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Decision

Matter of: Prism Maritime, LLC
File: B-409267.2; B-409267.3
Date: April 7, 2014

James K. Kearney, Esq., Holly Emerick Svez, Esq., and Steven W. Cave, Esq., Womble Carlyle Sandridge & Rice, LLP, for the protester.
Donald C. Holmes, Esq., Donald C. Holmes & Associates, P.A., for the intervenor.
Marvin D. Rampey, Esq., and Philip Lazarus, Esq., Department of the Navy, Naval Sea Systems Command, for the agency.
Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest is sustained where record shows that agency's source selection authority essentially disagreed with all of the negative findings of the agency's evaluators concerning awardee's proposal, but the record does not support a conclusion that his disagreement, which does not withstand logical scrutiny, was reasonable.
2. Protest challenging agency's cost realism evaluation is sustained where evaluation failed adequately to consider the realism of the offerors' proposed costs, and record further shows that, in any event, agency improperly used the offerors' proposed--as opposed to evaluated--costs in making its source selection decision.

DECISION

Prism Maritime, LLC, of Chesapeake, Virginia, protests the issuance of a task order¹ to Valkyrie Enterprises, LLC, of Virginia Beach, Virginia, by the Department of the Navy under request for proposals (RFP) No. N00024-13-R-3038 for alteration installation team support and asset staging services in Port Hueneme, California

¹ The value of this task order is in excess of \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award indefinite-delivery, indefinite-quantity contracts. 10 U.S.C. § 2304c(e)(1)(B).

and several other locations. Prism maintains that the agency misevaluated proposals, engaged in improper discussions with Valkyrie, and made an unreasonable source selection decision.

We sustain the protest.

BACKGROUND

The RFP contemplates the issuance, on a best-value basis, of a cost-plus-incentive-fee (CPIF), cost-plus-fixed-fee (CPFF) and cost reimbursement type task order to perform ship alteration and modernization services for a base year and up to two 1-year option periods.² The successful contractor will provide engineering support services, asset staging services and installation services on board ships identified by the agency.

The RFP advised offerors that the agency would issue a task order to the firm submitting the proposal determined to offer the best overall value considering evaluated cost, and several non-cost factors. The non-cost evaluation factors were technical capability and experience, and past performance; the former was significantly more important than the latter, and both collectively were significantly more important than cost. RFP at 94-95.³ The RFP also stated that the importance of cost would increase with the degree of evaluated equality among the proposals under the non-cost factors. Id. The technical capability and experience factor included three subfactors: personnel qualifications and experience (resumes), plan to accomplish, and transition/mitigation plan, with the first two subfactors deemed equal in importance and significantly more important than the third subfactor.⁴ Id.

² The RFP provided that, for the regular labor quantities of the requirement (estimated at 716,204 labor hours over the life of the contract), the contractor will be paid on a CPIF basis; for the surge and overtime labor quantities of the requirement (estimated at 237,622 labor hours over the life of the contract), the contractor will be paid on a CPFF basis; and for the other direct costs elements of the requirement, the contractor will be paid on a cost reimbursement basis. See RFP at 1-10.

³ The RFP stated that, as a threshold matter, offerors were required either to meet certain mandatory requirements at the time of proposal submission, or to have an acceptable plan to meet those mandatory requirements by the time of task order award. RFP at 93. Those requirements were: (1) that all key personnel have appropriate security clearances; (2) that the offeror have a facility to perform the requirement that has an appropriate security clearance; and (3) that the offeror either certify that it has no organizational conflict of interest or present an acceptable organizational conflict of interest mitigation plan. Id.

⁴ The RFP provided that the agency would assign adjectival ratings under the technical capability and experience factor and subfactors of outstanding, good, acceptable, marginal or unacceptable. RFP at 95-96. A rating of unacceptable

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The RFP also stated that the agency would perform a cost realism evaluation of the offerors' proposed costs to determine whether those costs were realistic and complete to perform the contract in light of each offeror's proposed technical approach and understanding of the requirements. RFP at 99-100.

In response to the RFP, the Navy received proposals from Prism and Valkyrie. The agency's source selection evaluation board (SSEB) evaluated those proposals and assigned the following adjectival ratings:

Factor/Subfactor	Prism	Valkyrie
Technical Capability and Experience	Acceptable	Unacceptable
Personnel Qualifications and Experience	Acceptable	Acceptable
Plan to Accomplish	Good	Unacceptable
Transition/Mitigation Plan	Acceptable	Unacceptable
Past Performance Relevancy	Very Relevant	Somewhat Relevant
Performance Confidence Rating	Satisfactory	Satisfactory
Overall Proposal Rating	Acceptable	Unacceptable

Agency Report (AR), exh. E-1, SSEB Report, at 20-21. The SSEB assigned the above ratings to the Valkyrie proposal based on its identification of a number of significant deficiencies under the plan to accomplish and transition/mitigation plan subfactors, as well as numerous weaknesses under each technical capability and experience subfactor. The SSEB summarized its conclusions regarding the Valkyrie proposal as follows:

Valkyrie's proposal contains some strengths but with several major discrepancies. Their 'Plan to Accomplish' and 'Transition/Mitigation Plan' do not successfully demonstrate their understanding of the solicitation. They do not clearly demonstrate the asset staging facility requirements and provide[] no plan to mitigate some of the risk associated with this. Their 'Transition Plan' will create a major disruption to the Government in the asset staging services. The risk

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under any subfactor or factor would render the proposal ineligible for award; the assignment of one or more deficiencies to a proposal would render it unacceptable. Id. The RFP also stated that the agency could consider risk in connection with its evaluation of proposals. Id. The RFP provided that the agency would assign past performance relevancy ratings of very relevant, somewhat relevant or not relevant, and also would assign confidence ratings of substantial confidence, satisfactory confidence, limited confidence, no confidence or unknown confidence. RFP at 96-97.

of unsuccessful contract performance is very high and is unacceptable.

Id.

The source selection authority (SSA) performed what the Navy characterizes as an independent evaluation of the proposals.⁵ He concluded that the SSEB incorrectly assigned all of the various deficiencies to the Valkyrie proposal, and also improperly assigned a number of the weaknesses. After expressing his disagreement with the SSEB's conclusions, the SSA ultimately found that the proposals of Prism and Valkyrie were technically equivalent. Based on the proposed cost difference between the proposals--Prism proposed a total cost of \$54,429,954 and Valkyrie proposed a total cost of \$46,106,405--the SSA concluded that the task order should be issued to Valkyrie because its proposal represented the best value to the government. This protest followed.

PROTEST

Prism challenges the agency's evaluation of proposals under the technical capability and experience factor, and also challenges the agency's evaluation of cost proposals. Additionally, Prism maintains that the agency improperly engaged in discussions solely with Valkyrie. We have considered all of Prism's arguments and sustain its protest for the reasons discussed below.

The principal focus of Prism's protest concerns the SSA's independent reevaluation of proposals. Prism maintains that, in reevaluating proposals, the SSA improperly applied unstated evaluation criteria, failed to consider the impact of the deficiencies identified by the SSEB in concluding that the Valkyrie proposal was acceptable, and otherwise reached evaluation conclusions that were unreasonable or irrational in concluding that the two proposals were technically equal.

It is a fundamental principle that agencies must evaluate proposals consistent with the terms of a solicitation and, while the evaluation of offerors' proposals generally

⁵ This is Prism's second protest in connection with this acquisition. In response to Prism's first protest--which also challenged the Navy's issuance of a task order to Valkyrie--the agency advised our Office that it would cancel the task order issued, reevaluate proposals, and make a new source selection decision. Navy Corrective Action Letter, Dec. 12, 2013. The record shows that the Navy did not conduct a wholesale reevaluation of proposals in performing its corrective action. Instead, it appears that the corrective action was confined to the SSA's execution of a new source selection decision document (SSDD). Compare AR, exh. D-1, SSDD-1, and exh. B-1, SSDD-2. In both SSDDs, the SSA made major departures from the SSEB's findings.

is a matter within the procuring agency's discretion, our Office will question an agency's evaluation where it is unreasonable, inconsistent with the solicitation's stated evaluation criteria and requirements, or undocumented. Exelis Systems Corp., B-407111 et al., Nov. 13, 2012, 2012 CPD ¶ 340 at 5; Public Commc'ns Servs., Inc., B-400058, B-400058.3, July 18, 2008, 2009 CPD ¶ 154 at 17. Further, while source selection officials reasonably may disagree with the evaluation ratings and results of lower-level evaluations, they are nonetheless bound by the fundamental requirements that their independent judgments be reasonable, consistent with the stated evaluation factors, and adequately documented. AT&T Corp., B-299542.3, B-299542.4, Nov. 16, 2007, 2008 CPD ¶ 65 at 16; AIU N. Am., Inc., B-283743.2, Feb. 16, 2000, 2000 CPD ¶ 39 at 8-9.

We have reviewed the record and conclude that the SSA's disagreement with the SSEB's identified deficiencies does not withstand logical scrutiny, provide a reasonable basis for his findings that the Valkyrie proposal was technically acceptable, or provide a basis for finding that the proposals were technically equal. In this connection, the record shows that the SSEB identified seven material deficiencies in the Valkyrie proposal, any one of which would provide a basis to conclude that award to Valkyrie would be improper under the terms of the RFP. We discuss two of the deficiencies identified by the SSEB for illustrative purposes.

Asset Staging Facility

The RFP requires the successful offeror to have available an asset staging facility to be used in connection with performance of the requirement. The facility is required to be established within 30 days after issuance of the task order; to be cleared to the classification level of secret by the Defense Security Service (DSS); to include 13,800 square feet; and to be located either in Port Hueneme, Oxnard, Ventura or Camarillo, California. RFP at 17-18. The RFP further provides as follows:

No award will be made to any offeror which does not possess a facility security clearance issued by the Defense Investigative Service at the Secret level. Naval Sea Systems Command will initiate appropriate security clearance action for any apparent successful offeror which does not already possess such clearance. The Government is not obligated to delay award pending security clearance of any offeror.

RFP at 67.

The record shows that Valkyrie makes reference to two facilities in its proposal. First, Valkyrie describes the location of its program management office (PMO), which it states is located in a facility on Eastman Avenue in Ventura, California. AR, exh. O, Valkyrie Technical Proposal, at 1-6, 1-29-1-30. Second, Valkyrie represents that it intends to use a facility currently being used by Prism for asset staging

purposes under a predecessor contract to meet this aspect of the requirement. Id. For example, the Valkyrie proposal represents as follows:

As shown in the POA&M [plan of action and milestones], we have pre-negotiated with the landlord to assume the lease on the current [asset staging] facility. These negotiations are scheduled [to] be completed well before contract start and, Valkyrie will assume the cost for the lease two weeks before contract start. Early lease assumption ensures all personnel and resources are in place to minimize interruptions to [contractual] tasks and complete transfer and inventory of all [on-hand material and inventory]

Id. at 1-29-1-30.

The agency's evaluators identified a weakness and two deficiencies under the transition/mitigation plan subfactor in connection with Valkyrie's proposed approach of assuming the lease for Prism's asset staging facility.⁶ AR, exh. E-1, at 18. Their principal concerns had to do with the fact that Valkyrie was offering to perform the requirement using the asset staging facility currently under lease to Prism; that Valkyrie had negotiated with the landlord that owned the building but not with Prism; that Valkyrie had not offered any alternate asset staging facility in the event it was unable to obtain an agreement to occupy the Prism facility; and Valkyrie's proposal included no information regarding how it would pursue or obtain recertification or approval of the facility by DSS in the event the firm was successful in obtaining Prism's facility. Id. The evaluators concluded that these concerns created a high risk of unsuccessful performance that rendered the Valkyrie proposal unacceptable. Id. at 18, 21.

Against this backdrop, the SSA disagreed with the findings of the SSEB and concluded that, in fact, Valkyrie's proposal should have been rated acceptable under the transition plan/mitigation plan subfactor. The SSA specifically found:

A transition plan is just that, the offerors idea on how to ensure uninterrupted support to the requirements upon assuming a contract from the incumbent. It can be argued that a plan can never be so badly planned and written that it is unacceptable. Here, Valkyrie took the least expensive and most probable approach by acquiring the existing space from the incumbent. Furthermore, a Clarification notice dated 15 August 2013 was sent to Valkyrie seeking clarification as to whether their facility in Ventura County could support this effort in

⁶ The evaluators also made reference to deficiencies in the Valkyrie proposal relating to its proposed asset staging facility under the plan to accomplish subfactor. AR, exh. E-1, SSEB Report, at 17.

regard to the square footage required in the solicitation; Valkyrie's response was "yes." The plan in itself has merit and is acceptable but lacks specific details. The lack of details makes the plan weak. The SSA determined that the two deficiencies identified by the SSEB are nothing more than two minor weaknesses.⁷

AR, exh. B-1, SSDD-2, at 9.

We find the SSA's conclusion unreasonable. First, as correctly noted by the SSEB, Valkyrie offered only Prism's asset staging facility in connection with performance of the asset staging activities of the task order.⁸ The SSA's reference to, and apparent consideration of, Valkyrie's Eastman Avenue facility--whether or not it was dimensionally satisfactory to perform the requirement--is immaterial, given that Valkyrie did not propose to perform asset staging activities at that facility. Simply stated, to the extent he did so, the record does not support the propriety of the SSA's consideration of Valkyrie's Eastman Avenue facility as having been offered in satisfaction of the RFP's requirement for an asset staging facility.

⁷ In an unrelated argument, Prism alleges that the SSA's August 15 communication with Valkyrie, along with another letter sent to Valkyrie by the SSA, constituted improper discussions because Valkyrie's responses to these questions effectively converted the Valkyrie proposal from unacceptable to acceptable. See e.g. Chicago Dryer, Inc., B-402340, Feb. 16, 2010, 2010 CPD ¶ 52 at 4 (submission of information necessary to find a quotation or proposal acceptable constitutes discussions). Although the information in question led the SSA to conclude that the proposal was acceptable, as discussed below, we find that the proposal was not technically acceptable, and was not made technically acceptable by this information. More significantly, however, Prism does not explain whether--or how--it would have changed its proposal had it been afforded an opportunity to engage in discussions, nor does it request as a remedy that it be afforded an opportunity to engage in discussions. It follows that, although these communications appear to have constituted discussions, those discussions were not prejudicial to the protester. See USATREX Int'l, Inc., B-275592, B-275592.2, Mar. 6, 1997, 98-1 CPD ¶ 99 at 8-9 (protest denied where, although record showed that agency engaged in post-best-and-final-offer discussions with only the awardee, those discussions were not prejudicial to the protester).

⁸ Counsel for the agency suggests that Valkyrie offered an entirely different facility other than Prism's asset staging facility to meet this requirement. Agency Legal Memorandum, Mar. 10, 2014, at 14. Counsel's assertion is not borne out by the record, and there is no indication that either the SSEB members or the SSA thought there was another facility mentioned in the Valkyrie proposal. Further, Valkyrie participated as an intervenor during the protest and did not corroborate agency counsel's assertion, despite having an opportunity to do so.

Second, as noted by the protester, it currently holds a lease for the asset staging facility proposed by Valkyrie, and there is nothing in the record to show that Valkyrie has negotiated a transfer of the lease with Prism, the entity legally entitled to occupy the facility. Where, as here, one offeror proposes the facility for which another competitor currently holds the lease, and there is nothing in the record to show that the original lessee is willing to transfer the lease to its competitor, an agency may appropriately find the first offeror's proposal technically unacceptable and ineligible for award for failing to meet a material solicitation requirement. Galen Medical Assocs.Inc., B-288661.4, B-288661.5, Feb. 25, 2002, 2002 CPD ¶ 44 at 3-4.

Finally, even if we were to accept the SSA's position that Valkyrie can, in fact, successfully negotiate a lease for Prism's asset staging facility, there remains a valid concern regarding the fact that, once the facility is transferred to Valkyrie, it would be necessary to obtain a DSS security clearance for the facility. The SSEB raised precisely this concern in evaluating Valkyrie's proposal, noting that it did not include any information at all regarding recertification or approval of the facility by DSS. AR, exh. E-1, SSEB report, at 18. In this connection as well, the protester points out that the Center for Development of Security Excellence⁹ estimates that the average time to process a secret facility clearance is 137 days. Protester's Comments, Mar. 3, 2014, at exh. E.

The SSA never considered either the complete absence in Valkyrie's proposal of information relating to recertification or approval of the facility, or the amount of time that would be necessary to process a request for a secret facility clearance, even assuming that Valkyrie properly could obtain possession of Prism's asset staging facility. As noted, the RFP expressly advised offerors that a facility security clearance was a condition precedent to issuance of a task order, and that the agency was not obligated to delay issuance of the task order in order to facilitate an offeror in its effort to obtain a facility security clearance.¹⁰ RFP at 67.

⁹ The Center for Development of Security Excellence is a component of DSS that provides education and training to Department of Defense security professionals. See http://www.dss.mil/about_dss/index.html.

¹⁰ In this regard, we note that agency counsel asked our Office to consider using the express option available under our Bid Protest Regulations, 4 C.F.R. § 21.10 (2013), because time sensitive work required during February and March 2014 could not be delayed. E-mail from Agency Counsel to GAO, Feb. 5, 2014. We did not grant this request because it was not made in accordance with the requirements of our Bid Protest Regulations (the agency made its request 40 days after the protest was filed, despite the fact that our regulations require that a party make such a request within 5 days of when the protest is filed), and was otherwise not feasible. Nonetheless, the record appears to show that the agency may not have been able

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In sum, the record demonstrates that the Valkyrie proposal failed to meet one of the RFP's three mandatory threshold requirements,¹¹ the requirement either to have a facility for performing the requirement that is designated as cleared to the level of secret by the DSS, or an acceptable plan for meeting that requirement. The record shows that the SSEB identified this failing as a material deficiency rendering the proposal ineligible for award. Despite the SSEB's finding which is supported by the record, the SSA unreasonably reached a contrary conclusion.

Proposed Staffing

The RFP required offerors to provide certain information relating to proposed staff, and to allocate their proposed staff among senior, mid-level and junior staff in terms of their relative levels of experience. In this regard, the RFP required offerors to, among other things, detail their staff members' years of experience, level of education and security clearance. RFP at 82. The RFP further stated that staffing was to be allocated as follows: senior staff (staff with 15 years or more of experience) were to comprise 10 percent of proposed staffing; mid-level staff (staff with more than 4 but less than 15 years of experience) were to comprise 75 percent of proposed staffing; and junior staff (staff with 4 years or less of experience) were to comprise 15 percent of proposed staffing. Id. The RFP also provided as follows:

In the event the offeror has not identified a firm candidate for a proposed task area, include the word "pending" in lieu of an individual's name. Offerors should attempt to minimize the number of proposed labor personnel for which candidates have not been identified.

RFP at 82.

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to wait the time necessary for Valkyrie to obtain a facility security clearance, even if it had obtained the lease for the Prism asset staging facility.

¹¹ We point out that, in performing their evaluation, the SSEB marked Valkyrie as having met the three threshold requirements, including the requirement that the firm have a facility approved by DSS as cleared to the level of secret. AR, exh. E-1, at 14. However, that conclusion was in reference to Valkyrie's Eastman Avenue facility. As discussed, Valkyrie did not propose to use that facility to perform the asset staging requirements. Thus, although Valkyrie did have "a facility" that met the threshold requirement, the finding is immaterial, because that facility was not proposed.

The record shows that the SSEB assigned a deficiency to the Valkyrie proposal under the plan to accomplish subfactor for failing to meet these requirements. Specifically, the evaluators found that Valkyrie's staffing plan did not include information relating to its proposed staffs' experience, education or security clearances. The SSEB further found that it was unable to determine whether Valkyrie's proposed staff was allocated among senior, mid-level and junior staff positions, as required by the solicitation. AR, exh. E-1, SSEB Report, at 16.

The SSA disagreed with this deficiency. In this connection, the record shows that the agency included answers to several questions that had been submitted by prospective offerors prior to issuance of the RFP. One answer stated that offerors could provide labor categories in lieu of names for non-key personnel. RFP at 2, question No. 10. (The proposal instructions also were amended to provide: "Individual's Name (**Optional for Non-Key Labor Category**)". RFP at 82, bold in original.) Based on the answer to this question, the SSA determined that the deficiency identified by the SSEB was improper. Specifically, he found:

IAW [in accordance with] the Contracting Officer's answer to question number ten (10) during the solicitation posting, prospective offerors were allowed to propose[] labor categories instead of names for non-key personnel, therefore Offerors were not able to provide the information necessary to determine the percent allocation and other information such as degree and years of experience. Therefore, the SSA determined this area to be neither a deficiency nor weakness.

AR, exh. B-1 at 7.

We find the SSA's conclusion unreasonable in light of the RFP's requirements. Although the SSA is correct that the RFP was changed to expressly permit offerors to use labor categories in lieu of named employees in their proposals, this change did not eliminate any of the other requirements specified in the RFP. Thus, although Valkyrie was not necessarily required to provide the specific names of individuals that it intended to use to perform the requirement, it nonetheless was required to affirmatively show that its proposal was based on providing personnel with the required levels of experience and expertise. For example, Valkyrie could have provided labor category descriptions or definitions that included educational and experience thresholds and requirements.

Valkyrie's proposal does not include a single named employee, other than its three proposed key employees. The proposal does use generic labor categories (for example, engineering technician level I, II, III, IV and V), AR, exh. S, at 1-11-1-12, but provides no information relating to the qualifications and experience of those labor categories. Accordingly, there was no way for the Navy to determine whether any of the staff that ultimately will be employed by Valkyrie will meet the RFP's requirements in terms of experience and education. Additionally, as observed by

the SSEB, there is no way to tell from the Valkyrie proposal whether the firm's proposed labor mix is in accordance with the requirements of the RFP, which specified that offerors were required to propose 10 percent senior, 75 percent mid-level and 15 percent junior personnel. Finally, there is no explanation in the record for why the SSA was unconcerned with the fact that Valkyrie failed entirely to minimize the number of proposed personnel that were not identified; as noted above, the RFP expressly cautioned offerors against the proposal of unnamed personnel.

In the final analysis, the SSA's reliance on the answer to question No. 10 in the solicitation was misplaced. While it is true that the question expressly advised offerors that they could use labor categories in lieu of named personnel, the original RFP already permitted offerors to propose "pending" employees in lieu of named employees. RFP at 82. In any event, the largely semantic change made by the answer to question No. 10 did not eliminate any of the RFP's other requirements relating to demonstrating that an offeror intended to perform the requirement using qualified staff and using an appropriate labor mix. We therefore conclude that the SSA did not act reasonably in eliminating this deficiency in the Valkyrie proposal identified by the SSEB.

Cost Evaluation

Prism asserts that the agency failed to perform an adequate cost realism evaluation. Prism maintains that Valkyrie's proposed cost is so low that it will be unable to recruit and retain qualified personnel for the contract. Prism asserts in this respect that Valkyrie proposed the bare minimum Service Contract Act wage rates for approximately 40 percent of its proposed staff. Prism concludes that, since Valkyrie's proposal did not include any identified personnel, it will not be able to recruit personnel at the labor rates used by Valkyrie in its proposal. We agree with Prism that the agency's cost realism evaluation here was inadequate.

When an agency evaluates proposals for the award of a cost-reimbursement 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 Machine Corp., B-295744, B-295744.2, Apr. 21, 2005, 2005 CPD ¶ 112 at 9; Federal Acquisition Regulation (FAR) § 16.301. As a consequence, a cost realism analysis must be performed by the agency 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. 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. In addition, where, as here, a contract involves the provision of a large amount of labor, agencies are required to consider the realism of an offeror's proposed labor rates. See ITT Federal Serv's Int'l Corp.,

B-289863.4, et al., Dec. 16, 2002, 2002 CPD ¶ 216 at 3-5 (protest sustained where record showed that agency failed to consider awardee's low proposed rates of compensation in connection with its cost realism evaluation).

As an initial matter, we point out that the entire contemporaneous record embodying the agency's cost realism evaluation is comprised of just two excel spreadsheets that do not provide meaningful information relating to the agency's cost evaluation efforts. The agency has not provided, for example, a narrative cost evaluation report, or any supporting materials (such as Defense Contract Audit Agency (DCAA) reports) that the agency claims to have used when it performed its cost evaluation. Agencies are required to adequately document their evaluations, and, where an agency fails to do so, it runs the risk that our Office will be unable to determine whether the agency's evaluation conclusions are reasonable. IAP World Servs., Inc.; EMCOR Gov't Servs., B-407917.2, et al., Jul. 10, 2013, 2013 CPD ¶ 171 at 12.

The agency did provide a post-hoc declaration from its contract specialist in which she describes her cost evaluation activities. The contract specialist states that she examined the proposals and determined that both offerors proposed the estimated number of labor hours stated in the RFP; obtained indirect rate information from DCAA and compared that information to the indirect rates proposed by the offerors; obtained a "global insights" report and used information from that report to check whether or not the offerors had proposed adequate escalation during the option years of the contract; checked the offerors' proposed direct labor rates against the Service Contract Act labor rates to determine whether either offeror had proposed rates below those specified in the wage rate determination; and performed a "weight guidelines analysis" in reviewing the offerors' proposed profit. Declaration of the Contract Specialist at ¶¶ 34-58. We have several concerns with the agency's cost realism evaluation.

First, as correctly noted by Prism, there is nothing in the record to show that the agency actually gave meaningful consideration to the offerors' proposed direct labor rates. Since this is largely a labor-intensive contract, the agency was required to give meaningful consideration to whether the offerors' proposed direct labor rates were realistic to attract and retain the personnel that will be required to perform the contract. ITT Federal Servs Int'l Corp. supra. Simply checking to determine whether or not an offeror has proposed the minimum Service Contract Act wage rate does not satisfy the agency's burden of meaningfully considering whether the rates proposed are realistic.

Second, with respect to the evaluation of the Valkyrie proposal, no meaningful evaluation of the firm's proposed wages could reasonably have been performed in any event, since, as discussed above, Valkyrie did not specify which of its proposed employees were junior, mid-level and senior. It follows that, since the agency did

not know what mix of staffing was being proposed, it could not have meaningfully judged whether the proposed rates were realistic.

Third, with respect to the agency's evaluation of the firms' proposed profit, we do not know what the agency means when it says it performed a "weight guidelines analysis." That term is not defined or explained in the record, and there is no basis from the materials presented for us to determine what such an analysis is, or whether or not it is reasonable.

Fourth, while the record shows that the Navy performed some kind of cost realism evaluation and made adjustments to the offerors' proposed costs for evaluation purposes, Declaration of the Contract Specialist, at ¶ 43, the record shows that, in making its source selection decision, the agency used the offerors' proposed, rather than evaluated, costs. AR, exh. B-1 SSDD, at 11. This was inherently improper. Nexant, Inc., B-407708, B-407708.2, Jan 30, 2013, 2013 CPD ¶ 59 at 11 n.4.

Finally, the agency appears to have ignored the fact that the contract is largely a CPIF-type contract. The central feature of a CPIF contract is a financial risk and reward mechanism to spur cost effective performance on the part of the contractor; the contractor will be rewarded for reducing costs, and penalized for cost overruns. See FAR § 16.405-1. The incentive aspect of a CPIF contract works only within a range defined by the minimum and maximum fee, and the FAR provides that the "fee adjustment formula should provide an incentive that will be effective over the full range of reasonably foreseeable variations from target cost." FAR §16.405-1(b)(3). Most significantly, once an overrun (that is, a variation between an offeror's proposed target cost and the actual cost of performance) is so great that the fee has dropped to the minimum, the CPIF mechanism no longer functions to give the contractor an incentive to control costs. An unrealistically low proposed target cost risks putting the contractor (and the agency) in precisely this situation. While with other cost reimbursement vehicles, calculating a proposal's most probable cost may be all that is needed to address cost realism, in the CPIF context, a lack of realism in an offeror's proposed target cost can defeat the purpose of the incentive fee structure and independently cause performance risk. Bechtel Hanford, Inc., B-292288, et al., Aug. 13, 2003, 2003 CPD ¶ 199 passim; see also, Hayes Int'l. Corp., B-162387, 47 Comp. Gen 336 passim (1967) (protest sustained where record showed that agency awarded contract despite the fact that it had determined that all proposals offered costs so unrealistically low that incentive fee mechanism would not function). Nothing in the record here shows that the agency gave any thought to these considerations.

In view of the foregoing, we conclude that the agency failed to perform a reasonable cost realism evaluation, and to the extent that it did perform any such evaluation, it did not use the results of that evaluation in its source selection decision. We therefore sustain this aspect of Prism's protest.

RECOMMENDATION

We recommend that the agency reevaluate proposals in a manner consistent with the above discussion. We further recommend that, at the conclusion of that reevaluation, the agency make a new source selection decision that is consistent with the terms of the solicitation. Should the agency conclude that Prism rather than Valkyrie is in line for award after its reevaluation, we recommend that the agency terminate the task order issued to Valkyrie and issue a task order to Prism, if otherwise proper. In the alternative, to the extent that the agency now concludes that the RFP does not adequately reflect its requirements, we recommend that it amend the solicitation, solicit and obtain revised proposals, evaluate those proposals and make a new source selection decision, terminating the task order issued to Valkyrie, if appropriate. Finally, we recommend that the agency reimburse Prism the reasonable costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d). The protester's certified claim for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is sustained.

Susan A. Poling
General Counsel