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# Decision

**Matter of:** Akima Facilities Operations, LLC

**File:** B-421584

**Date:** July 6, 2023

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Devon E. Hewitt, Esq., Potomac Law Group, PLLC, for the protester.  
Damien C. Specht, Esq., James A. Tucker, Esq., and Roke Iko, Esq., Morrison & Foerster LLP, for ASRC Federal Facilities Logistics, LLC, the intervenor.  
Jennifer L. Howard, Esq., Victoria H. Kauffman, Esq., Amber M. Hufft, Esq., and James A. Vatne, Esq., National Aeronautics and Space Administration, for the agency.  
Nathaniel S. Canfield, Esq., and Evan D. Wesser, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest challenging the agency's evaluation of proposals is denied where the evaluation was reasonable and consistent with the terms of the solicitation.
  2. Protest that the agency evaluated proposals disparately is denied where the record reflects that differences in evaluations were a result of differences in proposals.
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## DECISION

Akima Facilities Operations, LLC, an 8(a)<sup>1</sup> small business of Herndon, Virginia, protests the award of a contract to ASRC Federal Facilities Logistics, LLC, an 8(a) small business of Beltsville, Maryland, under request for proposals (RFP) No. 80GSFC22R0011, which was issued by the National Aeronautics and Space Administration (NASA) for operations and maintenance (O&M), architect-engineering (A-E), construction, and information resources services.

We deny the protest.

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<sup>1</sup> Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes the Small Business Administration to enter into contracts with government agencies and to arrange for performance through subcontracts with socially and economically disadvantaged small business concerns. Federal Acquisition Regulation (FAR) 19.800. This program is commonly referred to as the 8(a) program.

## BACKGROUND

The agency issued the RFP on August 3, 2022, pursuant to the negotiated procurement procedures in FAR part 15, and amended it once. Contracting Officer's Statement (COS) at 1-2. The RFP sought proposals for the provision of O&M, A-E, construction, and information resources services in support of facility requirements at NASA's Goddard Space Flight Center (GSFC) Greenbelt site and the Wallops Flight Facility, as well as GSFC remote sites and NASA headquarters. *Id.* at 1; Agency Report (AR), Tab 4B, Statement of Work (SOW) at A-4.

The RFP contemplated award of a single, indefinite-delivery, indefinite-quantity contract with a five-year ordering period and a maximum value of \$320 million. COS at 1; AR, Tab 4A, RFP at 2, 14. Task orders to be issued under the contract will include both cost-plus-fixed-fee and fixed-price tasks. COS at 1; RFP at 102.

The RFP provided that the agency would utilize a best-value tradeoff methodology in its source selection, considering three factors: mission suitability; past performance; and cost. RFP at 136. The mission suitability and past performance factors, when combined, were approximately equal in importance to cost. *Id.* Individually, cost was more important than the mission suitability factor, which was more important than the past performance factor. *Id.*

The mission suitability factor consisted of two subfactors: technical approach and management approach. *Id.* at 120, 137. Relevant here, among the aspects of each offeror's technical approach was a quality control plan, for which the RFP instructed offerors as follows:

The offeror shall submit a written Quality Control Plan (QCP) identifying the offeror's approach to ensuring high quality service and product throughout the duration of the contract. Specifically, the offeror shall identify in the plan the procedures for continually monitoring, identifying, and correcting deficiencies. The QCP shall describe the offeror's method (e.g. 100% inspection, planned sampling, random sampling, customer complaints, etc.) to determine whether performance requirements in the SOW are met. The Plan shall ensure that work is completed in accordance with Computerized Maintenance Management System (CMMS) job plans, maintenance and construction specifications, drawings, and industry standards as applicable.

*Id.* at 121. The RFP stated that the agency would evaluate the quality control plan, including all areas and information specified in the instructions, for effectiveness and reasonableness. *Id.* at 137.

Also relevant here, one of the elements of the management approach was a task order management plan, in which the offeror was to describe its plan for managing a

fluctuating number of task orders, detailing its plan for responding quickly to requests, assigning staff, subcontracting as necessary, tracking progress, invoicing, and closing out tasks. *Id.* at 121. Additionally, offerors were to explain how they would control schedule and cost, as well as correctly allocate costs between cost-plus-fixed-fee and fixed-price tasks. *Id.* The RFP stated that the agency would evaluate the task order management plan, including all areas and information specified in the instructions, for effectiveness. *Id.* at 138.

The RFP further provided that the agency would numerically weight and score proposals under the technical approach and management approach subfactors, with technical approach scored on a 400-point scale and management approach scored on a 600-point scale. *Id.* Proposals also would receive adjectival ratings for each subfactor, but the agency would not assign an overall adjectival rating for the mission suitability factor; rather, proposals would receive a numerical score for that factor equaling the total of the subfactor scores. *Id.* at 139.

With respect to past performance, the RFP stated that the agency would evaluate the recency, relevancy, and performance quality of the offeror's past performance to assign a confidence level of high, moderate, low, very low, or neutral. *Id.* at 141-142.

The agency received timely proposals from four offerors, including Akima and ASRC. COS at 4. The agency evaluated those two offerors' proposals as follows:

	<b>Akima</b>	<b>ASRC</b>
<b>MISSION SUITABILITY</b>	654	740
<b>Technical Approach</b>	300/Very Good	332/Very Good
<b>Management Approach</b>	354/Good	408/Good
<b>PAST PERFORMANCE</b>	High Confidence	High Confidence
<b>PROPOSED COST</b>	\$51,445,063	\$50,539,806
<b>PROBABLE ADJUSTED COST</b>	\$54,368,372	\$53,997,554

AR, Tab 8, Source Evaluation Board (SEB) Presentation to Source Selection Authority (SSA) at 11, 13.

Based on his review of the strengths and weaknesses associated with each proposal, the SSA determined that ASRC's proposal was superior to Akima's under both the technical approach and management approach subfactors, and that it therefore was superior under the mission suitability factor as a whole. AR, Tab 9, Source Selection Statement at 8-10. The SSA further found that the proposals were equally meritorious under the past performance factor. *Id.* at 11. The SSA concluded that ASRC's proposal--which had a lower proposed and probable cost--represented the best value, and selected it for award. *Id.*

## DISCUSSION

The protester alleges that the agency unreasonably evaluated both its proposal and the proposal submitted by ASRC. Additionally, the protester contends that the agency evaluated proposals unequally. As discussed in further detail below, we find no basis on which to sustain the protest.

### Evaluation Challenges

#### Mission Suitability Factor

First, the protester challenges the evaluation of its proposal under both subfactors of the mission suitability factor. Protest at 5-9. The protester alleges that the agency unreasonably assigned a weakness to its proposal for lack of specificity and details with respect to the protester's quality control plan under the technical approach subfactor. *Id.* at 5-7. The protester further alleges that the agency unreasonably assigned a weakness to its proposal under the management approach subfactor for lack of clarity regarding the role of a proposed subcontractor. *Id.* at 8-9. The agency responds that its evaluation was reasonable and consistent with the terms of the RFP. Memorandum of Law (MOL) at 4-8, 14-16. We conclude that the protester has not demonstrated that the agency's evaluation was improper.<sup>2</sup>

In reviewing protests challenging the evaluation of an offeror's proposal, it is not our role to reevaluate proposals; rather, our Office examines the record to determine whether the agency's judgment was reasonable, and in accordance with solicitation criteria and applicable procurement statutes and regulations. *Patriot Def. Group, LLC*, B-418720.3, Aug. 5, 2020, 2020 CPD ¶ 265 at 7. A protester's disagreement with the agency's assessment, without more, does not render the evaluation unreasonable. *The Ginn Group, Inc.*, B-420165, B-420165.2, Dec. 22, 2021, 2022 CPD ¶ 17 at 9.

In evaluating the protester's quality control plan, the agency found that it detailed theoretical quality management system processes, but did not include specific details as to how the protester would conduct quality control across the O&M, A-E, and construction programs contemplated by the RFP. AR, Tab 8, SEB Presentation to SSA at 30. The agency concluded that this lack of detail increased the risk of unsuccessful

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<sup>2</sup> The protester initially alleged that the agency also unreasonably assigned a weakness to its proposal under the technical approach subfactor with respect to the proposed staffing of representative task orders and the need for overtime hours. See Protest at 7-8. The agency responded to this argument in its report, arguing that the protester had failed to propose adequate staffing, in particular for unplanned work that would require overtime labor. MOL at 8-13. The protester did not substantively reply to the agency's response. We therefore consider the protester to have abandoned this argument, and we will not further consider it. 4 C.F.R. § 21.3(i)(3); *LinTech Global, Inc.*, B-419107, Dec. 10, 2020, 2021 CPD ¶ 5 at 3.

contract performance, and assigned a weakness. *Id.*; AR, Tab 9, Source Selection Statement at 5, 9.

The protester contends that this weakness was not consistent with the RFP's evaluation criteria, arguing that the RFP instructed offerors to submit a plan that reflected their standard procedures and methods, as well as industry standards, not a plan that was tailored to the contract requirements and addressed each type of work to be performed. Protest at 5-6. The agency responds that its evaluation was consistent with the RFP's terms, and that the protester's argument is premised on an unreasonable reading of the RFP. MOL at 5-6.

Where, as here, the parties disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions. *Resicum Int'l LLC*, B-421383, Mar. 22, 2023, 2023 CPD ¶ 75 at 4. To be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. *Id.*; *Futron, Inc.*, B-420703, July 25, 2022, 2022 CPD ¶ 189 at 6.

Here, the protester's interpretation that the RFP did not require offerors to provide specific information regarding their approach to quality control with respect to the work described in the RFP is contrary to the plain language of the RFP, and therefore is not reasonable. For instance, the RFP instructed offerors to submit a quality control plan that "describe[s] the offeror's method . . . to determine whether performance requirements in the SOW are met." RFP at 121. Thus, the RFP explicitly tied the quality control plan to the specific requirements and work described in the SOW, including O&M, A-E, and construction requirements.<sup>3</sup> It is not reasonable to read this aspect of the RFP as requiring only a description of an offeror's general quality control procedures, rather than a plan tailored to the successful performance of the specific contract requirements.

Furthermore, the protester's contention that the RFP required quality control plans only to be consistent with industry standards is not supported by the RFP. The instructions state that the offeror's quality control plan "shall ensure that work is completed in

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<sup>3</sup> Similarly, as the agency points out, the questions and answers released to all offerors contained a response stating that the quality control plan portion of the RFP's instructions "requires submission of a Quality Control Plan to cover all work to be performed under the contract and will be incorporated as Attachment F into the awarded contract." AR, Tab 3, Questions & Answers at 31. As our Office has recognized, information disseminated during the course of a procurement that is in writing, signed by the contracting officer, and provided to all offerors, contains all of the essential elements of an amendment--even where not designated as an amendment--and is sufficient to operate as such. *Energy Eng'g & Consulting Servs., LLC*, B-407352, Dec. 21, 2012, 2012 CPD ¶ 353 at 3. The agency's answer thus provided an additional indication to offerors that their quality control plans were to address all aspects of the work, including O&M, A-E, and construction requirements.

accordance with . . . industry standards as applicable.” *Id.* The RFP therefore required that the proposed quality control plan demonstrate how the offeror would ensure the *work* was consistent with industry standards; it did not require only that the quality control plan itself be consistent with industry standards. Accordingly, the protester has not advanced a reasonable interpretation of the RFP, and we deny this ground of protest.

The agency also assigned a weakness to the protester’s proposal under the management approach because the proposal was unclear regarding the role of a proposed subcontractor in performing construction tasks. AR, Tab 8, SEB Presentation to SSA at 35. Specifically, the agency noted that the proposal did not provide details about how the subcontractor would staff construction projects to provide daily oversight, attend progress and quality control meetings, and coordinate construction activity. *Id.* The agency concluded that the lack of clearly defined responsibilities and procedures in this regard increased the risk of unsuccessful performance. *Id.*; AR, Tab 9, Source Selection Statement at 5, 10.

The protester alleges that the assignment of this weakness was unreasonable because the protester did not propose that the subcontractor would manage construction requirements. Protest at 8-9. To that end, the protester argues that its proposal states that the proposed subcontractor will perform A-E requirements, and will only monitor construction work required under the contract. *Id.* at 8. Because its proposal did not propose that the subcontractor would perform or manage construction requirements, the protester contends that the agency unreasonably assigned this weakness. *Id.* at 9.

We find the protester’s contentions unpersuasive. As the agency points out, the protester’s proposal contains multiple references to the subcontractor performing construction requirements. MOL at 14-16. For example, a chart listing the roles of the protester and its proposed subcontractors states that the subcontractor at issue here will perform “Construction (SOW 11.0)[.]” AR, Tab 5B, Akima Mission Suitability Volume at 3. Moreover, the protester and subcontractor are the only two entities specified as performing construction SOW requirements. *See id.* Additionally, with respect to design-build construction requirements, the proposal states that the subcontractor “[DELETED].” *Id.* at 24. This reasonably suggests that the subcontractor is managing construction requirements of this nature. Furthermore, in discussing commissioning of construction requirements, the proposal states that “[e]ngineering, contractor management, and construction supervision requirements are routed to” the subcontractor, which “manages the engineering and construction support services[.]” *Id.* at 25. It is not unreasonable to read those statements as indicating that the subcontractor is proposed to manage construction requirements.

The record thus reflects that the protester’s proposal referred to the subcontractor’s substantial involvement in construction requirements in several places. The protester therefore has not demonstrated that the agency’s reading of its proposal was unreasonable. To the extent the protester did not intend for its proposal to be read in this manner, an offeror has the burden of submitting an adequately written proposal,

and it runs the risk that its proposal will be evaluated unfavorably if it fails to do so. *Hawk Inst. for Space Scis.*, B-409624, June 20, 2014, 2014 CPD ¶ 200 at 3. We therefore deny this protest allegation as well.

### Past Performance

Next, the protester alleges that the agency unreasonably evaluated ASRC's proposal under the past performance factor, arguing that the agency should have had greater concerns about ASRC's past performance in light of the nature and frequency of documented performance problems. Protest at 9-10; Comments at 6-9. Specifically, the protester contends that the agency did not reasonably consider safety and cost overrun issues that arose in ASRC's past performance references, and that ASRC's proposal should have received a rating of moderate, rather than high, confidence. Comments at 8-9. The agency responds that it reasonably considered the issues raised by the protester in its evaluation of ASRC's past performance. MOL at 20.

An agency's evaluation of past performance, which includes its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of agency discretion which we will not disturb unless the agency's assessments are unreasonable, inconsistent with the solicitation criteria, or undocumented. *Fox RPM Corp.*, B-409676.2, B-409676.3, Oct. 20, 2014, 2014 CPD ¶ 310 at 3. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was improper. *Beretta USA Corp.*, B-406376.2, B-406376.3, July 12, 2013, 2013 CPD ¶ 186 at 10.

The record reflects that the agency considered both the issues identified by the protester as well as additional information that mitigated and contextualized those concerns. For example, the agency noted that ASRC had cost overruns on 15 task orders under another NASA contract, which is one of the issues the protester argues the agency did not reasonably consider. AR, Tab 8, SEB Presentation to SSA at 116. As the SEB further noted, however, ASRC had taken corrective actions that promptly resolved the cost control issues, resulting in a substantial reduction in overrun incidents. *Id.* In light of ASRC's success in resolving cost control issues, the agency favorably evaluated ASRC's performance. *Id.*

Similarly, the agency noted that ASRC had received a satisfactory rating for regulatory compliance in connection with the discharge of water from fire vehicles, which the protester also cites as an example of information that should have raised greater concerns. *Id.* at 117. Again, though, the agency also noted ASRC's "high overall performance rating" for the contract and that "[n]o other performance issues were identified." *Id.* Finally, the record reflects that the agency also considered the safety issues identified by the protester under another NASA contract. *Id.* at 118. The record contains a detailed discussion of those issues, as well as the agency's consideration that the subcontractor at issue has an Occupational Safety and Health Administration reportable incident rate that is less than half the average construction rate. *Id.* The agency consequently assigned a positive performance rating for that contract. *Id.*

In short, the record reflects that the agency considered all of the concerns raised by the protester, but also that the agency took into account additional performance assessment data regarding those contracts, such as corrective actions and their results. This is in keeping with the RFP's evaluation criteria, which stated that the agency's evaluation "will consider . . . any corrective actions taken by the offeror." RFP at 141. While the protester may disagree with the agency's judgments in this regard, the protester's disagreement, without more, does not establish that the agency's evaluation was unreasonable. We therefore deny this protest allegation.

### Disparate Treatment

Lastly, the protester contends that the agency disparately evaluated proposals under the technical approach subfactor of the mission suitability factor. Specifically, the protester argues that the agency unequally assigned a significant strength to ASRC's proposal for regularly scheduling some of its O&M staff on Saturday. Protest at 10. The protester contends that it proposed a similar approach, and therefore deserved a similar significant strength. *Id.*; Comments at 5-6. The agency responds that it evenly evaluated proposals, and that the differences in the evaluations reflect differences in the two proposals. MOL at 21-23.

It is a fundamental principle of federal procurement law that a contracting agency must even-handedly evaluate proposals against common requirements and evaluation criteria. *Systems Implementers, Inc.; Transcend Technological Sys., LLC*, B-418963.5 *et al.*, June 1, 2022, 2022 CPD ¶ 138 at 17. To successfully allege unequal (or disparate) treatment, a protester must demonstrate that the agency unreasonably downgraded its proposal for features that were substantively indistinguishable from, or nearly identical to, those contained in other proposals. *Emagine IT, Inc.*, B-420202, B-420202.2, Dec. 30, 2021, 2022 CPD ¶ 20 at 12.

Here, we agree with the agency that the evaluation reflects differences in the proposals. ASRC's proposal stated that normal business hours for its personnel are Monday through Saturday, "allow[ing] some staff to [DELETED] when [Goddard Space Flight Center] is less occupied (Saturday)." AR, Tab 7, ASRC Mission Suitability Volume at 9. It further stated that ASRC's proposed approach was to "schedule personnel within [DELETED]." *Id.* The agency found that this approach greatly enhanced the chances of successful performance, noting that weekend work is imperative to keeping GSFC operational, and that the proposed schedule would "result in a marked increase in efficiency over a standard work week." AR, Tab 8, SEB Presentation to SSA at 17.

In arguing that it proposed a similar approach, the protester cites a single sentence from its cost proposal stating that "[w]ork will be performed during normal business hours, during scheduled shift hours as required, and after hours as required by the customer." Comments at 6 (citing AR, Tab 5C, Akima Cost Volume at A2). Even if that language had appeared in the technical approach section of the protester's proposal, it does not approach the level of detail contained in ASRC's proposal. It cannot reasonably be



characterized as substantively indistinguishable from, or nearly identical to, the content of ASRC's proposal. Indeed, the protester appears to recognize that substantive distinction between the proposals, stating that it "did not believe it needed to address its shift scheduling approach in detail" because it "knew the [a]gency was very familiar with [Akima's] shift scheduling approach to accommodate work on Saturdays" as a result of its sister company's work on an incumbent effort. Comments at 6. As noted above, however, it is an offeror's responsibility to submit a well-written proposal, with adequately detailed information that allows a meaningful review by the procuring agency. Thus, to the extent that the protester's proposed approach to scheduling is similar to ASRC's and therefore deserving of a similar significant strength, it was incumbent upon Akima to make that approach clear in its proposal. See, e.g., *Scientific and Commercial Sys. Corp.; Omni Corp.*, B-283160 *et al.*, Oct. 14, 1999, 99-2 CPD ¶ 78 at 14 ("Offerors are responsible for preparing their proposals in a manner that establishes that what is offered will meet the government's needs, and agencies are not obligated to search out omitted information or to credit offerors for information that they may have, but failed to submit with their proposal."). On this record, we conclude that the differences in the evaluation stem from differences in the proposals. This allegation accordingly provides no basis to sustain the protest.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel