U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: ICF Incorporated, LLC

File: B-419485.4; B-419485.5

Date: June 26, 2023

Kelly E. Buroker, Esq., Kevin P. Connelly, Esq., Jeffrey M. Lowry, Esq., and Tamara Droubi, Esq., Vedder Price PC, for the protester.
Brian A. Darst, Esq., Odin Feldman Pittleman PC, for STS International, Inc., the intervenor.
Fadette Berthold, Esq., and Jonathan A. Hardage, Esq., Department of the Army, for the agency.
Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of proposals and source selection decision is dismissed in part, and denied in part, where the record shows that the agency's evaluation and source selection were reasonable, rational, and consistent with the terms of the solicitation and applicable statues and regulations.

DECISION

ICF Incorporated, LLC, of Fairfax, Virginia, protests the award of a contract to STS International, Inc., of Berkley Springs, West Virginia, under request for proposals (RFP) No. W911QY-20-R-0020, issued by the Department of the Army for combat field service team equipment services. ICF argues that the agency misevaluated proposals and made an unreasonable source selection decision.

We dismiss the protest in part, and deny it in part.

BACKGROUND

This is our third occasion to consider the propriety of the agency's actions in connection with this acquisition. The agency originally awarded a contract to STS in December 2020 and ICF filed its first protest challenging that award. In response to this protest, prior to the deadline for submission of the agency report, the agency advised our Office that it intended to take corrective action. Based on the agency's proposed corrective action, we dismissed ICF's first protest as academic. *ICF Incorporated, LLC,* B-419485, Jan. 19, 2021 (unpublished decision).

Thereafter, the agency performed its corrective action and again awarded the contract to STS in November 2021. After being advised of the agency's selection decision and requesting and receiving a debriefing, ICF filed a second protest with our Office in December 2021. The agency provided a detailed report in response to that protest. After reviewing the agency's report, ICF filed a supplemental protest with our Office, alleging, among other things, that one of STS's proposed key employees was no longer available to perform on the contract. After reviewing ICF's supplemental protest, the agency advised our Office that it intended to take corrective action in response to ICF's allegation relating to the availability of STS's key personnel. The agency advised our Office as follows:

> Specifically, the concern that has prompted the Army's decision to take corrective action is the following supplemental allegation made by ICF for the first time in its January 31, 2022 filing: "**STS's Technical Proposal Should Have Been Rated Unacceptable Due to the Unavailability of One of Its Identified Key Personnel[.]**"

Agency Report (AR) Exh. 13, Agency Corrective Action Letter, Feb. 4, 2022, at 1-2. The agency advised that it would reopen discussions with all offerors in the competitive range, and specifically would seek updated information relating to their proposed key personnel; obtain and evaluate revised proposals; and make a new source selection decision. *Id.* at 2. Based on the agency's proposed corrective action, we dismissed ICF's second protest as academic. *ICF Incorporated, LLC*, B-419485.2, B-419485.3, Feb. 4, 2022 (unpublished decision).

The agency engaged in its proposed corrective action and made award of the contract to STS for a third time in March 2023. After being advised of the agency's latest selection decision, ICF filed its current protest with our Office raising various allegations, discussed in detail below.

The RFP contemplates the award, on a best-value tradeoff basis, of an indefinite-delivery, indefinite-quantity fixed-price contract to perform the solicited requirements for a single 5-year period of performance. RFP at 13.[1] Firms were advised that award would be based on consideration of price, and several non-price factors. The evaluation factors, in descending order of importance, were: technical, past performance, price, and small business participation. RFP at 88. The RFP further provided that all of the non-price considerations, when combined, were significantly more important than price.

---

[1] All citations to the RFP are to the conformed version of the solicitation provided by the agency in its report. AR, Exh. 61, Conformed RFP.

In response to the solicitation, the agency received four proposals. After evaluating the proposals, the agency included all four firms in the competitive range and engaged in discussions. As noted above, the agency made a selection decision based on its original round of discussions with the offerors, and ICF filed a protest in connection with that selection decision. Through the process of implementing its corrective action, the agency ultimately engaged in two more rounds of discussions.[2] At the conclusion of those discussions, the agency assigned the following ratings to the ICF and STS proposals:

	ICF	STS
Technical	Outstanding	Good
Past Performance	Substantial Confidence	Substantial Confidence
Small Business	Outstanding	Outstanding
Price	$23,222,025	$20,619,661

AR, Exh. 4, SSDD, at 5. On the basis of these evaluation results, the agency selected STS as the offeror deemed to have submitted the best-value proposal. *Id.* at 20. After being advised of the agency's selection decision and requesting and receiving a debriefing, ICF filed the current protest.

DISCUSSION

ICF raises various challenges to the agency's evaluation of proposals and source selection decision. ICF challenges the evaluation of proposals under the price and technical factors, and alleges that the agency's source selection decision was unreasonable and inconsistent with the terms of the solicitation. We have reviewed all of ICF's allegations and conclude that certain of ICF's allegations are not properly for our consideration on the merits, while its remaining allegations provide no basis for our Office to object to the agency's actions. We discuss ICF's principal allegations below.

We note at the outset that, in considering protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency; rather, we review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. *Comprehensive Health Services, LLC*, B-421108.4, B-421108.5, May 17, 2023, 2023 CPD ¶ 126 at 3. We also note that, in making source selection decisions in a best-value setting, agencies are afforded broad discretion, and their tradeoffs are governed only by the test of rationality and consistency with the solicitation's evaluation scheme. *Id.*

[2] One of the original offerors removed itself from the competition after the agency's original selection decision and did not participate in the subsequent rounds of discussions. AR, Exh. 4, Source Selection Decision Document (SSDD) at 3.

Price Realism

ICF argues that the agency failed to perform an adequate price realism evaluation and, as a consequence, failed adequately to consider what it describes as the inherent risk in STS's proposed technical approach. According to ICF, the agency failed to recognize the inherent risk occasioned by STS's low prices because STS proposed to perform using incumbent personnel, but its proposed prices are inadequate to attract and retain those incumbent personnel.

The agency agrees that the RFP contemplated the conduct of a price realism evaluation, but argues that the requirement was not for purposes of evaluating the offerors' technical understanding. The agency takes the position that the RFP's price realism requirement was only for purposes of evaluating responsibility. The agency states that it did, in fact, perform a price realism evaluation, but only after it completed its evaluation of proposals under the non-price factors, and only in connection with its responsibility determination. Contracting Officer's Statement of Facts and Legal Memorandum at 33-34.

We dismiss this aspect of ICF's protest. While ICF is correct that a price realism evaluation can be used to evaluate whether an offeror's prices are so low that they reflect a lack of technical understanding, the RFP here did not contemplate such an evaluation. In this connection, we have consistently stated that an RFP must provide that (1) the agency will review prices to determine whether they are so low that they reflect a lack of technical understanding, and (2) that a proposal can be rejected for offering unrealistically low prices. *Async-Nu Microsystems, Inc.*, B-419614.5, B-419614.6, Sept. 30, 2022, 2022 CPD 251 at 5-6; *see also Dyncorp International, LLC,* B-407762.3, June 7, 2013, 2013 CPD ¶ 160 at 8-9. Absent such a provision, the question of whether a firm's prices are too low generally concerns a matter of responsibility.[3]

Here we conclude--consistent with the agency's position--that the RFP required the agency to review prices for realism, but only in connection with the question of responsibility; the RFP did not provide for price realism to be used to evaluate a firm's technical understanding. The RFP included two provisions relating to the evaluation of price realism. First, the RFP's price evaluation factor stated:

> The contract price proposal will be evaluated in accordance with FAR Part 15.305 for Fairness and Reasonableness, price competitiveness, and will

---

[3] Federal Acquisition Regulation (FAR) 15.404-1(d)(3) specifically provides that cost realism evaluation techniques may be used in connection with the award of a fixed-price contract (in other words, the conduct of a price realism evaluation), either for evaluating a firm's technical understanding, or in connection with making responsibility determinations. As discussed further below, consistent with this FAR provision, the RFP here contemplated performance of a price realism evaluation, but only in connection with the agency's responsibility determination.

> not be given an adjectival or risk rating. The price proposal shall be evaluated based on the price competition for this acquisition. Price, while being an important factor, is not in and of itself the determining factor in the selection of the successful offeror for award of the contract contemplated by this solicitation. Price is not scored/weighted; rather, each offeror[']s price will be evaluated for realism, reasonableness, and completeness of the proposed price. *The ultimate importance of the price factor will be determined after the technical and past performance merit and confidence in the offerors proposal have been established. Fairness, realism and reasonableness shall be determined accordingly by the Contracting Officer.*

RFP at 91-92 (emphasis supplied). Thus, the RFP's price evaluation factor expressly stated that the importance of the price factor would be determined by the contracting officer only *after* the evaluation of proposals under technical and past performance factors had been completed.

This interpretation is reinforced by another provision of the RFP's evaluation scheme, entitled "Factors And Areas To Be Evaluated," which stated:

> The evaluation of proposals in response to this RFP shall be based on an independent comprehensive review and assessment of each proposal against all source selection criteria, Factors, Proposal Risk, and Performance Confidence as further described below. Ratings consistent with these evaluation Factors will be derived from (1) the ability of the offeror, as demonstrated in the Technical, Program Management, and Past Performance Sections, to perform the work in accordance with all aspects of requirements outlined in this solicitation and (2) the realism of the Contract Price Section. *Proposals that are unrealistic in terms of capability commitments in Technical Approach, Program Management, or Contract Price will be deemed to reflect an inherent lack of technical competence and/or failure to comprehend the complexity and risks associated with contract requirements. Such failures, which bring into question the responsibility of the offeror, may constitute grounds for proposal rejection.*

RFP at 89-90 (emphasis supplied). This RFP provision thus expressly identified a lack of price realism (as well as a lack of non-price capabilities) to be a matter of responsibility, and not a matter of technical understanding. It follows that the RFP contemplated the possibility of proposal rejection for including unrealistic prices, but only in connection with a finding of nonresponsibility.

Consistent with these provisions, the agency conducted a detailed evaluation for purposes of establishing the realism of the proposed prices. AR, Exhs. 5, 6, Final Price Evaluation Report and Workbook. Based on that analysis, the contracting officer made an express finding that STS was eligible to receive award. AR, Exh. 7, Contracting Officer's Determination of Price Reasonableness and Realism, at 4.

In light of the discussion above, we conclude that the RFP did not contemplate--as urged by ICF--performing a price realism evaluation for purposes of assessing the offerors' technical understanding of the requirement. We also conclude that the agency fulfilled its obligation under the terms of the RFP to consider price realism in connection with its review of STS's responsibility.

In light of these considerations, we find that this aspect of ICF's protest fails to state a valid basis for protest. As noted, ICF's protest alleges only that the agency failed to take into consideration what it describes as the risk associated with STS's allegedly low prices in light of its proposed technical approach. ICF has not challenged the agency's determination that STS was responsible. Since, as discussed, the solicitation only contemplated elimination of a firm as nonresponsible based on unrealistic prices, and since ICF has not challenged the agency's determination that STS was responsible, its protest fails to state a valid basis for protest. 4 C.F.R. §§ 21.1(f), 21.5(f). Accordingly, this aspect of ICF's protest is dismissed.[4]

Evaluation of the STS Technical Proposal[5]

ICF raises two challenges to the evaluation of STS's technical proposal. First, ICF argues that the agency should have rejected STS's technical proposal because it exceeded the page limit set by the RFP. In this connection, ICF points to certain earlier discussions exchanges conducted between STS and the agency and argues that, through these exchanges, STS was effectively permitted to exceed the page limit established for the offerors' technical proposals (the RFP instructions stated that technical proposals were to be limited to 30 pages).

We dismiss this aspect of ICF's protest as untimely. Our Bid Protest Regulations require that protests other than those alleging an apparent solicitation impropriety be filed no later than 10 days after the protester knows or should know its basis for protest. 4 C.F.R. § 21.2(a)(2). In addition, where, as here, a firm filed an earlier protest with our Office, and obtained information that provides the basis for a current allegation, the subsequently-raised allegation must independently satisfy our timeliness requirements.

---

[4] As a final matter we point out that the RFP did not contemplate offerors proposing unique staffing approaches to performing the requirement. The RFP dictated the personnel positions (seven discrete labor categories) and number of hours for each position that offerors were required to use in formulating their prices, so there was no opportunity for offerors to propose fundamentally differing staffing profiles. *See* AR, Exh. 69, Price Proposal Workbook.

[5] In its current initial protest, ICF argued that the agency also erred evaluating the ICF proposal under the technical evaluation factor by failing to recognize various "tangible programmatic efficiencies" offered by ICF. Protest at 46-49. In in its comments and supplemental protest, ICF withdrew these allegations. Comments and Supplemental Protest at 51.

See Synergy Solutions, Inc., B-413974.3, June 15, 2017, 2017 CPD ¶ 332 at 6-7; *Savee Consulting, Inc.*, B-408416.3, Mar. 5, 2014, 2014 CPD ¶ 92 at 5.

ICF was provided all of the materials that it relies on in connection with this allegation during its earlier (second) protest. Specifically, the agency report filed at that time included all of the evaluation notices issued to STS, and all of STS's responses to those evaluation notices. In fact, ICF actually raised this exact allegation--based on the exact same evidence that it currently is relying upon--in its supplemental protest filed after receipt of the agency report in the earlier case. Comments and Supplemental Protest (B-419845.2), Jan 31, 2022, at 23-29.

ICF suggests that this aspect of its current protest is timely because it assumed that the agency would have corrected this problem when it reopened discussions during its latest iteration of the acquisition. However, as noted above, the agency's corrective action was prompted by a specific concern over ICF's allegation relating to the availability of STS's key personnel, and not any concern relating to the number of pages comprising STS's technical proposal. In this connection, the agency advised that it would reopen discussions with all offerors in the competitive range, and specifically would seek updated information relating to their proposed key personnel; obtain and evaluate revised proposals; and make a new source selection decision. AR Exh. 13, Agency Corrective Action Letter, Feb. 4, 2022, at 2.

ICF did not object to the agency's proposed corrective action prior to the time we dismissed its earlier protest; did not request reconsideration of our prior dismissal of its earlier protest; and did not file a new protest challenging the scope or adequacy of the agency's corrective action. ICF also made no mention of this issue when it filed its current initial protest. Instead, ICF advanced this argument for the first time in a supplemental protest filed after its receipt of the latest agency report. Under these circumstances, we conclude that this aspect of ICF's protest is untimely. *Verizon Business Network Services, Inc.*, B-419271.5, B-419271.6, Apr. 26, 2021, 2021 CPD ¶ 191 at 14-16. We therefore dismiss this allegation.

Second, ICF argues that the STS proposal was previously assigned three significant weaknesses and one weakness that STS could not have cured through discussions. According to ICF, these significant weaknesses and weakness were assigned because of editorial errors and mislabeling or misidentifying tables and figures, and reflect a lack of attention to detail that reflected an inherent level of risk associated with making award to STS that could not have been eliminated through discussions.

We dismiss this aspect of ICF's protest as untimely as well. As with its assertion that STS improperly was permitted to exceed the RFP's page limitation, ICF made this same allegation when it filed its supplemental protest after receipt of the agency report in its earlier (second) protest, and relied then on the same evidence it cites now in support of its assertion. Comments and Supplemental Protest (B-4194852.), Jan. 31, 2022, at 29-31. In addition, as noted above, the agency's corrective action in response to ICF's supplemental protest was prompted by a specific concern over ICF's allegation relating to the availability of STS's key personnel, and not any concern relating to the removal of weaknesses assigned to the STS proposal. ICF did not object to the agency's proposed corrective action prior to the time we dismissed its earlier protest; did not request reconsideration of our prior dismissal of its earlier protest; and did not file a new protest challenging the scope or adequacy of the agency's corrective action. ICF also made no mention of this issue when it filed its current initial protest. Instead, ICF advanced this argument for the first time in a supplemental protest filed after its receipt of the latest agency report. Under these circumstances, we likewise conclude that this aspect of ICF's protest also is untimely.[6] *Verizon Business Network Services, Inc., supra.*

Best-Value Selection Decision

ICF makes a variety of arguments challenging the reasonableness of the agency's source selection decision. These argument largely amount to many different ways of saying the same thing, namely, that the source selection authority's (SSA's) decision was unreasonable or otherwise inconsistent with the terms of the RFP because the ICF proposal was not selected for award, despite its technical superiority and what ICF characterizes as its "modest" price premium.

ICF argues that the SSA relied on an unreasonable and inadequate price realism evaluation that failed to consider the technical risk associated with STS's proposed pricing, and an unreasonable technical evaluation that failed to identify deficiencies or weaknesses in the STS proposal. ICF argues that the SSA "abandoned" the evaluators' findings with respect to its technical proposal because of the SSA's allegedly unreasonable conclusion that certain of those findings were based on ICF's incumbency, and thus failed adequately to credit its technical proposal with all of the strengths assigned to it by the technical evaluators. ICF argues that the SSA more generally failed to "go behind" the adjectival ratings assigned to the proposals under the technical factor and the adjectival ratings assigned to the offerors' past performance.[7]

---

[6] We also point out that when the agency provided ICF a debriefing and answers to ICF's questions in connection with the latest award decision, the agency again advised ICF that the STS proposal had not been assigned any significant weaknesses, weaknesses or deficiencies. ICF was therefore advised again that the agency did not assign the weaknesses relied on by ICF in raising this allegation. *See* ICF's current Initial Protest, exh. E.4, Agency Questions and Answers, Question No 10. Nonetheless, ICF did not raise this argument in its current initial protest, but raised it instead for the first time in its supplemental protest.

[7] In its initial protest, ICF argued, among other things, that the agency disparately assigned significant strengths and strengths to STS's past performance while not similarly assigning significant strengths and strengths to its own past performance. After receiving the agency report and being apprised of the fact that the agency did not assign significant strengths or strengths to any offeror's past performance, ICF withdrew this aspect of its protest. Comments and Supplemental Protest at 3 n. 3.

Finally, ICF argues that the agency failed to make award in accordance with the terms of the RFP because it placed too much emphasis on price versus the non-price considerations, and that the agency effectively converted the acquisition from a best-value tradeoff to a lowest-priced, technically acceptable award basis.

We have reviewed all aspects of ICF's challenge to the agency's selection decision and find no merit to any of them. Preliminarily, we note that a number of ICF's contentions rely on arguments that, as discussed above, are premised on ICF's flawed understanding of the RFP's terms, or are otherwise untimely. As noted, ICF argues that the agency failed to identify the technical risk associated with STS's allegedly low prices, but the RFP did not require such an evaluation finding. Similarly, ICF failed to raise any timely challenges to the agency's underlying evaluation of STS's technical proposal, and otherwise withdrew its challenges to the agency's evaluation of its own technical proposal, and the agency's evaluation of past performance.

The remainder of ICF's challenges to the agency's selection decision amount to no more than disagreement with the agency's ultimate conclusion that the STS proposal provided the agency with the best overall value to the government. As noted, agencies enjoy broad discretion, and their tradeoffs decisions are governed only by the test of rationality and consistency with the solicitation's evaluation scheme; a protester's disagreement with the agency's ultimate selection decision, without more, does not provide our Office a basis to object to the agency's selection decision. *Comprehensive Health Services, LLC*, *supra* at 15-16. We have considered all of ICF's challenges to the agency's selection decision and find no merit to any of them; we discuss one allegation for illustrative purposes.

ICF argues that the SSA improperly discounted several of its assigned strengths that were based on its incumbency.[8] According to ICF, the agency was required--but failed--to give it due credit for its assigned strengths, especially in light of the comparative importance of the technical evaluation factor versus price.

We find no merit to this aspect of ICF's protest. While ICF is correct that the RFP emphasized the relative importance of technical merit over price, the RFP also contemplated that the agency would make a cost/technical tradeoff between proposals that considered not just technical merit, but also price. This is the essence of a "best-value" acquisition, and the fact that a firm's technical advantage arises from its incumbency does not necessarily dictate that its proposal represents the best value to the government. *See ABSG Consulting, Inc.* B-407956.2, Apr. 18, 2013, 2013 CPD ¶ 111 at 10.

---

[8] ICF also argues that the SSA improperly reduced certain "significant" strengths assigned by the technical evaluators to strengths. The record shows, however, that the SSA did this only because the RFP did not contemplate the assignment of significant strengths. See AR, Exh. 4, SSDD, at 8 n. 1. We see nothing improper in the SSA's actions based on a reading of the RFP which, consistent with his finding, did not provide for the assignment of significant strengths. RFP at 91.

Here, the record shows that the SSA critically considered the advantages offered by the ICF proposal--including those arising as a consequence of its incumbency--but ultimately concluded that ICF's technical advantage did not outweigh its higher price. The portion of the SSA's analysis that focused on the comparative value of the strengths assigned to the ICF proposal by virtue of its incumbency provided as follows:

> When taking a closer look at the strengths assigned to ICF in their technical rating it is clear that they are well deserved but also based in large part on the company being the longtime incumbent on the effort. ICF being the incumbent does not diminish their demonstrated expertise in their proposal nor does it discount their experience and excellent performance but it does follow that they should be able to draft a concise list of personnel performing the various tasks articulated in the RFP and doing so being considered a strength (a significant one according to the evaluators) requires context. Similarly, the [deleted] phase in plan, admittedly exceeding the 90 days allowed for, is rendered moot if there is no transition necessary if awarded to the incumbent. The highlighting of the mental toughness of their employees and their ability to make quick decisions in stressful situations is admirable and something that I have no reason to doubt[,] but I wonder what the value [of] this subjective quality is when compared to the requirement[,] and does it follow that it is unique to this particular offeror? Again, this discussion isn't meant to disparage but rather analyze what may be driving the delta between an "Outstanding" technical proposal and one that is "Good" and the point of bringing up the examples above is to show that while the former is likely well-deserved, the . . . [latter] may be the better value given the fact that the rating received [good] exceeds the threshold for technical acceptability and the price is millions of dollars cheaper while still being reasonable and realistic. It is for the above reasons that I feel that the price premium associated with ICF's technically superior proposal does not represent the best value for the Government.

AR, Exh. 4, SSDD, at 19-20. This is nothing more than the SSA doing precisely what is contemplated by a best-value source selection methodology; weighing the comparative value of the proposals' non-price attributes against the cost associated with acquiring those attributes. ICF's disagreement with the SSA's ultimate judgment, without more, does not provide a basis for our Office to object to the agency's selection decision.

The protest is dismissed in part, and denied in part.

Edda Emmanuelli Perez
General Counsel