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Decision

Matter of: Addx Corporation

File: B-417804; B-417804.2; B-417804.3

Date: November 5, 2019

Lee Dougherty, Esq., Effectus, PLLC, for the protester.
Jonathan A. Hardage, Esq., Department of the Army, for the agency.
Charmaine A. Stevenson, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's evaluation of transition plan, benefit/compensation plan, and management plan factors is denied where the contemporaneous record is sufficient to show that the agency was concerned with the lack of detail provided in the protester's proposal.
 2. Protest challenging agency's evaluation of the protester's past performance is sustained where the record shows that the agency applied an unstated evaluation criterion, and unreasonably evaluated the responses provided in past performance questionnaires.
 3. Protest is sustained where the agency failed to perform and document any analysis that considered the protester's lower proposed cost in its decision to eliminate the protester's proposal from the competition.
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DECISION

Addx Corporation, a service-disabled veteran-owned small business of Alexandria, Virginia, protests its elimination from the competition conducted by the Department of the Army, Army Contracting Command Redstone Arsenal, under task order request for proposals (TORFP) No. W911W6-19-R-0010 for professional and technical system support services for the Army's Special Operations Mission Planning and Execution (SOMPE) program. The protester contends that the agency's evaluation of proposals was unreasonable and disparate, and that the agency improperly eliminated Addx's proposal from the competition.

We sustain the protest.

BACKGROUND

The TORFP was issued on March 8, 2019, to holders of the General Service Administration's (GSA) One Acquisition Solution of Integrated Services (OASIS) Small Business governmentwide acquisition contract. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 5. The task order competition was conducted using the procedures at Federal Acquisition Regulation (FAR) subpart 16.5. Id. at 1. The TORFP was set aside for service-disabled veteran-owned small businesses and contemplated award of a cost-plus-fixed-fee task order with a period of performance that includes a 7-month base period and four 1-year option periods. Agency Report (AR), Tab 3, TORFP, at 1-2. The task order requires the contractor to provide technical and analytical mission planning and execution system support for the SOMPE program and other United States Special Operations Command (USSOCOM) components within the continental United States as well as at manned locations outside the continental United States (OCONUS). AR, Tab 7, Performance Work Statement (PWS), at 2.

Proposals were to be rated under each of the management/technical evaluation factors, in descending order of importance, as follows: (1) transition plan (to include the 90 percent workforce retention goal stated in the PWS); (2) benefit/compensation plan for workforce retention; (3) management plan to manage the global workforce; (4) past performance with specific skillset applicability; and (5) security clearances of proposed personnel for the specific support locations. TORFP at 13. When combined, the management/technical evaluation factors were significantly more important than the cost factor. Id. at 14. Award was to be made to the offeror whose proposal was determined to provide the best value to the government using a tradeoff analysis. Id. at 13.

The agency received two timely proposals in response to the TORFP, one from Addx and another from Sawdey Solutions Services (Sawdey). AR, Tab 12, Source Selection Authority (SSA) Briefing Slides, at 25, 27. In its evaluation of proposals, the agency identified six strengths and six weaknesses in Addx's proposal. AR, Tab 10, Addx Consensus Evaluation, at 2-3. In contrast, the agency identified 12 strengths and no weaknesses in its evaluation of Sawdey's proposal. AR, Tab 12, SSA Briefing Slides (Sawdey Consensus Evaluation), at 1-3. The agency assigned the proposals both adjectival and risk ratings for each technical evaluation factor as follows:¹

¹ The agency used the following risk ratings for each management/technical evaluation factor: low risk, moderate risk, and high risk. AR, Tab 4, Evaluation Plan, at 2. The adjectival ratings for the transition plan, benefit/compensation plan, management plan factors, and overall proposal ratings were as follows: exceptional, acceptable, marginal, or unacceptable. Id. Past performance ratings were satisfactory, marginal, unsatisfactory, or not applicable. Id. at 3. Security clearance and facility clearance requirements were evaluated on a pass/fail basis. TORFP at 13.

| | Addx | Sawdey |
|---|-------------|---------------|
| Transition Plan Rating | Marginal | Exceptional |
| Transition Plan Risk | Moderate | Low |
| Benefit/Compensation Plan Rating | Acceptable | Acceptable |
| Benefit/Compensation Plan Risk | Moderate | Low |
| Management Plan Rating | Marginal | Acceptable |
| Management Plan Risk | Moderate | Low |
| Past Performance Rating | Marginal | Satisfactory |
| Past Performance Risk | Moderate | Low |
| Security Clearance/Facility Clearance Rating | Pass | Pass |
| Security Clearance/Facility Clearance Risk | Low | Low |
| OVERALL PROPOSAL RATING | Marginal | Acceptable |
| OVERALL PROPOSAL RISK | Moderate | Low |

AR, Tab 12, SSA Briefing Slides, at 3. The agency also concluded that Addx’s total proposed cost was \$59,872,454 and that Sawdey’s total proposed cost was \$68,910,721. *Id.* at 24, 26. The technical evaluation team (TET) recommended that the SSA and contracting officer “initiat[e] discussions, if required, with [Sawdey].” *Id.* at 37.

On May 15, the agency notified Addx that it had been eliminated from the competition. AR, Tab 13, Addx Unsuccessful Offeror Letter. Addx received a pre-award debriefing and then filed an agency-level protest. AR, Tab 18, Addx Agency-Level Protest. On July 19, the agency responded to Addx’s protest. AR, Tab 19, Agency Response to Addx Agency-Level Protest. This protest followed.²

DISCUSSION

The protester challenges virtually every aspect of the agency’s conduct of this procurement. Primarily, the protester argues that the agency’s evaluation of its proposal was unreasonable and that the agency improperly eliminated its proposal from the competition. Protest at 5-11; Comments & Supp. Protest at 2-13. The protester additionally argues that the agency disparately evaluated proposals with respect to the ability to retain the incumbent workforce. 2nd Supp. Protest at 5-7. As discussed below, we have considered all of Addx’s allegations and sustain the protest because the agency unreasonably evaluated Addx’s proposal under the past performance factor and

² While the task order will be in support of a Department of Defense organization, OASIS is a civilian agency indefinite-delivery, indefinite-quantity contract awarded by GSA. As such, the protest is within our Office’s jurisdiction because the value of the order to be issued exceeds \$10 million. *See* 41 U.S.C. § 4106(f); Analytic Strategies LLC; Gemini Indus., Inc., B-413758.2, B-413758.3, Nov. 28, 2016, 2016 CPD ¶ 340 at 4-5.

improperly failed to consider Addx's lower proposed cost when it eliminated the Addx proposal from the competition. We deny Addx's remaining allegations.³

Transition Plan, Benefits/Compensation Plan, and Management Plan

The protest challenges all of the weaknesses identified by the agency in its evaluation of Addx under the transition plan, benefit/compensation plan, and management plan factors.⁴ Protest at 5-11. In response to each of the agency's reports, the protester repeatedly argues that the agency failed to contemporaneously document its evaluation, and has improperly sought to create a post-protest record with non-contemporaneous statements made in the heat of litigation, to which our Office should give no weight. Comments & Supp. Protest at 3-8; Supp. Comments at 1, 6-8; 2nd Supp. Protest at 7-8.

³ The agency argues that the protest is untimely filed because Addx filed an improper agency-level protest. We disagree. The agency notified Addx on May 15 that it had been eliminated from the competition "based on the Management/Technical assessed rating of 'Marginal' of the technical proposal and a risk rating of 'Moderate'" and offered a post-award debriefing. AR, Tab 13, Addx Unsuccessful Offeror Letter. On May 16, Addx requested a debriefing and was informed by the agency that post-award debriefings would not be conducted until mid-June. COS/MOL at 13. That same day, Addx requested a pre-award debriefing because it had been told by the agency Addx had been eliminated prior to negotiations and award. AR, Tab 14, Email to Agency, May 16, 2019. On May 20, the agency provided Addx a debriefing informing Addx of all of its ratings, strengths, and weaknesses. COS/MOL at 13-14; see also AR, Tab 16, Addx Debriefing Slides. On May 30, Addx filed an agency-level protest challenging the agency's evaluation of Addx's proposal. Over a month later, on July 19, the agency responded to the protest, neither dismissing nor denying the protest, but stating that only GAO has jurisdiction over task order protests and addressing the allegations raised in Addx's protest. AR, Tab 19, Agency Response to Addx Agency-Level Protest. On July 29, Addx filed its protest with our Office. Since Addx's agency-level protest was filed within 10 days of learning the basis of the protest, i.e., Addx's ratings, strengths, and weaknesses, and the protest to our Office was filed within 10 days of the agency's response to the protest, we find the protest to our Office timely. 4 C.F.R. § 21.2(a)(3).

⁴ The protester also argued that the agency failed to provide the bases upon which Addx would be evaluated. Protest at 12-13 ("The Agency's evaluative factors [affected] Addx's proposal as Addx could not reasonably determine the criteria while preparing its proposal."). Insofar as some aspects of the protester's argument presented an untimely challenge to the sufficiency of the TORFP's stated evaluation criteria, our Office dismissed this aspect of the protest. Electronic Protest Docketing System (EPDS) Docket No. 9, Ruling on Request for Dismissal, Aug. 15, 2019; see 4 C.F.R. § 21.2(a)(1) (protests based upon alleged improprieties in a solicitation must be filed prior to bid opening or time set for receipt of initial proposals).

In reviewing protests of alleged improper evaluations and source selections, even in a task order competition as here, we do not reevaluate proposals, but rather we examine the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. Technology Concepts & Design, Inc., B-403949.2, B-403949.3, Mar. 25, 2011, 2011 CPD ¶ 78 at 8. In order for us to review an agency's evaluation judgment, an agency must have adequate documentation to support its judgment. Id. at 8-9. However, in reviewing an agency's evaluation, we do not limit our consideration to contemporaneously documented evidence, but instead consider all the information provided, including the parties' arguments, explanations, and any hearing testimony. Id.; Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 10.

At the outset, we note that the record provided by the agency contains very little contemporaneous documentation. The document upon which the agency primarily relies as evidence of a reasonable evaluation and source selection decision is a 28-page slide briefing to the SSA that summarizes the TET's technical evaluation. AR, Tab 12, SSA Briefing Slides, at 1-28. Included with the slides are the consensus evaluation reports for Addx and Sawdey. Id. at 30-33 (identical to Tab 10, Addx Consensus Evaluation)⁵; see also id. at 34-36 (Sawdey Consensus Evaluation). The final page of the briefing consists of a recommendation from the TET which states, in its entirety, as follows: "Following the evaluation of proposals received in response to [the TORFP], the [TET] recommends initiating discussions, if required, with [Sawdey]." Id. at 37. Below the TET's recommendation is the following statement, in its entirety, from the SSA, who also served as the contracting officer: "I have reviewed the various elements of the proposals, evaluation results, and discussion and have determined that an award to [Sawdey] is in the best interest of the Government considering the criteria set forth in the solicitation."⁶ Id.

⁵ The agency additionally produced the individual evaluator worksheets assessing Addx's proposal. AR, Tab 11, Addx Individual Evaluator Worksheets.

⁶ We note that development of the record here occurred in stages. In a teleconference conducted by our Office on September 3, regarding the agency's document production, the agency advised that an award was subsequently made and contract performance is ongoing. See EPDS Docket No. 14, GAO Notes; Comments & Supp. Protest at 2. However, the agency did not identify Sawdey as the awardee until it filed its first supplemental report on September 19. In addition, the agency produced a significantly redacted version of the SSA briefing slides and attached documents in its first request for dismissal and initial agency report, provided a less redacted version with its first supplemental report, and did not provide our Office with a completely unredacted version of the document until it filed its second supplemental agency report. Further, it was not until the agency filed its second supplemental agency report that the agency provided our Office with Tab 27, Sawdey Notification Letter, and Tab 32, Sawdey Technical Proposal.

In addition, the agency produced letters to Addx and Sawdey, both dated May 15. In pertinent part, the letter to Addx stated as follows:

As a result of the evaluation process, the proposal submitted by ADDX Corporation was not selected for award.

This letter serves as notice that your proposal has been eliminated from the competition based on the Management/Technical assessed rating of “Marginal” of the technical proposal and a risk rating of “Moderate”. A revision of your proposal will not be considered.

AR, Tab 13, Addx Unsuccessful Offeror Letter. In contrast, the agency’s letter to Sawdey, dated the same day, in pertinent part stated as follows:

Sawdey Solution Services, Inc[.]’s proposal has been selected for award.

This letter serves as notice of the Government’s intent to enter into negotiations for a GSA OASIS Task Order, W911W6-19-F-901B. The Government seeks to make award, after negotiations, as quickly as possible. Lack of timeliness by either party during negotiations will put awards at risk.

AR, Tab 27, Sawdey Notification Letter. During the development of the record, the agency prepared and produced three declarations from members of the TET, the SSA, and contract specialists. AR, Tab 22, Joint Decl. of the TET; Tab 24, Supp. Joint Decl. of the TET; Tab 25, Joint Decl. of SSA, Contract Specialists, and the TET.

The record shows that the TET identified multiple weaknesses under the transition plan, benefits/compensation plan, and management plan factors related to Addx’s failure to address requirements regarding OCONUS personnel and management of a global workforce. E.g. AR, Tab 10, Addx Consensus Evaluation, at 2 (“Proposal lacks sufficient detail to support the transition of contractor employees at OCONUS locations.”); id. at 3 (“There is no specific discussion of the benefit/compensation plan for the OCONUS support requirements.”); id. (“The offeror does not describe how they plan to manage a globally distributed workforce.”). The TET summarized its evaluation of the Addx proposal as follows:

Overall, the Offeror’s proposal lacks details in key areas. There are numerous pages of non-specific, descriptive “we can do this” verbiage, where more specifics would have imparted confidence in their approach. The Offeror does not truly address the SOMPE support requirement or describe how they will meet it. Throughout the proposal, the Offeror fails to mention the actions required to place and sustain a contractor at OCONUS locations. The base year requirement has support requirements [for] at least three OCONUS locations with more locations [to be] added in the option years. The teaming relationship, if utilized

correctly, has the potential to reduce risk and aid potential performance. However, the Offeror's approach, as presented, does not convey an understanding of the complexities of meeting the SOMPE global system support requirement.

Id. at 4. In general, the statements provided by the TET regarding these factors provide context for the agency's conclusions by explaining its past experience and challenges faced with the SOMPE program, and are consistent with the consensus evaluation of Addx's proposal. See AR, Tab 22, Joint Decl. of the TET at 3-4 (explaining that additional training and documents have historically been required for OCONUS personnel to gain theater and country clearances and approvals); Tab 24, Supp. Joint Decl. of the TET.

The protester argues that we should give no weight to the agency's post-protest explanations. While we accord greater weight to contemporaneous source selection materials as opposed to judgments made in response to protest contentions, post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, will generally be considered in our review of the rationality of selection decisions--so long as those explanations are credible and consistent with the contemporaneous record. Technology Concepts & Design, Inc., supra, at 9; Glacier Tech. Solutions, LLC, B-412990.2, Oct. 17, 2016, 2016 CPD ¶ 311 at 7.

On balance, we find that the contemporaneous record is sufficient to show that the agency was generally concerned with the lack of detail provided in Addx's proposal, and in particular with respect to the information provided regarding OCONUS personnel. Even the protester concedes that the additional statements provided by the agency regarding its technical evaluation do not provide any new information regarding its evaluation. See Comments & Supp. Protest at 4-5 ("Not only does the above statement provide no new unrecorded information, but it also utilizes cherry picked statements as much as possible to paint an incorrect narrative regarding Addx's proposal."). On this record, we find no basis to question the agency's conclusions under the transition, benefits/compensation plan, and management plan factors.

Addx also argues that the agency disparately evaluated proposals with respect to the ability to retain the incumbent workforce under the transition plan factor. Specifically, Addx alleges that the agency unreasonably penalized its proposal for not providing letters of intent from incumbent personnel, but did not hold the awardee to the same standard. 2nd Supp. Protest at 5-7. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors' proposals. IndraSoft, Inc., B-414026, B-414026.2, Jan. 23, 2017, 2017 CPD ¶ 30 at 10. Here, the protester has not made the requisite showing that the agency treated the two proposals unequally. See Alphaport, Inc., B-414086, B-414086.2, Feb. 10, 2017, 2017 CPD ¶ 69 at 7.

Regarding retention of the incumbent workforce, the TORFP's transition plan factor included the following statement:

For all labor categories, retention of the incumbent workforce (where present) is preferred. The Government's goal is for Offerors to retain 90 [percent] of the current workforce identified in Attachment No. 2, Base Year Support requirement. Offeror must show as a part of their Management/Technical proposal (see section 8.3.1 below) an ability to meet the Government's goal. To the extent that the Offeror is unable to meet or exceed this goal, the Government will assign a higher risk rating during evaluation. However, as part of the Management/Technical proposal, an offeror may provide a detailed recruitment plan to fill vacant positions prior to award.

TORFP at 8. The TORFP required that proposals "describe the contractor's capabilities to satisfy the requirement as detailed in the PWS, including the resumes. . . and/or letters of intent of the proposed contractor personnel proposed for each labor category (where such labor category is currently occupied) identified in [the TORFP]." Id. at 11.

Here, the record shows that there were meaningful differences between the offerors' proposals regarding retention of the incumbent workforce. In its proposal, Addx generally explained that it contacted all 56 of the current incumbent personnel, received 52 resumes and one letter of intent, and that its compensation and benefits plan would provide an incentive for incumbent employees to join its workforce. AR, Tab 8, Addx Technical Proposal, at 7-8, Appendices A and B. Addx additionally provided a plan to fill vacant positions for incumbent staff that declined employment with Addx. Id. at 8. Sawdey's proposal likewise provided resumes from the incumbent workforce, but in contrast, the proposal indicated that it would subcontract with the current incumbent contractor and gradually onboard incumbent staff during task order performance until Sawdey and its subcontractor become equal partners. AR, Tab 32, Sawdey Technical Proposal, at 2-3, Appendix A. Overall, the TET rated Addx as marginal with moderate risk, and rated Sawdey as exceptional with low risk, under the transition plan subfactor. AR, Tab 12, SSA Briefing Slides, at 3. The TET explains that, based on other statements made by Addx in its proposal, it "reached the conclusion that Addx had contact with the incumbent employees, but had not likely discussed Addx's specific proposed compensation package, the employees' current or expected compensation, or received firm commitments from the employees to work for Addx in the event Addx was awarded the contract." AR, Tab 24, Supp. Joint Decl. of the TET, at 2. On this record, we find no evidence of disparate treatment.⁷ See Alphaport, Inc., supra.

⁷ Although we deny Addx's allegations, we are mindful that the degree to which the protester's proposal was found to be deficient appeared to increase with each successive agency report. For example, the contemporaneous record is inadequately documented to support the agency's statement in its final report that the Addx proposal "would require a significant re-write in order to be considered among the highest rated

Past Performance

The protester also challenges the agency's evaluation of its past performance. Specifically, Addx contends that the agency unreasonably failed to consider the content of its proposal and applied unstated evaluation criteria when evaluating its past performance. Protest at 10-11. The agency argues that its evaluation of Addx's past performance was reasonable. COS/MOL at 28-31. Specifically, the agency argues that "Addx did not have any explicit past performance information related to the position of a Mission Planning Software Engineer or any detailed description as to how it would address and overcome this lack of explicit past performance either directly or through one of its subcontractors." Id. at 29 (quoting AR, Tab 19, Response to Addx Agency-Level Protest, at 2).

As noted, the TORFP included a "[p]ast performance with specific skillset applicability" factor. TORFP at 11. With respect to this factor, the TORFP stated, in pertinent part, as follows:

[T]he offeror will identify all previous contracts that the offeror has performed in the last five years which highlight experience relevant to the PWS and of similar scope and type of services, e.g.[,] professional services for USSOCOM/[Department of Defense (DOD)]. Relevant past performance may include performing as a prime or a subcontractor (provide prime contractor name and contract number).

Id. at 12. The TORFP required that offerors provide a past performance questionnaire (PPQ) to both the contracting officer and contracting officer's representative for each contract identified in the technical proposal volume, and that the respondents provide the completed PPQs directly to the agency. Id.

In its proposal, Addx identified seven contracts performed in the last five years by Addx and its proposed team members to "demonstrate highly relevant experience of similar scope and type" to the TORFP requirements. AR, Tab 8, Addx Technical Proposal, at 40. For each contract identified, Addx provided a narrative explanation of the relevance of the contract as compared to specific sections of the SOMPE solicitation's PWS. Id. at 40-47. The record shows that the agency received three PPQs in support of Addx's technical proposal related to two contracts performed by Addx. See AR, Tab 9, Addx PPQs.

proposals or to otherwise have a realistic possibility for award." See 2nd Supp. COS/MOL at 2. Although our Office sustains this protest on other grounds, the agency may wish to reconsider and document its technical evaluation here in implementing our recommendation that the agency adequately document its reevaluation and source selection decision.

In its evaluation, the agency identified the following strength: “Three past performance questionnaires were submitted, all with ‘Satisfactory’ ratings.” AR, Tab 10, Addx Consensus Evaluation, at 3. The agency also identified a weakness, which stated: “The past performance submissions are not related to mission planning support engineer specific skillsets.” Id. To further explain its evaluation of Addx’s proposal, the TET additionally states that Addx’s past performance demonstrated “an overall lack of experience performing system support services on tactical Special Operation mission planning and situational awareness systems/devices.” AR, Tab 22, Joint Decl. of TET, at 5. Further, in response to the agency-level protest, the agency stated that Addx did not have any explicit past performance related to mission planning software engineer. AR, Tab 19, Agency Response to Addx Agency-Level Protest, at 2.

Our Office will examine an agency’s evaluation of an offeror’s past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria, since determining the relative merit of an offeror’s past performance is primarily a matter within the agency’s discretion. Target Media Mid Atlantic, Inc., B-412468.6, Dec. 6, 2016, 2016 CPD ¶ 358 at 9. While we will not substitute our judgment for that of the agency, we will sustain a protest where the agency’s conclusions are inconsistent with the solicitation’s evaluation criteria, undocumented, or not reasonably based. Conley & Assocs., Inc., B-415458.3, B-415458.4, Apr. 26, 2018, 2018 CPD ¶ 161 at 5. It is a fundamental principle of government accountability that an agency must prepare a record sufficient to allow for a meaningful review when its procurement actions are challenged. e-LYNXX Corp., B-292761, Dec. 3, 2003, 2003 CPD ¶ 219 at 8.

On this record, we conclude that the agency’s evaluation of Addx’s past performance was unreasonable. We find that the weakness identified by the agency reflects the application of an unstated evaluation criterion to Addx’s proposal. As noted, the TORFP required that offerors provide past performance for “experience relevant to the PWS and of similar scope and type of services, e.g.[,] professional services for USSOCOM/DOD.” TORFP at 12. The PWS requirements include but are not limited solely to “mission planning support engineer specific skillsets.” See AR, Tab 7, PWS (contractor shall perform, for example, operational software support; mapping, imagery and geospatial information system support; operational node support; training support; enhancement and upgrade support; special operation forces support; ground tactical support; aviation support). Indeed, the TORFP specifically identified “professional services for USSOCOM/DOD” as past performance that would be considered similar to the PWS requirements, and does not provide any other definition of a “specific skillset applicability” against which offerors’ proposals would be evaluated. TORFP at 13. To the extent that the agency argues that Addx did not demonstrate past performance specifically “performing system support services on tactical Special Operation mission planning and situational awareness systems/devices” rather than “professional services for USSOCOM/DOD,” we find that the agency improperly applied an unstated evaluation criterion to its evaluation of Addx’s past performance.

We additionally find that the agency’s evaluation and ratings were unreasonable in light of the responses provided in the PPQs. The PPQ respondents were required to provide

the following ratings for each of six questions in the areas of quality of service, schedule/timeliness, and customer satisfaction, for a total of 18 ratings: satisfactory, marginal, unsatisfactory, or not applicable. See AR, Tab 9, Addx PPQs. In all three PPQs submitted in support of Addx's proposal, Addx received the highest rating of satisfactory in response to all applicable questions.⁸ See generally id. As a result of these ratings, none of the respondents provided any information that would constitute adverse past performance.⁹ Id. One PPQ respondent commented that "Addx has provided excellent performance with their current contract" and "consistently gone above and beyond to insure that they provide the best service possible." AR, Tab 9a, PPQ No. 1, at 7.

Despite receiving the highest available rating of satisfactory to all applicable questions, in all three PPQs, the agency assigned an adjectival rating of marginal and a moderate risk rating to Addx's proposal under the evaluation factor of past performance with specific skillset applicability. AR, Tab 12, SSA Briefing Slides, at 3. The definition for a marginal rating states that "[p]ast performance reflects serious problems. The offeror's proposed actions appear only marginally effective or were not fully implemented." AR, Tab 4, Evaluation Plan, at 3. The definition for a moderate risk rating is that the proposal "[h]as some potential to cause disruption of effort or increase in cost/price of performance." Id. at 2. However, nothing in the responses, or any other evaluation materials, indicated that Addx's prior performance "reflects serious problems" or had "potential to cause disruption of effort or increase in cost/price of performance." See id., at 3. We therefore find that the agency's ratings of Addx's past performance as marginal and moderate risk lack a reasonable basis.¹⁰

In sum, we find that the agency's past performance evaluation was unreasonable and therefore sustain the protest on this basis.

Best-Value Tradeoff

⁸ One PPQ respondent provided a rating of "not applicable" in response to four of the 18 questions. AR, Tab 9c, PPQ No. 3, at 5-6.

⁹ The PPQ requested that respondents "discuss each and every response for which you indicated M (Marginal) or US (Unsatisfactory) in response to the [18] questions above (use additional sheets, if necessary)." See AR, Tab 9a, PPQ No. 1, at 6 (Question A).

¹⁰ The record is also devoid of any evidence that the agency substantively considered any of the past performance information provided by Addx in the technical volume of its proposal. As noted, the agency identified a strength for ratings provided in response to Addx's PPQs. However, the weakness references "past performance submissions"; the declarations submitted by the TET to explain their rating of Addx as marginal makes clear that the "submissions" are limited to the PPQs received by the agency. AR, Tab 22, Joint Decl. of TET, at 5 (¶ d); see also Tab 25, Joint Decl. of SSA, Contract Specialists, and the TET, at 3 (¶ 11, stating "[t]here was no evidence from the past performance submissions that the Offeror has ever executed a comparable effort.").

Finally, the protester contends that the agency failed to perform and document a proper best-value tradeoff selection decision. Supp. Comments at 1, 8-9; 2nd Supp. Protest at 3, 7-8. In contrast, the agency argues that the record demonstrates that it reasonably established a de facto competitive range of one. Supp. COS/MOL at 10-13. The agency further argues that “there was no need for a trade-off because the Army reasonably eliminated Addx from the competitive range prior to award.” 2nd Supp. COS/MOL at 17. We agree with the protester.

The TORFP stated that when combined, the management/technical evaluation factors were significantly more important than the cost factor and that award was to be made to the offeror whose proposal was determined to provide the best value to the government using a tradeoff analysis. TORFP at 13-14. Here, as discussed, the record does not include a source selection decision document. As noted, the record shows that the TET provided the following recommendation to the SSA: “Following the evaluation of proposals received in response to [the TORFP], the Management/Technical Team recommends initiating discussions, if required, with [Sawdey].” AR, Tab 12, SSA Briefing Slides, at 37. Thereafter, the SSA stated: “I have reviewed the various elements of the proposals, evaluation results, and discussion and have determined that an award to [Sawdey] is in the best interest of the Government considering the criteria set forth in the solicitation.” Id.

In a joint declaration submitted by the SSA, contract specialists, and TET members, the agency states as follows regarding the briefing and recommendation to the SSA:

[The SSA] asked why the [TET] recommended excluding Addx’s proposal and initiating discussions with [Sawdey] in light of Addx’s lower cost. [The TET members] explained that given the overall proposal rating for Addx as “Marginal” and an overall proposal risk rating of “Moderate”, particularly in light of the lack of detail in the Transition Plan, especially for the Overseas locations, that [Sawdey] had significantly higher probability of successfully transitioning the incumbent work force without a disruption in service. . . . The evaluation team found the [Sawdey] proposal to be the highest rated proposal due to their complete understanding of the complexities of meeting the SOMPE global system support requirement. The SSA approved the evaluation team’s recommendation to enter into negotiations with [Sawdey], and to eliminate Addx from the competition.

AR, Tab 25, Joint Decl. of SSA, Contract Specialists, and the TET, at 4 (¶¶ 16-17).

Where, as here, a solicitation provides for issuance of a task order on a best-value tradeoff basis, it is the function of the SSA to perform a price/technical tradeoff, that is, to determine whether one proposal’s technical superiority is worth its higher price. Engility Corp., B-413120.3 et al., Feb. 14, 2017, 2017 CPD ¶ 70 at 24; Alliant Enter. JV, LLC, B-410352.5, B-410352.6, July 1, 2015, 2015 CPD ¶ 209 at 13. An agency has broad discretion in making a tradeoff between price and nonprice factors, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality

and consistency with the solicitation's stated evaluation criteria. Alliant Enter. JV, LLC, supra, at 14. The agency's rationale for any price/technical tradeoffs made and the benefits associated with the additional costs must be adequately documented. FAR §§ 16.505(b)(1)(iv)(D), (b)(7)(i); AlliantCorps, LLC, B-415744.5, B-415744.6, Nov. 23, 2018, 2018 CPD ¶ 399 at 5. However, there is no need for extensive documentation of every consideration factored into a tradeoff decision. FAR § 16.505(b)(7); AlliantCorps, LLC, supra. Rather, the documentation need only be sufficient to establish that the agency was aware of the relative merits and costs of the competing proposals, and that the source selection was reasonably based. AlliantCorps, LLC, supra.

Our review of the record shows that cost was not considered in any meaningful way prior to the agency's decision to eliminate Addx's proposal from the competition. Both the contemporaneous record and the agency's subsequent explanation are inadequate as a best-value tradeoff, or even as a de facto establishment of a competitive range, to justify elimination of the protester from the competition. Nothing in the contemporaneous record indicates that Addx's lower cost was considered by the TET in its recommendation to the SSA, or independently by the SSA. We recognize that the agency's post-protest explanation identifies Sawdey's higher ratings and "significantly higher probability of successfully transitioning the incumbent work force without a disruption in service" as the basis for entering into negotiations with Sawdey. See AR, Tab 25, Joint Decl. of SSA, Contract Specialists, and the TET, at 4 (¶ 16). However, the agency still does not explain why a higher-rated proposal that includes a transition with no disruption is worth the over \$9 million price premium associated with the Sawdey proposal.¹¹ Accordingly, we also sustain Addx's protest on this basis.

RECOMMENDATION

We recommend that the Army reevaluate proposals in a manner that is consistent with the TORFP and this decision. If necessary, the agency should conduct discussions and obtain revised proposals. The agency should adequately document its reevaluation of proposals and upon completion of the reevaluations, perform a best-value tradeoff that adequately documents the basis for any cost/technical tradeoff determinations in a selection decision. In the event Addx's proposal is found to represent the best value to the government, Sawdey's task order should be terminated for the convenience of the

¹¹ The protester did not challenge any aspect of the agency's cost evaluation, and the agency did not produce any cost evaluation documents. In this regard, the only evidence in the contemporaneous record of the agency's cost evaluation consists of two slides, in which the agency simply provides the offerors' proposed costs by performance period and total proposed costs. AR Tab. 12, SSA Briefing Slides, at 24, 26. We note, however, that in its debriefing the protester was advised of a weakness identified in its cost proposal, but that its proposed cost was found to be fair and reasonable, and realistic to complete the effort. AR, Tab 16, Addx Debriefing Slides, at 11. Consistent with our recommendation, the agency should perform and document a cost evaluation consistent with the terms of the TORFP if it has not yet done so.

government and a new task order should be issued to Addx in accordance with the terms of the TORFP.

We also recommend that Addx be reimbursed the costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). Addx should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Thomas H. Armstrong
General Counsel