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Decision

Matter of: LATA-Atkins Technical Services, LLC

File: B-418602; B-418602.4

Date: June 10, 2020

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DIGEST

Protest that agency unreasonably evaluated proposals is denied where the record shows that the evaluations were consistent with the solicitation's evaluation criteria and all applicable statutes and regulations.

DECISION

LATA-Atkins Technical Services (LATS), LLC, of Albuquerque, New Mexico, protests the award of an indefinite-delivery, indefinite-quantity (IDIQ) contract to RSI EnTech, LLC, of Oak Ridge, Tennessee, under request for proposals (RFP) No. 89303019RLM000002, issued by the Department of Energy (DOE) for legacy management support services. LATS alleges that the agency unreasonably evaluated proposals, and improperly made its source selection decision.

We deny the protest.

BACKGROUND

On July 1, 2019, DOE issued the RFP to obtain support services for the agency's Office of Legacy Management, which conducts nuclear and chemical weapon post-closure operations. Agency Report (AR), Tab A.1, RFP at 1, 3; RFP, attach. A, Statement of Work (SOW) at 2. The selected contractor would perform the following tasks: operate

and maintain remedial action systems; perform routine inspections; maintain soil and groundwater treatment; monitoring services; waste disposal; and information management. RFP, SOW at 4. The RFP contemplated the issuance of fixed-price, time-and-materials/labor hour, cost-plus-fixed-fee, or hybrid task orders to be performed over a 60-month ordering period and a 6-month extension period. RFP at 3. The IDIQ contract had a ceiling value of \$1 billion. *Id.*

Award would be made on a best-value tradeoff basis considering price and technical factors. RFP at 102-103. Proposed prices would be evaluated for reasonableness and completeness. *Id.* at 103. Technical approaches would be evaluated under the following four factors listed in descending order of importance: technical and capability approach; management approach; teaming approach; and past performance. *Id.* The technical factors, when combined, were significantly more important than price; however, price would be determinative if technical proposals were similar in merit. *Id.*

Five offerors, including LATS and RSI, submitted proposals by the September 30, 2019, closing date. AR, Tab B.2, Source Selection Decision Document (SSDD) at 4. The agency's evaluation produced the following relevant results:

	LATS	RSI
Technical and Capabilities Approach	Outstanding	Outstanding
Management Approach	Outstanding	Outstanding
Teaming Approach	Outstanding	Outstanding
Past Performance	Significant Confidence	Significant Confidence
Price	\$273,492,200	\$190,687,753

Id. at 6, 14. The source selection authority (SSA) determined that RSI's proposal was more advantageous than LATS's proposal under the technical and capabilities approach, and management approach factors. *Id.* at 6-10, 18.

Specifically, the SSA noted that RSI's technical and capabilities approach included a superior quality control plan, and demonstrated extensive experience in developing, maintaining, and recertifying Occupational Safety and Health Administration Voluntary Protection Programs, and a streamlined approach to long-term surveillance and maintenance. *Id.* at 6-7. Although RSI's approach demonstrated poor technical understanding of the Defense Related Uranium Mines (DRUM) program, the SSA noted that RSI's approach would be easily rectified upon access to the agency's current work plan and non-public documents. *Id.* at 8.

With regard to RSI's management approach, the SSA noted that the firm proposed an effective management strategy that supported its technical approach and focused on streamlining the agency's activities. AR, Tab B.2, SSDD at 9-10. The SSA found that RSI's approach included clear lines of authority across the firm's organization, and that the firm's structure closely aligned with the agency's existing management structure. *Id.* at 10. The SSA also emphasized other aspects of RSI's proposal as particularly

advantageous, including the firm's central platform to integrate Environmental, Safety, Health & Quality Assurance programmatic policy, procedures, and requirements into their operating procedures, as well as RSI's approach to cross-training personnel. *Id.*

Based on these advantages, and because RSI's proposed price was lower than LATS's proposed price, the agency determined that RSI's proposal represented the best value. AR, Tab B.2, SSDD at 17-18. After LATS learned that its proposal was unsuccessful, it filed this protest with our Office.

DISCUSSION

LATS raises various allegations challenging the agency's conduct of the acquisition. We conclude that none of the allegations provide us with a basis to sustain the protest. We discuss the principal allegations below but note at the outset that, in reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or 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, as well as applicable statutes and regulations. *SaxmanOne, LLC*, B-414748, B-414748.3, Aug. 22, 2017, 2017 CPD ¶ 264 at 3.

Technical and Capabilities Approach

LATS alleges that the agency unreasonably evaluated both its and RSI's proposals under the technical and capabilities approach factor. With regard to its proposal, LATS argues that DOE unreasonably evaluated its approach to the DRUM program, and should have evaluated other aspects of its proposal more favorably. Protest at 9-13. As for RSI's proposal, the protester argues that the agency should have evaluated RSI's key personnel as not meeting the solicitation's requirements. Supp. Protest at 3-4.

When demonstrating their technical and capabilities approach, the solicitation instructed offerors to show that their key personnel satisfied pertinent position qualifications requirements, explain their approach to meeting to the SOW's requirements, describe similar experience for corporate management personnel, and provide a master quality control plan. RFP at 96-97. The solicitation advised that offerors would be evaluated based on the extent to which their technical approach demonstrated a thorough understanding of the requirement, the experience levels of corporate management and key personnel, and how well each offeror's quality control plan ensured quality products and work. *Id.* at 104.

LATS's Proposal

As noted above, the agency evaluated LATS's technical and capabilities approach as "outstanding." The agency assigned its proposal one weakness and 12 strengths. AR, Tab B.2, SSDD at 6.

In assigning the weakness, the agency concluded that LATS did not demonstrate an understanding of the DRUM Phase I program activities. AR, Tab B.1, Source Evaluation Board (SEB) Report at 62. The agency noted that LATS's proposal provided that a possible solution was to "reevaluate program priorities to determine if continued chemical and radiological sampling is needed at sites." *Id.* (quoting AR, Tab D.1, LATS Proposal at 230. The agency interpreted this statement as indicating a lack of technical understanding because the SOW requires collection at each site, and failure to collect data at each site will yield flawed data. *Id.*

LATS argues that the weakness was unreasonable because its proposal made clear that it would conduct sampling at each DRUM site. Protester's Comments at 2. The agency responds that LATS's proposal was internally inconsistent, and that an offeror has a responsibility to submit a well-written proposal that allows for meaningful review. Memorandum of Law (MOL) at 13.

Based on the record, we have no basis to object to the agency's assignment of the weakness. The SOW requires the selected contractor to "ensure that data are collected in adequate quantity and quality at each [DRUM site]" in order to reconcile uranium mine location information, conduct field inventories to identify physical hazards at each site, conduct mine-wide gamma radiation walkover surveys, and collect soil and water samples. RFP, SOW at 8-9. Although LATS's proposal appears to commit to collecting data at each DRUM site, the agency concluded that the firm also potentially demonstrates a poor understanding of the technical requirement because its "possible solution" confusingly ignores the extensive on-site data collection requirements outlined in the SOW. See AR, Tab B.1, SEB Report at 62. Indeed, by proposing to conduct chemical and radiological sampling off-site, the firm's proposal can reasonably be interpreted as failing to recognize the significance of on-site testing or how on-site data is essential to producing complete data reports. See *id.* As a result, we find reasonable the agency's assessment of a weakness. Accordingly, we deny the protest allegation.

LATS next argues that the agency should have assigned its proposal a "significant strength" for proposing [DELETED]. Protest at 12-13. The agency responds that it considered that feature of the firm's proposal, but concluded that it only warranted the assignment of a "strength." MOL at 14-15.

In this regard, we note that the adjectival rating assigned serves only as a guide to intelligent decision-making; indeed, our focus concerns whether the agency rationally considered the underlying merit of the proposal. See *STG, Inc.*, B-415580.4, B-415580.5, July 5, 2018, 2018 CPD ¶ 232 at 5-6. Here, the evaluation record shows that the agency considered the underlying merit of the protester's proposal because the agency noted that LATS's four Centers of Excellence provided benefits, such as additional support to field staff and consistency across the enterprise. AR, Tab B.1, SEB Report at 56. Thus, we find the evaluation to be reasonable because the agency considered the advantages offered by this feature. While LATS may argue that these advantages significantly exceed the SOW's requirements, that argument, without more, does not provide us with a basis to sustain the protest. *DirectViz Sol's., LLC*,

B-417565.3, B-415565.4, Oct. 25, 2019, 2019 CPD ¶ 372 at 5 (“An offeror’s disagreement with the agency’s evaluation, without more, does not demonstrate that the evaluation was unreasonable.”). Accordingly, we deny this protest allegation.

Similarly, LATS argues that its proposal should have been assigned a strength because its long-term surveillance and maintenance approach would reduce costs and improve efficiency. Protest at 13. Also, LATS argues that its asset management approach warranted a strength because it would decrease long-term stewardship costs and result in more effective management of government property. *Id.* We find neither argument persuasive.

DOE explains, and the record confirms, that the agency considered these features but did not view them as warranting individual “strengths.” MOL at 15; see AR, Tab B.1, SEB Report at 52-63. Although LATS may argue that its approach creates efficiencies or decreases costs, the agency is free to disagree with that judgment, and, as noted above, disagreement with the agency’s position regarding the relative worth of a feature does not demonstrate that the evaluation was unreasonable. *DirectViz Sols., LLC, supra.* Accordingly, we deny this allegation.¹

RSI’s Proposal

LATS argues that the agency unreasonably evaluated RSI’s IDIQ Manager, Information and Technology Manager, and Health and Safety Manager as meeting the minimum experience requirements. Specifically, LATS asserts that each of these individuals’ resumes did not include dates for previous positions, and that therefore DOE could not determine whether they possessed sufficient experience. Supp. Protest at 4.

The solicitation listed four key personnel positions: IDIQ Manager; Information and Technology (IT) Manager; Health & Safety (H&S) Manager; and, Quality Assurance Manager. RFP, attach. C, Position Qualifications at 2-3. Each position had minimum requirements. The IDIQ Manager was required to possess an advanced degree with at least ten years of relevant work experience at the senior program level, or a bachelor’s degree and 15 years of relevant work experience at the senior program level. *Id.* at 2. The IT Manager and the H&S Manager were required to possess an advanced degree

¹ With regard to these features, LATS also argues that the agency unequally evaluated its and RSI’s proposals. Protester’s Comments at 3-4. LATS contends that RSI was assigned strengths for portions of its proposal that increased efficiencies and reduced costs. *Id.* We dismiss this argument because LATS did not raise it in a timely manner. A protest allegation, other than one based on an alleged impropriety in the solicitation, must be filed within ten days of when the protester knew or should have known of its basis of protest. 4 C.F.R. § 21.2(a)(2). Here, the agency provided LATS with RSI’s evaluation documents on March 31, 2020, but LATS did not raise this argument until it filed its comments on April 30. Thus, the protester’s allegation of unequal treatment is untimely.

with at least five years of relevant work experience, or a bachelor's degree with at least ten years of relevant work experience. *Id.*

On this record, we have no basis to object to the evaluation. The resumes provide that each of the individuals meet the experience qualifications. The IDIQ Manager's resume states that he has "[DELETED] years of senior experience," and "[DELETED] years ([DELETED] total years) of DOE experience that includes leading teams with both small and large business subcontractors." AR, Tab C.1, RSI Proposal 159. Similarly, the IT Manager's resume shows that he has more than [DELETED] years of experience, and the H&S Manager's resume shows that he has [DELETED] years of experience. *Id.* at 162-167. Although the resumes do not include specific dates identifying their periods of performance in previous positions, we agree with DOE that specific dates were unnecessary since each resume's narrative portion demonstrated sufficient experience. See MOL at 21. Further, we note that LATS has not demonstrated that the RFP required resumes to include specific dates when listing positions, or that the personnel qualifications could not be demonstrated by providing a narrative description of each person's experience level. See Supp. Protest at 4; Protester's Comments at 4. Accordingly, we deny this allegation.

Management Approach

LATS alleges that the agency failed to assign technical risk to RSI's management approach due to RSI's exceedingly low proposed price. Protest at 16-17. LATS argues that RSI will be unable to recruit and retain staff, or effectively transition into performance at its "rock-bottom price and its attendant rock-bottom wages." *Id.* LATS also argues that RSI's management approach should have been assigned a risk because the firm will be unable to compensate employees in accordance with Service Contract Act (SCA) requirements at its low labor rates. Protester's Comments at 4-9.

The management approach factor required offerors to demonstrate how they will identify, apply, and manage resources to support the requirement. RFP at 97. Offerors were instructed to demonstrate their approaches to organizational structure, recruitment and retention, managing personnel, and transition services. *Id.* at 98. In evaluating this factor, the agency would consider whether management structures supported the contract, each offeror's ability to manage resources and track task orders, and how well each offeror could integrate activities in order to conduct a smooth transition. *Id.* at 104.

When submitting their proposed prices, offerors were instructed to complete a pricing matrix. RFP at 100. The pricing matrix included prepopulated labor categories and labor hours; offerors were only required to provide fully burdened labor rates.² *Id.*; see

² Offerors were required to provide government facility burdened labor rates, and contractor facility burdened labor rates. RFP, attach. 8, Pricing Matrix. The RFP specified that only the government facility burdened labor rates would be used for evaluation purposes. RFP at 105.

also RFP, attach. 8, Pricing Matrix. When evaluating price, the RFP provided that the labor rates would be used to determine whether the proposed price is fair and reasonable. RFP at 105.

Consistent with the agency's position, we interpret the protester's allegation as arguing that the agency should have conducted a price realism analysis. Despite the protester's disclaimer that "[n]o, this is not a price realism argument . . . it is an assertion of material error based on specifically stated evaluation criteria and evidence regarding RSI's Management Approach that is directly and reasonably derived from RSI's price;" the core allegation is that RSI's proposed price was so low that it posed performance risks. Protest at 16 n.3; see *Triad Int'l Maintenance Corp.*, B-408374, Sept. 5, 2013, 2013 CPD ¶ 208 at 10 ("Price realism measures whether a proposed price is so low that it poses a performance risk[.]"); cf. *PricewaterhouseCoopers Public Sector LLP*, B-415129.3, July 31, 2018, 2018 CPD ¶ 272 at 3 (protester's challenges to technical evaluation were actually price realism arguments because protester argued that the awardee's low price indicated that its technical approach was inadequate).

Our decisions provide that an agency may elect to perform a realism analysis in a fixed-price environment in order to assess whether an offeror's price is so low as to reflect a lack of understanding of the contract requirements or for assessing the risk inherent in an offeror's approach. See, e.g., *Goel Servs., Inc., in association with Grunley Construction Co., Inc.*, B-404168, Jan. 12, 2011, 2011 CPD ¶ 59 at 7. In order to conduct a price realism analysis, an RFP must either provide for that analysis by express provision, or state that the agency will review prices to determine whether they are so low that they reflect a lack of technical understanding and that a proposal may be rejected for offering low prices. *Apextech, LLC*, B-415153.2, B-415153.3, Mar. 15, 2018, 2018 CPD ¶ 112 at 4.

As the agency points out, the solicitation neither provides for a price realism analysis by express provision nor states that the agency will review prices to determine whether they are so low as to demonstrate a lack of technical understanding. See MOL at 27. Indeed, the solicitation only provided that proposed prices would be evaluated to determine whether the prices were fair and reasonable (*i.e.*, whether the prices are too high). RFP at 105; see *Goel Servs., Inc., supra* at 7 (price reasonableness analysis focuses on whether the proposed prices are too high). Thus, the agency was neither required nor permitted to assess technical risk to RSI's management approach based on the firm's alleged inability to recruit and retain staff or compensate employees consistent with the SCA due to its "rock-bottom wages."³ Accordingly, we deny this

³ We point out that LATS does not argue that RSI's proposal demonstrated an intent not to comply with all applicable SCA requirements. See Protester's Comments at 4-9. Our decisions explain that a firm will be eligible for award even when it offers hourly rates below SCA requirements, so long as the proposal does not reflect an intent to violate the SCA and the firm is otherwise determined to be responsible. *Allen-Norris-Vance Enters., Inc.*, B-243115, July 5, 1991, 91-2 CPD ¶ 23 at 3. In this context, an offeror

(continued...)

protest allegation because the agency reasonably did not consider whether RSI's allegedly low labor rates reflected a risk in the firm's management approach.⁴

Teaming Approach

LATS argues that the agency unreasonably evaluated RSI's teaming approach as "outstanding." Protest at 18-19. LATS complains that RSI should have been evaluated less favorably because it lacks experience managing members of a joint venture, lacks experience with its proposed teaming structure, and does not have a workshare or dispute resolution process with its teaming members. Protester's Comments at 9.

The solicitation instructed offerors to describe their teaming experience. RFP at 98-99. Offerors were required to address their past experience managing subcontractors or partners; history of working relationship among the prime and subcontractors or partners; the experience and qualifications of the prime contractor; the roles and responsibilities of each teaming member; the methodology to determine how work would be distributed amongst the teaming members; how disagreements would be settled; how the prime would manage terminations and replacement of teaming members; and, how the prime contractor will manage organizational conflict of interests. *Id.* In evaluating each offeror's teaming approach, the agency would consider how well each offeror delineated lines of authority, responsibilities, distribution of work, working relationships, qualifications, past experience managing teaming members, strategies for conflict resolution, and the duration of any teaming agreements. *Id.* at 105.

(...continued)

remains eligible for contract award because a proposal for a fixed-price contract that does not take exception to the solicitation's SCA provisions yet offers labor rates that are less than the applicable SCA rates may simply constitute a below-cost offer, and an award to a responsible firm on the basis of such an offer is unobjectionable. *Id.* Since LATS has not identified any aspect of RSI's proposal wherein RSI demonstrated its intent not to comply with SCA requirements, RSI's allegedly below-cost labor rates are unobjectionable.

⁴ As a related allegation, LATS argues that the agency unreasonably assigned a strength to RSI's management and technical capabilities approach based on RSI's experience (*i.e.*, what the parties have referred to as RSI's "smart solutions"). Supp. Protest at 4-5; *see also* AR, Tab B.1, SEB Report at 47-48 (agency assigned a strength to RSI's proposal because in the portion of RSI's proposal prefaced as "smart solutions," the firm demonstrated experience providing legacy management support services at 50 sites). LATS argues that this strength was unreasonable because RSI's low price shows that the firm did not understand the solicitation's technical requirements. Supp. Protest at 4-5. Because we conclude that the solicitation did not call for a price realism analysis, we do not find the agency was required to consider whether RSI's low price somehow diminished the value of RSI's experience providing legacy management support services. Accordingly, we deny the protest allegation.

Contrary to the protester's position, we conclude that the agency reasonably evaluated RSI's proposed teaming approach. The record shows that the agency thoroughly reviewed RSI's teaming approach and concluded that the firm's approach warranted a rating of "outstanding." AR, Tab B.1, SEB Report at 130-137. The agency explained that RSI had a 30-year working relationship with its teaming members which mitigates operational learning curves due to familiarity. *Id.* at 131. The agency also explained that RSI described its relevant experience in all areas of the requirement, its experience managing subcontractors on prior DOE projects, and its strategic approach to dispute resolution. *Id.*

Additionally, the agency highlighted eight advantageous features of RSI's proposed teaming approach. *Id.* at 131-137. Further, our review of RSI's proposal shows that the agency's observations were consistent with the contents of the firm's proposed teaming approach. See AR, Tab C.1, RSI Proposal at 218-244. Although LATS may complain that its proposed teaming approach offered more advantageous features such as more experience or a better dispute resolution process, we note that position simply disagrees with the agency's judgment regarding the relative worth of the two proposed approaches and does not provide a basis, standing alone, to sustain the protest. See *DirectViz Sols., LLC, supra*. Accordingly, we deny this protest allegation.

Past Performance

LATS alleges that the agency unreasonably assigned RSI's proposal a rating of "significant confidence" under the past performance factor. Supp. Protest at 2-3. LATS asserts that RSI submitted only three relevant referenced contracts, while the protester submitted six relevant referenced contracts. Protester's Comments at 10. LATS further asserts that its relevant contracts were more varied than RSI's relevant contracts since two of RSI's relevant contracts were for the same project. *Id.*

Where a protester challenges an agency's past performance evaluation, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria. *Enterprise Servs. et al., B-415368.2 et al., Jan. 4, 2018, 2018 CPD ¶ 44 at 11*. An agency's evaluation of past performance, which includes its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of discretion which we will not disturb unless the assessment is unreasonable or inconsistent with the solicitation criteria. *Id.* at 11-12.

Offerors were instructed to submit past performance history demonstrating management of contracts in which the size, scope, and complexity was similar to the instant requirement. RFP at 99. Offerors were required to submit past performance questionnaires for each referenced contract. *Id.* In evaluating past performance, the agency would assess the likelihood of performance based on the quality of performance for an offeror's relevant contracts. *Id.* at 105.

On this record, we have no basis to object to the agency's evaluation. The agency explains that RSI submitted three relevant contracts.⁵ MOL at 35. The record shows that RSI received highly favorable past performance ratings between for these relevant contracts. AR, Tab B.1, SEB Report at 162-63.

While LATS may argue that RSI did not have a large enough record of past performance to merit a rating of "significant confidence," the protester does not identify any solicitation language reserving a rating of significant confidence to offerors with more than three relevant contracts. See Protester's Comments at 10-11; see also Agency Response to Protester's Comments, May 4, 2020, at 3 n.1. Further, we note that the agency acknowledged that some offerors had a larger record of past performance or contracts that were greater in relevance, but for which the agency did not find that those features were discriminating factors; instead, the agency based its evaluation on the performance ratings and quality of feedback. AR, Tab B.2, SSDD at 12. As a result, we conclude that the agency reasonably evaluated RSI's past performance because the agency based its rating on the fact that RSI received highly favorable performance ratings on relevant contracts. Accordingly, we deny this protest allegation.⁶

Source Selection Decision

Finally, LATS argues that the source selection decision was unreasonable because it was predicated on multiple errors in the evaluation process. LATS argues that the tradeoff analysis was flawed because the agency made material errors in its evaluation of both LATS's and RSI's proposals. Protester's Comments at 11. We dismiss this

⁵ RSI's proposal referenced nine contracts. AR, Tab C.1, RSI Proposal at 58. The agency received seven past performance questionnaires (PPQ). AR, Tab B.1 SEB Report at 162. Of the seven PPQs, the agency determined that only three were similar in terms of size, scope, and complexity and therefore relevant. *Id.*

⁶ LATS alleged that RSI lacked relevant past performance because RSI's referenced contracts were not similar in size. Supp Protest at 2-3. In its report, DOE provided its analysis demonstrating how RSI's contracts were in fact similar in size. MOL at 35-38. LATS did not rebut the agency's position in its comments, but only responded that the size "calculation is not clearly reflected in the record." Protester's Comments at 10 n.4. Where, as here, the agency responds to an allegation in its report but the protester does not rebut the agency's position in its comments, we dismiss the allegation as abandoned because the protester has not provided us with a basis to find the agency's position unreasonable. *Medical Staffing Solutions USA*, B-415571, B-415571.2, Dec. 13, 2017, 2017 CPD ¶ 384 at 3. Here, LATS did not rebut DOE's position by showing that its analysis was incorrect or unreasonable. Accordingly, we dismiss the allegation as abandoned.

allegation because it is derivative of the protester's challenges to the agency's evaluation. *Safeguard Base Operations, LLC*, B-415588.6, B-415588.7, Dec. 14, 2018, 2018 CPD ¶ 426 at 4 (derivative allegations do not establish independent bases of protest).

The protest is denied.

Thomas H. Armstrong
General Counsel