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Decision

Matter of: INDUS Technology, Inc.
File: B-411919; B-411919.2; B-411919.3
Date: November 20, 2015

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Robert Jusko, Esq., and Alan Mygatt-Tauber, Esq., Department of the Navy, for the agency.
Paula J. Haurilesko, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency engaged in unequal treatment with respect to the past performance evaluations of offerors is denied, where the offerors were not similarly situated with respect to the magnitude and reason for cost overruns.
 2. Protest that the agency engaged in unequal treatment with respect to its cost realism analysis is denied, where the agency's cost evaluation approach was reasonably based on the unique circumstances of each offeror's cost history.
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DECISION

INDUS Technology, Inc., of San Diego, California, protests the Department of the Navy's issuance of a task order to Celeris Systems, Inc., of Anaheim, California, under request for proposals (RFP) No. N00024-14-R-3249, for engineering, technical, and business support services. INDUS challenges the evaluation of both its and Celeris' proposals, as well as the agency's tradeoff decision.

We deny the protest.

BACKGROUND

The RFP, issued on August 27, 2014 and set aside for small business concerns, provided for the issuance of a cost-plus fixed-fee task order under the Navy's

SeaPort Enhanced (SeaPort-e) multiple-award, indefinite-delivery/indefinite-quantity (ID/IQ) contracts for engineering, technical, infrastructure, logistics, business, and underwater vehicle operational site support services for the Naval Undersea Warfare Center Division, Keyport,¹ for locations in Hawaii; San Diego, California; and Guam. Agency Report (AR) at 1-2. The RFP provided that a task order, with a base year and two 1-year options, would be issued to the offeror whose proposal provided the best value to the government, considering cost and (in descending order of importance) three non-cost factors: technical approach and capability; management, including equally-weighted subfactors for management plan and staffing plan; and past performance.² When combined, the non-cost factors were more important than cost. RFP at 152.

Under the technical approach and capability factor, the RFP advised that proposals would be evaluated for the degree to which the proposal demonstrates the knowledge, capability and experience to perform each of the functional areas in the performance work statement (PWS). Under the management plan subfactor of the management factor, the RFP stated that proposals would be evaluated for the degree to which the management plan demonstrates the offeror's ability to manage its workforce, quality, transition, risk, and, if applicable, subcontractors. Id.

Under the past performance factor, the RFP provided that offerors' past performance for the past three years would be evaluated for relevance (similarity to the size, scope, and technical complexity of the effort), and quality of the product or service delivered, delivery or completion schedule, and cost control. As pertinent here, offerors' past performance with respect to cost control would be evaluated for the extent to which the offeror provided contract services at or below their initially proposed costs while maintaining customer desired level of quality and delivery, and limit direct and indirect cost growth. Id. at 153.

The RFP further provided that cost proposals would be analyzed for realism and the completeness of the cost data, as well as traceability to the offeror's technical proposal. The RFP specifically identified as relevant cost information Defense Contract Management Agency (DCMA) and Defense Contract Audit Agency recommended rates for such costs as direct labor, overhead, general &

¹ Naval Undersea Warfare Center Division, Keyport, is one of two divisions of the Naval Undersea Warfare Center providing Fleet readiness support for submarines, torpedoes, land attack systems and Fleet training systems. See <http://www.navsea.navy.mil/Home/WarfareCenters/NUWCKeyport/WhoWeAre.aspx> (last visited Nov. 18, 2015).

² Under the technical approach and capability factor, and under the management factor, proposals could be rated as outstanding, good, acceptable, marginal, and unacceptable. AR, Tab 6, Business Clearance Memorandum, at 28.

administrative (G&A) expenses, and indirect costs. Id. The RFP cautioned offerors that if the proposed costs appear unrealistic, the government might infer either a lack of understanding of the requirements, increased risk of performance, or lack of credibility on the part of the offeror. Id. at 154.

The Navy received proposals from INDUS, Celeris, and one other offeror. The evaluators assessed strengths, weaknesses, and significant weaknesses in the offerors' proposals, and rated INDUS and Celeris as follows:

	Celeris	INDUS
Technical Capability & Approach	Acceptable	Good
Management	Acceptable	Marginal
Management Plan	Good	Acceptable
Staffing Plan	Marginal	Marginal
Past Performance	Substantial Confidence	Satisfactory Confidence
Proposed Cost	\$22,494,294	\$26,338,525
Evaluated Cost	\$33,261,912	\$31,816,188

AR, Tab 6, Business Clearance Memorandum, at 254.

Under the management plan subfactor, Celeris' proposal received two strengths and no weaknesses, significant weaknesses, or deficiencies, and was assigned a good rating, while INDUS' proposal received three strengths and two weaknesses, and was assigned an acceptable rating. AR, Tab 4, Source Selection Evaluation Board (SSEB) Report, at 17, 25-26. As relevant here, one weakness was assigned for INDUS failing to identify an oversight point-of-contact for several PWS tasks without providing an explanation. In this regard, the SSEB stated that the omission "results in a risk to the government as it indicates a potential for a lack of oversight responsibility for those tasks." Id. at 25-26.

With respect to past performance, the evaluation team reviewed the past performance references submitted by the offerors and identified additional contracts obtained through the Past Performance Information Retrieval System (PPIRS). Celeris submitted three past performance references for itself and its major subcontractor. As relevant here, the Navy found one contract, in which Celeris performed as the prime contractor, to be relevant. Celeris' performance under the contract was rated in the Contractor Performance Assessment Report System (CPARS) as exceptional for quality and schedule, and satisfactory for cost control.

The other two contracts were found to be somewhat relevant. AR, Tab 5, Past Performance Report, at 6.

INDUS submitted five past performance references for itself and two of its subcontractors. Four contracts were found to be somewhat relevant or not relevant. The Navy found one reference, a task order in which INDUS performed as the prime contractor, to be very relevant as it was the predecessor task order for the current procurement. INDUS was rated in CPARS as very good under quality, schedule, and cost control. Id. at 10. Additionally, as INDUS was the incumbent on the current contract and no ratings had yet been entered into CPARS, the past performance team obtained a past performance evaluation from the contracting officer.³ INDUS was rated as satisfactory under quality and schedule, but unsatisfactory under cost control because the average burdened invoiced rates for seven invoices were [Deleted] to [Deleted] percent higher than the average proposed rates as a result of higher average bid-to-spend rates from the subcontractors. The past performance evaluation team concluded that this posed a cost risk because INDUS was proposing to use the same subcontractors. Id. at 14.

The source selection authority (SSA) considered the strengths, weaknesses, and significant weaknesses identified for each offeror, and determined whether they represented discriminators with respect to the other offerors. For example, the SSA noted that Celeris received a strength for its history of successfully transitioning contracts and for proposing an experienced transition manager, but concluded that this strength did not constitute a discriminator because INDUS, as the incumbent contractor, had no transition risk. AR, Tab 6, Business Clearance Memorandum, at 267.

The SSA then considered the discriminating strengths, weaknesses, and significant weaknesses of the offerors in the tradeoff decision. With respect to the tradeoff analysis between INDUS and Celeris, the SSA recognized that technical approach and capability was the most important factor, and that under that factor INDUS had a low risk and Celeris had a moderate risk of unsuccessful contract performance. However, the SSA concluded that, although INDUS was rated good for the most important factor, INDUS' rating was dependent on strengths that provided benefits for only 3.8 percent of the proposed hours. In comparison, while Celeris received an acceptable rating under the technical approach and capability factor, its strengths under that factor provided benefits for 70.9 percent of its proposed hours. Id. at 291-292.

With respect to the management factor, the SSA noted that INDUS received an overall rating of marginal; that four of INDUS' discriminating weaknesses increased

³ The period of performance for the current contract was May 31, 2014 to May 30, 2015. AR, Tab 5, Past Performance Report, at 14.

the risk of unsatisfactory performance in six PWS paragraphs that comprised 22 percent of the proposed hours; and that a weakness and two significant weaknesses--inadequate staffing plan and insufficient hours proposed--would affect the success of performance contract-wide. Id. at 292. The SSA noted that, in contrast, Celeris' proposal received an overall rating of acceptable under the management factor. While the SSA acknowledged that Celeris' proposal received six discriminating weaknesses and one discriminating significant weakness that affected 58.9 percent of the proposed hours, the SSA noted that Celeris' one discriminating strength provided a benefit contract-wide. Id. at 293.

Finally, the SSA noted that INDUS' proposal presented a cost risk because it included unrealistically low proposed hours. The SSA concluded that, after considering the various strengths and weaknesses, as well as the cost risks involved in INDUS' proposal, the advantages offered by Celeris' proposal warranted the associated \$1,445,724 (4.5 percent) evaluated cost premium. Id. at 293-294. As a result, the SSA made award to Celeris. This protest followed.⁴

DISCUSSION

INDUS raises multiple challenges to the Navy's evaluation of both INDUS' and Celeris' proposals, as well as to the SSA's tradeoff decision. We have considered all the issues raised by INDUS and find that none warrant sustaining its protest. We discuss several of INDUS' arguments below.

Past Performance

INDUS asserts that the Navy engaged in disparate treatment under the past performance factor because it downgraded INDUS' past performance to satisfactory confidence based on its cost overruns on the current contract, but failed to downgrade Celeris' past performance under similar circumstances. 2nd Supp. Protest at 47. In this regard, INDUS argues that Celeris should have received a lower past performance confidence rating than the substantial confidence rating it received because of Celeris' performance on a recent, relevant contract that also suffered from cost overruns. INDUS asserts that Celeris' performance for this effort resulted in early depletion of the labor ceiling and required early exercise of the first option year. INDUS Supp. Comments at 42.

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

⁴ Since the estimated value of this task order was in excess of \$30 million, this procurement falls within our jurisdiction to hear protests related to the issuance of task orders under multiple-award ID/IQ contracts valued in excess of \$10 million. 10 U.S.C. § 2304c(e)(1)(B).

discretion which we will not disturb unless the agency's assessments are unreasonable or inconsistent with the solicitation criteria. SIMMEC Training Solutions, B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 4. Where a protester challenges an agency's past performance evaluation, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations, and to ensure that it is adequately documented. Falcon Envtl. Servs., Inc., B-402670, B-402670.2, July 6, 2010, 2010 CPD ¶ 160 at 7. A protester's disagreement with the agency's evaluation judgments concerning the merits of past performance does not establish that the evaluation was unreasonable. Sam Facility Mgmt., Inc., B-292237, July 22, 2003, 2003 CPD ¶ 147 at 3.

Here, we find the past performance evaluation to be unobjectionable. The differences in the evaluation results reasonably reflected the differences in the magnitude of the cost overruns between the two contracts. In this regard, INDUS was rated as unsatisfactory for cost control on the current contract because its average burdened invoice rates were [Deleted] to [Deleted] percent higher than the average proposed rates for seven invoices.⁵ See AR, Tab 6, Business Clearance Memorandum, at 76. In comparison, Celeris experienced cost overruns only [Deleted] percent greater during the base year of its contract, and it reduced this amount to [Deleted] percent during the first option year. Further, according to the agency, Celeris' cost overruns were caused in part by the government increasing the work from 120 hours to 1,221 hours, whereas the government had no role in INDUS' cost overruns. Finally, as noted by the agency, Celeris was able to mitigate its cost overruns by reducing the overruns by half in the first option year, whereas INDUS' cost overruns displayed no downward trend in spending rates. Supp. AR at 15.

In sum, the record shows that the Navy's differentiation between the two offerors' past performance in this respect was reasonable. INDUS experienced a higher percentage of cost overruns than Celeris, and, as noted by the Navy, Celeris' cost overruns were the result of the government increasing the workload. While INDUS argues that the Navy failed to adequately consider its rationale for its cost increase, the record shows that the Navy considered the rationale, and did not find it convincing. The contract specialist considered INDUS' response and concluded

⁵ INDUS explained that its cost overruns resulted because it had proposed a lower level, lower-priced Service Contract Act labor category than was currently being used. However, after the Department of Labor ruled that each incumbent personnel must remain at the same level he or she was previously performing under, INDUS had to increase its labor costs. Additionally, INDUS' subcontractors had informed it that certain positions that had not been proposed under the contract were required, thus contributing to the increase in labor costs. AR, Tab 12, INDUS Response to Adverse Past Performance, Apr. 9, 2015.

that, although INDUS proposed the labor mix that it is currently using to perform the work, either its team lacked an adequate understanding of the requirements to perform the work, or knowingly proposed labor categories and costs below what was required to perform the work. See AR, Tab 6, Business Clearance Memorandum, at 77. As a result, the Navy concluded that INDUS' unsatisfactory performance on cost control posed a cost risk because INDUS is proposing the same subcontractors for the current task order. Id. at 76. In these circumstances, we find no basis to question Celeris' higher overall past performance rating.

Cost Realism

INDUS argues that the Navy engaged in disparate treatment of offerors in its cost realism analysis. In this regard, the Navy asked DCMA to review offerors' indirect rates. DCMA conducted a regression analysis based on 6 years of INDUS' rates, including: fiscal years 2009-2012 rates derived from INDUS' audited incurred cost submissions; fiscal year 2013 rates taken from INDUS' yet-to-be audited incurred cost submission; and INDUS' fiscal year 2014 provisional billing rates as approved by the Defense Contract Audit Agency. DCMA Rate Verification for INDUS, Jan. 8, 2015, at 2. The contract specialist relied on the proposed rates provided by DCMA and adjusted INDUS' rates accordingly. AR, Tab 6, Business Clearance Memorandum, at 152.

In September 2013, DCMA analyzed Celeris' indirect rates using actual rates from fiscal year 2013 and applying an escalation factor for a three-year period.⁶ AR, Tab 16a, DCMA Rate Verification for Celeris, Sept. 12, 2013, at 4. In December 2014, DCMA conducted another review of Celeris' indirect rates, relying in part on the previous DCMA analysis as well as Celeris' 2015 forward rate projections. As a result of this analysis, DCMA accepted Celeris' proposal rates. AR, Tab 16, DCMA Direct & Indirect Rate Review for Celeris, at 8-9. While the contract specialist acknowledged that DCMA had accepted Celeris' proposed indirect rates, when he compared the proposed rates to actual invoiced rates from another contract for the period December 28, 2014 to January 10, 2015, he found that the invoiced rates were higher than the proposed rates. Accordingly, the contract specialist concluded that Celeris' rates were unrealistic and adjusted the rates upward to reflect the most recent actual rates. AR, Tab 6, Business Clearance Memorandum, at 127.

INDUS complains that while the Navy subjected INDUS' indirect cost rates to regression analysis, resulting in increases in the various indirect rates of between 1.09 and 5.33 percent, the agency merely accepted Celeris' current indirect cost billing rates without conducting regression analysis. 2nd Supp. Protest at 50-51.

⁶ Beginning in fiscal year 2012, Celeris had changed its indirect cost pools. See Tab 16a, DCMA Rate Verification for Celeris, Sept. 12, 2013, at 4.

The evaluation of competing cost proposals requires the exercise of informed judgment by the contracting agency. We review an agency's judgment in this area only to see that the agency's cost realism evaluation was reasonably based and not arbitrary. Earl Indus., LLC, B-309996, B-309996.4, Nov. 5, 2007, 2007 CPD ¶ 203 at 8. In performing its cost realism evaluation, an agency must independently analyze the realism of an offeror's proposed costs based upon its particular approach, personnel, and other circumstances; a cost estimation method which mechanically adjusts proposed labor rates fails to satisfy the requirement for an independent analysis of an offeror's proposed costs. Science Applications Int'l Corp., Inc., B-408270, B-408270.2, Aug. 5, 2013, 2013 CPD ¶ 189 at 6.

Here, the record indicates that the Navy's methodology was reasonably based on the unique circumstances of each offeror's cost history. In this regard, the Navy requested and received assistance from DCMA in reviewing the offerors' indirect rates. Because INDUS' fiscal year 2013 indirect rates had yet to be audited and INDUS had provided only provisional billing rates for fiscal year 2014, DCMA used regression analysis based on INDUS' audited incurred cost submissions for fiscal years 2009-2012 in addition to the 2013 and 2014 rates. The contract specialist analyzed both offerors' cost proposals utilizing DCMA's reports of its analysis, and with respect to INDUS, adopted DCMA's recommendations. AR, Tab 6, Business Clearance Memorandum, at 152. In contrast, there were sufficient actual rates available for Celeris that regression analysis was not deemed necessary. Further, while DCMA had accepted the rates in Celeris' proposal, the contract specialist, relying on Celeris' higher invoiced rates from another contract (for the period December 28, 2014 to January 10, 2015), concluded that Celeris' proposed rates were unrealistic and adjusted the rates upward to reflect the most recent actual rates. Id. at 127. Based on this record, we conclude that the Navy reasonably used the most recent actual rates for Celeris, while in the absence of more recent rates for INDUS, adopted the DCMA proposed rates.

Management Plan

INDUS asserts that the Navy unreasonably assigned it a weakness under the management plan subfactor of the management factor for failing to provide an oversight point-of-contact for five PWS tasks. Supp. Protest at 42-44. INDUS argues that the RFP did not require an oversight point-of-contact, and, moreover, that only one individual had been named to conduct the work for three of the specified tasks. INDUS also argues that the Navy should have assumed that the program manager was the point-of-contact in the absence of a named individual. INDUS Comments at 12.

The Navy responds that the RFP required offerors to describe, in detail, the approach to managing personnel and the diversity of services in multiple geographic locations, and that the RFP stated that the government would review the

management plan to evaluate the degree to which the offeror demonstrates its ability to manage personnel. AR at 27. The Navy also states that because INDUS' proposal indicated that it was moving to a team lead approach, it appeared that INDUS was abandoning the normal approach in which the program manager was the point-of-contact, but did not explain why some PWS tasks were staffed with a team lead and others were not. Therefore, the Navy was concerned that the lack of a point-of-contact in this area indicated a potential for lack of oversight responsibility for those tasks. AR at 27-28.

In reviewing protests challenging the evaluation of proposals, we do not conduct a new evaluation or substitute our judgment for that of the agency but examine the record to determine whether the agency's judgment was reasonable and in accord with the RFP evaluation criteria. EEC-Insight, JV, B-404959, B-404959.3, July 12, 2011, 2011 CPD ¶ 169 at 4. A protester's disagreement with an agency's judgment, without more, is not sufficient to establish that an agency acted unreasonably. Trofholz Techs., Inc., B-404101, Jan. 5, 2011, 2011 CPD ¶ 144 at 3-4. Moreover, it is an offeror's responsibility to submit an adequately written proposal that demonstrates the merits of its approach; an offeror runs the risk of having its proposal downgraded or rejected if the proposal is inadequately written. Id. at 4-5.

We agree with the Navy that identification of a point-of-contact was reasonably encompassed by the evaluation criteria. Under the management plan subfactor, the RFP advised that the government would evaluate the degree to which the management plan demonstrated the offeror's ability to manage its workforce, as well as the degree to which the offeror demonstrates its ability to manage personnel and the diversity of services in multiple geographic locations. RFP at 152. In our view, the identification of points-of-contact and lines of communication is reasonably encompassed by this aspect of the management plan subfactor. In this regard, while procuring agencies are required to identify significant evaluation factors and subfactors in a solicitation, they are not required to identify various aspects of each factor which might be taken into account, provided that they are reasonably related to or encompassed by the RFP's evaluation criteria. Agile Defense, Inc., B-407179, Nov. 16, 2012, 2012 CPD ¶ 342 at 6-7.

Further, the record supports the Navy's concerns about lines of communication. INDUS' proposal stated that INDUS designated team leads to be the points-of-contact for PWS functional areas, and identified individuals for particular PWS tasks. AR, Tab 3, INDUS' Proposal, at 60. However, as noted by the Navy, INDUS' proposal did not identify a point-of-contact for five PWS tasks and did not otherwise indicate that the program manager would be the point-of-contact for these PWS

tasks.⁷ Furthermore, INDUS' own arguments highlight the basis for the Navy's concern in this area. INDUS argues both that the Navy should have assumed that the program manager was the point-of-contact unless a team lead was identified, and that, for those PWS tasks that had only one person identified and assigned to the task, the Navy should have assumed that the identified person was the point-of-contact. INDUS Comments at 13. Accordingly, we conclude that the Navy's finding of a weakness was reasonable.

The protest is denied.

Susan A. Poling
General Counsel

⁷ The tasks were PWS 2.4, Readiness, Test, and Evaluation Support; 2.7, Technical Analysis and Assessment Support; 2.8, Combat Systems and Undersea Warfare Test Administrative Support; 2.19, Program Information and Management Support; and 2.21, Administrative Office Services.