



United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** Athena Sciences Corporation

**File:** B-409486; B-409486.2

**Date:** May 14, 2014

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Dan McCaugherty, Athena Sciences Corporation, for the protester. Carol L. O’Riordan, Esq., and Anthony J. Marchese, Esq., O’Riordan Bethel Law Firm, LLP, for TMC Technologies of West Virginia Corporation, the intervenor. Alexander T. Bakos, Esq., Victoria H. Kauffman, Esq., David S. Schuman, Esq., and Amber M. Hufft, Esq., National Aeronautics and Space Administration, for the agency. Nora K. Adkins, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest challenging the agency’s evaluation of the protester’s and awardee’s quotations, as well as the award decision, is denied where the agency’s evaluation and award decision were reasonable and in accordance with the solicitation criteria.
  2. Protest alleging agency bias is denied where protester does not support its allegations with convincing proof, and record does not otherwise reflect bias.
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### DECISION

Athena Sciences Corporation, of Fairmont, West Virginia, protests the issuance of a blanket purchase agreement (BPA) to TMC Technologies of West Virginia Corporation,<sup>1</sup> also of Fairmont, West Virginia, by the National Aeronautics and Space Administration (NASA) under request for quotations (RFQ) No. NNG13459507Q for technical support services. The protester challenges the agency’s evaluation of the vendors’ quotations and the source selection decision, and also alleges that agency officials were biased against Athena.

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<sup>1</sup> The record refers to this firm interchangeably as TMC, TMC2, and TMC<sup>2</sup>.

We deny the protest.<sup>2</sup>

## BACKGROUND

The RFQ was issued on May 3, 2013, and sought quotations from vendors holding General Services Administration, Federal Supply Schedule (FSS) contracts under Schedule 70, General Purpose Commercial Information Technology Equipment, Software, and Services to provide technical expertise support services to NASA's independent verification and validation (IV&V) facility located in Fairmont, West Virginia. RFQ at 94.<sup>3</sup> The solicitation contemplated the award of a single BPA for a 12-month base ordering period and four 12-month options, under which fixed-price and time-and-materials purchase orders will be issued; the maximum value of the BPA orders was \$9.4 million. Id. at 100-101.

The solicitation provided that the BPA would be awarded on a best-value basis considering the following three evaluation factors: (1) technical merit; (2) past performance; and (3) price. Id. at 189. The technical merit factor had three subfactors, which would be scored on a 1000 point scale as follows: (1) technical understanding/approach (425 points); (2) management approach (350 points); and (3) representative task order (RTO) approach (225 points). Id. at 189-190. For purposes of award, the technical merit factor was more important than the past performance factor, which was more important than price. Id. at 189.

The Army received quotations from seven vendors, including Athena and TMC. Agency Report (AR) at 12. Based upon the agency's evaluation of the quotations, the source selection authority concluded that TMC's quotation provided the best value to the agency. In this regard, the source selection authority noted that TMC submitted the highest-scored quotation with the fifth-lowest price, and that Athena submitted the second-highest-scored quotation with the second-lowest price. AR, Tab 13, Source Selection Decision, at 1235, 1240. The source selection authority concluded that the specific strengths in TMC's quotation "more than offset the price premium associated with TMC's total proposed price." Id. at 1241. On January 29, the agency awarded the BPA to TMC.

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<sup>2</sup> Our Office did not issue a protective order in connection with this protest because Athena elected not to retain counsel who could receive access to nonpublic information pursuant to the terms of a protective order. Accordingly, our discussion of the facts of this protest is necessarily general in nature to avoid reference to nonpublic information. Our conclusions, however, are based on our review of the entire record, including nonpublic information provided by the agency to our Office.

<sup>3</sup> The agency report was submitted with Bates numbering; this decision's citations to page numbers in the record are to the Bates-numbered pages.

## DISCUSSION

Athena protests NASA's evaluation of Athena's and TMC's quotations and the agency's award decision. Athena also alleges that agency officials were biased against Athena.<sup>4</sup> Although we discuss only certain representative examples of the arguments raised by the protester, we have reviewed each of the arguments, and find no basis to sustain the protest.<sup>5</sup>

Where an agency conducts a formal competition for the establishment of a BPA, we will review the agency's actions to ensure that the evaluation was reasonable and consistent with the solicitation and applicable procurement statutes and regulations. The Clay Group, LLC, B-406647, B-406647.2, July 30, 2012, 2012 CPD ¶ 214 at 8; OfficeMax, Inc., B-299340.2, July 19, 2007, 2007 CPD ¶ 158 at 5. In reviewing protests of alleged improper evaluations and source selection decisions, it is not our role to reevaluate submissions; rather, we will examine the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. The Clay Group, LLC, *supra*. A protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2.

### Evaluation of Athena's quotation

Athena contends that NASA's evaluation of its quotation was unreasonable. The protester alleges that the agency's assignment of two weaknesses under the

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<sup>4</sup> The protester also withdrew a number of protest grounds, which we do not address in this decision. See Athena Comments (Mar. 25, 2014) at 28.

<sup>5</sup> For example, the protester asserts that NASA failed to follow its source selection methodology, and thus failed to make an award in accordance with NASA's source selection procedures. In this regard, the protester notes that the agency created a draft version of its award recommendation, and subsequently revised the evaluations and recommendations based on additional reviews by legal counsel and technical experts. Supp. Protest (Mar. 10, 2014) at 5-7. The protester contends that because neither the solicitation nor the agency's selection plan provided for the preparation and revision of draft evaluation documents, the award decision could not be based on the revised evaluations. The protester, however, does not point to any law or regulation that prohibits agencies from preparing draft versions of evaluations, or from revising its evaluation judgments prior to the final award decision, and we are not aware of any such prohibitions. This protest issue is dismissed. See Bid Protest Regulations, 4 C.F.R. § 21.5(f) (2014).

technical merit factor was improper because Athena's quotation adequately addressed each of the agency's concerns, and the agency's evaluation failed to follow the solicitation criteria. As explained below, we find that the agency's evaluation of Athena's quotation was reasonable and in accordance with the solicitation criteria.

Athena's first technical merit factor weakness was assigned for its management approach. Athena argues that the agency failed to reasonably evaluate its technical quotation and failed to follow the solicitation criteria in assigning the weakness.

The management approach subfactor required vendors to describe their organizational structure, policies, procedures, and techniques for effectively and efficiently managing the proposed work; to discuss the relationships between technical management, business management, and subcontract management; and to propose a staffing plan that ensures all contract requirements are met. RFQ at 179. The solicitation provided that the agency's evaluation of the vendor's management approach would evaluate the adequacy of the vendor's organizational structure, policies, procedures and techniques proposed to manage the work associated with the contract; the thoroughness and reasonableness of the vendor's discussion of technical management, business management, and subcontract management; and the reasonableness, efficiency, and effectiveness of the vendor's proposed staffing plan to ensure contract requirements are met. Id.

Athena's proposed management approach assigned numerous management tasks to its proposed project manager. AR, Tab 6, Athena Quotation, at 367. In addition to these management responsibilities, Athena's quotation also assigned its project manager technical responsibilities under the RTOs. Id. at 367, 382, 386, 389.

NASA's evaluation of Athena's quotation concluded that the protester's utilization of its project manager did not demonstrate a reasonable, efficient, or effective approach. AR, Tab 12, Evaluation Report, at 1212. The agency found that while the management approach portion of Athena's quotation claimed that only 50 percent of its project manager's time was allocated for work under the RTOs, this amount was inconsistent with its RTO approach response, which indicated that 75 percent of its project manager's time was devoted to technical task order work. Id. The evaluators concluded that the remaining 25 percent of the project manager's time would not be sufficient for the project manager to perform the overall contract management duties identified in the protester's quotation. Id. Athena's quotation was assessed a weakness because its approach increased the risk of unsuccessful contract and task order management. Id.

Athena argues that the agency's assignment of a weakness to its management approach was unreasonable because the agency improperly concluded that its quotation allocated 75 percent of the project manager's time to the technical task order work. Athena asserts that while it did allocate task order work to the project

manager--which is depicted in its RTO approach as 75 percent of the project manager's time--the agency failed to consider that not all of this time was for technical activities. Athena contends that had the agency compared the allocation of the project manager's time in its technical quotation to the breakdown of the project manager's time in Athena's price quotation, NASA would have understood that only 30 percent of the project manager's time was allocated to technical task order work, while 44 percent was allocated for management activities under the RTOs. Thus, Athena asserts that the weakness is unreasonable because the agency did not properly evaluate the allocation of the project manager's time, and instead assumed that all of the work assigned to the project manager under the task orders would be for technical work.

NASA asserts that its assessment of a weakness was reasonable because it was based upon the information in Athena's technical quotation. The agency explains that it was concerned with Athena's ability to provide effective and efficient contract management since Athena's quotation assigned numerous contract management responsibilities to its project manager, and also included technical responsibilities under the task orders. AR at 6.

We think this aspect of the agency's concern was reasonable because, as discussed above, the protester assigned a large number of duties to the project manager for overall contract management that were not related to task order work. The agency's evaluation considered the allocation of the project manager's time as part of its management approach assessment. AR, Tab 12, Evaluation Report, at 1212. The agency found that Athena had proposed its project manager to fulfill both management and technical responsibilities, and that the protester's heavy reliance on one individual for a large array of critical functions would increase the risk of unsuccessful overall contract and task order management. The technical portion of Athena's quotation did not further break down these hours or direct the agency to the price portion of its quotation for further explanation of how the project manager's time was allocated.

To the extent the protester argues that certain of its project manager's task order work should have been understood to encompass management for the overall contract, outside of the task order responsibilities, we do not think that the protester's quotation reflects this allocation of time. In a competitive FSS procurement, it is the vendor's burden to submit a quotation that is adequately written and establishes the merits of the quotation. The Dixon Group, Inc., B-406201, B-406201.2, Mar. 9, 2012, 2012 CPD ¶ 150 at 6.

As a related matter, Athena asserts that the agency's management approach evaluation was unreasonable because the agency failed to follow the solicitation's evaluation criteria. Athena contends that the agency could not consider the allocation of the project manager's time within its management approach because

the allocation of labor hours could only be considered as part of the price evaluation. For the reasons discussed below, we do not agree with the protester.

The solicitation stated that the management approach subfactor evaluation would assess the adequacy of a vendor's organizational structure, policies, procedures and techniques proposed to manage the work associated with the contract; the thoroughness and reasonableness of the vendor's discussion of technical management, business management, and subcontract management; and the reasonableness, efficiency, and effectiveness of the vendor's proposed staffing plan to ensure contract requirements are met. RFQ at 191-192. The agency evaluation of Athena's management approach found that the allocation of its project manager's time to performance of technical requirements on task orders, as reflected in the RTO responses, did not provide a reasonable, efficient, and effective staffing plan that would ensure contract requirements are met. AR, Tab 12, Evaluation Report, at 1212.

While the protester is correct that agencies are not permitted to use unstated evaluation factors, an agency properly may take into account specific matters that are logically encompassed by, or related to, the stated evaluation criteria, even when they are not expressly identified as evaluation criteria. MINACT, Inc., B-400951, Mar. 27, 2009, 2009 CPD ¶ 76 at 3. We think that NASA's consideration of the allocation of the project manager's time was reasonably encompassed within the agency's evaluation of a vendor's management approach. In this regard, the agency reviewed whether Athena's project manager would have sufficient time to manage the contract, task orders, and complete responsibilities assigned as a task order lead. On this record, we conclude that the agency's assignment of this weakness for over-allocating the project manager's time was reasonable.

Athena's second technical merit factor weakness was assigned for its RTO approach. The protester argues that the agency failed to consider information contained within its quotation, which adequately addressed the agency's concerns.

The solicitation required vendors to provide their approaches to three RTOs for evaluation purposes. As relevant here, the task for RTO-3 was software issues and anomaly analysis (SIA). Vendors were required to demonstrate their understanding of the objectives and requirements of each task order, and illustrate the processes, tools, techniques that the vendor would use to accomplish the tasks. RFQ at 181. The vendors were also required to demonstrate their understanding of the technical and management challenges of the work to be performed and the objectives of each effort. In response to each of the three RTOs vendors were to: (1) provide a technical approach, including methods and tools, (2) provide a staffing plan and skill mix, (3) provide for other resources necessary to successfully accomplish the task, (4) identify potential technical and/or managerial challenges and critical issues, including risk identification and approach, and (5) identify lines of communication for each RTO between contractor staff and the IV&V facility staff. Id.

The RFQ also advised that any contractor assumptions should be clearly stated, and explained that assumptions may include the provision of equipment, materials, and data from the government. Id. at 182. The solicitation stated that the agency would evaluate the thoroughness of the vendor's response to the RTO, including technical approach, methods, and tools; the realism of the proposed staffing plan; the realism of the additional resources necessary; the completeness and accuracy of the identification of critical issues; the effectiveness of the lines of communication; and the effectiveness and efficiency of the proposed staff location for the RTO. Id. at 192-193.

Athena's overall SIA approach provided that "[o]n day one, [Athena would] begin implementation of automated latent SIA 'escape' reporting procedures to the SIA Team from IV&V projects through the ORBIT [observation, risk, requirement, backlog, and issue tracking] system." AR, Tab 6, Athena Quotation, at 350. The quotation further detailed that Athena would also use ORBIT to log each root cause analysis, which would be traceable to the parent SIA ORBIT record. Id. at 351. With regard to RTO-3, Athena's quotation stated that it would use the ORBIT tool for SIA and request for action (RFA) workflow automation. Id. at 387. This portion of the quotation also explained that "[o]n day one [Athena would] work with SWAT [software assurance tools] to configure ORBIT according to our approach." Id. at 387. In the assumption section of RTO-3, Athena's provided that its RTO-3 assumptions included "ORBIT changes begin during Phase-In" and "IVVO [IV&V office] attends bi-weekly SIA reviews and accepts RFAs for changes to organizational factors." Id. at 389.

The agency's evaluation of Athena's RTO approach concluded that Athena's RTO-3 approach lacked adequate details concerning its intended use of the ORBIT system and the effect the proposed use would have on other users of that system. AR, Tab 12, Evaluation Report, at 1213. The evaluators determined that "[t]he lack of clarity does not provide the Government confidence in the Offeror's ability to successfully perform RTO-3 elements." Id.

We find that the agency's evaluation of Athena's RTO approach was reasonable given Athena's failure to provide an adequately-detailed explanation of how it intended to use the ORBIT system. The agency explained that it assigned the RTO-3 weakness because the evaluators were concerned that Athena did not understand that its proposed changes to the ORBIT tool would affect users and programs that used ORBIT for purposes other than SIA activities. Specifically, the agency found that Athena's approach failed to recognize that modifications to the ORBIT system would affect multiple IV&V users and functions. AR, Tab 12, Evaluation Report, at 1213; AR at 9-10. The lack of clarity of Athena's proposed modifications to the ORBIT tool, which would begin on day one of the contract, decreased the agency's confidence that Athena would be able to successfully complete the contract. We find nothing unreasonable about the agency's

assessment. The protester's disagreement with the agency's assessment of its RTO-3 approach does not provide us a basis for which to sustain the protest.<sup>6</sup>

#### Evaluation of TMC's quotation

Next, Athena asserts that NASA unreasonably evaluated TMC's technical quotation because the awardee is not able to provide an equivalent solution to Athena's simulation and testbed technology. Athena also argues that TMC quotation relies upon a process that is the intellectual property of another contractor, L-3.

With regard to TMC's proposed simulation and testbed solution, the protester contends that the awardee could not have offered technology that was equivalent to that offered by the protester. Protest at 63-64. As noted above, Athena did not retain outside counsel that could be granted access to material under a protective order; for this reason, the protester was not provided a copy of TMC's quotation. The protester acknowledges that it does not know what simulation and testbed technology was offered by the awardee, but contends that the awardee's technology could not have been of equal merit to that offered by Athena.

NASA asserts that it reasonably considered the information provided in TMC's quotation and concluded that TMC met, and in some areas exceeded, the requirements of the solicitation. NASA's evaluation did not find any weaknesses with TMC's technical understanding/approach, and instead found that the awardee's proposed testbed approach merited a strength. AR, Tab 13, Source Selection Decision, at 1235; Tab 12, Evaluation Report, at 1192. We have reviewed the record, and conclude that the agency reasonably evaluated TMC's proposed technical approach. To the extent the protester generally contends that the awardee's proposed approach could not have been equal to the protester's, Athena

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<sup>6</sup> Athena also contends that NASA unfairly criticized the level of detail in its proposed approach because the RFQ did not provide vendors with an adequate level of technical information. To the extent that Athena argues that the solicitation failed to provide sufficient detail for vendor's to respond, we find that this argument is untimely because it challenges an alleged impropriety in the solicitation that should have been protested before the initial closing time for submission of proposals or quotations. Our Bid Protest Regulations contain strict rules for the timely submission of protests. They specifically require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals or quotations be filed before that time. 4 C.F.R. § 21.2(a)(1). Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Dominion Aviation, Inc.-- Recon., B-275419.4, Feb. 24, 1998, 98-1 CPD ¶ 62 at 3.



has not provided any specific basis to conclude that the agency's evaluation of TMC's quotation was unreasonable.

Athena also argues that TMC proposed to use a proprietary technology for software engineering, known as Rapid Application Incremental Development (RAPID), which is owned by L-3, over which Athena stated that it has "assumed ownership." Protest at 68. The protester contends that the awardee does not have a license to use the RAPID technology, and therefore should not have been assigned any strengths for proposing to use RAPID. As NASA explains, however, the agency did not assign any strengths to TMC's quotation based on a proposed use of the RAPID technology. AR at 27-28. In any event, Athena's complaint regarding a disputed use of proprietary technology is essentially a contract dispute between private parties, which our Office does not review. See The Panther Brands, LLC, B-409073 Jan. 17, 2014, 2014 CPD ¶ 54 at 7. On this record, we find no basis to sustain the protest.

#### Bias of Agency Officials

Next, Athena argues that NASA's award to TMC reflects improper bias against Athena. Specifically, the protester asserts that the source selection authority was biased as a result of litigation filed in a West Virginia State Court against Athena, wherein a contractor unsuccessfully attempted to obtain an injunction against Athena's submission of a quotation in response to the current solicitation. Athena also alleges bias of the source selection authority because the same individual refused to award prior projects to Athena for similar services.

Government officials are presumed to act in good faith, and a protester's contention that procurement officials are motivated by bias or bad faith must be supported by convincing proof; our Office will not consider allegations based on mere inference, supposition, or unsupported speculation. Career Innovations, LLC, B-404377.4, May 24, 2011, 2011 CPD ¶ 111 at 7-8; Shinwha Elecs., B-290603 et al., Sept. 3, 2002, 2002 CPD ¶ 154 at 5 n.6. Here, the protester has made no such showing. The prior litigation involved two private parties, which was resolved in a court of competent jurisdiction, and the agency's decision to fund a project or award a contract or task award does not provide the convincing proof required as evidence of bias. Accordingly, this portion of Athena's protest is dismissed. See 4 C.F.R. § 21.5(f).

## Best Value Decision

Finally, Athena asserts that NASA's award decision was unreasonable because the evaluation contained various inconsistencies that caused the agency to find weaknesses and not find strengths or significant strengths in Athena's quotation. Athena argues that without these inconsistencies, Athena's quotation would have been rated higher and resulted in the award of the BPA to Athena.

As explained above, we reviewed each of Athena's challenges to the agency's evaluation of its quotation. We concluded that NASA reasonably evaluated Athena's quotation in accordance with the solicitation criteria, and that Athena's allegations provide no more than mere disagreement with the agency's conclusions, which does not provide a basis to sustain the protest. To the extent the protester contends that the selection decision was flawed based on inconsistencies within the evaluations, we also find no basis to sustain the protest. For example, although the agency assessed a strength for Athena's overall approach to the RTO requirements, there was nothing inconsistent about also identifying certain weaknesses regarding Athena's proposed approach to the individual RTOs--for example, a weakness concerning the protester's lack of detail regarding approach to modify the ORBIT tool under RTO-3. See AR, Tab 12, Evaluation Report, at 1213. On this record, we find that the agency's best value decision was reasonable.

The protest is denied.

Susan A. Poling  
General Counsel