



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: Catalyst Solutions, LLC

File: B-416804.3; B-416804.4

Date: April 4, 2019

Milton C. Johns, Esq., and Emily A. Spence, Esq., FH+H, PLLC, for the protester.
Kenneth D. Brody, Esq., and Thomas K. David, Esq., David, Brody & Dondershine, LLP, for Keith Stalder and Associates, LLC, the intervenor.
Philip J. Taylor, Esq., John K. Harms, Esq., and Graeme S. Henderson, Esq., United States Marine Corps, for the agency.
Louis A. Chiarella, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Supplemental protest challenging the agency's evaluation of the awardee's proposal is dismissed as untimely where it fails to independently meet GAO timeliness requirements and represents an unwarranted piecemeal development and presentation of protest issues, which our Bid Protest Regulations do not contemplate.
2. Protest challenging the agency's evaluation of protester's technical proposal is denied where the protester fails to demonstrate that it suffered any competitive prejudice from the alleged errors.

DECISION

Catalyst Solutions, LLC, of Stafford, Virginia, protests the award of a contract to Keith Stalder and Associates, LLC (KSA), of Arlington, Virginia, under request for proposals (RFP) No. M00264-18-R-0020, issued by the Department of the Navy, United States Marine Corps, to provide call center services at the Sergeant Merlin German Wounded Warrior Call Center, in support of the Marine Corps Wounded Warrior Regiment's Recovery Care Program, at Quantico, Virginia. Catalyst argues that the agency's evaluation of offerors' proposals and resulting award decision were improper.

We deny the protest.

BACKGROUND

The RFP was issued on June 21, 2018, as a service-disabled veteran-owned small business set-aside. Agency Report (AR), Tab 3, RFP at 1; Contracting Officer's Statement (COS) at 1. The solicitation contemplated the award of a fixed-price contract for a base year with one 1-year option. Contract award was to be made on a "best value" tradeoff basis, using four evaluation factors in descending order of importance: technical capability; performance execution and management (hereinafter, performance execution); past performance; and price. RFP at 75.

Catalyst and KSA were among the offerors that submitted proposals by the July 24 closing date. The agency evaluated proposals using various adjectival rating schemes that were set forth in the RFP.¹ On August 31, the agency determined that KSA's proposal represented the best value to the government and made contract award to KSA. COS at 1. The agency thereafter provided Catalyst with notice of contract award on August 31, and a debriefing on September 6.²

On September 11, Catalyst filed a protest with our Office challenging the propriety of the award to KSA. Specifically, Catalyst alleged the agency's evaluation of Catalyst's own proposal under the technical capability and performance execution factors was unreasonable. Protest, Sept. 11, 2018, at 4-18. On September 28, in response to Catalyst's protest, the agency advised our Office that it intended to take corrective action by reevaluating offerors' proposals under the technical capability and performance execution factors, and making a new source selection decision. AR, Tab 14, Agency Letter to GAO, Sept. 28, 2018, at 1. We then dismissed Catalyst's protest as academic. Catalyst Solutions, LLC; MARCH Marketing, LLC, B-416804, B-416804.2, Oct. 1, 2018 (unpublished decision).

On December 21, the Marine Corps completed its reevaluation, with the final evaluation ratings and prices of the Catalyst and KSA proposals as follows:

¹ Proposals were to be rated as outstanding, good, acceptable, marginal, or unacceptable for the technical capability and performance execution factors, and either substantial confidence, satisfactory confidence, neutral confidence, limited confidence, and no confidence for the past performance factor. RFP at 77, 79.

² This debriefing provided Catalyst with, among other things, the evaluation ratings assigned to KSA's proposal, including KSA's "substantial confidence" past performance rating. Protest, Sept. 11, 2018, exh. H, Catalyst Debriefing, Sept. 6, 2018, at 8.

	Catalyst	KSA
Technical Capability	Unacceptable	Outstanding
Performance Execution	Unacceptable	Outstanding
Past Performance	Substantial Confidence	Substantial Confidence
Evaluated Price	\$10,623,826	\$8,748,338

AR, Tab 12, Business Clearance Memorandum (BCM) at 14.³

The agency evaluators also identified strengths, weaknesses, and deficiencies in each offeror's proposal in support of the ratings assigned. AR, Tab 11, Technical Evaluation Panel Report, at 1-26. For example, with regard to Catalyst's proposal, the agency found one strength, three weaknesses, and one deficiency ("[t]he proposed use of automated routing and a virtual queue [for inbound calls] is a material failure to meet the contract requirements") under the technical capability factor, and one weakness and one deficiency (the offeror's described "process to bypass the required security procedures . . . is a material failure to meet the requirements of the [performance work statement] and . . . increases the risk of a security breach") under the performance execution factor. *Id.* at 9-10.

The contracting officer, as source selection authority (SSA), then determined that KSA's proposal, which was both higher technically-rated and lower-priced than Catalyst's, represented the best value to the government. AR, Tab 12, BCM at 74.

The agency provided Catalyst with notice of intent to make award to KSA on December 21, and a debriefing on January 3, 2019.⁴ COS at 1-2; MOL at 2-3. This protest followed on January 8, 2019.

DISCUSSION

Catalyst again challenges the agency's evaluation of its proposal under the technical capability and performance execution factors. Catalyst, in a supplemental protest filing, also challenges the evaluation of KSA's proposal under each nonprice factor. As

³ We note that the BCM initially provided to Catalyst as part of the agency report did not contain KSA's evaluation ratings, which were not relevant to the scope of the Catalyst's initial protest. The agency provided this information at our Office's request, in order to determine the issue of prejudice. Electronic Protest Docketing System Entry No. 27.

⁴ The agency determined that a pre-award notice was required here, in accordance with Federal Acquisition Regulation § 15.503(a)(2), as the procurement had been set aside for small business concerns. Memorandum of Law (MOL) at 2-3.

detailed below, we find Catalyst's protest of the evaluation of KSA to be untimely, and the evaluation of its own proposal to be without prejudice.

Agency's Evaluation of KSA

Catalyst challenges the evaluation of KSA's proposal. The protester alleges that had the agency conducted a proper evaluation, KSA should have been rated as "unacceptable" under the technical capability and performance execution factors, and "neutral confidence" under the past performance factor. Supp. Protest at 3-5. We find Catalyst's protest here to be untimely.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. Under these rules, protests generally must be filed no later than 10 days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Moreover, where a protester initially files a timely protest, and later supplements it with independent grounds of protest, the later-raised allegations must independently satisfy the timeliness requirements, since our Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues. Synergy Solutions, Inc., B-413974.3, June 15, 2017, 2017 CPD ¶ 332 at 7; Savvee Consulting, Inc., B-408416.3, Mar. 5, 2014, 2014 CPD ¶ 92 at 5.

As detailed below, Catalyst's bases of protest regarding the evaluation of KSA were known or should have been known to the protester either from the record developed during Catalyst's earlier (pre-corrective action) protest, or from the second contract award announcement sent on December 21. In each instance, however, Catalyst failed to timely raise these allegations.

Catalyst protests the evaluation of KSA's past performance and argues that it was unreasonable for the agency to assign KSA a "substantial confidence" rating. Supp. Protest at 4. The protester, however, was aware of the same "substantial confidence" rating initially assigned to KSA's past performance from the September 6, 2018, debriefing, but did not challenge this aspect of the agency's evaluation in its earlier, pre-corrective action protest. See Protest, Sept. 11, 2018, at 5-18, exh. H, Catalyst Debriefing, Sept. 6, 2018, at 8. Moreover, Catalyst was aware as of September 28, 2018, that the agency's corrective action was limited to the reevaluation of offerors' proposals under the technical capability and performance execution factors, and did not include the reevaluation of KSA's past performance. AR, Tab 14, Agency Letter to GAO, Sept. 28, 2018, at 1. The fact that the agency reevaluated proposals in part and made a new source selection decision does not provide a basis for reviving otherwise untimely protest allegations concerning aspects of the agency's evaluation that were not subsequently affected by the agency's corrective action. See DRS ICAS, LLC, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 21 (finding a protest of an agency's price evaluation to be untimely where the protester was on notice of the agency's calculation method from an earlier, pre-corrective action and did not file its protest within 10 days of when the basis of protest should have been known); Synergy Solutions, Inc., supra.

As there is no apparent reason why Catalyst could not have raised this evaluation challenge when Catalyst filed its previous protest, we consider this protest ground to be raised in an unwarranted piecemeal manner. See Savvee Consulting, Inc., supra, at 6 (dismissing as untimely new arguments that were based on information that was known to the protester in the prior protest).

Catalyst also protests the evaluation of KSA under the technical capability and performance execution factors, and argues that KSA should have been rated as “unacceptable” under these evaluation criteria. Supp. Protest at 5. However, Catalyst was aware by December 21, 2018, that KSA was again the prospective awardee and that, in accordance with the solicitation, an offeror was required to be rated other than unacceptable to be eligible for contract award. Protest, exh. I, Notice of Contract Award, Dec. 21, 2018; RFP at 77 (“A proposal that receive[s] an ‘Unacceptable’ rating for Factor 1 [technical capability] or Factor 2 [program execution] will result in the entire proposal being determined ‘unacceptable’. No further evaluation of the proposal shall be performed and the Offeror will not be considered for award.”). Accordingly, Catalyst knew or should have known by December 21, 2018, of its reason for protest here. As Catalyst did not file its protest challenging KSA’s technical acceptability until March 22, 2019, more than 10 days after it knew or should have known of its basis of protest, we find this to be another piecemeal presentation of issues and therefore untimely. Savvee Consulting, Inc., supra.

Agency Evaluation of Catalyst

Catalyst also protests the agency’s evaluation of its proposal under the technical capability and performance execution factors. Protest at 5-19. Specifically, the protester alleges that each weakness and deficiency identified in its proposal was unreasonable, and that it should have instead received “acceptable” ratings under these evaluation criteria. Id. at 19. The agency responds that its evaluation was reasonable and consistent with the stated evaluation criteria, and that Catalyst’s proposal failed to adequately address material aspects of the solicitation, and thereby warranted ratings of unacceptable. MOL at 3-6. We need not review the merits of the evaluation of Catalyst’s proposal, however, because the protester has failed to demonstrate that it was prejudiced by the alleged errors.

Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency’s actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest. Engility Corp., B-413120.3 et al., Feb. 14, 2017, 2017 CPD ¶ 70 at 17; Lockheed Martin Integrated Sys., Inc., B-408134.3, B-408134.5, July 3, 2013, 2013 CPD ¶169 at 8; see Statistica, Inc. v. Christopher, 102 F.3d 1577 (Fed. Cir. 1996).

Here, even if the agency improperly evaluated Catalyst under the technical capability and performance execution factors--and Catalyst instead received “acceptable” ratings under these evaluation criteria as the protester contends--Catalyst would still remain both lower technically rated (“acceptable” as compared to “outstanding”) and higher

priced (\$10,623,826 as compared to \$8,748,338) than KSA. Quite simply, insofar as KSA would remain both higher technically-rated and lower-priced than Catalyst, no price/technical tradeoff would be required as part of the SSA's determination that KSA's proposal represented the overall best value to the government. Katmai Health Servs., LLC, B-413816.3, July 12, 2017, 2017 CPD ¶ 220 at 6; Pond Constructors, Inc., B-414307, B-414307.2, May 1, 2017, 2017 CPD ¶ 165 at 5 n.8 (denying protest where protester failed to establish prejudice because it could not demonstrate a need for a price/technical tradeoff). Consequently, the remaining aspects of Catalyst's protest are denied.

The protest is denied.

Thomas H. Armstrong
General Counsel