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Decision

Matter of: Symtech Corporation

File: B-285358

Date: August 21, 2000

James P. Gallatin, Esq., Leigh T. Hansson, Esq., and Jeffrey S. Robinette, Esq., Reed Smith Shaw & McClay, for the protester.
Vincent A. Salgado, Esq., and Chauncey C. Williams, Esq., National Aeronautics and Space Administration, for the agency.
Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Allegation that agency improperly evaluated proposals is denied where the record shows that the agency evaluated the proposals in accordance with the evaluation factors announced in the solicitation and, except for disagreeing with the evaluators' individual ratings, protester does not challenge or otherwise provide any evidence showing that the evaluation team's consensus ratings were not reasonable.
2. Protester's contention that agency improperly evaluated its past performance because it excluded two references the firm submitted with its proposal is denied, where the agency reasonably excluded the references for contracts that were not directly relevant to the procurement; the record shows that the agency evaluated proposals in accordance with the criteria announced in the solicitation; and the record reasonably supports the overall rating assigned the protester's proposal in this area.
3. Allegation that contracting agency should have rejected awardee's proposal as unacceptable because it shows that the firm does not intend to comply with the solicitation's limitation on subcontracting clause is denied where the awardee did not take exception in its offer to the subcontracting limitation provision, and the agency reasonably determined that the awardee will spend at least 50 percent of the cost of contract performance for personnel for its own employees.

DECISION

Symtech Corporation protests the award of a contract to Infinity Technology, Inc. under request for offers (RFO) No. 4-99001, issued by the National Aeronautics and Space Administration (NASA), Dryden Flight Research Center (DFRC), for technical and administrative support services. Symtech contends that the agency improperly evaluated technical proposals, its past performance, and price. The protester also argues that the selection of Infinity's proposal was improper because the awardee's offer indicated that the firm would not comply with the mandatory "Limitations on Subcontracting" clause in the RFO.

We deny the protest.

BACKGROUND

The RFO was issued on January 14, 2000, and was restricted to firms certified under the Small Business Administration's section 8(a) set-aside program. RFO at 1. The RFO contemplated the award of a fixed-price contract with some indefinite-delivery, indefinite-quantity (ID/IQ) provisions for a phase-in period and a basic 2-year period with one 3-year option period, which could be extended in 1-year increments, up to an additional 5 years. RFO, Description/Work Statement/Specification, at 3-4; and ¶ F, Award Term, at 6. The services to be obtained on a fixed-price basis include the following seven functional areas: administrative office support, resources management, financial management, acquisition management, research library, technical publications, and reproduction center. In addition to those services, integrated financial management program (IFMP) support is to be procured as an ID/IQ item. RFO at 3-7; Contracting Officer's (CO) Statement of Facts, June 2, 2000, at 2.

The RFO stated that while the following evaluation factors were essentially equal in importance, they were listed in "slightly descending" order of importance: technical approach and personnel, relevant experience and past performance, and price. RFO § 52.212-2 Evaluation--Commercial Items (Jan. 1999), at 41. The RFO also stated that the technical approach and past performance areas were significantly more important than price. *Id.* Award was to be made to the responsible offeror whose proposal was deemed most advantageous to the government.

Eighteen firms, including the protester and the awardee, responded to the RFO by the time set on March 14 for receipt of initial proposals. Individual experts then independently rated the technical proposals by evaluating them under each of the functional areas within their respective area of expertise. These experts assigned numerical and adjectival ratings for each area, and identified major and minor strengths and weaknesses for each proposal. For each offeror, the agency separately evaluated relevant experience and past performance based on questionnaires

completed by the offerors' references. The agency also evaluated price in terms of relative ranking when compared with other offers, and reasonableness.

After the functional-area experts individually rated proposals, and past performance and price were evaluated, an evaluation team, referred to in the record as the "buying team," then discussed the findings and reached a consensus overall adjectival rating for each proposal under the evaluation areas ranging from poor to excellent, with the following results for the three firms whose proposals earned the most favorable ratings:

	Technical	Past Perf.	Price/Rating
Infinity	Very Good	Excellent	\$13,638,885/Good
Symtech	Good	Very Good	13,424,708/Very Good
Offeror C	Good	Fair	12,863,171/Good

CO's Statement of Facts, *supra*, at 5, 7; Agency Report (AR) exh. J-8, Memorandum for the Record, Midrange Buying Team, Apr. 24, 2000, at 4-9.

The lead buying team member, who was designated as the source selection official (SSO) for this procurement, reviewed the evaluation results and concluded that Infinity's proposal was most advantageous to the government. Specifically, the SSO found that the relatively high number of strengths identified in Infinity's proposal provided confidence that the firm clearly understood the RFO's requirements. The SSO further found that based on the agency's analysis of Infinity's price, proposed incumbent personnel would be retained and adequately compensated. Based on this review, the SSO selected Infinity for award. AR exh. J-9, Memorandum for the Record from A/Lead, Buying Team Member, May 1, 2000, at 1. This protest followed a debriefing by the agency.

PROTESTER'S CONTENTIONS

Symtech argues that the agency's evaluation of technical proposals was flawed. The protester also claims that the evaluators applied unstated evaluation criteria and failed to disclose subfactors that the SSO considered "critical" in his source selection decision. Symtech further contends that the agency conducted an unreasonable past performance evaluation. The protester also alleges that award to Infinity was improper because its offer indicated that the firm would not comply with the RFO's mandatory "Limitations on Subcontracting" clause, and challenges NASA's price reasonableness determination.¹

¹ In its protest, Symtech also argued that NASA had improperly denied the firm a post-award debriefing, failed to conduct discussions with Symtech, and held improper discussions with the awardee. The agency responded to these allegations in its report, and the protester does not take issue with the agency's position.

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DISCUSSION

Technical Approach and Personnel

With respect to the evaluation of technical proposals, Symtech's arguments focus primarily on the different numerical and adjectival ratings assigned its own and Infinity's proposals by the individual functional-area experts under the various areas evaluated. For example, Symtech contends that the functional-area evaluators used an inconsistent evaluation methodology which, according to Symtech, resulted in arbitrary scoring of proposals and reflected a lack of uniformity among the evaluators. Except for its numerous complaints about the different numerical scores and adjectival ratings assigned the proposals by the individual functional-area experts, however, Symtech does not challenge any of the specific major and minor strengths or weaknesses the evaluators identified in the proposals as reflected in the buying team's final consensus report.

The evaluation of technical proposals, including the evaluation of past performance, is a matter within the contracting agency's discretion, since the agency is responsible for defining its needs and the best method of accommodating them. Federal Envtl. Servs., Inc., B-260289, B-260490, May 24, 1995, 95-1 CPD ¶ 261 at 3. In reviewing an agency's technical evaluation, we will not reevaluate the proposals, but will examine the record of the evaluation to ensure that it was reasonable and in accordance with the stated evaluation criteria. Id. Technical evaluators have considerable latitude in assigning ratings which reflect their subjective judgments of a proposal's relative merits. I.S. Grupe, Inc., B-278839, Mar. 20, 1998, 98-1 CPD ¶ 86 at 5. Evaluators may have different judgments as to a proposal's merits, and one evaluator's scoring is not unreasonable merely because it is based on judgments different from those of other evaluators. Arsenault Acquisition Corp.; East Mulberry, LLC, B-276959, B-276959.2, Aug. 12, 1997, 97-2 CPD ¶ 74 at 4. Our review of the record shows that Symtech's allegations focus mainly on its disagreement with the functional-area experts' individual notes and ratings, which necessarily reflect their subjective judgments of the relative merits of the proposals. As explained in greater detail below, the buying team's consensus report confirms that the evaluation was reasonable and consistent with the RFO's stated criteria.

Under the technical approach and personnel factor, the RFO stated as follows:

This factor will be used to evaluate the technical approach to performing technical services and to evaluate the offeror's approach to managing the required services in an efficient and cost-effective

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Accordingly, we consider these issues abandoned. See Rockwell Int'l Corp., B-261953.2, B-261953.6, Nov. 22, 1995, 96-1 CPD ¶ 34 at 12 n.14.

manner, including all necessary labor (key personnel and staffing), management, material, and equipment directly related to this requirement. The Government will evaluate the offeror's plans for avoiding personal services, assuring safety and health, and managing the quality, resource utilization, and ISO 9000 compliance requirements of this contract.

RFO § 52.212-2, Evaluation--Commercial Items, at 41.

As already explained, the functional-area experts independently evaluated proposals for each of their respective areas of expertise under this factor, and identified major and minor strengths and weaknesses for each proposal. The buying team then reviewed the experts' findings and reached a consensus on the strengths and weaknesses for each firm. For Symtech's proposal, the team identified two major strengths and one minor strength, and three minor weaknesses. Specifically, the team concluded that Symtech had demonstrated a [DELETED]. AR exh. J-8, Memorandum for the Record, Midrange Buying Team, *supra*, at 4. The team also found Symtech's proposed [DELETED], which was considered a major strength. In addition, the team concluded that Symtech's [DELETED] was a minor strength. The team noted three minor weaknesses in this area, however. In particular, the team found that in some areas, Symtech's proposed [DELETED] were deficient and that Symtech's proposed [DELETED]. In addition, the team concluded that Symtech had not clearly demonstrated its understanding of [DELETED]. The team further found that Symtech's discussion in the [DELETED] area was too general, lacking in both process and procedures. Based on these findings, the team assigned an overall rating of "good" to Symtech's proposal under this factor.

By contrast, the team identified four major and several minor strengths in Infinity's proposal. For example, the team found that [DELETED]. The evaluators further concluded that the firm's proposed [DELETED] would result in an excellent appreciation of the DFRC environment, which was considered a major strength. The team also found that Infinity's proposed [DELETED] areas were highly qualified for their respective positions. The team further noted as major strengths, [DELETED]. The team also considered the following four additional features of Infinity's proposal to be minor strengths: Infinity's [DELETED]. The team also identified three minor weaknesses in Infinity's proposal primarily related to its [DELETED]. In view of the four major and several minor strengths, the team assigned Infinity's proposal an overall rating of "very good" under this factor.

In sum, the record shows that the team identified two major strengths and one minor strength in Symtech's proposal, while it identified four major and several minor strengths in Infinity's proposal, which earned Infinity's proposal a slightly higher rating under this factor. The record further reveals that the evaluation team identified an equal number of minor weaknesses in the firms' proposals. Given that Symtech has provided no specific argument or evidence showing that the team's

consensus ratings were arbitrary or otherwise unreasonable with respect to the evaluation of either firm's proposal under this factor, there is no basis to question the team's consensus ratings in this area.

Symtech also argues that the evaluators applied unstated evaluation criteria. In this connection, the protester alleges that NASA failed to inform offerors that certain functional areas were deemed "critical" and were therefore considered more important in the evaluation relative to the other functional areas. Symtech's argument is without merit.

In support of its position, the protester relies on a document drafted and submitted to our Office in response to the protest, in which the SSO explains in detail the basis for the selection decision. In that document, the SSO summarizes the evaluation process, including the buying team's findings, and highlights the discriminators which led to his selection decision. Specifically, the SSO states that he found Infinity's [DELETED]. AR exh. J-9, Source Selection Statement Addendum, May 19, 2000, at 1. The SSO goes on to explain that he considered Infinity's [DELETED]. *Id.* Contrary to the protester's arguments, there is no evidence in the record that NASA's functional-area experts considered any of the service areas "critical" to this requirement. Rather, the record shows that in his cost/technical tradeoff analysis, the SSO carefully considered the basis of the several major strengths the evaluators had identified in Infinity's proposal, and concluded based on his reasoned analysis that they served as discriminators between Symtech's and Infinity's proposals. See F2M-WSCI, B-278281, Jan. 14, 1998, 98-1 CPD ¶ 16 at 7-8; Israel Aircraft Indus., Ltd., MATA Helicopters Div., B-274389 *et al.*, Dec. 6, 1996, 97-1 CPD ¶ 41 at 7. We see no basis to object to the SSO's approach in this regard.

Symtech also argues that the evaluation conducted by the functional-area experts does not adequately support the consensus ratings. In this regard, the protester contends that the evaluators' handwritten notes do not reflect a structured effort or approach to the evaluation and in some cases are illegible, and complains that the major strengths and weaknesses identified in the buying team's consensus ratings report are not traceable to the individual evaluators' ratings.

Although the functional-area experts apparently did not use the same standard worksheet on which to record their individual evaluations, that does not mean that the evaluation lacked structure or that the buying team's consensus ratings lack adequate support. As for the evaluation approach, the record shows that by letter dated March 14, 2000, the contracting officer provided the functional-area experts with specific instructions and questions they were to consider in evaluating proposals within their area of expertise. Some of the areas the evaluators were specifically instructed to consider included sufficiency of staffing, labor categories, proposed approach, phase-in plan, managing the effort, and key personnel, to name a few. Evaluators were also instructed to identify major and minor strengths or

weaknesses in their respective area of expertise and assign an overall numerical score ranging from 0 to 100. AR exh. J-7.

Following those instructions, each functional-area expert then recorded his or her handwritten notes in response to the items to be considered, made other observations regarding major strengths or weaknesses in the proposals, and assigned numerical ratings to the proposals. In addition to handwritten notes, some evaluators also generated their own typewritten forms which they used to record their findings and numerical ratings. Based on their individual findings, the functional-area experts then met to discuss the relative strengths and weaknesses of proposals and arrived at consensus adjectival ratings for each. The record shows that for each proposal, the buying team identified major strengths and weaknesses under the technical approach and personnel factor, and provided a narrative explanation for their overall adjectival ratings. AR exh. J-8. Using a similar approach for each proposal, the buying team summarized each offeror's past performance and experience in support of the overall adjectival ratings assigned under this area.

The fact that, as Symtech points out, the evaluators' individual numerical scores may differ from the final consensus ratings, by itself, does not warrant questioning the final consensus ratings. Agency evaluators may meet to discuss the relative strengths and weaknesses of proposals, as was done here, in order to reach a consensus rating, which often differs from the ratings given by individual evaluators, since such discussions generally operate to correct mistakes or misperceptions that may have occurred in the initial evaluation. Resource Applications, Inc., B-274943.3, Mar. 5, 1997, 97-1 CPD ¶ 137 at 5. The overriding concern in the evaluation process is that the final scores assigned reasonably reflect the actual merits of the proposals, and not that they be mechanically traceable back to the scores initially given by the individual evaluators. Dragon Servs., Inc., B-255354, Feb. 25, 1994, 94-1 CPD ¶ 151 at 11. Here, as explained above, we think that the buying team's consensus ratings report reasonably reflects the relative strengths and weaknesses of the proposals, provide sufficient information about the actual merits of the proposals for the SSO to reach an informed decision, and reasonably support the overall ratings assigned the proposals.²

² To the extent that the protester argues that not all buying team members evaluated Symtech's proposal, there is no requirement that a minimum number of evaluators be on an evaluation team. In any event, we view the composition of a technical evaluation panel to be within the discretion of the contracting agency. In the absence of evidence of bad faith, conflict of interest, or actual bias, we have no reason to question the composition of an evaluation panel. Alcan Envtl., Inc., B-275859.2, Apr. 11, 1997, 97-1 CPD ¶ 139 at 6; Delta Ventures, B-238655, June 25, 1990, 90-1 CPD ¶ 588 at 3-4; Johns Hopkins Univ., B-233384, Mar. 6, 1989, 89-1 CPD

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Relevant Experience and Past Performance Evaluation

Symtech argues that NASA's past performance evaluation was unreasonable. In particular, the protester alleges that the agency arbitrarily excluded two of the six references it had provided because they were deemed irrelevant to this procurement. Symtech also generally complains about the methodology the agency used to obtain past performance information from its references. The protester further contends that the agency's approach improperly penalized offerors found to have "no experience" in some of the functional areas.

Under this factor, the RFO stated that the agency would evaluate information related to prime and subcontractor performance on programs with both government and private industry. RFO § 52.212-2, Evaluation--Commercial Items, at 41. In order to facilitate the evaluation of proposals under this factor, offerors were instructed to describe their relevant experience accomplishing work directly related in technical complexity to the present procurement, including programs or projects which include technical, cost, schedule, and management elements "directly related" to those expected to be encountered in accomplishing the objectives of the instant procurement. RFO Addendum to § 52.212-1, Instructions to Offerors -- Commercial Items, ¶ E, Technical Proposal Preparation Instructions, at 38. In addition, offerors were instructed to provide prime and any first tier subcontractor references for up to 10 contracts performed within the last 5 years which reflect the offerors' ability to perform the required services. Id.

The agency explains that the buying team determined the relevance of the referenced contracts to this procurement based on the contract description provided by the offerors in their proposals. The agency then sent past performance questionnaires to those references considered relevant to this procurement. The questionnaires requested respondents to complete a form by rating each offeror's performance with an adjectival rating ranging from "poor" to "excellent" or "no experience" on each of the seven functional areas covered by the RFO, and to provide any general comments concerning the offeror's performance. A member of the buying team then prepared a summary of the responses for each offeror, characterizing prior performance under the applicable functional areas.

Of the six references Symtech submitted with its proposal, the agency forwarded questionnaires to four references, two for contracts performed by Symtech itself and two by its proposed subcontractor Woodside Summit Group (WSG). The remaining two references were not considered because the buying team concluded that those contracts had little relevance to the instant procurement. The contracts involved

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¶ 240 at 7. Symtech does not argue, and there is no evidence in the record, of actual bias, conflict of interest, or bad faith, on the part of the buying team.

were for maintenance of computer-aided drafting systems for the Coast Guard and multi-mission helicopter integrated logistics support for the Navy.

The completed questionnaires for the two contracts performed by Symtech's subcontractor WSG show that for four of the seven functional areas (administrative office services, resources management office service, financial management office services, and acquisition management, the references rated WSG's performance "very good" or "excellent." With respect to the contracts performed by Symtech, one of the two references rated the firm's performance "fair" for the administrative office service functional area, and indicated "no experience" for the remaining functional areas. AR exh. D-2. The reference for the second Symtech contract commented that the referenced contract was for mathematical, analytical, statistical, scientific, and technical support of various theoretical and experimental programs, and that the seven functional areas listed in the questionnaire were not included in the contract. Id. Based on the questionnaire responses, the team assigned an overall rating of "very good" to Symtech's proposal under this factor.

Symtech objects to the agency's past performance evaluation because the agency did not forward past performance questionnaires to all of the references Symtech submitted with its proposal. Symtech also objects to the questions themselves, arguing that they improperly asked for ratings only with regard to the seven specific functional areas, without also asking more generally about the management elements, or skills, of the offerors that might be relevant to the work called for under the RFP.

Where, as here, a solicitation requires the evaluation of offerors' past performance, an agency has discretion to determine the scope of the offerors' performance histories to be considered, provided all proposals are evaluated on the same basis and consistent with the solicitation requirements. Federal Envtl. Servs., Inc., B-250135.4, May 24, 1993, 93-1 CPD ¶ 398 at 12. Notwithstanding the protester's assertions to the contrary, we see nothing unreasonable in the agency's manner of assessing Symtech's past performance.

While the RFP requested a maximum of 10 references relevant to this procurement, it did not specify the number of references that the agency would contact for purposes of the evaluation. Of the six references Symtech provided, the agency reasonably determined that two were for contracts or projects which had little or no relevance to the current requirement—the ones for computer-aided drafting and multi-mission helicopter integrated logistics support. In view of the RFO's specific instructions for offerors to describe their relevant experience accomplishing work directly related to the instant procurement, Symtech should have realized that references for contracts or projects having little or no relevance to this procurement might not be considered. In any event, there is no requirement that an agency contact all of an offeror's references. IGIT, Inc., B-275299.2, June 23, 1997, 97-2 CPD ¶ 7 at 6. To the extent that Symtech challenges the questions themselves, we see

nothing unreasonable about NASA seeking information about the offerors' performance on other contracts relative to the seven functional areas covered by this requirement; moreover, the agency submitted identical questionnaires to all offerors' relevant references. Based on our review of the evaluation record, we see no basis to conclude that Symtech was improperly evaluated, or that Symtech was otherwise prejudiced as a result of the past performance evaluation methodology NASA applied here.

The protester also contends that the agency improperly failed to reconcile an apparent discrepancy in the past performance information it obtained about one of Symtech's contracts. As relevant here, the record shows that the reference for a contract performed by Symtech for NASA rated its performance in one functional area--administrative office services--as fair. Symtech points out, however, that its proposal shows that for that contract, it received an outstanding performance award from NASA. Although it appears that NASA evaluators did not attempt to resolve this apparent inconsistency, the protester was not prejudiced as a result. Even assuming that NASA had adjusted the fair rating to reflect the outstanding performance award Symtech received for that one contract, based on the other references' qualitative ratings, discussed in detail above, there is no reason to conclude that its proposal's rating of "very good" overall in the past performance area would have improved to the next higher level of "excellent."

Symtech also argues that the agency's rating methodology improperly penalized offerors with a higher number of "no experience" ratings in the seven functional areas. In this regard, the protester maintains that by merely tallying the responses to the past performance questionnaires NASA sent to offerors' references, the agency placed at a disadvantage those offerors whose references indicated that they had "no experience" with the offeror in a particular functional area. Symtech maintains that under the agency's approach, for example, if one offeror received favorable qualitative past performance ratings, and another offeror received primarily ratings of "no experience," the offeror with the qualitative ratings would earn an overall higher past performance rating.

Federal Acquisition Regulation (FAR) § 15.305(a)(2)(iv) provides that, for past performance evaluations, in the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror may not be evaluated favorably or unfavorably on past performance. Contrary to Symtech's argument, there is no evidence that the agency penalized offerors for whom a reference indicated "no experience." What the record shows is that rather than merely tallying the number of qualitative ratings to mechanically arrive at a final rating, as Symtech contends, the evaluators considered all of the responses obtained, including qualitative adjectival ratings; noted where a reference indicated it had "no experience" with respect to a particular functional area; summarized all of the responses in the buying team's report, including any awards earned; and assigned an overall past performance rating to each proposal based on

those summaries. The record further shows that even though Symtech's references indicated they had "no experience" with the protester in several of the functional areas, the agency reasonably concluded that based on the qualitative responses NASA did obtain and awards noted, the protester's proposal warranted a "very good" rating overall in this area. Where a reference indicated that it had "no experience" with the offeror on a particular functional area, the response was treated as tantamount to a neutral rating in that area, which, consistent with the FAR, the evaluators considered neither favorably nor unfavorably in the overall assessment. Accordingly, we see nothing unreasonable about the methodology the agency used to evaluate the offerors' past performance.

Alleged Reliance on Subcontractor

The RFO incorporated by reference the "Limitations on Subcontracting" clause set forth at FAR § 52.219-14, required for all solicitations reserved for exclusive small business participation, pursuant to the requirements of 15 U.S.C. § 644(o)(1) (1994). The clause provides that:

(b) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for--

(1) Services (except construction). At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.

This requirement exists to prevent small business concerns from subcontracting to large businesses the bulk of a contract reserved for small business participation. Ann Riley & Assocs., Ltd., B-271741.2, Aug. 7, 1996, 97-1 CPD ¶ 120 at 3.

Symtech asserts that selection of the awardee's proposal was improper because Infinity's proposal indicated that it would staff more than 50 percent of the personnel needed to perform the work with subcontractor employees in contravention of the clause. In support of its position, Symtech asserts that the awardee's proposal shows that Infinity intends to staff the contract with [DELETED] of its own employees, while relying on its subcontractor to provide [DELETED] employees to perform the contract. In supplemental comments, the protester contends that with respect to personnel costs, the three highest hourly rates in the awardee's proposal are in areas that Infinity proposes to staff with subcontractor employees. Protester's Supplemental Comments, July 7, 2000, at 5. Symtech also points to a buying team's observation that

[t]he Infinity offer reflects the possibility that, as the qualified 8(a) prime, they may not be performing at least 50% of the effort as required by the contract clause at [FAR §] 52.219-14 "Limitation[s] [on]

Subcontracting.” While this perception can not be verified until after award (and incurrence of “costs”), if selected Infinity will be reminded to abide by the clause requirement.

AR exh. J-8, at 11. As such, Symtech asserts that the agency’s determination that Infinity’s proposal was acceptable, was unreasonable.

As a general matter, an agency’s judgment as to whether a small business offeror will comply with the subcontracting limitation is a matter of responsibility, and the contractor’s actual compliance with the provision is a matter of contract administration. Corvac, Inc., B-254757, Jan. 11, 1994, 94-1 CPD ¶ 14 at 4; American Bristol Indus., Inc., B-249108.2, Oct. 22, 1992, 92-2 CPD ¶ 268 at 5; Little Susitna, Inc., B-244228, July 1, 1991, 91-2 CPD ¶ 6 at 3. However, where, as here, a protester alleges that an offer or bid indicates that the offeror or bidder will not comply with the subcontracting limitation, we will consider the matter. See, e.g., National Med. Staffing, Inc.; PRS Consultants, Inc., B-238694, B-238694.2, June 4, 1990, 90-1 CPD ¶ 530 at 4 (proposal indicating noncompliance with the subcontracting limitation should have been rejected as technically unacceptable).

As the agency correctly points out, contrary to Symtech’s assertion, compliance with the referenced provision is measured in terms of the cost of contract performance for personnel expended by the awardee, and not simply on a numerical comparison of staffing levels. FAR § 52.219-14(b)(1). Thus, Symtech’s mere comparison of the number of Infinity employees with its subcontractor’s does not show noncompliance with the clause. Further, the agency points out that upon closer scrutiny in response to this allegation, Infinity’s staffing plan reveals that all program management positions and virtually all administrative positions, with higher salaries, will be staffed by Infinity employees. By contrast, the agency explains that except for five employees, the positions staffed by Infinity’s subcontractor will be assigned support staff functions, which are among the lowest salaried positions. In addition, the agency points out that Infinity proposed an additional [DELETED] of its own employees to staff the ID/IQ function, which will increase the costs of Infinity personnel.

Notwithstanding the fact that Infinity’s staffing plan shows [DELETED] than its subcontractor for all functions (other than those staffing the ID/IQ function) and slightly higher hourly rates for some areas covered by Infinity’s subcontractor, NASA states that based on its analysis, it expects that Infinity’s total cost of performance will exceed 50 percent of the cost of contract performance for personnel. In any event, the record shows that the evaluators noted that this issue was not entirely verifiable prior to award, and that NASA will ensure Infinity’s compliance with the subcontracting limitation provision. Further, based on our review of Infinity’s proposal, there is nothing to suggest that the firm took exception to the subcontracting limitation provision. Given that an agency is permitted wide discretion in this area, and in light of the agency’s explanation in response to this

allegation, we see no basis to conclude that NASA abused its discretion in selecting Infinity's proposal for award.

Price Evaluation

Symtech argues that, in its price evaluation, NASA improperly considered [DELETED]. The evaluation at issue, while referred to in the record as a price reasonableness evaluation, was actually an effort to see if offerors were proposing adequate compensation, because of concern about the impact that low compensation could have on staff morale or retention. AR exh. J-8, Memorandum for the Record, Midrange Buying Team, supra, at 10. In that evaluation, the agency compared the offerors' proposed rates in eight labor categories to the rates paid under the two incumbent contracts, one of which was being performed by Symtech's proposed subcontractor, WSG. The evaluators noted whether the offerors' proposed rates were above or below the incumbent's rates for each of the eight labor categories, with "above" ratings apparently good, since they suggested a positive impact on staff morale and retention. Infinity was evaluated as proposing [DELETED] categories above the incumbent's rates and [DELETED] below; Symtech was scored as [DELETED] above and [DELETED] below.

Symtech focuses on the fact that, for [DELETED] labor categories, the agency did not use the incumbent's rates as the benchmarks leading to these evaluations. For those [DELETED] labor categories, for whom WSG was the incumbent, the agency determined that the incumbent rates were "vastly inflated," and the agency therefore developed, for those three categories, benchmarks that were lower than the incumbent's rates. Id. According to Symtech, the only reason that the agency deviated from the incumbent's rate was that the agency personnel [DELETED].

While the agency provides a different explanation of why it used lower benchmarks for the [DELETED] labor categories, this issue cannot have prejudiced Symtech and we therefore need not resolve it. Lowering the [DELETED] benchmarks did not affect the offerors' prices (or evaluated prices); it simply meant that both Symtech's and Infinity's rates looked somewhat higher than they would have if compared to a higher benchmark. Since higher rates suggested a positive impact on staff morale and retention, this would have improved (not harmed) the offerors' ratings. In any event, the impact would be comparable for all offerors, so that Symtech was not prejudiced.

The protest is denied

Robert P. Murphy
General Counsel