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Decision

Matter of: Federal Maintenance Logistics Solutions, LLC

File: B-412270.5

Date: November 15, 2016

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DIGEST

1. Protest that the agency’s evaluation of the protester’s proposed costs failed to comply with the solicitation’s stated evaluation criteria is denied where the record reflects that the agency’s evaluation of the protester’s proposal was consistent with the terms of the solicitation.
 2. Protest challenging the agency’s evaluation of the awardee’s past performance is denied where the source selection authority’s independent evaluation was reasonable, adequately documented, and consistent with the stated evaluation criteria.
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DECISION

Federal Maintenance Logistics Solutions (FMLS), LLC, of Greenville, South Carolina, protests the issuance of a task order to AC First, LLC, of Fort Worth, Texas, under request for proposals (RFP) No. W52P1J-15-R-0004, by the Department of the Army, Army Material Command, Rock Island, for contract services to provide logistics support services in Afghanistan. The protester challenges the Army’s evaluation of its cost proposal, and the awardee’s past performance.

We deny the protest.

BACKGROUND

In May 2015, the Army issued the RFP to contractors holding Enhanced Army Global Logistics Enterprise (EAGLE) basic ordering agreements (BOA). The solicitation sought proposals to provide logistic support services in Afghanistan. The solicitation contemplated a single best-value award of a combined cost-plus-fixed-fee, and cost-no-fee-bearing task order, for a base year with four 1-year options. The RFP established the following evaluation factors: technical, past performance, and cost/price.¹ The technical factor was evaluated on an acceptable/unacceptable basis. The solicitation provided that proposals must receive a rating of at least acceptable for the technical factor to be considered for award. RFP at 25.

As relevant here, the solicitation's statement of work (SOW) explained that the contractor would be required to provide the appropriate amount of qualified labor and management to perform all logistics support services ordered under the task order in a cost effective, safe and environmentally-sound manner. SOW at 2. In defining the type of staffing and labor mix permitted, the solicitation specified that "only full time employees are to be proposed against this effort." RFP at 10. The solicitation further provided definitions relating to the staffing and labor permitted under the solicitation. For example, the RFP defined "expat" to mean a "[c]ontractor employee that has evidence of U.S. citizenship" and "is currently eligible to work on the Outside [of] the Continental United States (OCONUS) U.S. installation." Id. The RFP defined "foreign national" to mean: "Any person other than a U.S. citizen, U.S. permanent or temporary legal resident alien, or person in U.S. custody; however, this shall not include Local Nationals (LNs) with citizenship in Afghanistan." Id.

Under the past performance factor, the agency evaluated past performance "as a predictor of future contract performance," and assessed the "degree of confidence it [had] in the expectation that the Offeror will successfully complete the requirements in accordance with the contract terms based on the Offeror's demonstrated record of recent and relevant performance." Id. at 27. For joint ventures, the solicitation provided that "the Offeror's past performance record will be assessed in its totality to determine the Offeror's past performance rating." Id.

With regard to the cost evaluation, the RFP provided that the agency would determine an offeror's total evaluated cost based on the cost information submitted by the offeror in its cost proposal, as detailed in the cost matrix, which was included as an attachment to the solicitation. In addition, the solicitation advised that the agency may make government-identified cost adjustments as determined in accordance with the agency's cost realism analysis. The solicitation also provided that if the offeror's proposal includes "indirect expense rates not fully supported,

¹ We note that while the RFP repeatedly referred to price (in addition to cost), the solicitation in fact provided for award of a cost-reimbursable contract.

those rates will be capped at the proposed rates for evaluation purposes and contract execution.” RFP at 29.

Prior Protest History

Initial proposals were due June 1, 2015, and the Army received seven timely proposals by that date. Combined Contracting Officer Statement & Memorandum of Law (COS/MOL) at 5. Following an initial evaluation of proposals, three offerors were eliminated from the competition, and the agency conducted discussions with the remaining offerors. Id.

On September 25, the agency issued a task order to AC First in the amount of approximately \$43 million for the base year, and with a total value of \$225 million. Id. On that same day, the agency issued a modification to the task order, which added approximately \$108 million to the base period to incorporate an increased workload. Id. One of the unsuccessful offerors filed a protest with our Office, arguing that the Army’s modification of the task order improperly increased the scope of the base year work. Id. at 6. On November 9, our Office dismissed the protest as academic after the agency advised that it intended to terminate the task order, revise the solicitation to accurately reflect its needs, request revised proposals, and make a new award determination. Id. at 7.

On November 17, the agency issued amendment 4 to the RFP to all seven of the original offerors. Id. at 8. Amendment 4 increased the workload requirement, and also advised offerors of the agency’s most probable cost (MPC) adjustment of the previously-awarded task order. The agency also opened discussions with all of the offerors, and requested revised final proposals, which were due December 8. The Army received timely final proposals from five of the offerors. Id. at 10. After an evaluation of proposals, the agency concluded that four of the proposals were timely, compliant, and technically acceptable. Id.

However, after conducting a cost evaluation of the proposals, the agency concluded that the proposal submitted by AC First presented an unacceptable risk to the government. Id. On February 10, 2016, the agency notified that offeror that its proposal was being removed from the competition. On February 15, AC First filed a protest with GAO. Id. at 11. On May 2, our Office dismissed the protest as academic after the agency advised that it would reinstate the unsuccessful offeror’s proposal into the competition and conduct discussions with all four offerors remaining in the competition.

Current Protest

On May 11, the agency opened discussions with the four offerors remaining in the competition, which as relevant here, included FMLS and AC First. COS/MOL at 11. As also relevant, the agency provided FMLS with an evaluation notice (EN) advising FMLS that it “did not provide historical data for [its] proposed [o]verhead and

general and administrative (G&A) expense rates,” as required by the RFP. AR, Tab 84, FMLS EN 1006, at 1. In this regard, the RFP requested that, “[i]f actual data for 2015 has been used to estimate proposed 2016 through 2021 rates, provide that explanation.” RFP at 19. The agency asked that FMLS provide the historical data required by the solicitation, and advised that, if “adequate supporting documentation is not received,” the “Government intends to set the Overhead and G&A rates as capped on the contract, if awarded.”² AR, Tab 84, FMLS EN 1006, at 1.

On June 9, 2016, the Army received final proposal revisions (FPRs) from all four offerors, including FMLS and AC First. COS/MOL at 11. FMLS’ FPR proposed a revised approach to [DELETED].³ Specifically, FMLS proposed to use a labor broker to [DELETED]. This differed from its previous approach, in which FMLS proposed [DELETED]. AR, Tab 132, FMLS FPR Vol. 4, at 1.

The agency’s evaluation of FMLS’ and AC First’s FPRs was as follows:

	FMLS	AC First
Technical	Acceptable	Acceptable
Past Performance	Substantial Confidence	Substantial Confidence
Price/Cost	\$452,491,020	— — ⁴
Probable Cost	\$463,427,870	\$456,892,382

AR, Tab 148, SSDD, at 3, 9, 12-13.

In evaluating FMLS’ FPR, the cost team concluded that a most probable cost (MPC) adjustment of FMLS’ proposed costs was necessary. Specifically, in evaluating the realism of FMLS’ proposed costs, the agency noted that the proposed overhead rate for the [DELETED] did not include [DELETED]. AR, Tab 139, Cost Realism

² In its EN response, FMLS explained that it did not have any historical data to provide because it was a newly formed joint venture, but that it believed it had “accounted for all practical elements that affect G&A and believe our forecasted G&A is as accurate as possible.” *Id.* FMLS also stated, however, that that “[i]f the Government ultimately determines that our Overhead and G&A rates must be capped, we will accept that decision.” *Id.*

³ FMLS proposed to [DELETED], as previously proposed.

⁴ During the course of the protest, the agency provided only the awardee’s probable cost, and not its proposed cost. The agency may have elected to omit this information because the protester did not challenge the evaluation of the awardee’s proposed costs.

Analysis, at 17. The cost team expressed concern with this approach, noting that FMLS' "final proposal does not specifically address [DELETED]." Id. at 18. The cost team also noted that "FMLS did not provide any additional supporting documentation for the indirect rate change or any supporting documentation from [DELETED]." Id. In this regard, the cost team also noted that, despite FMLS' change in approach, the FMLS labor rates did not change from" the labor rates proposed in FMLS' interim proposal. Id. at 18. Based on these concerns, the cost team concluded that a MPC adjustment to FMLS' proposed indirect rate for [DELETED] was required, in accordance with RFP § M.5.3.1, which provided that "failure of the Offeror to establish the credibility of its proposed costs may result in a MPC adjustment being made to the costs proposed." AR, Tab 139, Cost Realism Analysis, at 18; RFP at 29. Accordingly, the cost team applied a MPC adjustment to FMLS' final proposal revision to account for the omitted [DELETED]. AR, Tab 144, SSEB Report, at 17.

Based on the evaluation, the source selection authority (SSA) determined that AC First's proposal provided the best value to the government because it was technically acceptable, received a substantial confidence past performance rating, and represented the lowest total evaluated cost. AR, Tab 148, SSDD, at 18. Accordingly, the SSA awarded the task order to AC First. Id. This protest followed.

DISCUSSION

FMLS challenges the agency's evaluation of its cost proposal, arguing that the agency's most probable cost adjustments were unreasonable and inconsistent with the terms of the solicitation. The protester also challenges the agency's evaluation of the awardee's past performance. As discussed below, none of the protester's allegations provides a basis to sustain the protest.⁵

Cost Realism Evaluation

FMLS challenges the agency's cost realism analysis with regard to FMLS' proposed use of a labor broker for [DELETED]. Specifically, FMLS argues that the Army's evaluation of its proposed costs failed to comply with the RFP's stated evaluation criteria, which the protester asserts, required the agency to cap its proposed indirect overhead rate for [DELETED], rather than adjust the rate based on the agency's most probable cost assessment. The protester also contends that the agency applied an unstated evaluation criterion when it required supporting documentation and data for FMLS' proposed [DELETED] labor broker. For the reasons discussed below, we find that the Army's cost realism evaluation was reasonable, consistent with the RFP, and adequately documented.

⁵ The protester raised other collateral arguments that are not discussed in this decision. We have reviewed all of the protester's allegations and conclude that they are without merit.

When an agency evaluates a proposal for the award of a cost-reimbursement contract, an offeror's proposed estimated costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. Federal Acquisition Regulation (FAR) §§ 15.305(a)(1); 15.404-1(d); Quantech Servs., Inc., B-408227.8, B-408227.9, Dec. 2, 2015, 2015 CPD ¶ 380 at 6. Consequently, the agency must perform a cost realism analysis to determine whether the estimated proposed cost elements are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the unique methods of performance and materials described in the offeror's proposal. FAR § 15.404-1(d)(1); Advanced Commc'n Sys., Inc., B-283650 et al., Dec. 16, 1999, 2000 CPD ¶ 3 at 5. An offeror's proposed costs should be adjusted, when appropriate, based on the results of the cost realism analysis. FAR § 15.404-1(d)(2)(ii). Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonably based and not arbitrary. Jacobs COGEMA, LLC, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 26.

For purposes of the cost realism evaluation, the solicitation required that offerors submit "sufficient supporting detail relative to direct and indirect rates, subcontracts, material and equipment, if applicable, and other direct costs." RFP at 29. With regard to labor brokers, the solicitation required "supporting rationale for such costs to acquire the vendor supplied labor." RFP, Q&A 356. The solicitation further advised that "[o]fferors are cautioned that the Government has concerns with the potential for post-award performance problems if Offerors propose unrealistically low costs," and therefore, that "failure of the Offeror to establish the credibility of its proposed costs may result in a MPC adjustment being made to the costs proposed" RFP at 29.

In FMLS' initial and interim proposal submissions, the protester did not propose to use a labor broker [DELETED]. See AR, Tab 62, FMLS Initial Proposal, at 4; Tab 130, FMLS Interim Proposal, at 4; COS/MOL at 16. Instead, FMLS proposed [DELETED]. Id. For these employees, FMLS proposed an indirect rate of [DELETED] percent for the base year, which included responsibility for the [DELETED].⁶ Id.

During discussions, the agency advised FMLS of its concern that FMLS "did not provide historical data for [its] proposed Overhead and G&A rates," in accordance with RFP § L.5.4.2.6.5(d). AR, Tab 84, FMLS EN 1006, at 1. The agency requested that FMLS provide its historical rates, and stated that if "adequate supporting documentation is not received," the "Government intends to set the Overhead and G&A rates as capped on the contract, if awarded." Id.

⁶ These [DELETED] included [DELETED]. AR, Tab 132, FMLS FPR Vol. 4, at 1.

In its FPR, rather than providing historical data to support its proposed overhead indirect rates, as requested by the agency during discussions, FMLS changed its proposed approach for [DELETED]. Specifically, rather than proposing [DELETED], FMLS proposed to use a labor broker to [DELETED].⁷ AR, Tab 132, FMLS FPR Vol. 4, at 1. This change in approach resulted in a reduction in FMLS' proposed indirect overhead rate for [DELETED] (for the base year).⁸ FMLS' proposal explained that the lower overhead rate for [DELETED] was because it did not include "[DELETED]." Id.; Tab 139, Cost Realism Analysis, at 17. FMLS' proposal stated that, instead, "[DELETED] has been added to [DELETED]." AR, Tab 132, FMLS FPR Vol. 4, at 1.

In evaluating the realism of FMLS' proposed costs, the agency noted that the proposed overhead rate did not include [DELETED]. AR, Tab 139, Cost Realism Analysis, at 17. The cost team expressed concern with this approach, noting that FMLS' "final proposal does not specifically address how [DELETED]." Id. at 18. The cost team also noted that "FMLS did not provide any additional supporting documentation for the indirect rate change or any supporting documentation from [DELETED]." Id. In this regard, the cost team also noted that, despite FMLS' change in approach, the FMLS labor rates did not change from the labor rates proposed in FMLS' interim proposal.⁹ Id. at 18. Based on these concerns, the cost team concluded that a most probable cost adjustment to FMLS' proposed indirect rate for [DELETED] was required, in accordance with RFP § M.5.3.1, which provided that "failure of the Offeror to establish the credibility of its proposed costs may result in a MPC adjustment being made to the costs proposed." Id. at 18; RFP at 29. Accordingly, the cost team applied a MPC adjustment to FMLS' final proposal revision to account for the omitted [DELETED]. AR, Tab 144, SSEB Report, at 17.

The protester argues that the solicitation included a provision for instances where an offeror's indirect rates "were not fully supported," and asserts that, because the agency's concerns regarding FMLS' proposed indirect rates for [DELETED] were based on insufficient documentation, the agency was required, by this provision, to cap the protester's proposed indirect rates, rather than impose a cost adjustment. RFP at 29. Specifically, the protester points to language in the solicitation which

⁷ FMLS proposed [DELETED], as previously proposed. Id.

⁸ Accordingly, the evaluators adjusted FMLS' proposed indirect rates for [DELETED] to match the indirect rate that FMLS proposed for [DELETED], which was the same indirect rate that FMLS had previously proposed in its interim proposal, and that led to an overall upward adjustment.

⁹ The evaluators noted that, as in FMLS' previous proposals, FMLS' FPR stated that "the FMLS labor rate for expats in Afghanistan are based on Economic Research Institute wage data or SCA wage determination," which the evaluators explained "were supported by FMLS" during discussions. Id.

provided that proposals with unsupported indirect expense rates “will be capped at the proposed rates for evaluation purposes and contract execution.” Id.

The Army responds that it based the MPC adjustment on concerns regarding the credibility of FMLS’ entire approach to [DELETED] in accordance with RFP Section M.5.3.1(a), not based solely on a lack of documentation for FMLS’ proposed indirect rates, as the protester asserts. See RFP § M.5.3.1(a) (providing for an MPC adjustment based on a “failure of the Offeror to establish the credibility of its proposed costs.”). In this regard, the agency argues that FMLS’ FPR failed to include sufficient documentation to support its new approach to [DELETED]--including a lack of any information regarding [DELETED], the rates to [DELETED], or explanation as to how [DELETED]--and therefore, that it was reasonable for the agency to adjust the proposed costs which it did not find credible.

Based on our review of the Army’s evaluation of the realism of FMLS’ proposed costs, we find no basis to conclude that the agency’s evaluation was unreasonable. As noted above, the cost team first noted that FMLS’ proposed overhead rates for [DELETED] did not include [DELETED], and expressed concern that FMLS’ FPR did not specifically address how [DELETED]. AR, Tab 139, Cost Realism Analysis, at 17-18. The cost team also noted that “FMLS did not provide any additional supporting documentation for the indirect rate change or any supporting documentation from [DELETED].” Id. at 18. In addition, the cost team stated that, “[a]s in the previous proposal submitted by FMLS,” the “labor rates for [DELETED] are based on Economic Research Institute wage data or [a] SCA wage determination,” and these “labor rates did not change from the interim proposal.” Id. Based on these concerns, the cost team adjusted FMLS’ proposed indirect overhead rates for [DELETED] to include the unaccounted for [DELETED]. Id.

The SSA further explained the rationale for the MPC adjustment. Specifically, the SSA stated that, although the “[o]verhead rates for [DELETED] are now proposed to [DELETED], [this approach] does not [DELETED] or documentation supporting [DELETED].” AR, Tab 148, SSDD, at 14. The SSA further explained that FMLS “did not propose this new approach . . . until after discussions were closed,” and it “provided its FPR.” Id. In this regard, the SSA noted that FMLS’ FPR failed to provide “supporting documentation as required by the RFP.” Id. Specifically, the SSA stated that FMLS “failed to identify any specific [DELETED] with supporting documentation,” and also “did not change the proposed labor rate or explain why [DELETED] for the same labor rate as [DELETED].” Id. Finally, the SSA noted that, “[c]onversely, [FMLS] provided extensive information on every [DELETED] via a broker, including [DELETED].” Id. Based on the above-listed concerns, the SSA explained that the agency performed an MPC adjustment to the indirect overhead rates to incorporate [DELETED]. Id. The SSA explained that the overhead rates used in the MPC adjustment were the same overhead rates proposed by FMLS in its interim proposal annualized for the base and options years. Id.

The protester objects to the agency's evaluation process and conclusions as described above. Specifically, the protester argues that the agency "imposed the MPC adjustment due to a perceived lack of supporting documentation for FMLS' proposed indirect rates," and therefore, asserts that the agency was required, per the terms of the RFP, to cap FMLS' proposed rates. Protester's Comments at 3. As referenced above, however, the solicitation provided for an MPC adjustment based on a "failure of the Offeror to establish the credibility of its proposed costs." RFP at 29. Contrary to the protester's contention, the record reflects that once FMLS revised its proposed approach to [DELETED], the agency's decision to make an MPC adjustment was based on its concern that FMLS' FPR failed to adequately explain (or include sufficient documentation to support) the new approach, or the proposed costs of the new approach. Based on our review of the record, we find that the agency's evaluation was consistent with the terms of the RFP.

Next, FMLS argues that the agency applied an unstated evaluation criterion by requiring documentation and data in support of FMLS' proposed [DELETED] labor broker. As discussed below, we find no merit to this argument.

In reviewing protests challenging an agency's evaluation of proposals, our Office does not independently evaluate proposals; rather, we review the agency's evaluation to ensure that it is consistent with the terms of the solicitation and applicable statutes and regulations. SOS Int'l, Ltd., B-402558.3, B-402558.9, June 3, 2010, 2010 CPD ¶ 131 at 2. We have long held that the evaluation of proposals is a matter within the discretion of the procuring agency; we will question the agency's evaluation only where the record shows that the evaluation does not have a reasonable basis or is inconsistent with the RFP. Hardiman Remediation Servs., Inc., B-402838, Aug. 16, 2010, 2010 CPD ¶ 195 at 3. It is an offeror's responsibility to submit an adequately written proposal, and an offeror risks having its proposal evaluated unfavorably where it fails to do so. Phillips & Jordan, Inc., B-411551, Aug. 25, 2015, 2015 CPD ¶ 273 at 6.

As relevant here, the solicitation provided that labor brokers were to be considered vendors, rather than subcontractors, which meant that vendors were not required to separately submit "sealed packages with supporting data" as subcontractors were required to do. RFP, Q&A 356. The solicitation also provided, however, with regard to labor brokers, that "[o]fferors are still required to cost these vendors out and provide the supporting rationale for such costs to acquire the vendor supplied labor." Id. Accordingly, the RFP specified that "all cost information shall be submitted in accordance with the RFP." Id.

Based on our review of the record, we conclude that the agency's evaluation was consistent with the terms of the solicitation. As referenced above, the RFP unequivocally stated that, for labor brokers, "[o]fferors are still required to cost these vendors out and provide the supporting rationale for such costs to acquire the vendor supplied labor." RFP, Q&A 356. Although the protester challenges the degree and type of supporting documentation required by this provision, we find

that, at the very least, based on this provision, the RFP adequately put offerors on notice that the agency's cost evaluation would assess an offeror's proposed rationale and costs to acquire vendor supplied labor. Id. As noted above, however, the record reflects that FMLS' FPR did not provide any supporting rationale or documentation with regard to its proposed approach to use a labor broker for [DELETED]. For example, FMLS' FPR did not identify [DELETED], discuss [DELETED] or indicate any [DELETED].¹⁰ COS/MOL at 34; AR, Tab 148, SSDD, at 16. As another example, the record reflects that FMLS' FPR did not include any rationale or supporting documentation regarding the lack of [DELETED]. AR, Tab 148, SSDD, at 16. As referenced above, it is an offeror's responsibility to submit an adequately written proposal, and an offeror risks having its proposal evaluated unfavorably where it fails to do so. Phillips & Jordan, Inc., supra. Here, the agency based its decision to adjust FMLS' proposed costs, in part, on the protester's failure to provide any explanation or documentation in support of its new proposed approach to use a labor broker to [DELETED]. AR, Tab 148, SSDD, at 16. Based on our review of the record, we find that the agency's evaluation was consistent with the terms of the RFP.

Past Performance

Finally, FMLS argues that the SSA's "substantial confidence" past performance rating for AC First was unreasonable in light of the SSEB's past performance evaluation and AC First's record of "safety-related incidents" on the incumbent contract.¹¹ As discussed below, we conclude that the protester's arguments are not supported by the record.

¹⁰ Although the protester also argues that we should afford little weight to the contracting officer's statements, our Office generally considers post-protest explanations, such as these, where the explanations simply provide a detailed rationale for contemporaneous conclusions and fill in previously unrecorded details, so long as the explanations are credible and consistent with the contemporaneous record. See Lynxnet, LLC, B-409791, B-409791.2, Aug. 4, 2014, 2014 CPD ¶ 233 at 6. To the extent the protester asserts that the agency's statements are inconsistent with the record, based on our review of the record, and as discussed herein, we disagree, and conclude that the statements are consistent with, and provide a more detailed explanation of, the cost realism evaluation in the contemporaneous record.

¹¹ The protester also argues that the Army's evaluation improperly failed to consider negative information relating to one of AC First's joint venture partners that was too "close at hand" to ignore. For example, the protester contends that the agency should have considered information relating to AISS--a joint venture composed of two companies including one that is also a member of AC First. Protest at 12. To the extent the protester contends that the agency was required to consider this negative information in evaluating AC First's past performance, however, we disagree. In certain circumstances, when evaluating past performance, we have

(continued...)

An agency's evaluation of past performance, including its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of agency discretion which we will not disturb unless the agency's assessments are unreasonable or inconsistent with the solicitation criteria. SIMMEC Training Sols., B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 4. Where a protester challenges an agency's past performance evaluation and source selection, we will review the evaluation and award decision to determine if they were reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations, and to ensure that the agency's rationale is adequately documented. DynCorp Int'l LLC, B-406523.2, B-406523.3, Dec. 16, 2013, 2014 CPD ¶ 7 at 6.

As noted above, the solicitation provided that past performance would be evaluated "as a predictor of future contract performance," and was assessed based on the "degree of confidence [the agency had] in the expectation that the Offeror will successfully complete the requirements in accordance with the contract terms based on the Offeror's demonstrated record of recent and relevant performance." RFP at M.5.2. The solicitation provided that the performance confidence rating would be based on the offeror's recent/relevant performance record, and the government's expectation that the offeror would successfully perform the required effort. RFP at 29. A rating of "substantial confidence" meant that, "[b]ased on the Offeror's recent/relevant performance record, the Government has a high expectation that the Offeror will successfully perform the required effort." Id.

During the evaluation of initial proposals, in September 2015, and interim proposals, in February 2016, the SSEB assessed AC First's past performance as "substantial confidence." AR, Tab 148, SSDD, at 7. The SSA explained that AC First "submitted a proposal with no subcontractors and had two references determined recent and relevant," one of which was the incumbent contract for the instant requirement. Id. The SSA further explained, however, that, after these evaluations and prior to the final evaluation of FPRs, AC First advised the agency that it received three letters of concern relating to one of these relevant contracts, stemming from safety incidents. Id.

(...continued)

held that evaluators cannot ignore information of which they are personally aware, even if that information is not included in the offeror's proposal. See, e.g., Firestorm Wildland Fire Suppression, Inc., B-310136, Nov. 26, 2007, 2007 CPD ¶ 218 at 4. Here, the contracting officer responds that the AISS contract was overseen by a different procuring activity than the procuring activity for the instant procurement, and that the evaluators for the instant procurement did not have knowledge of the AISS contract concerns alleged by the protester. COS/MOL at 51. Accordingly, because the protester has failed to demonstrate that the agency was aware of, or should have known of, the asserted information, we find no basis to conclude that the agency improperly disregarded this information during its evaluation.

Based on the three safety-related incidents, during the final evaluation of FPRs, the SSEB recommended downgrading AC First's past performance rating from substantial confidence to satisfactory confidence. AR, Tab 142, Past Performance Evaluation, at 36. Specifically, the SSEB concluded that, "[w]ith this most recent information obtained," there is a "definite indication of a systemic performance trend." Id. The SSEB based this conclusion on its concern that the three incidents stemmed from "safety concerns, one resulting in death and the other two resulting in vehicle damage," as well as the fact that all three incidents "occurred within less than 60 days," with the first two incidents "occur[ing] only a few weeks apart." Id. The SSEB noted, for example, that "[a]fter the serious workplace accident that ultimately resulted in the employee's death, there were still similar safety issues indicating AC First was not following its [Corrective Action Plans] or the [Corrective Action Plans] were not effective." Id. Accordingly, the SSEB concluded: "Although AC First maintains the three (3) incidents occurring within less than 60 days of each other are all isolated incidents," the "pattern of these incidents indicates these are not isolated incidents as stated by AC First." Id. The SSEB also acknowledged that "[t]his negative trend in performance was an important consideration" in its recommendation of a satisfactory confidence rating. Id.

The SSA disagreed with the SSEB's recommendation that AC First's past performance rating should be changed to satisfactory confidence, noting that "[although I agree that [AC First] experienced performance problems . . . I do not believe these incidents warrant a change from the Substantial confidence rating issued on both 15 September 2015 and 02 February 2016." AR, Tab 148, SSDD, at 8. Contrary to the findings of the SSEB, the SSA found that AC First's overall safety incident rate for the incumbent contract, including the time when the safety incidents occurred, was in fact "exceptionally low." Therefore, in consideration of all of AC First's recent and relevant past performance, the SSA found that the three incidents "did not appear to indicate a trend or warrant a downgrade of the Offeror's overall past performance rating."¹² Id.

In addition, the SSA disagreed with the SSEB's conclusion that the safety incidents reflected an indication of "systemic issues." Specifically, the SSA found that each was "distinctly different in nature." Id. For example, he explained that the first incident occurred "when a 10-Ton Light Medium Tactical Vehicle dump truck undergoing maintenance moved in reverse and severely injured a mechanic working under the vehicle." Id. The second incident, which occurred at a different base, was caused when "a vehicle undergoing maintenance moved unexpectedly and damaged another vehicle," which "produced sparks and created a small fire." Id. The third incident, which occurred at a yet a different location, was caused by two vehicles that collided during road testing when one of the drivers "approaching the intersection believed the driver [of the other vehicle] was going to veer right,"

¹² The SSA concluded that AC First experienced safety issues on only 0.6% of the workload. Id.

and the other driver “claimed the sun was in his eyes and temporarily impeded his vision when he was making his turn.” Id. The SSA explained that “[w]hile the aforementioned incidents are unfortunate, not all accidents in a contingency-based industrial environment can be prevented.” Id. The SSA therefore concluded that “despite the nature of the incidents,” based “on [AC First’s] entire recent/relevant performance record, I have a high expectation that the Offeror will successfully perform the require effort,” and give AC First a “[substantial] confidence rating.]” Id. at 9.

The protester challenges AC First’s substantial past performance rating, arguing that the SSA’s evaluation either ignored, or was contrary to, the SSEB’s conclusion that the three safety failures were, in the aggregate, a “definite indication of a systemic performance trend.” Protester’s Comments at 11.

Source selection officials and higher-level agency evaluators may reasonably disagree with the evaluation ratings and results of lower-level evaluators. See, e.g., Verify, Inc., B-244401.2, Jan. 24, 1992, 92-1 CPD ¶ 107 at 6-8. In this regard, an SSA has broad discretion in determining the manner and extent to which technical and cost evaluation results are used, is permitted to make an independent evaluation of offerors’ proposals, and may disagree with or expand upon the findings of lower-level evaluators provided the basis for the evaluation is reasonable and documented in the contemporaneous record. KPMG Consulting LLP, B-290716, B-290716.2, Sept. 23, 2002, 2002 CPD ¶ 196 at 13-14; Brisk Waterproofing Co., Inc., B-276247, May 27, 1997, 97-1 CPD ¶ 195 at 2 n.1.

Based on our review of the record, we conclude that the SSA’s independent evaluation of AC First’s past performance was reasonable and adequately documented in the SSDD. To the extent the protester asserts that the SSA ignored the SSEB’s conclusion that the three safety failures were, in the aggregate, a “definite indication of a systemic performance trend,” Protester’s Comments at 10, we find no support for the protester’s allegations in the record. As detailed above, the record shows that the SSA disagreed with the SSEB’s conclusions regarding the three safety incidents, furnished a detailed analysis as to the basis for his disagreement, and reassigned the proposal a rating of substantial confidence for past performance. AR, Tab 148, SSDD at 7-9. As for the protester’s contention that the SSA’s evaluation was improper because it was contrary to the SSEB’s evaluation, as referenced above, source selection officials may reasonably disagree with the evaluation ratings of lower-level evaluators, provided that the basis for the evaluation is reasonable and documented in the contemporaneous record. KPMG, supra. On this record, we have no basis to conclude that the SSA’s findings were unreasonable.

The protest is denied.

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General Counsel