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Decision

Matter of: MindPoint Group, LLC

File: B-421869.2; B-421869.3

Date: February 9, 2024

Tracye Winfrey Howard, Esq., and Jennifer Eve Retener, Esq., Wiley Rein LLP, for the protester.

James C. Fontana, Esq., Fontana Law Group, PLLC, and David R. Warner, Esq., and Heather Mims, Esq., Warner, PLLC, for ShorePoint, Inc., the intervenor.

Alex Cohn, Esq., Federal Retirement Thrift Investment Board, for the agency.

Raymond Richards, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester whose General Services Administration Multiple Award Schedule contract expired following the issuance of a task order under the instant solicitation is an interested party to challenge the agency's reevaluation of quotations and new source selection decision following corrective action in response to a prior protest where the protester still holds the originally issued task order.
2. Protest challenging the awardee's quotation as ineligible for award based on an alleged failure to comply with solicitation instructions is denied where the agency reasonably found the awardee's quotation technically acceptable.
3. Protest challenging the evaluation of quotations under the staffing and management approach factor is dismissed where the basis of the argument is contradicted by the record and therefore fails to state a valid basis of protest.
4. Protest challenging the source selection decision as contrary to the terms of the solicitation is denied where the record demonstrates that the selection decision was made as contemplated by the terms of the solicitation.

DECISION

MindPoint Group, LLC (MindPoint), of McLean, Virginia, protests the issuance of a task order to SharePoint, Inc.,¹ of Herndon, Virginia, by the Federal Retirement Thrift Investment Board (FRTIB) under request for quotations (RFQ) No. FRTIB1-23-Q-0018, for cybersecurity, risk, and compliance support services. The protester challenges the evaluation of quotations and source selection decision.

We deny the protest.

BACKGROUND

The FRTIB was established by the Federal Employees' Retirement System Act (FERSA), 5 U.S.C. §§ 8401-8479, as a self-funded agency with independent budgetary authority that receives no annual appropriations from Congress. Thrift Federal Acquisition Supplement, Oct. 1, 2018, at Preamble. Due to FRTIB's unique status, it is not strictly bound by the Federal Acquisition Regulation (FAR); however, the agency has determined that its procurements will largely adhere to the FAR unless doing so could infringe upon its fiduciary obligations under FERSA. *Id.*

The FRTIB issued the RFQ on April 26, 2023, using the Federal Supply Schedule (FSS) procedures of FAR subpart 8.4, to holders of General Services Administration (GSA) multiple award schedule (MAS) contracts with special item number (SIN) 54151 for highly adaptive cybersecurity services (HACS). Agency Report (AR), Tab 2, Initial RFQ at 1, 13. The RFQ contemplated the issuance of a task order with a 12-month base period and four 12-month option periods. AR, Tab 4, RFQ amend. 0002 at 11. The agency sought quotations for cybersecurity, risk, and compliance support services. *Id.* at 13.

The task order would be issued on a best-value tradeoff basis considering the following factors: technical approach; staffing and management approach; past performance; and price. *Id.* at 56. The non-price factors were of equal importance; when combined, the non-price factors were more important than price. *Id.* In the event quotations were rated similarly under the non-price factors, the importance of price could increase. *Id.* ("The closer the quot[at]ions are judged for evaluation [under the non-price factors], the more important price may become in the decision."). Quotations were due by May 26. *Id.* at 10.

The agency received eight quotations by the deadline. Contracting Officer's Statement (COS) at 3. Quotations were evaluated on July 11, and a task order was issued to MindPoint on August 4. *Id.* Following the issuance of the task order to MindPoint, SharePoint filed a protest with our Office challenging the agency's evaluation of

¹ SharePoint submitted its quotation as the lead member of a contractor teaming arrangement (CTA) with Valiant Solutions, LLC (Valiant), of Henderson, North Carolina. Agency Report (AR), Tab 24, SharePoint Price Volume at Appendix A.

quotations and source selection decision. *ShorePoint, Inc.*, B-421869, Aug. 18, 2023 (unpublished decision). On August 14, the agency filed a notice of corrective action stating that it would reevaluate quotations and make a new source selection decision. *Id.* On August 18, we dismissed the protest as academic. *Id.*

Following the dismissal of ShorePoint’s protest, the agency conducted its reevaluation of quotations. COS at 4-5. The relevant results are as follows:

	MindPoint	ShorePoint
Technical Approach	Outstanding	Outstanding
Staffing & Management Approach	Good	Good
Past Performance	High Confidence	High Confidence
Price	\$58,618,713	\$50,814,604

AR, Tab 12, Source Selection Decision Document (SSDD) at 3-4. The source selection authority (SSA) determined that the relative differences in the quotations submitted by MindPoint and ShorePoint reflected different approaches but did not show one approach as technically stronger than the other. *Id.* at 40. The SSA further concluded that MindPoint’s approach was not worth the associated price premium. *Id.* Based on the evaluation results shown above, the SSA concluded that ShorePoint’s quotation represented the best value to the government. *Id.* Accordingly, on October 18, the agency selected ShorePoint for the task order. *Id.* at 40, 41.

On October 25, MindPoint learned that the agency selected ShorePoint as the new awardee. AR, Tab 13, Notice & Brief Explanation at 1. On October 26, MindPoint requested an “oral brief explanation,” which the agency conducted on October 31. COS at 6. On November 6, MindPoint filed the instant protest with our Office.

Interested Party

As a threshold matter, the agency asserts that MindPoint is not an interested party to challenge the procurement. Under the bid protest provisions of the Competition in Contracting Act, 31 U.S.C. §§ 3551-3557, only an interested party may protest a federal procurement. 31 U.S.C. § 3551(2). Our regulations define an interested party as an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. 4 C.F.R. § 21.0(a)(1). Determining whether a party is interested involves the consideration of a variety of factors, including the nature of the issue raised, the benefit or relief requested, and the party’s status in relation to the procurement. *Noble Supply & Logistics*, B-417269, April 30, 2019, 2019 CPD ¶ 167 at 6.

As discussed above, the agency issued the RFQ to holders of GSA MAS contracts with SIN 54151 for HACS. RFQ amend. 0002 at 10. On October 10, after the agency issued the initial task order to MindPoint, MindPoint’s GSA MAS contract expired. MindPoint Resp. to Agency Req. for Dismissal, Nov. 15, 2023 at 1-2. As of the date of

this decision, MindPoint has not advised our Office that it holds an active GSA MAS contract with the appropriate SIN. Nevertheless, MindPoint still holds the initial task order, which the agency issued while MindPoint's GSA MAS contract was still active. Although MindPoint's task order is subject to a stop work order--implemented once the agency decided to take corrective action in response to ShorePoint's protest--the order has not been terminated by the agency.

The agency contends that because MindPoint does not currently hold an active GSA MAS contract with SIN 54151 for HACS, a task order cannot be issued to MindPoint following the post corrective action reevaluation of quotations. Memorandum of Law (MOL) at 3-4. On this basis, the agency maintains that MindPoint no longer has a direct economic interest in the instant matter and therefore is not an interested party.² *Id.*

MindPoint argues that it is an interested party to challenge the reevaluation of quotations and new source selection decision because it still holds the initial task order issued under the instant solicitation. Comments & Supp. Protest at 2 n.1. MindPoint asserts that were GAO to sustain this protest and recommend a new source selection decision, the agency could select MindPoint for award and lift the stop work order on the August 4 task order, which would allow MindPoint to perform the contract under its terms. *Id.* This, according to the protester, establishes its direct economic interest in the instant matter. *Id.*; see also Resp. to Req. for Dismissal, Nov. 15, 2023.

Based on our review of the relevant guidance and authority, we conclude that MindPoint is an interested party to challenge the agency's reevaluation of quotations and new source selection decision. Our analysis follows.

GSA directs and manages the FSS program.³ FAR 8.402(a); GSA MAS Ordering Guide (Summer 2020) at 2. GSA's ordering guide explains how to place orders against a GSA MAS contract and addresses issues that can arise under the MAS program. GSA MAS Ordering Guide (Summer 2020) at 2. Relevant here, the ordering guide explains what happens when an order has been issued to a MAS contract holder and that holder's MAS contract expires during the period of performance for the order. *Id.* at 7. According to the ordering guide: "MAS contracts include the standard FAR clause 52.216-22, Indefinite Quantity, to allow ordering activities and MAS contractors to continue orders up to 60 months after the base MAS contract has expired, including exercising options." *Id.*

The relevant portion of FAR clause 52.216-22, supplemented with information from the GSA Acquisition Manual (GSAM), reads:

² The agency learned that MindPoint's GSA MAS contract expired after it issued the post corrective action source selection decision on October 18 but prior to issuing a task order to ShorePoint on October 25. MOL at 3; see also COS at 5-6.

³ The FSS program is also known as the GSA Schedules program or the MAS program. FAR 8.402(a).

Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; *provided*, that the Contractor shall not be required to make any deliveries under this contract after [the completion of customer order, including options, 60 months following the expiration of the FSS contract ordering period].

FAR clause 52.216-22(d) (bracketed material supplied by the GSAM); GSAM 538.273(e).

Based on the authority and guidance cited above, we find that were the agency to reassess its source selection decision and choose MindPoint as the awardee, the agency could remove the stop work order on the August 4 task order, and MindPoint could perform the requirement under that order. FAR clause 52.216-22(d); GSAM 538.273(e); GSA MAS Ordering Guide (Summer 2020) at 2. It is of no consequence that the agency could not issue a new task order to MindPoint--MindPoint already holds a valid task order issued under the instant RFQ prior to the expiration of its MAS contract. Accordingly, MindPoint has a direct economic interest in this matter and therefore qualifies as an interested party to challenge the agency's reevaluation of quotations and source selection decision. 4 C.F.R. § 21.0(a)(1).

This conclusion is consistent with our decision in *AllWorld Language Consultants*, which addressed a scenario where an awardee's GSA MAS contract expired during the task order's projected period of performance. See *AllWorld Language Consultants, Inc.*, B-411481.3, Jan. 6, 2016, 2016 CPD ¶ 12 at 7-9. In that matter we analyzed the facts against FAR clause 52.216-22 and guidance issued by GSA and found it legally unobjectionable for the agency to have issued a task order to a vendor whose GSA MAS contract was set to expire mere days after the award date.⁴ *Id.* at 9. Here, like the

⁴ In *AllWorld Language Consultants*, we concluded that while the awardee was eligible to perform the base period of performance, the relevant authority did not support a finding that the agency could exercise any options under the task order. *AllWorld Language Consultants, supra* at 9-10. That matter was decided in 2016. Since that time, the GSAM and the GSA MAS ordering guide have been updated to clearly permit the exercise of options where a vendor's GSA MAS contract has expired during an order's period of performance. Extending Federal Supply Schedule Orders Beyond the Contract Term, 87 Fed. Reg. 10313, 10313-10314 (Feb. 24, 2022) (amending the GSAM to incorporate policy concerning the option to extend the term of the contract and the performance of orders beyond the term of the base GSA MAS contract); see also GSA MAS Ordering Guide (Summer 2020) at 7 (expressly permitting the exercise of options after a base GSA MAS contract has expired). FAR clause 52.216.22 has remained unchanged since 1995.

awardee in *AllWorld Language Consultants*, MindPoint holds a task order issued prior to the expiration of its GSA MAS contract. Consistent with that decision and the FAR, it would be legally unobjectionable for MindPoint to complete performance under the terms of its August 4 task order. As we conclude that MindPoint is an interested party to maintain this protest, we will address the merits of its arguments.⁵

DISCUSSION

MindPoint challenges the procurement in several ways.⁶ First, the protester argues that the agency unreasonably evaluated ShorePoint's quotation under the past performance factor. Protest at 10-12; Comments & Supp. Protest at 2-6, 7-8; Supp. Comments at 1-4. Next, the protester challenges the evaluation of its own quotation under the staffing and management approach factor and argues that the agency evaluated quotations in a disparate manner.⁷ Protest at 13-16; Comments & Supp. Protest at 6, 8;

⁵ The agency and intervenor complain that MindPoint has frustrated FRTIB's intent to terminate the August 4 task order by delaying the submission of a request for an equitable adjustment (REA), which the agency asserts is needed for the "seamless close-out" of the August 4 task order. MOL at 3 n.1; ShorePoint Comments at 3-4. FRTIB and ShorePoint ask our Office to deny MindPoint's interested party status on this basis; however, neither party provides any evidence in support of the claim that MindPoint has purposefully delayed the process, e.g., demonstrating that MindPoint has missed deadlines established by the agency for submission of an REA. *Id.* Moreover, notwithstanding any supposed delay in submitting an REA, MindPoint still holds a valid task order issued under this solicitation and therefore has a direct economic interest in this matter. In any event, to the extent that the agency alleges that MindPoint is inappropriately delaying the termination of the task order, this is a matter of contract administration that we would not resolve. See 4 C.F.R. § 21.5(a).

⁶ Here, we note the protester's challenges are described in terms of alleged violations of, or inconsistencies with, certain requirements of the FAR. Because FRTIB is not strictly bound by the FAR, we consider first the question of whether the FAR should inform our analysis. FRTIB has not argued that the FAR should not apply here or that following the FAR in this procurement would infringe upon its fiduciary obligations under FERSA. The Thrift Federal Acquisition Supplement states that, "in most circumstances, it is in the Agency's interest to follow the FAR for FRTIB's procurements of goods and services." Thrift Federal Acquisition Supplement, Oct. 1, 2018, at Preamble. The record shows that FRTIB has conducted this procurement following FAR part 8 procedures. Under the circumstances, we conclude that the requirements of the FAR should provide the basis for our review of this procurement. See e.g., *ASI Gov't, Inc.*, B-419080.2, B-419080.3, June 24, 2021, 2021 CPD ¶ 246 (applying the requirements of FAR part 8 to a procurement conducted by FRTIB).

⁷ MindPoint withdrew a protest ground challenging the evaluation of ShorePoint's quotation under the staffing and management approach factor. Comments & Supp. Protest at 7 n.5.

Supp. Comments at 5-6. Finally, MindPoint contends that FRTIB improperly made the source selection decision based on the lowest-priced, technically acceptable (LPTA) quotation, which was contrary to the terms of the RFQ. Protest at 16-17; Comments & Supp. Protest at 9-11. As discussed below, we find no basis to sustain the protest.⁸

Past Performance Factor

MindPoint challenges the evaluation of ShorePoint's quotation under the past performance factor. Protest at 10-12; Comments & Supp. Protest at 2-6, 7-8; Supp. Comments at 1-4. MindPoint contends that ShorePoint's quotation violated the RFQ's instructions and therefore should have been deemed ineligible for award. Comments & Supp. Protest at 2-5; Supp. Comments at 1-4. In the alternative, MindPoint argues that even if ShorePoint's quotation was not rendered ineligible, the agency's decision to rate it as high confidence was unreasonable. Comments & Supp. Protest at 6; Supp. Comments at 4. As discussed below, we deny these challenges.⁹

Under the past performance factor, vendors were required to submit information on recent and relevant projects. RFQ amend. 0002 at 54. Past performance volumes were to include information such as descriptions of the work performed, the dollar value of the projects, the names and contact information for the clients, and PPQs. *Id.* The RFQ did not specify a minimum number of project examples required, but did include the following language relevant to the protest:

⁸ MindPoint raises other collateral arguments. While our decision does not address each argument, we have reviewed them all and find no basis to sustain the protest.

⁹ MindPoint also asserted that ShorePoint did not have any relevant past performance and therefore FRTIB unreasonably rated ShorePoint's quotation as high confidence. Protest at 10-12. The agency provided a detailed response to this protest ground. MOL at 5-10. In its comments responding to the agency's report, the protester did not rebut or respond with any specificity to the agency's response; therefore, we deem this protest ground abandoned and will not address it further. 4 C.F.R. § 21.3(i)(3); *Facility Healthcare Servs., Inc.*, B-418743.2, B-418743.3, Sept. 2, 2021, 2021 CPD ¶ 313 at 5.

Additionally, MindPoint argues that ShorePoint should have received a lower rating under the past performance factor based on a comparison to MindPoint's past performance volume. Comments & Supp. Protest at 7 ("Even though [MindPoint] received higher [past performance questionnaire (PPQ)] performance ratings when compared to ShorePoint, the Agency unreasonably concluded that both offerors merited the same rating of High Level of Confidence."); Supp. Comments at 4-5 n.2. We find that MindPoint has failed to explain how this is a valid basis of protest under the terms of this solicitation. Nothing in the terms of the solicitation required the agency to consider one vendor's PPQs when evaluating another vendor's quotation. Accordingly, we dismiss the allegation for failure to state a legally sufficient basis of protest. 4 C.F.R. §§ 21.1(c)(4), (f); *id.* § 21.5(f).

FRTIB will allow one (1) past performance from a named Teaming Partner (subcontractor) to be included in the Past Performance volume.

Id.

Under the past performance factor, the agency was to assess vendors' project examples to determine its level of confidence in each vendor's ability to perform. RFQ amend. 0002 at 58-59. The RFQ stated "the offeror's" past performance would be evaluated and explained that for the purpose of evaluating quotations "the 'offeror' must include any joint ventures, subcontractors and/or teaming partners proposed as part of the prime offeror's team under this effort." *Id.* at 59. Quotations would be rated on the following scale: high level of confidence; moderate level of confidence; low level of confidence; or neutral confidence. *Id.* at 60.

ShorePoint submitted three project examples in its past performance volume. AR, Tab 8, ShorePoint Past Performance Volume at 3-19. The first example was performed by ShorePoint's CTA member, Valiant; the second example was performed by ShorePoint; and the third example was performed by ShorePoint's proposed subcontractor, Booz Allen Hamilton (Booz Allen). *Id.* at 3-19.

ShorePoint's quotation earned a rating of high level of confidence under the past performance factor. AR, Tab 10, ShorePoint Past Performance Evaluation at 9; see also AR, Tab 12, SSDD at 39 (discussing ShorePoint's past performance examples). Underlying the overall confidence rating, the contracting officer found that all three project examples were recent, the Valiant and Booz Allen examples were very relevant whereas the ShorePoint example was relevant, and all three examples demonstrated exceptional or very good performance quality. AR, Tab 10, ShorePoint Past Performance Evaluation at 9.

MindPoint argues that ShorePoint improperly submitted examples from both its CTA member Valiant and its subcontractor, Booz Allen. Comments & Supp. Protest at 2-6; Supp. Comments at 1-4. According to MindPoint, the solicitation instruction stating that "FRTIB [would] allow one (1) past performance from a named Teaming Partner (subcontractor)" meant that vendors were not allowed to submit more than one project example from an entity other than the entity submitting the quotation, in this case ShorePoint. Comments & Supp. Protest at 3-4 (referring to Valiant and Booz Allen as ShorePoint's teaming partners). Since ShorePoint's past performance volume included two project examples performed by entities other than ShorePoint, MindPoint contends that ShorePoint's quotation should have been deemed noncompliant with that instruction and ineligible for award. *Id.* MindPoint maintains that this result is required because the RFQ stated quotations would be subject to a "compliance review" prior to the technical evaluation where noncompliant quotations would be deemed ineligible. *Id.* (citing RFQ amend. 0002 at 55).

In the alternative, MindPoint argues that even if ShorePoint's quotation was not rendered ineligible, the agency's decision to rate it as high confidence under the past

performance factor was unreasonable. Comments & Supp. Protest at 6; Supp. Comments at 4. MindPoint argues that the agency should have disregarded the project example submitted by either Valiant or Booz Allen due to the RFQ's alleged restriction on multiple past performance project examples from teaming partners. Comments & Supp. Protest at 6. According to the protester, excluding either the Valiant or the Booz Allen project example--both of which were rated as very relevant--would necessarily reduce ShorePoint's overall confidence rating as ShorePoint would lose the benefit of a very relevant project example. Supp. Comments at 4 n.2.

In response, the agency argues that the instruction relied on by MindPoint limited past performance examples from subcontractors but did not apply to past performance examples from CTA members like Valiant. Supp. MOL at 2-8. Based on this understanding of the instruction, the agency contends that ShorePoint's past performance volume complied with the terms of the solicitation and that the agency's consideration of ShorePoint's three examples was reasonable. *Id.*

In support of its argument, the agency notes that under the FSS program, a CTA member is treated differently than a subcontractor; the primary difference being that each member of a CTA is treated as a prime contractor enjoying privity of contract with the government. *Id.* at 2-3; see e.g., *Softrams, LLC; Chags Health Info. Tech., LLC*, B-419927.4 *et al.*, Feb. 7, 2022, 2022 CPD ¶ 57 at 4 n.6 (discussing the differences between CTA members and subcontractors in FSS procurements); see also GSA MAS Ordering Guide (Summer 2020) at 3 (a CTA is not a "sub-prime arrangement."); www.gsa.gov/cta ("each team member[] will operate as a prime contractor for the portion of work they perform.") (last visited Feb. 5, 2024).

As Valiant is ShorePoint's CTA member whereas Booz Allen is ShorePoint's proposed subcontractor, the agency contends that ShorePoint complied with the contested instruction by including just one past performance example from a proposed subcontractor--the example from Booz Allen. Supp. MOL at 3. The agency argues that Valiant's past performance example was not subject to the limitation because Valiant, as a CTA member, was properly not considered a subcontractor and the limitation on past performance examples applied only to subcontractors. *Id.*

Where 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 its provisions. *Leidos Inc.; Booz Allen Hamilton Inc.*, B-421524 *et al.*, June 20, 2023, 2023 CPD ¶ 157 at 7. To be reasonable, and therefore valid, an interpretation must be consistent with such a reading. *Id.*

Here, we agree with the agency's interpretation of the contested language. That is, we agree the solicitation instruction that "FRTIB will allow one (1) past performance from a named Teaming Partner (subcontractor)" limited past performance examples from subcontractors but did not limit past performance examples from CTA members (*i.e.*, co-prime contractors). Such an interpretation is reasonable and consistent with the

solicitation when read as a whole. In contrast, MindPoint's interpretation is not reasonable. We explain our analysis below.

Initially, the word "subcontractor" appearing in parentheses is reasonably understood to clarify the preceding phrase, "Teaming Partner." By including the parenthetical following the phrase, the agency essentially defined the phrase to mean "subcontractor." If the agency had intended the instruction to apply to CTA members *and* subcontractors, it could have expressly stated as much. Indeed, the agency did just that when it defined an offeror's team to include CTA members and subcontractors in the RFQ's evaluation criteria. See e.g., RFQ amend. 0002 at 59 ("the 'offeror' must include any joint ventures, subcontractors and/or teaming partners proposed as part of the prime offeror's team under this effort.").

Further, reading the instruction's phrase "Teaming Partner" as urged by MindPoint would render meaningless the parenthetical reference to "subcontractor." That is, MindPoint's interpretation of "Teaming Partner" is so broad that it would include any entity other than the entity submitting the quotation. If that were the case, there would be no need to include the parenthetical reference to "subcontractor" because subcontractors would be included within that broad interpretation of teaming partner. In other words, if we were to accept MindPoint's interpretation of "Teaming Partner," the parenthetical reference to subcontractor would be redundant. Such a result would not be reasonable. Cf. *United States v. Williams*, 553 U.S. 285, 294 (2008) (applying the legal canon of *noscitur a sociis* to the interpretation of a statute and explaining that "a word is given more precise content by the neighboring words with which it is associated.").

Therefore, consistent with the agency's interpretation of the contested instruction, the language limited past performance examples from subcontractors but did not similarly limit past performance examples from CTA members. Accordingly, ShorePoint's quotation did not violate the terms of the solicitation by including past performance examples from its CTA partner, Valiant, and its proposed subcontractor, Booz Allen.

MindPoint argues that even if ShorePoint could submit Valiant's past performance example as a CTA member, the contemporaneous evaluation record demonstrates that the agency considered Valiant to be one of ShorePoint's subcontractors. Supp. Comments at 2. In this regard, MindPoint notes that the past performance evaluation document refers to Valiant as a subcontractor as does the agency report. See e.g., AR, Tab 10, ShorePoint Past Performance Evaluation at 2 (. . . "they partnered with Valiant (subcontractor) under a Contractor Teaming Agreement"); MOL at 5 (. . . "ShorePoint's proposed subcontractors, Valiant and Booz Allen"); COS at 7 (referring to Valiant and Booz Allen as subcontractors). Based on our review, the contemporaneous record supports a conclusion that the agency operated under the erroneous impression that Valiant was ShorePoint's subcontractor. See AR, Tab 10, ShorePoint Past Performance Evaluation at 2. This is reinforced by the language used in the agency report referring to Valiant as a subcontractor. See MOL at 5; COS at 7.

Despite the agency's apparent error, we find no basis to sustain the protest on this basis because MindPoint is unable to demonstrate competitive prejudice. Competitive prejudice is an essential element of every viable protest, and we will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions. *Skyward IT Sols., LLC*, B-421105.2, Apr. 27, 2023, 2023 CPD ¶ 108 at 13 (despite an agency error, protest ground was denied for want of competitive prejudice).

Regardless of the agency's incorrect identification of Valiant's relationship to ShorePoint, the fact remains that Valiant is a CTA member and not a subcontractor. AR, Tab 24, ShorePoint Price Volume at Appendix A (CTA document). Indeed, ShorePoint's past performance volume specifically referred to Valiant as a "CTA Member" in Valiant's past performance example. AR, Tab 8, ShorePoint Past Performance Volume at 3 ("Valiant, CTA Member"). Importantly, no harm resulted from such error because the agency properly considered the past performance examples submitted for work performed by Valiant and Booz Allen, consistent with the solicitation. Notably, the solicitation did not require the agency to give different weight to past performance examples from subcontractors, nor does the record reflect that different weight was given to such examples. Thus, while we find that the agency operated under the incorrect impression that Valiant was a subcontractor, we conclude that MindPoint was not prejudiced by that error. Accordingly, this error does not provide our Office with a basis to sustain the protest. *Skyward IT Sols., LLC, supra*.

Because we conclude that ShorePoint complied with the solicitation in submitting past performance examples from both its CTA member and subcontractor and the agency's evaluation of both examples was appropriate, MindPoint's other challenges to the agency's evaluation under the past performance factor must fail. In this regard, MindPoint's arguments are based on its contention that the agency could properly consider only one of the past performance examples from the CTA member or the subcontractor, and therefore the agency could not have reasonably assigned ShorePoint's proposal a rating of high level of confidence. Comments & Supp. Protest at 6. As explained above, the necessary condition for MindPoint's challenges is not present. Therefore, these challenges are denied.

Staffing and Management Approach Factor

MindPoint challenges the agency's evaluation of its quotation under the staffing and management approach factor and argues that quotations were evaluated in a disparate manner. Protest at 13-16; Comments & Supp. Protest at 6, 8; Supp. Comments at 5-6. We have reviewed these challenges and find that none provide a basis to sustain the protest. Below, we discuss a representative sample of MindPoint's technical evaluation challenges followed by a discussion of MindPoint's allegation of disparate treatment. As discussed below, we deny the technical evaluation challenges and dismiss the allegation of disparate treatment.

Technical Evaluation Challenges

MindPoint argues that its quotation merited additional strengths under the staffing and management approach factor and contends that its quotation would have earned the highest possible rating of outstanding if given proper credit. Protest at 13-16; Comments & Supp. Protest at 8. According to MindPoint, this would have resulted in the agency selecting MindPoint as the best-value vendor. *Id.* at 15-16. We have reviewed each strength MindPoint advocates for and find no basis to question the agency's evaluation. Below, we discuss a representative sample of MindPoint's challenges.

Under the staffing and management approach factor, vendors were required to describe their approaches for successful performance of the requirements in the statement of work (SOW). RFQ amend. 0002 at 57. The SOW detailed information such as the agency's objectives, the scope of the procurement, requirements of listed "Task Areas," and personnel requirements. *Id.* at 13-28 (location of the SOW in the RFQ). Relevant to this discussion, quotations would be evaluated under this factor to assess vendors' "proposed management of personnel, the effectiveness of the proposed use of staff and/or subcontractors, in terms of meeting technical needs and variable workload." *Id.* at 57.

Quotations would be evaluated using the following scale: outstanding; good; acceptable; marginal; or unacceptable. *Id.* at 58. For example, a rating of outstanding was defined as:

Quotation meets requirements and indicates an exceptional approach or understanding of the requirements. Strengths far outweigh any weaknesses. Risk of unsuccessful performance is extremely low.

Id. In contrast, a rating of good was defined as:

Quotation meets requirements and indicates a thorough approach or understanding of the requirements. [Quotation] contains strengths which outweigh any weaknesses. Risk of unsuccessful performance is low.

Id. In assigning an overall rating, the agency would consider any deficiencies, strengths, or weaknesses found in the respective quotation. *Id.* Relevant here, a strength was defined as an aspect of a quotation that "has merit or exceeds specified performance or capability requirements in a way that will be advantageous to the Agency during contract performance." *Id.*

The agency assigned MindPoint's quotation a rating of good under the staffing and management approach factor. AR, Tab 9, Technical Evaluation Team (TET) Report at 2. The TET found two strengths--considered minor--and no weaknesses. *Id.* at 23. In sum, the TET concluded that MindPoint provided a thorough understanding of the

requirement, the risk of unsuccessful performance was low, and the evaluation of MindPoint's quotation was consistent with a rating of good. *Id.*

MindPoint argues that the agency unreasonably failed to credit its quotation with an additional strength for its proposed teaming structure. Protest at 14; Comments & Supp. Protest at 8; Supp. Comments at 6. MindPoint explains that it "proposed to integrate its [DELETED] within the program through [DELETED], as well as integrating the [DELETED] with [MindPoint's] [DELETED][.]" Protest at 14. According to the protester, this approach exceeded the RFQ's requirement to "meet[] technical needs and variable workloads" by creating "[DELETED] that reduce risk to the program, which would be advantageous to the Agency." *Id.* (citing the RFQ's evaluation criteria).

The agency argues that its evaluation of MindPoint's quotation was reasonable and consistent with the terms of the solicitation, and that this challenge amounts to disagreement with reasonable evaluation judgments. MOL at 16. As additional context and support, the technical evaluation panel chairperson submitted a declaration stating that MindPoint's teaming structure "met, but did not exceed the requirements of the SOW." AR, Tab 1.2, Declaration at 2.¹⁰

Where an agency issues a solicitation to FSS contractors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the evaluation was reasonable and consistent with the terms of the solicitation. *Technology, Automation & Management, Inc.*, B-418063.3, B-418063.4, Oct. 2, 2020, 2020 CPD ¶ 343 at 6. In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate quotations. *Agile-Bot II, LLC*, B-419350.3, B-419350.4, June 16, 2021, 2021 CPD ¶ 231 at 5. Rather, we will examine the record to determine whether the agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement statutes and regulations. *Id.*

The decision of whether to assess unique strengths for aspects of a quotation is a matter within the agency's discretion. *Id.* at 9. We will not disturb such a decision absent a showing that it was unreasonable or inconsistent with the terms of the solicitation. *Id.* A protester's disagreement with the agency's judgments does not establish that the evaluation was unreasonable. *Deloitte Consulting, LLP*, B-416882.4, Jan. 6, 2020, 2020 CPD ¶ 21 at 4.

On this record, we find no basis to sustain the protest. Here, the protester disagrees with the agency's judgment but does not demonstrate how not receiving a strength for its proposed teaming structure was inconsistent with the terms of the solicitation or otherwise unreasonable. In this regard, MindPoint describes its proposed teaming

¹⁰ This declaration was submitted as part of the supplemental agency report. In the protester's comments on the agency report, MindPoint argues that the agency had insufficiently addressed its protest ground. Comments & Supp. Protest at 8. In response, the agency provided a more detailed rebuttal along with the chairperson's declaration.

structure and argues that it exceeded the RFQ's requirements; however, MindPoint does not specifically explain what requirement it supposedly exceeded. For example, MindPoint does not cite to any portion of the SOW requirements that its approach exceeded. See Protest at 14; Comments & Supp. Protest at 8; Supp. Comments at 6. Rather MindPoint argues that its approach exceeded the general requirement included in the evaluation criteria that the staffing and management approach should meet technical needs and variable workloads.

Thus, the protester has not provided any explanation as to which specific SOW requirement MindPoint believes it exceeded in a way that would be advantageous to the agency during contract performance and therefore merited a strength. While MindPoint claims its approach exceeded requirements by creating redundancies that reduce risk, we conclude that this challenge amounts to disagreement with the agency's evaluation judgments, which, without more, is not a basis to sustain the protest. *Deloitte Consulting, LLP, supra*. Accordingly, we deny this protest ground.¹¹

Disparate Treatment

MindPoint argues that the agency disparately evaluated quotations under the staffing and management approach factor. Comments & Supp. Protest at 6; Supp. Comments at 5-6. In this regard, MindPoint highlights two strengths assessed by the TET: one to MindPoint's quotation, and one to ShorePoint's quotation. *Id.* MindPoint argues that each vendor's strength involved a common practice and that MindPoint's strength was "downgraded" to minor but ShorePoint's strength was not similarly downgraded. *Id.* As discussed below, we dismiss this challenge because its factual basis is contradicted by the record.

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3557. Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. *Honeywell Tech. Sols., Inc.*, B-407159.4, May 2, 2013, 2013 CPD ¶ 110 at 3. To achieve this end, our Bid Protest Regulations, 4 C.F.R. §§ 21.1(c)(4), (f), require that a protest include a detailed statement of the legal and factual grounds for the protest. These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. *Midwest Tube Fabricators, Inc.*, B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3.

¹¹ Here, we note that MindPoint initially argued that its quotation deserved a rating of outstanding based on the definition of that rating. Protest at 13. MindPoint noted that its quotation had been credited with two strengths and no weaknesses and asserted that its strengths far outweighed any weaknesses. *Id.* The agency provided a detailed response to this challenge. MOL at 13-16. The protester did not pursue this challenge in its comments; therefore, we deem it abandoned and do not address it further. 4 C.F.R. § 21.3(i)(3); *Facility Healthcare Servs., Inc., supra*.

The record reflects that MindPoint and ShorePoint each earned two strengths under the staffing and management approach factor. AR, Tab 9, TET Report at 23 (MindPoint), 31-32 (ShorePoint). Relevant to the protest, each vendor was credited with a minor strength for their respective approaches to program management. In this regard, the TET report noted generally for both vendors that “[t]here were no weaknesses identified, but the strengths were considered minor and the proposal was consistent with a rating of ‘Good.’” *Id.* at 23, 31.

In describing MindPoint’s program management strength in more detail, the TET also stated:

The [vendor’s quotation] details a Program Management Framework (PMF) which includes a [DELETED], a [DELETED] which the agency can leverage, and a [DELETED] Although this is a strength, the assessed benefits should provide minor benefits to the FRTIB within the whole scope of their staffing and management approach.

Id. at 23. In describing ShorePoint’s strength in more detail, the TET noted that ShorePoint’s proposed approach “derived from industry best practices such as ISO 9001 . . . and . . . [DELETED]” and that it “incorporates [DELETED] to deliver highly adaptive task execution.” *Id.* at 32. Unlike the detailed description of MindPoint’s strength, the description of ShorePoint’s strength did not also state that it would provide minor benefits. *Id.* at 31.

In raising this protest ground, MindPoint notes that--like ShorePoint--its approach involved the practice known as ISO 9001. Comments & Supp. Protest at 6; see AR, Tab 5, MindPoint Technical Volume at 23. As argued by the protester, “[i]nstead of crediting [MindPoint’s] use of ISO 9001 as it did with ShorePoint, the Agency assessed that [MindPoint’s program management framework] provided only ‘minor benefits to the FRTIB.’” Comments & Supp. Protest at 6 (citing the TET Report). MindPoint asserts that “it was unreasonable for the Agency to downgrade [MindPoint’s] strength as providing only ‘minor benefits’ but not make the same determination for ShorePoint.” *Id.*

The agency responds that each vendor’s approach was evaluated fairly. Supp. MOL at 9-10. The contracting officer states that both of the relevant strengths were considered minor, and that “[n]o strength was valued any higher than any others.” Supp. COS at 3. In other words, the contracting officer states that MindPoint’s strength was not “downgraded” and that both vendors were credited with a strength of the same weight for their program management approaches. *Id.*

In response to the agency, MindPoint reasserts that its strength was “downgraded” based on the language in the TET report stating the benefits of MindPoint’s approach were considered minor. Supp. Comments at 5. MindPoint claims that “[t]he TE[T] made no similar statement when it described ShorePoint’s strength for program management.” *Id.*

Based on our reading of this challenge, MindPoint appears to claim that ShorePoint's program management strength was based on that firm's proposed use of ISO 9001 and was considered stronger than a minor strength and argues that because MindPoint also proposed using ISO 9001 in some fashion, MindPoint's quotation should have earned more than a minor strength. See *id.*

We dismiss this challenge as failing to state a valid basis of protest because MindPoint's argument is contradicted by the record. In this regard, the protester complains that its program management strength was considered a minor strength and erroneously states that ShorePoint's program management strength was not similarly considered minor. Supp. Comments at 5. This is factually incorrect. As noted above, the TET report stated that both MindPoint's and ShorePoint's program management strengths were "considered minor." AR, Tab 9, TET Report at 23, 31. Consistent with this evaluation, the SSA did not consider MindPoint's strength to be downgraded as compared to ShorePoint's strength, noting that under this factor, "[n]o strengths identified . . . make any offeror superior over the other." AR, Tab 12, SSDD at 17. Moreover, the record shows that ShorePoint's strength was based on more than just the proposed use of ISO 9001. AR, Tab 9, TET Report at 32.¹² As the factual basis of this protest ground is directly contradicted by the record, it is dismissed. 4 C.F.R. §§ 21.1(c)(4), (f); *id.* § 21.5(f).

Source Selection Decision

Finally, MindPoint challenges the agency's source selection decision. Protest at 16-17; Comments & Supp. Protest at 9-11. Specifically, MindPoint asserts that the SSA failed to sufficiently compare the underlying merits of the competing quotations and instead selected ShorePoint as the best value to the government based on its low price. Comments & Supp. Protest at 9-10. MindPoint argues that the SSA's alleged failure to look beyond the evaluation ratings resulted in the task order being issued on an LPTA basis, rather than on a best-value tradeoff basis as required by the solicitation.

The agency counters that its source selection decision was made in accordance with the requirements of the solicitation and FAR subpart 8.4. MOL at 17. According to the agency, the SSA sufficiently considered the underlying merits of the quotations and

¹² For the record, the technical evaluation chairperson responded to this protest ground. The chairperson explains that MindPoint and ShorePoint were each credited with a strength for their proposed approaches to "the program management requirements in the [SOW]." AR, Tab 1.2, Declaration at 5. The chairperson further explains that the descriptions of the strengths included in the TET report included examples of noteworthy aspects of the quotations, but did not include "an exhaustive list of every detail[.]" *Id.* Our review of the record confirms the aspects of the quotations cited by the TET. AR, Tab 5, MindPoint Technical Volume at 23; AR, Tab 6, ShorePoint Technical Volume at 25.

reasonably found that SharePoint's quotation represented the best value to the government. *Id.* at 17-18. As discussed below, we deny this challenge.

When making source selection decisions on a best-value tradeoff basis, selection officials have considerable discretion. *Booz Allen Hamilton, Inc.*, B-418125 *et al.*, Jan. 15, 2020, 2020 CPD ¶ 28 at 13. In reviewing protests of an agency's source selection decision in procurements conducted under the FSS procedures of FAR subpart 8.4, we do not conduct a new evaluation or substitute our judgement for that of the agency. *Castro & Co., LLC*, B-414694, Aug. 15, 2017, 2017 CPD ¶ 260 at 4. Rather, we examine the record to ensure that the source selection decision was reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *Id.* In a best-value competition where the agency reasonably concludes that the competing quotations are technically equal, price may properly become the determining factor for award. *Synergetics, Inc.*, B-299904, Sept. 14, 2007, 2007 CPD ¶ 168 at 7-8 (denying protest challenging the selection of a technically equal, lower-priced quotation under a FAR part 8 procurement).

Here, the solicitation was issued under FAR subpart 8.4 and contemplated issuing the task order on a best-value tradeoff basis considering three non-price factors and price. RFQ amend. 0002 at 56. The solicitation explained that the importance of price could increase should quotations be rated similarly under the non-price factors. *Id.*

As discussed above, the TET report contained detailed evaluation findings about each vendor. For example, the TET report included a discussion about a strength credited to MindPoint's quotation for its program management framework. See *e.g.*, AR, Tab 9, TET Report at 23. The discussion described the relevant attributes of MindPoint's program management framework and explained how those attributes would benefit the agency. *Id.* The record reflects that the TET's other findings were detailed in a similar manner. See *e.g.*, *id.* at 31-32 (discussing SharePoint's quotation).

The record reflects that the SSA reviewed the TET report. AR, Tab 12, SSDD at 3-4. For the staffing and management approach factor, the SSA noted that each vendor had strengths but that none of the strengths made any vendor superior over the other. *Id.* at 17. Under the past performance factor, the SSA stated that MindPoint and SharePoint both "demonstrated highly effective performance that would be fully responsive to contract requirements with contract requirements accomplished in a timely, efficient, and economical manner with only minor problems with little identifiable effect on overall performance." *Id.* at 17-18.

In comparing the vendors' quotations to each other, the SSA noted the solicitation's evaluation methodology, which allowed the importance of price to increase where quotations earned similar ratings under the non-price factors. *Id.* at 40. Consistent with this methodology, the SSA explained that "[t]he closer the quotes are judged for [the non-price] evaluation factors . . . the more important price may become in the decision." *Id.* The SSA further stated that "[t]he relative differences in the [quotations] represent different approaches, but not technically stronger approaches," and concluded that the

technical attributes associated with MindPoint's quotation were not worth the price premium. *Id.* Ultimately, the SSA concluded that ShorePoint's technical approach--offered for approximately 15 percent less in price than MindPoint's technical approach--represented the best value to the government. *Id.*

On this record, we have no basis to sustain Mindpoint's challenge to the agency's source selection decision. The record demonstrates that the SSA did not simply choose the lowest-priced, technically acceptable quotation; rather, the selection decision was made based on an assessment of the relative merits of the quotations and their prices, as contemplated by the terms of the solicitation. The record supports a conclusion that the SSA reviewed the underlying merits of the quotations and reasonably determined that the quotations were relatively technically equal, and that paying a price premium for MindPoint's quotation was not warranted. AR, Tab 12, SSDD at 40 ("[t]he relative differences in the [quotations] represent different approaches, but not technically stronger approaches, and do not merit paying a price premium for MindPoint"). Such a conclusion is reasonable and consistent with the terms of the solicitation and a best-value competition conducted under FAR subpart 8.4 where the competing quotations were found to be technically equal. RFQ amend. 0002 at 56 ("The closer [quotations] are judged [under the non-price factors], the more important price may become"); see also *Synergetics, Inc., supra*. Accordingly, this challenge is denied.

The protest is denied.

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