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Decision

Matter of: Gritter Francona, Inc.

File: B-420140.2; B-420140.4

Date: December 22, 2021

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DIGEST

1. Protest objecting to agency's evaluation of protester's proposal is denied where the agency reasonably evaluated the proposal consistent with the stated evaluation criteria.
 2. Protest challenging source selection authority's upgrade of awardee's past performance rating is dismissed as untimely where the protester waited more than 10 days after it knew, or should have known, its basis for protest to raise this argument.
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DECISION

Gritter Francona, Inc. (GFI), a small business located in Rockville, Maryland, protests the award of a contract to GC Associates, LLC (GCA), a small business located in Arlington, Virginia, under request for proposals (RFP) No. HT001120R0003, issued by the Department of Defense, Defense Health Agency (DHA), for program management support. The protester asserts that the agency conducted an unreasonable evaluation of proposals and improperly awarded the contract on a lowest-priced, technically acceptable basis.

We deny the protest in part and dismiss the protest in part.

BACKGROUND

On May 13, 2020, DHA issued the solicitation seeking program management support for the Director of DHA and the Deputy Assistant Secretary of Defense for Health

Services and Policy Oversight, as well as administrative and records management support for DHA's Arlington, Virginia office.

The RFP anticipated the award of a contract on a best-value tradeoff basis considering the following factors: technical, past performance, and price. Agency Report (AR), Tab 1, RFP at 57. Under the solicitation's evaluation criteria, the technical evaluation factor was more important than past performance. *Id.* In addition, both non-price factors, when combined, were more important than price. *Id.* The solicitation provided that as the range of technical merit narrows, the price factor would become more significant. *Id.*

The technical factor was comprised of five subfactors: technical approach, key personnel, transition plan, quality control approach, and limitation on subcontracting. *Id.* at 59-60. The technical approach subfactor was to be evaluated with an adjectival rating (outstanding, good, acceptable, marginal, or unacceptable), while the other subfactors were to be evaluated as either acceptable or unacceptable. AR, Tab 36, RFP amend. 3 at 14-17.

The evaluation of the technical approach subfactor would consider the adequacy of the workforce size, in terms of labor hours and the adequacy of the workforce skill mix to perform the full scope of work described in the performance work statement. *Id.* at 14. The evaluation would also consider the degree to which the offeror's technical approach demonstrates an understanding of, and the capability to perform, certain program management requirements. *Id.* at 14-15.

The RFP contemplated that the agency would make its tradeoff by first comparing offerors under the technical approach subfactor (assuming the proposals being compared were rated acceptable under the other subfactors), the past performance factor, and price. *Id.* at 19. Where the relatively better value proposals could not be distinguished from the other proposals, the solicitation permitted the agency to consider "adverse evaluation comments" under the transition plan, quality control approach, and limitation on subcontracting subfactors. *Id.* As the key personnel subfactor evaluation would only document deficiencies, the RFP stated that an acceptable rating under that subfactor would "present[] no useful information for trade-off comparison." *Id.*

The agency received 12 proposals by the June 22 closing date. Contracting Officer's Statement (COS) at 7. On April 5, 2021, the contracting officer established a competitive range of nine proposals.

For the evaluation of GFI, the source selection authority (SSA) removed a strength assessed by the source selection evaluation board (SSEB) under the technical approach subfactor. In this respect, the SSEB credited GFI's proposal with a strength for its approach under performance work statement (PWS) section 5.10.3 for identifying data quality errors and notifying the appropriate point of contact as necessary for fixing the errors. AR, Tab 49, Source Selection Decision Document (SSDD) at 14. The SSA concluded, however, that this approach merely met requirements and was not materially

different from the plans proposed by the other offerors. *Id.* Due to the removal of this strength, the SSA lowered GFI's technical factor rating to acceptable from the rating of good assigned by the SSEB.

For the evaluation of GCA, the SSA disagreed with the SSEB's assignment of a limited confidence rating for GCA's past performance, which was based on the offeror's lack of relevant past performance. *Id.* at 11-12. In this respect, GCA's five submitted past performance efforts were all rated as only somewhat relevant. *Id.* The SSA concluded that this lack of relevant past performance merited a neutral confidence rating under the solicitation's evaluation scheme rather than a limited confidence rating. *Id.*

Ultimately, all nine proposals were evaluated as acceptable under the technical factor and each of its subfactors, with GCA and GFI rated as follows:

	Technical	Past Performance	Price
GCA	Acceptable	Neutral	\$26,188,214
GFI	Acceptable	Satisfactory	\$33,405,351

Id. at 18.

The SSA conducted eight separate best-value tradeoffs of each offeror relative to the lowest priced offeror, GCA, ultimately concluding that GCA's proposal provided the agency with the best value.

For the tradeoff between GCA and GFI, the SSA reviewed the evaluation of the two proposals and concluded that GFI's "technical proposal and more relevant past performance" did not offset its higher price. *Id.* at 23.

This protest followed.

DISCUSSION

GFI argues that the agency unreasonably evaluated GFI's technical proposal by failing to credit meritorious features and by removing a strength assessed by the SSEB. The protester also asserts that the agency improperly upgraded GCA's past performance rating from limited confidence to neutral confidence. The protester further contends that the agency improperly converted the competition to award based on the lowest-priced, technically acceptable proposal, which led to an unreasonable best-value tradeoff.

While we do not address every argument raised by the protester, we have reviewed each argument and find no basis to sustain the protest.

Technical Evaluation

The protester argues that DHA unreasonably downgraded its proposal under the technical approach factor by not crediting areas that exceeded the RFP requirements and by removing a strength for GFI's plan to monitor data quality in all program-related systems. With respect to the first argument, the protester argues that its technical proposal "reflected superior services, capabilities, and experience that easily warranted" a higher technical rating. Protest at 11. The protester specifically notes aspects of its proposal that exceeded solicitation requirements under what it labels the nine "sub-subfactors," *i.e.*, areas outlined under the evaluation criteria for the technical approach subfactor. *Id.* at 13. In particular, the protester touts the experience and understanding of its subcontractor, the incumbent contractor for this effort.

An agency's judgment of whether to assess 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. *Raytheon Co.*, B-417935 *et al.*, Dec. 13, 2019, 2020 CPD ¶ 6 at 7. In this respect, agencies are not required to assign strengths for aspects of proposals that merely meet the requirements of the solicitation. *Enterprise Services, LLC et al.*, B-415368.2 *et al.*, Jan. 4, 2018, 2018 CPD ¶ 44 at 8. Moreover, it is not our Office's role to independently reevaluate proposals and assign strengths where the agency did not. See *MetroStar Sys., Inc.*, B-419890, B-419890.2, Sep. 13, 2021, 2021 CPD 324 at 13 (*citing Sapiant Gov't Servs., Inc.*, B-410636, Jan. 20, 2015, 2015 CPD ¶ 47 at 3).

Here, we find that the agency reasonably concluded that GFI's technical proposal met, but did not materially exceed, the RFP requirements. In this respect, in its agency report, the agency responded to each proposal feature cited by the protester and explained why the proposed approach merely met the applicable requirement. The protester failed to substantively respond to these points within its comments on the agency report.

For example, the protester argued, within its initial protest filing, that GFI's proposed approach for the review of program performance (called for under PWS paragraph 5.4.2) demonstrated the GFI team's understanding of program goals and metrics, and provided a detailed approach to performing this work. The protester asserted that the approach set forth "a logical, understandable, and executable six-stage process that takes into account all of its iterations and idiosyncrasies of staffing and coordinating policy issuance changes driven by program performance outcomes, which is currently used by the GFI team." Protest at 16. GFI asserted that these "capabilities and knowhow" exceeded requirements "in a way that will be advantageous to the [g]overnment" and therefore merited a strength. *Id.* at 17 (*quoting* RFP at 14 (definition of a strength)).

The agency responded to this argument in the agency report by noting that GFI's approach demonstrated that it met the applicable PWS requirement. That requirement called for the review of program performance against established goals and other

indicators, and the development of recommended courses of action based upon “thorough operational research and statistical analysis of the impact, advantages, disadvantages, and cost.” AR, Tab 2, PWS at 14. The agency further noted that the protester had failed to support its contention that GFI’s approach exceeded requirements, beyond simply restating the content of its proposal and citing the fact that GFI was teamed with the incumbent. The agency found that simply teaming with the incumbent did not entitle GFI to a strength.

In its comments, the protester did not respond to these assertions beyond stating that its protest “includes objective details of its proposal that were not given proper credit as part of the [best-value] tradeoff process.” Comments at 7. In the absence of a substantive response explaining how GFI’s proposal, including its approach to the review of program performance, exceeded solicitation requirements, we conclude that this argument does not rise beyond disagreement with the agency’s evaluation judgment.

The protester also objects to the SSA’s removal of the strength assigned by the SSEB for GFI’s plan to monitor data quality. The protester asserts that the agency should have assigned GFI’s proposal a strength for this approach.¹ In this respect, the SSEB credited GFI with a strength for proposing a “proven method for data quality management,” noting that GFI’s five-step model “is a strength and should ensure more than successful completion of the task.” AR, Tab 47, SSEB Report at 13. GFI’s five-step approach consisted of “1) identification of errors, 2) determination of logic checks, 3) work with stakeholders, 4) follow up and escalate errors, and 5) report on status of error resolution.” *Id.* The SSEB noted that GFI’s approach of using “automated solutions to ensure data quality will ensure that data errors are quickly identified and reported to the respective [s]takeholder.” *Id.*

The SSA disagreed with the assessment of this strength, finding that the information in GFI’s proposal provides a “top level basic understanding” of the processes proposed that merely met the RFP requirements. AR, Tab 49, SSDD at 14. The SSA noted that the other offerors proposed similar approaches which also involve steps for the identification of errors and their causes, resolution, notification, follow up, reporting, and data improvement. *Id.* The SSA further explained that given the similarity in

¹ To the extent that the protester separately challenges the removal of the strength as procedurally unreasonable or a violation of procurement regulations in its own right, we find that such a challenge would be untimely. In this respect, the protester did not discuss the removal of this strength until it filed its November 1 comments and supplemental protest, which was filed more than 10 days after it first learned of the removal of the strength via receiving a copy of the SSDD on October 19. Since the protester’s initial protest filing argued that GFI’s proposal warranted a strength for its proposed data plan, however, we will consider the reasoning employed by the SSEB in assessing this approach as a strength in our determination of whether GFI’s proposal was entitled to a strength in this area.

approaches proposed by the offerors, the agency was concerned that the strength had been disparately applied to GFI. COS at 18.

We find the agency's explanation for removing the strength to be reasonable. While the protester contends that the SSA's analysis "willfully refuses to engage in the required qualitative analysis," Comments & Supp. Protest at 5, we do not agree. In this regard, the SSA qualitatively assessed GFI's data monitoring plan, reaching a reasoned conclusion that the features of the plan did not exceed the relevant PWS requirement for offerors to propose a "comprehensive plan to identify data quality errors and notify the . . . point of contact, as necessary for fixing errors." PWS at 16. The SSA also compared the steps detailed in the protester's proposal and found them to be qualitatively equivalent to the steps proposed by other offerors. While the protester disagrees with these evaluation judgments, ultimately it provides us with no basis, beyond disagreement, to question these judgments.

Past Performance Evaluation

GFI challenges the SSA's decision to change GCA's past performance rating from limited confidence to neutral confidence. In this respect, the protester argues that a neutral confidence rating was to be assigned only where there was no recent/relevant past performance record or where the offeror's past performance record was so sparse that no meaningful confidence record could be reasonably assigned. Comments & Supp. Protest at 15. The protester contends that "the SSEB's and the SSA's joint finding that GC's Past Performance submission had projects that were both recent and somewhat relevant negat[ed] any ability of the Agency to assign a Neutral Confidence rating." *Id.*

We find this argument to be untimely because it was raised, for the first time, in GFI's November 1 comments and supplemental protest. Under our Bid Protest Regulations, protests generally must be filed no later than 10 days after the protester knew, or should have known, its basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Here, GFI was provided with a redacted copy of the SSDD on October 19, as an attachment to an agency's filing submitted during a dispute over the proposed scope of the agency report. The provided document disclosed both the fact that the SSA had changed GCA's past performance rating and the fact that the SSEB had determined that GCA's five past performance efforts were all found to be somewhat relevant. See Agency Response to Document Objection, attach. 1, Redacted SSDD at 11-12. In possession of these facts, we conclude that GFI should have known the basis of its protest, challenging the change in GCA's past performance rating, at that time. Since the protester waited until 13 days later to file its supplemental protest, this protest ground is untimely.

While the protester asserts that the version of the SSDD it received on October 19 was "overly-redacted" and notes that it did not receive the complete agency report until October 22, Supp. Comments at 8, neither of these assertions change that GFI first

knew of its protest basis on October 19.² Nor does the later production of the remainder of the agency report toll the statutory deadline for filing a protest with our Office. *C.f. Vigor Shipyards, Inc.*, B-409635, June 5, 2014, 2014 CPD ¶ 170 at 5 (extension of comments deadline did not extend the 10-day deadline for raising supplemental protest arguments).

Best-Value Tradeoff

Finally, the protester argues that the agency improperly awarded the contract on a lowest-priced, technically acceptable basis and conducted an arbitrary best-value tradeoff. In this respect, the protester contends that the agency failed to conduct a qualitative evaluation of proposals and “relied on mere adjectival ratings to conclude that all proposals were technically equivalent and award to the lowest price [offeror].” Comments & Supp. Protest at 10.

In reviewing an agency’s source selection decision, we examine the supporting record to determine if it was reasonable and consistent with the solicitation’s evaluation criteria and applicable procurement statutes and regulations. *The SI Organization, Inc.*, B-410496, B-410496.2, Jan. 7, 2015, 2015 CPD ¶ 29 at 14. When making tradeoff decisions in a best-value source selection, selection officials have considerable discretion. *Omega Apparel, Inc.*, B-411266, June 26, 2015, 2015 CPD ¶ 205 at 6. An agency may select a lower-priced, lower-rated offeror in a best-value procurement even when the solicitation, as here, states that non-price factors are of greater importance than price, as long as the SSA acknowledges and documents any significant advantages of the higher-priced, higher-rated offer and explains why they are not worth the price premium. *Id.* at 6. The documentation supporting the decision must be sufficient, however, to establish that the SSA was aware of the relative merits and costs of the competing proposals. *General Dynamics-Ordnance & Tactical Sys.*, B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 8.

Here, we find that the agency conducted a qualitative best-value tradeoff that looked beyond adjectival ratings and compared the substantive merits of the competing proposals. For example, the SSA documented the tradeoff between GCA and GFI,

² In addition, the protester filed what it termed a “motion to strike” the agency’s response to GFI’s comments and supplemental comments on the basis that the agency impermissibly responded to both GFI’s new protest grounds and GFI’s comments on the agency report. Motion to Strike at 1. We note, however, that our direction to the agency requested that it “file a response to the protester’s comments and supplemental protest.” Electronic Protest Docketing System Dkt. 22. Our direction to the agency therefore did not limit DHA to responding only to the protester’s supplemental protest. Indeed, DHA’s response to both the supplemental protest and the protester’s comments served to facilitate GAO’s consideration of the issues in this proceeding. In addition, our Office gave the protester the opportunity to respond and address any arguments raised by the agency. In sum, we find nothing improper about the agency’s response filing and see no basis to disregard any portion of that filing.

noting the technical approach of each offeror, “with particular attention to the technical section [from which the removed strength] was assigned and [the] evaluation criteria.” AR, Tab 49, SSDD at 22. In addition, the SSA noted that the two proposals included a different allocation of hours, with GCA proposing a “more efficient use of labor, [which,] although not a strength, provides a greater benefit to the government.” *Id.* at 23. Last, the SSA acknowledged concerns expressed by the evaluation team that GCA’s past performance would not scale up to the level required under the contract, but noted that the RFP evaluation criteria did not permit the assessment of experience and, further, that no fault had been found in GCA’s technical approach or the qualifications of its key personnel. *Id.* Ultimately, the SSA concluded that GFI’s technical proposal and more relevant past performance did not offset its substantially (27.6 percent) higher price. *Id.*

We find this best-value tradeoff process to be reasonable, well-documented, and consistent with the evaluation criteria.

The protest is dismissed in part and denied in part.

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General Counsel