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Decision

Matter of: Immersion Consulting, LLC

File: B-420638; B-420638.2

Date: June 30, 2022

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DIGEST

1. Protest that the agency's assessment of a weakness in the protester's proposal reflected a clear evaluation error is denied where the agency reasonably relied on the information provided in the protester's proposal, and where the offeror bears the burden of submitting an adequately written proposal.
2. Protest that the agency applied unstated evaluation criteria in its evaluation of the protester's proposal is denied where the record reflects that the challenged evaluation was premised on matters that were logically encompassed by the stated evaluation criteria.
3. Protest that the agency failed to justify a weakness assessed to the protester's proposal is denied where the agency's evaluation was reasonable and consistent with the terms of the solicitation.
4. Protest challenging the agency's best-value tradeoff analysis is denied where the record reflects that the agency's source selection rationale was based on a reasonable evaluation and was consistent with the stated evaluation criteria.

DECISION

Immersion Consulting, LLC, a service-disabled veteran-owned small business (SDVOSB) of Annapolis, Maryland, protests the issuance of a task order to Evoke

Consulting, LLC, an SDVOSB of Arlington, Virginia, by the Department of Homeland Security (DHS) under request for proposals (RFP) No. 70RTAC22R00000006 for services in support of the Homeland Security Information Network (HSIN). The protester challenges the agency's evaluation of proposals and source selection decision.

We deny the protest.

BACKGROUND

The agency issued the solicitation on January 20, 2022, pursuant to the procedures in Federal Acquisition Regulation subpart 16.5, to SDVOSB firms holding General Services Administration Veterans Technology Services indefinite-delivery, indefinite-quantity (IDIQ) governmentwide acquisition contracts. Agency Report (AR), Tab 7b, RFP at 1-2.¹ The solicitation contemplated the issuance of a single task order with a 1-year base period of performance and two 1-year option periods. *Id.* at 2. The solicitation sought information technology, program administration, operations management, and governance and oversight services in support of both the HSIN and a network identified as the Integrated Multi-Domain Enterprise (IMDE).² *Id.* at 20.

The solicitation provided for award on a best-value tradeoff basis, considering three evaluation factors, listed in descending order of importance: technical approach; management approach and staffing; and price. RFP at 11. The solicitation advised that all non-price factors, when combined, were significantly more important than price. *Id.*

As relevant here, under the management approach and staffing factor, the solicitation advised offerors that proposals would be evaluated to determine “the degree to which the proposed approach for allocating qualified non-key personnel . . . [can] meet the **dynamic staffing needs** of this order.” RFP at 14 (emphasis added). The RFP also advised offerors that proposals would be evaluated based on “the likelihood that the [s]taffing approach demonstrates an ability to meet applicable requirements in a timeframe which will successfully achieve the schedule and performance requirements for the order, to include surge staffing as needed.” *Id.*

¹ DHS provided a conformed solicitation in its response to the protest; citations to the RFP refer to the conformed solicitation.

² The agency describes the HSIN as the primary nation-wide information sharing and collaboration network used by both DHS and other state, local, and federal agencies. RFP at 17. DHS describes IMDE as the connection and distribution method for information sharing between federal, local, tribal, territorial, international, and private sector groups and envisions it as a standard integration platform for information sharing across DHS operational components. *Id.* at 18.

DHS received multiple proposals by the February 16 submission due date, including proposals from Immersion and Evoke. The following is a summary of the agency's confidence ratings for the protester's and awardee's proposals:

	Immersion	Evoke
Technical Approach	High Confidence	High Confidence
Management Approach and Staffing	Some Confidence	High Confidence
Price	\$12,998,679.56	\$16,439,127.53

AR, Tab 14, Source Selection Decision (SDD) at 8.

The evaluators assessed a weakness in Immersion's proposal under the management approach and staffing factor, noting the following:

Immersion's proposal included a retention rate of [REDACTED] percent but the vendor did not provide any type of reach back or bench. This lowers the government's confidence that the vendor can retain and recruit qualified non-key personnel in a timely manner. This is important because in several areas we have only one contractor with key knowledge . . . and should a contractor leave for better opportunity, then the risk to government is a gap in services.

AR, Tab 11, Consensus Technical Evaluation Report at 1.

The source selection authority "acknowledge[d] the [21 percent] price premium for Evoke over Immersion," and concluded that with Evoke's "technically superior services in both non-price factors," Evoke's proposal presented the best value to the government. AR, Tab 14, SDD at 9.

On March 22, DHS notified unsuccessful offerors of the source selection results. Contracting Officer's Statement (COS) at 3. Following a March 23 post-award debriefing, Immersion timely filed this protest on March 28.³ *Id.*

DISCUSSION

The protester challenges various aspects of the agency's technical evaluation. Immersion's core argument is that the agency made "a single, outcome-determining evaluation error" in assessing a weakness in its proposal and assigning a corresponding

³ Because the value of the task order is in excess of \$10 million, this protest is within our jurisdiction to consider protests regarding civilian agency IDIQ task order contracts. See 41 U.S.C. § 4106(f)(1)(B); *Alliant Sols., LLC*, B-415994, B-415994.2, May 13, 2018, 2018 CPD ¶ 173 at 4 n.8.

rating of “Some Confidence” under the management approach and staffing factor. Protest at 1-2. Immersion also contends that the agency used unstated evaluation criteria to identify this weakness. *Id.* at 12. Finally, Immersion argues that the agency’s best-value decision is flawed because it is based on an unreasonable evaluation and does not justify paying the awardee’s higher price. *Id.* at 13-14. Based on our review, we find no basis to sustain Immersion’s protest.⁴

In reviewing protests of an agency’s evaluation, we do not reevaluate proposals; rather, we review the record to determine whether the evaluation is reasonable and consistent with the solicitation’s evaluation scheme and applicable procurement laws and regulations. See *Ball Aerospace & Techs. Corp.*, B-411359, B-411359.2, July 16, 2015, 2015 CPD ¶ 219 at 7. Further, an offeror bears the burden of submitting an adequately written proposal and runs the risk of an unfavorable evaluation when it fails to do so. *Recon Optical, Inc.*, B-310436, B-310436.2, Dec. 27, 2007, 2008 CPD ¶ 10 at 6; see *Microtechnologies, LLC*, B-418700, July 31, 2020, 2020 CPD ¶ 260 at 4.

Evaluation Error Allegation

The protester argues that the weakness identified in its proposal under the management and staffing factor relies on a “clear evaluation error” by the evaluators. Protest at 2. Specifically, Immersion asserts that the [REDACTED] percent retention rate submitted in its proposal pertained to its subcontractor, [REDACTED], and that the agency unreasonably and incorrectly attributed this rate to Immersion’s entire team. *Id.* at 11; Comments and Supp. Protest at 9.

DHS responds that it reasonably attributed this rate to Immersion’s entire team, as Immersion refers to itself as a team throughout its proposal, and [REDACTED] is a part of that team. Memorandum of Law (MOL) at 8. Consequently, the agency contends that [REDACTED] performance is relevant to the entire team’s performance. COS at 11. The agency also asserts that [REDACTED] retention rate was particularly relevant because a table in Immersion’s proposal showed that all [REDACTED]

⁴ In its various protest submissions, Immersion has raised arguments that are in addition to, or variations of, those specifically discussed below. While we do not specifically address all of the protester’s arguments, we have considered them all and find that they afford no basis on which to sustain the protest. As an example, in its supplemental protest, Immersion argues that the agency’s identification of a weakness in Immersion’s proposal reflects disparate treatment because two offerors, neither of which is the awardee, failed to address employee retention in their proposals but did not receive a corresponding weakness for this failure. Comments and Supp. Protest at 13-14. We need not address the merits of this argument; we conclude that the agency’s evaluation of other offerors is not relevant to this protest, since lowering other offerors’ proposal ratings would not disturb the award to Evoke.

proposed staff members are current [REDACTED] employees working on the [REDACTED].⁵ MOL at 8.

We reject the protester's argument that the agency unreasonably relied upon the [REDACTED] percent retention rate submitted in Immersion's proposal in order to evaluate the protester's proposal. We note the agency's argument that it considered the only retention rate that Immersion provided. See MOL at 9. Immersion, as an offeror, bears the burden of submitting an adequately written proposal and runs the risk of being evaluated unfavorably when it fails to do so. See *Recon Optical, Inc.*, *supra*. To the extent the protester is suggesting that the agency should instead have considered Immersion's own retention rate, it would need to have included that rate in its proposal. MOL at 9. It failed to do so, and to the extent that Immersion contends the agency should have interpreted the submitted retention rate differently, the protester's disagreement, without more, provides no basis to sustain the protest. See *STG, Inc.*, B-411415, B-411415.2, July 22, 2015, 2015 CPD ¶ 240 at 5-6. Ultimately, the protester's argument--that it was improper for the agency to consider the [REDACTED] percent retention rate or attribute it to Immersion's team--is contradicted by the fact that Immersion included only this rate in its proposal. As a result, this protest ground is denied.

Unstated Evaluation Criteria

The protester also argues that the agency's assessment of this same weakness in Immersion's proposal resulted from the evaluators applying unstated evaluation criteria. In this regard, Immersion complains that the evaluators documented [REDACTED] percent retention rate and lack of "reach back or bench" as a weakness even though the solicitation's evaluation criteria do not include the terms "reach back" or "bench" or refer to employee retention. Protest at 2 (citing AR, Tab 11, Consensus Technical Evaluation Report at 1).

The protester also asserts that the agency previously acknowledged the protester's ability to provide "coverage across all SOW task areas," including "double-coverage for contingency," when DHS evaluators identified a strength in

⁵ In response to this assertion, the protester contends that the agency is making an inappropriate *post hoc* argument not documented in the contemporaneous record. Comments and Supp. Protest at 9. In its supplemental protest, the protester reiterates this *post hoc* assertion multiple times. We find no merit to these arguments. Here, the agency had no reason to anticipate, when documenting its evaluation, that the protester would raise this particular protest ground. Consequently, the agency had no reason to contemporaneously address whether all of Immersion's named, proposed staff were [REDACTED] employees. Moreover, in our view, the agency's response during the development of the protest regarding Immersion's proposed staff is not inconsistent with the contemporaneous evaluation record, but merely provides additional explanation.

Immersion's proposal under the management and staffing factor.⁶ Comments and Supp. Protest at 10. The protester argues that the assessed weakness conflicts with the assessed strength. *Id.*; Protest at 12.

In response, the agency explains that the strength assessed under the management and staffing factor was based on Immersion's ability to begin immediately and without transition delays, not on the protester's claim of "double-coverage for contingency." MOL at 15. The agency also states that it found the protester's double-coverage claim to be misleading, as Immersion did not propose twice the number of full time equivalents (FTEs) for each position.⁷ *Id.*; COS at 14. DHS adds that in the evaluation documents, where the agency identified a strength under the management and staffing factor, evaluators included both a quote from the protester's proposal and a response to that language. Supp. COS at 4-5. The agency asserts that its response, which emphasizes its "high confidence" in a successful transition, is limited to the part of the protester's proposal describing Immersion's ability to begin work immediately. *Id.* at 5.

In response to the protester's unstated evaluation criteria argument, the agency asserts that employee attrition and retention concerns are intrinsic to the solicitation's evaluation criteria. As a general matter, the agency notes that a key element of staffing is having personnel available for the life of a requirement. More specifically, DHS points to the language advising offerors that proposals would be evaluated based on whether the proposed staffing approach sufficiently "allocate[d] qualified non-key personnel . . . to meet the dynamic staffing needs of this order" as naturally encompassing a protester's ability to retain staff and have personnel available for the life of the requirement.⁸ The agency asserts in this

⁶ In identifying this strength, the agency quoted part of the protester's proposal, including the reference to Immersion's asserted ability to provide "double-coverage for contingency." AR, Tab 13, Award Recommendation at 58. The evaluators noted that the protester's proposal gave the agency "high confidence that transition will not be long" and that Immersion's staffing plan "benefits the [g]overnment by not delaying current development and support projects."

⁷ As an example, the agency states that Immersion proposed [REDACTED] employees to meet the 1.5 FTE requirement for the program manager position. COS at 14. The agency adds that the solicitation required "21 billets, some which were for less than full time," while the protester proposed [REDACTED] personnel to fill these spaces, a number which is not in accordance with Immersion's claim of double-coverage. Supp. MOL at 6. The protester does not dispute these numbers. See Comments and Supp. Protest at 10-11; Supp. Comments at 10.

⁸ The agency similarly contends that retention and reach back are subsumed within the solicitation's evaluation criteria because the RFP advises that proposals would be evaluated for "the likelihood that the [s]taffing approach demonstrates an ability to meet

regard that the solicitation's terms conveyed this concern, notwithstanding that the solicitation did not expressly require offerors to provide retention rates or an available "bench." MOL at 12. The agency asserts that Immersion recognized that employee attrition and retention are important elements of staffing when it chose to include in its technical proposal both [REDACTED] retention rate and methods for maximizing employee retention. COS at 16.

While a solicitation must inform offerors of the basis for proposal evaluation by identifying the evaluation factors and their relative importance, a solicitation need not specifically identify each and every element an agency considers during an evaluation where such elements are intrinsic to, or reasonably subsumed within, the stated evaluation factors. *Horizon Indus., Ltd.*, B-416222, July 11, 2018, 2018 CPD ¶ 235 at 6.

Here, we conclude that employee attrition and retention, as well as the need for "reach back" or a "bench," are directly relevant to the solicitation's requirements for offerors to meet dynamic staffing needs and achieve contract requirements on schedule. We find reasonable the agency's argument that high retention reduces the agency's operational risk and that "turnover causes gaps," resulting in the inability "to achieve successful and timely schedule requirements." MOL at 13. Here, retention rates, "reach back," and "bench" are all terms logically encompassed within the solicitation's management and staffing evaluation criteria. See *Horizon Indus., Ltd.*, *supra*.

Further, with regard to Immersion's claim that the evaluators identified a strength based on the protester's asserted ability to provide double-coverage, we agree with the agency's assertion that the strength was assessed based on Immersion's ability to begin work immediately and without transition delays. MOL at 15. The record shows that the agency's analysis of the identified strength considers the transition between the incumbent contractor and the successful offeror, not Immersion's likelihood of providing successful staffing coverage over the life of the contract. See AR, Tab 13, Award Recommendation at 58. We find that the agency's decision to assign a strength based on transition does not conflict with the agency's concern regarding Immersion's ability to retain employees and swiftly fill any staffing gaps throughout the life of the contract. This protest ground is denied.

Low Retention Rate Justification

Immersion argues that the agency failed to justify why it considered an [REDACTED] percent retention rate going back to "the company's founding" to be low.⁹ Protest at 3.

applicable requirements in a timeframe which will successfully achieve the schedule and performance requirements for the order, to include surge staffing as needed." COS at 15 (emphasis omitted).

⁹ The protester also argues that the agency unreasonably failed to address whether it had concerns regarding [REDACTED] performance or retention as the [REDACTED]. Protest at 3. The agency asserts that it did not address [REDACTED] past performance

The protester states that it considers this to be a high retention rate and asserts, without offering support, that it outperforms the industry standard. *Id.* The protester also contends that, to the extent the agency compared the retention rate in Immersion's proposal to other offerors' submitted rates, such a comparison is unreasonable, as those rates vary in terms of time frame. Comments and Supp. Protest at 13.

DHS responds that the technical evaluation team reasonably considered an [REDACTED] percent retention rate to be low and to consequently lower the agency's confidence in Immersion's ability to have the necessary personnel available to fulfill the contract requirements. COS at 12. The agency explains that the evaluation team compared Immersion's submitted rate to the rates of five other offerors, all of whom had higher retention rates, or, conversely, lower attrition rates, than the protester. MOL at 14. The agency asserts that it based this contemporaneous evaluation decision not only on the [REDACTED] percent attrition rate, but also on the protester's failure to provide additional staff coverage or sufficient resources for any contingency. COS at 16-17.

Here, a review of the record reveals that the agency did not act unreasonably in assessing a weakness to Immersion's proposal based on the protester's submitted retention rate. We agree with the agency that it reasonably took the only retention rate that the protester provided and compared it to other submitted rates. MOL at 14-15. We note that despite Immersion's argument that the agency failed to explain the basis for assessing this weakness, the protester did not elaborate on the claimed superiority of its retention rate in its proposal; rather, it made the conclusory statement that a [REDACTED] percent attrition rate outperforms the industry standard without providing any further evidence to support that assertion. AR, Tab 9, Management Approach and Staffing Proposal at 13. Ultimately, the record shows that the agency reasonably evaluated the submitted information, concluded that Immersion's ability to retain staff was a concern, and identified a weakness based on retention and staffing coverage concerns. This protest ground is denied.

Award Decision

Finally, the protester challenges the agency's best-value determination, arguing that the tradeoff decision is based on an unreasonable evaluation and does not justify paying the awardee's 21 percent price premium. Protest at 13-14.

We conclude that the agency's evaluation of proposals was reasonable, as addressed above. With regard to the best-value tradeoff decision itself, the agency asserts that it looked behind the confidence ratings of the offerors, conducted a qualitative analysis, and determined that Evoke's technical superiority merited its price premium, as

because the solicitation did not include a past performance evaluation factor. COS at 18. In this circumstance, Immersion's insistence that the agency should have taken into consideration the protester's performance of the [REDACTED] is inconsistent with the solicitation's evaluation scheme, and does not provide a basis to sustain the protest.

demonstrated in the agency's source selection decision. MOL at 5-6; see AR, Tab 14, SSD at 9-10. The source selection official noted the weakness assigned to Immersion's proposal, but also "noted the many increased confidence ratings for Evoke and determined that these advantages gave the government high confidence that Evoke would perform well and that these benefits were worth the price premium." MOL at 20.

Source selection officials have broad discretion in determining the manner and extent to which they will make use of technical and price evaluation results; price/technical trade-offs may be made, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the evaluation criteria. *Quantech Servs., Inc.*, B-417347, B-417347.2, May 29, 2019, 2019 CPD ¶ 203 at 10.

We find that the agency properly exercised its discretion in conducting the tradeoff analysis and concluding that the awardee's technical superiority was worth the price premium. The record shows that the agency did not rely on a mechanical comparison of confidence ratings where Immersion's weakness was the only factor that tipped the scales in Evoke's favor; rather, the agency identified a number of advantages in the awardee's technical proposal that gave DHS high confidence in Evoke's ability to perform the contract. See AR, Tab 14, SSD at 9-10. We note the agency's statement that "[d]espite being rated equally for Factor 1 [technical approach], overall, Evoke's proposal provides additional benefits and less risk than Immersion's proposal." AR, Tab 13, Award Recommendation at 59. Despite the protester's disagreement, we have no basis to question the reasonableness of the agency's tradeoff analysis and award decision.

The protest is denied.

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General Counsel