U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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Washington, DC 20548

Comptroller General
of the United States

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Decision

Matter of: Vertex Aerospace, LLC

File: B-417065; B-417065.2

Date: February 5, 2019

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Scott F. Lane, Esq., and Katherine S. Nucci, Esq., Thompson Coburn LLP, for DynCorp International, LLC, the intervenor.
R. Montana Erickson, Esq., and Lisa D. Wentz, Esq., Department of the Navy, for the agency.
Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably assessed a significant weakness in protester's proposal, and properly assigned it a moderate technical risk rating, based on protester's failure to provide adequate substantiation for its proposed indirect rates.

DECISION

Vertex Aerospace, LLC, of Madison, Mississippi, protests the Department of the Navy's award of a contract to DynCorp International, LLC, of Fort Worth, Texas, pursuant to request for proposals (RFP) No. N61340-18-R-0905, to provide maintenance and logistics support services for the Navy's TH-57 Sea Ranger helicopters.[1]

We deny the protest.

[1] Vertex submitted its initial proposal in February 2018 under the name of "L-3 Vertex Aerospace, LLC," the incumbent contractor. Agency Report (AR), Memorandum of Law (MOL), Nov. 23, 2018, at 1. In June 2018, Vertex was sold to American Industrial Partners and, thereafter, the Navy was notified of the ownership and name change. Protest at 1.

BACKGROUND

On December 7, 2017, the agency issued the RFP, seeking proposals to provide "maintenance, logistics, and technical support for the TH-57 aircraft and associated equipment in order to meet the Daily Flight Schedule (DFS) as detailed in [the solicitation]." [2] PWS at 3. The solicitation provided for the award of a contract with a 2-year base performance period and two 1-year option periods; provided that the source selection decision would be made on a best-value tradeoff basis; and established the following evaluation factors, listed in descending order of importance: technical, past performance, and price. RFP at 214.

The solicitation contained multiple fixed-price contract line item numbers (CLINs), and identified in detail the activities that would be required under each CLIN. Of relevance to this protest, under CLIN 0X08,[3] depot conditional maintenance, the contractor will be required to provide the labor necessary to perform the depot-level maintenance and repairs that are identified during the aircraft condition inspection (ACI).[4] The solicitation contained an estimate of 80,000 hours per year for CLIN 0X08.

With regard to evaluation under the technical factor, the solicitation provided for two assessments: (1) compliance with the solicitation requirements and (2) risk associated with the offeror's proposed approach.[5] Id. at 215. The solicitation provided that, in evaluating compliance with the solicitation requirements, the agency would assign only ratings of acceptable or unacceptable. Id. In evaluating technical risk, the solicitation provided that the agency would consider an offeror's proposal with regard to, among

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[2] The mission of the Navy's TH-57 aircraft is "to provide primary and advanced flight training for student rotary wing aviators and intermediate training for tilt rotor students." AR, Tab 4, RFP attach. 1, Performance Work Statement (PWS) at 2. Accordingly, a specified number of aircraft is required on a daily basis, and the contractor's performance is measured by its ability to "provide safe aircraft, in the required quantities, at the specified launch times." AR, Tab 29, Source Selection Evaluation Board (SSEB) Report, at 3.

[3] The X in the various CLINs signified that the CLIN applied to multiple performance periods.

[4] The ACI requires that the aircraft be disassembled so that the depot mechanics can inspect the aircraft structure for cracking or corrosion. The solicitation establishes a required 190-day average turn-around time, measured from the time an aircraft is inducted for the ACI to the time it is back in service. PWS at 27.

[5] The solicitation elaborated that risk assessments would be made with regard to the various elements (maintenance and flight line operations approach, operational experience, supply support experience, manning, transition phase-in, quality control program plan, and small business) and advised that "[e]mphasis will be placed on Operational Experience and Manning." RFP at 215.

other things, the likelihood of unsuccessful contract performance.[6] Id. In performing the technical risk assessments, the solicitation provided that the agency would identify risk reducers,[7] weaknesses,[8] significant weaknesses,[9] and deficiencies in an offeror's proposed approach, and assign technical risk ratings of low, moderate,[10] high, or unacceptable. Id. at 215-19.

With regard to evaluation of price, the solicitation provided that proposed prices would be evaluated for reasonableness and completeness and, with regard to certain fixed-price CLINs, including CLIN 0X08, the solicitation provided for a price realism evaluation. The solicitation specifically advised offerors that "[a]dequate substantiation is necessary for the Government to evaluate the [proposed] price," warning that "[t]he burden of proof for the proposed price rests with the Offeror." Id. at 205. Further, with regard to indirect rates, the solicitation stated that "the Offeror shall clearly identify the source of the indirect rates and substantiate their buildup." Id. at 209. Finally, after stating that CLIN 0X08 would be evaluated for price realism, the solicitation provided a separate admonition regarding CLIN 0X08, stating: "[a]dditionally, for CLIN 0X08, the adequacy of the build-up of the composite labor rate may be assessed a significant weakness under the Technical Factor evaluation." [11] Id. at 216.

On February 7, 2018, DynCorp and Vertex submitted their initial proposals. Thereafter, the proposals were evaluated and the agency opened discussions, sending multiple evaluation notices (ENs) to each offeror. On August 7, the offerors submitted their first

[6] The solicitation also provided that the agency's risk assessments would consider the potential for schedule disruption, performance degradation, and/or increased government oversight. Id.

[7] A risk reducer was defined as "[a]n aspect of an Offeror's proposal that reduces risk in a way that will be advantageous to the Government during contract performance." Id.

[8] A weakness was defined as "a flaw in the proposal that increases the risk of unsuccessful contract performance." Id. at 219.

[9] A significant weakness was defined as "a flaw that appreciably increases the risk of unsuccessful contract performance." Id.

[10] Of relevance to this protest, a moderate risk rating was defined as "Proposal contains a significant weakness . . . which may cause . . . degradation of performance." Id. at 218.

[11] The agency explains that the solicitation separately addressed the price realism evaluation for CLIN 0X08 because "unlike the other CLINs, CLIN 0X08 does not have a predefined scope of work," adding that "[i]nstead, CLIN 0X08 establishes a composite rate that will be used when issuing orders for ACI work." Contracting Officer's Statement, Nov. 23, 2018, at 7. Thus, the agency states that it could not assess price realism for CLIN 0X08 by considering proposed manning levels but, rather, was required to focus on the components of the composite labor rate.

final proposal revisions (FPR1), which the agency evaluated. On August 9, the agency reopened discussions, again sending various ENs to each offeror. On August 16, the offerors submitted their second FPRs (FPR2).

In evaluating Vertex's FPR2, the agency noted that the overhead and general/ administrative (G&A) rates Vertex used in calculating the composite labor rate for CLIN 0X08,[12] had dropped dramatically--from [redacted] to [redacted] for overhead, and from [redacted] to [redacted] for G&A. The agency further noted that: the new rates were characterized by Vertex as its "Strategic Plan Rates"; Vertex's proposal did not include any meaningful documentation supporting the buildup of the lower rates; and Vertex "released" the new rates on August 8--the day after Vertex's FPR1 submission. AR, Tab 10(q), Vertex FPR2, at 33a. Accordingly, the agency reopened discussions yet again to provide Vertex an opportunity to address this matter. In an EN to Vertex dated August 28, 2018, the agency stated:

> The Government is unable to verify the proposed [Vertex] Manufacturing (MFG) rate, used as the Overhead rate within the price attachments. The rate for Overhead decreased from [redacted] down to [redacted] and the rate for G&A decreased from [redacted] down to [redacted]. . . . [T]he proposal does not include any substantiating documentation to support the buildup of those rates as required by the RFP. As such, this may be assessed a significant weakness.

AR, Tab 18(r), EN CP-030, at 4.

On August 31, Vertex responded to the EN, repeating some of the information it had submitted with its FPR2, noting that L-3 Technologies had sold Vertex to American International Partners in June of 2018, and asserting--without meaningful elaboration-- that Vertex's FPR1 rates were "no longer relevant" because of "known organizational changes" and "a new business win." AR, Tab 20(R), Vertex Response to EN CP-030, at 6. Further, Vertex acknowledged that the "cost models," on which its new "planning rates" were based, reflected only "preliminary estimates," and that the company's "Strategic Plan" had neither been "completed" nor "approved by management."[13] Id. In short, Vertex referred

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[12] Vertex states that the overhead rate was specifically "used to price CLIN 0X08," while the G&A rate "is applicable to Vertex more broadly." Vertex Comments, Dec. 3, 2018, at 5. Nonetheless, Vertex's submissions indicate that both rates were components of Vertex's composite labor rate for CLIN 0X08. See AR, Tab 10(q), Vertex FPR2, at 43; Tab 20(r), Vertex Response to EN CP-030, at 2-3.

[13] Vertex's initial proposal (as well as subsequent FPRs) reflected its intent to perform the CLIN 0X08 requirements at the Crestview Aerospace facility; accordingly, Vertex's initial proposal and its FPR1 "included Crestview's overhead rates for the CLIN 0X08 effort." Protest at 22. Vertex asserts that, because of the June 2018 sale of Vertex to American International Partners, the company "intends to combine [Vertex, Crestview Aerospace and a third company] into a common company G&A pool in 2019." Id. at 18.

to future organizational changes that had not been effected in order to forecast dramatically reduced rates, but did not present any documentary support, such as an approved forward pricing rate proposal (FPRP), instead merely asserting that such documentation would be "completed and submitted prior to the end of the year." Id. at 5-7.

On September 5, Vertex submitted its third FPR (FPR3), in which it increased its total evaluated price by $1.3 million, but did not change the overhead and G&A rates applicable to CLIN 0X08. Thereafter, the agency evaluated DynCorp's and Vertex's proposals as follows:

	DynCorp	**Vertex**
Technical **Compliance** **Risk**	Acceptable Low Risk	Acceptable Moderate Risk
Past Performance	Satisfactory Confidence	Substantial Confidence
Total Evaluated Price (TEP)	$306.5 million	$307.8 million

AR, Tab 29, SSEB Report, at 62.

In assigning a "moderate" technical risk rating to Vertex's proposal, the SSEB noted that Vertex had provided no meaningful substantiation for the proposed indirect rates used to calculate the CLIN 0X08 composite labor rate, and that these rates had not even been approved by Vertex's own management. The SSEB further noted that the solicitation explicitly warned offerors that an inadequately substantiated price for CLIN 0X08 "may be assessed a significant weakness under the Technical Factor." AR, Tab 29, SSEB Report, at 54-61; see RFP at 216. Finally, the SSEB noted that Vertex's TEP in its FPR2 had decreased by approximately $18 million from the TEP in its FPR1,[14] and that Vertex may have underpriced the CLIN 0X08 effort by "approximately 25%." AR, Tab 29, SSEB Report at 54-56; Tab 30(a), Briefing Slides, at 12. Accordingly, the SSEB concluded:

> The lack of adequate substantiation for the composite labor rate for CLIN 0X08 raises the concern that [Vertex] may not be able to staff to the levels needed to meet the required average TAT [turn-around time] of 190 days. Delays in TAT would impact aircraft availability and the Offeror's ability to meet the DFS [daily fielding schedule] requirements because of fewer available aircraft. The potential underpricing of the composite labor rate by

[14] As noted above, Vertex increased its TEP by approximately $1.3 million in its FRP3, but did not change its overhead and G&A rates.

> using the flat [redacted] aircraft maintenance (MMRO [modification, maintenance, repair and overhead]) rate increases the risk to the program and is a significant weakness in [Vertex's] proposal.[[15]]

AR, Tab 29, SSEB Report at 32.

Thereafter, the agency's source selection advisory committee (SSAC) reviewed the evaluation record, concluding as follows:

> A comparison between the Offerors reveals that [DynCorp] has an advantage over [Vertex] in Technical, the most important factor. With respect to Past Performance, [Vertex] has an advantage over [DynCorp] based upon its positive past performance on the current TH-57 CLS [contractor logistics support] effort with no notable adverse past performance without demonstrated systemic improvement.
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> When all factors are considered in accordance with the evaluation criteria set forth in the RFP, [DynCorp] has the advantage. [Vertex's] only advantage is in the second most important factor and the benefits derived from that aspect of [Vertex's] proposal are not sufficient to overcome [DynCorp's] advantages in the other factors. [DynCorp] holds an advantage in the Technical factor which is of greater importance than the Past Performance factor. . . . [DynCorp's] TEP [total evaluated price] is slightly lower than [Vertex's] TEP. Further, [Vertex's] price may be low considering the unsubstantiated underpriced rate associated with CLIN 0X08, and, as a result [Vertex] was assessed a significant weakness in the Technical factor because the unsubstantiated price appreciably increases the risk that DFS [daily fielding schedule] requirements may not be met by [Vertex]. In the SSAC's opinion . . . [DynCorp's] proposal provides the best value to the Government.

AR, Tab 31, Proposal Analysis Report (PAR), at 12.

Finally, the source selection authority (SSA) reviewed the record and performed an independent assessment. AR, Tab 32, Source Selection Decision Document (SSDD), at 2. In documenting the source selection decision, the SSA first noted the importance the solicitation placed on technical risk, stating:

> Given the nature of high operational tempo (OPTEMPO) for the TH-57 aircraft that conduct Training operations, the Government decided that it would place

[15] The SSEB also evaluated the offerors' technical proposals, making judgments regarding potential risk reducers proposed by each offeror. In this regard, the SSEB identified 8 risk reducers and no other weaknesses or deficiencies in Vertex's proposal; and identified 11 risk reducers and no weaknesses or deficiencies in DynCorp's proposal. AR, Tab 29, SSEB Report, at 15-19, 28-32.

> emphasis on having a low risk technical approach and confidence that the work would be performed successfully. . . . As a result, according to the [solicitation] criteria, the Government emphasized the risk associated with an acceptable technical approach as being the most important consideration in the best value decision.

AR, Tab 32, SSD, at 2.

The SSA then considered each of the evaluated risk reducers in the two proposals, along with the SSEB's and SSAC's evaluations and assessments, and concluded:

> Based on my independent assessment, I agree with the SSAC's comparative analysis and recommendation that, in accordance with the evaluation criteria, the [DynCorp] proposal provides the best value, all factors considered. Therefore, in accordance with the evaluation criteria, I select [DynCorp] for award of the TH-57 CLS contract.

AR, Tab 32, Source Selection Decision, at 5.

Thereafter, Vertex was notified of the source selection decision. This protest followed.

DISCUSSION

Vertex challenges various aspects of the agency's source selection process, focusing primarily on alleged flaws associated with the agency's assessment of a significant weakness in Vertex's proposal that resulted in the assignment of a moderate technical risk rating. As discussed below, Vertex's protest is without merit.[16]

More specifically, Vertex protests that the "entire contract award decision effectively turned on a single, arbitrarily assigned, significant weakness," and therefore maintains that the agency improperly assigned a moderate risk rating to Vertex's proposal. Protest at 22. In this context, Vertex does not dispute that: Vertex's FPR2 reflected significantly lower indirect rates for CLIN 0X08 than the rates Vertex had previously proposed; the solicitation required offerors to substantiate such rates, and specifically warned that failure to do so for CLIN 0X08 would provide a basis for assessing a significant weakness; and the agency advised Vertex during discussions that the FPR2

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[16] In addition to its primary complaints challenging the agency's assessment of a significant weakness and assignment of a moderate technical risk rating, Vertex presents arguments that are in addition to, or variations of, its primary complaints, including assertions that the agency: failed to conduct meaningful discussions; failed to give Vertex credit for various proposed risk reducers; misevaluated DynCorp's proposal; placed undue weight on Vertex's unsubstantiated rates; and performed a flawed best-value tradeoff. Protest at 24-62. We have reviewed all of Vertex's multiple allegations and find no basis to sustain its protest.

rates were inadequately substantiated and "may be assessed a significant weakness." See AR, Tab 18(r), EN CP-030, at 4. Nonetheless, Vertex asserts that the agency "could not assign Vertex's proposal a significant weakness because Vertex substantiated the overhead rate for CLIN 0X08 in accordance with the Solicitation's requirements and the Navy's evaluation notice." Id. at 24.

The agency responds by first noting the solicitation's directions, admonitions, and warnings, discussed above. Next, the agency points out that, following Vertex's FPR2 submission, the agency re-opened discussions in order to advise Vertex that its dramatically reduced indirect rates were inadequately substantiated. In this regard, the agency points to Vertex's response in this third round of discussions, noting that the response not only failed to provide anything more meaningful than vague references to ongoing corporate changes and restructuring, but actually presented additional indications that the rates were unreliable--specifically acknowledging that the rates were preliminary and had not even been approved by Vertex's own internal management. Finally, the agency notes that the risk that a contractor may be required to perform at a loss was precisely what the agency sought to avoid when it crafted the solicitation.[17] Accordingly, the agency maintains that it properly identified a significant weakness in, and assigned a moderate technical risk rating to, Vertex's proposal, which was consistent with the terms of the solicitation.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. Computer World Servs. Corp., B-410513, B-410513.2, Dec. 31, 2014, 2015 CPD ¶ 21 at 6. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. STG, Inc., B-405101.3 et al., Jan. 12, 2012, 2012 CPD ¶ 48 at 7. An offeror bears the burden of submitting an adequately written proposal that contains all of the information required by a solicitation. Where a proposal omits, inadequately addresses, or fails to clearly convey required information, the offeror runs the risk of an adverse agency evaluation. Distributed Sols., Inc., B-416394, Aug. 13, 2018, 2018 CPD ¶ 279 at 4.

Here, we find no basis to question either the agency's assessment of a significant weakness in, or the assignment of a moderate technical risk rating to, Vertex's proposal. As discussed above, it is clear the solicitation was structured in a manner to put offerors

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[17] As noted above, the agency consciously emphasized a low-risk technical approach when it established the terms of the solicitation. See AR, Tab 32, SSDD, at 2. Indeed, the agency was so concerned regarding this matter that the solicitation stated: "if the Offeror proposes a profit of less than three percent (3%) for [certain fixed-price CLINs, including 0X08], a significant weakness may be identified to reflect performance risk that may, in and of itself, result in a Moderate Technical Risk Rating." RFP at 216.

on notice regarding the importance of technical risk and the agency's concerns regarding unsubstantiated price proposals--particularly with regard to the composite labor rate proposed for CLIN 0X08. In this regard, the solicitation explicitly put offerors on notice of the agency's concerns by providing that a significant weakness could be assessed for inadequately substantiated price proposals. Further, we find no basis to question either the procedures employed in connection with, or the substance of, the agency's determination that Vertex's FPR2 rates were inadequately substantiated. In this regard, it is undisputed that the agency reopened discussions in order to provide Vertex an opportunity to submit the required substantiation for those rates, specifically reminding Vertex of the solicitation provisions requiring that offerors "shall clearly identify the source of the indirect rates and substantiate their buildup"; warning that "[t]he burden of proof for the proposed price rests with the Offeror"; and repeating the solicitation's separate admonition that an unsubstantiated buildup for the CLIN 0X08 composite rate "may be assessed a significant weakness." See AR, Tab 18(R), EN CP-030 at 4.

We also find no basis to question the agency's conclusion that Vertex's response to the agency's discussion questions failed to provide any meaningful substantiation, and actually presented additional indications that the rates were unreliable. Most significantly, Vertex's response specifically stated that the new rates were based on a planning document that had neither been completed nor approved by Vertex's own management, and referred to future organization changes that had not been effected as "substantiation" for its dramatically reduced rates. Finally, we find nothing unreasonable in the agency's concern that Vertex's unsubstantiated pricing for CLIN 0X08, which could lead to Vertex's performance of the contract with little or no profit, could negatively impact Vertex's successful contract performance. As noted above, the solicitation reflected the agency's intent to diminish risk and ensure availability of the required aircraft. Vertex's disagreement with the significance of the risk presented by its failure to comply with the solicitation's explicit pricing requirements does not render the agency's judgment unreasonable.

In short, we find no merit in Vertex's assertions that it submitted adequate substantiation for its unapproved, preliminary indirect rates; that it complied with the solicitation's requirements regarding substantiation of its proposed rates; or that the agency improperly assessed a significant weakness in, and assigned a moderate technical risk rating to, Vertex's proposal.

The protest is denied.

Thomas H. Armstrong
General Counsel