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# Decision

**Matter of:** Torden, LLC

**File:** B-421404.7

**Date:** December 14, 2023

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## DIGEST

Protest challenging the agency's evaluation of proposals is denied where the evaluation was reasonable and in accordance with the terms of the solicitation.

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## DECISION

Torden, LLC, a small business of Tiverton, Rhode Island, protests the issuance of a task order to Arrow Security & Training LLC (AST), a small business of Nashua, New Hampshire, under request for task order proposals (RTOP) No. W50NH9-21-R-CON3. The RTOP was issued by the Department of the Army for linguist services. The protester contends that the agency unreasonably evaluated proposals.

We deny the protest.

## BACKGROUND

The Department of Defense (DOD) provides linguistic services in support of United States military missions around the globe by transcribing, translating, and interpreting data gathered from a variety of sources. Agency Report (AR), Tab 5j, RTOP at 38.<sup>1</sup> To continue supporting these missions, the agency issued the subject ROTP on

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<sup>1</sup> Tab 5j of the agency report is the final version of the RTOP and incorporates all of the amendments.

November 12, 2021, to small business contract holders of the DOD Language Interpretation and Translation Enterprise (DLITE) II indefinite-delivery, indefinite-quantity (IDIQ) contract in accordance with Federal Acquisition Regulation (FAR) section 16.505. AR, Tab 2, Contracting Officer's Statement (COS) at 2. The solicitation contemplated the issuance of a time-and-materials task order with cost-reimbursement contract line item numbers for travel and other direct costs. *Id.* The period of performance encompassed a 1-year base period, four 1-year option periods, and one 6-month option to extend services under FAR clause 52.217-8. *Id.* The due date for proposals, as amended, was December 13, 2022. *Id.*

The solicitation provided for the evaluation of proposals based on the following two factors: technical and cost/price. RTOP at 128-129. The technical factor consisted of three subfactors: (1) transition plan, (2) management plan, (3) and human capital plan.<sup>2</sup> *Id.* at 128. For the transition plan subfactor, the agency would evaluate the offeror's phase-in processes, procedures, timelines, and risk mitigation strategies to transition from the incumbent contractor and provide a qualified workforce during the designated transition period. *Id.* at 128-129. For the management plan subfactor, the agency would evaluate the offeror's management approach and non-linguist personnel staffing plan, such as organizational structure, roles, responsibilities, and lines of communication for supporting linguists, monitoring performance, managing risk, and interfacing with the agency. *Id.* at 129. For the human capital plan subfactor, the agency would evaluate the offeror's proposed approach for recruiting and retaining linguists, including the methods and processes for supplying qualified candidates. *Id.* For cost/price, the agency would evaluate the reasonableness of the offeror's proposed price and verify that proposed linguist labor rates are at or above government-developed floor rates. *Id.*

The solicitation provided that the agency would issue the task order on a best-value tradeoff basis where the transition plan subfactor was significantly more important than the management plan subfactor, and the management plan subfactor was slightly more important than the human capital plan subfactor. *Id.* at 127. The technical subfactors, when combined, were significantly more important than cost/price. *Id.*

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<sup>2</sup> The solicitation provided that under the technical evaluation factor, proposals would receive ratings of outstanding, good, acceptable, marginal, or unacceptable. *Id.* at 128. As relevant here, a rating of outstanding indicated that the proposal had an exceptional approach and understanding of the requirements, its strengths far outweighed any weaknesses, and the risk of unsuccessful performance was very low. *Id.* A rating of good indicated that the proposal had a thorough approach and understanding of the requirements, its strengths outweighed any weaknesses, and the risk of unsuccessful performance was low. *Id.* A rating of acceptable indicated that the proposal had an adequate approach and understanding of the requirements, its strengths and weaknesses were offsetting or would have little to no impact on contract performance, and risk of unsuccessful performance was no worse than moderate. *Id.*

Following the initial evaluation, the agency issued the task order to AST on December 15, 2022. COS at 3. Torden protested the issuance of that task order to our Office on January 17, 2023. *Id.* On April 13, the agency took corrective action, stating that it intended to reevaluate proposals and make a new best-value tradeoff decision. *Id.* Our Office dismissed Torden’s protest as academic on April 17. *Torden, LLC*, B-421404.2, Apr. 17, 2023 (unpublished decision).

Following our Office’s dismissal of the protest, the source selection evaluation board reevaluated the eight proposals submitted in response to the initial solicitation. COS at 3. The results of the reevaluation of Torden’s proposal and AST’s proposal were as follows:

	<b>Torden</b>	<b>AST</b>
<b>Transition Plan</b>	Good	Good
<b>Management Plan</b>	Good	Outstanding
<b>Human Capital Plan</b>	Good	Acceptable
<b>Overall Technical/Risk Rating</b>	Good	Outstanding
<b>Price</b>	\$184,003,631	\$188,948,976

AR, Tab 20f, Source Selection Decision Document (SSDD) at 8.<sup>3</sup> In conducting the best-value tradeoff, the source selection authority (SSA) concluded that AST’s proposal represented the best value to the agency, considering that it received the highest overall technical rating with a total of five strengths.<sup>4</sup> *Id.* at 105. The SSA explained that although the proposals of Torden and AST each received a strength for the offeror’s transition timelines and were approximately equal under the transition plan subfactor, AST’s proposal represented the best value to the agency due to the four strengths it received under the management plan subfactor. *Id.* The SSA also concluded that the technical superiority of AST’s proposal warranted paying a price premium. *Id.* Accordingly, the SSA selected AST to receive the task order. *Id.*

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<sup>3</sup> Both Torden and AST received one strength under the transition plan subfactor. AR, Tab 20f, SSDD at 99. Under the management plan subfactor, Torden received one strength and AST received four strengths. *Id.* Under the human capital plan subfactor, Torden received one strength and AST received no strengths. *Id.*

<sup>4</sup> A strength was defined as “an aspect of an offeror’s proposal that has merit or exceeds specified performance or capability requirements in a way that will be advantageous to the government during contract performance.” COS at 11.

On August 15, the agency sent an unsuccessful offeror notice to Torden. COS at 4. Torden requested a debriefing the same day, to which the agency responded on August 23. *Id.* Torden then submitted post-award debriefing questions, to which the agency responded on September 1. *Id.* The protester filed this protest on September 6.<sup>5</sup>

## DISCUSSION

Torden challenges the agency's evaluation of its proposal and AST's proposal. Torden first contends that the evaluation of its proposal lacked a rational basis. Protest at 10. Specifically, Torden argues that the agency minimized numerous strengths in Torden's proposal. *Id.* With respect to the agency's evaluation of AST's proposal, Torden argues that the agency (1) unreasonably assigned a strength under the transition plan subfactor, (2) failed to conclude that AST's proposal improperly proposed dual-hatting of linguists under the management plan subfactor, and (3) failed to conduct a reasonable cost analysis and cost/technical crosswalk. *Id.* at 20-25. The protester also alleges that the agency disparately evaluated the proposals. For reasons discussed below, we deny the protest.<sup>6</sup>

In reviewing a protest of an agency's evaluation, our Office will not reevaluate proposals or substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. *22nd Century Techs., Inc.*, B-420139, Dec. 9, 2021, 2022 CPD ¶ 8 at 4. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. *Id.* A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was unreasonable. *Id.*

### Challenge to the Evaluation of Torden's Proposal

As noted above, the evaluators assigned Torden's proposal a single strength under each of the three technical subfactors. The protester argues that its proposal should have received additional strengths under the management plan and human capital plan subfactors.

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<sup>5</sup> Because the value of the task order, which was issued under a DOD multiple-award IDIQ contract, exceeds \$25 million, our Office has jurisdiction to hear the subject protest. 10 U.S.C. § 3406(f)(1)(B).

<sup>6</sup> Although we do not address in detail every argument raised by the protester, we have considered all of the arguments and find none to be meritorious. For instance, Torden argues that the agency failed to reevaluate Torden's proposal as provided in the agency's notice of corrective action. Protest at 10-11. In response, the agency explains that it inadvertently omitted the updated technical evaluation from the updated SSDD but corrected this error prior to Torden filing its protest. COS at 4-5. Based on the agency's explanation, we find Torden's argument to be without merit.

## Management plan subfactor

Under the management plan subfactor, the agency assigned Torden's proposal a strength for the proposed retention and use of incumbent management. Torden argues that the agency should have assigned its proposal an additional strength under this subfactor for its quality control and risk management approach. Protest at 17-18. Specifically, Torden argues that the agency's failure to assign a strength here was inconsistent with its conclusion elsewhere in the SSDD that Torden's quality control and risk management approach had been proven on other Department of Defense Language Interpretation and Translation Enterprise (DLITE) contracts. *Id.* at 18. In response, the agency argues that it considered Torden's proposed approach and reasonably concluded that it did not warrant a strength. Memorandum of Law (MOL) at 20.

Based on the record, we have no basis to object to the agency's decision not to assign an additional strength here. The SSDD shows that the agency considered Torden's approach to quality control and concluded that the approach met the requirements of the solicitation. AR, Tab 20f, SSDD at 96. Specifically, the agency determined that Torden's approach to managing linguist performance in terms of quality was adequate because the proposed [DELETED], which met the requirement. *Id.* The fact that this approach may have been proven on other DLITE efforts does not mandate that the agency assign Torden's proposal a strength here. This protest ground is denied.

Torden next argues that the agency improperly minimized its strength for its proposed retention of all incumbent management personnel. Protest at 17-18. Specifically, Torden argues that although it received a strength here, the agency diluted this strength when it stated that Torden's proposed management personnel and organization structure were "adequate" and "[met] the requirements." *Id.* at 17. We disagree that the agency diminished the weight of the strength Torden's proposal received here as Torden has taken this statement out of context. COS at 10; MOL at 21. The agency explains that the SSDD is structured to first address whether an aspect of a proposal met the requirements; it later considers whether that aspect also warrants a strength. COS at 10. In assigning Torden's proposal a strength under this subfactor, the agency explained that Torden's proposed retention of incumbent management personnel was advantageous to the agency because the use of experienced management personnel that are familiar with the operational tempo, end users, and mission requirements would reduce mission risk. AR, Tab 20f, SSDD at 101. There is no indication that the agency diminished this strength. Accordingly, this protest ground is denied.

## Human capital plan subfactor

Under the human capital plan subfactor, Torden argues that the agency improperly assigned its proposal only a single strength for its “Handshake” program.<sup>7</sup> Protest at 18. Specifically, Torden contends that although its proposal received a strength for the Handshake program’s approach to recruiting, it should have received additional strengths for its approach to vetting and pre-vetting, and pipeline and backfill. *Id.*

With respect to vetting and pre-vetting, Torden argues that its Handshake program [DELETED], which eliminates security processing risks and minimizes the financial burden of background investigations. Protest at 19. According to the agency, however, the SSA acknowledged that Torden proposed [DELETED] but did not view this feature as exceeding the requirements of the solicitation. MOL at 24.

Based on the record, we have no basis to object to the agency’s decision not to assign a strength for vetting and pre-vetting. In the SSDD, the SSA fully acknowledged the vetting and pre-vetting capabilities of the Handshake program, concluding that this approach was adequate because [DELETED]. See AR, Tab 20f, SSDD at 97. Additionally, section 2.3.4 of the performance work statement expressly required offerors to “thoroughly pre-vet candidates and submit qualified candidates.” RTOP at 43. While Torden argues that its proposal described additional steps to maximize MEAD approval, Comments at 16, the agency concluded that Torden’s proposal would not significantly reduce vetting time because the vetting process is ultimately government-controlled. COS at 14.

Torden also argues that it was unreasonable for the agency to fail to assign its proposal a strength for having an “active pipeline of [DELETED] linguists and access to the incumbent contractor’s pipeline.” Protest at 19. According to Torden, this pipeline should have received a strength because it reduces the likelihood of staffing vacancies and further supports Torden’s ability to provide qualified candidates and backfill when necessary. *Id.* In response, the agency argues that it did not assign Torden’s proposal a strength here because it is typical for offerors to have a pool of vetted candidates. MOL at 25. Additionally, the agency argues that it has limited processing capabilities, so having candidate submissions that exceed the requirements was not necessarily a strength because excess candidates could not be processed quickly. *Id.*

Based on the record, we have no basis to object to the agency’s decision here. The record reflects that the SSA considered the [DELETED] that Torden proposed, concluding that it met the requirements to provide enough candidates. AR, Tab 20f, SSDD at 97. Although Torden argues the number of candidates it proposed should have been considered a strength, a strength requires more than just exceeding the

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<sup>7</sup> According to Torden’s technical proposal, its Handshake program is “a web-based application that connects students on college campuses with open job postings.” AR, Tab 8a, Torden Technical Proposal at 19.

requirements of the solicitation; it also needed to be advantageous to the agency. In sum, the protester's challenges under the human capital subfactor are denied.

### Challenge to the Evaluation of AST's Proposal

Torden next challenges the agency's evaluation of AST's proposal, arguing that the technical rating of outstanding for AST's proposal "could only possibly be reached" if the agency unreasonably evaluated AST's technical subfactors and inflated the weight of the less important subfactors. Protest at 20. The protester also contends that the agency failed to perform a complete cost/technical crosswalk. *Id.* at 25. For reasons discussed below, we deny these arguments.

#### Transition plan subfactor

Torden challenges the agency's evaluation of AST's proposal under the transition plan subfactor. Torden argues that it was unreasonable for the agency to assign AST's proposal a strength for its transition timelines because Torden is the sole offeror currently performing on the incumbent contract.<sup>8</sup> *Id.* at 20. Therefore, according to Torden, no offeror could have proposed a shorter timeline for transitioning to incumbent personnel; conversely, if the agency assigned a strength for a transition timeline that was longer than Torden's proposed timeline, the agency engaged in disparate treatment. *Id.* at 20-21. In other words, Torden argues that no other offeror could have received a strength for its transition timeline. *See id.*

We disagree. The solicitation required that offerors propose to provide at least 98 percent of the required number of linguists by day 90. RTOP at 92. As the agency points out, both Torden and AST proposed accelerated timelines for the transition of incumbent personnel that exceeded this requirement. COS at 15. In evaluating AST's proposed timeline, the evaluators concluded that AST could capture [DELETED] of incumbent personnel within the first [DELETED] and administrative processing could be completed by [DELETED]. AR, Tab 10, AST Technical Evaluation at 4. Although AST's plan was not identical to Torden's, we have no basis to disagree with the agency that AST's transition plan was both realistic and advantageous to the agency. Torden's argument that no other offeror could have proposed as advantageous a transition timeline as it did is unsupported by the record.

Moreover, disparate treatment can occur only when the agency treats similar proposals differently. *See Battelle Memorial Inst.*, B-418047.5, B-418047.6, Nov. 18, 2020, 2020 CPD ¶ 369 at 5-6. In other words, a protester must show that similar or identical proposals were treated differently and that the evaluation differences did not arise from differences in the proposals. *Id.* Since Torden concedes that the plans here were different, it cannot, as a matter of law, demonstrate disparate treatment. This ground is thus denied.

#### Management plan subfactor

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<sup>8</sup> Torden is currently a subcontractor on the incumbent contract. Protest at 5.

Torden next challenges the agency's evaluation of AST's proposal under the management plan subfactor. Protest at 21. According to Torden, AST proposed to have senior linguists perform quality control management functions in violation of the solicitation's prohibition against dual-hatting linguists as management staff. *Id.* The agency argues that no dual-hatting occurred because the linguists will simply provide feedback through work product review. MOL at 31. Based on the record, we have no basis to object to the agency's conclusion here.

The solicitation required offerors to propose a quality control manager who would be responsible for, among other things, periodic inspections of all aspects of contract performance, coordination with staff on identified concerns, and corrective measures to eliminate deficiencies and reoccurrence. RTOP at 47. The solicitation further specified that linguists "shall not be dual-hatted as on-site managers." *Id.* at 7. One aspect of AST's proposed approach to quality control was that it would use senior linguists to assess translation quality, conduct reviews, and provide feedback to the quality control manager. The agency assigned AST's proposal a strength for this feature because it would not only provide a formal process for quality review of work product but would assist the quality control manager in improving linguist quality and reducing the risk of translation errors. AR, Tab 20f, SSDD at 13; see AR, Tab 7a, AST Technical Proposal at 12.

Although Torden contends this approach violated the prohibition against dual-hatting, the agency considered the possibility of a violation and concluded that none occurred. AR, Tab 20f, SSDD at 13. Specifically, the agency determined that AST's proposal did not task linguists with any managerial functions such as performing site lead functions; instead, it concluded that work product review is a function that must be performed by linguists. *Id.* In this regard, the agency explained that the work product review required by performance work statement (PWS) section 2.5, such as the requirement to review transcriptions and translations for accuracy, must be provided by linguists; on-site managers are not certified as linguists on the contract.<sup>9</sup> COS at 17. We have no basis to conclude this determination was unreasonable. Additionally, a senior employee's review of a junior employee's work product does not mean that the senior employee has now assumed the role of a quality control manager. Instead, we agree with the agency's position that such a process demonstrates "a normal part of review." *Id.* This protest ground is thus denied.

#### Overall technical rating

In its next challenge to the evaluation of AST's technical proposal, Torden argues that the agency's overall technical rating of AST's proposal subverted the evaluation criteria.

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<sup>9</sup> Section 2.5 of the PWS requires the contractor to ensure the quality and accuracy of its product and services by correcting errors and making changes as directed by the agency. RTOP at 48.



Protest at 24. According to Torden, because the transition plan subfactor was significantly more important than the management plan subfactor, the agency must have improperly inflated the lesser-important management plan subfactor for AST's proposal to receive an overall technical rating of outstanding. *Id.* The agency explains, however, that it looked beyond the adjectival ratings and concluded that AST's four strengths and superior merit under the management plan subfactor elevated the overall technical rating to outstanding. MOL at 36.

We have no basis to object to the agency's evaluation here. As mentioned above, AST's proposal received a rating of good under the transition plan subfactor and a rating of outstanding under the management plan subfactor. The agency explained that it did not look at only the adjectival rating assigned to each subfactor in arriving at the overall technical rating for AST's proposal, but it considered the five total strengths it assigned to AST's technical proposal, four of which were under the management plan subfactor. See AR, Tab 20f, SSDD at 105-106. The fact that four of these strengths were assigned under the second most important evaluation factor did not prevent the agency from assigning an overall technical rating of outstanding. Therefore, this protest ground is denied.

#### Cost/technical crosswalk

In its final challenge to the evaluation of AST's proposal, Torden contends that the agency performed a flawed and incomplete cost/technical crosswalk.<sup>10</sup> Protest at 25. Specifically, Torden argues that because AST lacked experience, its technical volume and cost volume were likely inconsistent with one another. *Id.* at 26. It also argues that the agency should have found that AST's indirect costs were likely to increase "given that AST has no experience performing comparable linguist services." *Id.* As the agency points out, however, Torden essentially argues that AST lacked relevant past performance. MOL at 28-29. We deny these arguments as past performance was not an evaluation factor here. The fact that AST may have lacked relevant experience is not an indication that its technical and cost volumes were inconsistent.<sup>11</sup>

In its comments on the agency report, Torden raises an additional challenge to the agency's crosswalk and contends that AST's proposed costs do not support its management approach. Comments at 24. Specifically, Torden argues that AST's proposed rates for program management office personnel were "well below the rates that the incumbent is currently paying these individuals, which poses high risk to AST's

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<sup>10</sup> A cost/technical crosswalk, as described by the solicitation, was an optional evaluation the agency could perform to ensure the technical volume was feasible and consistent with the cost volume. RTOP at 113.

<sup>11</sup> Torden also argues that the crosswalk was flawed because it failed to consider AST's alleged dual-hatting of linguists as quality control managers. Protest at 26. As discussed above, we conclude that the record does not support Torden's contention that dual-hatting occurred here.

approach.” *Id.* In essence, Torden argues that it is unlikely that AST would be able to retain the incumbent program management personnel with its proposed pricing. See *id.*

As the agency points out, however, Torden arrives at this conclusion following a comparison of the price difference between its proposed rates and AST’s proposed rates. Supp. COS at 3-4. The agency further notes that Torden fails to consider possible changes in the hiring climate, as well as the fact that AST may “raise its offer to management personnel during negotiations.” *Id.* at 4. The agency also notes that the government “will pay the FFP [firm-fixed-price] rates proposed by the awardee for the TOPM [task order program manager] and QCM [quality control manager] and all other labor categories, regardless of the cost incurred by the contractor to meet the requirement.” *Id.* In other words, AST’s purportedly lower rates do not necessarily indicate that AST risks not retaining incumbent staff. As the agency’s price analysis for AST indicates, the agency evaluated AST’s price and concluded that it was reasonable, complete, and balanced. AR, Tab 12, AST Price Analysis at 17. We have no basis to object to this conclusion.<sup>12</sup>

The protest is denied.

Edda Emmanuelli Perez  
General Counsel

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<sup>12</sup> Additionally, Torden’s argument that AST’s pricing was too low to retain the incumbent management is, in effect, a price realism challenge. Where a solicitation anticipates award of a time-and-materials contract with fixed-price, fully burdened labor rates, there is no requirement that an agency conduct a price or cost realism analysis, in the absence of a solicitation provision requiring such an analysis. *Iron Vine Sec., LLC*, B-409015, Jan. 22, 2014, 2014 CPD ¶ 193 at 5. Here, the solicitation did not require the agency to perform a price realism analysis, nor did it perform one. Supp. COS at 3.