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Decision

Matter of: Asteri Consulting Services, LLC d/b/a Asteri EMS

File: B-421799; B-421799.2

Date: October 16, 2023

Samuel Van Kopp, Esq., Michael Bhargava, Esq., Lynne Halbrooks, Esq., and Robert Nichols, Esq., Nichols Liu LLP, for the protester.

Bradley L. Drell, Esq., and Heather M. Mathews, Esq., Gold Weems Bruser Sues & Rundell, for Legacy EMS, Inc., the intervenor.

Morgan L. Hilgendorf, Esq., and Brent F. Osgood, Esq., Department of Defense, for the agency.

Paula A. Williams, Esq., and Evan D. Wesser, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation and selection of a lower-priced quotation evaluated as technically equal to the protester's is denied where the record shows that the agency's evaluation and selection decision were reasonable and consistent with the terms of the solicitation.
 2. Protest asserting that agency conducted discussions with the awardee but not with the protester, is denied where the communication sent by the agency to the awardee constituted clarifications rather than discussions.
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DECISION

Asteri Consulting Services, LLC d/b/a Asteri EMS, a small business located in Colorado Springs, Colorado, protests the award of a contract to Legacy EMS, Inc., a small business located in Alexandria, Louisiana, under request for quotations (RFQ) No. HT9407-23-Q-0001 issued by the Department of Defense (DOD), Defense Health Agency (DHA) for ground ambulance services. Asteri, the incumbent contractor, argues that the agency unreasonably evaluated the awardee's experience, conducted unequal discussions, performed an unreasonable price analysis, and that the resulting selection decision was flawed.

We deny the protest.

BACKGROUND

On May 30, 2023, DHA issued the RFQ pursuant to the procedures of Federal Acquisition Regulation (FAR) part 12, Acquisition of Commercial Products and Commercial Services, and FAR subpart 13.5, Simplified Procedures for Certain Commercial Products and Commercial Services.¹ RFQ at 27. The RFQ, which was set aside for small business concerns, sought quotations for a contractor to provide ground ambulance services at the United States Air Force Academy (USAFA) in Colorado Springs, Colorado.

As is relevant here, the performance work statement (PWS) stated that the selected contractor was required to provide a minimum of three dedicated ambulances covering the following areas:

- Entire North area of USAFA (referred to as the North Cadet Area). The ambulance must be physically located in the North Cadet Area. This area requires 24/7 coverage.
- Entire Flight Line (referred to as Flight Line area). The ambulance must be physically located in the Flight Line area. This area requires coverage only during flight hours.
- Roving area covering the Southern and Central Areas (referred to as Roving area). This area requires 24/7 coverage.

Agency Report (AR) Exh. 10, Revised PWS at 14.

Additionally, the contractor will provide ambulance services “during USAFA base exercises, special events, sports/athletic events, specialized training, and in-flight emergencies.” *Id.*

The RFQ contemplated award of a fixed-price contract with a 30-day phase-in period, an 11-month base period, and two 1-year option periods. RFQ at 3-7; AR Exh. 10, Revised PWS at 2. Award would be made to the vendor whose quotation, conforming to the solicitation would be most advantageous to the government, price and other non-price factors considered. RFQ at 29. The non-price factors were listed as: (1) experience; (2) responses to quote response form; and (3) past performance. *Id.* Vendors were instructed to provide a completed quote response form (RFQ attach. 4);²

¹ The RFQ was amended once. Unless otherwise noted, citations to the RFQ are to the conformed copy provided by the agency as exhibit 12 in the agency report.

² The quote response form was to include accurate and detailed information about the vendor’s experience and capability to perform the solicited services. RFQ at 28.

a completed pricing worksheet (RFQ attach. 3);³ and a mission-essential contractor services plan.⁴ *Id.* at 28.

As to the experience factor, vendors were to describe their experience providing services on no more than three contracts demonstrating the vendor's ability to fulfill the solicitation requirements. AR Exh. 8, RFQ attach. 4, Quote Response Form at 1. Vendors were to address the following aspects of their prior experiences: (1) 24-hour emergency response operations; (2) performing services for special events comparable to National Collegiate Athletic Association (NCAA) football games; and (3) provision of a dedicated independent medical director.⁵ *Id.*

The agency was to assess vendors' experience information and assign a relevancy rating of either relevant or not relevant. RFQ at 30. Relevant experience was defined as experience within the past three years that "involved similar scope, magnitude of effort, and complexities this solicitation requires."⁶ *Id.* Not relevant experience was defined as experience within the past three years that "did not involve similar scope, magnitude of effort, and complexities this solicitation requires." *Id.* More relevant experience would be considered more favorably than less relevant experience, but the RFQ did not require rejection of quotations for non-relevant experience. *Id.*

Of note, the stated purpose of assigning a relevancy rating was to determine which experience references would be part of the past performance evaluation. *Id.* Additionally, as it pertains to the experience factor, the RFQ stated that vendors were responsible "for providing sufficient detail" in their quotations "for effective evaluation, and for substantiating the validity of stated claims." *Id.* The other non-price factors, responses to quote response form (factor 2) and past performance (factor 3) would not be scored or rated. *Id.* at 30. The RFQ did not rank or otherwise provide the weight for any of the non-price factors.

As to price, vendors were to provide, for each performance period, fixed unit and extended prices for each contract line item number (CLIN), using the pricing worksheet provided with the RFQ. RFQ at 28; AR Exh. 11, Revised Pricing Worksheet. Total

³ Completion of the pricing worksheet would constitute the vendor's price quotation. RFQ at 28.

⁴ The mission-essential contractor services plan would not be evaluated but will be incorporated into the resulting contract. RFQ at 28 (*citing* Defense FAR Supp. clause 252.237-7023).

⁵ The quote response form also sought additional information such as the vendor's anticipated teaming arrangements; number of ambulances to be dedicated to contract performance; and the vendor's plans to retain/recruit personnel. AR Exh.8, RFQ attach. 4, Quote Response Form at 5-7.

⁶ The RFQ did not further define what experience the agency considered to be similar in "scope," "magnitude of effort," or "complexities."

proposed prices would be the sum of vendors' extended prices for all performance periods including a 6-month contract extension period. Total proposed prices would be evaluated for reasonableness in accordance with FAR section 13.106-3(a). RFQ at 30. The agency would not conduct a price realism analysis unless the contracting officer determined that a vendor's prices were so low as to present an unacceptable technical risk. Quotations found to be unrealistically low might be eliminated from consideration for award. *Id.*

In describing the evaluation process, the RFQ stated that the agency would evaluate quotations for responsiveness, evaluate vendors' experience for relevancy, review vendors' answers to other questions on the quote response form, assess past performance of any relevant experience contract, and conduct a price analysis of each quotation. *Id.* at 29. Next, the agency was to conduct a comparative analysis (comparing vendors' experience, past performance, responses to other questions on the quote response form, and price to one another) and select an awardee that is best suited to fulfill the requirements of the solicitation. In this comparative analysis, the non-price factors would be significantly more important than price. *Id.*

As is relevant here, the RFQ advised that the agency reserved the right to make award based on initial responses, or to engage in exchanges "to clarify certain aspects of quotes (e.g., the relevance of a vendor's experience information and adverse past performance information to which the vendor has not previously had an opportunity to respond), or to resolve minor or clerical errors." *Id.* at 31.

DHA received timely quotations from five vendors, including Asteri and Legacy.⁷ For the experience factor, Asteri submitted two references, including its incumbent contract at USAFA. AR Exh. 13, Asteri Quote Response Form at 2-3. The agency reviewed both contract references and assigned a relevancy rating of relevant for each reference. *Id.*, Exh. 20, Asteri Evaluation Extract at 3. Under this factor, the evaluators recognized that Asteri, as the incumbent, had experience with the exact scope and complexities that this solicitation requires, including special events. *Id.*

Legacy provided experience information for three references: (1) Creech Air Force Base (AFB), in Nevada; (2) Peterson and Schriever Space Force Base (SFB), in Colorado; and (3) Langley AFB, in Virginia. *Id.*, Exh. 15, Legacy Quote Response Form at 1-4. Legacy identified itself as the prime contractor for each of the three contracts and provided the following information:

Q: Did any of your experiences require your company to perform services for special events comparable to an NCAA football game?

A: Experience 1 for Creech AFB requires standby for special events to include Creech Family Day, as well as exercise and other base events.

⁷ The quotations submitted by the other three vendors are not relevant to the resolution of this protest and are not discussed further.

Most of our DOD contracts have required standby of some events or visits. Equally, we contract privately to provide event coverage at many types of venues. Some of which would be at or comparable to an NCAA football game.

Id. at 1.

Legacy's quotation also included the following information under the "Additional Vendor Information" heading:

Legacy is well versed in supporting large-scale operations and support activities, with prior experience in supporting special events of up to 50,000 attendees and providing medical support for mass hurricane evacuations. We have supported Joint Base Medical Exercises, [mixed martial arts (MMA)] events, Special Olympics, and have 100 [percent] confidence in our ability to support USAFA's Sporting Events and any large-scale exercises, as requested. In addition, we will be supporting the El Paso County Fair in 2023 and the Colorado Springs Pride Fest, with an expected attendance of 50,000.

Id. at 7.

After reviewing Legacy's experience information under the heading "Additional Vendor Information," quoted above, the agency conducted exchanges with Legacy and asked Legacy to: "Please clarify the number of people that attended these events and if you were/are going to be the sole contractor." AR Exh. 17, Exchange Request at 1. Legacy provided the following response:

We solely supported an average of 15,000 to 30,000 people for the Joint Base Medical Exercises, MMA events, and Special Olympics. For the Hurricane relief, we supported over 100,000 people along with other agencies/contractors. We will be the main contractor for the El Paso County Fair and the Colorado Springs Pride Fest in conjunction with the Fire Department, which has an expected attendance of 50,000 people. We are confident we can support United States Air Force Academy's requirements. Legacy is more than qualified for immediate assumption of full responsibilities of this contract and has a sustainable business model for meeting [DOD] needs.

Id., Response to Exchange Request at 2.

The agency reviewed the totality of Legacy's experience information, including its exchange response, and assigned Legacy a relevancy rating of relevant for each of the contract references. *Id.*, Exh. 20, Legacy Evaluation Extract at 3. The agency then performed a comparative assessment of all five vendors under this factor. Relevant here, as to Asteri and Legacy the agency concluded:

For this Factor, Asteri, and Legacy EMS's quotes were considered, through comparative analysis, more beneficial than those of the other two vendors. Although the Asteri, and Legacy EMS's experience are not identical in scope and complexity, they all demonstrated recent and relevant experience with the most important aspects of this solicitation (24/7 operations and experience providing EMS services at special events similar in scope and complexity to an NCAA football game). The difference in experience between these three vendors is negligible in terms of benefit to the government. Asteri has demonstrated experience with 24/7 EMS services at the exact scale this solicitation requires. They have a qualified medical director and experience providing EMS services for special events similar in scale and complexity to an NCAA event.

Legacy EMS also demonstrated experience with 24/7 EMS services similar to the scale of operations this solicitation requires. Legacy EMS has experience with flightline emergencies, interfacility transports, and participating in base exercises - all of which are required for this contract. Legacy EMS has experience with special events that have had up to 50[thousand (K)] attendees and an average of 15-30K spectators that would be similar to an NCAA event. In accordance with FAR 13.106-2(b)(3), comparative analysis demonstrates that Asteri, and Legacy EMS[,] are the best-suited vendors for this Factor.

Id., Exh. 20, Legacy Evaluation Extract at 3; see *also* Exh. 19, Award Decision Document at 11 (“Although Asteri’s experience is identical to the experience that will be required under this contract, Legacy EMS’ experience providing Ambulance services to nearby Peterson AFB/Schriever SFB, along with their experience with special events up to 50,000 attendees, makes them equally qualified to perform the required services at USAFA.”).

Similarly, in its comparative assessments of quotations under factor 2, responses to the quote response form and factor 3, past performance, the agency determined that Asteri and Legacy were the best suited vendors under each factor. AR Exh. 20, Evaluation Extract at 4-6; Exh. 19, Award Decision Document Table 6-1 at 11.

Price quotations were evaluated by the contracting officer for reasonableness. Contracting Officer Statement at 5; AR Exh. 19, Award Decision Document at 9-10. To determine the reasonableness of total proposed prices, the contracting officer compared competing vendors’ prices for each performance period to each other, to the agency’s independent government estimate (IGE), and to the distribution to the quotations’ mean. AR Exh. 19, Award Decision Document Table 5-4 at 10.

Asteri’s total proposed price of \$7,429,620, was approximately 20.5 percent higher than the agency’s IGE of \$6,165,837. Legacy’s total proposed price of \$6,735,897, was approximately 9.25 percent higher than the IGE and 10.3 percent lower than Asteri’s proposed price; both vendors’ prices were within one standard deviation below the

mean. *Id.* Based on her analysis, the contracting officer determined that Asteri's and Legacy's total evaluated prices were fair and reasonable. AR Exh. 19, Award Decision Document at 10. Based on the price quotations received, the contracting officer determined that a price realism evaluation was not required, and none was conducted because no price quotation was so low as to present an unacceptable technical risk. In this regard, the contracting officer stated that her decision was based on consideration of Legacy's evaluated pricing, which was within one standard deviation of the mean, was 10.3 percent lower than Asteri's pricing, and was 9.25 percent higher than the IGE. *Id.*

In her selection decision, the contracting officer concurred with the non-price evaluation assessments and enumerated the benefits identified in Asteri's and Legacy's quotations, respectively. *Id.* at 5-9. The contracting officer recognized the price differential (10.3 percent) between Legacy's and Asteri's pricing and concluded that Legacy's lower-priced quotation offered the best value, finding that Asteri's quotation "did not provide enough of a tangible benefit" to justify paying a 10 percent price premium. *Id.*

On June 30, the agency made award to Legacy in the amount of \$5,728,350 (minus the 6-month contract extension) and posted notice of the award on SAM.gov. Contracting Officer's Statement at 3. On July 7, the contracting officer provided Asteri a brief explanation of the basis for the award decision. *Id.* This protest followed.

DISCUSSION

Asteri challenges multiple aspects of the agency's evaluation of Legacy's quotation under both the experience and price factors, as well as the agency's best-value tradeoff and source selection decision.⁸ We have reviewed all of Asteri's arguments and, while

⁸ In its initial protest, Asteri raised numerous allegations which have been abandoned. For example, the protester argued that the agency unreasonably evaluated Legacy's pricing by failing to determine if the awardee's low pricing was based on per unit ambulance costs or proposed unrealistic underpayments for non-paramedic personnel; the agency unreasonably failed to recognize that Legacy's pricing was to provide one ambulance on a 24-hour basis rather than the required two ambulances; the agency miscalculated Legacy's staffing approach; and the agency miscalculated Legacy's record keeping systems to track and manage controlled substances.

The agency specifically responded to each of these arguments in its agency report. In its comments on the agency report, Asteri failed to rebut or otherwise address the agency's responses. As a result, we have no basis to conclude that the agency's position with respect to the issues in question is unreasonable or improper.

IntegriGuard, LLC d/b/a HMS Federal--Protest and Recon., B-407691.3, B-407691.4, Sept. 30, 2013, 2013 CPD ¶ 241 at 5. Accordingly, we consider these arguments to have been abandoned and will not address them further. Bid Protest Regulations,

(continued...)

we do not discuss all of them, we find that none of the arguments provide a basis to sustain the protest. We discuss Asteri's principal contentions below.

Evaluation of Legacy's Experience

Asteri contests many aspects of the agency's evaluation of Legacy's quotation under this factor. See *generally*, Comments & Supp. Protest at 4-9. The protester's primary complaint is with the agency's determination that Legacy had provided services at special events that were comparable to NCAA football games. *Id.* at 8; Supp. Comments at 4-6. As addressed above, the RFQ required offerors to address in their respective quotations whether "any of your experiences require your company to perform services for special events comparable to an NCAA football game." AR Exh. 8, RFQ attach. 4, Quote Response Form at 1. Asteri contends that Legacy's response to this question only referenced its experience at Creech AFB during a Family Day event,⁹ and that this event was not comparable to an NCAA event. Comments & Supp. Protest at 5.

The protester also objects to the agency's conclusion that Legacy had experience supporting special events with up to 50,000 attendees, which Asteri alleges was a material error of fact since nothing in the contemporaneous evaluation record substantiated this claim. *Id.* at 6-7. According to the protester, the agency premised its best-value determination and award decision on the mistaken belief that Legacy had experience supporting special events of up to 50,000 attendees. *Id.* Asteri further alleges that it was improper for the agency to accept Legacy's self-representation of its experience because the RFQ required vendors to substantiate the validity of stated claims of experience, which Legacy failed to do. *Id.* at 8-9; see *also* Supp. Comments at 8-12.

As noted, DHA conducted this procurement using simplified acquisition procedures for commercial items. Simplified acquisition procedures are designed, among other things, to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors. FAR 13.002. When using these procedures, an agency must conduct the procurement consistent with a concern for fair and equitable competition and must evaluate quotations in accordance with the terms of the solicitation. *SSI Tech., Inc.*, B-412765.2, July 13, 2016, 2016 CPD ¶ 184 at 3; *Recogniti, LLP*, B-410658, Jan. 21, 2015, 2015 CPD ¶ 49 at 5. In reviewing protests of an allegedly improper simplified acquisition evaluation, our Office examines the record to determine whether the agency met this standard and exercised its discretion

4 C.F.R. § 21.3(i)(3); *Knowledge Connections, Inc.*, B-297986, May 18, 2006, 2006 CPD ¶ 85 at 2 n.2.

⁹ The protester misstates the awardee's response to this question. The awardee's complete response regarding its experience comparable to an NCAA football game is provided in our decision.

reasonably. *Emergency Vehicle Installations, Corp.*, B-408682, Nov. 27, 2013, 2013 CPD ¶ 273 at 4.

DHA responds that its evaluation of Legacy's quotation under the experience factor was reasonable and consistent with the terms of the solicitation. See *generally* Memorandum of Law (MOL) at 9-17. The agency reports that its determination was based on the totality of the information Legacy provided in its quote response form and in its response to the agency's exchange request. *Id.*; see also, Intervenor's Supp. Comments at 2-5. In this regard, the agency points out that under the experience factor, Legacy's submission demonstrated experience not just with special events comparable to NCAA football games but with providing 24-hour emergency response operations and with providing dedicated independent medical directors. Supp. MOL at 9. Moreover, under the heading, "Noteworthy Observations" the evaluators made the following observations regarding Legacy's experience: (1) highly relevant experiences working with military treatment facilities and military base nuances; and (2) event experience -- cited additional experience "supporting special events of up to 50,000 attendees and providing medical support for mass hurricane evacuations. Additional experience supporting Joint Base Medical Exercises, MMA events, and Special Olympics." See AR Exh. 20, Legacy Evaluation Extract at 3.

In responding to each of the specific claims made by the protester, DHA first points to Legacy's response to the question "did any of your experiences require your company to perform services for special events comparable to an NCAA football game" in which Legacy described its experience in supporting "exercise and other base events" at Creech AFB and that elsewhere in the quote response form Legacy identified the "exercise and other base events" as joint base medical exercises. Supp. MOL at 6 *citing* AR Exh. 15, Legacy Quote Response Form at 1, 7. The agency asserts that the protester's experience in providing support for joint base medical exercises substantiated Legacy's claim of experience with special events comparable to NCAA events.

As the contracting officer explained in her sworn declaration:

The evaluators are familiar with Joint Base Medical Exercises and understand that they involve multiple bases, military members, civilian, and contractor personnel. They can be very large and plausibly could be comparable to an NCAA game. Peterson SFB alone has nearly 12,000 active duty, reservists, and civilian personnel, in addition to a possibly large contractor contingent, all of which would potentially be included in a Joint Base Medical Exercise . . . the Agency clarified the relevancy of Legacy's provided examples to ensure the number of attendees would be comparable to an NCAA football game. Legacy responded indicating it supported "an average of 15,000 to 30,000 people for the Joint Base Medical Exercises, MMA events, and Special Olympics." This was reasonably considered comparable to NCAA events as the range of attendance is similar.

Supp. MOL, Exh. 1, Decl. from Contracting Officer ¶ 4 at 2.

The protester contests the agency's acceptance of the awardee's claim as to the number of attendees at joint base medical exercises. According to the protester, the DOD website for military installations states that there are only 3,500 uniformed personnel at Creech AFB and only 8,100 at Schriever SFB which refutes the 15,000 persons estimate Legacy provided without any substantiation.¹⁰ Comments & Supp. Protest at 8. As further support, Asteri asserts that additional data from DOD's own reporting indicates that the "largest military medical exercise in the history of NATO [North Atlantic Treaty Organization]" involved "only some 2,500 participants." Supp. Comments at 10 (referencing an April 8, 2019 exercise drill in Romania).

We find no basis in the record to conclude that the agency's determination concerning Legacy's experience was unreasonable. More specifically, Asteri has not demonstrated that the agency's conclusions regarding Legacy's experience with joint base events were unreasonable. In its protest submissions, Asteri lists a variety of arguments and data ostensibly to refute the facts on which the agency bases its evaluation conclusions, but none undermines the agency's determinations. Here, the agency reasonably considered the complexity of the underlying military exercises, including the significant numbers of potential military, contractor, and other personnel that could have participated in such events. Based on the record presented, which includes the evaluators' familiarity with military activities, and reasoned assessments, the protester's objections ultimately reflect its disagreement with the agency's judgment that Legacy has experience performing the ambulance services called for under the solicitation. Such disagreement, standing alone, does not provide us with a basis to sustain the protest. *Regency Inn & Suites*, B-411066.2, May 8, 2015, 2015 CPD ¶ 154 at 4; *Robbins-Gioia, LLC*, B-402199 *et al.*, Feb. 3, 2010, 2010 CPD ¶ 67 at 6. This aspect of Asteri's protest is denied.

Next, DHA counters Asteri's additional allegations that Legacy failed to substantiate the validity of its claims of experience including its reference to supporting special events of up to 50,000 attendees. Supp. MOL at 6-8. The agency notes that the specific language in the RFQ provides "Vendors are responsible for providing sufficient detail in the Quote Form for effective evaluation, and for substantiating the validity of stated claims." *Id.* at 7 *citing* RFQ at 30. As the contracting officer explains in her sworn declaration, this solicitation provision is related to the RFQ's experience factor and "[t]he purpose of this statement was to avoid vendors simply providing a 'yes' response or other vague response [on the quote response form]" and "did not contemplate the type of extensive substantiation the protester implies." Supp. MOL, Exh. 1, Decl. of Contracting Officer ¶ 2 at 1. As to substantiating vendors' experience with special events comparable to NCAA games, the contracting officer attests that vendors

¹⁰ DHA notes that Asteri omitted data for the population at Peterson SFB which has nearly 12,000 active duty, reservists, and civilian personnel (not including contractor personnel). Supp. MOL at 7.

provided examples of prior events that “met this standard and went beyond a perfunctory ‘yes’ or vague response. This standard was applied equally to all vendors.” *Id.*

Regarding Legacy’s reference to its experience supporting special events of up to 50,000 attendees, and providing medical support for mass hurricane evacuations, the contracting officer notes that Legacy provided these examples in the additional vendor information section of its quote response form and attests that these examples “bolstered my understanding of its capability to provide large scale event services . . . of up to 50,000 attendees and mass hurricane evacuations, MMA events, and Special Olympics all support Legacy as a vendor offering a beneficial approach.” Supp. MOL, Exh. 1, Decl. of Contracting Officer ¶ 5 at 2-3. The contracting officer further attests that her “reliance on Legacy’s performance of special events of up to 50,000 attendees was not associated with the El Paso County Fair nor the Colorado Springs Pride Fest or a specific event.” *Id.*, ¶ 6 at 3.

Asteri disputes the agency’s assertions that Legacy’s reference of supporting “special events of up to 50,000 attendees” referred to its prior experience and not to a future event such as the El Paso County Fair. *See generally*, Supp. Comments at 4-6. The protester claims even if the contracting officer reached that finding, her *post hoc* statement “does not trump” the contemporaneous evaluation documents. *Id.* at 5-6.

We have explained that in reviewing an agency’s evaluation, we will not limit our consideration to contemporaneously documented evidence, but instead consider all the information provided, including the parties’ arguments and explanations concerning the contemporaneous record. *Remington Arms Co., Inc.*, B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 10. Post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, will generally be considered in our review of the reasonableness of evaluation decisions--provided those explanations are credible and consistent with the contemporaneous record. *NWT, Inc.; PharmChem Labs., Inc.*, B-280988, B-280988.2, Dec. 17, 1998, 98-2 CPD ¶ 158 at 16. Where an agency offers an explanation of its evaluation during the heat of litigation that is not borne out by the contemporaneous record, however, we generally give little weight to the later explanation. *Al Raha Grp. for Tech. Servs., Inc.; Logistics Mgmt. Int’l, Inc.*, B-411015.2, B-411015.3, Apr. 22, 2015, 2015 CPD ¶ 134 at 10.

Here, contrary to the protester’s arguments, the contemporaneous evaluation record affirmatively shows that Legacy’s quotation, which included a completed quote response form, included the following information under the “Additional Vendor Information” heading: “Legacy is well versed in supporting large-scale operations and support activities, *with prior experience* in supporting special events of up to 50,000 attendees and providing medical support for mass hurricane evacuations. AR Exh. 15, Legacy Quote Response Form at 7 (emphasis added). Since the contracting officer’s explanation of her evaluation of Legacy’s quotation is supported by the contemporaneous evaluation record, Asteri’s protest reflects disagreement with the

agency's evaluation conclusions and does not show that the evaluation was unreasonable. Accordingly, we deny this protest allegation.

Unequal Discussions

Asteri also contends that the agency's communications with Legacy regarding the experience information in its quote response form constituted unequal discussions. Comments & Supp. Protest at 9-10; Supp. Comments at 6-8. According to the protester, the RFQ required Legacy to provide sufficient detail in its quote response form "for effective evaluation, and for substantiating the validity of stated claims" which Legacy failed to do. Comments & Supp. Protest at 9.

At issue here, was the agency's request that Legacy "clarify the number of people that attended these events and if you were/are going to be the sole contractor." AR Exh. 17, Email Request for Clarification at 1. As noted, Legacy responded, in relevant part: "We solely supported an average of 15,000 to 30,000 people for the Joint Base Medical Exercises, MMA events, and Special Olympics." *Id.*, Email Response to Request for Clarification at 2. The protester asserts that these communications constituted unequal discussions because it allowed Legacy to "change its [quotation] and remain eligible for award." Supp. Comments at 7. Moreover, Asteri claims that the agency relied on Legacy's response about the number of attendees at these events in both its determination that Legacy had experience comparable to NCAA events and its best-value determination that Legacy and Asteri were equally qualified that prejudiced Asteri. *Id.* at 7-8.

Asteri's argument ignores the plain language of the RFQ concerning clarifications. As the agency points out, and the record confirms, the solicitation provided for award on the basis of initial quotations but allowed the agency to contact vendors to clarify certain aspects of their quotations, such as "the relevance of a vendor's experience information." RFQ at 31; Supp. MOL at 10. Based on this solicitation provision, we find no merit to the protester's claim that the exchanges between the agency and the awardee constituted discussions, unequal or otherwise. Rather, such exchanges *i.e.*, giving vendors an opportunity to clarify certain aspects of their quotations constitutes clarifications, not discussions. Accordingly, the agency did not violate the terms of the solicitation by considering Legacy's response to the clarification request to assess the relevancy of the Legacy's experience.¹¹ We deny this protest allegation.

¹¹ To the extent the protester challenges the agency's express reservation in the RFQ of its ability to conduct limited exchanges with vendors as to their respective experience, such objections are untimely. We have routinely rejected as untimely post-award challenges alleging that an agency's scope or conduct of exchanges or discussions violated applicable procurement law when the agency's exchanges or discussions were consistent with express, unambiguous ground rules set forth in the solicitation. See, e.g., *Blue Origin Federation, LLC; Dynetics, Inc.-A Leidos Co.*, B-419783 *et al.*, July 30, 2021, 2021 CPD ¶ 265 at 30; *VariQ-CV JV, LLC*, B-418551, B-418551.3, June 15,

(continued...)

Price Evaluation

Asteri contends that the agency's price evaluation was flawed for two reasons. Comments & Supp. Protest at 2-4. The protester alleges that the agency failed to verify that Legacy's proposed prices were for the number of ambulances specified in the PWS. Specifically, the protester claims that the awardee's prices for the Flight Line area (CLINs 0002, 1002, and 2002) were [DELETED] percent lower than its own, which in its view, reflects "a reduction in the number of ambulances [that would be] available during flight hours." *Id.* at 3. The protester contends that had the agency analyzed individual CLIN prices, the agency would have recognized that Legacy's quotation was non-compliant with the terms of the solicitation. *Id.* at 3-4 (citing *Technatomy Corp.*, B-414672.5, Oct. 10, 2018, 2018 CPD ¶ 353).

The manner and depth of an agency's price analysis is a matter within the agency's discretion which we will not disturb provided that it is reasonable and consistent with the solicitation's evaluation criteria and applicable procurement statutes and regulations. *Gentex Corp.--Western Operations*, B-291793 *et al.*, Mar. 25, 2003, 2003 CPD ¶ 66 at 27-28. It is up to the agency to decide upon the appropriate method for evaluation of cost or price in a given procurement, although the agency must use an evaluation method that provides a basis for a reasonable assessment of the cost of performance under the competing proposals or quotations. *S.J. Thomas Co., Inc.*, B-283192, Oct. 20, 1999, 99-2 CPD ¶ 73 at 3. In reviewing a protest against the propriety of an evaluation, we will review the evaluation to ensure that it was reasonable and consistent with the solicitation's evaluation criteria and applicable procurement statutes and regulations. See *Decisive Analytics Corp.*, B-410950.2, B-410950.3, June 22, 2015, 2015 CPD ¶ 187 at 10-11.

Here, Asteri relies on our decision in *Technatomy* to support its claim that the agency should have scrutinized individual CLIN prices; however, such reliance is misplaced. In *Technatomy*, the solicitation explicitly stated that the agency would evaluate offerors' individual fully burdened fixed-price labor rates and their total proposed prices in accordance with FAR section 15.404. The protester in that case alleged that by relying exclusively on the existence of price competition and evaluating only total prices, the agency "failed to identify several instances of high pricing by awardees," and, therefore, failed to reasonably determine whether the awardees' prices were fair and reasonable. *Technatomy supra* at 11-12.

The material difference between this case and *Technatomy* is readily apparent. In this protest, Asteri does not contend that a CLIN-by-CLIN analysis could have revealed that Legacy's overall fair and reasonable price could prove to be illusory because of unreasonably high priced individual CLINs. Rather, the protester only complains that one of Legacy's proposed CLINs was too low. As the agency points out, price

2020, 2020 CPD ¶ 196 at 20-21; *OGSystems, LLC*, B-414672.6, B-414672.9, Oct. 10, 2018, 2018 CPD ¶ 352 at 13-14.

reasonableness considers whether prices were too high rather than too low. Supp. MOL at 3-4 (*citing Lily Timber Servs.*, B-411435.2, Aug. 5, 2015, 2015 CPD 246 at 3). Absent any evidence that the awardee took exception to the solicitation's requirements, the protester's speculation that the awardee will not perform at its proposed price presents questions of price realism, as we discuss further below. Thus, the facts and issues presented in *Technatomy* are not germane to those presented in this case.¹²

Next, turning to the crux of the protester's complaints, the protester alleges that the agency was obligated to perform a price realism analysis given the price differential in quotations. Comments & Supp. Protest at 3-4; Supp. Comments at 2-3. The record does not support Asteri's arguments. Although not required, an agency may choose to conduct a price realism analysis in awarding a fixed-price contract to assess whether a vendor's low price reflects its understanding of the contract requirements or to assess risk inherent in its quotation. See *Milani Constr., LLC*, B-401942, Dec. 22, 2009, 2010 CPD ¶ 87 at 5. However, where, as here, a solicitation reserves the right to conduct a price realism evaluation, the decision to conduct such an evaluation is a matter within the agency's discretion. See *Guident Techs., Inc.*, B-405112.3, June 4, 2012, 2012 CPD ¶ 166 at 13 n.9.

As noted, this solicitation reserved the right to conduct a price realism evaluation if the contracting officer determined that a vendor's price was so low as to present an unacceptable technical risk. RFQ at 30. In this regard, as part of her price analysis, the contracting officer specifically determined that a realism analysis was not required because none of the evaluated prices were so low as to present an unacceptable technical risk. COS at 5; AR Exh. 19, Award Decision Document at 10. As discussed above, this analysis was based on comparison of competitively priced quotations against other quotations and the government's independent estimate; based on the reasonableness of this analysis, we decline to find that the agency abused its discretion in declining to conduct a price realism evaluation. Asteri's arguments in this regard reflects its disagreement with the agency's determination which is not sufficient to establish that the agency's determination was unreasonable. *DeWitt & Co., Inc.*, B-417194, Mar. 25, 2019, 2019 CPD ¶ 126 at 3. This aspect of Asteri's protest is denied.

Best-Value Determination

Finally, Asteri argues that the best-value decision was flawed because it was based on errors in the underlying evaluation as discussed in this protest. Supp. Comments at 12-13. DHA disagrees, arguing that its best-value determination was reasonable and adequately documented. MOL at 17-20.

¹² We further note that unlike the solicitation in *Technatomy*, the RFQ here did not contemplate that the agency would evaluate individual CLINs for reasonableness. Rather, the agency was only required to determine whether vendors' total proposed prices were fair and reasonable in accordance with FAR section 13.106-3(a). RFQ at 30; see *Vital Link, Inc.*, B-405123, Aug. 26, 2011, 2011 CPD ¶ 233 at 6.

As discussed above, the alleged evaluation errors, on which the protester's challenges are based on, have no merit. Because we do not find that the agency's underlying evaluation of quotations under the experience and price factors to be unreasonable, we do not find that the source selection decision was flawed on that basis. See *Derivative, LLC*, B-420687.3, B-420687.4, May 12, 2023, 2023 CPD ¶ 119 at 8-9.

The protest is denied.

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