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# Decision

**Matter of:** FedWriters, Inc.

**File:** B-421906.7; B-421906.8

**Date:** September 17, 2024

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## DIGEST

1. Protest challenging the agency's evaluation of proposals is denied where the evaluation was reasonable and in accordance with the terms of the solicitation.
  2. Protest challenging the agency's best-value tradeoff is denied where the best-value tradeoff was reasonable and consistent with the terms of the solicitation.
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## DECISION

FedWriters, Inc., an 8(a) small business of Fairfax, Virginia, protests the award of an indefinite-delivery, indefinite-quantity (IDIQ) contract and issuance of an initial task order to Kaiva Strategies, LLC under request for proposals (RFP) No. 75F40123R00069, issued by the Department of Health and Human Services, Food and Drug Administration (FDA), for professional, administrative, and consulting services (PACS). The protester contends that the agency unreasonably evaluated proposals, which resulted in an improper best-value tradeoff decision.

We deny the protest.

## BACKGROUND

On April 23, 2023, the agency issued the solicitation in accordance with Federal Acquisition Regulation (FAR) parts 12 and 15 as a set-aside for 8(a) small businesses.<sup>1</sup> Agency Report (AR), Tab 2b, RFP amend. 0001 at 3.<sup>2</sup> The solicitation contemplated both the award of an IDIQ contract in support of the FDA's PACS requirements, and the issuance of an initial task order under that contract to provide digital communications support to FDA's Office of External Affairs. AR, Tab 2e, RFP, attach. B, IDIQ Statement of Work (SOW) at 1; AR, Tab 2i, RFP, attach. D, Task Order SOW at 3. To that end, the solicitation included both an IDIQ SOW and a task order SOW. AR, Tab 2e, RFP, attach. B, IDIQ SOW; AR, Tab 2i, RFP, attach. D, Task Order SOW. The period of performance for the IDIQ contract is five years, consisting of five 12-month ordering periods and one 6-month ordering period. AR, Tab 2e, RFP, attach. B, IDIQ SOW at 9. The period of performance for the task order is also five years, consisting of a 1-year base period, followed by four 1-year option periods. AR, Tab 2i, RFP, attach D, Task Order SOW at 11. The solicitation provided for the evaluation of proposals in two phases; the due date for phase one proposals, as amended, was May 12, 2023. RFP amend. 0001 at 1.

The two-phase evaluation scheme was based on the following evaluation factors: demonstrated prior experience, key personnel, task order management approach, relevant past performance, and labor categories and pricing worksheet. AR, Tab 2g, Instructions and Evaluation Criteria amend. 0001 at 3-6. For phase one, the agency would evaluate the demonstrated prior experience factor. Under phase two, the agency would evaluate the remaining factors. The solicitation provided that the agency would award the contract on a best-value tradeoff basis where the non-price evaluation factors were listed in descending order of importance and the non-price factors were significantly more important than price. *Id.* at 10.

For the agency's evaluation of the demonstrated prior experience factor under phase one, offerors were to describe their prior experience managing similar IDIQ contracts or blanket purchase agreements, complying with limitations on subcontracting, identifying highly qualified staff, and responding quickly to task order requirements. *Id.* at 4. The agency would evaluate this factor by assessing its level of confidence that the offeror would successfully perform all requirements. *Id.* Following phase one of the evaluation, the agency would issue an advisory notification that advised offerors as to whether they should submit a proposal for the phase two evaluation. *Id.* at 4-5.

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

<sup>2</sup> All citations reference the Adobe PDF page number.

Under phase two, the agency would evaluate the remaining factors. *Id.* at 7-9. For the key personnel factor, offerors were to provide resumes for a project manager, visual information specialist/graphic designer, and video producer for the initial task order. *Id.* at 7. For each of the latter two positions, the resume was to provide a link to a virtual portfolio of work products.<sup>3</sup> For the task order management approach factor, offerors were to describe the processes, tools, and organization for transitioning in and managing the work of the initial task order, address their approach to compliance with section 508<sup>4</sup> accessibility standards, and describe any proposed subcontracting arrangements. *Id.* at 8. For the past performance factor, offerors were to submit all information for the efforts referenced under the demonstrated prior experience factor in phase one. *Id.*

The solicitation provided that the agency would evaluate these non-price factors by assessing its level of confidence that the offeror would successfully perform all the requirements.<sup>5</sup> *Id.* at 7-9. For labor categories and pricing, offerors were to complete both an IDIQ labor category pricing worksheet providing fully burdened hourly rates for each government-provided labor category and a task order pricing worksheet providing labor categories and rates for the task order work. AR, Tab 2d, RFP, attach. A, Labor Categories and Pricing Worksheet. The solicitation provided that the agency would perform a price analysis. AR, Tab 2g, Instructions and Evaluation Criteria amend. 0001 at 9.

#### Initial Award and Corrective Action

The agency received sixty phase one proposals by the due date on May 12, 2023, including one from the protester. Contracting Officer's Statement (COS) at 6. The agency informed the protester that its proposal was among the most highly rated proposals for phase one and invited the protester to participate in phase two. *Id.* The protester submitted its phase two proposal on June 23, 2023. *Id.* The results of the initial evaluation were as follows:

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<sup>3</sup> Of relevance to this protest, the visual information specialist/graphic designer's portfolio was to include three examples of graphics for social media and one example of infographics. *Id.*

<sup>4</sup> While not at issue in this protest, section 508 of the Rehabilitation Act of 1973, as amended, generally requires that agencies' electronic and information technology be accessible to people with disabilities. See 29 U.S.C. § 794d.

<sup>5</sup> As relevant here, a rating of "high confidence" indicated that the agency had high confidence that the offeror would successfully perform the requirements. AR, Tab 6a, Source Selection Decision (SSD) at 75. A rating of "some confidence" indicated that the agency had some confidence that the offeror would successfully perform the requirements. *Id.*

|                                      | <b>FedWriters</b> | <b>Awardee</b>  |
|--------------------------------------|-------------------|-----------------|
| <b>Demonstrated Prior Experience</b> | High Confidence   | High Confidence |
| <b>Key Personnel</b>                 | Some Confidence   | High Confidence |
| <b>Management Approach</b>           | High Confidence   | High Confidence |
| <b>Past Performance</b>              | High Confidence   | Neutral         |
| <b>Price</b>                         | \$1,555,948       | \$2,332,667     |

Protest, exh. A, August 15 Debriefing at 2.

On August 14, 2023, the agency informed the protester that its proposal was not selected for award. COS at 6. The protester filed a protest with our Office on August 21, 2023. *Id.* Subsequent to the filing of the protest, the agency informed our Office that it intended to take corrective action. *Id.* Specifically, the agency stated that it would reevaluate proposals and make a new award decision. *Id.* We dismissed the protest as academic on September 20, 2023. *FedWriters, Inc.*, B-421906, Sep. 20, 2023 (unpublished decision).

#### Reevaluation and Second Protest

On November 6, 2023, following the reevaluation, the agency again notified the protester that its proposal was not selected for award. COS at 6. On November 13, 2023, the protester filed a protest with our Office that challenged the agency's reevaluation and award decision. *Id.* On December 7, 2023, the agency informed our Office of its decision to take corrective action by reevaluating the proposals and making a new award decision. *Id.* We dismissed the protest as academic on December 14, 2023. *FedWriters, Inc.*, B-421906.4, Dec. 14, 2023 (unpublished decision).

#### Current Protest

On June 25, 2024, the agency completed the reevaluation. COS at 7. The results were as follows:

|                                      | FedWriters      | Awardee         |
|--------------------------------------|-----------------|-----------------|
| <b>Demonstrated Prior Experience</b> | High Confidence | High Confidence |
| <b>Key Personnel</b>                 | Some Confidence | High Confidence |
| <b>Management Approach</b>           | High Confidence | High Confidence |
| <b>Past Performance</b>              | High Confidence | High Confidence |
| <b>Price</b>                         | \$1,555,948     | \$2,332,667     |

AR, Tab 5b, Demonstrated Prior Experience, Key Personnel, and Management Approach Evaluation Report at 2; AR, Tab 5c, Past Performance Evaluation Report at 2-3; AR, Tab 5d, Price Proposal Evaluation Report at 2. Based on these results, the agency concluded that the awardee’s proposal represented the best value to the agency, despite the higher price, as price was the least important evaluation factor and the awardee’s advantage under the key personnel evaluation factor was “a significant discriminator.” AR, Tab 6a, SSD at 104. Accordingly, the agency selected the awardee’s proposal for award. *Id.* at 105.

On June 25, 2024, the agency informed the protester that its proposal was not selected for award. AR, Tab 7a, Post Award Notification at 1. The protester requested a debriefing, which the agency provided on June 27. AR, Tab 8a, Debriefing Letter at 1. This protest followed.

## DISCUSSION

The protester contends that the agency’s evaluation of proposals was unreasonable. Protest at 1. Specifically, the protester contends that its proposal should have received a rating of “[h]igh [c]onfidence” under the key personnel factor. *Id.* In its supplemental protest, the protester contends that the agency unreasonably assigned the awardee’s proposal a rating of “[h]igh [c]onfidence” under the past performance factor. Comments and Supp. Protest at 1. The protester also argues that the agency unreasonably determined that Kaiva’s proposal offered a better value than its own proposal. For reasons discussed below, we deny the protest.<sup>6</sup>

In reviewing a protest challenging 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. *The Bionetics Corp.*, B-420272, Jan. 7, 2022, 2022 CPD ¶ 27 at 3. Rather, we will review the record to determine whether the agency’s evaluation was reasonable and consistent with the stated

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<sup>6</sup> Although we do not address every argument raised by the protester, we have considered them and find none to be meritorious.

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.*

The protester first argues that the agency "justified its 'Some Confidence' rating of FedWriter's proposal under [the key personnel factor] based *solely* on its view that the portfolio work submitted for the Visual Information Specialist was not up to snuff"; that is, the work failed to meet the agency's quality standards. Protest at 8. According to the protester, this conclusion was unreasonable because the agency stated earlier in the evaluation that all of the protester's key personnel met or exceeded the requirements. *Id.* The protester also argues that two of the work samples submitted on behalf of the visual information specialist were found by the agency to demonstrate technical experience. *Id.* The agency responds that this protest ground should be denied because the protester conflates experience with expertise. Memorandum of Law (MOL) at 11-12. The agency argues that while the evaluation report reflects the protester's visual information specialist met the requirements for experience, the evaluators also found that the proposed individual's portfolio failed to demonstrate expertise and proficiency. *Id.*

Based on the record, we have no basis to conclude that the agency's evaluation was unreasonable here. The solicitation provided that offerors were to submit a resume for a visual information specialist/graphic designer that included a description of the individual's experience as well as a portfolio with three examples of graphics for social media and one example of infographics. AR, Tab 2g, Instructions and Evaluation Criteria amend. 0001 at 7. Although the evaluators concluded that the protester's visual information specialist met the required level of experience, the evaluators also concluded that the quality of that experience was lacking. See AR, Tab 5b, Demonstrated Prior Experience, Key Personnel, and Management Approach Evaluation Report at 6. For example, while the protester's proposed visual information specialist had experience providing social media graphics, the quality of those graphics "did not demonstrate a high degree of expertise." *Id.* Instead, the agency explained that these graphic design examples "lacked the polish and professionalism expected of modern social media content," which ultimately lowered the confidence rating the agency assigned under this factor. *Id.*; AR, Tab 6a, SSD at 104.

Although the protester argues that the agency failed to support its criticism of the portfolio by specifically addressing, for instance, the "formatting, font, colors, text, or size of the portfolio examples," Comments and Supp. Protest at 3, the record reflects that the agency compared the protester's graphic design examples to the examples on the agency's social media channels and concluded that they were not up to the agency's standards. See AR, Tab 6a, SSD at 104. The protester has not demonstrated that the agency's judgement was unreasonable in this regard and accordingly, we deny this protest ground.

The protester next contends that the agency unreasonably evaluated the awardee's past performance because the protégé member of the joint venture has "virtually no

experience” that is relevant to the task order or the IDIQ as a whole.<sup>7</sup> Comments and Supp. Protest at 3-4. Specifically, the protester argues that the awardee submitted a past performance example for its protégé member that demonstrated experience with scientific writing and medical editing, but failed to include any experience with digital communications, video support, audio, and photography as required by the task order SOW. *Id.* at 4. Moreover, the protester contends that this reference, which was the only one submitted for the protégé, failed to demonstrate any experience with four of the five task areas identified in the SOW for the IDIQ contract. *Id.* The agency responds that the awardee’s past performance submission included references from both the protégé entity and the mentor entity, and that while the protégé entity may not have had the same breadth of experience as the mentor entity, its experience was still relevant and reasonably evaluated. Supp. MOL at 6. The agency also argues that it considered the awardee’s past performance in the aggregate and reasonably assigned the awardee’s past performance a rating of high confidence. *Id.*

Our Office will examine an agency’s evaluation of an offeror’s past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit or relative relevance of an offeror’s past performance is primarily a matter within the agency’s discretion. *L-3 Nat’l Sec. Sols., Inc.*, B-411045, B-411045.2, Apr. 30, 2015, 2016 CPD ¶ 233 at 12. A protester’s disagreement with the agency’s judgment does not establish that an evaluation was improper. *Id.*

Our review of the record leads us to conclude that the agency’s past performance evaluation was unobjectionable. The solicitation provided that offerors were to submit past performance information for the references submitted under the demonstrated prior experience evaluation factor during phase one. AR, Tab 2g, Instructions and Evaluation Criteria amend. 0001 at 8. One of the references submitted by the awardee was for a scientific writing and medical editing contract performed by the protégé entity with the mentor entity as a subcontractor. AR, Tab 5c, Past Performance Evaluation Report at 3. Although the protester contends this reference bears little relevance to the current effort, the solicitation expressly provided that “[s]pecialized consultant expertise in medical, healthcare, and pharmaceutical industries will also be required.” See AR, Tab 2g, Instructions and Evaluation Criteria amend. 0001 at 4. While the protester argues that the awardee’s protégé entity has “virtually no experience in performing the work set forth . . . in the contract as a whole,” Comments and Supp. Protest at 4, the protégé was not required to have experience in all of the task areas. As the agency points out, the past performance of the mentor entity and protégé entity cover all task areas in the aggregate. Supp. COS at 4. Contrary to the protester’s position, the awardee’s protégé entity is “bring[ing] something of value to the joint venture other than its 8(a) status.” See Comments and Supp. Protest at 4. Accordingly, we have no basis to sustain this protest ground.

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<sup>7</sup> Kaiva, the awardee, is a mentor/protégé joint venture.

In its final challenge, the protester alleges that even if the agency reasonably evaluated the awardee's proposal, the purported advantages are not worth the price premium.

Where, as here, a procurement provides for the award of a contract or the issuance of a task order on the basis of a best-value tradeoff, it is the function of the source selection authority (SSA) to perform a price/technical tradeoff to determine whether one proposal is worth its higher price. See *General Dynamics Information Tech., Inc.*, B-415568, B-415568.2, Jan. 25, 2018, 2018 CPD ¶ 63 at 12. An agency has broad discretion in making a tradeoff between price and non-price factors; this decision is governed only by the tests of rationality and consistency with the solicitation's stated evaluation criteria. *Id.*

We find the SSA's best-value tradeoff and source selection decision unobjectionable. First, as described above, we find no merit to the protester's objections to the agency's evaluations; thus, there is no basis to question the SSA's reliance upon those judgments in making the source selection decision. Next, the record shows that in conducting the tradeoff, the SSA comparatively assessed the proposals under each evaluation factor and based on these considerations, concluded that the awardee's proposal merited its higher price. The record does not provide us with any basis to object to this conclusion.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel