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## Decision

**Matter of:** Shearwater Systems LLC

**File:** B-413573; B-413573.2; B-413573.3

**Date:** November 16, 2016

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William K. Walker, Esq., Walker Reausaw, for the protester.  
Edward J. Tolchin, Esq., Offit Kurman Attorneys at Law, for the intervenor.  
James Casey, Esq., Department of Justice, for the agency.  
Robert T. Wu, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest challenging the evaluation of the awardee's proposal is denied where the record shows that the agency's evaluation was reasonable and in accordance with the stated evaluation criteria.

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### DECISION

Shearwater Systems LLC, of Manassas, Virginia, protests the award of a contract to BA-ZAI JV, of Rockville, Maryland, by the Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, under request for proposals (RFP) No. DJA-15-AHDQ-R-0044 for information technology (IT) and related support services. Shearwater argues that the agency improperly evaluated BA-ZAI's proposal.

We deny the protest.

### BACKGROUND

The RFP, issued on July 1, 2015, sought proposals from participants in the Small Business Administration's 8(a) Business Development Program to perform data entry, imaging, indexing, IT support and related support services at the agency's National Tracing Center in Martinsburg, West Virginia. RFP at 1. The RFP contemplated award of one indefinite-delivery, indefinite-quantity (ID/IQ) contract comprised of a 12-month base period and four 12-month option periods, with a contract ceiling amount of \$220,000,000. Id. at 9.

Award was to be made on a best-value tradeoff basis considering seven pass/fail evaluation factors, four weighted non-price factors, and price. Id. at 66-67. The four weighted non-price factors were, in descending order of importance: technical/managerial approach, key personnel, past performance, transition plan and price. Id. at 67. The weighted non-price factors, when combined, were to be significantly more important than price. Id. Price was to be evaluated for reasonableness, based on consideration of the Service Contract Act (SCA) rates for the Martinsburg, West Virginia, area and government historical rates. Id. at 70.

As relevant here, one of the pass/fail evaluation factors required offerors to identify turnover rates for employees over a designated three-year period, and to address an employee retention program including, but not limited to training programs, salary and benefit plans. Id. at 66. Under the technical/managerial approach factor, the agency was to evaluate the “degree to which the Offeror effectively demonstrates a knowledge, understanding, technical ability to successfully perform and manage the requirements of the Performance Work Statement (PWS).” Id. This factor required submission of a staffing plan detailing labor categories and numbers of hours. Id. Finally, the transition plan factor states, in full, “[a] detail[ed] plan for each task must be provided with a time frame that the entire transition will be completed prior to the incumbent contractor’s contract ending.” Id. at 70.

The agency received nine proposals, including those from Shearwater and BA-ZAI. Agency Report (AR), exh. 30, Evaluation of Price Factor, at 9. The agency conducted multiple rounds of discussions, resulting in a competitive range of three proposals to be considered for award. AR, exh. 32, Award/Price Negotiation Memorandum, at 2. The relevant evaluation results after discussions were:

	<b>Shearwater</b>	<b>BA-ZAI</b>
Technical/Management Approach	Exceptional	Exceptional
Key Personnel	Good	Exceptional
Past Performance	Exceptional	Good
Transition Plan	Exceptional	Good
<b>Overall</b>	Exceptional	Exceptional
<b>Price</b>	\$134,120,291	\$122,707,258

Id. at 3, 6-7. The source selection authority (SSA) conducted a best-value tradeoff analysis between offerors. While finding relative benefits with both proposals under various factors, the SSA ultimately concurred with the source selection evaluation board’s (SSEB) conclusion that both offerors proposed equally exceptional proposals. Id. at 8. However, the SSA recognized that Shearwater proposed a higher price, and determined that the benefits of the firm’s proposal did not outweigh the additional cost. Id. On this basis, the SSA determined that BA-ZAI’s proposal represented the best value to the government, and decided to award the contract to the firm. Id. at 11. After a debriefing, this protest followed.

## DISCUSSION

Shearwater argues that BA-ZAI's proposal should have been assigned weaknesses under the technical/managerial approach and transition plan factors because the firm proposed lower fringe rates than did Shearwater. Protest at 9-10; Protester's Comments at 2-3. In this regard, the protester argues, "[t]he complete absence of any discussion on the impact of the reduced fringe benefits on the staff retention was unreasonable for the evaluation of the staffing plan and for the transition plan." Protester's Comments at 3. The protester concludes that had the agency properly weighted the risk of low employee retention due to a reduction of employee benefits, Shearwater would have been selected as providing the best value to the government. Id. at 4.

The evaluation of technical proposals is a matter within the discretion of the contracting agency, since the agency is responsible for defining its needs and the best method for accommodating them. SRA Int'l, Inc., B-408624, B-408624.2, Nov. 25, 2013, 2013 CPD ¶ 275 at 4. In reviewing an agency's evaluation, we will not reevaluate technical proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and with procurement statutes and regulations. Id.

The agency responds that it reasonably evaluated BA-ZAI's proposal. Legal Memorandum at 9. The agency argues that, under the stated evaluation scheme, employee retention was only to be evaluated under the pass/fail criteria, and points to various portions of the record that support its conclusion that the awardee satisfied the RFP requirement to address its employee retention program, including training, salary and benefit plan. Id. at 11. Moreover, the agency argues that the focus of the transition plan was not on employee retention, but was instead on timing and scheduling issues. Id. at 13. While conceding that compensation could affect an offeror's ability to hire the incumbent staff, the agency points to portions of the record supporting the agency's assigned adjectival rating to BA-ZAI's proposal under the transition plan factor. Id.

Our review of the record shows that employee retention was an explicit consideration only under the pass/fail criteria set forth in the RFP, as the agency asserts. In this regard, one of the pass/fail criteria required offerors to identify turnover rates for employees over a designated three-year period, and to address the offeror's employee retention program, including, but not limited to training programs, salary and benefit plans. RFP at 66. Nothing in the language of the technical/managerial approach factor even implies that the impact of fringe rates would be evaluated. Id.

We also agree with the agency as to the focus of the transition plan factor, and our review of the agency's evaluation does not cause us to question the agency's

assessment of BA-ZAI's proposal. The agency points to various aspects of the awardee's proposal addressing transition, including the recruitment of incumbent personnel during the first week of transition and filling recruitment gaps through other transition activity, to support its evaluation conclusions. Legal Memorandum at 13-14. The record reasonably supports the agency's conclusions.

Finally, while Shearwater argues that the agency did not reasonably consider the risk to retention caused by a reduction in fringe rates, unaddressed by the protester is the fact that its fringe rates were substantially higher than those of the other offerors here. See generally Protester's Comments. The firm's proposed fringe rate of [DELETED] percent exceeded BA-ZAI's fringe rate of [DELETED] percent, which itself was in line with the rates submitted by three other offerors, and higher than the rates submitted by four other offerors. AR, exh. 30, Evaluation of Price Factor, at 4. The record also shows that the agency had concerns that Shearwater's fringe rates were too high, and addressed those concerns during discussions. Id. at 8. Thus, the record appears to support the conclusion that Shearwater's fringe rates, and not BA-ZAI's were the proper subject of scrutiny by the agency.

We deny the protest.

Susan A. Poling  
General Counsel