



# Decision

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**Matter of:** Raytheon Company

**File:** B-417731; B-417731.2

**Date:** October 3, 2019

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D. Randall Kemplin, Esq., Department of the Navy, for the agency.

Alexander O. Levine, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

1. Protest challenging agency's cost realism evaluation is denied where the agency reasonably adjusted cost items that the protester failed to adequately substantiate as required by the solicitation.
2. Protest asserting that agency's best-value tradeoff decision ignored significant weaknesses in the awardee's proposal is denied where the evaluation record contradicts the protester's assertion that the weaknesses in question were found to be significant.

## DECISION

Raytheon Company, located in Indianapolis, Indiana, protests the award of a contract to Science Applications International Corporation (SAIC), located in Reston, Virginia, by the Department of the Navy under request for proposals (RFP) No. N0016418RWP44, for the overhaul, repair, and material and technical support of subsystems of the MK-99 fire control system. The protester asserts that the agency unreasonably adjusted Raytheon's proposed costs for the RFP's cost-reimbursable line items, improperly failed to conduct discussions, and engaged in a flawed best-value tradeoff analysis that ignored significant weaknesses in SAIC's proposal.

We deny the protest.

## BACKGROUND

On August 17, 2018, the Navy issued the RFP seeking proposals for the award of an indefinite-delivery, indefinite-quantity contract for the overhaul, supplemental repair, parts-kitting, and other technical support services related to the MK-82 directors and AN/SPG-62 reflectors/antenna systems, which are major subsystems of the MK-99 fire control system used for the AEGIS weapon system. Agency Report (AR), Tab 4, RFP amend. 3, at 2. The solicitation included both fixed-price and cost-reimbursable contract line item numbers (CLINs).

The RFP contemplated that award would be made on a best-value tradeoff basis considering three factors: technical and management, past performance, and cost/price. Id. at 35. The technical and management factor was significantly more important than the past performance factor, and both factors, when combined, were significantly more important than cost/price. Id. The solicitation advised that the Navy did not intend to conduct discussions and that the agency might award the contract to a lower-cost proposal “when the offerors are considered essentially equal in terms of technical capability, or when specific strengths and/or benefits associated with a technically superior offer do not support any associated cost or price premium.” Id.

For the cost-reimbursable CLINs, the RFP anticipated that the Navy would perform an analysis of “the reasonableness, realism and completeness of [each offeror’s] cost/price data, the traceability of the cost/price to the [o]fferor’s capability data, the proposed allocation of man-hours and labor mix, and the proposed [cost/price’s] reflection of the [o]fferor’s understanding of the complexity and risk of the requirements.” Id. at 40.

The RFP advised offerors that the agency would use the most relevant and reliable data available to evaluate the probable cost of each major cost element. Id. at 31. To assist the agency’s cost realism evaluation, the solicitation required each offeror to provide supporting cost data, warning that the “burden of cost credibility rests with the [o]fferor to demonstrate the realism of its proposed costs; as such, the [o]fferor must submit substantiating cost data for every cost element it proposes (e.g., direct labor, fringe rate, overhead rate, [general and administrative] rate, subcontract costs, etc.).” Id. at 30. Providing poor or inadequate supporting cost data would negatively impact the agency’s evaluation and might result in the agency making assumptions that could be detrimental to the offeror or result in an upward adjustment to the offeror’s costs. Id. at 32. Additionally, the RFP warned that “[m]erely providing the substantiating data, without sufficient analysis and explanation of the relevance and reliability of that data in the [c]ost/[p]rice [n]arrative, will not be sufficient to demonstrate cost realism.” Id. at 31.

For individuals named in an offeror’s proposal, the solicitation required the offeror to base its labor rates on the “actual labor rates expected to be expended” in contract performance. Id. Consistent with this requirement, the offeror (or its major subcontractor) was to provide a screenshot from its payroll system for each current employee named in the offeror’s staffing plan, with the screenshot reflecting that individual’s direct rate. Id. The RFP repeatedly warned offerors that “proposing lower

cost personnel in technical labor categories without substantial justification will be [considered] an indication that the [o]fferor does not have a clear understanding of the technical labor needed to support the effort” and may result in upward adjustments to the proposed direct labor rates. Id. at 30, 40-41.

Both Raytheon and SAIC timely submitted proposals in response to the solicitation. The Navy evaluated these proposals as follows:

	<b>Raytheon</b>	<b>SAIC</b>
<b>Technical Capability/Approach</b>	<b>Outstanding</b> 23 strengths, 1 weakness	<b>Acceptable</b> 9 strengths, 7 weaknesses
Technical Approach, Repair and Overhaul Processes	Outstanding	Acceptable
Facilities	Outstanding	Acceptable
Technical Services Approach	Outstanding	Marginal
Management Approach	Good	Acceptable
<b>Past Performance</b>	<b>Substantial Confidence</b>	<b>Substantial Confidence</b>
<b>Proposed Cost/Price</b>	<b>\$50,270,735</b>	<b>\$41,821,277</b>
<b>Evaluated Cost/Price</b>	<b>\$55,080,796</b>	<b>\$47,612,593</b>

AR, Tab 9, Source Selection Evaluation Board (SSEB) Report, at 5-6; AR, Tab 11A, Source Selection Decision Document (SSDD), at 2.

As reflected in the above table, the agency upwardly adjusted both Raytheon’s and SAIC’s proposed costs during its cost realism assessment. In Raytheon’s case, the increase was the result of the agency’s adjustment to the direct labor rates proposed for two labor categories, ground support equipment mechanic and gyroscopic engineer, as well as adjustments to Raytheon’s escalation and indirect rates. AR, Tab 17, Cost Analyst Decl., at 10.

Following the evaluation, the Navy determined that the technical superiority of Raytheon’s proposal was not worth its 15.7 percent cost/price premium because the strengths offered by Raytheon’s approach were either similar to SAIC’s strengths or were “not worthy of paying such a premium.” AR, Tab 11A, SSDD, at 8.

Following the Navy’s award to SAIC, Raytheon timely filed this protest.

## DISCUSSION

Raytheon challenges the Navy’s cost realism evaluation and best-value tradeoff determination. With respect to the cost evaluation, the protester challenges the agency’s upward adjustment of Raytheon’s direct labor rates under two labor categories, an increase calculated on the basis of payroll screenshots included in Raytheon’s cost proposal. The protester asserts that the agency unreasonably relied

on these payroll screenshots while ignoring other parts of Raytheon's proposal that substantiated its proposed direct labor rates.

Second, the protester asserts that the Navy found several significant weaknesses in SAIC's approach, but failed to meaningfully consider these flaws within its best-value tradeoff analysis. The protester contends that the agency also failed to adequately document its consideration of Raytheon's overall technical superiority and instead evaluated proposals on a lowest-priced, technically acceptable basis.

Last, the protester argues that the agency acted improperly in not conducting discussions. Raytheon asserts that this decision was based on a mistaken belief that the solicitation prohibited such discussions.<sup>1</sup>

### Cost Realism

The protester challenges the Navy's upward adjustment to Raytheon's proposed direct labor rates under two labor categories: ground support equipment mechanic and gyroscopic engineer.<sup>2</sup> The agency's adjustment to these rates was based on payroll screenshots provided by Raytheon for two of its employees under these labor categories, where the screenshots showed that the employees were paid at higher rates than those proposed by Raytheon. See AR, Tab 10, Cost Realism Report, at 6. The Navy's cost analyst found this actual payroll data to be a more reliable and realistic indicator of Raytheon's costs than the rates proposed by Raytheon, which were based on wage determination rates set by the Department of Labor under the Service Contract Act. See AR, Tab 17, Cost Analyst Decl., at 4.

The protester challenges the agency's reliance on actual salary information, and argues that it adequately substantiated lower rates within both its staffing plan and its cost proposal, but the agency unreasonably ignored this information. The protester therefore contends that the Navy's decision to upwardly adjust Raytheon's direct labor rates was

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<sup>1</sup> While we do not address in detail every argument raised by the protester, we have reviewed each issue and do not find any basis to sustain the protest. For example, we find no merit to the protester's argument that the agency acted improperly in not conducting discussions. In this regard, the record does not support the protester's contention that the agency's decision to forego discussions was based on a belief that the solicitation did not permit such discussions. Instead, the record supports the agency's representation that its decision was based on its view that discussions would not be "the best path forward for the Government." AR, Tab 11A, SSDD, at 9.

<sup>2</sup> The Navy also adjusted the rates for two related categories: reach back-gyroscopic engineer and reach-back ground support equipment mechanic. AR, Tab 10, Cost Realism Report, at 6. The protester, however, did not directly challenge these rates and we find no basis within the record to conclude that the agency's adjustment to these rates was unreasonable.

arbitrary, particularly because the two employees at issue were paid at higher rates than the other employees listed in Raytheon's staffing plan.

Where a contract that includes cost-reimbursable CLINs is to be awarded, an offeror's estimated costs of performing the cost-reimbursable CLINs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. Palmetto GBA, LLC, B-298962, B-298962.2, Jan. 16, 2007, 2007 CPD ¶ 25 at 7. Consequently, the 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. Federal Acquisition Regulation § 15.404-1(d). An agency's cost realism analysis need not achieve scientific certainty, but the methodology employed must be reasonably adequate and provide some measure of confidence that the rates proposed are reasonable and realistic in view of other cost information reasonably available to the agency as of the time of its evaluation. SGT, Inc., B-294722.4, July 28, 2005, 2005 CPD ¶ 151 at 7. Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonably based and not arbitrary. Jacobs COGEMA, LLC, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 26.

Based on our review of the record, we find the Navy's adjustment of Raytheon's proposed labor rates to be reasonable in light of the lack of substantiation or explanation provided in Raytheon's proposal for these rates. In this regard, we note that the solicitation repeatedly warned offerors that the burden would fall on the offeror to demonstrate the realism of its costs. See RFP at 30-32, 40. To substantiate an offeror's proposed direct labor rates, for example, the solicitation required the offeror (or its major cost-reimbursement subcontractor) to provide a "screen-capture from the employer's payroll system," for current employees named in the offeror's staffing plan, which would allow the agency to derive that individual's direct rate. Id. at 31. Furthermore, the offeror's burden to demonstrate the realism of its costs included not only providing substantiating data but also "sufficient analysis and explanation of the relevance and reliability of that data." Id. at 30-32, 40. The solicitation noted that failing to provide this information, or failing to explain inconsistencies between an offeror's cost proposal and its technical approach, might result in upward adjustments to the offeror's costs. Id. at 30-31.

Despite these requirements, Raytheon's cost proposal did not include meaningful substantiation or explanation for the rates it proposed under the ground support equipment mechanic and gyroscopic engineer labor categories. For example, for ground support equipment mechanics, Raytheon based its direct rate of \$22.29 an hour on the applicable wage determination rate, but did not include any further explanation of why this rate was reliable or realistic. See AR, Tab 22, Raytheon Cost Proposal, at 9. The agency found this absence of explanation concerning because the only two payroll screenshots included in Raytheon's proposal for this labor category showed that Raytheon's mechanics earned actual wages (of [DELETED] an hour, respectively) that were higher than Raytheon's proposed rate. See AR, Tab 17, Cost Analyst Decl., at 6. While Raytheon's cost proposal did note that these screenshots were "provided for informational purposes only rather than as a basis for pricing," AR, Tab 22, Raytheon

Cost Proposal, at 8, Raytheon did not provide any explanation for the discrepancy between the screenshot rates and its proposed rates. Raytheon also provided no explanation for why the agency should conclude that the wage determination rates are more reliable indicators of Raytheon's probable cost than Raytheon's actual payroll information.

Similarly, for gyroscopic engineers, Raytheon proposed a direct rate of [DELETED], but did not adequately explain or demonstrate the realism of this rate. This omission was significant because this rate was substantially lower than the rates cited by Raytheon's proposal as support for the realism of the proposed rate. These cited rates included those from Raytheon's forward pricing rate proposal ([DELETED]), the applicable forward pricing rate recommendation ([DELETED]), and the midpoint in Raytheon's geographic salary survey ([DELETED]). See AR, Tab 22, Raytheon Cost Proposal, at 9. In addition to being lower than these benchmarks, Raytheon's proposed rate was significantly lower than the payroll rate for one of the gyroscopic engineers ([DELETED]) included in Raytheon's proposal. See id. at 54.

The protester further argues that its staffing plan provided substantiation for its rates by showing the limited hours and roles proposed for the two employees in question, and by showing that other employees would have a comparatively larger role in contract performance than these two employees. We find, however, that neither the staffing plan nor Raytheon's cost proposal provided sufficient cost information about these other employees to enable the agency to accurately determine what rates such employees would be paid. For example, for the ground support equipment mechanic category, Raytheon's staffing plan included the names of 12 other mechanics, but did not include their payroll information. See AR, Tab 20, Raytheon Tech. Proposal, at 35. For the gyroscopic engineer category, Raytheon's staffing plan provided the rate information for only two of the engineers, and these engineers' hours constituted only a portion of the total hours proposed for the labor category. Compare id. with AR Tab 24, Raytheon Cost Summary, at 9.

In the absence of cost-substantiating information about most of the offeror's employees under these labor categories, which would have allowed the Navy to verify Raytheon's proposed staffing costs, we conclude that the agency was under no obligation to simply accept Raytheon's calculations or even to split the difference by adjusting the rates to some undefined midpoint between the proposed rates and the rates shown in the payroll screenshots. Nor was the agency obligated to trust that Raytheon's labor rates were realistic just because they were set at the wage determination rate. As noted above, such a conclusion would not resolve the inconsistencies between Raytheon's proposed rates and the payroll information it submitted. Ultimately, it was Raytheon's burden to substantiate its costs, a burden it did not satisfy. In light of this failure, we find the agency's upward adjustment to be reasonable.

## Best-Value Tradeoff

Finally, the protester argues that the agency's best-value tradeoff ignored certain significant weaknesses in SAIC's proposal, which were discussed within the SSEB report and the source selection authority's (SSA) notes.<sup>3</sup> The first such weakness, which pertained to SAIC's management approach, was described by the SSEB as a "flaw that appreciably increases the risk of unsuccessful performance." AR, Tab 9, SSEB Report, at 17.<sup>4</sup> Raytheon argues that this sentence, and particularly the SSEB's use of the word "appreciably," matches the source selection guide's definition of a significant weakness.<sup>5</sup> As additional support for this position, the protester notes that the SSA's notes also described this flaw as "appreciably" increasing the risk of unsuccessful performance. AR, Tab 16, SSA's Notes, at 6. The protester further notes that the SSA's tradeoff notes described SAIC's technical services approach as "contain[ing] weaknesses and significant weaknesses that may cause disruption of schedule or degradation of performance." Id. at 5.

The agency contends that the above language was not indicative of any agency finding of significant weakness, but was simply an error that was corrected in the SSDD. Based on our review of the evaluation record, we find the agency's explanation to be credible. In this regard, we note that the documents relied upon by the protester--the SSEB report and the SSA's notes--both state that SAIC's proposal contained no significant weaknesses and list the above flaws as weaknesses rather than as significant weaknesses. See AR, Tab 9, SSEB Report, at 6, 16-17; AR, Tab 16, SSA's Notes, at 5-6. Thus, Raytheon's characterization of these flaws as significant weaknesses is inconsistent with the characterization used by the documents themselves.

In addition, the SSA submitted a declaration, which explained that the reference in her notes to significant weaknesses and to "appreciable" increases in risk were simply errors that were subsequently corrected when the SSA drafted the SSDD. AR, Tab 15A, SSA Decl., at 2, 6. The SSA also provided a detailed explanation of why she did not find that these weaknesses rose to the level of significant weaknesses. See id. at 3-9. We find these explanations to be both reasonable and consistent with the evaluation record.

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<sup>3</sup> Raytheon does not argue "that the [a]gency failed to designate certain [w]eaknesses as [s]ignificant [w]eaknesses," but instead argues that the agency ignored its own significant weakness determinations. Protester's Supp. Comments at 11.

<sup>4</sup> This weakness was assessed by the agency due to SAIC's failure to define an adequate approach to working with government agencies to approve vendors. AR, Tab 9, SSEB Report, at 16-17.

<sup>5</sup> The agency used the Department of Defense source selection guide, which defined a significant weakness as a "flaw in the proposal that appreciably increases the risk of unsuccessful performance." Contracting Officer's Statement/Memorandum of Law at 7.

The protester challenges these explanations as post hoc assertions that should not be credited in light of the inconsistent evaluation language discussed above. Our Office has stated, however, that post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and fill in previously unrecorded details, will generally be considered in our review of the rationality of selection decisions where those explanations are credible and consistent with the contemporaneous record. APlus Techs., Inc., B-408551.3, Dec. 23, 2013, 2014 CPD ¶ 12 at 10 n.11.

Here, we find the agency's explanation to be consistent with the contemporaneous record. As noted above, both the SSEB report and the SSA's notes stated that the agency found no significant weaknesses in SAIC's proposal. The inconsistency between this finding and the language highlighted by the protester is consistent with the agency's post-protest explanation that the use of such language was attributable to an error that was subsequently corrected in the SSDD.

In sum, we conclude that the agency reasonably considered the strengths and weaknesses of the two offerors' approaches in its best-value tradeoff determination.

The protest is denied.

Thomas H. Armstrong  
General Counsel