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# Decision

**Matter of:** Democracy International, Inc.

**File:** B-415243; B-415243.2

**Date:** December 13, 2017

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## DIGEST

1. Agency's selection of a lower-rated, lower-priced proposal for award is unobjectionable where the agency's tradeoff decision was reasonable, and where the agency adequately documented its tradeoff rationale.
  2. Protester's challenges regarding ambiguities in the solicitation are untimely because any ambiguities were patent and were not challenged prior to the due date for receipt of proposals.
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## DECISION

Democracy International, Inc. (DI), of Bethesda, Maryland, protests the award of a contract to Management Systems International, Inc. (MSI), by the United States Agency for International Development (USAID) under request for proposals (RFP) No. SOL-306-16-000037 for the "Afghanistan's Measure for Accountability and Transparency" (AMANAT) program. DI argues that the best-value tradeoff and source selection decision were unreasonable. The protester further alleges that the solicitation contained a latent defect that prevented offerors from competing on an equal basis.

We deny in part and dismiss in part the protest.

## BACKGROUND

On June 15, 2016, USAID issued the RFP pursuant to the procedures of Federal Acquisition Regulation (FAR) parts 15 and 16 for the implementation of the AMANAT program, an anti-corruption activity, the purpose of which is to reduce and prevent corruption in Afghanistan's government public services. Agency Report (AR), Tab 3, RFP, Attachment J-1, Statement of Objectives, at 1. The RFP anticipated the award of a cost-plus-fixed-fee, single-award, indefinite-delivery/indefinite-quantity contract for a 5-year period. RFP at 16 and 106.

The solicitation contained a statement of objectives in lieu of a statement of work. The solicitation stated that the offeror must use the RFP's statement of objectives to develop a performance work statement (PWS) and that the successful offeror's PWS would be incorporated into the resultant contract. RFP at 107.

The solicitation provided that the contractor's PWS must contain a "roll out strategy" for AMANAT under the following three objectives:

1. Strengthen Afghan non-governmental and governmental institutions in identifying vulnerabilities to corruption in the delivery of public services and developing corresponding recommendations to address these vulnerabilities;
2. Support select Afghan government institutions with technical and financial assistance to plan for and implement procedural reforms based on those recommendations; and
3. Strengthen local CSOs [civil society organizations] capacity to test and monitor the effectiveness of those reforms and to advocate for their implementation where necessary.

Statement of Objectives at 4. The RFP also provided the following:

In addition AMANAT is designed to build on and scale up anti-corruption interventions currently being carried out by the USAID-funded Advancing Effective Reforms for Civic Accountability (AERCA) project, which focuses on streamlining business processes related to the delivery of key public services and strengthening civil society monitoring efforts.

Id.<sup>1</sup> at 1-2.

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<sup>1</sup> The AERCA project ended on June 30, 2017. Statement of Objectives, at 2 n.1. DI was the contractor for the AERCA project.

The solicitation provided for award on a best-value tradeoff basis, considering cost and the following technical evaluation factors, listed in descending order of importance: technical approach, management plan and implementation schedule, monitoring and evaluation, and past performance.<sup>2</sup> RFP at 129-130. The solicitation provided that the technical and other non-cost factors, when combined, were considered significantly more important than the cost factors.<sup>3</sup> RFP at 129. The RFP stated that the cost proposal would be evaluated for completeness, cost reasonableness and realism. RFP at 130. The solicitation provided that to the extent competing technical proposals were essentially equal, cost/price factors may become the determining factor in source selection. RFP at 133. The solicitation was amended twice. As relevant here, amendment one amended the estimated cost range of the contract from \$40 to \$50 million, to \$30 to \$40 million. AR, Tab 4, Amendment 1 at 4. The agency received timely proposals from five offerors, including DI and MSI. The agency conducted a technical evaluation and cost realism analyses of four of the proposals.<sup>4</sup> The agency

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<sup>2</sup> For the technical approach, management plan and implementation schedule, and monitoring and evaluation, the RFP stated that the agency would assign one of the following ratings: exceptional, very good, satisfactory, marginal, unsatisfactory, or neutral. AR, Tab 7, Source Selection Plan at 25-26. The RFP included a description of each adjectival rating. As relevant to this protest, the definition of an exceptional rating was a proposal that met and fully exceeded the government's expectations and where strengths significantly outweigh any weaknesses that may exist. *Id.* at 25. A satisfactory rating was defined as a proposal that met the RFP requirements, presented a moderate overall degree of risk of unsuccessful contract performance and where strengths outweigh weaknesses. *Id.* The solicitation stated that the agency also would identify significant strengths, strengths, weaknesses, significant weaknesses, and deficiencies, in support of the adjectival ratings assigned to the offerors' proposals. *Id.* at 24.

<sup>3</sup> The RFP states that technical factors and non-cost factors, when combined, were "more important" than cost factors (RFP at 129), and "significantly more important than cost." RFP at 133. The agency acknowledged that the RFP contained conflicting statements regarding the relative importance of cost and non-cost factors. USAID maintained that this discrepancy did not impact the overall best value source selection decision as the source selection authority (SSA) "consistently used" the standard that "[a]ll evaluation factors other than cost or price, when combined are significantly more important than cost or price," during all stages of the evaluation and award. AR, Tab 9, Source Selection Decision at 3.

<sup>4</sup> One of the proposals did not meet the requirements specified in Section L of the RFP and was eliminated from the competition. Contracting Officer Statement (COS) at 9.

then established a competitive range comprised of DI and MSI, held discussions with the offerors, received final proposal revisions, and evaluated final proposals as follows:

	DI	MSI
Technical Approach	Exceptional	Satisfactory
Management Plan and Implementation Schedule	Very Good	Satisfactory
Monitoring and Evaluation	Very Good	Very Good
Past Performance	Very Good	Very Good
Overall Consensus Rating	Exceptional	Satisfactory
Probable Cost	\$37,925,896	\$30,030,243

AR, Tab 9, Source Selection Decision, at 7. The SSA compared the two firms' proposals, concluded that DI's technical superiority was not worth the associated cost premium and selected MSI's proposal as offering the best value to the government. Id. Thereafter, DI filed this protest with our Office challenging the agency's evaluation and selection decision.

## DISCUSSION

The protester challenges the reasonableness of the agency's best-value tradeoff decision resulting in the selection of MSI's lower-rated, lower-priced proposal. DI further maintains that the agency improperly converted the procurement from a best-value tradeoff procurement into a de facto lowest-cost, technically-acceptable procurement. Protest at 1. The protester also states that the solicitation contained latent defects that prevented offerors from competing on an equal basis.<sup>5</sup> Comments at 10.

First, DI challenges the SSA's best-value determination, which resulted in MSI's lower-rated, lower-priced proposal being selected for award. The protester argues that the agency unreasonably failed to consider the superior technical merits of its proposal, and put undue weight on MSI's lower proposed price. We find no basis to sustain the protest.

Source selection officials in negotiated best-value tradeoff procurements have broad discretion in making price/technical tradeoffs, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the solicitation's evaluation criteria. World Airways, Inc., B-402674, June 25, 2010, 2010 CPD ¶ 284 at 12. Generally, in a negotiated procurement, an agency may properly select a lower-rated, lower-priced proposal where it reasonably concludes that the price premium involved in selecting a higher-rated proposal is not justified in light of the acceptable level of technical competence available at a lower price. DynCorp Int'l, LLC, B-412451, B-412451.2, Feb. 16, 2016, 2016 CPD ¶ 75 at 22. While an agency

<sup>5</sup> The protester raises other collateral arguments. While our decision does not specifically address every argument, we have considered all of the protester's additional assertions and find that none provides a basis to sustain the protest.

has broad discretion in making a tradeoff between price and non-price factors, an award decision in favor of a lower-rated, lower-priced proposal must acknowledge and document any significant advantages of the higher-priced, higher-rated proposal, and explain why they are not worth the price premium. See DynCorp Int'l, LLC, supra. A protester's disagreement with the agency's judgment, without more, does not establish that the evaluation or source selection was unreasonable. Weber Cafeteria Servs., Inc., B-290085.2, June 17, 2002, 2002 CPD ¶ 99 at 4.

The agency stated that DI presented a "very strong" proposal with many strengths and was the significantly higher technically ranked offeror. AR at 6. With regard to the protester's contention that the agency unreasonably failed to consider the superior technical merits of its proposal, and put undue weight on MSI's lower proposed price, we find unobjectionable the agency's determination that MSI's proposal represented the best value to the government. In this regard, the agency's award decision, which memorializes the SSA's cost/technical tradeoff, reflects a reasonable source selection decision that is adequately-documented and consistent with the solicitation. Here, the record shows that the source selection decision includes a comprehensive discussion of the lower-level evaluators' evaluation findings, the strengths and weaknesses of each proposal, and the resolution of concerns identified through discussions. AR, Tab 9, Source Selection Decision at 7-11. The award decision further contained detailed sections comparing the proposals, including comparison of MSI's lower-priced proposal against the higher-technically rated proposal of DI. Id. at 7-21.

While the agency evaluation acknowledged that DI's proposal was higher rated with respect to the first two evaluation factors, the agency also discussed the strengths that MSI's proposal received under these evaluation factors. For example, under the RFP's most important factor, technical approach, the SSA reviewed both offerors and compared the significant strengths and strengths of DI's proposal, which was rated excellent, and MSI's proposal which was rated satisfactory. Id. at 16-18. The agency concluded that DI demonstrated "more depth of understanding in its technical approach" that was "more than adequate" to meet the agency's requirements and that MSI "presented a holistic technical approach that was clear, logical, and likely to facilitate the implementation process." Id. at 17-18.

Further, under the management plan and implementation schedule factor, the agency stated that "[w]hile DI was more highly rated than MSI," and included strengths such as that it provided a "clear staffing organogram in addition to field office staffing tables," the "key personnel for both organizations [had] qualifications that exceed[ed] the requirements, as well as proven systems to manage the activity and satisfy the [g]overnment's objectives." Id. at 18-19.

With regard to the monitoring and evaluation factor, where both DI and MSI were rated "very good," the agency found that DI "proposed a cohesive set of indicators," that included "detailed descriptions" that gave a "clear and concise description of exactly what they intend to measure." Id. at 19. Regarding MSI, the agency concluded that it provided "detailed, relevant indicators and provide[d] a useful format in which the offeror

[could] monitor the AMANAT activity.” Id. at 20. Finally, under the past performance factor, the agency evaluated DI and MSI as technically equal, with “very good” ratings, and concluded that both offerors had relevant experience implementing anti-corruption programs. Id. at 21.

Based upon this analysis, USAID concluded that overall MSI’s proposal represented the best value to the government. Id. at 22-23. In short, in performing the best-value tradeoff determination, the SSA specifically recognized the evaluated superiority of DI’s proposal under the non-price factors; made assessments regarding the relative value of that superiority; considered the magnitude of MSI’s price savings; and concluded that the benefits offered by DI’s higher-rated proposal were not worth the associated price premium.<sup>6</sup> The SSA stated that in her “business judgment,” while DI’s proposal was deemed technically exceptional, she had “not been convinced” that it would “warrant payment of a price premium compared to MSI’s lower-priced, satisfactory proposal.” Id. at 22. USAID noted that DI’s proposal was ranked second in terms of cost, with a total probable cost of \$37,925,896, which is \$7,895,653 higher than the second ranked offeror. Id. The agency stated further that “there [were] no clear technical advantages to justify the price premium to DI.” AR at 7.

We find nothing unreasonable in the agency’s assessments and conclusions; accordingly, we find no merit in the protest challenging the agency’s best-value tradeoff.<sup>7</sup>

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<sup>6</sup> While the protester alleges that the SSA improperly mentioned DI’s indirect costs as a source of the cost premium of its proposal, the SSA notes that “whether it is indirect cost or direct costs, the bottom line is that DI’s proposal represented a price premium of over \$7,000,000,” and that she determined that MSI’s lower-cost, lower-rated proposal provided the best value to the government. AR, Tab 9, Source Selection Decision at 23; Supp. Protest at 9; Supp. AR, Tab 10, Supp. COS at 9. We find no basis to sustain this aspect of DI’s protest.

<sup>7</sup> The protester also argues at length that the case of Firstline Transportation Security, Inc. v. United States, 100 Fed. Cl. 359 (2011), where the court determined that the agency had failed to conduct a proper best value analysis, should control in this instance. Supp. Protest at 3-9. We disagree that Firstline is controlling. First, we note that our Office is not bound by decisions of the U.S. Court of Federal Claims; however, we agree with the agency that the factual scenario in that case varies greatly from the situation presently before us. As noted above, here the SSA clearly acknowledged the superior technical merit in DI’s proposal, and she in no way “minimized the substantial [technical] differences between proposals,” as the court found was done in Firstline, which served to elevate the relative importance of price in the best value tradeoff. Supp. AR at 6 citing Firstline Transportation Security, Inc. v. United States, 100 Fed. Cl. 359 (2011) at 49.

Further, with regard to the protester's contention that the agency improperly converted the procurement to a de facto lowest-cost, technically-acceptable procurement, we find no basis to sustain the protest. Rather, on this record, as explained above, we find that the SSA clearly acknowledged the benefits associated with the protester's higher-rated, higher-priced proposal, but concluded that the benefits did not merit paying the price premium. While the protester disagrees with the agency's determination, the protester's disagreement, without more, does not provide a basis to sustain the protest.

Next, DI argues that the solicitation contained a latent ambiguity. DI identifies the ambiguity as the inclusion of a benchmark on which DI relied to its detriment when it was designing its performance work statement (PWS) for its AMANAT proposal. Protest at 9; Comments at 10. The protester argues that the RFP's statement, that "AMANAT is designed to build on and scale up anti-corruption interventions currently being carried out" by the AERCA project created a "false benchmark" on which DI relied "to its detriment." Id. citing Statement of Objectives at 1-2; Comments at 10.

An ambiguity exists if a solicitation term is susceptible to more than one reasonable interpretation that is consistent with the solicitation, when read as a whole. Poly-Pacific Techs., Inc., B-293925.3, May 16, 2005, 2005 CPD ¶ 100 at 3. A patent ambiguity exists where the solicitation contains an obvious, gross, or glaring error, while a latent ambiguity is more subtle. Where a patent ambiguity in a solicitation is not challenged prior to the submission of proposals, we will dismiss as untimely any subsequent challenge to the meaning of the solicitation term. 4 C.F.R. § 21.2(a)(1); Simont S.p.A., B-400481, Oct. 1, 2008, 2008 CPD ¶ 179 at 4. A defect is considered latent where a protester is reasonably unaware of any interpretation other than its own, and thus cannot be charged with knowledge of an ambiguity that had to be protested before the closing date. Reflect-A-Life, Inc., B-232108.2, Sept. 29, 1989, 89-2 CPD ¶ 295 at 4.

According to the protester, the "build on and scale up" language constitutes a latent ambiguity because it only came to light in the context of the agency's evaluation. Specifically, the protester argues it only identified the ambiguity after it reviewed the Technical Evaluation Committee Guide and the Source Selection Plan in the agency report. From this review, the protester alleges it determined that the agency was not using the current state of AERCA as a benchmark upon which the AMANAT program would be evaluated. Protest at 8-10; Supp. Protest at 13. DI contends that if the agency had instead asked offerors to create an anti-corruption program within a certain price range, with no mention of a specific existing program, then it would have proposed a much different program. Id. at 11.

The agency responds that the statement of objectives in the RFP did not use the word "benchmark." Further, the agency argues that the statement of objectives included three objectives for which a roll out strategy was required to be included in each offeror's proposed PWS, yet none of these objectives referenced the AERCA program. AR, Tab 10, Supp. COS at 12 citing Statement of Objectives at 4. The agency further argues, and we agree, that while both contractors reviewed the same statement of objectives in the RFP to develop its proposals, the fact that DI, based on its incumbent

status, read something into the statement of objectives that was not present, does not constitute a latent ambiguity in the RFP's statement of objectives.<sup>8</sup> Supp. AR at 13.

Even if we were to agree with the protester that the “build on and scale up” language in the solicitation created an ambiguity, any such ambiguity would not provide a basis to sustain the protest. Here, the language that the protester relies upon from the RFP's statement of objectives referencing the AERCA program was found in the purpose section, but was not mentioned or required by the list of objectives that each offeror was required to address in its PWS to implement the program. Therefore, any such ambiguity would have been patent and DI was required to protest this alleged ambiguity prior to the submission of proposals--which it failed to do. In our view, an offeror who chooses to compete under a patently ambiguous solicitation does so at its own peril, and where a protester fails to challenge an obviously flawed statement of objectives prior to the time for receipt of proposals, we will dismiss a post-award challenge to the solicitation language as untimely. 4 C.F.R. § 21.2(a)(1); PricewaterhouseCoopers Public Sector, LLP, B-413316.2, B-413316.3, Dec. 27, 2016, 2017 CPD ¶ 12 at 9; Ball Aerospace & Techs. Corp., B-402148, Jan. 25, 2010 CPD ¶ 37 at 5. Consequently, we find DI's assertion that the RFP statement of objectives contained an ambiguity to be untimely.

The protest is denied in part and dismissed in part.

Thomas H. Armstrong  
General Counsel

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<sup>8</sup> The protester also argues that the solicitation lacked metrics that would “allow USAID to judge whether, and how, one proposal provide[d] any clear technical advantage over another proposal, relative to price.” In the protester's view, this omission constituted a latent ambiguity in the solicitation. Protest at 9-10. We fail to see how any such obvious omission could be anything other than a patent ambiguity which, to be timely, must have been protested before the submission of proposals. 4 C.F.R. § 21.2(a)(1).