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Decision

Matter of: Pinnacle Solutions, Inc.

File: B-414360.2; B-414360.3

Date: December 11, 2017

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Karen M. Reilley, Esq., Warnecke Miller, Esq., and Amy V. Xenofos, Esq., National Aeronautics and Space Administration, for the agency.

Paul N. Wengert, Esq., and Scott H. Riback, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging exclusion of protester's proposal from competitive range is denied where agency reasonably reevaluated protester's proposal and concluded that it was not among the most highly rated.

DECISION

Pinnacle Solutions, Inc., of Huntsville, Alabama, a small business, protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. NNJ16556087R, issued by the National Aeronautics and Space Administration (NASA) for aircraft logistics, integration, configuration management, and engineering services (known as ALICE), at the Lyndon B. Johnson Space Center and Ellington Field, in Houston, Texas; the NASA Forward Operating Location, in El Paso, Texas; the Langley Research Center, in Hampton, Virginia; and other locations. Pinnacle argues that NASA misevaluated proposals and unreasonably excluded it from the competitive range.

We deny the protest.

BACKGROUND

This is our second occasion to consider a protest filed in connection with this acquisition. In a prior decision, we sustained a protest filed by Pinnacle, finding that

the agency had misevaluated proposals and unreasonably eliminated Pinnacle from the competition. Pinnacle Sols., Inc., B-414360, May 19, 2017, 2017 CPD ¶ 172. We recommended that NASA consider whether to amend the RFP to more clearly state its needs, evaluate Pinnacle's proposal reasonably, and make a new competitive range determination. Id. at 13.

After our decision sustaining Pinnacle's earlier protest, NASA appointed a new contracting officer who reconvened the source evaluation board to conduct a reevaluation of all the proposals submitted. The contracting officer determined that it would not be necessary to revise the RFP to clarify the evaluation criteria, and that the reevaluation would assess the unrevised, original proposals.

The RFP, which contemplates the award of a hybrid fixed-price, cost-reimbursement type contract on a best-value tradeoff basis, sought proposals to provide the required services for a 2-month phase-in period, a 16-month base period and two 2-year option periods. RFP transmittal letter, at 1; RFP at 16, 510.¹ Proposals were to be evaluated under three factors: mission suitability, past performance, and cost/price. The mission suitability and past performance factors were approximately equal in importance, and each was more important than the cost/price factor. RFP at 550. The mission suitability factor consisted of three subfactors: management approach (700 points), technical approach (150 points), and safety & health approach (150 points). Id.

The reevaluation of Pinnacle's proposal under the mission suitability factor identified three strengths, one significant weakness, and nine weaknesses under the management approach subfactor; two weaknesses under the technical approach subfactor; and both a strength and a weakness under the safety and health subfactor. Agency Report (AR), exh. 9, Competitive Range Charts, at 4518-4536. In reevaluating Pinnacle's past performance, NASA obtained two updated contractor performance assessment reports (CPARS), which the agency recorded in the past performance record. NASA concluded that the information in the new CPARS did not change the firm's past performance adjectival rating from the original evaluation. The reevaluation scoring results for all three offerors were as follows:

¹ The agency used a BATES numbering system to serially number all pages in the record. All page number citations in this decision are to the BATES numbers assigned by the agency.

	Yulista	Pinnacle	Offeror B
Mission Suitability (1000)	785 points	467 points	426 points
Management Approach (700)	Very Good 581 points	Fair 294 points	Fair 231 points
Technical Approach (150)	Good 105 points	Fair 68 points	Fair 60 points
Safety & Health Approach (150)	Good 99 points	Good 105 points	Very Good 135 points
Past Performance	Moderate Confidence	Moderate Confidence	Low Confidence
Total Contract Probable Cost	\$190.2 million	\$180.6 million	\$171.7 million

AR, exh. 9, Competitive Range Charts, at 4496, 4517, 4536, 4556.

Based on these evaluation results, the agency established a competitive range consisting of only Yulista's proposal. AR, exh. 10, Competitive Range Determination, at 4599. The record shows that the inclusion of Yulista's proposal and the exclusion of the others was based on consideration of which proposals were the most highly rated under the three evaluation factors, and on considering the entire reevaluation and the detailed findings for each evaluation factor. Id. The competitive range determination summarized the evaluated weaknesses in Pinnacle's proposal, noting in general a lack of clarity in the firm's organized labor plan, and a failure to demonstrate a comprehensive understanding of the complexities of the ALICE requirement. Id. at 4597-98.

On August 18, NASA informed Pinnacle that its proposal had again been excluded from the competitive range. Pinnacle requested and received a debriefing, after which it filed this protest.

PROTEST

Pinnacle challenges every instance where the agency assigned a weakness or significant weakness to its proposal, maintaining that the agency's evaluation was unreasonable. Pinnacle also argues that NASA misevaluated its past performance

by failing reasonably to consider the most recent past performance information for Pinnacle. Finally, Pinnacle argues that the reevaluation unequally assigned strengths and significant strengths to Yulista's proposal that also should have been assigned to Pinnacle's.

We have considered all of Pinnacle's arguments and find that none has merit. We discuss Pinnacle's principal allegations below. We note at the outset that, in reviewing protests challenging the evaluation of proposals, our Office does not reevaluate proposals; rather, we examine the record to ensure that the evaluation was reasonable and in accordance with the solicitation's evaluation criteria and applicable statutes and regulations. Outreach Process Partners, LLC, B-405529, Nov. 21, 2011, 2011 CPD ¶ 255 at 3.

Mission Suitability Evaluation

As noted above, Pinnacle challenges each of the weaknesses and the significant weakness assigned to its proposal under the mission suitability factor. Pinnacle argues both that the evaluation was unreasonable, and also that the agency applied unstated evaluation criteria during the evaluation. We have reviewed all of Pinnacle's assertions and find them to be without merit. For illustrative purposes, we discuss below two principal areas of concern identified by the agency during its evaluation, and Pinnacle's challenges to those concerns.

Labor Relations Plan

The record shows that the agency assigned Pinnacle's proposal a significant weakness under the management approach subfactor because of the inadequacy of its labor relations plan, and also assigned it another, second, weakness because Pinnacle's proposed subcontractor, Dyncorp, did not include a labor relations plan with its proposal materials,² and there was no information in the Pinnacle proposal that described DynCorp's labor relations plan.

Pinnacle challenges the assignment of both the significant weakness and the related weakness described above. Pinnacle argues that NASA unreasonably based the significant weakness on concerns relating to whether Pinnacle's approach would result in a single collective bargaining agreement (CBA) or multiple CBAs, but the ultimate answer to that question will depend on the result of negotiations with the union that will not occur until after contract award. Pinnacle argues that its management plan and labor relations plan addressed all elements specified in the RFP, so the assessment of a significant weakness based on the concerns identified by NASA was unreasonable. In addition, while Pinnacle

² The agency explains that Pinnacle and DynCorp submitted separate cost proposal materials.

acknowledges that its proposal did not include a labor relations plan submission from DynCorp, the protester argues that the omission was inconsequential because Pinnacle's own plan provided that Pinnacle, as the prime contractor, would ensure labor relations are managed correctly.

The RFP here required offerors to describe their corporate philosophy and management approach to ensure and sustain healthy corporate-employee relations with CBA employees; required a description of the offeror's organized labor plan for the contract; required a labor relations plan from both the prime contractor and any proposed subcontractor; and required the offeror to include a specific list of positions falling under each CBA. RFP at 251, 281. The RFP provided that the agency would evaluate the offerors' management plans (including their labor relations plan) for overall demonstrated comprehensive understanding, effectiveness, feasibility and efficiency. RFP at 551.

Our review of the record confirms that the agency assigned a significant weakness to Pinnacle's proposal under the management plan subfactor because it could not determine the number of CBAs Pinnacle (and DynCorp) intended to negotiate with the applicable employees, whether those CBAs would be negotiated by each firm individually, or whether the preexisting CBA (entered into by DynCorp under the predecessor contract) would be expanded to cover both firm's employees. AR, exh. 7, Pinnacle Mission Suitability findings, at 3767. The agency therefore found that it could not determine under which CBA each position would fall, as required by the RFP. The record also shows that the agency assigned Pinnacle's proposal the second, related, weakness because DynCorp did not submit a labor relations plan with its proposal materials, and Pinnacle's proposal did not provide any information about DynCorp's labor relations plan. Id. at 3759-60.

Given the requirements of the RFP outlined above, we find that the agency reasonably assigned these weaknesses to Pinnacle's proposal. While Pinnacle suggests that it provided all that was required under the terms of the RFP in describing its labor relations plan, the record shows otherwise. Pinnacle failed to identify "each CBA" as required by the solicitation, and by extension, failed to include a specific list of positions that would fall under each CBA. Similarly, Pinnacle's proposal failed to include any information relating to the DynCorp labor relations plan, as expressly required by the RFP. Under the circumstances, we conclude that the agency reasonably assigned this weakness and significant weakness. Accordingly, we deny this aspect of Pinnacle's protest.³

³ Pinnacle also argues that the RFP did not require offerors to identify the number of CBAs they intended to use and therefore suggests that the agency applied an unstated evaluation criterion in making this finding. As noted, however, the RFP expressly required offerors to include a list of specific positions falling under "each
(continued...)"

Adequacy of Proposed Compensation

The record shows that the agency assigned three related weaknesses to Pinnacle's proposal in connection with the adequacy and consistency of its proposed employee compensation. First, the agency assigned a weakness to Pinnacle's proposal because there were instances where supervisory employees would be receiving compensation below the compensation proposed for the employees they would be supervising. Second, the agency assigned a weakness to Pinnacle's proposal because its proposed compensation for certain employees exercising greater responsibility was below the compensation proposed for employees exercising less responsibility. Third, the agency assigned a weakness to the Pinnacle proposal because there were differences between the fringe benefits proposed for Pinnacle employees on the one hand and DynCorp employees on the other, even though the employees would be performing the same job in the same location.

Pinnacle challenges the assignment of these weaknesses, alleging that its proposed compensation for all employees was realistic and reasonable, and based either on actual compensation being paid under the predecessor contract, or reasonably reliable indicia such as wage rate surveys. Pinnacle also argues that the mere existence of differences among its proposed fringe benefits and DynCorp's does not create a risk of poor performance under the contract, and that in any case, the RFP did not require offerors to propose the same fringe benefits for all employees.

We find no merit to this aspect of Pinnacle's protest. As noted, the RFP required offerors to submit a labor relations plan. That plan was required to, among other things, describe how the offeror intended to promote and maintain harmonious labor relations during contract performance. RFP at 281. The solicitation's evaluation criteria provided as follows with respect to what the agency intended to evaluate in connection with the offeror's staffing plan:

Staffing Approach – The offeror's Staffing Approach (MA2) will be evaluated for overall demonstrated understanding, effectiveness, feasibility, efficiency, and consistency with the overall management approach and rationale. The information in Compensation Templates (a) through (d) will be evaluated as part of the Total Compensation Plan as it relates to the staffing approach.

(...continued)

CBA." RFP at 281. It follows that the RFP required offerors to identify the number of CBAs.

RFP at 551. The record shows that, based on these RFP requirements, the agency's evaluators were concerned about the potential negative impacts of the variances identified in Pinnacle's employee compensation.

With respect to the differences in pay between supervisors and those being supervised, the record shows that the agency was concerned about the possibility that highly qualified and productive employees would reject important leadership positions in favor of lower-level, but better-paying positions, and that this could lead to difficulty in filling the leadership or supervisory positions, thereby increasing the risk of unsuccessful performance. AR, exh. 7, Pinnacle Mission Suitability Findings, at 3753. The evaluators identified a number of instances that formed the basis for their concerns. For example, the record shows Pinnacle proposed that senior aircraft mechanics be paid \$[DELETED] per hour, whereas employees supervising these mechanics (production controllers, maintenance control coordinators, and maintenance control coordinator-leads) would be paid between \$[DELETED] and \$[DELETED] per hour. Id. at 3753-54.

With respect to differences in pay for positions of greater responsibility versus positions of lesser responsibility, the record shows that the agency was concerned that this could have a negative effect on successful contract performance as well. AR, exh. 7, Pinnacle Mission Suitability Findings, at 3761-63. Again, the evaluators identified specific examples of instances that were of concern. For example, the evaluators noted Pinnacle proposed that warehouse personnel be paid more than purchasing agent personnel, even though the duties of the purchasing agent personnel required the exercise of greater responsibility. Id. Similarly, the evaluators noted that high-level engineers were proposed to be paid at lower rates of compensation than low-level engineers. Id.

Finally, with respect to the differences among Pinnacle's and DynCorp's proposed fringe benefits packages, the agency was concerned about the impact this would have on employee retention and labor relations. AR, exh. 7, Pinnacle Mission Suitability Findings, at 3748. The record shows that the agency performed a detailed comparison of the differences between Pinnacle's and DynCorp's fringe benefits packages, id. at 3749-50, and identified a particular concern with respect to the difference between the two firms' long-term disability and life insurance benefits, with DynCorp's benefits in these areas being significantly less robust than the benefits offered by Pinnacle. Id. The evaluators noted that, because of the inherently dangerous, high-risk nature of aircraft operations, these differences could negatively affect employee retention and harmonious labor relations between employees of the two firms.

The record therefore shows that the agency was not concerned with the realism and reasonableness of Pinnacle's proposed compensation package, as Pinnacle argues. Rather, NASA's evaluators were concerned about the negative effect that differences in the protester's proposed compensation package would have on

employee morale, and by extension, successful contract performance. In addition, although Pinnacle is correct that the RFP did not necessarily require proposing fringe benefits that were consistent among similarly-situated employees, this nonetheless provided a reasonable basis for the agency's concerns. Given the terms of the solicitation, we conclude that the agency's evaluation findings in this respect were reasonable.⁴ We therefore deny this aspect of Pinnacle's protest.

Past Performance Evaluation

Pinnacle argues that NASA unreasonably overlooked recent information showing dramatic improvement in Pinnacle's performance under three contracts that would have elevated the firm's past performance rating.

Pinnacle's allegation is not borne out by the record. The agency explains that it considered two of the three updated references identified by Pinnacle, but concluded that the updated information did not warrant raising Pinnacle's past performance rating. Specifically, the record shows that NASA obtained updated CPARS for two of Pinnacle's past performance examples during the reevaluation process. Contracting Officer's Statement, appendix. 2. The contemporaneous record also shows that the agency recorded the presence of the new records, but made no change to the narrative or adjectival rating for Pinnacle's past performance. Contracting Officer's Statement, appendix. 3 (original and reevaluation charts for Pinnacle identifying changed entry from "No Data" to "Satisfactory"). Although the record does not contain an extensive narrative describing the agency's conclusion that no change to Pinnacle's past performance rating was merited, we regard the agency's explanation as reasonable and consistent with the contemporaneous record. In the final analysis, Pinnacle's challenge to the agency's past performance evaluation amounts to no more than the protester's disagreement with the agency's conclusion. Such disagreement, without more, does not provide a basis for our Office to object to the agency's

⁴ Pinnacle also suggests that the weakness assigned to its proposal to pay supervisors less than those being supervised, and the weakness relating to pay differences among employees having greater or lesser responsibility constituted an improper "double counting" of a single weakness. As discussed above, however, the agency's concerns relating to these two weaknesses were distinct. The weakness assigned for the disparity between supervisor rates of pay and the rates of pay for those being supervised related to Pinnacle's ability to attract and retain qualified personnel to perform supervisory roles. AR, exh. 7, Pinnacle Mission Suitability Findings, at 3753. In contrast, the weakness assigned to the differences in pay for those with greater versus lesser responsibility related to what the agency characterized as an "undervaluing" of the employees with greater responsibility. AR, exh. 7, Pinnacle Mission Suitability Findings, at 3762.

evaluation. n-Link/LSG Joint Venture, B-411352, 411352.2, July 1, 2015, 2015 CPD ¶ 194 at 9. Accordingly, we deny this aspect of Pinnacle's protest.⁵

Unequal Treatment

Finally, Pinnacle argues that the evaluation demonstrates unequal treatment between it and Yulista. Pinnacle argues that the agency assigned a strength or significant strength to Yulista's proposal in two instances where, in Pinnacle's view, it also should have assigned a similar strength or significant strength to Pinnacle's proposal.

We find no merit to this aspect of Pinnacle's protest. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors' proposals. Paragon Sys., Inc.; SecTek, Inc., B-409066.2, B-409066.3, June 4, 2014, 2014 CPD ¶ 169 at 8-9. Pinnacle's protest fails to make this showing.

For example, Pinnacle argues that its approach to seeking government/industry partnerships to provide additional support for NASA's Aircraft Operations Division was essentially equal to an approach for which the evaluators assigned a strength to Yulista's proposal. However, as explained by the agency, and as borne out by the record, Pinnacle's proposal presented a general approach to identifying and pursuing such relationships, whereas Yulista proposed to leverage existing relationships. Compare AR, exh. 15, Yulista Proposal and Evaluation Materials, at 4863, 5509, with AR, exh. 3, Pinnacle Mission Suitability Proposal, at 3382. The record thus demonstrates a meaningful difference in the two firms' proposals, which provides a reasonable basis for the difference in the assignment of a strength to Yulista's proposal but not to Pinnacle's.

The protest is denied.

Thomas H. Armstrong
General Counsel

⁵ With respect to the third past performance example identified by Pinnacle, the agency states that it relates to a contract that had been assessed as not sufficiently relevant in the original evaluation, and in any event, was unavailable until after the reevaluation was complete. In light of these considerations, we have no basis to object to the agency's not considering the third example identified by Pinnacle in its reevaluation of the firm's past performance.