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Decision

Matter of: Verdi Consulting, Inc.

File: B-414103.2; B-414103.3; B-414103.4

Date: April 26, 2017

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DIGEST

1. Protest is sustained where the agency's evaluation of the protester's past performance was inconsistent with the terms of the solicitation and inadequately documented.
 2. Protest is sustained where the agency's price evaluation failed to evaluate offerors' option year prices contrary to the terms of the solicitation and where the record was inadequately documented.
 3. Protest of an agency's source selection decision is sustained where the best-value tradeoff was based on unreasonable and inadequately documented evaluations.
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DECISION

Verdi Consulting, Inc. (Verdi), of McLean, Virginia, protests the award of a contract to Falcon Capital Advisors, LLC (Falcon), of Washington, D.C., under request for proposals (RFP) No. DU208WR-16-R-0001, issued by the Department of Housing and Urban Development (HUD) for financial operations services. Verdi challenges its past performance evaluation, as well as the agency's evaluation of price and the best-value tradeoff.

We sustain the protest.

BACKGROUND

The solicitation was issued on May 9, 2016, as a competitive 8(a) set-aside and sought proposals for mortgage compliance reviews, data analysis, evaluation of internal controls, and various other financial operations tasks aimed at identifying and reducing risk to the Federal Housing Administration's Mutual Mortgage Insurance Fund (MMI). RFP amend. 1, § I, at 56-57, 62; see Performance Work Statement (PWS) § 1. The RFP provided for the award of a fixed-price, indefinite-delivery, indefinite-quantity (IDIQ) contract for a base year and 4 option years, and stated that award would be made on the basis of a best-value tradeoff among the following evaluation factors: technical approach, management plan, key personnel, past performance, and price. RFP amend. 1, § I, at 55-56, 62; § L, at 101, § M, at 112-15; PWS § 1.6. The solicitation stated that the evaluation factors were listed "in equal order of importance" and that the non-price evaluation factors, when combined, were significantly more important than the price factor. RFP amend. 1, § M, at 115. Offerors were instructed to submit separate technical and business (i.e., price) proposals. Id. §§ L(b)-(d)B.

With respect to the past performance evaluation factor, offerors were to identify up to five current or past projects (within 3 years of the proposal) that were relevant (i.e., similar in scope, value and magnitude) to the requirement. Id. § L(d)A.2.4; § M, at 113. For each project, offerors were to submit a narrative describing its relevance to the requirement, as well as a customer reference using the past performance survey provided with the RFP. Id. § L(d)A.2.4; § J, attach. 2, Past Performance Survey, at 1-4. If the offeror was proposing to subcontract more than 20 percent of the contract value, the offeror was to submit separate past performance information for the proposed subcontractor(s). Id. § L(d)A.2.4.

The RFP stated that the agency would evaluate the recency, relevance, quality, and sufficiency of an offeror's past performance, and that the overall assessment would be based upon the sufficiency of high quality past performance and the risk of nonperformance. Id. § M, at 113-14. The RFP also stated that the agency would primarily assess the past performance of the prime contractor, but that if significant subcontracting use was anticipated, the past performance history of the proposed subcontractor(s) "must also be evaluated." Id. at 113. Offerors were informed that proposals would be assessed a past performance rating of excellent, good, fair, neutral, or unacceptable, and that the final rating would encompass the totality of the information provided, including its completeness and relevance, as well as the depth, breadth, and quality of relevant past performance for the prime contractor and proposed subcontractor or team members. Id. at 114, 116-17.

With respect to the price evaluation factor, offerors were to propose fixed prices for dozens of contract line item numbers (CLINS) corresponding to PWS tasks, subtasks, and related deliverables. Id. § B2, Price Sched. Offerors also were to complete the pricing chart provided with the RFP, which required offerors to describe and list their proposed cost elements, such as direct labor and overhead, for the prime and proposed subcontractor(s). Id. § J, attach. 3, Pricing Chart. The RFP stated that price would be

evaluated for reasonableness and price unbalancing; that an offeror's total evaluated price would include all option periods; and that the agency would evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Id. § M, at 112, 114. In this respect, the RFP also incorporated Federal Acquisition Regulation (FAR) provision 52.217-5, Evaluation of Options, which requires the evaluation of option prices for award purposes, except when it is determined not to be in the government's best interest to exercise the options. Id. at 115; FAR § 52.217-5. The RFP also stated that the agency would evaluate reasonableness by comparing offerors' proposed prices to each other and to an independent government cost estimate. Id. at 114. Moreover, the RFP stated that the agency would evaluate the reasonableness of proposed costs/prices for the option periods by assessing the acceptability of the offeror's methodology used in developing the cost/price estimates. Id.

HUD received proposals from six offerors by the June 17 submission deadline, including from Verdi (the incumbent) and Falcon.¹ Contracting Officer's Statement (COS) ¶¶ 5, 8; see RFP at 1. On August 22, a contract specialist requested that offerors "revise their Business Proposals and submit a Best and Final Business Proposal" because "[t]here appear[ed] to be some confusion on the line item structure and what each task entails." Agency Report (AR), exh. 10, Request for Final Bus. Proposal, at 1. The contract specialist provided a revised schedule, explaining that "we hope this is easier to understand[.]" and requested that offerors submit their revised price proposal in accordance with the revised schedule. See id. All offerors--except Verdi--submitted a final revised price proposal by the August 29 due date. Supp. COS ¶ 11; see Protester's Supp. Comments at 6-9.

Proposals were evaluated as follows:

	Overall Rank	Technical Approach	Management Plan	Key Personnel	Past Performance	Total Estimated Base Year Cost
Offeror 1	1	Excellent	Excellent	Excellent	Excellent	\$2,907,046
Falcon	2	Excellent	Good	Good	Good	\$957,645
Offeror 3	3	Good	Good	Good	Good	\$2,781,800
Offeror 4	4	Fair	Fair	Good	Good	\$2,353,667
Offeror 5	5	Fair	Fair	Fair	Fair	\$856,245
Verdi	6	Good	Unacceptable	Fair	Unacceptable	\$1,796,996

AR, exh. 3a, Source Selection Decision (SSD), at 2; exh 13, Total Estimated Base Year Cost Spreadsheet, at 1-2. With respect to the agency's price evaluation, the contemporaneous record shows that HUD did not calculate total evaluated prices

¹ The RFP provisions related to the other non-price evaluation factors are not relevant to our decision. See infra n.8.

or evaluate proposed cost elements. See id.; exhs. 11-12, Price Evaluation (Eval.) Spreadsheets. The agency's price analysis is discussed below.

With respect to Verdi's past performance, the agency's technical evaluation panel (TEP)--which evaluated proposals under the non-price factors--noted that, as the incumbent contractor, Verdi's Past Performance Information Retrieval System (PPIRS) reports "reflect experience and the capabilities required to perform Tasks and Sub-Tasks related to [sections] 5.1, 5.2, and 5.3" of the PWS.² AR, exh. 1, TEP Report, at 11. The TEP assessed a number of strengths in that regard because Verdi had been directly involved in a majority of the required tasks. Id. at 10-11. However, of significance here, the agency also assessed a number of deficiencies to Verdi's proposal because the firm had allegedly violated HUD's information technology (IT) security standards and was cited for a violation in July 2016 by the HERMIT³ information systems security officer. Id. at 11. The TEP report states that "[d]ue to the seriousness of these violations, this reviewer is not satisfied that the performance of this offeror will comply with HUD Security requirements" and that the incident would be reflected in Verdi's contractor performance assessment rating system report (CPAR) for the 2016 performance period.⁴ Id.

The agency's source selection authority (SSA) reviewed the TEP's findings and performed a cost/technical tradeoff among the two most highly rated proposals, as discussed below. See AR, exh. 3a, SSD, at 2-3. The SSA determined that Falcon's proposal provided the best overall value to the government, and HUD awarded the IDIQ contract to Falcon and issued an initial 12-month task order to the firm for \$882,575. Id.; see Debriefing, Nov. 1, 2016, at 1.

On November 1, HUD provided Verdi a combined notice of award and written debriefing informing Verdi of its evaluation assessments, including the TEP's past performance

² That is, task 5.1, "[e]nsure forward mortgage [l]oss [m]itigation business rules are utilized appropriately to prevent foreclosure and mitigate loss to . . . (MMI);" task 5.2, "[e]nsure Home Equity Conversion Mortgages (HECMs) are being serviced according to HUD regulations and requirements" (hereinafter, HECM tasks); and task 5.3, "[e]valuate, document, and design internal controls and processes to mitigate risk to . . . (MMI)" (hereinafter, internal controls tasks). PWS § 5.

³ That is, the Home Equity Reverse Mortgage Information Technology (HERMIT) system software used by HUD to service and track HECM activities. PWS §§ 1.2, 2.1. According to HUD, access to the HERMIT system is necessary for successful performance of the requirement. Contract Specialist Statement ¶ 6.

⁴ We omit the details of the alleged IT security violation, because they are not relevant to the protest and because the CPAR was ultimately revised as part of the agency's corrective action. See COS ¶ 17. According to Verdi, the "CPAR has been revised to state that the contracting officer 'would recommend [Verdi] for similar requirements in the future.'" Protest at 5.

findings discussed above. Debriefing, Nov. 1, 2016, at 1-3. The notice advised Verdi of the value of the initial task order, but did not state the total evaluated price of Verdi's or Falcon's respective proposals. Id.

On November 7, Verdi filed a protest with our Office challenging HUD's evaluation of Verdi's proposal under the RFP's management plan, key personnel, and past performance evaluation factors, as well the agency's source selection decision. Protest B-414103. With respect to its past performance evaluation, Verdi asserted that HUD "relied on false allegations in what appears to be a pre-draft" CPAR, which (according to the protest) the agency was in the process of withdrawing "because of its grave inaccuracies." Id. at 1.

On November 21, HUD submitted a notice of corrective action and request for dismissal, advising the parties that the agency would "reevaluate the Management Plan, Past Performance and Key Personnel factors in light of all of the Protester's contentions[,] including that the information relied upon by the Agency in the draft CPAR was false." Notice of Corrective Action & Request for Dismissal, Nov. 21, 2016, at 1. The notice also stated that

[i]n purs[u]ing corrective action, the Agency will not reference the draft CPAR at all in any factor analysis. Furthermore, the Agency will explicitly reference the past performance of the Protestor as HUD's incumbent contractor, including its years of excellent CPAR reviews. To address another contention, the Agency will remove from its analysis any reference to an evaluator's apparent personal experience with a Verdi system.

Id. The notice further stated that the agency would issue a new source selection decision after reevaluating Verdi's proposal.⁵ Id. On November 23, our Office dismissed Verdi's protest as academic. Verdi Consulting, Inc., B-414103, Nov. 23, 2016 (unpublished decision).

On January 10, 2017, HUD notified Verdi that the agency had completed its reevaluation of the protester's proposal, which was rated as follows:

	Overall Rank	Technical Approach	Management Plan	Key Personnel	Past Performance
Verdi	6	Good	Good	Good	Unacceptable

AR, exh. 2, Debriefing, Jan. 10, 2017, at 1. While Verdi's ratings under the management plan and key personnel evaluation factors improved (both were reevaluated as good), Verdi's past performance evaluation rating remained

⁵ In response to the agency's notice, Verdi stated that it did not object to HUD's request for dismissal. Protester's Email to Parties, Nov. 22, 2016.

unacceptable.⁶ AR, exh. 3b, Revised TEP Report, at 4. The price evaluation and the other offerors' evaluation ratings and ranking (as listed in the previous table, supra at 3) did not change. See id.; exh. 3a, SSD, at 2.

Unlike the earlier evaluation, Verdi was now assessed one deficiency under the past performance evaluation factor, namely, that "Verdi's staff is not authorized access to HERMIT, which precludes the firm from successfully performing the Tasks and Sub-Tasks 5.2 [HECM tasks] and 5.3 [internal controls tasks]." See AR, exh. 2, Debriefing, Jan. 10, 2017, at 3.⁷ Moreover, unlike the previous evaluation, Verdi was not assessed any strengths under this factor; rather, the TEP noted: that the PPIRS reports reviewed reflected the experience and capabilities required to perform PWS tasks 5.1, 5.2, and 5.3; that Verdi had been directly involved in a number of tasks associated with the RFP; and that the PPIRS reports reflected excellent and satisfactory past performance ratings. See id.

HUD did not perform a new cost/technical tradeoff or prepare a new source selection decision document because, according to the agency, "[s]ince the re-evaluation of the Protester's proposal under a 'best value' methodology did not put the Protester in line for award, a new source selection was not required because Falcon remained the 'best value' due to its superior technical ratings and lower evaluated price." Memorandum of Law (MOL) at 3; COS ¶ 19 ("Since the corrective action did not result in a new awardee, a new source selection decision was not necessary."). This protest followed Verdi's receipt of HUD's January 10, 2017, notice of award and debriefing.

DISCUSSION

Verdi challenges its past performance evaluation, as well as HUD's price evaluation and best-value tradeoff. Although we do not address each of the protester's various arguments, we have considered all of the protester's contentions.⁸ We sustain Verdi's protest for the reasons discussed below.

⁶ An unacceptable past performance rating reflected low confidence and substantial doubt of successful performance, due to the offeror's record of past performance or the offeror's failure to address the evaluation factor as instructed. See RFP amend. 1, § M, at 117.

⁷ We cite here to the January 10, 2017, debriefing letter because as we discuss below, the agency's reevaluation findings (after corrective action) are not documented anywhere else in the record, including the TEP's revised report. See AR, exh. 3b, Revised TEP Report, at 1-4.

⁸ For example, Verdi protests the reevaluation of its proposal under the RFP's technical approach and key personnel factors; however, its protest in this regard is based on nothing more than disagreement with its assessed adjectival ratings, which is insufficient to show that the evaluation was unreasonable. See Glenn Def. Marine-Asia PTE, Ltd., B-402687.6, B-402687.7, Oct. 13, 2011, 2012 CPD ¶ 3 at 7; Protest at 10;

(continued...)

Interested Party

As a threshold matter, the agency requests that our Office dismiss the protest because, according to HUD, Verdi is not an interested party since it is not next in line for award. MOL at 3-4. In this respect, HUD points out that Verdi has not challenged the technical evaluations of the other offerors' proposals (including Falcon's, the awardee), a number of which had higher technical ratings and were lower-priced (according to the agency).⁹ Id. at 4. Thus, according to HUD, "under a 'best value' analysis, the Agency has several offers that would be considered for award ahead of the Protester." Id. In any event, HUD argues that Verdi would not be considered for award, because, after investigating Verdi's arguments challenging the agency's price evaluation, HUD "discovered that the Protester's price proposal was nonresponsive and therefore unacceptable" because Verdi did not submit a revised price proposal. Supp. MOL at 2-3. In HUD's view, "in order for the Protester to prevail, the GAO would also have to determine that Verdi's failure to respond to the Agency's request for revised price proposals was both excusable and immaterial, and then the GAO would furthermore have to allow Verdi an opportunity to revise its proposal after the [proposal submission] deadline, in order to conform to the Agency's amended pricing schedule." Id. at 5. HUD maintains that allowing Verdi to do so would be unfair to the other offerors and would give Falcon grounds to protest. Id. at 3.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556, 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). 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. RELM Wireless Corp., B-405358, Oct. 7, 2011, 2011 CPD ¶ 211 at 2.

HUD's interested party arguments lack merit because the RFP provided for a cost/technical tradeoff analysis that would comparatively consider the offerors' respective strengths and weaknesses. Where, as here, the RFP provides for a cost/technical tradeoff basis for award--as opposed to the selection of the lowest-priced, technically acceptable offer--evaluation of proposals is not limited

(...continued)

Protester's Comments at 6-8. The essence of an agency's evaluation is reflected in the evaluation record itself, not the adjectival ratings. Stateside Assocs., Inc., B-400670.2, B-400670.3, May 28, 2009, 2009 CPD ¶ 120 at 8. Here, Verdi identifies no aspect of HUD's evaluation under the RFP's technical approach and key personnel factors that was allegedly inconsistent with the solicitation. See AR, exh. 2, Debriefing, Jan. 10, 2017, at 1-2; Protester's Comments at 6-8.

⁹ HUD's price evaluation was flawed, as discussed below.

to determining whether a proposal is merely technically acceptable. Rather, in determining which proposal offers the best value, the agency should consider the differences between proposals to distinguish their relative quality. Johnson Controls World Servs., Inc.; Meridian Mgmt. Corp., B-281287.5 et al., June 21, 1999, 2001 CPD ¶ 3 at 4. Here, Verdi's protest of its past performance evaluation and of the agency's price evaluation (which we sustain, as discussed below) call into question HUD's determination that Falcon's proposal provided the best value to the government.¹⁰

Moreover, although HUD is correct insofar as it asserts that it could have rejected Verdi's proposal outright for failing to submit a revised price proposal, the agency did not do so. In fact, the record shows that the agency actually evaluated Verdi's (unrevised) price proposal, as well as the price proposal of Offeror No. 4, even though both offerors' price schedules were inconsistent with the CLIN structure in the revised schedule provided by the agency in its request for revised price proposals.¹¹

We thus agree with Verdi that HUD effectively waived any objection to Verdi's failure to submit a revised price proposal, and we will not rely on HUD's post-protest assertion, made in the heat of litigation, as a basis to dismiss the protest. See, e.g., A1 Procurement, JVG, B-404618, Mar. 14, 2011, 2011 CPD ¶ 53 at 3 n.3 (declining to dismiss protest based on agency's post-protest assertions that protester was ineligible to compete where the protester's eligibility to compete was not questioned during the procurement); Port of Bellingham, B-401837, Dec. 2, 2009, 2009 CPD ¶ 245 at 9 n.18 (declining to dismiss protest based on agency's post-protest assertions that it was legally precluded from awarding a lease to the protester due to the protester's significantly higher price, since it is not clear that, during the acquisition process, the agency considered that matter to require rejection of the protester's proposal); Supp. Comments at 6-9.

Accordingly, we find that Verdi is an interested party to pursue its protest and has shown a reasonable possibility of prejudice, and we decline to dismiss the protest. See, e.g., id.; Patricio Enters., Inc., B-412740 et al., May 26, 2016, 2016 CPD ¶ 152 at 8-9 (finding no basis on which to speculate how the SSA would have viewed the relative

¹⁰ Indeed, we agree with Verdi that the agency's "inexplicable price evaluation and outdated best value tradeoff make it impossible to predict who would have received award under the ground rules set out in the Solicitation." Protester's Comments at 13.

¹¹ Specifically, the record shows that the agency was able to convert Verdi's and Offeror No. 4's CLIN prices (from the original CLIN structure in the RFP, to the CLIN structure in the revised schedule provided to offerors by the contract specialist in her request for final revised business proposals), because both offerors' unit and total prices for the corresponding PWS tasks were readily discernable. Compare AR, exhs. 11-13, Price Eval. Spreadsheets with exh. 7, Verdi's Price Proposal, Sched., at 22-38; see RFP amend. 1, § B2, Price Sched.; see, e.g., AR, exh. 10, Request for Final Bus. Proposal; see also exh. 14, Price Evaluator's Notes, at 2.

merits of the protester's and awardee's proposals in light of a new, reasonable past performance evaluation); MSI, a Div. of the Bionetics Corp., B-243974 et al., Sept. 17, 1991, 91-2 CPD ¶ 254 at 6 ("If, as [the protester] argues, the agency's cost evaluation is flawed and would have resulted in an even greater cost advantage for [the protester], a revised cost/technical tradeoff could result in [the protester] being in line for award. Accordingly, [the protester] is an interested party under our Bid Protest Regulations.").

Evaluation of Verdi's Past Performance

As stated above, HUD assessed Verdi with a deficiency and unacceptable rating under the past performance evaluation factor because "Verdi's staff [was] not authorized access to HERMIT, which precludes the firm from successfully performing" specified tasks under the solicitation's PWS. Debriefing, Jan. 10, 2017, at 3; see supra n.3 (describing HERMIT).

Verdi contends that this assessment was unreasonable and imposed an unstated evaluation criterion. Protester's Comments at 4-5. Verdi argues that nothing in the solicitation stated or implied that current access to HERMIT, or an offeror's future ability to perform specified PWS tasks in that regard, would be evaluated under the past performance evaluation factor. Protest at 7-8. According to Verdi, nothing in the solicitation required access to HERMIT as a precondition for award. Id. at 9. Regardless, Verdi contends that even if the RFP allowed HUD to evaluate current or future HERMIT access, Verdi would not need HERMIT access to perform successfully, because [DELETED]. Id. at 8.

HUD contends that it reevaluated Verdi's past performance consistent with its proposed corrective action which, according to the agency, never stated that Verdi's loss of access to the HERMIT system would not be considered in the reevaluation, or that the protester's proposal would be found acceptable upon reevaluation. See MOL at 5. HUD asserts that it "did everything it was obligated to do," namely, "eliminating its reliance on Verdi's draft CPAR information, and instead relying on information that was "close at hand[.]"¹² Id. at 4-5.

Where a protester challenges the past performance evaluation and source selection, we will review the evaluation and award decision to determine if they were reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations, and to ensure that the agency's rationale is adequately documented. Shaw-Parsons Infrastructure Recovery Consultants, LLC; Vanguard Recovery Assistance, Joint Venture, B-401679.8 et al., Sept. 8, 2010, 2010 CPD ¶ 211 at 7.

¹² The contracting officer states that during the corrective action process, Verdi actively communicated with HUD regarding its (Verdi's) intentions and expectations from HUD's corrective action. COS ¶ 14. According to the contracting officer, Verdi specifically communicated that its primary concern in filing its initial protest was that HUD revise the draft CPAR that the agency relied in evaluating Verdi's proposal. Id. ¶¶ 15, 16.

We note, as an initial matter, that there is little documentation to support HUD's evaluation of Verdi's past performance (as well as the agency's price evaluation and source selection decision discussed below). While, as a general matter, the evaluation of an offeror's past performance is a matter within the discretion of the contracting agency, we will question an agency's evaluation of past performance where it is unreasonable or undocumented. Clean Harbors Env'tl. Servs., Inc., B-296176.2, Dec. 9, 2005, 2005 CPD ¶ 222 at 3. Although an agency is not required to retain every document generated during its evaluation of proposals, the agency's evaluation must be sufficiently documented to allow our Office to review the merits of a protest. Apptis, Inc., B-299457 et al., May 23, 2007, 2008 CPD ¶ 49 at 10. Where an agency fails to document or retain evaluation materials, it bears the risk that there may not be adequate supporting rationale in the record for us to conclude that the agency had a reasonable basis for its source selection decision. Navistar Def., LLC; BAE Sys., Tactical Vehicle Sys. LP, B-401865 et al., Dec. 14, 2009, 2009 CPD ¶ 258 at 13.

The extent of the agency's evaluation findings are documented only in the written debriefing provided to Verdi, not in the revised TEP report, which simply lists Verdi's revised evaluation ratings after the agency took corrective action. The debriefing letter states, on the one hand, that Verdi's PPIRS reports reflect that the company has shown that it can perform the HECM and internal control tasks and that it has excellent and satisfactory past performance.¹³ AR, exh. 2, Debriefing, Jan. 10, 2017, at 2. On the other hand, the letter also states that Verdi's lack of access to HERMIT precludes the firm from successfully performing the HECM and internal control tasks. Id. Nothing in the contemporaneous record, including the debriefing letter, explains or otherwise justifies the deficiency assessed against Verdi related to its HERMIT access.¹⁴ As described above, the RFP stated that the agency would assess the sufficiency of high quality past performance, the risk of nonperformance, and the totality of past performance information, as well as the depth, breadth, and quality of relevant past performance. See RFP amend. 1, § M, at 113-14. In short, nothing in the RFP anticipated that current access to HERMIT, or an offeror's future ability to perform specified PWS tasks in that regard, would be evaluated under the past performance evaluation factor.

Moreover, nothing in the record shows that HUD evaluated the past performance of Verdi's proposed subcontractors, even though Verdi's proposal stated that its subcontractors [DELETED], and Verdi provided the required subcontractor past

¹³ Inexplicably, these positive findings, which were initially evaluated as strengths in the agency's earlier past performance evaluation, were merely noted as general comments and no strengths were assessed in the agency's post-corrective action reevaluation. Compare AR, exh. 1, TEP Report, at 11, with exh. 2, Debriefing, Jan. 10, 2017, at 2.

¹⁴ Although HUD claims that it relied on past performance information that was "close at hand," neither the agency or the record explain what information the agency relied upon in reaching its past performance evaluation conclusions. See MOL at 3-5.

performance information. AR, exh. 7, Verdi's Tech. Proposal, at 18-19, 20, 26, 58-61. In this respect, the RFP expressly stated that if significant subcontracting use was anticipated, the past performance of the proposed subcontractor(s) "must also be evaluated." RFP amend. 1, § M, at 113.

We thus find, based on our review of the limited record, that HUD's evaluation of Verdi's past performance was inadequately documented, inconsistent with the terms of the RFP, and unreasonable, and we sustain the protest on that basis. See Solers, Inc., B-404032.3, B-404032.4, Apr. 6, 2011, 2011 CPD ¶ 83 at 8-14 (sustaining protest of the evaluation of the protester's past performance where the contemporaneous record was inadequate for our Office to determine whether the evaluation was reasonable, because the procuring agency did not document the information upon which the evaluators relied in making their judgments).

Price Evaluation

Verdi also maintains that HUD's price evaluation was flawed because the agency only evaluated base year pricing. Protester's Comments at 8. HUD does not substantively defend its price evaluation, but instead argues that Verdi has no basis to challenge the price evaluation because Verdi did not submit a revised price proposal. See Supp. MOL at 2-3; 2nd Supp. MOL at 2-4.

In reviewing protests of an agency's evaluation and source selection decision, our Office will not reevaluate proposals; rather, we review the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria, and applicable procurement laws and regulations. Velos, Inc., B-400500.8, B-400500.9, Dec. 14, 2009, 2010 CPD ¶ 13 at 11; Keeton Corrections, Inc., B-293348, Mar. 4, 2004, 2005 CPD ¶ 44 at 6. While we will not substitute our judgment for that of the agency, we will sustain a protest where the agency's conclusions are inconsistent with the solicitation's evaluation criteria, undocumented, or not reasonably based. DRS ICAS, LLC, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 4-5.

The RFP, as discussed above, stated that an offeror's total evaluated price would be based on adding the total price for all options to the total price for the basic requirement. RFP amend. 1, § M, at 112, 114. Moreover, the RFP incorporated FAR provision 52.217-5, which requires the evaluation of option prices for award purposes, except when doing so is not in the government's best interest. Id. at 115; FAR § 52.217-5. The RFP also stated that the agency would evaluate reasonableness by comparing offerors' proposed prices to each other and to an independent government cost estimate (IGCE). Id. The RFP further stated that the agency would evaluate the reasonableness of proposed costs/prices for the option periods by assessing the acceptability of the offeror's methodology used in developing the cost/price estimates. Id.

HUD's price evaluation, like the agency's past performance evaluation discussed above, is not adequately documented. The contemporaneous price evaluation record consists of seven spreadsheets. Five of the spreadsheets correspond to each of the five performance years and simply list each of the offerors' proposed CLIN prices for that performance year.¹⁵ AR, exh. 11a-11f, Price Eval. Spreadsheets, Performance Periods. The sixth spreadsheet simply lists offerors' CLIN prices for the base year next to a "reduced estimate" price for the year, which, according to brief explanatory notes in the spreadsheet, were calculated based on the IGCE and HUD's estimated case reviews per year for the corresponding PWS tasks. AR, exh. 12, Price Eval. Spreadsheet, Reduced Estimates, at 1. The sixth spreadsheet also lists the offerors' rankings and ratings under each evaluation factor. Id. at 2. The seventh (and final) spreadsheet lists each offeror's total estimated base year costs per CLIN, calculated, according to the explanatory notes, using the estimated case reviews per year for the respective tasks.¹⁶ AR, exh. 13, Total Estimated Base Year Cost Spreadsheet, at 1-2. Except for the brief explanatory notes accompanying the sixth and seventh spreadsheets, the contemporaneous record does not include any narrative explanation of the conclusions the agency may have reached in its price evaluation.¹⁷

Although the record suggests that HUD evaluated price reasonableness by comparing offerors' CLIN prices to each other and to an IGCE, nothing in the record shows that the agency calculated total evaluated prices to include all option periods, as required by the RFP. Where, as here, a solicitation contains FAR provision 52.217-5, the agency must evaluate all option year pricing unless the agency finds that funds will not be available. See Marshall Co., Ltd., B-311196, Apr. 23, 2008, 2008 CPD ¶ 78 at 2 n.2; Building Constr. Enters., Inc., B-294784, Dec. 20, 2004, 2004 ¶ 251 at 2 (absent showing that there is reasonable certainty that funds will not be available, an agency must evaluate option prices where the solicitation provides for their evaluation). Here, HUD has not provided any documentation or statement from the SSA (or anyone else) evidencing any contemporaneous consideration of option year pricing. Moreover, nothing in the record suggests that the agency evaluated CLIN or option year prices for price

¹⁵ As indicated above, all of the spreadsheets are based on the revised schedule and CLIN structure in the agency's request for revised price proposals. See AR, exhs. 11-13, Price Eval. Spreadsheets; supra n.11.

¹⁶ The seventh spreadsheet does not reference an IGCE. HUD did not provide a copy of the IGCE.

¹⁷ HUD also provided the price evaluator's three pages of personal notes, but states that those notes "are not part of the Agency's official source selection decision, but may be considered as part of the entire price evaluation record." Agency Supp. Document Production Letter, at 2; see Price Evaluator's Statement, at 1-2. The evaluator's notes variously state that most of the offerors' CLIN prices are "grossly" underestimated, overestimated, or over-priced, but nothing in the record or in her notes explains if or how such concerns were addressed. See id.

unbalancing.¹⁸ Furthermore, nothing in the record indicates that the agency evaluated offerors' cost/price estimates.¹⁹

In short, the record is devoid of any contemporaneous documentation whatsoever showing that the agency evaluated the offerors' prices consistent with applicable FAR provisions and the explicit terms of the solicitation. Accordingly, we sustain Verdi's protest of HUD's price evaluation. See Medical Dev. Int'l, Inc., B-402198.2, March 29, 2010, 2011 CPD ¶ 185 at 6-7 (sustaining protest where the source selection decision does not provide any discussion of the proposals' option year pricing, even though the RFP advised offerors that their evaluated price would include base and option period pricing); AI Procurement JVG, supra, at 3-4.

Best-Value Tradeoff

Finally, Verdi contends that HUD failed to perform or document a proper best-value analysis or source selection decision. Protester's Comments at 10. Again, we agree.

In a best-value procurement, such as the one here, it is the function of the SSA to perform a tradeoff between price and non-price factors to determine whether one proposal's superiority under the non-price factors is worth a higher price. System Eng'g Int'l, Inc., B-402754, July 20, 2010, 2010 CPD ¶ 167 at 4. Even where, as here, price is stated to be of less importance than the non-price factors, an agency must meaningfully consider cost (or price) to the government in making its selection decision. Id. at 5. An agency that fails to adequately document its source selection decision bears the risk that our Office may be unable to determine whether the decision was proper. Johnson Controls World Servs., Inc., B-289942, B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6.

Here, the following is the extent of the SSA's documented price/technical tradeoff:

While [Offeror No. 1's] Technical Proposal was ranked higher, the organization's price proposal is more than three times the total price

¹⁸ Indeed, the evaluation of price unbalancing necessarily entails evaluating option year pricing to determine whether the offeror's pricing structure is reasonably related to the actual costs to be incurred in each year of the contract. See, e.g., Eastex Maritime, Inc., B-256164, May 19, 1994, 94-1 CPD ¶ 340 at 3.

¹⁹ Contrary to Verdi's suggestion, the RFP did not contemplate, and nothing in the contemporaneous record indicates, that HUD performed a price realism analysis. See 2nd Supp. Protest at 1-3. Specifically, the solicitation did not contain an express provision for a price realism analysis, nor did it advise offerors that their proposals could be rejected on the basis of low prices. See RFP amend. 1, § M, at 114. Accordingly, a price realism analysis was neither required nor permitted. See ERIMAX, Inc., B-410682, Jan. 22, 2015, 2015 CPD ¶ 92 at 7-8; DynCorp Int'l LLC, B-407762.3, June 7, 2013, 2013 CPD ¶ 160 at 9.

of Falcon. Specifically, the firm priced CLIN 0003 over \$813k (Base Year total price), which is 16,811.74% higher than Falcon, and 717.54% higher than the next highest priced offeror, which is not sufficiently supported by [Offeror No. 1's] Technical Proposal, Schedule A and Schedule B.

AR, exh. 3a, SSD, at 2. The contemporaneous record lacks any other documentation of a price/technical tradeoff analysis.

On its face, this two-sentence source selection decision is not only inadequate as a best-value tradeoff, but reflects that the SSA considered only base year pricing contrary to the terms of the solicitation.²⁰ More importantly however, because we find that the agency's price evaluation and the evaluation of Verdi's past performance were unreasonable and fundamentally flawed, as discussed above, the agency's reliance (if any) on those evaluation judgments as part of its best-value tradeoff, is also flawed.²¹ We have no basis--and we decline the agency's invitation--to speculate about how the SSA would have viewed the relative merits of Verdi's and Falcon's proposal in light of a new, reasonable past performance and price evaluation. Accordingly, we also sustain Verdi's protest on this basis. See Medical Dev. Int'l, Inc., *supra*, at 7; Supreme Foodservice GmbH, B-405400.3 *et al.*, Oct. 11, 2012, 2012 CPD ¶ 292 at 10-14 (sustaining protest where the record does not permit meaningful review of whether the agency's evaluation was reasonable or the precise effect that the flaws in the evaluation had on the SSA's price/technical tradeoff).

RECOMMENDATION

We recommend that HUD reevaluate Verdi's past performance, and all of the offerors' price proposals, in a manner that is consistent with the RFP and this decision. If necessary, the agency should conduct discussions and obtain revised price proposals. The agency should adequately document its reevaluations and upon completion of the reevaluations, perform and document a new price/technical tradeoff analysis, including the rationale for any tradeoffs made. If Falcon's proposal is not found to represent the best value to the government, the agency should terminate the contract and task order and make a new award to the offeror representing the best value to the government.

We also recommend that Verdi be reimbursed the reasonable costs of filing and pursuing the protest, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1). The protester's certified claim for such costs, detailing the time

²⁰ HUD, in response to our request, confirmed that it had provided all documentation of its price evaluation and source selection decision and best-value analysis. 2nd Supp. MOL at 6.

²¹ As stated above, HUD did not perform a new cost/technical tradeoff or prepare a new source selection decision document after taking corrective action.

expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Susan A. Poling
General Counsel