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Decision

Matter of: The Green Technology Group, LLC

File: B-417368; B-417368.2

Date: June 14, 2019

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Alexander O. Levine, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's evaluation of awardee's price quotation is denied where the agency reasonably determined that the awardee's pricing would not result in the agency paying an unreasonably high price for contract performance and where the solicitation did not provide for a price realism evaluation.
 2. Protest challenging agency's technical evaluation is denied where the agency evaluated quotations in accordance with the stated evaluation criteria and did not treat vendors unequally.
 3. Errors in an agency's technical and past performance evaluations do not provide a basis to sustain a protest, where the errors did not affect the agency's best-value tradeoff determination and therefore did not prejudice the protester.
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DECISION

The Green Technology Group, LLC (TGTG), a small business located in Fairfax Station, Virginia, protests the issuance of a task order to LinTech Global, Inc., a small business located in Farmington Hills, Michigan, under request for quotations (RFQ) No. HT0015-19-R-0004, issued by the Department of Defense (DOD), Defense Health Agency (DHA), for code maintenance and data processing operations support. The protester challenges the agency's evaluation of the awardee's price quotation, argues that the agency unreasonably evaluated vendors under the non-price factors, and contends that the best-value tradeoff analysis was flawed.

We deny the protest.

BACKGROUND

On November 20, 2018, the RFQ was issued to holders of a General Services Administration (GSA) Schedule 70 federal supply schedule contract, seeking the issuance of a fixed-price task order. The solicitation sought performance-based, commercial services for code maintenance and data processing operations support for DHA's health information technology directorate, solutions delivery division (SDD) program executive office. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 2; Agency Report (AR), Tab 15, Performance Work Statement (PWS), at 2. The RFQ anticipated that the resulting task order would have a 9-month base period, one 12-month option period, and an optional extension period of 6 months. AR, Tab 10, RFQ, at 3-18. The PWS included estimated workload data with labor categories and estimated hours for the base and option period. PWS at 109-111.

The solicitation contemplated that the task order would be issued on a best-value tradeoff basis considering the following evaluation factors: technical, past performance, and price. RFQ at 31. Under the evaluation criteria, the technical factor was significantly more important than the past performance and price factors. Id. Past performance, in turn, was slightly more important than price. Id.

The technical evaluation factor consisted of two subfactors, technical approach and management approach, with the former being more important than the latter. Id. With respect to technical approach, the solicitation anticipated that the agency would evaluate the vendor's level of understanding of the required tasks, the feasibility of the intended approach, the completeness of that approach and the likelihood of successful accomplishment of tasks within the required timeframe. Id. at 33. The evaluation of each vendor's management approach, in turn, would examine the vendor's chain of command practices and its approach to coordinating, directing, and effectively managing proposed subcontractors. Id. at 34.

For past performance, DHA was to evaluate recent and relevant performance information on all vendors based on information learned from references provided by the vendor, past performance questionnaires (PPQs), and "any data independently obtained by the government." Id. The RFQ noted that in addition to evaluating recency and relevancy, the agency would perform a performance quality assessment to assess the entirety of a vendor's past performance. Id. The solicitation permitted vendors to submit past performance information from subcontractors that would perform major aspects of the requirement, and provided that such references would "be rated as highly as past performance information for the principal offeror." Id. The RFQ permitted the submission of up to five prior contracts. Id. at 29.

For price, the solicitation contemplated that the agency would evaluate and document the fairness and reasonableness of each vendor's total evaluated price. Id. at 34. The

RFQ also provided that quotations “determined to have pricing that is materially unbalanced or not fair and reasonable will not be considered further for award.” Id. at 32.

On December 21, the agency received timely quotation submissions from three vendors including TGTG and LinTech.¹ The agency evaluated TGTG’s and LinTech’s quotations as follows:

	TGTG	LinTech
Overall Technical	Acceptable Strengths=2, Weaknesses=9	Outstanding Strengths=17, Weaknesses=3
A. Technical Approach	Acceptable	Good
B. Management Approach	Acceptable	Outstanding
Past Performance	Substantial Confidence	Satisfactory Confidence
Total Evaluated Price	\$64,843,311	\$42,274,514

COS/MOL at 8-23; AR, Tab 28, LinTech Consensus Tech. Evaluation Report, at 8; AR, Tab 29, TGTG Consensus Tech. Evaluation Report, at 8.

Following the evaluation, the agency conducted a best-value tradeoff and selected LinTech as the vendor whose quotation offered the best value to the government. In making this determination, the source selection authority (SSA) recognized TGTG’s advantages of “incumbency in terms of experience, know-how, and very relevant past performance” and the benefits stemming from several of its technical initiatives. AR, Tab 40, Source Selection Decision Document (SSDD), at 34. However, the SSA concluded that these benefits did not outweigh LinTech’s outstanding technical approach and did not warrant the payment of a 53.4 percent price premium. Id.

On March 1, 2019, the agency announced the issuance of the task order to LinTech. This protest followed.

DISCUSSION

The protester challenges numerous aspects of the agency’s technical, past performance, and price evaluations, as well as the resulting best-value tradeoff determination. With respect to the price evaluation, TGTG contends that the agency did not satisfy regulatory requirements and ignored evidence that LinTech’s pricing was materially unbalanced. For the technical evaluation, TGTG argues that the agency disparately evaluated TGTG’s and LinTech’s quotations and lacked a rational basis for assessing weaknesses in the protester’s approach. The protester additionally argues

¹ For its quotation, TGTG proposed the incumbent as its subcontractor.

that the agency unreasonably evaluated the relevancy of the awardee's past performance efforts because these efforts were for smaller contract values than the instant requirement. Last, the protester contends that the resulting best-value tradeoff determination was flawed and failed to document a meaningful consideration of the competing quotations.²

Price Evaluation

As an initial matter, the protester argues that the agency's assessment of fair and reasonable pricing did not meet the requirements of either Federal Acquisition Regulation (FAR) part 8 or FAR part 15. In this respect, under DOD class deviation 2014-O0011, DOD contracting activities are required to use the price analysis procedures of FAR § 15.404-1 in lieu of FAR § 8.404(d) to make a determination of fair and reasonable pricing for individual orders under a GSA schedule contract. TGTG argues that the agency failed to comply with these FAR part 15 requirements because it did not document an analysis of the material differences in vendors' pricing. The protester contends that this was "particularly troubling where (1) [DHA] identified a significant disparity between the [independent government cost estimate (IGCE)] and LinTech's prices; (2) recognized that some of LinTech's [contract line item numbers (CLINs)] were much lower than the IGCE; and (3) the requiring activity expressed concerns regarding LinTech's low price compared to the IGCE." Protester's Comments at 3.

Here, we find the protester's challenge to be without merit. In this regard, we note that the purpose of a price reasonableness evaluation is to ensure that a proposed price is not too high. Palladian Partners, Inc., B-402003, B-402003.2, Dec. 24, 2009, 2010 CPD ¶ 63 at 4. Consideration of whether a price is too low is a matter of price realism. Since the solicitation did not provide for a realism evaluation, or otherwise state that DHA would consider whether prices were unrealistically low, the agency's alleged failure to consider, as part of its price reasonableness analysis, the disparity between LinTech's low prices and the IGCE fails to state a valid basis of protest.³

While the solicitation did require the agency to evaluate and document the fairness and reasonableness of each vendor's total evaluated price, here we find that the agency met this requirement. In this regard, DHA compared LinTech's total evaluated price to both

² While we do not address in detail every argument raised by TGTG in its protest, we have reviewed each issue and do not find any basis to sustain the protest.

³ TGTG additionally argues that, given LinTech's low proposed pricing, the agency should not have credited the awardee for proposing to retain [DELETED] percent of the incumbent personnel. We find that this argument essentially amounts to an assertion that DHA should have conducted a price realism analysis, *i.e.*, an analysis of the realism of LinTech's technical approach in light of its proposed pricing. As noted above, however, the solicitation did not call for the agency to conduct such an analysis.

the prices quoted by the other vendors and to the IGCE, two methods prescribed by FAR § 15.404-1(b)(2). Ultimately, LinTech's total price was lower than both of these benchmarks. For these reasons, we deny the protester's price reasonableness arguments.

The protester additionally contends that the agency failed to document an adequate evaluation of whether LinTech's pricing was materially unbalanced. In this respect, the protester notes that, in several instances, LinTech's line item pricing was materially different from the line item pricing found in the IGCE. For example, LinTech's price for CLIN 0005 was [DELETED] the IGCE CLIN 0005 price, while its CLIN 0013 price was approximately [DELETED] the IGCE CLIN 0013 price. The protester also notes that the labor categories proposed by LinTech were different from those included in the IGCE.

Unbalanced pricing exists where the prices of one or more contract line items are significantly overstated, despite an acceptable total evaluated price (typically achieved through underpricing of one or more other line items). FAR § 15.404-1(g)(1).⁴ While both understated and overstated prices are relevant to the question of whether unbalanced pricing exists, the primary risk to be assessed in an unbalanced pricing context is the risk posed by overstatement of prices. Crown Point Sys., B-413940, B-413940.2, Jan. 11, 2017, 2017 CPD ¶ 19 at 5. Where an agency determines that a firm's pricing is unbalanced, it is required to conduct a risk analysis to evaluate whether award to the firm will result in the government paying an unreasonably high price for contract performance. FAR §15.404-1(g)(2).

Based on our review of the record, we find that DHA adequately assessed the relevant risk to the government of paying an unreasonably high price for contract performance. As an initial matter, we note that the solicitation contemplated the issuance of a fixed-price task order, and the protester has not demonstrated, or even alleged, how the price for contract performance would be different than this fixed price.⁵ We note that where an agency contemplates the award of a fixed-price contract, that fixed price is the price at which the awardee is obligated to perform and the price the government is bound to pay. Cf. Cerner Corp., B-293093, B-293093.2, Feb. 2, 2004, 2004 CPD ¶ 34 at 12. Additionally, the protester has not challenged the accuracy of the solicitation's quantity or hour estimates, or asserted that the contract price would have to be adjusted for some other reason. Accordingly, on these facts, we see no reason to conclude that LinTech's CLIN pricing will result in DHA facing payment of a contract price above and beyond the fixed price quoted by LinTech.

⁴ Although the procurement at issue was not conducted under FAR part 15, to the extent the agency incorporated concepts set forth in FAR part 15 into the RFQ, such as those related to unbalanced pricing, we look to FAR part 15 for guidance in analyzing the reasonableness of the agency's actions. See Triumvirate Envtl., Inc., B-406809, Sept. 5, 2012, 2012 CPD ¶ 244 at 5 n.3.

⁵ We also note that LinTech's proposed price was significantly lower than TGTG's price.

While the protester argues that several of the awardee's CLIN prices deviated significantly from the corresponding IGCE CLIN prices, we find that this disparity alone does not demonstrate unbalanced pricing or otherwise indicate that the agency will pay a higher total price for contract performance. Moreover, as the agency notes, the IGCE was based on the historical pricing of the incumbent (TGTG's proposed subcontractor), and therefore it was not unusual for the IGCE to not align with the competitive pricing submitted by LinTech. We note, in addition, that, despite the disparity in CLIN pricing, both LinTech and TGTG proposed the same amount of total labor hours and did not object to the level of effort identified in the PWS or to any other solicitation term.

Technical Evaluation

The protester additionally raises numerous challenges to the strengths credited to LinTech's technical quotation and to the weaknesses assigned to TGTG's technical quotation. With the exception of three weaknesses found in TGTG's quotation, however, we find that these arguments do not provide a basis to question the reasonableness of the agency's evaluation. Further, as detailed in the prejudice section below, we find that these weaknesses do not provide a basis to sustain TGTG's protest.

The evaluation of a quotation is a matter within the agency's discretion. Sigmatech, Inc., B-406288.2, July 20, 2012, 2012 CPD ¶ 222 at 5. In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate quotations but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Torres Advanced Enter. Solutions, LLC, B-403036, Aug. 18, 2010, 2010 CPD ¶ 197 at 2. Further, it is a vendor's responsibility to submit a well-written quotation for the agency to evaluate, and a vendor that fails to do so runs the risk that its quotation will be evaluated unfavorably. Amyx, Inc., B-410623, B-410623.2, Jan. 16, 2015, 2015 CPD ¶ 45 at 8.

The protester challenges a weakness assessed by DHA due to TGTG proposing [DELETED] but not providing "enough detail to base a decision or determine the level of risk these [DELETED] may pose to the government should this contract be awarded to a competitor." AR, Tab 29, TGTG Consensus Tech. Evaluation Report, at 5. The protester argues that the agency unreasonably assessed this weakness because it was not the vendor's responsibility, under the RFQ evaluation criteria, to demonstrate that its offerings could be completed by a competing vendor. In response to this argument, the agency contends that it did not "consider this a strength" because the vendor did not explain what comprised "[DELETED]." Supp. COS/MOL at 13.

We find the agency's explanation to be inadequate. Specifically, while the agency explains why it did not assess a strength for this approach, it does not explain why DHA found that the approach warranted a weakness. In the absence of any explanation from the agency that relates the assessed weakness to a failure by TGTG to meet the

solicitation's requirements, we cannot conclude that the weakness was reasonably assessed.

DHA also assessed two related weaknesses to TGTG's quotation due to the firm's security testing approach. The agency assessed the first weakness for failing "to provide a thorough explanation of the processes and procedures in place to accomplish the [s]ecurity [t]esting, [risk management framework (RMF) authorization to operate (ATO)], [information assurance vulnerability alerts (IAVMs)], and [security technical implementation guide (STIG)] tasks as described in the PWS." AR, Tab 29, TGTG Consensus Tech. Evaluation Report, at 4. The agency assessed the second weakness for not detailing "the RMF process for achieving and maintaining an ATO." Id. According to the agency, TGTG did not sufficiently explain how it would accomplish security testing and how it would implement the RMF ATO process.

Based on our review of the record, however, we find that the protester did address these areas in its quotation, and did address how it would undergo these security processes. See AR, Tab 26, TGTG Quotation, at 73-75, 123-125.⁶ For example, TGTG's quotation explained that its "[DELETED]." Id. at 74. To the extent the agency asserts that further detail was required by the PWS, it has not sufficiently explained what was missing from TGTG's quotation. We are therefore unable to conclude that the agency had a reasonable basis for these two weaknesses.

With the exception of these three weaknesses, we do not find merit in any of the protester's other challenges to the agency's technical evaluation. For example, the protester challenges a weakness assessed in its quotation for its task order management plan. This weakness was assessed because, although TGTG identified six key areas of focus, it did not offer any suggested metrics of project compliance with SDD processes and procedures. AR, Tab 29, TGTG Consensus Tech. Evaluation Report, at 7. In response to this finding, TGTG argues that it did offer suggested metrics for compliance and asserts that the agency unequally applied a higher standard to its quotation "as the incumbent" than it did to LinTech's quotation.

Based on our review of the record, we find this weakness to be reasonable. In this regard, the solicitation required vendors to include a draft task order management plan that included an integrated master management plan "describing the [c]ontractor's overall management approaches, policies and procedures including suggested project metrics compliance with SDD process and procedures." RFQ at 28. Here, while TGTG's draft task order management approach included some details about the procedures it would use, it was largely devoid of detail on how it would categorize and use metrics to assess compliance. See AR, Tab 26, TGTG Quotation, at 85. While the protester argues that the awardee's quotation contained a similar lack of detail, we find

⁶ Both TGTG's and LinTech's quotations do not contain consecutive page numbers. Accordingly, our Office assigned consecutively numbered page numbers to these documents, for purposes of citing to them herein.

that LinTech's quotation did detail its proposed categorization and use of metrics in order to measure performance and ensure continuous improvement. See AR, Tab 23, LinTech Quotation, at 87-88.

Additionally, we find no basis to sustain the protester's challenges to the strengths assigned to LinTech's quotation. For example, the protester argues that a weakness assessed in LinTech's quotation is inconsistent with many of the strengths credited to LinTech's quotation. In this respect, DHA found that LinTech's quotation was "weak in expressing their understanding of each system identified in the PWS." AR, Tab 28, LinTech Consensus Tech. Evaluation Report, at 5. The agency stated that this amounted to a "moderate risk for completing the transition-in plan within the specified 30-day time period." Id. The protester contends that this weakness was inconsistent with strengths credited to LinTech's quotation for [DELETED].

We find that the assessed weakness is not inconsistent with the above strengths. In this regard, while the agency found that LinTech's quotation weakly expressed the vendor's understanding of the PWS systems, this fact alone does not foreclose the vendor's quotation from being credited for different features of its approach, e.g., [DELETED]. We note that the agency's description of this weakness did not describe it as having a broader impact beyond the transition-in plan, for example somehow calling into question the applications quoted by LinTech under its SDD software portfolio. While TGTG argues that the weakness should have been treated as a "fatal weakness" that "affected the technical acceptability of LinTech's entire technical approach," Protester's Supp. Comments at 8, we find no basis in the record to question the moderate weight assigned by the agency for this weakness.

Last, we note that the protester abandoned several of its protest arguments. For example, in its supplemental protest, TGTG challenged a strength assigned to LinTech for its subcontractor management plan, arguing that the assessment of the strength amounted to unequal treatment because TGTG proposed a similar approach but was not given a similar strength. See Protester's Comments at 13. The agency responded to this protest argument by noting clear differences in the two vendors' subcontractor management plans, including problems with the clarity of TGTG's proposed approach. See Supp. COS/MOL at 10. Where an agency provides a detailed response to a protester's assertion and the protester fails to rebut or respond to the agency's argument in its comments, the protester fails to provide us with a basis to conclude that the agency's position with respect to the issue in question is unreasonable, and as a result, the protester abandons the assertion. IntegriGuard, LLC d/b/a HMS Fed.-Protest and Recon., B-407691.3, B-407691.4, Sept. 30, 2013, 2013 CPD ¶ 241 at 5. Here, as noted above, the agency provided detailed responses to several of the protester's arguments and the protester failed to respond or rebut the agency's responses. As a result, we consider the arguments abandoned and do not consider them further.

Past Performance

The protester additionally argues that DHA unreasonably found that the past performance efforts submitted for LinTech and its subcontractor were relevant when these efforts had smaller contract dollar values than the instant requirement. In this regard, DHA found to be relevant a \$48.4 million past performance effort submitted for LinTech and a \$28.8 million effort submitted for its subcontractor. See AR, Tab 40, SSDD, at 18-19. The agency also found to be somewhat relevant a \$6.7 million effort submitted for LinTech's subcontractor. See id. at 20. The RFQ here defined a "relevant" effort as involving a similar scope, magnitude of effort, and complexity as the instant requirement, and defined a "somewhat relevant" effort as involving some of the scope, magnitude of effort, and complexity of the instant requirement. RFQ at 35.⁷

In reviewing a protester's challenge to an agency's evaluation of a vendor's past performance, our Office does not independently evaluate quotations; rather, we review the agency's evaluation to ensure that it is reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. CSR, Inc., B-413973, B-413973.2, Jan. 13, 2017, 2017 CPD ¶ 64 at 5. An agency's determination of the relevance or merit of a vendor's performance history is a matter within the discretion of the contracting agency, which we will not disturb unless the agency's assessments are unreasonable or inconsistent with the solicitation criteria. Id.

Here, we find that the agency reasonably evaluated the relevance of the awardee's past performance efforts. In this regard, the record demonstrates that the agency's consideration of relevancy examined a wide variety of data points, of which size was only one consideration. For instance, the agency mapped the performance of each submitted reference to the specific sections of the instant PWS to reach conclusions about the relevance of the scope for each effort. See AR, Tab 40, SSDD, at 18-21. For the awardee's past performance efforts, the agency used these metrics to determine that two efforts were similar, though not identical, in size, scope and complexity to the instant requirement because they involved similar dollar contract values with many of the same PWS requirements, while another effort was found to be only somewhat relevant because it involved a smaller dollar value and included only some of the same PWS requirements. See id. We find these conclusions to be reasonable.

The protester additionally challenges the satisfactory confidence rating assessed for LinTech's first past performance effort. In this respect, the record demonstrates that DHA did not receive a PPQ for this contract and did not have any information with respect to this contract from either the past performance information retrieval system or the federal awardee performance and integrity information system. In addition, the agency has not asserted that it considered other qualitative information about this effort, e.g., a phone interview with the relevant contracting officer. In the absence of such

⁷ In contrast, a very relevant effort was defined as involving essentially the same scope, magnitude of effort, and complexity as the instant requirement. RFQ at 35.

information, it is unclear what, if any, qualitative information the agency considered in reaching its confidence assessment rating for this effort.⁸

Accordingly, we find no basis in the record for the satisfactory confidence rating assigned to this contract effort. The solicitation here required the agency to base its past performance evaluation on a consideration of the recency, relevancy, and quality of the performance effort. See RFQ at 35-36. In the absence of any evidence showing that the agency considered the quality of LinTech's past performance effort, we cannot conclude that the satisfactory rating assigned to this effort was reasonable.

Prejudice

As noted above, we find that the record does not adequately support three of the weaknesses assessed in TGTG's technical approach and does not support the satisfactory confidence rating assessed for LinTech's first past performance effort. We are not persuaded, however, that the protester was prejudiced as a result of these 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. Lockheed Martin Integrated Sys., Inc., B-408134.3, B-408134.5, July 3, 2013, 2013 CPD ¶ 169 at 8.

Here, we find that the correction of the above errors would not meaningfully affect the agency's source selection decision. With regard to the three technical weaknesses noted above, we note that these were part of seven weaknesses assessed in TGTG's technical approach. On the basis of these seven weaknesses, which were coupled with no strengths, DHA rated TGTG's technical approach as acceptable. Even if three of these weaknesses were removed, however, we see no reason that the agency's evaluation of TGTG's technical approach rating would have been materially affected.⁹ Further, the removal of these weaknesses would not have meaningfully impacted the

⁸ We note that the agency largely failed to substantively address this protest argument in its supplemental memorandum of law.

⁹ We note that under the RFQ, an acceptable rating was to be assigned to a quotation that "meets requirements and indicates an adequate approach and understanding of the requirements, and [where the] risk of unsuccessful performance is no worse than moderate." RFQ at 32. In contrast, the next highest rating, good, was to be assigned where the quotation indicates a "thorough approach and understanding of the requirements and contains at least one strength." Id. Since, even without the three weaknesses in question, TGTG would still have had four weaknesses and no strengths, it is likely its technical approach rating would still have been rated acceptable, even without the weaknesses in question.

agency's overall technical evaluation, where TGTG's acceptable-rated approach would have remained inferior to LinTech's outstanding-rated approach.

With respect to the evaluation of LinTech's past performance, we find that the removal from consideration of LinTech's first past performance effort would have no effect on the agency's overall assessment of the awardee's past performance. In this regard, we note that the agency assigned LinTech a satisfactory confidence rating on the basis of three past performance efforts, all three of which were assigned satisfactory confidence ratings. Removing one of these efforts from the calculus would still leave two efforts, each of which was assigned a satisfactory confidence rating.

Moreover, we note that DHA's best-value tradeoff determination did not rely on the above weaknesses assessed in TGTG's quotation, or on consideration of LinTech's first past performance effort, to make the source selection decision. Instead, the agency found that LinTech offered the best value based on the technical advantages its quotation offered relative to the technical advantages offered by TGTG's quotation, and based on the 53.4 percent price premium between the two quotations. See AR, Tab 40, SSDD, at 34. These considerations would remain unchanged even if the above errors were corrected. Accordingly, we conclude that the protester has not demonstrated that it was prejudiced as a result of these errors.

The protest is denied.

Thomas H. Armstrong
General Counsel