



# Decision

**Matter of:** Spectrum Healthcare Resources, Inc.

**File:** B-421325

**Date:** March 21, 2023

**DOCUMENT FOR PUBLIC RELEASE**

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Amy Laderberg O’Sullivan, Esq., James G. Peyster, Esq., and David H. Favre, III, Esq., Crowell & Moring LLP, for the protester.

Nicholas T. Solosky, Esq., and Morgan M. Tapp, Esq., Fox Rothschild LLP, for Dentrust Dental International, Inc. d/b/a Docs Health, the intervenor.

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

Heather Self, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest challenging agency’s evaluation of proposals and resulting source selection decision is sustained because record shows the agency evaluated in a manner not consistent with the terms of the solicitation.

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## DECISION

Spectrum Healthcare Resources, Inc., of St. Louis, Missouri, protests the award of a contract to Dentrust Dental International, Inc. d/b/a Docs Health, of Pipersville, Pennsylvania, under request for proposals (RFP) No. 70FA4023R00000001, issued by the Department of Homeland Security, Federal Emergency Management Agency (FEMA) for medical and behavioral health services. The protester objects to the evaluation of proposals and resulting best-value tradeoff.

We sustain the protest.

## BACKGROUND

On October 4, 2022, using the procedures of Federal Acquisition Regulation (FAR) part 15, the agency issued the solicitation seeking proposals for “medical professionals to provide Medical and Behavioral Health Services to FEMA employees, Federal partners, Contractors and Visitors under FEMA oversight.” Agency Report (AR), Tab B.4, RFP at 1.<sup>1</sup> The health services are to be provided as part of the agency’s

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<sup>1</sup> Our citations are to documents’ Adobe PDF pagination.

workforce health and safety program for FEMA employees, and will be provided at both fixed non-disaster sites and disaster sites throughout the United States and its territories. *Id.* at 14-15. The types of health services to be provided include occupational health center services, medical employability and fitness for duty consultations, immunizations and travel medication, respiratory clearances, commercial drivers' licenses clearances, behavioral stress counselors, and nursing hours to support the National Recovery Communication Center and Regional Recovery Communication Centers. *Id.* at 14.

The solicitation contemplated the award of a single indefinite-delivery, indefinite-quantity (IDIQ) contract under which the agency would issue time-and-materials task orders with fixed labor rates. RFP at 1-2. The contract would have a 1-year base period of performance, four 1-year option periods, and included an option to extend contract services for up to six months under FAR clause 52.217-8. *Id.* at 3, 59. The awarded IDIQ contract would have a minimum guarantee of \$5,000, and a maximum ceiling of \$23.2 million. *Id.* at 15, 19.

The solicitation established a two-phased evaluation process with four evaluation factors: (1) technical capability; (2) staffing and management approach; (3) past performance; and (4) price. RFP at 96. The solicitation listed the non-price factors in descending order of importance, and provided that the non-price factors combined were slightly more important than price. *Id.* at 104. In phase I of the evaluation, the agency would assess offerors' under the most important factor--technical capability. *Id.* at 96. Following the phase I evaluation, the agency would provide advisory notifications informing offerors whether their proposals were among the most highly competitive--and should proceed to phase II--or whether their proposals were unlikely to be viable competitors and they should not proceed to phase II. *Id.* at 98. Offerors advised that their proposals were not among the most highly competitive would still be permitted to submit phase II proposals, however. *Id.* In phase II, the agency would evaluate offerors under the remaining three factors. *Id.* at 96.

The solicitation provided that the evaluation would "measure the Government's confidence that the offerors understand the requirement[,] proposes a sound approach[,] and will be successful in performing the contract." RFP at 106. The agency would assign proposals a confidence rating of high, some, or low. *Id.* With respect to price, the solicitation required offerors to complete the pricing template provided with the RFP, and the agency would calculate total evaluated price by adding together the subtotal price for each contract line item from the template for the 1-year base period, four 1-year option periods, and the 6-month option to extend services. *Id.* at 101, 104-105. The agency would then assess offerors' total evaluated prices for reasonableness and realism. *Id.* at 101, 108.

The agency received fourteen phase I proposals. Of those, the agency assigned four of the proposals (including the awardee, Docs Health's) a rating of high confidence, five of the proposals (including the protester, Spectrum's) a rating of some confidence, and the remaining five proposals a rating of low confidence. AR, Tab F, Award Decision at 4-5.

Following the phase I evaluation, the agency advised the four offerors whose proposals received ratings of high confidence, including the awardee, to proceed to phase II. *Id.* at 15. The agency advised the ten remaining offerors, including the protester, that their proposals were not among the most highly competitive, and that they were not recommended--but were permitted--to proceed to phase II. *Id.*

Four offerors chose to submit phase II proposals, including both the protester and awardee. AR, Tab F, Award Decision at 16. The combined phase I and phase II evaluation results for the protester's and awardee's proposals were as follows:

	<b>Spectrum</b>	<b>Docs Health</b>
<b>Technical Capability</b>	Some Confidence	High Confidence
<b>Staffing and Management Approach</b>	High Confidence	Some Confidence
<b>Past Performance</b>	Some Confidence	Some Confidence
<b>Total Proposed Price</b>	\$26,447,973.27	\$23,197,840.00
<b>Total Evaluated Price</b>	\$28,821,190.03	\$25,465,740.00

AR, Tab F, Award Decision at 26-27.

The source selection authority (SSA) concluded that Docs Health's proposal was higher technically rated than Spectrum's proposal, as Docs Health received a higher rating under the most important factor--technical capability. AR, Tab F, Award Decision at 28. Docs Health also submitted a lower-priced proposal than Spectrum. *Id.* Noting that a tradeoff is not required between a higher-rated, lower-priced proposal and a lower-rated, higher-priced proposal, the SSA nonetheless chose to conduct "a tradeoff analysis to ensure that the Government [was] receiving the best value." *Id.* After comparing proposals, the SSA found that Docs Health's lower-priced proposal was stronger than Spectrum's proposal under the technical capability and past performance factors, and that "the strengths that Spectrum provides in [staffing and management approach] do not warrant or justify" Spectrum's associated price premium. *Id.* at 31. Accordingly, the SSA concluded that Docs Health's proposal offered the best value, and selected the firm for award. *Id.* at 31, 34.

After being notified of the agency's award decision and receiving a debriefing, Spectrum filed this protest with our Office. AR, Tab G.1, Unsuccessful Offeror Email at 2; Tab G.2, Unsuccessful Offeror Letter at 1; Tab H.2, Spectrum Debriefing at 1; Tab H.3, Spectrum Debriefing Questions & Answers at 1.

## DISCUSSION

Spectrum challenges the evaluators' assessment of seven weaknesses in the firm's proposal under the most important evaluation factor--technical capability. Spectrum also challenges the agency's best-value tradeoff. As explained below, we sustain the

protest because the evaluation reflected in the record is inconsistent with the evaluation methodology set forth in the solicitation.

### Evaluation of Protester's Proposal

At the outset, we note that in reviewing protests of an agency's evaluation and source selection decision, our Office will not reevaluate proposals; rather, we review 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. *Science Applications Int'l Corp.*, B-420005 *et al.*, Oct. 21, 2021, 2021 CPD ¶ 372 at 5. While we do not substitute our judgment for that of the agency, we will sustain a protest if the agency's conclusions are inconsistent with the solicitation's evaluation criteria and applicable procurement statutes and regulations, or otherwise not reasonably based. *Id.*; *Seaward Servs., Inc.*, B-420580, B-420580.2, June 13, 2022, 2022 CPD ¶ 145 at 3.

As relevant here, for the technical capability factor the solicitation required offerors to submit information "detailing their EXPERIENCE by addressing" five topics. RFP at 97. Specifically, the RFP instructed that an offeror "[u]sing specific examples that are verifiable" should "describe [its] technical capability" in: (1) obtaining medical personnel with the necessary certifications and licenses "to support national medical response efforts"; (2) "deploying hundreds of medical staff capable of safely providing medical and behavioral health services to dispersed locations within a 96-hour period"; (3) "staffing medical personnel to the 48 contiguous states . . . in a saturated market"; (4) "staffing medical personnel to . . . Puerto Rico, USVI [U.S. Virgin Islands], Guam, American Samoa, Commonwealth of Northern Mariana Islands, Republic of Marshall Islands, and Federated States of Micronesia"; and (5) "providing daily reporting of work at a trackable level." *Id.* at 97-98.

The solicitation provided that, in describing their technical capability, offerors may reference up to five recent and relevant contracts, with prime contract references being considered more relevant than references for subcontractors. *Id.* at 98. Additionally, the solicitation established that "[t]he evaluation [would be] based on the technical capability presented by the offerors, and how well they align with the requirements in the SOW [statement of work]." *Id.* at 107. According to the RFP, "[m]ore weight may be given to experience serving as the prime contractor, depending on the circumstances." *Id.*

For the staffing and management approach factor, the solicitation did not require the use of verifiable experience examples, as it did for the technical capability factor. Rather, the solicitation instructed offerors to "illustrate [their] understanding of the technical requirements and objectives of this acquisition and provide a description of the proposed approach to performing the work." RFP at 100. The solicitation established that the evaluation would be based on the government's confidence in an offeror's "proposed approach to manage the tasks and staff a fully qualified workforce" and its

“demonstration of [its] understanding and approach to managing the overall contract.” *Id.* at 107.

The record reflects the evaluators identified two aspects of Spectrum’s proposal for technical capability that “Raise[d] Expectation of Success” (*i.e.*, strengths), seven aspects that “Lower[ed] Expectation of Success” (*i.e.*, weaknesses), and assigned the technical capability portion of the protester’s proposal a rating of some confidence. AR, Tab E.1, Phase I Technical Evaluation Report (Phase I Tech. Rpt.) at 12-13.

Specifically, the evaluators found that Spectrum’s “proposal addressed the requirements in the solicitation by using its past experience for four contracts and did not adequately address its technical capability to perform the work described in the PWS [performance work statement].” *Id.* at 12. The evaluators further noted that Spectrum “explained how they were going to get medical support deployed but did not address the process to get mental health professionals deployed in the timeframe outlined in the PWS.” *Id.*

Spectrum asserts that “Technical Capability, is an experience-based evaluation factor meant to establish an offeror’s ability to provide staffing for the contract based on its prior corporate experience providing similar types of staffing under similar urgent circumstances under other federal contracts.” Spectrum contends that “[a] separate evaluation factor, . . . Staffing and Management Approach, addresses the question of how the offeror will meet the SOW requirements.” Protest at 9-10. In short, Spectrum maintains that technical capability “was to assess capability based on historical experience, and [staffing and management approach] was intended to assess the proposed performance approach.” *Id.* at 10.

Spectrum argues that “FEMA unlawfully comingled the scope of [the technical capability factor] and [the staffing and management approach factor] when evaluating Spectrum’s [technical capability] proposal during the Phase I evaluation process.” Protest at 10. Spectrum maintains that “[i]nstead of limiting the assessment to experiential technical capability, FEMA repeatedly criticized Spectrum under [the technical capability factor] for not explaining its proposed staffing approach in the midst of outlining its experience staffing similar efforts (including the incumbent contract).” *Id.* Specifically, Spectrum contends that the following two weaknesses assessed in its proposal under the technical capability factor improperly conflated aspects of the staffing and management approach evaluation with the evaluation of technical capability:

The vendor did not adequately *outline how they can deploy the medical personnel/labor categories (except nurses) within the 96-hour timeframe outlined* in the PWS.

While the vendor indicated on the chart on pg. ii that it can deploy behavioral health staff within 96 hours, *the proposal does not illustrate how it plans to do that* and how it has previously met that timeframe.

*Id.* at 10-11; *citing with added emphasis* AR, Tab E.1, Phase I Tech. Rpt. at 12-13.

Spectrum characterizes the assessment of these weaknesses as “particularly improper because offerors had no reason to provide ‘how’ explanations in the Phase I [technical capability] proposal when the RFP made it abundantly clear that the precise ‘how’ issues would be fully addressed in the Phase II proposal in response to . . . Staffing and Management Approach.” Protest at 11. As a result, Spectrum, explains “there is no possible basis for the Agency to assert that addressing these performance approach issues were somehow implicitly encompassed under [the technical capability factor] . . . when they were explicitly identified as issues for consideration under [the staffing and management approach factor].” *Id.* Thus, Spectrum claims, “FEMA’s decision to materially down-grade Spectrum’s proposal under [technical capability] for not addressing [staffing and management approach] considerations was unreasonable and unlawful.” *Id.*

In response, the agency acknowledges that “[o]fferors were required to detail their experience to show that they had the technical capability to perform,” but argues that “[o]fferors without experience in certain areas were not excepted from showing their capability to complete the requirements.” Memorandum of Law (MOL) at 14. According to the agency, offerors without prior experience in certain technical capability topic areas, “could not simply ignore the requirement and expect the Agency not to assess its failure to address the requirements as a weakness.”<sup>2</sup> *Id.*

At the crux of the parties’ arguments is a disagreement over the scope of the solicitation’s technical capability evaluation factor. When a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions. *Patronus Sys., Inc.*, B-418784, B-418784.2, Sept. 3, 2020, 2020 CPD ¶ 291 at 5. To be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. *Id.* Here, the interpretation of the solicitation advanced by FEMA is unreasonable because it fails to read the solicitation as a whole.

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<sup>2</sup> Additionally, the agency maintains that the two challenged weaknesses were not assessed for Spectrum’s “failure to explain a staffing approach[,] but were tied to clear and explicit requirements under [the technical capability factor].” *Id.* Specifically, the agency points to the solicitation’s requirement for offerors to show their “*technical capability deploying hundreds of medical staff capable of safely providing medical and behavioral health services to dispersed locations within a 96-hour period.*” *Id.*, citing with added emphasis RFP at 97. This argument, however, ignores the plain language of the assessed weaknesses, which indicate the evaluators’ dissatisfaction with how Spectrum planned to deploy medical personnel, rather than with Spectrum’s existing technical capability for such deployment, as demonstrated through verifiable experience examples.

Specifically, FEMA ignores the solicitation's instructions to offerors to detail "their EXPERIENCE" and requiring offerors to use "specific examples that are verifiable" from up to five reference contracts in describing their technical capability. RFP at 97-98. Additionally, FEMA ignores the solicitation's explanation that "[m]ore weight may be given to experience serving as the prime contractor" when evaluating an offeror's technical capability. *Id.* at 107. Read together, the instructions and evaluation criteria indicate that offerors were limited to describing their technical capability through the lens of verifiable past experience. Thus, the agency's argument that offerors "without experience in certain areas were not excepted from showing their capability" is inconsistent with the terms of the solicitation. MOL at 14.

Further, reading the evaluation factors together demonstrates that while an offeror's technical capability was to be evaluated based on its verifiable experience, under the staffing and management approach the agency specifically would assess an offeror's "plan to achieve the objectives of the IDIQ SOW." RFP at 107. Accordingly, we find unreasonable the agency's assessment of the two weaknesses under the technical capability factor for Spectrum's failure to address how it would deploy personnel--*i.e.*, its "plan to achieve the objectives" of the SOW, as the solicitation required the agency to assess offerors ability to meet the requirements of the SOW--or how offerors planned to perform--under the staffing and management approach factor. *See e.g., Seaward Servs., Inc., supra* at 9 (finding evaluation of *how* offeror would meet the RFP's requirements to be inconsistent with solicitation's evaluation methodology, which was "confined to consideration of an offeror's actual experience in operating, maintaining, and repairing aluminum-hulled vessels").

Spectrum also challenges the five remaining weaknesses assessed under the technical capability factor, arguing that the agency failed to consider the entirety of the information in the firm's proposal. Protest at 11-18. Spectrum maintains that the evaluators assessed weaknesses "based on a limited reliance on cherry-picked information when the purportedly missing information in question was provided in later portions of Spectrum's [technical capability] submission." *Id.* at 11-12. Spectrum further contends that instead of being assessed weaknesses, the information ignored by the agency warranted the assessment of strengths in the firm's proposal and the assignment of a high confidence rating for technical capability. *Id.* at 19.

In responding to Spectrum's challenges, the agency, at times, appears to continue its conflation of the evaluation criteria under the technical capability and staffing and management approach factors. Comments at 8-9. For example, in addressing the weakness assessed in Spectrum's proposal for not giving "adequate evidence/ experience regarding providing daily reporting and quality assurance," FEMA explains that one of the reasons for the assessment of this weakness was because "Spectrum's Proposal lacks detail as to how Spectrum intends to apply quality assurance measures to the healthcare services it would provide to the Agency under this contract)." MOL at 21; *see also* AR, Tab E.1, Phase I Tech. Rpt. at 13. Further, FEMA maintains that while Spectrum's proposal "notes that it provides FEMA with weekly reports under its current contract and that [Spectrum's teaming partner] provides special reports within

three business days of request, it does not address *how* it proposes to provide the daily reporting requested in the PWS.” MOL at 21.

As another example, in explaining why the evaluators assessed a weakness in Spectrum’s proposal for being “extremely confusing to decipher,” the agency represents that part of the evaluators’ confusion was because “in response to certain requirements, Spectrum described its experience as ‘Not Applicable.’” *Id.* at 22; see *also* AR, Tab E.1, Phase I Tech. Rpt. at 12. The agency’s post-protest elucidation of the rationale behind the weakness suggests that it was assessed, in part, because the evaluators did not understand that the evaluation of technical capability was to be in the context of an offeror’s past experience with the factor’s identified topic areas.

The agency’s post-protest explanations only serve to demonstrate that the evaluators improperly conflated considerations from the staffing and management approach factor into the evaluation of Spectrum’s proposal under the technical capability factor, and that this conflation was a factor in the assessment of some of the remaining five weaknesses assessed in Spectrum’s proposal. Thus, based on the record before us, we cannot conclude that the agency’s evaluation of Spectrum’s proposal under the technical capability factor was reasonable.

Competitive prejudice is an essential element of every viable protest. *MetroStar Systems, Inc.*, B-419890, B-419890.2, Sept. 13, 2021, 2021 CPD ¶ 324 at 9. 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. *Id.*; *AT&T Mobility LLC*, B-420494, May 10, 2022, 2022 CPD ¶ 115 at 12.

Here, the record reflects, that the agency’s failure to evaluate in a manner consistent with the solicitation affected its assessment of at least two weaknesses in Spectrum’s proposal, and may have affected the assessment of other weaknesses as well. Accordingly, we cannot conclude with any certainty that, had the agency evaluated proposals consistent with the terms of the solicitation, that the SSA would have made the same selection decision. In such circumstances, we resolve doubts regarding prejudice in favor of a protester as a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. *Id.* Thus, we conclude that Spectrum has established the requisite competitive prejudice to prevail in its bid protest, and we sustain the protester’s challenge to the agency’s evaluation of the firm’s proposal under the technical capability factor.

#### Best-Value Tradeoff

Spectrum also contends that the agency’s best-value tradeoff necessarily was flawed because the underlying technical evaluation was flawed. Protest at 19; Comments at 8. The agency responds that its source selection decision was based on a reasonable underlying evaluation. MOL at 22. In reviewing an agency’s source selection decision, we examine the supporting record to determine if it was reasonable and consistent with



the solicitation's evaluation criteria and applicable procurement statutes and regulations. *Guidehouse LLP; Jacobs Tech., Inc.*, B-420860 *et al.*, Oct. 13, 2022, 2022 CPD ¶ 257 at 17. In light of our determination that the evaluation of Spectrum's proposal under the technical capability factor was inconsistent with the solicitation's evaluation criteria, we find the source selection based on that unreasonable evaluation to be itself unreasonable. *Weston-ER Fed. Servs., LLC*, B-418509, B-418509.2, June 1, 2020, 2020 CPD ¶ 311 at 16 ("an agency's best-value determination is flawed when one or more of the underlying evaluations upon which that tradeoff analysis is based are unreasonable, erroneous[,] or improper").

Spectrum further maintains that the SSA "improperly considered [the awardee's] purported price advantage and gave it undue weight" in conducting the best-value tradeoff. Protest at 19. Specifically, Spectrum argues that because the solicitation set forth a maximum contract ceiling of \$23.2 million, the awardee's price advantage was "a mere \$2,160" as compared to the contract ceiling. *Id.* Spectrum contends that "FEMA gave undue weight to the nominal price advantage" contrary to the solicitation's evaluation scheme which established price as the least important factor. *Id.*

Because we sustain the protest, and in light of our recommendation to reevaluate Spectrum's proposal and make a new selection decision, we need not reach the protester's contention that the agency gave "undue weight" to price in the best-value tradeoff.<sup>3</sup> We note for the record, however, that Spectrum's argument here is based on a false premise. As discussed above, the solicitation explained that the agency would use an offeror's total evaluated price for evaluation purposes, and that it would calculate that price by adding together an offeror's proposed prices for the base year, each option year, and the option to extend services. RFP at 101, 104-105, 108. Contrary to Spectrum's contention that the price difference between its proposal and the awardee's proposal is "a mere \$2,160," based on the methodology set forth in the solicitation, the actual difference between price proposals is approximately \$3.3 million.<sup>4</sup> AR, Tab F, Award Decision at 26, 31.

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<sup>3</sup> In conducting any corrective action, the agency may wish to reconsider its evaluation of all offerors in light of the findings and conclusion discussed above.

<sup>4</sup> To the extent that Spectrum's representation of the erroneous price differential is an attempt to argue that the agency should have utilized the contract ceiling for price evaluation purposes, this allegation is untimely. The solicitation was clear, on its face, that the agency would use offerors' total evaluated prices for purposes of evaluation. Any claim that a different price evaluation method would have been more appropriate is, essentially, a challenge to the terms of the solicitation. As such, the protester was required to raise this allegation prior to the closing time for receipt of initial proposals-- which Spectrum did not. 4 C.F.R. § 21.2(a)(1); see e.g., *American Sys. Group*, B-418535, June 9, 2020, 2020 CPD ¶ 190 at 4 (dismissing as untimely protester's contention that the agency "'capriciously adopted' a 25 percent price realism factor when the solicitation stated that for a price to be determined realistic it must not be less than 25 percent of the average of all prices received).

## RECOMMENDATION

We recommend that the agency reevaluate Spectrum's proposal under the technical capability factor consistent with the discussion above. Following the reevaluation, the agency should make a new source selection decision in accordance with the solicitation. Further, we recommend that the protester be reimbursed the cost of filing and pursuing this protest, including reasonable attorneys' fees. See 4 C.F.R. § 21.8(d)(1). Spectrum should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Edda Emmanuelli Perez  
General Counsel