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Decision

Matter of: Bering Straits Professional Services, LLC

File: B-422869

Date: November 26, 2024

Kenneth A. Martin, Esq., The Martin Law Firm, PLLC, for the protester.
Lauren S. Fleming, Esq., C. Peter Dungan, Esq., Adam Bartolanzo, Esq., and Cash W. Carter, Esq., Miles & Stockbridge P.C., for Akima Infrastructure Protection, LLC, the intervenor.
Javier A. Farfan, Esq., and Joshua Adams, Esq., Department of Homeland Security, for the agency.
Heather Weiner, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency evaluation of protester’s technical proposal and tradeoff decision is denied where the evaluation and tradeoff decision were reasonable and consistent with the terms of the solicitation.

DECISION

Bering Straits Professional Services, LLC (BSPS), a small business of Anchorage, Alaska, protests the award of a contract to Akima Infrastructure Protection, LLC (AIP), of Herndon, Virginia, under request for proposals (RFP) No. 70CDCR24R00000008, issued by the Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), for detention management, transportation and food services. The protester challenges the agency’s evaluation of its technical proposal and argues that the best-value tradeoff determination was unreasonable.

We deny the protest.

BACKGROUND

Using the procedures of Federal Acquisition Regulation (FAR) part 15, the agency issued the RFP on February 3, 2024, as an 8(a) set-aside, seeking detention management, transportation, and food services for detainees at the Krome Service

Processing Center (SPC), in Miami, Florida.¹ Agency Report (AR), Tab 2, RFP at 1.² The solicitation contemplated the award of a single, fixed-price, indefinite-delivery, indefinite-quantity contract with an ordering period of one base year and nine 1-year options. *Id.* Task orders issued under the contract would have both fixed-price and labor-hour contract line item numbers based on the fixed rates established in the contract. *Id.*

The RFP provided for award on a best-value tradeoff basis considering the following factors, with the first three factors listed in descending order of importance: prior experience, past performance, transition-in plan, technical approach, betterment, and price. RFP at 96. Prior experience, past performance, and transition-in plan were considered more important than technical approach and betterment. All non-price factors individually were considered more important than price and, when combined, these factors were significantly more important than price. *Id.* The solicitation also provided that as the technical merits of competing proposals become comparable, price will become more important. *Id.*

The solicitation explained that the individual factors would be rated holistically, with one rating for each factor, except price. *Id.* Prior experience, technical approach, and betterment would be rated as high confidence, some confidence, or low confidence, whereas past performance would be rated as acceptable, unacceptable, or neutral and transition-in plan would be rated as acceptable or unacceptable. RFP at 97-99, 101.

The procurement was conducted in two phases using an advisory “down select” methodology. COS at 6. Phase I included evaluation of prior experience and past performance. Phase II included evaluation of the remaining factors--transition-in plan, technical approach, betterment, and price. *Id.* at 6-7. After conducting the phase I evaluation, the agency received phase II proposals from five offerors, including BSPS and AIP. *Id.* at 7.

After evaluating phase two proposals, the agency assigned the following overall ratings to BPS and AIP:

¹ Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes the Small Business Administration to enter into contracts with government agencies and to arrange for performance through subcontracts with socially and economically disadvantaged small business concerns. See 13 C.F.R. § 124.501(a). This program is commonly referred to as the “8(a) program.”

² The solicitation was amended twice. Contracting Officer’s Statement (COS) at 7. All citations to the RFP are to the version at Tab 2, unless otherwise indicated. Citations to the record are to the Adobe PDF document pages.

	BSPS	AIP
Prior Experience	High Confidence	High Confidence
Past Performance	Acceptable	Acceptable
Transition-in Plan	Acceptable	Acceptable
Technical Approach	Low Confidence	High Confidence
Betterment	High Confidence	High Confidence
Price	\$719,444,699	\$720,005,228

AR, Tab 63, Source Selection Decision (SSD) at 17.

After evaluating proposals and performing a best-value tradeoff, the agency concluded that AIP’s proposal provided the best value to the government. *Id.* at 19. The agency awarded a contract to AIP on August 12, 2024, and the next day, notified BSPS that its proposal had not been selected for award. COS at 8; AR, Tab 64, Unsuccessful Offeror Letter. After requesting and receiving a debriefing on August 21, BSPS filed this protest with our Office. AR, Tab 65, Debrief Letter.

DISCUSSION

BSPS, which is the incumbent contractor for the requirement, challenges the agency’s evaluation of its proposal under the technical approach factor and the agency’s best-value tradeoff and award decision. For the reasons discussed below, we find the protester’s arguments provide no basis to sustain the protest.³

The evaluation of an offeror’s proposal is a matter within the agency’s discretion. *National Gov’t Servs., Inc.*, B-401063.2 *et al.*, Jan. 30, 2012, 2012 CPD ¶ 59 at 5. In reviewing protests challenging an agency’s evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency, but rather examines the record to determine whether the agency’s judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. *MicroTechnologies, LLC*, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 4-5. A protester’s disagreement with the agency’s judgment in evaluating proposals or in its determination of the relative merit of competing proposals, without more, does not establish that the evaluation was unreasonable. *Veterans Evaluation Servs., Inc. et al.*, B-412940 *et al.*, July 13, 2016, 2016 CPD ¶ 185 at 8-9.

Technical Approach

The agency assessed four weaknesses to the protester’s proposal under the technical approach factor, which resulted in a rating of low confidence for this factor. Specifically, the agency assigned weaknesses because BSPS’s proposal: relied on non-existent

³ While our decision does not address every argument raised by the protester, we have reviewed each argument and conclude that none provides a basis to sustain the protest.

government-provided software for management of detention records; proposed to make credible fear identifications and reports despite this being the responsibility of the asylum prescreening office, not the contractor; stated that “floater” employees would not need to undergo the new hiring process; and proposed a plan that deviated from the solicitation’s performance work statement (PWS) food ordering requirements. AR, Tab 60, BSPS Consensus Eval. at 1-2. The protester challenges all four weaknesses, and in each instance, alleges that the agency misunderstands its proposal or that its proposed approach complied with the RFP’s requirements. The agency responds that it carefully considered BSPS’s proposal and assessed each weakness in accordance with the RFP evaluation criteria. Memorandum of Law (MOL) at 13. Based on our review, we find that none of the protester’s arguments provide a basis to sustain the protest. We discuss several representative examples below.

Record Keeping

For the technical approach factor, the solicitation provided that the agency would evaluate whether the offeror’s technical approach demonstrates an understanding of the PWS, section C.4, and will be successful in performing the work based on its written submission. RFP at 91. The RFP advised that the “technical approach must present sufficient information to reflect a thorough understanding of the requirement and a detailed plan for executing these requirements with minimal risk to the government.” *Id.* The solicitation also provided that the agency “will determine through strengths, weaknesses and deficiencies [its] level of confidence as to whether the offeror has a clear understanding of the PWS requirements, proposes a sound approach, and is likely to be successful in performing the contract, based on the offeror’s answers to questions regarding their technical approach.” *Id.* at 99.

As relevant here, PWS section C.4.2 provided, in pertinent part, that the “[c]ontractor must be responsible for detainee record keeping services and personal property in accordance with Section C.18 of the PWS and ICE Records Retention Policy.” AR, Tab 3, PWS at 11. To this end, the record keeping portion of the PWS, section C.18, provided that the contractor “must prepare required orders, instructions, and reports of accidents, security violations, fires, and bomb threats” and that the Contractor “must, at the request of DHS/ICE, prepare any special or other reports, or issue further orders and instruction as required in support of this contract.” *Id.* at 73. This section also instructed that the contractor “must maintain a detailed and comprehensive written inventory of records” and that the “inventory must be recorded on Standard Form (SF) 135, Records Transmittal and Receipt, and must comply with all statutes, regulations, and guidelines from the National Archives and Records Administration (NARA) and ICE 2011 PBNDS [performance-based national detention standards] (2016 Revision).” *Id.* In addition, it specified that the contractor “must retain all records in accordance with the NARA General Records Schedule 3, Procurement, Supply and Grant records” and that “[i]t follows that the Contractor must retain all records for six years and three months after final payment.” *Id.* It also noted that “[t]he Government reserves the right to inspect all records related to this contract at any time.” *Id.*

In evaluating BSPS's proposal under this factor, the agency assessed a weakness because BSPS stated that it would "file detainee records and related government forms systematically" "using government-provided software[.]" AR, Tab 60, BSPS Consensus Eval. at 1. The agency explained that "[i]t is unclear as to what government software the vendor refers" and it "gives the impression the vendor will rely on government owned systems for records keeping." *Id.* The agency explained that "[n]owhere in the PWS does it indicate the government will provide such system" and that "[t]his decreases the confidence because it is unclear the vendor understands [its] role as it relates to detainee records keeping (PWS 4.2)." *Id.*

In response to the protest, the agency points to the above-quoted language in PWS C.4.2 ("[c]ontractor must be responsible for detainee record keeping services and personal property in accordance with Section C.18 of the PWS[.]") and PWS C.18 (explaining that the contractor must "maintain a detailed and comprehensive written inventory of records" for "six years and three months after final payment.") PWS at 11, 73. The agency notes that this language states that the contractor is responsible for detainee record keeping services, but "[n]owhere does it state, either explicitly or implicitly, that the [g]overnment will provide software for the purpose of filing detainee records or any related government forms." MOL at 14. The agency explains that because BSPS's proposal stated, with regard to the record keeping requirement, that it would file detainee records and related government forms "using government-provided software," the agency assessed a weakness finding a decrease in confidence because it is "unclear the vendor understands [its] role as it relates to detainee records keeping (PWS 4.2)." MOL at 14; AR, Tab 60, BSPS Consensus Eval. at 1.

The protester disagrees with the agency's evaluation. While the protester does not dispute that its proposal stated that it would use "government-provided software" in providing the record keeping services or that the above quoted portions of the PWS fail to indicate that the agency will furnish government-provided software for the contractor to use in meeting the detainee recording keeping requirement, the protester relies on PWS sections unrelated to PWS section C.4.2, which in the protester's view, indicate that there is a government system the contractor uses for sensitive information, and suggests that BSPS's proposal "disclosed it would use its own software systems to satisfy ICE's requirements not dependent on contractors having access to the government's software and systems." Protest at 25-26.

Based on our review, we find nothing unreasonable regarding the agency's assessment of the weakness. As noted above, the plain language of the PWS provided that the "[c]ontractor must be responsible for detainee record keeping services and personal property in accordance with Section C.18 of the PWS," which provided, in part, that the contractor must "maintain a detailed and comprehensive written inventory of records" for "six years and three months after final payment." PWS at 11, 73. We agree with the agency that nothing in the quoted language states or indicates that the agency will furnish government-provided software to the contractor to use in satisfying the record keeping requirement.

While the protester points to sections of the PWS unrelated to the record keeping requirement--*i.e.*, C.7.14 (intelligence), C.7.15 (computer security), C.9 (facility, equipment and supplies), and C.14 (training)--as the agency explains, "none of the sections cited by BSPS have anything to do with the evaluation of the technical approach proposals." MOL at 15 (citing RFP at 99) (providing that offerors' technical approaches would be evaluated to determine whether they "demonstrate[] an understanding of the PWS (Section C.4)," not PWS sections C.7.14, C.7.15, C.9, or C.14). Furthermore, the protester fails to demonstrate that any of the other PWS sections have any bearing on the contractor's duty to provide detainee record keeping services. For example, section C.9 (facility, equipment, and supplies) explicitly states that it deals with ICE's provision of "physical facility space/structure" for the contract, not government-provided software. PWS at 46. As another example, section C.14 (training) states that the "[c]ontractor must ensure all contractor personnel with access to the ICE network and systems complete all required online training in the ICE Training System (ITS)[.]" *Id.* at 63. As the agency explains, this PWS section requires that "[t]he [c]ontractor must ensure all Detention Officers are trained[.]" MOL at 15 (citing PWS at 62). As such, the "access" to networks and systems cited by BSPS in this section, when read in context, does not suggest that ICE would provide detention records management software, but rather, refers to the contractor's employees having access to the agency's training system. The protester has failed to demonstrate that any of these PWS sections are relevant to the evaluation of the record keeping requirement.⁴

Finally, BSPS argues that the agency's assessment of the weakness is unreasonable because its proposal "disclosed it would use its own software systems to satisfy ICE's requirements not dependent on contractors having access to the government's software and systems." Protest at 26. While BSPS's proposal stated that it "uses highly secure network and quality software programs and platforms for administrative and logistic operations for ICE detention operations," in the very next paragraph, it further stated it would rely on government provided software for management of detention files ("[u]sing Government-provided software for management of detention files (D-files), the BSPS

⁴ With regard to PWS section C.7.14 (intelligence), this section deals with capturing intelligence, not with detention records management. PWS at 41-42 ("The Contractor must have policies and procedures in place to collect and disseminate observed intelligence information and enter this information into the DHS/ICE Enforcement Integrated Database (EID), also known as 'ENFORCE.'"). Similarly, PWS section C.7.15 (computer security) states that "[c]ontractor employees must utilize the ICE network when communicating PII." *Id.* at 42. Despite the protester's assertion to the contrary, this section deals with "manag[ing] computer equipment and services in accordance with all federal security, privacy laws, and regulations established to protect systems and data." *Id.* While this section does require the contractor to "inform all personnel of the confidential nature of ICE detainee information," the requirement that contractor employees "must utilize the ICE network" only applies to instances when "communicating PII [personally identifiable information]." *Id.* The protester has failed to demonstrate that these PWS sections indicate that the agency will give government-provided software to the contractor for providing detainee record keeping services.

team files detainee records and related Government forms systematically[.]” AR, Tab 29, BSPS Proposal at 1).

It is an offeror’s responsibility to submit a well-written proposal, with adequately detailed information that clearly demonstrates compliance with the solicitation requirements and allows for meaningful review. *MIG Constr. Partners*, B-419818.4, B-419818.9, May 24, 2022, 2022 CPD ¶ 120 at 5. Here, the agency had no obligation to infer a process for record keeping that BSPS did not describe in its proposal, especially not where that inference would directly contradict the statement in BSPS’s proposal that it would “[u]s[e] Government-provided software” for detainee record keeping services. To the extent the protester did not intend the reference in its proposal to “government-provided software” to apply to the record keeping requirement, it was incumbent upon the protester to clearly articulate its approach. The protester’s disagreement with the evaluation, without more, is not sufficient to render the evaluation unreasonable.

Credible Fear Referrals

The protester also challenges the agency’s assessment of a weakness to BSPS’s proposal under the technical approach factor because BSPS failed to demonstrate it understood its role regarding credible fear referrals.

Section C.4.2.6 of the PWS details the requirements for “credible fear referrals.” It states: “The Asylum Prescreening Office (APSO) within [the U.S. Citizenship and Immigration Services (USCIS)] is responsible for carrying out, among other duties, asylum prescreening interviews to determine if a detainee in ICE custody has established fear (*i.e.*, reasonable fear, or credible fear) based on the requests submitted.” PWS at 20. With regard to the contractor’s role in the credible fear process, the PWS stated that the “contractor shall provide at the direction of the facility AFOD [assistant field office director] and/or COR [contracting officer’s representative] the necessary security services and administrative support to process all fear referrals submitted by detainees in ICE custody at the Krome SPC.” *Id.* The PWS explained that these administrative functions “include but are not limited to overseeing, directing, instructing, and providing detainee forms,” “serv[ing] as the neutral, third-party observer/witness of the documents being signed,” and “submit[ing] all required paperwork to USCIS” once the “credible fear referral tasks have been accomplished[.]” *Id.*

In response to the requirement of PWS section C.4.2.6, BSPS’s proposal explained that “Team BSPS staff is trained and able to quickly recognize any credible fear claim made by detainees.” AR, Tab 29, BSPS Proposal at 6. It further stated: “Staff identifies, reports and submits credible fear referrals for all detainees.” *Id.*

In evaluating BSPS’s proposal for the credible fear requirement, the agency assessed a weakness, finding that BSPS “fails to understand [its] role in implementing this requirement and is under the impression that [it is] the one[] making the determination whether a detainee has grounds for a credible fear.” AR, Tab 60, BPS Consensus

Eval. at 1. The agency explained that “the requirement of the PWS is to provide administrative support to process fear referrals submitted by detainees.” *Id.* The agency found that this “decreases the government’s confidence due to [the] vendor not understanding the requirement.” *Id.*

The protester argues that the agency’s evaluation was unreasonable because, although its proposal stated that BSPS staff would “recognize” and “identify” detainees’ credible fear claims, in making those statements, it was merely addressing the requirement to “serve as the neutral, third-party observer/witness of the documents being signed,” as required by the PWS. Protest at 27.

The agency responds that the wording of BSPS’s proposal--that its staff would identify “credible fear referrals for all detainees”--indicated that BSPS would have a larger role in the credible fear referral process than anticipated under the solicitation, which expressly reserved the identification of credible fear referrals as the responsibility of the APSO (Asylum Prescreening Office). The agency contends that it reasonably found that this demonstrated a lack of understanding of the requirement. MOL at 17-18.

Based on our review, we find nothing unreasonable regarding the agency’s evaluation of this weakness. As noted above, this requirement delineates that the APSO would be responsible for conducting interviews to recognize, identify, and determine whether detainees established credible fear, while the contractor would be responsible for processing fear referrals submitted by detainees and providing general administrative support. PWS at 20; see MOL at 17-18. The record shows that, in its proposal, BSPS stated that its staff “recognize[s] any credible fear claim made by detainees” and “identif[ies] . . . credible fear referrals[.]” AR, Tab 29, BSPS Proposal at 6. Although the protester maintains that, in making these statements, it was referring to the requirement that the contractor serve as a “neutral, third-party observer,” based on the plain language in BSPS’s proposal, we do not find the agency’s understanding of BSPS’s approach to be unreasonable. It is the protester’s responsibility to submit a well-written, detailed proposal so that the agency can assess whether BSPS understands the solicitation’s requirements. The protester failed to do so here. The protester’s disagreement with the evaluation, without more, is not sufficient to render the evaluation unreasonable. This protest ground is denied.

Best-Value Tradeoff Determination

Finally, the protester challenges the agency’s best-value tradeoff. The protester’s primary argument is that the tradeoff was based on a flawed technical approach evaluation, as discussed above. Protest at 30. Because we find no merit to the protester’s challenges to the agency’s evaluation of its proposal, we see no basis to sustain the protester’s derivative challenge to the agency’s best-value decision. *Allied Tech. Grp., Inc.*, B-412434, B-412434.2, Feb. 10, 2016, 2016 CPD ¶ 74 at 14-15.

The protester also asserts that the agency failed to adequately document its source selection decision. Protest at 31. As explained below, we find this argument unavailing.

Our Office reviews source selection official tradeoff decisions for rationality and consistency with the evaluation criteria. *Crowder Constr. Co.*, B-411928, Oct. 8, 2015, 2015 CPD ¶ 313 at 10. In negotiated procurements, we have consistently stated that source selection officials have broad discretion in determining how they will use technical and price evaluation results, and the manner and extent to which they make price/technical tradeoffs. *Id.* Where a price/technical tradeoff is made, we examine whether the source selection decision was documented, and whether that documentation included rationale for tradeoffs made, and the benefits associated with additional costs. *Id.*; FAR 15.308. An agency may properly select a more highly rated proposal over a lower price one where it has reasonably concluded that the technical superiority outweighs the difference in price. See *Deloitte Consulting, LLP*, B-419336.2 *et al.*, Jan. 21, 2021, 2021 CPD ¶ 58 at 14-15.

Here, the source selection authority's (SSA's) comparative analysis of the proposals and tradeoff decision were rational, consistent with the evaluation criteria, and well-documented.⁵ The record reflects that, in conducting the best-value tradeoff, the SSA reviewed the non-price evaluations from the technical evaluation team and past performance evaluation team and adopted their findings as his own. AR, Tab 63, SSD at 6-20. For the prior experience factor, the SSA concluded that both offerors "have multiple strengths and no weaknesses" and therefore, the agency "has high confidence that these offerors would be successful in performing the ICE requirement." *Id.* at 6-7. For the past performance factor, the SSA found that both offerors had "acceptable past performance in CPARS [contractor performance assessment reporting system] with no negative ratings." *Id.* at 10. For the transition-in plan, the SSA found that both AIP and BSPS had acceptable transition-in plans and met the minimum staffing requirements listed in the PWS. *Id.* at 12. For the technical approach factor, the SSA determined AIP had added strengths, which were documented in the SSD. *Id.* at 14. The SSA also determined that BSPS "provided a technical approach that lacked an understanding of [its] role in regard to records keeping, food ordering and credible fear referrals." *Id.* For the betterment factor, the SSA determined that both AIP and BSPS proposed betterments that exceed the PWS requirements in ways that are beneficial to the government. *Id.* at 15. With regard to price, the SSA agreed with and adopted the price evaluations, finding that the price proposals of AIP and BSPS contained the required information and were fair and reasonable. *Id.* at 17. AIP offered the second lowest price proposal at \$720,005,228. *Id.* at 16. BSPS offered the lowest priced proposal at \$719,444,699. *Id.*

The SSA explained that "[a]lthough BSPS [was] the lowest price proposal, the aspects noted under Factor 4 [technical approach] decreased the Government's confidence and therefore BSPS does not represent the best value for the Government." *Id.* at 18. The SSA noted that "AIP is the highest rated offeror and is higher rated than BSPS." *Id.* The SSA explained that "AIP's TEP [total evaluated price] is \$560,528.60 more than BSPS," but "as stated in the solicitation, the government is willing to pay a price premium for proposal features that reduce the risk of unsuccessful contract

⁵ The contracting officer also served as the source selection authority.

performance, provide increased technical capability or greater benefits to the government.” *Id.* The SSA concluded that “[i]n this case, the government is willing to pay the 0.1 [percent] price premium to AIP to reduce the risk of unsuccessful performance presented by BSPS’s technical approach.” *Id.*

As noted above, the protester asserts that the agency’s tradeoff was inadequately documented. Based on our review of the record, we do not agree that the SSA failed to thoroughly document the source selection decision. Rather, as discussed in detail above, the record reflects that the SSA considered the strengths and weaknesses of both offerors, as well as BSPS’s lower proposed price, but determined that AIP’s proposal was the best value to the government. In sum, although BSPS disagrees with the agency’s evaluation, the record demonstrates that at every step in the procurement, the agency considered all of the information submitted by the offerors and available to the agency and issued well-reasoned and rational evaluation reports before making a best-value tradeoff that highlighted key discriminators between these proposals.

The protest is denied.

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