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Decision

Matter of: Jamaica Bearings Group

File: B-421180; B-421180.2; B-421180.3

Date: January 11, 2023

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DIGEST

1. Protest of agency's technical, past performance, and price evaluation is denied where record demonstrates that agency reasonably evaluated proposals in accordance with solicitation criteria.

2. Protest of agency's best-value tradeoff decisions is dismissed where the agency took corrective action for some of the contract awards, rendering those decisions academic, and for the remaining contract awards the agency awarded contracts to offerors that were lower-priced than, and equally-rated to, the protester.

DECISION

Jamaica Bearings Group, a small business of New Hyde Park, New York, protests the award of contracts to three firms¹ under request for proposals (RFP)

No. SPE4A2-21-R-0002, issued by the Department of Defense, Defense Logistics Agency (DLA), for material support. The protester alleges that the agency improperly evaluated proposals and made an unreasonable best-value determination.

¹ The protested awardees are American Bearing and Components LLC, a small business of Hansville, Washington; Noble Supply and Logistics, LLC, a small business of Rockland, Massachusetts; and Mechatronics, Inc., a small business of Preston, Washington.

We deny the protest.

BACKGROUND

On October 30, 2022, the agency issued the RFP, seeking to award multiple fixed-price, indefinite-delivery, indefinite-quantity (IDIQ) contracts for the supply of 682 items within federal stock group (FSG) 31, bearings/bushings. Contracting Officer's Statement and Memorandum of Law (COS/MOL)² at 2. The items were divided among three federal supply classes (FSCs): FSC 3110 (bearings, antifriction, unmounted); FSC 3120 (bearings, plain, unmounted); and FSC 3130 (bearings, mounted). *Id.* To be considered for award, offerors were required to propose at least 50 percent of the initial population of supply items (*i.e.*, at least 341 items). *Id.*; see Agency Report (AR), Exh. 2, Solicitation Statement of Work at 2. As amended, the RFP anticipated a 3-year base period, one 3-year option period, and one 4-year option period. AR, Exh. 12, RFP amend. 6 at 2.

The solicitation identified four evaluation factors: cyber security, technical, past performance, and price. AR, Exh. 5, RFP³ at 8. The cyber security and technical factors would be evaluated on an "[a]cceptable/[u]nacceptable" basis; any offeror determined to have proposed an unacceptable approach to either factor would be ineligible for award. *Id.* The agency would conduct its best-value tradeoff between past performance and price, which were of equal importance. *Id.* The agency would make tradeoff decisions on a "line-by-line" basis, that is, each of the 682 supply items requested by the solicitation were assigned a separate contract line item number (CLIN), and the agency would make a separate tradeoff and award decision for each CLIN. *Id.*

A proposal would be evaluated as acceptable on the technical factor if it "clearly [met] the minimum requirements of the RFP," and unacceptable if it did not. *Id.* at 10. There were two technical subfactors: high-level quality certification, and contractor declaration. *Id.* at 9. The first subfactor required offerors to "[p]rovide evidence of [h]igher-[l]evel [q]uality [c]ertification in accordance with [I]nternational Standards Organization (ISO) 9001 or equivalent" and to describe the capabilities of their quality

² On November 10, 2022, the agency submitted a COS/MOL that related only to the protester's initial protest, B-421180. After our Office consolidated the protests, the agency submitted a superseding COS/MOL on December 5, addressing all three protests. All citations to the COS/MOL are to the agency's December 5 filing.

³ Unless otherwise specified, citations to the RFP are to the Adobe PDF version of the solicitation's instructions to offerors and evaluation factors for award (*i.e.*, sections L and M), included in the agency report at tab 5.

systems.⁴ *Id.* The second subfactor required the contractor to complete a “Contractor Declaration” form included with the solicitation, acknowledging that the contractor would adhere to the restrictions of Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.225-7016 and section 225.7009-2.⁵ *Id.*

Under the past performance factor, the agency would “assess [its] confidence in the offeror’s ability to successfully accomplish the proposed effort based on the offeror’s demonstrated present and past work record.” RFP at 10. The RFP provided that the agency would “evaluate the offeror’s demonstrated record of contract compliance in supplying products and services that meet users’ needs, including schedule and material conformance, through [the] use of the [g]overnment’s Supplier Performance Risk System (SPRS),” and that the agency reserved the right to use other available sources. *Id.* With regard to the information obtained from these sources, the RFP stated: “[t]his information is considered recent and relevant for the purposes of this evaluation.” *Id.*

The possible confidence assessment ratings, in descending order of confidence, were: substantial confidence, satisfactory confidence, neutral confidence, limited confidence, and no confidence. *Id.* Of relevance to this protest, “substantial confidence” was defined as the agency having “a high expectation that the offeror will successfully perform the required effort,” and “satisfactory confidence” was defined as the agency having “a reasonable expectation” of the same. *Id.* A rating of neutral confidence would be assigned when “[n]o recent/relevant performance record is available or the offeror’s performance record is so sparse that no meaningful confidence assessment rating can be reasonably assigned.” *Id.*

The RFP stated that proposed prices for each CLIN would be evaluated for reasonableness and balance. *Id.* at 11. With respect to reasonableness, the RFP stated that the agency expected adequate price competition to support the determination of reasonableness. *Id.* In the absence of adequate competition, and if reasonableness could not be determined by analysis of information that the agency could obtain itself, the agency could require additional data from offerors to support their proposed prices. *Id.*

The agency received six timely proposals, including proposals from the protester and all three protested awardees. COS/MOL at 7. The protester and the three protested

⁴ ISO-9000 standards (including ISO 9001) are a series of internationally recognized quality assurance standards. See *LBM Inc.*, B-286271, Dec. 1, 2000, 2000 CPD ¶ 194 at 2 n.2.

⁵ Generally, these DFARS provisions require that ball and roller bearings, and a majority of their bearing components, be manufactured in the United States or Canada, but also state that a waiver may be issued for non-availability. DFARS clause 252.225-7016; DFARS 225.7009-2. See DFARS 225.7009-4 (providing grounds for waiver).

awardees all proposed prices for more than 50 percent of the total number of CLINs, as required. *Id.*

In evaluating proposals, the agency identified areas where discussions were required with multiple offerors, and it conducted those discussions in the form of “evaluation notices” (ENs). *Id.* at 8-10. Specifically, as part of its evaluation of price, the agency determined that it could not verify the reasonableness of the prices proposed for 258 CLINs on the basis of either adequate competition or comparison to historical pricing, and that the agency required the submission of additional information from offerors for these CLINs. COS/MOL at 7-8. The agency’s price evaluator recommended, and the agency sent, ENs to offerors to obtain supporting data. AR, Exh. 61, Final Pricing Report at 3. For example, the agency sent multiple ENs to Jamaica requesting, among other data, verification of the manufacturer of its proposed products, invoices or cost breakdowns, and letters of authorization supported by quotes or invoices. AR, Exh. 36, Price EN to Jamaica at 3-10. All of these requests stated that they applied to the price evaluation factor. *Id.*

On July 25, the agency requested final proposal revisions (FPRs) from offerors. AR, Exh. 56, FPR Request. The request stated that responses were due no later than 5:00 p.m. Eastern Time on August 5, and stated that revisions received after that date would be late and would not be considered. *Id.* at 3. The request also stated: “Unless otherwise stated in your FPR Proposal, your FPR or current proposal (whether revised or not) will be considered valid for 180 calendar days from the initial FPR due date of April 29, 2022 until October 26, 2022.” *Id.*

On the day that FPRs were due, Jamaica sent an email to the agency by which it requested an extension, noting that some of its vendors were unable to provide updated pricing in time, and that some of the line item quotes in its FPR would expire on August 31. AR, Exh. 58, Jamaica Response to FPR Request at 4. When no response was received, Jamaica timely submitted its FPR, again noting that some of its CLIN proposals would expire on August 31. *Id.* at 1-3. On August 29, Jamaica asked the agency if it could update its proposal with additional vendor pricing that it had received. AR, Exh. 62, Emails Between Jamaica and Agency at 1. The agency informed Jamaica that it was no longer considering pricing updates. *Id.*

After the conclusion of discussions and submission of FPRs, the agency’s technical evaluation team (TET) evaluated proposals and determined that Jamaica and the awardees had demonstrated the acceptability of their proposals under the technical factor. AR, Exh. 24, TET Consensus Report at 4. The TET documented its finding that these offerors each met the requirements of both the high-level quality certification and contractor’s declaration subfactors. *Id.* at 5. The cyber security evaluation team similarly found that the protester and the awardees had demonstrated their acceptability under the cyber security factor. AR, Exh. 23, Cyber Security Final Report at 4-5.

With respect to past performance, the evaluation team assigned a rating of substantial confidence to Jamaica, American, and Mechatronics, and a rating of satisfactory confidence to Noble. AR, Exh. 17, Past Performance Report at 1. The evaluators

based this on data from SPRS. *Id.* This included supplier risk scores, which the agency explained are calculated using ten past performance factors, weighted by age and relative importance and summed to produce a numerical and color score for every company that has data from within the preceding three years. *Id.* at 5.

Jamaica, American, and Mechatronics all had supplier risk scores in the top five percent of suppliers, and positive records of deliveries in each of the three FSCs involved in this procurement. *Id.* at 7-9 (American), at 11-13 (Jamaica), at 13-15 (Mechatronics). With respect to all three offerors, the agency determined that it had a high expectation of successful performance and assessed a rating of substantial confidence. Noble had a supplier risk score in the second ten percent of suppliers (*i.e.*, the 85th-95th percentile), no documented experience specific to the three FSCs at issue in this procurement, and generally positive scores for delivery and quality in multiple other FSCs. *Id.* at 15-17. The agency's evaluators weighed Noble's lack of specific past performance in the three FSCs here against its overall past performance record, and determined that the agency had "a reasonable expectation that the offeror will successfully perform the required effort." *Id.* at 17. They concluded, "[b]ased on Noble[s] recent/relevant performance records, which show[] that Noble can successfully perform the effort, a performance rating of [s]atisfactory [c]onfidence is assigned." *Id.*

The source selection authority (SSA) then performed and documented the best-value tradeoff decision. AR, Exh. 64, Source Selection Decision Document (SSDD). For the cyber security, technical and past performance factors, the SSA reviewed offerors' proposals, and concurred with the evaluation teams' ratings. *Id.* at 1-9.

With respect to past performance, the SSA further explained that he considered the past performance of Jamaica, American, and Mechatronics--all of which were assessed a rating of substantial confidence--to be equal. AR, Exh. 67, SSA Declaration at 1. In making this determination, the SSA noted that although Jamaica's past performance history indicated a larger volume of deliveries, "it had a similar proportion of late deliveries and quality issues as American and Mechatronics." *Id.* With respect to Noble's past performance, the SSA expressly agreed with the rating of satisfactory, finding that "Noble's lack of past performance records in FSG 31 is not sufficient to justify a confidence rating above [s]atisfactory." AR, Exh. 64, SSDD at 8.

In making the tradeoff decision, which the RFP provided was to consider past performance and price only, the SSA concluded that, as among Jamaica, American, and Mechatronics, the offeror that proposed the lowest price would be the best value to the agency. *Id.* As between these three offerors and Noble, which was rated satisfactory confidence on the past performance factor, the SSA applied a "[y]ardstick" approach by which the agency would pay up to a 5 percent premium for an offeror with a substantial confidence rating. AR, Exh. 64, SSDD at 9-10.

The SSA determined that American represented the best value for 52 CLINs, Mechatronics for 143 CLINs, Noble for 53 CLINs, and Jamaica for 43 CLINs.⁶ *Id.* at 10. Between September 27 and October 25, the agency made awards to Jamaica, American, Mechatronics, and Noble, and posted notification of these awards on the Department of Defense Bid Board System. COS/MOL at 15-16. Jamaica protested each of the awards to other firms within ten days of the agency's posted notice.⁷ *Id.* Our Office determined that the protests raised similar issues and, after consultation with the parties, we consolidated the protests. GAO Notice, Nov. 16, 2022.

DISCUSSION

The protester challenges the agency's evaluation of some of the awardees under the technical, past performance, and price evaluation factors, as well as the agency's best-value tradeoff decisions. As explained below, we have reviewed all of Jamaica's challenges and find no basis to sustain the protest.⁸

Technical Evaluations

The protester alleges that the agency improperly evaluated the technical proposals of American and Noble.

The evaluation of technical proposals is a matter largely within the agency's discretion, and a protester's disagreement with the agency's judgment, without more, does not establish a basis for our Office to sustain a protest. *Pemco Aeroplex, Inc.*, B-310372, Dec. 27, 2007, 2008 CPD ¶ 2 at 10. Our Office will not disturb an agency's evaluation of technical proposals unless it is shown to be unreasonable or inconsistent with the solicitation's evaluation criteria. *Wilson 5 Serv. Co., Inc.*, B-407047, Oct. 18, 2012, 2012 CPD ¶ 339 at 4.

Here, the protester argues that American's and Noble's proposals did not meet the solicitation's technical requirements because the awardees did not provide letters of authorization demonstrating that they were approved to supply various items by the manufacturers of those items. The agency contends that it reasonably evaluated proposals under the technical factor because all offerors submitted evidence of both

⁶ The agency elected to award a total of 303 CLINs, to include 12 CLINs to a fifth offeror. AR, Exh. 64, SSDD at 10. With respect to the remaining CLINs, the agency elected not to make award, either because of changes in the agency's requirements or because the agency determined that no offeror had proposed a reasonable price. See AR, Exh. 63, Final Price Negotiation Memorandum at 2.

⁷ Jamaica did not protest the award of the 12 additional CLINs to the fifth offeror.

⁸ The protester initially challenged the agency's evaluation of the cyber security factor, but withdrew this aspect of its protest. Comments at 8.

their higher-level quality certification and their contractor declaration, which were the only requirements under the technical factor. We agree.

Where a solicitation does not require that offerors submit certain information, and does not require the agency to evaluate proposals based on that information, we will not sustain a protest based on the agency's alleged failure to consider that information. See *Nexsys Electronics Inc. d/b/a Medweb*, B-419616.4, Jan. 7, 2022, 2022 CPD ¶ 26 at 4. The solicitation here did not require offerors to submit letters of authorization, and did not provide that the agency would evaluate offerors' under the technical factor based on whether they had provided such letters.⁹ See RFP at 5, 9. Instead, as discussed above, offerors were required only to address their higher-level quality certification and to complete the contractor's declaration. *Id.* at 5. The agency would determine the technical rating for each proposal on the basis of these two subfactors only. *Id.* at 9.

Further, while the protester contends that letters of authorization were necessary to demonstrate compliance with the solicitation's technical requirements, it does not explain or support this argument. In any event, this argument is contradicted by Jamaica's own proposal, which did not include any letters of authorization in its discussion of the technical factor. See AR, Exh. 16, Jamaica Initial Proposal at 7-14.

Accordingly, we find that the protester has not shown that the agency's evaluation of proposals under the technical factor was unreasonable or inconsistent with the solicitation, and we deny this aspect of the protest. *Wilson 5 Serv.*, *supra* at 4.

Past Performance

The protester further alleges that the agency improperly evaluated the past performance of American, Mechatronics, and Noble.

An agency's evaluation of past performance, which includes the consideration of the relevance, scope, and size of an offeror's performance history, is a matter of discretion, which we will not disturb unless the agency's assessment is unreasonable or inconsistent with the solicitation criteria. See *Metropolitan Life Ins. Co.*, B-412717, B-412717.2, May 13, 2016, 2016 CPD ¶ 132 at 14. When a protester challenges an agency's past performance evaluation, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria, and procurement statutes and regulations, and to ensure that the agency's rationale is adequately documented. *DynCorp Int'l, LLC*, B-412451, B-412451.2, Feb. 16, 2016, 2016 CPD ¶ 75 at 14.

⁹ To the extent the agency, during discussions, requested that offerors submit letters of authorization and supporting invoices or quotes, it did so in an attempt to evaluate price reasonableness. See, e.g., AR, Exh. 35, EN to American at 10. This is not related to the agency's evaluation of the technical factor.

With respect to American and Mechatronics, the protester argues that the agency did not consider differences in the relevance or quantity of offerors' past performance. The record does not support the protester's contention. Specifically, the record demonstrates that the agency considered the relevance of offerors' past performance because offerors without demonstrated performance in all three FSCs, such as Noble, were evaluated less favorably than offerors with more closely relevant experience. With respect to the quantity of past performance, the SSA explained in a declaration that he considered the fact that Jamaica had a larger volume of past performance, but determined that Jamaica's past performance was equal to that of American and Mechatronics because of "a similar proportion of late deliveries and quality issues." AR, Exh. 67, SSA Declaration at 1. Jamaica has not made any argument as to why this determination was unreasonable. See Comments at 8-11.

With respect to Noble, the protester argues that Noble should have been assigned a rating of neutral confidence. The protester cites to the agency's conclusion that Noble did not demonstrate performance of the specific FSCs at issue in this procurement. See AR, Exh. 17, Past Performance Evaluation at 16-17.

Here, the solicitation stated that past performance would be evaluated on the offeror's "demonstrated record of contract compliance in supplying products and services that meet users' needs," and that such information would be considered recent and relevant. RFP at 10. Thus, the RFP did not limit the definition of relevance to only the provision of products in the specific FSCs at issue. Accordingly, the agency found that Noble had a record of recent and relevant performance because of the firm's generally positive record supplying other products, but assessed Noble a rating of satisfactory confidence rather than substantial confidence due to its lack of specific experience in the FSC categories here. We find this conclusion to be reasonable and consistent with the solicitation's evaluation criteria.

In sum, the protester has not demonstrated that the agency's past performance evaluation was unreasonable or inconsistent with the solicitation's evaluation criteria with respect to any of the awardees. *Metropolitan Life, supra* at 14. We therefore deny these protest grounds.

Price Evaluation

The protester next alleges that the agency unreasonably determined that Noble and Mechatronics submitted fair and reasonable pricing. With respect to Noble, the protester contends that, absent letters of authorization supported by quotes, the agency had "no reasonable basis to conclude that Noble's pricing was fair or reasonable." Comments at 11. With respect to Mechatronics, the protester argues that the agency improperly failed to consider Jamaica's own--expired--pricing in conducting the price reasonableness analysis.

A determination of price reasonableness is a matter of agency discretion, involving the exercise of business judgment, which our Office will not question unless it is shown to

be unreasonable. *United Distribution Sys.*, B-419874, B-419874.2, Aug. 20, 2021, 2021 CPD ¶ 307 at 7.

The agency report here documents an extensive analysis of pricing, based on whether adequate competition existed and the degree to which proposed prices deviated from historical prices paid for the same items. See AR, Exh. 61, Pricing Team Final Report. Ultimately, the agency decided to make award only with respect to those line items where either (1) adequate price competition existed and the awarded price was within 25 percent of historical pricing, or (2) adequate price competition did not exist, but the award price was within ten percent of historical pricing. AR, Exh. 63, Final Pricing Negotiation Memorandum at 18-19, 37.¹⁰

Except for one argument regarding Jamaica's expired pricing, the protester does not substantively respond to the agency's arguments in support of DLA's price reasonableness analysis, or explain why any of the agency's conclusions are incorrect. See Comments at 11. In any event, the Federal Acquisition Regulation (FAR) expressly permits agencies to determine that prices are fair and reasonable using the methods that the agency used here. Specifically, FAR section 15.404-1(b)(2)(i) permits the "[c]omparison of proposed prices received in response to the solicitation," and notes that "[n]ormally, adequate price competition establishes a fair and reasonable price."¹¹ Section 15.404-1(b)(2)(ii) of the FAR permits an agency to determine reasonableness by "[c]omparison of the proposed prices to historical prices paid . . . for the same or similar items." These two methodologies appear to be precisely what the agency did here, and the protester has not demonstrated that the agency acted unreasonably.

Further, we find no merit to the protester's contention that the agency was required to take into account Jamaica's expired pricing when evaluating the reasonableness of Mechatronics's pricing. As an initial matter, while the agency expressly stated that proposed prices would be presumed valid through October 26, 2022, Jamaica submitted proposals, for some CLINs, with prices that expired on August 31. These proposals had therefore expired when the agency made its contract awards in September. They were no longer "priced offers that satisfy the [g]overnment's

¹⁰ The SSD states that, of the 53 line items awarded to Noble, 23 were found reasonable based on price competition and pricing within 25 percent of historical data, and 30 were found reasonable in the absence of price competition because Noble proposed a price within ten percent of historical pricing. AR, Exh. 64, SSD at 10. Similarly, of the 143 line item awards made to Mechatronics, 99 were found reasonable based on competition and a 25 percent historical pricing threshold, and 44 were found reasonable absent competition, but based on the ten percent historical pricing threshold. *Id.* at 9. The protester has not identified, nor could our Office locate, any line item award that did not fall into one of these two categories. See AR, Exh. 68, Final Abstract, Award Summary.

¹¹ Adequate competition exists when "[t]wo or more responsible offerors, competing independently, submit priced offers that satisfy the [g]overnment's expressed requirement." FAR section 15.403-1(c)(1)(i)(A).

expressed requirement”; *i.e.*, the type of offers that the FAR directs agencies to consider in determining price reasonableness through adequate price competition. See FAR section 15.403-1(c)(1)(i)(A). We find nothing unreasonable, therefore, in the agency not considering this expired pricing in determining the reasonableness of Mechatronics’ pricing.

Best-Value Determination

The protester’s challenge to the agency’s best-value determination consists of two arguments: first, that the tradeoff decision was tainted by the agency’s improper past performance evaluation under which Jamaica claims it should have received higher ratings than American and Noble; and second, that the agency’s “yardstick” approach to the tradeoff between past performance and price was improperly mechanical and did not consider the underlying merits of proposals.

The first of these arguments is derivative of Jamaica’s challenges to the agency’s past performance evaluation, all of which we have denied. Thus, we dismiss this allegation because derivative allegations do not establish independent bases of protest. *Advanced Alliant Solutions Team, LLC*, B-417334, Apr. 10, 2019, 2019 CPD ¶ 144 at 6.

With respect to the protester’s second argument, as explained above, the agency reasonably concluded that Jamaica was equal to American and Mechatronics under the past performance factor. Therefore, price was the only discriminator between these offerors, and the agency did not (and was not required to) make a best-value tradeoff decision. See *The MIL Corp.*, B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 14 (no tradeoff is required when proposals are technically equal and one is lower-priced than the other). The agency was also not required to make a tradeoff between Jamaica and another offeror on any CLINs for which Jamaica did not submit a price, or on any CLINs for which Jamaica’s proposal expired prior to award.

Accordingly, the only CLINs where the agency conducted a tradeoff between Jamaica and another offeror--and therefore the only CLINs to which Jamaica’s second argument applies--are those CLINs that were awarded to Noble, where Jamaica submitted a proposal that had not expired at the time of award. There are 11 such CLINs.¹² On November 18, 2022, the agency informed our Office that it intended to take corrective action with respect to these particular CLINs by cancelling the award to Noble and recompeting the CLINs among IDIQ holders at a later date. Notice of Corrective Action, B-421180.2 at 1.

The agency’s corrective action renders Jamaica’s protest of the agency’s best-value tradeoff academic. We do not consider academic protests. *Ferris Optical*, B-403012.2, B-403012.3, Oct. 21, 2010, 2010 CPD ¶ 265 at 1-2.

¹² These are: CLINs 70, 99, 102, 106, 151, 307, 351, 408, 524, 537, and 559.

We therefore dismiss the protester's challenge to the agency's tradeoff determination as derivative in part, and academic in part.

The protest is denied.

Edda Emmanuelli Perez
General Counsel