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Decision

Matter of: Alternate Perspectives, Inc.

File: B-420613; B-420613.2

Date: June 28, 2022

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DIGEST

Protest challenging the agency's evaluation of proposals is denied where the evaluation was reasonable and in accordance with the terms of the solicitation.

DECISION

Alternate Perspectives, Inc., a small business of Leesburg, Virginia, protests the award of a contract to Human Learning Systems, LLC, under request for proposals (RFP) No. 1605JW-21-R-00015, issued by the Department of Labor for the operation and management of the Shreveport Job Corps Center in Shreveport, Louisiana. The protester contends the agency unreasonably evaluated proposals, resulting in an improper award.

We deny the protest.

BACKGROUND

On November 18, 2021, the agency issued the RFP as a set-aside for small businesses in accordance with Federal Acquisition Regulation part 19. Agency Report (AR), Exh. 1a, RFP at 1-2.¹ The RFP provided for the award of a fixed-price contract with economic price adjustment for a base period of two years, and three 1-year option

¹ All citations are to the Adobe PDF page numbers.

periods. RFP at 5-8. The due date for proposals, as amended, was December 28, 2021. AR, Exh. 2, RFP amend. 0001 at 1.²

The RFP provided for the evaluation of proposals under the following evaluation factors: technical approach, past performance, staff resources, price, and phase-in and phase-out plans. RFP at 92. For technical approach, offerors were to address five areas at the Job Corps Center: career pathways, counseling placement and support, relationships with the community, safety and security, and outreach and admissions. *Id.* at 84-85. The agency would evaluate the degree to which the offeror's strategies were likely to meet and exceed the requirements under this factor; whether they were tailored to operate in the context of the eligible population, and the local and regional market; and whether they were innovative, evidence-based, and feasible. *Id.* at 92.

For past performance, offerors were required to identify relevant past or current projects, which the solicitation defined as projects with requirements similar in size, scope and complexity to the requirements of the RFP.³ *Id.* at 86. The RFP provided that the experience must be from the three years preceding the submission of proposals, and be of at least one year in duration. *Id.* In evaluating past performance, the RFP provided that the agency would evaluate whether the projects met the RFP's definition of relevancy, and the quality and effectiveness of those projects. *Id.* at 93. The RFP further provided that the agency would not permit offerors to provide their own description of the quality or effectiveness of prior performance; instead, the agency would rely on Contractor Performance Assessment Reporting System (CPARS) reports, and other outside sources of data, to conduct the quality determination. *Id.*

For staff resources, the RFP required offerors to respond to three subfactors: organizational and staffing charts; staff schedules; and corporate oversight and capacity. *Id.* at 87. The agency would evaluate the degree to which the offeror proposed: (1) appropriate staffing levels and labor categories; (2) staff in sufficient numbers and at the appropriate times to provide coverage; and (3) corporate resources committed to successful performance. *Id.* at 94. For price, the agency would conduct a price analysis to determine whether the proposed price was fair and reasonable. For the phase-in and phase-out plans, offerors were to provide the time and staff required for each phase, and the major steps the offeror sought to accomplish. *Id.* at 90. The agency would evaluate the phase-in and phase-out plans on a pass/fail basis, considering whether the plans included tasks and resources needed to accomplish a timely and successful transition. *Id.* at 95.

The RFP provided for award on a best-value tradeoff basis where technical approach was the most important evaluation factor, past performance was the second most

² The RFP was amended twice; all citations are to the final, amended RFP.

³ The RFP defined "size" as "dollar value or center OBS [on-board strength]," "scope" as the type of work and the nature of activities performed, and "complexity" as performance challenges and risks. RFP at 86.

important, and staff resources was the third most important. *Id.* When combined, the three non-price factors were significantly more important than price. *Id.*

The agency received ten proposals, including proposals from Alternate Perspectives and Human Learning Systems. Contracting Officer’s Statement (COS) at 6. The technical evaluation panel (TEP) evaluated proposals under the technical approach, staff resources, and phase-in/phase-out evaluation factors.⁴ COS at 6-10. The contracting officer conducted the past performance evaluation and price analysis.⁵ *Id.* The final evaluation ratings were as follows:

	Alternate Perspectives	Human Learning Systems
Technical Approach	Acceptable	Very Good
Staff Resources	Acceptable	Acceptable
Past Performance	Satisfactory	Satisfactory
Phase-In/Phase-Out Plan	Pass	Pass
Price	\$51,549,810	\$60,754,986

AR, Exh. 9, Award Memorandum at 3.

Under the technical approach factor, the TEP assigned Alternate Perspectives’ proposal no strengths, weaknesses, or deficiencies; under staff resources, it assigned Alternate

⁴ Proposals were to be rated under the technical approach and staff resources factors as outstanding, very good, acceptable, marginal, or unacceptable. AR, Exh. 9, Award Memorandum at 7. As relevant here, a rating of “very good” was defined as a proposal that met or exceeded many of the specified requirements of the solicitation in a significantly beneficial way to the government, had no significant weaknesses or deficiencies, and had at least one strength. *Id.* Overall, a rating of “very good” indicated there was a low risk of unsuccessful performance. *Id.* A rating of “acceptable” indicated the proposal met the requirements, contained no more than a few strengths, had no deficiencies, and had strengths that outweighed any weaknesses. *Id.* Overall, a rating of “acceptable” indicated that the proposal had no worse than a moderate degree of risk. *Id.*

⁵ Proposals were to be rated under past performance as exceptional, very good, satisfactory, marginal, unsatisfactory, or neutral. Past Performance Adjectival Ratings at 1. As relevant here, a rating of “satisfactory” indicated the agency had some doubt that the offeror would successfully perform the required effort. *Id.*

Perspectives' proposal no strengths or deficiencies, but two weaknesses.⁶ AR, Exh. 9, Award Memorandum at 13-17. The two weaknesses were related to optometrist services and a security cadet training program. For optometrist services, the TEP concluded that Alternate Perspectives did not propose to staff the optometrist position, despite the RFP requiring that all centers provide optometry services to students. *Id.* at 16. For the security cadet training program, the TEP stated that Alternate Perspectives intended to implement a security cadet program to augment security staffing, but this program was a potential detriment because the Job Corps Center did not offer a security pathway, and Alternate Perspectives did not propose any changes to the training services listed in the RFP.⁷ *Id.*

In conducting its tradeoff analysis, the TEP concluded that Human Learning Systems' proposal provided the best value to the government. *Id.* at 77. Although its price was higher than Alternate Perspectives' price, the TEP determined that the higher technical rating of Human Learning Systems' proposal was worth the price premium. *Id.* On March 11, 2022, the source selection authority, who was also the contracting officer, selected Human Learning Systems for award. COS at 2. Alternate Perspectives received a debriefing on March 14, and filed this protest with our Office on March 21.

DISCUSSION

Alternate Perspectives contends the agency (1) unreasonably assigned its proposal a weakness for its security cadet program, (2) unreasonably evaluated its past performance, (3) improperly selected Human Learning Systems for award despite it proposing unallowable cash payments to students, (4) failed to evaluate fringe benefits, (5) failed to conduct a price reasonableness analysis, and (6) made an improper tradeoff decision. For the reasons discussed below, we deny the protest.⁸

In reviewing protests challenging the evaluation of an offeror's proposal, it is not our role to reevaluate proposals; rather, our Office examines the record to determine whether the agency's judgment was reasonable and in accordance with the solicitation criteria

⁶ The RFP defined "strength" as any aspect of the proposal that enhances the merit of the proposal or increases the probability of successful performance. AR, Exh. 9, Award Memorandum at 7. It defined "weakness" as a flaw in the proposal that increases the risk of unsuccessful performance. *Id.* It defined "deficiency" as a material failure that increases the risk of unsuccessful performance to an unacceptable level. *Id.*

⁷ The TEP assigned Human Learning Systems' proposal twelve strengths, with no weaknesses or deficiencies under the technical approach factor; under staff resources, it assigned Human Learning Systems' proposal no strengths or deficiencies, but one weakness, which, similar to Alternate Perspectives' proposal, was related to optometrist services. AR, Exh. 9, Award Memorandum at 27-32.

⁸ Although we do not address every argument raised by the protester, we have considered them all and find none to provide a basis for sustaining the protest.

and applicable procurement statutes and regulations. *National Capitol Contracting, LLC*, B-418402.3, Mar. 25, 2021, 2021 CPD ¶ 158 at 3-4. A protester's disagreement with the agency's evaluation, without more, does not render the evaluation unreasonable. *Id.*

Security Cadet Program Weakness

Alternate Perspectives argues the agency unreasonably assigned its proposal a weakness under the staffing resources factor for its security cadet program.⁹ Protest at 11. As mentioned above, the TEP assigned Alternate Perspectives' proposal a weakness here because the Job Corps Center did not offer a security cadet program, and Alternate Perspectives did not propose to add a security training program to the list of training courses provided in the RFP. AR, Exh. 9, Award Memorandum at 16. The TEP was thus unsure whether Alternate Perspectives fully understood the requirements of the RFP. *Id.* In response, Alternate Perspectives argues the agency "read into [its] proposal additional information that did not exist" and that its cadet program was "separate and apart" from any curriculum offered at the Job Corps Center. Comments and Supp. Protest at 7.

Based upon our review of the record, although we conclude that the agency did not have a reasonable basis for assigning the weakness, we decline to sustain the protest on this ground because the protester cannot establish that it was competitively prejudiced by the erroneous evaluation finding. While we will not substitute our judgment for that of the agency, we will question an agency's conclusions where they are inconsistent with the solicitation criteria and applicable procurement statutes and regulations, undocumented, or not reasonably based. *MicroTechnologies, LLC*, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 4-5. Here, Alternate Perspectives' proposal expressly provided that it intended to implement a security cadet program. AR, Exh. 4c, Alternate Perspectives Staffing Resource Volume at 26. The proposal does not suggest, as the agency argues, that Alternate Perspectives assumed a cadet program already existed at the Job Corp Center. Rather, the proposal indicated that Alternate Perspectives would implement its own program, and although it did not expressly state its intention to modify the current training curriculum, its proposal made clear that the protester intended to introduce its own, separate program. *See id.* Thus, we find the agency's contention that Alternate Perspectives did not propose to modify the training curriculum unavailing.

Although we find that the assignment of this weakness was unreasonable, we have no basis to sustain this protest ground because Alternate Perspectives has not

⁹ In its initial protest, Alternate Perspectives also challenged the agency's decision to assign it a weakness due to its alleged failure to provide optometry services. Protest at 9-11. It later withdrew this protest ground on the basis that the protester was not competitively prejudiced as a result of the allegation because Human Learning Systems also received a weakness for failing to provide the same services. Comments and Supp. Protest at 2 n.1.

demonstrated competitive prejudice. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was competitively prejudiced by the agency's actions; that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. *22nd Century Technologies, Inc.*, B-420139, Dec. 9, 2021, 2022 CPD ¶ 8 at 5-6. There is nothing in the record to suggest that the elimination of one weakness under the staffing resources factor would have changed either Alternate Perspectives' rating under the factor or the agency's best-value tradeoff decision. In this regard, Alternate Perspectives has not shown how the elimination of a single weakness under the third most important factor would give it a substantial chance of receiving the award when it received no strengths under any factor, while Human Learning Systems' proposal received twelve strengths and a higher rating under the most important evaluation factor. As a result, this protest ground is denied.

Past Performance

Alternate Perspectives next challenges the agency's evaluation of the firm's past performance, contending that the agency unreasonably failed to evaluate one of its past performance references. Protest at 13. Although the CPARS report for this reference was unavailable at the time of the evaluation, Alternate Perspectives argues the contracting officer still should have included it in the agency's evaluation because the contracting officer was the assessing official on the CPARS report for that reference. Comments and Supp. Protest at 2. Thus, Alternate Perspectives argues this information was "too close at hand" for the contracting officer to exclude it from his evaluation. *Id.* at 3. In response, the agency argues that, even if the contracting officer had considered this information, it would not have had a material impact on the past performance evaluation as the protester had already received an overall CPARS rating of "satisfactory" for the effort. COS at 16-17.

Under the circumstances here, we have no basis to object to the agency's decision not to evaluate the CPARS report for this effort. As explained by the contracting officer, the CPARS report was not finalized at the time the agency collected the CPARS information. *Id.* at 15. And even if the contracting officer should have included it in the evaluation, Alternate Perspectives has not shown that consideration of the information would have reasonably impacted its past performance rating. In Alternate Perspectives' proposal, it provided the national rankings of the Job Corp Centers it submitted for the past performance evaluation. AR, Exh. 4b, Alternate Perspectives Past Performance Proposal at 7. Noticeably, the effort in question was ranked lower than the other two efforts evaluated by the agency. *See id.* For example, the proposal indicated that the center in question was nationally ranked 97th overall; the two centers evaluated by the agency were ranked 74th and 85th respectively. *Id.* Alternate Perspectives has not shown how the agency's evaluation of this effort would have improved its past performance rating, particularly when it was the lowest ranked of its submitted efforts. As such, this protest ground is denied.

Unallowable Cash Payments

Alternate Perspectives next contends Human Learning Systems' proposal should have been ineligible for award because the awardee included unallowable cash payments (*i.e.*, incentive payments) to students as part of its technical approach. Comments and Supp. Protest at 8. According to Alternate Perspectives, the Job Corps Policy and Requirements Handbook (PRH) does not allow offerors to pay incentives to students. *Id.* at 11. The agency, however, contends incentive payments are not only permissible, but are required under the PRH. Supp. Memorandum of Law (MOL) at 3.

We agree with the agency here. The RFP incorporated by reference the Job Corp's PRH. RFP at 10-11. In chapter two, under the heading titled "incentives," the PRH provides that the job center "must develop processes to recognize students for positive behavior and performance, including rewards and what students must do to earn them." PRH Chapter 2, 2.5 Student Conduct, R1. Incentives at 36. Thus, Alternate Perspectives' argument that an incentive program violated the RFP is contradicted by the terms of the RFP.¹⁰

Alternate Perspectives also argues that, to the extent the RFP allowed incentive payments, the payments proposed by Human Learning Systems were still unallowable as they rewarded the wrong type of conduct. Supp. Comments at 3. Specifically, Alternate Perspectives contends that chapter 2.5 of the PRH provides that the center should reward achievements, but that Human Learning Systems' proposal intended to award participation. *Id.* at 4. We disagree. Human Learning Systems' proposal provided that students could earn points by "participating in tutoring, attending individual and/or group sessions with counselors, academic and [career technical training] achievement, attending resource fairs, participating in family friendly events and the number of clock hours spent at the Help Center in a month's time." AR, Exh. 12, Human Learning Systems Proposal at 2. There is no support for the argument that the awardee's proposal rewarded only participation, particularly as the sentence expressly identifies academic achievement as a basis of reward. This protest ground is thus without merit.

Awardee's Fringe Benefits and Price Reasonableness

¹⁰ In its comments on the supplemental agency report, Alternate Perspectives offers an alternative argument wherein it contends the awardee's proposal should have been found ineligible for award because these payments were intended not to incentivize students, but rather to retain them. Supp. Comments at 2-3. In support of this argument, Alternate Perspectives points to a portion of Human Learning Systems' proposal which stated that these payments would increase retention. *Id.* at 2. This argument does not provide our Office a basis to sustain the protest. Even if these payments increased retention, such an effect would not necessarily eliminate the incentive nature of the payments. A payment may retain and incentivize as the two are not necessarily mutually exclusive. We therefore find no merit to this argument.

Alternate Perspectives next contends the agency failed to evaluate whether Human Learning Systems would immediately provide health insurance to its employees. Comments and Supp. Protest at 13. In response, the agency states that “the specifics of health insurance offered employees is a fringe benefit within the discretion of the [offeror] and not something that was to be evaluated under the Solicitation or considered by the DOL evaluators” and that “the analysis was focused on proposed salaries . . . not on fringe benefits or health insurance practices.” MOL at 14; COS at 19.

We have no basis to object to the agency’s evaluation here. The RFP did not require the evaluation of the specifics of health insurance plans; instead, the RFP provided that the agency would evaluate only whether a staff compensation plan was unrealistically low. RFP at 95. This protest ground is denied.¹¹

Alternate Perspectives also argues the agency failed to conduct a price reasonableness analysis. This argument is not supported by the record. In evaluating proposals for price reasonableness, the FAR permits the use of various price analysis techniques, including the comparison of proposed prices to each other, to prices found reasonable on previous purchases, or to an independent government estimate. FAR 15.404-1(b)(2); *Comprehensive Health Servs.*, Inc., B-310553, Dec. 27, 2007, 2008 CPD ¶ 9 at 8. Here, the contracting officer states that he compared the prices of the ten offerors to one another, and to the independent government cost estimate. Supp. COS at 4-5. Based on this comparison, he found all the prices to be fair and reasonable. This protest ground is denied.

Tradeoff Decision

Finally, Alternate Perspectives challenges the agency’s tradeoff decision based on the alleged errors discussed above. When, as here, the RFP provides for a best-value tradeoff, the source selection official retains discretion to select a higher-priced, but technically higher-rated submission, if doing so is in the government’s best interest and is consistent with the solicitation’s stated evaluation and source selection scheme. *All Point Logistics, Inc.*, B-407273.53, June 10, 2014, 2014 CPD ¶ 174 at 13-14. As discussed, we have no basis to sustain Alternate Perspectives’ protest of the agency’s evaluation of proposals. Consequently, we have no basis to sustain a challenge to its tradeoff decision.

¹¹ In any event, the protester’s argument hinges on an unreasonable inference from language in the awardee’s proposal stating that “all incumbent staff retained by [Human Learning Systems] will be eligible for immediate benefits.” Supp. Comments at 9-11. From this statement of assurance by the awardee that it will provide benefits to staff the awardee hires from the incumbent contractor, the protester leaps to the conclusion that any and all other staff must not be immediately eligible for any benefits. We find the protester’s inference unreasonable where the proposal makes no such express statement, and the proposal otherwise clearly sets forth the numerous benefits the awardee will provide all full-time employees, to include medical benefits. See AR, Exh. 5, Human Learning Systems Business Proposal at 17.

The protest is denied.

Edda Emmanuelli Perez
General Counsel