



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Synergy Solutions, Inc.

File: B-413974.3

Date: June 15, 2017

Isaias Alba, IV, Esq., Kathryn V. Flood, Esq., Michelle E. Litteken, Esq., Julia Di Vito, Esq., and Marc B. Langston, Esq., Piliero Mazza PLLC, for the protester.
Amy Laderberg O'Sullivan, Esq., Olivia L. Lynch, Esq., and Laura J. Mitchell Baker, Esq., Crowell & Moring LLP, for TUVA, LLC, the intervenor.
William Mayers, Esq., Department of Energy, for the agency.
Katherine I. Riback, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency's cost realism evaluation of the awardee's proposed costs was unreasonable is denied where the agency's evaluation was reasonable and supported by the record.
 2. Protest challenging portions of the agency's evaluation of proposals is dismissed as untimely where the protester could have and should have raised the protest grounds during the prior protest.
 3. Protest challenging agency's technical and past performance evaluation is denied, where the agency evaluated the proposals in accordance with the terms of the solicitation.
-

DECISION

Synergy Solutions, Inc., (Synergy) of Oak Ridge, Tennessee, a small business, protests the award of a contract by the Department of Energy, National Nuclear Security Administration, under request for proposals (RFP) No. DE-SOL-0006736 to TUVA, LLC, of Herndon, Virginia, for services in support of the Office of Personnel and Facility Clearances at Kirtland Air Force Base in Albuquerque, New Mexico. Synergy challenges the agency's evaluation under the cost and non-cost factors, and maintains that the agency failed to conduct meaningful and equal discussions.

We deny the protest.

BACKGROUND

The Department of Energy issued the RFP on February 25, 2015, as a small business set-aside to provide Office of Personnel Security and Facility Clearance (OPFC) support services for the National Nuclear Security Administration. The solicitation anticipated award of a performance-based cost-plus-fixed-fee type contract, for a 3-year base performance period and a 2-year option period. RFP at 251. This RFP is to provide non-personal support services essential for the successful accomplishment of the OPFC responsibilities, including all personnel security program support. Id. at 82. The contractor will provide the expertise and perform all necessary services to ensure timely and effective administration, and completion of numerous Facility Clearance (FCL)/ Foreign Ownership, Control, or Influence (FOCI) adjudicative, clearance management and processing activities, actions, and products. Id. at 83.

The solicitation provided for award on a best-value basis considering the following factors, in descending order of importance: technical approach, staffing plan and program manager qualifications, corporate experience, past performance and cost.¹ Id. at 78. The RFP stated that the first four evaluation factors, when combined, were significantly more important than cost/price; but that cost/price would “contribute substantially” to the selection decision. Id. The solicitation further provided that cost/price was more likely to become a determining factor to the extent the offeror’s technical proposals were “evaluated as close or similar in merit.” Id.

With regard to technical approach, the solicitation provided that the agency would evaluate the offeror’s understanding of the requirements, and the “completeness and feasibility” of the proposed technical approach to accomplish the following tasks listed in the performance based work statement (PBWS): program management, processing, adjudication, facility clearance, and foreign ownership, control, or influence programs. Id. at 67; 81-88. The agency also stated that it would evaluate the extent to which the offeror’s technical approach demonstrated a thorough understanding of any technical risks as well as the effectiveness of the offeror’s approach to avoid or minimize those risks. Id. at 78.

With regard to staffing plan and program manager qualifications, the solicitation instructed offerors to provide a staffing plan summary which identified by PBWS tasks the direct productive labor hours (DPLH), annual DPLH per full-time equivalent (FTE), and the estimated quantity of proposed FTEs for the base period and the option period.

¹ For the technical approach, staffing plan and program manager qualifications, and corporate experience factors, the RFP stated that the agency would assign one of the following ratings: excellent, good, satisfactory, or less than satisfactory. Agency Report (AR), Tab 2, Source Selection Plan at 5. For the past performance factor, the agency would assign one of the following ratings: exceptional, very good, satisfactory, marginal, unsatisfactory, and neutral. Id. at 6.

Id. at 67. The offerors were informed that the hours proposed in the staffing plan must be reflected in the cost proposal. RFP at 67. The offerors were also told to provide in narrative form, a description of their proposed labor categories and job duties for those proposed labor categories. Id.

The agency stated that it would evaluate the degree to which the proposed staffing levels and skill mix were likely to result in efficient and successful performance of the PBWS. Id. at 78. The agency also stated that it would evaluate staffing during workload fluctuations, as well as the qualifications of the proposed program manager to determine the individual's education and relevant experience. Id.

With regard to corporate experience, the solicitation instructed offerors to submit completed corporate experience and self-assessment forms for "past or current contracts that [were] relevant (similar nature, size in dollars, and complexity)" to the scope of work to be performed by each team member under the PBWS. Id. at 67. Offerors were to submit no more than three contracts for each proposed team member. The solicitation provided that the listed contracts were only to include federal customers, and the contracts cited must have been within the last three years. Id. If a team member elected to rely on an affiliated or predecessor company's corporate experience, then the team member had to explain how the affiliated or predecessor company's assets or resources would be utilized under this contract. Id. at 67-68. The solicitation provided that the agency would assess the relevancy (similarity in nature, value, and complexity) and depth of the offeror's (or team member's or subcontractor's) experience as it related to performing the portions of the PBWS the offeror (or team member or subcontractor) was proposed to perform. Id. at 79.

With regard to past performance, the offeror was to provide past performance questionnaires for each contract listed in the corporate experience section, to be completed and returned to the agency for evaluation. Id. at 68. The agency stated that it would evaluate how well the offeror had performed work similar to that required in this solicitation. The agency stated that it would evaluate the offeror's (or team member's or subcontractor's) relevant information gathered from the past performance questionnaires, the self-assessment information and any relevant past performance information that the government may gather from other sources. Id. at 79. The solicitation provided that the agency could consider the past performance of a predecessor or affiliated company of a team member as though it was the past performance of the team member if the government determined that the assets or resources of the predecessor or affiliated company would be brought to bear in performance under the contract. Id.

For the cost proposal the offerors were instructed to provide, among other things, "narrative support sufficient to explain the development of the proposed costs/prices." Id. at 69. The narrative was to describe the "[o]fferor's supporting rationale, the estimating methodologies used, and the basis of estimate for the data provided in support of the proposed costs." Id. The solicitation provided that if a teaming arrangement was proposed, the offeror must provide a summary of the total cost/price

and clearly identify by cost element the portion of the cost proposal that pertains to each participant, including subcontractors. Id.

The solicitation instructed each offeror to provide its company compensation policies, such as salary wages and fringe benefits, insurance, health and other contributions, and recruitment. Id. at 73. The offeror was also to provide a cost summary by major cost element. The solicitation provided that the direct labor hours and rates should be consistent with the staffing plan summary in the technical proposal. The offeror also was instructed to provide exhibits showing its proposed indirect rates by contractor fiscal year for fringe benefits, labor overhead, general and administrative, and any other proposed indirect rate. Id. at 71.

The solicitation provided that the cost proposal would be evaluated for cost reasonableness and realism. Id. at 79. With regards to cost realism, the solicitation stated that the cost proposal would be evaluated “to determine if the estimated proposed cost elements are realistic for the work to be performed, reflect a clear understanding of the PBWS requirements, and are consistent with the Staffing Plan Summary provided by the [o]fferor.” Id. The RFP stated that inconsistencies between the cost proposal and other portions of the proposal “could raise concerns” regarding the offeror’s understanding of the requirements and its ability to perform the work for the proposed cost, and may affect the offeror’s technical proposal ratings. Id. at 79-80. The solicitation also provided that the agency may adjust the offeror’s proposed costs to reflect any addition or reduction in cost elements to realistic levels, and the cost realism analysis would be used by the agency to establish each offeror’s total probable cost. Id. at 80.

The agency received timely proposals from ten offerors, including Synergy, the incumbent contractor, and TUVa, by the closing date.² Six offerors’ proposals were eliminated from further consideration based on receiving “less than satisfactory” ratings. AR at 9. The agency held discussions with the remaining offerors, received final proposal revisions, and evaluated proposals. The agency notified the offerors that TUVa was selected for award on September 30, 2016. AR, Tab 23, Award Notification to Synergy (Sept. 30, 2016).

Synergy requested and received a written debriefing on October 6. Synergy then filed a protest with our Office on October 11, arguing that TUVa had no relevant experience, the agency miscalculated TUVa’s proposal under the first two evaluation factors (technical approach, and staffing plan and program manager qualifications), and the agency unreasonably evaluated the realism of TUVa’s proposed cost. (Synergy Protest, B-413974). Synergy also protested the evaluation of its proposal under the first

² The agency states that before the release of the RFP it developed an independent government cost estimate (IGCE) of \$32,123,912 and 66 FTEs. AR, Tab 1, IGCE at 1. According to the agency the incumbent presently performs the requirement with [DELETED] FTEs. AR, Tab 28, Revised Evaluation Report at 50 n.8.

two evaluation factors (technical approach and staffing plan and program manager qualifications), as well as the evaluation of its past performance. *Id.* Following early document production by the agency on October 25, Synergy filed a supplemental protest on November 4, alleging that the agency also misevaluated TUVA's proposal under the past performance and corporate experience factors, and that the agency engaged in unequal discussions. (Synergy Protest, B-413974.2).

Following the agency's review of Synergy's initial and supplemental protests, the agency decided to take corrective action. During discussions between the parties and the agency regarding the extent of the agency's proposed corrective action, the question of whether the agency would reopen discussions was raised by TUVA, the intervenor. AR at 16. The agency responded with the following:

Should the agency identify new weaknesses and/or deficiencies in its reevaluation of proposals that it would have been obligated to raise in the previous round of discussions, the agency will give acceptable offerors an opportunity to address the new weaknesses and/or deficiencies in additional discussions.

Email from Department of Energy to GAO (Nov. 15, 2016).

In connection with the corrective action, a reevaluation of all of the evaluation factors, including cost, was performed. In addition, compliance with the small business requirements was considered. AR at 14. The agency made a new source selection decision and TUVA was again chosen for award.

On February 23, 2017, Synergy was notified of the award decision and requested a debriefing that was provided on March 2. AR, Tab 33, Synergy Debriefing Letter (Mar. 2, 2017). This protest to our Office followed.³

DISCUSSION

Synergy challenges multiple aspects of the agency's evaluation of its proposal as well as TUVA's. Synergy contends that the agency failed to perform a proper cost realism analysis of the awardee's proposal, unreasonably evaluated its and TUVA's proposals under the non-cost evaluation factors, and engaged in inadequate and unequal discussions. Although we do not specifically address all of Synergy's allegations, we have fully considered all of them and find that none provide a basis on which to sustain the protest.

³ On March 2, 2017, Synergy also filed a size challenge with the U.S. Small Business Administration (SBA) and on April 6, SBA determined that TUVA was a small business for the purposes of this procurement. SBA Size Determination of TUVA, LLC (Apr. 26, 2017). On May 12, Synergy filed an appeal of the size determination with the SBA's Office of Hearings and Appeals (OHA). SBA OHA Protective Order (May 15, 2017).

Untimely Protest Grounds

As a preliminary matter, the protester raises a number of issues in its current protest that were clearly apparent in the record of the earlier procurement but were not raised either in Synergy's initial, or supplemental protest. Since several of these issues were known, or should have been known, to the protester from the record developed in response to the firm's earlier protests, we will not now consider arguments that Synergy could have and should have raised in its initial or supplemental protests. Loyal Source Government Services, LLC, B-407791.5, Apr. 9, 2014, 2014 CPD ¶ 127 at 5; Savvee Consulting, Inc., B-408416.3, Mar. 5, 2014, 2014 CPD ¶ 92 at 5. Waterfront Techs., Inc.--Protest & Costs, B-401948.16, B-401948.18, June 24, 2011, 2011 CPD ¶ 123 at 11 n.12.

First, Synergy argues that three of the contract references provided for two of TUVA's subcontractors (contracts HC1028-14-P-0271 and DJD-10-C-0014 for SAVA, and contract HSSCCG-08-D-00009 for Inquiries) are not relevant to the work required under the RFP given the lack of similarity and complexity to the work here. Protest at 18; AR at 22. Our review of the record shows that Synergy had all of the information it needed to raise these challenges during its earlier protests because Synergy was provided all of the information related to the evaluation of TUVA (or its subcontractors), when the agency produced the documents related to this procurement on October 25, during the earlier protest.⁴ Synergy Protest, B-413974 at 9. As a result, this protest issue is untimely raised.

Second, Synergy challenges the agency's assessment of a significant weakness against Synergy's staffing plan. Specifically, the agency assigned Synergy's proposal a significant weakness for not stating that its Personnel Security Specialist I (PSS I) personnel [DELETED]. Protest, Tab C, Notification to Unsuccessful Offerors (Feb. 23, 2017), at 51. Synergy argues that the agency failed to notify it during discussions of this significant weakness.

The agency states, and the protester does not dispute, that this significant weakness was communicated to Synergy on September 30, 2016, in the agency's notification to unsuccessful offerors following the agency's initial award of the contract. AR, Tab 23, Notification to Unsuccessful Offeror (Sept. 30, 2016), at 15-16.⁵ The agency also states

⁴ The agency's early document production did not initially include all volumes of TUVA's final proposal revisions. These volumes were provided on or about November 3. (Synergy Protest, B-413974.2 at 2).

⁵ The agency points out as well that Synergy asked the following question relating to the debriefing, to which the agency responded in writing on October 6, 2016:

- 8) In Factor 2-Staffing Plan & PM Quals, can the Government explain why the [w]eakness discussed was considered significant?

(continued...)

that the scope of any discussions during corrective action was addressed and clarified in the November 15 emails referenced above and that the protester failed to challenge the scope of the corrective action. In sum, this protest ground is also untimely.

In general terms, Synergy argues that because the agency conducted a full reevaluation and made a new award decision these issues are timely filed. Comments at 2. We disagree. The protester was aware that the agency was not seeking revised proposals, or reopening discussions--except as described in the November 15 email on this topic. See Savvee Consulting, Inc., *supra* at 6. The fact that the agency made a new source selection decision (and provided the offeror with a debriefing concerning that decision) does not provide a basis for reviving otherwise untimely protest allegations concerning aspects of the agency's evaluation that were not subsequently affected by the agency's corrective action. See DRS ICAS, LLC, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 21. Such unwarranted piecemeal presentation or development of protest issues undermines our goal of affording parties the opportunity to present their cases with the least disruption possible to the orderly and expeditious conduct of government procurements. Labat-Anderson Inc., B-246071.4, Oct. 9, 1992, 92-2 CPD ¶ 244 at 5. Accordingly, we see no reason to provide the protester here with a "second bite at the apple," nor condone a situation where an agency takes corrective action in response to a protest, and the protester then advances issues that could have and should have been raised in the previous protest. Accordingly, these protest grounds are dismissed as untimely. 4 C.F.R. § 21.2(a)(2).

Cost Realism

Turning to Synergy's timely-raised issues, Synergy first contends that the agency unreasonably evaluated the realism of TUVA's proposed costs. The protester argues that the agency improperly evaluated TUVA's direct rates and erred in finding that TUVA's cost proposal was consistent with its technical approach. Synergy also contends that TUVA's indirect labor rates are unrealistically low.

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); CSI, Inc.; Visual Awareness Techs. & Consulting, Inc., B-407332.5 *et al.*, Jan. 12, 2015, 2015 CPD ¶ 35 at 5-6. Consequently, the agency must perform a cost realism analysis

(...continued)

The Government determined the proposed job duties/skill mix in the Staffing Plan were not likely to result in efficient and successful performance of the PBWS, and it is a flaw in the proposal that appreciably increases the risk of unsuccessful contract performance.

AR, Tab 25, Synergy Debriefing (Oct. 6, 2015), at 5.

to determine the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR § 15.404-1(d)(1). An agency is not required to conduct an in-depth cost analysis, or to verify each and every item in assessing cost realism; rather, the evaluation requires the exercise of informed judgment by the contracting agency. Cascade Gen., Inc., B-283872, Jan. 18, 2000, 2000 CPD ¶ 14 at 8; see FAR § 15.404-1(c). Further, an agency's cost realism analysis need not achieve scientific certainty; rather, the methodology employed must be reasonably adequate and provide some measure of confidence that the rates proposed are reasonable and realistic in view of other cost information reasonably available to the agency as of the time of its evaluation. SGT, Inc., B-294722.4, July 28, 2005, 2005 CPD ¶ 151 at 7. 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.

Based on the record before us, we find the agency's cost realism analysis to be reasonable. Synergy contends that TUVA will not be able to retain the incumbent workforce at the proposed rate. Specifically, as part of its proposal, TUVA proposed to retain [DELETED] percent of the incumbent workforce. AR, Tab 17, TUVA Final Proposal Revision, at 372. Synergy alleges that TUVA will be unable to meet its proposed retention rate because its proposed rates are lower than the incumbent rates.

The record here shows that the agency used a variety of methods to evaluate the direct rates, including comparing TUVA's proposed labor rates with the incumbent's rates, and a Defense Contract Audit Agency (DCAA) rate check for the prime contractor and subcontractor, which determined that the proposed labor rates were within the salary ranges and overall are higher than the midpoint. AR, Tab 28, Revised Evaluation Report at 51. In addition, because TUVA proposed maintaining [DELETED] percent of the incumbent workforce, the agency further engaged in a discrete analysis of labor rates by labor category. AR, Tab 28, Revised Evaluation Report, at 53. In this regard, the agency noted that TUVA proposed [DELETED] FTEs, while the incumbent's current staffing level is [DELETED] FTEs. The agency determined that TUVA, to meet its goal of retaining [DELETED] percent of the incumbent's staff, would have to retain at least [DELETED] FTEs. The agency's analysis determined the following regarding TUVA's proposal:

In review by labor category, the price analyst noted that the Program Analyst's lead positions would potentially be hard to maintain within budgeted costs while the remaining incumbent labor is feasible.

AR, Tab 28, Revised Evaluation Report, at 53. The agency concluded that there was no evidence of TUVA underbidding in relation to its stated goal of maintaining [DELETED] percent of the incumbent personnel. Id. at 54. In light of the variety of methods used, and the contemporaneous considerations discussed, we find the agency's evaluation to be reasonable.

Synergy also alleges that the agency altered TUVA's staffing plan in its cost realism evaluation. The agency responds that it did not alter TUVA's staffing plan, but rather it

used historical information to calculate the likely skill mix for the total number of FTEs and labor categories proposed. Supp. AR at 2. In this regard, the RFP, in the question and answer section, advised offerors of the percentage estimates for the skill sets required for this requirement. RFP at 183. The agency then compared the FTEs proposed under each labor category to the six skill sets presented by percentages in the RFP. Supp. AR at 2; Tab 28, Revised Evaluation Report at 87 and 89. The agency acknowledges that this was not a “one for one comparison,” but was a “technique for the purposes of comparison.” Supp. AR at 2. In addition, the agency stated that it consistently aligned the proposed labor categories into the skill sets provided in the RFP for both TUVA and Synergy to determine if the offeror proposed an appropriate skill mix in the appropriate categories. Id. The agency used this analysis to conclude that the allocation of labor categories and skill mix for the tasks were sufficient and realistic to accomplish the PBWS. Id. at 3. Based on the record before us, we have no basis to question the agency’s determination.

Finally, Synergy argues that TUVA’s indirect rates were unrealistically low and inconsistent with TUVA’s technical approach to retain a large percentage of the incumbent’s employees. Specifically the protester argues that TUVA’s indirect rates were “far too low to provide the generous benefits that TUVA proposed.”⁶ Protest at 22.

On this front, TUVA explains that as an Alaskan Native Corporation (ANC) it can utilize the resources of its parent company (“reach back”), thereby reducing its indirect costs. Specifically, TUVA’s proposal states:

TUVA has access to technical and administrative reach back to its parent company, AKIMA, LLC. A benefit of which [DELETED] set aside for Akima subsidiaries. Additionally, we are able to offer [DELETED].

AR, Tab 17, TUVA’s Final Proposal Revisions, at 7. TUVA then listed the services it can obtain from its parent to reduce its indirect costs, including [DELETED]. Id. at 7. In addition, the agency compared TUVA’s proposed indirect rates with its DCAA-provided Forward Budget Submission. AR, Tab 28, Revised Evaluation Report at 51. Given the agency’s considerations, and given the specific information provided in TUVA’s proposal, we find nothing objectionable in the agency’s review of TUVA’s indirect costs.

Unequal Discussions

Synergy next contends that the agency’s discussions with Synergy and TUVA were not equal. In this regard, Synergy alleges that TUVA was provided with lengthy instructions

⁶ TUVA proposed a fringe rate of [DELETED] percent, a labor overhead rate of [DELETED] percent, and a general and administrative (G&A) rate of [DELETED] percent. AR at 36. Synergy proposed a fringe rate of [DELETED] percent, a labor overhead rate of [DELETED] percent, and a G&A rate ranging from [DELETED] percent to [DELETED] percent. Id.

regarding how to remedy its weaknesses, while Synergy was not provided with such assistance. Protest at 9-11.

Agencies have broad discretion to determine the content and extent of discussions, and we limit our review of the agency's judgments in this area to a determination of whether they are reasonable. InfoPro, Inc., B-408642.2, B-408642.3, Dec. 23, 2014, 2015 CPD ¶ 59 at 9. When an agency engages in discussions with an offeror, the discussions must be meaningful, that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror's potential for receiving the award. FAR § 15.306(d); Cubic Simulation Sys., Inc., B-410006, B-410006.2, Oct. 8, 2014, 2014 CPD ¶ 299 at 12. The requirement that discussions be meaningful, however, does not obligate an agency to spoon-feed an offeror or to discuss every area where the proposal could be improved. FAR § 15.306(d)(3); Insignia-Spectrum, LLC, B-406963.2, Sept. 19, 2012, 2012 CPD ¶ 304 at 5. The degree of specificity required in conducting discussions is not constant and is primarily a matter for the procuring agency to determine. Kathpal Technologies, Inc., B-291637.2, April 10, 2003, 2003 CPD ¶ 69 at 3.

With respect to Synergy's contention that the agency unequally provided more meaningful and detailed discussions for TUVA, the protester is correct in asserting that offerors may not be treated unequally; that is, offerors must be afforded equal opportunities to address the portions of their proposals that require revision, explanation, or amplification. Unisys Corp., B-406326 et al., Apr. 18, 2012, 2012 CPD ¶ 153 at 7. However, the requirement for equal treatment does not mean that discussions with offerors must, or should, be identical. To the contrary, discussions must be tailored to each offeror's proposal. FAR §§ 15.306(d)(1); (e)(1); Metropolitan Interpreters & Translators, Inc., B-403912.4 et al., May 31, 2011, 2012 CPD ¶ 130 at 7.

The agency responds that both offerors were given comprehensive discussion questions and that the length of each discussion question necessarily varied depending on the agency's concern. AR at 17-19. The agency notes that the protester's only example of unequal discussions involves a lengthy discussion question addressed to TUVA. Protest at 10-11. In the question, the agency informed TUVA that its "approach to performing Adjudication, Major Services ([Performance Based Work Statement (PBWS)] task 4.3.1) is inadequate because the technical approach for rendering recommendations for access authorization as outlined in the PBWS, is flawed." AR, Tab 13, Competitive Range Discussions (TUVA), at 10. The agency then informed TUVA about when, and by whom, a decision to approve or deny a security clearance is made in the adjudicative process. AR, Tab 13, at 11. The protester complains that when its proposal was assigned weaknesses for failure to identify and mitigate risks, the agency "did not state how it should alter its proposal to provide an approach to mitigate the risk." Comments at 8 (emphasis in the original).

We find that the protester's argument rests on a comparison of two very different discussion scenarios. The record shows that the agency identified a weakness about the TUVA proposal--the firm's misunderstanding of the sequencing of the work--and

provided it with an objective piece of information regarding the actual sequencing of work. In contrast, the agency identified broad weaknesses in Synergy's technical approach. Notwithstanding these concerns, the agency left it to the protester to decide how to respond since those weaknesses were not based on a misunderstanding of an objective fact, but rather arose from the lack of an adequate description of its approach to risk mitigation. In addition, the record includes at least one instance where Synergy was provided feedback similar to the feedback given, in this instance, to TUVA. AR, Tab 12, Competitive Range Discussions (Synergy) at 10. We find the agency's discussions with each party to be reasonable and equal, particularly when the content of the discussions, not just the length, are taken into account. See CSC Govt. Solutions, LLC, B-413064, B-413064.2, Aug. 10, 2016, 2016 CPD ¶ 347 at 11-12.

Technical Approach

Synergy also challenges the agency's evaluation of the technical approach factor alleging that the agency improperly assigned it two weaknesses for the same issue; namely, that Synergy's proposal regarding risk mitigation for the OPFC did not provide an effective approach to avoid or minimize risks. Protest at 25. We disagree.

In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate proposals; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. OPTIMUS Corp., B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4. A protester's disagreement with the agency's judgment, without more, does not establish that an evaluation was unreasonable. DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2.

The agency argues that Synergy was properly assigned two separate "risk" weaknesses because they were related to different PBWS elements under this factor. The first weakness was that Synergy's proposal failed to identify risk as it related to adjudication and the risk of rendering inaccurate recommendations regarding eligibility for access authorization. AR, Tab 28, Revised Evaluation Report. The agency stated the following regarding this weakness:

SSI [Synergy] failed to understand the importance of Adjudication, Major Services (PBWS task 4.3.1) and applying directives that result in the rendering [of] an accurate recommendation.

AR, Tab 28, Revised Evaluation Report at 62. The second weakness was that Synergy's proposal failed to identify risk in any task areas of the PBWS as it related to the release/disclosure and/or compromise of sensitive information to include personally identifiable information (PII). We find nothing improper about the agency's assessment of these two weaknesses when each weakness aligns with a specific portion of the PBWS.

Staffing Plan and Program Manager Qualifications

The protester also challenges the agency's rating of TUVA's staffing plan as "excellent." The protester asserts that TUVA's staffing plan was lacking in certain areas as TUVA proposed to provide a lower number of personnel to perform the contract than Synergy proposed, or than the government calculated in its IGCE. Protest at 24.

In this regard, the agency found that TUVA's organizational structure "innately leads to efficient completion of work and the ability to flex and adjust workloads which is critical when dealing with fast turnaround times." AR, Tab 28, Revised Evaluation Report at 27. TUVA further provided that it would staff [DELETED]. The agency concluded this was significant because TUVA could then apply [DELETED] during workload surges to accomplish tasks [DELETED], which would allow TUVA to meet the deadlines associated with PBWS tasks. Id. at 28. The agency also found that TUVA proposed a highly qualified program manager. Id. Based on the record before us, we find that Synergy's allegations reflect nothing more than disagreement with the agency's findings and that the agency's evaluation with regard to this evaluation factor is reasonable.

Synergy also argues that the agency unequally evaluated its proposal and that of TUVA's under this factor. The protester states that its proposal was assigned a significant weakness because its proposed job duties for the PSS I "do[] not include the [DELETED]." AR, Tab 28 Revised Evaluation Report at 67 (emphasis added). The protester contends that TUVA also did not propose that its PSS I personnel would [DELETED], and yet its proposal was not assigned a similar weakness. Comments at 8.

The agency responds that the "nexus between the [DELETED] is the foundation and critical component of the [administrative review] AR process." AR at 21. The agency further explains that the "focus of the significant weakness," assigned to Synergy, was the "[DELETED]." Id.

We find that the contemporaneous record supports the statement in the agency report quoted above. The source selection authority stated the following regarding Synergy's significant weakness:

However, SSI received a significant weakness because SSI described job duties for Adjudication Major Services (PBWS 4.3.1) for the Personnel Security Specialist (PSS) I that does not include the [DELETED]. As a result, the PSS I proposed [DELETED], which is not efficient and does not lend to proficient [DELETED].

AR, Tab 29, Revised Source Selection Report at 6. Therefore, even if, as Synergy argues, the agency unequally assigned a significant weakness with regard to the [DELETED], the Source Selection Authority did not rely on this portion of the weakness in distinguishing between these proposals in the best-value decision and there is no prejudice to the protester as a result of this difference. Executive Court Reporters, Inc.,

B-272981 et al., Dec. 5, 1996, 96-2 CPD ¶ 227 at 6. Accordingly, we find no basis to sustain the protest.

Corporate Experience and Past Performance⁷

Synergy next contests the agency's assignment of the rating of "good" for corporate experience and "very good" for past performance to TUVA's proposal. The protester contends that TUVA, itself, has no experience performing any services related to security clearance processing or adjudication, and is relying on its subcontractors. Comments at 19. The protester further alleges that the agency's evaluation finding low risk for TUVA was unreasonable in light of its reliance on its subcontractors.

The agency's evaluation stated that TUVA and its subcontractors provided corporate experience for each of the PBWS areas. AR, Tab 28, Revised Evaluation Report at 37-41. The agency noted as well that there was nothing in the solicitation that prohibited it from considering a vendor's experience as a subcontractor, nor did the solicitation call for any specific weighting of experience or require that a vendor have experience as a prime contractor. AR at 26.

First, to the extent that Synergy alleges that the agency improperly attributed the experience or past performance of an affiliated company to TUVA when it found that SAVA's performance on a contract for the Federal Bureau of Investigations provided relevant experience in clearance processing and adjudication, we disagree. An agency properly may attribute the experience or past performance of a parent or affiliated company to an offeror where the firm's proposal demonstrates that the resources of the parent or affiliate will affect the performance of the offeror. Encompex, Inc., B-292865.4, et al., June 18, 2004, 2004 CPD ¶ 149 at 4-5. The relevant consideration is whether the resources of the parent or affiliate--its workforce, management, facilities or other resources--will be provided or relied upon for contract performance, such that the parent or affiliate will have meaningful involvement in contract performance. Id. Where the proposal shows a significant nexus between the parent or affiliate concern's resources and the contracting entity, there is nothing objectionable in attributing the experience or past performance of the related entities to the business entity entering into the contract.

Here, TUVA explained in its proposal that:

As [Alaskan Native Corporations] ANCs, and subsidiaries to a common parent (Akima, LLC), TUVA and SAVA⁸ are permitted to provide mutual past

⁷Although corporate experience and past performance are separate evaluation factors in the solicitation they were treated together in the record by the agency and the protester, so they will be treated similarly in this protest decision. AR at 22; Comments at 19.

performance/corporate experience in accordance with FAR [s]ubpart 15.305 (2)(iii). Accordingly, TUVA has selected a corporate experience reference from our sister company, SAVA. Specifically, the FBI [subject matter expert] SME Services contract will be used as a TUVA prime corporate experience reference. SAVA will be a subcontractor to TUVA for this effort.

See AR, Tab 17, TUVA Final Proposal Revision at 232. The agency found that TUVA provided information on how the resources of SAVA would be utilized in the performance of the PBWS and applied the experience of SAVA to TUVA. AR, Tab 28, Revised Evaluation Report at 36 n.1. In any event, the solicitation specifically allowed for the consideration of corporate experience and past performance of subcontractors. We therefore find no basis to question the agency's determinations in this regard.

Similarly, we disagree with Synergy's contention that the agency could not have found TUVA's proposal to represent low risk because of its reliance on its subcontractors' experience and past performance. As set forth above, the solicitation specifically stated that the agency would consider the offeror's (or team member's or subcontractor's) experience as it related to performing the portions of the PBWS that it was proposed to perform. RFP at 79. The solicitation also allowed for the past performance of team member and subcontractor past performance to be considered. The agency, in accordance with the solicitation, evaluated the experience of both TUVA and its subcontractors and considered both in its evaluation of corporate experience and past performance. Roca Management Education & Training, Inc., B-293067, Jan. 15, 2004, 2004 CPD ¶ 28 at 5. While the protester would prefer that the agency have found some risk in the use of subcontractor experience, we find nothing in the solicitation that required such a finding. As such, we find the agency's evaluation of risk to be reasonable and in accordance with the solicitation.

On this record we find no basis to sustain any of Synergy's challenges to the agency's evaluation of these proposals.

The protest is denied.

Susan A. Poling
General Counsel

(...continued)

⁸ SAVA is a 100 percent Alaskan Native Corporation. AR, Tab 17, TUVA Final Proposal Revision, at 337. SAVA and TUVA are sister companies, and SAVA is operating as a subcontractor for the purposes of this procurement.