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Decision

Matter of: New Directions Technologies, Inc.

File: B-412703.2; B-412703.3

Date: August 18, 2016

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Thomas K. David, Esq., Kenneth D. Brody, Esq., and Katherine A. David, Esq., David, Brody & Dondershine, LLP, for All Points Logistics, LLC, an intervenor. Karen M. Reilley, Esq., and Jerry L. Seemann, Esq., National Aeronautics and Space Administration, for the agency.

Matthew T. Crosby, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency treated the protester and awardee unequally by communicating with the awardee after discussions but not the protester is denied where the record reflects that the agency's communication with the awardee was a clarification and that the protester introduced defects into its proposal after discussions that could not have been addressed without reopening discussions.
 2. Protest challenging the source selection authority's (SSA) conclusion that the protester's and awardee's proposals were of equal merit under a technical subfactor even though the protester's proposal was assessed an additional significant strength is denied where the record reflects the SSA considered the underlying evaluation findings and concluded that various factors, including a specific aspect of the awardee's approach, rendered the proposals technically equal.
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DECISION

New Directions Technologies, Inc., of Ridgecrest, California, protests the award of a contract by the National Aeronautics and Space Administration to All Points Logistics, LLC, of Huntsville, Alabama, under request for proposals (RFP) No. NNM14494731R for information technology (IT) services to be provided at the George C. Marshall Space Flight Center, in Huntsville, Alabama, the National Space Science and Technology Center, also in Huntsville, and the Michoud Assembly Facility, in New Orleans, Louisiana. New Directions alleges that the

agency engaged in disparate treatment of offerors and that its best-value determination was flawed.

We deny the protest.

BACKGROUND

The solicitation, issued on June 26, 2014, as a service-disabled, veteran-owned small business set-aside, contemplated the award of a cost-plus-fixed-fee contract with a base period of one year and four one-year options. RFP at 1, B-2, F-2, I-6. The solicitation included a performance work statement (PWS) outlining the needed IT services. Id. at J-1-1 to J-1-38. The five top-level requirements in the PWS were: program management; IT security services; IT planning, policy, and service integration and delivery; IT infrastructure services; and audio visual services. Id. at J-1-2 to J-1-3.

The solicitation provided that the award would be made on a best-value tradeoff basis, considering the following three factors: mission suitability, past performance, and cost. RFP at M-2 to M-3. The solicitation stated that these factors were equally weighted, but that the mission suitability and past performance factors, when combined, were significantly more important than cost. Id. at M-3.

The mission suitability factor included two subfactors: technical and management approach, and staffing and total compensation approach. RFP at M-4. The solicitation stated that proposals would be evaluated under these subfactors using a points system, with a maximum of 600 points available under the technical and management approach subfactor, and a maximum of 400 points available under the staffing and total compensation approach subfactor. Id.

As relevant here, under the technical and management approach subfactor, the solicitation instructed that proposals must include a description of the offeror's approach to providing the IT services in the PWS. RFP at L-23. The solicitation further instructed that this description must address the offeror's approach to "implementing an IT Security framework" and "analyzing data from various IT Security sources." Id. The solicitation listed the offeror's description of its technical approach as one of seven elements to be evaluated under the technical and management approach subfactor. Id. at M-5. The solicitation did not specify any weight or relative priority to be given to the seven elements. Id.

The solicitation instructed offerors to submit proposals in four volumes: a mission suitability volume, a past performance volume, a cost volume, and a "model contract" volume. RFP at L-16. As relevant here, the model contract volume was to include, among other things, the offerors' total proposed costs for the various contract line item numbers. Id. at L-54. As also relevant, the solicitation established a limit of 260 pages for the mission suitability volume. Id. at L-16.

The agency received numerous proposals in response to the solicitation, including proposals from New Directions and All Points. A source evaluation board (SEB) evaluated the proposals and assessed significant strengths, strengths, deficiencies, significant weaknesses, and weaknesses under the non-cost factors. See Agency Report (AR), Tab 49, Competitive Range Determination, at 3-20. As relevant here, the SEB assessed three weaknesses to New Directions' proposal under the mission suitability factor. Id. at 15. Next, the SEB assigned adjectival ratings to the proposals.¹ See id. The agency then established a competitive range consisting only of the New Directions and All Points proposals. Id. at 26. Discussions with the two firms ensued.

At the conclusion of discussions, the agency asked representatives of both firms how many additional proposal pages would be needed to address the issues identified in discussions under the mission suitability factor. See AR, Tab 56, All Points Discussions Correspondence, at 12-13; Tab 59, New Directions Discussions Script, at 3. New Directions requested 15 pages, and All Points requested 10 pages. See Contracting Officer's Supp. Statement ¶ 4.06. The agency then sent letters to the firms requesting final proposal revisions (FPR). The letters established a 276 page limit for the mission suitability FPR volumes--i.e., a 16-page increase over the initial 260 page limit. See AR, Tab 62, All Points FPR Request Ltr., at 3; Tab 63, New Directions FPR Request Ltr., at 3. Regarding the page limit, the FPR request letters cautioned as follows:

Pages submitted in excess of the total 276-page limitation will not be evaluated . . . and will be returned. Therefore, if the combined FPR submission for the Mission Suitability volume exceeds 276 total pages, **only** the first 276 pages will be evaluated.

AR, Tab 62, All Points FPR Request Ltr., at 3 (emphasis in original); Tab 63, New Directions FPR Request Ltr., at 3 (emphasis in original).

Both New Directions and All Points submitted FPRs. After reviewing New Directions' mission suitability FPR volume, the agency found that it contained 283 pages--7 pages over the 276 page limit established in the FPR request letter. See AR, Tab 74, Mem. for R., at 1. Therefore, consistent with the terms of the FPR request letter, the agency eliminated the 7 excess pages from the end of the FPR

¹ The available ratings under the mission suitability subfactors were excellent, very good, good, fair, and poor. AR, Tab 48, SEB Initial Findings Presentation, at 16. The available ratings under the past performance factor were very high confidence, high confidence, moderate confidence, low confidence, very low confidence, and neutral. Id. at 17. The available ratings under the cost factor were high cost confidence, medium cost confidence, and low cost confidence. RFP at M-7.

volume and evaluated only the first 276 pages.² See AR, Tab 74, Mem. for R., at 1. As a result of content being eliminated from the end of the FPR volume, the SEB considered New Directions' proposal to have failed to address several evaluation criteria under the mission suitability's staffing and total compensation subfactor. AR, Tab 75, SEB Final Findings Presentation, at 33. Accordingly, the SEB assessed a new significant weakness and a new weakness to the proposal under this subfactor. Id. at 84, 87. However, the SEB also found that the new content in the FPR volume satisfactorily addressed the three weaknesses previously assessed to the firm's proposal under the mission suitability factor. See id. at 63, 85-86. Consequently, these weaknesses were eliminated from the SEB's evaluation findings. Id.

Turning to All Points' FPR, the agency found that the total proposed costs in the cost volume were inconsistent with those in the model contract volume. See AR, Tab 67, All Points Model Contract Vol. Correspondence, at 1. Accordingly, the contracting officer asked the firm via e-mail to "confirm the Cost volume accurately reflects the proposed costs." Id. An All Points representative responded that, indeed, "the Cost volume reflects the accurate proposed cost." Id. The contracting officer then documented the following in a memorandum to the file:

[All Points FPR] reflected a small number of clear transposition errors from the Cost Volume to the Model Contract Volume As the Cost Volume was the higher of the two volumes and [All Points] indicated that the Cost Volume was the intended cost, the Cost Volume was utilized for selection purposes.

Id.

Following the agency's review of the FPRs, the evaluation findings were adjusted and finalized. The table below summarizes the final evaluation ratings and evaluated costs.

² The record reflects that New Directions' FPR contained 283 pages of content; i.e., the inclusion of 7 extra pages was not the result of duplicate pages or formatting issues. See AR, Tab 68, New Directions FPR, Vol. I, Mission Suitability.

	NEW DIRECTIONS	ALL POINTS
Mission Suitability		
Technical and Management Approach (600 points maximum)	Excellent (575 points)	Excellent (568 points)
Staffing and Total Compensation Approach (400 points maximum)	Very Good (360 points)	Excellent (391 points)
Past Performance	Very High Confidence	Very High Confidence
Proposed Cost	\$179.6 million	\$181.7 million
Probable Cost	\$179.6 million	\$181.7 million
Cost Confidence Assessment	High Confidence	High Confidence

AR, Tab 75, SEB Final Findings Presentation, at 34-36.

The SEB presented its findings to the source selection authority (SSA). After asking questions about the findings and receiving responses from the SEB, the SSA documented a source selection decision in which she compared the proposals under each of the evaluation factors. AR, Tab 76, Source Selection Decision Document (SSDD), at 3-8. Under the technical and management approach subfactor, she noted that the proposals were assessed similar point scores (575 versus 568), the same number of strengths (13 each), and no significant weaknesses or weaknesses. Id. at 3-4, 6. She found 10 of the 13 strengths assigned to the proposals to be “essentially the same.” Id. at 6. She also found that while New Directions’ proposal had been assessed two significant strengths versus only one assessed to All Points’ proposal, the significant strength assessed to All Points proposal related to IT security, which she characterized as “an area of critical importance.” Id. at 6. Ultimately, she concluded that there was no “basis to make a distinction between the two proposals” under this subfactor. Id.

In contrast, the SSA found that under the staffing and total compensation approach subfactor, All Points’ proposal had a “distinct advantage.” AR, Tab 76, SSDD, at 7. In support of this finding, she noted that All Points’ proposal had been assessed a higher point score and adjectival rating, and that All Points’ proposal had been assessed no significant weaknesses or weaknesses, whereas New Directions’ proposal had been assessed both a significant weakness and a weakness.³ Id. at 3, 6-7. She also discussed the underlying evaluation findings and documented concern regarding the significant weakness and the weakness assessed to New Directions’ proposal. Id. at 6-7.

³ As discussed above, the significant weakness and weakness resulted from New Directions’ failure to adhere to the page limit for the mission suitability FPR volume.

The SSA similarly found that All Points' proposal had a "distinct advantage" under the past performance factor. AR, Tab 76, SSDD, at 8. In support of this finding, she noted that while the proposals' adjectival ratings were the same, All Points' proposal had been assessed four significant strengths, whereas New Directions' proposal had been assessed only one significant strength. Id. at 4-5. She also discussed the underlying findings behind All Points' significant strengths, highlighting the fact that the significant strengths related to the areas of IT security, computing services, and customer support center services. Id. at 7-8.

Finally, the SSA documented a best-value tradeoff determination. Here, she concluded that New Directions' proposal had a "slight advantage" under the cost factor (a probable cost of \$179.6 million versus \$181.7 million). AR, Tab 76, SSDD, at 8. She determined, however, that the advantages of All Points' proposal under the mission suitability and past performance factors warranted the "slightly higher" cost associated with All Points' proposal. Id. Therefore, she selected All Points' proposal for award. Id. Following a debriefing, New Directions filed a protest with our Office.

DISCUSSION

New Directions alleges that the agency treated the offerors disparately by communicating with All Points regarding the discrepancy between the firm's cost and model contract FPR volumes, but not similarly communicating with New Directions to resolve the excess page count issue in its mission suitability FPR volume. New Directions also alleges that the SSA's best value determination was flawed because she purportedly placed undue emphasis on certain SEB evaluation findings. Based on the record, we see no merit in these claims. Below we discuss them in turn.⁴

Disparate Treatment

As outlined above, New Directions claims that the agency engaged in disparate treatment by "allow[ing] All Points to address flaws in its FPR but den[ying] the same opportunity to [New Directions]." Supp. Comments at 5. New Directions points out that Federal Acquisition Regulation (FAR) § 15.306(e), which addresses agency exchanges with offerors, prohibits agencies from engaging in conduct that favors one offeror over another. Comments at 14. New Directions takes the position that to avoid the purported disparate treatment, the agency either should have allowed New Directions to resolve the excess page count issue in its mission

⁴ Our discussion focuses on New Directions' chief arguments. We note that the firm has raised various other arguments regarding these claims. Although these arguments are not discussed in this decision, we have considered all of them, and we find, based on the record, that none of them has merit.

suitability FPR volume, or should not have communicated with All Points regarding the discrepancy between its cost and model contract FPR volumes. See Comments at 13-15; Supp. Comments at 5-8. Based on the record here, we disagree that disparate treatment occurred.

Further discussion of New Directions' claim requires a brief review of the distinction between two types of agency/offeror exchanges that are known as clarifications and discussions. Clarifications are "limited exchanges" that agencies may use to allow offerors to clarify certain aspects of their proposals or to resolve minor or clerical mistakes. FAR § 15.306(a)(2). Requesting clarification from one offeror does not trigger a requirement that the agency seek clarification from other offerors. See Serco Inc., B-406061.1, B-406061.2, Feb. 1, 2012, 2012 CPD ¶ 61 at 13; Gulf Copper Ship Repair, Inc., B-293706.5, Sept. 10, 2004, 2005 CPD ¶ 108 at 6. Discussions occur when an agency communicates with an offeror for the purpose of obtaining information essential to determine the acceptability of a proposal, or provides an offeror with an opportunity to revise or modify its proposal in some material respect. See Serco Inc., *supra*; Gulf Copper Ship Repair, Inc., *supra*; see also FAR § 15.306(d). In a procurement where an agency has initiated discussions, such as the one here, the decision to reopen discussions and request a new round of revised proposals is largely within the discretion of the contracting officer. See Metcalf Constr. Co., B-289100, Jan. 14, 2002, 2002 CPD ¶ 31 at 6; Mine Safety Appliances Co., B-242379.5, Aug. 6, 1992, 92-2 CPD ¶ 76 at 6. Where an offeror introduces material ambiguities or defects into its proposal in its FPR, it runs the risk that the agency will exercise its discretion not to reopen discussions. See Metcalf Constr. Co., *supra*; Logicon RDA, B-261714.2, Dec. 22, 1995, 95-2 CPD ¶ 286 at 5.

As discussed above, the agency's communication with All Points concerned what the agency contemporaneously documented as a "a small number of clear transposition errors from [All Points'] Cost Volume to the Model Contract Volume." AR, Tab 67, All Points Model Contract Vol. Correspondence, at 1. As also discussed above, the agency's communication requested only that the firm confirm that its cost volume--which contained more comprehensive cost information and higher cost values--was accurate.⁵ AR, Tab 67, All Points Model Contract Vol. Correspondence, at 1. Thus, the communication concerned a "minor or clerical error," and we view it as a clarification. As we have established, an agency's request for clarification from one offeror does not trigger a requirement that the agency seek clarification from other offerors. See Serco Inc., *supra*; Gulf Copper Ship Repair, Inc., *supra*.

⁵ As mentioned previously, the agency used the higher values in All Points' cost proposal in the evaluation and source selection. See AR, Tab 67, All Points Model Contract Vol. Correspondence, at 1.

In contrast to the agency's communication with All Points, we view the communication that New Directions claims the agency should have initiated with it regarding the excess page count in the firm's mission suitability FPR volume as discussions. In this regard, such a communication would have afforded New Directions an opportunity to revise its mission suitability FPR volume to conform to the FPR page limit. Since such a revision would have required New Directions to eliminate at least seven pages of content from its FPR volume, the revision would have been material. As established above, discussions occur when an offeror is provided an opportunity to revise or modify its proposal in some material respect. See Serco Inc., supra; Gulf Copper Ship Repair, Inc., supra. As also established above, agencies have discretion to not reopen discussions even where an offeror introduces new defects in its FPR, such as New Directions did here. See Metcalf Constr. Co., supra; Logicon RDA, supra. For these reasons, we see no basis to conclude that the agency treated the offerors unequally. New Directions' claim regarding disparate treatment of the offerors is denied.

Best-Value Tradeoff

Next, New Directions alleges that the SSA's best-value tradeoff analysis was flawed. The error, according to New Directions, was that the SSA abandoned the solicitation's evaluation scheme by giving undue weight to certain SEB evaluation findings. The firm's chief argument in this area concerns the SSA's conclusion that under the technical and management approach subfactor, New Directions' and All Points' proposals were essentially equal in technical merit. New Directions points out that the SSA reached this conclusion even though New Directions' proposal was assessed two significant strengths, while All Points' proposal was assessed only one.⁶ Comments at 20 (citing AR, Tab 76, SSDD, at 6). New Directions contends that the SSA failed to adequately consider the two significant strengths assessed to its proposal, and that she gave undue weight to the single significant strength assessed to All Points' proposal simply because it related to IT security, which she characterized as "an area of critical importance." Id. New Directions argues that the SSA therefore imposed her own weighting scheme that improperly elevated IT security over the other PWS requirements. See Protest at 12-16; Comments at 17-23; Supp. Comments at 8-10.

The agency responds by asserting that the SSA did not introduce her own weighting scheme. Supp. Mem. of Law at 15-16. Rather, the agency states, she considered the SEB's underlying evaluation findings and concluded that the comprehensive nature of All Points' approach to IT security was a distinguishing feature. See id. Further, the agency contends, this feature was one of several factors supporting her

⁶ As set forth above, in addition to the significant strengths, the proposals were assessed an equal number of strengths and no significant weaknesses or weaknesses under this subfactor. AR, Tab 76, SSDD, at 3-4.

ultimate conclusion that the proposals were essentially equal under the technical and management approach subfactor, notwithstanding the fact that New Directions' proposal was assessed two significant strengths, whereas All Points' proposal was assessed only one. Supp. Mem. of Law at 15-16.

Where, as here, a procurement is conducted on a best-value tradeoff basis, it is the function of the SSA to perform a cost/technical tradeoff, that is, to determine whether one proposal's technical superiority (however represented) is worth the higher cost; the extent to which one is sacrificed for the other is governed only by the test of rationality and consistency with the stated evaluation criteria. See Gen. Dynamics Land Sys., B-412525, B-412525.2, Mar. 15, 2016, 2016 CPD ¶ 89 at 11; Hi-Way Paving, Inc., B-410662, Jan. 21, 2015, 2015 CPD ¶ 50 at 12. An agency, in making its tradeoff analysis, ultimately may focus on a particular discriminator between proposals, even if it is not related to one of the most-heavily weighted evaluation factors, where it has a reasonable basis to do so. See Gen. Dynamics Land Sys., supra; Keane Fed. Sys., Inc., B-280595, Oct. 23, 1998, 98-2 CPD ¶ 132 at 16. A protester's disagreement with the agency's judgments about the relative merit of competing proposals does not establish that the evaluation was unreasonable. See Gen. Dynamics Land Sys., supra; Hi-Way Paving, Inc., supra.

As discussed above, IT security was one of five top-level requirements in the PWS. RFP at J-1-2 to J-1-3. As also discussed above, the solicitation established that under the technical and management approach subfactor, the agency would evaluate the offerors' approach to seven elements, including providing the IT services listed in the PWS, "implementing an IT Security framework," and "analyzing data from various IT Security sources." Id. at L-23, M-5. The solicitation did not specify a weight or relative priority to be given to the seven elements or to any aspect of the PWS. Id. Our Office has recognized that where an RFP does not disclose the relative weight of evaluation factors or subfactors, the factors or subfactors are understood to be of equal importance to each other. See Bio-Rad Labs., Inc., B-297553, Feb. 15, 2006, 2007 CPD ¶ 58 at 6; SOS Interpreting, Ltd., B-287477.2, May 16, 2001, 2001 CPD ¶ 84 at 4.

We disagree with New Directions' claim that the SSA accorded undue weight to IT security under the technical approach and management subfactor. Instead, we see the record as showing that she considered the relative significant strengths and strengths assessed to the proposals, and identified All Points' approach to IT security as a discriminator. See AR, Tab 76, SSDD, at 6. We previously have found that when equally-weighted evaluation criteria are considered, the fact that one is chosen as more valuable does not mean that the relative weight of the criteria have been changed or abandoned; it simply means that one has become the discriminator between competing proposals. See Gen. Dynamics Land Sys., supra, at 12-13; Keane Fed. Sys., Inc., supra. So long as the solicitation disclosed the criteria to the offerors, as was done here, there is nothing improper in one

becoming a discriminator where the proposals are evaluated as otherwise equal. See Gen. Dynamics Land Sys., supra; Keane Fed. Sys., Inc., supra.

In sum, New Directions' claim amounts, in essence, to an allegation that the SSA should have mechanically tallied the significant strengths assessed under the technical and management subfactor to find that New Direction's proposal was superior. We reject this premise under the terms of the solicitation here. While it is clear that New Directions disagrees with the SSA's judgment regarding the technical merit of the proposals, such disagreement does not furnish a basis on which to sustain the protest.

The protest is denied.⁷

Susan A. Poling
General Counsel

⁷ We note that New Directions also alleges that the agency failed to reasonably evaluate whether All Points' proposed teaming arrangement may have rendered the firm ineligible for award through the application of the Small Business Administration's (SBA) regulations on "ostensible subcontractor" relationships. Protest at 19-24; Comments at 2-12; Supp. Comments at 1-3. As relevant to this claim, the solicitation provided that the agency would undertake such an evaluation, but it also provided that that if an ostensible subcontractor relationship was found to exist, the matter would be referred to the SBA for a final determination. See RFP at M-6. New Directions' claim has no merit for at least two reasons. First, we see nothing in the record--and New Directions has offered nothing--to suggest that All Points' teaming arrangement reflected an ostensible subcontractor relationship. Second, after filing its protest with our Office, New Directions challenged All Points' small business size status through a protest with the SBA. New Directions' size protest argued, among other things, that All Points' teaming arrangement constitutes an ostensible subcontractor relationship. See Supp. Mem. of Law, attach. 1, SBA Size Determination, Case No. 3-2016-060, at 1. After considering the record on the issue, SBA issued a decision finding that no ostensible subcontractor relationship exists, and that All Points meets the small business size standard applicable to this procurement. Id. at 7-8.