



# Decision

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**Matter of:** AT&T Corporation

**File:** B-421195; B-421195.2

**Date:** January 17, 2023

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## DIGEST

Protest challenging source selection authority's rationale for removing 33 strengths assigned by lower-level evaluators is sustained where the rationale is not meaningfully explained in the contemporaneous record.

## DECISION

AT&T Corporation, of Oakton, Virginia, protests the issuance of a task order to Lumen Technologies Government Solutions, Inc., of Herndon, Virginia, under fair opportunity request for proposals (RFP) No. 70US0921R70090054, issued by the Department of Homeland Security (DHS), United States Secret Service, for virtual private networks, and internet protocol service networks and non-Washington D.C. voice services. The protester argues that the agency's evaluation of offerors' task order proposals and resulting award decision were improper.

We sustain the protest.

## BACKGROUND

The solicitation was issued on June 28, 2021, by the Secret Service to transition the agency's telecommunications and information technology services to provide critical support for its facilities. Agency Report (AR), Tab 2, RFP at 151.<sup>1</sup>

The RFP was issued to holders of General Services Administration (GSA) Enterprise Infrastructure Solutions (EIS) governmentwide acquisition contracts, pursuant to the procedures of Federal Acquisition Regulation (FAR) subpart 16.5.<sup>2</sup> *Id.* at 211.<sup>3</sup> The solicitation contemplated the issuance of three task orders, on a fixed-price basis with economic price adjustments, with a 1-year base period and ten 1-year options. *Id.* at 148 and 190.<sup>4</sup> This protest concerns the issuance of the first task order for virtual private network service and internet protocol service networks and non-Washington D.C. voice services. AR, Tab 5, Contracting Officer Statement (COS) at 862.

The solicitation stated that the agency would evaluate each task order using a separate best-value decision. RFP at 211. The RFP established that the best-value tradeoff would be based on four technical factors of equal importance: performance management; technical approach; transition approach and past performance. *Id.* at 212.<sup>5</sup> The non-price factors, when combined, were significantly more important than price. *Id.* at 211. The solicitation also provided that, as technical evaluations converge, price may become the deciding factor in the award. *Id.*

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<sup>1</sup> The agency assigned a numbering system to the records in these cases. All citations are to the numbers assigned by the agency.

<sup>2</sup> GSA's EIS is a multiple-award, indefinite-delivery, indefinite-quantity (IDIQ) contract awarded on July 31, 2017, to provide agencies with telecommunications services on a global basis. *Qwest Gov't Servs., Inc. d/b/a CenturyLink QGS*, B-419271.4, B-419271.7, Apr. 14, 2021, 2021 CPD ¶ 169 at 2 n.1.

<sup>3</sup> The solicitation was subsequently amended seven times. Unless stated otherwise, all citations are to the final conformed version of the RFP provided by the agency.

<sup>4</sup> All task orders involved the same statement of work requirements and evaluation criteria.

<sup>5</sup> The agency was to assign one of the following adjectival ratings for the factors of performance management, technical approach and transition approach: superior, good, satisfactory, marginal or unsatisfactory. RFP at 216. For the past performance factor, the agency was to assign one of the following risk ratings: neutral, superior, satisfactory, or unsatisfactory. *Id.* at 216. Price was to be evaluated to determine if prices submitted were fair and reasonable. *Id.* at 215.

The agency received five proposals for the first task order, including proposals from AT&T, the incumbent, and Lumen. COS at 864. The agency evaluated the proposals of AT&T and Lumen as follows:

	Performance Management Factor	Technical Approach Factor	Transition Approach Factor	Past Performance Factor	Total Evaluated Price
AT&T	Good	Good	Satisfactory	Superior	\$36,838,243
Lumen	Satisfactory	Satisfactory	Satisfactory	Satisfactory	\$28,607,930

AR, Tab 10, Source Selection Decision (SSD) at 1038. The agency's technical evaluation team (TET) prepared its technical evaluation report, in which it assigned AT&T's proposal a total of 42 strengths across the various factors. AR, Tab 3, Technical Evaluation Report at 6-15. The technical evaluation report was submitted for review to the contracting officer, who was also the source selection authority (SSA). The SSA reviewed the evaluators' findings, and completed an independent review of the proposals. COS at 865.

With regard to AT&T's proposal, the SSA listed the rating for each technical factor assigned by the TET, and stated that he fully concurred with their findings. The SSA then listed nine specific "benefits" of AT&T's proposal. AR, Tab 10, SSD at 1039. The SSA also stated that AT&T's proposal had a relatively low price and had multiple "benefits" for the agency.<sup>6</sup> *Id.*

For the evaluation of Lumen's proposal, the SSA noted that the proposal was the lowest priced, and the SSA listed specific "benefits" stemming from the proposal. *Id.* at 1040-1041. The SSA then stated the following:

After my review of the submitted proposal and TET Report, I found that the TET Report did not make note of numerous strengths I identified in the

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<sup>6</sup> In a supplemental statement, submitted in response to this protest, the SSA states that he did not mention 33 of the strengths assigned to AT&T by the TET because, in his opinion, certain of the strengths identified by the TET merely met the solicitation requirements, and, therefore, did not qualify as strengths. AR, Tab 9, Supp. COS at 2. The SSA then provides an explanation for why some of the excluded strengths did not qualify as strengths. *Id.* at 1-5. For example, the TET assigned AT&T's proposal a strength under the transition approach factor because, "AT&T can add resources to meet expedited or emergency requirements, when and where they are needed, Page 92." AR, Tab 3, Technical Evaluation Report at 817. The SSA states that this strength was not listed in the source selection decision because "[g]iven that this capability would be an expectation of any provided transition services, AT&T's proposal was unremarkable and I did not view this as a strength." AR, Tab 9, Supp. COS at 1025.

submitted proposal. For my best value determination, I will take into account these numerous strengths which I have identified in my review of the Lumen proposal."

*Id.* at 1041. The SSA also identified, and described, four new strengths for Lumen's proposal. *Id.* As a result of these newly identified strengths, the SSA raised Lumen's adjectival rating for the performance management factor from satisfactory to good. *Id.*

Regarding the source selection decision, the contracting officer stated the following:

While AT&T's offer is more highly technically rated overall and provides many benefits to the Government when compared to the Lumen offer, the AT&T offer is not so higher rated overall, and does not provide benefits which justify paying over a quarter more than the price offered by Lumen. I determine that the offer presented by Lumen provides the best value to the Government for this requirement.

*Id.* at 1044. The agency issued task order No. 1 to Lumen on September 30, 2022, and this protest to our Office followed.<sup>7</sup>

## DISCUSSION

AT&T argues that the agency failed to adequately document its best-value tradeoff, including by failing to document the SSA's disagreement with, and departure from, the judgments of the technical evaluators. The protester notes that the TET assigned AT&T a total of 42 strengths under the various technical factors (AR, Tab 3, Technical Evaluation Report at 6-15), and that the SSA eliminated 33 of these strengths in his source selection document with no explanation. AT&T acknowledged that the contracting officer did attempt to provide his rationale for the elimination for these strengths in the supplemental agency report. However, the protester contends that because the SSA failed to contemporaneously document his basis for these conclusions, the source selection document was not adequately documented, and the best-value determination was therefore unreasonable.<sup>8</sup>

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<sup>7</sup> As the value of the task order at issue is greater than \$10 million, the procurement here is within our jurisdiction to hear protests related to the issuance of task orders under IDIQ contracts awarded by civilian agencies. 41 U.S.C. § 4106(f).

<sup>8</sup> While the protester also contests various aspects of the evaluation of AT&T's proposal based on the TET's findings, we need not address these contentions because, as explained below, the SSA significantly departed from the TET's evaluation of proposals. For example, AT&T challenges the satisfactory rating its proposal received under the transition approach factor in light of the ten strengths assessed by the TET under that factor. Comments/Supp. Protest at 2. Since the SSA disagreed with nine of these strengths, and therefore did not consider them in the source selection decision, we need not consider whether such strengths warranted raising AT&T's adjectival rating under

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In response, the agency characterizes AT&T's arguments as simple disagreement with the agency's evaluation of proposals. Supp. Memorandum of Law (MOL) at 4. The agency contends that its contemporaneous documentation of its evaluation and best-value tradeoff were sufficient, and that the SSA's reasoning for his conclusions was properly explained within his post-protest declaration. AR, Tab 9, Supp. COS at 2-5. The agency emphasizes that source selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Supp. MOL at 4.

As discussed below, we agree with the protester's contention that the SSA's elimination of 33 of AT&T's strengths, with no contemporaneous documentation, means there is inadequate support in the record to determine that the SSA's best-value decision was reasonable. As a result, we sustain AT&T's challenge.

In reviewing protests of awards in a task order competition, we do not reevaluate proposals but examine the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. *DynCorp Int'l LLC*, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 7. It is a fundamental principle of federal procurement law that a contracting agency must treat all offerors equally and evaluate their proposals evenhandedly against the solicitation's requirements and evaluation criteria. *DevTech Systems, Inc.*, B-418273.3, B-418273.4, Dec. 22, 2020, 2021 CPD ¶ 2 at 7.

In response to the protest, the SSA explains his review of the TET's evaluation. While he concurs with the overall ratings the TET assigned to AT&T's proposal, the SSA states that he did not agree with all of the strengths the TET assigned. AR, Tab 9, Supp. COS at 2. The SSA states the following regarding his awarding of strengths to AT&T's proposal:

I did not think all the strengths awarded [to AT&T] should have been considered as strengths. The strengths I listed in the [Source Selection Decision Document] SSDD were ones that stood out to me as providing a benefit to the government above the requirements in the solicitation. Thus, some of the strengths the TET assigned AT&T were not listed as such in the SSDD.

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the transition approach factor. As noted below, however, we find that the SSA failed to contemporaneously document his rationale for removing these strengths.

In addition to these challenges, the protester raises various collateral arguments. We have considered each argument but, other than those arguments discussed below, we find no basis to sustain the protest.

AR, Tab 9, Supp. COS at 1024.<sup>9</sup>

Although source selection officials may reasonably disagree with the ratings and recommendations of lower-level evaluators, they are nonetheless bound by the fundamental requirement that their independent judgments be reasonable, consistent with the provisions of the solicitation, and adequately documented in the contemporaneous record. *The Arcanum Group, Inc.*, B-413682.2, B-413682.3, Mar. 29, 2017, 2017 CPD ¶ 270 at 8; *see Earl Indus., LLC*, B-309996, B-309996.4, Nov. 5, 2007, 2007 CPD ¶ 203 at 7.

Here, the technical evaluation team assigned AT&T's proposal a total of 42 strengths under the various technical factors. AR, Tab 3, Technical Evaluation Report at 6-15. After reviewing these findings, the SSA performed his own assessment, and disagreed with many of the TET's findings of strengths for AT&T. In the end, the SSA assigned AT&T's proposal only nine strengths. AR, Tab 10, Source Selection Decision at 1039. The SSA did not explain in the source selection document why he removed 33 of AT&T's strengths, however, and any such explanation is wholly missing from the contemporaneous evaluation record. Following this removal, the SSA relied on his findings to determine that Lumen's lower-priced, lower-rated proposal provided the best value to the government. Because the SSA failed to adequately document the basis for his removal of a significant number of AT&T's strengths, 33 of 42, and resultant downgrade in the number of benefits represented by AT&T's proposal, we do not find that the agency has adequately documented its evaluation of AT&T's proposal and determination that the proposal benefits did not warrant the payment of a price premium. We therefore sustain the protest on this basis.

To the extent the agency argues that the SSA's declaration, provided during the course of this protest, sufficiently explained his removal of 33 of 42 of AT&T's strengths, we disagree. In this regard, it is an agency's obligation to adequately document the basis of its evaluation and best-value tradeoff, and, where an agency fails to do so, it runs the risk that our Office will be unable to determine whether the agency's evaluation was reasonable. *DKW Commc'ns, Inc.*, B-411182, B-411182.2, June 9, 2015, 2015 CPD ¶ 178 at 9. In addition, changes made by the SSA to the TET's evaluation record must be adequately documented. *See The Arcanum Group, Inc., supra; Earl Indus., LLC, supra.* Further, while our Office will generally consider post-protest explanations that

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<sup>9</sup> For the evaluation of Lumen's proposal, the SSA also disagreed with several of the TET's conclusions but, in contrast to his disagreement regarding the evaluation of AT&T's proposal, the SSA documented his views in the source selection decision and explained the additional strengths he found in Lumen's proposal. The SSA stated that the "TET Report did not make note of numerous strengths I identified in the submitted proposal," and then identified four purported "additional [s]trengths." AR, Tab 10, Source Selection Decision at 1041. As a result of these added strengths, the SSA raised Lumen's rating under the performance management factor from satisfactory to good. *Id.*

provide a detailed rationale for contemporaneous conclusions and fill in previously unrecorded details, *Netizen Corp.*, B-418281 *et al.*, Feb. 21, 2020, 2020 CPD ¶ 85 at 6-7 n.5, this principle is subject to the requirement that the post-protest explanation be consistent with the record.

Here, the contemporaneous record contains no support for the rationales now advanced by the SSA, as to why he discarded most of AT&T's strengths. Nor has the agency pointed to portions of the contemporaneous record that are consistent with these rationales. For example, the TET assigned AT&T's proposal a strength under the transition approach factor for AT&T's ability to meet expedited or emergency requirements on an as-needed basis. AR, Tab 3, Technical Evaluation Report at 817. The SSA discarded this strength because he stated that other offerors also discussed the ability to scale resources on an as-needed basis in their proposals. AR, Tab 9, Supp. COS at 1025. However, this statement, by the SSA, that other offerors described their abilities to scale their efforts, was not supported in the TET's report, or the source selection decision. We note also that the contemporaneous evaluation record provided to our Office contains no mention of Lumen's ability to add resources on an as-needed basis. See AR, Tab 3, Technical Evaluation Report at 829.

Effectively, the agency seeks to justify a widespread reevaluation of AT&T's proposal entirely on the basis of post-protest explanations, and without adequate support and documentation within the contemporaneous record. We find this to be unreasonable and inconsistent with the agency's obligation to contemporaneously document the basis of its evaluation and best-value tradeoff.

Finally, competitive prejudice is an element of every viable protest. *AdvanceMed Corp.*, B-414373, May 25, 2017, 2017 CPD ¶ 160 at 16. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was 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. *SunGard Data Sys., Inc.*, B-410025, Oct. 10, 2014, 2014 CPD ¶ 304 at 6-7. Here, there is no basis for our Office to know what the ultimate source selection decision might have been, had these flaws in the evaluation not occurred. In such circumstances, we resolve doubts regarding prejudice in favor of a protester since a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. *Immersion Consulting, LLC*, B-415155, B-415155.2, Dec. 4, 2017, 2017 CPD ¶ 373 at 7. Accordingly, we conclude that AT&T has established the requisite competitive prejudice to prevail in a bid protest.

## RECOMMENDATION

We recommend that the agency conduct a new best-value tradeoff determination and that the SSA document the basis of his evaluation conclusions, including the basis for any disagreements with the TET. We also recommend that the agency reimburse the protester its costs associated with filing and pursuing the protest, including reasonable

attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d). The protester's certified claims 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.

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General Counsel