



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: KSC BOSS Alliance, LLC

File: B-416334; B-416334.2

Date: July 27, 2018

Aron C. Beezley, Esq., Sarah S. Osborne, Esq., and Lisa A. Markman, Esq., Bradley Arant Boult Cummings LLP, for the protester.
Lisette S. Washington, Esq., Louis Shernisky, Esq., and Brian M. Stanford, Esq., National Aeronautics and Space Administration, for the agency.
Nora K. Adkins, Esq., and Tania Calhoun, 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 the agency properly evaluated the protester's proposal in accordance with the solicitation's evaluation criteria, meaningfully considered all of the evaluation factors when establishing the competitive range, and reasonably excluded the protester's proposal.

DECISION

KSC BOSS Alliance, LLC (KBA)¹, of Arlington, Virginia, protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. NNK18619079R, issued by the National Aeronautics and Space Administration (NASA) for base operations and spaceport services to be performed at the John F. Kennedy Space Center and NASA facilities on Cape Canaveral Air Force Station, Florida. The protester challenges the agency's evaluation and competitive range determination.

We deny the protest.

¹ KBA is a joint venture between Kellogg Brown and Root Services, Inc. and Yang Enterprises, Inc. (YEI).

BACKGROUND

NASA issued the RFP on November 1, 2017, pursuant to the procedures of Federal Acquisition Regulation (FAR) part 15, for the award of a single fixed-price contract with a 2-year base period and three 2-year option periods.² RFP at 70, 85.³ The solicitation sought services for the Kennedy Space Center and NASA facilities on Cape Canaveral Air Force Station including operations, maintenance, and engineering of assigned facilities, systems, equipment, and utilities (FSEU); work management and spaceport integration functions; mission support and launch readiness management; project management and design engineering services; construction support services; and institutional logistics. Performance work statement (PWS) at 202. The PWS divided this work into six sections: (1) management; (2) work management; (3) FSEU operations, maintenance, baseline repairs and replacements (BRRs), and service orders (SOs); (4) engineering and support services; (5) logistics; and (6) IDIQ work (fixed-price task orders to purchase additional services within the scope of work identified in PWS sections 1-5.). See id. at 195-201.

The solicitation contemplated award on a best-value tradeoff basis considering three factors: mission suitability, past performance, and price. RFP at 188. The price factor was more important than the mission suitability factor, which was more important than the past performance factor; when combined, the mission suitability and past performance factors were approximately equal to price. Id. The mission suitability factor was comprised of three subfactors for a total of 1,000 points: management (525), technical (375), and small business utilization (100). Id. at 189.

As relevant to this protest, NASA's evaluation of proposals under the mission suitability factor would assess an offeror's overall understanding of and ability to execute the contract requirements. Id. With respect to the management approach subfactor, the RFP advised that the evaluation would consider five areas including an offeror's approach to effectively prioritize, schedule, report, and ensure completion of baseline and IDIQ requirements.⁴ Id. at 189-90. For the technical approach subfactor, the

² The contract also includes a cost-reimbursable contract line item number (CLIN) for fuel, NASA office supplies, and buses, and a fixed-price indefinite-delivery, indefinite-quantity (IDIQ) component for fixed-price task orders to purchase additional services within the contract's scope of work. RFP at 168.

³ The agency used a Bates numbering system in preparing the agency report. This decision uses the Bates numbers assigned by the agency for its citations.

⁴ Baseline work consists of responding to BRRs and SOs; accomplishing recurring services such as preventive maintenance, programmed maintenance, and predictive testing and inspection that involve routine, periodic maintenance, and incidental repair requirements associated with assigned FSEU; operations that required continuous presence of qualified personnel during a specific period; work management and spaceport integration; logistics; system engineering and engineering services; and

(continued...)

evaluation would consider six areas including an offeror's basis of estimate. In this regard, the agency's basis of estimate evaluation would assess an offeror's understanding of the requirements and the reasonableness of the proposed approaches by reviewing the offeror's proposed methodologies, rationale, and consistency with its glossary of labor category descriptions. Id. at 190-91.

Under the past performance factor, the RFP stated that the agency would evaluate the offeror's and its proposed major subcontractors' recent performance of work similar in size, content, and complexity to the requirements of the solicitation. Id. at 192. With respect to price, the agency would conduct a price evaluation in accordance with FAR subpart 15.4--contract pricing. Id. For evaluation purposes, the total evaluated price would consist of the offeror's price for the base period and all options including: baseline annual services (CLINs 1 & 3); baseline established counts (CLINs 2 & 4); NASA provided numbers in CLIN 5 (fuel, NASA office supplies, GSA buses); estimated IDIQ price (CLINs 6 & 7); and phase-in. Id.

The agency received five proposals in response to the solicitation. Agency Report (AR), Tab 11.01, Source Selection Board (SEB) Consensus Presentation to Source Selection Authority (SSA), at 29583. The SEB⁵ reviewed the mission suitability proposals, identified significant strengths, strengths, weaknesses, significant weaknesses, and deficiencies, and documented these findings. Id. at 29597-630. The SEB voting members arrived at a consensus on all findings, and then assigned adjectival ratings and point scores for each of the three subfactors (management approach, technical approach, and small business plan). Id. at 29631. With regard to past performance the SEB assessed the offerors' recent and relevant performance of work similar in size, content, and complexity to the current requirement and assigned a level of confidence rating to each offeror's past performance. Id. at 29634-39. Finally, the agency reviewed the offeror's price assumptions and evaluated the prices for reasonableness and unbalanced pricing. Id. at 29641-42. The results of the agency's evaluation were as follows:

(...continued)

project management services. PWS at 202-3. IDIQ work consists of work which cannot be adequately defined in advance for inclusion within baseline work. Id. at 203. The agency may choose to issue task orders for scope identified in each PWS section; as identified in RFP attach. J-07, pre-priced IDIQ work tasks; or specific IDIQ work requirements identified in PWS section 6.0--IDIQ work. Id.

⁵ The contracting officer was a non-voting member of the SEB. AR, Tab 1.02, SEB Appointment Letter, at 24.

Offeror	Mission Suitability	Past Performance	Price
Offeror A	765	Very High	\$670.0M
Offeror B	684	Very High	\$487.3M
Offeror C	662	Very High	\$446.9M
KBA	431	Very High	\$658.3M
Offeror D	418	Very High	\$488.0M

Id. at 29644.

Under the mission suitability subfactors, NASA assigned KBA’s proposal the following ratings/point scores: management approach (fair/194); technical approach (fair/150); small business utilization (very good/87). Id. These ratings/scores resulted from the SEB assignment of multiple significant weaknesses and weaknesses to KBA’s mission suitability approach. Id. at 29619-23. Under the management approach subfactor, the SEB’s assigned one significant weakness related to KBA’s management of established counts⁶ and one weakness related to the use of cost-type contract assumptions. Id. at 29619-20. Under the technical approach subfactor, the SEB assigned one significant weakness related to KBA’s basis of estimate for other direct costs (ODCs) of operations, maintenance, and engineering and four weaknesses related to KBA’s approach to process maintenance action requests and insufficient resources proposed in KBA’s basis of estimate under the technical subfactor. Id. at 29621-22. Under the small business utilization approach subfactor, the SEB assigned one significant strength related to KBA’s strong commitment to the small business program and exceeding the government recommended small business goals. Id. at 29623.

The SEB presented the results of its evaluation to the SSA. The SEB presentation included a detailed discussion of the evaluation of each offeror’s proposal against all evaluation factors, as well as the contracting officer’s recommendation for the establishment of a competitive range amongst the five proposals received. See AR, Tab 11.01, SEB Consensus Presentation to SSA. The contracting officer also provided a competitive range determination to the SSA. AR, Tab 11.02, Competitive Range Determination. The determination summarized the contracting officer’s conclusion that offerors A, B, and C provided the mostly highly rated proposals and that KBA and offeror D should be excluded from the competitive range because their proposals were not among the most highly rated. Id. at 29690-93. With respect to KBA, the contracting officer’s determination provided that the SEB’s evaluation found “several Basis of Estimate areas that demonstrated a lack of understanding in various resource areas, as well as an inappropriate approach to managing the established counts.” Id. at 29692.

⁶ Established counts is the term used to represent the number of categorized BRRs and SOs in a given government fiscal year. AR, Tab 06, RFP App. J-01-01, Glossary Rev.1, at 017838. The contractor is to manage the established counts of SO and BRR using the established counts exchange rate (ECER), identified in Attachment J-03, Pricing and Reporting Data, for identified customers. Contracting Officer Statement (COS) at 42-43.

The contracting officer concluded that “[e]ven if KBA were to correct these weaknesses as a result of discussions, without any strengths or significant strengths in the Management and Technical subfactors, it is highly unlikely that discussions would result in KBA substantially increasing its Mission Suitability score without significant proposal revisions.” Id. Her determination also noted her consideration of KBA’s evaluated price of \$658.3 million--the second highest evaluated price--and her conclusion that KBA’s high price would make the possibility of any tradeoff unlikely. Id. The SSA concurred with the contracting officer’s competitive range determination. Id. at 29693.

On April 16, NASA notified KBA that its proposal was not among the most highly rated and was excluded from the competition. After receiving a debriefing, KBA filed this protest.

DISCUSSION

KBA challenges NASA’s evaluation and resulting competitive range determination on several grounds. The protester principally asserts that each of the significant weaknesses and weaknesses identified under the mission suitability factor were unreasonable; that the agency improperly assigned a very good rating to KBA’s proposal under the small business utilization subfactor; and that the contracting officer’s competitive range determination was unreasonable, unsupported, and failed to meaningfully consider past performance and price. While we do not address each of KBA’s various allegations, we have considered them all and, as discussed below, we find no basis to sustain the protest.

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). Where a protest challenges an agency’s evaluation, and its decision to exclude a proposal from a competitive range, we first review the propriety of the agency’s evaluation of the proposal, and then turn to the agency’s competitive range determination. Government Telecomms., Inc., B-299542.2, June 21, 2007, 2007 CPD ¶ 136 at 4. In so doing, we do not conduct a new evaluation or substitute our judgment for that of the agency, but examine the record to determine whether the agency’s judgment was reasonable and in accord with the solicitation’s evaluation criteria. Beretta USA Corp., B-406376.2, B-406376.3, July 12, 2013, 2013 CPD ¶ 186 at 5. An offeror’s disagreement with the agency’s evaluation, without more, is not sufficient to render the evaluation unreasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

Mission Suitability Evaluation

KBA challenges each of the two significant weaknesses and five weaknesses assigned its proposal under the mission suitability factor. The protester alleges that the agency failed to consider information contained in its proposal, was based on unstated evaluation criteria, and was otherwise unreasonable. KBA also asserts that its small

business utilization subfactor should have been rated excellent, not very good. We have reviewed all of KBA's allegations and find the agency's evaluation unobjectionable; we include representative examples below.⁷

The protester's proposal was assigned a significant weakness and a weakness under the management approach subfactor of mission suitability. The significant weakness was assigned as part of the agency's evaluation of KBA's approach to prioritize, schedule, report, and ensure completion of baseline and IDIQ requirements in a multi-user spaceport environment including the flexibility to respond to surge requirements and complete the total combined established units for each customer per fiscal year. See RFP, Evaluation Criteria, at 189.

The SEB assigned a significant weakness because "KBA's approach of using a set point of 85 percent to monitor and track the expenditure of 'work units' by customer is an inappropriate approach to managing the established counts of Baseline Repairs and Replacements (BRRs) and Service Orders (SOs)." AR, Tab 10, KBA Evaluation, at 29564. In this regard, the evaluators found that this "approach of notifying the customers 'in writing of the potential spending limit infraction' to develop a path forward once an 85% spend level is attained does not meet the PWS requirement to actively manage the established counts and total combined established units," and "does not demonstrate how KBA will perform PWS 1.2.1-23 requirement to exchange the established counts of BRRs and SOs within each customer using the ECER [established counts exchange rate] to meet fluctuating needs." Id. In addition, the evaluators found that "the approach of notifying the customers does not meet the PWS 1.2.3-3 requirement to discuss established counts status at the monthly Surveillance Review with the Contracting Officer's Representative." Id.

KBA argues that the significant weakness is unreasonable because its proposal addressed the requirements to provide customers with near real-time reporting of the established counts, which would allow customers to be aware of unit count usage at any point. The protester alleges that the 85 percent set point identified in its proposal was merely a tipping point to notify customers in writing that it was nearing its expenditure limit. As evidence of its compliance with the PWS requirements KBA cites the following passage from its proposal:

We provide near real-time reporting on the Government management portal of the running total of counts by work category and total combined units per customer. We develop a budget management system in Excel that monitors and tracks the expenditure of work units by client. We establish a set point of 85% for each type of work unit by client. Once an 85% spend level is attained, the customer is notified in writing of the potential spending limit infraction and a path forward is developed. We

⁷ The protester withdrew its challenge to one weakness under the technical approach subfactor after receiving the agency report.

manage and prioritize EWRs [electronic work requests] to ensure the total combined established units for each baseline customer are not exceeded, and communicate with the Government on recommend approaches . . . to ensure sufficient units are available throughout each fiscal year.

AR, Tab 8.01, KBA Mission Suitability Volume, at 17940.

The agency counters that while KBA's proposal highlights, nearly verbatim, certain PWS requirements (PWS 1.2.1-24, 1.2.1-25), these references fail to address how KBA will manage and exchange BRR and SO counts in accordance with PWS 1.2.1-23. Moreover, the agency asserts that a customer notification at a set point of 85 percent is not a substitute for providing an approach as to how the contractor would work with the contracting officer's representative to seek approval of exchanges between baseline customers. Thus, NASA contends that it properly assessed a significant weakness because KBA's proposal failed to make clear that it understood the requirements.

We find no basis to object to the evaluation. The PWS required a contractor to manage the established counts of BRRs and SOs with the ECER for identified customers; exchange the established counts of BRRs and SOs within each customer using the ECER to meet fluctuating needs; and seek approval of the contracting officer's representative for exchanges between baseline customers based on review of the established counts status during the monthly surveillance review meeting. PWS at 205. While KBA's proposal provided generalized statements with respect to providing near real-time reporting; developing a budget management system to monitor and track expenditures; and managing and prioritizing EWRs, NASA concluded that these basic references, along with the specific reference to an 85 percent set point, which it found to be inappropriate, were sufficient to call into question KBA's understanding of the requirement. We find nothing unreasonable with this analysis. In this regard, offerors are responsible for submitting a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. Aero Simulation, Inc., B-411373, B-413373.2, July 2, 2015, 2015 CPD ¶ 233 at 3. An offeror is responsible for affirmatively demonstrating the merits of its proposal and risks the rejection of its proposal if it fails to do so. Henry Schein, Inc., B-405319, Oct. 18, 2011, 2011 CPD ¶ 264 at 7-8.

KBA also contends that the significant weakness is improper because the agency did not conclude that its approach failed to meet actual requirements of the solicitation, and instead conflated a PWS requirement for the contractor with proposal submission requirements and evaluation criteria. We find no support for the protester's allegation. As stated above, the RFP provided that the agency's evaluation would consider an offeror's approach to prioritize, schedule, report, and ensure completion of baseline and IDIQ requirements in a multi-user spaceport environment including the flexibility to respond to surge requirements and complete the total combined established units for each customer per fiscal year. RFP at 189-90. The baseline and IDIQ requirements were enumerated and explained in the PWS provided as part of the solicitation. Also as stated above, these requirements included managing the established counts of BRRs

and SOs with the ECER for identified customers; exchanging the established counts of BRRs and SOs within each customer using the ECER to meet fluctuating needs; and seeking approval of the contracting officer's representative for exchanges between baseline customers based on review of the established counts status during the monthly surveillance review meeting. PWS at 205. Because the stated evaluation criteria provided for an evaluation based upon an offeror's approach to meet the specific PWS requirements at issue here, we find the agency's evaluation reasonable.⁸

We similarly find no basis to conclude that the evaluation was unreasonable with respect to the weakness assigned to KBA's proposal under the management approach subfactor. This weakness was assigned by the SEB because KBA proposed an outage management process that included cost-type contract assumptions. AR, Tab 10, KBA Evaluation, at 29566. Specifically, the evaluators found that KBA's proposal included key elements titled "Schedule and Cost Updates" and "Post Planned Outage Report," and proposed assigning a budget to each outage and an outage cost control coordinator to track, update, and report the cost performance against the outage budget at the weekly outage meeting. Id. The evaluations also noted that KBA's post outage report was proposed to include final outage costs and the associated costs incurred as a result of scope changes. Id. Based on these aspects of KBA's proposal, the SEB concluded that the statements indicated a lack of understanding of the contract requirements because such cost-type considerations are not applicable to a fixed-price contract. Id. The SEB noted that in a fixed-price service contract, the government does not participate in the price risk associated with performance; rather, the risk is on the contractor. Id.

KBA argues that its proposal adequately demonstrated that it understood outages were performed under baseline or IDIQ work and that cost references were appropriate because it must track and manage the BRR and SO category assigned, which is based upon specific cost levels. NASA counters that KBA's argument is misplaced because while the BRR and SO categories are based on actual direct craft labor hours and direct material costs, this does not require tracking actual costs incurred as provided in KBA's outage management approach. The agency contends that KBA's argument portrays a fundamental misunderstanding of BRR and SO categorization using the total dollar formula (\$100 rate multiplied by craft labor hours plus direct material costs to determine categorization for BRRs and SOs), which does not necessitate a need for managing labor costs. Moreover, NASA asserts that such cost control and cost performance reporting efforts are not necessary since outages are performed as part of the overall baseline fixed-price effort or as part of the fixed-price task order work. On this record,

⁸ KBA's allegation that the agency conflated performance requirements for evaluation criteria is repeated throughout its protest with respect to various weaknesses assigned to its proposal. In each instance, as here, the solicitation provided for the evaluation of the offeror's approach to meeting the PWS requirements. Thus, we find no basis to conclude that the agency's evaluation was based upon unstated evaluation criteria in any of these areas.

we find that KBA's disagreement with the SEB's judgement does not provide a basis for us to question the evaluation conclusions. NASA was within its discretion to assign a weakness because KBA's use of cost-type language demonstrated a lack of understanding of the requirements of the fixed-price contract.

Under the technical approach subfactor of mission suitability, the SEB assigned KBA's proposal a significant weakness and four weaknesses. The significant weakness and two of the weaknesses were assigned as part of the agency's evaluation of KBA's basis of estimate.⁹ In this regard, the RFP provided that the agency would evaluate an offeror's basis of estimate for the offeror's understanding of the requirements and the reasonableness of the proposed approaches. RFP at 191. The evaluation would consider the offeror's proposed methodologies, rationale, and consistency with its glossary of labor category descriptions. Id.

The SEB assigned a significant weakness to KBA's proposal because its basis of estimate failed to identify any other direct costs (ODCs) for operations, maintenance, and engineering to perform the PWS requirements for baseline work, which demonstrated a lack of understanding of the requirements. AR, Tab 10, KBA Evaluation, at 29568. In reaching this conclusion the SEB noted that the RFP requires performance of approximately 17,000 preventive maintenance work orders on 13,254 assigned assets each year, and that the preventive maintenance work orders require materials to clean and lubricate equipment, perform minor corrosion control on equipment, replace consumables such as air filters and belts, and perform incidental repairs. Id. The SEB noted that while KBA's maintenance approach acknowledged that "lubrication" and "replacement of wear parts" occurs during these tasks, it proposed no ODCs or rationale why it did not propose any ODCs in its basis of estimate. Id.

KBA argues that its proposal clearly provided for baseline work ODCs but it only itemized the IDIQ work ODCs as required by the RFP. KBA asserts that in assessing the significant weakness, NASA ignored or overlooked portions of its proposal.

NASA responds that the RFP required offerors to identify ODCs for operations, maintenance, and engineering to perform the PWS requirements for baseline work. The agency explains that the RFP instructed offerors to provide a basis of estimate for the requirements identified in the basis of estimate template and required submission of "[a]n itemization of resources (labor and non-labor for the Offeror, including subcontractors) described in sufficient detail to demonstrate the Offeror's understanding of the requirements and the reasonableness of the proposed approaches." RFP at 179.

⁹ To the extent that any of KBA's allegations include an assertion that the agency conducted or was required to conduct a price realism analysis, we find that the protester has not provided a valid basis of protest because the agency did not conduct such analysis and the RFP did not require a realism evaluation. Rather, the RFP provided for the evaluation of an offeror's basis of estimate under the technical approach subfactor for understanding of the requirements and reasonableness of the offeror's approach.

As relevant here, offerors were also to provide details with respect to the type and value of non-labor ODCs and rationale for each resource/labor category or ODC for maintenance, operations, BRRs, SOs, and systems engineering and engineering services. RFP, attach. L-03, Basis of Estimate Template, at 1546-47. NASA contends that the instructions for the basis of estimate did not request ODCs for IDIQ work. See id. (IDIQ work CLINs not listed in template). Thus, NASA argues that it was proper to assign a significant weakness when assessing whether KBA's basis of estimate demonstrated an understanding of the requirements and reasonableness of its proposed approach, because KBA admittedly only itemized ODCs for IDIQ work and failed to identify ODCs for the baseline services identified in the basis of estimate template.

We find that the agency's evaluation was reasonable. The agency concluded that KBA's failure to identify ODCs for the baseline maintenance, operations, and engineering demonstrated a lack of understanding of the requirement. The evaluators noted that KBA's proposal provided for certain maintenance activities but did not identify the ODCs associated with these activities (i.e. lubrication and replacement of wear parts). While the protester asserts that these costs were included as part of its overall price, we find no basis to question the agency's evaluation where the solicitation requested offerors to identify these costs in their basis of estimates. KBA's protest allegation that it provided these ODCs as part of its overall price does not render unreasonable the agency's evaluation. Again, offerors are responsible for submitting a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. Aero Simulation, Inc., supra. An offeror is responsible for affirmatively demonstrating the merits of its proposal and risks the rejection of its proposal if it fails to do so. Henry Schein, Inc., supra.

As a final example, the SEB assigned a weakness to KBA's proposal under the technical approach subfactor because its basis of estimate did not demonstrate an understanding of the transportation infrastructure operational requirements and did not provide the appropriate resources for performance. AR, Tab 10, KBA Evaluation, at 29576. The SEB concluded that KBA's approach indicated that it failed to understand the requirements, including those in PWS 3.2.13.2 specific to bridge operation, because it failed to provide appropriate resources. Id. In this regard, the evaluators found that KBA proposed [DELETED] civil technical professional in its operations basis of estimate, which was insufficient to perform all of the varying operations inspection requirements for all Kennedy Space Center traffic signage, 20 traffic control devices, 8 bridges/2 culverts (and associated shorelines), and bathymetric waterway surveys. Id. In addition, for the Indian River bridge and Haulover bridge operations, KBA's basis of estimate provided [DELETED] bridge tenders, which the agency found would not meet the 24 hour, 7 day a week operation requirement, and provided [DELETED] bridge tenders for the Jay Jay river bridge and Banana river bridge, which the agency found were excessive since full time bridge operation was not required. Id.

KBA argues that the weakness is misplaced because the solicitation did not define what constitutes appropriate resources. KBA contends that if NASA wanted offerors to propose a specific level of resources it was required to amend the solicitation and notify all offerors of the changed requirement. KBA also asserts that NASA's evaluation was based upon an unstated evaluation criterion since the level of resources was not specified in the solicitation. The protester finally argues that the weakness was otherwise unreasonable because KBA proposed sufficient resources and NASA ignored the fact that its proposed resources were based on YEI's unique experience on the incumbent contract.¹⁰

NASA responds that, as above, the basis of estimate required an offeror to provide an itemization of resources (labor and non-labor) for the offeror, including all subcontractors, described in sufficient detail to demonstrate the offeror's understanding of the requirements and the reasonableness of the proposed approaches. RFP at 179. Offerors were also required to provide a detailed explanation of methodologies, rationale, and other relevant information to allow NASA to clearly understand the proposed approaches. Id. The agency's evaluation of KBA's basis of estimate found it failed to provide appropriate resources to meet the PWS requirements, which indicated a lack of understanding. NASA asserts that it did not have a specific number of resources required, as alleged by the protester, but was required to evaluate whether KBA's approach demonstrated a lack of understanding and whether the approach was reasonable. Thus, the agency contends that because KBA proposed too few resources for some requirements, yet proposed excessive resources for other requirements, its assignment of a weakness was reasonable. Moreover, the agency argues that while KBA contends in its protest that its civil technical professional will oversee the work of the other bridge tenders or that the bridge tenders will be available as needed to assist with other bridge tending operations, these explanations were not provided in KBA's proposal.

On this record, we find no basis to question the agency's assessment of a weakness. The agency thoroughly evaluated KBA's basis of estimate and concluded that it failed to provide adequate detail as to the resources it was providing to meet the transportation operation requirements. As discussed above, the agency concluded that this demonstrated a lack of understanding, and the protester has not provided a basis for us to question the agency's conclusion. Thus, we find that the agency's evaluation was reasonable and in accordance with the stated evaluation criteria.

In sum, our review of the record indicates that the agency reasonably evaluated KBA's mission suitability factor and underlying subfactors.¹¹

¹⁰ As stated above, KBA is a joint venture between Kellogg Brown and Root Services, Inc. and YEI. YEI was a subcontractor on the incumbent effort.

¹¹ KBA also alleges that the agency's rating of very good for its small business utilization approach was unreasonable because NASA assigned KBA's proposal a significant strength, which would mandate an excellent rating. We find the agency's assignment of
(continued...)

Competitive Range

KBA next challenges its exclusion from the competitive range and argues that the agency failed to meaningfully consider past performance and price when it excluded KBA from the competition. KBA also alleges that the contracting officer failed to adequately support her decision to exclude KBA's proposal. As discussed below, the contemporaneous record and the contracting officer's explanations of the record, demonstrate that the contracting officer's competitive range determination and decision to exclude KBA is unobjectionable.

As an initial matter, to the extent the protester asserts that the agency was required to conduct a best-value tradeoff analysis among all of the evaluation factors when establishing the competitive range, this argument is misplaced. Rather, as stated above, when establishing a competitive range, FAR § 15.306(c)(1) directs contracting agencies to evaluate proposals against all evaluation criteria, and eliminate those proposals that are not among the most highly-rated or that the agency otherwise reasonably concludes have no realistic prospect of being selected for award. FAR § 15.306(c)(1). Agencies are not required 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. We find that the contracting officer's competitive range determination was reasonable, adequately supported, and included a meaningful consideration of all evaluation factors.

The record demonstrates that the contracting officer was a non-voting member of the SEB, was present for all SEB discussions and consensus findings, and was aware of the SEB's rationale underlying its findings for each subfactor. Supp. COS at 14-15; AR, Tab 11.02, Competitive Range Determination, at 29689-93. The contracting officer also led the evaluation of the offerors' past performance. COS at 86. In reaching her competitive range determination, the contracting officer relied on her knowledge of the SEB's evaluation and recommendations, the SEB's detailed presentation to the SSA, and her own assessment of the offerors' evaluation results under each of the evaluation factors. AR, Tab 11.02, Competitive Range Determination, at 29690-93. Based on this information, the contracting officer prepared a competitive range memorandum to summarize her conclusions, which included a chart detailing the ratings of all offers as well as a written narrative detailing the SEB findings with respect to strengths and weaknesses, the level of confidence assigned past performance, and the total

(...continued)

a very good rating unobjectionable. The terms of the solicitation did not require an excellent rating based upon a sole significant strength. Thus, it was within the agency's discretion to choose the rating that best reflected its evaluation findings.

evaluated price for each offeror. Id. at 29692-93. The memorandum also included the contracting officer's determination of the most highly rated proposals. Id. at 29591-93.

With respect to KBA, the memorandum stated that, "when considering the evaluation results of all factors" KBA was not among the most highly rated. Id. at 29692. The memorandum noted that KBA's evaluated price of \$658.3 million was the second highest evaluated price. It also detailed that the SEB's evaluation of KBA's mission suitability identified "several Basis of Estimate areas that demonstrated a lack of understanding in various resource areas, as well as, an inappropriate approach to managing the established counts." Id. The memorandum further noted that each offeror was rated very good under the past performance factor. It also provided that the contracting officer considered that "[e]ven if KBA were to correct these weaknesses as a result of discussions, without any strengths or significant strengths in the Management and Technical subfactors, it is highly unlikely that discussions would result in KBA substantially increasing its Mission Suitability score without significant proposal revisions." Id. The contracting officer also considered that KBA's second highest evaluated price of \$658.3 million would make the possibility of any tradeoff unlikely. Id. For these reasons, the contracting officer excluded KBA from the competitive range.

Based on the record, we find no merit to the protester's allegations that the contracting officer failed to meaningfully consider past performance or price.¹² As described above, the contracting officer was knowledgeable of the evaluation findings and based her decision on a consideration of all evaluation factors. Thus, we find that the decision was reasonable and we conclude that the agency's decision to exclude KBA's proposal from the competitive range was within the agency's discretion.¹³

¹² With respect to KBA's allegation that NASA failed to analyze the underlying basis for the lower-priced proposals, we point out that the solicitation was for a fixed-price contract and any such consideration would assess the realism of the offerors' prices. Since NASA chose not to conduct a price realism analysis, and nothing in the RFP required such an analysis, we find no basis to conclude that the agency was required to evaluate the price differences among the proposals in the manner alleged by KBA.

¹³ We also find no merit to the protester's assertion that the competitive range determination was unequal because it included an offeror with a material omission in its price but did not include KBA's proposal. The contracting officer explains that one offeror's price contained a mistake in its IDIQ coefficient pricing. It appeared to the contracting officer that the offeror had misplaced the decimal point. Thus, she concluded that discussions were necessary to resolve this potential mistake. NASA asserts that this was not a material omission and even if it would require an upward adjustment in that offerors price (one of the two lowest-priced offers), it would not impact the competitive range determination because this error had no effect on the offerors' mission suitability or past performance. Moreover, even with an increase in price this offeror would remain more highly-rated and lower-priced than the protester. We find no basis to conclude the determination was unreasonable. See ECC Renewables, LLC; Pacific Power, LLC, B-418907 et al., Dec. 18, 2013, 2014 CPD ¶ 9

(continued...)

We also have no basis to find that the contracting officer's determination was not adequately supported. While the protester cites to our decision in Pinnacle Solutions, Inc., we find this case distinguishable. See Pinnacle Sols., Inc., B-414360, May 19, 2017, 2017 CPD ¶ 172 at 12-13 (Challenge to exclusion from competitive range is sustained where (1) the evaluation record did not reasonably support the assessment of weaknesses, reflected apparent disregard of aspects of protester's proposal, and was based on unstated evaluation criteria, and (2) the competitive range determination improperly relied on comparison of point scores and on the contracting officer's unsupported speculation about whether holding discussions with the protester would result in assessment of a significant strength to a revised proposal.).

Unlike Pinnacle, we find the agency's underlying evaluation of KBA's proposal was reasonable and in accordance with the stated evaluation criteria. Most notably however, here, the contracting officer's competitive range determination was not speculative and meaningfully considered the SEB's evaluation for each factor. The competitive range determination considered the SEB consensus presentation, which provided a detailed analysis of each offeror's evaluation results, and reviewed the significant strengths, strengths, significant weaknesses, and weaknesses supporting the agency's evaluative conclusions. In addition, the contracting officer was a non-voting member of the SEB, and played an active role in and was knowledgeable of the evaluation results for each offerors' proposal. Further, the record demonstrates that the contracting officer did not make her competitive range determination solely on the basis of point scores or rating but rather was fully aware of and compared the proposals against one another on a qualitative basis for each evaluation criteria. The contracting officer summarized these findings in the competitive range determination document, which specifically referenced her rationale with respect to KBA's exclusion.¹⁴ Based on this record, we cannot conclude that the contracting officer's determination was inadequately supported. Thus, we find no basis to conclude that it was improper for NASA to exclude KBA's proposal from the competitive ranges.

The protest is denied.

Thomas H. Armstrong
General Counsel

(...continued)

at 6-7 (no basis to question agency decision to include proposal with deficiencies that the agency considered to be easily correctable while excluding other proposals).

¹⁴ The record shows that the contracting officer's competitive range determination did not overemphasize the significant weaknesses and weaknesses assigned to KBA's proposal but, rather, noted these as rationale as to why the proposal was not among the most highly rated.