



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Interactive Technology Solutions, LLC

File: B-413665.2; B-413665.3

Date: March 1, 2017

Christopher R. Shiplett, Esq., Danielle N. Hart, Esq., and Nishat Azam, Esq., Randolph Law, PLLC, for the protester.

Kenneth D. Brody, Esq., Thomas K. David, Esq., and Katherine A. David, Esq., David, Brody & Dondershine, LLP, for Technology, Automation & Management, Inc., the intervenor.

Scott N. Flesch, Esq., and Capt. Matthew A. Freeman, Department of the Army, for the agency.

Elizabeth Witwer, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of the protester's proposal under the solicitation's non-price factors is denied where the record reflects that the evaluation was reasonable and consistent with the solicitation's terms and applicable procurement statutes and regulations.

DECISION

Interactive Technology Solutions, LLC (ITS), of Falls Church, Virginia, protests the issuance of a task order to Technology, Automation & Management, Inc. (TeAM), of Fairfax, Virginia, under task order proposal request (TOPR) No. W81XWH-08-D-0043-0006, issued by the Department of the Army, U.S. Army Medical Research Acquisition Activity, for program management and technical management support services. The protester challenges the agency's evaluation of its proposal under the solicitation's non-price factors.

We deny the protest.

BACKGROUND

The Army issued the solicitation on April 8, 2016, to contractors holding a TRICARE Evaluation, Analysis, Management, and Support (TEAMS) indefinite-delivery, indefinite-quantity (IDIQ) contract. The solicitation sought proposals to provide program management, engineering expertise, administrative support, technical support, operational planning, and execution oversight for the Defense Health Agency (DHA), Health Information Technology, Infrastructure and Operations (I&O) division. TOPR at 1;¹ Agency Report (AR), Tab 22, Award Decision, at 2. The solicitation contemplated the issuance of a fixed-price task order with a base period of three months and two option periods of 12 months and six months, respectively. TOPR at 1.

The solicitation provided for award on a best-value basis consisting of price and the following non-price evaluation factors, in descending order of importance: (1) technical approach, (2) management approach, (3) experience, (4) quality control approach, and (5) past performance. Id. at 14. The non-price factors, when combined, were more important than price. Id. As the non-price factors became similar, the importance of price increased. Id.

In rating the first four non-price factors (excluding past performance), the solicitation provided that the Army would assign one of the following adjectival ratings: outstanding, good, acceptable, marginal, or unacceptable.² Id. at 18. The solicitation also provided that the Army would assign an overall rating to these factors. Id. at 14. Only proposals receiving an overall rating of acceptable or higher for the first four non-price factors would be considered for award. Id.

¹ Citations to the solicitation are to the amended version provided at Tab 12 of the agency report.

² Past performance was evaluated for relevancy and performance confidence, resulting in the assignment of two ratings. TOPR at 17, 20-21. The solicitation provided different adjectival ratings for these past performance criteria. Id.

Four offerors, including ITS and TeAM, submitted timely proposals in response to the solicitation. AR, Tab 22, Award Decision, at 15; Memorandum of Law (MOL) at 2. The Army evaluated the proposals of ITS and TeAM as follows:

	ITS	TeAM
Technical Approach	Acceptable	Good
Management Approach	Acceptable	Acceptable
Experience	Good	Good
Quality Control Approach	Acceptable	Acceptable
Overall Non-Price Rating	Acceptable	Good
Past Performance	Very Relevant / Substantial Confidence	Very Relevant / Substantial Confidence
Evaluated Price	\$16,510,821	\$14,338,462

AR, Tab 22, Award Decision, at 46, 58. In the tradeoff analysis, the source selection authority (SSA) concluded that TeAM's proposal offered the best value to the government. *Id.* at 60. Accordingly, on November 14, the Army notified unsuccessful offerors of TeAM's selection for award. Contracting Officer's Statement (COS) at 3; AR, Tab 23, Debriefing Letter.

ITS filed a timely protest with our Office on November 23, challenging the Army's evaluation of its proposal under three of the non-price factors: technical approach, experience, and quality control approach. Protest at 5. On January 3, after receipt of the agency report, ITS supplemented its protest with two additional grounds pertaining to the agency's evaluation of its proposal under the management approach and experience factors.³ Comments at 3. On January 4, the Army requested that we dismiss both the initial and supplemental protests, arguing that, as of December 23, 2016, our Office is not authorized to hear protests in connection with task and delivery orders valued at less than \$25 million placed under multiple-award contracts created by defense agencies. Army Req. for Dismissal at 3 (citing National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017, Pub. L. No. 114-328, 130 Stat. 2000 § 835 (2016)).

³ In its comments, ITS withdrew its challenge to the Army's evaluation of its proposal under the quality control approach factor and withdrew aspects of its challenges to the technical approach and experience factors. Comments at 3.

DISCUSSION

The protester challenges the agency's evaluation of its proposal under the technical approach, management approach, and experience factors. Protest at 4, 5; Comments at 3. We have considered all of ITS's arguments and conclude that none furnishes a basis upon which to sustain the protest. We discuss below a representative claim under each factor. Prior to addressing the merits of ITS's protest, however, we address the Army's request for dismissal of the protest.

Jurisdiction

The awarded value of the task order exceeds \$10 million. Accordingly, at the time the protest was filed on November 23, this procurement was within our jurisdiction to hear protests in connection with task and delivery orders placed under multiple award contracts created by defense agencies. See 10 U.S.C.S. § 2304c(e)(1)(B) (2015); MicroTechnologies, LLC, B-413091.4, Feb. 3, 2017, 2017 CPD ¶ ___ at 6 n.7. As the Army correctly notes, however, subsequent to the filing of the protest, the dollar threshold applicable to such defense agency task and delivery order protests was increased to \$25 million. See FY 2017 NDAA, Pub. L. No. 114-328, 130 Stat. 2000 § 835. Notwithstanding the change in our statutory authority, because the order at issue was protested prior to the increase in the dollar threshold, we retain jurisdiction to resolve the protest. MicroTechnologies, LLC, supra. See also Smartronix, Inc.; ManTech Advanced Sys. Int'l, Inc., B-411970.9 et al., Dec. 9, 2016, 2016 CPD ¶ 362 at 2 n.3; Technatomy Corp., B-405130, June 14, 2011, 2011 CPD ¶ 107 at 5-6. Thus, we deny the Army's request for dismissal.⁴

Technical Approach Factor

ITS's proposal received a rating of acceptable under the technical approach factor. AR, Tab 22, Award Decision, at 32. The record reflects that this rating was based upon the Army's assignment of one significant strength and two weaknesses. Id. at 45-46. One of the weaknesses at issue in this protest relates to the Army's conclusion that ITS's proposal lacked adequate detail regarding the firm's approach

⁴ The Army argues, in the alternative, that we should dismiss ITS's supplemental protest, filed on January 3, because it was filed after the amendment of our jurisdiction to hear task and delivery order protests. We have reviewed ITS's supplemental protest and conclude that it is not a new protest for the purposes of our jurisdictional authority. Rather, it provides additional factual and legal support to ITS's previously filed, existing protest. As such, the supplemental protest amends or modifies the initial protest, which, as explained above, we have jurisdiction to review. See 4 C.F.R. § 21.9(c) (describing a supplemental protest as "adding one or more new grounds to an existing protest").

to meeting several of the tasks in the Performance Work Statement (PWS). Id. at 45.

The solicitation provided that proposals would be evaluated to assess the degree to which an offeror's technical approach demonstrates, among other things, "[a] clear understanding of all tasks and how the approach is likely to yield the required results within the required timeframe" and "[a] technical approach which is creative and reduces costs, technical, or schedule risk to the Government." TOPR at 15. In assessing a weakness to ITS's proposal, the Source Selection Evaluation Board (SSEB) and SSA found:

The offeror proposed tasks throughout the proposal in tables (See Exhibits 8, 10, 11, 14, and 15) which are paraphrased directly from the PWS requirement. This fails to provide a level of detail required for the Government to accurately assess the Proposal. In the approach, the offeror often stated ["As the incumbent . . ."] then referred to current or past performance rather than how they propose to meet the new requirement.

AR, Tab 22, Award Decision, at 45; Tab 21, SSEB Report, at 30.⁵ The contracting officer, who also served as the SSA, further explained that "[t]he level of detail provided is extremely limited with the exhibits restating multiple PWS tasks under short sections which did not provide an adequate level of detail on this highly technical requirement." COS at 9. The contracting officer stated that, "[i]nstead of using the limited space in its proposal to address the PWS requirements, the protester made comments that added little value to the proposal." Id. at 10.

ITS disputes the Army's assignment of this weakness, claiming its proposal did not consist solely of exhibits; rather, ITS argues that its proposal also included a narrative section describing its understanding of the tasks, its approach to accomplish those tasks, and the benefits of its proposed approach. Comments at 7. Additionally, ITS claims that the exhibits themselves included an explanation of how the aforementioned narrative "mapped" to the relevant sections of the PWS and an explanation of the value, innovation, and efficiency offered by ITS's technical approach. Id. at 7-8; Protest at 9-10. With respect to its incumbency status, ITS claims that it used the phrase "as the incumbent" only four times in its 19-page proposal and, in each instance, explained how its incumbency would provide a

⁵ In the award decision, the SSA disagreed with the SSEB's inclusion of a sixth exhibit in the list of tables that the agency considered to contain paraphrasing. AR, Tab 22, Award Decision, at 45. The SSA removed the reference to the exhibit in the award decision, but concurred with the assigned weakness in all other respects. Id.

benefit to the Army with respect to the specific technical approach ITS proposed. Protest at 11.

In reviewing an agency's evaluation, we will not substitute our judgment for that of the agency, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and with procurement statutes and regulations. MicroTechnologies, LLC, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 4-5; GeoSystems Analysis, Inc., B-413016, July 25, 2016, 2016 CPD ¶ 190 at 4. A protester's disagreement with an agency's evaluation judgments, without more, does not establish that the agency acted unreasonably. Science Applications Int'l Corp., B-413501, B-413501.2, Nov. 9, 2016, 2016 CPD ¶ 328 at 5.

We have reviewed ITS's proposal and, based on its content, we see no basis to sustain the protest. Although ITS is correct that its proposal included narrative descriptions of its approach in addition to exhibits, the Army's conclusion that these "short sections . . . did not provide an adequate level of detail on this highly technical requirement," COS at 9, is reasonable. Moreover, although the exhibits themselves included some explanation of the value, innovation, and efficiency of ITS's technical approach, we agree with the Army that "[t]he level of detail provided is extremely limited." Id. In sum, we find that the record supports the agency's assessment of the weakness. ITS's arguments to the contrary amount to disagreement with the agency's judgment, which, based on the record here, does not establish that the agency acted unreasonably.

Management Approach Factor

ITS's proposal received a rating of acceptable under the management approach factor. AR, Tab 22, Award Decision, at 32. The record reflects that this rating was based upon the Army's determination that ITS's proposal did not merit any strengths, weaknesses, or deficiencies. Id. at 33-34, 59. The only substantive comment pertaining to this factor in the SSEB's report was a recitation of the definition of an acceptable rating. Compare AR, Tab 21, SSEB Report, at 32, with TOPR at 18.

In its protest, ITS points out that the section of the SSEB report corresponding to the evaluation of ITS's management approach begins with a reference to another offeror.⁶ Comments at 11 (citing AR, Tab 21, SSEB Report, at 32); Supp.

⁶ ITS alleges that this error is duplicated in the award decision document. Comments at 11. Because the name of the offeror is redacted in the award decision document, see AR, Tab 22, Award Decision, at 33, we cannot independently verify ITS's allegation. We noted, however, that the Army seemingly confirms ITS's allegation in its supplemental agency report. Supp. MOL at 10.

Comments at 6. As a result, ITS argues that the Army either incorrectly “copied and pasted” the evaluation of another offeror’s proposal, or, in the alternative, did not reasonably review ITS’s management approach. Supp. Comments at 6. With respect to the latter argument, ITS contends that it “presented a management approach that exceeded by far the requirements of the PWS” and that “[a] reasonable evaluation of ITS’s management approach could not have resulted in a report with no remarks[.]” Id.; Comments at 11.

We conclude that the record does not support ITS’s contention that the Army imputed the evaluation of another offeror to ITS under this factor. Rather, as the Army contends, the reference to the other offeror was a typographical error that did not prejudice ITS. Supp. MOL at 9; Supp. COS at 1. The contracting officer explains that the evaluations of the two offerors were not identical and that the two offerors’ proposals did not receive identical ratings under this factor. Supp. COS at 2. Thus, the contracting officer asserts that the SSEB did not erroneously “copy and paste” another offeror’s evaluation and associate it with the evaluation of ITS’s proposal. Supp. COS at 2. Rather, the reference to the offeror was a “minor” typographical error that “had absolutely no effect on the source selection decision.” MOL at 10. We agree with the Army that ITS suffered no prejudice as a result of the typographical error.

With respect to ITS’s alternative argument, *i.e.*, that the Army did not reasonably review ITS’s management approach, the agency argues that this argument is untimely raised. Supp. MOL at 9. The Army points out that the debriefing letter provided to the protester on November 14 informed ITS of the following: (a) its adjectival ratings for each factor; (b) assigned strengths, weaknesses, and/or deficiencies (if any) assigned to the proposal under each factor; and (c) a description of the basis for the assigned strength, weakness, and/or deficiency (if any). Id. (citing AR, Tab 23, Debriefing Letter, at 3). Accordingly, the Army argues that ITS knew on that date that the Army has assigned its proposal a rating of acceptable under this factor and that the Army did not assign any strengths, weaknesses, or deficiencies. Supp. MOL at 9.

We agree that ITS’s challenge to the Army’s substantive evaluation of its proposal under this factor is untimely raised. Our Bid Protest Regulations contain strict rules for the timely submission of protests. Verizon Wireless, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 3. Pursuant to these rules, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for the protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Here, ITS knew, or should have known, of the basis of protest on November 14 when the Army first informed it of its rating under the management approach factor and lack of assigned strengths, weaknesses, or deficiencies. AR, Tab 23, Debriefing Letter, at 3. Because ITS did

not file its challenge the Army's evaluation of its proposal under this factor until January 3, the protest is untimely.⁷

Experience Factor

Finally, ITS challenges the evaluation of its proposal under the experience factor. ITS's proposal received a rating of good under the experience factor. AR, Tab 22, Award Decision, at 34. The record reflects that this rating was based on the Army's assignment of two significant strengths to ITS's proposal. Id. at 34-35. TeAM's proposal also received a rating of good under the experience factor, which was based on the Army's assignment of three strengths to its proposal. Id. at 59. After discussing the strengths of both offerors, the SSA concluded that "[t]here is no clear advantage in Experience, therefore neither TeAM [nor] ITS offer[s] a distinctly better value to the Government in this factor." Id.

ITS claims that it had more years of experience than TeAM and, therefore, argues that the Army improperly discounted or ignored ITS's experience in rating the offerors equally. Comments at 10, 11. In this regard, the solicitation stated that the Army would evaluate the offeror's experience to determine "[t]he degree to which the Offeror's proposal reflects corporate or proposed staff experience identical to, similar to, or related to the requirement." TOPR at 16.

The Army argues that it did not discount ITS's experience. Supp. MOL at 8. Rather, it provided higher marks to ITS for its greater experience. Id. The Army explains that ITS received two significant strengths for its nearly identical corporate experience and related individual experience, whereas TeAM received two strengths for its experience in these areas. Id.; Supp. COS at 1. The Army further argues that ITS failed to acknowledge that TeAM's proposal was assigned a third strength under this factor. Supp. MOL at 8. The Army states that TeAM's proposal received an additional strength because all of its proposed key personnel possessed both Information Technology Infrastructure Library Version 3 (ITIL V3) and Project Management Professional (PMP) certifications.⁸ Id. (quoting AR,

⁷ To the extent ITS's challenges the Army's evaluation of its proposal under this factor on the basis that there are no substantive comments included in the evaluation--a fact that ITS learned upon receipt of the agency report on December 23--ITS's challenge fails to state a legally sufficient basis of protest and is dismissed. See 4 C.F.R. § 21.5(f). ITS does not identify any applicable provision of the solicitation requiring such comments, nor does it allege that the Army has violated any procurement law or regulation in this respect.

⁸ Under this factor, the solicitation stated that "[a]ll key personnel experience will be evaluated to [determine] the degree to which the offeror demonstrates: Experience and certification in ITIL Foundation Version 3." TOPR at 16.

Tab 22, Award Decision, at 59). According to the Army, this aspect of TeAM's proposal exceeded the PWS requirements. Supp. COS at 1.

The record demonstrates that the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria. The award decision reflects an acknowledgement that ITS's proposal received two significant strengths for its superior corporate experience, whereas TeAM's proposal received only strengths for its experience. AR, Tab 22, Award Decision, at 34-35, 59. At the same time, the award decision also reflects an acknowledgement that TeAM received an additional strength for exceeding the PWS requirements in a manner that ITS did not. Id. at 50; Supp. COS at 1 ("TeAM also exceeded the PWS requirement for ITIL V3 and PMP certifications . . . ITS did not have a similar strength for these certifications.").⁹ Moreover, we find nothing unreasonable in the SSA's conclusion that both proposals should be rated as good under this factor and that there was "no clear advantage" between the offerors' proposals.¹⁰ The protester's allegations to the contrary demonstrate disagreement with the agency's judgment, which does not

⁹ In the award decision, the SSA states, "TeAM also offers key personnel which are all certified with ITIL V3 and PMP." AR, Tab 22, Award Decision, at 59 (emphasis added). ITS argues that this conclusion is unclear and "is as likely to mean that all four of the key personnel that TeAM proposed had *either* ITIL V3 *or* PMP as it is to mean that all four of the key personnel that TeAM proposed had *both* ITIL V3 *and* PMP." Supp. Comments at 5. We disagree. There is nothing unclear or ambiguous in the SSA's statement. Moreover, we find ITS's interpretation to be unreasonable because it would require our Office to read-in language that is notably absent. As such, ITS has not provided a basis for our Office to question the accuracy of the SSA's statement.

¹⁰ ITS claims that the SSA ignored a significant portion of its relevant corporate experience in concluding that the two proposals were substantially equal under this factor. Comments at 10. For support, ITS points to a page in the award decision in which the SSA summarizes ITS's experience—leaving out certain aspects of the SSEB's assessments. Id. (citing AR, Tab 22, Award Decision, at 59). In reviewing the award decision in its entirety, however, we note that the SSA included a more detailed discussion of ITS's experience, see AR, Tab 22, Award Decision, at 34-35, and only later summarized key aspects of that experience, id. at 50. Accordingly, we do not find that the SSA ignored ITS's experience or that the SSA was unaware of ITS's experience, only that the SSA elected to provide a more abbreviated summary later in the award decision. We do not find the SSA's decision to be objectionable in this regard.

provide a basis to question the reasonableness of the agency's evaluation.
Science Applications Int'l Corp., supra.

The protest is denied.

Susan A. Poling
General Counsel