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United States Government Accountability Office
Washington, DC 20548

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Decision

Matter of: ERC Inc.

File: B-407297; B-407297.2

Date: November 19, 2012

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Tania Calhoun, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that source selection authority's (SSA) selection decision was improper is denied where the record shows the SSA conducted an extensive examination of the qualitative merits of proposals in finding them essentially equal under two evaluation factors, and reasonably relied on a key discriminator under the third evaluation factor to make the selection decision.

DECISION

ERC, Inc., of Huntsville, Alabama, protests the award of a contract to Barrios Technology, Ltd., of Houston, Texas, under request for proposals (RFP) No. NNJ11401774R, issued by the National Aeronautics and Space Administration (NASA) to obtain mission and program integration services for the International Space Station Program. ERC challenges the source selection decision.

We deny the protest.

BACKGROUND

The International Space Station (ISS) Program is a cooperative international program formed to build, operate, and utilize a permanently human-tended space station in low Earth orbit. Contracting Officer's (CO) Statement at ¶ 1.1. The ISS hosts an average of 14 visiting vehicles per year involving various types of

launchers and vehicles. These vehicles ferry up to 2.5 tons of supplies to the ISS each trip. Many also carry replacement crew members to ISS, which remains a very risk-laden environment. Legal Memorandum at 3. The United States and its international partners collaborate to crew, operate and sustain the ISS as a space-based laboratory under a U.S. Program Manager. CO's Statement at ¶ 1.1.

This Mission and Program Integration (MAPI) procurement is part of a NASA strategy to change the way the ISS Program does business due to two developments. First, the ISS Program is expanding the use of commercial and international partners to provide for crew and cargo services now that the Space Shuttle has been retired. These changes and associated risks directly impact how NASA manages the ISS Program and its related logistics, including re-supply transportation and integration services. Id. at ¶ 3.1. Second, the government has designated ISS as a National Laboratory, which places operational demands on NASA to make ISS available to scientific researchers. As a result, the Program has sought to redefine and realign the contracts that are essential to ISS mission safety and success. The statement of work (SOW) combines requirements from multiple predecessor contracts. Under two of these contracts, NASA acquired support from Barrios and a firm proposed as its subcontractor here. Legal Memorandum at 3-4.

The solicitation, issued February 8, 2012 as a small business set-aside, contemplated award of a cost-plus-award-fee/incentive-fee contract that included an indefinite-delivery/indefinite-quantity feature with a not-to-exceed limit, as well as a fixed-price phase-in period. RFP §§ B.2, B.3, L.3. The period of performance consists of a 45-day phase-in period and a two-year base period, with up to three two-year option periods. RFP §§ F.2, F.3, F.6.

The MAPI contractor will provide products and services to support mission and program integration and necessary infrastructure operations functions for the ISS. The SOW advises prospective offerors that thorough knowledge and expertise of the ISS will be necessary to perform this contract. RFP SOW at C-7. Services are to be performed in such areas as program management and administration; business management; configuration management/data management and integration; systems engineering and integration; mission planning; operations; safety and mission assurance/program risk; and program research.

Award was to be made on a best value basis, considering three evaluation factors: mission suitability, past performance, and cost/price. RFP § M.3. The mission suitability factor was more important than the past performance factor; both factors, when combined, were significantly more important than cost. Id. The evaluation of cost/price proposals is not at issue here.

The mission suitability factor, worth 1,000 points, was comprised of three subfactors: technical approach (450 points); management approach (450 points), and safety and health approach (100 points). RFP § M.3.1. The SEB planned to

adjectivally rate the subfactors as excellent, very good, good, and so on, and to convert those ratings into point scores for use as a source selection guideline. Id.

Each offeror’s past performance record was to be examined for recent and relevant past performance to determine its ability to perform the required work. In determining relevance, NASA was to consider whether present or past efforts involved the same magnitude of effort and complexities as required here.¹ Performance confidence ratings of “very high level of confidence,” “high level of confidence,” and so on were to be assigned to each proposal. RFP § M.3.2.

NASA received three proposals by the April 18 closing date, including those from Barrios and ERC. The third proposal is not at issue here. After an initial evaluation, all three proposals were included in the competitive range. Discussions were conducted with all offerors, and final proposal revisions were requested. On July 20, the SEB briefed the source selection authority (SSA), the ISS Program Manager, on the final evaluation results. As discussed below, the briefing generated extensive discussion concerning the relative qualitative merits of the proposals, and resulted in the SSA requesting additional information. On August 3, the SSA and SEB reconvened for further discussion of the final evaluation results:

	ERC	Barrios
Mission Capability	893 points	873 points
Technical Approach	Very Good (374 points)	Very Good (401 points)
Management Approach	Excellent (428 points)	Very Good (383 points)
Safety and Health Approach	Excellent (91 points)	Very Good (89 points)
Past Performance	Very High Level of Confidence	Very High Level of Confidence
Proposed/Probable Cost	\$357.5 M/\$358.4 M	\$368.8 M/\$369.9 M

AR, Exh. 18, Aug. 3, 2012, SSA Selection Meeting Presentation, at 5, 24, 69.

The SSA’s source selection statement sets forth a detailed comparative analysis of the proposals under each factor, and a cost/technical tradeoff analysis of what the SSA termed a “close decision.” AR, Exh. 20, Source Selection Statement, at 9.

The SSA indicated that, during the initial SEB presentation, ERC’s mission capability proposal had a modest point advantage overall. He focused on the source of this apparent difference and found that it stemmed from ERC’s better management approach. The SSA agreed with the SEB’s findings. The SSA stated that the SEB rated the technical approach proposals essentially equal, with a slight point advantage to Barrios. The SSA described his skepticism about the weight the

¹ A “very relevant” present/past performance effort involved “essentially the same magnitude of effort and complexities this solicitation requires.” RFP § M.3.2(c).

SEB assigned to several strengths in both proposals here. Finally, the SSA stated that he found the proposals essentially equal under the safety and health subfactor. The SSA concluded that, as to mission capability overall, in light of his view of some technical approach strengths, which effectively offset the modest point advantage the SEB had given ERC under the management approach subfactor, he tentatively determined that the proposals were essentially equal. However, he thought the SEB could provide him more detailed qualitative information, especially under the technical approach subfactor, to help him differentiate between proposals and either firm up or modify his initial assessment. Id. at 8.

The SSA stated that he initially found the past performance proposals essentially equal. However, as the discussion drilled down into the details of the relevancy, complexity, and size of each offerors' past contracts, the conversation turned to risk, especially in the area of logistics. The SSA said he recognized that "ISS logistics," which represents about 30 percent of the MAPI work, should not be weighted as just generic logistics. He considered ISS logistics to consist of transportation of up-mass to the ISS; expenditure of extremely limited crew time for receiving, accounting for, replacing or repairing elements, components and systems; and the optimal management of very limited on-orbit stowage. He indicated that space is an unforgiving environment for humans and the systems their lives depend on. In this regard, the SSA explained that ISS logistics are subject to much more severe constraints than typical logistics requirements and systems, with more severe adverse consequences. The SSA said he needed more detailed qualitative information to help him differentiate between the very close proposals in light of this perspective on the relevance of past performance. Id. at 8-9.

The SSA said Barrios had the high probable cost by a "very slight amount, so slight as to render the proposals essentially equal" under the cost/price factor. Id. at 9.

The SSA directed the SEB to provide more detailed qualitative information on the mission capability proposals, and to consider how constraints associated with ISS logistics might affect the weighting of relevance under the past performance factor. To avoid giving undue weight to incumbency, he asked the SEB to consider constraints of all kinds that might have arisen during the offerors' prior performance in addition to the spaceflight environment. Id. The SSA states that the information he received from the SEB concerning mission capability solidified his initial determination that the proposals were essentially equal.² With no discernible

² In revalidating its findings and ensuring their internal consistency, the SEB found that one Barrios weakness was not rated consistently for reasons NASA describes. The SEB slightly raised Barrios' point score while retaining the same weakness and rating. The SEB looked for similar inconsistencies with other proposals but found none. CO's Statement at ¶ 12.3. ERC's generalized argument that NASA treated
(continued...)

benefits to use as discriminators under the mission capability factor, the SSA turned to the past performance factor.

The SSA stated that the additional detail the SEB provided on ERC's prior contracts led him to conclude that they were not subject to the sort of challenging environment and constraints as are present in human spaceflight or its equivalents. He found that the Barrios team experience in such environments gave it a meaningful advantage. In addition, he found that ERC's experience in another key area, integrated system performance analysis, did not measure up to that of the Barrios team; this was also a meaningful advantage in Barrios' favor. Id. at 10.

The SSA explained that the non-cost differences came down to the following comparative risk consideration:

- With Barrios and its modest advantage I had found in Technical Approach, the risk was that, while I could be sure the work (especially logistics and integrated system performance analysis) would be done well and not miss anything critical, it may not be accomplished with maximum management efficiency.
- With ERC and its modest advantage I had found in Management Approach, the risk was that, while I could be sure the work (especially logistics and integrated system performance analysis) would be done very efficiently, it may not be accomplished (at least initially) with the degree of completeness or effectiveness demanded by the tightly constrained and high-risk environment of the operating ISS.

Id.

The SSA stated that the risks involved in this contract affect the lives and safety of people and the ISS's optimal functioning. He found that the effectiveness of the work was significantly more important than how efficiently or at what cost that work was carried out. While he did not doubt that ERC could, "after a reasonable period of time," learn to discern, assess and address the risks, the SSA thought its learning curve period was likely to be longer than it would have been if the firm had at least some experience managing equivalent risks and challenges in some very challenging and high-risk environment. The SSA also stated that the Barrios team provided a demonstrated experience base in performing integrated system performance analysis in a complex and changing environment. Weighing the ERC

(...continued)

offerors disparately because it did not adjust ERC's point score is unsupported by substantive argument.

proposal's slightly lower cost against its disadvantage of moderately higher non-cost risks as compared to the Barrios proposal, the SSA found that the Barrios proposal represented the best value to the government. Id. at 10-11.

DISCUSSION

ERC's protest centers on the SSA's source selection decision. ERC challenges the SSA's finding that the proposals were essentially equal under the mission capability and cost/price factors. ERC also challenges the SSA's use of "ISS logistics," under the past performance factor, as a discriminator for the award decision. ERC ultimately argues that, based on adjectival ratings and point scores, as well as its lowest cost/price, it should have received award.

In reviewing an agency's evaluation of proposals and source selection decision, it is not our role to reevaluate submissions; rather, we examine the supporting record to determine whether the decision was reasonable, consistent with the stated evaluation criteria, and adequately documented. Trofholz Techs., Inc., B-404101, Jan. 5, 2011, 2011 CPD ¶ 144 at 3; Johnson Controls World Servs., Inc., B-289942, B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6. A protester's disagreement with the agency's evaluation judgments, or with the agency's determination as to the relative merits of competing proposals, does not establish that the evaluation or the source selection decision was unreasonable. Smiths Detection, Inc.; Am. Sci. and Eng'g, Inc., B-402168.4 et al., Feb. 9, 2011, 2011 CPD ¶ 39 at 6-7; ITW Military GSE, B-403866.3, Dec. 7, 2010, 2010 CPD ¶ 282 at 5.

Source selection officials have broad discretion to determine the manner and extent to which they will make use of evaluation results, and must use their own judgment to determine what the underlying differences between proposals might mean to successful performance of the contract. Applied Physical Sciences Corp., B-406167, Feb. 23, 2012, 2012 CPD ¶ 102 at 6; Information Network Sys., Inc., B-284854, B-284854.2, June 12, 2000, 2000 CPD ¶ 104 at 12. Source selection officials are not bound by the recommendations of lower-level evaluators. All Points Int'l Distributions, Inc., B-402993, B-402993.2, Sept. 3, 2010, 2010 CPD ¶ 209 at 3.

In a best value procurement, it is the function of the source selection official to perform a cost/technical tradeoff, that is, to determine whether one proposal's technical superiority is worth the higher cost. ITW Military GSE, *supra*. Ratings, whether numerical, color, or adjectival, are merely guides to assist agencies in evaluating proposals; the qualitative information underlying those ratings is the type of information that source selection officials should consider, in addition to ratings, to enable them to determine whether and to what extent meaningful differences exist between proposals. Pemco Aeroplex, Inc., B-310372, Dec. 27, 2007, 2008 CPD ¶ 2 at 6. Proposals with the same adjectival ratings are not necessarily of equal quality, and a proposal with a higher point-score is not necessarily superior to a proposal with a lower point-score. An agency may properly consider specific

advantages that make one proposal of higher quality than another. Id. at 6-7. It is well settled that a single evaluation factor--even a lower-weighted factor--may properly be relied upon as a key discriminator for purposes of a source selection decision. Smiths Detection, Inc.; American Science and Eng'g, Inc., supra at 16.

In the case at hand, our review of the record shows that the SSA properly looked behind the adjectival ratings and point scores to identify any qualitative differences that existed between the proposals. His conclusion that the proposals were essentially equal under the mission capability and cost/price factors is reasonable and well documented, and his use of "ISS logistics," under the past performance factor, as a discriminator was reasonable, consistent with the solicitation's evaluation criteria, and well documented. Recognizing the wide discretion afforded agencies in making their tradeoff decisions, ERC has given us no basis to find the SSA's decision here unreasonable or otherwise improper.³

We first review ERC's challenges to the SSA's findings that the proposals were essentially equal under the mission capability factor and cost factors.

ERC argues that the SSA improperly attempted to "discredit or neutralize" its significant strength under the technical approach subfactor. Comments at 14. In its agency report, NASA provided a detailed explanation as to why the SSA thought this significant strength--which concerned ERC's understanding of on-orbit stowage and waste management functions--represented less benefit to the program than did the SEB. Legal Memorandum at 26-27. NASA's explanation is fully supported by the source selection statement. AR, Exh. 20, Source Selection Statement at 8. ERC's comments in response to the agency report did not address NASA's explanation at all, but merely repeated its unsupported allegation. In the face of the SSA's reasoned explanation for his views, ERC has given us no basis to question his judgment. The protester's allegation that the SSA acted in bad faith by exercising that judgment is wholly unsupported.

ERC also argues that the SSA improperly found the proposals to be essentially equal under the safety and health subfactor despite the fact that ERC's proposal had the higher adjectival rating. Again, adjectival ratings are merely guides for the source selection official, who must use his or her judgment to ascertain actual qualitative differences. Applied Physical Sciences Corp., supra. ERC has failed to point to any substantive differences between the two proposals under this subfactor, and we discern none. We have no basis to question the SSA's conclusion.

³ Our decision does not address all of ERC's arguments, but we have fully considered each of them and conclude that the remaining arguments do not provide a basis to sustain the protest.

ERC finally argues that the SSA unreasonably downplayed the cost/price differential between the proposals in finding them essentially equal. As discussed above, however, in finding the proposals “essentially equal” here, the SSA appreciated the actual cost/price difference and considered that Barrios had the higher probable cost “by a very slight amount.” AR, Exh. 20, Source Selection Statement, at 9. He ultimately concluded that ERC’s “slightly lower cost” did not outweigh its moderately higher non-cost risks. *Id.* at 11. Hence, the SSA did not “downplay” the cost/price differential but, instead, considered it in the context of a procurement where the non-cost/price factors were significantly more important than cost/price. ERC has not shown that the SSA’s judgment was unreasonable.

We turn to ERC’s argument that the SSA improperly used “ISS logistics,” under the past performance factor, as a discriminator in making his tradeoff decision. ERC primarily argues that “ISS logistics” constitutes an unstated evaluation criterion. ERC also argues that the SSA’s assignment of risk to ERC’s past performance proposal is otherwise unreasonable. Our review of the record shows that these arguments have no merit.

ERC argues that “ISS logistics” constitutes an unstated evaluation criterion because “logistics” is not identified as part of the past performance evaluation criteria, and is not mentioned in the SOW. ERC’s reading of the RPF is unreasonably narrow.

Although agencies are required to identify in a solicitation all major evaluation factors, they are not required to identify all areas of each factor that might be taken into account in an evaluation, provided that the unidentified areas are reasonably related to or encompassed by the stated factors. Master Lock Company, LLC, B-309982.3, Dec. 10, 2008, 2009 CPD ¶ 6 at 5.

It is true that the SOW does not include a section entitled “logistics” or “ISS logistics.” However, as NASA points out, a common definition of “logistics” is “the management of the flow of resources, between the point of origin and the point of destination, in order to meet some requirements.” Supp. Legal Memorandum at 5. NASA explains that numerous sections of the SOW plainly involve logistics, including the specific areas identified by the SSA in his source selection statement. NASA states that, for example, Section 5.0 of the SOW, Systems Engineering and Integration, includes work that enables the efficient transportation of up-mass to the ISS by the optimal management of limited stowage capacity on resupply vehicles. Section 6.0 of the SOW, “Mission Planning,” concerns planning and preparing for the logistical activities required to resupply the ISS and to transport crew members to and from the ISS. Section 7.0 of the SOW, Operations, concerns the execution of the logistics involved in operating the ISS. *Id.* at 4-7. The CO has provided a detailed calculation showing that the work across the SOW providing ISS logistics involves approximately 30 percent of the total workforce used to construct the government estimate of resources. Supp. CO’s Statement at 2.

ERC asserts that NASA's identification of these SOW sections as involving logistics is "misleading" but does not explain its belief in this regard. Supp. Comments at 1-5. Our review of the cited SOW provisions affords us no basis to question NASA's characterization of them as involving logistics associated with the ISS program.⁴ As a result, NASA reasonably considered "ISS logistics" or its equivalent in weighing the relevance of offerors' past performance because it is reasonably encompassed in that evaluation factor.

ERC also challenges NASA's explanation of the SOW's logistics tasks arguing that the explanation was not contemporaneous. Our Office will not, however, limit its review to contemporaneous evidence, but considers all the information provided, including a party's arguments and explanations. See Serco, Inc., B-406683, B-406683.2, Aug. 3, 2012, 2012 CPD ¶ 216 at 7. While we generally give little or no weight to reevaluations and judgments prepared in the heat of the adversarial process, Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15, post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, will generally be considered in our review as long as those explanations are credible and consistent with the contemporaneous record. NWT, Inc.; PharmChem Labs., Inc., B-280988, B-280988.2, Dec. 17, 1998, 98-2 CPD ¶ 158 at 16. The source selection statement clearly describes the SSA's use of ISS logistics as a discriminator, and we view NASA's current explanation of this term to be precisely the type of post-protest explanation that we will consider.

ERC also argues that, even if "ISS logistics" was not an unstated evaluation criterion, the SSA's conclusion that its proposal presented a risk in this area was unreasonable. In this regard, ERC challenges the SSA's conclusion that there was risk associated with its ability to accomplish the work, at least at the outset, with the degree of completeness or effectiveness demanded by the ISS environment. ERC argues that this conclusion is unreasonable in light of the significant strength the SEB identified in its proposal for its ability to provide an effective phase-in.

There is no dispute that the SEB assigned ERC's proposal this significant strength under the management approach subfactor. As NASA explains, this feature was one reason the SSA found ERC's proposal essentially equal to Barrios' proposal under the mission capability factor overall. Nonetheless, while acknowledging the benefits of ERC's proposed management processes, the SSA remained concerned about the likelihood of realizing the beneficial outcomes of those proposed

⁴ To the extent that ERC contends that the "tightly constrained and high risk environment of the ISS" referred to by the SSA is an unstated evaluation criterion, such an environment would appear to be inherent in an ISS support contract.

management processes given the nature of the contract. Supp. Legal Memorandum, at 15, citing AR, Exh. 20, Source Selection Statement, at 10.

NASA states that two learning phases were inherent in the requirements, and ERC focused on the first--the 45-day phase-in period. The SEB recognized ERC's significant strength in the phase-in period, described by NASA as a limited management and administrative function, but did not address the 180-day transition phase and the degree to which ERC could "ride" the technical learning curve from the phase-in period through the transition period. Supp. Legal Memorandum, at 15-16. NASA points out that, in discussing its transition plan, ERC's own proposal expresses concerns about the continuing burden to learn the work sufficiently to perform it, "not just without disruption, but well." Id. at 16. NASA further explains that the SSA's finding of risk was not inconsistent with the SSEB's evaluation because, while the phase-in and transition plans showed how ERC might progress along the learning curve, past performance was the key to the likelihood of how fast it would progress. Id., citing AR, Exh. 20, Source Selection Statement, at 11. In short, according to NASA, the fact that ERC had an exceptional phase-in plan did not mean there was no risk in its performance in the initial period of performance.

ERC does not specifically address NASA's argument that the significant strength associated with its phase-in plan was not inconsistent with the SSA's concern. Instead, ERC sidesteps NASA's explanation to argue that the risk would apply equally to all non-incumbent offerors, and to raise new arguments associated with strengths it was assigned under the management approach factor. As to the former, ERC's argument gives us no basis to question the SSA's judgment, which we find reasonable. As to the latter, ERC's arguments concerning the evaluation of its own proposal, raised for the first time in its comments on the agency's report, are untimely and will not be considered. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2012).

In its comments on the agency report, ERC argued that the SSA treated the offerors disparately by considering the risk posed by its proposal at the contract's inception, but not the risk posed by Barrios' staffing reductions during the same period. ERC's argument relies on a selective reading of the solicitation and a failure to consider the evaluation record.

As part of their management approach, offerors were required to define the specific labor resources needed to successfully perform the contract in accordance with their proposed approach. RFP § L.15.3.4. The solicitation included a government resource estimate (GRE) as the government's estimate of the resources required to perform the contract, "without incorporation of any one offeror's specific management or technical approach." Id. The RFP explained that the GRE was based on historical usage factors which "might not correspond to the resources that might be required to successfully accomplish future work." Id. Further, the RFP stated that the GRE was not intended to influence the offeror's proposed estimates,

but was provided to assist offerors in determining the general magnitude of their “unique proposed management and technical approaches.” Id.

ERC argues that it proposed [DELETED] work year estimates (WYE) [DELETED], but that Barrios proposed fewer WYEs. ERC argues that Barrios’ proposed staffing levels introduce performance risk that was not considered by the SSA.

Again, the labor estimates in the GRE represented historical estimates, and did not reflect changes to the way work might be performed under any offeror’s unique approach. NASA explains that Barrios proposed to structure its work based on the consolidated and streamlined MAPI approach in the RFP, took credit for the innovations and efficiencies it would immediately implement, and, accordingly, proposed fewer resources to start. Supp. Legal Memorandum at 8. NASA states that ERC structured its work based on the less efficient historical approach, did not implement any innovations and efficiencies, and, accordingly, proposed extra staff. Id. ERC has not shown that the mere fact that Barrios did not propose labor in consonance with the GRE represented a performance risk that NASA failed to consider. See AR, Exh. 18, SSA Selection Meeting Presentation, at 56-57 (discussing weakness in Barrios proposal related to its proposed WYEs).

In conclusion, after an extensive examination of the qualitative merits of the proposals, and a determination of essential equality under the mission capability and cost/price factors, the SSA properly focused on the factor in which he found a key discriminator, past performance. Although the RFP provided that the mission capability factor was more important than the past performance factor, to the extent that the SSA properly determined that there was a key discriminator under the past performance factor, there is nothing objectionable in the SSA’s reliance upon that key discriminator for purposes of his source selection decision. Further, while the SSA acknowledged that ERC proposed a lower cost/price, the record reflects that ERC’s advantage under the least important evaluation factor was consistently referred to as “slight.” AR, Exh. 20, Source Selection Statement, at 6, 9, 10, 11. We find that the SSA properly relied upon the key discriminator between the proposals in making the selection.

The protest is denied.

Lynn H. Gibson
General Counsel