



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: Synaptex Corporation, Inc.

File: B-415917.5; B-415917.6

Date: September 24, 2018

Jerry A. Miles, Esq., Deale Services, LLC, for the protester.
Matthew T. Schoonover, Esq., Matthew P. Moriarty, Esq., Shane J. McCall, Esq., and
Stephan L. Skepnek, Esq., Koprince Law, LLC, for OSC Edge, the intervenor.
Paul C. Scheck, Esq., and David H. Turner, Esq., Department of the Navy, for the
agency.
Mary G. Curcio, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Protest that agency failed to consider whether awardee would comply with limitations on subcontracting clause is denied where there is nothing on the face of the awardee's proposal that indicates its intent not to comply.
2. Protest that agency made an unreasonable best-value tradeoff is denied where agency considered that protester's non-price proposal was superior to awardee's non-price proposal, but concluded that protester's proposal was not worth a 40 percent price premium.

DECISION

Synaptex Corporation, Inc., a small business of Reston, Virginia, protests the award of a contract to Open SAN Consulting, LLC dba OSC Edge (OSC), of Atlanta, Georgia, under request for proposals (RFP) No. N00189-17-R-Z023, issued by the Department of the Navy, Naval Supply Systems Command, for information technology support services. Synaptex asserts that the agency unreasonably evaluated OSC's intention to comply with the RFP's limitation on subcontracting and performed an unreasonable best-value tradeoff.

We deny the protest.

BACKGROUND

The solicitation, issued as a small business set-aside, provided for the award of a fixed-price, indefinite-delivery, indefinite-quantity contract, on the basis of the best value to the government, considering price and the following non-price factors (in descending order of importance): management approach, performance approach, and past performance. Agency Report (AR), Attach. 1, RFP, at 1, 76-77. The solicitation advised offerors that in making the award decision, the non-price factors would be considered more important than price. Id.

As relevant to this protest, the solicitation instructed offerors that in addressing their management approach they should, among other things, explain how they were going to comply with Federal Acquisition Regulation (FAR) clause 52.219-14, Limitations on Subcontracting, which was incorporated into the solicitation. AR, Attach. 4, RFP amend. 4, at 8; see also RFP at 61. This clause requires that where, as here, a service contract is issued as a small business set-aside at least 50 percent of the cost of contract performance must be incurred for employees of the small business offeror. FAR clause 52.219-14(c). In addition, offerors were instructed to provide an explanation of the roles and responsibilities of any subcontractor proposed, and of how the subcontractor would be managed. Id.

Following the submission and evaluation of proposals, the ratings of OSC and Synaptex were as follows:

Offeror	Management Approach	Performance Approach	Past Performance	Overall Rating	Price
OSC	Outstanding	Good	Unknown Confidence	Good	\$44,290,359
Synaptex	Outstanding	Outstanding	Substantial Confidence	Outstanding	\$62,009,284

AR, Attach. 9, Source Selection Decision Document (SSDD), at 4. The agency selected OSC for award and this protest followed.¹

DISCUSSION

Synaptex protests that the agency unreasonably assigned OSC's proposal a rating of outstanding under the management approach factor because OSC did not explain how

¹ The agency initially made award to OSC on January 5, 2018. Synaptex and another offeror submitted protests, which were dismissed after the agency took corrective action. Envistacom, LLC, B-415917.3, Mar. 8, 2018 (unpublished decision); Synaptex Corp., Inc., B-415917.4, Mar. 8, 2018 (unpublished decision). The corrective action involved reevaluating proposals and making a new source selection decision, which again resulted in award to OSC.

it was going to comply with the limitations on subcontracting requirements of the solicitation, and did not address the roles and responsibilities of its subcontractors. Synaptek further asserts that the agency failed to make a reasonable best-value tradeoff decision. We have considered all of the issues raised and find no basis to sustain the protest. We discuss several representative issues below.

Management Approach

As noted, the solicitation instructed offerors that in responding to the management approach factor they should, among other things, explain how they were going to comply with the solicitation's limitations on subcontracting clause. AR, Attach. 4, RFP amend. 4, at 8. In its proposal, OSC identified four subcontractors that it intended to use and the anticipated value of each subcontract, as follows: [DELETED]. See AR, Attach. 6, OSC Price Proposal, at 12.

The agency explains that since the value of the contract awarded to OSC was \$44,290,359, OSC's proposal indicated it would perform 56.5 percent of the required effort with its own employees, which is compliant with the limitations on subcontracting clause. MOL at 24 (citing AR, Attach. 8, Business Clearance Memorandum, at 34-35). OSC's proposal also explained that it would ensure compliance with the limitations on subcontracting clause by monitoring subcontractor staffing levels and performance to make sure that the subcontractors did not participate at a higher level than they were proposed. AR, Attach. 5, OSC Non-Price Proposal, at 15; Attach. 8, Business Clearance Memorandum, at 30; Attach. 9, SSDD, at 28-29. Based on this information, the agency found no basis to conclude that OSC did not intend to comply with the solicitation's limitations on subcontracting requirements. AR, Attach. 8, Business Clearance Memorandum, at 30; see also AR, Attach. 9, SSDD, at 28-29.

As a general rule, an agency's judgment as to whether a small business offeror will comply with the limitations on subcontracting clause is a matter of responsibility, and the contractor's actual compliance is a matter of contract administration. Geiler/Schrudde & Zimmerman, B-412219 et al., Jan. 7, 2016, 2016 CPD ¶ 16 at 7. Neither issue is one that our Office generally reviews. See 4 C.F.R. § 21.5(a), (c). However, where a proposal, on its face, should lead an agency to conclude that an offeror has not agreed to comply with subcontracting limitations, the matter concerns the proposal's acceptability. An offeror need not affirmatively demonstrate compliance with the subcontracting limitations in its proposal. Express Med. Transporters, Inc., B-412692, Apr. 20, 2016, 2016 CPD ¶ 108 at 6. Rather, compliance is presumed unless specifically negated by language in the proposal. Id. Where a protester alleges that an offeror is not proposing to comply with the solicitation's limitations on subcontracting provisions, the protester must affirmatively demonstrate that the awardee's proposal takes exception to the solicitation's requirements. Id. Mere assumptions, inferences, and speculation are insufficient to demonstrate noncompliance. Id. at 7.

Synaptek argues that statements in OSC's proposal that OSC will monitor the subcontractors' performance to ensure that they do not exceed the amount for which

they have been proposed are not sufficient to meet this requirement. Protester's Comments & Supp. Protest, July 30, 2018, at 3-5. However, there is nothing on the face of OSC's proposal which indicates that OSC does not intend to comply with the limitations on subcontracting. In fact, OSC's proposal shows that it intends to perform more than 50 percent of the work itself and specifically stated that it would ensure compliance with the limitations on subcontracting by monitoring its subcontractors' efforts. Therefore, OSC did not take exception to meeting the limitation on subcontracting requirement and there was no basis for the agency to question the proposal.

Synaptex also asserts that in concluding that OSC would perform more than 50 percent of the value of the contract with its own employees, the agency failed to consider the value of three independent contractors that OSC proposed to use. Protester's Comments & Supp. Protest, July 30, 2018, at 5. Specifically, in its proposal OSC proposed a team to handle transition matters that included [DELETED]. The three [DELETED] were independent contractors. See AR, Attach. 5c, OSC Non-price Proposal, at 49-50; Small Business Administration (SBA) Size Determination Memorandum, Dec. 8, 2017, at 7.² A review of OSC's proposal shows that these three independent contractors were proposed for a total of 40 days. AR, Attach. 5c, OSC Non-Price Proposal, at 49-50.

As discussed above, OSC's proposal indicated that it is proposing to perform 56.5 percent of the value of the contract with its own employees. See AR, Attach. 6, OSC Price Proposal, at 12. Accordingly, for it to be clear from the face of OSC's proposal that it did not plan to comply with the limitations on subcontracting clause, the value of the services of these three independent contractors would need to exceed 6.5 percent of the value of OSC's contract.³ Six and one-half percent of \$44 million, the value of the contract award to OSC, is \$2,860,000. It is not reasonable to assume that the value of the services of three individuals who are independent contractors, performing for a total

² Synaptex also filed a size protest with the SBA arguing that OSC is affiliated with one or more of its subcontractors on this procurement because the subcontractors would be performing primary and vital requirements. SBA Size Determination Memorandum, Dec. 8, 2017, at 1, 3. SBA concluded that OSC is not affiliated with its subcontractors. Id. at 9. SBA's Office of Hearings and Appeals affirmed the decision. Synaptex Corp., SBA No. SIZ-5954, Aug. 24, 2018, 2018 SBA LEXIS 84.

³ The solicitation's limitation on subcontracting provision requires the small business contractor to incur at least 50 percent of the cost of contract performance with its own employees; OSC's proposal indicates it has proposed to perform 56.5 percent of the cost of performance with its own employees. The cost of performance of the three independent contractors, (which would be attributed to subcontractor performance costs and not OSC employee performance costs) would therefore need to exceed 6.5 percent in order to reach the conclusion that OSC would not perform at least 50 percent of the cost of performance with its own employees.

of 40 days, would amount to \$2,860,000. In other words, it is not reasonable to assume that each day of performance by an independent contractor would cost \$71,500 (\$2,860,000/40 days). Accordingly, there is no basis to conclude that it was clear from the face of OSC's proposal that OSC did not intend to comply with the solicitation's limitations on subcontracting.⁴

Synaptek also asserts that OSC did not address the roles and responsibilities of its subcontractors as required by the solicitation under the management approach factor. Comments & Supp. Protest, July 30, 2018, at 3. Specifically, the solicitation instructed offerors that in responding to the management approach factor they should provide an explanation of the roles and responsibilities of any subcontractor proposed. AR, Attach. 4, RFP amend. 4, at 8. The agency argues that OSC's proposal provided a sufficient explanation of the roles and responsibilities of its subcontractors and how they would be managed. Supp. MOL, Aug. 9, 2018, at 6.

In reviewing protests against allegedly improper evaluations, our Office will examine the record to determine whether the agency's determination was reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. Engineered Elec. Co. d/b/a/ DRS Fermont, B-295126.5, B-295126.6, Dec. 7, 2007, 2008 CPD ¶ 4 at 4. An offeror's disagreement with an agency's assignment of adjectival ratings, or other aspects of the evaluation, without more, does not render the evaluation unreasonable. See McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 18.

In its proposal, OSC stated that the roles and responsibilities of each subcontractor was based on the subcontractor's expertise. AR, Attach. 5b, OSC Non-Price Proposal on Subcontractors, at 14-15. OSC specifically provided that: subcontractor A has significant experience in [DELETED] and OSC would leverage that expertise throughout the relevant performance work statement (PWS) elements; subcontractor B has expertise [DELETED], as subcontractor B is currently [DELETED]; subcontractor C is focused on [DELETED]; and subcontractor D is [DELETED]. Id. While Synaptek contends that OSC did not list exactly what tasks each subcontractor would perform, and thus did not comply with the solicitation's requirement, the solicitation did not require such detail. Accordingly, Synaptek's disagreement with the agency's evaluation does not demonstrate that the evaluation was unreasonable. For these reasons, we deny these protest allegations.

⁴ Synaptek asserts that OSC indicated that it was planning to hire a permanent program manager and deputy program manager and may hire the transitional personnel as permanent personnel in their independent contractor capacity. According to Synaptek, if that happens, the total value of the subcontracts might exceed 50 percent of the value of the contract, resulting in OSC no longer being compliant with the limitations on subcontracting clause. This is a matter of contract administration which we will not consider. See Geiler/Schrudde & Zimmerman, supra, at 7.

Best-Value Tradeoff

Finally, Synaptek argues that the agency made an unreasonable best-value tradeoff decision. Synaptek specifically asserts that the agency made award to OSC based on its lower proposed price, when the solicitation provided that price was less important than the non-price factors. According to Synaptek, since it submitted a superior non-price proposal, it should have received the award.

In reviewing a protest of an allegedly flawed best-value determination, GAO will examine the record to determine whether the agency's judgments are reasonable and consistent with the solicitation's stated evaluation criteria and applicable procurement laws. CEdge Software Consultants LLC, B-408203, July 19, 2013, 2013 CPD ¶ 177 at 7. Where a solicitation provides that the technical factors are more important than price, source selection officials have broad discretion in determining whether one proposal's technical superiority is worth its higher price, so long as the decision is reasonable, consistent with the solicitation's stated criteria, and adequately documented. Id. Generally, in a negotiated procurement, an agency may properly select a lower-rated, lower-priced proposal where it reasonably concludes that the price premium involved in selecting a higher-rated proposal is not justified in light of the acceptable level of technical competence available at a lower price. DynCorp Int'l, LLC, B-412451, B-412451.2, Feb. 16, 2016, 2016 CPD ¶ 75 at 22.

Here, the agency made a reasonable tradeoff decision. In this regard, contrary to Synaptek's position that the agency only considered OSC's lower price, the record shows that the source selection authority (SSA) considered the non-price proposals of OSC and Synaptek, and reviewed the differences in those proposals. The SSA specifically recognized that while both offerors received the same outstanding rating for management approach, Synaptek had a slight advantage under this factor based on its unique strengths, and its risk mitigation strategy. AR, Attach. 9, SSDD, at 32-33. The SSA also found that OSC provided specific tracking mechanisms to support performance, staffing and retention plans that demonstrated a path to securing qualified personnel, and a cyber security plan that demonstrated an understanding of an effective security awareness program. Id. at 33.

The record also shows that the SSA considered Synaptek's proposal superior to that of OSC's under the performance approach factor based on an exceptional and low risk transition plan, as well as a superior approach to technology planning and modernization. Id. The SSA also considered that OSC's performance approach provided system and process accountability and a strong transition plan. Id. Finally, the SSA recognized that Synaptek's substantial confidence past performance rating was far superior to the past performance of OSC, which received a neutral past performance rating, based on a lack of relevant past performance. Id. The SSA noted that while OSC's past performance references were not similar in size or scope, the quality of the references was satisfactory. Id. In all, the SSA recognized that the non-price proposal of Synaptek was superior. In the end, however, the SSA concluded that even though an award to OSC presented a greater risk, the proposal submitted by

Synaptek did not justify a price premium of 40 percent. Id. While Synaptek disagrees with this outcome, we do not find that it is unreasonable. This protest allegation is denied.

Thomas H. Armstrong
General Counsel