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Decision

Matter of: DZSP 21, LLC

File: B-410486.10

Date: January 10, 2018

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Patricia J. Battin, Esq., and Richard J. Huber, Esq., Department of the Navy, 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 denied where record shows that agency’s evaluation and selection decision were reasonable, and in accordance with the terms of the solicitation and applicable statutes and regulations.

DECISION

DZSP 21 LLC, of Hagatna, Guam, protests the award of a contract to Fluor Federal Solutions, LLC, of Greenville, South Carolina, under request for proposals (RFP) No. N62742-13-R-1150, issued by the Department of the Navy for base operations support services for the Joint Region Marianas on the island of Guam. DZSP argues that the agency miscalculated proposals and made an unreasonable source selection decision.

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

BACKGROUND

This is our fourth occasion to consider the propriety of the Navy's actions in connection with this acquisition since this contract was originally awarded to DZSP in 2014.¹ In our first decision issued in connection with this procurement, we sustained a protest filed by Fluor (and dismissed a protest filed by another unsuccessful offeror) relating to the agency's evaluation of proposals and conduct of discussions. CFS-KBR Marianas Support Services, LLC; Fluor Federal Solutions LLC, B-410486, et al., Jan. 2, 2015, 2015 CPD ¶ 22, aff'd., DZSP 21 LLC--Recon., B-410486.4, Jul. 22, 2015, 2015 CPD ¶ 238. We recommended that the agency reopen discussions with the offerors, solicit, obtain, and evaluate revised proposals, and make a new source selection decision. CFS-KBR Marianas Support Servs., LLC; Fluor Federal Solutions LLC, supra. at 9-10.

The Navy implemented our recommended corrective action and again selected DZSP for contract award. Fluor filed a second protest challenging the agency's continued selection of DZSP. After full development of the record in that case, we conducted an outcome prediction alternative dispute resolution (ADR) procedure at the request of the Navy. We advised the parties that the agency's evaluation of DZSP's proposed cost in the area of its exempt employee² compensation appeared to have overlooked certain significant features of DZSP's proposed cost. As a result, the GAO attorney advised that our Office likely would sustain the protest. The agency advised that it intended to take corrective action to address the concerns we identified, and on that basis we dismissed Fluor's second protest as academic. B-410486.6, B-410486.7, Mar. 30, 2016 (unpublished decision).

After dismissal of Fluor's second protest, the agency engaged in limited discussions with the protester and DZSP, and solicited, obtained, and evaluated revised proposals. The agency again selected DZSP for award, and Fluor filed a third protest in our Office. We sustained Fluor's third protest, finding that the agency had evaluated proposals disparately in a manner that prejudiced Fluor. Fluor Federal Solutions, LLC, B-410486.9, Jan. 18, 2017, 2017 CPD ¶ 334. Specifically, the record showed that the agency evaluated Fluor's and DZSP's proposals disparately in the area of staff recruitment and retention. The record showed that the agency downgraded the Fluor

¹ In its most recent agency report, the Navy provided copies of documents relating to this iteration of its acquisition, as well as documents from earlier rounds of the acquisition. The agency report is arranged into a number of separately-named "folders," each of which contains a number of documents. All of the citations in this decision are to a named folder, followed by the document, followed by a page number. In those instances where we cite to a document from an earlier round of the litigation that is not in the current record, we identify the document by citation to the B-number, followed by a record cite from that round of the litigation.

² The term "exempt employees" refers to employees exempt from the requirements of a collective bargaining agreement included in the RFP and applicable to the acquisition.

proposal for concerns relating to its anticipated ability to recruit and retain the incumbent exempt staff based on its proposed compensation, while at the same time failing to take into consideration DZSP's proposed staffing approach that showed it also could have difficulty retaining incumbent exempt staff based on its proposed compensation. We therefore recommended that the agency reevaluate proposals. Id. at 9.

In the wake of our last decision, the agency performed a limited reevaluation of proposals, confining its effort to a reevaluation of cost proposals by its cost evaluation team (CET). The CET's reevaluation was further confined to the offerors' exempt labor rates, because that was--once again--the area of the agency's previous evaluation that our last decision identified as problematic.

In performing its limited reevaluation of the offerors' exempt labor costs, the agency made two "probable cost" adjustments. First, it made an upward adjustment to both firms' proposed costs to account for a revised performance start date of September 1, 2017. This resulted in an increase to the Fluor proposal of \$[deleted], and an increase to the DZSP proposal of \$[deleted]. Agency Report (AR), Reports Folder, exh. ZO, CET Reevaluation Report, at 4, 7.³ This aspect of the agency's reevaluation is not at issue in the current protest.

Second, the agency made an upward adjustment of \$[deleted] to the DZSP proposal to account for escalation of its exempt labor rates. AR, Reports Folder, exh. ZO, CET Reevaluation Report, at 7. The agency's evaluators made this upward adjustment because DZSP proposed [deleted] escalation for these labor rates over the life of the contract, and the CET concluded that this was not realistic. This probable cost adjustment is at issue in the protest, and we discuss it in detail below.

Based on the results of that limited reevaluation, the agency made a new source selection decision, identifying Fluor as the firm submitting the proposal found to offer the government the best value based on consideration of the firms' evaluated cost and ratings assigned under several non-cost evaluation criteria.⁴ The agency's evaluation results were as follows:

³ The CET reevaluation report does not have page numbers. Our citations to the CET reevaluation report are to the page numbers that correspond to the pdf document page numbers when the report is opened in electronic form using adobe acrobat reader software.

⁴ As discussed in our earlier decisions, the RFP contemplates the award of a cost-reimbursement-type contract for a 12-month base period, four 1-year option periods, and an additional three 1-year award option periods. AR, RFP Folder, exh. A., RFP Conformed Through Amendment No. 28, at 4-10. (This version of the RFP includes inconsistent page numbers. Our citations to the RFP here, and elsewhere in the decision, are to this version of the solicitation, and are to the page numbers that correspond to the pdf document page numbers when the RFP is opened in electronic form using adobe acrobat reader software.) The RFP advised offerors that the agency

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	Fluor	DZSP
Past Performance	Substantial Confidence	Substantial Confidence
Occupational Safety	Outstanding	Outstanding
Staffing and Resources	Outstanding	Outstanding
Technical Approach	Outstanding	Good
Small Business Utilization	Outstanding	Outstanding
Evaluated Cost	\$495,891,094	\$499,147,099

AR, Reports Folder, exh. ZP, Reevaluation Source Selection Decision Document (RSSDD), at 3. After being advised of the agency's source selection decision and requesting and receiving a debriefing, DZSP filed the instant protest.⁵

PROTEST

DZSP challenges several aspects of the agency's reevaluation and source selection decision. DZSP's protest challenges the agency's evaluation of the offerors' proposals in the area of exempt employee compensation. DZSP also raises challenges to the agency's evaluation of the offerors' key personnel, as well as its calculation of something referred to as the Guam receipts tax. We have considered all of DZSP's arguments and find no merit to its protest. We discuss DZSP's principal allegations below. We note at the outset that, in reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria, and applicable statutes and regulations. ManTech Advanced Sys. Int'l, Inc., B-413717, Dec. 16, 2016, 2016 CPD ¶ 370 at 3.

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would make award on a best-value tradeoff basis, considering cost and several non-cost evaluation factors. The non-cost factors were: past performance, occupational safety, staffing and resources, technical approach, and small business utilization. Id. at 98-106. For cost evaluation purposes, the RFP advised offerors that the agency would evaluate proposals for completeness, reasonableness, balance, and realism. Id. at 97-98. Finally, the RFP stated that past performance was approximately equal in importance to the other four non-cost evaluation factors combined, and that all five non-cost factors, when combined, were approximately equal in importance to cost. Id. at 97.

⁵ After the agency made its source election decision, it requested that its revised evaluation and source selection materials be placed under the protective order issued during the last protest so that these detailed materials could be shown to counsel for DZSP and Fluor, presumably in an effort by the agency to avert another protest. We granted the agency's request, and it shared its evaluation materials with the parties' counsel.

Evaluation of DZSP's Exempt Personnel

As discussed in detail in our last decision, the agency's corrective action in response to the ADR procedure conducted in connection with Fluor's second protest involved, among other things, engaging in limited discussions with the offerors and allowing them to make limited revisions to their proposals. As is relevant to the current discussion, in response to those limited discussions, DZSP introduced a new approach relating to the compensation of its exempt employees in a revision to its cost (but not its technical) proposal. AR, Evaluation Notices Folder, exh. P, DZSP Discussion Question and Response, at 2-3.

In effect, DZSP's new approach was that it would replace incumbent workers at a rate of [deleted] percent of its exempt workforce per year and hire new, lower-paid, employees in their place. These new employees would be paid [deleted] percent of the hourly rates identified in DZSP's proposal, and this would result in a [deleted] percent "decrement" factor applied to all exempt employees' compensation.⁶ Further, the employees that were not replaced in a particular contract year would be given a 1 percent escalation to their hourly rates of compensation (until such time as they were replaced), and this would result in constant exempt employee compensation costs that would not increase over the life of the contract. AR, Evaluation Notices Folder, exh. P, DZSP Discussion Question and Response, at 2-3.

In our last decision, we noted an inconsistency in the agency's treatment of Fluor and DZSP in relation to their proposed compensation for their exempt employees. On the one hand, the agency evaluators criticized Fluor for proposing to retain 95 percent of the incumbent exempt employees, but offering hourly rates that the evaluators considered potentially inadequate to achieve that retention rate. In contrast, the agency evaluators did not similarly criticize DZSP for proposing the approach described above that achieved [deleted] escalation in its proposed exempt employee compensation costs over the life of the contract by essentially replacing the entire incumbent exempt employee workforce at least once (and potentially more than once) during contract performance, notwithstanding that DZSP also claimed a 95 percent retention rate. Fluor Federal Solutions, LLC, supra., at 5-9.

As noted, in response to our last decision, the record shows that the agency confined its reevaluation to the offerors' cost proposals, and in that reevaluation, it made an upward adjustment to DZSP's proposed rates of compensation for its exempt employees. Specifically, the record shows that the CET determined that DZSP's revised cost proposal (described above) was inconsistent with its technical proposal, which identified

⁶ DZSP used the term "decrement factor" to describe its approach of paying its entire exempt workforce a total amount that would represent less than [deleted] percent of the anticipated cost of their compensation due to DZSP replacing [deleted] percent of their employees and paying the new employees at lower rates in a given contract year. AR, Evaluation Notices Folder, exh. P, DZSP Discussion Question and Response, at 2-3.

a 95 percent retention rate for incumbent employees; failed to provide any meaningful cost or pricing data to support its proposal of an [deleted] percent annual turnover rate for exempt employees; failed to provide information in its revised cost proposal to justify abandoning its previous estimating practices which utilized multi-year escalation of compensation rates; failed to provide supporting information to demonstrate the feasibility of using the [deleted] percent compensation rate for new hires; and failed to support the mathematical calculation that its approach would result in a [deleted] percent “decrement” factor for all exempt employee compensation. AR, Reports Folder, exh. ZO, CET Reevaluation Report, at 5-6.

The record shows that, in light of these conclusions, the CET applied a 1.29 percent escalation factor to DZSP’s exempt employee rates of compensation that resulted in an upward adjustment to its evaluated cost of \$[deleted]. AR, Reports Folder, exh. ZO, CET Reevaluation Report, at 7-9. The CET arrived at the 1.29 percent escalation factor by averaging the Guam Bureau of Statistics Consumer Price Index for an 8-year period from 2009-2016. Id. at 9.

DZSP argues that the agency’s upward adjustment of its exempt employees’ compensation was unreasonable because the findings of the CET and the technical evaluation team (TET) are inconsistent. In this connection, during its last reevaluation of proposals (performed in the wake of the ADR procedure following Fluor’s second protest, but before we issued our last decision in connection with this matter), the record shows that the TET found DZSP’s proposed [deleted] percent annual turnover rate realistic, and also found its proposed compensation rates for newly-hired employees of [deleted] percent of proposed rates realistic. AR, Reports File, exh. ZK TET Memorandum to the File, at 13. DZSP therefore concludes that the upward adjustment to its proposed cost was unreasonable.⁷

We find no merit to this aspect of DZSP’s protest. While we agree with DZSP that there is an unreasonable evaluation finding in the record, the error lies with the conclusions of the SSA, rather than those of the CET.

As noted, the record shows that the SSA agreed with the findings of the CET, and expressly adopted the conclusion that DZSP’s employee replenishment program was unreasonable and unrealistic. AR, Reports Folder, exh. ZP, RSSDD at 5-6. Notwithstanding this finding, the SSA nonetheless credited the DZSP technical proposal with a strength under the staffing and resources factor for proposing to retain between 90 and 95 percent of the incumbent workforce. In this connection, she stated:

⁷ The record shows that the source selection authority (SSA), in the current selection decision, concurred with the CET’s findings relating to the unrealistic nature of DZSP’s proposed staffing approach, as well as its application of the 1.29 percent escalation factor, but nonetheless continued to assign the DZSP proposal a strength for offering to retain 95 percent of its staff because DZSP did not change its technical proposal. We discuss the conclusions of the SSA in detail below.

While the SSEB [source selection evaluation board] had found this plan to be realistic and reasonable, the June 2017 CET's evaluation of this workforce replenishment plan determined that it was not realistic and required a probable cost adjustment increase. I also conclude that DZSP's FPR [final proposal revision] cost proposal was unrealistic. As DZSP did not conform its Factor C [staffing approach] proposal with the elements of its workforce replenishment plan—its [deleted]% historic retention (and near term [deleted]% retention) as well as [its] detailed recruitment strategy remain a part of its FPR, I did not downgrade DZSP's Factor C technical evaluation based on its workforce replenishment plan's potential elevated risk of loss of institutional knowledge based on higher employee turnover or perceived difficulties in recruitment at lower wages. And as DZSP's FPR proposed to retain [deleted]% of the work force during contract execution, I have added back the strength initially identified by the TET for the [deleted]% proposed retention.

AR, Reports Folder, exh. ZP, RSSDD at 12.

This finding on the part of the SSA is squarely inconsistent with the express terms of the DZSP cost proposal. While DZSP's technical proposal originally offered an incumbent retention rate of between 90 and 95 percent, its cost proposal—which was submitted after its technical proposal—expressly proposed instead to replace [deleted] percent of its exempt staff during each year of the contract. AR, Evaluation Notices Folder, exh. P, DZSP Discussion Question and Response, at 2-3. As we explained in our last decision, using this rate of replacement, DZSP will entirely replace [deleted] its exempt staff within approximately five and one-half years of contract performance, and replace approximately half of the newly-hired employees again during the remaining years of contract performance. Simply stated, the SSA's finding above is inconsistent with the express terms of the DZSP proposal, when read as a whole.⁸

Where, as here, an agency contemplates the award of a cost reimbursement type contract, an agency properly may make both upward adjustments to a firm's proposed cost, and also downgrade the firm's technical proposal, where the proposal includes inconsistencies between the promised performance described in the technical proposal and the proposed cost. Basic Contracting Services, Inc., B-284649, May 18, 2000, 2000 CPD ¶ 120 at 12. A cost realism evaluation is performed to determine the extent to which an offeror's proposed cost represents what the contract should cost; however, such adjustments do not take into consideration the increased risks to satisfactory contract performance stemming from proposal deficiencies or weaknesses that have

⁸ Even the TET, in making its previous finding that the DZSP replenishment plan was realistic, concluded that “DZSP's prior retention rates (e.g. retention rate of [deleted] [percent] in 2013) would not be applicable to future periods.” AR, Reports File, exh. ZK TET Memorandum to the File, at 12 (emphasis supplied).

their origin in a firm's cost proposal. Id.; see also, Information Systems Networks, Inc., B-254384.3, Jan. 21, 1994, 94-1 CPD ¶ 27 at 6 n. 4.

Here, we conclude that the agency erred in its evaluation of the DZSP proposal because the SSA's assignment of a strength to the proposal for its retention rate is unreasonable, and inconsistent with DZSP's stated intention to entirely replace its workforce.⁹ It follows that the agency's upward cost realism adjustment to the DZSP proposal to account for the fact that the evaluators viewed the DZSP employee replacement strategy as unrealistic was reasonable. The record therefore shows that the agency did, in fact, miscalculate the DZSP proposal, but in a manner that unreasonably favored--rather than penalized--DZSP. In light of these considerations, we deny this aspect of DZSP's protest.¹⁰

⁹ As noted, DZSP makes much of the TET's finding that DZSP's employee replacement strategy was realistic. AR, Reports Folder, exh. ZK, TET Memorandum to the File, at 12. The record shows that this finding was based on the TET's consideration of the fact that [deleted] percent of DZSP's workforce was comprised of employees that were 55 years of age or older. Id. However, the reasonableness of this finding is questionable in light of the fact that DZSP proposed to replace its entire workforce--and not merely those that were aged 55 years or older--at least once during contract performance. In any case, whether or not the TET reasonably arrived at that conclusion, as noted, the record shows that the TET concluded that DZSP's incumbent retention rate "would not be applicable" in light of DZSP's employee replacement plan. Id. at 12.

¹⁰ As a final matter, we note that DZSP also takes issue with the agency's use of a 1.29 percent escalation factor in calculating its evaluated cost. According to the protester, this factor is too high and does not reflect a comparatively recent downward--and even negative--trend in the Guam Bureau of Statistics Consumer Price Index. In this connection, the record shows that the agency relied on data from an 8-year period spanning the years 2009 to 2016. DZSP notes that, in 2013, the rate of growth in the applicable index was 0, and in subsequent years it was negative. The agency explains that it used an 8-year interval of data because the contract term here is for 8 years.

We have no basis to question the reasonableness of the agency's reliance on the data set it used. The record shows that the Guam Bureau of Statistics Consumer Price Index has fluctuated considerably during the 8-year period considered by the agency, from a high of 3.2 percent in 2012, to a low of -0.80 percent in 2016. While the protester is correct that the most recent trend is downward, the apparent volatility in the index--reflected in the agency's data set--bears out the reasonableness of the agency's actions. We therefore deny this aspect of DZSP's protest.

Evaluation of Fluor's Exempt Personnel

DZSP also takes issue with the agency's evaluation of the Fluor proposal under the staffing and resources evaluation factor as well. DZSP alleges that the agency unreasonably assigned the Fluor proposal a strength for offering to retain 95 percent of the incumbent staff. The protester argues that the agency's technical evaluators found that Fluor's proposed rates of compensation for exempt employees were too low, and that these low rates could result in Fluor being unable to retain the incumbent exempt workforce, as it proposed to do. The record also shows, however, that both the CET and the SSA assigned the Fluor proposal a strength for its offer to retain 95 percent of the incumbent staff.¹¹ DZSP argues that the TET was correct in raising this concern, and that the agency therefore should not have assigned this strength to the Fluor proposal.

We deny this aspect of DZSP's protest because we conclude that, even if DZSP is correct, it was not prejudiced by the agency's alleged error. In this connection, prejudice is an essential element of every viable protest, and where no prejudice is shown or otherwise evident, we will not sustain a protest, even if the agency's actions arguably are improper. Avaya Gov't Solutions, Inc., B-409037, et al., Jan. 15, 2014, 2014 CPD ¶ 31 at 6.

As discussed above, the record shows that the agency unreasonably assigned DZSP's proposal a strength for its incumbent retention rate because DZSP proposed to replace the entire incumbent staff as part of its employee replenishment strategy. To the extent that DZSP is correct that the agency also erred in assigning Fluor's proposal a strength for its proposed retention rate, this was not prejudicial to DZSP, since, in that case, neither firm should have been assigned a strength for incumbent employee retention. Accordingly, we deny this aspect of DZSP's protest.¹²

¹¹ In this connection, the record shows that the TET based its concern on its reading of Fluor's response to a discussion question relating to the company's comparatively low salaries and the impact of those low salaries on the company's ability to retain incumbent staff. The TET interpreted Fluor's response as stating that it would hire outside employees if it was unable to hire incumbents at the rates proposed. AR, Reports Folder, exh. ZK, TET Memorandum to the File, at 34.

In contrast, the CET and SSA read the same discussion response as an offer by Fluor to [deleted]. AR, Reports Folder, exh. ZO, CET Reevaluation Report, at 10; exh. ZP, RSSDD, at 20.

¹² DZSP suggests in the alternative that the agency could have given Fluor credit for its high retention rate, but concluded that its [deleted] were unrealistic to achieve that retention rate and upwardly adjusted those rates to more realistic rates. We disagree. An offeror that proposes a [deleted] from the government, such that upward adjustments to [deleted] are improper, unless [deleted]. Advanced Sciences, Inc., B-259569.3, July 3, 1995, 95-2 CPD ¶ 52 at [deleted]. Here, the record shows that

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Key Personnel Unavailability

DZSP argues that certain of Fluor's key personnel have become unavailable since proposals were submitted, and that Fluor failed to advise the agency of this fact after learning of their unavailability. In its protest DZSP originally identified five of Fluor's key personnel as allegedly unavailable. In submitting its comments responding to the agency report, DZSP confined its challenge to the availability of four of Fluor's key employees.¹³

We find no merit to this aspect of DZSP's protest. While an offeror generally is required to advise an agency where it knows that one or more key employees have become unavailable after the submission of proposals, there is no such obligation where the offeror does not have actual knowledge of the employee's unavailability. See Greenleaf Constr. Co. Inc., B-293105, et al., Jan. 17, 2006, 2006 CPD ¶ 19. Our decision in Greenleaf is grounded in the notion that a firm may not properly receive award of a contract based on a knowing material misrepresentation in its proposal.

We note at the outset the unusual circumstances surrounding this acquisition. The agency originally made award of a contract in 2014 based on proposals that had been submitted at that time. DZSP essentially is asking our Office to conclude that the offerors had an ongoing obligation to be in constant contact with their respective proposed key personnel to ensure that they were at all times available during the approximately 4-year interval during which there has been uncertainty regarding the ultimate awardee of the contract. Correspondingly, DZSP's protest allegation presupposes that all of the offerors' key personnel were somehow standing by--and not engaging in gainful employment--waiting for an employment opportunity to materialize sometime in the undefined future under this contract. We decline to interpret our decisions to require such a result.

The record shows that, with respect to the four individuals identified by DZSP as allegedly unavailable, one was originally a Fluor employee, while the other three were not Fluor employees, but nonetheless were individuals that had signed letters of intent that were included in the Fluor proposal. With respect to the individual that was a Fluor employee at the time proposals were originally submitted in 2014, Fluor advises that he

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Fluor made an unequivocal offer to [deleted], and there is no evidence to show that Fluor's proposal will be [deleted]. AR, Evaluation Notices Folder, exh. Q, Fluor Discussion Questions, at 3. In light of this representation in the Fluor proposal, there would be no basis for the agency to make an upward adjustment to Fluor's proposed cost.

¹³ As to the fifth individual, Fluor's proposed port operations manager, DZSP did not further pursue its challenge to his availability based on documentation produced by Fluor in connection with the protest.

was a Fluor employee in good standing who was released during a reduction in force after the contract originally was awarded to DZSP. Nonetheless, Fluor produced correspondence between it and its former employee showing that, subsequent to the award of the contract, and also in connection with the current protest, Fluor has been in contact with the employee and he has not indicated that he is unavailable to perform on the contract. Fluor Key Personnel Document Production, exh. B.

As for the remaining three key employees proposed by Fluor and identified by DZSP, the record shows that none of the three were Fluor employees at the time Fluor submitted its proposal, but all three signed letters of intent expressing their willingness to work on the contract. Those letters were included in Fluor's original 2014 proposal, and also with Fluor's final proposal revision submitted in July, 2016. See AR, Final Proposal Revisions Folder, exh. F, Fluor Final Proposal Revision, Technical Proposal, at 3-81-3-116. Fluor provided correspondence between these individuals and Fluor that occurred after award of the contract to Fluor, and also in connection with the latest protest. Fluor Key Personnel Document Production, exhs. A, C, D. None of that correspondence shows that these individuals advised Fluor of their unavailability, and all appear interested in assuming the positions for which they had been proposed.

With respect to certain of DZSP's proposed key employees, the record includes information that would appear to cast doubt on their availability as well, but as with Fluor's key employees, DZSP has produced evidence that it maintains shows the continuing availability of these individuals. DZSP was the incumbent contractor under the predecessor contract for this requirement, and was awarded a series of sole-source contracts during the ongoing litigation at our Office. The record shows that at least four of DZSP's proposed key personnel resigned or retired from their active roles as DZSP's key personnel.

One of these individuals, DZSP's proposed ordnance manager, resigned on August 18, 2017, to take a position with the government as a contracting officer's representative. AR, DZSP Key Personnel Unavailability Folder, exh. A. One of these individuals, DZSP's proposed port operations manager, resigned from DZSP on March 11, 2016. Protester's Document Production, Appendix A, at 25. One of these individuals, DZSP's proposed business manager, resigned from DZSP on April 5, 2016. Id. at 2. And a fourth individual, DZSP's industrial properties manager, retired from DZSP on January 6, 2016. Id. at 13.

Notwithstanding the apparent showing discussed above, DZSP submitted an affidavit from its president and chief executive officer, along with various documentation that he maintains shows that, although these individuals resigned from DZSP at some point prior to the current award of the contract, all of them now remain available to work on the contract should DZSP receive award. Protester's Document Production, exh. A, Affidavit of DZSP's President, Appendix 1, Miscellaneous Documentation.

In the final analysis, the record shows that both firms may now have questions regarding the ongoing availability of their key personnel due to the extensive passage of

time from the submission of proposals, and the uncertainty associated with the award of the subject contract in light of the continuing protests. Nonetheless, there does not appear to be any evidence of an affirmative, material misrepresentation by either firm, nor can we conclude that one firm was given a competitive advantage over the other by reason of the availability or unavailability of their proposed key personnel. On this record, we have no basis to object to the agency's award of the contract to Fluor based on the alleged unavailability of its proposed key personnel. We therefore deny this aspect of DZSP's protest.

Evaluation of the Guam Receipts Tax

Finally, DZSP challenges the agency's evaluation of the Guam receipts tax (GRT) in connection with evaluating the offerors' cost proposals. According to DZSP, the two firms used a different basis for calculating the GRT, and more specifically for calculating a credit taken against the GRT known as the Guam Registered Apprenticeship Program (GRAP) credit.¹⁴ DZSP maintains that Fluor used a different--more generous--basis to calculate the GRAP credit than DZSP used, and this provided Fluor with an unfair competitive advantage in its cost proposal. Specifically, DZSP argues that Fluor took into consideration the direct wages of not only its apprentices, but also its journeymen instructors in calculating the GRAP credit, whereas DZSP used only its apprentices' direct wages in calculating the credit.

We dismiss this aspect of DZSP's protest. Our procedures afford parties the opportunity to participate in the protest process, thus ensuring that our decision on the matter will address all relevant information and issues. Accordingly, all parties are expected to use due diligence in presenting their respective positions during the protest process; they may not present available information in a piecemeal fashion through the filing of a subsequent protest after resolution of a prior protest. Good Food Services, Inc., B-244528.3, Dec. 30, 1992, 92-2 CPD ¶ 448 at 2. Failure to make all arguments or submit all relevant information available during the course of an earlier protest undermines the goals of our bid protest process to produce fair and equitable decisions based on consideration of all parties' arguments on a fully developed record. Id. at 3.

The offerors' calculation of the GRT was directly at issue in Fluor's second protest, because Fluor alleged that it had calculated the GRT differently than DZSP. Specifically, Fluor argued that it calculated the GRT using a figure of approximately 4.167 percent rather than the 4 percent used by DZSP in its calculation. In responding to that allegation, DZSP argued that there was no basis for the agency even to have known about Fluor's use of the higher figure, and also that there was no legal obligation for the agency to have accounted for it in performing its cost realism evaluation. DZSP argued as follows:

¹⁴ The GRAP credit contemplates a contractor taking a credit against the GRT for costs incurred in connection with an apprenticeship program.

Second, Fluor's argument fails because even if the Navy were obligated to re-open discussions or make a cost adjustment based upon Fluor's use of the 4.166667% tax rate, the Navy had no reason to know that Fluor was utilizing this adjusted rate. Fluor's proposal narrative expressly stated that "[a] standard 4 percent tax rate was utilized for the life of the contract." Fluor Cost Vol. at 8-26.¹⁵ Nowhere does the Fluor proposal mention the 4.166667% rate or any adjustment whatsoever. In fact, Fluor's cost volume spreadsheets concealed the rate used because Fluor chose to present the GRT amount aggregated together with the tax incentive offset available through the Guam apprenticeship program [the GRAP]. Id. Consequently, Fluor's JB-1 Cost Summary Worksheet showed only a single number for GRT that already factored in the tax offset. See Ex. B, Excerpt of Fluor JB-1 Worksheet. Only through an exhaustive analysis of Fluor's application of the Guam apprenticeship program [the GRAP] could the Navy have reverse-engineered the 4.166667% rate. That level of analysis is far beyond any reasonable requirement for an agency's cost realism evaluation.

DZSP Supplemental Comments, B-410486.6, at 11 (emphasis supplied).

The record therefore shows that calculation of the GRT was directly at issue in Fluor's second protest, and DZSP argued that the agency was not required to observe or account for Fluor's calculation of the GRAP in its cost realism evaluation. In its current protest, DZSP now argues--in direct opposition to its earlier argument--that the agency should have known that Fluor used a different basis than DZSP for calculating the GRAP credit, and should have considered it in its cost realism evaluation. Where, as here, a current protester (formerly an intervenor) previously had all of the information necessary to make an argument, but instead made a very different argument, we will not consider the subsequently-advanced argument, since to do so would undermine our overriding goal of producing fair and equitable decisions based on consideration of all parties' arguments on a fully developed record. UnitedHealth Military & Veterans Services, LLC, B-401652.8, et al., June 14, 2011, 2011 CPS ¶ 83 at 12.

¹⁵ In its current protest, DZSP cites to this very same page of the Fluor proposal in support of its latest argument that the agency should have known that the offerors used a different basis for calculating the GRAP, and should have accounted for that difference in its cost realism evaluation. This page of the Fluor proposal has at all relevant times provided as follows: "In accordance with local tax standards, the apprenticeship program offers an economic tax incentive of 50 percent of total direct and indirect cost for all apprentice employees and their journeymen instructors." AR, B-410486.6, Fluor Cost Proposal Narrative, Aug. 13, 2015, at 8-26 (emphasis supplied); see also AR, B-410486.9, Fluor Cost Proposal Narrative, July 29, 2016, at 8-26; AR, Final Proposal Revisions Folder, Fluor Final Cost Proposal Narrative, July 29, 2016, at 8-26.

The protest is denied in part and dismissed in part.

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General Counsel