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Decision

Matter of: Insight Technology Solutions, Inc.

File: B-417388; B-417388.2

Date: June 19, 2019

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Michael Willems, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging that awardee's proposal contained material misrepresentations is denied where the record does not support a conclusion that the proposal contained misrepresentations or that the agency relied on any false information.
 2. Protest alleging agency erred in evaluation of past performance is denied where the agency's evaluation was reasonable and consistent with the terms of the solicitation.
 3. Protest that agency erred in conducting a best-value tradeoff by failing to consider the strengths of the protester's technical approach is denied where the solicitation established that the technical approach would be evaluated as either acceptable or unacceptable and the tradeoff would be based solely on consideration of past performance and price.
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DECISION

Insight Technology Solutions, Inc. (ITS), a small business of Bowie, Maryland, protests the issuance of a task order to BB&E, Inc., a small business of Northville, Michigan, pursuant to fair opportunity proposal request (FOPR) No. FA4890-19-R-9956, under the General Services Administration's (GSA) OASIS Small Business indefinite-delivery, indefinite-quantity contract for engineering and environmental advisory and assistance program support services for the Air Force. The protester alleges that the awardee's

proposal included material misrepresentations, and that the agency erred in its evaluation of proposals and best-value tradeoff decision.

We deny the protest.

BACKGROUND

The Air Force issued the FOPR on December 10, 2018. Memorandum of Law (MOL) at 3. The FOPR contemplated the issuance of a single fixed-price task order, with a cost-reimbursable contract line item for travel. Agency Report (AR), Tab 5, Conformed FOPR at 1. The FOPR provided that proposals would be evaluated on the basis of three evaluation factors: (1) past performance; (2) technical; and (3) price. FOPR at 2. The FOPR also indicated that award would be made on the basis of a tradeoff between price and past performance, with past performance being significantly more important than price. Id. The FOPR noted, however, that the greater the equality of proposals under factors other than price, the more important price would become in the best-value tradeoff. Id.

With respect to past performance, the FOPR provided that offerors would be assigned one of the following confidence ratings based on the offeror's overall record of recency, relevancy, and quality of performance: (1) substantial confidence; (2) satisfactory confidence; (3) neutral confidence; (4) limited confidence; (5) no confidence. FOPR at 8-10. Regarding the relevance of past performance information, the FOPR provided that the evaluation team would conduct an in-depth review and evaluation of all performance data obtained to determine how closely the work performed under those efforts relates to the proposed effort. Id. at 5. However, the FOPR also noted that each past performance effort would be assigned a relevance rating on the basis of two factors: (1) the number of locations outside the continental United States (OCONUS) at which the offeror performed services; and (2) the number of full-time employees each effort involved. Id. at 8-9. For example, a past performance effort that involved experience at five OCONUS locations and at least fourteen full-time employees would receive a rating of "very relevant," while an effort that involved experience at three OCONUS locations and ten full-time employees would receive a rating of "relevant." Id.

With respect to the technical factor, the FOPR indicated that the offerors' proposals would be evaluated solely on the basis of their proposed transition plans. FOPR at 10-11. While, the FOPR provided that the agency may assign strengths, weaknesses and deficiencies in the evaluation of the technical factor, proposals would ultimately receive either a rating of "acceptable" or "unacceptable," and proposals that exceeded the evaluation criteria would not receive higher ratings. Id. at 3-4, 10-11. The FOPR additionally noted that the tradeoff between price and past performance would be made among only technically acceptable proposals, and that unacceptable proposals would be ineligible for award. Id. 10-11.

With respect to price, the FOPR provided that offerors should submit proposals on a fixed-price, level-of-effort basis showing direct¹ and fully-burdened rates. FOPR at 7. Additionally, each offeror was to propose pricing for fourteen full-time equivalents (FTEs) distributed across eight labor categories. Id. The FOPR indicated that an offeror could be rejected as unawardable if its price was evaluated as unfair, unreasonable, unbalanced or unrealistic. Id. at 11. With respect to price realism, the FOPR noted that an example of an unrealistically low proposed price would be a price that included labor rates that were so low that the agency could not make a reasonable determination that an offeror could successfully attract, hire, and retain qualified personnel for the labor categories proposed. Id.

The agency received four proposals, including one from ITS and one from BB&E. The agency assigned ITS's overall past performance a rating of substantial confidence, while the agency assigned BB&E a rating of satisfactory confidence. AR, Tab 20, Fair Opportunity Decision Document (FODD) at 29. Both ITS and BB&E received technical ratings of acceptable, and proposed prices of \$16,965,052.16 and \$15,526,894.62, respectively. Id.

On March 1, 2019, the agency notified ITS that it was an unsuccessful offeror. MOL at 7. On March 6, the agency issued the task order to BB&E. Id. ITS requested and received a post-award debriefing on March 5, followed by an exchange of questions and answers closing on March 8. Id. This protest followed.²

DISCUSSION

ITS argues that the award decision is flawed in several respects. First, ITS alleges that BB&E's proposal contained material misrepresentations, and that the agency should accordingly exclude it from the competition. Supp. Protest at 4-6. Second, ITS contends that the agency erred in its evaluation of proposals and in its best-value tradeoff decision. Protest at 15-23. Specifically, ITS contends that the agency did not adequately assess the relevance or quality of past performance information, failed to consider differences between the offerors' technical approaches, and conducted a best-value tradeoff decision that was inadequately documented and irrational because of those errors. Id. The protester additionally alleges that the agency erred in performing its price realism analysis. Supp. Protest at 6-11. We address these arguments in turn.

¹ In this regard, the agency refers to unburdened labor rates as direct labor rates. See, e.g., Fair Opportunity Decision Document at 24-28.

² The protested task order is valued at more than \$10 million and was issued under GSA's OASIS Small Business multiple-award contract. Accordingly, our Office has jurisdiction to consider the protest. 41 U.S.C. § 4106(f).

Material Misrepresentations

ITS contends that BB&E's proposal contained material misrepresentations related to both its past performance and to its proposed personnel. Supp. Protest at 4-6. First, ITS argues that BB&E overstated the number of OCONUS locations and full-time personnel on specific past performance efforts in order to create the impression that its past performance efforts were more relevant than they actually were. Id. at 4-5. Second, ITS notes that BB&E proposed the entire incumbent staff as part of its technical approach. Id. at 5-6. Proposing the incumbent workforce was not possible, however, because ITS (or its subcontractor) secured signed, exclusive commitments from all the incumbent staff stating that no other offeror had permission to present their resumes and qualifications in connection with the instant procurement. Id. Accordingly, ITS contends that BB&E had no reasonable expectation that its proposed staff would actually work for it on this procurement, which our decisions have concluded constitutes a material misrepresentation. Id. (citing Sev1Tech, Inc., B-416811, B-416811.2, Dec. 18, 2018, 2018 CPD ¶ 429). On the basis of these two alleged material misrepresentations, the protester argues that BB&E should be excluded from the competition.

The protester is correct that, in some circumstances, we have recommended that an offeror be excluded from a competition as the result of a misrepresentation. See, e.g., Patricio Enterprises, Inc., B-412738, B-412738.2, May 26, 2016, 2016 CPD ¶ 145 at 15 (recommending exclusion of awardee from competition where the awardee made material misrepresentations that the awardee had signed offer letters in place for certain proposed personnel despite never having provided such letters to those individuals); Informatics, Inc., B-188566, Jan. 20, 1978, 78-1 CPD ¶ 53 at 13 (sustaining protest and recommending exclusion of awardee's proposal from further consideration where awardee made false statements about the methodology and results of a survey of incumbent staff concerning their willingness to accept employment with the awardee). An offeror's misrepresentation that materially influences an agency's consideration of its proposal is a material misrepresentation that generally provides a basis for proposal rejection or termination of a contract award based upon the proposal. ACS Gov't Servs., Inc., B-293014, Jan. 20, 2004, 2004 CPD ¶ 18 at 4; ManTech Advanced Sys. Int'l, Inc., B-255719.2, May 11, 1994, 94-1 CPD ¶ 326 at 5. However, in this case, ITS misreads BB&E's proposal and the applicability of our decisions.

With respect to the protester's arguments that BB&E's proposal contained a misrepresentation concerning its past performance, the allegations do not establish a material misrepresentation. The protester has alleged that BB&E made certain representations concerning the number of OCONUS locations and full-time staff involved in its past performance efforts, and that the agency's review of those past performance efforts established that those efforts involved different numbers of OCONUS locations and full-time staff than BB&E had represented in its proposal. Supp. Protest at 4-6. However, the agency has indicated that it believed those differences to be a result of either a different accounting method or a good faith error, and, in any case, the record reflects that the agency did not rely on the allegedly

erroneous information in BB&E's proposal, but rather on information that resulted from its own investigation. MOL at 26-27.

The protester has not alleged convincing evidence to rebut the agency's conclusion that BB&E did not deliberately misrepresent its past performance.³ See Protester's Comments at 9-10. Furthermore, even assuming for the sake of argument that BB&E's proposal contained a misrepresentation, the protester does not contest that the agency identified the allegedly erroneous information, and did not rely on it in making its award decision. Id. Our decisions have been clear that, where an alleged misrepresentation had no effect on the evaluation, that misrepresentation was not material and does not implicate the validity of the award decision. See, e.g., Dev Tech. Group, B-412163, B-412163.5, Jan. 4, 2016, 2016 CPD ¶ 10 at 9-10 (even assuming a misrepresentation, protest is denied where the alleged misrepresentation did not affect the evaluation and was therefore not material). Accordingly, the protester's argument that BB&E's proposal contained a material misrepresentation with respect to its past performance is without merit.

Concerning the alleged key personnel misrepresentation, the issue of whether personnel identified in an offeror's proposal, in fact, perform under the subsequently-awarded contract is generally a matter of contract administration that our Office does not review. See 4 C.F.R. § 21.5(a); Future-Tec Mgmt. Sys., Inc.; Computer & Hi-Tech Mgmt., Inc., B-283793.5, B-283793.6, Mar. 20, 2000, 2000 CPD ¶ 59 at 18-20. Nonetheless, our Office will consider allegations that an offeror 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, as such a material misrepresentation has an adverse effect on the integrity of the competitive procurement system. Ryan Assocs., Inc., B-274194 et al., Nov. 26, 1996, 97-1 CPD ¶ 2 at 7. Our decisions frequently refer to such circumstances as a "bait and switch." Id. In order 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. CACI Techs., Inc., B-408858, B-408858.2, Dec. 5, 2013, 2013 CPD ¶ 283 at 4-5; ACS Gov't Servs., Inc., supra at 4, 10.

This case is clearly distinguishable from the "bait and switch" decisions relied on by the protester. As a preliminary matter, in decisions where we have sustained a protest alleging a "bait and switch" material misrepresentation, the solicitation generally

³ The protester's allegations rest on a chain of inferences grounded solely on the fact that information in BB&E's proposal was inconsistent with what the agency's past performance inquiries revealed, and that this inconsistency could not be readily explained from an examination of BB&E's proposal. Protester's Comments at 9-10. The record before us is insufficient to establish a material misrepresentation.

required offerors to propose specific key personnel, to submit resumes and letters of commitment, or to seek agency approval prior to any substitutions in certain personnel. See, e.g., Sev1Tech, Inc., supra at 2 (solicitation included key personnel requirement and required submission of resumes); ManTech Advanced Sys. Int'l, Inc., supra at 2 (solicitation required submission of resumes and government approval of substitutions). By contrast, the instant solicitation does not require the identification of any specific personnel, the submission of any resumes or letters of commitment, nor the agency's approval of changes in proposed personnel.⁴ To the contrary, while the solicitation specifically calls for offerors to outline their approach to capture and retain the staff working on the incumbent task order, it also calls for offerors to provide an approach to replacing any incumbent staff who cannot be retained. FOPR at 6-7.

While we have concluded that an offeror may not represent the commitment of incumbent employees based only on a hope or belief that the offeror will ultimately be able to make good on its representation, BB&E's proposal does not represent that it has received any particular commitments from the incumbent employees. ManTech Advanced Sys. Int'l, Inc., supra at 12-13. While BB&E's proposal names the incumbent staff in its proposal and indicates that it intends to perform the effort with those individuals, the proposal does not represent that those individuals have committed to work for BB&E. AR, Tab 16, BB&E Technical Proposal at 11-13. Instead, the proposal, when read as a whole, suggests that BB&E has communicated with some or all of the incumbent staff and hopes to employ them, if possible, but does not represent that BB&E has made any offers of employment or received any commitments from those staff. Id. Specifically, BB&E's proposal makes the limited representation that it intends to make offers of employment to incumbent personnel in the future (which suggests no offers have yet been made), and has also identified other qualified personnel that it intends to use if the incumbent personnel decline those offers.⁵ Id.

⁴ The performance work statement (PWS) requires that the government be notified of changes in staff post-award, but does not require government approval of substitutions. See, e.g., AR, Tab 6, PWS at 19

⁵ The closest BB&E's proposal comes to making any affirmative representation concerning the availability of incumbent staff is the statement that BB&E "has already discussed the transition with incumbent staff in order to ensure retention of staff and will have all fourteen (14) on-site personnel in place on Day 1 of [the period of performance]." AR, Tab 16, BB&E Technical Proposal at 13. However, the proposal also notes, on the prior page, that the incumbent staff may or may not be hired, either due to their individual choices or the agency's indication that they would prefer alternative staff, and that BB&E has identified other qualified staff to ensure full staffing at the start of performance. Id. at 12. The proposal, therefore, fairly contemplates that the fourteen personnel that will be in place at the beginning of the period of performance may or may not be the incumbent staff.

In short, there is no evidence in the record that BB&E made any specific representations (much less misrepresentations) concerning the availability of key personnel in the sense contemplated by our prior decisions, nor does the solicitation in this case require BB&E to have made any such representations. By way of example, in our decision in Sev1Tech we found a material misrepresentation where the awardee included incumbent staff resumes in its proposal and represented that it had made contingent offers of employment to those staff, but had, in fact, not contacted those staff prior to award. See Sev1Tech, supra. By contrast, in this case, BB&E included no resumes, and did not suggest that it had made any offers of employment. Rather, BB&E merely represented that it had communicated with the incumbent staff, intended to hire them in the future, if possible, but had a plan in place if it could not do so. AR, Tab 16, BB&E Technical Proposal at 11-13.

Finally, regarding ITS's allegation that the incumbent employees have not given any other offerors their permission to propose them for this procurement, where, as here, the solicitation specifically requires all offerors to explain how they intend to retain the incumbent staff, BB&E's naming of the incumbent personnel and expressing an intent to hire those individuals to perform the effort, if possible, is an unobjectionable response to that solicitation requirement. Moreover, while the protester's letters of exclusivity stated that only ITS or its subcontractor may offer the resumes and qualifications of the undersigned incumbent staff for the procurement, no offeror, including ITS, included any resumes in their proposals. MOL at 16-17, 27-28; AR, Tab 10, ITS Technical Proposal, at 19-32. The letters likewise include no prohibition on communication with other offerors. Id. Accordingly, there is no apparent inconsistency between the limited representation in BB&E's proposal that it communicated with the incumbent staff and the terms of ITS's letters of exclusivity. On these facts, the protester has not established that BB&E's proposal contained a material misrepresentation.

Past Performance

With respect to past performance, the protester argues that the agency did not adequately consider the relative relevance or quality of the offerors' past performance. Protest at 15-18, 22-23; Supp. Protest at 11-13. In this regard, the protester contends that, although it received the highest possible past performance confidence rating and BB&E received a lower confidence rating, had the agency appropriately considered the relevance and quality of the past performance efforts, one of its past performance references would have received a higher relevance rating and the agency would have reached a different conclusion in its best-value tradeoff. Id.

The evaluation of technical proposals and the determination of the relative merit or relevance of past performance references are generally matters within the agency's discretion, which our Office will not disturb unless they are shown to be unreasonable or inconsistent with the solicitation's evaluation criteria. American Systems Corp., B-413952.3, B-413952.4, June 23, 2017, 2017 CPD ¶ 204 at 6-7; NCI Information Systems, Inc., B-412680, B-412680.2, May 5, 2016, 2016 CPD ¶ 125 at 4; ORBIS Inc., B-408033.2, June 3, 2013, 2013 CPD ¶ 140 at 4. A protester's disagreement without

more, does not form the basis for us to conclude that an evaluation was unreasonable. See DynCorp International, LLC, B-412451, B-412451.2, Feb. 16, 2016, 2016 CPD ¶ 75 at 7-8.

With regard to relevance, the protester argues that the agency's assessment mechanically assessed only the numbers of OCONUS locations and full-time employees on prior efforts, and did not consider other ways in which past performance efforts were potentially more similar to the instant procurement. Supp. Protest at 11-13. The protester notes that the solicitation provided that the agency would perform an in-depth review and evaluation of all performance data obtained to determine how closely the work performed under those efforts relates to the proposed effort, but that the agency did not consider any factors other than the number of OCONUS locations and full-time staff in assessing relevance. Id. For example, the protester contends that, had the agency appropriately considered relevance, one of ITS's past performance efforts, which involved performing all services relevant to this procurement, would have been considered very relevant rather than merely relevant. Id.

While the protester is correct that the solicitation included general language suggesting that the agency would perform an in-depth review and evaluation of performance data that it obtained, the solicitation also included a detailed chart that more specifically defined how each past performance effort would be assigned an adjectival rating for relevance. FOPR at 5, 8-9. That chart defined the adjectival ratings for relevance solely in terms of the number of OCONUS locations and full-time staff involved in each past performance effort. Id. at 8-9. While the solicitation contemplated that the agency may consider a variety of factors in assessing relevance, the solicitation also made it abundantly clear that the primary factors which the agency intended to use in evaluating relevance were the number of OCONUS locations and full-time staff involved in each past performance effort. Id. In this regard, the record supports that while the agency made its determinations of relevance primarily on the basis of those two factors, the agency's evaluation also briefly discussed the nature of the work performed on prior efforts and in some cases related it to the instant procurement.⁶ See FODD at 5-6, 9-11. The protester, in essence, quibbles with the depth of the agency's assessment of factors that the solicitation suggested were to be, at best, peripheral to the agency's assessment of past performance relevance. This argument amounts to nothing more

⁶ The protester argues that the agency only asked "two questions" of past performance points of contacts, inquiring about the number of OCONUS locations and full-time staff. Protester's Comments at 2-3. The protester argues that this underscores the mechanical nature of the agency's evaluation of past performance, but this argument reflects a misreading of the record. Id. The agency's correspondence instead indicated that it only had two questions for the points of contact that it could not otherwise address with information already in its possession, such as contractor performance assessment reporting system (CPARS) information. AR, Tab 23, Past Performance Government Responses at 1-2.

than either disagreement with the agency's evaluation judgment, or, arguably, an untimely protest of the terms of the solicitation,⁷ and is meritless.

The protester additionally contends that the agency erred in several respects in its assessment of the quality of past performance efforts. Protest at 15-17. Specifically, the protester argues that the solicitation provided that the agency's confidence assessment would be based on an offeror's "overall record of recency, relevancy, and quality of performance," but that the agency's brief consideration of quality was mechanically based on a comparison of CPARS ratings. Id. (citing FOPR at 9). The protester suggests that the agency, first, erred in considering the CPARS ratings of ITS and BB&E to be broadly equivalent, and, second, that the agency should also have examined the context of the CPARS ratings and considered, for example, the nature and types of work performed on those past performance efforts. Protester's Comments at 3-4.

As a preliminary matter, the protester's suggestion that the agency's assessment of past performance quality should have considered the types and nature of work performed on prior efforts, and how that work relates to the current effort, is a description of a past performance relevance assessment (which addresses how similar the prior effort was to the current effort) and not a past performance quality assessment (which addresses how well the prior effort was performed). The protester's argument that the agency should have considered those factors in its consideration of past performance quality, is in effect, a suggestion that the agency double-count past performance relevance.

Turning to the substance of the protester's arguments, the record reflects that the agency considered quality of performance through a review of the underlying facts in the relevant CPARS, and did not merely mechanically rely on the CPARS ratings. For example, the agency's evaluation called out specific relevant information in the CPARS concerning the quality of contract performance. See, e.g., FODD at 9. Furthermore, contrary to the protester's suggestion that the agency erroneously viewed the CPARS ratings as equivalent, the relevant CPARS ratings do not appear to significantly differ.⁸ See FODD at 4-7, 9-11. While the contemporaneous record reflects that the discussion of past performance quality was brief, the protester has not alleged, and the record does not reflect, any meaningful differences in quality of past performance (as opposed

⁷ Protests based upon alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial proposals must be filed prior to the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1).

⁸ Recognizing that ITS's past performance efforts were determined to be generally more relevant than BB&E's, the quality ratings were nonetheless quite similar. In order from most to least relevant past performance efforts, ITS received ratings of: (1) very good to exceptional; (2) satisfactory; and (3) satisfactory to very good. FODD at 4-7, 9-11. BB&E received ratings of: (1) exceptional; (2) satisfactory; (3) and satisfactory. Id.

to relevance of past performance) between the offerors. Accordingly, we have no basis to conclude that the agency erred in this respect, and this protest allegation is without merit.

As a related matter, the protester alleges that the agency's best-value tradeoff was unreasonable and inadequately documented because it discussed only the difference in relevance ratings when comparing ITS's past performance to BB&E's past performance. Protest at 22; Protester's Comments at 5. Specifically, the agency's best-value tradeoff stated, in relevant part, that "the difference between ITS's confidence rating was due to a Very Relevant. However, the difference of ITS having one (1) [past performance information reference] as Very Relevant was not worth an additional \$1.4M." Id. (citing FODD at 30). The protester argues that this assessment ignores other significant differences between the past performance of the offerors, and amounts to an impermissible failure to look behind the adjectival ratings. Id.

In this case, the FODD incorporated significant discussion of the agency's evaluation of relevance and quality of past performance references, as discussed above. Specifically, the language quoted above comes at the conclusion of a 30-page document discussing the merits of the various proposals in detail. See FODD generally. Therefore, when read as a whole, the decision document clearly demonstrates that the agency considered the underlying details of the evaluation in making its source selection decision. Id. The fact that the best-value tradeoff discussion reasonably focused on the element of the evaluation that the agency viewed as most salient in distinguishing between the offerors is unobjectionable, notwithstanding that the protester disagrees with the agency's assessment of salience. As a general matter, we will not substitute our judgment for that of the agency where the agency's evaluation is reasonable and consistent with the solicitation criteria and applicable procurement statutes and regulations. Public Commc'ns Servs., Inc., B-400058, B-400058.3, July 18, 2008, 2009 CPD ¶ 154 at 17. On the record provided, we have no basis to conclude that the agency was unreasonable in concluding that ITS's admittedly superior past performance was not worth an approximately 9 percent price premium.

Technical Approach

The protester argues that the agency erred by failing to assign it strengths for its superior technical approach. Protest at 18-20. Specifically, the protester notes, among other things, that its proposal included exclusive letters of commitment from incumbent staff, which reduced transition risk, and proposed a 15-day transition period instead of the 30-day transition period required by the FOPR. Id. The protester additionally contends that the agency erred by failing to consider its alleged technical superiority in the best-value tradeoff. Id. at 22-23.

In response, the agency notes that even if the protester's technical approach merited the assignment of a strength, the protester was not prejudiced thereby because the best-value tradeoff methodology outlined in the FOPR did not provide for consideration of the technical evaluation factor. MOL at 13-20. Specifically, the FOPR provided that

offerors would receive a rating of acceptable or unacceptable for their technical approach. FOPR at 10. While the FOPR did contemplate that strengths, weaknesses, and deficiencies could be assigned, the FOPR also provided that proposals that exceed the evaluation criteria would not receive higher ratings. Id. at 3-4, 10. More significantly, the FOPR provided that the award would be made on the basis of a tradeoff between price and past performance, and did not provide for a tradeoff on the basis of technical merit. Id. at 2.

In response, the protester points to general language in the solicitation indicating that the award decision will be based on an “integrated assessment of the evaluation factors and total overall evaluated price.” Protester’s Comments at 6-7 (citing FOPR at 2). The protester argues that this, and other similar language, suggests that the technical evaluation factor would also be considered in the best-value tradeoff decision. Id. The protester also contends that the fact that the solicitation provides for the assignment of strengths, weaknesses, and deficiencies for the technical evaluation factor supports its reading of the FOPR. Id.

As noted above, the evaluation of technical proposals and the determination of the relative merit or relevance of past performance references are generally matters within the agency’s discretion, which our Office will not disturb unless they are shown to be unreasonable or inconsistent with the solicitation’s evaluation criteria. American Systems Corp., supra. In this case, the protester’s argument that the solicitation requires the agency to consider the technical factor in the best-value tradeoff ignores the specific language in the solicitation explicitly describing how the technical evaluation factor will be considered in the award decision. The FOPR provides that technically unacceptable proposals will not be eligible for award, and that the tradeoff will be made only among technically acceptable proposals. FOPR at 2, 10. Further, the FOPR notes that proposals which exceed the criteria for acceptability will not receive higher ratings. Id. at 10. Most importantly, the FOPR clearly establishes that the best value tradeoff will be made between past performance and price and provides the weight those factors will be given in the decision, without reference to any consideration of the technical evaluation factor or its relative weight. Id. at 2.

Accordingly, there is no reason to conclude that the agency should have considered technical merit as a distinguishing factor among otherwise technically acceptable proposals in the best-value tradeoff decision. Because the protester cannot establish that it was prejudiced by the agency’s failure to assign it a technical strength, we need not consider the protester’s arguments concerning the agency’s failure to evaluate additional technical strength in its proposal. See, e.g., American Cybernetic Corp., B-310551.2, Feb. 1, 2008, 2008 CPD ¶ 40 at 2-3 (prejudice is an essential element to every viable protest, and where an agency’s improper actions did not affect the protester’s chances of receiving award, there is no basis for sustaining the protest).

Price Realism

Finally, the protester argues that the agency's price realism analysis was unreasonable. Supp. Protest at 6-11. Specifically, ITS notes that the fixed-price portion of the contract is driven by compensation for personnel, and BB&E proposed to use precisely the same personnel as ITS. Id. Because BB&E's proposed pricing entailed significant pay reductions for many of those staff, ITS contends that BB&E will be unable to capture the incumbent personnel. Id. Accordingly, ITS contends that it was unreasonable for the agency to conclude that BB&E's proposed price, which was based on a technical approach that involved retaining the incumbent staff, was realistic. Id.

Where, as here, a solicitation provides for a price realism analysis, the depth of an agency's price realism analysis is a matter within the sound exercise of the agency's discretion. Navistar Def., LLC; BAE Sys., Tactical Vehicles Sys. LP, B-401865 et al., Dec. 14, 2009, 2009 CPD ¶ 258 at 17. In reviewing protests challenging price realism evaluations, our focus is on whether the agency acted reasonably and in a manner consistent with the solicitation's requirements. General Dynamics One Source, LLC; Unisys Corp., B-400340.5, B-400340.6, Jan. 20, 2010, 2010 CPD ¶ 45 at 9.

In this case, the agency assessed the realism of BB&E's prices by comparing BB&E's labor rates (to include direct rates, fully burdened rates, and indirect rates) to the independent government estimate, historical pricing, and the pricing of other offerors.⁹ FODD at 23-28. The agency's price realism analysis provided significant detail, and concluded that BB&E's direct labor rates for various labor categories ranged from [DELETED] percent lower to [DELETED] percent higher when compared to ITS's rates and the current contract rates.¹⁰ MOL at 23. On the basis of that comparison, as well as a comparison of the composition of indirect rates, the agency found that BB&E's proposed rates were realistic. FODD at 24-26.

With respect to the protester's specific contention that BB&E's direct labor rates are too low to capture the incumbent staff and therefore unrealistic, this argument is without merit. While the protester is correct that BB&E's proposed direct labor rates would require some number of incumbent employees to accept an up to [DELETED] percent pay cut, the record reflects that BB&E's fringe rates were approximately [DELETED] percent higher than ITS's fringe rates on average, which suggests that BB&E's total compensation structure may, to some extent, offset that reduction in pay. See FODD

⁹ One offeror proposed a lower price than BB&E, and the agency conducted a more detailed price realism analysis of the price information in that offeror's proposal, ultimately concluding that it was unrealistically low. FODD at 26-27.

¹⁰ While BB&E's price was approximately 9 percent lower than ITS's price overall, BB&E also proposed significantly lower percentages of [DELETED], so a significant portion of the price difference is not attributable to differences in the offerors' unburdened labor rates. See FODD at 24-26, 28.

at 25-26, 28. Additionally, while BB&E proposed pay cuts for some positions, it also proposed significant pay raises for other positions. Id. More significantly, as discussed above, BB&E's technical approach is not necessarily dependent on successfully retaining all incumbent staff. While BB&E's proposal indicated that BB&E intended to attempt to hire the incumbent staff, it also indicated that BB&E had identified additional alternative staff in the event incumbents were not hired, and the agency's evaluation acknowledged that aspect of BB&E's proposal. See FODD at 7-8.

Furthermore, on this record we cannot conclude that the differences in the proposed rates are so significant as to suggest that BB&E's rates are per se too low. See Apptis, Inc., B-403249, B-403249.3, Sept. 30, 2010, 2010 CPD ¶ 237 at 10-11 (protest of professional compensation analysis denied where differences in professional compensation were not significant enough to be unreasonable per se). Accordingly, we have no basis to conclude that the agency's price realism analysis was unreasonable or inconsistent with the terms of the solicitation.

The protest is denied.

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