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Decision

Matter of: InGenesis, Inc.

File: B-416564.3

Date: November 26, 2019

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DIGEST

Protest challenging the agency's evaluation of proposals is denied where the record shows that the agency's evaluation was reasonable, consistent with the evaluation criteria, and extensively documented qualitative differences between the proposals.

DECISION

InGenesis, Inc., of San Antonio, Texas, protests the award of a contract by the Department of Health and Human Services, Federal Occupational Health (FOH) agency, under personal services request for proposals (RFP) No. 18-233-SOL-00075 to STG International, Inc. (STGi), of Alexandria, Virginia, for medical and occupational health professionals. InGenesis contends that the agency improperly assigned its proposal significant weaknesses and weaknesses under the technical factor, unreasonably evaluated its proposal and that of the awardee under the past performance factor, and made an unreasonable best-value determination.

We deny the protest.

BACKGROUND

The agency issued the solicitation on February 12, 2018, under the commercial item procedures of Federal Acquisition Regulation part 12. Id. at 1.¹ FOH provides

¹ Citations to the RFP are to the conformed copy provided by the agency.

integrated occupational health and safety (OHS) services throughout the federal government. Agency Report (AR), Tab 3.27, RFP at 3. The RFP contemplated the award of an indefinite-delivery, indefinite-quantity contract on a best-value tradeoff basis. Id. at 2. The solicitation provides for a 5-year ordering period during which the agency can issue time-and-material (labor-hour) task orders. Id. at 101. Under this solicitation the contractor would provide medical staffing, occupational professionals and ancillary staff as personal service contractors to support FOH and facilitate delivery of the FOH services specified in the performance work statement. Id. at 2, 4.

The proposals were to be evaluated using a two-phased approach. Id. at 112. Under phase 1, proposals were evaluated on a pass/fail basis regarding the Joint Commission (TJC) accreditation/certification. Id. at 113-114. Proposals that received a pass rating in phase 1 would then be evaluated in phase 2 under the following factors: technical evaluation, past performance and price. Id. at 114-115. The technical evaluation factor was comprised of the following three subfactors, in descending order of importance: staffing and scheduling approach, TJC and FOH policy approach, and transition plan. Id. at 115. According to the RFP, technical was more importance than past performance, and, when combined, technical and past performance were more important than price.² Id. at 112.

Regarding past performance, the solicitation provided that the agency would evaluate each offeror's past performance references for recency, relevancy, and quality to assess the agency's overall confidence in the offeror's ability to perform. Id. at 116. The total evaluated price would be evaluated for reasonableness. Id. at 118-119.

The agency received proposals from InGenesis and STGi by the March 29 due date. Both proposals passed phase 1 of the evaluation, and were evaluated in phase 2. The agency made award to STGi on June 29.

InGenesis filed a protest contesting the award with our Office on July 9. In response, the agency notified our Office of its intent to take corrective action by reevaluating technical proposals and past performance information in accordance with the evaluation and award criteria in the solicitation. Agency Notice of Corrective Action (July 18, 2018), at 1. The agency also stated that it would complete a new best-value analysis and source selection decision. Id. at 2. Based on the agency's proposed corrective action, we dismissed InGenesis' protest as academic. InGenesis, Inc., B-416564, July 31, 2018 (unpublished decision).

² For the technical evaluation factor, the agency assigned descending ratings of blue, purple, green, yellow, and red. RFP at 115. The RFP provided that the agency would assign each subfactor a color-coded rating and then assign an overall rating for the technical factor. Id. at 115. For the past performance factor, proposals were rated as substantial confidence, satisfactory confidence, limited confidence, no confidence, and unknown confidence. Id. at 117-118.

The agency completed the above-described corrective action and reaffirmed the award to STGi on March 15, 2019. InGenesis again protested to our Office on March 25. The agency again notified our Office that it intended to take corrective action by reviewing the weaknesses assigned to the proposals, reviewing the proposals to determine if the agency failed to credit offerors with warranted strengths and significant strengths, and reviewing its past performance evaluation. Agency Corrective Action Notice (Apr. 4, 2019), at 1-2. Our Office dismissed the protest as academic. *InGenesis, Inc.*, B-416564.2, Apr. 12, 2019 (unpublished decision). At the conclusion of the agency's second corrective action the proposals were evaluated as follows:

	STGi	InGenesis
Technical	Purple	Yellow
Past Performance	Satisfactory Confidence	Satisfactory Confidence
Total Evaluated Price	\$493,580,344	\$441,550,500

AR, Tab 9.1, Award Decision Memorandum, at 41.³ The agency determined that STGi's higher-rated technical proposal represented the best value to the government, notwithstanding InGenesis' lower price. After being advised of the agency's conclusion, InGenesis filed this protest.

DISCUSSION

InGenesis challenges the agency's evaluation of technical proposals, and contests the agency's past performance evaluation which assigned both offerors the same rating of "satisfactory confidence." InGenesis also contends that the agency's best value determination was unreasonable as it was based on flawed evaluations. We have fully

³ The RFP defines a purple technical rating and the yellow technical rating as follows:

Purple: Proposal meets the requirements outlined in the solicitation; has at least one significant strength that will benefit the Government; does not have any significant weaknesses or deficiencies; and demonstrates a high likelihood of fully successful contract performance.

Yellow: Proposal marginally meets the requirements outlined in the solicitation; has at least one significant weakness; the proposal would require revision in order to meet the requirements outlined in the solicitation; and demonstrates moderate risk of unsuccessful contract performance.

RFP at 115 (emphasis in the original).

considered all of InGenesis' protest grounds, and although we address only a portion of the arguments below, we find that none provide a basis to sustain the protest.

Technical Evaluation

InGenesis alleges that the agency improperly assigned multiple weaknesses and significant weaknesses to its technical proposal, while also unreasonably failing to credit its proposal with strengths or significant strengths that it asserts were warranted. InGenesis also argues that the agency's evaluation was unequal. We find the agency's evaluation unobjectionable.

In reviewing protests challenging the evaluation of proposals, we do not conduct a new evaluation or substitute our judgment for that of the agency but examine the record to determine whether the agency's judgment was reasonable and in accord with the RFP evaluation criteria. Gonzales Consulting Services, Inc., B-416676, B-416676.2, Nov. 20, 2018, 2018 CPD ¶ 396 at 7. The offeror has the burden of submitting an adequately written proposal, and it runs the risk that its proposal will be evaluated unfavorably when it fails to do so. Hawk Institute for Space Sciences, B-409624, June 20, 2014, 2014 CPD ¶ 200 at 3. A protester's disagreement with the agency's judgment, without more, is not sufficient to establish that an agency acted unreasonably. Id.

The protester first contends that the agency unreasonably assigned its proposal a significant weakness under the staffing and scheduling approach subfactor. In this regard, InGenesis' proposal stated that, as the incumbent, it had difficulties with fill rates and filling vacant staff positions, and identified four steps it has taken to address these performance issues. According to the protester, the agency unreasonably concluded that it failed to provide sufficient information to demonstrate how these proposed steps would mitigate these issues, which the agency found increased the risk that InGenesis would not be able to hire qualified personnel within 30 days. InGenesis contends that it adequately described how it would address its issues with fill rates and filling vacant positions by using the [DELETED] to reduce the administrative burden of hiring; meeting with the contracting officer's representative weekly to discuss candidate status, vacancies, and staff issues; adding more than seven recruiters; and implementing a new recruitment marketing platform. Protest at 12-13; AR, Tab 4.1, InGenesis Proposal Vol. I, Technical, at 5. The protester also states that it was hampered in providing a more fulsome explanation of its approach to its previous recruiting and retention difficulties by the fact that the agency established strict page limits for its proposal. Protest at 13.

The agency responds that FOH has a large contingent of contractor employees critical to meeting FOH's mission to improve the health, safety, and productivity of federal employees, and, as such, recruiting and retaining staffing is part of the most important technical subfactor. The agency notes that InGenesis' proposal stated that, as the incumbent, it had difficulty with recruitment and retention, but failed to propose an approach or plan that effectively addressed these issues. Contracting Officer's

Statement (COS) at 4. The agency acknowledged that InGenesis' proposal included four measures to address these recruiting and retention issues, but states that InGenesis' four proposed steps were "high level processes," that failed to sufficiently demonstrate how these proposed remedies would address its retention and recruitment issues.⁴ Memorandum of Law (MOL) at 18 citing AR, Tab 6.1, Technical Evaluation Report, at 6.

Based on our review of the record, we find that the agency reasonably assigned InGenesis' proposal a significant weakness due to performance problems that it acknowledged concerning recruitment and retention issues it experienced as the incumbent, and its failure to sufficiently explain its proposed remedies. In this regard, the agency explains that staffing and retention is the most important component in the contract, and it reasonably found that the protester had not adequately explained how it would resolve potential issues that it had raised in its proposal.⁵ In addition, InGenesis' argument that it was prevented from providing a more detailed response by the RFP's strict page limitations is, in essence, an allegation that the RFP's page allowance was inadequate. Such an allegation raised after the receipt of proposals is untimely and will not be considered. Essex Electro Engineers, Inc., B-284149, B-284149.2, Feb. 28, 2000, 2000 CPD ¶ 72 at 12. In sum, while the protester disagrees with the agency's evaluation, it has not shown that the agency's assignment of a significant weakness is unreasonable. This protest ground is denied.

InGenesis, in its comments on the agency report, also alleges that the agency unequally credited STGi for proposing to hold weekly staff meetings and utilizing seven recruiters, while considering these features a significant weakness in InGenesis' proposal. InGenesis Comments at 6-7. We dismiss this ground as untimely. The agency submitted its agency report on September 18, 2019, which included documents concerning the agency's evaluation of STGi's proposal. Electronic Protest Docketing System (EPDS) Docket Entry Nos. 15-19. On September 20, the protester notified our Office that it was unable to access the agency's documents (EPDS Docket Entry No. 20), and was granted access to the agency's documents. On that same day the

⁴ For example, regarding InGenesis' proposed plan to add more than seven recruiters to the department, the agency noted that InGenesis did not provide sufficient detail concerning whether these additional recruits would be dedicated to the FOH requirement or would be a corporate acquisition. AR, Tab 6.1, Technical Evaluation Report, at 6. The agency noted as well that there was no detail regarding how adding seven additional recruiters would impact the number of candidates submitted. Id.

⁵ To the extent that the protester argues in its protest that the information it provided regarding its difficulty in recruiting and retention, was voluntary and, thus, not required by the RFP (Protest at 13), the agency provided a substantive response to this argument (MOL at 19), and the protester failed to address this issue in its comments on the agency report. Thus, we find that the protester abandoned this argument. IntelliDyne, LLC, B-409107 et al., Jan. 16, 2014, 2014 CPD ¶ 34 at 3 n.3.

protester requested, and was granted, an extension of time to file its comments on the agency's report to October 2. EPDS Docket Entry Nos. 20-21. In granting the requested extension, our Office cautioned the protester that "[p]lease note that this extension does not toll the timeliness requirements for filing supplemental protest issues." Id.

Because InGenesis' challenge regarding unequal evaluations is based on information contained in the agency's September 18 report, which it was able to access on September 20, but was not raised until October 2, more than ten days after it knew or should have known the basis of its protest, we dismiss this argument as untimely. Where a protester files a broad initial allegation and later supplements that broad allegation with allegations that amount to specific examples of the initial general challenge, these specific examples must independently satisfy our timeliness requirements where such examples involve different factual circumstances that require a separate explanation or defense from the agency; this is because our regulations do not contemplate the piecemeal presentation of protest arguments. Criterion Sys., Inc., B-416553, B-416553.2, Oct. 2, 2018, 2018 CPD ¶ 345 at 8; Savannah River Tech. & Remediation, LLC; Fluor Westinghouse Liquid Waste Servs., LLC, B-415637 et al., Feb. 8, 2018, 2018 CPD ¶ 70 at 6; Vigor Shipyards, Inc., B-409635, June 5, 2014, 2014 CPD ¶ 170 at 5.

InGenesis next argues that the agency unreasonably assigned it a significant weakness under the transition plan subfactor due to its failure to "specifically identify risks and mitigations strategies in the event their Transition Plan fails to materialize as planned." Protest at 15 citing AR, Tab 6.1, Technical Evaluation Report, at 8. The protester contends that considering its status as the incumbent, the agency's designation of a significant weakness with regard to its transition plan "dramatically overstates the likelihood of such risks." Protest at 15.

The agency responds that it acknowledged that InGenesis proposed specific mitigation methods for the limited risk of [DELETED] failure, however it assigned InGenesis' proposal a significant weakness under the transition subfactor based on InGenesis' failure to identify and mitigate potential risks beyond potential [DELETED] failure. AR, Tab 6.1, Technical Evaluation Report, at 8. In this regard, the agency explains that InGenesis' proposal includes, as part of its contingency plan, multiple steps that must be taken to comply with the PWS during the transition period, but then fails to include any identification or mitigation of risks regarding these steps in the event that the transition plan doesn't materialize as planned. MOL at 33. The agency further contends that to the extent InGenesis believed its incumbent status significantly reduced the risk of transition difficulties such that a contingency plan was not required, InGenesis should have challenged this solicitation requirement before proposals were due.⁶ Supp. MOL at 11.

⁶ The protester also notes that the agency misidentified [DELETED] in the agency report as a "[DELETED]," rather than as a [DELETED]. InGenesis Comments at 10 citing
(continued...)

We find that the agency reasonably assigned InGenesis' proposal a significant weakness under the transition plan subfactor. RFP at 105. In this case, as explained above, other than addressing potential [DELETED] failure, InGenesis failed to identify risks and provide mitigation strategies in the event its transition plan failed to materialize as planned, which was a requirement of the solicitation. We also agree with the agency that if the protester thought it was unreasonable to ask the incumbent to provide mitigation strategies in the event that its transition plan did not work as planned, the protester should have contested this solicitation provision before the receipt of proposals. We find that it was unreasonable for the protester to assume, based on its status as the incumbent, it need not provide information specifically required by the solicitation.

Strengths

The protester next argues that the agency unreasonably failed to assign its proposal multiple strengths or significant strengths for features in its proposal. First, InGenesis argues that its [DELETED] tool should have been recognized as a strength as it provides the agency with a number of benefits, including providing hiring managers a more detailed, side-by-side comparison of candidates. Protest at 16; InGenesis Comments at 11. Similarly, the protester argues that its proposal should have been assigned a significant strength rather than a strength for its comprehensive employee recognition plan, as it is a "significant proposal feature" not required by the RFP. Protest at 17.

The agency responds that while it noted the use of [DELETED] in InGenesis' proposal, it determined that there was nothing in InGenesis' proposal which showed that the [DELETED] system provided any additional benefit to the agency or otherwise exceeded the requirements of the solicitation, such that it would warrant the assignment of a strength. COS at 7. Concerning InGenesis' claim that [DELETED] provides a benefit to the agency in hiring decisions by offering hiring managers a more detailed, side-by-side comparison of candidates, the agency contends that nothing in InGenesis' proposal offers any explanation as to how the proposed use of [DELETED] exceeds the solicitation requirements to provide fully screened, qualified, candidates that meet educational, training, competency, licensure, and experience standards, as well as appropriate health status. MOL at 36 citing RFP at 10.

(...continued)

MOL at 32. The agency responds that this was a typographical error that appeared once in the agency report, and notes that it never confused the two concepts with regard to the evaluation of proposals. Supp. MOL at 11. To the extent the protester points out an error in the record, we agree with the agency that it was a typographical error that did not prejudice InGenesis and provides our Office no basis to question the agency's evaluation in this regard.

Regarding InGenesis' comprehensive employee recognition plan, the agency noted that it recognized InGenesis' strength regarding its proposed employee recognition plan in its comparative assessment of proposals, especially in relation to the corresponding weakness assigned to STGi for its proposed employee recognition program. AR, Tab 9.1, Award Decision, at 43. The agency maintains that InGenesis' argument that it deserved a significant strength versus a strength for this proposal feature amounts to a disagreement with the agency's evaluation, and fails to demonstrate an error in the agency's evaluation. MOL at 39.

Based on our review of the record, we find reasonable the agency's conclusion that InGenesis failed to establish how the use of the [DELETED] system exceeded the solicitation requirements, such as to warrant the assignment of a strength. Concerning InGenesis' comprehensive employee recognition program, the agency in fact agreed with InGenesis that this program provided a benefit, and awarded InGenesis a strength for this feature, and the protester has not shown that the agency's determination was unreasonable. Although InGenesis contests the agency's evaluation in both areas, we find its arguments amount to disagreement with the agency's evaluation which, by itself, is not sufficient to establish that the evaluation was unreasonable. DeWitt and Co., Inc., B-417194, Mar. 25, 2019, 2019 CPD ¶ 126 at 3. In addition, we find misguided the protester's focus on whether something was labeled a strength versus a significant strength, as it is an agency's qualitative information underlying the ratings that govern the reasonableness of an agency's assessment of offeror's proposals. Enterprise Servs., LLC et al., B-415368.2 et al., Jan. 4, 2018, 2018 CPD ¶ 44 at 26. We therefore find no basis to sustain the protest allegation.

Past Performance

InGenesis next argues that the agency evaluated proposals unequally under the past performance factor and unreasonably assigned both STGi and InGenesis satisfactory confidence ratings. Protest at 18-19. The protester contends that the assignment of the same rating was unreasonable and evidenced unequal treatment because STGi had only one relevant contract, which was the FOH contract on which it was a subcontractor to InGenesis. Protest at 18. According to InGenesis, STGi was terminated from this contract and this should have decreased its past performance quality rating to marginal or unacceptable. Id.

The agency responds that STGi submitted three contract references, two of which were determined by the agency to be "very relevant" with "exceptional" quality, and one which was "somewhat relevant." AR, Tab 9.1, Award Decision Memorandum, at 45. In contrast, the agency notes that of InGenesis' three contract references, one was determined to be "very relevant" with "satisfactory" past performance, and two were found to be "somewhat relevant" with "very good" past performance. Id. The agency further argues that the protester "implies, without any proof" (MOL at 44), that "STGi's removal from the only relevant contract [it] possessed is proof that they faced serious problems and were ineffective in their attempts to resolve them." Protest at 18. The agency contends there is nothing in this record to support this assertion. MOL at 44.

The evaluation of past performance, including the agency's determination of the relevance and scope of a firm's performance history, is a matter of agency discretion, which we will not find improper unless unreasonable or inconsistent with the solicitation criteria or applicable procurement statutes or regulations. Leidos, Inc., B-414773, B-414773.2, Sept. 12, 2017, 2017 CPD ¶ 303 at 8. The evaluation of past performance, by its very nature, is subjective, and we will not substitute our judgment for reasonably based evaluation ratings; an offeror's disagreement with an agency's evaluation judgments, by itself, does not demonstrate that those judgments are unreasonable. Gonzales Consulting Services, Inc., supra at 4.

Here, the protester's initial challenge to the past performance evaluation was based on the incorrect assumption that STGi had only one relevant past performance reference, the FOH contract. Protest at 17-18. The agency responded that, in fact, STGi submitted three contract references, and that two contracts were determined by the agency to be "very relevant" with "exceptional" quality, and the third was "somewhat relevant." AR, Tab 9.1, Award Decision Memorandum, at 45. Therefore InGenesis' initial protest provides our Office with no basis to question the agency's evaluation.⁷

Best-Value Tradeoff

Finally, InGenesis argues that the agency's best-value tradeoff was unreasonable as it was based on a flawed evaluation of its proposal under the technical and past performance factors. Protest at 20-21. InGenesis' assertion is predicated on its contention that the agency erred in its evaluation of its proposal under the technical and past performance factors. As discussed above, we find no merit in this contention. Moreover, the record shows that the agency understood the evaluated differences

⁷ InGenesis contends, in its comments on the agency report, that the agency failed to adequately document the basis for the assignment of exceptional performance to STGi for the FOH contract reference. In addition, the protester contends that STGi's performance assessment was stale because the respondent who provided input about STGi's performance on that contract, held her position through 2014, while STGi worked on the contract until 2017, so there was no evaluation for the recent years of performance. InGenesis Comments at 13. The protester also contends that the agency's explanation of a typographical error in STGi's past performance evaluation, concerning the relevancy of additional contractor's performance assessment reports (CPARs) references reviewed (AR, Tab 7.1, Past Performance Report, at 23), is unreasonable. Id. at 12. Finally, InGenesis asserts that the agency's assignment of exceptional quality to STGi on the FOH reference for which STGi was a subcontractor to InGenesis, while assigning satisfactory quality to InGenesis under this same contract, evidences unequal treatment. Because InGenesis filed its comments more than ten days after the protester's receipt of the agency report, which contained the information that forms the basis of these supplemental challenges, we dismiss these allegations as untimely. Criterion Sys., Inc., supra at 7.

between the technical and past performance proposals of the two firms. The record demonstrates that the contracting officer reasonably determined that STGI's higher-rated proposal reflected technical superiority that outweighed InGenesis' price advantage. On review of this record, we conclude that there is no basis to object to the agency's best-value tradeoff and source selection decision.

The protest is denied.

Thomas H. Armstrong
General Counsel