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Decision

Matter of: NCI Information Systems, Inc.

File: B-417805.5; B-417805.6; B-417805.7

Date: March 12, 2020

Daniel P. Graham, Esq., Jamie F. Tabb, Esq., Elizabeth Krabill McIntyre, Esq., and John M. Satira, Esq., Vinson & Elkins LLP, for the protester.
Paul A. Debolt, Esq., Emily A. Unnasch, Esq., and Christina E. Wood, Esq., Venable, LLP, for DCS Corporation, the intervenor.
Dylan C. Bush, Esq., and Wade L. Brown, Esq., Department of the Army, for the agency.
Charmaine A. Stevenson, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's evaluation of offerors' professional compensation plans is denied where the record demonstrates that the evaluation was reasonable and consistent with the terms of the solicitation and the requirements of Federal Acquisition Regulation provision 52.222-46.
 2. Protest that awardee's proposal is unacceptable because the awardee failed to notify the agency during corrective action that a proposed key person is unavailable is denied where the record contains no evidence that the awardee had actual knowledge that the proposed key person is unavailable.
 3. Protest challenging agency's evaluation of awardee's small business participation plan is denied where the agency reasonably evaluated the awardee's proposal in accordance with the solicitation's evaluation criteria.
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DECISION

NCI Information Systems, Inc. (NCI), of Reston, Virginia, protests the issuance of a task order to DCS Corporation (DCS), of Alexandria, Virginia, under request for proposals (RFP) No. RS3-19-R-0001, issued by the Department of the Army, Army Contracting Command--Aberdeen Proving Ground, for a wide variety of systems engineering and technical assistance (SETA) services. The protester contends that the agency's evaluation and selection decision are unreasonable.

We deny the protest.

BACKGROUND

The Army issued the RFP on February 13, 2019, to holders of the Army's Responsive Strategic Sourcing for Services multiple-award, indefinite-delivery, indefinite-quantity (IDIQ) contracts to provide systems engineering and technical support services for the Army's Program Manager for Soldier Protection and Individual Equipment (PM-SPIE). Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 2. The procurement was conducted pursuant to Federal Acquisition Regulation (FAR) § 16.505 procedures. Agency Report (AR), Tab 6, RFP, at 23. The RFP contemplated award of a cost-plus-fixed-fee and cost-reimbursement task order on a best-value tradeoff basis with a period of performance consisting of a 12-month base period and four 12-month option periods. Id. at 1.

The RFP stated that a task order would be awarded to the offeror whose proposal represented the best value to the government under the following four evaluation factors: technical, past performance, small business participation, and cost/price. RFP at 14. The technical factor included the following subfactors: transition plan; recruitment, retention, and staffing; key personnel/resumes; and corporate experience. Id. at 15. The agency was to assign the following adjectival ratings under the recruitment, retention, and staffing subfactor: outstanding, good, acceptable, and unacceptable. Id. For all other technical subfactors and the small business participation plan factor, the agency was to assign a rating of acceptable or unacceptable.¹ Id. To be considered for award, a proposal must have received a rating of acceptable or greater in every non-cost/price factor and subfactor. Id. For purposes of the best-value tradeoff, the technical factor was significantly more important than past performance, which was more important than cost/price. Id. at 14.

The RFP stated that the agency would evaluate the cost/price factor to ensure that proposed costs were fair, reasonable, and realistic in accordance with FAR § 15.404-1. RFP at 20. The RFP further stated: "For purposes of this solicitation, each offeror's proposed direct labor rates will be analyzed. If more than 16% of the individual direct labor rates[] are determined to be unrealistic, the Offeror's entire cost proposal may be determined to be unrealistic and unawardable." Id. at 21 (emphasis omitted). In addition, the RFP stated that the government would evaluate proposals in accordance with FAR provision 52.222-46, Evaluation of Compensation for Professional Employees. Id.

¹ Past performance was to be evaluated and rated based on relevance (relevant or not relevant) and confidence (substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence). RFP at 18-19.

The agency received three proposals by the solicitation due date. See AR, Tab 92, Source Selection Evaluation Board (SSEB) Tradeoff Recommendation, at 3. The Army's final evaluation of the DCS and NCI proposals was as follows:

	DCS	NCI
Technical	Outstanding	Acceptable
Transition Plan	Acceptable	Acceptable
Recruitment, Retention, and Staffing	Outstanding	Acceptable
Key Personnel / Resumes	Acceptable	Acceptable
Corporate Experience	Acceptable	Acceptable
Past Performance - Relevance	Relevant	Relevant
Past Performance - Confidence	Substantial	Substantial
Small Business Participation Plan	Acceptable	Acceptable
Total Cost	\$145,527,583	\$137,357,651

Id. at 1. On July 12, the agency notified NCI that its proposal had not been selected for award. AR, Tab 99, NCI Award Notification Letter. NCI received a debriefing, which was closed on July 22. See AR, Tab 107, NCI Debriefing Slides; Tab 109, NCI Debriefing Questions.

On July 29, NCI filed a protest with our Office and alleged, among other things, that the agency failed to properly evaluate proposals in accordance with the RFP and FAR provision 52.222-46. On October 31, our Office conducted an outcome prediction alternative dispute resolution telephone conference, during which the parties were advised that the protest was likely to be sustained on these bases. Our Office dismissed the protest as academic because the agency advised that it would take the following corrective action: (1) reevaluate offerors' final proposal revisions under the technical factor, recruitment, retention and staffing subfactor, and the cost/price factor, as they relate to the offerors' proposed compensation plans, (2) document the results of the reevaluation, particularly with regard to FAR provision 52.222-46 and subcontractors' compensation plans, and (3) make and document a new award decision. NCI Info. Sys., Inc., B-417805 et al., Nov. 5, 2019, at 1 (unpublished decision).

On November 27, the Army advised NCI that it had reaffirmed its decision to make award to DCS. AR, Tab 173, Notice of Completion of Corrective Action. This protest followed.²

² The task order at issue is valued in excess of \$25 million, and was placed under an IDIQ contract established by the Army. Accordingly, our Office has jurisdiction to consider NCI's protest. 10 U.S.C. § 2304c(e)(1)(B).

DISCUSSION

The protester challenges certain aspects of the agency's evaluation of proposals and its best-value tradeoff decision. As discussed below, we find no basis to sustain the protest.

Evaluation of Compensation for Professional Employees

NCI argues that the agency failed to evaluate offerors' and their subcontractors compensation for professional employees as required by the RFP under the transition plan, and the recruitment, retention and staffing plan subfactors, and under FAR provision 52.222-46. Supp. Protest at 2-5. In particular, the protester argues that DCS proposed to staff the task order primarily by hiring NCI's incumbent employees, but proposed compensation that is substantially lower than the employees' current earnings. Id. at 3-4. The protester also argues that the agency reached a flawed conclusion that DCS's proposed fringe benefits merited three strengths. Comments & 2nd Supp. Protest at 14-16.

The agency argues it properly evaluated professional employee compensation as required by the RFP and the FAR. COS/MOL at 10-15. The agency notes first that it evaluated both direct pay and 26 categories of fringe benefits provided by the offerors and their proposed subcontractors. The agency also contends that DCS's approach to hiring incumbent employees is consistent with the RFP's request for "realized retention rates for incumbents on contracts. . . similar in size and scope" to the requirement. Id. at 12. The agency also notes that there are instances across the labor categories where DCS has in fact proposed rates higher than NCI, and that only "a handful of incumbent NCI employees may not fit into DCS's proposed compensation structure." Id. at 13. The agency further states that it specifically considered the following features of the compensation plan proposed by DCS that outweigh those proposed by NCI: [DELETED]. Id. at 11-12.

The evaluation of proposals in a task order competition, including the determination of the relative merits of proposals, is primarily a matter within the agency's discretion, since the agency is responsible for defining its needs and the best method of accommodating them. Wyle Labs., Inc., B-407784, Feb. 19, 2013, 2013 CPD ¶ 63 at 6. An offeror'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. In reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency, but rather examines the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. MicroTechnologies, LLC, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 4-5.

For the transition plan subfactor, the RFP required that an offeror's proposal include a plan demonstrating the ability to execute a successful transition of the incumbent or new

workforce within 60 days of award. RFP at 4. For the recruitment, retention, and staffing subfactor, the RFP required that offerors provide a detailed narrative to “maintain a qualified and capable workforce throughout the contract,” and identified multiple topics that offerors should specifically address in their proposals. Id. at 4-5. As relevant to the allegations here, the RFP required that offerors specifically address their compensation plans under this subfactor, as follows:

Proposed compensation plan and structure and how that structure supports their recruitment and retention plan. [Offerors] must comply with the reporting requirements of FAR 52.222-46 as part of the cost volume and provide convincing data on its professional compensation plan and its impact on recruitment and retention. While the complete compensation plan is required under the cost volume, this technical section requires the vendor to summarize the basic elements of the compensation plan and why that is attractive enough to recruit and retain qualified personnel in a competitive environment.

Id. at 5. The RFP stated that the agency’s overarching evaluation for technical factors, including these subfactors, would consider the adequacy of the response and feasibility of the approach provided by each offeror. Id. at 15-16.

Under the cost/price factor, the RFP further stated that the agency would evaluate compensation for professional employees in accordance with FAR provision 52.222-46, and that “the Offeror and its subcontractor(s) shall provide documentation and submit a total compensation plan setting forth salaries and fringe benefits proposed for the professional employees who will work under the contract that assures that it reflects a sound management approach and understanding of the contract requirements.” Id. at 12. The RFP further stated the agency would evaluate compensation plans as follows:

[In accordance with] FAR 52.222-46, Evaluation of Compensation for Professional Employees, [t]he Government will evaluate the plan to assure that it reflects a sound management approach and understanding of the contract requirements. This evaluation will include an assessment of the Offeror’s ability to provide uninterrupted high-quality work. The professional compensation proposed will be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation. The Government is concerned with the quality and stability of the work force to be employed on this contract. Professional compensation that is unrealistically low or not in reasonable relationship to the various job categories, since it may impair the Contractor’s ability to attract and retain competent professional service employees, may be viewed as evidence of failure to comprehend the complexity of the contract requirements. Failure to comply with these provisions may constitute sufficient cause to justify rejection of a proposal.

Id. at 21-22.

The record also shows that the Army conducted two rounds of discussions, during which the agency identified unrealistic direct labor rates proposed by offerors and their subcontractors, and issued evaluation notices.³ AR, Tab 50, Initial Price/Cost Report, at 7, 26-27, 31, 35-36, 39-42; Tab 71, Interim Price/Cost Report, at 7, 27-29, 33-34, 38-40, 43, 46-48, 50. In its cost realism analysis, the agency evaluated offerors' proposed direct labor rates to identify if any were "outliers"; if no outliers existed, the agency performed a standard deviation analysis. AR, Tab 89, Final Price/Cost Report, at 6. If outliers existed, the agency performed a median absolute deviation analysis. Id. The agency also considered Economic Research Institute data and a variety of documentation submitted by offerors as required by the RFP to perform its realism analysis of direct labor rates. Id. In its evaluation of offerors' final proposal revisions, the agency concluded that "there were no unrealistic direct labor rates for any of the offerors." Id. at 7.

During the agency's corrective action, the cost/price analyst performed a comparative review of the compensation plans offered by each prime and their proposed subcontractors. AR, Tab 169, Corrective Action Cost/Price Report, at 8-11. This review considered a variety of features included in each company's compensation plans, such as paid time off and other leave (e.g., military and bereavement), health benefits, life and disability insurance, retirement savings contributions, tuition assistance, and bonuses. Id.; see also Tab 168, Cost/Price Report Fringe Benefit Analysis. The cost/price analyst concluded as follows:

While the three offerors do not offer the same benefits, when taken as a whole, they are relatively similar. Based on the valuation of each compensation plan in congruence with the rates provided, a reasonable employee would take no issue with each company's total compensation plan. The risk of staffing this requirement with qualified, skilled individuals to provide uninterrupted, high-quality work is low. . . .

AR, Tab 169, Corrective Action Cost/Price Report, at 11.

The cost/price analyst's evaluation was provided to the SSEB, which concluded that the strengths identified in its previous evaluation of DCS's technical proposal for the recruitment, retention and staffing subfactor "are still valid and justified," and that there should be no change to the technical evaluation. AR, Tab 170, Corrective Action Addendum to SSEB Comparative Analysis - Tradeoff Recommendation. In its evaluation of DCS, the agency identified three strengths, two of which related to DCS's compensation plan, and assigned a rating of outstanding. AR, Tab 90, SSEB Report,

³ The agency also identified subcontractors that did not provide a compensation plan with their cost proposals, and requested that they be submitted with the offerors' final proposal revisions. AR, Tab 50, Initial Price/Cost Report, at 10-11, 28, 32-33, 43-44; Tab 71, Interim Price/Cost Report, at 10, 30, 35-36, 49, 51.

at 7-9. The SSEB identified as a strength DCS's provision of [DELETED] paid time off to employees with [DELETED] of employment, with additional days off for [DELETED], and concluded this feature presented a valuable recruiting and retention tool. Id. at 8. The evaluators concluded that DCS's proposed paid time off "would provide [an] immediate benefit to [PM-SPIE] as it is [DELETED]% more [paid time off] than even the most experienced employees receive with the incumbent SETA contractor." Id. Another strength related collectively to multiple other features of DCS's compensation plan. The evaluators concluded these features were unique, exceptional, and added to the standard benefits offered by almost all companies, and would be beneficial to recruitment, retention, and staffing. Id.

The contracting officer, who also served as the selection official, concurred with the SSEB. The selection official affirmed the prior evaluation and assigned DCS a rating of acceptable under the transition plan subfactor, and outstanding under the recruitment, retention, and staffing subfactor. AR, Tab 172, Task Order Decision Document, at 3.

As discussed above, the record shows that the agency evaluated proposed labor rates, identified rates deemed unrealistic, addressed the issues in discussions, and concluded in its final evaluation that all proposed direct labor rates were realistic. The agency evaluated DCS's technical proposal and identified strengths related to DCS's compensation plan. Further, the agency reviewed the compensation plans of all primes and their proposed subcontractors and concluded that they were relatively similar, a reasonable employee would "take no issue" with the plans, and there was low risk that any offeror would be unable to staff the requirement with qualified, skilled individuals to successfully perform the work. Finally, the record shows that the agency meaningfully considered the extent to which the compensation plans would impact "the quality and stability of the work force," which is the concern expressly stated in the RFP and FAR provision 52.222-46. Accordingly, we find the agency's evaluation to be reasonable.

Key Personnel

The protester argues that the agency should have found DCS's proposal unacceptable because DCS failed to advise the agency during the corrective action period that a proposed key person is no longer available. Protest at 12-13. NCI argues that it is evident, based on publicly available information, that DCS's proposed materials engineer III relocated from the Washington, D.C. area to Tucson, Arizona, and accepted a new position with another company in October 2019. Id.

The agency responds that the corrective action did not include a reevaluation of key personnel, and NCI raised no objection to the scope of the corrective action. COS/MOL at 9-10. The agency further argues that DCS had no obligation to report unavailability of the proposed key person, who was not a DCS employee, because the individual has not notified DCS that he is no longer available to perform the task order. Supp. COS/MOL at 5-8.

Our Office has explained that offerors are obligated to advise agencies of material changes in proposed staffing, even after submission of proposals. General Revenue Corp., et al., B-414220.2 et al., March 27, 2017, 2017 CPD ¶ 106 at 22. While an offeror generally is required to advise an agency where it knows that one or more key employees have become unavailable after the submission of proposals, there is no such obligation where the offeror does not have actual knowledge of the employee's unavailability. DZSP 21, LLC, B-410486.10, Jan. 10, 2018, 2018 CPD ¶ 155 at 10. This premise is grounded in the notion that a firm may not properly receive award of a contract based on a knowing material misrepresentation in its proposal. Id.

With respect to the key personnel subfactor, the RFP identified 10 positions and required that "letters of intent/commitment shall be provided for each position." RFP at 6. In its proposal, DCS identified 10 individuals for each of the required positions, and provided resumes and letters of intent for each. AR, Tab 63, DCS Interim/Final Technical Proposal, at 29, Appendix E. Specifically, the resume submitted for the individual proposed by DCS as its materials engineer III indicates that he has never been employed by DCS. Id. at E-9 to E-10. However, the proposed individual provided the required letter of intent, dated February 22, 2019, stating: "I am available and committed to pursuing employment with DCS Corporation to support the Program Executive Office (PEO) Soldier, Project Manager Soldier Protection and Individual Equipment (PM-SPIE) effort. . . ." Id. at E-38. As noted, the agency concluded that DCS's proposal was acceptable under the key personnel subfactor. AR, Tab 90, SSEB Report, at 4, 7.

In response to this protest allegation, the intervenor provided a declaration from a corporate official that states, in pertinent part, as follows:

[N]one of DCS's proposed key personnel have rescinded their letters of intent, nor have any of DCS's proposed key personnel notified DCS that they are unavailable to fill the position for which they provided a signed letter of intent. DCS had no reason to believe, prior to contract award, that any of its key personnel would be unavailable for contract performance. Indeed, to this day, DCS has no reason to believe any of its proposed key personnel have withdrawn their availability and intent to perform the contract effort.

AR, Tab 185, Decl. of DCS Vice President, at 2 (¶ 7).

Here, the resume of the proposed key person indicates that the individual was not employed by DCS, and DCS states that it has not been notified by any of its proposed key personnel that they are unavailable to perform the contract. Under these circumstances, DCS had no obligation to inform the agency that any of its key personnel were unavailable. Accordingly, we find the agency's evaluation unobjectionable.

Small Business Participation Plan

The protester also argues that the agency's evaluation of DCS's small business participation plan was unreasonable, and DCS should have been rated as unacceptable. Protest at 7-11. Specifically, NCI argues that DCS failed to identify subcontractors that would meet the woman-owned small business (WOSB) or historically-underutilized business zone (HUBZone) small business goals set forth in the RFP. Id. at 7-8. The protester additionally argues that DCS's proposal should have been rejected for failing to meet a material RFP requirement because the RFP required offerors to identify all of their proposed subcontractors, and none of the [DELETED] subcontractors identified by DCS in its proposal are WOSB or HUBZone small businesses. Id. at 9-11. The agency argues that it properly evaluated DCS's small business participation plan in accordance with the terms of the solicitation, and reasonably concluded that the plan was acceptable. COS/MOL at 6-8.

The evaluation of an offeror's proposal under a small business participation factor is a matter within the agency's discretion. Mission Essential Pers., LLC, B-410431.9, B-410431.10, Mar. 18, 2015, 2015 CPD ¶ 109 at 7. In reviewing an agency's evaluation, our Office will not reevaluate proposals; instead, we will examine the record to ensure that the evaluation was reasonable and consistent with stated evaluation criteria and applicable procurement statutes and regulations. Id. at 7-8; Cajun Constructors, Inc., B-409685, July 15, 2014, 2014 CPD ¶ 212 at 7.

Here, the RFP required that offerors complete a table providing their proposed small business participation plan percentages, and stated that the agency would rate the small business participation plan as acceptable or unacceptable. RFP at 10, 20; AR, Tab 10, Small Business Participation Plan Template. The RFP defined an acceptable rating as follows: "The Small Business Participation Plan indicates an adequate approach and understanding of small business objectives." RFP at 20. In pertinent part, the RFP stated as follows:

All Offerors (both large and small businesses) will be evaluated on the level of proposed participation of small businesses in the performance of [this] acquisition (as small business prime Offerors or small business subcontractors) relative to the objectives and goals established herein. . . . The Government will evaluate the extent to which the Offeror meets or exceeds the goals[.]

Id. The goals for this procurement were that 13 percent of the total contract value be subcontracted to small businesses, inclusive of the goals that 0.5 percent of the total contract value be subcontracted to each of the following subcategories of small business: small disadvantaged business (SDB), WOSB, HUBZone small business, veteran-owned small business (VOSB), and service-disabled VOSB (SDVOSB). Id.

In its small business participation plan, DCS proposed goals identical to those stated in the RFP. AR, Tab 36, DCS Small Business Participation Plan. In its cost proposal,

DCS otherwise indicated that its performance would account for [DELETED] percent of the proposed labor cost, and the remainder of the task order would be performed by its [DELETED] subcontractors, all of which were small businesses. AR, Tab 82, DCS Final Cost Proposal, at 4. Specifically, the DCS proposal indicated that its major small business subcontractor would account for [DELETED] percent of the proposed labor cost, and the remaining [DELETED] percent of the task order would be performed by the [DELETED] other small business subcontractors, all of which were also SDBs, VOSBs, and SDVOSBs. Id. As noted, the agency concluded that DCS's small business participation plan was acceptable. AR, Tab 90, SSEB Report, at 4, 9.

We find the agency's evaluation reasonable. The RFP stated that the agency would evaluate "the extent to which the Offeror meets or exceeds" the RFP's small business participation goals. The RFP did not require offerors identify specific small businesses that would be utilized to meet each goal. The record shows that DCS proposed to meet all of the RFP's stated small business participation goals, and did not take exception to any of the goals stated in the RFP. The DCS proposal otherwise indicated that it would exceed some of the small business subcontracting goals, by subcontracting at least [DELETED] percent of the total labor costs of the task order to small businesses, of which [DELETED] percent would be performed by SDB, VOSB, and SDVOSB small businesses. On this record, we find reasonable the agency's conclusion that DCS's small business participation plan was acceptable.

Best-Value Tradeoff

Finally, the protester challenges the agency's best-value tradeoff based on the alleged underlying evaluation errors. Protest at 14. Specifically, NCI argues that two of the three strengths identified by the agency as discriminators in DCS's proposal related to DCS's compensation plan, but are illusory because they impact only DCS employees and do not otherwise benefit employees of DCS's subcontractors. Comments & 2nd Supp. Protest at 14-16. NCI further argues that these discriminators conflict with the cost/price analyst's conclusion that all offerors' and their subcontractors' compensation plans were "relatively similar." Id. at 16-17. The agency argues that its best-value tradeoff is reasonable and rational and in accordance with the RFP. COS/MOL at 16; Supp. COS/MOL at 1-5.

Source selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results; cost and technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the solicitation's evaluation criteria. Booz Allen Hamilton Inc., B-414283, B-414283.2, Apr. 27, 2017, 2017 CPD ¶ 159 at 13-14. In reviewing protests of an agency's source selection decision, even in a task order competition as here, we do not reevaluate proposals but examine the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. Intelligent Waves LLC, B-416169, B-416169.2, June 12, 2018, 2018 CPD ¶ 211 at 12.

Here, as discussed above, we conclude that the agency's evaluation was reasonable. As noted, the evaluators identified three strengths in DCS's technical proposal and assigned a rating of outstanding; no strengths were identified in NCI's technical proposal, which was rated acceptable. Based on its evaluation, the SSEB recommended that award be made to DCS. AR, Tab 170, Corrective Action Addendum to SSEB Comparative Analysis - Tradeoff Recommendation. The contracting officer, who also served as the selection official, concurred with the SSEB and concluded that the superiority of DCS's proposal warranted the approximately \$8.1 million price premium associated with an award to DCS. AR, Tab 172, Task Order Decision Document, at 4-6. Contrary to the protester's assertion, the fact that DCS's compensation plan applies only to a portion of its entire proposed workforce does not negate the benefits identified by the agency for those personnel, or establish that the benefits do not exceed what some incumbent employees currently receive. Likewise, the agency's conclusion that compensation plans across primes and their proposed subcontractors were "relatively similar" does not preclude the agency from also concluding that the compensation plan offered by DCS was superior to that offered by NCI. On this record, we find no basis to question the agency's best-value tradeoff decision.

The protest is denied.

Thomas H. Armstrong
General Counsel