

B- 416003.2 (Comp.Gen.), 2018 WL 2461492

COMPTROLLER GENERAL

Matter of: Tantara Corporation

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DIGEST

Protest challenging the agency's evaluation of the protester's proposal under the technical and past performance factors, and the best-value tradeoff determination is denied where the record shows that the evaluation was reasonable and in accordance with the stated evaluation criteria.

DECISION

Tantara Corporation, a small business of Worcester, Massachusetts, protests its failure to receive a contract award under request for proposals (RFP) No. W912HN-14-R-0019, issued by the Department of the Army, U.S. Army Corps of Engineers, Savannah District for a multiple-award task order contract (MATOC) to provide various environmental services. Tantara challenges the agency's evaluation of its proposal under the technical and past performance factors, and contends that the best-value tradeoff determination was flawed because of the evaluation errors.

We deny the protest.

BACKGROUND

The RFP, issued on March 2, 2015, sought proposals for award of an indefinite-delivery, indefinite-quantity (IDIQ) MATOC that will provide environmental remediation services, consisting of, among other things, environmental restoration, environmental conservation, pollution prevention, quality assurance, facilities maintenance, inspection, and energy management. RFP at 10, 191. The resulting MATOC was to be comprised of approximately six IDIQ contracts with a total capacity of \$230 million. *Id.* at 191. The contracts were set aside to be awarded on a competitive basis to economically disadvantaged small business participants in the Small Business Administration's 8(a) business development program for a base period of three years and one 2-year option period. *Id.*

Proposals were to be evaluated on a best-value tradeoff basis considering the following factors: technical approach, quality assurance/quality control (QA/QC), past performance, and price. *Id.* The RFP instructed offerors that proposals would not be evaluated against each other; instead evaluators would use an adjectival rating system to "assess the merits of the proposal and to depict how proposals meet solicitation requirements and standards." *Id.* Price was to be evaluated for completeness and reasonableness based on a scenario comprised of total labor hours divided among various disciplines that were priced by hourly labor rate and added together for a total price. *Id.* at 201, 258. Of the non-price factors, technical approach was to be more important than QA/QC, which was more important than past performance. *Id.* at 203. The non-price factors, when combined, were approximately equal to price. *Id.*

*2 Twenty-five proposals were received by the original submission date of May 14, 2015. Agency Report (AR), Tab 9, Source Selection Decision Document (SSDD), at 3. The agency conducted an initial evaluation of proposals, established a competitive range, and entered into discussions with offerors. *Id.* The final evaluation results for the seven awardees and Tantara were as follows:

	Technical		Past	Total Evaluated
	Approach	QA/QC	Performance	Price
			Substantial	
LG2-QRI JV	Good	Good	Confidence	\$67,579
			Substantial	
3E-Plexus Solutions JV LLC	Good	Outstanding	Confidence	\$81,646
			Satisfactory	
Delmonico-PKS JV, LLC	Good	Good	Confidence	\$82,505
			Substantial	
Ayuda-ArCADIS	Good	Outstanding	Confidence	\$84,728
			Substantial	
Northwind-Jacobs JV	Good	Good	Confidence	\$90,767
			Substantial	
Aerostar SES LLC	Good	Good	Confidence	\$93,351
			Substantial	
CTI-TPMC Environmental Services LLC	Outstanding	Outstanding	Confidence	\$99,325
			Satisfactory	
Tantara Corp.	Good	Acceptable	Confidence	\$89,190

*3 *Id.* at 9, 21.¹ After receiving a debriefing, Tantara filed the following protest.

DISCUSSION

Tantara challenges the agency's evaluation of its proposal under the technical approach and past performance factors, as well as the agency's best-value tradeoff decision. We have considered all of the protester's contentions and find that none provide a basis to sustain the protest.

Technical Approach Evaluation

Tantara argues that its proposal should have received an outstanding instead of a good rating under the technical approach factor. Protest at 13–14. The protester points to various aspects of its proposal that the firm asserts should have been favorably evaluated by the agency, and argues that its proposed technical approach “satisfies all of the elements for an Outstanding rating.” *Id.* at 17. The agency defends its evaluation of Tantara's proposal arguing, in essence, that the adjectival rating assigned was appropriate. Memorandum of Law (MOL) at 8. We are provided no basis to question the agency's evaluation.

Preliminarily, while Tantara disagrees with the adjectival rating assigned, the issue here is not the rating, but the reasonableness of the underlying evaluation. In this regard, evaluation of proposals and assignment of adjectival ratings are reasonably based on a qualitative assessment of the proposals consistent with the evaluation scheme. *Epsilon Sys. Solutions, Inc., B-409720, B-409720.2, July 21, 2014, 2014 CPD ¶230 at 6.* As our Office has consistently recognized, ratings, be they numerical, adjectival, or color, are merely guides for intelligent decision-making in the procurement process. *One Largo Metro LLC et al., B-404896 et al., June 20, 2011, 2011 CPD ¶128 at 14.* Thus, where the evaluation and source selection decision reasonably consider the underlying basis for the ratings, the protester's disagreement over the actual adjectival ratings is essentially inconsequential in that it does not affect the reasonableness of the judgments made in the source selection decision. *Epsilon Sys. Solutions, Inc., supra.*

During Tantara's debriefing, the firm asked the agency, essentially, what the agency believed warranted an outstanding rating under the technical approach factor. Protest at 13–16; AR, Tab 4c, Post Award Debriefing, at 2. The agency responded to Tantara's inquiry, in pertinent part, as follows: “In general, the evaluation board considered elements and rated more highly proposals that reduced risk in unsuccessful performance with submission of aggressive remedial technologies, demonstrated regulatory knowledge, and application of sampling technologies and methodologies, and detailed explanations of risk reduction approaches.” *Id.* Relying on the agency's response, Tantara argues that the agency's evaluation was unreasonable because the firm's proposal contained various elements that the agency emphasized during the debriefing as being characteristic of more highly rated proposals.² Protest at 14–16.

*4 The agency asserts that its debriefing response described characteristics “for which [the] SSEB [Source Selection Evaluation Board] might rate a proposal ‘more highly[,]’ but it did not say that the proposal would automatically warrant the highest rating.” MOL at 7. While not specifically addressing the individual elements that Tantara argues should have resulted in a higher rating, the agency generally asserts that the assigned rating was appropriate because, consistent with the RFP's definition of good, “[t]he SSEB found that the Protester's proposal went beyond an adequate approach and understanding of the requirements and that it indicated a thorough approach and understanding.” *Id.* at 8.

In reviewing a protest challenging an agency's evaluation, our Office will neither reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. *Analytical Innovative Solutions, LLC, B-408727, Nov. 6, 2013, 2013 CPD ¶263 at 3.* Rather, we will review the record only to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. *Id.* We will not sustain a protest where the agency's evaluation is reasonable, and the protester's challenges amount to disagreement with the agency's considered technical judgments regarding the specific elements of an offeror's proposal. *BNL, Inc., B-409450, B-409450.3, May 1, 2014, 2014 CPD ¶138 at 5.*

The protester has not met its burden to show that the agency's evaluation was unreasonable. In this regard, while the protester points to numerous aspects of its proposal that the firm argues should have received more positive consideration by the agency, it does not provide any argument detailing why it was unreasonable for the agency to not evaluate its proposal more favorably given these aspects in its proposal. For example, with respect to aggressive remedial technologies, two aspects of its proposal that Tantara identifies are “[DELETED]” and “[DELETED].” Protest at 14. The protester does not explain what either of these aspects are (or any of the aspects it points to), nor does it provide any context for them, or specifically argue why the agency erred in not treating these aspects of the firm's proposal more favorably. Similarly, with respect to sampling

technologies, the protester identifies, among other things, “[DELETED]” and “[DELETED],” but provides no explanation or context for these aspects of its proposal, nor does it proffer any specific arguments as to why the agency was unreasonable in not treating these aspects of Tantara’s proposal more favorably. *Id.* at 15.

Moreover, despite having access to the entire record, including the proposals and evaluations of each awardee, Tantara makes no effort to analyze the relative merits of its proposal or evaluation against the proposals or evaluations of any of the awardees. For instance, the record shows that only one offeror, CTI–TPMC Environmental Services LLC, received an outstanding rating under the technical approach factor. AR, Tab 9, SSDD, at 9. Yet, Tantara makes no effort to address the relative merits of its own proposal vis-à-vis CTI’s proposal (or any other proposal) to show that it was unreasonable for the agency not to treat Tantara’s proposal more favorably in the evaluation.

*5 In sum, Tantara has not shown that its challenges amount to anything more than disagreement with the agency’s considered technical judgments regarding the specific elements of its proposal. Consequently, without more, we cannot find that the agency’s evaluation was unreasonable. *The Ensign–Bickford Company, B–274904.4, Feb. 12, 1997, 97–1 CPD ¶69 at 3.*

Past Performance Evaluation

Tantara next challenges the agency’s evaluation of the firm’s past performance arguing that its proposal demonstrated past performance in all six scope requirements detailed in the solicitation, instead of only three of the six requirements as evaluated by the agency. *Id.* at 10; RFP at 13–16. The protester also argues that the agency unreasonably failed to credit the firm’s proposal for its prior experience with its teaming partner. Protest at 11–13.

Our Office examines an agency’s evaluation of past performance to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations; however, the necessary determinations regarding the relative merits of offerors’ proposals are primarily matters within the contracting agency’s discretion. *Advanced Env’tl. Solutions, Inc., B–401654, Oct. 27, 2009, 2010 CPD ¶7 at 5.* Our Office will not question an agency’s determinations absent evidence that those determinations are unreasonable or contrary to the stated evaluation criteria. *Id.*

The RFP states that “[t]he past performance evaluation considers each offeror’s demonstrated record of performance and experience on recent and relevant projects that involve a similar scope and magnitude of effort and complexities as this solicitation requires.” RFP at 198. Offerors were required to demonstrate their past performance and experience on recent, relevant projects using past performance questionnaires (PPQ’s) included with the solicitation. *Id.* at 196. Each submitted PPQ was to be evaluated for relevance considering such aspects as similarity of scope, type of work, complexity, contract type, and the degree of subcontracting or teaming proposed by the offeror. *Id.* at 198.

Confidence was to be assessed by determining how well the contractor performed on past projects, considering the following: relevant past performance and experience information, source of the information, context of the data, general trends in contractor performance and experience on recent projects. *Id.* at 199–200. The solicitation identified six scope requirements comprising the objectives, requirements and services to be performed under the contract. Each of the six scope requirements included detailed illustrative lists of potential work to be performed under each area, and were categorized as: environmental compliance, environmental restoration, environmental conservation, pollution prevention, real estate and sustainment, restoration and modernization (SRM) services. *Id.* at 13–16.

*6 The record shows that Tantara received a satisfactory rating under the past performance factor, supported by the following evaluation summary:

The Offeror’s submitted past performance [were] all Very Relevant examples with Satisfactory to Exceptional Ratings. The Offeror’s submitted projects did not include any submissions from the subcontractor included in the proposal. Overall, the submitted past performance covered three of the six areas identified within the scope of the contract and did not contain Real Estate, Pollution Prevention or SRM work.... While the Offeror has not performed work similar to all of the areas of the scope of the solicitation and did not submit projects performed by its proposed subcontractor, the board determined that there is a reasonable expectation that the Offeror can successfully perform the required effort.

AR, Tab 7c, Source Selection Evaluation Report, at 94.

With respect to the protester's first contention, that Tantara's past performance included all six scope requirements in its proposal, the agency responds, essentially, that the information from the PPQ's did not show that the protester had past performance reflecting all six scope requirements, and the agency reasonably evaluated Tantara's proposal in accordance with the terms of the RFP. MOL at 4–5. In its comments, however, Tantara points to specific aspects of its proposal, and provides explanation for why those aspects of its proposal allegedly show past performance relevant to the real estate, pollution prevention, and SRM scope requirements. Comments at 16–18. As the record does not address these specific aspects of Tantara's past performance in the evaluation record, we requested and received from the agency supplemental statements from the evaluators responding to Tantara's comments.³

Tantara argues that all eight PPQ's it submitted demonstrated experience with pollution prevention. Comments at 11–15. The protester points to various aspects of the work performed as evidence of its experience with pollution prevention.⁴ However, the agency explains that pollution prevention, as contemplated by the solicitation, “relates to the programs that avoid or reduce pollution through the reduction in waste streams, reduction in impacts from storm water, erosion and sedimentation and development of programs that prevent or control spills.” Declaration, SSEB Evaluator McIntosh, at 1. The agency states that the work identified by Tantara centered on “the remediation and restoration of contaminated sites. Several of the projects included the removal of contaminated soils. Other projects were remediation and, as such, did not include pollution prevention work.” *Id.*

Tantara argues, in response, that the agency “is penalizing Tantara for not demonstrating pollution prevention experience on projects where the primary purpose of the project was avoiding or reducing future pollution, as opposed to preventing further pollution during remediation activities.” Supp. Comments at 5. The protester asserts that the RFP “makes no distinction between pollution prevention work performed during remediation projects versus pollution prevention work performed as the primary purpose of the project.” *Id.* Tantara concludes that it “was unreasonable to make this distinction in the past performance evaluation because it resulted in an unduly and restrictive interpretation of the Solicitation's pollution prevention experience requirements.” *Id.*

*7 We are provided no basis to question the agency's determination that Tantara's past performance did not include pollution prevention work as contemplated by the terms of the RFP. In this regard, the solicitation required contractors to “be capable of implementing repairs, upgrades, and improvements associated with pollution prevention work,” and gave seven examples of work included as pollution prevention.⁵ RFP at 15–16. In this regard, while the term “pollution prevention” is not defined in the solicitation, consistent with the agency's understanding of the scope of work, the illustrations relate to programs that avoid or reduce pollution through the reduction in waste streams, reduction in impacts from storm water, erosion and sedimentation and development of programs that prevent or control spills. RFP at 15–16; Declaration, SSEB Evaluator Stevenson, at 1–3. Moreover, the scope of work was limited to implementing repairs, upgrades, and improvements associated with pollution prevention work, which does not reasonably encompass the remediation work emphasized by Tantara.

Tantara next argues that six of its PPQ's included work relevant to the SRM scope requirement. In this regard, the protester points to: horizontal and vertical delineation of contaminated soils and the restoration of 26 properties for redevelopment; various remediation and site preparation work; and abatement work, demolition, utilities termination, and restoration/site preparation work. Comments at 17. The agency responds with respect to each of Tantara's six PPQ's, that the work detailed was not relevant to the SRM scope requirement. Declaration, SSEB Evaluator Stevenson, at 3–5.

For example, while Tantara points to “horizontal and vertical delineation of contaminated soils” as being relevant, Comments at 17 (emphasis in the original), according to the agency, the SRM work involved horizontal and vertical construction. A review of the solicitation confirms the agency's interpretation of the solicitation. In this regard, the SRM scope requirement states, “[a]ll SRM work shall be incidental to environmental services and shall include the furnishing of all materials, plant, tools, labor costs, and other associated incidentals necessary to complete vertical and horizontal construction requirements, inspections, quality assurance and other SRM initiatives as defined in individual Task Orders awarded herein.” RFP at 16. Thus, while it may be the case that Tantara's PPQ discussed vertical and horizontal work, the work was done in the context of delineation of contaminated soil, and not vertical and horizontal construction, as required by the SRM scope requirement.

Indeed, a review of the RFP requirements for SRM work shows that the agency reasonably concluded that the remediation and restoration work performed by Tantara was not relevant to the scope of work, as the protester suggests. In this regard, the RFP states that “SRM not only consists of construction restoration and modernization, but also may include assessments, evaluations, inspections, maintenance, incorporating performance program management by placing renewed emphasis of facility maintenance, using performance measurements to improve accountability and using a facilities condition metric that provides an objective indication of facility readiness.” RFP at 16. Nowhere in this definition of SRM is work related to site remediation, site preparation, abatement or demolition called out. Our review of the record confirms the reasonableness of the agency’s evaluation in this regard.

*8 Next, Tantara points to one of its PPQ projects to support its contention that the firm has relevant past performance in real estate services. With respect to this project, Tantara argues that it “performed land surveying to ensure the work it performed was properly located and to avoid adverse impacts of property use and on sensitive ecosystems.” Comments at 18. In response, the agency asserts that the services contemplated under this scope requirement were “more extensive than a survey of the boundary of a work site.” Declaration, SSEB Evaluator Stevenson, at 6. We agree.

The RFP required contractors to provide a “wide range of real estate services incidental to environmental projects,” including preparation of real estate planning reports in support of land acquisition, preparation of market impact studies and appraisals, administration of certain legal requirements, performance of compliance, utilization, and similar inspections, and performance of audits of real estate historical records. RFP at 16. Moreover, the RFP permitted the agency to consider such aspects as similarity of scope, type of work, and complexity in assessing relevance of past performance. RFP at 198. Here, the agency determined that the work proffered by Tantara was not extensive enough to be considered under the scope requirement. Such a determination is well within the agency’s discretion. *See Advanced Env’tl. Solutions, Inc., supra* (the necessary determinations regarding the relative merits of offerors’ proposals are primarily matters within the contracting agency’s discretion).

Finally, Tantara argues that the agency improperly failed to credit the firm with prior experience with its teaming partner. In this regard, the RFP states, “Offerors may increase the [SSEB’s] level of confidence by demonstrating previous teaming between the offeror and Major Subcontractors on relevant projects.” RFP at 255. Further, “Offerors may increase the SSEB’s level of confidence if the role of the offeror or team member on relevant submitted projects is similar to or more significant than the role the offeror or team member is expected to perform on this contract.” *Id.* The agency asserts that it did not credit Tantara for work with its teaming partner because the PPQ’s did not provide information about what the teaming partner had done in the performance of its prior projects with Tantara and its proposal did not verify what similar work its teaming partner had done or how well it had done any work. Declaration, SSEB Evaluator Stevenson, at 6–7. The agency concludes, “Because of this absence of information, we could not judge how successfully the work to be done by [Tantara’s teaming partner] would be performed.” *Id.* at 7.

*9 Tantara argues that the RFP “only required that the offeror demonstrate prior teaming experience, in similar roles on relevant [p]rojects, and made clear that by doing these things, the SSEB’s level of confidence would be increased.” Comments at 21. However, the language cited above, and on which the protester relies, does not establish the position urged by Tantara. In this regard, the use of the term “demonstrate” does not connote that a qualitative review of Tantara’s work with its teaming partner was not contemplated. In fact, the confidence assessment was to evaluate “the past performance and experience record ... to determine how well the contractor performed on past projects.” RFP at 256. Thus, in assessing confidence, the agency was explicitly required to perform a qualitative review of “how well the contractor performed on past projects.” Reasonably encompassed within this evaluation, was an assessment of how well Tantara’s teaming partner performed on past projects in order to assess increased confidence in the offeror’s past performance. *See MINACT, Inc., B-400951, Mar. 27, 2009, 2009 CPD ¶76 at 3* (finding that agency may properly take into account specific matters that are logically encompassed by, or related to, the stated evaluation criteria). Consequently, we are provided no basis to question the agency’s discretion in not crediting Tantara for the prior work performed with its teaming partner.⁶

Having resolved Tantara’s challenges to the evaluation of its proposal under the technical and past performance factors, and finding no merits to its protest, we conclude that the firm’s challenge to the agency’s best-value tradeoff decision is also without merit. In this regard, Tantara bases its claim that the best-value tradeoff was improper on the assertion that the tradeoff was based on the flawed technical evaluation. Since the protester has not shown that the evaluation was defective,

and the source selection decision sets forth a reasoned basis for the selection of the awardees, we deny this ground of protest. *Bannum Inc.*, B-412045, Nov. 25, 2015, 2015 CPD ¶372 at 6.

The protest is denied.

Thomas H. Armstrong
General Counsel

Footnotes

- ¹ Proposals were to be assigned one of the following adjectival ratings for the technical factors: outstanding, good, acceptable, marginal or unacceptable. RFP at 201. With respect to past performance, proposals were to be assigned one of the following performance confidence assessments: substantial confidence, satisfactory confidence, limited confidence, no confidence or unknown confidence/neutral. *Id.* at 200.
- ² Tantara points to six aspects of its proposal that the firm asserts shows utilization of aggressive remedial technologies, eleven aspects that show “some of the many sampling technologies” proposed by Tantara, seven areas that it asserts demonstrate “outstanding risk reduction approaches,” and the assertion that the firm’s proposal, “demonstrates Tantara’s complete and exceptional understanding of the regulatory drivers and framework and their impact on the scope of work.” Protest at 14–16.
- ³ Where, as here, the agency offers post-protest explanations that provide a detailed rationale for contemporaneous conclusions and simply fill in previously unrecorded details, such explanations will generally be considered in our review of the rationality of selection decisions, so long as those explanations are credible and consistent with the contemporaneous record. *Management Sys. Int’l, Inc.*, B-409415, B-409415.2, Apr. 2, 2014, 2014 CPD ¶117 at 6.
- ⁴ Tantara points to work such as: analysis and treatment of contaminated soil; dust control, excavation techniques and environmental monitoring; removal of contaminated soil; capping of storage tanks, removal of hazardous material; stockpile management and surgical excavation; and construction of two groundwater remediation systems. *Id.*
- ⁵ Included under this scope requirement were: (1) perform reviews and studies of pollution prevention programs, (2) reduce and prevent potential impacts of spills for fuel or hydraulic systems and storage tanks, including, upgrade/repair of fuel or hydraulic systems and storage tank programs and systems, (3) prepare/review plans and implement corrective actions related to storm water and waste water management programs and implement erosion and sediment control plans, (4) perform work to prevent, reduce, and/or eliminate impacts from storm water, erosion, and sedimentation, (5) prepare/revise comprehensive environmental management systems, (6) review, monitor, and mitigate noise pollution programs and noise sources, and (7) perform waste stream analysis and provide recommendations. RFP at 15–16.
- ⁶ To the extent that Tantara points to information outside of the submitted PPQ’s to support its position, the RFP was clear that only information contained within the PPQ’s was required to be evaluated under the past performance evaluation. *See* RFP at 197 (stating that information submitted in a format other than or in lieu of the PPQ will not be considered).

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