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Decision

Matter of: Knight Point Systems, LLC

File: B-416602; B-416602.2

Date: October 26, 2018

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DIGEST

1. Protest alleging that awardee engaged in an impermissible bait and switch regarding its key personnel is denied where awardee did not mislead the agency about its intent to utilize the key personnel it identified in its quotation and where awardee expressly advised the agency that it also intended to recruit incumbent employees.
 2. Protest challenging assignment of multiple disadvantages to quotation is denied where significant disadvantage regarding key personnel was reasonably assigned and protester cannot demonstrate the remaining disadvantages prejudiced the protester.
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DECISION

Knight Point Systems, LLC, (KPS) a service-disabled veteran-owned small business of Reston, Virginia, protests the issuance of a task order by the Export-Import Bank of the United States (EXIM)¹ to InquisIT, LLC, a small business of Chantilly, Virginia, under that vendor's General Services Administration (GSA) Federal Supply Schedule (FSS) contract, pursuant to request for quotations (RFQ) No. 83310118Q0042, for information

¹ EXIM is an independent executive agency and a wholly owned government corporation that supports U.S. exports by providing export financing through its loan, guarantee, and insurance programs. Agency Report (AR), Tab 4A, RFQ, Performance Work Statement (PWS) ¶ 2.

technology infrastructure engineering and operations support (IT IE&OS) services. KPS, the incumbent contractor, challenges the evaluation of its proposal and contends the awardee contemplated an impermissible bait and switch scheme with regard to its proposed personnel.

We deny the protest.

BACKGROUND

The agency issued the RFQ on May 16, 2018, to vendors holding GSA Schedule 70 contracts for IT services, pursuant to the FSS procedures set forth at Federal Acquisition Regulation (FAR) subpart 8.4. RFQ, at 9, 11; Contracting Officer's Statement (COS) at 4. The RFQ contemplated the issuance of a primarily fixed-priced task order for a 5-year period of performance, which included a 7-month base period. RFQ at 3-7, 11. The solicitation's PWS identified the IT IE&OS services the contractor would provide under the following five task areas: helpdesk and desktop services; network/system engineering and operations support; telecommunications services support; operational security and surveillance support; and disaster recovery and continuity of operations support. PWS ¶¶ 7.1-7.5.

The solicitation contemplated an estimated annual level of effort of 34,560 labor hours--18 full-time equivalents (FTEs) at 1,920 labor hours per year--which the agency reported was "similar" to the number of FTEs that the incumbent was using on the current contract. RFQ at 11; AR, Tab 4B, RFQ amend. 1, at 4. More specifically, the PWS identified the incumbent "contractor team of 18 fulltime talented staff" by labor category: seven system engineers; six helpdesk technicians; three network engineers; one security engineer; and one project/program manager. PWS ¶ 3.2. The PWS further explained that all of the incumbent's staff were considered "key personnel." Id. Despite disclosing this incumbent staffing information, the agency nevertheless advised that it was "up to the [v]endors to propose the resources to successfully accomplish all objectives and tasks identified within the PWS." RFQ amend. 1, at 4. Additionally, while a vendor was "free to propose its staffing mix to achieve the requirements," AR, Tab 4D, RFQ amend. 2, at 3, the RFQ explained that "[a]ll proposed full time (1920 hours) positions shall be considered key personnel." RFQ at 36.

The solicitation included several requirements regarding the contractor's key personnel. For instance, the contractor was to provide reports "itemizing the level of effort expended by each Key Personnel." Id. Pursuant to the solicitation, the agency could reduce the contractor's compensation based on the number of hours less than the 1,920 hours expected for a particular position. Id. The RFQ further explained that the contractor's performance would be "evaluated, in part, by the extent that it does not 'gap' any of the Key Personnel positions during contract performance." Id. The solicitation also advised that "to ensure a smooth and orderly start-up of work, it is essential that the key personnel identified be available on the effective date of this task order." Id. at 37.

The solicitation also outlined a process for the substitution of key personnel. First, the RFQ required that the contractor was to “immediately notify” the contracting officer if one or more key personnel became unavailable during performance, and identify a replacement “of at least substantially equal ability and qualifications.” Id. The contracting officer then would approve any key personnel replacements. Id. In addition, the RFQ outlined consequences if a timely replacement was not “reasonably forthcoming,” which spanned from adjustments to the contract’s price to contract termination. Id. Of note here, the solicitation also specified that the contractor could not substitute key personnel during the first 90 days of performance (except for illness, death, or termination of employment). Id.

The task order was to be issued on a best-value tradeoff basis, considering the following evaluation factors: technical approach; staffing and management; and price.² Id. at 56. The non-price evaluation factors, when combined, were more important than price. Id. Relevant to KPS’s protest is the agency’s evaluation of quotations under the staffing and management factor, which is referred to collectively as “management approach” in the contemporaneous record. The factor was made up of three related components: staffing plan; management plan; and quality control plan. Id. at 56-58.

In the staffing plan, the vendor was to identify the staff mix and the amount of resources proposed to perform the effort. Id. at 53, 56. The vendor was to indicate whether proposed personnel were current employees, planned hires, subcontractors, or any other arrangement, and provide resumes for each individual proposed.³ Id. at 53, 57. In the management plan, the vendor was to identify its key personnel, provide a “time loading chart” for its staff, and describe management procedures for oversight of the project and for ensuring adequate commitment of resources to the project, among other elements. Id. at 54, 57. In addition, the vendor was to explain why it considered each proposed person “essential to the project’s viability and success,” and why each individual was chosen for his or her respective role. Id. The vendor’s management plan also was to include a strategy to mitigate personnel turnover and staffing problems. Id. As the contracting officer explains, the management plan was “more of the ‘roadmap’ as to ‘how’ the [v]endors intended to use the personnel identified in the Staffing Plan.” COS at 8.

Three vendors, including KPS and InquisIT, submitted quotations by the June 7, 2018, submission deadline. Id. at 10. A technical evaluation board (TEB) conducted an initial evaluation of quotations and prepared a report describing the quotations’ advantages,

² First, as a prerequisite to being evaluated for award, a vendor had to pass a review of its corporate experience performing professional IT services for a federal government agency or department in accordance with the National Institute of Standards and Technology Standards for Security Categorization of Federal Information and Federal Information Processing Standard 199. RFQ at 55.

³ The RFQ did not require letters of commitment from proposed personnel.

disadvantages, and risks, as well as areas requiring clarification. See AR, Tab 6F4, Initial Consensus TEB Report, June 18, 2018, at 1-38. The agency thereafter conducted exchanges with the vendors, and the TEB members prepared another consensus report documenting their final evaluation conclusions. See AR, Tab 6F5, Consensus TEB Report, June 21, 2018, at 1-39. Ultimately, KPS's and InquisIT's proposals were evaluated as follows:

	KPS	InquisIT
Technical Approach ⁴	Acceptable	Acceptable
Management Approach	Acceptable (High Risk)	Acceptable (Low Risk)
Price	\$15,007,731	\$13,458,829

AR, Tab 9A11, Award Memo., July 17, 2018, at 16-26, 32. The contracting officer, serving as the source selection authority, determined that InquisIT's quotation was the most advantageous to the government. Id. at 35. The contracting officer explained that InquisIT adequately described how it intended to successfully perform the PWS requirements, and successfully addressed how it proposed to "operationalize and manage the engagement." Id. at 35-36. "Given [KPS's] significantly higher price and risk associated with its Management Approach," the contracting officer concluded that InquisIT's quotation provided the best value to the agency.⁵ Id. at 36.

The agency issued the order to InquisIT on July 11. AR, Tab 10A, Award Notification Email, July 11, 2018, (3:06 p.m.). Following a brief explanation of the award, KPS protested the issuance of the task order to our Office on July 20.

DISCUSSION

KPS contends that EXIM misevaluated InquisIT's quotation under the management approach factor. The protester primarily alleges that the awardee did not intend to use the key personnel identified in its quotation for performance of the contract, which, according to the protester, should have rendered the quotation unacceptable. The protester also challenges the three disadvantages assigned to its quotation, and complains that the agency's exchanges with the vendor regarding its proposed [DELETED]'s labor hours were misleading. While we do not specifically address each

⁴ The TEB assigned ratings of highly acceptable, acceptable, or unacceptable under the non-price factors. COS at 11-12.

⁵ The third vendor's quotation was rated unacceptable and not considered for award. AR, Tab 9A11, Award Memo., at 34.

of the protester's arguments, we have considered them all and find that none provides a basis to sustain the protest.⁶

As an initial matter, we note that where, as here, an agency issues an RFQ to GSA FSS contractors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. VariQ Corp., B-409114 et al., Jan. 27, 2014, 2014 CPD ¶ 58 at 8. A protester's disagreement with the agency's judgment, without more, does not establish that an evaluation was unreasonable. DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2. For procurements conducted pursuant to FAR subpart 8.4 that require a statement of work (or a PWS for performance-based acquisitions, such as this one), FAR § 8.405-2(e) designates limited documentation requirements. In a FAR subpart 8.4 procurement, an agency's evaluation judgments must be documented in sufficient detail to show that they are reasonable. Neopost USA Inc., B-404195, B-404195.2, Jan. 19, 2011, 2011 CPD ¶ 35 at 7; FAR § 8.405-2.

InquisIT's Proposed Personnel

KPS's principal argument is that InquisIT engaged in an impermissible bait and switch of its key personnel. See Protest at 22-33; Comments & Supp. Protest at 3-13, 27-31. According to KPS, the awardee's quotation improperly identified key personnel that InquisIT did not intend to use for performance of the contract. The protester complains that InquisIT "jettisoned" its proposed personnel after award and attempted to hire KPS's incumbent employees, as well as posted public advertisements for many of the same positions. Protest at 22. Given these allegations, KPS argues that "the entire InquisIT [quotation] was a sham." Id. The protester therefore maintains that the

⁶ For example, the protester also argues that InquisIT failed to propose any "Tier III" personnel, which the RFQ described as "senior level experts" with more than 10 years of experience. Protest at 29; Comments & Supp. Protest at 14-15; see PWS ¶ 10.4. Contrary to KPS's assertion, the record reflects that four of InquisIT's key personnel qualified as Tier III personnel. AR, Tab 9A11, Award Memo., at 29. Indeed, the agency even highlighted as an advantage that the personnel InquisIT proposed for "higher value key positions" were current InquisIT employees and not contingent hires. Id. at 18. Equally unavailing is KPS's contention that EXIM failed to assess whether InquisIT proposed a sufficient level of effort, as contemplated by the RFQ. See Comments & Supp. Protest at 37-41. This allegation seemingly ignores the adequately documented record that discussed the vendors' proposed levels of effort and reasonably concluded that the awardee's level of effort: reflected the labor category needs of the government; was consistent with the government's estimate; and was consistent with the vendor's technical quotation. See AR, Tab 9A11, Award Memo., at 28-29. Indeed, directly undercutting KPS's concern on this point is the fact that the awardee proposed a higher level of effort than the protester. See id. at 28, 30.

agency's evaluation of InquisIT's staffing was flawed and that the quotation should have been rejected as unacceptable.

EXIM responds that InquisIT did not engage in a bait and switch. Memorandum of Law (MOL) at 17. The agency maintains that the awardee's quotation identified its proposed key personnel, as well as discussed the vendor's intention to recruit incumbent personnel. The agency, therefore, argues that InquisIT did not misrepresent its staffing approach, and that the protester has failed to establish that InquisIT's proposed personnel were unavailable to perform the task order. Id. at 18. Following our review of the record, we agree with EXIM that the record does not support KPS's allegations.

The issue of whether personnel identified in a vendor's quotation, in fact, perform under the subsequently-awarded task order is generally a matter of contract administration that our Office does not review. See Bid Protest Regulations, 4 C.F.R. § 21.5(a); DKW Communications, Inc., B-414476, B-414476.2, June 23, 2017, 2017 CPD ¶ 206 at 8. Nonetheless, our Office will consider allegations that a vendor proposed personnel that it did not have a reasonable basis to expect to provide during contract performance in order to obtain a more favorable evaluation, because such a material misrepresentation has an adverse effect on the integrity of the competitive procurement system. See CACI Techs., Inc., B-408858, B-408858.2, Dec. 5, 2013, 2013 CPD ¶ 283 at 4. Our decisions frequently refer to such circumstances as a "bait and switch." Id. To establish an impermissible bait and switch, a protester must show: (1) that the awardee either knowingly or negligently represented that it would rely on specific personnel that it did not have a reasonable basis to expect to furnish during contract performance; (2) that the misrepresentation was relied on by the agency; and (3) that the agency's reliance on the misrepresentation had a material effect on the evaluation results.⁷ E.g., Systems Plus, Inc., B-415559, B-415559.2, Jan. 12, 2018, 2018 CPD ¶ 27 at 10; see also Patricio Enters. Inc., B-412738, B-412738.2, May 26, 2016, 2016 CPD ¶ 145 at 4-5 (sustaining protest where awardee engaged in an impermissible bait and switch).

As discussed above, the RFQ required that vendors identify in their quotations the key personnel proposed for performance, and submit their proposed staff mix, the status of proposed personnel, and resumes, among other information. RFQ at 56-57. The solicitation also explained that it was "essential" that a vendor's key personnel "be available on the effective date of this task order," and the RFQ outlined the process for the substitution of key personnel, which was limited during the first 90 days of performance. Id. at 37.

⁷ This procurement was conducted as a task order competition among FSS contract holders and, as such, was subject to the provisions of FAR subpart 8.4. We have explained that the principles discussed herein regarding bait and switch allegations and material misrepresentations apply equally to FAR subpart 8.4 procurements. See PricewaterhouseCoopers LLP; IBM U.S. Fed., B-409885 et al., Sept. 5, 2014, 2014 CPD ¶ 289 at 11 n.9 (addressing bait and switch allegations in a FAR subpart 8.4 task order competition).

In its quotation, InquisIT proposed 18 FTEs, all of which were key personnel (i.e., proposed for 1,920 labor hours/year). AR, Tab 7A1d, InquisIT Final Quotation, at 43. Consistent with the solicitation instructions, InquisIT identified its key personnel by name, noted whether each individual was a current employee or contingent hire, described the expertise of each individual, and explained why the vendor considered each proposed person “essential to the project’s viability and success.” Id. at 43-47; see RFQ at 57. InquisIT also submitted resumes (containing the information required by the RFQ) for these 18 proposed personnel. AR, Tab 7A1d, InquisIT Final Quotation, at a-jjj.

In addition, the vendor also discussed its effort to recruit KPS’s incumbent staff. Specifically, InquisIT explained as follows:

[DELETED]

Id. at 39-40. Elsewhere, the vendor explained that within 5 days of award it would begin the “formal assessment of staff, evaluating incumbent and proposed staff to determine the appropriate staffing mix for the move forward EXIM team [sic],” and it would provide a “final roster” within 10 days of award. Id. at 41. InquisIT represented that it would be “fully staffed” on “Contract Day One.” Id. at 42 (emphasis removed).

Here, we are provided no basis to sustain the protest. In this regard, the record does not support KPS’s assessment that InquisIT engaged in an impermissible bait and switch scheme. First, we agree with the agency that the awardee did not misrepresent its staffing approach. See MOL at 17-18. Rather, as detailed above, the awardee expressly advised the agency of its “two-layer staffing approach” that involved recruiting and hiring incumbent staff and utilizing the vendor’s proposed staff where necessary. See AR, Tab 7A1d, InquisIT Final Quotation, at 42. Indeed, the record further shows that the agency was fully aware of InquisIT’s intent to capture incumbents, as well as offer a “bench of candidates should incumbents not be available.” AR, Tab 6F5, Consensus TEB Report, at 30; see also id., Tab 9A11, Award Memo., at 19. Given this clear language in the awardee’s quotation and the agency’s acknowledgement of InquisIT’s staffing strategy, we decline to accept KPS’s contention that InquisIT misrepresented its staffing.

In addition, outside of KPS’s complaint that the awardee recruited the protester’s incumbent employees, the protester has not persuasively shown that InquisIT’s proposed key personnel would not be available on the effective date of the task order. Rather, as the agency highlights, InquisIT identified its 18 key personnel by name (and provided resumes for these individuals), and noted that 10 of them were current employees and eight were contingent hires. See MOL at 18; AR, Tab 7A1d, InquisIT Final Quotation, at 43-47. Indeed, shortly after being issued the order, InquisIT began the process of submitting security clearance documentations for its proposed personnel. See MOL at 20; AR, Tab 14D, EXIM/InquisIT Kickoff Presentation, at Slide 5-6. Nothing in the record suggests that these individuals would not be able to perform, if incumbent staff were not recruited. Likewise, nothing in the record suggests that InquisIT’s identification of these key personnel was an attempt to mislead the agency. Cf. Patricio

Enters., Inc., supra, at 10 (sustaining protest where awardee misled the agency about the readiness of proposed personnel). That is, there is no basis to find that InquisIT either knowingly or negligently misrepresented that it would rely on specific personnel that it did not have a reasonable basis to expect to furnish during performance.⁸ See DKW Communications, Inc., supra, at 9.

Moreover, we emphasize that it is neither unusual nor inherently improper for an awardee to recruit and hire personnel previously employed with an incumbent contractor. Invertix Corp., B-411329.2, July 8, 2015, 2015 CPD ¶ 197 at 6. In fact, here, such recruitment was exactly what the awardee stated it would do in its quotation. See CACI Techs., Inc., supra, at 8. Thus, we agree with the agency that InquisIT's actions here in recruiting incumbent personnel were "perfectly acceptable." See MOL at 17. Likewise, the mere fact that InquisIT was seeking to hire additional qualified personnel to meet the needs of the RFQ (e.g., through job postings) does not demonstrate that InquisIT failed to propose appropriate personnel in its quotation or misrepresented the availability of the personnel. See PricewaterhouseCoopers LLP; IBM U.S. Fed., supra.

Lastly, the protester repeatedly argues that InquisIT's recruitment of KPS's incumbent employees is a violation of the RFQ's limitation on key personnel substitutions during the first 90 days of performance. Comments & Supp. Protest at 3, 7, 28; see RFQ at 37. In response, the agency asserts that KPS "places an inappropriate emphasis" on the 90-day restriction. Supp. MOL at 6. EXIM further maintains that the provision at issue only precluded the unilateral substitutions of key personnel, and that the limitation should be read in the context of the entire key personnel section of the solicitation. Id. According to the agency, the substitution provision did not require the agency to find a vendor unacceptable because they proposed to recruit incumbents. Id. at 7. We find the agency's explanation persuasive.

As an initial point, the record shows that the awardee did not expressly take exception to the specific provision or otherwise indicate that it did not intend to comply with the key personnel restrictions. Rather, InquisIT explained in its quotation that it promptly would be recruiting incumbent personnel and provide EXIM a "final roster" of its personnel within 10 days of being issued the order. AR, Tab 7A1d, InquisIT Final Quotation, at 41. The vendor further explained that within 25 days of award it would be "working with the incumbents and new hires to complete their onboarding." Id. at 42. Then, as InquisIT explained, on "Contract Day One" the vendor would be "fully staffed and the team

⁸ Even assuming for the sake of argument that InquisIT had intended all along to "switch" its proposed key personnel with KPS's incumbent employees, the protester's argument still fails because there is no evidence of "baiting." In this respect, KPS has not alleged that its incumbent employees--the ones InquisIT supposedly intended to use during performance--were less qualified than the personnel identified in InquisIT's quotation, such that any switch would have had a material impact on the evaluation. See STG, Inc., B-411415, B-411415.2, July 22, 2015, 2015 CPD ¶ 240 at 16.

well-prepared to execute all responsibilities without interruption or delay to the end-user.” Id. (emphasis removed). At no point did the awardee indicate that it intended to unilaterally substitute key personnel once performance began. Indeed, the protester’s contention otherwise is based solely on speculation, and finds no support in the record.

Regardless, whether the agency ultimately waives the substitution limitation and permits InquisIT to substitute personnel during the first 90 days of performance would not constitute a material change to the terms of the solicitation. In this regard, KPS has not established that InquisIT would gain an unfair advantage if the agency were to allow early substitutions, especially given that the protester has not argued that its incumbent personnel--the same individuals KPS proposed for performance--were less qualified than InquisIT’s.⁹ See AT&T Eng’g Techs., VECTOR Research Div., B-282670, B-282670.2, Aug. 13, 1999, 99-2 CPD ¶ 37 at 8-9 (denying allegation that awardee’s intent to hire incumbents violated solicitation restriction on substitutions of personnel during first 180 days of performance); see also Jardon & Howard Techs., Inc., B-414979, B-414979.2, Oct. 27, 2017, 2017 CPD ¶ 358 at 7 (rejecting challenge to non-incumbent awardee’s proposal to recruit incumbent personnel despite solicitation provision limiting the substitution of key personnel within the first 90 days of performance). As such, KPS’s unsupported complaints in this regard fail.¹⁰

In sum, the record reflects that InquisIT identified each of its proposed key personnel, as required by the RFQ, and also discussed its intention to recruit incumbent employees. There was no misrepresentation; thus, there was no bait and switch. In addition, it was unobjectionable that the agency both credited InquisIT’s proposed staffing while acknowledging that the vendor could utilize incumbent personnel during performance; there is nothing inconsistent or otherwise inappropriate with this evaluation. Based on our review of the record, KPS’s varied objections to EXIM’s evaluation of InquisIT’s staffing do not provide any grounds to sustain the protest.

⁹ Where there is no evidence that the agency was misled into selecting a vendor it would not otherwise have selected, we will not overturn a selection decision merely because the awardee ultimately employs different individuals than those proposed, particularly where the substituted employees have the same qualifications and skill levels as those proposed. See Airwork Ltd.-Vinnell Corp. (A Joint Venture), B-285247, B-285247.2, Aug. 8, 2000, 2000 CPD ¶ 150 at 5; B & K Enters., B-276066, May 7, 1997, 97-1 CPD ¶ 166 at 3-4.

¹⁰ In any event, whether InquisIT ultimately complies with the key personnel provisions at issue--which prescribe limitations and expectations for a contractor during performance (as opposed to a vendor in a pre-award setting)--are matters of contract administration that are outside of our Office’s review. See 4 C.F.R. § 21.5(a); DKW Communications, Inc., supra, at 8.

KPS's Quotation Disadvantages

Next, KPS protests the evaluation of its quotation under the management approach factor. By way of additional background, the TEB identified three disadvantages in KPS's quotation under the factor. First, the TEB highlighted as a "significant disadvantage" that while KPS proposed 19 FTEs for performance, the vendor provided that only [DELETED] of the 19 would be key personnel performing 1,920 labor hours per year. AR, Tab 6F5, Consensus TEB Report, at 35. In this respect, KPS proposed that most of the remaining FTEs would be full-time, but perform slightly less than 1,920 labor hours per year each such that the key personnel provisions would be inapplicable to most of the vendor's personnel. Id.; see AR, Tab 6E8, KPS 2d Response to Agency Exchanges, at 2-4 (Time Loading Chart). The TEB also expressed concern that KPS proposed a part-time (956 labor hours) [DELETED]; the agency explained its need for a full-time [DELETED] to meet the performance requirements. AR, Tab 6F5, Consensus TEB Report, at 36. Lastly, based on the government's "firsthand experience" with KPS's proposed [DELETED], the TEB concluded that the individual did not "possess adequate technical and [DELETED] skills to meet the Government's performance expectations under this requirement." Id. at 35.

KPS complains that the three disadvantages were unreasonably assigned. As explained below, because we conclude that the significant disadvantage regarding key personnel was unobjectionable, we need not address the protester's other challenges.

Here, we find reasonable the agency's assignment of a significant disadvantage to KPS's quotation on the basis that the vendor proposed only [DELETED] key personnel. As the evaluators explained, the solicitation's key personnel provisions were "specifically designed to ensure basic coverage, curb staff churning and create a pre-agreed financial disincentive for failure to staff [which] is a key risk in this type of requirement." Id. Under KPS's approach, however, only [DELETED] of the vendor's 19 FTEs would be subject to the key personnel provisions of the solicitation. Id. The TEB reasonably concluded that KPS's "failure to have the preponderance of the proposed staff subject to the key [personnel] clause without suggesting a clear alternative mitigant for this concern represents a risky proposal for the government." Id.

The source selection authority concurred with the TEB's concern. Specifically, the contracting officer highlighted that the "risk mitigation protections for the government derived from the Key Personnel clause were largely eliminated" by KPS's quotation. AR, Tab 9A11, Award Memo., at 35. The contracting officer also expressed concern that "[n]o alternative protections were offered." Id. Given these explanations, we find reasonable the significant disadvantage assigned to KPS's quotation.¹¹

¹¹ Likewise, KPS's tenuous disparate treatment argument fails because unlike the protester, the awardee proposed that all of its 18 FTEs would be key personnel, regardless if InquisIT were to use its proposed personnel for performance or recruit incumbent personnel for the positions. See Comments & Supp. Protest at 4, 11, 13.

(continued...)

Moreover, we find no merit to the protester's assertion that because a vendor was "free to propose its staffing mix," RFQ amend. 2, at 3, the agency, consequently, was precluded from downgrading a quotation based on a vendor's staffing mix. See Comments & Supp. Protest at 17-19. In this regard, KPS's contention that EXIM "could not evaluate based solely on the number of key personnel proposed" has no support in the record. See id. at 20. The RFQ here specifically advised that the agency would evaluate the vendor's staffing plan "to determine whether it identifies the staff mix and the amount of resources required to accomplish the requirements outlined in the PWS." RFQ at 56. Similarly, the agency was to assess the vendor's management plan, which was to include a time loading chart for key and generic staff. Id. at 57. In our view, the RFQ plainly permitted the agency to evaluate whether a vendor was attempting to "circumvent[]" the key personnel protections, as was the case here. See AR, Tab 6F5, Consensus TEB Report, at 38.

As a final matter, we need not address KPS's objections to the remainder of the disadvantages given the reasonableness of the significant disadvantage discussed above. In this respect, even assuming the agency erred in identifying a concern regarding the labor hours KPS proposed for its [DELETED], the protester has failed to demonstrate that it suffered competitive prejudice.¹² Competitive prejudice is an essential element of a viable protest, and we will sustain a protest only where the protester demonstrates that, but for the agency's improper actions, it would have had a substantial chance of receiving the award. Technology & Telecomms. Consultants, Inc., B-413301, B-413301.2, Sept. 28, 2016, 2016 CPD ¶ 276 at 14.

Here, the disadvantage regarding KPS's key personnel was considered significant and resulted in the protester's high risk rating under the management approach factor. In addition, InquisIT's lower-priced quotation was deemed low risk based on the identification of two advantages and one disadvantage. See AR, Tab 9A11, Award Memo., at 18, 20. Thus, even if the disadvantage regarding the part-time [DELETED] was eliminated, KPS's quotation would still be high risk and remain higher priced than InquisIT's quotation. On this record, the protester has not sufficiently demonstrated that it would have had a substantial chance of receiving the task order had the agency not identified the concern regarding the [DELETED]'s labor hours. Consequently, KPS cannot establish that the disadvantage competitively prejudiced the protester.¹³ See

(...continued)

The agency's reasonable concerns with KPS's quotation simply do not apply to InquisIT's quotation.

¹² The third disadvantage, regarding the technical and [DELETED] skills of the protester's [DELETED], was not discussed as part of the source selection authority's award determination. See AR, Tab 9A11, Award Memo., at 34-37.

¹³ For this same reason, we need not address KPS's protest allegation regarding the exchanges the agency had with the vendor, because the challenges to the exchanges at issue focus on the [DELETED]'s proposed hours.

Bart & Assocs., Inc., B-407996.5 et al., Jan. 5, 2015, 2015 CPD ¶ 61 at 19 (finding no prejudice where protester would not have had a substantial chance of receiving award because elimination of weaknesses would have still left protester technically equal and higher priced than awardee).

We deny the protest.

Thomas H. Armstrong
General Counsel