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Decision

Matter of: North Wind, Inc.; Earth Resources Technology, Inc.

File: B-404880.4; B-404880.5; B-404880.6

Date: November 4, 2011

Kevin P. Mullen, Esq., and Sarah A. Maguire, Esq., Jenner & Block LLP, for North Wind, Inc., and William T. Welch, Esq., and J. Patrick McMahon, Esq., McMahon, Welch and Learned, PLLC, for Earth Resources Technology, Inc., the protesters. Robert J. Symon, Esq., Aron C. Beezley, Esq., and Daniel P. Golden, Esq., Bradley Arant Boult Cummings LLP, for Navarro Research and Engineering, Inc., an intervenor.

Vincent A. Salgado, Esq., and Kevin Love, Esq., National Aeronautics and Space Administration, for the agency.

Nora K. Adkins, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of agency's re-evaluation of the awardee's proposal, as part of a corrective action, is sustained where the agency failed to evaluate the awardee's proposal in accordance with the solicitation requirements.

DECISION

North Wind, Inc., of Idaho Falls, Idaho, and Earth Resources Technology, Inc. (ERT), of Laurel, Maryland, protest the award of a contract to Navarro Research and Engineering, Inc., of Oak Ridge, Tennessee, by the National Aeronautics and Space Administration (NASA) under request for proposals (RFP) No. NNJ10336475R for environmental compliance and restoration work at the White Sands Test Facility in Las Cruces, New Mexico.

We sustain the protests.

BACKGROUND

The solicitation, issued on July 27, 2010 as a 100-percent small business set-aside, sought environmental restoration and compliance support under an indefinite-delivery/indefinite-quantity (ID/IQ) contract. The RFP contained both fixed-price

and cost-reimbursable items. The RFP provided for a total not-to-exceed cost of \$80 million.

The contract requirements were set forth in the performance work statement (PWS). Section 1 of the PWS provided an explanation of the solicitation's program management, planning, and reporting requirements; section 2 described the environmental restoration requirements; and section 3 stated the environmental compliance requirements. The section 1 work was to be performed on a fixed-price basis, whereas the section 2 and 3 work was to be performed on a cost-reimbursement basis.

Section M of the RFP set forth the evaluation factors and sub-factors, which were mission suitability, past performance, and price. RFP at M-2. The RFP stated that mission suitability was more important than past performance and price combined; past performance was more important than price; and the combined weight of mission suitability and past performance was significantly more important than price. Id. at M-7.

The mission suitability factor was to assess the ability of an offeror to provide and administer the contract requirements. This factor had three subfactors: technical approach, management, and safety and health. Id. at M-2. A total of 1,000 points were assigned to the mission suitability factor; 450 points for the technical approach subfactor, 400 for the management subfactor, and 150 for the safety and health subfactor. Id.

The RFP also provided:

Although proposals are organized by factors and sub-factors, the Government will conduct an integrated evaluation, considering any proposal data in its evaluation of each factor and sub-factor. Therefore, all aspects of the offeror's proposal will be considered during the evaluation process, including the offeror's proposed Model Contract.

Id.

Section L of the RFP set forth the proposal instructions. This section required offerors to submit their proposals in five volumes: (1) mission suitability, (2) past performance, (3) cost/price, (4) plans and other data, and (5) completed model contract and representations and certifications. RFP at L-12. This section also set forth page limits on proposals, and cautioned that "[p]ages submitted in excess of the limitations specified in this provision will not be evaluated by the Government and will be returned to the offeror." Id. at L-4. The stated page limit for volume I,

mission suitability, was 50 pages.¹ Id. at L-14. This 50-page limit did not apply to “resource sheets” (explained below) and the Safety and Health Plan. Id.

The proposal instructions of the RFP specified what was to be addressed within the 50-page mission suitability proposal. Offerors were first cautioned that the mission suitability proposal should comprehensively explain how the offeror proposes to comply with the applicable specifications, and be detailed and complete enough to clearly and fully demonstrate that the offeror understands the requirements and the inherent risks. Id. at L-17. This section further warned that “[s]ince the paragraphs and tables described in these instructions are also intended to facilitate the technical evaluation of the offeror’s proposal, offerors will carefully follow these instructions.” Id. at L-18.

Each of the three subfactors of the mission suitability factor (technical approach, management, and safety and health) was to be addressed within the mission suitability proposal. The RFP instructions broke down the technical approach subfactor into two parts--overall technical approach, and specific technical understanding and resources--and provided detail about what should be addressed in each part. The overall technical approach part of the technical approach subfactor required offerors to demonstrate their understanding of the PWS as a whole. Id. at L-17-18. The specific technical understanding and resources part of the technical approach subfactor required offerors to address the requirements of the fixed-price ID/IQ task order (PWS 1), and the sample cost-reimbursable task orders (PWS 2 and 3).² Id. at L-18-19.

The RFP instructions for part two of the technical approach subfactor also provided the specific “level of detail” offerors were required to provide to “address the specific labor resources and associated supporting rationale” for their technical approaches. Id. at L-18. Specifically, three levels of detail were required. The first level of detail required offerors to identify their technical approach for providing each of the required PWS tasks, with sufficient discussion to demonstrate understanding of the technical requirements. Id. at L-19. The second level of detail (and the one most relevant to these protests) required offerors to provide a basis of estimate (BOE) for each of the three task orders, including any efficiencies or cost savings proposed. Id. The third level of detail required the completion of a resources table for each task order, identifying the labor categories and staffing levels for each category; these

¹ There were also stated page limits on the other volumes of the proposal.

² The three sample tasks were detailed elsewhere in the RFP. RFP, Section C, PWS, at C-1-22.

tables were required to agree with the narrative discussion in the mission suitability proposal.³ Id. at L-20.

With respect to the proposal instruction requirement to provide a BOE for each PWS task order, the RFP stated:

Explain the BOE by providing supporting rationale for all labor resources ([full time equivalents] FTEs and skill mix) proposed. Include a discussion regarding how the proposed FTEs were estimated. Also, include a discussion associated with any assumptions made regarding the requirements that led to the proposed resources . . . Include sufficient narrative discussion to convince the Government that the proposed resources are realistic for the proposed technical and management approach. Include with your narrative discussion a schedule and critical path for the proposed effort.

Offerors are required to estimate any non-labor resource dollars for the fixed-price and cost reimbursable IDIQ portion of this contract. A narrative BOE shall be provided that depicts the offeror's understanding of the required non-labor resources.

Id. at L-19.

The proposal instructions also included an independent government estimate (IGE), reflecting direct labor staffing, non-labor resources, and cumulative labor staffing by skill mix for year one of the contract for each of the three tasks. Id. at L-26-28. The RFP included the following caveats and instructions to offerors regarding the IGE:

The IGE is based on historical usage factors which may not be representative of 100% of usage for future work. The IDIQ IGE provided above is not intended to influence the offeror's proposal estimates . . . Offerors shall develop their own estimates that support their unique proposal management and technical approaches and shall provide supporting rationale in narrative form.

* * *

This IGE represents the Government's estimate for accomplishing the IDIQ fixed-price Task Order 1 and Sample Cost Reimbursable Task Orders 2 and 3 without the incorporation of any one offeror's specific management and technical approach. It is intended to assist you in

³ As indicated above, the resource tables were excepted from the 50-page limit on the mission suitability proposal. RFP at L-14.

determining the magnitude of the labor FTE and non-labor resource (NLR) requirements. This is not to be considered a Government “plug number.” . . . Offerors are free to incorporate the IGE into their Cost/Price Volume or to propose non-labor resource costs as deemed appropriate to accomplish the Task Orders.

Id. at L-28-29.

Six offerors, including North Wind, ERT, and Navarro, submitted timely proposals. After the initial evaluation of proposals, the agency decided that award would be made to Navarro without discussions. On February 28, 2011, NASA notified the offerors that it had awarded the contract to Navarro. NASA provided a debriefing to North Wind on March 7 and ERT on March 8.

Events During North Wind’s Previous Protest

On March 14, North Wind filed a protest with our Office challenging NASA’s evaluation of North Wind’s technical and cost proposals, and the agency’s award decision.⁴ After reviewing the agency report, on April 22, North Wind filed a supplemental protest contending that NASA improperly considered 56 pages of information in Navarro’s proposal that fell outside the RFP’s 50-page limit for mission suitability proposals.

The record showed that Navarro’s mission suitability proposal contained 50 pages of narrative addressing the three mission suitability subfactors. ERT Agency Report (AR), Tab 7, Navarro’s Mission Suitability Proposal, at 1-50. In addition to its 50-page narrative, Navarro also included a 59 page attachment.⁵ Navarro’s attachment addressed the solicitation’s BOE (56 pages) and resources table (3 pages) requirements for the three task orders.⁶ Id., BOE attach.

⁴ ERT did not protest the initial award decision.

⁵ Our review indicates that these pages addressed such subjects as Summary of Work Scope, Labor Resources (Supporting Rationale), Estimation of Proposed FTEs (Discussion), Assumptions, Proposed Resources (include Schedule and Critical Path), Required Non-Labor Resources (Discussion), and Efficiencies and Cost Savings (Discussion). AR, Tab 7, Navarro’s Mission Suitability Proposal, attach, 1-59.

⁶The organization of Navarro’s mission suitability proposal with its accompanying attachment appears to have been based upon a misreading of the solicitation, which required the entirety of an offeror’s BOE to be within its 50-page mission suitability proposal. RFP at L-14. In this regard, Navarro’s proposal stated, “[s]ince [the BOE and resources table] are outside of the page count, they are included with this volume in another tab and referred to in each of the sample tasks.” ERT AR, Tab 7, Navarro Mission Suitability Proposal, at 10. Although the table of contents for

(continued...)

Despite the fact that all 56 pages of Navarro's BOE fell outside the 50-page limit, the source evaluation board (SEB) assigned a significant strength to Navarro's technical approach subfactor during the initial evaluation. Specifically, the SEB concluded that Navarro had provided a "clear and concise [BOE] and associated resource evaluations [that] demonstrates a comprehensive understanding of the complexity and scope of the work which will ensure the highly effective and efficient implementation of the technical program requirements." North Wind AR, Tab 18, SEB Presentation to SSA, at 33. Moreover, the initial source selection decision stated that Navarro's proposal warranted a significant strength because of its:

sound and effective Task Order approach concerning associated resource sheets, [BOE], and supporting rationale;" "[t]he highly refined Navarro resource sheets and [BOE] clearly described the total available [FTE] resources per Task Order, and then apportioned those resources to the third level of a Work Breakdown Structure (WBS) designed for each Task Order.

North Wind AR, Tab 19, Initial Source Selection Decision, (Jan. 27, 2011), at 2.⁷

On May 24, 2011, NASA advised our Office of its intent to take corrective action in response to North Wind's supplemental protest issue by removing the 56 challenged pages and re-evaluating Navarro's proposal. ERT AR, Tab 2, Corrective Action Plan, at 1. NASA advised:

[T]he [SEB] will remove the 56 pages of 3rd level [WBS] resource sheets from the Navarro proposal . . . because they contain BOE narrative text, and then re-evaluate and re-score the Technical Approach subfactor . . . score for a revised Mission Suitability Score. . . . A new [source selection decision] and contract will be issued by the Agency, consistent with the source selection decision of the [Source Selection Authority].

Id., attach., Corrective Action Plan, at 1, 3.

(...continued)

Navarro's mission suitability proposal provided that Navarro's BOE was located within the 50-page mission suitability proposal corresponding to each of the three task orders, our review of those pages finds only a reference to the 59-page attachment. Id. at i, ii, 14, 26, and 33.

⁷ For the record, we note that the proposal information on which this significant strength was based, including the resource sheets and third-level WBS analysis, was contained within the 56-page BOE attachment that exceeded the 50-page limit.

On May 25, North Wind objected to the agency’s corrective action plan, asserting that the corrective action was fundamentally flawed, given the nature of the procurement violation at issue. North Wind contended that the agency should instead allow offerors to submit revised proposals for a new evaluation based on a common page limitation at least as lengthy as the offending proposal submitted by Navarro. Among other things, North Wind argued that if NASA simply removed the offending proposal pages and re-evaluated Navarro’s proposal, its evaluators would be influenced by the original proposal. North Wind argued that a new evaluation panel would be required to avoid this problem. North Wind Letter (May 25, 2011).

Notwithstanding these objections, our Office dismissed North Wind’s initial and supplemental protests on May 31, given the broad discretion of an agency in determining the nature of corrective action that it should take to ensure fair and impartial competition. North Wind, Inc., B-404880; B-404880.2, May 31, 2011; see Rockville Mailing Serv., Inc., B-270161.2, Apr. 10, 1996, 96-1 CPD ¶ 184 at 4.⁸

NASA’s Corrective Action and New Source Selection Decision

The SEB completed its re-evaluation of Navarro’s proposal on June 28.⁹ The proposals were rated under the mission suitability factor as follows:

Offeror	Mission Suitability Score	Technical Approach	Evaluated Cost
Navarro	895	390	[REDACTED]
ERT	[REDACTED]	[REDACTED]	[REDACTED]
North Wind	[REDACTED]	[REDACTED]	[REDACTED]

ERT AR, Tab 3, Competitive Range Presentation, at 20, 95. As a result of the re-evaluation of Navarro’s technical approach, Navarro’s score dropped 55 points from the initial evaluation. This reduction was primarily the result of a weakness assessed under the technical approach subfactor:

[Navarro’s] resource allocations [REDACTED]; however, the offeror did not specifically state that intent in the [BOE] narrative discussion . . . included within their Technical Approach section. Therefore, the Government’s integrated proposal evaluation of the offeror’s resource sheets, management approach, and corresponding cost volume

⁸ However, our dismissal observed “[i]f after the agency completes its re-evaluation of Navarro’s proposal, and makes a new source selection, North Wind believes that the award was improper, it may protest the award and re-raise this objection [to] the reevaluation.” North Wind, Inc., *supra*, at 2 n.1.

⁹ The proposals of ERT and North Wind were not re-evaluated.

information was necessary in order to conclude that the offeror fully understood the task order requirements and that their approach was effective and feasible.

Id. at 25. The SEB determined that this weakness was a “minor issue[] relating to RFP instructions.” Id. at 107; see Hearing Transcript (Tr.) at 18.

On July 19, NASA notified the parties that it had again awarded the contract to Navarro. On July 29, North Wind and ERT filed protests with the GAO challenging NASA’s re-evaluation of Navarro’s proposal and subsequent award decision.

DISCUSSION

Interested Party

As an initial matter, NASA and Navarro contend that neither North Wind nor ERT are interested parties to pursue their protests. Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (2006), only an “interested party” may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1) (2011). Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit or relief sought by the protester, and the party’s status in relation to the procurement. Four Winds Servs., Inc., B-280714, Aug. 28, 1998, 98-2 CPD ¶ 57 at 2. A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. Id.

NASA and Navarro contend that North Wind is not an interested party because it would not be in line for award, even if its protest were sustained. The agency and intervenor reach this conclusion for three reasons: (1) North Wind’s mission suitability score was [REDACTED], (2) North Wind abandoned its challenges to the evaluation of its own mission suitability and cost proposals during the earlier protest, and (3) North Wind did not challenge the evaluation of ERT’s intervening higher-ranked proposal. While NASA and Navarro are correct in these observations, we note that North Wind’s evaluated cost is [REDACTED] lower than [REDACTED]. As a result, North Wind’s acceptable proposal must be included in any cost/technical tradeoff in this procurement. Moreover, we note that North Wind could improve its mission suitability score if NASA elects to convene discussions as a result of this decision. Thus, we find North Wind is an interested party. See Native American Industrial Distributors, Inc., B-310737.3 et al., Apr. 15, 2008, 2008 CPD ¶ 76 at n.5.

NASA and Navarro also challenge ERT’s interested party status, claiming that an offeror who did not participate as a party in the original protest cannot be considered an interested party for purposes of challenging the agency corrective action taken in response to the original protest. We note first that ERT could not

have intervened in North Wind's earlier protest given that it was not the awardee. In addition, we note that ERT is not protesting the corrective action, but the ultimate selection decision that resulted from the earlier corrective action—a selection decision that resulted from a tradeoff between ERT and the awardee. Thus, we find ERT is also an interested party.

Propriety of the Re-evaluation

The protesters argue that NASA's re-evaluation of Navarro's proposal, and the new source selection decision, were inconsistent with the stated requirements of the solicitation. Specifically, the protesters contend that the agency could not have reasonably determined that Navarro's proposal, after removal of the 56 pages containing BOE narrative, met the solicitation's requirement to provide a BOE.

It is a fundamental principle of federal procurement law that a contracting agency must evaluate all offerors' proposals against the solicitation's stated evaluation criteria. See, e.g., Source Diversified, Inc., B-403437.2, Dec. 16, 2010, 2010 CPD ¶ 297 at 6; Computer Prods., Inc., B-284702, May 24, 2000, 2000 CPD ¶ 95 at 4-5. In reviewing protests against allegedly improper evaluations, our Office examines the record to determine whether the agency's evaluation was, in fact, in accord with the stated evaluation factors. Computer Assocs. Int'l, Inc., B-292077.3 et al., Jan. 22, 2004, 2004 CPD ¶ 163 at 6.

NASA maintains that it evaluated Navarro's proposal in accordance with the solicitation criteria and did not consider the 56-page BOE attachment that was removed as a result of its initial evaluation, even though the same evaluators that had viewed the 56 pages conducted the re-evaluation.¹⁰ NASA contends that it complied with the solicitation's requirements because Navarro's proposal contained sufficient BOE narrative within the remaining 50 pages of its mission suitability proposal for the agency to determine that "[REDACTED], despite the fact that Navarro did not explicitly state within its 50-page . . . [mission suitability proposal] that it [REDACTED]." NASA's Post-Hearing Comments at 1-2; Tr. at 103. NASA states that its assumption that [REDACTED] was confirmed by its integrated assessment of the rest of Navarro's proposal (besides the 50-page mission suitability proposal).

Our review of the record reveals several problems with NASA's position. First, while it is true that the RFP allowed offerors to [REDACTED], Tr. at 78, they were nonetheless explicitly required by section L of the solicitation to provide a BOE. The BOE was required to include, among other things, "supporting rationale for all labor resources (FTEs and skill mix) proposed" to demonstrate that the resources are

¹⁰ During our hearing, the SEB witness testified that he did not rely on the 56 pages removed from Navarro's initial proposal in the re-evaluation and award decision. Tr. at 121. We have no basis to question the veracity of this testimony.

realistic for the proposed technical and management approach. RFP at L-19. During the hearing, NASA's SEB witness testified that the RFP [REDACTED]. Tr. at 79-80.

The record here shows that both protesters and Navarro provided BOEs with their initial mission suitability proposals. However, as Navarro's proposal explained, Navarro did not address the BOE level of detail within the mission suitability page limit because it determined that this requirement was "outside of the page count." AR, Tab 7, Navarro's Mission Suitability Proposal, at 10.

In addition, during the hearing, the agency conceded that Navarro's 50-page mission suitability proposal [REDACTED], as Navarro was required to do if this was its intent. Tr. at 175. In our view, without such a representation, the agency could not reasonably conclude that the proposal contained "a discussion regarding how the proposed FTEs were estimated" as required by the BOE level of detail. See RFP at L-19.

Furthermore, even if we accept that Navarro [REDACTED]. The RFP specified that resources tables "shall agree with" the narrative discussion (here, how the FTEs were estimated) required for the BOE labor and non-labor resources. RFP at L-20. Our review of Navarro's resource tables for task order 1 and task order 2 confirms the protesters' allegations that [REDACTED]. Compare ERT AR, Tab 7, Navarro Mission Suitability Proposal, attach., Task Order 1 Resources Table, and Task Order 2 Resources Table with RFP at L-26-28; see Tr. at 142-43, 169-70. While NASA asserts that the differences were relatively minor and that a review of the totality of the proposal confirms that [REDACTED],¹¹ Navarro did not state this, or provide the BOE required by the RFP, in its 50-page mission suitability proposal.

As indicated, while stipulating that inclusion of the BOE in the technical approach section of the mission suitability proposal was a requirement of the RFP, Tr. at 60, NASA nevertheless contends that Navarro's proposal provided sufficient narrative to meet the BOE requirements. In both its agency report, and at the hearing, NASA provided examples that it contends show Navarro's compliance with the BOE requirements, and [REDACTED].

We have reviewed of each of NASA's examples, the parties' arguments, the hearing testimony, and Navarro's proposal; in our view, Navarro's mission suitability

¹¹ The agency claims that its assumption [REDACTED], notwithstanding the inconsistency with Navarro's resource sheets, was validated when it reviewed information contained in Navarro's volume III cost proposal and volume IV staffing plan during its integrated evaluation of Navarro's factors and subfactors. Tr. at 120-121.

proposal did not comply with the RFP proposal preparation requirements.¹² Specifically, the proposal failed to provide adequate “supporting rationale for all labor resources (FTEs and skill mix) proposed” to demonstrate that the proposed resources are realistic for the proposed technical and management approach. See RFP at L-19. Furthermore, as indicated, Navarro’s mission suitability proposal did not “include a discussion regarding how the proposed FTEs were estimated.” See id. Navarro’s mission suitability proposal also failed to provide any narrative BOE that explained its understanding of the required non-labor resources. See id.

For example, with regard to the task order for PWS 2, environmental restoration requirements,¹³ the agency references the statement, “[REDACTED].” ERT AR, Tab 7, Navarro’s Mission Suitability Proposal, at 15; see Contracting Officer’s Statement on ERT Protest at 14. This generalized reference to work required under the task order in no way provides narrative support for any of the FTEs (engineer, scientist, etc.) proposed by Navarro to meet the RFP requirements.¹⁴

With regard to the task order for PWS 3, environmental compliance requirements,¹⁵ NASA points to phrases in Navarro’s mission suitability proposal stating “[REDACTED].” Id. at 28-29. Yet nowhere in this portion of the proposal are Navarro’s proposed engineers, scientists, or technicians specifically discussed. Once again, Navarro failed to provide BOE narrative to support the [REDACTED] FTEs proposed in its resources table for task order 3.

¹² Although we have considered all of the numerous examples that NASA has referenced to show Navarro’s compliance with the BOE requirements, we discuss only a few examples here.

¹³ Navarro’s resources table for task order 2 reported the labor categories and number(s) of FTEs (totaling [REDACTED] FTEs) proposed to perform this task order. AR, Tab 7, Navarro Mission Suitability Proposal, attach., at 14. The resources tables provided by Navarro contain no BOE narrative.

¹⁴ We note for the record, one example that comes closer to complying with the BOE requirement was the statement, “[REDACTED].” AR, Tab 7, Navarro’s Mission Suitability Proposal, at 14. However, we see no other reference in the 50 pages of Navarro’s mission suitability proposal addressing any of the remaining FTEs proposed on Navarro’s task order 2 resources table. Thus, for task order 2 alone, Navarro’s proposal failed to address the other [REDACTED] FTEs mentioned on its resources table for the overall staffing of this task order.

¹⁵ Navarro’s resource table for task order 3 reported the labor categories and number(s) of FTEs (totaling [REDACTED] FTEs) proposed to perform this task order. AR, Tab 7, Navarro Mission Suitability Proposal, attach., at 41.

To show that Navarro intended to [REDACTED] and complied with the BOE requirements, the agency also relies on various portions of Navarro's program management plan, staffing plan, and cost proposal, which all fall outside of the 50-page mission suitability page limit. While the solicitation clearly provided for an integrated assessment considering all of the evaluation factors, RFP at M-2, the SEB witness testified that the purpose of this integrated assessment was to corroborate and validate the consistency and integration of the various portions of the offeror's proposal. Tr. at 82-83, 139-40. Our review finds that instead of merely corroborating and validating, NASA used such information--not contained in the mission suitability proposal--to backfill Navarro's response to the BOE requirements.¹⁶ Such an evaluation cannot be done to avoid the clearly stated 50-page limit on the mission suitability proposal that was required to include the BOE. See Electronic Design, Inc., B-279662.2 et al., Aug. 31, 1998, 98-2 CPD ¶ 69 at 10-11; see also Tr. at 220 (SEB Witness testimony: "technically anything outside of the 50 pages should not be considered, and would not be considered.")

In summary, while we note that NASA downgraded Navarro's proposal because it did not specifically state [REDACTED], NASA's willingness to essentially waive the BOE requirement for Navarro, without disclosing this willingness to all of the offerors and providing them an opportunity to submit revised proposals, was prejudicial to the offerors who provided the required BOEs within the page limitation imposed on the mission suitability proposals. See Electronic Design, Inc., at 10-11 D&M General Contracting, Inc., B-252282.4, Aug. 19, 1993, 93-2 CPD ¶ 104 at 3. In this regard, it is a fundamental principle of government procurement that competition must be conducted on an equal basis; that is, offerors must be treated equally and be provided with a common basis for the preparation of their proposals. Electronic Design, Inc., at 10.

In our view, North Wind and ERT were both prejudiced by the agency's evaluation of Navarro's proposal because their mission suitability proposals provided BOEs within 50-page limit. In fact, ERT provided the required BOE in its 50-page mission suitability proposal, [REDACTED]. North Wind AR, Tab 32, Mission Suitability Proposal of ERT, at 20, 28, 38, and Resources Tables; Tr. at 107 ([REDACTED]). ERT claimed that Navarro's tactic of submitting its BOE in additional attachments greatly increased its ability to respond to the technical approach sub-factor and gave Navarro a competitive advantage denied to other offerors. ERT Comments at 4. In addition, North Wind has asserted that it could and would have submitted more detailed information about its approach to mission suitability--which was assigned [REDACTED]--had it been given the same opportunity as Navarro to submit

¹⁶ For example, the SEB's integrated evaluation ventured outside of the 50-page mission suitability proposal into Navarro's staffing plan, which had its own page limitation, where Navarro stated that it had "[REDACTED]." AR, Tab 7, Navarro Staffing Plan, at 1.

additional pages with its mission suitability proposal. See North Wind Supp. Protest (April 22, 2011), attach. A, Affidavit of North Wind Executive Vice President, at 1-4.

We sustain the protests.¹⁷

RECOMMENDATION

We recommend that NASA appoint a new source evaluation board, consider amending the solicitation to remove or increase the 50-page limit for mission suitability proposals, conduct meaningful discussions if appropriate, obtain and evaluate revised proposals, and make a new source selection decision. We further recommend that the agency reimburse the protesters the costs of filing and pursuing their protests, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protesters' certified claim for costs, detailing the time spent and the cost incurred, must be submitted to the agency within 60 days after receiving this decision.

Lynn H. Gibson
General Counsel

¹⁷ In view of our recommendation below, we need not address North Wind's and ERT's other protest contentions. However, the agency may wish to take them into account in implementing its corrective action in response to our recommendation.