



441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. No party requested redactions; we are therefore releasing the decision in its entirety.

Decision

Matter of: Lynch Consultants, LLC

File: B-421713.2; B-421713.3

Date: November 2, 2023

Richard D. Kelley, Esq., Allison K. Riddle, Esq., and Harrison J. Clinton, Esq., Bean Kinney & Korman, PC, for the protester.
Jonathan T. Williams, Esq., Katherine B. Burrows, Esq., James N. Rhodes, Esq., and Annie B. Hudgins, Esq., Piliero Mazza PLLC, for 11th Hour Search, LLC, the intervenor.
Luis Then, Esq., and Maria DiGiovanni, Esq., General Services Administration, for the agency.
Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In a competition for a multiple award schedule task order, protest that the agency misevaluated the protester's quotation and made an unreasonable source selection decision is denied where the evaluation and best-value tradeoff were reasonable and consistent with the solicitation.

DECISION

Lynch Consultants, LLC, of Arlington, Virginia, a small business, protests the issuance of a multiple award schedule order to 11th Hour Search, LLC, of Falls Church, Virginia, also a small business, under request for quotations (RFQ) No. 47QFDA23Q0009, issued by the General Services Administration (GSA), Federal Acquisition Service, for professional financial support services for the Uniformed Services University of the Health Sciences, in Bethesda, Maryland. Lynch argues that GSA lacked a valid basis to take corrective action in response to an earlier protest, misevaluated the quotations, and made an unreasonable source selection decision.

We deny the protest.

BACKGROUND

GSA issued the RFQ on December 16, 2022, to obtain quotations from service-disabled veteran-owned small business vendors for issuance of a schedule task order under the

procedures of Federal Acquisition Regulation (FAR) subpart 8.4, Federal Supply Schedules. The RFQ provided specific instructions for vendors whose quotations proposed schedule contractor teaming arrangements, and separate instructions for those proposing subcontracting arrangements. For subcontracting arrangements, the RFQ directed the vendor to “clearly describe . . . the subcontractor’s experience and technical capabilities,” and to “clearly detail its prime/subcontractor agreement(s) . . . the type and extent of work to be performed by the proposed subcontractor(s)” and “clearly delineate” the subcontractors’ “roles and responsibilities.” Agency Report (AR), Tab 3, RFQ amend. 4 at 52. The RFQ also advised the vendor to provide a technical and management approach that would “ensure its subcontractors will provide high quality services, adhere to professional and privacy standards, and perform excellent customer services” under the RFQ requirements. *Id.*

Quotations were to be evaluated under three non-price factors, in descending order of importance: corporate experience, management approach, and key personnel. *Id.* at 60. The management approach factor evaluation, the only one at issue here, would assess whether the vendor demonstrated a complete understanding of the requirement and the capacity to successfully manage multiple work streams that deliver requirements iteratively and incrementally throughout the life cycle of the task order, and its “approach to managing client/end user’s expectation with the ideal labor mix.” *Id.* at 61. Price would be assessed for fairness and reasonableness; a total price would be calculated as the sum of prices for the base period and option years. *Id.* at 63.

The RFQ identified four potential adjectival ratings for evaluation of quotations under the management approach factor. The highest rating, excellent, represented a quotation that was high quality, met all requirements, exceeded “some or many requirements,” showed a “thorough understanding of the requirements,” and its risk of unsuccessful performance was “very low.” *Id.* The rating of good indicated that a quotation met all requirements, exceeded “some requirements,” showed a “sound understanding of the requirements and problems,” and its risk of unsuccessful performance was “low to moderate.” *Id.* The rating of acceptable represented a quotation that met all requirements, showed “some understanding of the requirements and some understanding of the problems,” and its risk of unsuccessful performance was “moderate.” *Id.*

Initial quotations were due by January 30, 2023. *Id.* at 49. After evaluating the initial quotations, GSA initiated discussions. Contracting Officer’s Statement at 1. The discussions issues raised with Lynch included the evaluation of Lynch’s management approach, which the agency indicated had been rated good. In addition to noting various aspects that were effective and lowered risk, the agency identified an area of concern arising from a statement in Lynch’s quotation that it “established Teaming Agreements” with two firms that the quotation identified as subcontractors, and after award would “convert these to Subcontracts.” AR, Tab 7, Discussions Letter to Lynch at 4. The agency then stated:

[i]t was not clear if this was a Teaming Agreement or Subcontractor plan.
The Government found this approach to be unclear and concerning as

much of the planning for how the three separate entities would work would be at the time work is to commence. This approach increased the risk of unsuccessful performance.

Id.

In response, Lynch stated that it had clarified how it would manage performance, including specifically its management of subcontractors. AR, Tab 8, Lynch Discussions Response Letter at 3. Lynch's revised quotation stated:

we will establish clear, well-defined subcontracts . . . to ensure we receive required services that meet the government standards. [Lynch]'s plan is to utilize two subcontractors in support of this contract, as shown in [an accompanying table].

Supp. AR, Tab 3, Lynch Volume II Quotation at 11.

When GSA evaluated Lynch's revised quotation, the management approach summary noted several positive attributes, but also concluded that Lynch's subcontracting approach remained vague, as its subcontracting plans would be finalized after award, and the firm had not shown that it had an agreement on how the work would be allocated among itself and its two subcontractors. Additionally, while Lynch responded to the agency's discussions questions, the evaluators concluded that Lynch's plan to finalize subcontracts after award could fail and disrupt the planned labor mix at the start of performance. Accordingly, the agency determined that Lynch's management approach rating should remain good. AR, Tab 10, Original Award Decision Document at 8. Because Lynch's quotation was the only one evaluated as acceptable, on May 16, GSA selected Lynch's quotation for award.

On June 1, 11th Hour filed a protest with our Office (which we discuss further below). On June 7, GSA requested dismissal of 11th Hour's protest as academic because the agency intended to take corrective action by reevaluating the quotations and making a new source selection decision. We dismissed 11th Hour's protest as academic on that basis. *11th Hour Search, LLC*, B-421713, June 9, 2023 (unpublished decision).

On August 1, the contracting officer finalized a new award decision document, which documented the reevaluation of 11th Hour's quotation as excellent and included the contracting officer's independent assessment of each vendor's quotation. With respect to Lynch's management approach, the contracting officer concluded that "[t]he biggest risk is that the Offeror did not clearly delineate the roles and responsibilities of the subcontractor(s), or clearly detail its prime/subcontractor agreement(s)." AR, Tab 9, Final Award Decision Document at 12. The contracting officer noted that Lynch's approach indicated that its subcontracting plans "would be established post award rather than prior to award," and the resulting lack of specific information about its subcontracting approach created "at least a moderate risk." *Id.*

The overall ratings and prices for Lynch and 11th Hour were as follows:

	Lynch	11th Hour
Corporate Experience	Recent, Relevant	Recent, Relevant
Management Approach	Good	Excellent
Key Personnel	Excellent	Excellent
Overall	Good	Excellent
Price	\$12,926,982	\$13,159,749

Id. at 9, 13.

The contracting officer compared the evaluations of the two quotations and ultimately determined that, when considering both technical factors and price, 11th Hour’s quotation offered the greatest overall benefit and that incurring its higher price was “more than reasonable when considering the superior Management Approach quoted by 11th Hour.” *Id.* at 17. In contrast, Lynch’s quotation “lacked clarity in its subcontracting arrangements,” and posed moderate risk. *Id.* Accordingly, the contracting officer selected 11th Hour’s quotation for award. *Id.* at 19. GSA provided Lynch notice of the source selection decision and an explanation of the basis for the selection, after which Lynch filed this protest.

DISCUSSION

Lynch’s protest challenges both GSA’s decision to take corrective action in response to 11th Hour’s earlier protest, and the resulting award to 11th Hour, arguing that the subsequent reevaluation of quotations was unreasonable and resulted in a flawed source selection decision. We address these contentions in turn and, for the reasons discussed below, we find that none has merit.

Timeliness of Challenge to Earlier Protest and Corrective Action

The first ground of protest relates to GSA’s decision to take corrective action in response to 11th Hour’s protest of the original award to Lynch. As noted above, 11th Hour challenged that award in a protest filed with our Office. In that protest, 11th Hour argued that GSA had unreasonably evaluated and rejected its quotation, or alternatively that GSA had failed to provide meaningful discussions and improperly applied an ambiguous requirement when it rejected 11th Hour’s quotation. Also as noted above, GSA took corrective action in response to that protest, resulting in our Office dismissing the protest as academic. *11th Hour Search, LLC*, B-421713, June 9, 2023 (unpublished decision). After completing the reevaluation, GSA selected 11th Hour’s quotation for award, which led to the current protest.

Lynch objects that 11th Hour was ineligible to file its earlier protest and that the corrective action, therefore, lacked a valid basis. According to Lynch, because the original evaluation deemed 11th Hour’s proposal unacceptable, 11th Hour was not an interested party to file its protest and it was therefore improper for the agency to have taken corrective action in response to 11th Hour’s protest. Lynch also argues that GSA

failed to identify a flaw in the original evaluation and award decision that could justify taking corrective action.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. *Verizon Wireless*, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. Under these rules, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2).

Again, on June 1, 2023, 11th Hour filed its protest with our Office arguing that GSA had improperly rejected its quotation. On June 7, GSA announced that it would take corrective action, and requested that we dismiss that protest as academic. On June 9, Lynch intervened in 11th Hour's protest. A short time later, our Office dismissed 11th Hour's protest as academic and, in our decision, we noted that the protester had contended that GSA "misevaluated the protester's quotation as unacceptable or it misapplied an ambiguous provision in the RFQ after failing to provide meaningful discussions." The decision also stated that the protest was academic because GSA had announced that it would "reevaluate the quotations and make a new source selection decision." *11th Hour Search, LLC*, B-421713, June 9, 2023 (unpublished decision).¹ Lynch filed this protest on August 11.

Lynch's challenge to 11th Hour's eligibility to protest and GSA's decision to take corrective action is untimely. Lynch knew, or should have known, the information that formed the basis for its challenge to GSA's decision to take corrective action, when our Office issued the decision dismissing 11th Hour's protest as academic on June 9. As noted above, our decision summarized both the grounds of 11th Hour's protest and the scope of GSA's intended corrective action. Nothing in Lynch's challenge to the corrective action relies on information that the protester obtained after June 9. Accordingly, we dismiss Lynch's protest of the agency's decision to take corrective action.

¹ When Lynch's counsel intervened, they did not immediately apply for admission under the protective order, so they were unable to review GSA's corrective action notice. However, our Office's decision dismissing 11th Hour's protest was issued and available to all parties, including Lynch. On August 2 (weeks after the protest had been closed) Lynch's counsel applied for admission to the protective order in 11th Hour's protest. Our authority to administer protective orders is to facilitate the development of protests before our Office. Therefore, because the protest file had been closed by our decision on June 9, we informed counsel for all parties that we would not act on the applications. Email from GAO to All Counsel (Aug. 3, 2023) at 1.

Evaluation of Lynch's Quotation

We turn next to Lynch's remaining grounds of protest that challenge the reevaluation of Lynch's quotation under the management approach factor and the source selection decision. Lynch argues that GSA unreasonably evaluated its proposal as merely good, rather than excellent. Protest at 8; Comments at 3; Supp. Protest at 9-10. As a result, Lynch contends that GSA made an unreasonable tradeoff to select 11th Hour's high-priced quotation.² *Id.*

Where a protester challenges the evaluation in a competition for a task order under FAR subpart 8.4, our Office will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. *Castro & Co., LLC*, B-415508.10, June 11, 2019, 2019 CPD ¶ 215 at 4. Our Office will not reevaluate the quotations; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *Id.*

Lynch argues that GSA improperly "weigh[ed] a small component--the subcontractors--more than the other factors." Protest at 9. The protester also contends that it was necessary for it to characterize its intended subcontracting arrangements as teaming agreements that would be "converted into subcontracts" upon award, and that GSA should not have evaluated this approach as posing risk.³ *Id.*

² Lynch also argues that the record reflects disparate treatment because GSA's discussions with 11th Hour resulted in 11th Hour clarifying its quotation in terms of its "Teaming Arrangement [including] Subcontractor details, the workshare terms, and roles and responsibilities." Supp. Protest at 9-10 (citing AR, Tab 9, Final Award Decision Document at 8). Lynch argues that both firms' use of subcontractors means that both firms' management approach included "Teaming Arrangements [that] would become subcontracts upon execution of any Award," and thus both should have been evaluated the same. Supp. Protest at 10.

Lynch's claim is unsupported. To challenge an evaluation as demonstrating disparate treatment, a protester must show that the differences in ratings did not stem from differences in the quotations. *Camber Corp.*, B-413505, Nov. 10, 2016, 2016 CPD ¶ 350 at 8. Lynch provides no factual support for its claim that 11th Hour's quotation used the same approach to subcontracting; its contention is built on self-serving hypotheses from the description of 11th Hour's response to discussions and is thus insufficient to demonstrate disparate treatment. Accordingly, we also deny this aspect of Lynch's protest.

³ Lynch also argues that it was inconsistent for GSA to characterize the risk posed by the lack of details in its subcontracting plans as moderate, while rating it under the management approach factor as good, which the RFQ defined as representing "low to moderate" risk. In support of its position, Lynch notes that a rating of acceptable was associated with "moderate risk." To the extent that Lynch's point has any validity, it

(continued...)

GSA argues that the evaluation was reasonable. The agency contends that Lynch's quotation introduced risk because it lacked details about the firm's subcontracting plans. Memorandum of Law at 5. GSA notes that it identified its concerns to the protester in discussions and indicated that the firm was rated good under the management approach factor. *Id.* The agency argues that Lynch's revised quotation did not provide sufficient additional details on the division of work between it and its subcontractors, in effect leaving those issues to be resolved after award. *Id.*

The contemporaneous record supports the reasonableness of GSA's evaluation. As quoted above, the RFQ specifically directed vendors relying on subcontractors to "clearly detail" the prime/subcontractor agreements, identify "the type and extent of work to be performed by the proposed subcontractor(s)" and "clearly delineate" each firm's roles and responsibilities. AR, Tab 3, RFQ amend. 4 at 52. Additionally, as noted above, the agency asked Lynch for clarity about its use of subcontractors during discussions, including whether it was anticipating a teaming arrangement or a subcontracting relationship. The agency also explained that it found Lynch's approach to be unclear and concerning as the planning for how Lynch would work with its subcontractors would not be resolved until after award, which "increased the risk of unsuccessful performance." AR, Tab 7, Discussions Letter to Lynch at 4.

Lynch provided a response that confirmed it would reach agreements with its intended subcontractors after award, but failed to allay the agency's concerns that Lynch's plan left the determination of the roles and responsibilities of Lynch and its two intended subcontractors to be determined after award. Given the RFQ's language seeking clear detail about subcontracting arrangements, and the agency's indication during discussions that Lynch's initial quotation posed risk in this area and had resulted in a factor rating below excellent, we see no basis to question the agency's evaluation of Lynch's revised quotation. To the contrary, GSA reasonably explains that the evaluation of risk in Lynch's approach was based in a lack of information that the RFQ requested. Accordingly, we deny Lynch's challenge to the evaluation of its quotation.

Lynch also argues that GSA's rationale for selecting 11th Hour's higher-priced quotation is inadequate. Lynch argues that the award decision does not adequately explain why the contracting officer concluded that the superiority of 11th Hour's quotation over Lynch's regarding "just one component of [its] Management Approach" was sufficient to justify incurring 11th Hour's higher price. Comments at 2.

When making tradeoff decisions in a best-value source selection, an agency has broad discretion in making a tradeoff between price and non-price factors. Our Office will

would, at best, show only that Lynch's management approach could have been rated lower (acceptable rather than good), so the argument does not demonstrate that the supposed error was prejudicial. In any case, as discussed below, the record also demonstrates that the contracting officer focused on the material differences between the quotations in making the tradeoff judgment in favor of 11th Hour's quotation, rather than on their adjectival ratings.

review whether the tradeoff judgment concerning the significance of the difference was rational and consistent with the RFQ's evaluation criteria. *Tuba Group*, B-419733, June 30, 2021, 2021 CPD ¶ 251 at 3.

Our review of the record demonstrates that the contracting officer's tradeoff judgment was reasonable and consistent with the RFQ criteria. As noted above, the RFQ provided that the nonprice evaluation factors when combined were more significant than price in making any tradeoff. Here, the contracting officer reviewed the evaluation, to include the concerns about Lynch's approach to subcontractor management under the management approach factor. As discussed above, that evaluation was reasonable. The award decision document sets forth the contracting officer's reasoned judgment that the additional cost incurred in making an award to 11th Hour was worth the firm's superior management approach. That judgment was reasonable and consistent with the RFQ criteria. Lynch's disagreement with the contracting officer's tradeoff judgment does not provide a basis to sustain its protest.

The protest is denied.

Edda Emmanuelli Perez
General Counsel