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Decision

Matter of: Global Asset Technologies, LLC

File: B-416576.8; B-416576.9

Date: November 22, 2019

William K. Walker, Esq., Walker Reausaw, for the protester.
Kristin Zachman, Esq., Bailey & Bailey, P.C., for Dawson Enterprises, LLC, the intervenor.
Maureen A. McAndrew, Esq., Department of the Army, for the agency.
Michael P. Grogan, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest arguing that agency's evaluation of proposals following corrective action was flawed because the agency failed to consider its prior evaluation provides no basis for sustaining the protest.
 2. Protest challenging the agency's best-value determination is denied when the agency reasonably concluded that the protester's proposal was essentially equal to the awardee's proposal under the non-price evaluation factors, and therefore reasonably made award to the lower-priced offeror.
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DECISION

Global Asset Technologies, LLC (Global), a small business of Anchorage, Alaska, protests the award of a contract to Dawson Enterprises, LLC (Dawson), under request for proposals (RFP) No. W912BU-18-R-0017, issued by the Department of the Army, Corps of Engineers (Corps) for facilities engineering and assessment services in support of the U.S. Army Reserve's 99th Division. Global contends that the agency unreasonably evaluated its proposal and made a flawed best-value determination.

We deny the protest.

BACKGROUND

The solicitation, issued on February 22, 2018, as an 8(a) set-aside, pursuant to the procedures in Federal Acquisition Regulation parts 12 and 15, contemplated the award

of a fixed-price contract, with cost-reimbursable line items for travel, for a 30-day phase-in, an 11-month base period, and four 1-year option periods, for facilities engineering and assessment services in support of the U.S. Army Reserve's 99th Division. Agency Report (AR), Tab 4, RFP at 1, 54, 60. Specifically, the statement of work required the provision of personnel, equipment, supplies, facilities, transportation, tools, materials, supervision, and other items and non-personal services necessary to perform real property ownership and base operations and support services across 13 states and the District of Columbia. Id. at 60.

The solicitation advised that award would be made on a best-value tradeoff basis, utilizing the following factors: (1) professional and technical approach; (2) past performance; and (3) price. Id. at 28. The professional and technical approach factor was composed of three subfactors, listed in decreasing order of importance: capability to perform; management approach; and staffing and laydown plan. Id. The RFP advised that professional and technical approach was more important than past performance, but, when combined, these two factors were significantly more important than price. Id. at 25. An offeror's professional and technical approach would be evaluated for strengths, deficiencies, weaknesses, risks, and uncertainties, and then assigned a color/adjectival rating based on the proposal's technical/risk rating.¹ Id. at 81-82. Under the past performance evaluation factor, the agency would evaluate an offeror's record of past and current performance to determine the probability of successfully performing the required efforts. Id. at 82. The solicitation provided that offerors would be assigned a confidence assessment rating based on the offeror's overall record of recency, relevancy, and quality of performance.² Id. at 82-83.

¹ For the technical/risk ratings, the agency used a color/adjectival rating scheme with the following rating combinations: blue/outstanding, purple/good, green/acceptable, yellow/marginal, and red/unacceptable. RFP at 81-82. As relevant to this protest, a blue/outstanding rating would be assigned where a "[p]roposal indicates an exceptional approach and understanding of the requirements and contains multiple strengths, and risk of unsuccessful performance is low," a purple/good rating would be assigned where a "[p]roposal indicates a thorough approach and understanding of the requirements and contains at least one strength, and risk of unsuccessful performance is low to moderate," and a green/acceptable rating would be assigned where a "[p]roposal meets requirements and indicates an adequate approach and understanding of the requirements, and risk of unsuccessful performance is no worse than moderate." Id. at 81.

² For the past performance confidence assessment ratings, the agency used an adjectival rating scheme with the following ratings: substantial confidence, satisfactory confidence, neutral confidence, limited confidence, no confidence, and unknown confidence (neutral). RFP at 83. As relevant to this protest, a substantial confidence rating would be assigned where "the Government has a high expectation that the offeror will successfully perform the required effort." Id.

As relevant to this protest, under the staffing and laydown plan subfactor, offerors were required to describe their plans to attract, recruit, hire, retain, and replace personnel for the duration of the contract, to overcome the barriers and risks associated with the replacement of personnel, and their plans to evaluate key personnel to ensure they have the necessary skills to successfully complete the requirements of the project. Id. at 76-77. The RFP further required offerors to provide a proposed deliverable schedule by location, and the RFP stated that “additional consideration will be given when personnel are co-located with Government personnel in their respected facilities.” Id. at 77. The solicitation advised that the agency would evaluate this subfactor based on an offeror’s understanding of the complete scope and complexity of performance requirements as it relates to the above-mentioned requirements. Id. at 81.

The agency received timely proposals from three eligible offerors, including Global and Dawson. AR, Tab 7, Source Selection Decision Document (SSDD) at 3. The source selection evaluation board (SSEB) reviewed the submitted proposals and provided a consensus evaluation report to the source selection authority (SSA). Contracting Officer’s Statement (COS) at 5-6; AR, Tab 7, SSDD at 5. The SSA reviewed the SSEB’s report and independently completed her own evaluation, revising some of the ratings assigned by the SSEB. SSDD at 7. The following is a summary of the final ratings of the proposals of Dawson and Global:

	Dawson	Global
Professional and Technical Approach	Outstanding	Outstanding
Capability to Perform	Outstanding	Outstanding
Management Approach	Good	Outstanding
Staffing and Laydown Plan	Good	Good
Past Performance	Substantial Confidence	Substantial Confidence
Price	\$28,205,572	\$28,456,696.82

Id. at 7.

The SSA decided that Dawson’s proposal represented the best value to the agency. Id. In so finding, the evaluation record reflects that the SSA independently reviewed the SSEB’s evaluation of each offeror’s proposal under each factor and subfactor. The SSA found that “[b]oth Dawson and Global were rated equally for [professional and technical approach, and past performance evaluation factors], and their proposals each demonstrated that they clearly understood the requirement and were capable of performing the work in the [performance work statement] with low risk of failure.” Id. at 19. The SSA noted that price was less important than professional technical approach and past performance, but that “since both Dawson and Global received the same ratings for [professional and technical approach, and past performance evaluation factors], the differentiating factor in this evaluation was price.” Id. As Dawson’s proposed price was less than Global’s, the SSA concluded that Dawson’s proposal represented the best value to the agency. The agency awarded the contract to Dawson on August 2. COS at 5.

Global received a written debriefing on August 16. Protest at 3. Global submitted written debriefing questions to the Corps on August 17, to which the agency responded on August 20. Id. This protest followed on August 21.³

DISCUSSION

The protester contends that the Corps' evaluation of its proposal under the staffing and laydown plan subfactor was flawed because the agency failed to consider that Global received a higher rating under this subfactor in a prior evaluation. Protest at 10; Comments and Supp. Protest at 4. Additionally, Global argues that the agency made an unreasonable best-value decision because the Corps failed to make a qualitative comparison between Global and Dawson's proposals. Protest at 11-13; Comments and Supp. Protest at 4-6. Although we do not address every argument raised by Global, we have reviewed them all and find that none provides a basis to sustain the protest.⁴

Global first argues that the Corps' evaluation of its proposal under the staffing and laydown plan subfactor was flawed. Protest at 10. In this regard, Global posits that its proposal received a higher adjectival rating, and was assigned multiple strengths, when the agency evaluated its proposal during a prior competition under this solicitation. Comments and Supp. Protest at 4. The protester contends that the agency "acted in an unreasonable manner by failing to acknowledge the prior evaluations and by failing to reconcile the different ratings." Id.

³ This protest follows after a series of protests challenging three prior contract awards, as well as a challenge to the scope of the Corps' corrective action in response to the protests. See COS at 3-5. These protests were either dismissed as academic, based on the agency's intent to take corrective action, or were withdrawn by the protester. See Global Asset Technologies, LLC, B-416576.1, B-416576.2, Jul. 31, 2018 (withdrawn); Aumakua Hawaii, B-416576.3, Aug. 1, 2018 (dismissed as academic); Chenega Facilities Management, LLC, B-416576.4, Jan. 16, 2019 (dismissed as academic); Dawson Enterprises, LLC, B-416576.5, Jan. 16, 2019 (dismissed as academic); Chenega Facilities Management, LLC, B-416576.6, Mar. 6, 2019 (dismissed as academic); Global Asset Technologies, LLC, B-416576.7, May 29, 2019 (dismissed as academic).

⁴ While Global's protest also challenged the agency's evaluation of Dawson's past performance, the protester withdrew this protest ground. Comments and Supp. Protest at 4. Global also withdrew its supplemental protest allegation concerning whether the Corps evaluated its proposal under the staffing and laydown plan subfactor in accordance with the terms of the solicitation. Withdrawal of Supp. Protest, Oct. 8, 2019, at 1.

The agency maintains that it was “not required to reconcile its pre-corrective action evaluations with its post-corrective action evaluations.” Memorandum of Law (MOL) at 5. The agency’s argues that the prior evaluation at issue--and the subsequent award to Global--was the subject of a protest by two other offerors, in response to which the Corps agreed to take corrective action. See Chenega Facilities Management, LLC, B-416576.4, Jan. 16, 2019; Dawson Enterprises, LLC, B-416576.5, Jan. 16, 2019. As part of its proposed corrective action, the agency amended the solicitation, obtained revised proposals, conducted a new evaluation of the newly submitted proposals, and made a new award decision. COS at 4, 11 n.7. Due to the changes to the solicitation and proposals, the agency argues that it would not have been appropriate to consider the prior evaluation, which was prepared based on a prior version of the RFP and Global’s proposal. MOL at 6 (“If the Corps utilized information from prior solicitations to make its current [award decision], not only would [the award decision] have been unreasonable and inconsistent with the stated evaluation criteria it also would have been contrary to the Corps’ representations to the GAO regarding its corrective action.”); COS at 11 n.7. We agree with the agency.

Global’s suggestion that the Corps’ evaluation was per se unreasonable because it failed to reconcile the earlier evaluation findings is without a legal or factual basis. Indeed, our Office has consistently concluded that the fact that an agency’s reevaluation varies from an original evaluation does not constitute evidence that the reevaluation was unreasonable. DynCorp Int’l, LLC, B-409874.2, B-409874.3, May 13, 2015, 2016 CPD ¶ 348 at 9; Chameleon Integrated Services, B-407018.3, B-407018.4, Feb. 15, 2013, 2013 CPD ¶ 61 at 5; QinetiQ North America, Inc., B-405163.2 et al., Jan. 25, 2012, 2012 CPD ¶ 53 at 13; Sabre Sys., Inc., B-402040.2, B-402040.3, June 1, 2010, 2010 CPD ¶ 128 at 5 n.3.

The overriding concern in our review of an agency’s evaluation is not whether the final ratings are consistent with earlier, individual ratings, but whether they reasonably reflect the relative merits of proposals. Domain Name Alliance Registry, B-310803.2, Aug. 18, 2008, 2008 CPD ¶ 168 at 11 (denying protest that agency reevaluation and technical ratings were unreasonable because agency did not explain why the evaluations differed between the initial evaluation and reevaluation undertaken during corrective action); Impregilo Edilizia S.p.A., B-292468.4, Nov. 25, 2003, 2003 CPD ¶ 216 at 5 n.5 (while protester may disagree with technical rating change, its mere disagreement, absent factual or legal basis indicating why awardee’s rating was improper, does not present an adequate basis for protest). The protester’s reliance on the agency’s prior evaluation findings is particularly unavailing here because, as noted above, the prior evaluation had been overtaken by the agency’s corrective action, which involved amending the solicitation’s requirements, obtaining revised proposals, and conducting an entirely new evaluation, thereby rendering the prior evaluation results essentially irrelevant.⁵

⁵ Global’s initial protest challenged the reasonableness of the Corps’ evaluation under the staffing and laydown plan subfactor, to which the agency provided a detailed response addressing Global’s argument. COS at 11-12; MOL at 4-6. Global’s

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See e.g., Engility Corp., B-413120.3, et al., Feb. 14, 2017, 2017 CPD ¶ 70 at 18 n.14 (rejecting protester's reliance on prior evaluation findings, in part, where the prior evaluation was based on a prior version of the protester's proposal).

Global also argues that the agency's best-value tradeoff decision was flawed because it was based on a mechanical comparison of offerors' technical scores, without a qualitative assessment of the underlying technical differences between proposals. Protest at 11-13; Comments and Supp. Protest at 4-6. The protester contends that had the SSA undertaken such an assessment, rather than merely comparing adjectival ratings, it would have acknowledged that Global's proposal was superior to Dawson's. Comments and Supp. Protest at 5-6. The agency argues that the SSA conducted an independent evaluation of both Dawson and Global's proposals, found that both were essentially equal in merit under the non-price factors, and reasonably concluded that Dawson's lower-priced proposal represented the best value to the agency. COS at 13-14; MOL at 11-14; Supp. COS/MOL at 7-11.

Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of the technical and price results, subject only to the tests of rationality and consistency with the RFP's evaluation factors. Brisk Waterproofing Co., Inc., B-276247, May 27, 1997, 97-1 CPD ¶ 195 at 3. Where a selection official reasonably regards proposals as being essentially technically equal, price properly may become the determining factor in making award, notwithstanding that the solicitation assigned price less importance than the technical factors. Staff Tech, Inc., B-403035.2, B-403035.3, Sept. 20, 2010, 2010 CPD ¶ 233 at 6-7. The fact that no price/technical tradeoff is required between proposals or quotations found to be technically equal does not negate the fact that the agency made award on a best-value tradeoff basis. Lynxnet, LLC, B-409791, B-409791.2, Aug. 4, 2014, 2014 CPD ¶ 233 at 13-14; The MIL Corp., B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 14.

Here, the record demonstrates that the agency's selection of Dawson's proposal was not a mechanical comparison of adjectival ratings, as the protester has alleged. Rather, the SSA concluded that Dawson's and Global's proposals were essentially equal under the non-price factors following a comparison of the relative merits of each proposal. In this regard, the SSDD illustrates that the SSA reviewed the SSEB's determinations and

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comments on the agency report provided no substantive response in connection with its challenge; in our view, Global abandoned this allegation. Where an agency provides a detailed response to a protester's allegations and the protester fails to rebut or otherwise substantively address the agency's arguments in its comments, the protester provides us with no basis to conclude that the agency's position with respect to the issue in question is unreasonable or improper, and we therefore find this protest ground abandoned and do not consider it further. See 4 C.F.R. § 21.3(i)(3); KSJ & Assocs., Inc., B-409728, July 28, 2014, 2014 CPD ¶ 222 at 5.

also independently evaluated each proposal against the RFP's stated evaluation criteria. AR, Tab 7, SSDD at 8-20. Indeed, the SSA reviewed the specific assessments underlying the overall factor and subfactor ratings, including the strengths and weaknesses noted in both Dawson's and Global's proposals, and made a number of changes to the SSEB's evaluation results based on her independent review. Id.

Moreover, the SSA also examined the offerors' proposals herself and independently assessed the strengths and weaknesses of each proposal, relative to the evaluation criteria. Id. For example, the SSA adjusted Global's rating under the staffing and laydown plan subfactor--from acceptable to good--because she found that the program and project managers each had sufficient work experience on similar projects that satisfy the RFP's educational requirements. Id. at 14-15. Based on her review, the SSA concluded that both proposals were equal from a technical standpoint, so no price/technical tradeoff was performed. The SSA concluded that price was the determining factor and that Dawson's lower-priced proposal presented the best value to the government. Id. at 19. In light of the SSA's independent review of the underlying approaches presented by both Dawson and Global, in addition to her review of the SSEB's findings, we see no basis to question the SSA's conclusions or find the agency's best-value decision unreasonable or otherwise improper.

The protest is denied.

Thomas H. Armstrong
General Counsel