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Decision

Matter of: Pinnacle Solutions, Inc.

File: B-414360

Date: May 19, 2017

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DIGEST

1. Protest challenging evaluation of proposal is sustained where evaluation record does not reasonably support the assessment of weaknesses in protester's proposal, and reflects apparent disregard of aspects of protester's proposal and application of unstated evaluation criteria.

2. Protest challenging exclusion of protester's proposal from competitive range is sustained where competitive range determination included higher-scoring higher-priced proposal and relied on comparison of point scores and on contracting officer's unsupported speculation about whether holding discussions with the protester would result in assessment of a significant strength to a revised proposal.

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 (JSC) 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. RFP at C-24 & F-3. Pinnacle argues that NASA miscalculated its proposal and unreasonably excluded it from the competitive range.

We sustain the protest.

BACKGROUND

The RFP, issued on August 19, 2016, as a small business set-aside, sought proposals to provide ALICE services for a 2-month phase-in period, followed by a 16-month base period and two 2-year option periods, under a single fixed-price, cost-plus-award-fee, and cost-plus-fixed-fee indefinite-delivery/indefinite-quantity contract.¹ Agency Report (AR) Tab 3, RFP transmittal letter, at 1; RFP at B-9, L-12. The RFP listed a combination of “to be determined” and “offeror-furnished information” cost elements, which were to be updated as the contracting officer issued orders. An order limitations clause stated that the order maximum would be \$182,350,000. RFP at B-1 to B-2, B-9.

The RFP specified the individual labor categories required, and provided a position description, a minimum education and experience level, and a reporting relationship for each. RFP appx. C (“Personnel Requirements”) at C-1 to C-15. NASA was to have “overall authority and will provide priorities and direction for all work contained within this [statement of work],” and to “establish work hours consistent with meeting the mission at each contract location,”² while the contractor was to “provide personnel for varied work schedules to meet changing mission requirements.” RFP at C-26 to C-27.³ The RFP set forth the estimated level of effort (referred to as “productive hours”) for each labor category at each location. Those were then incorporated in pricing model spreadsheets that offerors were to complete by filling in cost data. RFP at L-28 to L-30 & attach. L-4 (Pricing Model Excel Workbook file), at sheets “ISCT-SR JSC” through “ISCT-SR LARC.”

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 M-2. The mission suitability factor consisted of three subfactors: management approach (700 points), technical approach (150 points), and safety & health approach (150 points). Id. Within the management approach

¹ The RFP also included clauses providing for the pricing structure to be changed by NASA during performance. RFP at H-22 to H-23.

² The RFP listed “[t]ypical work hours.” For example at Ellington Field: 2:30 p.m. to 11:30 p.m. each Sunday, 6:30 a.m. to 11:45 p.m. each Monday through Thursday, and 6:30 a.m. to 3:15 p.m. each Friday. Id.

³ The RFP permitted offerors to propose different productive hours, so long as the proposal fully justified the proposed efficiency through a “clear and consistent description” that included “[s]ufficient detail to allow a thorough Government understanding and analysis of the proposed efficiency.” RFP at L-34.

subfactor, three “subfactor elements” were identified: overall management approach (MA1), staffing approach (MA2), and contract phase-in approach (MA3). RFP amend. 1 at 3043, 3077. There were also three subfactor elements under the technical approach subfactor: technical understanding of requirements (TA1), resources (TA2), and basis of estimate (TA3). Id. at 3044, 3077-78.

The RFP provided extensive instructions regarding the preparation of proposals, which included 3½ pages that established proposal page limits, described how they were to be applied, and identified exclusions from the page limit calculations. Id. at L-15 to L-18. There was a limit of 134 pages for the mission suitability factor, which was further divided into 119 pages for the management approach response, and 15 pages for technical approach response. RFP amend. 1 at 3040. The RFP also stated that “[t]he responses that the offeror provides to MA1, MA2, and MA3 constitute the required submittal for TA1.” Id. at 3044.

Under the management approach subfactor, the RFP directed offerors to submit a management plan addressing specific topics, including relationships with subcontractors, risks and mitigation approaches, and the offeror’s corporate philosophy and management approach for ensuring good relations under collective bargaining agreements (CBA).⁴ RFP attach. J-1, at 1-2 (JSC Data Requirements Description for Offeror’s Management Plan).

The source selection plan provided for the assignment of adjectival ratings under the mission suitability subfactors (consistent with the provisions in NASA Federal Acquisition Regulation (FAR) Supplement § 1815.305(a)(3)), that were connected to the evaluation point scores, as follows: excellent (91-100 percent of points), very good (71-90 percent), good (51-70 percent), fair (31-50 percent), and poor (0-30 percent). AR, Tab 1, ALICE Evaluation Plan, at 5.

NASA received proposals from three offerors, including Pinnacle. For Pinnacle, the evaluators identified three strengths, one significant weakness, and eight 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.⁵ AR, Tab 8, Mission Suitability Evaluation Report for Pinnacle, at 1-25.

⁴ The RFP provided a copy of the existing CBA between the employee union at Ellington Field and the incumbent contractor, DynCorp International. RFP attach. J-4-2.

⁵ The mission suitability evaluation report provides only narrative descriptions of strengths and weaknesses, but does not indicate the assignment of adjectival ratings or point scores.

On December 19, the contracting officer prepared a decision establishing a competitive range based on the evaluation of the initial proposals. The decision memorandum set forth the evaluation results as follows:

	Offeror A	Pinnacle	Offeror B
Mission Suitability (1000)	719 points	439 points	354 points
Management Approach (700)	518 points Very Good	266 points Fair	189 points Poor
Technical Approach (150)	102 points Good	68 points Fair	60 points Fair
Safety & Health Approach (150)	99 points Good	105 points Good	105 points Good
Past Performance	Moderate Confidence	Moderate Confidence	Low Confidence
Total Contract Probable Cost	\$190.2 million	\$180.6 million	\$171.7 million

AR, Tab 9, Competitive Range Charts, at 17, 19; AR, Tab 10, Competitive Range Determination, at 1-2.

As described below, the contracting officer’s competitive range determination focused on the point scores, the corresponding adjectival ratings, and the number of strengths and weaknesses identified in the evaluation of each proposal. Id. As illustrated below, the contracting officer did not look behind the scores or adjectival ratings, and the competitive range determination did not document a reasoned consideration of the actual evaluation findings or their basis in the proposals.

Regarding Offeror A’s proposal, the competitive range determination observed that the firm’s adjectival ratings were “very good” for the mission suitability factor and “moderate confidence” for the past performance factor, and reasoned that these ratings “ma[de] it a ‘most highly rated’ proposal.” Id. at 2. The rationale also noted that those factors, when combined, were more important than the firm’s most probable cost. Id. As a result, the contracting officer included Offeror A in the competitive range, and stated that discussions with the firm were “considered necessary to address weaknesses and obtain price clarifications.” Id. at 1.

In contrast, the contracting officer’s review of the ratings for Pinnacle’s proposal was unfavorable. The contracting officer explained that Pinnacle’s proposal had not been assigned any significant strengths under either the management approach or technical approach subfactors, that it was “highly unlikely” that Pinnacle would be assessed a significant strength in either subfactor after discussions, and that Pinnacle’s mission suitability score was 280 points lower than Offeror A’s score. Id. After making those observations, the contracting officer concluded that Pinnacle’s

proposal was “not among the most highly rated,” and excluded Pinnacle’s proposal from the competitive range.⁶ Id.

On February 8, NASA provided a debriefing to Pinnacle. This protest followed.

ANALYSIS

Pinnacle argues that weaknesses assigned to its proposal were unreasonable, that NASA ignored strengths in its management approach, and ultimately, that NASA should have included Pinnacle’s proposal in the competitive range.

NASA responds that the evaluation was reasonable, and that it properly deemed Pinnacle’s proposal as having no reasonable chance for award because of its lower scores and the evaluators’ judgment that had “identified 14 specific weaknesses in the proposal,”⁷ and no significant strengths in either the management approach or technical approach subfactors. AR at 4, 30. The contracting officer explains that \$10 million was “not a significantly large difference” in most probable cost, and that Pinnacle’s past performance rating was the same as Offeror A, so the decision to exclude Pinnacle’s proposal “was most strongly influenced by the significant difference between Mission Suitability scores for Pinnacle’s proposal and for [Offeror A’s].” Contracting Officer’s Statement at 12. Accordingly, NASA argues the contracting officer reasonably and properly excluded Pinnacle’s proposal from the competitive range. AR at 30.

Under FAR § 15.306(c)(1), the “contracting officer shall establish a competitive range comprised of all of the most highly rated proposals,” based on “the ratings of each proposal against all evaluation criteria,” unless the range is further reduced for purposes of efficiency. FAR § 15.306(c)(1). In reviewing the evaluation of a protester’s proposal and the subsequent competitive range determination, our Office does not reevaluate proposals, but we will examine the record to ensure that the evaluation was reasonable, and was conducted 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.

It is well established that an agency may not exclude a technically acceptable proposal from a competitive range without meaningful consideration of the cost or price of the proposal to the government. SPAAN Tech, Inc., B-400406, B-400406.2, Oct. 28, 2008, 2009 CPD ¶ 46 at 9. On the other hand, agencies are not required

⁶ Offeror B’s proposal was also excluded from the competitive range on similar reasoning. Id.

⁷ The record before our Office documents 1 significant weakness and 11 other weaknesses (8 under management approach, 2 under technical approach, and 1 under safety & health approach), for a total of 12.

to include a proposal in the competitive range where it is not among the most highly rated or where the agency reasonably concludes that the proposal has no realistic prospect of award. Environmental Restoration, LLC, B-413781, Dec. 30, 2016, 2017 CPD ¶ 15 at 3. Thus a technically acceptable proposal may be excluded from the competitive range if it does not stand a real chance of being selected for award. Id. at 5. When a proposal is so much lower in quality than other proposals, such that it stands no real possibility of award despite being technically acceptable, then meaningful negotiations are not possible and, as a result, the agency may exclude it from the competitive range. Hittman Assocs., Inc., B-198319, Dec. 17, 1980, 80-2 CPD ¶ 437 at 3. Where a protester's challenges to the evaluation of its proposal would only result in a comparatively small change in its evaluation point score, those challenges do not provide a basis to overturn the decision to exclude the protester's proposal from the competitive range. TELESIS Corp., B-299804, Aug. 27, 2007, 2007 CPD ¶ 150 at 7.

Mission Suitability Evaluation

Pinnacle challenges each weakness assessed for its proposal. For purposes of this decision, we discuss three examples under the management approach subfactor (which, as shown above, was significantly more important than the other two mission suitability subfactors). We consider Pinnacle's challenges, first, to a weakness regarding hiring and purchasing authority of the staff; second, to a weakness regarding compliance with work schedule and break times; and third, to a significant weakness regarding management of workers that were divided between Pinnacle's and its subcontractor's CBA. As explained below using these three examples, we conclude that the mission suitability evaluation was unreasonable and applied unstated evaluation criteria.

First, the protester challenges the assessment of a weakness under the management approach subfactor on the basis that Pinnacle failed to provide its executive manager "full authority to act for the Contractor on all matters relating to this contract," and failed to provide personnel on site at Ellington Field purchasing authority for up to \$100,000, as well as a commitment to obtain authorization for purchases for higher amounts within 24 hours.⁸ RFP at C-27, C-76.

⁸ The RFP provided for designated NASA or Department of Defense officials to direct the contractor to obtain property or services when requested, by the contractor then issuing a subcontract or purchase order. The RFP identified the importance of having a subcontracting process that would be highly responsive to such government requests while imposing as low a level of corporate approvals as practical. The RFP also provided that the contractor could be required to obtain rights in data and warranties for the benefit of NASA, and would need to include terms in the subcontracts to allow them to be novated to a subsequent ALICE prime (continued...)

Pinnacle's proposal stated that the company's internal controls generally did not provide such [DELETED], and then explained that for the ALICE contract, Pinnacle would [DELETED] the required authority; expressly including "full authority to act on behalf of the Pinnacle Team on all matters pertaining to the NASA ALICE contract." AR, Tab 5, Pinnacle Proposal, vol. I, appx. A, at 3269⁹ (Management Plan ¶ 1.5). The proposal also stated that in matters of [DELETED], with [DELETED] reserved to the company [DELETED]. Id.

Regarding the procurement authority of its staff, Pinnacle's proposal stated that the firm's executive manager would be delegated authority to approve purchases up to \$100,000, and that authorization for purchases above that amount would be obtained from the company president within 24 hours.¹⁰ Id.

NASA explains that the agency's evaluators found Pinnacle's responses represented a weakness on the basis that the proposal had selectively interpreted the RFP to limit the executive manager's hiring authority, and it had omitted details and made contradictory claims about purchasing authority. Contracting Officer's Statement at 14-15. The evaluation record describes Pinnacle's approach as a weakness because it "increased the risk of delays and inefficiencies," and "d[id] not address RFP requirements," which thus risked unsuccessful performance. AR, Tab 8, Mission Suitability Evaluation Report for Pinnacle, at 6.

Pinnacle responds that its proposal expressly complied with the RFP requirements, and argues that the evaluators applied unstated evaluation criteria because the RFP did not inform offerors that NASA required the contractor to give its executive manager complete authority over hiring. Pinnacle also contends that its proposal did not lack any specific information about its delegation of procurement authority,

(...continued)

contractor without disruption. Id. at C-76 to C-77 & attach. J-1 at 2 (JSC Data Requirements Description for Offeror's Management Plan).

⁹ The copy of Pinnacle's proposal submitted to our Office as an exhibit to the agency report contains a table of contents with page number references but, as with many of the documents in the record, the pages have only a sequential page-numbering that was applied by NASA during production of the report. We reference that sequential numbering in citing such documents.

¹⁰ The proposal also stated that "generally" the company's policy was to require approval of the company president for purchases valued [DELETED], but went on to explain that additional authority could be delegated, either temporarily or permanently. The proposal continued in the following paragraph, stating that "for ALICE," the procurement authority of Pinnacle's staff would be \$100,000, and that approval for purchases over that amount would be obtained from the company president within 24 hours. Id. at 3278.

but instead expressly complied with all of the RFP procurement requirements. Protester's Comments at 3-6.

The contracting officer argues that the RFP required the offeror's executive manager to have "full authority to act for the Contractor on all matters relating to this contract" and contained no exceptions, so Pinnacle should have understood that the executive manager was expected to have full authority over hiring and employment actions. Contracting Officer's Statement at 14. With respect to purchasing authority, the contracting officer explains that Pinnacle's proposal described a general policy of requiring approval of Pinnacle's [DELETED], and then stated in the next paragraph that for ALICE the firm would provide purchasing authority to Ellington Field personnel for up to \$100,000. Id. at 15. As a result, the contracting officer argues, Pinnacle's proposal did not provide required details "such as procurement authority, for their acquisition staff and Director of Contracts for their 'general' corporate policy," and only when it filed this protest did Pinnacle furnish additional information. Id.

The agency's explanation does not provide a rational basis for the assignment of this weakness to Pinnacle's proposal. Although the RFP expressly required the contractor to have "full authority to act for the Contractor on all matters relating to this contract," the RFP did not reasonably advise offerors that the executive manager had to have complete hiring authority.¹¹ We view as reasonable Pinnacle's inference that "full authority to act for the Contractor on all matters relating to this contract" addressed relations between NASA and the contractor team, and did not require the executive manager to have absolute authority over hiring. Thus, the agency's interpretation of the "full authority to act" specification as including complete authority for the executive manager make hiring decisions was not reasonably apparent to offerors, making it, at best, a latent ambiguity.

Regarding procurement authority, NASA's explanation of its judgment that Pinnacle's proposal had omitted information and was self-contradictory is also unsupported and unreasonable. When the two consecutive paragraphs of Pinnacle's proposal concerning purchasing authority are read together, it is clear that the first paragraph explains Pinnacle's general policy and then states that temporary or permanent exceptions can be made. The second paragraph then expressly states that "for ALICE" on-site purchasing staff will have the authority to make purchases up to \$100,000, and that whenever they require authority above that amount, they can obtain it within 24 hours--as the RFP specifies. NASA's assertion that the proposal omitted information about purchasing authority does not identify missing information, and the claim that the proposal is contradictory is

¹¹ It is not clear from the protest record why requiring the contractor's executive manager to have complete hiring authority was necessary.

undermined by a straightforward reading. Accordingly, the agency's evaluation of this weakness was unreasonable.

As a second example, Pinnacle challenges a management approach subfactor weakness that was assessed for failing to show a plan for complying with required work schedules and break times, failing to "take into consideration that the Government establishes work hours consistent with meeting the mission at each contract location," and failing to consider the agency's intention to have night shift work on Sundays. AR, Tab 8, Mission Suitability Evaluation Report for Pinnacle, at 10. In reviewing Pinnacle's proposal, the evaluators noted that the firm had proposed to use [DELETED], but the evaluators viewed this as conflicting with the RFP language indicating that the "Government will establish work hours" *Id.* The evaluators also stated that Pinnacle's proposal to use [DELETED] "impos[ed] unnecessary and onerous management requirements," and increased the "risk of reduced mission success and contract performance." *Id.* Although the evaluators recognized that Pinnacle proposed to comply with CBA requirements regarding work schedules and breaks by publishing and posting [DELETED], the agency judged that approach to be inadequate because it did not show how Pinnacle would ensure that workers would actually comply. *Id.*

Pinnacle's proposal discussed the firm's approach to managing scheduling and breaks, the main elements of which included assessing the agency's [DELETED], starting with the aircraft that had the [DELETED], then reviewing aircraft [DELETED] needs, setting priorities with [DELETED], and coordinating the [DELETED] between the [DELETED]. AR, Tab 5, Pinnacle Proposal, vol. I, at 3276-77. The proposal stated that the use of [DELETED] would permit the [DELETED] compliance with breaks and meal times required by the CBA, while also providing the benefit of [DELETED] activity. *Id.* at 3277. The proposal also explained that Pinnacle's strategy for schedule and break compliance would involve posting [DELETED] along with a [DELETED] that identified the [DELETED]. *Id.* at 3266.

Pinnacle argues that in assigning this aspect of its proposal as a weakness, NASA did not reasonably consider the narrative explanation in its proposal, which the firm argues complied with the work schedule in the RFP, and that NASA evaluated the proposal by disparaging Pinnacle's approach—comparing Pinnacle's plan for setting and posting [DELETED] to the ineffectiveness of highway speed limit signage at "ensur[ing] that motorists will not speed." Protester's Comments at 13 (quoting AR at 16).

NASA's evaluation of this weakness is not reasonably supported by the record. The RFP provided for the agency to establish work hours and provided what were labeled as typical working hours, while instructing offerors to explain their approaches to ensuring that scheduling was flexible and also provided required breaks. Pinnacle's proposal explained that its approach included [DELETED],

establishing a [DELETED] from a [DELETED], and a plan to post [DELETED]. The agency's evaluation judgment that the proposed approach needed to go beyond showing a method to achieve compliance, apparently by including enforcement mechanisms that would be analogous to highway traffic enforcement, was not reasonably disclosed by the evaluation criteria in the RFP. Accordingly, we find this aspect of the evaluation unreasonable.

Finally, the evaluators identified a significant weakness in Pinnacle's proposal, also under the management approach subfactor. The significant weakness stemmed from Pinnacle's explanation that it and its primary subcontractor would each have a CBA with the union at NASA's Ellington Field. Pinnacle's proposal [DELETED] CBA between its subcontractor ([DELETED]) and the employee union, and went on to explain that Pinnacle would honor the monetary CBA terms, would align worker benefits (and the costs to the workers) with those of the incumbent's CBA, and in general would aim to foster a "[DELETED]." AR, Tab 5, Pinnacle Proposal, vol. I, appx. C, at 3296, 3302 (Labor Relations Plan).

NASA assessed this aspect of Pinnacle's proposal as a significant weakness, explaining the evaluators were concerned that when mechanics were working alongside each other, their employment by two companies--and the separate CBAs and different managers--could result in trouble. AR, Tab 8, Mission Suitability Evaluation Report for Pinnacle, at 18. Specifically, NASA viewed Pinnacle's approach as producing inconsistencies in the employers, managers, and CBA terms, and resulting in a "significant risk of reduced NASA mission effectively [*sic*], material damage, personal injury, and unsuccessful contract performance." Id. Additionally, NASA stated that having two CBAs posed still more risks: difficult and protracted labor negotiations, diminished opportunities for workers to move to other areas, limits on the ability to "platoon" the workers (to use the agency's terminology) to meet mission requirements, distraction of workers during labor negotiations, increased long-term confusion among workers (beyond that caused by the RFP provision for cross-training of workers), and inefficient and ineffective lines of authority and communication. Id.

Pinnacle again argues that NASA's evaluation is arbitrary and unreasonable, contending that having both it and its subcontractor managing workers under separate CBAs does not pose significant risks. Pinnacle notes that NASA assessed strengths to Pinnacle's proposal under the management approach subfactor (under the staffing approach and phase-in approach elements) because Pinnacle proposed to implement a [DELETED] through its CBA for [DELETED], and because Pinnacle's proposal showed considerable experience in negotiating CBAs with multiple unions at multiple locations. Protester's Comments at 20 n.4; see AR, Tab 8, Mission Suitability Evaluation Report for Pinnacle, at 2-5. Further, Pinnacle argues NASA was aware that the firm currently successfully performs under a NASA contract where workers are covered by two different CBAs, and that any

remaining concern can be nullified by simply aligning the CBAs so workers can be [DELETED] to the other. Protest at 21; Protester's Comments at 20-21.

NASA maintains that its evaluators' concerns were reasonable and that they properly assessed a significant weakness. Further, while the agency does not appear to dispute that it was aware of Pinnacle's experience implementing multiple CBAs under the same contract, NASA argues that it could not consider that fact because Pinnacle's proposal did not discuss the specific contract and provide detailed information on managing that workforce under multiple CBAs. AR at 7.

The assessment of a significant weakness to Pinnacle's proposal based on NASA's concerns about wide-ranging confusion and disruption resulting from Pinnacle and its subcontractor each having a CBA with the union is not consistent with the evaluation criteria in the RFP, and is thus unreasonable. The RFP directed offerors to address (with examples) their corporate philosophy and management approach to ensure and sustain healthy corporate-employee relations with the unionized workforce. It also stated that the management approach subfactor would be used to evaluate "overall demonstrated comprehensive understanding, effectiveness, efficiency and feasibility." RFP attach. J-1 at 1 (JSC Data Requirements Description for Offeror's Management Plan); RFP at M-3. Pinnacle responded by identifying the need for it to negotiate a CBA that was consistent with the incumbent contractor's CBA, and by explaining that its goals were not simply to provide [DELETED], but also to [DELETED] and to minimize [DELETED].

The evaluation of a significant weakness for the perceived risks of having two CBAs does not reflect any consideration of Pinnacle's proposed steps to limit such risks. Pinnacle stated that it would focus on understanding the incumbent's CBA, that it sought to [DELETED]" that both Pinnacle and its subcontractor would work together at [DELETED] and the corresponding [DELETED], and that Pinnacle would maintain the [DELETED] of the existing CBA through [DELETED] involvement, or would honor the [DELETED] through [DELETED]. AR Tab 5, Pinnacle Proposal, vol. I, appx. A (Management Plan) at 3270 & appx. C (Labor Relations Plan) at 3296, 3302. The evaluation of a significant weakness does not acknowledge these aspects of Pinnacle's approach, nor does it indicate whether (or why) the evaluators concluded that the measures were insufficient to mitigate the risks. Beyond that flaw, the evaluation criteria also did not reasonably advise offerors that the evaluation of the offeror's "corporate philosophy and management approach to ensure and sustain healthy corporate-employee relations with [unionized] employees" would include assessing whether a significant risk of disruptive effects would result from the offeror and its subcontractor both employing unionized mechanics.

While agencies are not required to identify each and every individual element encompassed within stated evaluation criteria, to enable competition, any unstated elements must be reasonably subsumed within the stated criteria. See Mnemonics,

Inc., B-290961, Oct. 28, 2002, 2003 CPD ¶ 39 at 6 (protest sustained where protester's proposed approach was downgraded for being inconsistent with agency's unstated intent). Here, NASA's evaluation of a weakness in Pinnacle's approach applied a significant, undisclosed, and ultimately unjustified limitation on Pinnacle's approach, when compared to the RFP evaluation criteria seeking the offeror's approach to managing workers covered by the CBA. Accordingly, we sustain Pinnacle's challenge to this aspect of the evaluation.

Competitive Range Determination

Pinnacle argues that the exclusion of its proposal from the competitive range was arbitrary and based on a flawed mission suitability evaluation. NASA argues that its decision to exclude Pinnacle's proposal was reasonable, citing the difference in the firms' scores and adjectival ratings. The agency also notes the fact that the evaluators did not identify a significant strength in Pinnacle's initial proposal and the contracting officer's view that the evaluators were unlikely to identify a significant strength even if discussions were held with Pinnacle. NASA argues even when considering Pinnacle's \$10 million advantage in probable cost, its proposal did not merit further consideration, when compared to Offeror A's higher-rated proposal.

As noted previously, an agency may eliminate an acceptable proposal from the competitive range where the proposal is not among the most highly rated or has no realistic prospect of award. Environmental Restoration, LLC, *supra*. As noted above, the narrative in the contracting officer's competitive range determination (which was echoed in the contracting officer's statement to our Office) relied on differences in point scores and adjectival ratings (which were derived from the scores) to conclude that Offeror A's proposal should be included in the competitive range, which Pinnacle's proposal was excluded. Neither that judgment nor contracting officer's blanket view that Pinnacle's proposal would not benefit from discussions, is based on the evaluation or specific aspects of Pinnacle's approach.

The reliance on point scores or adjectival ratings in making a competitive range decision, as here, is improper. The reasoned judgment required to exclude a proposal from a competitive range cannot rely on the unreasoned distinctions used here: differences in point scores, a lower adjectival rating, and unsupported speculation about whether a future revised proposal would merit assessment of a significant strength.¹² See S&M Prop. Mgmt., B-243051, June 28, 1991, 91-1 CPD

¹² We note that the record does not disclose a substantive basis for including Offeror A's proposal in the competitive range, beyond observing that it had been assessed "weaknesses" (thus presumably two or more) and cost "clarification" issues that would be addressed in discussions, and that Offeror A's proposal had a higher probable cost, higher point score, and consequently a higher adjectival rating.

¶ 615 at 4 (narrowing competitive range on basis of point scores was improper). Accordingly, the exclusion of Pinnacle's proposal from the competitive range is unreasonable, so we sustain this ground of protest.

RECOMMENDATION

We recommend that NASA reevaluate Pinnacle's proposal under the RFP criteria and make a new competitive range determination. If NASA determines that additional proposals should be included in the competitive range, we recommend that NASA provide meaningful and equal discussions to all such offerors. We also recommend that NASA determine whether its evaluation criteria are reasonably disclosed in the RFP, and if appropriate, amend the RFP to clarify the basis for its evaluation and provide an opportunity for offerors to submit revised proposals. Finally, we recommend that NASA reimburse Pinnacle the costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). In accordance with § 21.8(f) of our Bid Protest Regulations, Pinnacle's claim for such costs, detailing the time expended and the costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision.

The protest is sustained.

Susan A. Poling
General Counsel