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Decision

Matter of: ManTech SRS Technologies, Inc.

File: B-408452; B-408452.2

Date: September 24, 2013

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Charles W. Morrow, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the evaluation of the awardee's proposed costs and the acceptability of its technical proposal is denied where the record does not support the protester's argument that the agency failed to consider the awardee's proposed labor hours in these evaluations.

2. Protest challenging the evaluation of the awardee's past performance is denied where the record shows that the agency reasonably considered the awardee's performance record in accordance with the solicitation criteria.

DECISION

ManTech SRS Technologies, Inc., of Houston, Texas, protests the award of a contract to Science Applications International Corporation (SAIC), of McLean, Virginia, under request for proposals (RFP) No. NNJ12424577R, issued by the National Aeronautics and Space Administration (NASA), for safety and mission assurance engineering services. ManTech challenges the agency's evaluation of SAIC's cost/price, technical proposal, and past performance. The protester also argues that the agency failed to conduct meaningful discussions, and challenges the selection decision.

We deny the protest.

BACKGROUND

The RFP was issued on November 6, 2012, and sought security and mission assurance engineering services under an indefinite-delivery, indefinite-quantity contract for a 3-year base period, with two 1-year options. The goal of the contract is to provide safety services for current and future NASA programs and projects, with the majority of the work to be performed at the Johnson Space Center and the White Sands Test Facility. Contracting Officer Statement at 1. The majority of the work will be performed under cost-plus-award-fee task orders (90 percent) with the remaining work being performed under fixed-price task orders (10 percent).¹ RFP at § B.2; Agency Report (AR), Tab 11, Competitive Range Determination, at 6. The award was to be made on a best-value basis considering technical acceptability, past performance, and cost/price. RFP § M.4.3.

The technical acceptability factor was comprised of two subfactors: (1) overall management approach, and (2) technical approach. Id. § M.4.4. Offerors' technical proposals were to be rated as acceptable, potentially acceptable, or unacceptable, and required both technical acceptability subfactors to be passed to achieve an acceptable rating. For the overall management approach subfactor, offerors were required to provide certain specified deliverables; for the technical approach subfactor, offerors were required to respond to 6 representative task orders for work expected to be performed under the contract. Task order No. 1 was fixed-price, and task order Nos. 2-6 were cost-reimbursement. Id. § M.4.6. The RFP explained that the offeror's responses to the task orders must "demonstrate the Offeror's technical understanding and realism of proposed resources for the work content." Id. § L.18.4. As relevant here, the RFP stated that the agency's evaluation would consider an offeror's proposed technical approach, including its proposed labor and non-labor resources. Id. § M.4.6.

Under the past performance factor, the RFP stated that the agency would evaluate the offerors' past performance (contract performance and quality performance), including recency and relevancy. As relevant here, the RFP stated that contracts performed within the past three years would be considered more relevant than those performed more than three years ago, assuming all other considerations to be equal. Id. § M.4.5. To facilitate this evaluation Section L stated as follows:

Offerors shall consider the relevancy, recency, and magnitude of the effort(s) as they relate specifically to this requirement. Offerors are advised that the Government's evaluation of submitted contracts for

¹ The contract also included a fixed-price phase-in period. RFP § B.2.

past performance will include an evaluation of how recently performance has occurred. Only contracts with performance within 3 years from the date of the solicitation will be considered recent. Past performance submitted for the Program Manager shall be within 5 years from date of the solicitation to be considered recent. Offerors with no past performance experience shall so state.

Id. § L.18.5(b).

For the cost-reimbursable task orders, the RFP explained that the government will perform a cost-realism analysis of an offeror’s proposed direct labor rates and resources, and develop a probable cost estimate. Id. § M.4.6. For the fixed price task order, the RFP stated the government would perform a price analysis of an offeror’s overall fixed price, as well as its fully-burdened fixed price rates. Id.

For purposes of award, the solicitation advised that, for those offerors whose proposals were technically acceptable, tradeoffs would be made between past performance and cost/price, and that past performance was significantly more important than price. Id. § M.4.7. The RFP further stated that if offerors were approximately equal in past performance, award would be made to the offeror with the lowest probable cost. Id.

The agency received proposals from two offerors, ManTech and SAIC, by the September 6 closing date. The agency’s streamlined procurement team (SLPT) evaluated the offerors’ proposals. Following the initial evaluation, the SLPT rated both proposals as potentially technically acceptable, and evaluated the past performance and cost/price of both proposals. The agency conducted written and oral discussions with both offerors concerning the areas in their proposals that were required to be addressed or clarified. The agency received the offerors’ final revised proposals on April 18.

The SLPT evaluated the offerors’ revised proposals as follows:

	ManTech	SAIC
Technical Acceptability	Acceptable	Acceptable
Past Performance Confidence	Very High	Very High
Proposed Cost/Price	\$89.97M	\$87.46M
Evaluated Cost/Price	\$90.22M	\$87.46M

AR, Tab 25, Source Selection Authority (SSA) Presentation, at 71.

The SSA reviewed the SLPT’s evaluations of ManTech’s and SAIC’s proposals, and concurred with the evaluations and ratings. See AR, Tab 26, Source Selection

Statement, at 8-11. The SSA also concluded that the past performance records of the offerors were “approximately equal.” Id. at 11. In accordance with the evaluation criteria, the SSA selected SAIC’s proposal for award based on its lower evaluated cost/price on May 29. After ManTech received a post-award debriefing, this protest followed.

DISCUSSION

ManTech raises the following challenges to the award to SAIC: (1) NASA failed to evaluate the realism of the awardee’s proposed labor hours; (2) the agency unreasonably found SAIC’s proposal technically acceptable; (3) the agency failed to conduct meaningful discussions with ManTech; and (4) the agency unreasonably evaluated the awardee’s past performance. Based on these alleged flaws, ManTech argues that NASA’s selection decision was unreasonable.² For the reasons discussed below, we find no basis to sustain the protest.

Evaluation of SAIC’s Proposed Hours

ManTech argues that NASA failed to reasonably evaluate the realism of SAIC’s proposed costs for cost-reimbursement task order Nos. 2-6.³ The protester

² ManTech’s challenge to NASA’s selection decision argues that the alleged evaluation flaws and conduct of discussions rendered the agency’s selection of SAIC’s proposal unreasonable. Because, as discussed below, we find no merit to the protester’s challenges to the evaluation of SAIC’s proposal or the conduct of discussions, we find no basis to sustain the protest with regard to the selection decision.

³ ManTech also argues that the agency failed to conduct an adequate price analysis of the awardee’s proposed labor hours for fixed-price task order No. 1, noting that SAIC proposed fewer labor hours [DELETED] than ManTech [DELETED]. See AR, Tab 25, SSA Presentation, at 68, 70. The RFP, however, did not provide for the evaluation of the realism of offerors’ proposed prices for this fixed-price task. RFP § M.4.6. Instead, the RFP stated that the agency would perform a “price analysis” of the overall proposed price and labor rates. Id. While agencies are required to perform some sort of price analysis or cost analysis on negotiated contracts to ensure that the agreed-upon price is fair and reasonable, where the award of a fixed-price contract is contemplated, a proposal’s price realism is not ordinarily considered, since a fixed-price contract places the risk and responsibility for contract costs and resulting profit or loss on the contractor. Systems Research & Applications Corp., B-407224.3, Dec. 17, 2012, 2012 CPD ¶ 352 at 10. In the absence of a specific provision stating that the agency will consider the realism of a proposed price, an agency is not obligated--or permitted--to evaluate whether a proposed price is realistic, i.e., too low. LS3 Techs. Inc., B-407459, B-407459.2,

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primarily argues that the agency failed to evaluate whether the awardee proposed a realistic number of labor hours to perform the work. We find no merit to this argument.

When an agency evaluates proposals for the award of a cost-reimbursement contract (or the cost-reimbursement portion of a contract), an offeror's proposed estimated cost of contract performance is not considered controlling since, regardless of the costs proposed by the offeror, the government is bound to pay the contractor its actual and allowable costs. Magellan Health Servs., B-298912, Jan. 5, 2007, 2007 CPD ¶ 81 at 13; Metro Mach. Corp., B-295744, B-295744.2, Apr. 21, 2005, 2005 CPD ¶ 112 at 9. Consequently, an agency must perform a cost-realism analysis to determine the extent to which an offeror's proposed costs represent what the contract costs are likely to be under the offeror's unique technical approach, assuming reasonable economy and efficiency. Federal Acquisition Regulation (FAR) §§ 15.305(a)(1), 15.404-1(d)(1), (2); The Futures Group Int'l, B-281274.2, Mar. 3, 1999, 2000 CPD ¶ 147 at 3.

A cost-realism analysis is the process of independently reviewing and evaluating specific elements of an offeror's cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the unique methods of performance and materials described in the offeror's proposal. FAR § 15.404-1(d)(1); Advanced Commc'n Sys., Inc., B-283650 et al., Dec. 16, 1999, 2000 CPD ¶ 3 at 5. An offeror's proposed costs should be adjusted when appropriate based on the results of the cost-realism analysis. FAR § 15.404-1(d)(2)(ii). Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonably based and not arbitrary, and adequately documented. See Magellan Heath Servs., supra.

Here, ManTech argues that the agency failed to evaluate the protester's proposed labor hours, and therefore unreasonably concluded that its proposed costs were realistic for the cost-reimbursement task orders. The protester notes that SAIC proposed [DELETED] labor hours to perform the cost-reimbursable task orders, as compared to [DELETED] labor hours proposed by ManTech to do the same work. See AR, Tab 25, SSA Presentation, at 68, 70. ManTech argues that SAIC proposed an unrealistically low number of labor hours to meet the cost-

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Jan. 7, 2013, 2013 CPD ¶ 21 at 11. For this reason, to the extent the protester argues that the agency's price analysis failed to consider whether SAIC proposed a sufficient number of labor hours for task order No. 1, we conclude that the protest fails to state a valid basis of protest. See id.; Bid Protest Regulations, 4 C.F.R. § 21.5(f) (2013).

reimbursement task order requirements, particularly for the more critical highly skilled engineer positions.

In support of its argument, ManTech contends that “the record is devoid of any evidence that NASA evaluated proposed labor hours.” Protester’s Comments (July 26, 2013) at 9. The protester further contends that NASA “never made any adjustments, not even a single hour” to SAIC’s proposed labor hours, in determining SAIC’s proposed costs to be realistic. See Protester’s Comments (Aug. 12, 2013) at 6. The protester argues that, had NASA considered SAIC’s labor hours, it is likely the agency would have found the hours to be unrealistically low to successfully perform the contract.

The record, however, does not support the protester’s assertion that the agency failed to evaluate SAIC’s proposed labor hours, or the protester’s claim that the agency did not make any adjustments to the awardee’s proposed costs. To the contrary, the record shows that the agency considered the specific elements of each offeror’s proposed costs before it concluded that each offeror’s costs were reasonable and realistic—including the costs associated with the average number of annual full-time equivalent staff, and the total proposed labor hours.⁴ See AR, Tab 11, Competitive Range Determination, at 55, 57; id., SAIC Cost/Price Evaluation Worksheet at 1-4; Tab 25, SSA Presentation, at 68, 70; id., SAIC Cost/Price Evaluation Worksheet at 1-6.

The record further shows that, contrary to the protester’s argument, NASA’s initial evaluation of SAIC’s cost proposal found the awardee’s proposed labor hours to be inadequate, and made an adjustment to the awardee’s proposed costs. The SLPT found that SAIC’s initial proposal did not include an adequate level of resources for cost reimbursement task order No. 5, with regard to its technical approach for its proposed quality manager. AR, Tab 11, Competitive Range Determination, SAIC Cost/Price Evaluation Worksheet at 2. Based on this cost-realism evaluation, the agency made a “resource adjustment” to SAIC’s proposed labor hours by adding an engineer position to the awardee’s staffing, and increasing its evaluated costs by \$0.54 million.⁵ Id. at 2-3. NASA requested that SAIC address this matter during

⁴ In addition to specifically evaluating SAIC’s proposed labor hours, the record shows that that NASA also evaluated other elements of the awardee’s proposed costs, including its direct labor rates (including skill mix), escalation, indirect rate, and profit/fee. See AR, Tab 25, SSA Presentation, at 64-66, 69-71; id. SAIC Cost/Price Summary, at 3-4.

⁵ NASA’s initial evaluation also made other adjustments to the awardee’s proposed costs, resulting in an evaluated cost/price of \$93.5 million, as compared to the awardee’s proposed cost/price of \$87.1 million. AR, Tab 11, Competitive Range Determination, SAIC Cost/Price Evaluation Worksheet at 1.

discussions. AR, Tab 13, SAIC Competitive Range Letter, Encl. 2, at 1. Based on SAIC's response to this and other cost realism concerns identified during discussions, the agency concluded that no adjustments to the awardee's revised proposed costs were required. See AR, Tab 25, SSA Presentation, SAIC Cost/Price Evaluation Worksheet at 4-5.

In sum, we find that the protester's argument that the agency's evaluation failed to consider whether SAIC proposed a realistic number of labor hours is contradicted by the record, and thus provides no basis to sustain the protest.

The protester also argues that the overall disparity between the offerors' proposed labor hours for the cost-reimbursement task orders demonstrates that the agency's cost-realism evaluation was unreasonable. As noted above, SAIC proposed [DELETED] hours for the cost-reimbursement task orders, whereas ManTech proposed [DELETED] hours for the tasks--a difference of approximately eight percent. AR, Tab 25, SSA Presentation, at 68, 70. The mere fact that an awardee's proposed costs are lower than the protester's proposed costs, however, does not provide a basis to sustain a protest, absent a specific challenge to an element of the agency's cost-realism analysis. See Wyle Labs., Inc., B-407784, Feb. 19, 2013, 2013 CPD ¶ 63 at 8-9; Yang Enters., Inc.; Santa Barbara Applied Research, Inc., B-294605.4 et al., Apr. 1, 2005, 2005 CPD ¶ 65 at 7. As discussed above, we find no merit to the protester's arguments concerning the evaluation of SAIC's proposed labor hours.

Additionally, ManTech argues that because NASA concluded that SAIC's proposed labor hours were realistic, the agency must have also concluded that the protester proposed too many labor hours. Under these circumstances, the protester contends, the agency was obligated to downwardly adjust ManTech's hours to reflect the agency's conclusion that a lower level of proposed hours was realistic for the work to be performed. The protester contends that, had the agency made this adjustment, its overall evaluated cost/price would have been lower than SAIC's.

As the protester notes, our Office has recognized that agencies should make downward adjustments to an offeror's evaluated cost where the proposal shows a misunderstanding of the requirements in a manner which would cause the government to incur a lower cost than that identified in the offeror's proposal. See Priority One Servs., Inc., B-288836, B-288836.2, Dec. 17, 2001, 2002 CPD ¶ 79 at 3-4. Conversely, however, we have held that where an offeror's proposed costs reflects its technical approach, the agency need not make a downward adjustment. See TriCenturion, Inc.; SafeGuard Servs., LLC, B-406032 et al., Jan. 25, 2012, 2012 CPD ¶ 52 at 15; The S.M. Stoller Corp., B-400937 et al., March 25, 2009, 2009 CPD ¶ 193 at 15. Moreover, there is no general requirement that an agency's cost realism evaluation "normalize" proposed labor hours where, as here, the varying costs between competing proposals result from different technical approaches. See Honeywell Tech. Solutions, Inc., B-400771, B-400771.2, Jan. 27,

2009, 2009 CPD ¶ 49 at 18-19; Information Ventures Inc., B-297276.2 et al., Mar. 1, 2006, 2006 CPD ¶ 45 at 9.

The record here does not show that NASA found ManTech's technical approach to reflect a lack of understanding of the requirements in a manner that would result in the offeror incurring fewer costs than it assumed in its technical approach. Moreover, the protester does not contend that its technical approach was so similar to the awardee's that the agency should have assumed that both offerors would have had the same costs of performance. On this record, we find no basis to conclude that the agency was required to downwardly adjust the protester's evaluated costs.

Technical Acceptability Evaluation

Next, ManTech argues that the agency unreasonably evaluated SAIC's proposal as technically acceptable, based on the number of hours proposed by the awardee. Protester's Comments (July 26) at 14; Protester's Comments (Aug. 12, 2013) at 18. We find no merit to this argument.

The evaluation of an offeror's proposal is a matter within the agency's discretion. IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3.

As discussed above, the technical approach subfactor of the technical acceptability factor required the agency to consider an offeror's labor and non-labor resources. RFP § M.4.4. The protester's argument here, however, is predicated on its incorrect assertion that the agency's cost realism and technical evaluations failed to consider SAIC's proposed labor hours.

NASA's cost-realism evaluation explained that SAIC's labor and non-labor resources were evaluated as part of the technical acceptability evaluation. See AR, Tab 11, Competitive Range Determination, SAIC Cost/Price Evaluation Worksheet at 2; Tab 25, SSA Presentation, SAIC Cost/Price Evaluation Worksheet at 4. Additionally, as discussed above, the agency's initial cost-realism evaluation expressly considered the awardee's proposed labor resources, and made an adjustment to SAIC's evaluated cost based on the agency's concern regarding task order No. 5. AR, Tab 11, Competitive Range Determination, SAIC Cost/Price Evaluation Worksheet at 2. Additionally, the SLPT found the following regarding the technical acceptability of SAIC's proposal:

The Offeror demonstrated a comprehensive understanding of the task order requirements, and their proposed approach is considered to be feasible, effective, efficient, reasonable, and predominately complete.

Innovation was evaluated in the context of risk to contract performance. The proposal was determined not to pose a risk to contract performance.

AR, Tab 25, SSA Presentation, Technical Acceptability Evaluation Worksheet at 7.

On this record, we find no merit to the protester's argument that the agency failed to consider the awardee's proposed labor hours in evaluating the acceptability of its technical proposal.

Lack of Meaningful Discussions

Next, ManTech argues that NASA failed to provide the protester with meaningful discussions. The protester argues that because the agency concluded that SAIC's proposed labor hours were realistic at a lower level than ManTech's, the agency must have concluded that the protester's proposed hours were too high. The protester contends, therefore, that the agency's discussions were inadequate and misleading because the agency did not advise ManTech of this concern. We find no merit to this argument.

The FAR requires agencies to conduct discussions with offerors in the competitive range "concerning, at a minimum . . . deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond." FAR §15.306(d)(3). When an agency engages in discussions with an offeror, the discussions must be "meaningful," that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror's potential for receiving the award. Id. § 15.306(d); Onsite Health Inc., B-408032, B-408032.2, May 30, 2013, 2013 CPD ¶ 138 at 7. As our Office has consistently held, however, agencies are not required to afford offerors all-encompassing discussions or to discuss every aspect of a proposal that could be improved. Apptis Inc., B-403249; B-403249.3, Sept, 30, 2010, 2010 CPD ¶ 237 at 4. Further, where an offeror's costs are high in comparison to those of its competitors, the agency may, but is not required to, address the matter during discussions. George G. Sharp, Inc., B-408306, Aug. 5, 2013, 2013 CPD ¶ 190 at 4. Accordingly, if an offeror's costs are not so high as to be unreasonable and unacceptable for contract award, the agency may conduct meaningful discussions without advising the offeror that its costs are not competitive. Id.

Here, NASA found the protester's proposed costs to be reasonable and realistic for the work proposed. See AR, Tab 25, SSA Presentation, ManTech Cost/Price

Evaluation Worksheet at 1-2. The protester argues that, to the extent the agency found SAIC to have proposed realistic costs, the agency must have found, notwithstanding the evaluation record, that ManTech's proposed costs were too high. Protester's Comments (July 26, 2013) at 17; Protester's Comments (Aug. 12, 2013) at 22. As discussed above, however, a cost-realism analysis must consider an offeror's costs relative to its technical approach; an agency therefore may find two offerors with different costs to each be realistic and reasonable, despite differences in their proposed costs. For this reason, there was no obligation for the agency to address this matter during discussions. See George G. Sharp, Inc., supra.

Past Performance

Finally, ManTech argues that NASA unreasonably evaluated SAIC's past performance. The protester argues that the agency's evaluation failed to fully consider the awardee's performance of the predecessor contract with regard to cost control. We find no merit to the protester's arguments.

An agency's evaluation of past performance, including its consideration of the relevance, scope, and significance of an offeror's performance history is a matter of discretion which we will not disturb unless the agency's assessments are unreasonable, inconsistent with the solicitation criteria, or undocumented. L-3 Sys. Co., B-404671.2, B-404671.4, Apr. 8, 2011, 2011 CPD ¶ 93 at 5; Family Entm't Servs., Inc., d/b/a/ IMC, B-291997.4, June 10, 2004, 2004 CPD ¶ 128 at 5. A protester's disagreement with such judgment does not provide a basis to sustain a protest. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

As discussed above, RFP advised that "[c]ontracts performed within the past three years will be considered to be more relevant than those performed more than three years ago." RFP § M.4.5. NASA assigned ratings of "very high level of confidence" to both offerors' past performance records. AR, Tab 25, Source Selection Authority (SSA) Presentation, at 71. The SSA presentation shows that for SAIC, the SLPT evaluated past performance information concerning "contracts performed within three years of the date of the solicitation." See AR, Tab 25, SSA Presentation, at 54.

ManTech contends that the agency's evaluation of SAIC's past performance failed to consider the awardee's performance of the predecessor Safety and Mission Assurance Support Services (SMASS) contract beyond the past three years, and therefore ignored cost control concerns older than the prior three years. The protester argues that NASA's evaluation applied an absolute 3-year window for past performance information, and disregarded anything older than three years. ManTech further argues that the agency's deviation had a material impact on the past performance evaluation because the agency's own past performance records

show that SAIC experienced cost control issues during its performance of the SMASS contract from 2006 to 2010. See AR, Tab 6, SAIC Past Performance Research, at 1527.

Although the SSA presentation states that the agency considered past performance information for SAIC “within three years of the date of the solicitation,” the agency’s response to the protest states that it considered information beyond the three years as it relates to the awardee’s record of cost control. Specifically, the contracting officer states that he reviewed information concerning SAIC’s performance of the SMASS contract, including the awardee’s record of cost control, beyond the most recent three years of performance. Contracting Officer Statement (July 16, 2013) at 15; Supp. Contracting Officer Statement (Aug. 5, 2013) at 6-7. The contracting officer specifically notes that documents in the record detail SAIC’s cost control and award fees for the SMASS contract for the full duration of that contract, and states that he considered this information in evaluating the awardee’s past performance. Id.; see AR, Tab 6, SAIC Past Performance Research, at 1527.1-1527.5. The contracting officer explained, however, that, consistent with the terms of the solicitation, the agency considered the most recent three years of performance to be more relevant, and that the prior years were less relevant. Contracting Officer Statement (July 16, 2013) at 15; Supp. Contracting Officer Statement (Aug. 5, 2013) at 6-7. On this record, we find no merit to the protester’s argument that the agency improperly ignored information concerning SAIC’s cost control performance on the SMASS contract beyond the prior three years .

The protest is denied.⁶

Susan A. Poling
General Counsel

⁶ ManTech raises other collateral issues. We have reviewed all of the protester’s arguments and find that none provides a basis to sustain the protest.