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Decision

Matter of: Manhattan Strategy Group, LLC

File: B-419040.3

Date: May 21, 2021

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William B. Blake, Esq., Department of the Interior, for the agency.

Charmaine A. Stevenson, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging that the awardee misrepresented the availability of its key personnel and should have been disqualified from the competition is denied where there is no evidence that the awardee misrepresented the availability of, or sought to replace, its key personnel.
 2. Protest challenging the agency's reevaluation of the protester's proposal and new award decision is denied where the record shows that both were reasonable and consistent with the terms of the solicitation.
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DECISION

Manhattan Strategy Group, LLC (MSG), a small business of Bethesda, Maryland, protests the award of a contract to STG International, Inc. (STGi), of Arlington, Virginia, under request for proposals (RFP) No. 140D0420R0017, issued by the Department of the Interior (DOI), for training and technical assistance services. The protester contends that the awardee misrepresented the availability of its proposed key personnel, and should have been disqualified from the competition. The protester also contends that the agency's evaluation of its proposal was unreasonable, and the best-value determination was flawed.

We deny the protest.

BACKGROUND

The RFP, issued on March 10, 2020, using the negotiated contracting procedures of Federal Acquisition Regulation (FAR) part 15, contemplated the award of a contract in each of 12 regions established by the Department of Health and Human Services (HHS), Administration for Children and Families, Office of Head Start (OHS).¹ Agency Report (AR), Tab 3, RFP at 3. The purpose of the contracts is to provide training and technical assistance to OHS grant recipients providing child development programs and services to economically disadvantaged children and families nationwide. *Id.* The anticipated period of performance for each contract is 59 months, consisting of an 11-month base period and four 12-month option periods. *Id.* at 41. This protest relates solely to the contract awarded for region VIII, which includes Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. *Id.* at 4.

The RFP stated that proposals would be evaluated under the following factors, listed in descending order of importance: management approach; technical approach; past performance; and price. *Id.* at 85. The management approach factor included the following subfactors: approach to implementation; personnel qualifications; and staffing plan. *Id.* The technical approach factor included the following subfactors: organizational experience and capacity; quality control plan; and understanding the project and scope. *Id.* The RFP stated that the management approach and technical approach factors and subfactors would be evaluated to identify strengths and deficiencies, if any, and assigned the following ratings: outstanding, good, acceptable, or unacceptable. *Id.* at 85-86. The RFP further stated that award would be made to the offeror whose proposal offered the best value to the government utilizing a tradeoff process where the non-price factors combined were significantly more important than price. *Id.* at 85.

The RFP identified the labor categories and number of personnel required for each region; for region VIII, the RFP identified nine labor categories to be filled by 19 required personnel. *Id.* at 24. For the personnel qualifications subfactor, the RFP required that offerors propose qualified personnel to fill the required positions, and include resumes and signed letters of commitment in their proposals. *Id.* at 79, 86.

The agency received four proposals by the April 24 due date, including proposals from MSG and STGi. Contracting Officer's Statement (COS) at 2. On July 31, MSG was selected for award. *Id.* On August 24, STGi filed a protest with our Office challenging the award to MSG. *Id.* at 3. The agency advised that it would take corrective action to include reevaluating proposals and making a new award decision; accordingly we dismissed the protest as academic. *Id.*; *STG Int'l, Inc.*, B-419040, B-419040.2, Sept. 24, 2020 (unpublished decision).

¹ This acquisition was performed by DOI on behalf of HHS pursuant to an interagency agreement for acquisition services. RFP at 3.

During its corrective action, the agency convened a new technical evaluation committee (TEC) to evaluate proposals. COS at 3. In addition, the agency engaged in exchanges with offerors to request that they confirm that their proposed key personnel remained available, and as necessary, to permit key personnel substitutions. AR, Tab 24, STGi Key Personnel Email Exchange at 2. STGi confirmed that all of its personnel remained available. *Id.* at 1. MSG confirmed that all but one of its proposed personnel remained available, and revised its proposal to provide a substitution for the one key person that was no longer available. AR, Tab 20, MSG Key Personnel Email Exchange at 1. In their final proposals, [DELETED] of the 19 required personnel proposed by STGi and MSG were the same. AR, Tab 16, STGi Technical/Management Proposal; Tab 21, MSG Technical/Management Proposal.

The agency's final evaluation of the MSG and STGi proposals was as follows:

	MSG	STGi
Management Approach	Acceptable	Good
Approach to Implementation	Acceptable	Good
Personnel Qualifications	Good	Good
Staffing Plan	Acceptable	Good
Technical Approach	Acceptable	Good
Organizational Experience and Capacity	Acceptable	Good
Quality Control Plan	Good	Good
Understanding the Project and Scope	Acceptable	Good
Past Performance	Low Risk	Very Low Risk²
Price	\$13,295,714	\$12,810,632

AR, Tab 41, Award Summary at 22. On February 12, 2021, the agency notified MSG that a contract was awarded to STGi, and provided a written debriefing. COS at 3; AR, Tab 42, MSG Unsuccessful Offeror Letter and Debriefing. This protest followed.

DISCUSSION

The protester argues that STGi misrepresented the availability of its key personnel and should have been disqualified from the competition. The protester further argues that the agency unreasonably evaluated its proposal, and that the agency failed to perform a

² The RFP established a three-step evaluation of the past performance factor, under which the agency would assess and assign a relevancy rating (step 1) and a rating for the overall quality of the performance (step 2) for each past performance reference, and then assign an overall risk rating (step 3) as follows: very low risk; low risk; moderate risk, high risk; and unknown risk. RFP at 87-89. The record shows that the TEC rated STGi as low risk, however the contracting officer concluded that STGi should be rated as very low risk. See AR, Tab 41 Award Summary at 3 n.1.

best-value tradeoff, thus the award determination is flawed. As discussed below, we find no basis to sustain the protest.³

The evaluation of proposals is primarily a matter within the agency's discretion, since the agency is responsible for defining its needs and identifying the best method for accommodating them. *VSE Corp.*, B-414057.2, Jan. 30, 2017, 2017 CPD ¶ 44 at 8. In reviewing protests challenging an agency's evaluation of proposals, our Office will not reevaluate proposals, but rather will examine the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement statutes and regulations. *International Preparedness Assocs. Inc.*, B-415416.3, Dec. 27, 2017, 2017 CPD ¶ 391 at 4. A protester's disagreement with the agency's judgments is not sufficient to render the evaluation unreasonable. *NCS/EML JV, LLC*, B-412277 *et al.*, Jan. 14, 2016, 2016 CPD ¶ 21 at 8.

Key Personnel Availability

The protester argues that STGi materially misrepresented the availability of its key personnel and should have been disqualified from the competition by the agency. Specifically, MSG argues that STGi failed to individually contact each of its proposed personnel to confirm that they would perform in their proposed positions if STGi was awarded the contract. Protest at 11-15. The agency argues that it had no basis to disqualify STGi's proposal from the competition, and its evaluation of STGi was reasonable because the proposal included the letters of commitment required by the RFP, and when asked during corrective action, STGi confirmed that all of its personnel remained available. Memorandum of Law (MOL) at 4-7.

During corrective action, the agency engaged in limited discussions with MSG and STGi regarding key personnel availability and qualifications. COS at 6-7. On October 19, the contracting officer sent emails to MSG and STGi stating, in pertinent part, as follows:

Given the amount of time that has lapsed since you submitted the original proposal in response to the subject solicitation, can you confirm whether or not the key personnel identified in your proposal are still available? If all personnel are not available, please provide substitute proposed personnel along with resumes (and everything else that was originally required to evaluate key personnel). . . . [O]nly revisions to key personnel and other sections directly affected by the revisions to key personnel will be accepted.

³ The protester also initially argued that the agency's evaluation of proposals was disparate, and that the agency failed to engage in meaningful discussions with the protester. Protest at 20-23. These allegations were withdrawn. Comments at 1 n.1. While we do not address every variation of the protester's remaining arguments, we have considered them all and conclude that none furnishes a basis to sustain the protest.

AR, Tab 20, MSG Key Personnel Emails at 2; Tab 24, STGi Key Personnel Emails at 2. On October 20, MSG responded that it had one key personnel substitution, and submitted the related proposal revisions. AR, Tab 20, MSG Key Personnel Emails at 1. STGi's response stated that "all key personnel in our proposal are still available to support the contract and we will not be making any key personnel substitutions at this time." AR, Tab 24, STGi Key Personnel Emails at 1.

The issue of whether personnel identified in an offeror's proposal will perform under the subsequently awarded contract is generally a matter of contract administration that our Office does not review. See 4 C.F.R. § 21.5(a); *InnovaSystems Int'l, LLC*, B-417215 *et al.*, Apr. 3, 2019, 2019 CPD ¶ 159 at 7. Nonetheless, our Office will consider allegations that an offeror proposed personnel that it did not have a reasonable basis to expect to provide during contract performance in order to obtain a more favorable evaluation, as such a material misrepresentation has an adverse effect on the integrity of the competitive procurement system. *American Sys. Corp.*, B-417387, B-417387.2, June 11, 2019, 2019 CPD ¶ 238 at 5.

Disputes in the area of whether an offeror will provide the key personnel identified in its proposal during contract performance often turn on the question of whether an offeror has engaged in an impermissible "bait and switch" tactic in submitting its proposal. *Id.* In order to establish an impermissible "bait and switch," a protester must show that: (1) the awardee either knowingly or negligently represented that it would rely on specific personnel that it did not have a reasonable basis to expect to furnish during contract performance, (2) the misrepresentation was relied on by the agency, and (3) the agency's reliance on the misrepresentation had a material effect on the evaluation results. *Patricio Enters. Inc.*, B-412738, B-412738.2, May 26, 2016, 2016 CPD ¶ 145 at 4-5. In addition, our Office has explained that offerors are obligated to advise agencies of changes in proposed staffing and resources, even after the submission of proposals. *General Revenue Corp., et al.*, B-414220.2 *et al.*, Mar. 27, 2017, 2017 CPD ¶ 106 at 22.

Here, the contracting officer requested that the offerors confirm that key personnel remained available or propose substitute personnel if necessary. However, this request did not necessarily obligate offerors to contact all proposed personnel to obtain written or verbal confirmation of their continued commitment prior to representing to the agency that the personnel remained available, as MSG's arguments suggest. In particular, the contracting officer did not require that offerors submit new letters of commitment, but rather limited proposal revisions to key personnel substitutions if applicable. As noted, [DELETED] of the 19 key personnel proposed by MSG and STGi were the same. Almost all of STGi's proposed personnel were incumbents currently performing the requirements and had provided letters of commitment to STGi for its initial proposal. AR, Tab 16, STGi Technical/Management Proposal Excerpt at 1-4; Tab 17, STGi Technical/Management Proposal Resumes and Letters of Commitment. On this record, we find no basis to conclude that STGi made a material misrepresentation to the agency when it confirmed that all of its proposed personnel remained available to

perform if STGi was awarded the contract.⁴ Accordingly, we find no basis to sustain this protest allegation.

Reevaluation of MSG's Proposal

The protester argues that the agency's reevaluation of its proposal under the management approach and technical approach factors was unreasonable because the numerous strengths identified by the TEC should have resulted in ratings of higher than acceptable. Protest at 15-16. MSG additionally argues that the agency unreasonably failed to identify in the reevaluation of MSG's proposal all of the same strengths it identified in the initial evaluation. *Id.* at 17-20. The agency argues that the reevaluation of MSG's proposal, performed by a newly convened TEC, was reasonable and consistent with the terms of the solicitation. MOL at 7-11. Because the protester's arguments are based on the incorrect premise that the agency was bound by its initial evaluation conclusions about the MSG proposal, we find them lacking in merit.

As noted, MSG was initially awarded the contract. In response to a protest filed by STGi, the agency determined that corrective action was appropriate and stated that it would reevaluate proposals and make a new award decision. The contracting officer states that "the Government decided to convene a new TEC in order to ensure the reevaluation was fair, unbiased, and impartial." COS at 6.

⁴ To support its allegation that STGi misrepresented the availability of its key personnel, MSG submitted three declarations. One declaration was submitted by an Executive Vice President of MSG and referred to emails from 13 key personnel--proposed by both MSG and STGi--stating that they were not contacted by STGi to confirm their availability, and an email from one additional employee stating that she was contacted by STGi but did not respond. Comments, Exh. A, Decl. of MSG Executive Vice President. Two additional declarations were submitted by another two key personnel proposed by both MSG and STGi, stating that they were contacted by STGi on or about October 19, and did not "confirm" their availability; however, neither individual states that they retracted their letters of commitment included by STGi in its proposal, or explicitly advised STGi that they were not available to perform the contract as proposed. *Id.*, Exh. B, Decl. of MSG Employee A; Exh. C, Decl. of MSG Employee B.

In response to this allegation, the intervenor argues that it did not intend to replace any personnel and had in fact begun to transition all of its proposed personnel at the time MSG filed this protest. Intervenor Comments at 3; *see also id.*, Exh. A, STGi Emails re: Contract Transition at 3 (email dated February 18, 2021, sent by MSG Employee A stating that "[s]taff were all contacted on 2.17.2021 and verbally confirmed that their information with phone numbers and addresses could be shared with STGi."). While an offeror generally is required to advise an agency where it knows that one or more key employees have become unavailable after the submission of proposals, there is no such obligation where the offeror does not have actual knowledge of the employee's unavailability. *DZSP 21, LLC*, B-410486.10, Jan. 10, 2018, 2018 CPD ¶ 155 at 10.

The record shows that although the number of strengths and weaknesses identified in the initial and reevaluation of MSG’s proposal are similar, the ratings assigned by the different TECs differed. The initial evaluation ratings were based on six strengths and one weakness under the management approach factor, and one significant strength and three strengths under the technical approach factor. Protest Exh. B, MSG Successful Offeror Debriefing, Aug. 14, 2020, at 2-7. The ratings assigned by the newly convened TEC in the reevaluation were based on five strengths under the management approach factor, and four strengths and one weakness under the technical approach factor. AR, Tab 39, MSG Consensus TEC Report at 2-9. Substantively, the record shows that although the new TEC agreed with some aspects of the initial evaluation, it did not reach conclusions identical to those of the initial TEC. MSG’s ratings differed in the reevaluation from the initial evaluation as follows:

	Initial Evaluation	Reevaluation
Management Approach	Outstanding	Acceptable
Approach to Implementation	Outstanding	Acceptable
Personnel Qualifications	Outstanding	Good
Staffing Plan	Good	Acceptable
Technical Approach	Good	Acceptable
Organizational Experience and Capacity	Good	Acceptable
Quality Control Plan	Outstanding	Good
Understanding the Project and Scope	Acceptable	Acceptable

Protest Exh. B, MSG Successful Offeror Debriefing, Aug. 14, 2020, at 1; AR, Tab 39, MSG Consensus TEC Report at 1-9.

We conclude that the protester has not demonstrated that the agency’s reevaluation is unreasonable or inconsistent with the terms of the solicitation simply because it differs from the initial evaluation. Contrary to the protester’s arguments, we have recognized that the fact that an agency determines that reevaluation is appropriate indicates that the agency views the initial evaluation as flawed. *DynCorp Int’l LLC*, B-409874.2, B-409874.3, May 13, 2015, 2016 CPD ¶ 348 at 9-10. Thus, the fact that an agency’s reevaluation varies from an original evaluation does not constitute evidence that the reevaluation was unreasonable. *Sabre Sys., Inc.*, B-402040.2, B-402040.3, June 1, 2010, 2010 CPD ¶ 128 at 5 n.3. Indeed, it is implicit that a reevaluation could result in different findings and conclusions. *Id.* Moreover, the evaluation of proposals and the assignment of adjectival ratings should not generally be based upon a simple count of strengths and weaknesses, but upon a qualitative assessment of the proposals consistent with the evaluation scheme; it is well established that adjectival descriptions and ratings serve only as a guide to, and not a substitute for, intelligent decision-making. *Environmental Chem. Corp.*, B-416166.3 *et al.*, June 12, 2019, 2019 CPD ¶ 217 at 12.

The protester argues that because the source selection authority (SSA) was the same for both the initial evaluation and the reevaluation, “it was incumbent upon her to seek an explanation for the significant rating differences . . . [y]et, there is no indication that

anyone even acknowledged or noticed the substantial and stark differences in the evaluations, let alone understood the reasons for those differences.” Comments at 13. Here, we find that the final evaluation record provides considerable explanation and support for the substantive assessments of MSG’s proposal, including a narrative for each factor and subfactor rating assigned. AR, Tab 39, MSG Consensus Evaluation Report at 2-9.

In addition, the SSA, who also served as the contracting officer, provided a detailed explanation of the factor and subfactor ratings assigned to both MSG’s and STGi’s proposals in response to these protest allegations. COS at 8-13. The SSA explains that “even though multiple strengths were identified by the Government [in MSG’s proposal], these were not strengths that significantly benefited the Government nor did they significantly [exceed] performance or capability standards; therefore, a rating of ‘outstanding’ was not merited.” *Id.* at 8. Generally, according to the SSA, the MSG proposal demonstrated that MSG would meet the minimum requirements of the RFP and included some strengths but did not warrant higher ratings. *Id.* at 9-13. The SSA maintains that the TEC’s reevaluation was conducted in accordance with the terms of the RFP, and is reasonable. *Id.* at 13. Based on our review of the record, we find no basis to sustain MSG’s protest challenging the agency’s reevaluation of its proposal.

Best-Value Determination

The protester also argues that the best-value determination was arbitrary and unreasonable because the agency failed to perform a substantive tradeoff analysis, instead selecting STGi based solely on its ratings and lowest price. Protest at 23-25; Comments at 14-15. Here, the SSA concluded that no tradeoff was necessary because the TEC rated STGi equal or better than all other offerors in every non-price factor, and STGi proposed the lowest price. The SSA further stated: “I have specifically reviewed the technical evaluation results and have not found any benefit provided by any offeror that would warrant paying a higher price than that proposed by STGi. Therefore, STGi presents the best value to the government and is selected for award.” AR, Tab 41, Award Summary at 22.

Because we have denied the protester’s challenges to the evaluation of proposals, we conclude that there is no basis to challenge the agency’s best-value determination. Where, as here, the highest-rated, lowest-priced offer is selected for award, a tradeoff is not required. *Maxim Healthcare Servs., Inc.*, B-412967.9, B-412967.11, June 25, 2018, 2018 CPD ¶ 230 at 11. As the record does not support MSG’s challenges to the agency’s evaluation, and we have found the agency’s evaluation to be reasonable, we find no merit to MSG’s objection to the source selection decision.

The protest is denied.

Thomas H. Armstrong
General Counsel