



# Decision

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**Matter of:** Goldschmitt and Associates, LLC

**File:** B-418459.2; B-418459.3

**Date:** April 15, 2020

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Nicholas M. Bidewell, Esq., and Kevin R. Hiltferty, Esq., Department of Energy, for the agency.

Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Protest challenging agency's evaluation of proposals and source selection decision is denied where record shows agency's evaluation and source selection were reasonable and in accordance with the terms of the solicitation and applicable statutes and regulations.

## DECISION

Goldschmitt and Associates, LLC, of Reston, Virginia, protests the award of a contract to WITS Solutions, Inc., of Ashburn, Virginia, under request for proposals (RFP) No. 89303019RMA000008, issued by the Department of Energy (DOE) for Freedom of Information Act support services. Goldschmitt argues that the agency misevaluated proposals, made an unreasonable source selection decision, and unreasonably found WITS responsible.

We deny the protest.

## BACKGROUND

The RFP contemplates the award, on a best-value tradeoff basis, of a labor-hours contract with fixed unit prices to meet the agency's requirements for a base year and two 1-year options. Firms were advised that proposals would be evaluated considering

price and several non-price factors that, collectively, were deemed significantly more important than price. RFP at 39. The non-price factors, listed in descending order of importance, were: technical approach, staffing approach, relevant corporate experience, and past performance.<sup>1</sup> RFP at 39-40. The RFP advised that price would be evaluated for mathematical correctness, completeness and reasonableness, and that the agency would review the proposed option pricing for possible unbalancing. RFP at 41-42.

In response to the solicitation, the agency received a number of proposals. The agency evaluated the proposals and assigned ratings under each of the evaluation factors, and arrived at total prices for each offeror. For the protester's and awardee's proposals, the agency assigned the following ratings and determined their total prices as follows:

	<b>Goldschmitt</b>	<b>WITS</b>
Technical Approach	Outstanding	Outstanding
Staffing Approach	Good	Good
Relevant Corporate Experience	Good	Good
Past Performance	Favorable	Favorable
Total Price	\$9,484,863	\$8,237,888

Agency Report (AR), exh. B.2, Source Selection Decision Document (SSDD), at 5-6, 16. On the basis of these evaluation results, the agency selected WITS, finding that, although the Goldschmitt proposal offered a slight advantage under the relevant corporate experience factor, the cost premium associated with its proposal was not worth the slight advantage identified by the agency. *Id.* at 19. After being advised of the agency's selection decision, and requesting and receiving a debriefing, Goldschmitt filed the instant protest.

## DISCUSSION

Goldschmitt takes issue with many of the agency's evaluation conclusions. We have reviewed all of the firm's allegations and find them to be without merit. We discuss the firm's principal contentions below. We note at the outset that, in considering challenges to an agency's evaluation of proposals, our Office does not substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria, and applicable statutes and regulations. CDO Technologies, Inc.; Abacus Technology

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<sup>1</sup> The RFP advised that the agency would assign proposals adjectival ratings of outstanding, good, adequate, marginal or unacceptable under the technical approach, staffing approach and relevant corporate experience factors. RFP at 40. For past performance, the RFP advised that the agency would evaluate the offerors on a pass/fail basis, assigning adjectival ratings of favorable or unfavorable; where a firm was found not to have any relevant past performance, a neutral rating would be assigned. *Id.*

Corporation, B-418111, et al., Jan. 14, 2020, 2020 CPD ¶ 26 at 5. We discuss our findings below.

#### Evaluation Under the Relevant Corporate Experience Factor

Goldschmitt takes issue with the agency's evaluation of proposals under the relevant corporate experience factor. The firm principally takes issue with the agency's assignment of strengths and weaknesses to the proposals under this factor, arguing that the agency unreasonably failed to give what the protester characterizes either as high enough--or low enough--marks under this factor based on the contracts reviewed. According to the protester, if the agency had done a reasonable job of assigning what it views as the correct strengths and weaknesses to the proposals, this would have affected the adjectival ratings ultimately assigned to the proposals under this factor, which in turn would have affected the agency's source selection decision.

We have reviewed all of Goldschmitt's arguments in connection with the agency's evaluation of corporate experience and find no merit to this aspect of its protest. We discuss one example of the firm's challenges to the agency's corporate experience evaluation for illustrative purposes.

The RFP provided that, in performing its evaluation under this factor, the agency would review the offerors' corporate experience examples for relevance, considering the size, scope and complexity of the examples provided. RFP at 41.<sup>2</sup> As noted, Goldschmitt's protest takes issue with the agency's assignment of strengths and weaknesses under this factor because, according to the protester, the agency's assignment of such strengths and weaknesses was unreasonable.

For example, the record shows that Goldschmitt submitted a corporate experience example for its subcontractor, Central Research, Inc., under which the firm currently is performing a contract at the Department of Interior that the agency found was similar in terms of scope and complexity, but dissimilar in terms of size. The contract at issue commenced performance in 2017 and is scheduled to be completed in 2022 (for a total period of performance of five years, compared to the three-year duration of the solicited requirement), and was valued at \$25 million (or a value approximately 2.5 times larger than the value contract being solicited). AR, exh. D.1, Goldschmitt Technical Proposal, at 43-44.

Because the corporate experience example was for a longer duration and higher dollar amount than the solicited requirement, the agency determined that the contract was not of a similar size compared to the solicited requirement. AR, exh. B.1, Technical Evaluation Report, at 78. Notwithstanding the agency's conclusion that the example

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<sup>2</sup> The RFP included essentially identical language in connection with the review of subcontractor corporate experience examples. RFP at 41.

was dissimilar in terms of size, the agency nonetheless assigned the Goldschmitt proposal a strength for this corporate experience example.<sup>3</sup> Id.

Goldschmitt argues that the agency should have assigned this corporate experience example a significant strength rather than only a strength, and also argues that it was irrational for the agency to have “discounted” this example because it was for a contract that was for a longer duration and larger dollar amount than the solicited requirement.

As an initial matter, the decision to assign a strength, rather than a significant strength, is not a discounting or downgrading of the proposal, as the protester contends. While we agree with the protester that different evaluators reasonably might have concluded that experience performing a contract with a longer duration and a larger dollar amount should be assessed a significant strength, we will not substitute our judgment for the documented judgment of the agency evaluators here. In addition, there is no dispute that the example actually is different in terms of size and dollar value compared to the solicited requirement.

More to the point, however, this allegation, as well as all of the protester’s other challenges to the agency’s evaluation under the corporate experience factor, are confined to arguments that the strengths or weaknesses assigned were lower--or higher--than they should have been. However, as our Office has repeatedly noted, ratings--be they adjectival ratings, point scores, or the assignment of strengths or weaknesses--are merely guides to intelligent decision making. Kollsman, Inc., B-413485, et al., Nov. 8, 2016, 2016 CPD ¶ 326 at 9. Thus, for example, the number and magnitude of strengths or weaknesses are not dispositive metrics for an agency to express the relative merit of a proposal. What is important is not the scores themselves, but the underlying substantive merits of the proposals as embodied in, or reflected by, the scores, along with the underlying narrative description that supports the assignment of those scores. Id.

Here, Goldschmitt has not shown that any of the agency’s findings with respect to its evaluation of the corporate experience factor are factually inaccurate or inherently irrational or unreasonable. In the final analysis, the agency’s evaluation materials--which were reviewed by, and relied upon by the source selection authority--reflect a fundamentally accurate portrayal of the corporate experience examples reviewed by the agency. In addition, the proposals of both Goldschmitt and the awardee were assigned

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<sup>3</sup> The record shows that, in every instance where the agency found that a corporate experience example reflected similarity in terms of two--but not three--of the variables under consideration (size, scope and complexity) the agency assigned a strength, but not a significant strength, under the corporate experience factor. AR, exh. B.1, Technical Evaluation Report, at 83, 192-194. In contrast, where the agency found that a corporate experience example reflected similarity under all three variables, the agency assigned significant strengths for the examples. Id. at 83.

strengths or weaknesses based upon a consistent, rational application of the evaluation factor that took into consideration the comparative merits of the proposals.<sup>4</sup>

Finally, and in any event, the record shows that, in making the source selection decision, the source selection authority expressly recognized that the Goldschmitt proposal was slightly superior to the WITS proposal under the corporate experience factor. AR, exh. B.2, SSDD, at 11, 19. The record therefore shows that the agency recognized the comparative superiority of Goldschmitt under this factor, and appropriately credited the firm with this superiority in making the source selection decision, notwithstanding the strengths or weaknesses assigned. In light of the discussion above, we deny this aspect of the protest.

#### Evaluation Under the Technical Approach Factor

In a similar vein, Goldschmitt maintains that the agency misevaluated proposals under the technical approach factor by assigning both proposals an adjectival rating of outstanding, even though the evaluators identified an additional strength in the Goldschmitt proposal compared to the WITS proposal. As with its allegation concerning the agency's evaluation of proposals under the relevant corporate experience, Goldschmitt has not shown that the agency's evaluation failed to portray the strengths or comparative merits of the two proposals accurately, or otherwise was unreasonable or irrational. Its complaint is confined to the assignment of the same adjectival ratings to the two proposals, notwithstanding the additional strength assigned to the Goldschmitt proposal. This challenge to the assignment of adjectival ratings, without more, does not demonstrate that there is any basis for our Office to object to the agency's evaluation. Kollman, Inc., supra.

#### Findings of the Source Selection Authority

Goldschmitt also argues that the agency's source selection authority (SSA) expressly found that its proposal was the overall highest rated proposal under the technical approach and staffing approach factors. However, the agency explains that this is no more than a typographical error in the SSDD.

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<sup>4</sup> Again, by way of example, the record shows that Goldschmitt's proposal was assigned weaknesses for two of its own corporate experience examples based on the agency's conclusion that they were not relevant because they were not similar in size, scope or complexity. AR, exh. B.1, Technical Evaluation Report, at 83-84. In evaluating the awardee's corporate experience, the agency similarly assigned a weakness to one of its subcontractor's corporate experience examples because it was not similar in size, scope or complexity. Id. at 185, 194.

Goldschmitt has not shown that the underlying factual findings of the agency were inaccurate, or that its assignment of these weaknesses was inconsistent, irrational or unreasonable. The firm merely disagrees with the agency's assignment of strengths and weaknesses to the offerors' corporate experience examples.

We find the agency's explanation--that the SSDD includes what appears to be a typographical error--reasonable based on our reading of the SSDD as a whole. In this connection, the record shows that the SSA repeatedly and expressly found the proposals of Goldschmitt and WITS relatively equal under the technical approach and staffing approach factors. See AR, exh. B.2, SSDD, at 6 (SSA expressly finding the Goldschmidtt and WITS proposals similar in merit under the technical approach factor, notwithstanding the assignment of an additional strength to the Goldshmidtt proposal); 8 (SSA noting that neither of the two proposals offered any significant discriminators under the staffing approach factor, and both were of similar merit); 17 (SSA expressly noting that the two proposals both received the highest ratings under the technical approach and staffing approach factors); and 19 (SSA expressly concluding that both firms provided the highest-rated proposals under all factors except the relevant corporate experience factor, where the Goldschmitt proposal was rated slightly superior).

The SSDD does contain the following statement:

And finally, WITS has proposed Criteria 1 - 4 at a total evaluated price that is only [deleted] higher than the second lowest price Offeror, and is \$1,246,975.20 lower than the overall highest technically rated Offeror for Criteria 1 and 2. Based on the above analysis, WITS' proposal offers the overall best value to the Government

AR, exh. B.2, SSDD, at 20 (deletion in original). Inasmuch as this statement is directly inconsistent with the numerous findings throughout the SSDD described above, and in light of the fact that there is no underlying narrative explanation for such an inconsistent finding, we conclude that the agency's explanation is reasonable.

Goldschmitt argues more generally that the SSA did not adhere to the evaluation factor weighting scheme during the source selection because the SSA failed to consider that the non-price factors were significantly more important than price. According to the protester, had the SSA followed the evaluation scheme, they would have selected its proposal because it was significantly superior under the non-price factors. However, this aspect of the protest is premised on a faulty conclusion, namely, that the Goldschmitt proposal was significantly superior. As discussed above, the record shows that the Goldschmitt and WITS proposals were largely equivalent under the non-price factors. The SSA did recognize that the Goldschmitt proposal was slightly superior under the relevant corporate experience factor--the third-most important of the non-price factors--but concluded that this slight superiority was not worth the price premium associated with award to the protester.

## Past Performance Evaluation of WITS

Goldschmitt next argues that the agency miscalculated the past performance examples that were submitted by WITS. The protester argues that the RFP advised offerors that the agency would only evaluate contracts that were of comparable size, scope and complexity to the solicited requirement. According to the protester, none of WITS's past performance examples was of a comparable size to the solicited requirement. Goldschmitt therefore argues that the agency should have assigned WITS a neutral rating for past performance instead of the favorable rating assigned.

We find no merit to this aspect of the protest. The protester's allegation is based on a reading of solicitation language that appears in the instructions for proposal preparation, not in the past performance evaluation factor. In support of its position, Goldschmitt directs our attention to language found in the instructions to offerors. RFP at 33.<sup>5</sup> The past performance evaluation factor, however, contains no reference to a consideration of the size, scope or complexity of the contracts submitted for the past performance references. It provides, in pertinent part, as follows:

The Government will evaluate the Offeror's performance under existing and prior contracts that have been completed within the past three (3) years for similar products or services. The Past Performance factor will be evaluated as favorable, unfavorable or neutral. In the case of an Offeror without a record of relevant past performance or for whom information on relevant past performance is not available, the Offeror will be evaluated neither favorably nor unfavorably on past performance and shall receive a neutral rating.

RFP at 41.<sup>6</sup> As is evident from a reading of the language quoted above, the solicitation stated only that the agency would evaluate past performance examples that were for "similar products and services." However, that phrase was not further defined, and did

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<sup>5</sup> Goldschmitt directs our attention to "AR, Tab A.1 RFP at 36." Protester's Comments at 14. A review of the RFP page found at that citation does not include the language the protester claims to be relying upon. It appears that Goldschmitt is citing to the pdf document page number, rather than the actual page number of the RFP. Page 33 of the RFP (which appears at page 36 of the pdf document furnished by the agency with its report) does include the language identified by Goldschmitt, but that language appears in the instructions to offerors, not the past performance evaluation factor.

<sup>6</sup> The past performance evaluation factor includes additional language, but the remaining language merely describes the types and sources of information the agency could consider in evaluating past performance, and a concluding statement that past performance would be assigned a single overall rating based on the agency's review of all information relating to an offeror's past performance. RFP at 41.

not otherwise limit the agency to an evaluation of only contracts that were comparable in size, scope and complexity to the solicited requirement.<sup>7</sup>

While a solicitation may establish additional informational, technical, administrative, or other requirements necessary to comply with the proposal preparation instructions, such additional requirements may not properly be considered in connection with the evaluation of proposals, unless those additional requirements also are specified as a basis for evaluation. Veterans Evaluation Services, Inc., et al., B-412940, et al., July 13, 2016, 2016 CPD ¶ 185 at 16-17, n.21. Here, since the RFP did not contemplate that the agency would consider the size of the past performance examples in its evaluation, we have no basis to object to the agency's evaluation for the reasons advanced by the protester. We therefore deny this aspect of its protest.

### WITS's Responsibility

Goldschmitt argues that the agency erred in finding WITS responsible because, according to the protester, there is outstanding pending civil litigation in Kansas state court against WITS for its alleged failure to pay taxes that the agency failed to consider during its responsibility determination.

We dismiss this allegation because it fails to identify an exception to our rules for reviewing an agency's affirmative determination of responsibility. 4 C.F.R. §21.5(c). Our Office generally will not consider a protest challenging an agency's affirmative determination of responsibility, except where the protester presents specific evidence that the contracting agency unreasonably failed to consider information that, by its nature, would be expected to have a strong bearing on whether the awardee should have been found responsible. ARServices, Limited, B-417561, B-417561.2, Aug. 19, 2010, 2019 CPD ¶ 297 at 8.

The record shows that the litigation in question arose from a minor clerical error relating to the payment of state taxes for a single WITS employee in Missouri rather than Kansas by WITS's payroll manager, with a total amount in controversy of \$1,534.10. Intervenor's Comments, exh.1, Affidavit from WITS's President. In addition, the record shows that the case was settled through payment of a judgment for the amount in question (\$1,534.10) by WITS. Intervenor's Comments, exh.2, Certificate of Satisfaction of Judgment, Feb. 25, 2020. Simply stated, there would have been no basis for the agency either to have been aware of this litigation, or to have been

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<sup>7</sup> In contrast, as noted, the evaluation factor for relevant corporate experience actually did state that the examples the agency would consider would be confined to those that were similar in size, scope and complexity. RFP at 41.

concerned about the matter in light of the minor nature of the controversy. See RQ Construction, LLC, B-409131, Jan. 13, 2014, 2014 CPD ¶ 30 at 4-5.

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