

## Decision

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**Matter of:** Mayvin, Inc.

**File:** B-419301.6; B-419301.7

**Date:** June 29, 2021

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E. Sanderson Hoe, Esq., and Andrew R. Guy, Esq., Covington & Burling, LLP, for Bennett Aerospace, Inc., the intervenor.

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### DIGEST

Protest alleging disparate treatment is sustained where the record shows that the agency failed to reasonably evaluate the protester's quotation in accordance with the performance work statement and assessed a significant benefit in the awardee's quotation, but not the protester's, for substantively indistinguishable features of the vendors' employee recruitment and retention plans.

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### DECISION

Mayvin, Inc., a small business of Annandale, Virginia, protests the establishment of a blanket purchase agreement (BPA), with Bennett Aerospace, Inc., a small business of Raleigh, North Carolina, under request for quotations (RFQ) No. 15M10420QA4100007, issued by the Department of Justice, United States Marshal Service (USMS), for executive, administrative, and professional support services. The protester contends that the agency evaluated quotations in a disparate manner, and conducted an unreasonable best-value tradeoff analysis.

We sustain the protest.

### BACKGROUND

In April 2020, the agency issued the solicitation, as a small business set-aside, under the procedures of Federal Acquisition Regulation (FAR) subpart 8.4. The RFQ was issued to firms holding General Services Administration's (GSA), Professional Services Schedule (PSS) contracts for mission-oriented business integrated services with special

item number 874-7, Integrated Business Program Support Services.<sup>1</sup> Contracting Officer's Statement (COS) at 1-2. The solicitation seeks executive, administrative, and professional support services for USMS's Financial Services Division. The solicitation explains that the BPA will incorporate the successful firm's proposed fixed labor-hour rates, and that the agency will obtain the services, on an as-needed basis, using call orders.

The RFQ contemplates establishment of the BPA, on a best-value tradeoff basis, for a base year and four 1-year option periods.<sup>2</sup> Firms were advised that quotations would be evaluated considering price and two non-price factors, technical approach and past performance. Agency Report (AR), Tab 1, RFQ at 5. Technical approach and past performance, when combined, were considered significantly more important than price. AR, Tab 3, RFQ, attach. 3, Eval. Factors at 5. The technical approach factor included four equally weighted subfactors: quality control plan, management plan, recruitment and retention plan, and transition plan. *Id.* at 1-4; Protest, exh. 4, RFQ Questions and Responses (Q&R) Part 2, Q13. With respect to price, the solicitation provided that the agency would evaluate vendors' quoted prices for reasonableness and completeness. RFQ, attach. 3, Eval. Factors at 5. It also advised that the agency would verify that quoted prices were consistent with each vendor's GSA PSS contract. *Id.*

In response to the solicitation, the agency received timely quotations from a number of vendors, including Mayvin and Bennett.<sup>3</sup> COS at 3. The evaluators assessed the quotations submitted by the protester and awardee as follows:<sup>4</sup>

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<sup>1</sup> The solicitation was posted via the GSA e-buy website.

<sup>2</sup> The estimated value of the requirement is \$147,030,750. COS at 2.

<sup>3</sup> This is the second source selection in connection with this acquisition. The USMS previously selected Bennett's quotation for establishment of the BPA in September 2020, and Mayvin and another unsuccessful firm, Protection Strategies, Inc., protested that selection decision with our Office. In response to those protests, the agency took corrective action, whereupon we dismissed the protests as academic. *Mayvin, Inc.*, B-419301, B-419301.4, Jan. 8, 2021 (unpublished decision); *Protection Strategies, Inc.*, B-419301.2, B-419301.3, Jan. 8, 2021 (unpublished decision).

<sup>4</sup> The RFQ advised that the agency would assign pass or fail (or neutral in the case of a firm having no past performance) ratings to the quotations under the past performance and security factors. Protest, exh. 3, RFQ Q&R Part 1, Q12. For the technical factor, the agency would assign ratings of outstanding, good, acceptable, marginal, or unacceptable. RFQ, attach. 3, Eval. Factors at 4.

	<b>MAYVIN</b>	<b>BENNETT</b>
<b>TECHNICAL APPROACH</b>	<b>Outstanding</b>	<b>Outstanding</b>
Quality Control Plan	Outstanding	Outstanding
Management Plan	Outstanding	Outstanding
Recruitment/Retention Plan	Outstanding	Outstanding
Transition Plan	Outstanding	Outstanding
<b>PAST PERFORMANCE</b>	<b>Acceptable</b>	<b>Acceptable</b>
<b>PRICE</b>	<b>\$131,010,096</b>	<b>\$128,490,806</b>

AR, Tab 12, Basis for Award Memorandum at 3.

The agency concluded that while both quotations received ratings of outstanding for each factor and subfactor, Mayvin proposed the superior management plan, and Bennett proposed the superior recruitment and retention plan. AR, Tab 13, Best-Value Analysis, at 3-5. In comparing the quotations, the contracting officer, who also served as the source selection authority (SSA) for this procurement, found that the benefit to the agency from Mayvin’s superior management plan was essentially equal to the benefit from Bennett’s superior recruitment and retention plan. *Id.* at 5-6. On the basis of these evaluation results, the agency selected Bennett for establishment of the BPA, concluding that its slightly lower-priced quotation was the best overall value to the government. *Id.* at 6.

On March 11, 2021, the agency notified Mayvin that Bennett’s quotation had been selected for establishment of the BPA. Protest, exh. 6, Notice of Award. After receiving a debriefing, Mayvin timely filed this protest.

## DISCUSSION

The protester argues that the awardee’s quotation was credited with a significant benefit under the recruitment and retention plan subfactor for the firm’s goal to retain 100 percent of qualified incumbents and the firm’s documented retention strategies, and that its quotation should have been credited with the same significant benefit. The agency argues that the difference in evaluations was based on differences in the vendors’ quotations.<sup>5</sup> Supp. MOL at 5-8. For the reasons discussed below, we find that

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<sup>5</sup> In its protest, Mayvin also argues that the agency improperly failed to credit its quotation for Mayvin’s demonstrated 95 percent retention rate. Protest at 10. In response, the agency argues that “[i]n light of Bennett’s demonstrated 100% retention rate, Mayvin’s insistence in its initial protest that its ‘demonstrated 95% retention rate’ offers a distinct advantage is wholly meritless.” Supp. Memorandum of Law (MOL) at 5, n.1. The protester responds that the agency’s argument is flawed as it compares two different retention metrics--one for retaining the incumbent workforce, and the other for retaining employees over the life of the contract. As to the former, both Mayvin and Bennett stated a goal of retaining 100 percent of the incumbent workforce. See AR,

the record supports the protester's assertion of disparate evaluation under the recruitment and retention plan subfactor and sustain the protest on this basis.

In reviewing protests of an agency's evaluation, we do not reevaluate quotations or substitute our judgment for that of the agency, as the evaluation of quotations is a matter within the agency's discretion. *SMS Data Products Group, Inc.*, B-418925.2 *et al.*, Nov. 25, 2020, 2020 CPD ¶ 387 at 4-5. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. *Id.*; *The Concourse Group, LLC*, B-411962.5, Jan. 6, 2017, 2017 CPD ¶ 36 at 4. A protester's disagreement with the agency's evaluation and assessment, without more, does not establish that the evaluation was unreasonable. *Cyberdata Techs., Inc.*, B-411070 *et al.*, May 1, 2015, 2015 CPD ¶ 150 at 4.

Moreover, it is a fundamental principle of federal procurement law that a contracting agency must treat all vendors equally and evaluate their quotations evenhandedly against the solicitation's requirements and evaluation criteria. *Soft Tech Consulting, Inc.*, B-416934, Jan. 15, 2019, 2019 CPD ¶ 60 at 5. Agencies properly may assign dissimilar proposals different evaluation ratings, however. *Battelle Memorial Inst.*, B-418047.3, B-418047.4, May 18, 2020, 2020 CPD ¶ 176 at 6. Accordingly, to prevail on an allegation of disparate treatment, a protester must show that the agency unreasonably failed to assess strengths (or assessed weaknesses) for aspects of its quotation that were substantively indistinguishable from, or nearly identical to, those contained in other quotations. *Id.*; *SMS Data Products Group, Inc.*, *supra* at 9.

Here, the solicitation provided that under the recruitment/retention plan subfactor, the agency would evaluate a firm's methodology for recruiting and retaining the qualified personnel needed to perform the contract. RFQ, attach. B, Eval. Factors at 2. The solicitation also provided that "the contractor is encouraged to engage incumbent service employees if the contractor, after careful assessment, finds the incumbent service employees qualify to meet the requirements of the solicitation." AR, Tab 2, Performance Work Statement (PWS) at 7.

The awardee provided in its quotation that its retention plan "focuses on maintaining high quality incumbent personnel" and "maintaining both incumbents and new hires through the life of the contract." AR, Tab 19, Bennett Quotation at 25. Bennett

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Tab 6, Mayvin Quotation at 3; Tab 19, Bennett Quotation at 26. As to the latter, however, Mayvin's quotation states it has a 95 percent retention rate, AR, Tab 6, Mayvin Quotation at 3, whereas Bennett's quotation only references its "year-over-year retention rate of 87% on our DEA [Drug Enforcement Agency] Diversion Control contract." *Id.*, Tab 19, Bennett Quotation at 27. To the extent the agency was comparing Bennett's goal of 100 percent incumbent retention rate with Mayvin's 95 percent retention rate for all employees over the life of the contract, the agency's evaluation was not comparing apples to apples and therefore was unreasonable. We also sustain the protest on this basis.

explained that it “recognizes that the incumbent contractor workforce is an asset” and that it therefore has “established a goal of retaining 100% of qualified incumbents.” *Id.* at 26. The awardee described the key features of its incumbent retention approach, which included: maintaining competitive pay and comparable benefits, and “[e]nsur[ing] a low stress transition experience for all incumbents.” *Id.* at 26.

Mayvin argues that its quotation set forth the same goal of retaining 100 percent of qualified incumbent employees. Supp. Protest at 13-14. For example, Mayvin provided in its quotation that, in light of its teaming arrangement with the incumbent contractor for the requirement, “Team Mayvin provides a unique best value proposition as the only bidder that can start with 100% retention on Day One.” AR, Tab 6, Mayvin Quotation at 3.

Mayvin also identified all of the incumbent personnel in Table 7 of its quotation. *Id.* at 10-12. Mayvin explained that “[b]ased on our proactive vetting of all incumbent contractors, Team Mayvin contractors have been carefully mapped to the Performance Work Statement (PWS) labor category descriptions enabling 0% attrition to the new contract.” *Id.* at 3. Mayvin further explained that “Team Mayvin’s proven management structure will utilize the incumbent contractors in (Table 7), ensuring continuity and providing a no-risk solution that meets or exceeds all requirements of this contract beginning on Day One.” *Id.* at 9. The protester’s quotation provided that “Team Mayvin is the only bidder that can provide a by-name slate of personnel with this level of experience and understanding of the USMS mission and daily operations.” *Id.* The protester’s quotation also noted that “all incumbent contractors have active suitability determinations, which can be seamlessly transferred to the new BPA with an award to Team Mayvin.” *Id.* Further, Mayvin’s quotation committed to “offer first right of refusal to all qualified, acceptable incumbent contractors [to] retain their experience and institutional knowledge, maintain continuity of services, and minimize disruption to USMS missions.” *Id.* at 32.

Additionally, Mayvin’s quotation described in detail its incumbent retention strategies, including in its transition plan. *Id.* at 25-32. These strategies included: maintaining comparable pay and benefits, and continuing communications with all incumbent contractors regarding any questions and concerns to assure them that corporate actions taken are meaningful and valuable to incumbent contractors. *Id.* at 26, 28.

The record reflects that the SSA credited Bennett’s quotation for the firm’s “goal of retaining 100% of qualified incumbents and documented retention strategies” because “[g]iven the possibility of a transition, this proposed goal would mitigate transition disruption to ensure continuity of USMS operations.” AR, Tab 13, Best-Value Analysis, at 4. The SSA concluded that “[t]his provides a significant non-cost benefit” as “retaining qualified candidates to support this requirement is essential to USMS programs.” *Id.*

The agency acknowledges that Mayvin’s quotation indicated “100% retention” of all qualified incumbent contractors. See Supp. MOL at 9-10. The SSA did not, however,

credit the protester's quotation for Mayvin's goal to provide "100% retention of personnel Day One of the contract" or its documented retention strategies. AR, Tab 6, Mayvin Quotation at 3, 21-25. *Id.* Rather, the SSA found that, "though Mayvin provided a list of proposed contract personnel and stated they would be able to start on day one of transition," the quotation "also stated that [Mayvin] would execute their Continuity Plan that ensures as many Personnel as **practicable** remain on the job to help Mayvin assume the prime role on the contract while maintaining continuity and consistency of services." AR, Tab 13, Best-Value Analysis at 4-5. The SSA concluded that "[b]ased on this finding, there is some ambiguity as to whether candidates would be available on day one." *Id.* at 4-5 (emphasis in original).

In response to the protest, the agency asserts that "[u]pon reading [the] sentence" in Mayvin's quotation that used the phrase "as many personnel as practicable," the agency "became justifiably concerned that Mayvin was not fully committing to 100% retention of 'qualified' personnel--but instead [was] committing only to what would be "practicable" for Mayvin." Supp. MOL at 8. The agency therefore maintains that its evaluation was reasonable because the statement in Mayvin's quotation that it would only "ensure as many people as practicable remain on the job" could not be reconciled with the other statements in Mayvin's quotation that there would be "100% retention" of qualified incumbents. *Id.* at 10. The agency argues that it is not required to reconcile conflicting portions of a firm's quotation to determine the vendor's actual intent, and that it is the vendor's responsibility to ensure its quotation is clear and consistent. *Id.*

The protester argues that the agency's evaluation was unreasonable because it ignores the context in which Mayvin's quotation used the phrase "as many personnel as practicable." The protester points out that its quotation included the phrase "as many personnel as practicable" only once to address the solicitation requirement at PWS 2.8.1.2. Supp. Comments at 18. As relevant here, PWS section 2.8.1.2 provided that in implementing the transition plan, "[t]he Contractor shall allow *as many personnel as practicable* to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract." AR, Tab 2, PWS at 9 (emphasis added).

In discussing its transition plan, Mayvin's quotation provided the following:

[PWS 2.8.1.2] Team Mayvin makes the affirmation of cooperation unequivocally because we have been cooperatively performing transition preparation for almost a year. As a part of our Phase 2 activities, Team Mayvin will execute our Continuity Plan that ensures as many personnel as practicable remain on the job to help Mayvin assume the Prime role on the contract while maintaining continuity and consistency of services. For Team Mayvin, Day One under the new BPA will be the next day at the office.

Team Mayvin represents a significant benefit to the USMS because our delivery team incorporates the incumbent contractor, along with all their personnel and operational knowledge. Team Mayvin is the only bidder

who can guarantee that 100% of all desired incumbent contractors can be retained and ready to continue work on Day One.

AR, Tab 6, Mayvin Quotation at 27.

The protester argues that the SSA's conclusion that Mayvin was not committing to fully staff the contract on day one of performance--based on the above reference in Mayvin's quotation to the solicitation requirement that the contractor allow "as many personnel as practicable" to remain on the job--is illogical and ignores the PWS language. We agree.

As noted above, PWS section 2.8.1.2 provided that in implementing the transition plan, "[t]he Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract." AR, Tab 2, PWS at 9. In discussing its transition plan, Mayvin's quotation cited "PWS 2.8.1.2" and provided: "Team Mayvin will execute our Continuity Plan that ensures as many personnel as practicable remain on the job to help Mayvin assume the Prime role on the contract while maintaining continuity and consistency of services." AR, Tab 6, Mayvin Quotation at 27. Mayvin's quotation continued: "For Team Mayvin, Day One under the new BPA will be the next day at the office." *Id.* The next two sentences of Mayvin's transition plan then explained "Team Mayvin represents a significant benefit to the USMS because our delivery team incorporates the incumbent contractor, along with all their personnel and operational knowledge" and "Team Mayvin is the only bidder who can guarantee that 100% of all desired incumbent contractors can be retained and ready to continue work on Day One." *Id.*

Based on our review of the record, we conclude that the agency's evaluation of Mayvin's quotation under the recruitment and retention plan subfactor was unreasonable. In particular, we find unreasonable the agency's conclusion that the single reference in Mayvin's quotation to the PWS 2.8.1.2 requirement--that the contractor allow/ensure "as many personnel as practicable" remain on the job to help the successor maintain the continuity and consistency of the services required--is inconsistent with the many statements in the quotation of the firm's intention to provide 100 percent of qualified incumbent personnel. As described in detail above, the record reflects that the protester's quotation stated the firm's intention to retain 100 percent of qualified incumbents at least five times. *See, e.g., id.* at 3 ("USMS receives 100% retention of personnel[.]"); *id.* ("Team Mayvin is the only contractor who can honestly claim we can retain 100% of desired contractors."); *id.* ("Team Mayvin . . . can start with 100% retention on Day One[.]"); *id.* at 27 ("Team Mayvin . . . can guarantee that 100% of all desired incumbent contractors can be retained[.]"); and *id.* at 30 ("With Team Mayvin 100% of the incumbent workforce will have the ability to continue work on Day One."). In addition, as noted previously, Mayvin's quotation included a table identifying all of the incumbent personnel by name, and explaining that "[b]ased on our proactive vetting of all incumbent contractors, Team Mayvin contractors have been carefully mapped to the [PWS] labor category descriptions enabling 0% attrition to the new contract." *Id.* at 3.

Although the agency argues that Mayvin's use of the "as practicable" language without any explanation or qualification "reasonably left the USMS concerned about Mayvin's actual plans for the transition," Supp. MOL at 9, the record clearly reflects that, in using the phrase "as practicable," Mayvin's quotation was simply restating the PWS requirement that the contractor "shall allow as many personnel as practicable to remain on the job." See AR, Tab 6, Mayvin Quotation at 27; Tab 2, PWS at 9. Considering the PWS required the contractor to "allow as many personnel as practicable to remain on the job," the agency has provided no explanation why a firm's statement of compliance with this PWS requirement would call into question a firm's stated goal to retain 100 percent of qualified incumbent personnel. This is particularly so when, as here, the next few sentences of the firm's transition plan provided that "[f]or Team Mayvin, Day One under the new BPA will be the next day at the office," and "Team Mayvin is the only bidder who can guarantee that 100% of all desired incumbent contractors can be retained and ready to continue work on Day One." AR, Tab 6, Mayvin Quotation at 27.

On this record, we conclude that when Mayvin's quotation is read in its totality and in the context of the solicitation and PWS, the agency's evaluation is unreasonable. In light of this conclusion, we also find that the agency evaluated in a disparate manner when the SSA found that only Bennett's proposed goal of retaining 100 percent of qualified incumbents and documented retention strategies provided a significant non-cost benefit. Accordingly, we sustain the protest. See, e.g., *Soft Tech Consulting, Inc.*, *supra* at 8-9 (sustaining protest because the record did not explain why the agency did not recognize the same labor categories in the protester's quotation that it recognized in the awardee's quotation when the two similarly lacked labor category labeling).

## PREJUDICE

We find that Mayvin has been prejudiced by the agency's evaluation. Competitive prejudice is an essential element of a viable protest and we will sustain a protest only when a protester demonstrates that, but for the agency's improper action, it would have had a substantial chance of receiving the award. *Trident Vantage Sys., LLC; SKER-SGT Eng'g & Sci., LLC*, B-415944 *et al.*, May 1, 2018, 2018 CPD ¶ 166 at 22.

In conducting the best-value analysis, as previously discussed, the SSA attributed a significant non-cost benefit to Bennett's quotation under the retention and recruitment plan subfactor for its proposed goal of retaining 100 percent of the current qualified incumbents and found Bennett's quotation to be superior under that subfactor. AR, Tab 13, Best-Value Analysis at 4-5. The SSA attributed a significant non-cost benefit to Mayvin's quotation under the management plan subfactor, which made Mayvin's quotation superior under that subfactor. *Id.* at 3-4. The SSA ultimately decided that Bennett's benefit under the retention and recruitment plan subfactor and Mayvin's benefit under the management plan subfactor were essentially equal, and therefore decided to establish the BPA with Bennett based on its slightly lower proposed price. *Id.* at 5-6. If the agency had evaluated the quotations equally under the recruitment and retention plan subfactor, Mayvin's quotation would have also been credited with a



significant non-cost benefit for its stated goal of retaining 100 percent of the incumbent personnel, eliminating the basis for the SSA's determination that the two quotations offered essentially equal non-cost benefits. In such a scenario, the agency would be required to conduct a best-value trade-off to consider whether Mayvin's superior technical quotation justified a price premium of less than 2 percent.

## RECOMMENDATION

In light of the foregoing discussion, we conclude that the agency unreasonably evaluated Mayvin's quotation under the retention and recruitment plan subfactor in finding that Mayvin's quoted plan to retain 100 percent of qualified incumbent personnel was inconsistent with PWS section 2.8.1.2. We also conclude that the agency erred in disparately evaluating the protester and awardees' quotations under the retention and recruitment plan subfactor with respect to the protester and awardees' ability to obtain and retain qualified staff. We further conclude that Mayvin was competitively prejudiced by these evaluation errors. We recommend that the agency reevaluate quotations in a manner consistent with our decision and make a new selection decision. We also recommend that Mayvin be reimbursed the costs associated with filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). Mayvin should submit its certified claim for such costs, detailing the time spent and the costs incurred, directly to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Thomas H. Armstrong  
General Counsel