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Decision

Matter of: Sudofy LLC

File: B-422604; B-422604.2; B-422604.3

Date: August 16, 2024

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DIGEST

Protest that the agency unreasonably and unequally evaluated proposals and conducted a flawed best-value tradeoff analysis is denied where the record shows the agency evaluated proposals in accordance with the terms of the solicitation and performed a reasonable best-value tradeoff analysis.

DECISION

Sudofy, LLC, a small business of Hanahan, South Carolina, protests the issuance of a task order to Atlas Technologies, Inc., also a small business, of North Charleston, South Carolina, under task order request for proposals (TORFP) No. N6523624R3002, issued by the Department of the Navy, Naval Information Warfare Center (NIWC) Atlantic, for engineering, technical, and management support services for NIWC Atlantic's network systems. The protester contends that the agency unreasonably and unequally evaluated proposals and conducted a flawed best-value tradeoff analysis.

We deny the protest.

BACKGROUND

The Naval Information Warfare Systems Command (NAVWAR) is one of six major acquisition commands under the Department of the Navy. About NAVWAR Systems Command, <https://www.navwar.navy.mil/About/> (last visited Aug. 12, 2024). NAVWAR

ensures that there are capable and secure communications and networks that span platforms and facilities across the Navy. *Id.* NIWC Atlantic is part of NAVWAR and conducts research, development, prototyping, engineering, testing, evaluation, installation, and sustainment of integrated information warfare capabilities and services across all warfighting domains. *Id.*

NIWC issued the TORFP as a small business set-aside on October 11, 2023, pursuant to Federal Acquisition Regulation (FAR) subpart 16.5, under the Navy's SeaPort-Next Generation multiple-award indefinite-delivery, indefinite quantity contract for technical, engineering, and management support services for NIWC's network systems, including the Consolidated Afloat Network Enterprise Services (CANES) system¹ and the Automated Digital Network System (ADNS).² Agency Report (AR), Tab 3, TORFP amend. 0001 at 1, 7, 122. These and other systems enable NIWC to communicate and transfer information securely.

The solicitation contemplated the award of a task order to the offeror with the proposal that provides the best value to the government based on the consideration of three factors: (1) technical understanding; (2) staffing plan;³ and (3) price. TORFP amend. 0001 at 3, 122. The solicitation indicated that the task order will have a 1-year base period of performance and four 1-year option periods.

The technical understanding factor required offerors to provide detailed descriptions of the processes, procedures, and methods they intended to use to accomplish the tasks in the performance work statement (PWS), while minimizing performance risk. *Id.* at 124. Offerors were to ensure that their responses included current technical trends, tools, and emerging technologies the offeror planned to use to complete the tasks. *Id.* This factor had two subfactors: engineering support, and sustainment patching. *Id.* Both subfactors posed hypothetical scenarios similar to tasks contractors would have to perform if awarded the contract. *Id.* at 122.

¹ CANES is an enterprise information system of computing hardware, software, and network services. Consolidated Afloat Networks and Enterprises (CANES), https://www.dote.osd.mil/Portals/97/pub/reports/FY2023/navy/2023canes.pdf?ver=KvIMM_5kM0qiLiVWpVzFwQ%3d%3d (last visited Aug. 12, 2024). The Navy uses the CANES systems to host its program applications on computing resources and network services in support of naval and joint operations, support weapon systems, command and control, intelligence, and business information applications, and to communicate via chat, email, voice, and video. *Id.*

² ADNS is a network system that "provides assured tactical wide area networking between ships, submarine and shore to support full spectrum battlespace connectivity." Program Manager, Warfare (PMW) 160 Tactical Networks, PMW 160's Portfolio-Operating at the Tactical Edge, https://www.ndia-sd.org/wp-content/uploads/2023/FallForum/PMW-160_NDIA-Fall-Forum_2023_HQCA-2023-A-121.pdf (last visited Aug. 12, 2024).

³ The staffing plan factor is not at issue here.

Under the engineering support subfactor, offerors were to design a tactical afloat network and an enterprise service system⁴ and discuss their design considerations, including problems they expected to encounter and steps they would take to mitigate and resolve those problems. *Id.* at 124. The detailed tasks to be addressed as part of this subfactor were contained in various PWS paragraphs regarding initial engineering development for CANES and ADNS. *Id.* at 9-10, 124. Under the sustainment patching subfactor, offerors were to respond to a hypothetical urgent system vulnerability, noting that the tactical afloat network and enterprise service system production environment⁵ require a zero-day vulnerability patching for Windows.⁶ *Id.* at 124. The detailed tasks to be addressed as part of this subfactor were contained in various PWS paragraphs regarding modernization and sustainment for CANES and ADNS. *Id.* at 10, 124.

Both non-price factors were evaluated using adjectival ratings of outstanding, good, acceptable, marginal, or unacceptable. *Id.* at 123. Price was evaluated for reasonableness and realism. *Id.* at 125. The technical understanding factor was the most important factor and, when combined, the two non-price factors (technical understanding and staffing plan) were significantly more important than price. *Id.* at 122.

The agency received six proposals by the submission due date, including those of Sudofy and Atlas. Contracting Officer’s Statement and Memorandum of Law (MOL) at 3. The proposals were first evaluated by the selection evaluation board (SEB), whose ratings and conclusions were reviewed by the source selection authority (SSA). The final adjectival ratings and prices for the protester and the awardee are as follows:

	Technical Understanding	Staffing Plan	Total Price
Sudofy	Good	Outstanding	\$80,679,318

⁴An afloat network is an interconnected system of hardware and software developed for operation on Navy ships that can exchange data and share resources. TORFP amend. 0001 at 117. An enterprise services system is a set of one or more computer applications and middleware systems hosted on computer hardware that provides standard information systems capabilities to end users and hosted mission applications and services. *Id.*

⁵ A production environment is where the latest versions of hardware, software, products, or updates reside to allow users to see, experience, and interact with the latest capabilities. TORFP amend. 0001 at 117.

⁶ A zero-day vulnerability is a “flaw in software for which no official patch or security update has been released.” Mitigate Zero-Day Vulnerabilities, Microsoft Defender, <https://learn.microsoft.com/en-us/defender-vulnerability-management/tvm-zero-day-vulnerabilities> (last visited Aug. 12, 2024).

Atlas	Outstanding	Outstanding	\$92,113,950
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AR, Tab 6, Source Selection Decision Document (SSDD) at 4-5.

Under the technical understanding factor, the agency determined that Sudofy’s proposal demonstrated a thorough understanding of the requirements and was assessed one strength and no weaknesses. *Id.* The SSA noted that Sudofy’s proposal merited one strength under the engineering support subfactor because its proposal implemented a 6-step approach to “monitor/manage network capabilities” which is a “unique design using emerging technologies . . . which will help quickly evaluate discrepancies with components and configurations against lab baselines.” *Id.* at 7; AR, Tab 4, Sudofy’s Proposal at 99-105. Under the sustainment patching subfactor, the SSA determined that Sudofy’s proposal demonstrated an understanding of the requirements by proposing a full end-to-end process to respond to an urgent Windows zero-day system vulnerability in a tactical afloat network and enterprise service system production environment. AR, Tab 6, SSDD at 7. For these reasons, the agency assigned Sudofy’s proposal an overall rating of good for the technical understanding factor.

The agency determined that the proposal from Atlas demonstrated an exceptional understanding of the technical requirements. The proposal received three strengths and no weaknesses: two under the engineering support subfactor and one under the sustainment patching subfactor. *Id.* at 5. The first strength was for the proposal’s “approach that involves the development and utilization of a Systems Engineering Plan [REDACTED].” *Id.* The second strength was for Atlas’s proposed “in-depth approach to automation to combine [REDACTED]⁷ with automation tools like [REDACTED].” *Id.* The SSA noted that this approach “would provide [REDACTED].” *Id.*

Under the sustainment patching subfactor, the SSA assigned a third strength to Atlas’s proposal for its innovative approach to automating manual mitigation processes by creating a custom script to be used before a final patch is ready. *Id.* at 5, 9. The SSA noted that this “proposed automation speeds up delivery of required updates to the fleet ensuring cyber readiness is kept intact.” *Id.* at 9. For these reasons, Atlas’s proposal received an overall rating of outstanding under the technical understanding factor.

In the best-value tradeoff analysis, the SSA reviewed the merits of both proposals, primarily considering the strengths they each received and the reasons for the strengths compared with the differences in price. In comparing the proposals, the SSA noted that Atlas’s strengths when taken together provided greater value to the government than the one strength noted in Sudofy’s proposal because of the underlying bases for the strengths. The SSA explained that Atlas’s systems engineering plan (SEP), its in-depth design approach including important automation, and its custom script all provided a greater value to the agency across both technical subfactors, as compared to the value

⁷ [REDACTED].

of Sudofy's approach to monitoring and managing networks, which provided additional value under only one subfactor. AR, Tab 6, SSDD at 9-10.

The SSA determined that the benefits of Atlas's proposal and lower performance risk warranted Atlas's cost premium, especially given that the technical understanding factor was the most important factor, and the non-price factors were significantly more important than price. *Id.* at 10. The SSA explained that the benefit and value of the three strengths as described above outweighed the value of the savings to be had from Sudofy's lower-priced proposal. *Id.* at 17. The SSA concluded that Atlas provided the best value to the government. *Id.* The agency made award to Atlas on May 7, 2024, and Sudofy was notified the same day. Sudofy filed this protest after receiving a debriefing from the agency.

DISCUSSION

Sudofy challenges the agency's evaluation of its own proposal, the evaluation of Atlas's proposal, and the best-value tradeoff determination. Sudofy asserts that the agency should have assigned its proposal two additional strengths, one under each of the technical understanding subfactors. Sudofy also asserts that the agency unreasonably and unequally assigned strengths to Atlas's proposal under both the technical understanding subfactors. Finally, Sudofy asserts that the agency's best-value tradeoff determination is flawed because of the alleged underlying flaws with the evaluation. We have reviewed Sudofy's arguments and find that none provide us with a basis to sustain the protest.⁸

Where an agency conducts a competition among contractors for the issuance of a task or delivery order under part 16 of the FAR, our Office will review the competition to ensure that it was conducted in accordance with the solicitation and applicable procurement laws and regulations. *United Excel Corp.*, B-415442, Jan. 4, 2018, 2018 CPD ¶ 16 at 6. In that regard, the agency must produce a sufficient record of the competition and source selection to allow for meaningful review of its procurement actions. *Id.* In reviewing protests of awards in a task order competition, we do not reevaluate proposals but examine the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. *Id.*

Evaluation of Sudofy's Proposal

⁸ The task order was issued against the Navy's SeaPort-Next Generation multiple-award indefinite-delivery, indefinite quantity (IDIQ) contract. TORFP amend. 0001 at 2. As a result, this protest is within our jurisdiction to hear protests related to the issuance of orders under multiple-award IDIQ contracts established within the Department of Defense, since the awarded value of the delivery order exceeds \$25 million. 10 U.S.C. § 3406(f)(1)(B).

Sudofy asserts that the agency should have assigned its proposal a strength under the engineering support subfactor for proposing to deploy [REDACTED].⁹ Protester's Comments & Supp. Protest at 14. The protester asserts that this offering improves understanding of how the afloat network can better meet the Navy's needs and exceeds the solicitation's requirements. *Id.* at 15.

The agency responds that this offering did not merit a strength because Sudofy's proposal to deploy [REDACTED] is part of its approach to monitoring and managing networks, for which the agency already assigned a strength. Supp. MOL at 18. The agency reasons that if [REDACTED] are not supporting monitoring and managing the networks, then it is unclear what else they would be doing, and the protester has not indicated what else [REDACTED] would be doing. *Id.* Sudofy does not refute the agency's argument, but rather shifts its argument to assert that the agency's response is a *post-hoc* rationalization of the evaluation, which is inadequately documented. Protester's Supp. Comments at 17.

⁹ Sudofy also asserts that the agency unreasonably "consolidated multiple benefits" in its proposal into one strength instead of assigning it multiple strengths. However, Sudofy does not explain why each benefit exceeds the requirements or adds additional value, just stating that they are "positive attributes" that each merit a strength. Protester's Comments & Supp. Protest at 21-23. The only evidence Sudofy offers to support this claim is a comparison of the SEB report comments on Sudofy's proposal to Atlas's; that is, Sudofy asserts that the SEB listed several positive attributes of Sudofy's proposal and assigned only one strength, but listed several positive attributes of Atlas's proposal and assigned several strengths. *Id.*; Protester's Supp. Comments at 23-25.

Sudofy's argument that the agency unreasonably failed to assess additional strengths based on the positive attributes of Sudofy's proposal is denied because it only expresses disagreement with the agency's decision. Sudofy does not state why these attributes exceed the requirements or provide additional value. Such an allegation does not establish that the agency abused its discretion, but only that the protester thinks the ratings should have been different, which constitutes disagreement with the agency's judgment and does not provide a valid basis of protest. *Altavian, Inc.*, B-417701, B-417701.2, Sept. 17, 2019, 2019 CPD ¶ 323 at 6.

Sudofy's argument that the agency unequally evaluated proposals because it did not assign additional strengths for Sudofy's positive attributes but did so for Atlas is unavailing. An argument that an agency unequally evaluated proposals must be based on the assertion that the ratings were not based on actual differences in the proposals. *Navarro Research & Eng'g, Inc.*, B-418602.2, B-418602.5, June 10, 2020, 2020 CPD ¶ 193 at 8. The strengths that Sudofy and Atlas received under the engineering support subfactor are not for the same or materially equivalent offerings. Therefore, the aspects of each proposal the agency acknowledged to support its assessment of strengths are not comparable and cannot support an allegation of unequal treatment.

However, the record shows that the agency did document its findings. The SEB report noted that one of the steps in Sudofy's approach to monitoring and managing networks was "[REDACTED] Deployment Analysis," (AR, Tab 5, SEB Report at 30) which is the step that included deploying [REDACTED] as stated in Sudofy's proposal. AR, Tab 4, Sudofy's Proposal at 103. The SSA summarized the SEB's findings and noted that Sudofy's approach to monitoring and managing networks was unique and detailed, referring to the six steps its approach included. AR, Tab 6, SSDD at 9. Therefore, the contemporaneous record demonstrates that the agency considered the deployment of [REDACTED] to be part of the protester's overall approach to monitoring and managing networks which is exactly what the protester's proposal described. Accordingly, we see no merit to this protest allegation.

Sudofy also asserts that the agency should have assigned its proposal a strength under the sustainment patching subfactor for its proposed use of the emerging technologies [REDACTED]. Protester's Comments & Supp. Protest at 16. Sudofy asserts that the use of these technologies merits a strength because the solicitation recommended that offerors incorporate emerging technologies into their approaches, and these technologies are different from those specified by the solicitation. Protester's Supp. Comments at 18.

As mentioned above, the TORFP directed offerors to include current technical trends, tools, and emerging technologies the offeror planned to use to complete tasks. TORFP amend. 0001 at 117. Sudofy's approach to sustainment patching includes a description of how it will use certain emerging technologies to apply non-patch mitigation solutions while a patch is being created. AR, Tab 4, Sudofy's Proposal at 105. Those technologies include [REDACTED] and [REDACTED]. *Id.* at 105-106. Sudofy's proposal explains the following about these technologies:

[REDACTED].

AR, Tab 4, Sudofy's Proposal at 105-106.

The agency responds that while these are emerging technologies, the use of emerging technologies by itself does not merit a strength because it was how these technologies were included in an offeror's approach and what kind of value was created by their inclusion that determined whether a strength would be assessed. Supp. MOL at 20; AR, Tab 13, SEB Declaration at 1, 6. The agency explains that the use of emerging technologies in the protester's approach has value and that's why the protester received a rating of good, but the protester has not demonstrated how the utilization of these technologies adds value meriting a strength; that is, in a way that exceeds the performance requirements. *Id.* The agency points out that the protester makes no argument about how these technologies would integrate with the Navy's existing platforms or systems. Supp. MOL at 20.

We have no basis to question the agency's position. The solicitation directed offerors to include emerging technologies in general, and therefore proposing to use emerging

technologies not explicitly listed in the solicitation cannot, by itself, exceed the requirements. As Sudofy has not demonstrated how the use of its technologies adds value in a way that necessarily merits a strength, Sudofy has failed to demonstrate that the agency abused its discretion in deciding not to assign a strength for this offering. *Navarro, supra* at 5.

Evaluation of Atlas's Proposal

Sudofy asserts that the agency unreasonably assigned strengths to Atlas's proposal, and that the agency unequally evaluated its and Atlas's proposals. We address each argument below.

Engineering Support Subfactor

Sudofy asserts that the agency unreasonably assigned Atlas's proposal a strength under the engineering support subfactor for its SEP because the solicitation required offerors to propose one. The protester also asserts that the agency unequally evaluated proposals because Sudofy also proposed an SEP but did not receive a strength.

The agency responds that Atlas's proposal did not receive this strength simply because it proposed an SEP, but because Atlas described its SEP as a foundational technical design document and provided detailed methods for implementing its SEP. Supp. MOL at 3. The agency explains that these details showed that Atlas was utilizing its SEP in a manner that exceeded the requirements. *Id.* The agency also argues that it did not unequally evaluate proposals because the differences in ratings are the result of actual differences in the proposals. The agency explains that Atlas's proposal provided a detailed description of its SEP, whereas Sudofy's proposal did not. *Id.* at 4-5.

Sudofy does not refute the agency's argument regarding the respective contents of the proposals and appears to concede that the proposals were different in their discussion of their SEPs. Protester's Supp. Comments at 7 ("Sudofy is not arguing it should have received a strength related to the SEP . . . Sudofy not 'discussing' the SEP . . . in its proposal does not excuse the Agency's unreasonable and unequal evaluation."). Yet Sudofy insists that the only reason Atlas received this strength was because it met the requirements. *Id.* at 4, 7.

We deny these allegations. First, Sudofy's argument that the agency only assigned Atlas's proposal a strength for its SEP because it met the solicitation requirements directly contradicts the record. As explained above, the SSA noted Atlas's SEP "would serve as the foundational technical design document to manage the execution of the project," and Atlas's design approach "allows for agility and full requirements traceability and Verification and Validation of requirements, which in turn will speed up delivery of capability to the fleet," which added value beyond what the solicitation required. AR, Tab 6, SSDD at 9-10. Sudofy has not challenged the accuracy of this finding.

Second, as Sudofy has not asserted that the proposals are similar regarding their use of a SEP, we have no basis to find the agency unequally evaluated proposals. It is a fundamental principle of government procurement that an agency must treat offerors equally, which means, among other things, that the agency must evaluate proposals in an even-handed manner. *Navarro, supra* at 8. To prevail on an allegation that the agency unequally evaluated proposals, a protester must show that the differences in ratings do not stem from differences in the proposals. *Id.* at 8-9. Sudofy's allegations in this regard are, therefore, denied.

Sudofy next asserts that the agency unreasonably assigned Atlas's proposal a second strength under the engineering support subfactor for its approach to automation, which included combining certain software programs with automation tools. Sudofy asserts that the agency unreasonably assigned this strength because the PWS required offerors to use the technologies Atlas proposed and to propose an automated process, and therefore this aspect of Atlas's proposal does not exceed the requirements. Sudofy also asserts the agency unequally evaluated proposals because its proposal included an approach that utilized software programs with automation tools and yet it did not receive a strength.

The agency responds that whether an offeror proposes to use tools and processes required by the PWS does not determine whether a strength will be assessed. The agency explains that the assessment of a strength is based upon how the tools and processes are incorporated into an offeror's approach and what kind of value their inclusion and proposed use provides to the government. Supp. MOL at 22. The agency points out that it was Atlas's unique approach utilizing certain technologies that merited the strength, not just the inclusion of the technologies. *Id.*

The only response the protester provides is that the agency did not document this finding in the contemporaneous record. Protester's Supp. Comments at 22. However, the contemporaneous record shows that the agency documented its finding regarding Atlas's approach to automation and that the protester's argument directly contradicts the record. As explained above, the SSA noted that Atlas's "in-depth approach to automation to combine [REDACTED] with automation tools like [REDACTED]." AR, Tab 6, SSDD at 5. Therefore, this protest allegation is denied.

Sustainment Patching Subfactor

Sudofy asserts that the agency unequally evaluated proposals under the sustainment patching subfactor. Sudofy argues that Atlas's proposal was assigned a strength for its approach to automate manual mitigation processes that occur before a patch is ready by creating a custom script, and Sudofy proposed to automate manual mitigation processes as well, but it did not receive a strength.

The agency responds that it did not unequally evaluate proposals because, again, the difference in ratings resulted from differences between the proposals. The agency explains that Atlas's approach went far beyond inserting simplistic statements about

using technology to apply non-patch solutions while a patch was being created, and it defined the distribution of a manual solution as well as how it would highlight the urgency of the zero-day vulnerability. Supp. MOL at 8. The agency further explains that, conversely, Sudofy's proposal did not include as much detail, innovation, or added value. *Id.* at 6.

Sudofy responds that its approach directly addressed the manual mitigation processes that occur after a vulnerability has been identified and a patch is being created, and proposed automated solutions for those manual processes, and therefore its approach was equal to that of Atlas's. Protester's Supp. Comments at 8-11.

Our review of the record shows that the agency did not unequally evaluate proposals. The proposals were different in their approaches to automating the manual mitigation processes. While Sudofy's proposal does describe automating certain processes, its proposal does not include creating a custom script as does the Atlas proposal.

Here, Atlas proposed to create a custom script that would automate the manual solutions, ensure they are accurately completed, and can include mitigations, validation mechanisms, and other offerings unique to the specific vulnerability. AR, Tab 15, Atlas Proposal at 8. The SSA determined that this offering was very valuable to the agency because it increases compliance, minimizes errors, reduces the burden on the system administrator, and speeds up delivery of required updates, ensuring cyber readiness is kept intact. AR, Tab 6, SSDD at 9.

Sudofy alternatively, proposed to utilize emerging technologies generally, such as [REDACTED], and [REDACTED], to apply non-patch mitigations quickly, as well as develop a temporary fix or apply other mitigation techniques like "[REDACTED]," but made no mention of a custom script. AR, Tab 4, Sudofy Proposal at 105-106. The SSA determined that while this approach did satisfy the requirements, it did not merit a strength. The SEB similarly noted Sudofy's proposed use of the above-referenced emerging technologies to apply non-patch mitigations but did not assess a strength for this offering. AR, Tab 6, SSDD at 7, 9; AR, Tab 5, SEB Report at 33-34.

Sudofy has not argued that its proposal includes proposing a custom script, but rather implies that its general intention to use emerging technologies, develop a temporary fix, or apply other techniques, is the same as creating a custom script. Sudofy has not demonstrated that these offerings are the same or that its approach provides a value equal or superior to a custom script. As Sudofy has not demonstrated that the proposals were the same regarding their approaches, we have no basis to conclude that the agency unequally evaluated proposals.

Best-Value Tradeoff

Lastly, Sudofy asserts that the best-value tradeoff analysis is necessarily flawed because of all the flaws Sudofy asserted are present in the evaluation, and that the analysis lacks a qualitative comparison of Atlas's and Sudofy's proposals. Protester's

Comments & Supp. Protest at 10-14. Because we have concluded that the protester's underlying evaluation allegations are without merit, this challenge to the selection decision, which is based on those allegations, is dismissed as without a valid basis of protest. *Antium, LLC*, B-421291, B-421291.2, Mar. 6, 2023, 2023 CPD ¶ 62 at 4 n.5.

The protest is denied.

Edda Emmanuelli Perez
General Counsel