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Decision

Matter of: UDC USA, Inc.

File: B-419671

Date: June 21, 2021

Lee Dougherty, Esq., Effectus, PLLC, for the protester.

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Hannah G. Barnes, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency applied unstated evaluation criteria in its evaluation of a protester's proposal is denied where the record reflects that the challenged evaluation was premised on matters that were logically encompassed by the stated evaluation criteria.
 2. Protest challenging the agency's evaluation of the protester's proposal, including allegations that the agency unreasonably failed to assess additional strengths in the protester's technical proposal, is denied where the record shows that the agency's evaluation was reasonable and consistent with the terms of the solicitation.
 3. Protest challenging the agency's past performance evaluation is denied where the record shows that the agency's evaluation was reasonable and consistent with the terms of the solicitation.
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DECISION

UDC USA, Inc., a small business of Tampa, Florida, protests the award of a contract to Ensign-Bickford Aerospace and Defense Company (Ensign), of Simsbury, Connecticut, under request for proposals (RFP) No. W15QKN-20-R-0072, issued by the Department of the Army, Army Contracting Command, for the production, testing, packaging, and delivery of blasting caps. UDC challenges the agency's evaluation of the protester's proposal, as well as the agency's source selection decision.

We deny the protest.

BACKGROUND

The RFP, issued on April 17, 2020, contemplated the award of a fixed-price, indefinite-delivery, indefinite-quantity contract for a base year and four option years. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 3. The solicitation sought proposals for the production, testing, packaging, and delivery of three types of blasting cap assemblies: the M19, M21, and M23. Agency Report (AR), Tab 3, RFP § C.1.0 (conformed).

The RFP provided for award on a best-value tradeoff basis, considering the following evaluation factors, listed in descending order of importance: (1) technical, (2) past performance, (3) price, and (4) small business participation. RFP § M-1.1. The technical factor included three subfactors, listed in descending order of importance: (1) manufacturing plan, (2) quality assurance and critical characteristic plan ("quality assurance plan"), and (3) management plan. RFP § M-2.1. The RFP provided that the three non-price factors, combined, were significantly more important than price, and cautioned offerors that award would not necessarily be made to the lowest-priced offeror. RFP § M-1.1.

With regard to the technical factor and the small business participation factor, the solicitation established an adjectival rating scheme and advised that evaluators would assess each factor and subfactor for significant strengths, strengths, weaknesses, significant weaknesses, deficiencies, and uncertainties. RFP § M-2.2. In addition to the adjectival ratings, the solicitation anticipated the consideration of technical risk, where the agency would assess technical risk for the "potential for disruption of schedule, increased costs, degradation of performance, the need for increased [g]overnment oversight, and/or the likelihood of unsuccessful contract performance." RFP § M-3.1.2.

Under the past performance factor, the solicitation advised that offerors would be evaluated on "the quality of their relevant and recent past performance" on previous contracts "as it relates to the probability of success on this contract," and explained that data obtained independently, as well as the data that offerors provided in their proposals, could be used to evaluate past performance. RFP § M-4.1. The solicitation established the following confidence ratings for the past performance evaluation: substantial confidence, satisfactory confidence, neutral, limited confidence, and no confidence. RFP § M-4.6.

Under the price factor, the solicitation provided for a price reasonableness determination based on the total evaluated price. RFP § M-5.1. The RFP also advised that proposals would be evaluated for unbalanced pricing. RFP § M-5.5.

The agency amended the solicitation seven times. COS/MOL at 3. On or before the June 17, 2020 closing date for receipt of proposals, the agency received proposals from

two offerors: the awardee and the protester. *Id.* The Army then evaluated UDC's and Ensign's proposals as follows:

	Ensign	UDC
Technical	Good	Good
-- Manufacturing plan	Outstanding	Good
-- Quality assurance plan	Marginal	Marginal
-- Management plan	Good	Good
Past performance	Substantial Confidence	Satisfactory Confidence
Small business participation	Good	Acceptable
Price	\$37,027,934	\$36,897,262

AR, Tab 37, Source Selection Decision Document (SSDD) at 5.

The source selection authority (SSA) concluded that the awardee's proposal presented the best value to the government under the terms of the solicitation. The SSA particularly noted that Ensign's proposal had advantages over UDC's proposal with respect to technical manufacturing and past performance, and that these advantages merited the small, 0.4 percent, price premium for the awardee's proposal. AR, Tab 37, SSDD at 8-10.

On February 25, 2021, the Army awarded the contract to Ensign and subsequently notified UDC of the SSA's source selection decision. This protest followed.

DISCUSSION

UDC challenges several aspects of the source selection decision, including the evaluation of its proposal under the technical, past performance, and price factors. Based on these alleged evaluation flaws, the protester maintains the best-value determination was unreasonable, and that but for these alleged flaws, UDC's proposal would have been the lowest-priced, most highly rated offer. We have reviewed all of the protester's arguments and discuss below several representative examples of UDC's assertions, the agency's responses, and our conclusions. Based on our review, we find no basis to sustain UDC's protest.¹

¹ In addition to the specific arguments discussed below, UDC initially raised, but in its comments on the agency's report, subsequently failed to respond or rebut, the agency's arguments supporting its assessment of a weakness in UDC's technical proposal. *Compare* Protest at 11-12 *with* COS/MOL at 24-25 *with* Comments. The protester also initially raised, but subsequently failed to respond or rebut, the agency's response to UDC's challenge to the agency's evaluation of the protester's proposal and the awardee's proposal under the small business participation factor. *Compare* Protest at 13 *with* COS/MOL at 30-35 *with* Comments. We consider these arguments

Technical Evaluation

UDC presents multiple allegations regarding the agency's technical evaluation of its proposal. As discussed below, we find the protester's assertions unpersuasive.

Unstated Evaluation Criteria

First, the protester challenges as unreasonable the agency's assessment of its quality assurance and critical characteristic plan under the quality assurance plan subfactor under the technical factor. Specifically, the protester argues that the agency applied unstated evaluation criteria when it assessed a significant weakness under this subfactor for not including plans for first article testing² or demonstrating understanding of the requirements for design verification testing in its proposal. Protest at 9-10. The protester argues that the solicitation does not specifically require that proposals include details on first article testing or design verification testing, and in the alternative, that UDC's proposal included information on these types of testing "throughout its proposal." *Id.* at 9.

The agency responds that the requirements for first article testing and design verification testing were logically encompassed within the RFP's evaluation criteria. COS/MOL at 15. The agency relies on language in the solicitation, which requires that offerors provide a "description of the plans/procedures for the manufacture, test, and inspection of the M19, M21, and the M23 [a]ssemblies" which will be evaluated under the quality assurance plan subfactor. The solicitation also alerts offerors that the agency would evaluate the "adequacy of the plans/procedures for the manufacture, test, and inspection" of blasting cap assemblies. RFP § L-22.1.2; RFP § M-3.1.4. The agency further notes that the RFP "also requires both [first article testing] and [design verification testing] in accordance with QAA-1430 and QAA-1431 [specified sections of the purchase description] as part of its quality assurance requirements prior to production." COS/MOL at 16; see RFP § I at 48.

The agency explains that it assessed a significant weakness to UDC's proposal because, "[w]hile the [o]fferor includes [lot acceptance testing], there is no test sequence, type of testing, or additional inspections which differ from [first article testing] to [lot acceptance sequential testing.]" AR, Tab 32, UDC Technical Evaluation at 7. With respect to design verification testing, the agency again points to its technical evaluation, which notes that although the agency is responsible for design verification testing, "the [o]fferor provides no assurance of quality and quantity of item test samples in order to successfully pass the environmental testing, mechanical testing, and prove

abandoned. We will not consider abandoned arguments. *IntelliDyne, LLC, B-409107 et al.*, Jan. 16, 2014, 2014 CPD ¶ 34 at 3 n.3.

² In its source selection decision, the agency notes that first article testing is "a major test that is required before the start of [p]roduction." AR, Tab 37, SSDD at 9.

reliable initiation during [design verification testing] and meet the requirements in the solicitation.” *Id.* The agency asserts that UDC’s arguments do not address the evaluators’ concerns, and that the protester’s “mere mentions” of first article testing and design verification testing in its management plan (which was assessed under the management plan subfactor) do not satisfy the solicitation requirements to address these issues as part of its quality assurance plan. COS/MOL at 18.

The protester reiterates its contention that the evaluation was unreasonable because the solicitation did not specifically require proposals to address first article testing or design verification testing. Comments at 8.

Our Office will not reevaluate proposals, but will instead examine the record to determine whether the agency’s judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See *Microtechnologies, LLC*, B-413091, Aug. 11, 2016, 2016 CPD ¶ 219 at 4-5. An offeror’s disagreement with the agency’s judgment, without more, is insufficient to establish that the agency acted unreasonably. *Id.* Moreover, although agencies are required to identify in a solicitation all major evaluation factors, they are not required to specifically identify each and every element an agency considers during an evaluation. FAR 15-304(d). Rather, as a general matter, an agency properly may take into account specific, albeit not expressly identified, matters that are logically encompassed by or related to the stated evaluation criteria. *Trailboss Enterprises, Inc.*, B-419209, Dec. 23, 2020, 2020 CPD ¶ 414 at 6.

We find the agency’s evaluation of the protester’s quality assurance plan to be reasonable. The record shows that the solicitation provided for the evaluation of an offeror’s plan for testing blasting cap assemblies and the adequacy of such plans. RFP § L-22.1.2; RFP § M-3.1.4. The record also shows the solicitation expressly referenced design verification testing and first article testing requirements.³ See RFP. As a result, we agree with the agency that these requirements were logically encompassed by the evaluation criteria.

Furthermore, the record supports the agency’s conclusions that UDC’s references to design verification testing or first article testing were brief, conclusory, and primarily located in the section of the proposal addressing the company’s management plan, rather than in the section that addressed the requirement for a quality assurance plan. See Tab 12, UDC Volume I; COS/MOL at 15. As a result, we find the agency’s evaluation of the protester’s technical proposal under the quality assurance plan subfactor to be reasonable, and we conclude that the agency did not apply unstated evaluation criteria when it considered the dearth of information provided in the proposal about its understanding of first article testing and design verification testing requirements. The protester’s argument to the contrary constitutes disagreement with

³ For example, the solicitation’s statement of work includes the requirement that “[t]he contractor shall submit a test plan for both [f]irst [a]rticle and . . . [l]ot [a]cceptance [t]esting.” RFP § C.3.8.

the agency's judgment without showing error. Accordingly, this protest ground is denied.

Additional Strengths

The protester also contends that the agency should have assessed additional strengths to the firm's proposal under the manufacturing plan subfactor under the technical factor. Specifically, the protester argues that its proposed design for manufacturing the alternate blasting cap, alternate blasting cap bushing, and proposed spool design merited an assessment of significant strengths. Protest at 10-11. The protester argues that the proposed blasting cap and bushing designs are safer and more reliable than the required specifications, and that the proposed spool design would be molded from a more resilient form of plastic. *Id.* at 11-12. The protester cites the solicitation, which defines a significant strength as "[a]n aspect of an [o]fferor's proposal that has appreciable merit or appreciably exceeds specified performance or capability requirements in a way that will be appreciably advantageous to the [g]overnment during contract performance." RFP § M-2.2.

The agency responds that it correctly concluded that the blasting cap and spool design were "adequate for the ability to meet the requirements defined in the solicitation." See Tab 12, UDC Volume I at 2; COS/MOL at 21. The agency first notes that UDC does not substantiate or verify its claims of improved safety and reliability. COS/MOL at 21. Next, the agency argues that the alternate blasting cap design was not based on the drawing provided in the solicitation, and does not conform to the solicitation's requirements. *Id.* Finally, the agency asserts that the bushing and spool design meet, but do not exceed, the requirements of the solicitation. *Id.* at 22.⁴ The agency concludes that the evaluators recognized that these areas of the protester's proposal met solicitation requirements, but "did not believe that the information provided was sufficient to support a determination that these specific aspects . . . exceeded or appreciably exceeded the requirements in a way that would be advantageous or appreciably advantageous to the [g]overnment." *Id.* at 23.

⁴ In a response that post-dated UDC's protest, the agency explains that it evaluated the bushing and spool design primarily based on whether the proposal met the requirements successfully, without evidence of damage. See COS/MOL at 22-23; AR, Tab 43, Technical Evaluators' Response at 1. For example, the agency argues that UDC's proposed bushing meets "but does not exceed" the solicitation requirements because it "ensures the signal from the [f]iring [a]ssembly to be transferred into the [b]lasting [c]ap unimpeded." AR, Tab 43, Technical Evaluators' Response at 1. Regarding the spool design, the solicitation required that the spool be made of a specific color, plastic, and possess certain capabilities; the agency states that UDC met but did not exceed these requirements, and that "the system level 'performance' requirements are primarily tested/evaluated and accepted on 'evidence of damage or does not function completely.'" *Id.*

The protester responds that the agency has not effectively refuted its arguments, and never considered its proposed alternate designs when it evaluated UDC's proposal. Comments at 6. UDC also notes that the agency's responses raise concerns not reflected in the evaluation record, and the agency instead "attempts to rectify this error with a non-contemporaneous evaluation." *Id.*

An agency's judgment that the features identified in a proposal did not significantly exceed the requirements of the RFP, and thus did not warrant the assessment of unique strengths, is a matter within the agency's discretion and one that we will not disturb where the protester has failed to demonstrate that the evaluation was unreasonable. *Protection Strategies, Inc.*, B-416635, Nov. 1, 2018, 2019 CPD ¶ 33 at 8 n.4; *Metropolitan Life Ins. Co.*, B-412717, B-412717.2, May 13, 2016, 2016 CPD ¶ 132 at 14. Furthermore, an agency is not required to document all "determinations of adequacy" or explain why a proposal did not receive a strength, weakness, or deficiency for a particular item. *Allied Tech. Grp., Inc.*, B-412434, B-412434.2, Feb. 10, 2016, 2016 CPD ¶ 74 at 13.

In this case, the agency was not required to document why it did not assess significant strengths; rather, the record shows that the agency documented its assessments that the protester's proposed blasting cap, bushing, and spool design adequately addressed the requirements of the solicitation. In other words, the evaluation record accurately reflects the agency's contemporaneous evaluation conclusions.⁵ Further, the explanations provided in the agency report are not inconsistent with the contemporaneous evaluation record. Finally, we conclude that the record shows the agency reasonably evaluated UDC's proposal under the management plan subfactor, given the discretion afforded an agency regarding the assessment of whether a proposal warrants unique strengths. Accordingly, this protest ground is denied.

Past Performance Evaluation

UDC also argues that its past performance warrants a substantial confidence rating, not a satisfactory confidence rating. Protest at 12. The protester argues that its prior experience is relevant to the subject matter at hand, its personnel have subject matter expertise, and its experience demonstrates "thorough experience managing [and successfully performing] complex systems-level contracts." *Id.*

The agency responds that it evaluated UDC's past performance in accordance with the established evaluation criteria. The agency asserts that for the delivery orders UDC claims were particularly relevant, the protester acted as a middle-man, not as a producer of munitions for government testing. COS/MOL at 26. Further, the agency argues that because the protester received a satisfactory rating for these past delivery orders, which constituted three of the four recent and relevant contracts identified in

⁵ We note that, contrary to the protester's assertion, the record shows the evaluators did at least acknowledge the proposed alternate blasting cap: "The plan . . . offers a new potential blasting cap." AR, Tab 32, UDC Technical Evaluation at 2.

UDC's proposal, the agency reasonably assigned a satisfactory confidence rating. *Id.* at 27.

The agency also points out that the solicitation permitted evaluators to go beyond information identified in the proposal, and to obtain data independently. *Id.* at 28. As a result, the SSA "requested a more thorough review of available past performance records" before finalizing an evaluation report, and discovered "another [r]ecent and [r]elevant contract that noted an inability by Mast Technology, Inc. ("Mast") [a company to which UDC is the successor-in-interest] to deliver timely product and further noted that the rating official would not recommend UDC/Mast for award of similar requirements." *Id.* The SSA chose not to send this information to the evaluators, because the SSA "felt that the [existing past performance evaluation reports] as initially presented, offered enough differentiation from a performance risk standpoint," given the awardee's substantial confidence rating and the protester's satisfactory confidence rating. *Id.* at 29.

In its comments, the protester primarily responds to the agency's final argument, asserting that the agency erred in crediting Mast's past performance to UDC. Comments at 2-5. The protester also claims that the agency's argument that UDC largely served as a "middle-man" for the majority of its past experience is "entirely unsupported by the record" and is a "post-protest, non-contemporary" evaluation. *Id.* at 5. The protester argues that it "was consistently praised" for this past experience and that the agency had no reasonable basis for simply assigning UDC a rating of satisfactory confidence. *Id.*

An agency's evaluation of past performance, including 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 agency's assessments are unreasonable or inconsistent with the solicitation's evaluation criteria. *Davis Strategic Innovations, Inc.*, B-413305, Sept. 26, 2016, 2016 CPD ¶ 267 at 3.

We first note that UDC's response regarding the agency's alleged error in crediting Mast's past performance to UDC is based on an incorrect assumption. The agency did not credit this past performance to UDC because the SSA felt that the existing past performance information UDC had volunteered already provided "enough differentiation from a performance risk standpoint." COS/MOL at 29; see AR, Tab 33, UDC Past Performance Evaluation. We also conclude that the protester fails to show that the agency's assessment of UDC's past performance history was unreasonable. The record shows that the evaluators found four of UDC's prior contracts or delivery orders to be both recent and relevant, and that the evaluators documented how these contracts demonstrated "*some* technical/management capabilities the same and similar to those required to perform on the item solicited."⁶ AR, Tab 33, UDC Past Performance

⁶ The protester's claim that the agency's report is based on "non-contempor[aneous]" assessments is unsupported by the record. Though the evaluators did not use the term

Evaluation at 10. Ultimately, we find no reason to disturb the agency's assessment of UDC's past performance. Accordingly, this protest ground is denied.

Additional Strength under Price Factor

The protester also argues that the agency unreasonably failed to assign UDC's proposal a strength under the price factor, given UDC's "offering of limited data rights." Protest at 9. The protester notes that the agency declined this offer, citing the solicitation, which did not request data rights. *Id.* UDC contends that this decision was "unreasonable" and that the agency should have considered the protester's offer of limited data rights "as a strength and an additional value when considering any trade off decisions." *Id.*

The agency responds that the protester's argument "underscores UDC's fundamental misunderstanding regarding the evaluation criteria of this specific RFP and regarding data rights generally." COS/MOL at 35. First, the solicitation established an evaluation scheme for proposed prices based on fairness and reasonableness, not strengths or significant strengths. *Id.* at 36. Moreover, the agency asserts that it did not solicit data rights because "the Army did not want or need a license for the M19, M21, and M23." *Id.*

The protester reiterates its original argument and claims that the agency's response in its report is a "conclusory statement[]" that "seemingly constitutes non-contemporaneous evaluations." Comments at 9.

Our role in resolving bid protests is to review whether a procurement action constitutes a violation of a procurement statute or regulation. 31 U.S.C. § 3552. To achieve this end, our Bid Protest Regulations, 4 C.F.R. §§ 21.1(c)(4) and (f), require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. *See, e.g., Midwest Tube Fabricators, Inc., B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3.*

Here, the solicitation provided for terms like "strength" to be used "in support of the rating of all non-cost/price evaluation [f]actors except [p]ast [p]erformance." RFP § M-2.2. Under the price factor, the solicitation provided for a price reasonableness determination. RFP § M-5.1. We also note the agency's contention that the protester was not offering the agency any rights it did not already possess. As a result, the

"middle-man," the record shows that the evaluators noted that three of UDC's past delivery orders demonstrated UDC's experience with "project management," "administrative aspects of performance," "performing inspections," and "data collection," but did not note similar experience with actual production of munitions. AR, Tab 33, UDC Past Performance Evaluation at 7-9.

protester's claim that the agency should have assigned UDC a strength under the price factor for its offer of limited data rights--rights that the agency already has--fails to state a valid legal or factual basis of protest. Accordingly, this allegation is dismissed.

Source Selection Decision

Finally, UDC contends that the agency's best-value decision was flawed because it was based on alleged evaluation errors. Protest at 8; Comments at 1. Based on our review of the record, and as discussed above, we conclude that the agency's evaluation and source selection decision were reasonable and in accordance with the terms of the solicitation. Here, the record shows that the Army provided a reasonable basis for a tradeoff that identified discriminators between the proposals, most notably the technical and past performance factors, and justified paying Ensign's slightly higher price. See AR, Tab 37, SSDD at 8-10. As this allegation constitutes disagreement with the agency's judgment, this allegation is denied. *Microtechnologies, LLC, supra*.

The protest is denied.

Thomas H. Armstrong
General Counsel