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Decision

Matter of: 22nd Century Technologies, Inc.

File: B-420510; B-420510.2

Date: May 4, 2022

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DIGEST

Protest challenging agency evaluation of quotations and tradeoff decision is denied where the evaluation and tradeoff decision were reasonable and consistent with the terms of the solicitation.

DECISION

22nd Century Technologies, Inc., of McLean, Virginia, protests the issuance of a task order to TekSynap Corporation, of Reston, Virginia, by the Defense Logistics Agency (DLA) pursuant to request for quotations (RFQ) SP4709-21-Q-0020, issued under DLA's J6 Enterprise Technology Services (JETS) multiple award indefinite-delivery, indefinite-quantity (IDIQ) contract for information technology support services. The protester alleges the agency erred in evaluating quotations and in the conduct of its best-value tradeoff.

We deny the protest.

BACKGROUND

The agency issued the RFQ on September 13, 2021, to holders of the JETS multiple award IDIQ contract. Memorandum of Law (MOL) at 3-4. The RFQ provided award would be made on the basis of a best-value tradeoff between three factors: (1) what the agency terms the "non-price" factor; (2) past performance; and (3) price. Agency

Report (AR), Exh. 1, RFQ at 92. The RFQ explained that the non-price factor was more important than the past performance factor, and the past performance factor was more important than the price factor. *Id.*

Of note, the non-price factor comprised three sub-factors: (1) level of effort/labor mix; (2) key personnel; and (3) technical approach. *Id.* at 92-93. The RFQ indicated that level of effort/labor mix would be evaluated as either acceptable or unacceptable, with the remaining two sub-factors to be considered of equal importance in the selection decision. *Id.*

Concerning key personnel, the solicitation identified specific qualifications for each key position, and explained that each resume would be evaluated for experience and capabilities relevant to the requirements. RFQ at 70. For example, the RFQ explained that the program manager must have, among other things, 5 years of experience in program management, at least 10 years of leadership experience, and experience with the information technology acquisition process. *Id.* at 72.

Relevant to this protest, the solicitation explained that past performance would be evaluated for recency, relevancy, and quality. *Id.* at 95. In this regard, the RFQ instructed vendors to submit at least two, but not more than three past performance questionnaires (PPQs). *Id.* at 93. Moreover, the RFQ indicated that the agency may consider past performance information from available government systems under certain circumstances, such as when the project point of contact is not responsive to a questionnaire. RFQ at 95. However, the RFQ also warned that the government may not consider PPQs received after the RFQ closing date and time. *Id.* at 93.

On October 13, 2021, the agency received six timely quotations. MOL at 13. The agency conducted interchanges with all six vendors, and all vendors submitted revised quotations. *Id.* at 13-14. The agency evaluated revised quotations from 22nd Century and TekSynap as follows:

	22nd Century	TekSynap
Non-Price	Good	Outstanding
Level of Effort/Labor Mix	Acceptable	Acceptable
Key Personnel	Good	Outstanding
Technical Approach	Good	Outstanding
Past Performance	Satisfactory Confidence	Substantial Confidence
Price	\$72,504,296	\$86,894,179

AR, Exh. 4, Award Decision Document at 11-12.

Of note, TekSynap's quotation received the highest possible ratings on all non-price factors. *Id.* Another vendor's quotation also received the highest possible ratings, but was higher priced than TekSynap. *Id.* By contrast, 22nd Century received lower non-price ratings, but was the lowest-priced vendor. *Id.* The agency ultimately concluded that TekSynap's quotation had significant non-price advantages over 22nd Century's

quotation, and, because the non-price factors were more important than price, the advantages of TekSynap's quotation were worth paying the price premium.¹ AR, Exh. 4, Award Decision Document at 20-21, 56-57.

The agency issued the task order to TekSynap on January 13, 2022. MOL at 31-32. After requesting and receiving a debriefing, this protest followed.² *Id.*

DISCUSSION

The protester alleges the agency's evaluation was flawed in several respects. For example, the protester contends the agency did not acknowledge several strengths of the protester's key personnel and disparately evaluated similarly qualified personnel. Protest at 10-15. The protester also argues the agency unreasonably evaluated its past performance by failing to consider several related task orders, and disparately evaluated similar aspects of the protester's and awardee's past performance. *Id.* at 15-17. The protester further alleges the agency's evaluation ignored numerous technical features of the protester's quotation that exceeded the solicitation's requirements. *Id.* at 17-27. Finally, the protester maintains that the best-value tradeoff failed to adequately consider its significant price advantage over the awardee. *Id.* at 27-29. We address these arguments in turn.³

¹ The award decision document also compared TekSynap's quotation to the other four quotations, but those additional tradeoffs are not relevant to 22nd Century's protest grounds. See, e.g., AR, Exh. 4, Award Decision Document at 21-49.

² Because the value of the 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)(1)(B).

³ The protester raises other arguments that are not addressed in this decision. While we do not address all the protester's arguments in this decision, we have considered them and conclude that they provide no basis to sustain the protest. For example, 22nd Century raised two supplemental protest arguments concerning both its and the awardee's experience performing outside of the continental United States. Supp. Protest at 1-3. The agency responded to the protester's allegations at length in a supplemental agency report, but the protester's comments did not substantively respond to the agency's arguments. See Supp. MOL at 1-14. Where an agency provides a detailed response to a protester's assertions and the protester either does not respond to the agency's position or provides a response that merely references or restates the original allegation without substantively rebutting the agency's position, we deem the initially-raised arguments abandoned. *Citrus College; KEI Pearson, Inc.*, B-293543 *et al.*, Apr. 9, 2004, 2004 CPD ¶ 104 at 8 n.4. Accordingly, we do not consider these abandoned arguments further.

Key Personnel

With respect to key personnel, the protester argues its key personnel exceeded the solicitation requirements in ways that were beneficial to the agency, but the agency did not acknowledge these features as strengths. Protest at 10-15. For example, the solicitation required a program manager to have at least ten years of leadership experience and have experience with the information technology acquisition process. RFQ at 72. The protester notes that its proposed program manager has 18 years of leadership experience and recently led a significant information technology effort involving more than 300 staff, both of which significantly exceed the minimum requirements of the solicitation. Comments at 2. The protester also contends that each of its five other key personnel exceeded the solicitation's requirements in numerous ways. *Id.* at 2-3. However, the agency only assigned three strengths for the protester's key personnel, acknowledging that the personnel exceeded the minimum qualifications of the RFQ with respect to their work experience, levels of education, and security clearances. *Id.*

The evaluation of technical quotations are generally matters within the agency's discretion, which our Office will not disturb unless they are shown to be unreasonable or inconsistent with the solicitation's evaluation criteria. *American Systems Corp.*, B-413952.3, B-413952.4, June 23, 2017, 2017 CPD ¶ 204 at 6-7; *NCI Information Systems, Inc.*, B-412680, B-412680.2, May 5, 2016, 2016 CPD ¶ 125 at 4; *ORBIS Inc.*, B-408033.2, June 3, 2013, 2013 CPD ¶ 140 at 4. Additionally, it is a fundamental principle of federal procurement law that a contracting agency must treat all competitors equally and evaluate their submissions evenhandedly against the solicitation's requirements and evaluation criteria. *Rockwell Elec. Commerce Corp.*, B-286201 *et al.*, Dec. 14, 2000, 2001 CPD ¶ 65 at 5.

Here, the protester argues the agency erred because it received only three strengths for its key personnel, even though its proposed personnel exceeded the agency's minimum requirements in several respects. It does not follow from the protester's arguments, however, that the agency's evaluation was unreasonable in this respect. For example, the protester notes that its personnel far exceeded the solicitation's minimum requirements in terms of their collective experience, but the agency assigned one of three strengths to the protester's key personnel submission specifically because the experience of the proposed personnel greatly exceeded the solicitation's minimum requirements. AR, Exh. 7, 22nd Century Final Evaluation Report at 5. It is not unreasonable for an agency to conclude that not every positive feature of a proposal identified in its evaluation represents a separate strength. In these respects, the protester simply disagrees with the agency as to the merit of its proposed approach, and the appropriate rating or characterization of its quotation. Such disagreement, without more, does not provide a basis for us to conclude that an evaluation was unreasonable. See *DynCorp International, LLC*, B-412451, B-412451.2, Feb. 16, 2016, 2016 CPD ¶ 75 at 7-8; *Jacobs Tech., Inc.*, B-411784, B-411784.2, Oct. 21, 2015, 2015 CPD ¶ 342 at 10-11.

Additionally, the protester contends that the agency evaluated vendors disparately by assigning strengths to features of the awardee's quotation that exceeded the minimum requirements, while ignoring similar features of the protester's quotation. Comments at 3-4. For example, the protester notes that the agency assigned a strength to TekSynap because several of its proposed personnel held Information Technology Infrastructure Library (ITIL) Foundation certifications. *Id.* However, the protester contends that the agency did not assign strengths to the protester's personnel who also exceeded the minimum solicitation requirements in ways advantageous to the agency. *Id.*

When a protester alleges unequal treatment in a technical evaluation, it must show that the differences in the evaluation did not stem from differences between the quotations or proposals. *IndraSoft, Inc.*, B-414026, B-414026.2, Jan. 23, 2017, 2017 CPD ¶ 30 at 10; *Paragon Sys., Inc.; SecTek, Inc.*, B-409066.2, B-409066.3, June 4, 2014, 2014 CPD ¶ 169 at 8-9. Accordingly, to prevail on an allegation of disparate treatment, a protester must show that the agency unreasonably downgraded its quotation for deficiencies that were substantively indistinguishable from, or nearly identical to, those contained in other quotations. See *Office Design Group v. United States*, 951 F.3d 1366, 1372 (Fed. Cir. 2020); *Battelle Memorial Inst.*, B-418047.3, B-418047.4, May 18, 2020, 2020 CPD ¶ 176 at 5.

Here, the protester's allegations do not establish impermissible disparate treatment because the protester has not alleged that the agency evaluated substantively indistinguishable quotation features differently. The contemporaneous record establishes that the agency assigned TekSynap a strength because its staff had several professional certifications, such as ITIL Foundation certifications, that exceeded the minimum requirements of the solicitation. AR, Exh. 8, TekSynap Final Evaluation Report. While the protester correctly noted that the agency found the awardee's staffs' certifications to be advantageous, the protester has not alleged that its own staff have equivalent certifications, but rather that the agency ignored "other aspects of the experience and expertise that it proposed" that exceeded minimum requirements. Comments at 4. Accordingly, the differences in the agency's evaluation appear to have stemmed from differences in the quotations and do not constitute impermissible disparate treatment.

Past Performance

The protester raises several arguments challenging the agency's past performance evaluation. First, the protester argues the agency unreasonably failed to consider past performance the protester called to the agency's attention during interchanges. Protest at 15-17; Comments at 4-8. Based on information provided in a PPQ the protester submitted for a Naval Air Systems Command (NAVAIR) information task order for technology services, the protester notes that the agency evaluated the work as only somewhat relevant. During interchanges, however, the protester explained that this effort was actually one of three interrelated task orders, which the protester contends were collectively highly relevant to the current effort. *Id.* The protester also argues that the agency erred by not considering the two other NAVAIR task orders as part of its

evaluation after the protester called them to the agency's attention during the interchanges. *Id.*

Second, the protester alleges that the agency evaluated similar past performance features disparately. Comments at 4-8. For example, the protester alleges that the agency assessed one of the protester's efforts as only "somewhat relevant" based on its dollar value, but one of the awardee's efforts with a lower dollar value was assessed a higher relevancy rating. *Id.* Additionally, the protester asserts that the awardee received positive credit for providing higher tiers of information technology (IT) support, yet the protester did not receive similar credit for one of its past performance references even though it required the protester to provide similar levels of IT support. *Id.*

As a general matter, the evaluation of a vendor's past performance is within the agency's discretion. We will question the evaluation conclusions where they are unreasonable or undocumented. *Clean Harbors Env'tl. Servs, Inc.*, B-296176.2, Dec. 9, 2005, 2005 CPD ¶ 222 at 3. The critical questions are whether the evaluation was conducted fairly, reasonably, and in accordance with the stated evaluation terms, and whether it was based on relevant information sufficient to make a reasonable determination of the firm's overall past performance. *Id.*

Concerning the NAVAIR task orders, the agency argues that the solicitation limited vendors to three PPQs. MOL at 42-45. Additionally, while the protester mentioned two additional efforts during interchanges, the protester did not submit additional PPQs for those two efforts. *Id.* The evaluators concluded it would be inappropriate to consider additional efforts as the protester had already submitted three PPQs in its quotation, and in any case the protester had not submitted the additional references in accordance with the requirements of the solicitation. *Id.* The protester responds by noting that the solicitation clearly permitted the agency to consider additional past performance efforts, and further argues that our decisions impose a duty on agencies to consider past performance of which they are aware. Comments at 5 (*citing Triad Int'l Maint. Corp.*, B-408374, Sep. 5, 2013, 2013 CPD ¶ 208 at 5).

In this case, we do not agree that the agency was required to consider the additional past performance efforts in its evaluation. Preliminarily, the solicitation permitted, but did not require the agency to consider additional past performance information drawn from government databases. RFQ at 95. Indeed, the RFQ expressly warned offerors that the government may not consider PPQs received after the RFQ closing date and time. *Id.* at 93. Additionally, and more significantly, the protester mischaracterizes our decisions concerning an agency's obligations to consider additional past performance information. While we have concluded that agency officials may not ignore past performance information in certain circumstances--such as when the past performance involves work overseen by the same contracting officer or activity or when the agency has completed PPQs in their possession--that is not this case. *See, e.g., Triad Int'l Maint. Corp., supra* at 7-8; *Intercontinental Constr. Contracting, Inc.--Costs*, B-400729.3, Mar. 4, 2009, 2009 CPD ¶ 44 at 2.

Here, the protester merely mentioned the additional task orders performed for a different agency, but did not submit additional PPQs or detailed information as required by the solicitation's past performance submission instructions. At best, the only knowledge agency officials possessed was that additional past performance references existed, and there is no legal requirement that an agency seek out and consider all past performance references. See *Shaw-Parsons Infrastructure Recovery Consultants, LLC; Vanguard Recovery Assistance, Joint Venture*, B-401679.4 *et al.*, Mar. 10, 2010, 2010 CPD ¶ 77 at 8 (agency not required to consider all past performance references, but must consider PPQs in its possession that it solicited). This is especially so when, as in this case, the RFQ limited vendors to three PPQs. If an agency were compelled to consider all additional references mentioned in quotations or during interchanges, it would effectively render the solicitation's limitation on the number of submissions meaningless. Accordingly, we see no basis to conclude the agency erred in refusing to consider the additional task orders.

Turning to the protester's disparate treatment arguments, as noted above, to prevail on an allegation of disparate treatment, a protester must show that the agency unreasonably downgraded its quotation for deficiencies that were substantively indistinguishable from, or nearly identical to, those contained in other quotations. See *Office Design Group v. United States*, 951 F.3d 1366, 1372 (Fed. Cir. 2020); *Battelle Memorial Inst.*, *supra*. The protester's allegations do not meet that standard.

The protester first argues that the agency erred by concluding that TekSynap's \$34 million dollar effort was very relevant, while concluding that the protester's \$40 million dollar effort was only somewhat relevant because the dollar value was "significantly less" than the current effort. Comments at 4-5. According to the protester, if a \$40 million dollar effort is less relevant because of its size, then a \$34 million dollar effort should have been even less relevant, not more. *Id.* Additionally, the protester notes the agency concluded that one of TekSynap's past performance efforts involved providing tier 2.5 and 3 IT support services, but erroneously concluded that one of the protester's past performance efforts did not involve providing those tiers of service. *Id.* at 6-7.

The protester's arguments are unsupported both by the agency's evaluation conclusions and the underlying record. Preliminarily, it is not clear that the protester's effort was actually more similar in dollar value to the current effort than TekSynap's effort. Specifically, the protester's effort had a \$40 million dollar value over a period of five years (\$8 million per year), while the awardee's effort had a \$34 million value over three years (approximately \$11 million per year). See AR, Exh. 4, Award Decision Document at 17-19. The current effort has an estimated value of \$100 million over three years (approximately \$33 million per year). *Id.* Of note, the agency's evaluation specifically noted both the dollar value and the time period of the protester's effort when discussing relevance, and it is not unreasonable for the agency to conclude that a higher value per year contract is more relevant, even though its aggregate value is lower. *Id.* ("The NAVAIR contract value of \$40[M] (5 years) is significantly less than [this contract's] estimated amount of \$100M for the 3-year effort").

Moreover, even setting that aside, contrary to the protester's suggestion, the agency's conclusion of relevance was not solely or primarily based on the dollar value of the efforts. Rather the agency concluded that the protester's effort was somewhat relevant because it involved not only a smaller dollar value, but also because it involved a smaller asset management scope, and did not involve in-person support for overseas users. *Id.* at 17. By contrast, the agency concluded that TekSynap's effort was very relevant primarily because it is the incumbent task order for the "exact same service and support as required" by the current effort, and which demonstrated a significant understanding of the requirements. *Id.* at 18. In sum, the two efforts are qualitatively different in meaningful ways, and the protester has not demonstrated that the agency treated substantively indistinguishable past performance efforts differently.

Next, the protester contends that one of TekSynap's past performance efforts was credited for providing tier 2.5 and tier 3 IT service, while the protester's NAVAIR past performance effort was not similarly credited despite also providing those services. Comments at 6-7. However, while TekSynap's past performance quotation mentions providing tier 2.5 and tier 3 IT service, the protester's quotation makes no mention of providing tier 2.5 or tier 3 IT service in connection with the NAVAIR effort. *Compare* AR, Exh. 15, 22nd Century Quotation, attach. 4 *with* Supp. AR, Exh. 4, TekSynap Past Performance Quotation at 6. We also note that the protester's other PPQs reference higher tier IT service, and the agency's evaluation correctly acknowledges that the protester provided higher tier IT service for those efforts. *See, e.g.,* AR, Exh. 4, Award Decision Document at 17-18. While the protester argues that several substantive features of its past performance (such as managing virtual teleconference systems and cybersecurity services) amount to tier 2.5 or tier 3 IT service, we note that the agency's evaluation specifically acknowledged those substantive features. *Id.* at 17. In short, it is not clear that the relevant past performance submission actually demonstrated tier 2.5 or tier 3 support, and to the extent it substantively demonstrated such support, it appears to have been considered and acknowledged by the evaluators. We see no basis to conclude the agency erred in its evaluation or that the agency evaluated substantially identical quotation features differently.

Technical Evaluation

In its initial protest, the protester argued that the agency erred by failing to assign its quotation more than a dozen strengths for various unacknowledged features of its technical quotation. Protest at 17-27. The majority of the protester's allegations were furnished as a list of block quotations of solicitation requirements followed by excerpts from the protester's quotation. In most cases the only substantive argument provided was a summary claim that the feature merited a strength or that the agency's technical evaluation did not address that feature. *See, e.g.,* Protest at 18-19. That is to say, the protest did not consistently explain in what way the quotation features actually exceeded the requirements to the agency's benefit.

The agency responded to the protester's arguments in general rather than providing a specific point by point rebuttal, arguing that the protester effectively disagrees with the

agency's technical judgment, and that the agency is not obliged to document all determinations of adequacy. MOL at 45-48. Following the agency report, the protester did not substantively respond concerning the majority of its initially raised arguments. See Comments at 9-13. Specifically, the protester only substantively addressed three of its technical arguments, and the majority of its response again consisted of tabular block quotations that substantially repeated what was included in the original protest. As noted above, when a protester does not respond to the agency's position or provides a response that merely references or restates the original allegation without substantively rebutting the agency's position, we deem the initially-raised arguments abandoned. *Citrus College; KEI Pearson, Inc., supra*. Accordingly we consider all the arguments not addressed in substance in the protester's comments to be abandoned.

Turning to the remaining arguments, the protester contends that its quotation exceeded the solicitation's requirements with respect to task order project management, service desk operations support, and end user hardware support. However, the protester has not explained in what way any of the relevant sections of its quotation meaningfully exceed the solicitation's requirements. For example, concerning end user hardware support, the protester argues that the solicitation required vendors to incorporate customer-facing desktop functions and plan for technology refreshes, and its quotation included a thorough methodology for accomplishing those tasks. Protest at 21. But it is not clear, either from the protest or the protester's quotation in what way this actually exceeds the RFQ's requirements rather than simply meeting them.

We note that the technical evaluation of quotations is a matter within the agency's discretion, and an agency is not required to document every single aspect of its evaluation or explain why a quotation did not receive a strength for a particular feature. See *22nd Century Techs., Inc.*, B-417336, B-417336.2, May 24, 2019, 2019 CPD ¶ 198 at 5; *InnovaSystems Int'l, LLC*, B-417215 *et al.*, Apr. 3, 2019, 2019 CPD ¶ 159 at 10. Here, the record reflects that the agency evaluated the quotation and, in its discretion, did not assign strengths for aspects of the protester's quotation that the protester argues merited additional strengths. The protester identifies no provision of the solicitation that mandated a different result. On the record before us, these arguments amount to nothing more than disagreement with the agency's judgment and do not provide a basis to conclude the agency's evaluation was unreasonable. See *DynCorp International, LLC, supra*.

Best-Value Tradeoff

Finally, the protester alleges that the agency did not meaningfully consider the protester's significant price advantage in conducting the best-value tradeoff. Protest at 27-28. Specifically, the protester notes that its quotation was priced more than \$14 million dollars below the awardee's quotation, a significant 19 percent savings, but the agency's best-value decision did not adequately document or reasonably consider the magnitude of the price difference, in part because the relevant narrative was only three sentences long. *Id.*; Comments at 14-15.

Source selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results; cost and technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the solicitation's evaluation criteria. *Booz Allen Hamilton Inc.*, B-414283, B-414283.2, Apr. 27, 2017, 2017 CPD ¶ 159 at 13-14. In reviewing protests of an agency's source selection decision, even in a task order competition as here, we do not reevaluate quotations but examine the record to determine whether the evaluation and source selection decision were reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. *Intelligent Waves LLC*, B-416169, B-416169.2, June 12, 2018, 2018 CPD ¶ 211 at 12. Further, a tradeoff analysis must be properly documented, and an award on the basis of a higher-priced quotation that is not supported by valid justification fails to comply with this requirement. See *Blue Rock Structures, Inc.*, B-293134, Feb. 6, 2004, 2004 CPD ¶ 63 at 5; *Universal Building Maintenance, Inc.*, B-282456, July 15, 1999, 99-2 CPD ¶ 32 at 4-5.

Here, the solicitation explained that the non-price factor was significantly more important than past performance, which was, in turn, more important than price. RFQ at 92. On that basis, the agency concluded that TekSynap had a superior non-price approach and superior past performance, which justified paying a 19 percent price premium. AR, Exh. 4, Award Decision Document at 19-20, 56-57.

The protester is correct that the final tradeoff narrative itself was brief, and did not go into significant depth concerning the comparison of quotations. However, that narrative was embedded in a larger document that included a lengthy comparison of the two quotations discussing the technical, past performance, and price differences between the two quotations. See *Id.* at 14-20. That is to say, the contemporaneous record clearly reflects that the source selection authority was aware of the substantive differences between the quotations and considered them in reaching the award decision. We see no reason why the agency was required to, in effect, repeat information contained earlier in the same document when explaining why it viewed the advantages of TekSynap's quotation under the most important evaluation factors as worth paying a price premium. Given the deference owed to agencies when making their selection decisions, on these facts, we see no basis to sustain the protest.

The protest is denied.

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General Counsel