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Decision

Matter of: Salient CRGT, Inc.,

File: B-419759; B-419759.8

Date: July 21, 2021

Lawrence P. Block, Esq., Elizabeth G. Leavy, Esq., William T. Kirkwood, Esq., and Joshua R. Turner, Esq., Reed Smith LLP, for the protester.

Gary J. Campbell, Esq., G. Matthew Koehl, Esq., and Lidiya Kurin, Esq., Womble Bond Dickinson (US) LLP, for Booz Allen Hamilton, Inc.; Elizabeth Jochum, Esq., Todd M. Garland, Esq., and Nora K. Brent, Esq., Smith Pachter McWhorter PLC, for RIVA Solutions, Inc.; David S. Black, Esq., Gregory R. Hallmark, Esq., Amy L. Fuentes, Esq., and Kelsey M. Hayes, Esq., Holland & Knight LLP, for Steampunk, Inc.; James J. McCullough, Esq., Michael J. Anstett, Esq., Anayansi Rodriguez, Esq., and Christopher H. Bell, Esq., Fried, Frank, Harris, Shriver & Jacobson LLP, for Science Applications International Corp., the intervenors.

Andrew Squire, Esq. and Chieko M. Clarke, Esq., Department of Commerce, for the agency.

Christopher Alwood, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's comparative analysis and source selection decisions under the solicitation's source selection scheme, which based award on the highest technically rated proposals with fair and reasonable prices, is denied where the agency's comparative analysis and source selection decisions were reasonable, adequately documented, and consistent with the terms of the solicitation.

DECISION

Salient CRGT, Inc., of Fairfax, Virginia, protests the award of contracts to five offerors¹ under request for proposals (RFP) No. 1333BJ20R00280001, issued by the Department

¹ The agency awarded contracts to three small business offerors, RIVA Solutions, Inc., of McLean, Virginia, Halvik Corporation, of Vienna, Virginia, and Steampunk, Inc., of McLean, Virginia; and two other offerors, Booz Allen Hamilton, Inc. (Booz Allen), of McLean, Virginia, and Science Applications International Corporation (SAIC), of Reston, Virginia. Agency Report (AR), Tab D12, Salient Debriefing at 1.

of Commerce, U.S. Patent and Trademark Office (PTO), for information technology (IT) development, modernization, enhancement, operations, and maintenance services in support of both legacy and modernized PTO software products, referred to by the agency as the business oriented software solutions (BOSS) procurement. Salient contends that the agency's comparative analysis of proposals and source selection decisions were inconsistent with the solicitation's evaluation scheme.

We deny the protest.

BACKGROUND

On May 29, 2020, the agency issued the RFP under the commercial item procedures of Federal Acquisition Regulation (FAR) part 12, seeking proposals to provide services, primarily in the form of Agile teams, in support of development, modernization, enhancement, operations, and maintenance of PTO IT products. AR, Tab A17, RFP at 7;² Contracting Officer's Statement (COS) at 2. The RFP contemplated the award of multiple indefinite-delivery, indefinite-quantity (IDIQ) contracts with 10-year ordering periods. *Id.* The solicitation advised offerors that the PTO intended to award at least five IDIQ contracts at a ratio of 3:2 for small to large businesses, representing a 60 percent small business set-aside goal for prime contract awardees. *Id.* at 78.

The RFP provided for award to the highest technically rated proposals with fair and reasonable prices, considering four non-price evaluation factors, in descending order of importance: (1) small business participation, (2) technical approach, (3) past performance, and (4) program management and staffing approach. *Id.* at 78-79.

To evaluate the small business participation factor, the agency would assess all large business offerors' small business participation plans and small business subcontracting plans. *Id.* at 79-80. The agency would evaluate the small business participation plans to determine the extent of an offeror's proposed participation and commitment to use small businesses in the performance of the BOSS procurement. *Id.* at 80. In this regard, the RFP specifically provided that proposals "with a higher total percentage of work to be performed by small businesses would be rated more favorably." *Id.* at 80. The agency would evaluate small business subcontracting plans to ensure that the plans met all requirements of FAR clause 52.219-9, Small Business Subcontracting Plan, and proposed to meet or exceed the Department of Commerce's 2020 subcontracting goals. *Id.* The RFP provided that the agency would assign each large offeror's small business participation plan an adjectival rating of either satisfactory or unsatisfactory. *Id.* at 79.

The agency was to evaluate proposals under the technical approach factor considering the offeror's proposed approaches to agile development; system and software development; and system tests and delivery. *Id.* at 81. The RFP provided that the

² The agency amended the RFP twice. All citations to the RFP in this decision are to the conformed version issued as part of amendment 0002.

agency would assign each offeror's technical approach an adjectival rating of superior, satisfactory, or unsatisfactory. *Id.* at 79.

The agency was to evaluate proposals under the past performance factor by considering past performance information that it deemed recent and relevant to determine the likelihood that the offeror would successfully perform the contract. *Id.* at 81-82. Past performance from prime offerors, joint venture members, and proposed subcontractors could be considered. *Id.* at 82. The RFP defined recent past performance as work ongoing or completed during the three years prior to the solicitation's due date for proposals. *Id.* The RFP specified that the agency would consider an offeror's past performance to be relevant if it met certain size, scope, and complexity requirements.³ *Id.* The RFP provided that the agency would assign each offeror's technical approach an adjectival rating of superior, satisfactory, neutral, or unsatisfactory. *Id.* at 79.

With regard to the program management and staffing approach factor, the agency would evaluate proposals to determine whether they met or exceeded the contract requirements from the performance work statement. *Id.* at 82. In its evaluation, the agency was to specifically consider the proposed program management team, the offeror's approach to identified types of risk, how well the offeror's approach promotes collaboration and manages interdependencies with agency staff and other contractors, the offeror's approach to task order transitions, and the proposed staffing approach. *Id.* at 82-83. The RFP provided that the agency would assign each offeror's program management and staffing approach an adjectival rating of superior, satisfactory, or unsatisfactory. *Id.* at 79.

The agency was to evaluate proposed labor rates and their associated build-up elements for each labor category to determine if they were fair and reasonable. *Id.* at 83. The RFP did not specify how the agency would determine the highest technically rated proposals. However, the source selection plan (SSP) provided that the agency would utilize the mathematical transitive property⁴ when conducting the comparative

³ With regard to size, relevant past performance was required to meet a size standard of no less than \$1 million for a 12-month period of performance. RFP at 82. With regard to scope, relevant past performance would include a contract summary similar in scope "to one or more [of] the services and related items listed in the BOSS PWS [performance work statement] Section 3." *Id.* With regard to complexity, the RFP required that an offeror's past performance collectively reference contracts and orders that involve Agile development, automated testing, development and operations or development, security, and operations services, and operation and maintenance support services. *Id.*

⁴ The transitive property of equality can be expressed as: if $a = b$ and $b = c$, then a must equal c .

analysis of proposals. AR, Tab B04, SSP at 19.⁵ In this regard, the SSP specified that if the evaluation team determined that “offeror A represents a better value than offeror B and offeror B represents a better value than offeror C, then the team can reasonably conclude that offeror A represents a better value than offeror C without conducting a head-to-head comparative analysis.” *Id.*

The deadline for the submission of proposals was July 30, 2020. RFP at 1. On or before the July 30 due date, the agency received 24 timely proposals. COS at 2. After the initial evaluation of proposals, the agency conducted a best-value comparative analysis to identify the three highest technically rated small business proposals. *Id.* at 11. The contracting officer (CO) explained how the agency performed this analysis as follows:

The ‘small businesses’ best value analysis began with the CO conducting a cursory assessment of all the consensus evaluation summaries (*i.e.* ratings and types and number of findings) to identify a ‘control’ offeror. The ideal ‘control’ offeror would allow the evaluation team to identify the three highest technically rated small businesses with the fewest possible number of vendor-to-vendor comparisons. With this in mind, the CO identified Agile Gov, Halvik, and Steampunk as candidates to be used as the ‘control’ offeror. Ultimately, from the three candidates identified, the CO selected Agile Gov LLC, as it was the first offeror listed, as the ‘control’ offeror for comparison purposes. The evaluation team then conducted the vendor-to-vendor comparisons by comparing Agile Gov as the ‘control’ offeror to all other small business offerors.

Id. at 11.

After identifying the three highest technically rated small business proposals with a fair and reasonable price, the agency conducted another best-value comparative analysis with all remaining offerors, both small and large, including Salient. *Id.* The contracting officer identified SAIC’s proposal as the large business control proposal. *Id.* As part of its second best-value comparative analysis, the evaluators found that SAIC’s proposal was higher technically rated than the protester’s. AR, Tab B10, Best-Value Comparative Analysis, tab “19v20”. As a result of the second comparative analysis, the evaluation team identified Booz Allen and SAIC as having the highest technically rated non-small business proposals with fair and reasonable prices. COS at 12.

⁵ The agency amended the SSP once. Citations in this decision are to the amended SSP dated September 29, 2020.

The agency evaluated the large business awardees' and the protester's proposals as follows:

| | Salient CRGT | Booz Allen | SAIC |
|---|---------------------|---------------------|---------------------|
| Small Business Participation | Satisfactory | Satisfactory | Satisfactory |
| Technical Approach | Superior | Superior | Satisfactory |
| Past Performance | Satisfactory | Superior | Superior |
| Program Management and Staffing Approach | Satisfactory | Superior | Superior |
| Price | Fair and Reasonable | Fair and Reasonable | Fair and Reasonable |

AR, Tab B10, Best-Value Comparative Analysis, tab "Evaluation Summary."

The source selection authority (SSA) independently evaluated the proposals and reviewed the evaluation team's findings, including the consensus evaluation report, the price evaluation report, the best value comparative analysis document, and the award recommendation memorandum. AR, Tab B12, Source Selection Decision Document (SSDD) at 4. The SSA concurred with the findings of the evaluation team and selected the proposals submitted by Booz Allen, SAIC, RIVA, Halvik, and Steampunk for award. *Id.* at 6.

On April 2, 2021, the PTO notified Salient that it had not been selected for award. COS at 14. Salient timely requested a debriefing, which the agency provided on April 12. *Id.*; AR, Tab D12, Salient Debriefing. On April 19, Salient filed the instant protest.

DISCUSSION

Salient challenges the agency's comparative analysis of proposals and source selection decision as inconsistent with the terms of the solicitation, alleging that it gave undue weight to the past performance factor and the program management and staffing factor.⁶ Protest at 6-8; Comments & Supp. Protest. In this regard, the protester first contends that the agency unreasonably found SAIC's proposal to be higher technically rated than Salient's due to improper inflation of the importance of the past performance factor and the program management and staffing factor. Comments & Supp. Protest at 3-4.

⁶ Salient raises other collateral issues to those discussed in this decision. While our decision does not address every variation of every issue, we have considered the arguments and find that none provides a basis to sustain the protest. Salient also challenged the agency's evaluation of its proposal under the past performance factor, but later withdrew this protest ground. See Comments & Supp. Protest at 1, n.1.

The protester points to a statement in the solicitation that the evaluation factors were listed in descending order of importance, arguing that the technical approach factor--the second most important factor--could not have been overshadowed by the third and fourth most important evaluation factors, even when combined. *Id.* at 3. Notably, the protester does not allege that any aspect of the agency's underlying evaluation, including assessed strengths and weaknesses, was unreasonable, arguing instead that the agency unreasonably weighted evaluation factors when conducting its comparative analysis of proposals. *Id.* at 4.

The agency responds that its evaluation and source selection decision reasonably applied the correct relative weights of the evaluation factors in accordance with the RFP. Memorandum of Law (MOL) at 29-30. The agency contends that it properly found SAIC's proposal to be higher technically rated than Salient's because the relative benefits identified in SAIC's proposal under the most important factor, small business participation, as well as under the past performance factor, and the program management and staffing approach factor, outweighed the relative benefits identified in Salient's technical approach. *Id.* at 33.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. Rather, we will review the record to determine whether the agency's evaluation and source selection decision was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. *AECOM Mgmt. Servs., Inc.*, B-417639.2, B-417639.3, Sept. 16, 2019, 2019 CPD ¶ 322 at 9. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. *Vertex Aerospace, LLC*, B-417065, B-417065.2, Feb. 5, 2019, 2019 CPD ¶ 75 at 8.

As noted above, the RFP provided that the agency was to consider four non-price evaluation factors, in descending order of importance: (1) small business participation, (2) technical approach, (3) past performance, and, (4) program management and staffing approach. RFP at 78-79. Also, the RFP specifically provided that, under the small business participation factor, proposals "with a higher total percentage of work to be performed by small businesses would be rated more favorably." *Id.* at 80.

Despite the protester's focus on SAIC's higher rating under the past performance factor, and the program management and staffing approach factor, the record demonstrates that the agency also evaluated SAIC's proposal more favorably than Salient's under the small business participation factor.⁷ Salient proposed that 27 percent of work under the

⁷ Salient repeatedly notes that its proposal was assessed the same adjectival rating as SAIC's under the small business participation factor, but does not discuss the relative benefits the agency assessed for the proposals' differing levels of proposed small business participation. See, e.g., Comments & Supp. Protest at 3. To the extent the

contract would be performed by small businesses, while SAIC proposed that 36 percent of work under the contract would be performed by small businesses. AR, Tab D01, Salient Small Business Participation Proposal Narrative at 1; AR, Tab C44, SAIC Small Business Participation Proposal Narrative at 1. When comparing Salient's and SAIC's proposals, the agency found that "both vendors proposed a small business participation rate that significantly exceeds" the 10 percent minimum required by the solicitation, but that the "approach proposed by SAIC provides greater benefit to the government." AR, Tab B10, Best-Value Comparative Analysis, tab "19v20."

The agency's contemporaneous evaluation record reflects the agency's in-depth consideration of the relative merits of SAIC's and Salient's proposals under the other non-price factors, including the various benefits reflected in Salient's technical approach with regard to the Agile development process, and system and software development. See *id.* The record further documents the agency's evaluation of specific benefits identified in the assessment of SAIC's proposal under the past performance, and the program management and staffing approach factors. *Id.*; AR, Tab B07, Past Performance Consensus Evaluation; AR, Tab B09, Program Management and Staffing Approach Consensus Evaluation.

Based on our review of the record, we find the agency's evaluation and source selection decision unobjectionable here. As noted above, the protester does not challenge the agency's evaluation judgements underlying its ratings, but simply its application of the relative weights of the evaluation criteria in the comparative analysis of proposals. We find the agency's assessment to be consistent with the evaluation criteria. Specifically, we conclude that the agency reasonably could find SAIC's proposal to be higher technically rated than Salient's where the agency evaluated SAIC's proposal as providing more benefit to the agency under first, third, and fourth most important evaluation factors, as compared to Salient's more beneficial approach under the second most important evaluation factor.⁸ Salient has not shown that the agency's judgements

protester is challenging the agency's consideration of the relative advantages of the two equally rated small business participation factors, we note that adjectival ratings are merely guides for intelligent decision making in the procurement process, and source selection officials are required to consider the underlying bases for ratings, including the advantages and disadvantages associated with the specific content of competing proposals. *CAMRIS Int'l, Inc.*, B-416561, Aug. 14, 2018, 2018 CPD ¶ 285 at 4.

⁸ Notably, Salient's arguments under a separate ground of protest discussed below support the reasonableness of the source selection decision here. Salient argues that the agency disregarded the stated evaluation scheme when comparing SAIC's and Booz Allen's proposals, which were assigned equal adjectival ratings under the small business participation factor. Comments & Supp. Protest at 6-7. In this instance, Salient contends that the RFP's evaluation scheme required the agency to give SAIC's proposal, which received the highest small business participation rate, a higher technical rating because the small business participation factor is the most important

were inconsistent with the stated evaluation criteria or otherwise unreasonable.⁹ We deny this ground of protest.

Next, the protester challenges the agency's comparative analysis of proposals, including the use of the transitive property to avoid comparing all proposals head-to-head. Comments & Supp. Protest at 5-9. In this regard, the protester asserts that the agency's comparison of SAIC's and Booz Allen's proposals unreasonably found Booz Allen's proposal to be higher technically rated than SAIC's. *Id.* at 6-7. As a result of this alleged error, Salient argues, the agency unreasonably failed to perform a necessary direct comparison between Salient's and Booz Allen's proposal, which Salient argues should have resulted in its proposal being selected for award. *Id.* at 7. The protester contends that the agency's selection decision ignored the evaluation scheme where it found Booz Allen's proposal to be more highly rated despite having been evaluated less favorably under the small business participation factor than SAIC's or Salient's proposals. *Id.* at 6.

While source selection officials are required to evaluate proposals and make a reasoned source selection decision, our Office has found the "indirect" comparison of proposals to be unobjectionable. *DMS Int'l*, B-409933, Sep. 19, 2014, 2014 CPD ¶ 278 at 5. Specifically, we have found transitive analysis of evaluated proposals to be reasonable where the record shows the agency took into account all the advantages offered by the proposals. See *Client Network Serv's, Inc.*, B-297994, Apr. 28, 2006, 2006 CPD ¶ 79 at 9 ("Since the SSA determined that QSS's proposal was a better value than CNSI's, and that CSC's was a better value than QSS's, we think it follows that the agency effectively found that CSC's proposal was a better value than CNSI's, even without a direct comparison of the two.")

evaluation factor. *Id.* Regardless of the merit of the argument, Salient does not explain why this interpretation of the evaluation scheme, which it uses to challenge the agency's award to Booz Allen, does not apply to its similarly situated proposal when compared to SAIC's.

⁹ Further, even if the agency had evaluated the offers as equal under the small business participation factor, which it did not, Salient has failed to demonstrate that the agency would have been unreasonable to value the combined benefits of SAIC's past performance and proposed program management and staffing approach more than the benefits of Salient's technical approach. The mere fact that an agency's source selection decision turns on an evaluation consideration that is designated as less important is not inherently objectionable since there is no requirement that the key award discriminator be the most heavily weighted factor. See *KIRA Inc.*, B-287573.4, B-287573.5, Aug. 29, 2001, 2001 CPD ¶153 at 6.

Here, the record indicates that Booz Allen's relatively less favorable evaluation under the small business participation factor was taken into account in the source selection. When comparing SAIC's and Booz Allen's proposals, the agency found that:

While factor 1 [small business participation] is more important than all other factors, the evaluation team considers that the significantly greater benefit from [Booz Allen]'s technical approach outweighs the combined greater benefit from SAIC's small business participation approach and lower risk from SAIC's program management and staffing approach.

AR, Tab B10, Best-Value Comparative Analysis, tab "19v03".

The SSA agreed with the evaluators and determined that Booz Allen's advantages under the technical approach factor more than offset the advantages of SAIC's proposal. AR, Tab B12, SSDD at 4.

Regardless, the protester maintains that its proposal is higher technically rated than Booz Allen's and should have been selected for award. Comments & Supp. Protest at 7. Salient notes that its and Booz Allen's proposals were assessed the same adjectival rating under the technical approach factor, that Booz Allen's proposal was assessed higher ratings for the past performance factor and the performance management and staffing approach factor, and that Salient's small business participation factor was evaluated to be more advantageous than Booz Allen's. *Id.*; see also AR, Tab B10, Best-Value Comparative Analysis, tab "Evaluation Summary". Salient argues that, because the solicitation's evaluation scheme established that the small business participation factor was the most important factor, Salient's advantage under that one factor should have outweighed Booz Allen's advantages under less important factors. Comments & Supp. Protest at 7.

As noted above, the mere fact that an agency's source selection decision turns on an evaluation consideration that is designated as less important is not inherently objectionable, since there is no requirement that the key award discriminator be found under the most heavily weighted factor. See *KIRA Inc.*, B-287573.4, B-287573.5, Aug. 29, 2001, 2001 CPD ¶153 at 6. It is well-established that adjectival ratings are merely guides for intelligent decision making in the procurement process. *CAMRIS Int'l, Inc.*, B-416561, Aug. 14, 2018, 2018 CPD ¶ 285 at 4. Source selection officials are required to consider the underlying bases for ratings, including the advantages and disadvantages associated with the specific content of competing proposals. *General Dynamics, Am. Overseas Marine*, B-401874.14, B-401874.15, Nov. 1, 2011, 2012 CPD ¶ 85 at 10. Here, Salient relies heavily on the adjectival ratings to presume equality under certain evaluation factors, without considering the underlying bases for the ratings. See Comments & Supp. Protest at 7 ("[Booz Allen] and Salient CRGT received the same rating for [the technical approach] Factor" without further consideration of the underlying advantages of the proposals).

However, the record demonstrates that, despite Salient's characterization of the technical approaches in the two proposals as being equal in rating, the agency considered Booz Allen's proposed technical approach to "significantly exceed the solicitation requirements in a manner that" benefitted the government. AR, Tab B06, Technical Approach Consensus Evaluation, tab "03F2." The agency assessed a strength to Booz Allen's technical approach under all but one of the PWS requirements that were evaluated as part of the technical approach factor. *Id.* The agency also noted in the comparative analysis against SAIC that Booz Allen's variety of strengths under the technical approach factor provided a significantly greater benefit. AR, Tab B10, Best-Value Comparative Analysis, tab "19v03."

On the other hand, while the agency also found Salient's technical approach "significantly exceeded the solicitation requirements," most of its assessed strengths were under a single evaluated PWS requirement. AR, Tab B06, Technical Approach Consensus Evaluation, tab "20F2." When similarly compared to SAIC's proposal, the agency found that Salient's technical approach provided an overall benefit but not "significantly" in the same way Booz Allen's technical approach had. AR, Tab B10, Best-Value Comparative Analysis, tab "19v20." Specifically, the agency noted that the proposals were evaluated as providing relatively equal benefit in terms of proposed Agile development; that Salient provided a greater benefit in the area of system and software development; and that SAIC provided a greater benefit in the area of system test and delivery. *Id.*

In short, the agency clearly documented that it considered Booz Allen's technical approach to provide a much greater benefit than Salient's, and the protester has not demonstrated why the evaluation scheme would not allow a significantly more advantageous technical approach to offset more minor advantages in the more heavily weighted small business participation factor. Given our conclusion, above, regarding the reasonableness of the agency's conclusion that SAIC's proposal was higher technically rated than Salient's proposal, we see no basis to question the agency's determination that Booz Allen's proposal was also higher technically rated than Salient's. Salient does not identify, and our review of the record does not find, any distinguishing aspect of either Salient's or Booz Allen's proposal that the agency failed to consider. We deny this ground of protest.

The protest is denied.

Thomas H. Armstrong
General Counsel