



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: KPMG LLP

File: B-420949; B-420949.2

Date: November 7, 2022

Dominique Casimir, Esq., Robyn N. Burrows, Esq., and Samarth Barot, Esq., Blank Rome LLP, for the protester.

Keith R. Szeliga, Esq., Shaunna Bailey, Esq., and Adam Bartolanzo, Esq., Sheppard Mullin Richter & Hampton LLP, for Deloitte Consulting LLP; and J. Alex Ward, Esq., Victoria D Angle, Esq., and James Tucker, Esq., Morrison & Foerster LLP, for Novetta Accenture Federal Services, the intervenors.

Erika Whelan Retta, Esq., Colonel Frank Yoon, Major Danelle McGinnis, and Isabelle P. Cutting, Esq., Department of the Air Force, for the agency.

Michelle E. Litteken, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest of the agency's evaluation of the protester's technical proposal is denied where the protester has not demonstrated that the evaluation was unreasonable or inconsistent with the solicitation.
2. Protest of the agency's price reasonableness evaluation is denied where the protester has not shown that the evaluation was inconsistent with the solicitation or applicable regulation.
3. Protest of the agency's best-value tradeoff decision is sustained where the record reflects that the agency did not qualitatively compare proposals before selecting higher-priced, higher-rated proposals for award.

DECISION

KPMG LLP, of McLean, Virginia, protests the award of seven indefinite-delivery, indefinite-quantity (IDIQ) contracts under request for proposals (RFP)

No. FA701421R0005,¹ issued by the Department of the Air Force, for visible accessible understandable linked trusted (VAULT)² subject matter expert support. KPMG protests the agency's assessment of a weakness in its technical proposal, the agency's price evaluation, and the award decision.

We sustain the protest.

BACKGROUND

On October 30, 2020, the agency issued the solicitation, describing its requirement as subject matter expert support to advise on and/or perform data preparation and architecture; develop agile algorithmic solutions; evaluate or execute data governance and data maturity models; and conduct data analytics using state-of-the-art mathematical, machine learning, and artificial intelligence techniques.³ AR, Tab 7, Performance Work Statement (PWS) § 1.1.1; see *also* AR, Tab 4, Solicitation Posting at 3.⁴ The solicitation anticipated the award of multiple IDIQ contracts, under which the agency would award fixed-price and fixed-price level-of-effort task orders. AR, Tab 18, RFP, amend. 7 at 3.

The solicitation provided for a two-step evaluation process. In step one, proposals would be rated as compliant or noncompliant under five criteria.⁵ RFP, amend. 7 at 17. In step two, the agency would evaluate proposals under three factors: (1) IDIQ pricing

¹ The seven awardees are: Deloitte Consulting; Leidos, Inc.; AT&T; International Information Associates Inc. (IIA); Novetta, OCTO Consulting, LLC; and Credence Management Solutions, LLC. Accenture Federal Services acquired Novetta in August 2021, after the deadline for proposal submission; Novetta Accenture Federal Services requested to intervene as an awardee in this protest.

² The agency states that "The VAULT Data Platform is a cloud-hosted data-as-service environment . . . which contains cloud-native, open source, and commercial services that support Air Force functional activities (e.g., finance, logistics, personnel, intelligence, etc.) and emphasizes data science capabilities (e.g., artificial intelligence, analytics, machine learning, data tagging and cataloging, etc.)." Agency Report (AR) Tab 1, Contracting Officer's Statement (COS) at 15.

³ The agency subsequently issued seven amendments to the solicitation. COS at 7.

⁴ Citations to the record are to the numbered pages provided by the agency in its report.

⁵ The five criteria consisted of the following: confirmation of participation in advisory multi-step process, representations and certifications, facility clearance validation, Department of Defense Form 254, and small business subcontracting plan compliance review. RFP, amend. 7 at 18.

and professional employee compensation plan; (2) small business commitment document; and (3) technical approach.⁶ *Id.* at 19.

The solicitation stated awards would be made to the highest technically rated offerors with an acceptable small business commitment document; a fair, reasonable, and balanced price; and a realistic professional employee compensation plan. RFP, amend. 7 at 17. The solicitation further stated: “This source selection will be utilizing the tradeoff process as defined in [Federal Acquisition Regulation (FAR)] 15.101 where [t]echnical is significantly more important than cost or price.” *Id.* at 18.

For the IDIQ pricing factor, the solicitation instructed offerors to submit an IDIQ pricing worksheet with fully burdened offsite labor rates. RFP, amend. 7 at 12. The solicitation stated that the agency would evaluate the worksheet to ensure fair, reasonable, and balanced pricing. *Id.* The RFP established that the sum of the fully burdened labor rates for each labor category for the base year and for each option year would be treated as the total evaluated price. *Id.* at 19.

With respect to the technical approach, the solicitation directed offerors to “provide a detailed technical approach to meet all the PWS requirements.” RFP, amend. 7 at 14. The PWS included six task areas: data preparation and architecture; agile algorithm solutions; data governance; data analytics; data environment development; and deliverables. AR, Tab 7, PWS at 5. Each task area consisted of a task and subtasks. *Id.* at 5-9. The solicitation advised against simply rephrasing or restating the agency’s requirements. RFP, amend. 7 at 3, 14. The technical approach evaluation would consider an offeror’s written technical proposal and oral presentation, and assess whether the proposal presents a comprehensive approach that met or exceeded the PWS tasks. *Id.* at 20. The agency would assign each proposal an adjectival rating based on the sufficiency of the approach, understanding of the requirements, and level of risk. *Id.* at 21.

The Air Force received 27 proposals in response to the solicitation. AR, Tab 22, Source Selection Evaluation Board (SSEB) Report at 11. The agency evaluated technical proposals by assessing strengths, weaknesses, and deficiencies.⁷ *Id.* at 357. The technical evaluators rated 10 proposals as outstanding, 8 proposals good, 2 proposals acceptable, 1 marginal, and 6 technically unacceptable. *Id.* The technical evaluators

⁶ The technical factor established that the agency would evaluate an offeror’s written approach to the PWS tasks, its written approach to a technical scenario, and an oral presentation by the offeror. RFP, amend. 7 at 17-18.

⁷ As relevant here, the solicitation defined a weakness as “a flaw in the proposal that increases the risk of unsuccessful contract performance.” RFP, amend. 7 at 16. During the evaluation, the Air Force characterized strengths according to whether they were expected to have a broader or narrower impact, *i.e.*, as “Majority [task order (TO)] Strengths,” “Multiple TO Strengths,” and “Specific Use-Case Strengths.” AR, Tab 22, SSEB Report at 357.

recommended all proposals that were rated acceptable or better for award. AR, Tab 33, Decl. of SSEB Chairperson ¶ 5; AR, Tab 30, Supp. COS at 3.

As part of the price evaluation, the Air Force calculated the median and mean of all offerors' proposed total evaluated prices and individual labor category rates. AR, Tab 22, SSEB Report at 27; see *also* COS at 9. The agency compared the prices proposed by each offeror to the mean and the median to assess fairness and reasonableness. AR, Tab 22, SSEB Report at 22; see *also* COS at 9. For three of the proposals, the agency rated the professional employee compensation plans as unrealistic, and they were deemed ineligible for award. AR, Tab 24, Source Selection Decision Document (SSDD) at 119-122; see *also* AR, Tab 23, Final Decision Briefing at 168 (stating three proposals were eliminated due to unrealistic professional employee compensation plans). When calculating the mean and median of the proposed total evaluated prices, however, the agency did not exclude the prices of the proposals deemed technically unacceptable or ineligible for award due to an unrealistic professional employee compensation plan. AR, Tab 30, Supp. COS at 9.

The agency rated KPMG's proposal as good under the technical approach factor and assessed 12 strengths and 1 weakness. AR, Tab 22, SSEB Report at 358. The agency determined that KPMG's pricing was reasonable, fair, and balanced, and its professional employee compensation plan was realistic. *Id.* The protester's proposal was ranked 14th out of all proposals received, and KPMG proposed the lowest total evaluated price of the proposals that were eligible for award. *Id.* at 359-362.

The SSEB ranked the proposals based on the strengths assigned and the expected benefits of those strengths. AR, Tab 22, SSEB Report at 357. The SSEB Report explained that this ranking was intended to "efficiently recommend the Highest Technically Rated Offerors." *Id.* The rankings, strengths, weaknesses, technical ratings, and prices of the top 14 proposals are provided below.

Ranking	Offeror	Strengths Benefit Majority of Task Orders	Strengths Benefit Multiple Task Orders	Strengths Benefit Specific Use-Case	Technical Rating	Total Evaluated Price
1	Deloitte	4	1	6	Outstanding	\$13,451.67
2	Leidos	3	1	7	Outstanding	\$18,272.25
3	AT&T	3	1	5	Outstanding	\$22,377.45
4	IIA	3	0	7	Outstanding	\$12,995.86
5	Novetta	2	1	7	Outstanding	\$13,651.60
6	Octo	1	1	8	Outstanding	\$10,999.98
7	Credence	2	0	4	Outstanding	\$11,805.92
8	[DELETED]	1	1	5	Good	\$11,446.35
9	[DELETED]	1	1	4	Good	\$16,206.14
10	[DELETED]	0	2	6	Good	\$16,158.58
11	[DELETED]	1	0	5	Good	\$14,260.85
12	[DELETED]	0	1	5	Good	\$14,557.00
13	[DELETED]	1	0	3	Good	\$13,997.42
14	KPMG	1	1	10	Good	\$10,243.99

Id. at 356-360.⁸ The SSEB concluded that the top seven proposals represented the best value and were the highest ranked, and the SSEB recommended those offerors for award. *Id.* at 362.

The source selection authority (SSA) followed the recommendation of the SSEB. AR, Tab 24, SSDD at 119-122. In the source selection decision, the SSA noted that the solicitation provided for award to the highest technically rated offerors with a fair, reasonable, and balanced price; a realistic professional employee compensation plan; and an acceptable small business commitment document. *Id.* at 122. The SSA also referenced the solicitation language providing for a best-value tradeoff: “Attachment 2, Addendum to FAR 52.212-2 Evaluation – Commercial Items, details that this is a tradeoff acquisition where the technical factor is significantly more important than price.” *Id.* The SSA continued: “The strengths for [o]utstanding [o]fferors, detailed in Section 3 of this document, are advantageous to the [g]overnment and worth paying additional costs and is in the benefit of the [g]overnment due to reducing risk associated with contract performance when compared with [o]fferors that received an [a]cceptable or [g]ood rating.” *Id.* The SSA concluded by stating that the proposals of the awardees “represent the best overall value to the [g]overnment as each had the highest technical

⁸ The proposals of the top 14 offerors were rated fair, reasonable, balanced, and realistic under the IDIQ pricing/professional employee compensation plan factor, and all were rated acceptable under the small business commitment plan documents factor. AR, Tab 22, SSEB Report at 359-360. Other than KPMG’s proposal, none of the top 14 proposals received any weaknesses. *Id.* at 357-358.

rating of [o]utstanding and the proposals contain strengths that warrant paying a premium.” *Id.* at 123.

After requesting and receiving a debriefing, KPMG filed this protest with our Office.

DISCUSSION

KPMG challenges the Air Force’s evaluation of its technical proposal, the price reasonableness evaluation, and the award decision. More specifically, KPMG argues that the agency improperly assigned a weakness to its technical proposal because its approach was limited to the VAULT data platform--as opposed to all environments across the Department of the Air Force (DAF) enterprise. KPMG also contends that the agency failed to perform a proper price reasonableness analysis. The protester also challenges the award decision, arguing that the agency assigned undue weight to the single weakness assessed to KPMG’s proposal; the SSA failed to conduct a proper best-value tradeoff; and the SSA deviated from the recommendation of the technical evaluation team without any contemporaneous explanation. We have reviewed all of KPMG’s assertions and sustain the challenge to the best-value tradeoff decision.⁹ We address the protester’s principal contentions below.

Technical Evaluation

The evaluation of technical proposals is a matter within an agency’s discretion. *Acquisition Servs. Corp.*, B-409570.2, June 18, 2014, 2014 CPD ¶ 197 at 7. In reviewing an agency’s evaluation, we will not reevaluate technical proposals, but instead will examine the agency’s evaluation to ensure that it was reasonable and consistent with the solicitation’s stated evaluation criteria and with procurement statutes and regulations. *Technology & Telecomms. Consultants, Inc.*, B-415029, Oct. 16, 2017, 2017 CPD ¶ 320 at 3. A protester’s disagreement with the agency’s judgment, without more, is insufficient to establish that an evaluation was improper. *Technica LLC*, B-413546.4, B-413546.5, July 10, 2017, 2017 CPD ¶ 217 at 5.

As noted above, the PWS included six task areas; within those areas, three of the tasks are relevant here: task 2.2, agile algorithm solutions; task, 2.4 data analytics; and task 2.5, data environment development. The PWS provided a description of the scope of work for each task. For example, the description of task 2.2 stated:

2.2 Agile Algorithm Solutions. The contractor shall develop algorithms for execution on cloud and on premise infrastructure to enable exploitation of USAF enterprise or mission-specific datasets to include production and experimental design that ensure maximum effectiveness to serve the USAF data consumers and enabling data integration and analysis across the enterprise. The contractor shall support establishment of a

⁹ To the extent that arguments presented by the protester are not discussed in this decision, we have reviewed the record and concluded that they are without merit.

Continuous Integration, Continuous Delivery Development Operations pipeline for Analytics using DevSecOps agile methodology. The contractor shall apply machine learning and artificial intelligence principles using open source or [commercial-off-the-shelf] frameworks in R, Python, or other language libraries supported by enterprise Data Platforms.

AR, Tab 7, PWS at 6. The evaluators determined that KPMG's approach for this task-- as well as for tasks 2.4 and 2.5--was scope-limited, and assessed a weakness. The evaluators explained the weakness as follows: "The Offeror provided several references to implementing capability for 'VAULT tenants' and the 'VAULT data platform.' This response increases the risk of unsuccessful performance as this acquisition spans more than the current VAULT data platform and VAULT tenants; task orders apply to the larger enterprise DAF." AR, Tab 21, Team Consensus Evaluation Sheet at 2; see *also* AR, Tab 22, SSEB Report at 232.

KPMG contends it was improper for the Air Force to assess the weakness because the weakness was contradicted by its proposal or resulted from the application of an unstated evaluation requirement.¹⁰ Protest at 8, 14. The protester does not dispute that the section of its proposal that addresses PWS task 2.2 contains multiple references to "VAULT tenants." Protest at 10; see *also* AR, Tab 20, KPMG Technical Proposal at 10. KPMG contends that it was unreasonable for the agency to find its approach was limited to VAULT because KPMG's proposal stated it would [DELETED]. Protest at 10 (*citing* AR, Tab 20, KPMG Technical Proposal at 10). The agency responds that KPMG's statement regarding [DELETED] is imprecise, as was its proposal. In addition, the Air Force suggests that KPMG's proposal merely reiterated or rephrased the PWS requirement in this area. COS at 17.

We find the evaluation of the protester's technical approach to be reasonable and consistent with the solicitation's evaluation criteria. Here, the solicitation required offerors to "demonstrate[] a comprehensive technical approach that meets or exceeds the PWS tasks." RFP, amend. 7 at 20. The protester's comments on the agency report do not meaningfully address the agency's evaluation or explanation. Rather, the protest and the comments on the agency report argue in broad terms that KPMG's proposed technical approach met the solicitation requirements. As we have recognized, an offeror has the burden of submitting an adequately written proposal; where a proposal omits, inadequately addresses, or fails to clearly convey required information, the offeror runs the risk of an adverse agency evaluation. *Addvetco, Inc.*, B-412702, B-412702.2, May 3, 2016, 2016 CPD ¶ 112 at 7-8. The agency evaluated information in

¹⁰ KPMG also argues that the technical evaluation was internally inconsistent because some evaluation documents refer to a single weakness and other documents refer to multiple weaknesses. We find no merit in this argument, as the agency provided a credible explanation for the typographical error, and there is no evidence that the SSA believed KPMG's proposal to have more than one weakness. See AR, Tab 23, Final Decision Briefing at 109 (reporting that KPMG's proposal had one weakness).

KPMG's proposal concerning its approach to task area 2.2 and found KPMG did not sufficiently address the DAF enterprise. Accordingly, we conclude the assignment of a weakness, in this regard, was reasonable.¹¹

Price Evaluation

KPMG argues that the agency's price reasonableness analysis was unreasonable because the Air Force did not meaningfully compare the offerors' prices to one another. Protest at 21; Comments & Supp. Protest at 12. The protester contends it was unreasonable for the Air Force to find all of the awardees' proposed prices reasonable when one of the awardees proposed a price that was more than double the price that KPMG proposed. Comments & Supp. Protest at 12. The agency responds that the analysis was reasonable because the agency compared each offeror's total evaluated price to the mean and median of all proposed prices and memorialized the comparison. COS at 29-30; Memorandum of Law (MOL) at 15. Additionally, the Air Force asserts that the protester was not prejudiced by any errors in the reasonableness evaluation. AR, Tab 31, Supp. MOL at 9-10.

The FAR defines price analysis as "the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit." FAR 15.404-1(b)(1). The manner and depth of an agency's price analysis is a matter committed to the discretion of the agency, which we will not disturb provided that it is reasonable and consistent with the solicitation's evaluation criteria and applicable procurement statutes and regulations. *TransAtlantic Lines, LLC*, B-411846.3, B-411846.4, May 18, 2016, 2016 CPD ¶ 148 at 7; *Federal Acquisition Servs. Alliant JV, LLC*, B-415406.2, B-415406.3, Apr. 11, 2018, 2018 CPD ¶ 139 at 11.

The solicitation advised that prices would be evaluated in accordance with FAR 15.404. AR, Tab 18, RFP, amend. 7 at 19. The FAR includes a non-exhaustive list of permitted price analysis techniques that ensure that the agency pays a fair and reasonable price. FAR 15.404-1(b). Here, the Air Force used the technique described in FAR 15.404(b)(2)(i), "Comparison of proposed prices received in response to the solicitation." AR, Tab 30, Supp. COS at 9. As discussed above, the agency calculated the mean and median total evaluated price using the prices proposed by all 27 offerors. *Id.* The agency did not exclude the prices from proposals that were deemed technically unacceptable or which included unrealistic professional employee compensation plans.¹² *Id.* The agency then compared the total evaluated price of each proposal to

¹¹ The Air Force consolidated the weaknesses for the three PWS tasks into one weakness. COS at 26. Although we discuss only one of the three tasks, we considered all three task areas and found that the agency's evaluation was reasonable.

¹² Our Office has sustained protests challenging an agency's price evaluation where the agency included proposed prices from proposals that had been deemed unacceptable or ineligible for award when calculating the mean or median. *See e.g., Lifecycle Construction Servs., LLC*, B-406907, Sept. 27, 2012, 2012 CPD ¶ 269 at 8. Although it

the mean and median and concluded that each total evaluated price was reasonable. For example, the agency's evaluation of AT&T's pricing provided:

As referenced in paragraph 3.1.1 above, AT&T's [total evaluated price] is \$22,377.45, which is 59.87 percent above the median of all proposed prices and 58.59% above the mean of all proposed prices. . . . Additionally, there are no findings that AT&T's price would be otherwise unreasonable. Therefore, AT&T's pricing is determined to be **FAIR, REASONABLE, AND BALANCED** through comparison of proposed prices received in response to the competition.

AR, Tab 22, SSEB Report at 65 (emphasis in original).

KPMG relies on our decision in *Technatomy Corp.*, B-414672.5, Oct. 10, 2018, 2018 CPD ¶ 353, in which we considered a price reasonableness analysis where there was a wide variance among the total evaluated prices and labor rates. We sustained the protest because the agency relied on the existence of competition alone to determine reasonableness. We noted that the agency failed to compare offerors' total proposed prices or their fully burdened labor rates. *Id.* at 14-15. The same cannot be said here. The Air Force compared each offeror's total evaluated price to the mean and median of all prices proposed. The agency recognized the variance in prices and attributed it to the fact that the total evaluated price was calculated by adding the proposed labor rates, which meant that a small number of higher labor rates could skew the total evaluated price higher.¹³ COS at 30. The agency compared the offerors' total evaluated prices and determined the awardees' prices (as well as the protester's) were reasonable. While the protester ultimately disagrees with the agency's conclusions in this regard, such disagreement does not provide a basis for our Office to find the agency's

was unreasonable here for the Air Force to calculate the mean and median total evaluated price using prices from proposals that were ineligible for award, the record shows that when these firms' prices are excluded, the change to the mean and median is insignificant. As such, we have no basis to conclude that KPMG was prejudiced by the agency's error. See *Kilda Grp., LLC*, B-409144, B-409144.2, Jan 29, 2014, 2014 CPD ¶ 80 at 5-6.

¹³ We accept the contracting officer's statement explaining the variance in total evaluated prices. In our view, the statement provides a detailed rationale that is credible and consistent with contemporaneous conclusions rather than a post-hoc rationalization. See, e.g., *GloTech, Inc.*, B-416967, Jan. 15, 2019, 2019 CPD ¶ 59 at 5 n.10 (concluding that a declaration that identified additional details on an agency's previous findings and conclusions was a post-protest explanation that provided a detailed rationale for contemporaneous conclusions).

evaluation unreasonable. Accordingly, the protester's allegations in this regard are denied.¹⁴

Source Selection

KPMG protests the sufficiency of the best-value tradeoff.¹⁵ In this regard, the protester contends that the award decision was unreasonable because the agency gave undue weight to a single weakness, failed to consider the protester's price advantage, and failed to identify specific features in the awardees' proposals that warranted paying a price premium. Protest at 21-22; Comments & Supp. Protest at 13-14. We view the agency's approach to the source selection as inconsistent with the terms of the RFP and part 15 of the FAR, and therefore address this threshold issue first.

As described above, the solicitation contained conflicting language concerning the basis of award. Specifically, the solicitation first stated: "Awards will be made to the Highest Technically Rated Offerors with an Acceptable Small Business Commitment Document, with a fair, reasonable, and balanced price, and a realistic Professional Employee Compensation Plan," and on the following page stated: "This source selection will be utilizing the tradeoff process as defined in FAR 15.101 where Technical is significantly more important than cost or price." RFP, amend. 7 at 17-18. In other words, the solicitation simultaneously contemplated award using two distinct evaluation schemes:

¹⁴ Agencies are required by statute to consider the cost or price to the government of entering into a contract, 41 U.S.C. § 3306(c)(1)(B), and our Office will sustain a protest when an agency's method for evaluating the total relative cost or price to the government is unreasonable. See, e.g., *Veterans Evaluation Servs., Inc. et al.*, B-412940 *et al.*, July 13, 2016, 2016 CPD ¶ 185 at 17-18. Here, the solicitation provided that an offeror's total evaluated price would be determined by adding proposed hourly labor rates, with no consideration of quantities. We have sustained protests involving similar evaluation methodologies because such an approach does not consider the relative cost or price to the government in the context of a best-value tradeoff procurement. See, e.g., *R & G Food Service, Inc., d/b/a Port-A-Pit Catering*, B-296435.4, B-296435.9, Sept. 15, 2005, 2005 CPD ¶ 194 at 4-6. This aspect of the solicitation was not timely protested, however.

¹⁵ As a supplemental protest ground, KPMG argues that the SSA inexplicably did not follow the technical team's recommendation that KPMG be selected for award. Comments & Supp. Protest at 4. As noted above, the technical evaluators recommended all proposals rated acceptable or better--including KPMG's proposal--for award. AR, Tab 33, Decl. of SSEB Chairperson ¶ 5. The SSEB considered the recommendation of the technical evaluators and recommended the seven outstanding proposals for award (AR, Tab 22, SSEB Report at 362), and the SSA selected those proposals for award. AR, Tab 24, SSDD at 122-123. Because we find the Air Force's source selection was otherwise unreasonable, we need not address this argument.

highest technically rated offeror with a fair and reasonable price and a best-value tradeoff.¹⁶

A solicitation that provides for evaluation and award on two different and conflicting bases contains a patent ambiguity.¹⁷ *FitNet Purchasing Alliance*, B-410263, Nov. 26, 2013, 2014 CPD ¶ 344 at 6; *Watchdog, Inc.*, B-258671, Feb. 13, 1995, 95-1 CPD ¶ 69 at 5. However, the terms of the solicitation were not challenged prior to the deadline for submitting initial proposals. Where, as here, a solicitation could be reasonably interpreted as consistent with making a source selection on either of two distinct bases, in the absence of a timely challenge to the ambiguous terms, the agency has discretion to award a contract on either basis. *FitNet Purchasing Alliance, supra*.

Thus, as a result of the unchallenged patent ambiguity, the Air Force had discretion to make award using either method. The agency could make award by identifying the highest technically rated offerors with acceptable small business commitment documents; fair, reasonable and balanced prices; and realistic professional employee compensation plans. Alternatively, the agency could conduct a best-value tradeoff--that is make award after comparing and weighing the individual technical aspects of the offerors' proposals and their relative prices--with the technical factor in this case being significantly more important than price. RFP, amend. 7 at 17-18. The record

¹⁶ Our Office has recognized a source selection process that results in award to the highest technically rated offerors, as here, as distinct from a source selection process using a tradeoff process. See *Sevatec, Inc. et al.*, B-413559.3 *et al.*, Jan. 11, 2017, 2017 CPD ¶ 3 at 5-6. The patent ambiguity created by the RFP's inclusion of the two source selection methods was not timely protested. In this circumstance, because KPMG did not challenge the ambiguity prior to the proposal submission deadline, KPMG cannot object to the method the agency used. *FFLPro, LLC*, B-411427.2, Sept. 22, 2015, 2015 CPD ¶ 289 at 10.

The solicitation here is distinguishable from the solicitation at issue in *Sevatec, supra*. There, the solicitation stated tradeoffs would not be used. *Sevatec, supra* at 2 n.1 and 5 n.7.

¹⁷ KPMG disputes that the solicitation is ambiguous. Comments and Supp. Protest at 18. The protester contends that the two evaluation schemes are consistent because both emphasize technical superiority. *Id.* ("This is because Statement 1 is announcing an award will be made to the 'highest technically rated' offerors, meaning that the Agency will evaluate to determine which proposals are the best, which is consistent with Statement 2's reference to the 'tradeoff process' in best value procurements."). We are not persuaded by KPMG's position. When making an award using a best-value tradeoff, an agency is required to make comparative assessments. No such assessments are required when award is to be made to the highest technically rated offerors with a fair and reasonable price. *U.S. Electrodynamics, Inc.*, B-414678, Aug. 1, 2017, 2017 CPD ¶ 252 at 9.

establishes that the agency attempted to make its award decision using the latter methodology, a best-value tradeoff process.

We reach this conclusion where, in the source selection decision, the SSA stated that his “determination is based on the use of tradeoff source selection procedures.” AR, Tab 24, SSDD at 122. The SSA then justified the award decision as follows: “The strengths for Outstanding Offerors, detailed in Section 3 of this document, are advantageous to the Government and worth paying additional costs and is in the benefit of the Government due to reducing risk associated with contract performance when compared with Offerors that received an Acceptable or Good rating.” *Id.* In the final paragraph of the source selection decision, the SSA wrote “the proposals contain strengths that warrant paying a [price] premium.” *Id.* at 123. This is quintessential tradeoff language. Because the record demonstrates that agency sought to make its awards using a best-value tradeoff process, we review the propriety of the source decision on that basis.¹⁸ *Cf. Science Applications Int'l Corp.*, B-407013, Oct. 19, 2012, 2012 CPD ¶ 308 at 5-6 (although solicitation allowed agency to decide whether it would perform a price realism evaluation, where record showed that agency elected to conduct a price realism evaluation, we reviewed the agency’s price realism evaluation for reasonableness).

In a best-value procurement, it is the function of the source selection authority to perform a tradeoff between price and non-price factors, that is, to determine whether one proposal’s superiority under the non-price factor is worth a higher price. Even where, as here, price is stated to be of less importance than the non-price factors, an agency must meaningfully consider cost or price to the government in making its selection decision. *e-LYNXX Corp.*, B-292761, Dec. 3, 2003, 2003 CPD ¶ 219 at 7. Before an agency can select a higher-priced offer that has been rated technically superior to a lower-priced but acceptable one, the award decision must be supported by a rational explanation of why the higher-rated offer is, in fact, superior, and explaining why its technical superiority warrants paying a price premium. *Alpha Omega Integration, LLC*, B-419812, B-419812.2, Aug. 10, 2021, 2021 CPD ¶ 302 at 7. An

¹⁸ Additionally, the contracting officer’s statement in response to the protest expressly defends against the protest on the basis that the agency used a best-value tradeoff process. COS at 31-33. Agency counsel also defended the sufficiency of the tradeoff, and although the agency has quoted the solicitation language providing for award to the highest technically rated offerors, the Air Force has not taken the position that no tradeoff was required under the terms of the solicitation. See COS at 31 (“KPMG’s technical/risk rating was compared against the technical ratings of other offerors in accordance with the solicitation, which stated ‘Technical is significantly more important than cost or price.’”); MOL at 17 (“the SSA determined that the awardees’ higher prices were preferred to lower [total evaluated prices] because of the ‘low’ performance risk associated with the higher priced proposals, as compared to the ‘low to moderate’ performance risk associated with the lower priced and lower technically rated proposals.”); see also *id.* at 16-18; AR, Tab 30, Supp. COS at 7-8.

agency that fails to adequately document its source selection decision bears the risk that our Office may be unable to determine whether the decision was proper. *Id.*

As discussed below, the record shows that the agency performed a mechanical tradeoff that relied exclusively on adjectival ratings, excluded technically acceptable proposals without any consideration of the price of those proposals, and, in general, did not meaningfully consider price.

When making award using a best-value tradeoff, an agency cannot eliminate a technically acceptable proposal from consideration for award without taking into account the relative cost of that proposal to the government. *Qbase, LLC et al.*, B-416377.9 *et al.*, Nov. 13, 2020, 2020 CPD ¶ 367 at 17 (*citing CyberData Techs., Inc.*, B-406692, Aug. 8, 2012, 2012 CPD ¶ 230 at 5; *System Eng'g Int'l, Inc.*, B-402754, July 20, 2010, 2010 CPD ¶ 167 at 5). When conducting a tradeoff, an agency may not so minimize the impact of price as to make it a nominal evaluation factor because the essence of the tradeoff process is an evaluation of price in relation to the perceived benefits of an offeror's proposal. *Qbase, LLC, supra* at 18 (*citing Sevatec, supra* at 8 (*citing FAR 15.101-1(c)*); *Electronic Design, Inc.*, B-279662.2 *et al.*, Aug. 31, 1998, 98-2 CPD ¶ 69 at 8).

Here, the tradeoff rationale consisted of a single generalized statement that the strengths in the awardees' proposals, as well as the reduced risk of poor performance, justify paying additional costs. AR, Tab 24, SSDD at 122-123. Price was not considered in any meaningful way in the source selection decision. Rather, the record shows that once an offeror's proposed price was deemed reasonable, realistic, and balanced, price had no impact on an offeror's ability to be selected for award. Once the agency identified the seven proposals rated as outstanding, the agency did not conduct a price/technical tradeoff. The Air Force did not take into account the relative cost of the offerors' proposals to the government. Although the SSA twice wrote that the strengths offered by the highest-rated proposals justified paying a price premium (AR, Tab 24, SSDD at 122-123), such generalized consideration of price was nominal at best. See *OGSystems, LLC*, B-414672.6, B-414672.9, Oct. 10, 2018, 2018 CPD ¶ 352 at 14 (*citing CyberData Techs., Inc.*, B-406692, Aug. 8, 2012, 2012 CPD ¶ 230 at 5 n.1). In the absence of any tradeoff analysis or further discussion considering price, we cannot conclude that the agency's best-value determination is reasonable.

The failure to meaningfully compare prices parallels the source selection decision's failure to substantively discuss the specific qualities of the offerors' proposals in relation to each other. The SSA accepted the adjectival ratings assigned by the evaluation team to each of the proposals, but he did not discuss the proposal features underlying those ratings. AR, Tab 24, SSDD at 122-123. As KPMG notes, its proposal received more strengths than any of the awardees, and it offered the lowest price of all eligible offerors. Comments & Supp. Protest at 5. Moreover, two of the awardees proposed total evaluated prices that were substantially higher than the prices proposed by KPMG and other offerors whose proposals were rated as good under the technical approach factor. AR, Tab 24, SSDD at 119-120. Yet, in the source selection decision, there is no

discussion of lower-rated and lower-priced proposals. Instead, it appears the agency considered only proposals rated as outstanding under the technical approach factor for award. AR, Tab 33, Decl. of SSEB Chairperson ¶ 7 (“Due to the number of offerors rated as Outstanding by the technical team, it was recommended by the Government team to expand the award pool to all technically-rated Outstanding offerors that were still eligible after other considerations (e.g. feasibility).”)

Ratings, whether numerical, color, or adjectival, are merely guides for intelligent decisionmaking. *One Largo Metro LLC et al.*, B-404896 *et al.*, June 20, 2011, 2011 CPD ¶ 128 at 14. A source selection authority cannot limit the tradeoff analysis to comparison of a limited subset of the highest-rated proposals without any qualitative assessment of the technical differences between these proposals and any of the other technically acceptable, lower-priced proposals. *R&K Enter. Sols., Inc.*, B-419919.6 *et al.*, Sept. 12, 2022, 2022 CPD ¶ 237 at 12 (*citing* J.R. Conkey & Assocs., Inc. dba Solar Power Integrators, B-406024.4, Aug. 22, 2012, 2012 CPD ¶ 241 at 9-10). The Air Force’s failure to meaningfully consider KPMG’s lower-rated and lower-priced proposal renders the tradeoff decision unreasonable.

Prejudice

Prejudice is an essential element of a viable protest. *See Qbase, LLC*, *supra* at 19. We will sustain a protest where a protester demonstrates a reasonable possibility that it was prejudiced by the agency’s actions. We cannot say whether the SSA would have determined that the technical features of the awardees’ proposals justified the payment of a price premium, under a properly analyzed and documented tradeoff. In such circumstances, we resolve any doubts regarding prejudice in favor of a protester since a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. *Id.*

RECOMMENDATION

For the reasons discussed above, we conclude that the agency’s best-value tradeoff was unreasonable and prejudicial to KPMG. We recommend that the agency perform and document a new source selection decision. If, in making the new source selection decision, the agency determines that firms other than the seven current awardees represent the best value to the government, then we further recommend that the agency terminate the contracts awarded for the convenience of the government and make awards to the firms selected, if otherwise proper.¹⁹ We also recommend that the

¹⁹ We recognize that the patent problems with the solicitation highlighted by this decision were not timely challenged by any of the offerors. Nevertheless, given the ambiguity in the solicitation regarding the basis for making the award decision, the agency may consider whether it would be beneficial to amend the RFP to resolve the ambiguity, solicit proposal revisions, and conduct a new evaluation in accordance with the amended solicitation. If the agency decides to base its source selection on a best-value tradeoff, the agency may also consider revising the solicitation to allow for a

agency reimburse KPMG's reasonable costs associated with filing and pursuing its protest, including attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester's certified claim for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after the receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is sustained.

Edda Emmanuelli Perez
General Counsel

meaningful price evaluation of the relative cost of the competing proposals. For example, the agency could provide for an evaluation based on estimated levels of effort for each labor category, or on responses to a sample task order. *See, e.g., Veterans Evaluation Servs., supra.*