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## Decision

**Matter of:** BlueWater Federal Solutions, Inc.

**File:** B-413758

**Date:** December 12, 2016

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Lee Dougherty, Esq., and Katherine A. Straw, Esq., Montgomery Fazzone PLLC, for the protester.

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Young H. Cho, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest challenging exclusion from the competition is denied where the agency reasonably found the protester's total proposed price to be unrealistic in accordance with the terms of the solicitation.

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### DECISION

BlueWater Federal Solutions, Inc. (BlueWater), of Chantilly, Virginia, protests the exclusion of its proposal from further consideration under task order request (TOR) number GSC-QF0B-16-32998, issued by the General Services Administration (GSA), for mission support services for the Joint Improvised-Threat Defeat Agency (JIDA).

We deny the protest.

### BACKGROUND

JIDA is the most recent incarnation of the Joint Improvised Explosive Device Defeat Organization (JIEDDO), which was established in 2006 as a Deputy Secretary of Defense-directed initiative with the mission to rapidly provide solutions to defeat the enemy's improvised threat campaign and save the lives of service members deployed fighting insurgent networks that employ improvised threats as a strategic

weapon of choice. TOR,<sup>1</sup> Section C, Performance Work Statement, at C-1. On March 11, 2015, the Deputy Secretary of Defense directed the establishment of JIEDDO as a defense agency and designated JIEDDO as a combat support agency, aligned under the Under Secretary of Defense for Acquisition, Technology, and Logistics. Id. On April 30, 2015, JIEDDO was renamed as JIDA. Id.

The TOR sought to procure mission support services to support JIDA, by providing subject matter expertise not readily available to the government that would allow government personnel to focus on JIDA's core mission of defeating improvised threats while the contractor support personnel were processing, drafting for government approval, and updating the documentation needed to keep those core functions running smoothly. Id. at C-2. The solicitation provided details for the 16 task areas of performance, 13 of which were considered "mandatory," while the remaining 3 were considered to be optional. Id. at C-3-C-68; see also id., Section B, Supplies or Services and Prices/Costs, at B-2 – B-6.

The TOR was issued by GSA on April 20, 2016, under Federal Acquisition Regulation (FAR) subpart 16.5, to contractors holding GSA's One Acquisition Solution for Integrated Services (OASIS) small business (SB) multiple award indefinite-delivery/indefinite-quantity (IDIQ) – pool 1 contracts. TOR, Cover Page. The solicitation contemplated the issuance of a single cost-plus-award-fee (CPAF) task order with not-to-exceed contract line item numbers for travel, materials and equipment, and other direct costs, with a one-year base period and four one-year option periods. Id., Section B, at B-1-B-6. Award was to be made on a best-value basis considering the following technical factors in descending order of importance, and cost/price: technical approach; management approach; key personnel and project staffing approach; and corporate experience. Id., Section M, Evaluation Factors for Award, at M-1, M-3-M-5. The solicitation stated that the technical factors, when combined, were significantly more important than cost. Id. at M-1, M-3.

The solicitation provided the agency's estimate of the total value of the CPAF portion of the task order, excluding the contract line item numbers (CLINs)<sup>2</sup> for task 16 (additional as-needed support); travel, materials and equipment, and other direct costs; and contract access fee<sup>3</sup> to be between \$133,325,135 and

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<sup>1</sup> The TOR was amended three times. All citations to the TOR are to the final version of the solicitation.

<sup>2</sup> Plug numbers and ceiling prices were provided for these CLINs. See TOR, Section B, B-1-B-6.

<sup>3</sup> GSA's operating costs associated with the management and administration of the OASIS SB contract were to be recovered through a contract access fee, which is 0.1 percent of the total value of the task order. Id. at B-1.

\$140,342,248.<sup>4</sup> Id., Section L, Instructions, Conditions, and Notices to Offerors, at L-3. Of particular relevance here, the solicitation advised offerors that any proposal that was not within the total estimated CPAF “shall include an explanation that specifically draws the [g]overnment’s attention to any unique **technical aspects** of the proposal the offeror would like the [g]overnment to consider as the justification for the deviation from the range.” Id. (emphasis added). This requirement was repeated in Section M, which also warned offerors that “[i]f the explanation does not sufficiently justify being outside the stated range, the price and the [offeror’s]<sup>5</sup> submission will be considered unrealistic or unreasonable and will receive no further consideration.” Id. at M-1-M-2.

[DELETED] offerors including, BlueWater, submitted timely responses to the TOR. AR, Contracting Officer’s Statement of Facts (COS) at 4. A technical evaluation board (TEB) evaluated the technical proposal submissions. See also AR, Tab 55, Draft TEB Consensus Report at 6-7.<sup>6</sup> The contract specialist (CS) and the contracting officer (CO) evaluated the cost/price proposals of offerors, including BlueWater, that received an overall technical rating of acceptable or higher.<sup>7</sup> AR, COS at 5.

BlueWater’s proposed price for the CPAF portion of the task order was \$113,529,987, which it acknowledged, deviated from the range (i.e., \$133,325,135

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<sup>4</sup> The TOR and the record refer to this value as “the range.” The upper end of the range (approximately \$140 million) reflects [DELETED], while the lower end of the range (approximately \$133 million) reflects [DELETED]. Agency Report (AR), COS at 5. See also TOR at L-3.

<sup>5</sup> The TOR uses the term “industry partner.” TOR at M-1. While it is not defined in the record, we understand this term to be synonymous to the term offeror.

<sup>6</sup> The record shows that the TEB reached a consensus on [DELETED], and provided a summary of the ratings to the CO on [DELETED]. See AR, Tab 55, Draft TEB Consensus Report at 3. The agency report submitted to our Office included a draft TEB consensus report, which the agency represented was relied on by the CO. Agency Email Responding to GAO Request for Information. The agency also indicated that the final TEB consensus report was not finalized until after the protest was filed. Id.

<sup>7</sup> The solicitation stated that the agency would evaluate an offeror’s proposal for cost realism and price reasonableness only if the offeror receives an overall technical rating of acceptable or higher. TOR at M-2. Acceptable was defined as “[DELETED]” AR, Tab 44, Proposal Evaluation and Task Order Award Plan (PETOAP) at 9-10. BlueWater’s proposal was assigned an overall acceptable rating. See AR, Tab 54, Summary of Ratings Letter; AR, Tab 55, Draft TEB Consensus Report at 10-11.

to \$140,342,248) by a delta of \$19,795,148 to \$ 26,812,261. AR, Tab 46, BlueWater Part II: Remainder of Written Cost/Price Proposal, at 43.<sup>8</sup> BlueWater's proposal stated that its lower price was "achieved [] by providing the highest quality personnel staffing and an accurate LOE [level of effort] that meets the technical requirements within each [t]ask [a]rea, while maintaining JIDA industry salary levels," and provided its 5-step approach "to achieve full technical competence within [its] proposed solution." Id. at 43-44.

These five steps were to (1) define a tailored technical solution in full alignment with the TOR; (2) select key personnel and assign them as task leads and key positions within each task area; (3) design and build a bottom-up basis of estimate, detailing BlueWater's proposed technical staffing level of effort for performance across every task to the TOR requirements; (4) align BlueWater's level of effort to all its project staffing plan, to provide resources (labor mix) and qualifications for the task requirements; and (5) "leveraging the BlueWater team's capabilities and experience in staffing [top secret/sensitive compartmented Information] qualified personnel," to target each JIDA position within the [project staffing plan] and identify by name [DELETED] percent of the proposed technical personnel (and their related salaries) required to meet or exceed the requirements of the TOR. See AR, Tab 46, BlueWater Part II: Remainder of Written Cost/Price Proposal, at 43-44.

The agency reviewed this explanation, as well as other portions of the offeror's proposal<sup>9</sup> and found that BlueWater's proposal did not sufficiently justify being outside of the range established in the TOR.<sup>10</sup> AR, Tab 56, Range Determination for BlueWater at 1. Specifically, the agency found that BlueWater failed "to present

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<sup>8</sup> The solicitation required that the cost proposal be submitted in two parts. See TOR, Section L, at L-4. The first part was to include "preliminary written cost/price proposal information," such as contract registrations, current forward pricing agreements, management systems, and cost accounting standards notices and certifications. Id. The second part was referred to as the "remainder of the written cost/price proposal," in which the offeror was to include, as relevant here, its cost/price supporting documentation. Id.

<sup>9</sup> The contracting officer explained that in addition to reviewing BlueWater's justification (which essentially referenced the entirety of BlueWater's proposal, including its basis of estimate, proposed staffing plan and key personnel, and overall technical solution), "out of an abundance of caution, [the CO] reviewed BlueWater's entire proposal to discern whether BlueWater proposed any unique technical aspects that would justify its deviation," also taking into consideration the TEB's findings. See AR, COS at 8-9.

<sup>10</sup> During proposal evaluation, the agency discovered that [DELETED]. See AR, Range Determination for BlueWater at 1. As a result, the agency [DELETED]. Id. at 1-2. BlueWater's price was [DELETED]. Id. at 2.

any unique technical aspects that would support any deviation from the range, much less a substantially lower price.” Id. at 4. In this regard, the agency found that “the offeror’s justification presented only a summary of how it arrived at a labor mix that matched the minimum requirements of the TOR. BlueWater’s rationale described no unique techniques or aspects at all, but merely aligned with steps most [offerors] would take in order to arrive at a total proposed price in response to the solicitation.” Id. The agency further found that “many of the steps BlueWater described in its rationale for price variation were requirements that the [g]overnment explicitly stated in the TOR” and that “merely meeting the requirements of the TOR does not constitute any unique technical approach, and does not justify a deviation from the stated range.” Id. The agency performed a detailed step-by-step analysis of BlueWater’s justification. Id. at 4-8. As a result, the agency concluded that “[i]n accordance with the TOR, the failure to sufficiently justify being outside the stated range resulted in the proposal being considered unrealistic and unreasonable,” and excluded it from further consideration.<sup>11</sup> Id. at 8, 13.

BlueWater was informed of its exclusion from the competition on September 2, 2016, and was provided a written debriefing on September 8. See AR, Tab 61, Written Pre-award Debriefing to BlueWater Email; AR, Tab 62, Written Pre-award Debriefing to BlueWater. BlueWater filed this protest on September 19.<sup>12</sup>

## DISCUSSION

BlueWater primarily argues that the agency failed to conduct a reasonable cost realism analysis. See Protest at 9-13. In this regard, BlueWater contends that the agency failed to assess whether its lower price was consistent with the technical solution described in its technical proposal, as evaluated by the TEB, and instead conducted a cost/price review completely independent of the technical evaluation, and relied solely on a mechanical application of an unreasonable independent government cost estimate (IGCE). Id. at 8, 11. Although we do not specifically

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<sup>11</sup> In addition to BlueWater’s failure to justify its deviation from the range, the agency also found other portions of its cost proposal to be unrealistic for the work to be performed. See AR, Tab 56, Range Determination for BlueWater at 8-13. These areas include an unrealistic escalation rate; staffing concerns identified by the TEB under the key personnel and project staffing factor; and low direct labor rates. See id. at 9-13.

<sup>12</sup> Because the awarded value of the task order at issue exceeds \$10 million and was filed prior to the sunset of our jurisdiction in connection with Title 41, this procurement is within our jurisdiction to hear protests related to the issuance of orders under civilian-agency multiple-award IDIQ contracts. 41 U.S.C. § 4106(f).

address each of BlueWater's arguments, we have fully considered all of them and find that they afford no basis on which to sustain the protest.<sup>13</sup>

When an agency evaluates a proposal for the award of a cost-reimbursement contract or task order, an offeror's costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. FAR § 16.505(b)(3); FAR § 15.305(a)(1); Exelis Sys. Corp., B-407673 et al., Jan. 22, 2013, 2013 CPD ¶ 54 at 7; CGI Fed. Inc., B-403570 et al., Nov. 5, 2010, 2011 CPD ¶ 32 at 5 n.1. Consequently, an agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR §§ 15.404-1(d)(1), 16.505(b)(3); Solers Inc., B-409079, B-409079.2, Jan. 27, 2014, 2014 CPD ¶ 74 at 4. When conducting a cost realism analysis, agencies are required to consider the realism of a firm's proposed costs in light of its unique technical approach. Metro Mach. Corp., B-402567, B-402567.2, June 3, 2010, 2010 CPD ¶ 132 at 6.

On this record, we find the protester's argument that the agency conducted a cost/price review completely independent of the technical evaluation, and relying solely on a mechanical application of an unreasonable IGCE<sup>14</sup> to be without merit. Here, the solicitation instructed offerors to provide an explanation of any unique technical aspects of the proposal that the offeror would like the government to consider as the justification for the deviation from the range. The solicitation also warned offerors that failure to provide an adequate justification for deviating from the government's estimated cost of performance would render such prices unrealistic or unreasonable, and would also result in the elimination of the proposal from the competition. Inherent in the agency's assessment here would be the consideration of whether an offeror's proposed costs were consistent with the technical solution described in its technical proposal, to the extent an offeror provided such information.

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<sup>13</sup> For example, BlueWater challenges the additional areas of its cost proposal that the agency found to be unrealistic. See Protest at 11-13. Because we find that the agency, consistent with the terms of the solicitation, reasonably found BlueWater's proposal to be unrealistic for failing to provide adequate justification for its deviation from the range and excluded it on this basis, we need not address these issues.

<sup>14</sup> BlueWater also alleged that the IGCE, as well as the agency's establishment of the range, was unreasonable because the IGCE was established using time-and-materials (T&M) labor rates and that the record lacked any explanation as to why a five percent range was chosen. See Protest at 8-9; Comments at 1-2. The agency refuted the protester's contention that the IGCE was established using T&M rates. See AR, COS at 5-6. Protester's argument with regard to the range is untimely, as it alleges an impropriety that was apparent from the solicitation but was not raised prior to the closing time for receipt of proposals. 4 C.F.R. § 21.2(a)(1).

Further, the record shows that the agency fully considered and documented its consideration of the justification that BlueWater provided, but found that the rationale BlueWater provided did not describe any unique techniques or aspects, but rather, described standard estimating methodologies to develop a proposal and meet some of the numerous minimum requirements specified in the TOR. See AR, Tab 56, Range Determination of BlueWater at 2-8. For example, the protester complains that the agency failed to recognize that BlueWater's cost/price buildup approach was "in fact unique, in that it: (1) provides a true overall cost for the [mission support services]; (2) is truly based upon realistic, actual current market based labor rates; and (3) provides overall value for the [g]overnment." Protest at 10. We find entirely reasonable the agency's assessment that BlueWater had not presented a unique approach. While the protester clearly disagrees, it has not shown the agency's conclusion in this regard was unreasonable. See Protest at 9; Comments at 4; see Dev Tech. Group, B-412163, B-412163.5, Jan. 4, 2016, 2016 CPD ¶ 10 at 10 (protester's disagreement with the agency's evaluation judgments, without more, does not render those judgments unreasonable).

The protest is denied.

Susan A. Poling  
General Counsel