



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: TekSynap Corporation

File: B-419464.3; B-419464.4

Date: January 5, 2023

Elizabeth N. Jochum, Esq., Tjasse L. Fritz, Esq., and David L. Bodner, Esq., Blank Rome LLP, for the protester.

William K. Walker, Esq., Walker Reausaw, for Chenega Agile Real-Time Solutions, LLC, the intervenor.

Bree A. Ermentrout, Esq., Anthony Lascola, Esq., Kenneth W. Sachs, Esq., and Darrell L. Tardiff, Esq., National Geospatial-Intelligence Agency, for the agency.

Sarah T. Zaffina, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging numerous aspects of agency's evaluation of the protester's technical and price proposal is denied because the evaluation was reasonable and consistent with the solicitation.
2. Protest arguing awardee has an unmitigated impaired objectivity organizational conflict of interest is dismissed where the protester is not an interested party to raise this allegation because it would not be in line for award even if this protest ground were to be sustained.

DECISION

TekSynap Corporation, a small business of Reston, Virginia, protests the National Geospatial-Intelligence Agency's (NGA) award of a contract to Chenega Agile Real-Time Solutions, LLC (CARS), a small business, of Lorton, Virginia, pursuant to request for proposals (RFP) No. HM0476-20-R-0001, to provide various enterprise management information technology (IT) support services. The protester argues that the agency unreasonably evaluated proposals and alleges that the awardee has an unmitigable organizational conflict of interest (OCI) rendering it ineligible for award.

We deny the protest.

BACKGROUND

On March 9, 2020, the NGA issued RFP No. HM0476-20-R-0001 (referred to as the Enterprise Management Services (EMS) procurement), pursuant to Federal Acquisition Regulation (FAR) part 15. The solicitation contemplated the single award of an indefinite-delivery, indefinite-quantity (IDIQ) contract and the simultaneous award of the initial task order (TO 0001). Agency Report (AR), Tab A.1.b., RFP at 4, 124.¹ The RFP provided that the IDIQ contract will have an 8-year ordering period, and that TO 0001 will have a 12-month base performance period and seven 12-month option periods. *Id.* at 124. The solicitation sought proposals for a full spectrum of IT services on multiple networks and security domains, including intelligence community cloud and desktop environments, at multiple locations worldwide for both existing and new facilities, in support of NGA's geospatial-intelligence mission. AR, Tab A.11.c, RFP amend. 10, attach. J.1, Performance Work Statement (PWS) at 5.

The solicitation provided that the source selection decision would be based on a best-value tradeoff between price and several non-price factors. AR, Tab A.11.b, RFP amend. 10 at 30. The non-price factors were technical/management, past performance, and security. *Id.* The RFP identified the technical/management factor as the most important factor and provided that the non-price factors, when combined, were significantly more important than price. *Id.* at 32. The technical/management factor consisted of the following three subfactors, listed in descending order of importance: management plan, technical approach, and transition plan.² *Id.* at 31-32. The solicitation provided that price proposals would be evaluated for completeness, reasonableness, and realism, and that each offeror's total evaluated price (TEP) would be used in the best-value tradeoff analysis.³ *Id.* at 40-42.

Five offerors, including TekSynap and CARS, submitted proposals by the April 27 closing date for receipt of proposals. AR, Tab E.4, Source Selection Decision (SSD) at 2. After evaluating the proposals, the agency established a competitive range, conducted discussions, and awarded the contract to CARS on December 1. *Id.* at 2-3.

¹ Citations to the record use the Adobe PDF pagination of documents submitted by the parties.

² The agency planned to evaluate proposals and assign adjectival ratings under the technical/management factor, and its underlying subfactors, of outstanding, good, acceptable, marginal, or unacceptable. *Id.* at 32-33. The rating assigned includes an assessment of both the quality of the proposal and risk associated with its strengths, weaknesses, and deficiencies. *Id.* 32-33.

³ The solicitation provided that the TEP would be based on the proposed price of TO 0001 for the 8-year period of performance plus a 6-month extension. *Id.* at 41-42. Any TO 0001 price greater than \$160 million would be ineligible for award. *Id.* at 41. The agency considered offerors' fully burdened labor rates, service catalog price lists, and TO 0001 price proposals in the price evaluation. *Id.* at 40-42.

On December 9, TekSynap filed a protest with our Office challenging the agency's evaluation and decision not to reopen discussions. We sustained the protest and recommended that the agency reevaluate proposals consistent with the solicitation terms or, alternatively, reopen discussions and request revised proposals before reevaluating, and make a new source selection decision based on that reevaluation. *TekSynap Corp.*, B-419464, B-419464.2, Mar. 19, 2021, 2021 CPD ¶ 130 at 14. In response to our recommendation, the agency reevaluated all offerors' final proposals, at which time the agency concluded that other issues existed with its evaluation and that changes to the agency's requirements necessitated amending the solicitation. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 3. Accordingly, the agency did not finish its reevaluation, but rather amended the RFP and sought revised proposals from offerors. *Id.* The agency thereafter engaged in several rounds of discussions with offerors, requesting and evaluating revised proposals over the next 18 months. *Id.*

In September 2022, the agency completed its reevaluation of final proposal revisions. The final evaluation ratings and prices for the proposals of TekSynap, CARS, and a third offeror (Offeror 3) were as follows:

	CARS	Offeror 3	TekSynap
TECHNICAL/ MANAGEMENT	Good	Good	Good
Management Plan	Good	Good	Good
Technical Approach	Good	Good	Acceptable
Transition Plan	Good	Good	Good
PAST PERFORMANCE	Substantial Confidence	Substantial Confidence	Substantial Confidence
SECURITY	Pass	Pass	Pass
TOTAL EVALUATED PRICE	\$152,993,457	\$148,094,635	\$154,777,362

AR, Tab E.2, Source Selection Evaluation Board (SSEB) Report at 26.

The source selection authority (SSA) independently assessed the SSEB report findings and the source selection advisory council's comparative analysis and recommendation. AR, Tab E.4, SSD at 2. On the basis of these evaluation results, the SSA concluded that CARS's proposal represented the best overall value to satisfy the agency's needs. *Id.* at 12. Specifically, the SSA found that CARS's proposal presented advantages over the proposals of both Offeror 3 and TekSynap under the technical/management factor, and that these advantages merited the three percent price premium over the lowest-price proposal from Offeror 3. *Id.* The SSA also found that Offeror 3's proposal provided several substantive advantages over TekSynap's proposal under the technical/management factor and concluded that Offeror 3's proposal provided a better value than TekSynap's higher-priced proposal. *Id.* at 11.

The agency awarded the EMS contract to CARS on September 15. After requesting and receiving a debriefing, TekSynap filed this protest with our Office.

DISCUSSION

TekSynap raises a number of allegations relating to the agency's technical and price evaluations. The protester also alleges that one of CARS's subcontractors performed work under another NGA contract creating an unmitigable impaired objectivity OCI for CARS that should have resulted in the agency's conclusion that CARS was ineligible for award. While we do not address every argument made by the protester, we have reviewed each argument and find no basis to sustain the protest. We discuss our conclusions below.

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. See *SDS Int'l, Inc.*, B-291183.4, B-291183.5, Apr. 28, 2003, 2003 CPD ¶ 127 at 5. 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. *Journey Aviation LLC*, B-419368.2, B-419368.3, June 2, 2021, 2021 CPD ¶ 224 at 4. We discuss two illustrative examples of TekSynap's evaluation allegations below.

Technical Evaluation

TekSynap argues generally that under the technical/management factor, NGA unreasonably and unequally evaluated its proposal. For instance, under subfactor 1.2, technical approach, the protester contends that the evaluation documentation does not support the assigned rating of acceptable because the agency did not assess any weaknesses to its proposal and therefore could not properly have concluded it presented a moderate risk of unsuccessful performance. Protest at 35. TekSynap also contends that the agency improperly evaluated the strength of its proposal by assessing moderate strengths and slight strengths and finding that the proposal "meets the standard" where significant strengths, moderate strengths, and slight strengths were warranted. Protest at 36. According to TekSynap, in the initial evaluation for subfactor 1.2, the agency assigned its proposal two significant strengths and three moderate strengths and a rating of good; however, upon reevaluation, NGA improperly removed these strengths from TekSynap's proposal and downgraded its rating from good to acceptable without explaining the change from the initial evaluation.⁴ *Id.*

⁴ The protester also argues that the agency improperly failed to identify risks associated with the proposals of CARS and Offeror 3. The agency, however, provided a detailed response to these allegations in its agency report. In its comments responding to the agency report, TekSynap made no further mention of its allegations regarding CARS and Offeror 3. Accordingly, we dismiss these allegations as abandoned. *AeroSage, LLC*, B-418292 *et al.*, Feb. 27, 2020, 2020 CPD ¶ 77 at 11 n.8.

In response to this allegation, the agency points out that the absence of weaknesses does not automatically correspond to a rating of outstanding because that rating also requires an “exceptional approach and understanding of the requirements.” COS/MOL at 69 (quoting RFP amend. 10 at 32). The agency notes that the evaluators found the protester’s technical approach demonstrated an acceptable approach and understanding of the agency’s requirements and provided adequate solutions to improve EMS. Accordingly, in the agency’s view, the proposal met the definition for a rating of acceptable. *Id.* at 69-70. The agency also responds that it did not downgrade TekSynap’s proposal after the initial evaluation but rather, a new SSEB conducted the reevaluation. *Id.* at 70-72. In addition, the agency amended the RFP, conducted several rounds of discussions with offerors, and received final proposal revisions from TekSynap. *Id.* The agency maintains that its evaluation was reasonable.

We find no merit to TekSynap’s evaluation challenge. Under the RFP, an outstanding rating was to be assigned where a proposal “indicates an exceptional approach and understanding of the requirements and contains multiple strengths, and risk of unsuccessful performance is low.” RFP amend. 10 at 32. In contrast, a rating of acceptable was to be assigned where a proposal “meets requirements and indicates an adequate approach and understanding of the requirements, and the risk of unsuccessful performance is no worse than moderate.” *Id.*

The evaluators assigned TekSynap a rating of acceptable consistent with their finding that TekSynap’s proposal “demonstrates an acceptable approach and understanding of the [g]overnment’s technical requirements and provides adequate solutions to improve upon NGA EMS.” AR, Tab D.2.i, TekSynap Final Technical/Management Evaluation Team (TMET) Consensus Evaluation Report at 20-21. In this regard, TekSynap’s proposal received a majority of “meets the standard” assessments, in addition to four slight strengths for its technical approach to leverage the underused functionalities of existing enterprise tools to improve visibility into the enterprise system, status reporting and coordination, and enterprise systems monitoring. *Id.* The agency has provided a reasonable explanation for the rating of acceptable, and we find no basis on which to sustain this protest ground.

Furthermore, we find that the agency’s reevaluation did not improperly downgrade the protester’s proposal or fail to reconcile the reevaluation with the agency’s initial evaluation. Our Office has consistently stated that the mere fact that a reevaluation of proposals after corrective action varies from the original evaluation does not constitute evidence that the reevaluation was unreasonable, since it is implicit that a reevaluation can result in different findings and conclusions. *See, e.g., PAE Aviation and Tech. Servs., LLC*, B-417704.7, B-417704.8, June 8, 2021, 2021 CPD ¶ 293 at 9. We have recognized that it is not unusual for different evaluators, or groups of evaluators, to reach different conclusions and assign different scores or ratings when evaluating proposals, since both objective and subjective judgments are involved. *MILVETS Sys. Tech., Inc.*, B-409051.7, B-409051.9, Jan. 29, 2016, 2016 CPD ¶ 53 at 7.

We have also generally found the argument that a reevaluation following corrective action was *per se* unreasonable because it was not reconciled with an earlier evaluation to be without legal or factual basis; this is because there is generally no requirement that an agency reconcile a later evaluation with an earlier one or explain why the evaluation changed. *Global Asset Techs., LLC*, B-416576.8, B-416576.9, Nov. 22, 2019, 2019 CPD ¶ 408 at 5. Quite simply, the overriding concern in our review is not whether an agency's final evaluation is consistent with an earlier evaluation, but rather, whether it is reasonable and consistent with the solicitation's stated evaluation criteria. See *Hughes Coleman, JV*, B-417787.5, July 29, 2020, 2020 CPD ¶ 257 at 7 n.5.

Here, the solicitation was amended, and revised proposals encompassing significant changes were evaluated by different individuals. The resulting ratings would not necessarily be the same as those in the initial evaluation even where, as here, the evaluators reasonably evaluated proposals consistent with the stated evaluation criteria. On this record, we have no basis to conclude that the agency's reevaluation was unreasonable.

Price Evaluation

TekSynap also challenges the agency's price evaluation, and, in particular, the agency's price realism evaluation. The protester argues that NGA's price realism analysis failed to examine the proposed technical approaches of the awardee and Offeror 3 when evaluating whether their proposed fully burdened labor rates were realistic for successful contract performance. Protest at 24-30. The agency responds that it considered technical approach in its evaluation and that its price realism analysis was reasonable and consistent with the solicitation. COS/MOL at 44-52. Based on this record, we find no basis to sustain this protest ground.

Where, as here, the award of a fixed-price contract is contemplated, a proposal's price realism is not ordinarily considered, since a fixed-price contract places the risk and responsibility for contract costs and resulting profit or loss on the contractor. *Integrity Mgmt. Servs., Inc.*, B-283094.2, May 3, 2000, 2000 CPD ¶ 67 at 4. Nonetheless, a solicitation may provide for a price realism analysis for purposes of measuring an offeror's understanding of the solicitation requirements or assessing risk. *Mortgage Contracting Servs., LLC*, B-418483.2, B-418483.3, Sept. 10, 2020, 2020 CPD ¶ 340 at 10. The nature and extent of such an analysis are matters within the discretion of the agency, and our review of a realism analysis is limited to determining whether it was reasonable and consistent with the terms of the solicitation. *Rust Consulting, Inc.*, B-406410, May 18, 2012, 2012 CPD ¶ 173 at 3.

As relevant here, the solicitation provided that the agency may conduct a price realism analysis on fully burdened labor rates and that the analysis, if undertaken, would be used to assess performance risk due to unrealistically low prices. RFP amend. 10 at 40. The solicitation provided that any risk identified during the price realism analysis would also effect the technical evaluation rating. *Id.*

The record demonstrates that, in conducting its price realism analysis, the agency in fact considered the technical approaches of the offerors when their proposed prices were determined to be too low. Specifically, the price evaluation team (PET) employed a two-step process in its evaluation. AR, Tab D.2.j, TekSynap Final PET Report at 10-11. First, the PET determined the median proposed labor rate for each labor rate. Then, the PET calculated a 20 percent variation (*i.e.* “median rate minus 20%”) to set the range for realism. AR, Tab D.15, Memorandum for Record PET Evaluation Standards at 1. The agency used the 20 percent variation because it was considered acceptable for historical competitive procurements at the agency. Any proposed labor rate lower than the median rate minus 20 percent was deemed unrealistic, *i.e.* too low. AR, Tab D.2.j, TekSynap Final PET Report at 10.

The PET also created a 7 percent allowance standard, meaning that an offeror’s fully burdened labor rates, on the whole, would be found to be realistic when less than 7 percent of the rates were too low. AR, Tab D.15, Memorandum for Record PET Evaluation Standards at 1-2. In other words, if the PET found one labor rate to be unrealistic, the offeror’s price still would be found realistic overall as less than 7 percent of its rates were unrealistic. Based on the number of unrealistic rates, the PET made referrals to the technical/management evaluation team (TMET) to analyze what impact, if any, these price risks would have on the technical evaluation. See AR, Tab D.2.j, TekSynap Final PET Report at 10.

Based upon our review of the record, we find no basis to question the agency’s price realism analysis. In its evaluation of the protester’s final proposal, the PET found none of TekSynap’s labor rates were too low; therefore, the PET determined that TekSynap’s labor rates were realistic and that a referral to the TMET to analyze price risk was unnecessary. AR, Tab D.2.j, TekSynap Final PET Report at 11.

In contrast, the PET determined that CARS’s labor rates were unrealistic because CARS proposed 248 labor rates that were unrealistically low, which exceeded the 7 percent allowance. AR, Tab D.1.i, CARS Final PET Report at 11. Thus, the PET referred CARS’s labor rates to the TMET for price risk analysis in accordance with the evaluation criteria. *Id.* The TMET assessed a slight weakness to CARS’s proposal because it found that “the unrealistically low labor rates present a slight risk to the offeror’s ability to provide a team of fully qualified personnel throughout the period of performance” of the contract. AR, Tab D.1.h, CARS Final TMET Consensus Evaluation Report at 8, 15. The TMET observed that while the majority of the work will be performed on-site, all the unrealistic labor rates were off-site rates, which could present a slight risk to staffing future task orders that require off-site personnel if there is not enough space on-site. *Id.* at 15. Specifically, the TMET concluded that the number of unrealistically low labor rates slightly increases the risk of unsuccessful performance because future task orders could be insufficiently staffed to meet requirements.⁵ *Id.*

⁵ The PET also found Offeror 3’s proposed labor rates realistic. The PET, however, referred one labor category to the TMET because Offeror 3 lowered the rate of the labor

Although the protester disagrees with the agency's price realism analysis and risk assessment, the agency has considerable discretion in determining the nature and extent of required price realism and proposal risk assessments in the context of fixed-price contracts. *Rust Consulting, Inc., supra*. For these reasons, we find no basis to question the adequacy of the agency's price realism evaluation. We conclude that the protester has not shown that the agency's price realism evaluation was inconsistent with its obligations under the solicitation and we find this protest ground to be without merit.

Conflict of Interest

Finally, as noted above, the protester alleges that CARS has an unmitigable impaired objectivity OCI due to a subcontractor's performance under another NGA contract. Comments & Supp. Protest at 3-5. However, because we find that the agency's technical and price evaluations are reasonable, and the SSA concluded that Offeror 3's proposal, with its lower price and advantages under the technical/management factor, was a better value than TekSynap's higher-priced proposal, the protester would not be next in line for award were we to sustain the protester's OCI allegations. TekSynap therefore is not an interested party to raise this argument. 4 C.F.R. § 21.0(a); see *CAC/ Dynamic Sys., Inc.*, B-406130, Feb. 28, 2012, 2012 CPD ¶ 77 at 8 (a protester is not an interested party to challenge the evaluation of the awardee's proposal where it would not be in line for award were its protest sustained); see also *Favor TechConsulting, LLC*, B-420279 *et al.*, Jan. 7, 2022, 2022 CPD ¶ 24 at 9 (a protester is not an interested party to raise OCI allegations where agency reasonably found protester was ineligible for award). Accordingly, we dismiss the protester's OCI allegation.

The protest is denied.

Edda Emmanuelli Perez
General Counsel

category in its final proposal revisions even though the PET had not identified the labor category in any price-related discussions. AR, Tab D.3.c, Offeror 3 Final PET Report at 11. The TMET considered the price risk of this unrealistically low labor rate, and determined that the labor rate did not present a risk to contract performance because the labor category was not used to perform TO 0001. AR, Tab D.3.b, Offeror 3 Final TMET Consensus Evaluation Report at 13-14. While the TMET did not consider the impact of this labor category in relation to other task orders, we note that even with this unrealistic labor category, Offeror 3's labor rates would still be realistic because the total number of rates that are too low does not exceed the 7 percent allowance.