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Decision

Matter of: 22nd Century Technologies, Inc.

File: B-422659.5; B-422659.6

Date: January 14, 2025

W. Brad English, Esq., Maynard Nexsen, PC, for the protester.
James Y. Boland, Esq., Lindsay M. Reed, Esq., and Kelly M. Boppe, Esq., Venable LLP, for Lamb Informatics Limited, the intervenor.
Laurina Spolidoro, Esq., Julie A. Neville, Esq., Sheila Rajabiun, Esq., and Omyra M. Ramsingh, Esq., Administrative Office of the United States Courts, for the agency.
Michael P. Price, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's best-value determination and subsequent source selection decision is denied where the record demonstrates the agency's conclusions were reasonable and adequately documented.

DECISION

22nd Century Technologies, Inc., of McLean, Virginia, protests the issuance of a call order to Lamb Informatics Limited, of Fairfax, Virginia, under request for quotations (RFQ) No. USCA24Q0007, issued by the Administrative Office of the United States Courts (AOUSC) for centralized management and operational support services for the agency's enterprise information technology infrastructure. The protester argues that the agency's best-value determination and resultant source selection decision were unreasonable.

We deny the protest.

BACKGROUND

On October 31, 2023, AOUSC issued the RFQ to holders of the judiciary information technology services blanket purchase agreement (BPA). Contracting Officer's Statement (COS) at 1. The solicitation contemplated the issuance of a fixed-price call order pursuant to the procedures of Federal Acquisition Regulation (FAR) subpart 8.4 to fulfill the agency's "mission to provide centralized management and operational support

for the [j]udiciary’s enterprise information technology (IT) infrastructure, mission-critical applications, and customer support functions, while striving to achieve its vision to become and maintain status as a world-class center for IT support.” *Id.*

The RFQ advised that AOUSC intended to issue the call order to the responsible vendor whose quotation represented the best value to the government, and further advised that determination of the best-value quotation could be made using a tradeoff process. Agency Report (AR), Tab 3, RFQ at 19.¹ The RFQ provided that in determining the best-value quotation, the agency would consider the following factors: (1) technical approach; (2) corporate experience; and (3) price. *Id.* Technical approach was the most important evaluation factor, and the non-price factors, when combined, were significantly more important than price. *Id.*

The RFQ stated that for each non-price factor, AOUSC would assess a confidence rating. *Id.* at 20-21. Each non-price factor could be assessed a rating of no confidence, some confidence, or high confidence based on the vendor’s ability to understand the requirement, whether the vendor proposed a sound approach, and whether the government found the vendor would be successful in performing the requirement without government intervention. *Id.* Price would be evaluated to ensure that the labor categories proposed by each vendor were on that vendor’s underlying BPA, to determine whether the level of effort and mix of labor were appropriate for the requirement, and whether the proposed price was fair and reasonable. *Id.* at 21.

AOUSC received quotations from four vendors, including 22nd Century and Lamb Informatics. COS at 3. After conducting exchanges with vendors, the agency completed its final evaluation of quotations on May 24, 2024; the final evaluation yielded the following relevant results:

	22nd Century Technologies	Lamb Informatics
Technical Approach	High Confidence	High Confidence
Corp. Experience	High Confidence	High Confidence
Price	\$62,012,755	\$61,813,042

COS at 3; AR, Tab 6, Award Decision Memorandum at 57. The contracting officer subsequently prepared an award decision memorandum documenting the evaluation findings and recommending the agency issue the order to Lamb Informatics. COS at 3.

On June 17, 22nd Century filed a protest with our Office challenging AOUSC’s conduct of the procurement in various respects. As relevant to this protest, the initial protest included an argument that the agency’s best-value determination and resultant source

¹ The RFQ was amended twice; all references to the RFQ are to the amended version unless otherwise noted. All page number citations refer to the Adobe Acrobat PDF page numbers of the conformed version of the solicitation provided by the agency.

selection decision were flawed. After receiving briefs from all parties fully addressing the protest grounds raised, the GAO attorney assigned to the protest conducted outcome prediction alternative dispute resolution. The GAO attorney advised the parties that GAO would likely sustain the protest on the basis that AOUSC's best-value determination was inadequately documented and precluded our Office from reviewing the reasonableness of that determination. In this regard, the GAO attorney advised that the contemporaneous documentation of the agency's best-value decision in its award memorandum failed to compare the relative merits of the competing quotations, which was critically insufficient where both the protester's and awardee's quotations received identical ratings of high confidence under each non-price factor, and where there was almost no difference in price between the two highly-rated quotations. The GAO attorney further advised that it would be appropriate for the agency to take corrective action in response to the protest.

On September 5, AOUSC filed a notice of corrective action pledging to conduct a new best-value determination that ensured the relative merits of the competing quotations were thoroughly analyzed and documented. See *22nd Century Technologies, B-422659 et al.*, Sept. 9, 2024 (unpublished decision) at 2. As a result of the agency's corrective action, the agency again selected Lamb Informatics for the order. COS at 4. In making its award decision, the agency noted that the awardee's quotation offered a "very slight" technical edge and that the awardee's quotation also contained a slight price advantage over 22nd Century's quotation. *Id.* As a result, the agency concluded that Lamb Informatics's quotation remained the quotation that offered the best value to the government. See *id.*; AR, Tab 6, Award Decision Memorandum at 60-61. 22nd Century subsequently timely filed its protest of the agency's new selection decision.

DISCUSSION

22nd Century argues that AOUSC's best-value determination was flawed because it "was laser focused on price" and did not "actually consider[] whether 22nd Century's [quotation] was better than Lamb's[.]" in effect converting the basis of award from a best-value basis, to a lowest-price, technically acceptable (LPTA) basis, contrary to the terms of the solicitation. Protest at 9-10. To this end, the protester maintains that the agency's documentation of its selection decision does not show that the agency fully compared the relative merit of its and Lamb Informatics's quotations, but rather, that the agency compared "only a fraction of 22nd Century's findings to Lamb's [quotation] and let price be the determining factor." Comments at 6.

AOUSC contends that the best-value determination made as part of its corrective action was reasonable, consistent with the terms of the solicitation, and adequately documented. Memorandum of Law (MOL) at 3. The agency disputes the protester's contention that it improperly converted the basis for award from best-value to LPTA, pointing out had that been the case, the agency would have issued the order to a third vendor (not 22nd Century or Lamb Informatics) that had the lowest price and received confidence ratings of some confidence (*i.e.*, was technically acceptable). *Id.* Furthermore, the agency maintains that it looked behind the equal adjectival ratings

assessed to both 22nd Century's and Lamb Informatics's quotations and, after performing a comparative analysis, determined that the awardee's quotation had "a slight technical edge while also being cheaper." *Id.* at 5. Accordingly, the agency concludes that its best-value determination was reasonable and consistent with the evaluation scheme prescribed by the solicitation. *Id.*

In reviewing protests of an agency's evaluation and source selection decision in procurements conducted under the federal supply schedule (FSS) procedures of FAR subpart 8.4, we do not conduct a new evaluation or substitute our judgement for that of the agency. *Washington Business Dynamics, LLC*, B-421953, B-421953.2, Dec. 18, 2023, 2023 CPD ¶ 286 at 13. Rather, we will review the record to ensure the agency's evaluation and award decision were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *Castro & Company, LLC*, B-414694, Aug. 15, 2017, 2017 CPD ¶ 260 at 4.

Procurements conducted using FSS procedures provide for a streamlined procurement process with minimal documentation requirements. *AT&T Mobility LLC*, B-420494, May 10, 2022, 2022 CPD ¶ 115 at 10. While the documentation requirements for these types of procurements are minimal, our Office has also consistently explained that agencies may not base their selection decisions on adjectival ratings alone, as such ratings serve only as guides to intelligent decision-making; source selection officials are required to consider the underlying bases for ratings, including the advantages and disadvantages associated with the specific content of competing quotations. See, e.g., *id.* at 9.

Here, we find the record demonstrates that AOUSC's best-value determination and source selection decision were reasonable and adequately documented. In this regard, the agency's documentation of its best-value determination included consideration of various aspects of vendors' quotations that served as the underlying basis of the adjectival confidence ratings assigned. At the outset, we agree with the agency that 22nd Century's argument that the agency improperly converted the basis of award from best value to lowest-price, technically acceptable, is meritless. As the agency correctly observes, another vendor proposed the lowest price and received ratings of some confidence under each of the non-price factors; accordingly, a source selection decision made on an LPTA basis would have resulted in that vendor being selected for award. See AR, Tab 6, Award Decision Memorandum at 57.

Furthermore, as explained above, the RFQ advised that AOUSC intended to issue the order to the responsible vendor whose quotation represented the best value to the government. RFQ at 19. The RFQ further advised that the best-value determination could be made using a tradeoff between the non-price factors and price, and notably, that the "importance of price in the evaluation will increase with the degree of equality of the technical quotations[.]" *Id.* The agency's award memorandum documented the various findings of the technical evaluation team (TET) with respect to each vendor's quotation under each of the evaluation factors. This included documentation of the findings associated with each quotation under each non-price evaluation factor that

“[r]aise[d] [e]xpectation of [s]uccess,” and “[l]ower[ed] [e]xpectation of [s]uccess.” See, e.g., AR, Tab 6, Award Decision Memorandum at 41-43 (documenting the TET’s findings under the technical approach factor with respect to 22nd Century). The award decision memorandum also documented the agency’s consideration of each vendor’s pricing and supporting information, including proposed labor categories and any proposed discounts from the vendor’s underlying BPA labor category price rates. See, e.g., *id.* at 52-54 (documenting the agency’s consideration of Lamb Informatics’s proposed pricing for each labor category proposed).

In addition to containing these findings, the award decision memorandum contained a section detailing the contracting officer’s best-value determination and source selection decision. *Id.* at 57-62. The award memorandum stated that the contracting officer used the TET’s findings and analyses, documented in the manner explained above, to support the source selection decision, but that the decision was ultimately the result of the contracting officer’s independent business judgment. *Id.* at 57. The award memorandum included an overview of the confidence ratings assessed to each vendor’s quotation under each of the non-price factors, as well as the total pricing proposed by each vendor. *Id.* As explained above, both 22nd Century and Lamb Informatics received ratings of high confidence for each of the non-price factors, while Lamb Informatics proposed pricing that was \$199,352.64 lower than 22nd Century pricing. *Id.*

The award memorandum discussed AOUSC’s findings under each of the non-price factors in greater detail. With respect to the technical approaches of the parties here, the award memorandum documented the agency’s consideration of the merits of the vendors’ competing approaches. For example, with respect to functional area 1 of the performance work statement (PWS), program/project management, the agency described specific aspects of the vendors’ approaches and noted that the “approach as defined by Lamb [Informatics] has more detail on how the [DELETED] will likely result in the success of projects. While both [vendors’ quotations] have elements that increase confidence, the more detailed approach by Lamb is of greater value.” *Id.* at 59. The agency’s analysis in this regard demonstrates that the contracting officer did not merely rely on the adjectival ratings of the quotations and the vendors’ pricing, but rather, that the contracting officer looked behind those adjectival ratings and considered various findings as documented by the TET in making a best-value determination.

With respect to its consideration of vendors’ quotations under the corporate experience factor, AOUSC’s award memorandum discussed the confidence ratings assigned for each vendor. For Lamb Informatics, for example, the agency noted the awardee’s experience with information technology service desk support for [DELETED] users at more than [DELETED] locations, experience that the agency found to be similar in size and scope to the work contemplated by the PWS for this procurement. *Id.* at 60. For 22nd Century, the agency noted the protester submitted examples of experience across each of the six functional areas contemplated by the PWS and provided descriptions to demonstrate that the protester had sufficiently performed under these areas. For both the protester’s and the awardee’s quotation, the agency concluded that the vendors

demonstrated that they “understand[] the requirement and would be successful in performing the task order with little or no [g]overnment intervention[.]” *Id.* at 60.

The record demonstrates that, in making its best-value determination and selection decision, AOUSC did not merely rely on Lamb Informatics’s adjectival ratings and price alone as the protester contends; rather, the agency considered the specific content of competing quotations and was aware of the relative merits and costs of the competing quotations. Though the protester argues that the agency “compared only a fraction of 22nd Century’s findings to Lamb’s,” resulting in price being the determining factor in the agency’s selection decision, our Office has consistently stated that there is no need for extensive documentation of every consideration factored into a tradeoff decision; rather, the documentation need only be sufficient to establish that the agency was aware of the relative merits and costs of the competing quotations and that the source selection was reasonably based. *HP Enterprise Services, LLC, B-413888.2 et al.*, June 21, 2017, 2017 CPD ¶ 239 at 9.

While both the relative merit and price of these competing quotations were nearly equal, the record demonstrates that the agency was aware of and considered the relative merits and costs of the competing quotations. Though Lamb Informatics proposed pricing that was only slightly lower than that proposed by 22nd Century, the RFQ advised that the importance of price would increase with the degree of equality of the technical quotations. The agency’s source selection decision recognized this, stating: “while both [quotations] have elements that increase confidence, the more detailed approach by Lamb is of greater value. The findings that increase confidence for 22nd Century do not justify the government spending \$199,352.64 more than it would [for] an award to Lamb.” AR, Tab 6, Award Decision Memorandum at 61.

On this record, we find no basis to question the agency’s selection of Lamb Informatics’s quotation as the best value to the government, given the awardee’s quotation was found to be slightly technically superior and slightly lower priced. The record demonstrates the agency otherwise was aware of the relative merit of the competing quotations underlying the assigned ratings. We find the agency’s selection decision in this regard was reasonable and consistent with the basis of award prescribed by the solicitation.

The protest is denied.

Edda Emmanuelli Perez
General Counsel