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## Decision

**Matter of:** Qi Tech, LLC

**File:** B-416711.10

**Date:** April 16, 2020

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John R. Tolle, Esq., and H. Todd Whay, Esq., Baker, Cronogue, Tolle & Werfel, LLP, for the protester.

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Candice A. Thomas, Esq., Department of the Navy, for the agency.

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### DIGEST

Protest challenging the agency's reevaluation of the awardee's proposal is denied where the record shows that the agency's reevaluation was reasonable, consistent with the solicitation, and documented.

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### DECISION

Qi Tech, LLC, a small disadvantaged business of McLean, Virginia, protests the issuance of a task order to Tatitlek Technologies, Inc., of Anchorage, Alaska, under request for proposals (RFP) No. N0017817R3058, issued by the Department of the Navy (Navy) for administrative and clerical support services for the Navy's Naval Surface Warfare Center Dahlgren Division (NSWCDD), Dahlgren, Virginia. Our Office previously sustained Qi Tech's protest challenging the agency's prior selection of Tatitlek. *Qi Tech, LLC*, B-416711.8, B-416711.9, Nov. 27, 2019, 2019 CPD ¶ 412. Qi Tech challenges the agency's reevaluation of Tatitlek's proposal and selection decision.

We deny the protest.

## BACKGROUND

The RFP was issued on August 10, 2017, pursuant to Federal Acquisition Regulation (FAR) subpart 16.5, to 8(a) small business<sup>1</sup> holders of Navy SeaPort-e indefinite-delivery, indefinite-quantity (IDIQ) contracts.<sup>2</sup> Agency Report (AR), Tab 1, RFP at 4; Contracting Officer's Statement/Memorandum of Law (COS/MOL) at 2. The RFP required, in general terms, the contractor to provide qualified personnel to successfully perform all specified administrative and clerical support tasks. RFP, Statement of Work (SOW) §§ C.2, C.4.<sup>3</sup> The solicitation contemplated the issuance of a cost-plus-fixed-fee, level-of-effort task order for a base year with four 1-year options on a best-value tradeoff basis considering the following factors in descending order of importance: recruitment and retention of personnel (recruitment/retention); scenario; management capability; workforce; past performance; and cost. RFP at 111.

Eight offerors, including Qi Tech and the incumbent, Tatitlek, submitted proposals by the initial solicitation closing date.<sup>4</sup> The agency evaluated proposals, established a competitive range (which included Qi Tech and Tatitlek), conducted discussions, and requested final proposal revisions (FPR). The contracting officer, acting as the source selection authority (SSA), selected Qi Tech's higher technically rated, higher-priced proposal for award on July 19, 2018. *Qi Tech*, *supra* at 2-3.

Tatitlek filed a protest with our Office challenging the Navy's evaluation of proposals and selection decision, which was docketed as B-416711. On November 28, our Office issued a decision denying Tatitlek's initial protest and three of the supplemental protests that were subsequently filed. *Tatitlek Techs., Inc.*, B-416711 *et al.*, Nov. 28, 2018, 2018 CPD ¶ 410. Tatitlek's fourth and final supplemental protest challenged the evaluation of

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<sup>1</sup> Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes the Small Business Administration to enter into contracts with government agencies and to arrange for performance through subcontracts with socially and economically disadvantaged small business concerns. FAR 19.800. This program is commonly referred to as the 8(a) program.

<sup>2</sup> The long and contentious history of this procurement is described in detail in two prior decisions: *Qi Tech*, B-416711.8, B 416711.9, *supra*, and *Tatitlek Techs.*, B-416711 *et al.*, Nov. 28, 2018, 2018 CPD ¶ 410.

<sup>3</sup> The solicitation was amended six times. Citations to the solicitation are to the final version of the solicitation, as amended. All citations to the record are to the consecutive numbering of the pages in the Adobe PDF format of the documents provided by the agency.

<sup>4</sup> Although firms that compete for task orders under IDIQ contracts are generally referred to as "vendors" who submit "quotations" and are "issued" task orders, the record and the parties' briefings primarily use the terms "offerors," "proposals," and "award." For the sake of consistency with the record, we refer to the firms that competed here as offerors who submitted proposals for award of a task order.

Qi Tech's technical and cost proposals with regard to the RFP's paid sick leave requirement. *Qi Tech*, B-416711.8, B-416711.9, *supra* at 3. Our Office conducted a hearing on these issues on December 18. After the hearing, the Navy notified our Office on December 21 that it intended to take corrective action by reevaluating Qi Tech's technical and cost proposals, and making a new award decision. We dismissed the remaining supplemental Tatitlek protest as academic. *Tatitlek Techs., Inc.*, B-416711.5, Jan. 3, 2019 (unpublished decision).

The Navy then conducted another round of discussions with both offerors, requested second FPRs, and evaluated the second FPRs. This time, the Navy selected Tatitlek's proposal for award. Qi Tech filed a protest (B-416711.7) with our Office on July 1, 2019, challenging the task order award to Tatitlek. COS/MOL at 3. We dismissed Qi Tech's protest as academic after the Navy informed our Office that it, once more, would take corrective action by reevaluating the offerors' technical proposals and making a new award decision. *Qi Tech, LLC*, B-416711.7, July 17, 2019 (unpublished decision).

The agency reevaluated the second FPRs and made a new source selection decision on August 19, again selecting Tatitlek's proposal for award. COS/MOL at 3. Qi Tech, thereafter, filed another set of protests with our Office, challenging the agency's reevaluation of the second FPRs and the resulting source selection decision. These protests were docketed as B-416711.8 and B-416711.9. *Qi Tech*, B-416711.8, B-416711.9, *supra* at 3-4.

On November 27, our Office issued a decision, sustaining in part, and denying in part, Qi Tech's protests. *Id.* at 12. We sustained Qi Tech's challenge to the agency's evaluation of Tatitlek's proposal under the recruitment/retention factor and denied the remaining allegations. In sustaining the protest, we found that the Navy had failed to reasonably consider Tatitlek's Service Contract Act (SCA) retention rate on the incumbent contract as part of the agency's final evaluation and that the agency failed to adequately document its evaluation conclusions. *Id.* at 7-8. As a result, our Office recommended that the agency reevaluate Tatitlek's proposal under the recruitment/retention factor and make a new selection decision based on its reevaluation. *Id.* at 12.

Pursuant to our recommendation, the agency reevaluated Tatitlek's second FPRs under the recruitment/retention factor and documented its evaluation findings. The reevaluation, however, did not result in the agency making any changes to the evaluated costs or the adjectival ratings assigned to the proposals. Consequently, the final evaluation ratings of Qi Tech's and Tatitlek's proposals remained as before, which are as follows:

	Qi Tech	Tatitlek
<b>Recruitment/Retention</b>	Outstanding	Outstanding
<b>Scenario</b>	Good	Good
<b>Management Capability</b>	Good	Good
<b>Workforce</b>	Outstanding	Acceptable
<b>Past Performance</b>	Very Relevant/ Substantial Confidence	Very Relevant/ Substantial Confidence
<b>Overall</b>	Outstanding	Good
<b>Proposed Cost</b>	\$51,308,383	\$49,103,293
<b>Evaluated Cost</b>	\$51,365,786	\$50,222,056

COS/MOL at 3-5; AR, Tab 4, Source Selection Decision Document (SSDD) at 4.

The SSA, having reviewed and considered the results of the reevaluation, again selected Tatitlek’s proposal for award. COS/MOL at 5; AR, Tab 4, SSDD at 9-10. Qi Tech was notified on January 13, 2020 of the agency’s task order award to Tatitlek. After receiving a debriefing, Qi Tech filed its current protest with our Office.<sup>5</sup>

## DISCUSSION

Qi Tech argues that the Navy again improperly evaluated Tatitlek’s proposal under the recruitment/retention factor. Specifically, Qi Tech asserts that because the agency, in an earlier evaluation, had assessed a significant weakness to Tatitlek’s proposal for having a high personnel turnover rate on its incumbent contract, the agency was unreasonable in concluding that the strengths now identified in Tatitlek’s proposal could sufficiently ameliorate the previously-assessed significant weakness. Protest at 15-16. According to the protester, most of the identified strengths under this evaluation factor “have nothing to do with staff turnover.” Protester’s Comments at 17. As a result, Qi Tech contends that the agency’s assignment of a rating of “outstanding” to Tatitlek for the recruitment/retention factor was unreasonable, because that rating, by definition, requires that “[s]trengths far outweigh any weaknesses,” which, under the circumstances, Qi Tech argues, is not borne out by the record.<sup>6</sup> Protester’s Supp. Comments at 8-10.

The agency explains that Tatitlek’s second FPR included a new retention plan that was not found in either the earlier FPR or in the incumbent contract. The agency asserts

<sup>5</sup> Because the value of the awarded task order is over \$25 million, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award IDIQ contracts issued by military agencies. 10 U.S.C. § 2304c(e)(1)(B).

<sup>6</sup> An “outstanding” rating was defined as: “Proposal meets requirements and indicates an exceptional approach and understanding of the requirements. Strengths far outweigh any weaknesses. Risk of unsuccessful performance is very low.” RFP at 109.

that, in addition to the strengths that were identified in its reevaluation, Tatitlek's revised retention plan included new retention policies and practices that, while, individually may not have risen to the level of separately numbered strengths, were, nonetheless, considered to be beneficial, and cumulatively were found to be significant enough to offset the risk associated with the low retention rate on the incumbent contract. Accordingly, the agency no longer found Tatitlek's retention rate on the prior contract to be a significant weakness. The agency also explains that it reasonably assigned a rating of "outstanding" to Tatitlek's proposal based on the strengths identified in its reevaluation and consideration of the entirety of the recruitment/retention proposal. COS/MOL at 6-7; Supp. MOL at 1-3.

Here, the RFP stated that under the recruitment/retention evaluation factor, the agency would assess the offeror's plan for recruitment, retention, and skills improvement of personnel covered by the SCA. As relevant here, the solicitation explained that the offerors' proposals were to be evaluated, among other things, on their "personnel management policies and practices designed to motivate employee performance and encourage longevity with the firm," including offerors' retention metrics of SCA-covered personnel. RFP at 112.

Tatitlek's first FPR provided the turnover rates for three of its prior contracts that included SCA-covered personnel. AR (B-416711.8), Tab 13, Tatitlek FPR at 17.<sup>7</sup> For the incumbent contract, Tatitlek represented that the turnover rate was 32%. *Id.* In evaluating the first FPR, the technical evaluation team (TET) found Tatitlek's high turnover rate on the incumbent contract demonstrated that the company's investment in staff retention was not effective, and the evaluators assessed Tatitlek a significant weakness for this evaluation factor. The evaluators explained that the high turnover rate "increases risk to the [g]overnment that continuity of services will not be provided and it increases the level of effort required to train and orient new personnel." AR (B-416711.8), Tab 14, TET Report, July 9, 2018, at 8. Overall, the TET assigned Tatitlek's proposal a "marginal" rating for the recruitment/retention factor because the evaluators found, among other things, that Tatitlek's proposal indicated an overall lack of understanding of the work and was vague in many areas.<sup>8</sup> *Id.* at 7. Tatitlek was advised of the weakness and significant weakness assessed under the recruitment/retention factor during discussions in December 2018. AR (B-416711.8),

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<sup>7</sup> The agency's document production for this protest was limited to the solicitation, an excerpt of Tatitlek's second FPR, an excerpt of the agency's reevaluation, and the revised selection decision. As a result, this decision also relies on agency report documents that were produced in response to the earlier protest filed by Qi Tech. *Qi Tech*, B-416711.8, B-416711.9, *supra*. We will cite to the documents from that record as AR (B-416711.8).

<sup>8</sup> A "marginal" rating was defined as follows: "Proposal does not clearly meet requirements and has not demonstrated an adequate approach and understanding of the requirements. The proposal has one or more weaknesses which are not offset by strengths. Risk of unsuccessful performance is high." RFP at 109.

Tab 2, Tatitlek Discussion Letter at 4. Tatitlek submitted its second FPR on March 18, 2019, which revised various portions of its proposal, including the recruitment/retention plan. AR, Tab 3, Tatitlek's 2nd FPR. Specifically, with regard to the retention metrics of SCA personnel, Tatitlek's second FPR no longer referenced the individual contract turnover rates for each SCA-covered contract. Instead, Tatitlek's second FPR represented that its "average turnover rate . . . is 17%, with an average retention rate of 83%" for its three prior SCA-covered contracts. *Compare* AR (B-416711.8), Tab 13, Tatitlek FPR at 17 *with* AR, Tab 3, Tatitlek's 2nd FPR at 12.

The TET evaluated Tatitlek's second FPR, and, this time, the evaluators assessed several strengths to Tatitlek's recruitment/retention proposal, while identifying no weaknesses or significant weaknesses. AR (B-416711.8), Tab 7, TET Report, July 17, 2019, at 6-8. Overall, the evaluators concluded that Tatitlek's proposal exceeded the solicitation's requirements and indicated an exceptional approach and understanding of the requirements. As such, the agency assigned an "outstanding" rating to Tatitlek's proposal under the recruitment/retention factor. *Id.* at 6.

In sustaining Qi Tech's earlier protest, our Office concluded that the agency's evaluation of Tatitlek's second FPR (1) failed to reasonably consider the historical SCA turnover rate on the incumbent contract, which was previously considered to be a significant weakness during the evaluation of Tatitlek's first FPR; and (2) failed to adequately document its evaluation conclusions. *Qi Tech*, B-416711.8, B-416711.9, *supra* at 7. Relevant here, our decision specifically found the following:

While the agency might have reasonably concluded that other features of Tatitlek's proposal served to ameliorate concerns about the company's turnover rate on the incumbent contract, there are no such conclusions in the record here. In our view, it was unreasonable for the evaluators to consider this significant weakness to be resolved simply because Tatitlek chose to obscure the negative retention metric--which did not change--from its earlier proposal . . . . Moreover, the agency has failed to adequately document how the significant weakness it had identified regarding Tatitlek's retention rate on the incumbent contract was actually addressed--by some means other than Tatitlek's "remov[al] [of] all verbiage related to the prior . . . significant weakness" from its final proposal.

*Id.* at 8. To address this issue, our decision recommended that the agency reevaluate Tatitlek's recruitment/retention proposal and "reasonably address whether the revised proposal has, or has not, ameliorated the previously-identified significant weakness regarding Tatitlek's retention rate on the incumbent administrative and clerical support services contract." *Id.* at 12.

In the latest reevaluation, the agency assessed multiple strengths and no weaknesses to Tatitlek's proposal under the recruitment/retention factor. AR, Tab 2, TET Report at 4-5. The agency again assigned an overall rating of "outstanding" to Tatitlek's proposal, concluding that Tatitlek's proposal exceeded the solicitation's requirements

and “indicate[d] an exceptional approach and understanding of the requirements.” *Id.* at 3. The TET also documented its consideration of Tatitlek’s retention rate on the incumbent contract, which the agency no longer considered to be a weakness based on several features of Tatitlek’s revised recruitment/retention plan that offset the previously-identified risk regarding the perceived ineffective investment in staff retention.

The evaluators found that Tatitlek’s second FPR made significant adjustments to Tatitlek’s retention policies and practices and offered “tangible benefits” to employees that were not found in the earlier FPR or in the incumbent contract that saw high turnover rates. The TET specifically identified a strength assessed for Tatitlek’s proposed [DELETED], as well as other practices and policies that the agency viewed as beneficial to employees, such as [DELETED], [DELETED], and [DELETED]. The evaluators concluded that Tatitlek’s revised recruitment/retention plan more than ameliorated the potential risk associated with the high turnover rate on the incumbent contract, which did not include the more robust retention policies and procedures. *Id.*

The fact that a reevaluation varies, or does not vary, from an original evaluation does not constitute evidence that the reevaluation was unreasonable. *All Points Logistics, Inc.*, B-407273.53, June 10, 2014, 2014 CPD ¶ 174 at 8. It is implicit that a reevaluation could result in different findings and conclusions. *IAP World Servs., Inc.*, B-406339.2, Oct. 9, 2012, 2012 CPD ¶ 287 at 3-4. The essence of an agency’s evaluation is reflected in the evaluation record itself, not in the adjectival ratings or adjectival characterizations of proposal features as strengths or weaknesses. See *Stateside Assocs., Inc.*, B-400670.2, B-400670.3, May 28, 2009, 2009 CPD ¶ 120 at 9. The overriding concern is not whether the final ratings are consistent with earlier ratings, but whether they reasonably reflect the relative merits of proposals. See *Domain Name Alliance Registry*, B-310803.2, Aug. 18, 2008, 2008 CPD ¶ 168 at 11.

On this record, we find no basis to question the reasonableness of the agency’s conclusions. As discussed above, in sustaining Qi Tech’s earlier protest, our Office found that the agency failed to reasonably consider Tatitlek’s SCA retention rate on the incumbent contract and adequately document its evaluation conclusions. *Qi Tech*, B-416711.8, B-416711.9, *supra* at 7. Our decision specifically noted that in making the prior award decision, the agency could have reasonably concluded that other features of Tatitlek’s proposal may have ameliorated concerns about the turnover rate on the incumbent contract. *Id.* at 8. The previous record, however, simply reflected no such considerations. *Id.* Rather, the record showed that despite the high incumbent contract turnover rate (which was unchanging historical data) being known by the agency evaluators and considered to be relevant, the only reason the Navy no longer considered it to be a significant weakness was because Tatitlek had removed the unflattering information from its final proposal. *Id.* at 7-8.

Here, the agency’s reevaluation documented its consideration of the historical retention rate on the incumbent contract and the evaluator’s conclusions as to why other features in Tatitlek’s proposal ameliorated concerns about the high turnover rate on the incumbent contract, such that it was no longer considered to be a significant weakness.

AR, Tab 2, TET Report at 3. On this record, we find that the Navy adequately documented the agency's assessment that the high turnover rate on the incumbent contract is addressed by Tatitlek's robust revised recruitment/retention proposal. Accordingly, Qi Tech's arguments that the agency ignored the previously-assessed significant weakness is not supported by the record.

Qi Tech also argues that the efficacy of the strengths assigned to Tatitlek's retention plan should be questioned because, according to Qi Tech, Tatitlek's proposal stated that it "developed [its retention] approaches on the incumbent contract while touting how successful they have been on that contract." Comments at 18; Supp. Comments at 8. This assertion, however, ignores the fact that while the agency had previously assigned a "marginal" rating to Tatitlek's first FPR--which did state that Tatitlek had developed its recruitment/retention approaches based on its incumbent contract--Tatitlek's second FPR proposed different retention policies and practices that were not included in its incumbent contract (or first FPR) and were found to be strengths by the agency in its reevaluation. *Compare* AR (B-416711.8), Tab 13, Tatitlek FPR at 11 *with* AR, Tab 3, Tatitlek's 2nd FPR at 13-14; AR, Tab 2, TET Report at 4-5; COS/MOL at 7. Qi Tech's arguments, again, are not supported by the record.

Finally, Qi Tech contests the agency's assessment of multiple strengths to Tatitlek's proposal under the recruitment/retention factor. According to Qi Tech, only two strengths identified by the TET could be found to reasonably relate to retention of personnel, and those two strengths could not outweigh the previously identified significant weakness to such a degree as to warrant the assignment of an "outstanding" rating under the recruitment/retention factor. Comments at 18; Supp. Comments at 8.

In reviewing protests challenging an agency's evaluation of proposals in a task order competition, our Office does not reevaluate proposals, but examines the record to determine whether the agency's judgment was reasonable and in accordance with the stated evaluation criteria and applicable procurement laws and regulations. *OGSystems, LLC*, B-417026.5, B-417026.6, July 16, 2019, 2019 CPD ¶ 273 at 4. A vendor's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. *STG, Inc.*, B-405101.3 *et al.*, Jan. 12, 2012, 2012 CPD ¶ 48 at 7.

Qi Tech's challenges to the agency's evaluation reflect nothing more than its disagreement with the agency's judgment regarding the merits of Tatitlek's proposal. On this record, we see no basis to substitute our judgment for the agency's adequately documented source selection decision. Qi Tech has not shown the agency's evaluation to be inconsistent with the solicitation criteria or applicable procurement statutes and regulations. Nor, for that matter, has the protester demonstrated the agency's evaluation to be unreasonable or inadequately supported. Moreover, we have consistently explained that ratings, whether numerical, color, or adjectival are merely guides to intelligent decision-making. The evaluation of proposals and consideration of their relative merits should be based upon a qualitative assessment of the proposals consistent with the solicitation's evaluation scheme. *Altavian, Inc.*, B-417701,

B-417701.2, Sept. 17, 2019, 2019 CPD ¶ 323 at 9. Here, the record demonstrates that the SSA's best-value tradeoff decision was based on a qualitative comparison of the proposals consistent with the stated evaluation scheme. AR, Tab 4, SSDD at 6-8. On this record, the protester's arguments provide no basis to sustain the protest.

The protest is denied.

Thomas H. Armstrong  
General Counsel