



Decision

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Matter of: Ahtna Professional Services, Inc.

File: B-421164; B-421164.2

Date: January 11, 2023

Ryan C. Bradel, Esq., and Michael E. Hatch, Esq., Ward & Berry, PLLC, for the protester.

Jonathan D. Shaffer, Esq., Smith Pachter McWhorter PLC, for IMAQ Walden JV, the intervenor.

Patrick J. Madigan, Esq., Department of Homeland Security, for the agency.

Jacob M. Talcott, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of proposals is denied where the evaluation was reasonable and in accordance with the terms of the solicitation.
 2. Protest alleging awardee engaged in impermissible "bait and switch" is dismissed where protester fails to demonstrate awardee "baited" the agency by proposing key personnel the awardee knew or should have known to be unavailable to perform the contract.
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DECISION

Ahtna Professional Services, Inc. (APSI), an 8(a) small business of Anchorage, Alaska, protests the award of a contract to IMAQ Walden JV (IWJV), also an 8(a)¹ small business of Anchorage, Alaska, under request for proposals (RFP) No. 70FA2022R00000002, issued by the Department of Homeland Security, Federal Emergency Management Agency, for security guard services for the Center for Domestic Preparedness in Anniston, Alabama. The protester contends the agency's evaluation of proposals was unreasonable, and the resulting best-value tradeoff

¹ Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes the Small Business Administration to enter into contracts with government agencies and to arrange for performance of those contracts through subcontracts with socially and economically disadvantaged small business concerns. Federal Acquisition Regulation (FAR) 19.800. This program is commonly referred to as the 8(a) program.

decision was flawed. The protester also contends that the awardee engaged in an impermissible “bait and switch” tactic with respect to its proposed key personnel.

We deny the protest in part, and dismiss it in part.

BACKGROUND

The agency issued the solicitation as an 8(a) set-aside on May 10, 2022. Agency Report (AR), Tab F, RFP at 1. The RFP contemplated the award of a fixed-price contract with a phase-in period of 1 month, a base period of 11 months, and four 12-month option periods. RFP at 1-3. The due date for proposals was June 16, 2022. *Id.* at 1, 50.

The RFP provided for the submission of proposals in two volumes: technical and business. *Id.* at 45, 48. The technical volume was to address six factors: (1) work plan, (2) management plan, (3) staffing plan and key personnel, (4) corporate experience, (5) quality control plan, and (6) past performance. *Id.* at 45-48. The business volume was to consist of a price proposal that included pricing for all material, equipment, and labor hours associated with performance of this contract. *Id.* at 48. The contract was to be awarded on a best-value tradeoff basis where the work plan, management plan, and staffing plan and key personnel (factors 1-3) were the most important factors and of equal importance relative to each other. *Id.* at 50. Corporate experience, quality control plan, and past performance (factors 4-6) were less important than factors 1-3, and were listed in descending order of importance. *Id.* The technical factors, when combined, were approximately equal to price. *Id.* at 51.

The agency received eight proposals by the closing date for receipt of proposals, including proposals from APSI, which is the incumbent contractor for the services, and IWJV. Contracting Officer’s Statement (COS) at 4, 20. The technical evaluation team (TET) evaluated the proposals; identified strengths, weaknesses, significant

weaknesses, and deficiencies; and assigned the proposals adjectival ratings under the various evaluation factors.² The final results of the evaluation were as follows:

	APSI	IWJV
Work Plan	Good	Outstanding
Management Plan	Good	Outstanding
Staffing Plan and Key Personnel	Good	Good
Corporate Experience	High Confidence	High Confidence
Quality Control Plan	Satisfactory	Good
Past Performance	Very Good	Very Good
Total Evaluated Price (without Phase-In Price)	\$22,619,485	\$24,658,095

AR, Tab V, Source Selection Decision Document (SSDD) at 12.

Although APSI submitted a lower price, the source selection authority (SSA) determined that IWJV's proposal represented the best value to the agency. *Id.* at 29. In conducting

² The Source Selection Plan (SSP) provided that under the work plan, management plan, staffing plan and key personnel, and quality control plan factors, proposals would be rated as outstanding, good, satisfactory, or unsatisfactory. AR, Tab H, SSP at 15. It further provided that under the corporate experience factor, proposals would be rated as high, some, or low confidence, and that under the past performance factor, they would be rated as exceptional, very good, satisfactory, marginal, unsatisfactory, and neutral. *Id.* at 15-16. As relevant here, a rating of "outstanding" indicated an "exceptionally thorough and comprehensive understanding of the program goals . . . and other aspects essential to performance of the program." *Id.* A rating of "outstanding" also indicated the proposal contained numerous strengths that should substantially benefit the program, and had no weaknesses, significant weaknesses, or deficiencies, and that overall, the risk of unsuccessful contract performance was extremely low. *Id.* A rating of "good" indicated a "thorough understanding of the program goals . . . and other aspects essential to performance of the program." *Id.* A rating of "good" also indicated that the proposal contained one or more strengths, and these strengths offset any weaknesses; that any uncorrected weaknesses did not significantly impact the offeror's ability to perform, and there were no significant weaknesses or deficiencies; and that overall, the risk of unsuccessful contract performance was very low. *Id.*

the tradeoff, he noted that IWJV's proposal was rated "1-step higher" for the work plan, management plan, and quality control plan, meaning its proposal received a higher rating for two out of the three most important technical factors. *Id.* at 30. The SSA identified three aspects of IWJV's proposal--pertaining to its plan to purchase weapons, its information management plan, and its quality control plan--that in his view justified the 8.27 percent price premium associated with the proposal. *Id.*

On September 27, 2022, the agency awarded a contract to IWJV. COS at 18. APSI requested a debriefing, which the agency provided on October 7. *Id.* at 19. APSI filed this protest with our Office the same day. *Id.*

DISCUSSION

APSI raises a number of challenges to the agency's evaluation of its proposal and IWJV's proposal. Supp. Protest at 4-9; Comments at 5-8. First, APSI argues that the agency failed to follow the evaluation criteria in evaluating its work plan, management plan, quality control plan, and staffing plan and key personnel, contending that the "ultimate ratings . . . were irrational." Supp. Protest at 4-9. APSI also argues that its proposal should have received additional strengths under the staffing plan and quality control plan factors, and that the agency disparately evaluated the proposals under the former factor. Comments at 7. Second, APSI argues that the agency unreasonably assigned strengths to IWJV's proposal under the work plan and management plan factors. Comments at 6-8. Third, APSI contends that the agency's best-value tradeoff was flawed. Supp. Protest at 9-10. Last, APSI argues that the awardee, IWJV, engaged in an impermissible bait and switch technique with regard to its key personnel. Protest at 8-9. For the reasons discussed below, we deny the protest in part, and dismiss it in part.³

Challenge to the Evaluation of APSI's Proposal

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals or substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. *The Bionetics Corp.*, B-420272, Jan. 7, 2022, 2022 CPD ¶ 27 at 3. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. *Id.* A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was unreasonable. *Id.*

APSI first challenges the agency's evaluation of its proposal under the work plan factor. Supp. Protest at 4-6. Under this factor, the RFP provided that the agency would evaluate the degree to which the offeror's work plan demonstrated an understanding of the requirements, as well as the methods through which the offeror proposed to meet

³ Although we do not address every protest ground raised by APSI, we have considered them and find none provides a basis to sustain this protest.

the requirements. RFP at 51. The TET concluded that APSI's work plan demonstrated a "very thorough" understanding of the requirements, and assigned its proposal one strength for its [REDACTED] and ability to conduct a "smooth transition" during the phase-in period. AR, Tab O, TET Report at 2. APSI contends that, based on these evaluation results, its work plan should have received a rating of "outstanding." Supp. Protest at 6.

We have no basis to object to the agency's evaluation here. As discussed above, the SSP provided for the assignment of a rating of "outstanding" to a work plan only if the plan demonstrated an "exceptionally thorough and comprehensive understanding" of the requirements and "contain[ed] numerous strengths." AR, Tab H, SSP at 15. APSI's work plan, however, was not found to have an "exceptionally thorough and comprehensive" understanding, but only a "very thorough" understanding. AR, Tab O, TET Report at 2. APSI does not explain which areas of its work plan should have been viewed as demonstrating an exceptional and comprehensive understanding of the requirements. See Supp. Protest at 6. Additionally, APSI concedes that its work plan received only one strength, not numerous strengths as was required for a rating of "outstanding." See *id.* The protester essentially disagrees with the judgment of the agency evaluators, which does not provide a basis for finding the evaluation unreasonable. In sum, the protester has failed to demonstrate that the assignment of a rating of "good" to its proposal under the work plan factor was unreasonable.

APSI next challenges the agency's evaluation of its proposal under the management plan factor, arguing "the same irrational result occurred" under this factor as under the work plan factor. Supp. Protest at 6. For this factor, the RFP provided that the agency would evaluate the offeror's ability to "direct and control the operations . . . in an efficient and effective manner." RFP at 51-52. In its evaluation, the TET concluded that APSI's management plan demonstrated a "full and complete understanding of the requirements," and assigned its proposal one strength under this factor due to its proposed [REDACTED]. AR, Tab O, TET Report at 2-3. APSI argues that "[a] proposal of this quality again belies a rating of 'good,'" and should have received a rating of "outstanding." Supp. Protest at 7.

We again have no basis to object to the agency's rating. Like the challenge above, APSI does not contend that the agency misunderstood any portion of its proposal under this factor; instead, it argues that the evaluation conclusions, left undisturbed, warranted a higher adjectival rating. *Id.* This argument is without merit because the agency's rating methodology required "numerous strengths" for a rating of outstanding, which APSI concedes that its management plan did not receive. See *id.* Additionally, although the TET concluded that APSI's management plan demonstrated a "full and complete understanding of the requirements," we do not view this language as indicating that the understanding was also "exceptionally thorough," as required for a rating beyond "good." See AR, Tab H, SSP at 15.

APSI next argues that the agency unreasonably assigned its proposal a rating of "good" instead of "outstanding" under the staffing plan and key personnel factor. Supp. Protest

at 8-9. For this factor, the RFP provided that the agency would evaluate “how the offeror will staff the contract,” giving consideration to the offeror’s plan to recruit, retain, train, and supervise its staff. RFP at 52. The TET concluded that APSI “thoroughly demonstrated” that its key personnel have the required skills and knowledge to meet the requirements. AR, Tab O, TET Report at 3. APSI’s proposal received one strength here for its “innovative compensation and benefit plan designed specifically to minimize recruitment challenges.”⁴ *Id.* Again, we have no basis to object to the assignment of a rating of good here as the evaluators’ findings fit squarely within the definition of a rating of “good.” Specifically, APSI’s proposal only “thoroughly” demonstrated an understanding; APSI does not argue it demonstrated an exceptional understanding. See Supp. Protest at 9. APSI’s proposal also received only one strength for its compensation and benefit plan, but numerous strengths were required for a rating of “outstanding.” See AR, Tab H, SSP at 15.

Last, APSI argues that the agency unreasonably assigned its proposal a rating of “satisfactory” for its quality control plan. Supp. Protest at 7-8. Under this factor, the agency would evaluate the offeror’s “ability to propose and execute a quality control plan, whereby the [offeror] manages and monitors the process and takes the appropriate corrective action to correct performance to meet program objectives.” RFP at 53. Although the TET concluded that APSI’s quality control plan was “well-thought-out,” it did not assign its proposal any strengths under this factor, as required for a rating higher than satisfactory. AR, Tab O, TET Report at 5-6. Further, while the protester contends that its proposal should have been assigned a strength under the factor for providing “a complete draft Quality Control Plan for the contract,” Comments at 7, we have no basis to object to the agency’s decision not to assign its proposal such a strength. The TET report indicates that the agency was aware of APSI’s draft quality control plan. See AR, Tab O, TET Report at 6. Whether the agency should have valued it more highly is an agency determination that we will not disturb, absent evidence the determination is unreasonable, as it is an evaluation decision solely within the discretion of the agency. See *LA TERMICA Srl*, B-416964.2, B-416964.3, Jan. 30, 2019, 2019 CPD ¶ 31 at 6. In sum, we have no basis to object to the agency’s rating.

⁴ In its comments on the agency report, APSI further asserted that the agency should have assigned its proposal an additional strength under this factor for “already having staff on board, thereby significantly minimizing transition risk.” Comments at 7. We dismiss this challenge as untimely because it was filed more than 10 days after APSI knew, or should have known, of the basis for this protest ground. 4 C.F.R. § 21.2. APSI knew of all the necessary facts giving rise to this protest ground on October 7 when the agency provided APSI with a post-award debriefing that identified the APSI proposal’s adjectival ratings and assigned strengths. AR, Tab Z, Post-Award Debriefing at 8. APSI, however, did not raise this argument until November 28. Comments at 1, 7. Therefore, this argument is untimely and is dismissed.

Challenge Alleging Disparate Treatment

APSI next contends that the agency disparately evaluated proposals by assigning IWJV's proposal a strength under the staffing plan and key personnel factor for its employee retention and development, but did not assign APSI's proposal a strength for offering a "nearly identical plan." When a protester alleges disparate treatment in an evaluation, it must show the differences in evaluation did not stem from differences between the offerors' proposals. *Battelle Memorial Inst.*, B-418047.5, B-418047.6, Nov. 18, 2020, 2020 CPD ¶ 369 at 5-6.

Here, the protester essentially concedes that there were differences between the proposals in alleging that it "proposed much of the same thing." Comments at 7. As the agency points out, IWJV was credited for offering [REDACTED] employee [REDACTED] awards with a [REDACTED] for employees. AR, Tab O, TET Report at 22. APSI's proposal, however, provided that it typically recognizes performance with [REDACTED]. AR, Tab I.1, APSI's Technical Volume at 79. As such, we find no basis to conclude that the differences in the evaluation did not stem from differences in the proposals.

Challenge to the Evaluation of IWJV's Proposal

APSI next contends that the agency erred in assigning IWJV's proposal strengths under the work plan and management plan factors. Comments at 5-7. We find these arguments to be without merit.

First, APSI contends that the agency improperly assigned IWJV's proposal a strength under the work plan factor for "placing an order" for firearms and [REDACTED], when, in fact, IWJV had not yet placed an order. *Id.* at 5-6. In response, the agency explains that the strength was assigned not only because IWJV placed an order, but because it demonstrated an understanding of the weapons requirement and had the ability to obtain firearms within the first 90 days of contract performance. Agency Response to Comments at 4. Therefore, the agency argues, even if it mistakenly understood that the order had already been placed, the strength should still stand as the exact timing of the order was only one consideration in the assessment here. *Id.*

The finding of the strength in question was as follows:

IWJV provided a detailed plan to purchase new weapons within the first 90 days. IWJV has [REDACTED] firearms manufacturer and placed an order [REDACTED] for the appropriate number of weapons needed (per [Statement of Work]) for replacement in the first 90 days. The offeror has demonstrated a full understanding of the weapons requirement and has experience in the acquisition and delivery of large volumes of handguns. See excerpt from page 47: "We recently provided this process by ordering, obtaining, and distributing over [REDACTED] firearms to officers in [REDACTED]." This is a benefit to the government as the [Statement of Work] requires the replacement of all weapons

within the first 90 days and [IWJV] is familiar with the processes needed to complete this task.

AR, Tab O, TET Report at 20.

Based on the record, we have no basis to object to the agency's evaluation. In assigning this strength to IWJV's proposal, the TET acknowledged IWJV's "detailed plan to purchase new weapons within the first 90 days." *Id.* Although APSI contends that IWJV had not yet placed the order, the basis for the strength was not solely dependent on an order already being placed. For example, the TET highlighted a portion of IWJV's proposal where it outlined that it had recently provided over [REDACTED], which the agency valued as IWJV demonstrated it was "familiar with the processes needed to complete this task." *Id.* In other words, as the agency explains, the exact date of the order was only a sub-issue; the agency assigned IWJV's proposal a strength because of its experience and overall plan. Agency Response to Comments at 4. This protest ground is thus denied.

Second, APSI contends that the agency improperly assigned IWJV's proposal a strength under the management factor for proposing to provide a "[REDACTED] system" despite stating that it would provide the system only if the agency approved it. Comments at 6-7. In other words, APSI argues, IWJV had made only a conditional offer, which should not have warranted a strength. *Id.* We deny this protest ground. APSI has not demonstrated why IWJV's offer of this system subject to the agency's approval should have been undeserving of a strength, particularly as IWJV stated that it would provide the system if requested by the agency. The RFP did not prohibit such a consideration, and APSI does not cite any legal authority supporting its assertion that assigning a strength for offering a method of performance made subject to the agency's own approval is unreasonable.

Best-Value Tradeoff

APSI next argues that the agency's best-value tradeoff decision was unreasonable because the agency's comparison of proposals involved only a comparison of adjectival ratings and failed to explain why the supposed benefits of IWJV's proposal warranted the agency paying a higher price. Supp. Protest at 10.

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 Points Logistics, Inc.*, B-407273.53, June 10, 2014, 2014 CPD ¶ 174 at 13-14. Source selection officials have broad discretion in determining the manner and extent to which they will make use of technical, past performance, and cost/price evaluation results, and this judgment is governed only by the tests of rationality and consistency with the stated evaluation criteria. *Id.* A protester's disagreement with the agency's determinations as to the relative merits of competing proposals, or disagreement with its judgment as to which

proposal offers the best value to the agency, does not establish that the source selection decision was unreasonable. *General Dynamics-Ordnance & Tactical Sys.*, B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 8.

Here, the record reflects that the SSA considered the respective merits of the proposals in accordance with the RFP criteria, and concluded that IWJV's proposal offered technical advantages that were worth paying a higher price. AR, Tab V, SSDD at 30. In particular, the SSA found that the price premium associated with IWJV's proposal was "justified by the IWJV detailed plan for purchase of weapons; the IWJV Management Plan that includes an [REDACTED] that is an innovative approach and demonstrates the company looks to modernize and use new tools to mitigate potential risks; and IWJV's [REDACTED] quality control process to measure contract performance and take corrective measures when needed." *Id.* The protester has failed to show that this determination was irrational or inconsistent with the stated evaluation criteria.

Bait and Switch Allegation

In its final challenge, APSI alleges that IWJV engaged in an impermissible bait and switch with regard to its key personnel. Protest at 8. As the sole basis of support for this argument, APSI alleges that "[w]ithin one day of receiving the award," IWJV contacted APSI's program manager and offered to hire him and all of APSI's key personnel. *Id.* We dismiss this protest ground.

A protester's argument that key personnel identified in an awardee's proposal will not perform under the resulting contract is generally a matter of contract administration that our Office will not review. 4 C.F.R. § 21.5(c). To establish an impermissible bait and switch, a protester must show that the awardee either knowingly or negligently represented that it would rely on specific personnel that would not be available to perform the contract, and that the misrepresentation was relied on by the agency and had a material effect on the evaluation results. *ICF Inc., L.L.C.*, B-419049.3, B-419049.4, Mar. 9, 2021, 2021 CPD ¶ 117 at 8. Thus, evidence of a switch in key personnel after award is not dispositive. The relevant inquiry is whether at the time the awardee submitted its proposal the awardee knew or should have known that the key personnel it identified would not be available to perform the contract.

Here, even if we were to accept as true APSI's allegation that IWJV is seeking to hire all of APSI's key personnel following the award, APSI has not presented any allegations or evidence to demonstrate that IWJV knew or should have known that the key personnel identified in its proposal were unavailable to IWJV to perform the contract at the time it submitted its proposal. Because the protester has failed to allege a key element for a finding of bait and switch, this argument is dismissed as failing to state a valid basis for protest. 4 C.F.R. 21.1(c)(4), (f); *Platinum Bus. Servs. LLC*, B-419930, Sept. 23, 2021, 2021 CPD ¶ 348 at 7.

The protest is denied in part, and dismissed in part.

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