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Decision

Matter of: Trilogy Secured Services, LLC

File: B-420833.9; B-420833.10

Date: July 18, 2024

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DIGEST

1. Protest challenging the agency's evaluation of proposals is denied where the agency's decision not to award strengths to the protester's proposal was reasonable and the agency did not treat offerors unequally.
 2. Protest challenging the agency's best-value tradeoff decision is denied where the protester has not established that the underlying evaluation was unreasonable.
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DECISION

Trilogy Secured Services, LLC, of Springfield, Virginia, protests the award of a contract to Birdi Systems, Inc., of Pasadena, California, under request for proposals (RFP) No 75F40121R00039, issued by the Department of Health and Human Services, Food and Drug Administration (FDA), for security installment and maintenance services. The protester challenges the agency's technical evaluations of proposals and source selection decision.

We deny the protest.

BACKGROUND

On October 25, 2021, using the procedures of Federal Acquisition Regulation (FAR) part 15 and subpart 12.6, the agency issued the solicitation as a total small business set

aside for 8(a) firms.¹ Agency Report (AR), Tab 2.6, RFP at 2; Memorandum of Law (MOL) at 2.² The agency sought support services to secure FDA facilities nationwide. The solicitation, with an expected 5-year ordering period, anticipated the award of an indefinite-delivery, indefinite-quantity (IDIQ) fixed-price contract under which the FDA could obtain the complete range of technical services to support the maintenance of existing hardware as well as the installation of new security systems. RFP at 2, 6-7. Award was to be made on a best-value tradeoff basis, considering the following evaluation factors: (1) technical capability, (2) relevant experience, (3) management approach, (4) past performance, and (5) price. *Id.* at 36. Non-price factors were listed in order of descending importance and, when combined, were significantly more important than price. *Id.* at 35-36. The technical factor was comprised of two subfactors, listed in order of descending importance: (1) technical approach to the IDIQ; and (2) technical approach to the sample task order (TO) statement of work (SOW). *Id.* at 36.

The agency made award on June 10, 2022, which resulted in protests filed by several different offerors. MOL at 2. In response, the agency notified our Office of its intent to take corrective action by reevaluating proposals and making a new source selection. *Id.* We dismissed those protests as academic on July 6, 2022.³ The FDA reevaluated and issued a new selection decision on March 31, 2023. *Id.* That award also resulted in several protests. The agency once again took corrective action. This time, the FDA proposed to amend the solicitation to clarify the statement of work, allow offerors to submit revised proposals, reevaluate, and make a new award decision.⁴ We dismissed those protests as academic on May 10, 2023. After that round of corrective action, the agency amended its solicitation requirements and the deadline for proposal submissions. Final proposals for the most current iteration of the solicitation were due by November 6, 2023. RFP at 32.

¹ Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes the Small Business Administration to enter into contracts with government agencies and to arrange for the performance through subcontracts with socially and economically disadvantaged small business concerns. FAR 19.800. Firms participating in this program are commonly referred to as “8(a)” contractors.

² Citations to the record use the documents’ Adobe PDF pagination.

³ *Chenega Sec. Int’l, LLC*, B-420833.1, B-420833.3, July 6, 2022 (unpublished decision); *Clear Cloud Secure Techs., LLC*, B-420833.2, July 6, 2022 (unpublished decision); *Birdi Sys., Inc.*, B-420833.4, July 6, 2022 (unpublished decision); *Trilogy Secured Servs., LLC*, B-420833.5, July 6, 2022 (unpublished decision).

⁴ *Chenega Sec. Int’l, LLC*, B-420833.6, May 10, 2023 (unpublished decision); *TIC Sec., LLC*, B-420833.7, May 10, 2023 (unpublished decision); *Birdi Sys., Inc.*, B-420833.8, May 10, 2023 (unpublished decision).

The agency received revised proposals from three offerors, including proposals from Trilogy and Birdi. AR, Tab 6.1, Award Recommendation at 8. The agency evaluated proposals as follows:⁵

	Trilogy	Birdi
TECHNICAL CAPABILITY	Acceptable	Highly Acceptable
Approach to IDIQ	Acceptable	Highly Acceptable
Approach to Sample TO SOW	Acceptable	Acceptable
RELEVANT EXPERIENCE	Acceptable	Highly Acceptable
MANAGEMENT APPROACH	Acceptable	Acceptable
PAST PERFORMANCE	Low Risk	Low Risk
PRICE	\$34,485,089	\$31,901,626

Id. at 8, 31, 33.

As a result of its most recent evaluation, the contracting officer, serving as the source selection authority (SSA), found Birdi to represent the best value to the government. *Id.* at 1, 46-47. The agency notified Trilogy of the award decision on April 3, 2024. AR, Tab 7.1, Award Notice. Trilogy received a written debriefing on April 16. AR, Tab 7.2, Debriefing. This protest followed on April 22.

DISCUSSION

Trilogy raises a number of challenges to the agency’s evaluation. The gravamen of the protester’s arguments revolve around the agency’s alleged failure to assess strengths to Trilogy’s proposal under the technical factors, which according to the protester, resulted in unequal or disparate treatment of proposals in some instances.⁶ Protest at 6-8; Comments and Supp. Protest at 2-4. Although we do not discuss every issue raised,

⁵ The available adjectival ratings for the technical evaluation factors are “highly acceptable,” “acceptable,” and “unacceptable.” AR, Tab 5.1, Technical Evaluation Panel (TEP) Report at 13. Past performance would be evaluated with a risk assessment of “low risk,” “neutral,” or “high risk.” RFP at 40.

⁶ Trilogy initially argued the evaluation of Birdi’s prior experience and price was unreasonable. Protest at 11-12. The agency provided a substantive response to these protest allegations, but Trilogy did not respond to the agency’s arguments in its comments. MOL at 11-15; see *generally* Comments and Supp. Protest. Where, as here, an agency provides a detailed response to a protester’s assertion and the protester fails to rebut the agency’s argument in its comments, the protester fails to provide us with a basis to conclude that the agency’s position with respect to the issue in question is unreasonable. 4 C.F.R. § 21.3(i)(3); *Medical Staffing Sols. USA*, B-415571, B-415571.2, Dec. 13, 2017, 2017 CPD ¶ 384 at 3. We consider these allegations to be abandoned and do not discuss them further. *DigiFlight, Inc.*, B-419590, B-419590.2, May 24, 2021, 2021 CPD ¶ 206 at 4.

we have reviewed each issue and conclude that none presents a basis to sustain the protest.⁷

Failure To Assess Strengths

Trilogy contends that the agency failed to assess multiple strengths in the firm's proposal, both on its own merit and for features identical to those assessed as strengths in Birdi's proposal. Protest at 8; Comments and Supp. Protest at 2-4. We address, first, the protester's allegations that its proposal merited strengths that the agency failed to identify. Among others, the protester alleges that the FDA should have awarded strengths for Trilogy's proposal of "highly experienced key personnel." Protest at 8. For example, the protester argues the agency should have assessed a strength under the management approach factor for proposing a systems administrator that "not only exceeded the years of required experience but also had current experience on the FDA's bridge [or interim] contract performing in those roles." *Id.*

The evaluation of technical proposals, including determinations regarding the magnitude and significance of evaluated strengths and weaknesses, is a matter largely within the agency's discretion, and a protester's disagreement with the agency's judgment, without more, does not establish a basis for our Office to sustain a protest. *MicroTechnologies, LLC*, B-420196.3, B-420196.4, Jan. 6, 2023, 2023 CPD ¶ 17 at 5-6; *Automation*

⁷ Trilogy also alleges the evaluation of Birdi's past performance was unreasonable. According to the protester, based "on its knowledge of the industry[,] Trilogy is aware that Birdi had performance failures on this prior TSA [Transportation Security Agency] contract," and that the agency "should have found and considered a poor Contractor Performance Assessment Reporting System ("CPARS") evaluation for Birdi" on that prior TSA contract. Protest at 10. Prior to submission of the agency report, the FDA requested dismissal of the allegation because it was speculative and failed to state a valid basis of protest. Req. for Dismissal at 2. We agree.

Our Bid Protest Regulations require that protests "[s]et forth a detailed statement of the legal and factual grounds of protest," and require a protester to "clearly state legally sufficient grounds of protest." 4 C.F.R. § 21.1(c)(4), (f). These requirements contemplate that a protester 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. *Arcticom, LLC*, B-421256, B-421256.2, Dec. 28, 2022, 2023 CPD ¶ 13 at 7. Here, the protester's bald assertion lacks any factual support. Without any detail or explanation, Trilogy simply speculates that Birdi submitted a TSA contract as part of Trilogy's past performance references, and that the TSA contract had a negative CPARS report. Trilogy does not provide any information, for example, as to what services were procured under the TSA contract that would have made the contract relevant to the consideration of past performance under the procurement here. Trilogy's conclusory statement about "knowledge of the industry" without further support is insufficient to establish a valid basis of protest and is dismissed, accordingly. *Arcticom, LLC, supra* at 7-8.

Precision Tech., LLC, B-416078, June 5, 2018, 2018 CPD ¶ 203 at 4. Further, an agency is not required to document determinations of adequacy or explain in the evaluation record why it did not assess a strength, weakness, or deficiency for a particular item. *MicroTechnologies, LLC*, *supra* at 6. Our Office will not disturb an agency's evaluation of technical proposals unless it is shown to be unreasonable or inconsistent with the solicitation's evaluation criteria. *Id.*

Here, we find nothing in the solicitation required the agency to assess a strength for proposing key persons with experience that exceeded that listed in the RFP.⁸ The agency notes that the evaluators did not believe Trilogy's personnel experience would result in the performance of work at a higher level of quality than would be expected, and Trilogy fails to explain how its key personnel expertise would increase the quality of performance. Supp. Contracting Officer's Statement (COS) at 3. The agency concluded that the features Trilogy identified in its proposal did not significantly exceed the requirements of the RFP to the agency's benefit, and thus, did not warrant the assessment of unique strengths. Because an agency is not required to explain in the evaluation record why it did not assess a strength, weakness, or deficiency for a particular item, we find the agency's post-protest explanations provide a detailed rationale that fill in previously unrecorded details and provide credible explanations that are consistent with the contemporaneous record. *Booz Allen Hamilton, Inc.*, B-420116.6, B-420116.7, Aug, 22, 2022, 2022 CPD ¶ 221 at 9. Accordingly, we find Trilogy's assertion that it should have been assessed strengths under the management approach factor to be nothing more than disagreement with the agency's evaluative conclusions, which, without more, provides no basis to object to the FDA's evaluation. *Automation Precision Tech., supra*.

Disparate Treatment

Next, the protester argues that, in some instances, the agency's failure to assess strengths to its proposal resulted in unequal or disparate treatment, because the FDA had awarded strengths to Birdi for proposing substantially the same thing. Comments and Supp. Protest at 2-4. We discuss two representative examples below.

Technical Capability Factor

The protester argues that the agency disparately evaluated proposals when the FDA assessed a strength to Birdi's proposal for proposing a backup systems administrator but failed to assess a strength to Trilogy's proposal for allegedly proposing the same thing. Comments and Supp. Protest at 2.

⁸ A strength was defined as "add[ing] value to the requirement, and it is worthy of being noted." AR, Tab 5.1, TEP Report at 11. It is "[t]hat part of a proposal that represents an added benefit to the Government or is expected to increase the quality of the offeror's performance." *Id.*

Subfactor 1 of the technical capability evaluation factor required offerors to describe their technical approaches to the IDIQ. The RFP instructed offerors to “provide a technical approach that clearly and completely addresses the task areas set forth in the IDIQ Statement of Work to achieve FDA’s Security Installation and Maintenance objectives.” RFP at 36. The agency would then “evaluate the extent to which the Offeror’s technical understanding and proposed approach satisfies the technical requirements of the Task Areas set forth in the IDIQ SOW in a manner that is technically sound, logical, and likely to be effective in achieving FDA’s Security Installation and Maintenance objectives.” *Id.* Relevant here, task area 1 of the IDIQ statement of work required offerors to address FDA security systems operations and maintenance. *Id.* at 8. Requirements under this task area included those related to system administration. *Id.* at 9. For system administration, the RFP provided:

As tasked, the Contractor shall provide system administration for all security systems identified in the task order. The activities performed by the Contractor shall include, but are not limited to: Checking and logging the status of all physical security systems, network and field devices; head end programming of all field hardware changes in the Physical Security Electronic System; entering all repairs and work performed in the FDA Service Maintenance Database; administering and maintaining a Configuration Management Database; logging and reporting all configuration management changes and updates in the configuration management database; and providing daily and weekly system and maintenance reports, as required.

Id. at 9. The RFP also instructed offerors to propose a systems administrator, which, among others, was generally required to manage FDA’s security systems. *Id.* at 18, 38. The protester argues that while both Trilogy and Birdi proposed a backup systems administrator, the agency treated the offerors disparately when it only awarded a strength to Birdi for doing so.

Where a protester alleges disparate treatment in a technical evaluation, it must show that the differences in the evaluation do not stem from differences between the offerors’ proposals. *Battelle Mem’l Inst.*, B-420253 *et al.*, Jan. 12, 2022, 2022 CPD ¶ 31 at 9. Accordingly, to prevail on an allegation of disparate treatment, a protester must show that the agency unreasonably failed to assess strengths for aspects of its proposal that were substantively indistinguishable from, or nearly identical to, those contained in other proposals. *Blue Origin Fed’n, LLC; Dynetics, Inc.-A Leidos Co.*, B-419783 *et al.*, July 30, 2021, 2021 CPD ¶ 265 at 41.

The agency notes that the FDA did not award a strength to Birdi’s proposal simply because the awardee offered a backup systems administrator. Supp. MOL at 3. Although the evaluators discussed the awardee’s proposed backup systems administrator as one component of the assessed strength, the agency explains--and the record supports--that the strength was assessed to Birdi’s proposal for its overall approach to providing system administration for FDA technologies. AR, Tab 5.1,

Technical Evaluation Panel (TEP) Report at 16; Supp. MOL at 3. This approach included the development and implementation of a [DELETED], along with “[DELETED].” AR, Tab 4.2, Birdi Proposal at 8. Additionally, Birdi proposed a [DELETED] to ensure that there was uninterrupted [DELETED] as migration occurred and a [DELETED] to maintain [DELETED] during transition. *Id.* at 11. The evaluators viewed the feature to be “a benefit to the FDA as it will ensure the agency does not experience coverage or security gaps during the C-CURE [Computer Coordinated Universal Retrieval Entry] implementation.” AR, Tab 5.1, TEP Report at 16. Overall, in assessing a strength to Birdi’s approach, the TEP found that “the Offeror’s approach exceeds the technical requirements of the Task Areas set forth in the IDIQ SOW in a manner that is technically sound, logical, and likely to be effective in achieving FDA’s Security Installation and Maintenance objectives.” *Id.*

On the other hand, the evaluators found Trilogy’s approach to system administration--in meeting the requirements of the solicitation--failed to amount to a strength. *Id.* at 42-43; Supp. MOL at 3. The record demonstrates that while Birdi’s proposal focused on describing the steps it would take to maintain, manage, and support existing and new security maintenance and installation, Trilogy’s proposal, in addressing system administration, focused mainly on who would be tasked with providing support and the expertise each person held. *Compare* AR, Tab 4.2, Birdi Proposal at 10-11, *with* AR, Tab 3.2, Trilogy Proposal at 11.

For example, in Trilogy’s proposal, the protester noted that its remote systems administrator would “[DELETED]” the onsite systems administrator and would provide “[DELETED]” to the primary systems administrator through “[DELETED].”⁹ AR, Tab 3.2, Trilogy Proposal at 11. The evaluators observed that, in meeting the requirements for system administration, Trilogy proposed a “System Administrator [that] will [DELETED].” AR, Tab 5.1, TEP Report at 42. The agency acknowledged the protester’s plan to [DELETED], recognizing that this would reduce risk by providing redundancy. *Id.* at 43. However, the agency explains that Trilogy’s reliance on the backup systems administrator’s expertise for “[DELETED]” suggested that the primary systems administrator would require help in performing his duties. Supp. MOL at 3; AR, Tab 3.2, Trilogy Proposal at 11. As such, the FDA found that the relationship between the primary and backup positions was not considered a benefit to the agency, deserving of a strength, because it appeared that two systems administrators would be needed for routine operations. Supp. MOL at 3.

In sum, the agency found Trilogy’s system administration plan met, but did not exceed, the requirements of the RFP. Based on our review of the record, we find nothing

⁹ In its proposal, Trilogy refers to its non-primary systems administrator as a “Remote Systems Administrator.” AR, Tab 3.2, Trilogy Proposal at 11. However, in its protest, Trilogy refers to this non-primary systems administrator as a “backup.” Protest at 5; Comments and Supp. Protest at 3; Supp. Comments at 2. For clarity and ease of reference, we refer to this non-primary systems administrator as the “backup” systems administrator.

objectionable with the agency's conclusion that the protester's system administration approach did not warrant a strength, as no feature of the approach exceeded the RFP requirements to the agency's benefit. *Owens & Minor Distrib., Inc.*, B-418223.5 *et al.*, Feb. 3, 2021, 2021 CPD ¶ 74 at 6. Further, we find that the differences in the FDA's evaluation were the result of material differences between proposals, and therefore, the protester fails to establish that the agency disparately treated offerors where proposals were not substantively indistinguishable in this regard. *Blue Origin Fed'n, LLC; Dynetics, Inc.-A Leidos Co.*, *supra*. Thus, these allegations are denied.

Relevant Experience Factor

The protester also contends that it should have received a strength for having highly relevant experience on an FDA bridge contract and that the agency evaluated offerors unequally when, according to the protester, the agency awarded a strength to Birdi for working with the firm [DELETED] but did not award a strength to Trilogy for working with the same firm. Protest at 7; Comments and Supp. Protest at 3.

For relevant experience, the RFP stated:

The FDA will evaluate the extent to which the Offeror demonstrates that its team has performed work that is substantially similar to this requirement in terms of scope and is compliant with the stated Labor Category descriptions and minimum education and experience requirements. FDA will evaluate three (3) relevant experiences.

RFP at 38. In terms of scope, the RFP instructed that "[t]he narrative must demonstrate the Offeror's experience by describing the Offeror's specific role and specific responsibilities in providing similar services to the SOW Task Areas." *Id.* at 38. Relevant here, two of the SOW task areas were "FDA Security Systems Operations and Maintenance," and "FDA Systems - New Installations and Modifications." *Id.* at 8.

Trilogy submitted a reference for work performed on an FDA security systems bridge contract. AR, Tab 3.2, Trilogy Proposal at 37; AR, Tab 3.2, Exh. C at 1-5. Trilogy's performance spanned the course of 10 months, and primarily consisted of "sustainment support." AR, Tab 3.2, Exh. C at 1, 4. For that experience reference, Trilogy listed its main performance functions to be maintenance and system administration. *Id.* at 2. The evaluators found this project met the solicitation's experience requirements. AR, Tab 5.1, TEP Report at 49. Specifically, the TEP determined that the referenced project was relevant and comparable to the FDA maintenance requirements for this solicitation. *Id.* As such, the FDA found that Trilogy "has performed work that is similar to the FDA Maintenance requirements in terms of scope." *Id.* The agency noted, however, that a strength was not awarded for this project because although the project was similar in scope to the maintenance requirements, the bridge contract "does not demonstrate similarities to the installation portion of the FDA requirements." *Id.*; see MOL at 10.

Here, the solicitation required the installation and maintenance of security systems. Trilogy's prior bridge contract experience involved--and the protester does not dispute this fact--only maintenance activities. Comments and Supp. Protest at 6. Thus, we find nothing objectionable with the FDA's assessment that the contract reference fails to exceed the solicitation requirements to the government's benefit where that reference demonstrates the offeror only has experience performing part of the current requirement. *Arrowpoint Corp.*, B-417375.2, B-417375.3, Oct. 25, 2019, 2019 CPD ¶ 367 at 5 (finding reasonable agency's conclusion that corporate experience of incumbent contract was not a strength where performance work statement requirements of prior and current contracts were different); *Technology, Automation & Mgmt., Inc.*, B-418063.3, B-418063.4, Oct. 2, 2020, 2020 CPD ¶ 343 at 10-11.

Trilogy also argues that the agency treated the protester and awardee disparately where the agency appeared to merit Birdi for working with the firm, [DELETED], but failed to award Trilogy a strength for also working with [DELETED]. Comments and Supp. Protest at 3. Again, the protester misconstrues the reasons the agency awarded a strength to Trilogy's proposal.

Our review of the record shows that Birdi was assessed a strength, overall, for its relevant experience performing an FDA contract for nationwide security system maintenance. AR, Tab 5.1, TEP Report at 21-22; Supp. MOL at 4. Specifically, the evaluators found that Birdi's reference, which included the performance of installation and maintenance services, was "identical in scope and complexity to the FDA's Security Installation and Maintenance effort." AR, Tab 5.1, TEP Report at 22. Our review of the referenced project--where Birdi worked with the FDA for 5 years installing and maintaining security systems--confirms that the experience reference submitted by Birdi is different from the experience reference submitted by Trilogy, where Trilogy worked with the FDA for 10 months and only provided maintenance services. *Compare* AR, Tab 4.2, Birdi Proposal at 77-79, *with* AR, Tab 3.2, Exh. C (Trilogy Proposal) at 1-5. Based on the record, we find that the proposals were distinguishable, and that the FDA reasonably evaluated proposals based on these differences. As such, we have no basis to conclude the agency treated offerors unequally. *Blueprint Consulting Servs., LLC, d/b/a Excelicon; Trillion ERP Venture Tech LLC*, B-420190 *et al.*, Dec. 30, 2021, 2022 CPD ¶ 19 at 11. For all the reasons discussed, these allegations are denied.

Best-Value Decision

Lastly, the protester challenges the agency's source selection decision. The protester contends that because the best-value determination was based on an unreasonable evaluation of proposals, the best-value decision is also flawed. Protest at 13. The agency responds that its source selection decision was based on a reasonable underlying evaluation. MOL at 15.

As discussed above, we find no reason to object to the agency's evaluation of proposals. Thus, there is no basis to question the source selection authority's reliance upon those evaluations in making the source selection decision. *Thalle Constr. Co.*,

Inc., B-421345 *et al.*, Mar. 27, 2023, 2023 CPD ¶ 84 at 18 (“[D]erivative allegations do not establish an independent basis of protest.”); *DynCorp Int’l LLC*, B-414647.2, B-414647.3, Nov. 1, 2017, 2017 CPD ¶ 342 at 16. Accordingly, we find no merit to Trilogy’s objection to the agency’s selection decision based upon the underlying evaluation of proposals.

The protest is denied.

Edda Emmanuelli Perez
General Counsel