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Decision

Matter of: Valiant Global Defense Services, Inc.

File: B-421550.2; B-421550.5; B-421550.6

Date: June 27, 2023

Aron C. Beezley, Esq., and Lisa A. Markman, Esq., Bradley Arant Boult Cummings LLP, for the protester.

Jason A. Blindauer, Esq., Blindauer Law, PLLC, for Fidelity Technologies Corporation, the intervenor.

Stephen J. Faherty Jr., Esq., and Patrick D. Healy, Esq., Department of the Navy, for the agency.

Michael P. Grogan, Esq., and Evan D. Wesser, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's challenge to the agency's evaluation of its proposal under the technical factor is denied where the evaluation was reasonable and consistent with the terms of the solicitation.
 2. Protest challenging agency's best-value tradeoff decision is denied where the tradeoff was reasonable, sufficiently documented, and consistent with the terms of the solicitation.
 3. Protest alleging that the awardee materially misrepresented the participation of a potential subcontractor is dismissed where the allegation is speculative and based on unsupported evidence.
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DECISION

Valiant Global Defense Services, Inc. (Valiant), of Herndon, Virginia, protests the issuance of a task order to Fidelity Technologies Corporation (Fidelity), of Reading, Pennsylvania, pursuant to request for proposals (RFP) No. N6134022R0029, issued by the Department of the Navy, for flight instructional services. The protester contends the agency's evaluation of its proposal under the technical factor was unreasonable and inconsistent with the terms of the solicitation, and that the best-value tradeoff determination was flawed.

We deny the protest.

BACKGROUND

The agency issued the solicitation on September 14, 2022, under the Navy’s Field Training Support Systems V multiple-award indefinite-delivery, indefinite-quantity (IDIQ) contract, pursuant to the procedures of Federal Acquisition Regulation (FAR) subpart 16.5.¹ Agency Report (AR), Tab 9, RFP at 1. The solicitation contemplated the issuance of a single task order, with fixed-price and cost-reimbursement contract line items, and a 7-month base period of performance and four, 1-year option periods. *Id.* at 4-39. The Navy sought contractor instructional services for naval aviation training at several naval air stations. Contracting Officer’s Statement (COS) at 1. Services will include in-person, one-on-one flight training instruction, and ground and academic instruction using training aircraft, training aircraft simulators, and part-task trainers. *Id.*

The solicitation advised that award would be made on a best-value tradeoff basis, considering two factors: (1) technical; and (2) price. RFP at 93-94. The technical factor had two subfactors: (a) management approach; and (b) staffing approach. *Id.* at 94. The solicitation explained the Navy would “evaluate each Offeror’s Technical Proposal to assess: the adequacy of the proposed approach; whether the proposal contains any perceived benefits; and whether the approach presents any perceived risks.” *Id.* at 95. The agency would assign one of five technical ratings, and one of four technical risk ratings, under the technical factor.² *Id.* at 94. Price would be evaluated for completeness, reasonableness, and realism. *Id.* at 96. The solicitation further advised that the technical factor was significantly more important than price. *Id.* at 94.

The agency received proposals from multiple offerors by the submission deadline. COS at 12-13. The Navy evaluated the proposals of Valiant and Fidelity as follows:

	Valiant	Fidelity
Technical Rating	Acceptable	Outstanding
Technical Risk Rating	Low	Low
Price	\$231,650,135	\$240,398,291

AR, Tab 68, Selection Official’s Decision Document (SODD) at 3.

¹ While the RFP was amended twice, all citations are to the conformed final version of the solicitation. All citations to the record are to the Adobe PDF document page numbers.

² The five technical ratings were outstanding, good, acceptable, marginal, and unacceptable. RFP at 94. The four technical risk ratings were low, moderate, high, and unacceptable risk. *Id.* at 95.

The selection official (SO) concluded that Fidelity's proposal represented the best value to the Navy. *Id.* at 13. In so determining, the SO found that Fidelity's proposal "demonstrated the most clear understanding of the requirements, proposed the best technical approach, has the lowest overall risk, and provides proposal features that, when considered holistically, provide more benefit beyond the minimum requirements, than any other offeror." *Id.* at 10-11. The SO explained that Fidelity's proposal, with eight unique positive attributes, was superior to Valiant's proposal, with only three positive attributes. *Id.* at 11. The SO concluded that Fidelity's superior proposal was worth the 3.78 percent price premium. *Id.* at 11-12. The Navy issued the task order to Fidelity on February 24, 2023. AR, Tab 70, Task Order Award Notice. Following a debriefing, this protest followed.³

DISCUSSION

Valiant principally challenges the Navy's evaluation of its proposal under the technical factor. In this regard, the protester argues the Navy unreasonably failed to assign multiple positive attributes for unique and beneficial aspects of the firm's approach. The protester also challenges the best-value tradeoff decision, contending the Navy failed to sufficiently document its tradeoff decision and did not comply with the solicitation's instructions concerning the relative weight of the factors. For the reasons that follow, we find no basis to sustain the protest.⁴

Technical Evaluation

Valiant argues the agency unreasonably failed to credit its proposal with multiple positive attributes under the technical evaluation factor.⁵ Protest at 19-23; Comments and Second Supp. Protest at 5-21; Supp. Comments at 2-17. The protester contends that "[h]ad the Agency properly recognized these Positive Attributes, Valiant would have

³ Because the estimated value of the issued task order is over \$25 million, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award IDIQ contracts awarded under the authority granted in title 10 of the United States Code. 10 U.S.C. § 3406(f)(B).

⁴ Valiant raises other collateral allegations. Although our decision does not specifically address them all, we have considered each argument and find that none provides a basis on which to sustain the protest.

⁵ The RFP defined a positive attribute as a "[m]eaningful finding in the evaluation that favorably impacts the demonstrated understanding of the requirements, adequacy of approach, perceived benefit(s), or associated risk to performance of the task order. For purposes of this attribute, a perceived benefit is something that can be captured as a contractual requirement during contract performance." RFP at 94.

received a higher technical rating and very well might have received the contract award.”⁶ Comments and Second Supp. Protest at 5.

As noted above, this task order competition was conducted pursuant to FAR subpart 16.5. The evaluation of proposals in a task order competition, including the determination of the relative merits of proposals, is primarily a matter within the contracting agency’s discretion, because the agency is responsible for defining its needs and the best method of accommodating them. *Engility Corp.*, B-413120.3 *et al.*, Feb. 14, 2017, 2017 CPD ¶ 70 at 15; *URS Fed. Servs., Inc.*, B-413333, Oct. 11, 2016, 2016 CPD ¶ 286 at 6. Our Office will review evaluation challenges in task order procurements to ensure that the competition was conducted in accordance with the solicitation and applicable procurement laws and regulations. *Engility Corp.*, *supra* at 15-16. An agency’s judgment that the features identified in the proposal did not significantly exceed the requirements of the solicitation--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. Moreover, an agency is not required to document “determinations of adequacy” or explain in the evaluation record why it did not assess a strength, weakness, or deficiency for a particular item. *Booz Allen Hamilton, Inc.*, B-417418 *et al.*, July 3, 2019, 2019 CPD ¶ 246 at 17. A protester’s disagreement with the agency’s judgment, without more, is not sufficient to establish that an agency acted unreasonably. *Id.*

⁶ The agency asked our Office to dismiss Valiant’s challenges to the Navy’s evaluation of the firm’s proposal under the technical factor because the protester’s allegations “fail to set forth a sufficient legal and factual ground, as required by 4 C.F.R. § 21.1(c)(4),(f).” Req. for Dismissal at 1. In this regard, the Navy argues Valiant failed to adequately address why it believed it deserved positive aspects for various proposal features. Specifically, the agency argues that the protester instead merely notated aspects of its technical solution and failed to tie those proposal features to the evaluation criteria, or otherwise explain how the proposal exceeded the requirements of the RFP. *Id.* at 3-5.

While the protester’s initial allegations were not thoroughly developed, we found that they included the minimum factual and legal predicates necessary to state valid bases of protest. See GAO Notice of Resp. to Req. for Dismissal, Apr. 11, 2023. The agency then requested that we dismiss Valiant’s more-substantiated allegations presented in its comments on the agency report as untimely piecemeal presentation of protest allegations (see Agency Req. for Dismissal, May 9, 2023). Though again a close call, the protester’s more fulsome presentation of its allegations in the comments on the agency report are sufficiently related to the initial protest grounds and were tailored to substantively respond to the agency report so as to not constitute improper piecemeal development.

As the following illustrative examples demonstrate, we find no basis to object to the agency's evaluation of Valiant's proposal.⁷ As one example, Valiant argues the Navy unreasonably failed to assign a positive attribute to the firm's proposal "where Valiant proposed that program and site management would be able to access [DELETED] through its [DELETED]." Comments and Second Supp. Protest at 6-7. Valiant's proposal explained the [DELETED] was "a [DELETED]" that "serves as our [DELETED]." AR, Tab 47, Valiant Technical Proposal at 19. Similarly, the protester's proposal explained that its [DELETED] "provides the gateway for authorized users to access a [DELETED]." *Id.* at 9. The protester further explained that its "[DELETED]." *Id.* In the protester's view, these proposal features would assist Valiant in managing the project, and would allow for scheduling efficiencies and timesaving. *Id.* at 12-13. The protester contends these features offer a direct benefit to the Navy, specifically, as the solicitation required the agency to consider an offeror's site management approach in its evaluation. See RFP at 88, 95.

In response, the Navy explains that the evaluators specifically considered these proposal features--the [DELETED]--as evidenced in the underlying technical evaluation record, but reasonably determined they did not warrant the assignment of a positive attribute. Supplemental Memorandum of Law (Supp. MOL) at 14; see AR, Tab 64, Valiant Consensus Evaluation Worksheets (CEW) at 1-7 (specifically identifying these specific proposal features as part of Valiant's proposal). Moreover, in response to the protest allegations, the Navy's technical factor team lead provided a statement addressing the agency's evaluation decisions in this regard. See Supp. AR, Statement of Tech. Factor Team Lead at 2-3. He explains that the technical evaluation team (TET) assigned Valiant a positive attribute under the management approach subfactor for the offeror's site management approach, which included a [DELETED]. *Id.* at 2; AR, Tab 64, Valiant CEW at 6. Specifically, the TET noted that this [DELETED] was included in Valiant's [DELETED]. AR, Tab 64, Valiant CEW at 2; AR, Tab 47, Valiant Technical Proposal at 8.

However, the team lead explained that Valiant's proposed [DELETED] did not warrant the assignment of an independent positive attribute. Supp. AR, Statement of Tech. Factor Team Lead at 2. He explains that the offered features "Valiant asserts are not of meaningful substantive value" on this requirement because "much more of the coordination occurs through the Navy's systems" and that "Valiant will only achieve as much schedule efficiency as the Navy system allows." *Id.* at 2-3. That is, the nature of this task order "reduces the utility of contractor systems like the [DELETED]." *Id.* Moreover, the team lead explains that "Valiant's proposal did not provide adequate explanation as to how the [DELETED] would, in light of the required usage of the Navy's

⁷ Given the volume of allegations raised by the protester, we discuss herein only some representative examples. However, we have reviewed each of Valiant's arguments concerning the agency's evaluation under the technical factor and find no basis to sustain the protest. Rather, the record demonstrates that the agency's evaluation was reasonable and in accordance with the terms of the solicitation.

systems, give Valiant the ability to exceed requirements or provide meaningful benefit to the Navy.” *Id.* The protester offers no meaningful rebuttal to the team lead’s arguments. See Supp. Comments at 3-6. As we find reasonable the team lead’s statements concerning why it declined to assign a positive attribute for Valiant’s offered technical features, we find no basis to sustain this allegation.

As another example, the protester argues its proposal warranted the assignment of a positive attribute for its approach to leverage existing personnel to accomplish a low-risk transition. Comments and Second Supp. Protest at 13-14; Supp. Comments at 10-12. Valiant contends that “[a]n offeror’s ability to transition and begin work on the project is clearly a consideration for essentially any solicitation” and that transition was inherent in the agency’s evaluation of how an offeror would manage and effectively execute training operations at a given site. Comments and Second Supp. Protest at 13; see RFP at 95 (the Navy would evaluate an offeror’s site management approach, to include its “approach of how it will facilitate its program manager’s (PM), site managers’ (SM), and alternate site managers’ (ASM) abilities to manage and effectively execute a standardized, responsive, and efficient training operation at each site[.]”). Valiant’s proposal explained its approach to transition the contract, which would include a [DELETED]. AR, Tab 47, Valiant Technical Proposal at 25-26.

However, we find reasonable the agency’s conclusion that Valiant’s transition approach did not warrant the assignment of a positive attribute. First, the agency notes that neither the RFP’s proposal instructions, nor the evaluation criteria, “mention, reference, or encompass a consideration of transition[.]” Supp. AR, Statement of Tech. Factor Team Lead at 6. Indeed, the protester asserts, without any stated justification or explanation, that a low-risk transition was related to the evaluation criteria (or proposal preparation instructions) concerning the management and execution of standardized training across performance locations.⁸

Moreover, even if the solicitation called for an evaluation of an offeror’s transition plan, the technical factor team lead explains that Valiant’s “approach does not represent a unique or appreciable benefit that warrants the assessment of a Positive Attribute.” *Id.* at 7. In this regard, the Navy points out that the RFP “lowers the transition risk by contemplating that the majority of the incumbent personnel will move to the new [task order] via the in-place Collective Bargaining Agreements (CBAs), which were provided as part of the Solicitation.” *Id.* at 6. Thus, in the agency’s view, this stated presumption that the majority of incumbent personnel would transition to the new task order, as well as the required two-month transition overlap period with the previous contractor, already represented a low risk for an unsuccessful transition. *Id.* at 6-7. Valiant’s disagreement

⁸ We note that the solicitation language the protester points to concerns how the agency would evaluate an offeror’s management approach. See RFP at 88, 95. However, Valiant’s discussion of its transition plan is found in its proposal section dealing with its staffing approach, not its site management approach. AR, Tab 47, Valiant Technical Proposal at 25-26.

with the agency's assessment that the firm's transition approach did not warrant the assignment of a positive attribute, without more, does not render the evaluation unreasonable. *The Ginn Grp., Inc.*, B-420165, B-420165.2, Dec. 22, 2021, 2022 CPD ¶ 17 at 9. The protest allegation is denied.

Best-Value Tradeoff

The protester also challenges the agency's best-value tradeoff. In this regard, Valiant contends the Navy's tradeoff gave insufficient consideration to the protester's price advantage, failed to document why Fidelity's proposal was worth the associated price premium, and failed to actually compare the underlying merits of the proposals. Protest at 15-19; Comments and Second Supp. Protest at 2-5. The Navy, in response, argues its tradeoff was reasonable and appropriately documented. MOL 4-8; Supp. MOL at 3-5.

Where, as here, a solicitation provides for issuance of a task order on a best-value tradeoff basis, it is the function of the source selection authority to perform a price/technical tradeoff. *Alliant Enter. JV, LLC*, B-410352.5, B-410352.6, July 1, 2015, 2015 CPD ¶ 209 at 13. An agency has broad discretion in making a tradeoff between price and nonprice factors, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the solicitation's stated evaluation criteria. *Id.* at 14. There is no need for extensive documentation of every consideration factored into a tradeoff decision. FAR 16.505(b)(7); *Lockheed Martin Integrated Sys., Inc.*, B-408134.3, B-408134.5, July 3, 2013, 2013 CPD ¶ 16 at 10. Rather, the documentation need only be sufficient to establish that the agency was aware of the relative merits and costs of the competing quotations and that the source selection was reasonably based. *Id.* A protester's disagreement with the agency's determination, without more, does not establish that the evaluation or source selection was unreasonable. *Engility Corp., supra* at 16.

In the SODD, the SO provided his rationale as to why Fidelity's proposal represented better value to the Navy than Valiant's proposal. The SO first identified positive and negative attributes associated with the proposals.⁹ See AR, Tab 68, SODD at 10. The SO then moved to his comparative analysis, where he clearly compared the differences in approaches between Fidelity and Valiant, and concluded that "Fidelity's proposal is superior to that of Valiant[']s proposal] . . . in its demonstrated understanding of requirements and its adequacy of approach." *Id.* at 11. The SO found that Fidelity's "superiority is worth the \$8,748,156 (3.78 [percent]) price premium over the proposal of Valiant." *Id.* at 11-12.

On this record, we find no basis to conclude the agency's best-value tradeoff was unreasonable or insufficiently documented. As noted above, the technical factor was

⁹ Based on the protest allegations presented by Valiant, the SO's examination of Fidelity's proposal was not produced in the agency's report.

significantly more important than price, and, “[b]ecause Technical is significantly more important than the amount of the price, the selection official is permitted to select an Offeror that has proposed a higher price, if the superiority of that Offeror’s proposal is worth the price premium.” RFP at 94. Here, the SO explained, in detail, why he believed Fidelity’s proposal to be superior. See AR, Tab 68, SODD at 11. Accordingly, on this basis, the SO determined this superiority to be worth the 3.8 percent price premium. *Id.* at 11-12. While the record does not demonstrate that the Navy conducted a point-by-point comparison as to why Fidelity’s myriad technical advantages were worth the additional price, such a detailed examination or explanation is not required. See *Worldwide Info. Network Sys., Inc.*, B-408548, Nov. 1, 2013, 2013 CPD ¶ 254 at 6 (explaining there is no need for extensive documentation of every consideration factored into a tradeoff decision). Here, given the RFP’s weighting of the technical and price factors, and its instruction that the selection official could select a technically superior proposal if that superiority was worth the associated price premium, we cannot conclude the SO’s decision was unreasonable or inconsistent with the solicitation.¹⁰

Alleged Material Misrepresentation and Unequal Treatment

Valiant, in a supplemental protest, argues that Fidelity’s proposal contained a material misrepresentation, which led to the Navy unreasonably and unequally crediting Fidelity’s proposal based on that misrepresentation. In this regard, the protester asserts that Fidelity represented that a subcontractor, Vertex Solutions (Vertex), was part of Fidelity’s team--and the agency credited Fidelity’s proposal for Vertex’s inclusion--despite the fact that Valiant had an exclusive agreement with Vertex. Supp. Protest at 2-4. The protester contends this material misrepresentation impacted the Navy’s evaluation, where Fidelity, but not Valiant, was credited for including Vertex. *Id.* at 4-5. In response to this allegation, the intervenor and agency sought dismissal, asserting that the allegation was speculative and without adequate factual support.

Our Bid Protest Regulations require that a protest include a sufficiently detailed statement of the grounds supporting the protest allegations. 4 C.F.R. §§ 21.1(c)(4), 21.1(f), and 21.5(f). That is, a protest must include a sufficient factual basis to establish a reasonable potential that the protester’s allegations may have merit; bare allegations or speculation are insufficient to meet this requirement. *Ahtna Facility Servs., Inc.*, B-404913, B-404913.2, June 30, 2011, 2011 CPD ¶ 134 at 11.

Here, Valiant’s allegations regarding the contents of Fidelity’s proposal, its representations to the Navy, and the Navy’s evaluation concerning such information, are based on a declaration submitted by a Valiant employee (whom we refer to as “Mr.

¹⁰ Similarly, to the extent the protester argues the tradeoff was insufficiently documented, we disagree. The underlying record demonstrates the SO was aware of the relative merits of the proposals, meaningfully compared those benefits, and determined that Fidelity’s technically superior proposal was worth the associated premium. AR, Tab 68, SODD at 10-11.

X”). See Supp. Protest, exh. 1. Specifically, Mr. X explains that during a phone call with an employee from Vertex (Mr. Y), Mr. Y told Mr. X that Mr. Y “had been informed by an Agency official that Fidelity had included Vertex in its proposal as a team member.” *Id.* at 1. Mr. X explains that Mr. Y relayed that this unnamed agency official “believed Vertex to be part of Fidelity’s team.” *Id.* at 2.

On this record, we conclude that Valiant’s allegations are not supported by a sufficient factual basis. First, the declaration relies on a recollection of a conversation with Mr. Y, which in turn relies on a recollection of a conversation (or other means of communication) held between Mr. Y and an unnamed agency official. Such third-hand information lacks both specificity and any indicia of reliability. See *Triple Canopy, Inc.*, B-400437, Nov. 13, 2008, 2009 CPD ¶ 3 at 7 (finding unreliable the protester’s “declarations [that] consist primarily of what the declarants themselves acknowledge is second and third-hand hearsay from unidentified sources”).

Second, even if we found Mr. X’s declaration to be credible evidence supporting the protester’s argument--which we do not--the agency has presented evidence to refute Valiant’s speculative claims. Specifically, the Navy submitted statements from the technical evaluation factor team lead, the evaluation team chair, and the contracting officer. Agency Resp. to Supp. Req. for Dismissal, May 8, 2023, at 8-10. The statements explain that Fidelity’s proposal contains no “mention or reference” to Vertex, and that “[s]ince Vertex was not in Fidelity’s Technical proposal, the Technical Factor Evaluation Team did not consider Vertex in the evaluation of Fidelity’s proposal or any teaming agreement between Fidelity and Vertex as alleged.” *Id.* at 8. Thus, absent any credible evidence that Fidelity proposed--or that the agency otherwise considered--Vertex as a proposed subcontractor, Valiant’s bare assertions, without more, fail to state a sufficient factual or legal basis of protest. Accordingly, this allegation is dismissed. 4 C.F.R. § 21.5(f).

The protest is denied.

Edda Emmanuelli Perez
General Counsel