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Decision

Matter of: McKean Defense Group, LLC

File: B-415254.2

Date: December 19, 2017

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Richard J. Conway, Esq., and Philip E. Beshara, Esq., Blank Rome LLP, for Gryphon Technologies, L.C., the intervenor.
Ryan Banach, Esq., William A. Longwell, Esq., and Jeanne P. Ockerman, Esq., Department of the Navy, for the agency.
Robert T. Wu, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency's cost realism analysis was unreasonable because the agency did not utilize an independent government cost estimate in its analysis is denied where the record shows that the cost evaluators relied on other cost analysis techniques permitted by the Federal Acquisition Regulation and the cost analysis was otherwise reasonable.
2. Protest that the best-value tradeoff decision was unreasonable and insufficiently documented is denied where the record shows that the tradeoff decision was reasonable and adequately documented, and where despite one apparent evaluation error, the protester could not show that it was prejudiced.

DECISION

McKean Defense Group, LLC, of Philadelphia, Pennsylvania, protests the award of a contract to Gryphon Technologies, L.C., of Washington, District of Columbia, by the Department of the Navy, Naval Sea Systems Command (NAVSEA) under request for proposals (RFP) No. N00024-16-R-3030 for engineering support services. McKean contends that the agency failed to conduct a reasonable cost realism analysis, performed a flawed best-value tradeoff determination, and failed to conduct a reasonable technical evaluation of proposals.

We deny the protest.

BACKGROUND

The RFP, issued on October 27, 2016, sought proposals for the provision of engineering, technical and programmatic services in support of NAVSEA's Surface Maintenance Engineering Planning Program (SURFMEPP).¹ MOL at 2; Agency Report (AR), Tab 1, RFP. The solicitation contemplated the award of a single cost-reimbursement task order, utilizing the multiple-award indefinite-delivery, indefinite-quantity (IDIQ) contracts² under the Navy's SeaPort-e program.³ MOL at 1; RFP at 138.

Award was to be made on a best-value tradeoff basis considering the following three evaluation factors: technical capability and experience ("technical capability"); past performance; and cost. RFP at 139. Technical capability was considered to be more important than past performance, and both non-cost factors, when combined, were to be significantly more important than cost. Id. at 140. However, the solicitation instructed offerors that "as competing proposals approach Technical Capability/Past Performance equality, the Total Evaluated Cost will increase in importance." Id. The technical capability factor included four subfactors listed in descending order of importance: technical capability and experience, key personnel, staffing plan, and management plan. Id. at 139-140.

Three proposals were evaluated, including those from Gryphon and McKean. Proposals were evaluated by the source selection evaluation board (SSEB) and cost evaluation team (CET), with the relevant results as follows:

	Gryphon	McKean
Technical Capability	Outstanding	Outstanding
Technical Capability and Experience	Outstanding	Outstanding
Key Personnel	Outstanding	Outstanding
Staffing Plan	Good	Good
Management Plan	Good	Good
Past Performance	Substantial Confidence	Substantial Confidence

¹ SURFMEPP's primary mission is to maintain and modernize the Navy's in-service ships throughout the ship's life-cycle. Memorandum of Law (MOL) at 3.

² Although this is a task order competition under a multiple-award IDIQ contract, the Navy issued the solicitation as an RFP rather than an RFQ (request for quotations) and refers to the submissions of proposals from offerors instead of quotations from vendors. For consistency and ease of reference to the record, we do the same.

³ SeaPort-e is the Navy's electronic platform for acquiring support services in 22 functional areas, including engineering, financial management, and program management. SeaPort-e, <http://www.seaport.navy.mil> (last visited Dec. 11, 2017).

Total Evaluated Cost	\$83,483,012	\$85,318,693
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AR, Tab 12, Best Value Determination, at 2.

The source selection authority (SSA) conducted a tradeoff between offerors, ultimately concluding that both proposals from Gryphon and McKean “substantially exceed the minimum requirements of the solicitation, as evidenced by the many strengths noted in each offeror’s Technical/Management Proposal, and that, in each case, the noted strengths would yield significant benefits to the Government during performance of the contemplated contract.” Id. at 3. She also noted that “although some weaknesses were noted in each offeror’s proposal, in my opinion, they are all relatively minor in nature and will create little or no risk of any performance issues or delays.” Id.

Based on her review of the evaluation documents, the SSA concluded that Gryphon’s and McKean’s proposals were essentially equal in overall technical merit. In this regard, the SSA noted that while “there were some differences in the strengths and weaknesses noted in each proposal, it is [her] conclusion that, in each case, all of the weaknesses noted are relatively minor in nature.” Id. at 4. She also observed that while the evaluators noted certain strengths in each proposal not found in the competing offer, she did not find any strengths, or combination of strengths, that would cause one proposal to be superior to the other in overall technical merit. Id. Having found the two proposals to be essentially equal in overall technical merit, the SSA determined that Gryphon’s proposal represented the best value to the government because it provided “essentially equal technical merit at a lower Total Evaluated Cost.” Id. After issuance of the task order, this protest followed.⁴

DISCUSSION

McKean challenges the agency’s evaluation of its proposal and Gryphon’s proposal. Specifically, the protester contends that the agency failed to conduct a reasonable cost realism analysis, performed a flawed best-value tradeoff determination, and failed to conduct a reasonable technical evaluation of proposals. Although we do not address every allegation and argument raised by the protester, we have reviewed them all and find that none provide a basis to sustain the protest.

Cost Analysis

In its protest, McKean alleges that the agency failed to conduct a cost realism analysis, or, alternatively, conducted a flawed analysis that did not examine compensation, other direct costs, or the most probable cost of Gryphon’s proposal. Protest at 18-24. Upon review of the agency report, the protester acknowledged that “the evaluators did spend

⁴ The task order at issue is valued in excess of \$25 million. Accordingly, our Office has jurisdiction to consider McKean’s protest. 10 U.S.C. § 2304c(e)(1)(B).

significant time evaluating the proposed costs of each offeror.” Protester’s Comments at 10. However, McKean persists with its challenge to the reasonableness of the agency’s cost realism analysis of Gryphon’s proposal, arguing that the agency unreasonably failed to compare Gryphon’s proposal to the independent government cost estimate (IGCE), which was based on historical rates of the incumbent contractor, McKean. Id. at 10-12.

The agency responds that it is not required to follow any particular process or procedure in conducting a cost realism analysis. While McKean objects to the fact that a particular technique was not utilized, “an agency may use any cost analysis technique, or any combination of cost analysis techniques and procedures considered appropriate under the circumstances.” Agency Response at 2. To support its contention that the cost realism analysis was thorough and reasonable, the agency points to such things as: the analysis it conducted of each cost element; the verification of labor hours and labor mix against government estimates; and its examination of labor rates and overhead costs against rates provided by the Defense Contract Audit Agency and the information contained within Gryphon’s proposal. Id. at 3 citing AR, Tab 11, Cost Realism Analysis Report, at 6-36.

Agencies are required to perform a cost realism analysis when, as here, the agency is awarding a cost-reimbursement contract, to determine the probable cost of performance for each offeror. Federal Acquisition Regulation (FAR) §15.404-1(d)(2). In conducting such analysis, agencies are given broad discretion to make cost realism evaluations. Burns & Roe Indus. Servs. Co., B-233561, Mar. 7, 1989, 89-1 CPD ¶ 250 at 2. Consequently, our review of an agency’s cost realism evaluation is limited to determining whether the cost analysis is reasonably based and not arbitrary. Jacobs COGEMA, LLC, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 26.

As highlighted by the agency, the FAR states that an agency “may use various cost analysis techniques and procedures to ensure a fair and reasonable price, given the circumstances of the acquisition.” FAR § 15.404-1(c)(2). Appropriate cost analysis techniques and procedures include such things as: verifying cost or pricing data and evaluating the cost elements; comparing costs proposed by the offeror for individual cost elements with actual costs previously incurred by the same offeror; using previous cost estimates from the offeror or from other offerors for the same or similar items; reviewing other cost estimates received in response to the government’s request; and using IGCE estimates by technical personnel. Id.

Our review of the record confirms that the evaluators used a variety of appropriate cost analysis technics to support their conclusion that Gryphon’s price was realistic. AR, Tab 11, Cost Realism Analysis Report, at 6-36. In this regard, we agree with the agency that its cost analysis was reasonably performed and adequately documented with a contemporaneous 86-page cost realism analysis report. Id. at 1-86. McKean’s argument, in essence, that the agency was required to utilize the IGCE in its analysis, is belied by the language of the FAR. Where the record indicates that the agency used various cost analysis techniques prescribed in the FAR, and the protester does not

provide any substantive arguments other than with respect to the agency's decision to not use the IGCE as part of its analysis, we are provided no basis to question the reasonableness of the agency's evaluation. See Jacobs COGEMA, LLC, supra at 26.

Tradeoff Decision

The protester next challenges the agency's award decision arguing that the record lacked a meaningful comparison between the proposals submitted by McKean and the awardee. Protester's Comments at 5. In this regard, the protester challenges the reasonableness of the SSA's determination that the proposals were essentially equal in technical merit, arguing that the SSEB "noted meaningful, weighty distinctions" that were "glossed over" by the SSA in her analysis. Id. Our review of the record provides no basis to question the agency's evaluation.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. Analytical Innovative Solutions, LLC, B-408727, Nov. 6, 2013, 2013 CPD ¶ 263 at 2. Rather, we will review the record only to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. Id. In issuing orders under multiple-award IDIQ contracts, the FAR requires contracting officers to document in the contract file the rationale for the placement and price of each order, including the basis for award and the rationale for any tradeoffs among cost or price and non-cost considerations in making the award decision. FAR §16.505(b)(7)(i). Moreover, we note that agencies are required to adequately document the final evaluation conclusions on which their source selection decisions are based. Booz Allen Hamilton, Inc., B-409355, B-409355.2, Mar. 19, 2014, 2014 CPD ¶ 100 at 7.

As an initial matter, our review of the record shows that the agency's evaluation of proposals is adequately documented. As the protester acknowledges, the record indicates "that each offeror's proposal was subject to a detailed review and evaluation." Protester's Comments at 1. While the protester goes on to challenge the adequacy of the SSA's tradeoff analysis, for instance, arguing that it "contains perfunctory, conclusory language relating to comparison," id. at 2, our review shows that the SSA's analysis sufficiently details the basis for award and the rationale for any tradeoffs among cost and non-cost considerations in making the award decision, as required by the FAR.

Substantively, McKean proffers two arguments in support of its position that there were qualitative differences between the awardee's and its own proposal that were ignored by the SSA in her best-value tradeoff decision. First, McKean points to the SSEB's statement that it had "exceptional confidence that McKean would successfully perform the requirements of the contract," whereas the SSEB only had "high confidence Gryphon would successfully perform the requirements of the contract with very low risk." Protester's Comments at 5; AR, Tab 9, Technical Evaluation Report, at 14, 22. Based on this language, McKean argues that while the evaluators recognized a qualitative

difference between proposals, a proper comparative assessment was never conducted between the proposals because the source selection decision only documents conclusory findings by the SSA. Protester's Comments at 4-5.

The record shows that the SSEB conducted an evaluation of each proposal, assigning strengths and weaknesses under the various subfactors of the technical capability factor. AR, Tab 9, Technical Evaluation Report, at 14, 22. The SSEB did not conduct a comparative analysis between proposals, but instead limited their evaluation to the merits of each separate proposal. Id. The language of which McKean complains is found in the separate introductory paragraphs for McKean's and Gryphon's portion of the technical evaluation report. The complete context for each statement is as follows:

The Gryphon team submitted an outstanding proposal in response to the solicitation. Gryphon completely understands the responsibilities and functions of SURFMEPP as a result of its experience supporting Carrier Planning Activity. Gryphon's proposal gives the government high confidence Gryphon would successfully perform the requirements of the contract with very low risk.

* * * * *

As the incumbent support contractor for SURFMEPP, McKean fully understands the requirements and functions of SURFMEPP. McKean's proposal gives the government exceptional confidence that McKean would successfully perform the requirements of the contract.

Id. at 14, 22.

Contrary to McKean's assertions regarding the importance of this language, our review of the record, including the various strengths and weaknesses assigned to both proposals, does not provide us with any basis to conclude that the evaluators intended to articulate an overall qualitative difference between Gryphon and McKean's proposals by using the term "high confidence" for Gryphon and "exceptional confidence" for McKean. More importantly, however, is that the SSA specifically recognized and evaluated the various strengths in each proposal not found in the competing offer, and did not find any strengths, or combination of strengths, that would cause one proposal to be superior to the other in overall technical merit. AR, Tab 12, Best Value Determination, at 4. In other words, regardless of what was intended by the evaluators' comments, it is apparent from the record that the SSA considered the substance of the technical evaluation in determining that the proposals were essentially equal with respect to technical merit.

Second, McKean challenges the SSA's determination that Gryphon had extensive prior and current experience supporting SURFMEPP activities. Protester's Comments at 6, citing to AR, Tab 12, Best Value Determination, at 3. In this regard, the protester essentially argues that Gryphon's direct experience with SURFMEPP only included "a

single subcontracted employee with dated experience” and that experience possessed by Gryphon through other programs was of a different level of complexity and breadth than the SURFMEPP contract. Protest at 12-13; Protester’s Comments at 6-7.

The agency responds that its assessment of Gryphon’s experience was based not only on its direct experience with SURFMEPP and work supporting the carrier planning activity, but also on other aspects of the firm’s proposal. MOL at 15-16 citing AR, Tab 12, Best Value Decision, at 3. Such experience included working with baseline availability work packages (BAWPs) and technical foundation papers (TFPs), both of which are “key SURFMEPP products that affect a wide range of products and processes across the surface ship enterprise.” AR, Tab 12, Best Value Decision, at 3. Furthermore, the SSA identified that both Gryphon and McKean demonstrated “a breadth of in-depth knowledge[,] spanning everything from programmatic and organization understanding to technical and engineering knowledge and analysis.” Id. Our review of the record provides no basis to find that these judgments were unreasonable.

In this regard, we will not sustain a protest where the agency’s evaluation is reasonable, and the protester’s challenges amount to disagreement with the agency’s considered technical judgments regarding the specific elements of an offeror’s proposal. BNL, Inc., B-409450, B-409450.3, May 1, 2014, 2014 CPD ¶ 138 at 5. Here, the record shows that the evaluators recognized various aspects of Gryphon’s prior and current relevant experience, which, in turn, was considered by the SSA, as stated above. AR, Tab 9, Technical Evaluation Report, at 15-23. While McKean disputes the complexity and breadth of this experience,⁵ given the substantial record supporting the agency’s conclusions, a record of experience that the protester does not dispute, we are not persuaded that the evaluators or the SSA were unreasonable in their assessment of the technical merits of Gryphon’s proposal.

Next, McKean challenges the agency’s application of the adjectival rating scheme, arguing that had it been properly applied, McKean’s proposal would have received outstanding ratings under all four technical capability subfactors. Protest at 16. As a general matter, adjectival descriptions and ratings serve only as a guide to, and not a substitute for, intelligent decision-making. Science Applications Int’l Corp., B-407105, B-407105.2, Nov. 1, 2012, 2012 CPD ¶ 310 at 7. Thus, the relevant question here is not whether the agency properly rated McKean’s proposal as good or outstanding under any given factor or subfactor, but rather, whether the underlying evaluation was reasonable and supported the source selection decision. We conclude that it was.

⁵ For instance, McKean argues that the “complexity of breadth of SURFMEPP is on a different scale from these other programs [forming the basis of Gryphon’s experience]. Specifically, the submarine program (SUBMEPP) has six classes and 78 hulls under it, while the carrier program(CPA) has 2 classes and 11 hulls. In contrast, the surface program (SURFMEPP) covers 183 hulls from 11 classes.” Comments at 7.

As noted above, the SSA conducted a tradeoff between offerors, and found that both Gryphon and McKean “substantially exceed the minimum requirements of the solicitation, as evidenced by the many strengths noted in each offeror’s Technical/Management Proposal, and that, in each case, the noted strengths would yield significant benefits to the Government during performance of the contemplated contract.” AR, Tab 12, Best Value Decision, at 3. She also observed that “although some weaknesses were noted in each offeror’s proposal, in [her] opinion, they are all relatively minor in nature and will create little or no risk of any performance issues or delays.” Id. Moreover, the SSA noted various comparative strengths in each firm’s proposal. For instance, she found that “[b]oth offerors have developed an in-depth, comprehensive familiarity with SURFMEPP’s organization and functions as a result of extensive prior and current experience supporting SURFMEPP activities.” AR, Tab 12, Best Value Determination, at 3.

In sum, the record supports the conclusion that the SSA looked behind the adjectival ratings assigned to each proposal, and evaluated the relative strengths and weaknesses of each. Specifically, the SSA annotated the following: “Although I utilized the adjectival ratings assigned by the SSEB evaluators as a guide in my decision making process, I thoroughly analyzed the particular strengths and weaknesses found in each offeror’s Technical/Management Proposal in order to identify substantive distinctions among the proposals that contributed to differences in overall technical merit.” Id. While McKean asserts that it should have received outstanding ratings for each of the technical capability subfactors, such an argument is misguided given the SSA’s detailed analysis of the relative merits of each proposal.

Technical Evaluation

Finally, McKean challenges the assignment of two weaknesses to the firm’s proposal under the staffing plan and management plan subfactors, arguing that each weakness represents a misreading of its proposal.⁶ Protest at 17-18; Protester’s Comments at 10. In response, the agency argues, in essence, that the protester has not shown that the evaluation was not conducted in accordance with the evaluation factors. MOL at 17-18.

The first weakness, under the staffing plan subfactor, was assigned because McKean allegedly identified three key personnel who were not yet hired by the firm. The evaluators identified risk that the individuals will not join McKean, leaving the firm unable to quickly fill the positions in support of SURFMEPP overseas. AR, Tab 9,

⁶ McKean also challenged the assignment of two weaknesses to the firm’s proposal under the technical capability and experience subfactor. The agency responded to these arguments in the agency report, however, the protester failed to rebut or otherwise address the agency’s arguments in its comments. MOL at 17-18; see generally Protester’s Comments. We conclude that McKean abandoned these protest grounds and they will not be considered further. IntelliDyne, LLC, B-409107 et al., Jan. 16, 2014, 2014 CPD ¶ 34 at 3 n.3.

Technical Evaluation Report, at 29. McKean argues that the RFP did not provide for a weakness to be assigned for “contingent hire employees,” but only for key personnel positions for which an individual was not yet identified.⁷ Protest at 16; RFP at 125. Moreover, the protester argues that its track record “should have further indicated that there was simply no appreciable risk with regard to its staffing plan.” Protest at 16.

The staffing plan subfactor provided for the evaluation of the capability, qualifications, and proposed overall allocation of personnel labor resources to meet the requirements of the RFP. RFP at 143. While the subfactor does not specifically address contingent hires, agencies may properly evaluate a proposal based on considerations not expressly stated in the RFP where those considerations are reasonably and logically encompassed within the stated evaluation criteria and where there is a clear nexus between the stated and unstated criteria. Exelis Systems Corp., B-407111 et al., Nov. 13, 2012, 2012 CPD ¶ 340 at 18.

It is not apparent from our review of the solicitation--and the protester has given no argument to the contrary--why the risk that individuals are not available cannot reasonably be evaluated under this stated evaluation criterion. In this regard, the staffing plan subfactor focuses on the capability and allocation of labor resources to meet the requirements of the RFP, which would reasonably encompass the availability of such resources. As such, as the agency reasonably observes, a contingent hire, who potentially may never become available, can reasonably be assessed as creating a risk. Moreover, while the language cited by the protester discusses proposal risk in the context of positions for which candidates have not been identified, there is nothing in the cited language that would preclude assessment of the risk of identified, yet contingent hires. If anything, the language shows that the agency was interested in assessing the risks associated with the availability of personnel, to which the assigned weakness relates.

Furthermore, the evaluation shows that Gryphon’s proposal was assigned a commensurate weakness for proposing 10 contingent hires under the same subfactor. AR, Tab 9, Technical Evaluation Report, at 21. To the extent that it was improper for the agency to assign a weakness to McKean’s proposal for contingent hires, the same rationale would apply to Gryphon’s proposal, and as such McKean has not shown it was prejudiced even under its own interpretation of the RFP. See Bannum, Inc., B-408838, Dec. 11, 2013, 2013 CPD ¶ 288 at 4 (finding prejudice is an essential element of any protest).

With respect to the second weakness, assigned under the management plan subfactor, the evaluators observed that a chart included in McKean’s proposal did not include

⁷ In support of its argument, the protester points to the following language in the RFP, “[f]rom an evaluation perspective, proposal risk in terms of ‘Technical Capability’ and ‘Cost Realism’ would be expected to increase when candidates have not been identified for proposed task area positions.” Id.

position titles or the number of full-time equivalent (FTE) personnel on the organizational chart. AR, Tab 9, Technical Evaluation Report, at 30-31. The SSEB noted a risk that the “organizational chart provided by McKean does not provide enough information and is not adequate to determine the proposed location of each FTE.” Id. at 31. McKean argues that it included information about each employee in the staffing plan, but was not required by the terms of the RFP to provide location information in connection with the management plan subfactor. Protest at 17.

The requirement for offerors to submit an organizational chart is located in Section L of the RFP, which states, in pertinent part, “[d]escribe the organization and provide an organizational chart that will manage the overall PWS [Performance Work Statement] effort, including subcontractors. The organizational chart shall include position titles and the number of full-time equivalents (FTEs) proposed for each support position.” RFP at 127. Our review of McKean’s proposal, and specifically the chart that is the subject of the weakness, shows that there are 25 personnel depicted on the chart by name and by position. AR, Tab 6, McKean’s Proposal Vol. I, at 80. Some, but not all of the personnel are additionally identified by geographical location. There is also a chart in the upper left corner of the page listing support positions for tasks detailed in the statement of work, and the assigned FTEs, per task, for a total of 130 FTE. Id.

The record does not provide additional explanation of the assigned weakness. Our review of the record shows that the chart appears to include the information called for in the Section L language discussed above, particularly with respect to the FTEs proposed for each support position. Notably, the Section L language does not appear to call for information on the proposed location of each FTE, as the assigned weakness states. Without more in the record, we cannot conclude that this weakness was reasonably assigned by the agency.

Prejudice

Since the record does not support the reasonableness of the assignment of one weakness to McKean’s proposal under the management plan subfactor, we now turn to the issue of prejudice, as prejudice is an element of every viable protest. See Bannum, Inc., supra, at 4. In this regard, we resolve any doubts regarding prejudice in favor of a protester since a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. See Kellogg, Brown & Root Servs., Inc.--Recon., B-309752.8, Dec. 20, 2007, 2008 CPD ¶ 84 at 5.

The agency argues that McKean has not shown prejudice, because the evaluators found that with respect to each of these weaknesses, any risk to contract performance is considered low. MOL at 18 citing AR, Tab 9, Technical Evaluation Report, at 23-26. Further, the agency points to the SSA’s conclusion that the weaknesses noted in McKean’s proposal “are all relatively minor in nature and will create little or no risk of any performance issues or delays.” Id. at 19 citing AR, Tab 12, Best Value Decision, at 3. The agency concludes that McKean has not shown that, but for these “minor weaknesses,” the SSA would have found McKean’s relative technical merit warranted

payment of a “cost premium of over \$1.8 million.” Id. In addressing the impact of any errors in the agency’s technical evaluation, McKean argues that under the terms of the RFP, “even a slight advantage in any of the technical subfactors or overall technical should have been greatly amplified because the non-cost factors were significantly more important than cost.” Protester’s Comments at 5.

We agree with the agency that the evaluation error identified under the management plan subfactor does not cause us to question the agency’s ultimate award decision given the significant cost premium of McKean’s proposal, and the otherwise reasonable technical evaluation and tradeoff decision. Moreover, it is apparent from the source selection decision that the SSA considered any weaknesses assigned to both proposals as “relatively minor in nature,” and focused, instead, on the significant strengths in each proposal, ultimately finding both proposals to be “essentially equal in overall technical merit.” AR, Tab 12, Best Value Determination, at 4. On this record, we conclude that the protester has not shown that it was prejudiced any evaluation error by the agency. See Bannum, Inc., *supra*, at 4.

The protest is denied.

Thomas H. Armstrong
General Counsel