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Decision

Matter of: STG, Inc.

File: B-415580.4; B-415580.5

Date: July 5, 2018

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Christian N. Curran, Esq., Daniel R. Forman, Esq., and Sarah A. Hill, Esq., Crowell & Moring LLP, for Enterprise Services, LLC, the intervenor.
Terrius Greene, Esq., and Kevin Misener, Esq., Department of Homeland Security, for the agency.
Michael Willems, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging agency's evaluation evidences different requirements than are described in the solicitation is denied where the record reflects that the solicitation reflected the agency's requirements.
 2. Protest alleging evaluation errors is denied where the arguments represent nothing more than disagreement with the agency's evaluation.
 3. Protester was not prejudiced by minor evaluation errors where the protester's proposal was significantly higher-priced than the awardee's proposal and the awardee's proposal received the highest possible overall rating.
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DECISION

STG, Inc., of Reston, Virginia, protests the issuance of a task order to Enterprise Services, LLC, (ES) of Herndon, Virginia, by the Department of Homeland Security, United States Customs and Border Protection, under request for proposals (RFP) No. C-39424-0 for network operations center services. STG argues that the agency erred in several respects in its evaluation of STG's proposal.

We deny the protest.

BACKGROUND

The agency issued the RFP on April 5, 2017, to holders of the National Institutes of Health, Information Technology Acquisition and Assessment Center, “Chief Information Officer–Solutions and Partners 3” governmentwide acquisition contract. Agency Report (AR), Tab 1, Memorandum of Law (MOL) at 1; AR, Tab 2, RFP Letter at 1. The RFP contemplated the issuance of a task order utilizing a best-value tradeoff selection process based on the following three evaluation factors: (1) technical/management approach, (2) past performance, and (3) price. AR, Tab 2, Instructions to Offerors at 2-5. The technical factor included four subfactors, in descending order of importance: (1) demonstrated understanding of the requirement; (2) staffing/resource management plan; (3) proactive and predictive analysis plan; and (4) incoming transition plan. Id. at 3-4. The RFP provided that all non-price evaluation factors, when combined, were significantly more important than price, but advised that for proposals of substantially equal technical merit, price would become the more significant factor. Id. at 8.

The agency received seven proposals in response to the RFP, including proposals from STG and ES, and announced the issuance of a task order to ES on September 21, 2017. MOL at 4. STG filed its initial protest on October 18. Id. at 5.

STG’s initial protest argued that the agency: (1) unreasonably failed to assign multiple additional strengths under each technical subfactor, as well as incorrectly assigning weaknesses under two technical subfactors; (2) unreasonably failed to assign a superior rating for some of STG’s past performance references; and (3) unreasonably downgraded STG’s overall past performance assessment on the basis of two neutral past performance assessments.¹ Protest, Oct. 18, 2017, at 13-31.

Following the submission of the agency report, STG filed a supplemental protest alleging additional grounds related to the evaluation of its own proposal and disparate treatment in both the technical and past performance evaluations, as well as alleging that the agency had impermissibly double-counted some of the awardee’s technical strengths. Supp. Protest, Nov. 27, 2017, at 2-18. Prior to filing a supplemental agency report, the agency notified our Office that it intended to reevaluate technical proposals and past performance submissions and make a new source selection decision. Agency Notice of Corrective Action at 1. Our Office dismissed the protest as academic on December 5, 2017. STG Inc., B-415580, B-415580.2, Dec. 5, 2017 (unpublished decision).

¹ STG made several additional allegations in its initial protest--two of which it subsequently withdrew, and one of which was dismissed as speculative and legally insufficient. Protester’s Comments, Nov. 30, 2017; Email from GAO to protester, Nov. 8, 2017.

Following the agency's corrective action, the agency convened a new technical evaluation team (TET),² and selected a new source selection authority (SSA). MOL at 5. The agency then reevaluated the proposals; the results of the reevaluation are shown on the following chart:

	STG (Initial Evaluation)	STG (Reevaluation)	ES*
TECHNICAL/MANAGEMENT APPROACH – OVERALL	Good	Good	Superior
Demonstrated Understanding of Requirements	Good	Good	Superior
Staffing/Resource Management Plan	Good	Satisfactory	Superior
Proactive and Predictive Analysis	Good	Good	Good
Transition Plan	Good	Good	Superior
PAST PERFORMANCE	Satisfactory	Satisfactory	Superior
PRICE	\$100,547,998	\$100,547,998	\$75,166,733

* ES's adjectival ratings did not change in the reevaluation. MOL at 4-5.

On the basis of the reevaluation the agency again concluded that ES represented the best value to the government. Id. This protest followed.³

DISCUSSION

The protester alleges that the solicitation does not reflect the agency's actual requirements and that the agency erred in various ways in reevaluating STG's proposal. Regarding the evaluation challenges, the protester alleges that: (1) the agency unreasonably failed to assign STG's proposal various strengths; and (2) on reevaluation, the agency unreasonably assessed various new weaknesses and downgraded its past performance despite there being no change in the underlying proposals. Protest at 2; Protester's Comments and Supp. Protest at 8-12,15-16. We address each argument in turn.⁴

² The TET for the reevaluation included some, but not all, of the same members as the original TET.

³ The agency issued the task order to ES in the amount of \$75,166,733. Because the task order at issue is valued at more than \$10 million, our Office has jurisdiction to consider the protest. 41 U.S.C. § 4106(f)(1)(B).

⁴ The protester initially advanced protest arguments alleging disparate treatment with respect to technical and past performance evaluation, but these were dismissed as speculative. See Resolution of Request for Partial Dismissal at 1-2. Additionally, the protester advanced certain other arguments not addressed in this decision. While we
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STG's Contention that the Solicitation Does Not Reflect the Agency's Needs

First, STG argues that the agency's assignment of a significant weakness to its proposal under the staffing/resource management plan technical subfactor shows that the solicitation does not reflect the agency's true requirements. Comments at 8-12. In the agency's original evaluation of STG's proposal, the evaluators appeared to have assessed STG a weakness for only assigning [DELETED] personnel to the secondary network operations site in Florida, noting 30 personnel would be optimal. September 2017 TET Consensus Report at 2-3. However, that specific personnel number is not reflected in the RFP, and the pricing template provided with the RFP appears to contemplate only nine personnel assigned to the secondary site. AR, Tab 2, Pricing Template at 2. In the reevaluation, the agency assessed STG a significant weakness under this technical subfactor. MOL at 4-5. STG, in addition to disputing the significant weakness, now argues that the agency's requirements are materially different than what was contemplated by the RFP, and therefore the RFP should be cancelled and amended to reflect the agency's true requirements. Comments at 8-12.

This protest ground is without merit. The reevaluation record makes clear that the agency did not view 30 personnel as the appropriate number of personnel for the Florida location,⁵ but rather found that the protester's specific staffing mix and staff schedule did not provide for the level of redundancy contemplated by the solicitation. Performance Work Statement (PWS) at 6; TET Consensus Report at 38. Specifically, the pricing template estimated nine positions in total for the Florida location, including two Tier 2/Level III systems engineers. MOL at 11-14; Pricing Template at 2. The template indicated that, while offerors should propose staff at a level to meet the performance objectives of the PWS, offerors should also describe any deviations from the agency's estimated staff levels. Id. However, the protester proposed [DELETED], rather than [DELETED] as contemplated by the pricing template, and the protester did not fully stagger the work weeks of the [DELETED] and its [DELETED]. STG Proposal at 29.

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do not address each allegation in this decision, we have considered all of them, and concluded that none provide a basis to sustain the protest.

⁵ Agency counsel, in the agency's legal memorandum, confused the issue by suggesting the solicitation's pricing template reflects nine personnel "per shift" at the Florida location. MOL at 11. As the protester notes, such a reading is unsupported by the record, and would be inconsistent with the remainder of the pricing template, which is not expressed on a per shift basis. Comments at 9. Because the legal memorandum, in this respect, is inconsistent with the solicitation, the conclusions of the TET, and the statement for the record of the TET chair, we view the assertion as an error in pleading, and not, as protester contends, a statement that the agency's requirements have materially changed such that the solicitation must be amended. See TET Chair Statement at 3-4; TET Consensus Report at 28; Pricing Template at 2.

In this regard, the solicitation required that offeror's propose staff adequate to maintain the Florida location in an "active/active" status to support continuity of operations if the Virginia facility was not available. PWS at 6. The primary issues identified by the TET revolve around the fact that STG's proposed schedule provided no higher level support on third shift, or on any of the three shifts on Saturdays, which meant that, in the event the Virginia facility was down during those times there would be no effective redundancy at the Florida location. TET Chair Statement at 3-4; TET Consensus Report at 38.

While it is not clear that the staffing mix described in the pricing template could fully eliminate the issues identified,⁶ the template indicated that offerors should account for any deviations from the template. Pricing Template at 1; MOL at 13. Here, the protester proposed less support than the pricing template contemplated, which the agency reasonably concluded would have the effect of reducing the level of redundancy provided by the Florida location. Id. Accordingly, we do not view the assignment of this significant weakness as evidence that the agency's requirements were different than what was specified in the RFP, nor do we conclude that the agency erred in assigning a significant weakness on that basis.

Alleged Technical Strengths

For each of the four technical subfactors, the protester identified a lengthy list of features in its proposal, which, in its view, merited strengths or significant strengths. For example, the protester notes that its key personnel appreciably exceeded the solicitation's preferred qualifications, which the agency noted in its evaluation was an advantageous feature of STG's proposal, but for which the agency allegedly did not assign STG a strength. Comments at 7-8 (citing AR, Tab 8, Consolidated TET Report at 39-40). As an additional example, the protester notes that the agency only assigned two strengths to its proposal under the demonstrated understanding technical subfactor, but the evaluation identified multiple additional advantageous features of its proposal for which strengths were not assigned. Comments at 5-6 (citing Consolidated TET Report at 37).

The evaluation of technical proposals and the determination of the relative merit or relevance of past performance references are generally matters within the agency's discretion, which our Office will not disturb unless they are shown to be unreasonable or

⁶ We note that, while adding a single additional Tier 2/Level III systems engineer, as contemplated by the pricing template, would not necessarily allow an offeror to provide higher-level support on all shifts and all days, it would significantly reduce the number of such uncovered shifts. For example, a hypothetical schedule using the staffing levels in the pricing template could result in either a Tier 2/Level III systems engineer or the team leader being available on all but 3 shifts out of 21 per week, as opposed to the protester's proposed schedule, in which 9 shifts out of 21 per week lacked higher-level support.

inconsistent with the RFP's evaluation criteria. American Systems Corp., B-413952.3, B-413952.4, June 23, 2017, 2017 CPD ¶ 204 at 6; NCI Information Systems, Inc., B-412680, B-412680.2, May 5, 2016, 2016 CPD ¶ 125 at 5; ORBIS Inc., B-408033.2, June 3, 2013, 2013 CPD ¶ 140 at 5. Additionally, adjectival descriptions and ratings serve only as a guide to and not a substitute for, intelligent decision-making. See Chapman Law Firm, LPA, B-293105.6 et al., Nov. 15, 2004, 2004 CPD ¶ 233 at 5. The essence of the evaluation is reflected in the evaluation record itself--the actual evaluation findings--and not the adjectival descriptions. Jacobs Tech., Inc., B-411784, B-411784.2, Oct. 21, 2015, 2015 CPD ¶ 342 at 10-11.

While the protester identifies numerous features of its proposal that it contends were unfairly ignored, the protester does not provide a supporting rationale that shows the agency's evaluation was unreasonable or inconsistent with the RFP.⁷ For example, the agency's technical evaluation expressed a positive view of the protester's proposal with respect to key personnel qualifications, noting that "[a] few strengths were identified in the resumes submitted," and enumerated those positive features. Consolidated TET Report at 38-40. Additionally, the SSA's decision memorandum notes that STG was assigned a strength under this subfactor for "Key Personnel – specifically Network Operations Manager." AR, Tab 9, SSA Decision Memorandum at 13. So it is clear on the record that the agency was aware of, and considered, these positive features, and, in fact, assigned STG a strength on the basis of its key personnel.

Similarly, the protester notes that it received only two strengths for the first technical subfactor, despite the fact that the agency expressed a positive view of numerous other features of that portion of its proposal. Comments at 5-6. The protester is correct that the technical evaluators identified multiple positive features of the protester's proposal under this subfactor, but nonetheless, only assigned two strengths. Consolidated TET Report at 37. Additionally, the SSA decision memorandum lists three features of the protester's proposal as "strengths," but the agency appears to identify only two strengths under this subfactor elsewhere in the SSA decision memorandum and in the technical evaluation table. Compare SSA Decision Memorandum at 13 with SSA Decision Memorandum at 9; Consolidated TET Report at 37. However, the record is

⁷ While the protest provided some argument in support of certain alleged strengths, the majority of the alleged strengths were furnished as list items, and were entirely unsupported by argument, other than to note that the technical evaluation did not address them. See, e.g. Protest at 25-27. However, an agency is not required to document all "determinations of adequacy" or explain why a proposal did not receive a strength, weakness, or deficiency for a particular item. Allied Tech. Group, Inc., B-412434, B-412434.2, Feb. 10, 2016, 2016 CPD ¶ 74 at 13. Accordingly, the fact that protester contends that these proposal elements deserved strengths represents nothing more than disagreement with the agency's judgment and does not provide a basis to conclude the agency's evaluation was unreasonable. See DynCorp International, LLC, B-412451, B-412451.2, Feb. 16, 2016, 2016 CPD ¶ 75 at 7-8

clear that the agency was aware of and considered these advantageous features of the protester's proposal, regardless of the actual number of strengths assigned. See Consolidated TET Report at 37.

It does not follow from the protester's arguments that the agency's evaluation was unreasonable in this respect. For example, it is not clear that exceeding the government's preferred key personnel qualifications for multiple positions necessarily merited the assignment of multiple strengths or a significant strength rather than the single strength the protester received. Likewise, it is not unreasonable for an agency to conclude that not every positive feature of a proposal identified in its evaluation represents a separate strength.⁸ In these respects, the protester simply disagrees with the agency as to the merit of its proposed approach, and as to the appropriate rating or characterization of its proposal. Such disagreement, without more, does not provide a basis for us to conclude that an evaluation was unreasonable. See DynCorp International, LLC, supra; Jacobs Tech., Inc., supra.

New Weaknesses and Downgraded Past Performance.

Finally, STG argues that the agency erred in its reevaluation because it failed to justify changes in its reevaluation of the same proposals. Protest at 19-21. Specifically, STG notes that the agency identified additional weaknesses not found in the previous evaluation, and downgraded several past performance references. Id. Additionally, STG argues that, other than in the areas it was downgraded, the reevaluation narratives are verbatim copies of the previous evaluation, which, according to the protester shows that the agency failed to conduct an adequate reevaluation. Comments at 2-3, 8-12. For example, among other things, the protester argues that the agency erred by downgrading STG's past performance references in the reevaluation despite no changes in the underlying proposal.⁹ Id.

Our decisions have been clear that there is nothing per se unreasonable about a new TET or a new SSA, convened for a reevaluation pursuant to corrective action, reaching different conclusions from a prior evaluation panel. Construction Servs. Group, Inc., B-412343.3, Feb. 27, 2017, 2017 CPD ¶ 76 at 4-5. Our Office has long recognized that different evaluation panels may reasonably reach different conclusions regarding the quality of an offeror's proposal given the subjective judgment necessarily exercised by evaluators. Id. The fact that a reevaluation varies, or does not vary, from an original

⁸ For example, the technical evaluators identified two different beneficial portions of the protester's proposal relating to the use of standard operating procedures to improve incident response, but the SSA ultimately assigned one strength on that basis rather than two separate strengths, which is not unreasonable. SSA Decision Memorandum at 13; Consolidated TET Report at 37.

⁹ The protester made a number of additional allegations of error, which we do not address due to lack of prejudice as discussed below.

evaluation does not constitute evidence that the reevaluation was unreasonable. AMG Co. Inc., B-415067.2, Jan. 29, 2018, 2018 CPD ¶ 38 at 3. Additionally, prejudice is an essential element to every viable protest, and where an agency's improper actions did not affect the protester's chances of receiving award, there is no basis for sustaining the protest. See, e.g., American Cybernetic Corp., B-310551.2, Feb. 1, 2008, 2008 CPD ¶ 40 at 2-3

As a preliminary matter, we note that the reevaluation TET included a new member, who had specific experience relevant to network operation centers and who drafted the PWS for this procurement. Supp. AR, MOL at 2-3. Additionally, as noted above, the agency appointed a new SSA. Id. Therefore the reevaluation TET represented a partially different set of evaluators, and the record reflects that, for most of the changes in evaluation, the TET reasonably explained its changes, the SSA sought explanation for changes made in the reevaluation, and, where appropriate, deferred to the technical expertise of the TET. For example, the original TET assigned STG a weakness for its staffing of the Florida location, and the reevaluation TET assigned STG a significant weakness instead, but, as discussed at greater length above, the TET and SSA provided a reasonable basis for this evaluation. TET Chair Statement at 3-4; TET Consensus Report at 28; AR, Tab 9, SSA Decision Memorandum.

However, it is clear that, with respect to certain portions of the reevaluation, the agency did err. For example, with respect to the protester's past performance, the agency concedes that it erroneously downgraded one of the protester's past performance references on the basis of an older performance review, which the evaluators mistakenly thought was the most recent performance review. MOL at 17. The agency additionally concedes that had it viewed the correct performance information, the protester's rating for past performance would have improved to superior overall. AR, Tab 11, Contracting Officer's Statement of Facts at 2-3.

However, while it is clear that the agency erred in its re-evaluation in at least this respect, the protester has not adequately established that it was prejudiced by this error, or other alleged reevaluation errors. As noted above, prejudice is an essential element to every viable protest, and where an agency's improper actions did not affect the protester's chances of receiving award, there is no basis for sustaining the protest. See, e.g., American Cybernetic Corp., supra, at 2-3. In this case, the protester was both lower technically-rated than the awardee and significantly higher-priced (approximately \$25 million, or 33 percent higher). See MOL at 4-5.

The upgrading of its past performance and, hypothetically, the improvement of its technical evaluation could, at best, improve the protester's technical and past performance ratings such that it achieved technical parity with the awardee, which received the highest possible overall ratings. Id. In that case the protester would remain significantly higher-priced than the awardee, and the solicitation made clear that "[b]etween proposals of substantially equal technical merit, price will become the more significant factor." Instructions to Offerors at 8. Therefore, it is not reasonable to conclude that, even were the protester entirely correct and its ratings should have put it

in technical parity with the awardee, that the agency would have reached a different best-value tradeoff decision. Accordingly, the remaining errors alleged, on this record, did not prejudice the protester. See American Cybernetic Corp., supra, at 2-3.

The protest is denied.

Thomas H. Armstrong
General Counsel