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# Decision

**Matter of:** Midnight Sun-Centennial Sunnliaq JV, LLC

**File:** B-420583.4

**Date:** May 11, 2023

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## DIGEST

1. Protest that agency misevaluated protester's and awardee's proposals is denied where the record shows the evaluations were reasonable and consistent with the RFP criteria.
  2. Protest that agency unreasonably selected awardee's proposal for award is denied where the source selection authority recognized protester's advantage under one evaluation factor and its significantly lower price, and reasonably determined that awardee's superiority in another evaluation factor would provide sufficient benefit to the agency to justify its higher evaluated price.
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## DECISION

Midnight Sun-Centennial Sunnliaq JV, LLC, of Anchorage, Alaska, a small business, protests the award of a contract to MVL USA Inc., of Lansing, Michigan, also a small business, under request for proposals (RFP) No. W912HN20R4002, issued by the Department of the Army, Corps of Engineers, for design-build construction services related to Fort Bragg, North Carolina. The protester contends that the Corps misevaluated both firms' proposals and made an unreasonable source selection decision.

We deny the protest.

## BACKGROUND

The RFP, issued September 9, 2020, instituted a two-phase design-build procurement under which offerors were to submit proposals to provide general construction services for three separate indefinite-delivery, indefinite-quantity single-award task order contracts, one each for Fort Bragg, North Carolina; Fort Stewart, Georgia; and Fort Gordon, Georgia.<sup>1</sup> The contract at issue here, for Fort Bragg, was set aside for small businesses. The RFP assigned the Fort Bragg contract a capacity of \$49 million.

The two-phase procurement process provided that proposals would be evaluated first under two factors: past performance and design experience. AR, Tab 3d, RFP amend. 3 at 16. The second phase evaluation added two more factors: technical approach and pricing. *Id.* at 18-19. In selecting the best value proposal, the technical approach factor would be less important than past performance, but more important than design experience. *Id.* at 19-20. The non-price factors, when combined, would be significantly more important than price. *Id.* at 19.

The technical approach evaluation was to be based on what the RFP described as a “quantitative proposal for the ‘sample/seed project’ task order. *Id.* at 17. The project was for modernization of a combat readiness training facility at Ft. Stewart, Georgia, consisting of a pre-engineered metal building of approximately 9,600 square feet. AR, Tab 3c, RFP amend. 2 at 2; Tab 3e, Cover Letter to RFP amend. 3 at 13-14. Proposals would be evaluated “on the technical approach in determining a price proposal utilizing the applicable Construction Specification Institute (CSI) numbers and appropriate quantities from R.S. Means,”<sup>2</sup> and on “how well they understand the required application of the proposed coefficient and mark-ups as they apply to the SEED/SAMPLE project(s).” AR, Tab 3d, RFP amend. 3 at 17.

Additionally, the Corps would “evaluate the Offeror’s overall quantitative approach for logic and reasonability,” and “how well defined and clear their supported approach to the SEED/SAMPLE project(s) is conducted.” *Id.* The evaluation would result in an adjectival rating of outstanding, good, acceptable, marginal, or unacceptable, and would also assess the level of associated risk: low, moderate, high, or unacceptable. *Id.* at 18-19. As relevant to the protest, an outstanding rating under the technical approach factor indicated a proposal with an “exceptional approach and understanding,” multiple strengths, and a low risk of unsuccessful performance. *Id.* at 18. A rating of good

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<sup>1</sup> Although issued as three separate single-award contracts, one for each location, the contracts contemplated orders for “projects [anywhere] within the three state region of North Carolina, South Carolina, and Georgia” and described “the primary focus area” being at the three locations. Agency Report (AR), Tab 3d, RFP amend. 3 at 3.

<sup>2</sup> RSMeans Cost Works (“R.S. Means”) refers to commercial database products and a pricing book that track the costs of construction materials, labor, and equipment. *W-T, Joint Venture*, B-417905.2, Dec. 7, 2020, 2020 CPD ¶ 396 at 4 n.7; *Midnight Sun-Centennial Kirratchiaq JV, LLC*, B-419934 *et al.*, Oct. 4, 2021, 2021 CPD ¶ 336 at 3 n.5; <https://www.rsmeans.com/info/contact/about-us> (last visited May 11, 2023).

designated “a thorough approach and understanding,” at least one strength, and a risk of low to moderate. *Id.* at 18. An acceptable rating applied to a proposal that met the requirements, showed an “adequate approach and understanding,” and a risk of “no worse than moderate.” *Id.*

In response to a question from a firm participating in phase 2, asking whether they were “required to develop a detailed design to quantify the CSI Item List [in the RFP] to justify the quantities considered,” the Corps responded that “[n]o detailed design is required for this sample project[.]” AR, Tab 10, Phase 2 Bidder Inquiries & Responses at 9.

The price factor evaluation was based on application of the offeror’s percentage coefficients that would be applied to a set of standardized construction costs known as the RSMeans Cost Works construction cost database, for specific locations, to which would be added the offeror’s proposed home office overhead rate. AR, Tab 3c, RFP amend. 2 at 2-13; Tab 3e, Cover Letter to RFP amend. 3 at 2-5.

The Corps received 40 proposals, including proposals from both MVL and Midnight, both of which sought the contract for Fort Bragg. After evaluating the phase 1 proposals, the Corps selected 11 offerors to continue to phase 2; five of these offerors, including MVL and Midnight, were selected to continue to phase 2 for the Fort Bragg contract.

In the technical approach evaluation, the Corps identified no strengths, weaknesses, or deficiencies in Midnight’s proposal, and rated it acceptable overall. AR, Tab 8, Phase 2 Source Selection Evaluation Board Report at 14. The Corps identified two strengths in MVL’s technical approach, both of which stemmed from the firm’s inclusion of a conceptual design for the sample project. The agency determined that the firm’s design “clearly demonstrated their technical approach” and supported MVL’s “selection of additional CSI line[] items which demonstrated a better understanding of the sample project requirements.” AR, Tab 9, Source Selection Decision Document (SSDD) at 21. Those two strengths increased the Corps’s confidence that MVL would “successfully and efficiently perform future task orders.” *Id.*

The source selection authority (SSA) reviewed each offeror’s pricing, starting with MVL’s, which showed that the firm’s coefficients were, on average, slightly higher than the agency’s estimate, and its home office overhead was significantly lower than the estimate. In comparison, Midnight’s coefficients were, on average, much lower than the agency estimate, and its home office overhead was significantly higher. AR, Tab 9, SSDD at 19-20. The final factor evaluation ratings and prices were:

<b>Factor</b>	<b>MVL</b>	<b>Midnight</b>
<b>Past Performance</b>	Substantial	Substantial
<b>Design Experience</b>	Good	Outstanding
<b>Technical Approach</b>	Outstanding	Acceptable
<b>Evaluated Price</b>	\$64.98 million	\$37.54 million

*Id.* at 11, 19-20.

The source selection authority (SSA) engaged in a tradeoff that resulted in the selection of MVL's higher-cost proposal, while recognizing that Midnight's proposal was the lowest priced but was acceptable and had no identified technical approach strengths. In contrast, "MVL's sample project proposal was far superior," and in particular, its "conceptual design clearly demonstrated their technical approach . . . and supported its selection of additional CSI line items which demonstrated a better understanding of the sample project requirements." *Id.* at 21. The SSA explained that it was "in the government's best interest to pay a premium for an offeror who demonstrates a superior approach to preparing project proposals." *Id.* While noting that Midnight had been rated superior to MVL under the design experience factor, the SSA deemed Midnight's advantage, and its lower evaluated price, insufficient to outweigh the agency's increased confidence in MVL's technical approach. *Id.* After being notified of the award and receiving a debriefing, Midnight filed this protest.<sup>3</sup>

## DISCUSSION

Midnight's protest centers on the agency's statement to offerors that a conceptual design for the seed/sample project was not required, the agency's evaluation that MVL's submission of a conceptual design was the basis for its non-price superiority, and the tradeoff rationale that MVL's proposal merited its significantly higher evaluated price over Midnight's proposal. As discussed below, the record supports the reasonableness of the evaluation and the agency's tradeoff judgment in selecting MVL's proposal.<sup>4</sup>

### Technical Approach Evaluation

Midnight challenges the technical evaluation of both its and MVL's proposals. First, the protester argues that the evaluation of its proposal was unreasonable because, in concluding that the proposal indicated a low risk of unsuccessful performance, the evaluators unreasonably assessed a rating of acceptable, rather than good or outstanding. The rating was unreasonable, Midnight argues, because an acceptable rating denoted a risk "no worse than moderate." In contrast, the RFP provided that a rating of good indicated a proposal with a risk low to moderate, and a rating of

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<sup>3</sup> The evaluation and award decision at issue in this protest are the result of corrective action taken in response to an earlier protest by Midnight, which our Office dismissed as academic when the Corps announced corrective action. *Midnight Sun-Centennial Sunnliq JV, LLC*, B-420583.3, Dec. 1, 2022 (unpublished decision).

<sup>4</sup> Midnight argued that it was improper for the Corps to evaluate the two most recent years of past performance by MVL. The firm contended that the Small Business Administration (SBA) had excluded MVL's revenues for those two years when assessing whether the firm was an eligible small business; Midnight argued that the Corps was required to do likewise in evaluating MVL's past performance. Comments at 9. Midnight fails to show why the SBA's size determination rules would restrict the information the Corps could consider in a past performance evaluation, so we dismiss the argument as lacking a valid legal basis. 4 C.F.R. § 21.5(f).

outstanding indicated a risk that was low, so Midnight reasons that its proposal's low risk required a technical approach rating of either good or outstanding.

Where a protester challenges an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of agency evaluators; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria, as well as applicable statutes and regulations. *Veterans Evaluation Servs., Inc. et al.*, B-412940 *et al.*, July 13, 2016, 2016 CPD ¶ 185 at 6.

The Corps argues that the assessment of Midnight's technical approach as acceptable was reasonable because that rating is consistent with a proposal evaluated as low risk, but more importantly it reflected the evaluators' reasonable judgment that Midnight's proposal provided no strengths that would justify a higher rating of good or outstanding. Memorandum of Law (MOL) at 9-11.

Our review of the record supports the Corps's evaluation of Midnight's technical approach as acceptable. The RFP indicated that an assessment of an offeror's risk of unsuccessful performance would be part of the technical approach evaluation. The RFP did not provide for a minimum rating of good where an offeror's proposal was deemed low risk; rather, the acceptable rating applied to Midnight's proposal was consistent with the RFP criteria that the proposal met requirements, had an adequate approach and understanding of the requirements, and the associated risk was no greater than moderate.<sup>5</sup>

Midnight next challenges the evaluation of MVL's proposal, arguing that the Corps applied unstated criteria by informing offerors that a conceptual design and design narrative were not required for the seed/sample task order. Midnight argues that the Corps unreasonably evaluated MVL's technical approach as superior due to its inclusion of a conceptual design. Protest at 10-12; Comments at 5-6. The protester argues that consideration of MVL's design concept was inconsistent with the RFP criteria that described the technical evaluation as being quantitative. *Id.* at 6.

The Corps argues that the evaluation of MVL's technical approach was reasonable and consistent with the RFP. The agency notes that even though it confirmed to offerors that they were not required to provide additional documentation for the seed/sample project, such as a design concept, additional information was not prohibited. The Corps contends that upon reviewing MVL's technical approach, the agency reasonably

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<sup>5</sup> To the extent Midnight contends that the record demonstrates unequal treatment, our review does not support the protester's characterization. The agency found MVL's proposal superior based on its demonstrated understanding of the requirements that supported its technical approach and pricing. While Midnight's proposal was also credited for demonstrating an understanding of the contract requirements, the record amply demonstrates that the Corps judged the level of understanding demonstrated in MVL's technical approach as significantly superior. *E.g.*, AR, Tab 9, SSDD at 21.

concluded that the proposal demonstrated significant technical approach strengths to justify the firm's selection of additional cost line items, and showed superior understanding of the contract requirements. MOL at 12-13.

A solicitation must inform offerors of the basis on which proposals will be evaluated and the evaluation must be based on the factors set forth in the solicitation. Federal Acquisition Regulation 15.304. However, an agency is not required to list every area that may be considered in the evaluation, and so, it may evaluate areas that are reasonably related to or encompassed by the stated criteria. *MicroTechnologies, LLC*, B-403713.6, June 9, 2011, 2012 CPD ¶ 131 at 3.

Our review supports the reasonableness of the Corps's evaluation of MVL's proposal. While Midnight emphasizes that the RFP described the technical approach evaluation as quantitative, the RFP also described the evaluation as considering whether the technical approach demonstrated "logic and reasonability," and the extent to which it was "well defined and clear" in supporting the offeror's specific approach to the seed/sample project. AR, Tab 3d, RFP amend. 3 at 17. While offerors were not required to provide a design or other narrative (and Midnight's proposal without those was evaluated as acceptable), we see nothing unreasonable in the evaluators' judgment that MVL's inclusion of additional information to justify its approach to the seed/sample project provided strengths that exceeded the requirements and could provide value to the agency during performance. It was not necessary for the RFP to specifically identify methods that offeror's could use to demonstrate the superiority of their approach, and the Corps reasonably considered the inclusion of a design concept in MVL's technical approach in assessing strengths and an outstanding rating. Accordingly, we deny Midnight's challenges to the evaluation.

#### Best-Value Tradeoff

Midnight challenges the source selection decision as unreasonable, arguing that the Corps has not justified its selection of MVL's proposal over Midnight's acceptable and significantly lower-priced proposal. The firm argues that by selecting MVL's proposal over Midnight's, the Corps has selected to have its projects priced 73 percent higher without any basis to expect a superior result; only that task order proposals will include a drawing and more pricing lines. Protest at 11 n.4; Comments at 12-13. Midnight maintains that the record thus fails to provide a reasonable basis for the source selection decision. *Id.*

In a best-value tradeoff procurement, it is the function of the selection official to perform a tradeoff between non-price factors and evaluated prices; that is, to determine whether one proposal's technical superiority is worth its higher evaluated price. In doing so, the extent to which one is sacrificed for the other is governed only by the test of rationality and consistency with the stated evaluation criteria. *Savvee Consulting, Inc.*, B-408416.3, Mar. 5, 2014, 2014 CPD ¶ 92 at 7.

The Corps argues that the source selection decision recognized the difference in the evaluated prices between Midnight as the lowest-priced offeror for the Fort Bragg contract, and MVL, and determined in the judgment of the SSA that MVL's technical approach showed significant superiority over Midnight's, even after considering Midnight's advantage under the design experience factor. MOL at 11-14. The agency notes that the RFP indicated that the technical approach evaluation would assess how well-supported and clear the offeror's technical approach to the seed/sample project was, and it argues that the selection of MVL's proposal was reasonable and consistent with the RFP criteria. MOL at 11-14.

Based on our review of the record, we have no basis to question the reasonableness of the source selection decision. The record shows that the SSA viewed MVL's superiority as a significant benefit to the agency because it showed the firm's ability to "quickly assess the project requirements and then develop a detailed and supported proposal that clearly provide[d] the reasoning" for the firm's approach and price, which the SSA deemed to be "of utmost importance" to successful performance. AR, Tab 9, SSDD at 18. The SSA noted that performance would likely involve projects with short windows of funding availability, and so obtaining task order proposals from a firm that had demonstrated an ability to document its technical approach and justify its pricing would be valuable in avoiding extensive negotiations and delays. *Id.* The record shows that the SSA recognized Midnight's advantage in design experience and the significant pricing difference, but concluded that the best value for the agency's needs would be provided through MVL's superior technical approach. The SSA's judgment that MVL's technical approach was sufficient to overcome Midnight's was reasonable and consistent with the RFP.

The protest is denied.

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General Counsel