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Decision

Matter of: MVM, Inc.

File: B-407779; B-407779.2

Date: February 21, 2013

Michael R. Golden, Esq., Michael A. Hordell, Esq., Heather Kilgore Weiner, Esq., and Samuel W. Jack, Esq., Pepper Hamilton LLP, for the protester.

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James E. Hicks, Esq., Department of Justice, for the agency.

Eric M. Ransom, Esq., and Jennifer Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Challenge to agency's evaluation of protester's proposal is denied where the record shows that the agency reasonably evaluated the protester's proposal in accordance with the solicitation's evaluation factors.
 2. Agency's selection of higher-rated, higher-priced proposal for award instead of a lower-rated, lower-priced proposal is unobjectionable, where the agency's tradeoff decision adequately documented key discriminators, included the rationale for the tradeoff made, and is reasonably based given the broad discretion afforded source selection officials.
 3. Protest that agency relied on incorrect information in its source selection decision is denied where, although the record shows there was an error in the decision, the error related to the lowest-weighted technical evaluation criterion, was not a factor in the agency's tradeoff analysis, and does not raise a reasonable possibility that protester was prejudiced.
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DECISION

MVM, Inc., of Ashburn, Virginia, protests the award of a contract to Metropolitan Interpreters and Translators, Inc., of New York, New York, the incumbent contractor, by the Department of Justice, Drug Enforcement Administration (DEA),

under request for proposals (RFP) No. DJD-12-R-0017, for regional linguist services for the southern west coast region.

We deny the protest.

BACKGROUND

The RFP, issued by the DEA on May 3, 2012, is one of several solicitations issued by the DEA for regional linguist services. The other RFPs pertain to requirements covering seven other regions of the country, including the Midwest and Texas regions, for which MVM was ultimately the successful offeror. Although the RFPs for the various regions were nearly identical, the evaluation and award decision for each region were conducted independently, as the exact requirements for linguist services varied from region to region.

The RFP contemplated the award of a single fixed-rate, time-and-materials, indefinite-delivery contract for a 1-year base, and four 1-year option, periods. Offerors were to furnish fixed hourly rates for 3 labor categories (Spanish linguist, common languages linguist, and exotic languages linguist) at each of 2 locations (Los Angeles and San Diego).¹ The RFP provided that regional linguist services would be ordered as needed by task order, using the contract rates.

The RFP advised that the award would be made to the offeror providing the best value to the government, which would not necessarily be the lowest-priced or the technically superior offer. The solicitation set forth evaluation criteria consisting of five technical factors and cost/price. The five technical factors, in descending order of importance, were quality control plan, sample task order, staffing plan, security plan, and past performance.² RFP at M-2. The RFP advised that the non-price evaluation factors, when combined, were significantly more important than cost/price. Id. at M-6.

¹ While the solicitation furnished an overall estimated number of hours for each labor category, offerors were advised that the price evaluation would be based not on the overall quantities, but rather on the estimated quantities in a sample 30-day task order. Offerors were to complete a sample task order pricing evaluation sheet, furnishing a burdened rate for each labor category, and, in addition, itemized costs supporting the calculation of the offered rates.

² The RFP provided that proposals would be rated as outstanding, good, acceptable, marginal, or unacceptable under each of the first four technical factors. The RFP also provided for the assignment of a risk rating (low, medium or high) under each of the first four factors. Under the fifth technical factor, past performance, proposals were to be rated as substantial, satisfactory, limited, no, or unknown confidence.

As relevant here, the staffing plan technical factor concerned the offeror’s ability to “recruit, retain, and train a local cadre of high-quality, qualified analytic linguists.” Id. at M-4. This evaluation factor included the offeror’s “proposed programs and procedures for recruiting high-quality personnel and determining their competency to perform the required services.” Id. Concerning competency, offerors were to demonstrate the ability to “recruit personnel who have received a successful score within the past five years on an examination by an approved independent organization.” Id. at L-8.

With regard to the past performance technical factor, the RFP advised that the agency would evaluate each offeror’s experience providing linguist services “that are of a similar nature to the work to be performed under the requirement described in this solicitation.” Id. at M-5. More specifically, offerors were advised that “jobs that are of similar size, scope, complexity, contract type, and period of performance, in relation to the requirements of this solicitation are of particular interest to the Government.” Id.

The agency received six proposals by the RFP closing date. After evaluating the initial proposals, the agency established a competitive range consisting of two firms: MVM and Metropolitan. The agency then conducted discussions with each offeror. At the conclusion of discussions, the agency requested final proposal revisions (FPR). Upon receipt of the FPRs, the agency conducted a final evaluation, the results of which were as follows:

	MVM	Metropolitan
Quality Control Plan	Outstanding/Low risk	Outstanding/Low risk
Sample Task Order	Outstanding/Low risk	Outstanding/Low risk
Staffing Plan	Good/Low risk	Outstanding/Low risk
Security Plan	Good/Low risk	Good/Low risk
Past Performance	Substantial confidence/ Relevant	Substantial confidence/ Very relevant
Overall	Outstanding/Low risk	Outstanding/Low risk

Final Source Evaluation Board Report at 2. MVM’s evaluated price for the sample task order was \$2,773,035.60, while Metropolitan’s evaluated price was \$2,978,688.72. Id.

In the source selection decision (SSD), the source selection authority (SSA) concluded that Metropolitan's proposal represented a better value to the government. Specifically, the SAA determined that while MVM's evaluated price "is \$205,653.12 lower over five years (a difference of \$41,130.62 per year, on average), it is not enough to off-set the technical difference," where "technical evaluation factors other than cost/price are 'significantly more important' than cost/price." SSD at 3. The SSA explained that Metropolitan's technical advantages included an "established pool of [DELETED] verified DEA cleared local resident Analytical Linguists" and its "retention and benefit plan to retain Analytical Linguists." Id. at 2. The SSA further noted that Metropolitan had demonstrated that [DELETED]; its plan allowed for [DELETED]; and it [DELETED]. Id. The SSA also identified a concern that in its final price proposal, MVM had proposed lower prices for option years one, two and three than for the base year. The SSA was concerned that MVM's lower prices in the option years might impact retention and cause "senior and experienced linguists to seek other opportunities." Id. at 3.

The agency made the award to Metropolitan on October 31, and announced the award to all unsuccessful offerors on the same day. MVM requested a post-award debriefing on November 2, and the agency provided a written response. MVM then submitted additional questions to the agency, to which the agency also responded. MVM protested to our Office on November 13.

DISCUSSION

MVM argues that the agency misevaluated its proposal under the staffing plan and past performance evaluation factors, utilized unstated evaluation factors that favored the incumbent contractor, disparately evaluated proposals in favor of the incumbent, and failed to conduct its source selection tradeoff analysis in accordance with the solicitation. In addition, MVM alleges that the agency failed to conduct the required qualitative comparison of proposals; the SSA relied on incorrect information in making the award determination; the SSA's concerns regarding its proposed pricing structure are unsupported; and the record does not support the agency's findings regarding the distinguishing strengths in Metropolitan's proposal.³

The agency responds that the procurement was conducted in accordance with the RFP's stated evaluation criteria and that the SSA reasonably and rationally selected Metropolitan as the best value to the government. The agency asserts that MVM's

³ MVM presented a multitude of allegations during the development of this protest. We discuss MVM's principal claims herein. To the extent that claims, or portions of claims, presented by the protester are not discussed in this decision, we consider them to be without merit.

protest grounds are speculative and represent little more than disagreement with the award decision.⁴

Evaluation of Technical Factors

MVM first challenges the agency's evaluation of its proposal under the staffing plan and past performance evaluation factors. Concerning the staffing plan factor, MVM argues that it should have been assigned an outstanding/very low risk rating, rather than a good/low risk rating. MVM asserts that the good/low risk rating was unreasonably based on a single minor weakness pertaining to its reliance on the retention of incumbent linguists that it addressed in its FPR.

In the foregoing connection, one of the weaknesses identified by the SEB in its evaluation of the protester's initial proposal was MVM's reliance on the recruitment of incumbent personnel to staff the contract. Accordingly, during discussions, the agency asked MVM the following question:

Recruitment of local linguist pool relies heavily on incumbent linguists.
What is MVM's plan if they can't retain the incumbent linguists?

Agency Letter to Protester, July 25, 2012, at 3. In its FPR, MVM responded that it understood it could not rely on retaining the incumbent personnel, and had been "[a]ctively recruiting, screening, testing, and compiling security packages for potential new hires in preparation for a contract award." FPR at 6. MVM explained that "[t]hrough this recruiting process we have 146 completed linguist security packages ready to submit . . . and have an additional 145 packages that we anticipate having ready to submit by contract award." *Id.* MVM contends that this response fully addressed the agency's concern and should have resolved the weakness and elevated its staffing plan rating to outstanding/very low risk.

The evaluation of an offeror's proposal is a matter within the agency's discretion. IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. A protester's mere disagreement with the agency's judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4. In reviewing a protest that challenges an agency's evaluation of proposals, our

⁴ To the extent MVM contends that the evaluation criteria favored the incumbent, the agency argues that the allegation challenges the terms of the solicitation and is untimely where it was first raised after award. We agree. Our Bid Protest Regulations contain strict rules for the timely submission of protests. They specifically require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals be filed before that time. 4 C.F.R. § 21.2(a)(1).

Office will not reevaluate the proposals, but will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Ocean Servs., LLC, B-406087, B-406087.2, Feb. 2, 2012, 2012 CPD ¶ 62 at 5.

We have no basis to conclude that the agency's evaluation was unreasonable. The record demonstrates that the initial SEB report rated MVM's proposal acceptable/low risk under the staffing plan factor. Following discussions, the SEB concluded that MVM had resolved multiple weaknesses and added an additional strength; accordingly, it upgraded MVM's rating to good/low risk. The agency also concluded, however, that MVM had not resolved the evaluators' concern regarding the protester's reliance on retention of the incumbent linguists. The contracting officer explains that MVM's FPR response concerning the number of linguist security packages that it had ready (or was in the process of preparing) was insufficient to alleviate the agency's concern because the FPR did not provide evidence that the 146 completed, and the 145 in-process, linguist security packages were for competent and qualified personnel, *i.e.*, personnel who had received a successful score within the past five years on an examination by an approved independent organization. Accordingly, the agency was still not convinced that MVM had a sufficient recruitment pool to fully staff the contract in the event that it could not retain the incumbent linguists. We see nothing unreasonable in the assessment of a minor weakness where the agency was still not convinced that MVM could fully staff the contract with qualified linguists without retention of the incumbent linguist personnel.⁵

With regard to MVM's argument that its proposal warranted an outstanding/low risk rating under the staffing plan factor, this argument represents mere disagreement with the agency's application of the rating definitions. MVM has not demonstrated that its good/low risk rating was unreasonable, and its arguments concerning the strengths of its proposal do not provide a basis on which to sustain the protest. The agency agreed that MVM's FPR presented a "sound and . . . well-reasoned" approach, which warranted a good/low risk rating under the solicitation. Final SEB Report at 2.

Concerning the past performance factor, MVM argues that agency improperly assigned relevancy ratings where the RFP did not disclose that relevancy ratings

⁵ MVM argues that the contracting officer's arguments are mere post-hoc justifications not reflected in the contemporaneous evaluation record. The record demonstrates, however, that the agency's concern about MVM's reliance on retention of incumbent linguists tracks from the SSD back to the initial proposal evaluation, and that the contracting officer, along with the SSA, was an approving signatory of both the initial and the final SEB reports and is competent to provide explanation of the SEB's evaluation.

would be assigned. MVM also disagrees with its substantial confidence/relevant rating under the factor, arguing that its contracts for the exact same services in other regions should have earned it a rating of very relevant.

As an initial matter, an agency is required to consider, determine and document the similarity and relevance of an offeror's past performance information as part of its past performance evaluation. See FAR § 15.305(a)(2); Clean Harbors Envtl. Servs., Inc., B-296176.2, Dec. 9, 2005, 2005 CPD ¶ 222 at 3. Further, our Office has specifically held that, where past performance is announced as an evaluation factor, relevancy is logically encompassed by and related to that evaluation factor, and the assessment of relevance is permitted under that evaluation criteria. See American Development Corp., B-251876.4, July 12, 1993, 93-2 CPD ¶ 49 at 10; AWD Technologies, Inc., B-250081.2, B-250081.3, Feb. 1, 1993, 93-1 CPD ¶ 83 at 5-6.

Here, the RFP specifically stated that:

The Government will evaluate each Offeror's, and subcontractor's, if any, experience providing linguist services that are of similar nature to the work to be performed under the requirement described in this solicitation. Specifically, jobs that are of similar size, scope, complexity, contract type, and period of performance, in relation to the requirements of this solicitation are of particular interest to the Government.

RFP at M-5. Similarly, the criteria for the relevancy ratings assigned by the SEB concerned the extent to which the offerors' past performance reflected similar "scope[,] magnitude of effort[,] and complexities" as required by the RFP. Initial SEB Report at 5. Where the agency's evaluation of "relevancy" reflects the scope and complexity evaluation criteria set forth in the RFP, and is logically encompassed by and related to the past performance factor, we have no objection to the agency's assignment of a separate relevancy rating to the offerors' past performance ratings.

We also find to be without merit MVM's complaint that its past performance should have been assigned a rating of very relevant, rather than relevant. While MVM argues that it has performed this exact requirement in other regions, the agency demonstrates that the analytic linguist requirement for the southern west coast region is substantially larger than the requirement performed by MVM in any other region. Specifically, the agency explains that the southern west coast region consists of two divisions, [DELETED], for which the linguist contract expenses in 2012 were [DELETED]. Agency Report, Legal Memorandum, at 14. In contrast, the largest division contract previously performed by MVM, [DELETED], had a total value of just [DELETED]. Id. Further, the agency demonstrates that the total value for all divisional linguist contracts performed by MVM in 2012 was [DELETED], a

total significantly less than the value of the southern west coast region requirement of [DELETED]. Id. Where MVM had previously performed DEA linguist contracts in other regions, but for substantially smaller requirements, we think that it was reasonable for the agency to rate MVM's past performance as relevant, rather than very relevant.

MVM also contends that the agency utilized additional unstated evaluation criteria favoring the incumbent, Metropolitan. This ground of MVM's protest essentially repeats earlier arguments disagreeing with its good/low risk rating under the staffing plan factor and its substantial confidence/relevant rating under the past performance factor, and presumes that the ratings reflect unstated criteria favoring the incumbent. However, nowhere in its protest does MVM specifically identify the unstated evaluation criteria or preference that the agency allegedly relied upon.

In reviewing MVM's contentions, we note first that bare assertions that an award was improper, with neither evidence nor explanation of the protester's theory regarding the alleged violation, are insufficient to satisfy this Office's requirements for either allegations or evidence sufficient to reasonably conclude that a violation of statute or regulation has occurred. See, e.g., View One, Inc., B-400346, July 30, 2008, 2008 CPD ¶ 142 at 3. Second, to the extent MVM argues that the agency was biased in favor of the incumbent contractor, government officials are presumed to act in good faith, and we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Where a protester alleges bias, it must provide credible evidence clearly demonstrating bias against the protester or in favor of the successful firm. Detica, B-400523, B-400523.2, Dec. 2, 2008, 2008 CPD ¶ 217 at 4-5. The protester has made no such showing here.

Finally, MVM alleges disparate treatment, based on the fact that it received higher evaluation ratings for proposals that it submitted for other regions in response to nearly identical RFPs. MVM argues that because the linguist RFPs were essentially the same, and its own proposals were essentially the same, the agency should have rated its proposals equally in all regions, or at a minimum reconciled the disparate evaluation results in the SSD. MVM's argument ignores the fact that there is substantial variance in the number of linguists required by the various DEA regions. Moreover, the areas of the evaluation to which MVM objects--which are, again, staffing plan and past performance--are areas in which the disparate results can be explained by the differences in the scope of the services and number of linguists required for the southern west coast region in comparison to the other regions. Accordingly, this basis of protest is also denied.

Final Price Proposal

MVM next alleges that the agency's concerns about MVM's final price proposal were unreasonable and not supported by the record. Specifically, in the SSD, the SSA commented that "MVM's pricing structure might cause senior and experienced linguists to seek other opportunities," and that "Option Periods I, II, and III are all budgeted at a lower cost than the base year." SSD at 3. MVM argues that there is no support for the SSA's concern in the business evaluation committee (BEC) report, and that a complete review of the price proposal would have shown that the base year was budgeted at a higher price due to start-up and transition costs contained in a line item for "[DELETED]." The protester also argues that the agency's discussions on price were misleading.

The agency responds that MVM radically altered its price proposal following discussions, and that the initial price proposal reviewed by the BEC neither demonstrated start-up/transition costs, nor included any de-escalation between contract years. The agency also explains that its concerns regarding senior and experienced linguists related to MVM's decision to reduce the linguist direct labor escalation rates from [DELETED] percent to [DELETED] percent for many labor categories, and to entirely [DELETED] escalation for others.

Based on our review, we find that the record supports the agency's assertions. First, the record demonstrates that the concerns noted in the SSD are not reflected in the BEC report because the BEC reviewed only the offeror's initial price proposals, and MVM's initial price proposal did not include the features that gave rise to the concerns noted in the SSD. Specifically, MVM's initial price proposal included a base year price of [DELETED], and escalated each option year by approximately [DELETED] percent. Initial SEB Report at 10. The record also shows that MVM's initial price proposal included 3 percent direct labor escalation rate. Business Evaluation Committee Report at 14. In its FPR, however, MVM's base year price was reduced to [DELETED], and in the first option year dropped further to [DELETED], before escalating at approximately [DELETED] percent between the remaining option years--surpassing the base year price in only option year four. Final SEB Report at 2.

MVM claims that if the agency had conducted a complete review of its final price proposal, it would have recognized that the base year price included start-up and transition costs, which accounts for the reduction in its price between the base year and the first option year. However, we see no explanation of this change in MVM's FPR. While MVM asserts that a line item for "[DELETED]," included these costs, we fail to see how this line item--which ranged from a rate of [DELETED] in the base year, to [DELETED] in option year one, to [DELETED] in option year three--constituted an adequate explanation of its revised price approach. MVM Supplemental Protest, Exhibit 3, Price Breakdown. It is an offeror's obligation to submit an adequately written proposal for the agency to evaluate, see United Def.

LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 19, and a protester's mere disagreement with the evaluation is not sufficient to render it unreasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

Our review of MVM's FPR also confirms that MVM reduced its direct labor escalation rates from [DELETED] percent to [DELETED] percent for many labor categories, and [DELETED] escalation for others. MVM FPR at 10. MVM argues that to the extent the agency considered this approach a weakness, the agency offered misleading discussions. Specifically, MVM asserts that it was advised during the oral discussions that the agency was looking to reduce costs through reducing escalation rates. The record also contains contemporaneous notes from the oral discussions confirming that MVM was advised to "take another look," or "provide additional explanation or justification" regarding escalation rates.⁶ Summary of Discussions at 2.

In negotiated procurements, whenever discussions are conducted by an agency, they are required to be meaningful, equitable, and not misleading. Metro Mach. Corp., B-295744, B-295744.2, Apr. 21, 2005, 2005 CPD ¶ 112 at 19. Where the manner in which an agency communicates with an offeror during discussions misleads an offeror into responding in a way that does not address the agency's concerns, the discussions are inadequate. Metro Mach. Corp., B-281872 et al., Apr. 22, 1999, 99-1 CPD ¶ 101 at 6-7. We disagree with MVM that the discussions were misleading in this case. Where MVM completely [DELETED] any escalation for certain labor categories, including the category most frequently used--i.e., Spanish analytic linguists--we cannot find the agency's concern that "MVM's pricing structure might cause senior and experienced linguists to seek other opportunities" unreasonable, nor do we find the concern incompatible with the agency's advice in discussions to "take another look," or "provide additional explanation or justification" regarding MVM's initial proposal's escalation rates.

Technical Discriminators and Tradeoff Decision

Concerning the agency's ultimate decision that the technical advantages of Metropolitan's proposal offset its higher price and that the proposal represented a better value to the government, MVM first alleges that the SEB and SSA did not adequately evaluate the proposals, but instead based the award decision on a mechanical comparison of adjectival ratings, without a qualitative assessment of the underlying differences between the proposals. More specifically, MVM argues that the SSD demonstrates a comparative assessment of the proposal under only the staffing plan technical factor and fails to document a comparative assessment of the

⁶ MVM does not dispute the accuracy of the contemporaneous oral discussion notes.

proposals under the remaining technical factors, including the first two factors, which were more important than the staffing plan factor.

Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of technical and cost evaluation results; cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the evaluation criteria. World Airways, Inc., B-402674, June 25, 2010, 2010 CPD ¶ 284 at 12. Where a cost/technical tradeoff is made, the source selection decision must be documented, and the documentation must include the rationale for any tradeoffs made, including the benefits associated with additional costs. FAR § 15.308; The MIL Corp., B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 13. However, there is no need for extensive documentation of every consideration factored into a tradeoff decision, nor is there a requirement to quantify the specific cost or price value difference when selecting a higher-priced higher-rated proposal for award. FAR § 15.308; Advanced Fed. Servs. Corp., B-298662, Nov. 15, 2006, 2006 CPD ¶ 174 at 5.

We conclude that the SSA adequately documented her comparison of proposals in the SSD. In support of her conclusion that Metropolitan's proposal represented a better value than MVM's, the SSA cited two key discriminators under the staffing plan factor, *i.e.*, Metropolitan's "established pool of [DELETED] verified DEA cleared local resident Analytical Linguists" and its "retention and benefit plan to retain Analytical Linguists." SSD at 2. In the SSD, the SSA also confirmed that she had "reviewed and analyzed all of the documentation and [the] recommendation provided by the SEB," and agreed with the SEB that award to Metropolitan was in the best interests of the government. *Id.* at 4. In turn, the SEB reports contain the complete evaluation results for each proposal and contain discussions of the key advantages of each proposal. *See* Initial SEB Report at 8-10; Final SEB Report, Attachments B, C. We do not consider the SSA's focus on the key discriminators between the proposals in the SSD to constitute a lack of documentation, where the underlying SEB evaluation record demonstrates that the proposals were fully evaluated and compared, and the evaluation record was reviewed by the SSA prior to the award decision.⁷

MVM next asserts that the technical advantages specifically cited by the SSA in the tradeoff decision--*i.e.*, Metropolitan's established pool of [DELETED] verified DEA cleared local resident analytical linguists and the company's retention and benefit plan--were illusory. Concerning the first advantage, MVM argues that the agency erred in uncritically accepting Metropolitan's claim of DEA cleared analytical linguists, because the agency knew or should have known that Metropolitan's

⁷ Further, as previously stated, the SSA and contracting officer were approving signatories on the SEB's reports.

statement was not accurate. According to MVM, the record suggests that Metropolitan mischaracterizes the experience of its claimed analytical linguists.

MVM's argument in this regard is essentially that Metropolitan failed to demonstrate that its [DELETED] individuals were qualified as "analytic linguists." In this connection, the protester contends that Metropolitan's incumbent contract required only "language analysts," which MVM contends is a lower-level labor category than "analytic linguist," with fewer training requirements. As support for its contention, MVM points to an agency questions and answers document, which states:

Question 99: Have incumbent personnel currently providing these services been vetted against the qualifications for analytic linguists listed in the RFP, or are these new requirements that will require a requalification of incumbent employees if they are hired by the selected vendor?

Answer 99: This is a new requirement.

Question 100: Do incumbent personnel currently exist in the numbers and skill levels required to support the requirements of the RFP?

Answer 100: No, however incumbent personnel exist and partially meet potential maximum requirements of the new contract.

RFP Q&A at 24.

In response, the agency explains that the questions and answers statements cited by MVM were not unique to the southern west coast region, but were posted verbatim to all eight regional linguist RFPs. The agency further reports that in the southern west coast region, Metropolitan has "over the past nine years trained an incumbent workforce to perform analytical duties." Supplemental Agency Report at 15. The agency further explains that while the questions and answers are properly read to reaffirm the fact that the requirement for analytic linguists, versus language analysts, is a new requirement, the answers do not imply that an incumbent contractor's linguists do not currently have the required analytical skills. In light of the agency's explanation, we see no basis on which to question the agency's acceptance of Metropolitan's claim of an "established pool of [DELETED] verified DEA cleared local resident Analytical Linguists."

MVM also challenges the agency's identification of Metropolitan's "retention and benefit plan" as a technical advantage, arguing that the record contains no contemporaneous evaluation of Metropolitan's retention and benefit plan compared to MVM's own retention and benefit plan. However, the SEB report demonstrates

that Metropolitan received a “major strength” under the staffing plan factor because its “retention and benefit plan to retain Analytical Linguists within the region is strong,” while MVM’s proposal received no similar major strength under the staffing plan factor.⁸ Final SEB Report, Attachment B, at 2. This major strength, reflected in the contemporaneous record, supports the SSA’s identification of Metropolitan’s “retention and benefit plan” as a technical discriminator.

Finally, MVM argues that the SEB and SSA relied on incorrect information in making the award decision. Specifically, MVM notes that the SEB report and the SSD indicate that Metropolitan was rated “Outstanding/Low Risk” for each factor. Final SEB Report at 3; SSD at 3. In fact, however, Metropolitan was rated Good/Low Risk, not Outstanding/Low Risk, under the security plan factor. Final SEB Report, Attachment B, at 3.

The agency acknowledges that the SEB and SSD narratives misstated Metropolitan’s technical rating under the security plan factor, but contends that the ratings under that factor played no role in the SSA’s decision that Metropolitan’s proposal represented the best value to the government, and thus MVM was not prejudiced by the error.

Our Office will not sustain a protest, unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency’s actions; that is, unless the protester demonstrates that, but for the agency’s actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3. In this case, we agree that the protester has not demonstrated that it was prejudiced by the agency’s misstatement of Metropolitan’s rating under the security plan technical factor.

In the SSD, the SSA specifically identified the technical discriminators that she relied upon in reaching the conclusion that Metropolitan’s proposal was worth the associated price premium, and all of the identified technical advantages related to technical factor 3, staffing plan. That is, the SSA did not rely on discriminators pertaining to factor 4, security plan. Where the record demonstrates that the SSA relied on technical discriminators related to the staffing plan factor in concluding that Metropolitan’s proposal was technically superior and worth the additional price, and not the misstatement of Metropolitan’s rating under the less-important security plan factor, the record does not establish that MVM was prejudiced as a result of the erroneous statement of Metropolitan’s rating.

⁸ While MVM did receive a major strength related to its “incumbent retention process,” it did not receive a major strength for an overall “retention and benefit plan,” as did Metropolitan. Final SEB Report, Attachment C at 2.

CONCLUSION

In sum, we conclude that the agency's evaluation and best value decision were reasonable. Concerning the technical factor evaluation, we think that it was reasonable for the agency to assess a minor weakness where it was not convinced that MVM had sufficient qualified personnel to fully staff the contract without retention of the incumbent personnel. We also think that the agency reasonably determined that MVM's past performance was relevant, rather than very relevant, where MVM's previous contracts totaled less than half of the value of the southern west coast region requirement. Further, we think that the agency's concerns related to MVM's final price proposal were reasonable where MVM significantly altered its price approach between its initial proposal and FPR, resulting in an unexplained reduction in option year price and [DELETED] direct labor escalation for the most ordered labor category. Finally, we conclude that the technical discriminators cited in the SSD were supported and not illusory, and that the agency's misstatement of Metropolitan's rating under the security plan technical factor was insignificant to the SSA's price/technical tradeoff decision, and thus did not result in prejudice to MVM.

The protest is denied.

Susan A. Poling
General Counsel