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Decision

Matter of: Professional Analysis, Inc.

File: B-419239; B-419239.2

Date: January 8, 2021

Brian A. Darst, Esq., Brian A. Darst Attorney at Law, for the protester.
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Ellen B. Clark, Esq., Veronica Hale, Esq., Elise L. Jones, Esq., and Graeme Henderson, Esq., United States Marine Corps, for the agency.
Lois Hanshaw, Esq., and Evan Williams, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against the issuance of a task order for logistical support services is denied where the record shows the agency's evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

Professional Analysis, Inc. (PAI), a veteran-owned small business of Alexandria, Virginia, protests the issuance of a task order to Cervello Technologies, LLC (Cervello), a veteran-owned small business of Clearwater, Florida, by the U.S. Marine Corps, under request for quotations (RFQ) No. M67004-20-Q-0008 for distribution management support services. PAI argues that Cervello is ineligible for award and the agency's evaluation of Cervello's and PAI's quotations under the technical, past performance, and price evaluation factors was flawed.

We deny the protest.

BACKGROUND

On March 30, 2020, the Marines issued the RFQ under the procedures of Federal Acquisition Regulation (FAR) subpart 8.4. Agency Report (AR) Tab 2, RFQ at 1. The RFQ sought a contractor to provide distribution management support services. *Id.* at 13. This support entails providing integrated logistics support in the areas of program management, distribution, metrics and analysis, supply chain management, advocacy,

and the preparation for transportation of Marine Corps military equipment and other supplies and material. *Id.*

The RFQ contemplated the award of a hybrid fixed-price, cost-reimbursable, labor-hours contract to be performed for one 9-month base period and two, 1-year option periods.¹ *Id.* at 13, 15. Award would be made on a best-value tradeoff basis considering three factors, listed in descending order of importance, technical, past performance and price. *Id.* at 70.

The technical factor was comprised of six equally rated subfactors.² *Id.* at 70, 72. Three subfactors are relevant to this procurement: (1) subfactor 1.1 (the logistics subfactor); (2) subfactor 1.3 (the operations subfactor); and (3) subfactor 1.4 (the key personnel subfactor).

The logistics subfactor required a quotation to demonstrate a working knowledge (*e.g.*, technical/functional competence and experience) of Department of Defense (DOD), Navy and Marine Corps logistics and financial orders, policies, procedures, and concepts. *Id.* The operations subfactor required a quotation to demonstrate the vendor's knowledge, competence, and expertise in providing operational/strategic level distribution and traffic management support to a flag officer command and enterprise. The key personnel subfactor required eight resumes to demonstrate the firm's understanding of how to recruit personnel with the skills, knowledge, abilities, education, and experience needed for the designated key positions. *Id.* Additionally, the performance work statement (PWS), under section 1.4.9, Key Personnel, required firms to provide the name, resume, and letter of intent for proposed key personnel identified in the quotation. *Id.* at 17.

Under the technical factor, quotations would be evaluated based on the thoroughness of the approach and level of understanding. *Id.* at 70-71. The contractor's performance capability would also be evaluated in accordance with the PWS. *Id.* at 70. A technical evaluation board (TEB) would evaluate strengths, adequacies, weaknesses, and deficiencies of the firm's technical quotation and assign each technical factor and subfactor an adjectival rating. *Id.* at 70-71.

The adjectival ratings, from highest to lowest, were outstanding, good, acceptable, marginal, and unacceptable. RFQ at 70-71. As relevant here, a quotation rated as outstanding offered an exceptional approach and understanding of the requirements, contained multiple strengths, and demonstrated a low risk of unsuccessful performance.

¹ The RFQ identified three contract line item numbers (CLINs). RFQ at 3-6. The government identified pre-established totals for two of the CLINs: CLIN 002, related to travel, and CLIN 003, related to surge requirements. *Id.* at 4-5; AR, Tab 6, Award Decision at 4. For CLIN 001, firms were required to provide labor rates and totals for the base and option periods. *Id.*

² The RFQ identified the subfactors only by number. RFQ at 70. For ease of reading, we have assigned narrative names to the relevant subfactors.

Id. at 70. A quotation rated as acceptable met the requirements, indicated an adequate approach and understanding of the requirements, and demonstrated a risk of unsuccessful performance that was no worse than moderate. *Id.* at 71.

The RFQ required that each firm's price/cost for the base and option periods provide all labor rates and totals. RFQ at 72. In addition, the agency provided the labor categories and number of personnel required for each category and identified an estimated government workload. *Id.* at 4-6, 38-39. Price would be evaluated for fairness and reasonableness. *Id.*

Three firms submitted quotations including, PAI and Cervello. AR, Tab 6, Award Decision at 2. The TEB reviewed firms' technical and past performance quotations. AR, Tab 5, TEB Final Report at 1. After an initial evaluation of quotations, the agency engaged in discussions with vendors. *Id.* Final ratings were as follows.

	Technical	Past Performance	Price
PAI	Acceptable	Very Relevant/Satisfactory Confidence	\$8,780,217
Cervello	Outstanding	Relevant/Satisfactory Confidence	\$15,542,665

AR, Tab 6, Award Decision at 4. The agency concluded that Cervello's quotation offered the best value based on the strength of its technical solution, which the agency concluded was worth the higher price. *Id.* at 7-8. The delivery order was issued under Cervello's Federal Supply Schedule (FSS) contract.

On September 22, the agency notified PAI of its award to Cervello. After receiving a brief explanation, PAI timely protested to our Office.

DISCUSSION

PAI raises numerous challenges to the agency's evaluation of quotations. First, PAI asserts that Cervello is ineligible for award based on issues with its FSS contract. Next, PAI argues that the agency erred in evaluating PAI's and Cervello's technical and past performance quotations. The protester also alleges that the agency miscalculated price. In addition, the protester contends the agency's best-value tradeoff decision was flawed, and that the agency's conduct of discussions was unreasonable. We have reviewed all of PAI's challenges and find no basis to sustain the protest.³

³ For example, PAI challenges the agency's evaluation of its past performance. We have considered this aspect of its protest and conclude that PAI's allegation amounts to no more than disagreement with the agency's evaluation findings in the area of past performance. PAI's disagreement with the agency's evaluation, without more, does not provide a basis for our Office to find the agency's evaluation unreasonable. *PricewaterhouseCoopers Pub. Sector, LLP*, B-415504, B-415504.2, Jan. 18, 2018, 2018 CPD ¶ 35 at 11 (finding protester's disagreement with agency's past performance evaluation does not provide a basis to sustain the protest).

Where an agency issues an RFQ to FSS vendors under FAR subpart 8.4 and conducts a competition for the issuance of an order, we will 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 Sols., Inc.*, B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4. A protester's disagreement with the agency's judgment, without more, does not establish that an evaluation was unreasonable. *DEI Consulting*, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2.

Awardee's FSS Contract

The protester contends that Cervello should be ineligible for award because its FSS contract does not include the labor categories, special item numbers, or geographic coverage required by the RFQ. Protest at 13-16. In support, PAI asserts that the labor categories and special item numbers required to perform are not available under Cervello's FSS contract because its contract relates to support services for engineering programs rather than logistics support. Comments and Supp. Protest at 14.

The agency explains that the RFQ required logistical, distribution, and transportation management services, which are encompassed by logistical engineering, a subset of industrial engineering that provides a scientific approach to, among other things, the acquisition, distribution design, and transport of materials and finished goods. Agency Resp. to Req. for Information at 3. In this regard, the agency states that the labor categories referencing engineering support on Cervello's FSS contract were written broadly enough to cover the services specified in the task order. *Id.*

When a concern arises that a vendor is offering services outside the scope of its FSS contract, the relevant inquiry is whether the services offered actually are included on the vendor's FSS contract, as reasonably interpreted. *National Forensic Sci. Tech. Ctr., Inc.*, B-409457.2, B-409457.3, July 29, 2014, 2014 CPD ¶ 224 at 6; *see also Ruchman & Assoc., Inc.*, B-415400, B-415400.2, Jan. 2, 2018, 2018 CPD ¶ 1 at 5-6.

We conclude that the agency reasonably accepted Cervello's proposed labor categories. Here, the agency's comparison of the solicitation's labor categories to the awardee's FSS contract shows the awardee's labor categories reasonably met the agency's needs. In this regard, the agency viewed the primary labor category proposed by Cervello--which provided support services such as program management, planning analysis, and analysis support for engineering programs and systems--as capable of performing the technical and logistical engineering tasks needed in the RFQ. Memorandum of Law (MOL) at 8-9; Agency Resp. to Req. for Information at 3. Additionally, the agency understood Cervello's FSS contract to identify minimum qualifications for education requirements, and the TEB determined that all resumes in Cervello's quotation contained more than the minimum requirements for education and experience. MOL at 9; AR, Tab 5, TEB Final Report at 5. Although PAI disagrees with the agency's conclusions, the protester has not shown that the RFQ requirements were not reasonably encompassed by Cervello's proposed labor categories. *DEI Consulting, supra.*

The protester also asserts that the agency violated the ordering procedures of FAR 8.402(f) and is precluded from making award here because the geographic coverage clause in Cervello's FSS contract does not cover all the geographic areas identified in the solicitation. Protest at 15.

While we recognize that Cervello's FSS contract does not appear to cover all the geographic locations identified for performance in the solicitation, we are not persuaded by the protester's argument that the geographic coverage clause acts as a limitation on the agency's ability to order services. In our view, PAI has not clearly demonstrated how FAR 8.402(f), which outlines the process for adding open market items to a vendor's FSS contract, relates to the geographic coverage clause in Cervello's FSS contract or acts as a limit on the agency's ability to make award to Cervello under the RFQ here. Based on the record before us, we find no basis to conclude that the agency should have found Cervello to be ineligible for award.

Technical Evaluation

The TEB rated Cervello's quotation under the technical factor as outstanding. AR, Tab 5, TEB Final Report at 3. Across the six subfactors, the agency assigned Cervello's technical quotation 14 strengths and no weaknesses or deficiencies. *Id.* at 3-6. As relevant here, the logistics and operations subfactors were each assessed four strengths and assigned a rating of outstanding, while the key personnel subfactor was assessed one strength and assigned a rating of good.⁴ *Id.* at 3-5.

The TEB rated PAI's quotation under the technical factor as acceptable. *Id.* at 11. Across the six subfactors, the agency assigned PAI's quotation six strengths, one weakness, and no deficiencies. *Id.* at 11-13. As relevant here, the logistics and operations subfactors were each assessed two strengths and assigned a rating of good, while the key personnel subfactor was assessed one strength and one weakness, and assigned a rating of acceptable.⁵ *Id.* at 11-12.

The protester argues that the awardee's technical quotation could not have been properly rated as outstanding under the technical factor because a review of the awardee's website shows no recent and relevant experience with distribution management support services. Protest at 16. Because Cervello allegedly lacks

⁴ Under the three remaining subfactors, Cervello's quotation was rated as follows: one was rated as outstanding with three strengths; another was rated as acceptable and assigned no strengths; and the last was rated as good and assigned two strengths. AR, Tab 5, TEB Final Report at 4-6. In total, three subfactors were rated as outstanding, two were rated as good, and one was rated as acceptable. *Id.*

⁵ Under the three remaining subfactors, PAI's quotation was rated as follows: one was rated as good with one strength; another was rated as acceptable and assigned no strengths; and the last was rated as acceptable and assigned no strengths. *Id.* at 11-13. In total, three subfactors were rated as good and three were rated as acceptable. *Id.*

relevant experience, the protester contends that the awardee could not have demonstrated the working knowledge and expertise required under the logistics and operations subfactors. *Id.* at 17. The protester also argues that because the TEB reviewed both technical and past performance quotations, it should have questioned the information in Cervello's technical quotation based on the alleged lack of experience shown in Cervello's past performance quotation. Comments and Supp. Protest at 44-45.

In response, the agency asserts that it reviewed the contents of the awardee's quotation rather than publicly available information outside Cervello's quotation, such as the company's website. MOL at 11. The agency also argues that it had no reasonable basis to assess Cervello's technical quotation by drawing conclusions about the level of experience documented in the firm's past performance quotation. *Id.* at 10-11.

As stated above, under the logistics subfactor, the RFQ required firms to demonstrate a working knowledge of logistics and financial orders, policies, procedures and concepts for DOD, the Navy and the Marines. RFQ at 70. Additionally, under the operations subfactor, firms were required to demonstrate their knowledge, competence, and expertise in providing operational/strategic level distribution and traffic management support to a flag officer command and enterprise. *Id.* Quotations would be evaluated based on the thoroughness of the approach and level of understanding. *Id.* at 70-71.

We find no merit to the protester's argument. The record shows that the agency assessed Cervello's quotation four strengths under the logistics subfactor, including two that specifically noted the awardee's knowledge and solid grasp of the mission and stakeholders, and the knowledge, skills, and abilities required by Marine's Logistics Command. AR, Tab 5, TEB Final Report at 3. In addition, Cervello's quotation was assigned four strengths under the operations subfactor, including one that found that Cervello's analytical methodology indicated a higher, command-level support. *Id.* at 4. Although the protester argues that Cervello lacks relevant experience, the record shows that the agency reasonably evaluated the awardee's technical quotation. Thus, the protester's assertion that Cervello must have lacked the experience required by the RFQ is not supported by the record. In addition, because the RFQ clearly stated that technical quotations would be evaluated on thoroughness of the approach and level of understanding, the agency was not required to consider Cervello's past performance information when evaluating technical quotations. PAI's disagreement with the agency's conclusions do not show that the agency's evaluation was unreasonable. The protester also asserts that the agency disparately evaluated quotations under the key personnel subfactor. Comments and Supp. Protest at 46. In this regard, the protester contends that the agency assigned a strength to Cervello's quotation for submitting more than the eight required resumes, while ignoring that PAI also submitted eight resumes and assigning PAI a weakness. *Id.* at 47.

In response, the agency maintains that it equitably evaluated the quotations under the key personnel subfactor. Supp. MOL at 5. The agency explains that Cervello's quotation offered more than the eight minimum required resumes and letters of intent, and was assigned a strength for offering additional resumes, including the program

manager's, which met qualifications for educational and length of employment.⁶ *Id.* The agency also notes that PAI's quotation provided the eight minimum resumes, and was assigned a strength for the qualifications of its proposed personnel. *Id.* Further, the agency clarifies that the protester received a weakness because it did not submit any letters of intent with the resumes, as required by the solicitation here. *Id.* In this respect, the agency contends that the differences in ratings were based on differences in the firms' quotations rather than disparate treatment. *Id.*

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 quotations. See, e.g., *Northrop Grumman Sys. Corp.*, B-406411, B-406411.2, May 25, 2012, 2012 CPD ¶ 164 at 8; *RIVA Sols., Inc.*, B-418952, B-418952.2, Oct. 27, 2020, 2020 CPD ¶ 353 at 4-5 n.3. Accordingly, to prevail on an allegation of disparate treatment, a protester must show that the agency unreasonably downgraded its proposal for deficiencies that were substantively indistinguishable from, or nearly identical to, those contained in other proposals. *Batelle Memorial Inst.*, B-418047.3, B-418047.4, May 18, 2020, 2020 CPD ¶ 176 at 5 (citing *Office Design Group v. United States*, 951 F.3d 1366, 1372 (Fed. Cir. 2020)).

We agree with the agency. Here, both Cervello's and PAI's quotations received strengths for their proposed key personnel. AR, Tab 5, TEB Final Report, at 5-6, 12. The record shows that Cervello's quotation included letters of intent for its proposed key personnel. AR, Tab 8a2, Cervello Letters of Intent at 1-35. With respect to PAI, the record reveals that PAI's quotation was assessed a weakness because it did not include any letters of intent. AR, Tab 5, TEB Final Report at 12. The agency concluded that without the letters of intent, there was an increased risk of a break in services since candidates were not identified and committed to begin on the first day of performance. *Id.* In this regard, the record demonstrates that Cervello provided the letters of intent as required, while PAI did not, and PAI reasonably was assessed a weakness for not meeting this RFQ requirement. Even though the protester generally contests the agency's evaluation, the protester has not shown that the agency evaluated quotations disparately under the technical factor. As a result, we deny this protest ground.⁷

⁶ The agency states that the TEB inadvertently identified three to five resumes as the minimum number of resumes required for submission. Supp. MOL at 4 n.1.

⁷ To the extent PAI argues that it did not need to provide resumes because its proposed personnel were all PAI employees, we find this argument to be untimely. The solicitation (Section 1.4.9, Key Personnel) clearly required the submission of letters of intent. RFQ at 17. If the protester wished to challenge the requirement to submit letters of intent, it should have done so prior to the closing date. Its failure to raise this argument until after award renders this argument untimely. 4 C.F.R. § 21.2(a)(1); *LogiCore Corp.*, B-416629, B-416629.2, Nov. 6, 2018, 2018 CPD ¶ 383 at 12.

Price Evaluation

Next, the protester argues that the agency failed to reasonably evaluate whether the prices quoted were fair and reasonable. Protest at 23. Additionally, PAI contends that the agency did not consider whether Cervello's labor mix or level of effort was reasonable under FAR 8.405-2(d), which requires the agency to consider the level of effort and the mix of labor proposed to perform a specific task being ordered, and to determine that the total price is reasonable. *Id.*

In response, the agency states that for this acquisition, many of the factors were prescribed by the agency, including the number of personnel, duty positions, and estimated work hours. MOL at 14. Accordingly, for CLIN 001, the primary difference was the hourly rate and the total price. *Id.* at 14-15. In this respect, the agency explains that it compared the vendors' hourly rates for CLIN 001 (distribution management support services) and noted that the totals for CLINs 002 (travel) and 003 (surge) had been established in the RFQ. *Id.* Thus, the agency asserts that it considered the level of effort and labor mix. *Id.*

As noted above, the RFQ required that each firm's price/cost for the base and option periods provide all labor rates and totals. RFQ at 72. Price would be evaluated for fairness and reasonableness. *Id.*

Our review of the record shows that the agency's evaluation was reasonable and consistent with the solicitation. The agency's price evaluation compared firms' prices to each other, found that the firms' quoted rates did not exceed their FSS contract rates, and evaluated prices applicable to each CLIN, including labor rates and proposed price totals for CLIN 001. AR, Tab 6, Award Decision at 4-6. The agency's evaluation also includes a chart documenting its evaluation of the prices for the base and option years and labor rates. *Id.* at 5-6. In addition, Cervello's price quotation followed the work hour estimates prescribed by the agency. AR, Tab 8c, Cervello Final Price Quotation at 4. Based on this evaluation, the agency determined that prices were fair and reasonable. *Id.* at 7. Here, we view the agency's comprehensive documentation of its price evaluation to be more than adequate, and conclude that PAI's challenges to that analysis fail to show that the agency failed to evaluate the level of effort or labor mix, given that these elements had been set by the agency. On these facts, we view the agency's price evaluation as reasonable and deny this basis of protest.

Best-Value Tradeoff

Finally, the protester challenges the agency's best-value tradeoff determination, arguing that the awardee could not have been technically superior, and could not have offered a fair and reasonable price. We disagree.

When, as here, a procurement conducted pursuant to FAR subpart 8.4 provides for source selection on a best-value tradeoff basis, it is the function of the source selection authority to perform a price/technical tradeoff, that is, to decide whether one quotation's technical superiority is worth its higher price. *RIVA Sols., Inc., supra* at 9. Agency

officials have broad discretion in determining the manner and extent to which they will make use of the technical and price evaluation results, and the extent to which one is sacrificed for the other is governed by the test of rationality and consistency with the solicitation's established evaluation scheme. *Recogniti, LLP*, B-410658, Jan. 21, 2015, 2015 CPD ¶ 49 at 6. An agency may properly select a more highly rated quotation over one offering a lower price where it reasonably has concluded that the technical superiority outweighs the price difference. *Id.*

Here, the record shows that Cervello's quotation was rated as outstanding under the technical factor and relevant with satisfactory confidence for past performance, while PAI's was rated acceptable under the technical factor and very relevant with satisfactory confidence for past performance. AR, Tab 6, Award Decision at 7. When conducting a comparison of PAI's and Cervello's proposals, the source selection authority (SSA) found a substantial difference between Cervello's outstanding technical rating and PAI's acceptable rating. *Id.* at 7-8. In this regard, the SSA highlighted four strengths assigned to Cervello's quotation, and specifically identified two as being particularly important in the tradeoff analysis. *Id.* at 7. The SSA further highlighted the awardee's [DELETED] model, which would allow for global improvements through meaningful process analysis, improvement and subsequent policy changes. *Id.*; AR, Tab 5, TEB Final Report at 4. The SSA also viewed Cervello's proposed personnel, including the program manager, as being more experienced with a pay scale that provided the government with an expectation of enhanced performance and higher confidence that qualified staff would be retained. AR, Tab 6, Award Decision at 7-8.

The record demonstrates that based upon these considerations, the SSA concluded that the benefits and value associated with these strengths would result in higher quality deliverables and successful performance of the contract and justified the payment of a higher price. AR, Tab 6, Award Decision at 7-8. While the protester's arguments reflect its disagreements with the agency's conclusions, they fail to provide a basis to sustain the protest. On this record, we find the agency's best-value tradeoff determination to be reasonable.

The protest is denied.

Thomas H. Armstrong
General Counsel