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Decision

Matter of: Insight Technology Solutions, LLC

File: B-421764.2; B-421764.3; B-421764.5

Date: September 29, 2023

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DIGEST

1. Protest that agency unreasonably evaluated technical proposals is sustained where the report of the evaluation contained a factual error regarding proposal content, and where the evaluation findings did not accurately reflect the record.
 2. Protest that agency conducted a flawed best-value tradeoff analysis is sustained where the award was based on evaluation errors, and the record demonstrates a reasonable possibility that the protester was prejudiced by those errors.
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DECISION

Insight Technology Solutions, LLC, of Annapolis, Maryland, protests the issuance of a task order to THOR Solutions, LLC (THOR), of Arlington, Virginia, under task order request for proposals (TORFP) No. 70Z02323R45900001, issued by the Department of Homeland Security, United States Coast Guard (USCG), for contractor support services. Insight asserts that the agency's proposal evaluation report contained a factual error regarding proposal content, that the agency unreasonably and disparately evaluated technical proposals, and that the agency conducted a flawed best-value tradeoff analysis.

We sustain the protest.

BACKGROUND

This task order competition was conducted pursuant to Federal Acquisition Regulation (FAR) subpart 16.5. The TORFP was issued to holders of the General Services Administration, One Acquisition Solution for Integrated Services indefinite-delivery, indefinite-quantity (IDIQ) contract to obtain contractor support services for the Ship Design and Systems Engineering Division, Human Systems Integration Division, and Surface Forces Logistics Center Engineering Services Division. Agency Report (AR), Tab A.1, TORFP Conformed at 2. Services would include “complete life cycle management of surface assets from concept development through disposal” and “studying, analyzing, and evaluating engineering problems, and developing solutions.” *Id.* The solicitation contemplated the issuance of a fixed-price task order to the offeror whose proposal represented the best value to the government, considering three factors: corporate experience, management approach, and price. *Id.* at 41-42. The corporate experience factor was more important than the management approach factor. Those two factors, when combined, were significantly more important than the price factor. *Id.* at 42.

Under the corporate experience factor, proposals were required to provide at least one--but no more than four--references that described “experience performing requirements similar in scope and complexity to those in the solicitation.” *Id.* at 38. The solicitation required that at least one of the references “demonstrates the prime Offeror’s or a Primary member of a Joint Venture’s experience as the prime contractor.” *Id.* at 39. The TORFP provided that, “to be considered similar in scope and complexity, at a minimum, the contract reference should show similar technical difficulty, show relevant requirements, and the show company’s experience providing specialized engineering capabilities similar to the requirements of this solicitation.” *Id.* at 38. The TORFP “encouraged” offerors “to identify relevant experiences with a large number of specialized engineers and experience performing the highly technical naval/marine engineering tasks identified in the solicitation.” *Id.*

The solicitation provided that the government would consider recency, relevance, and length of experience in its evaluation of offeror experience; references would not be considered recent if they began before February 2016. *Id.* at 41-42. Regarding relevance, “[s]imilarity of scope and complexity [would] be considered based on the types of services performed under each reference effort, as well as the type and number of specialized FTEs [full-time equivalent] provided under those efforts.” *Id.* at 41. The TORFP advised offerors that the “government may rate proposals demonstrating experience managing 50 or more FTEs more favorably,” and that the “government may also rate proposals demonstrating experience in highly technical naval/marine engineering tasks more favorably.” *Id.* The solicitation provided for ratings of outstanding, good, satisfactory, marginal, or unsatisfactory under both the corporate experience and the management approach factors. AR, Tab A.7, TORFP attach. 6, Adjectival Ratings. The degrees of relevance were not defined in the TORFP or the internal evaluation plan. Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 8.

Under the management approach factor, proposals were to “provide a sound, compliant approach that meets all requirements listed in the [statement of work (SOW)] and demonstrates a thorough knowledge and understanding of the requirements.” TORFP at 40. “At a minimum,” offerors were to address the following: an effective approach for ensuring that the USCG receives well-qualified staff that will continue to meet the evolving needs of the USCG; an effective approach for managing relationships with teaming partners and/or subcontractors; and a summary of a total compensation plan (TCP) that adheres to the provision at FAR 52.222-46, Evaluation of Compensation for Professional Employees. *Id.* Insight does not challenge the agency’s evaluation of proposals under the management approach factor.

The TORFP required offerors to submit a completed price proposal in accordance with the contract line item number structure outlined in attachment 3, pricing worksheet, and attachment 4, TCP. *Id.* at 40. The protester also does not challenge the agency’s evaluation of price proposals.

Five firms, including the protester and the intervenor, submitted proposals. See AR, Tab G.1, Source Selection Decision (SSD) at 2. As relevant to this protest, the technical evaluation team’s (TET’s) evaluation of THOR’s four contract references found the first three references to be highly relevant and found contract reference 4--for which THOR was the prime contractor--to be relevant.¹ *Id.* at 11-13. In formulating an overall rating for the corporate experience factor, however, the TET inaccurately stated that “[a]ll four [of THOR’s] contract references demonstrated highly relevant corporate experience of the Offeror and the proposed subcontractors.” *Id.* at 13. The TET evaluated two of Insight’s contract references as highly relevant and two--including the protester’s prime contract reference 1--as somewhat relevant.² *Id.* at 3-7.

The table below summarizes the agency’s evaluation of Insight’s and THOR’s proposals:

Offeror	Factor		
	Corporate Experience	Management Approach	Price
Insight	Good	Good	\$64,601,850
THOR	Outstanding	Satisfactory	\$63,191,077

AR, Tab G.1, SSD at 3.

¹ THOR provided the following four contract references: [DELETED]; and (4) THOR as the prime offeror. AR, TET Report at 11.

² Insight provided the following four contract references: (1) Insight, as the prime offeror; [DELETED]. *Id.* at 3.

The source selection authority (SSA) conducted a best-value tradeoff analysis based in part on a review of the TET report. *Id.* at 2. Under the corporate experience factor, the SSA reiterated the incorrect statement in the TET report that THOR's proposal "demonstrated the highest degree of relevant experience through all four (4) [corporate experience] contract references," with two references providing "exceptional similarity to the requirements." *Id.* at 4. The SSA identified these three "underlying differences" that set THOR's proposal apart: THOR itself, in contract reference 4, demonstrated experience in the highly technical fields of naval and marine engineering; THOR's proposal demonstrated greater subcontractor expertise in naval and marine engineering; and THOR's proposal provided two subcontractors with "expertise in [American Bureau of Shipping (ABS)] classification and experience with (Naval Vessel Rules (NVR)) criteria."³ AR, Tab G.1, SSD at 4.

In trading off the proposals of Insight and THOR, the SSA noted that the underlying differences between these proposals indicate that THOR's proposal is a lower risk/higher value proposal for corporate experience. *Id.* at 4. The SSA concluded that "[t]he underlying findings for these proposals show that Insight's proposal is a slightly lower risk proposal for [the management approach], specifically that Insight demonstrates a more robust ability to manage personnel." *Id.* at 5. The difference between the risk associated with Insight's compensation plan and THOR's compensation plan was small, in the SSA's view, but distinguishable. *Id.* The SSA noted that THOR's total evaluated price is 2.2 percent lower than Insight's. *Id.* at 6. While the agency evaluated Insight's proposal more highly under the management approach factor, the SSA determined that difference in the proposals was "relatively minor" and did not justify the price premium of Insight's proposal or overcome the "demonstrably superior" proposal from THOR under the corporate experience factor. *Id.* The SSA determined that THOR's proposal represented the best value to the agency, *id.*, and this protest followed.⁴

³ The agency explains that ABS is a classification organization that "develops, maintains, and promulgates vessel classification rules that refer to safety rules, guidelines, standards, and other criteria for the design, construction, and survey of marine vessels and structures." Resp. to GAO Question at 1. USCG further explains that one set of these rules is the NVR; the NVR pertain to United States Navy (USN) shipbuilding practices and are intended to permit the USN to capture best practices from the commercial shipbuilding industry while maintaining the ability to leverage and integrate modern technologies. *Id.* The USCG notes that each shipbuilding program has a different requirement for the type of ABS classification, which in turn implicates different ABS rules. *Id.* at 1-2. Some shipbuilding programs will utilize NVR. See *id.* at 2. For that reason, the agency maintains that "familiarity with either or both rulesets is useful as it may be part of tasking under the instant effort." *Id.*

⁴ As noted above, the total evaluated price of the task order at issue here is over \$10 million; accordingly, this procurement is within our jurisdiction to hear protests of task orders placed under civilian agency IDIQ contracts. 41 U.S.C. § 4106(f)(1)(B).

DISCUSSION

Insight argues that the TET report inaccurately summarized its evaluation of THOR's corporate experience references, crediting the awardee's proposal with better corporate experience than the evaluation found, and that the USCG then carried that inaccurate finding through to the source selection decision. The protester further contends that the agency unreasonably and disparately evaluated offerors' corporate experience references by finding that two of THOR's proposed subcontractors demonstrated ABS and NVR experience, without also finding that two of Insight's proposed subcontractors demonstrated that same experience. Finally, Insight argues that these evaluation errors resulted in a flawed best-value tradeoff analysis that prejudiced the protester. As explained below, we find that the record supports these allegations. As a result, we sustain the protest.⁵

TET Characterization of Relevance of THOR's Contract References

Insight argues that the TET inaccurately summarized its evaluation of the awardee's contract references when the TET stated that all four references showed the highest degree of relevance. Supp. Comments at 11-12. This was unreasonable, the protester asserts, when the TET's own findings regarding THOR's contract reference 4 did not support a finding that contract reference was highly relevant. *Id.*

In reviewing protests of an award 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. *Ohio KePRO, Inc.*, B-417836, B-417836.2, Nov. 18, 2019, 2020 CPD ¶ 47 at 4.

As noted above, the TET evaluated THOR's contract reference 4 as relevant. AR, Tab E.1, TET Report at 13. The TET then inaccurately summarized its findings, stating "[a]ll four contract references demonstrated highly relevant corporate experience of the Offeror and the proposed subcontractors." *Id.* The USCG acknowledges this "misstatement." Supp. COS/MOL at 11 n.4 (noting that the TET's statement that all four of THOR's contract references were evaluated as highly relevant was a misstatement, where the TET evaluated THOR's contract reference 4 as relevant); see AR, Tab E.1, TET Report at 12-13. This allegation that the TET inaccurately summarized its evaluation of the THOR's contract references when the TET stated that all four references showed the highest degree of relevance has merit, and we consider in a section further below whether the protester was prejudiced by this procurement error. We first address the protester's allegation that the agency improperly assigned subcontractor experience to THOR's proposal.

⁵ Insight asserts other challenges to the agency's evaluation; we have reviewed all the protester's allegations and discuss only those that we found had merit.

Evaluation of Subcontractor Experience

Insight argues that the agency unreasonably evaluated THOR's proposal as having two contract references that demonstrate ABS and NVR experience. The protester asserts the evaluation was also disparate where the agency failed to recognize that two of Insight's contract references likewise demonstrated such experience. We find, as we discuss below, that the record supports the allegation that the agency disparately evaluated the proposals under the corporate experience factor when the USCG identified THOR's proposal, but not Insight's, as demonstrating ABS and NVR experience. The record, however, supports the reasonableness of the agency's evaluation of THOR's proposal as having two references that demonstrate ABS and NVR experience, even if those references are not the ones identified by the TET.

Intervenor's Proposal

The TET noted that THOR's contract references 2 and 3 displayed experience applying ABS and NVR technical criteria rules for classifying ships in development and maintenance of naval ship acquisitions. AR, Tab E.1, TET Report at 4-5. Insight argues that the record does not support a finding that contract reference 3 demonstrated NVR experience. 2nd Supp. Protest at 24. According to the protester, attributing such experience to that contract reference is "unfounded because the documentation submitted for [contract reference 3] contains no references to 'NVR' whatsoever, nor any description of [that proposed subcontractor's] work with NVR criteria." *Id.*, citing AR, Tab D.2.d, Intervenor's Contract Reference 3. As the protester notes, the agency made "no response whatsoever to this allegation." Supp. Comments at 17, citing Supp. COS/MOL; see also Supp. COS/MOL at 6-7 (discussing reasonableness of agency's evaluation of THOR's contract reference 3, without reference to whether the reference exhibited experience with either ABS or NVR). Accordingly, we view the agency's failure to respond to this allegation as a concession that contract reference 3 did not contain a reference to NVR.

In response to this allegation, THOR asserts that the evaluation was accurate because its contract reference 1 also demonstrated experience with ABS and NVR. Intervenor's Supp. Comments at 11-12, citing AR, Tab D.2.a, Intervenor's Proposal, Contract Reference 1 SOW at 9-11 (requiring application of rules of "classification societies"); *id.* at 5 (specifically referencing "ABS NVR, 2010, with USCG Appendix"). The intervenor asserts, and our review of the record confirms, that the SSD states only that two of THOR's references demonstrate ABS and NVR experience; but the SSD does not specifically identify which two. Intervenor's Supp. Comments at 11; see AR, Tab G.1, SSD at 4 (twice noting that THOR had two subcontractors with ABS and NVR experience). The protester does not challenge the intervenor's contention that THOR's contract reference 1 demonstrated experience with ABS and NVR. See Resp. to Intervenor's Supp. Comments at 5. Rather, Insight asserts that "THOR acknowledges" that "the USCG's contemporaneous evaluation did not credit THOR's first Corporate Experience reference with ABS experience and NVR experience." *Id.* Insight argues that the TET report only identified THOR's contract references 2 and 3 as possessing

ABS and NVR experience, and the evaluation was inaccurate regarding contract reference 3. *Id.*

As we conclude above, the agency evaluation was flawed when it identified ABS and NVR experience in THOR's contract reference 3. As the Intervenor argues, however, the record nevertheless supports a finding that THOR's contract references 1 and 2 demonstrated that experience. The intervenor's proposal thus demonstrated ABS and NVR experience in contract references submitted by two subcontractors, which is how the agency described its assessment in the SSD. On this record, the protester has failed to demonstrate how it was prejudiced when the SSD refers only to the experience of two unspecified subcontractors in THOR's proposal, and the intervenor has demonstrated its proposal contained contract references submitted by two subcontractors with ABS and NVR experience. *Archer Western Contractors, Ltd.*, B-403227, B-403227.2, Oct. 1, 2010, 2010 CPD ¶ 262 at 6 (noting that competitive prejudice is a necessary element to every protest; we will not sustain a protest unless the protester shows that but for the agency's error, it has a substantial chance for award). As such, this allegation is denied.

Protester's Proposal

Insight further contends that the agency disparately evaluated proposals by identifying THOR's experience with ABS and NVR, but failing to identify comparable experience in the protester's contract references 3 and 4. Insight provided citations in the record to support its claim. 2nd Supp. Protest at 22-23, *citing* AR, Tab C.1, Protester's Technical Proposal at 142, 145 (noting that SOW for contract reference 3 required in-depth knowledge of the use of NRV and ABS), and 160 (noting that SOW for contract reference 4 stated "[t]he contractor shall complete the development of technical criteria for applicable programs which will be in the form of ABS Rules for Building and Classing Naval Vessels (NVR) for use in the acquisition process of Naval combatant ships"). The USCG does not dispute Insight's claim--or the evidence in the record--that the protester's contract references 3 and 4 reflected ABS and NVR experience. See Supp. COS/MOL at 8-9. The agency argues that the "TET report clearly notes that the two proposed subcontractors [for Insight's contract references 3 and 4] included experiences that demonstrated expertise with vessel classification rules." *Id.* at 8, *citing* AR, Tab E.1, TET Report at 6-7 (noting that one of Insight's subcontractor references demonstrated experience with ABS). The agency argues that, because the USCG evaluated both contract references as highly relevant, "Insight's claims that its proposal was not given proper credit for its proposed subcontractors' experience in this regard, is completely belied by the record." *Id.*

The USCG contends that the evaluation was reasonable because Insight's two contested contract references received the highest possible relevance rating, when, in this instance, the ratings assigned are beside the point. Evaluation ratings are merely guides, and proposals with the same adjectival ratings are not necessarily of equal quality; the qualitative information underlying the ratings is what source selection officials should consider, in addition to ratings, to enable them to determine whether and

to what extent meaningful differences exist between proposals. *Innovative Mgmt. Concepts, Inc.*, B-408070.2, Dec. 4, 2013, 2014 CPD ¶ 49 at 4. Here, the SSA identified experience with ABS and NVR as a salient, distinguishing difference between the two proposals, regardless of the adjectival ratings assigned to individual contract references. The USCG's failure to evaluate both offerors' contract references for evidence of such experience constitutes a disparate evaluation, where the difference in the evaluation did not arise from proposal differences. In our discussion of the agency's best-value tradeoff analysis, we consider whether the protester was prejudiced by the errors in this procurement.

Best-Value Tradeoff Analysis

Insight contends that, but for the errors in the agency's evaluation, the protester would have had a substantial chance of receiving award. 2nd Supp. Protest at 32. The USCG argues that a tradeoff analysis "is adequate where the agency shows that it was aware of the relative merits and price of the competing quotations and that the source selection was reasonably based." Supp. COS/MOL at 14, *citing Appsential, LLC*, B-419046.2 *et al.*, Jan. 22, 2021, 2021 CPD ¶ 63 at 16.

Where, as here, a solicitation provides for issuance of a task order on a best-value tradeoff basis, it is the function of the SSA to perform a tradeoff between price and non-price factors, that is, to determine whether one proposal's superiority under the non-price factor is worth a higher price. *Guidehouse LLP*, B-419848.3 *et al.*, June 6, 2022, 2022 CPD ¶ 197 at 17. The documentation of the tradeoff must be sufficient to establish that the agency was aware of the relative merits and costs of the competing proposals and that the source selection was reasonably based. *Laulima Gov't Solutions, LLC*, B-415079.2, B-415079.3, Feb. 2, 2018, 2018 CPD ¶ 92 at 7.

As a review, the SSA's tradeoff analysis included two relevant findings. First, the SSA assigned summary ratings of highly relevant for all four of THOR's contract references, where the record only demonstrates the TET report assigned ratings of highly relevant to three of THOR's contract references. AR, Tab G.1, SSD at 4. Second, the SSA noted that two of THOR's contract references demonstrated expertise in ABS classification and experience with NVR criteria, and the SSA described this as one of the "underlying differences" in the proposals, but did not so note such experience in Insight's proposal. *Id.* (noting that "[a]n additional feature of the submitted proposal is that two (2) of the proposed subcontractors have documented experience applying ABS and Naval Vessel Rules (NVR)," and noting that one of the underlying differences in the proposals was that "THOR's proposal documents two (2) subcontractors with expertise in ABS classification and experience with NVR criteria, a benefit to the Government").

Insight argues that the plain language of the source selection decision considered THOR's two contract references with ABS and NVR experience to be one of three "underlying differences between proposals." Resp. to Intervenor's Supp. Comments at 3. The protester asserts that, because the SSD "plainly represents that ABS experience and NVR experience were important discriminators in THOR's favor," the

contention that the SSD was not impacted by the failure to similarly identify this experience in Insight's proposal "is belied by the record." *Id.* The USCG claims the protester's assertion that the SSA did not properly note the ABS and NVR experience of Insight's two subcontractors when comparing the relative findings of the evaluations is without merit, because in "describing the advantages and detriments of the proposals' evaluations, the SSA focused on those aspects of the evaluations which spotlighted value propositions between the competing proposals." Supp. COS/MOL at 9.

The record does not support a finding that the SSA was aware of the relative merits of the competing proposals when the SSA was unaware that Insight's proposal, like THOR's, had two contract references that demonstrated experience with ABS and NVR. The SSA could not have reasonably weighed the relative merits of the two proposals when the SSA lacked a full understanding of the merits of Insight's proposal. The SSA also adopted the TET report's misstatement that all four of THOR's contract references were evaluated as highly relevant. Because the SSA's best-value tradeoff analysis included these two errors of fact, we find the tradeoff flawed.

Prejudice

Competitive prejudice is an essential element of a viable protest, and where no prejudice is shown or is otherwise evident, our Office will not sustain a protest, even if a deficiency in the procurement is evident. *Invertix Corp.*, B-411329.2, July 8, 2015, 2015 CPD ¶ 197 at 10. We resolve any doubts regarding prejudice in favor of a protester since a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. *DRS Tech. Servs., Inc.*, B-411573.2, B-411573.3, Nov. 9, 2015, 2015 CPD ¶ 363 at 14.

Insight's total evaluated price represented a slight premium over THOR's. The agency evaluated Insight's proposal as superior to THOR's under the management approach factor, and THOR's proposal as superior to Insight's under the corporate experience factor. Overall, the agency considered Insight's advantage under the management approach factor as insufficient to overcome THOR's advantage under the corporate experience factor and slight edge in price. It is unclear, however, that, but for the evaluation errors, the agency would have reached the same conclusion as to the relative advantages of the two proposals. Because there is a reasonable possibility that, had the agency reasonably evaluated the offerors' technical proposals, Insight would have received the contract award, we find that the protester was prejudiced by the errors in the conduct of the procurement. We sustain the protest on that basis.

CONCLUSION AND RECOMMENDATION

We recommend that the USCG, consistent with our decision, conduct and document a reevaluation of proposals and perform a new best-value tradeoff analysis. We also recommend that Insight be reimbursed the costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester's certified claims for such costs, detailing the time expended and costs incurred, must be

submitted directly to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is sustained.

Edda Emmanuelli Perez
General Counsel