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Decision

Matter of: AKAL Security, Inc.

File: B-417840.4

Date: April 27, 2020

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John R. Tolle, Esq., and H. Todd Whay, Esq., Baker, Cronogue, Tolle & Werfel, LLP, for VMD Systems Integrators, Inc., the intervenor.
Michael Kiffney, Esq., and Christopher Reames, Esq., Department of Homeland Security, for the agency.
Robert T. Wu, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of proposals and best-value tradeoff award decision is denied where the record shows that the agency's evaluation and award decision were reasonable and in accordance with the stated evaluation criteria.
 2. Protest that the agency failed to evaluate to awardee's proposal for price realism is denied where the stated evaluation criteria did not call for a price realism evaluation.
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DECISION

Akal Security, Inc., of Española, New Mexico, protests the issuance of a task order to VMD Systems Integrators, Inc., of Fairfax, Virginia, under request for proposals (RFP) No. 70T05018R5NSPP040 by the Department of Homeland Security, Transportation Security Administration (TSA), for security screening services at the Kansas City International Airport (MCI).¹ The protester challenges the agency's evaluation of proposals and the best-value tradeoff award decision.²

¹ The airport was originally called Mid-Continent International Airport, or MCI, and the International Air Transportation Association adopted MCI as the airport's designator code. See www.flykci.com/about-us/kci-airport/ (last visited Apr. 24, 2020).

² Although this is a task order competition under a multiple-award indefinite-delivery, indefinite-quantity (IDIQ) contract, the agency issued the solicitation as an RFP rather

We deny the protest.

BACKGROUND

The RFP, issued on September 26, 2018, sought proposals to provide comprehensive security screening services at MCI, the international airport in Kansas City, Missouri, in support of the agency's Transportation Screening Partnership Program (SPP).³ Agency Report (AR), Tab 2, RFP, at 6.⁴ In general terms, the awardee was to provide security screening of passengers and baggage at the airport, and to ensure the security of designated security areas. Included within those required services was the provision of security training and related screening support services. RFP at 10. The resulting order was to consist of a 1-year base period and four 1-year option periods, with each period consisting of required fixed-price contract line item numbers (CLIN), optional CLINs, and a cost-reimbursement CLIN for travel. *Id.* at 6-8.

The solicitation contemplates that the task order will be issued on a best-value tradeoff basis, considering the following factors: (1) cost efficiency; (2) transition and operational management approach (transition); (3) program management and training approach (program management); (4) past performance; and (5) price. *Id.* at 72. Under the stated evaluation scheme, cost efficiency was to be evaluated first, on an acceptable/unacceptable basis. *Id.* at 73. Only proposals that were determined to be acceptable under this factor would be evaluated under the remaining factors. The transition and program management factors were considered to be of equal weight, and each was more important than the past performance factor. *Id.* The non-price factors, when combined, were to be significantly more important than price. *Id.*

than a request for quotations and refers to the submissions of proposals from offerors instead of quotations from vendors. For consistency and ease of reference to the record, we do the same.

³ The SPP was authorized under the Federal Aviation Administration Act of 2018 and codified at 49 U.S.C. § 44920. RFP at 2. Section 44920 of the statute provides, in pertinent part, "[a]n airport operator may submit to the Administrator of the [TSA] an application to carry out the screening of passengers and property at the airport . . . by personnel of a qualified private screening company pursuant to a contract entered into with the [TSA]." 49 U.S.C. § 44920(a). This requirement was competed under the TSA's SPP multiple-award IDIQ contract. RFP at 6.

⁴ The RFP was amended 14 times. Contracting Officer's Statement at 2-4. Amendment 00013, issued on September 30, 2019, was the last amendment incorporating changes to the solicitation. AR, Tab 2, RFP. Unless otherwise noted, references to the RFP are to the solicitation as amended by amendment 00013.

Six proposals were received in response to the solicitation, including those from Akal and VMD. AR, Tab 9, Tradeoff Analysis and Award Recommendation (TAAR) at 4. The relevant evaluation results were as follows:

	Akal	VMD
Cost Efficiency	Acceptable	Acceptable
Transition and Operational Management Approach	Outstanding	Outstanding
Program Management and Training Approach	Good	Good
Past Performance	Significant Confidence	Significant Confidence
Price	\$119,093,642	\$113,625,753

Id. at 4.⁵

The source selection authority (SSA) reviewed and concurred with the findings of the technical evaluation team (TET) and past performance evaluation team (PPET) for the evaluations of Akal’s and VMD’s proposals. See AR, Tab 10, SSA Decision Memo (SSDM) at 4-5, 7-8. The SSA conducted a comparative analysis between various proposals, including a direct comparison of the merits of VMD’s proposal to Akal’s proposal. *Id.* at 10. In this regard, the SSA found that while VMD’s proposal received the same rating of “outstanding” as Akal’s proposal under the transition factor, “[t]he merits of [VMD’s proposal were] determined to be slightly better than the merits of [Akal’s proposal].” *Id.* Additionally, the SSA found that the proposals were essentially equal for the program management and past performance factors. *Id.*

Based on a review of the record, the SSA determined that VMD’s proposal represented the best value to the government. *Id.* at 12. Akal was informed of the agency’s award decision on January 30, 2020, and received a written debriefing on January 31. See AR, Tab 11, Award Notification; Tab 12, Akal Debriefing. This protest followed.⁶

⁵ As discussed, under the solicitation’s stated evaluation scheme, cost efficiency was to be evaluated on an acceptable/unacceptable basis. RFP at 73. Transition and operational management approach, and program management and training approach were to each be assigned one of the following adjectival ratings: outstanding, good, acceptable, or unacceptable. *Id.* Past performance was to be evaluated using the following ratings: high confidence, significant confidence, satisfactory confidence, unknown confidence (neutral), little confidence and no confidence. *Id.*

⁶ Our Office has jurisdiction to review the protest of this task order pursuant to our authority to hear protests related to task and delivery orders placed under civilian agency multiple-award IDIQ contracts valued in excess of \$10 million. 41 U.S.C. § 4106(f)(1)(B).

DISCUSSION

Akal protests the agency's evaluation of proposals under the program management and past performance factors. Under both of these factors, the protester argues, in essence, that its own proposal should have been rated more favorably than VMD's proposal, as opposed to treating the proposals as effectively equal. Protest at 8-10. According to Akal, the agency also failed to perform a required price realism analysis. *Id.* at 11-12. As result of these errors, Akal argues that the agency unreasonably determined that VMD's proposal represented the best value to the government. *Id.* at 9-10. We have considered each of Akal's allegations, and are provided with no basis to sustain the protest.

Program Management

Akal first challenges the agency's evaluation of proposals under the program management factor. In this regard, the protester contends that the agency unreasonably failed to recognize the benefits of its proposed quality assurance program. *Id.* at 8. Akal also argues that, "as the incumbent, [it] is able to provide 100 [percent] retention rate of employees at MCI," which VMD is unable to duplicate. *Id.* at 9. Finally, the protester argues that its own training program should have been recognized as superior to the program proposed by VMD, yet the agency inexplicably assessed both firms' proposals with significant strengths for their training programs. Protester's Comments at 6.

The agency responds that Akal's complaints concerning the evaluation are "largely based on its belief that as the incumbent, its proposal must be better than VMD's." Memorandum of Law (MOL) at 2. Moreover, the agency asserts that the protester's arguments are "nothing more than disagreement with the agency's evaluation." *Id.* We agree.

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 accord with the stated evaluation criteria and applicable procurement laws and regulations. *Trandes Corp.*, B-411742 *et al.*, Oct. 13, 2015, 2015 CPD ¶ 317 at 6. Where an agency conducts a task order competition as a negotiated procurement, our analysis regarding fairness will, in large part, reflect the standards applicable to negotiated procurements. *DynCorp International LLC*, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 12.

Quality Assurance

With respect to its first argument, Akal asserts that its inclusion of a "[q]uality [a]ssurance monitor position located in TSA's Coordination Center that was to be staffed 7 days a week . . . should have resulted in Akal receiving a higher rating than VMD" under this factor. Protest at 8. Conversely, Akal argues that VMD's proposed quality assurance solution did not warrant the same level of merit as its own, and the

agency was unreasonable in failing to recognize the “clear benefit to the government” provided by its quality assurance program. Protester’s Comments at 6.

The agency responds that the evaluators considered this aspect of Akal’s proposal, but did not believe a strength was warranted. MOL at 3. In this regard, the TET chair explains that Akal’s proposal “of inserting a quality assurance monitor in the TSA Coordination Center is part of the Contractor business model and does not constitute a strength.” Declaration of TET Chair at 1. Moreover, the TET Chair highlights the protester’s method of reviewing closed-circuit television for any potential issues as being acceptable, but observes that “quality assurance is best facilitated at the screening operation and in person.” *Id.*

In reviewing a protest challenging an agency’s evaluation of task order proposals, our Office will neither reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency’s discretion. *Analytical Innovative Solutions, LLC*, B-408727, Nov. 6, 2013, 2013 CPD ¶ 263 at 3. An offeror’s disagreement with an agency’s evaluation, without more, does not establish that the evaluation was unreasonable. *See, e.g., Alutiiq Tech. Servs. LLC*, B-411464, B-411464.2, Aug. 4, 2015, 2015 CPD ¶ 268 at 4.

Akal essentially argues in its comments, that its proposal exceeded the minimum requirements of the solicitation, and the agency’s failure to recognize this aspect of its proposal as a strength “did not coincide with [TSA’s] own rating system.” Protester’s Comments at 6. The protester concludes, “[i]t seems that the TET does not recognize that a program with clear benefit to the government warrants recognition. This position is flawed.” *Id.* Our review of the record does not provide a basis to question the agency’s evaluation. In this regard, the agency explains why it did not assign a strength to this aspect of Akal’s proposal, and the protester’s response provides no evidence that the agency’s assessment was unreasonable. As such, without more support for why the agency’s position is unreasonable, this allegation is denied.

Retention

Akal next argues, “as the incumbent, [it] is able to provide 100 [percent] retention rate of employees at MCI,” which VMD is unable to duplicate. Protest at 9. The protester asserts that “as the incumbent [it] is also able to provide recruiting resources with MCI-specific experience. Again, there is an absolute impossibility that VMD can do the same.” *Id.* According to Akal, the firm “should have received a higher rating, which would have placed them alone in the evaluation of the proposals.” *Id.*

The agency responds that retention is not a consideration under the program management factor, and, as such “Akal’s argument is a non-starter.” MOL at 3. The agency also asserts that Akal’s argument represents “mere disagreement with the TET’s evaluation and is based entirely on . . . Akal’s status as the incumbent—including the benefits it believes that should flow from that status.” *Id.* at 4.

Our review of the record confirms that retention was not a consideration under the program management factor, but was instead to be considered under the transition evaluation factor. RFP at 74. In this regard, the transition factor required offerors to address various aspects of their approach to transition and operational management, including their recruitment approach and practices. *Id.* at 64-65, 74. Specifically as relevant here, offerors were required to describe their “[r]ecruitment practices for both incumbents and new hires,” and “[r]ecruitment approach to maximize retention of incumbent screening workforce.” *Id.* at 65. Thus, consistent with the agency’s position, the protester’s contention that retention should have been considered under the program management factor, finds no basis in the solicitation.

Moreover, our review of the agency’s evaluation of Akal’s and VMD’s proposals under the transition factor shows that the agency did consider, and recognize various strengths and significant strengths in Akal’s approach to transition, including the firm’s previous experience transitioning at MCI. AR, Tab 9, TAAR, at 24. The record also shows that the evaluators recognized various strengths in VMD’s proposal relevant to transition, including the firm’s previous experience in transitioning five other SPP airports, and VMD’s “[r]obust approach for retention of incumbent workforce.” *Id.*

Here, we agree with the agency and find that the protester’s apparent belief that Akal’s incumbency status entitles it to higher ratings does not provide a basis for finding the agency’s evaluation unreasonable. See *FFLPro, LLC*, B-411427.2, Sept. 22, 2015, 2015 CPD ¶ 289 at 6. As we’ve stated numerous times, there is no requirement that an incumbent be given extra credit for its status as an incumbent, or that the agency assign or reserve the highest rating for the incumbent offeror. *Id.* Taking into account that the record plainly addresses this aspect of Akal’s protest, and Akal provides no responsive argument in this regard that would cause our Office to question the agency’s evaluation, we deny this ground of protest.

Training

Finally, Akal argues in its comments that its proposed training program should have been recognized as superior to the program proposed by VMD, yet both firms received significant strengths for their programs. Protester’s Comments at 6. In this regard, the protester argues that the “inclusion of a management level Manager, and an Assistant Manager objectively provides for more organizational oversight of the training function.” *Id.* Akal cites this as evidence that it was not evaluated objectively and that “the procurement was stacked against it.” *Id.*

Our review of the record shows that the agency provided a detailed rationale for its evaluation of VMD’s and Akal’s respective training approaches. The record shows that the agency found that while VMD and Akal proposed a similar number of qualified staff, VMD’s training approach provided various additional benefits. These benefits included the use of training assets from other airports to provide training assistance, and the provision of additional training outside of TSA requirements. AR, Tab 9, TAAR, at 27. Akal, however, even after reviewing the record, provides no argument actually grounded

in the evaluation record; the protester only provides assertions that specific traits in Akal's proposal warranted it being evaluated as superior to VMD's proposal. See *generally* Protester's Comments. Without more, we are provided no basis to object to the agency's evaluation.

Past Performance

Akal next challenges the agency's evaluation of Akal's and VMD's proposals under the past performance factor. In this regard, Akal argues that while it received a rating of "significant confidence" under the past performance factor, this rating "does not include any reference or accounting for the relevancy and weight of Akal's performance as the incumbent as it should." Protest at 9. The protester asserts that "[t]his is especially problematic because VMD was also provided with a [s]ignificant [c]onfidence rating." *Id.* Akal concludes that if the agency evaluated proposals reasonably, "Akal must rate higher than VMD." *Id.* at 10.

The agency defends its evaluation of proposals under the past performance factor, arguing that "there is no allowance in the RFP or [source selection plan] for the PPET to award 'extra points' for an incumbent contractor's past performance." MOL at 6-7. The agency also asserts that the protester's argument that incumbent past performance be given extra weight is an untimely challenge to the terms of the solicitation. *Id.* at 7. We are provided no basis to object to the agency's evaluation.

Our Office examines an agency's evaluation of past performance to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations; however, the necessary determinations regarding the relative merits of offerors' proposals are primarily matters within the contracting agency's discretion. *Advanced Envtl. Solutions, Inc.*, B-401654, Oct. 27, 2009, 2010 CPD ¶ 7 at 5. Our Office will not question an agency's determinations absent evidence that those determinations are unreasonable or contrary to the stated evaluation criteria. *Id.*

The record shows that the agency assigned significant confidence ratings to both Akal's and VMD's proposals under the past performance factor. AR, Tab 10, SSDM at 7. The record also shows that the SSA evaluated VMD's and Akal's past performance records as being essentially equal. *Id.* at 10. The underlying evaluation shows that both VMD and Akal submitted three past performance references that were all considered to be relevant to the current effort.⁷ AR, Tab 9, TAAR at 28-29. The record also shows that

⁷ The record shows that Akal's submitted references were: (1) performance of the incumbent contract at MCI; (2) a screening services contract at Baltimore Washington International Airport; and (3) a security services contract for the U.S. Marshals Service. AR, Tab 8, Past Performance Evaluation Report (PPER), at 5-12. VMD submitted three references: (1) an SPP contractor for Rochester International Airport; (2) an SPP contract for Rochester, New York, Key West, Florida, and Tupelo, Mississippi; and (3) an SPP contract for Atlantic City International Airport. *Id.* at 30-33.

ratings provided by references for both offerors were generally satisfactory, with both offerors receiving some higher ratings.⁸ *Id.*

Akal's argument challenging the evaluation of past performance rests, in its entirety, on a listing of the ratings assigned by references for both offerors, and stating, "[o]nce again objectively, these ratings cannot add up to an equal score for each company." Protester's Comments at 9. The protester makes no argument about the underlying merits of the evaluation of each offeror's past performance records, even though the agency report provided the relevant portions of the evaluation record, which evidences a detailed evaluation conducted by the agency. See generally AR, Tab 8, PPER; Tab 9, TAAR; Tab 10, SSA Decision Memo.

We have consistently stated that the essence of an agency's evaluation is reflected in the evaluation record itself, not the adjectival ratings. *Stateside Assocs., Inc.*, B-400670.2, B-400670.3, May 28, 2009, 2009 CPD ¶ 120 at 8. Moreover, as a general matter, adjectival descriptions and ratings serve only as a guide to, and not a substitute for, intelligent decision-making. *Science Applications Int'l Corp.*, B-407105, B-407105.2, Nov. 1, 2012, 2012 CPD ¶ 310 at 9. The relevant question here is not what adjectival rating should have been assigned by the agency based on a simple count of strengths and weaknesses, but whether the underlying evaluation is reasonable and supports the source selection decision. See *INDUS Technology, Inc.*, B-411702 *et al.*, Sept. 29, 2015, 2015 CPD ¶ 304 at 4. Here, in essence, the protester asks that we sustain the protest based only on a superficial counting of reference ratings, which we conclude, without more, is not sufficient to form a basis to sustain the protest. See, e.g., *Spatial Front, Inc.*, B-417985, B-417985.2, Dec. 18, 2019, 2020 CPD ¶ 8 at 3-4 (denying protest based on protester's superficial counting of strengths and weaknesses).

Price Realism

Finally, Akal argues that the agency failed to perform a required price realism analysis, and that "VMD's unrealistically low price required further review, with its low bid reflecting a very real danger of nonperformance." Protest at 12. The agency responds that it did not perform a price realism analysis because it was not called for in the solicitation. MOL at 9. We agree with the agency.

Where a solicitation contemplates the award of a fixed-price contract, an agency may provide in the solicitation for the use of a price realism analysis for the purpose of measuring an offeror's understanding of the requirements or to assess price risk in its proposal. *IBM Corp.*, B-299504, B-299504.2, June 4, 2007, 2008 CPD ¶ 64 at 10-11. In this regard, price realism may consider whether an offeror's fixed price is so low that it reflects a lack of understanding of solicitation requirements, or whether an offeror's low price creates a risk that the firm cannot perform its proposed technical solution at

⁸ For its three references, Akal received a total of four exceptional ratings, six very good ratings and 29 satisfactory ratings. AR, Tab 8, PPER, at 12. For its three references, VMD received a total of five very good ratings, and 14 satisfactory rating. *Id.* at 35.

the price offered. *Hewlett Packard Enter. Co.--Costs*, B-413444.3, Mar. 3, 2017, 2017 CPD ¶ 85 at 5; *Emergint Techs., Inc.*, B-407006, Oct. 18, 2012, 2012 CPD ¶ 295 at 5-6.

Here, the solicitation states that the price evaluation will consist of the following: (1) an assessment of pricing assumptions, contingencies utilized in developing pricing, and the offeror's basis of estimate included in the pricing narrative; (2) an assessment of anticipated wages and fringe benefits included in the pricing narrative to ensure compliance with compensation and benefits requirements set forth in law; (3) an assessment of security screening operational staffing in the pricing proposal in order to ensure they align with the staffing in the technical proposal; and (4) an assessment of whether the total price, including all CLINs and option periods, is fair and reasonable in accordance with Federal Acquisition Regulation 15.404-1. RFP at 75.

In its protest, Akal simply cites the language of the price factor, and states, "the Solicitation states that the price evaluation will consist of the following, all of which triggers the requirement for a price realism analysis." Protest at 11. In its comments, the protester additionally argues that, "[t]he underlying issue here is that VMD's [price] proposal, as it relates to staffing, does indeed exhibit a lack of technical understanding of the requirements of the RFP." Protester's Comments at 4. Thus, Akal appears to focus on the price evaluation as it relates to staffing requirements.

Our review of the record, including the solicitation language cited by the protester, leads us to conclude that a price realism evaluation was not required by the terms of the solicitation. As our decisions have stated, in the absence of an express price realism provision, we will only conclude that a solicitation contemplates a price realism evaluation where the solicitation expressly states that the agency will review prices to determine whether they are so low that they reflect a lack of technical understanding, and states that a proposal can be rejected for offering low prices. *DynCorp Int'l LLC*, B-407762.3, June 7, 2013, 2013 CPD ¶ 160 at 9. Absent such a solicitation provision, agencies are neither required nor permitted to evaluate price realism in awarding a fixed-price contract. *Id.*

Akal raises nothing more than a perfunctory challenge that a price realism analysis was required by the terms of the solicitation. The protester's arguments, for instance, lack any detail as to what particular language in the price evaluation factor would trigger a price realism evaluation requirement. Unaided by specific arguments by the protester, our review reveals no provision in the solicitation that would support the protester's contention. For instance, the language in the price evaluation that relates to staffing, does not support Akal's contention, as this language requires only that the staffing in the pricing proposal align with the staffing in the technical proposal. Here, nothing in the RFP states that the agency planned to evaluate proposed prices to determine whether they were so low that they reflected a lack of technical understanding, and nothing in the RFP states that the agency could reject a proposal for offering unrealistically low prices. As such, consistent with the agency's position, we conclude that a price realism evaluation was not required by the solicitation, and the protest ground is denied.

See *PricewaterhouseCoopers Public Sector LLP*, B-415129.3, July 31, 2018, 2018 CPD ¶ 272 at 2.

Having resolved Akal's challenges to the evaluation of proposals, and finding no merits to its protest, we conclude that the firm's challenge to the agency's best-value tradeoff decision is also without merit. In this regard, Akal bases its claim that the best-value tradeoff was improper on the assertion that the tradeoff was based on the flawed evaluation. Since the protester has not shown that the evaluation was defective, and the source selection decision sets forth a reasoned basis for the selection of the awardee, we deny this ground of protest. *Bannum Inc.*, B-412045, Nov. 25, 2015, 2015 CPD ¶ 372 at 6.

The protest is denied.

Thomas H. Armstrong
General Counsel