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United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: URS Federal Services, Inc.

File: B-407114; B-407114.2

Date: November 9, 2012

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DIGEST

Protest of an agency's evaluation and source selection decision is denied where the record shows that the agency reasonably evaluated proposals consistent with the solicitation's evaluation criteria.

DECISION

URS Federal Services, Inc., of Germantown, Maryland, protests the award of a contract to L-3/Army Fleet Support LLC, of Madison, Mississippi, under request for proposals (RFP) No. W58RGZ-11-R-0139, issued by the Department of the Army for aviation maintenance services at Fort Rucker, Alabama. URS challenges the Army's evaluation and source selection decision.

We deny the protest.

BACKGROUND

The solicitation provided for the award of a hybrid cost-plus-incentive-fee (CPIF), cost reimbursement, and fixed-price contract for maintenance and logistics support services for over 590 rotary wing aircraft at Fort Rucker and other locations.[1] The rotary aircraft to be supported included, for example, the Apache, Kiowa, Black Hawk, and Chinook aircraft, which the contractor would prepare for flight, inspect, repair, and return to fully mission-capable status. See RFP, attach. 3, Assigned Aircraft; see also RFP, attach. 1, Army's Performance Work Statement.

Offerors were informed that award would be made on a best-value basis, considering the following three evaluation factors: mission capability; cost/price; and past performance. The mission capability factor was stated to be significantly more important than cost/price, and cost/price was stated to be slightly more important than the past performance factor. The mission capability factor included the following subfactors, listed in descending order of importance: workforce; technical capability; performance management; phase-in; and small business participation plan. Offerors were warned that proposals that received less than an acceptable rating under any mission capability subfactor would not be considered for award. RFP § M-6.

The RFP provided detailed instructions for the submission of proposals and described how proposals would be evaluated under each factor and subfactor. For example, with respect to the workforce subfactor, offerors were instructed to provide, among other things, their proposed manpower methodology, productivity rationale, and staffing by shift and skill classification for each organizational element. See RFP amend. 9, § L-3(c)(i)(a). The RFP provided that the agency's evaluation of proposals under this subfactor would focus on, among other things, the adequacy of the offeror's proposed manpower, workforce composition, process for sustaining trained qualified personnel; and staffing approach for the quality control program. RFP amend. 5, § M-7(B)(1).

With respect to cost/price, offerors were informed that the agency would evaluate the realism of the offerors' proposed costs for the cost-reimbursement portion of the contract and would evaluate the reasonableness of the offeror's proposed fixed prices. The RFP provided that an offeror's total evaluated cost/price would be the agency's most probable cost estimate (including the offeror's proposed target fee) and its proposed fixed prices. RFP amend. 5, § M-7(B)(2).

The Army received proposals from four firms, including L-3 (the incumbent) and URS, which were evaluated by the agency's source selection evaluation board (SSEB). Discussions were conducted with the offerors, and final proposal revisions

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[1] A CPIF contract is a cost-reimbursement contract that provides for an initially negotiated fee to be adjusted by a formula based on the relationship of total allowable costs to total target costs. See Federal Acquisition Regulation (FAR) § 16.405-1. Here, the RFP provided for a 50/50 cost overrun/underrun fee adjustment formula. RFP at I-160.

were received and evaluated. The protester's and awardee's FPRs were evaluated as follows.[2]

		L-3	URS
Mission Capability		Good	Good
	Workforce	Acceptable	Acceptable
	Technical Capability	Good	Outstanding
	Performance Management	Acceptable	Acceptable
	Phase-In	Acceptable	Acceptable
	Small Business Participation	Good	Acceptable
Cost/Price		$2,198,935,219	$2,485,041,398
Past Performance		Very Relevant/ Substantial Confidence	Relevant/ Satisfactory Confidence

See Agency Report (AR), Tab 80, Source Selection Decision, at 3.

The SSEB supported its adjectival ratings with narratives that discussed an offeror's approach, identifying its strengths and weaknesses, under each factor and subfactor. See, e.g., AR, Tab 54, URS Final Mission Capability Evaluation; Tab 68, L-3 Final Mission Capability Evaluation. With respect to the mission capability factor, the SSEB found that, although the firms had differing subfactor ratings, both firms' FPRs merited an overall good rating. In this respect the evaluators concluded that each firm's proposals demonstrated a thorough approach and understanding of the requirements, and contained strengths that outweighed any weaknesses, with a low risk of unsuccessful performance. AR, Tab 54, URS Final Mission Capability Evaluation, at 4; Tab 68, L-3 Final Mission Capability Evaluation, at 15.

The SSEB's evaluation reports were reviewed by the agency's source selection advisory council (SSAC), which conducted a comparative assessment of the merits of the offerors' proposals and prepared a selection recommendation for the source

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[2] As relevant here, a good mission capability factor rating reflected a proposal meeting the RFP's requirements that indicated a thorough approach and understanding and that presented a low risk of unsuccessful performance. An acceptable rating reflected a proposal meeting the requirements that indicated an adequate approach and understanding and that presented no more than a moderate risk of unsuccessful performance. A substantial confidence past performance rating reflected a high expectation based upon an offeror's recent/relevant performance record that the offeror would successfully perform the required work. A satisfactory rating reflected a reasonable expectation of successful performance. AR, Tab 45, Source Selection Plan, at 11, 29-30.

selection authority (SSA). See AR, Tab 82, SSAC Report; Tab 81, SSAC Comparative Analysis. In its comparison of the proposals under the mission capability factor, the SSAC noted that, although the workforce subfactor was the most important, all of the offers received the same acceptable rating. The SSAC concluded that the technical capability and small business participation plan subfactors presented discriminators between the firms' proposals, and compared the firms' various evaluated strengths under these subfactors. AR, Tab 82, SSAC Report, at 35-41.

The SSAC found that URS's proposal presented slightly more merit than L-3's under the technical capability subfactor, based in part on URS's proposal of certain innovative ideas. The SSAC also found, however, that several of URS's proposed innovations posed some risk. Id. at 47. The SSAC found that L-3's proposal presented more merit than URS's under the small business participation plan subfactor, because L-3 presented a greater degree of small business, veteran-owned small business, and service-disabled veteran-owned small business participation and because L-3 had provided copies of enforceable agreements with six of its small business subcontractors. Id. at 41. On balance, the SSAC concluded that the two firms' proposals were substantially equal under the mission capability factor. Id. at 47.

The SSAC also compared the merits of L-3's and URS's evaluated past performance. In this regard, the SSAC noted that L-3 had received a higher substantial confidence past performance rating, which reflected in part L-3's successful performance of the nearly-identical incumbent contract. Id. at 42-43, 46. The SSAC noted that URS's lower satisfactory confidence rating reflected that, although the firm had a satisfactory performance record, the firm had received some marginal performance ratings, which the SSAC cited as a concern. Id. at 44-46.

The SSAC recommended that the contract be awarded to L-3, stating:

> L-3 offers a good technical capability approach that exceeds several areas of the PWS and they have proven they can successfully perform the contract requirements . . . . There is no benefit to paying a higher price for the same level of Mission Capability (Technical) performance and a lesser confidence rating based on past performance. Therefore, the price premium of $286M is not warranted.

Id. at 47.

The SSEB's and SSAC's evaluation and comparative assessment of the firms' proposals were presented to the SSA, who agreed with the SSAC that L-3's proposal offered the best value to the agency. AR, Tab 80, Source Selection Decision, at 11. The SSA prepared a draft of his decision, which was presented to a peer review team, which concluded that the SSEB had adequately documented the evaluation of the FPRs; that the SSAC had prepared a thorough comparative analysis report; and that the SSA's draft decision was well organized and clearly articulated the basis for the best value selection. AR, Tab 75, Peer Review Team Memorandum, July 12, 2012.

The SSA signed his selection decision, and award was made to L-3. This protest followed a debriefing.

DISCUSSION

URS raises numerous objections to the agency's evaluation of proposals and selection decision. Underlying its complaints with respect to the agency's mission capability and past performance evaluation are contentions that URS's proposal should have been more highly rated, and that L-3's proposal should have been lower rated.

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 solicitation's evaluation criteria. Abt Assocs. Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. Where a protester challenges the agency's evaluation and source selection, we will review the evaluation and award decision to determine if they were reasonable, consistent with the solicitation's evaluation scheme, as well as procurement statutes and regulations, and adequately documented. See, e.g., Wackenhut Servs., Inc., B-400240, B-400240.2, Sept. 10, 2008, 2008 CPD ¶ 184 at 6; S4, Inc., B-299817, B-299817.2, Aug. 23, 2007, 2007 CPD ¶ 164 at 9. A protester's disagreement with the agency's evaluation, without more, provides no basis to question the reasonableness of the evaluators' judgments. See Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11.

We have considered all of URS's arguments, and find that none provide a basis to object to the agency's selection of L-3 for award. As we discuss in greater detail below, we find the agency's evaluation of proposals reasonable, and its selection decision unobjectionable.

Mission Capability Factor

URS challenges the agency's evaluation of the firms' proposals under all of the mission capability subfactors, arguing that L-3 should not have received the same overall rating of good as the protester. URS also contends that L-3's overall good rating was not reasonable, because the agency rated the awardee's proposal as good under only two of the five subfactors. In this regard, URS also argues that its proposal should have been viewed as having more technical merit than L-3's proposal under the mission capability factor, given that the SSEB identified a higher number of strengths in URS's proposal, and that these strengths allegedly were "far more comprehensive and represent superior benefits to the Government" than L-3's strengths. URS's Comments and 2nd Supp. Protest at 11-13.

As we explain below in several examples, we find from review of the record that the Army reasonably considered the merits of the firms' proposals under this factor and determined that the proposals were substantially equal. To the extent that URS disagrees with the Army's judgment based upon a mathematical or mechanical consideration of the number of strengths identified in each firm's respective proposal, such an analysis does not show that the agency's judgment was unreasonable. See Wackenhut Servs., Inc., supra, at 7 (rejecting protester's attempt to engage in a mathematical or mechanical comparison of the number of significant strengths in protester's and awardee's proposals). Rather, we review the agency's qualitative findings in connection with its evaluation of proposals--that is, the agency's narratives supporting and justifying the various identified strengths and weaknesses--to determine the reasonableness of the agency's assessment of proposals. Id.

With respect to the workforce subfactor, under which both proposals received acceptable ratings, URS contends that L-3's proposed workforce could not reasonably be considered acceptable, because L-3's staffing level was lower than URS had proposed, and lower than L-3's staffing level under the incumbent contract (which, according to URS, has less requirements than the work solicited here).[3] URS's Comments and 2nd Supp. Protest at 21-23.

As noted above, offerors were informed that the agency's evaluation under this subfactor would focus on, among other things, the adequacy of the offeror's proposed manpower; workforce composition; process for sustaining trained qualified personnel; and staffing approach for the quality control program. See RFP amend. 5, § M-7(B)(1). Here, the contemporaneous evaluation documentation explains the SSEB's review of the merits of L-3's proposed staffing plan, noting one strength and two weaknesses. AR, Tab 68, L-3 Final Mission Capability Evaluation, at 4-6. The SSEB found that L-3 offered a manpower approach and methodology that would satisfy the government's requirements. The SSEB also recognized as a weakness that L-3 proposed to **[deleted]**, noting that although some of the **[deleted]** could be validated based upon L-3's proposed improved productivity, and robust and enhanced training program, some risk remained. Id. at 2, 4. Although

[3] The Army contends that the requirements of L-3's incumbent contract and the RFP here are virtually identical.

URS disagrees with the Army's judgment that L-3's proposal was acceptable under this subfactor, it has not shown that the Army acted unreasonably.[4]

With respect to the technical capability subfactor, under which URS's proposal was rated good and L-3's acceptable, URS contends that its technical superiority under this subfactor was so significant that the Army could not reasonably find the firms' proposals to be equal under the mission capability factor. In this regard, URS notes that its proposal had 3 significant strengths (to L-3's 2) and 28 strengths (to L-3's 14). See URS's Comments and 2nd Supp. Protest at 12-13.

We find no merit to URS's arguments in this regard. Although the record clearly shows that the agency recognized URS's technical superiority under this one subfactor, this did not require the SSEB to find that URS's proposal was superior to L-3's overall under the mission capability factor. Rather, the record amply demonstrates that the evaluators took into account the firms' respective strengths and weaknesses under this factor, but reasonably concluded that the proposals were essentially equal, taking all of the subfactors into account. Although the protester disagrees with this assessment, it does not show the evaluators' judgments to be unreasonable. See Citywide Managing Servs. of Port Washington, Inc., supra, at 10-11.

URS also objects to L-3's higher rating under the small business participation plan, which the protester contends was obtained based upon a material misrepresentation. Specifically, the protester contends that L-3 "misrepresented the status of a clearly large business as small" in order to maximize its rating. URS's Comments and 2nd Supp. Protest at 33. In addition, URS speculates that L-3 "exercised undue control and influence over certain of its key small business subcontractors, resulting in clear affiliation between the entities."[5] Id. at 35. L-3 and

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[4] URS supports its disagreement with the opinion of a consultant, who has provided a declaration that compares L-3's proposed staffing level with that of URS's, even though the two firms have differing technical approaches. See URS's Comments and 2nd Supp. Protest, Attach. 1, Consultant's Declaration. We also find that the consultant's disagreement with the agency's judgment on this issue does not establish that the agency's evaluation was unreasonable.

[5] URS also speculates that L-3 will transfer its own employees to some of the small businesses that will become L-3's key small business subcontractors to allow L-3 to control the employees, their work, and the small businesses. In this regard, URS contends that the evaluators should have been suspicious of L-3's promises and questioned them during discussions. URS's Comments and 2nd Supp. Protest at 35-36. URS's speculations as to L-3's future plans provide no basis to question the agency's evaluation. In this regard, we do not agree that the agency's evaluation was unreasonable because the agency was not "suspicious" of L-3's proposal.

the Army dispute that L-3's proposed small business subcontractors were not small on the date that L-3 submitted its initial proposal.[6] See, e.g., L-3 Supp. Comments at 16; Supp. AR at 13.

We find no merit to this argument. A misrepresentation is material where the agency relied upon it and it likely had a significant impact upon the evaluation. Johnson Controls Sec. Sys., B-296490, B-296490.2, Aug. 29, 2005, 2007 CPD ¶ 102 at 5. Here, URS has neither demonstrated that L-3's small business participation plan was based on a misrepresentation, or that it had a material impact on the evaluation of L-3's proposal. In this regard, as the agency points out that, under the RFP's terms, L-3's proposed small business goals are incorporated into the contract, and L-3 will be bound by its promised level of small business participation.[7] See AR, Tab 82, SSAC Report, at 47; RFP amend. 5, § M-7(B)(1).

Past Performance

URS challenges the agency's ratings of the firms' proposals under the past performance factor, arguing that the Army evaluated URS's and L-3's proposals unequally.

Here, L-3 submitted three contracts to demonstrate its past performance, including the $3.3 billion, 8-year incumbent contract, which the agency found to be very relevant as it is indistinguishable from the current requirement. L-3's other two contracts were also for aircraft maintenance services; these contracts were found to be relevant but not of the same level of complexity, magnitude, and scope as the RFP requirements here. Nearly all of the performance ratings for L-3's performance of these contracts were good to exceptional, with the exception of one marginal rating under the incumbent contract. See AR, Tab 70, L-3 Past Performance Evaluation, at 3. The single marginal rating was for a single month in 2010 where the agency found L-3 had not followed Army technical manuals and procedures,

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[6] L-3 and the Army contend that under the Small Business Administration's regulations size status is measured as of the time a small business subcontractor submits its written representation that it is small to the prime contractor. See 13 C.F.R. § 121.411(a). With respect to one of the small business subcontractors identified by URS in its contentions, L-3 and the Army state that the concern represented to L-3 on October 14, 2011 that it was a small business concern. L-3's Supp. Comments at 13; Supp. AR at 13.

[7] URS also questions the agency's assignment of a strength in L-3's proposal for providing enforceable agreements with six of its small business subcontractors. Although URS disparages L-3's memorandum agreements with these six subcontractors, it does not explain why these agreements do not constitute a proposal strength, other than to complain that they are vague.

resulting in significant maintenance-related incidents. Id. at 2; AR at 9. The agency states that in response to the marginal rating, L-3 submitted a corrective action plan that was accepted by the government, and that L-3 had no further performance problems. AR at 10.

URS disagrees that L-3's past performance merited a substantial confidence rating, arguing that the agency unreasonably ignored the one marginal performance rating given L-3 in 2010. This contention is belied by the record, however, which shows that the agency considered the circumstances of the marginal rating, and concluded that, on balance, L-3's past performance reflected good to outstanding performance. Although URS disagrees with the agency's judgment in this regard, it does not show that the agency's judgment was unreasonable or its evaluation inconsistent with the RFP.

URS also complains that its own past performance merited a higher confidence rating. Here, the agency found that URS presented relevant performance of work of similar size, scope and complexity for which the firm had received mostly acceptable to outstanding ratings. Some marginal ratings were also noted, however, with respect to financial/cost management reporting and utilization of small businesses. See AR, Tab 56, URS Past Performance Evaluation, at 2-3. The Army rated URS's past performance as relevant and of satisfactory confidence. Although URS disagrees with this rating, it has not shown it to be unreasonable.

Cost Realism Analysis

The Army evaluated the realism of proposed costs for the cost-sharing effort through a most-probable cost (MPC) analysis.[8] The RFP describes the MPC as the estimate of the cost of completing the contract using the offeror's technical and management approaches, adjusted by any additional cost to the Government. The RFP also provided a detailed description of the process the agency would use in determining the MPC. RFP amend. 5, § M-7(B)(2). URS challenges the agency's improper evaluation of L-3's proposed costs based upon its argument that the agency unreasonably evaluated L-3's proposed staffing under the workforce subfactor.[9] URS's Comments and 2nd Supp. Protest at 29, 32. As discussed

[8] The fixed-price CLINs were to be evaluated for cost reasonableness. RFP amend. 5, § M-7(B)(2).

[9] In its initial protest, URS argued that the Army had neither performed a cost realism analysis nor determined the MPC for each offer; and that the SSA was unaware that these things had not been done. Protest at 28-29. The record belies these allegations, as it shows the Army analyzed cost realism and conducted an MPC evaluation of each initial and final proposal as required. URS did not pursue this argument in its subsequent pleadings.

above, however, we find no merit to URS's contention that the agency unreasonably accepted L-3's staffing approach and level under that subfactor.

Moreover, the record shows that L-3's approach to performing the work was fully considered in the agency's cost/price evaluation. For example, the evaluators recognized that the cost impact of L-3's plan to **[deleted]**--and, more specifically, on the **[deleted]**. AR, Tab 69, FPR Cost/Price Analysis Report, at 3. L-3's MPC was upwardly adjusted to reflect the additional staffing that the technical evaluation team recommended to account for the risk identified in this area. Id. URS has not shown that the evaluation was unreasonable in this regard.[10]

Selection Decision

Finally, URS also challenges the Army's selection decision, arguing that the Army's selection of L-3 for award reflected nothing more than the Army's "fixation" with L-3's lower price. See, e.g., URS's Comments and 2nd Supp. Protest at 7. There is no merit to this contention. As explained above, the Army found that L-3's and URS's proposals were essentially equal in technical merit under the mission capability factor, but that L-3's past performance was considered superior to URS's. Given this and L-3's $286 million cost/price advantage, the agency concluded that

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[10] URS also argues that L-3 proposed an unreasonably low incentive fee **[deleted]** in its revised proposal, and that the agency "failed to properly analyze the risk introduced by the cost sharing structure where [L-3's] fee was unreasonably low." URS's Comments and 2nd Supp. Protest at 32. L-3 reduced its fee in its revised proposal stating, among other things, that based upon its incumbent experience with controlling costs this presented little risk. See, e.g., AR, Tab 61, L-3 Revised Cost Proposal at 15, 45. While L-3's business judgment that it could forego a larger, or more robust, fee arrangement may, in fact, reduce the "incentives" here, it is not clear that a low fee should have been viewed as creating a risk. We see nothing unreasonable about the agency not assessing a risk in this area.

L-3's proposal reflected the best value to the agency. See AR, Tab 80, Source Selection Decision, at 11. We have no basis to question this judgment.

The protest is denied.

Lynn H. Gibson
General Counsel