals is primarily a matter within the agency's discretion, since the agency is responsible for defining its needs and identifying the best method for accommodating them. Armedia, LLC, B-415525 et al., Jan. 10, 2018, 2018 CPD ¶ 26 at 4. In reviewing protests of an agency's evaluation, our Office does not reevaluate proposals; rather, we review the record to determine if the evaluation was reasonable, consistent with the solicitation's evaluation scheme, as well as procurement statutes and regulations, and adequately documented. Veteran Nat'l Transp., LLC, B-415696.2, B-415696.3, Apr. 16, 2018, 2018 CPD ¶ 141 at 4. An offeror's disagreement with the agency, without more, does not render the evaluation unreasonable. Beacon Grace, LLC, B-415529, Jan. 16, 2018, 2018 CPD ¶ 29 at 4.

Based on the record before us, we find the agency's reevaluation of NSCG's retention rates to be reasonable. The record shows that NSCG's subcontractor's retention rates were below [DELETED] percent for a number of labor categories, on both a contract with a three-year average, as well as a contract with a one-year average. See AR, Tab 23, NSCG's Management Approach Volume, at 20. The record also shows that the Army considered NSCG's explanation and concluded that NSCG's explanation did not allay its concern. See AR, Tab 26, SSEB Report, at 28. The protester's disagreement in this regard does not demonstrate that the agency's assessment of a weakness was unreasonable.

Challenge to Source Selection Decision

NSCG raises multiple challenges to the source selection decision. First, NSCG argues that the SSA erroneously concluded that NSCG planned to outsource its recruiting

activities. Protest at 13; Protester's Comments at 8. NSCG explains that its proposal does not state that it plans to outsource its recruiting function, but instead, indicates that it will conduct recruiting itself. Protest at 14. In this regard, NSCG identifies a paragraph in its proposal that discussed "Team NSCG's recruiting plan" as demonstrating that it did not plan to outsource recruiting. Id. (quoting AR, Tab 23, NSCG's Management Approach Volume, at 18).

As noted above, the agency evaluators identified two weaknesses in NSCG's management approach proposal. AR, Tab 26, SSEB Report, at 28. The first was the previously identified retention statistics. The second weakness involved NSCG's proposed outsourcing of human resource (HR) services. The SSEB expressed concern that the outsourcing of HR responsibilities would increase performance risk with respect to consistent resolution of staffing issues; increase turbulence during the transition period, which would result in a slower on-boarding process; and other issues such as loss of paperwork, complaints about insensitivity, and a lack of response from the HR firm regarding compensation package inquiries from incumbent staff. Id.

The Army asserts that recruiting is traditionally associated with the HR function, and it was specifically the HR aspects of the recruiting process that were noted as a concern by the evaluators. COS at 4; MOL at 13. The Army also argues that NSCG's proposal did not provide an explanation about which HR functions would be outsourced, nor did the proposal specifically state that the recruiting function would not be conducted by NSCG's (outsourced) HR team. Thus, in the Army's view, the proposal was unclear about how NSCG would handle recruiting. MOL at 14.

In reviewing an agency's evaluation of proposals and source selection decision, we examine the supporting record to determine whether the decision was reasonable, consistent with the stated evaluation criteria, and adequately documented. Johnson Controls World Servs., Inc., B-289942, B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6. The source selection official has broad discretion in determining the manner and extent to which he or she will make use of proposal evaluation results, and this judgment is governed only by the tests of rationality and consistency with the stated evaluation criteria. Pacific-Gulf Marine, Inc., B-415375, B-415375.2, Jan. 2, 2018, 2018 CPD ¶ 124 at 7.

Based on the record before us, we find no basis to conclude that the SSA's characterization of the outsourcing weakness was unreasonable. As noted above, the SSA reviewed not only the SSEB report, but also the offerors' proposals. AR, Tab 27, SSDD, at 1. With respect to outsourcing, NSCG's proposal stated that "[DELETED]" AR, Tab 23, NSCG's Management Volume, at 10. In discussing the weakness identified with outsourcing the HR function, the evaluators noted that NSCG's proposal indicated that the outsourcing would provide immediate capability to hire [DELETED], and that the agency was concerned that, among other things, the outsourcing would increase the risk to consistent resolution of staffing issues. AR, Tab 26, SSEB Report, at 28. In view of NSCG's proposal language and the nature of the agency's concern, we find reasonable the SSA's conclusion that the outsourcing would negatively impact

recruiting. In this regard, it is an offeror's responsibility to submit an adequately written proposal that demonstrates the merits of its approach; an offeror runs the risk of having its proposal downgraded or rejected if the proposal is inadequately written. Dewberry Crawford Grp.; Partner 4 Recovery, B-415940.12 et al., July 2, 2018, 2018 CPD ¶ 296 at 6. This protest ground is denied.²

Next, NSCG contends that the Army's tradeoff decision was inconsistent with the terms of the solicitation because the agency attached greater importance to the management approach factor than to the technical approach factor--the most important factor. Protester Comments at 3. In this regard, NSCG argues that the SSA unreasonably considered strengths that the SSEB identified in Dynamic's proposal under the management approach factor to discount the strengths identified in NSCG's proposal under the technical approach factor. Id. at 5.

The Army states that the SSA conducted an integrated assessment of proposals as required by the RFP. MOL at 11. The Army explains that the SSA reviewed the content of the proposals as a whole and concluded that NSCG's proposal lacked any positive discriminators. COS at 3. The Army explains that, for each strength or significant strength found in NSCG's proposal, the SSA found an equivalent element in Dynamic's proposal, even though the SSEB had identified some of these features in the management volume of Dynamic's proposal, rather than the technical volume. Id.

Source selection officials have broad discretion to determine the manner and extent to which they will make use of evaluation results, and must use their own judgment to determine what the underlying differences between proposals might mean to successful performance of the contract. ERC Inc., B-407297, B-407297.2, Nov. 19, 2012, 2012 CPD ¶ 321 at 6. Ratings, whether numerical, color, or adjectival, are merely guides to assist agencies in evaluating proposals; the qualitative information underlying those ratings is the type of information that source selection officials should consider, in addition to ratings, to enable them to determine whether and to what extent meaningful differences exist between proposals. Id. Moreover, it is well settled that a single evaluation factor--even a lower-weighted factor--may properly be relied upon as a key

² In its initial protest, NSCG also challenged the assessment of a weakness to its proposal under the management approach factor for proposing to outsource HR services. Protest at 21. The agency substantively responded to the protest ground. MOL at 17-18; COS at 5-6. However, NSCG failed to address the Army's response, and instead simply directed our attention to its argument that the SSA mischaracterized the weakness. See Protester Comments at 10. Accordingly, we dismiss this protest ground as abandoned. Mayfield Gov't Inspections, B-414528, June 13, 2017, 2017 CPD ¶ 189 at 5 ("Where an agency provides a detailed response to a protester's assertions and the protester either does not respond to the agency's position or provides a response that merely references or restates the original protest allegation without substantively rebutting the agency's position, we deem the initially raised arguments abandoned.").

discriminator for purposes of a source selection decision. Smiths Detection, Inc.; Am. Sci. & Eng'g, Inc., B-402168.4 et al., Feb. 9, 2011, 2011 CPD ¶ 39 at 6-7; ITW Military GSE, B-403866.3, Dec. 7, 2010, 2010 CPD ¶ 282 at 5.

Here, the SSA reviewed the proposals and the SSEB report, and concluded that NSCG's and Dynamic's proposals were approximately equal under the technical approach factor. AR, Tab 27, SSDD, at 1, 54. In this regard, the SSA stated that the two offerors had two similar significant strengths with respect to their marketing plans and understanding of the requirements. Id. The SSA noted that NSCG had four additional strengths under the technical approach factor. Id. The SSA concluded that the strength in NSCG's proposal for a new CYSS coordinator guide was somewhat similar to a strength found in Dynamic's proposal under the management approach factor. Id. at 54-55. The SSA also concluded that, although the additional strengths identified in NSCG's proposal under the technical approach factor--outreach-focused training, an extensive training library, and a one-week follow-up with the respective state family program director--were impressive, they were all similar in impact to related aspects of Dynamic's management approach that address onboarding, training, and quality controls. Id. at 55. The SSA also concluded the Dynamic's proposed [DELETED] was similar to capabilities described in NSCG's proposal, but that Dynamic's [DELETED] was potentially more robust. Id.

In essence, NSCG objects to the SSA's determination that the two proposals were technically equal under the technical approach factor. However, in determining that the two offerors' proposals were technically equal, the record shows that the SSA looked behind the adjectival ratings to meaningfully consider the differences--and similarities--between proposals. AR, Tab 27, SSDD, at 54. The SSA recognized that both NSCG's and Dynamic's proposals demonstrated a clear and in-depth understanding of the requirement, and that both offerors proposed marketing plans deserving of a significant strength. Id. The SSA acknowledged the four additional strengths identified in NSCG's proposal, but concluded that these were not discriminators because these features were similar in impact to features in Dynamic's proposal related to onboarding, training, and quality control. Id. at 55. Thus, the SSA determined that these strengths did not represent differences between the proposals and were not a basis upon which to conclude that one proposal was superior to another under the technical approach factor. Accordingly, the protester's disagreement with the SSA's judgment provides no basis to sustain the protest.

Moreover, we find no merit in NSCG's contention that its proposal should have been considered superior to Dynamic's under the technical approach factor because of the additional strengths. In this regard, 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 solicitation's evaluation scheme. National Gov't Servs., Inc., B-412142, Dec. 30, 2015, 2016 CPD ¶ 8 at 15; see also The Boeing Co., B-311344 et al., June 18, 2008, 2008 CPD ¶ 114 at 32 (source selection should generally not be based upon a simple count of strengths and weaknesses, but upon a qualitative assessment of the proposals). As

discussed above, the record here shows that the SSA reasonably concluded that the protester's additional strengths did not constitute a meaningful difference between the proposals.

Finally, NSCG argues that the SSA treated offerors disparately in his consideration of the strengths identified in the offerors' proposals. Protest at 12; Protester Comments at 6. NSCG contends that the Army used features identified in Dynamic's proposal under the management approach factor to diminish and downplay superior features in NSCG's proposal under the technical approach factor, but failed to similarly consider these same features from NSCG's proposal when comparing proposals under the management approach factor. Protester Comments at 6-7. In this regard, NSCG argues that the Army, in essence, "double-counted" Dynamic's strengths identified under the management approach factor by also considering them under the technical approach factor. The Army states that, even if the protester were correct, Dynamic's proposal would still possess a greater quantity and quality of positive discriminators under the management approach factor. COS at 3.

Although we agree that the Army's evaluation was flawed in this respect, we find that NSCG was not prejudiced by this error. In light of the number of significant strengths identified in Dynamic's proposal under the management approach factor that are not similarly identified in NSCG's proposal and also considering Dynamic's lower price, we conclude that there is no reasonable possibility that the agency's award decision would be affected by discounting those of Dynamic's strengths already considered under the technical approach factor. Prejudice is an essential element of every viable protest; we will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions; that is, unless the protester demonstrates that, but for the agency's actions, it would have a substantial chance of receiving an award. Octo Consulting Grp., Inc., B-413116.53, B-413116.55, May 9, 2017, 2017 CPD ¶ 139 at 10.

Here, in addition to the strengths identified under the management approach factor that the SSA considered as balancing NSCG's strengths under the technical approach factor, the SSA concluded that the significant strengths associated with Dynamic's overall management approach--including Dynamic's methodical communication plan, corrective actions and improvement plans, and its approach to communications during transition--were unmatched by features of NSCG's proposal. AR, Tab 27, SSDD, at 55. For example, the SSA acknowledged that NSCG received a strength associated with its communication plan, but concluded that NSCG's plan was less robust than Dynamic's. Id. In view of the SSA's consideration of Dynamic's significant strengths, together with the SSA's acknowledgment of Dynamic's lower price, id. at 54, NSCG has not demonstrated that it was prejudiced by the SSA's consideration of Dynamic's strengths under both the technical and management approach factors. Therefore, we find no basis to sustain this protest ground. See Innovative Mgmt. & Tech. Approaches, Inc., B-413084, B-413084.2, Aug. 10, 2016, 2016 CPD ¶ 217 at 9-10 (finding no basis to

sustain an evaluation challenge where the protester failed to establish that but for the evaluation errors the protester would have a substantial chance of receiving the award).

The protest is denied.

Thomas H. Armstrong
General Counsel