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Decision

Matter of: OBXtek, Inc.

File: B-419478; B-419478.2

Date: March 23, 2021

Lewis P. Rhodes, Esq., General Counsel, PC, for the protester.
Jon D. Levin, Esq., Maynard Cooper & Gale PC, for Beshenich Muir & Associates, LLC, the intervenor.
William J. Wrabley, III, Esq., and Alexa Bryan, Esq., Department of the Army, for the agency.
Jonathan L. Kang, Esq., and Evan C. Williams, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the evaluation of the realism of the awardee's proposed costs is denied where the agency reasonably found that the costs were realistic and did not require adjustments.
2. Protest challenging the agency's evaluation of technical proposals is denied where the evaluations were reasonable and consistent with the terms of the solicitation.
3. Protest challenging the evaluation of the awardee's corporate experience is denied where the record shows no possibility that the agency's evaluation could have resulted in prejudice to the protester.

DECISION

OBXtek, Inc., a service-disabled veteran-owned small business (SDVOSB), of McLean, Virginia, protests the issuance of a task order to Beshenich Muir & Associates, LLC (BMA), also a SDVOSB, of Leavenworth, Kansas, under request for proposals (RFP) No. RS3-20-0044, which was issued by the Department of the Army, Army Materiel Command, for program management, administrative support, and training at regional signal training sites (RSTS). The protester argues that the agency unreasonably evaluated OBXtek's and BMA's cost and technical proposals.

We deny the protest.

BACKGROUND

The Army issued the solicitation on September 11, 2020, seeking proposals to provide program management, administrative support, and instructors for training sponsored by the Army Cyber Center of Excellence. Agency Report (AR), Tab 2, RFP at 1; Tab 6, Performance Work Statement (PWS) at 3. The work will be performed at 11 RSTS locations in and outside the continental United States. PWS at 3. The RFP limited competition to SDVOSBs that hold Responsive Strategic Sources for Services (RS3) indefinite-delivery, indefinite quantity (IDIQ) contracts awarded by the agency. RFP at 1. The solicitation anticipated the issuance of a task order with fixed-price and cost-reimbursement contract line item numbers, with a base period of 1 year, and one 1-year option. *Id.* at 7.

The RFP advised offerors¹ that proposals would be evaluated based on three factors: (1) technical, (2) small business participation, and (3) cost. *Id.* at 34-38. The small business participation factor was to be evaluated on an acceptable/unacceptable basis. *Id.* at 38. The technical factor had four elements: (1) transition-in, (2) management approach, (3) staffing approach, and (4) corporate experience. *Id.* at 24-27. The RFP advised that adjectival ratings would be assigned to each element of the technical factor, but that “[t]here will NOT be an overall rating for Volume I – Technical.” *Id.* at 36. For the technical factor elements, the RFP stated that proposals would be assigned ratings of high confidence, some confidence, or low confidence. *Id.* at 37. For purposes of the best-value tradeoff award decision, the technical factor was “significantly more important” than cost. *Id.* at 35.

The Army received proposals from 11 offerors, including OBXtek and BMA, by the closing date of September 28. AR, Tab 1, Task Order Decision Document (TODD) at 4; Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 3. The agency evaluated OBXtek’s and BMA’s proposals as follows:

¹ Although firms that compete for task and delivery orders under multiple award IDIQ contracts are commonly referred to as “vendors,” our decision uses the term “offeror” to be consistent with the record provided by the agency.

	OBXtek	BMA
Technical Factor		
Transition-In	High Confidence	High Confidence
Management Approach	High Confidence	High Confidence
Staffing Approach	Some Confidence	Some Confidence
Corporate Experience	Some Confidence	High Confidence
Small Business Participation	Acceptable	Acceptable
Proposed Cost	\$36,827,630	\$32,048,215
Evaluated Cost	\$36,827,630	\$32,048,215

AR, Tab 1, TODD at 8, 17.

The contracting officer, who was also the source selection authority, selected BMA's proposal for award. *Id.* at 22-23. The contracting officer found that "[w]hen compared to OBXtek, BMA offers the Government a stronger technical approach for both Element 2: [Management] and Element 4: Corporate Experience." *Id.* at 22. The contracting officer also noted that OBX's total evaluated cost "represents a 13% premium" as compared to BMA's evaluated cost. *Id.* Based on these findings, the contracting officer concluded that "[a]ward to BMA will provide the greatest overall benefit in response to this requirement." *Id.*

The Army notified OBXtek of the award on November 23, and provided a debriefing that concluded on December 14. COS/MOL at 17. This protest followed.²

DISCUSSION

OBXtek raises three primary arguments: (1) the agency unreasonably evaluated the realism of the awardee's proposed costs; (2) the agency unreasonably and unequally evaluated the offerors' proposals under the transition plan and staffing plan elements under the technical plan factor; and (3) the agency improperly considered the corporate experience of one of the awardee's proposed subcontractors because it did not qualify as a "major subcontractor" under the terms of the RFP. Based on our review of the record, we find that none of the protester's arguments merit sustaining the protest.³

² The awarded value of the task order at issue exceeds \$25 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award IDIQ contracts awarded under the authority of Title 10 of the United States Code. 10 U.S.C. § 2304c(e)(1)(B).

³ OBXtek also raises other collateral arguments. Although we do not address every argument, we have reviewed them all and find no basis to sustain the protest.

This task order competition was conducted among RS3 contract holders pursuant to the provisions of Federal Acquisition Regulation (FAR) subpart 16.5. In reviewing protests of awards in task order competitions, we do not reevaluate proposals or quotations but examine the record to determine whether the evaluations and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. *DynCorp Int'l LLC*, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 7. It is a fundamental principle of federal procurement law that a contracting agency must treat all offerors or vendors equally and evaluate their proposals or quotations evenhandedly against the solicitation's requirements and evaluation criteria. *Sumaria Sys., Inc.; COLSA Corp.*, B-412961, B-412961.2, July 21, 2016, 2016 CPD ¶ 188 at 10. A protester's disagreement with the agency's judgment regarding the evaluation of proposals or quotations, without more, does not establish that the agency acted unreasonably. *Imagine One Tech. & Mgmt., Ltd.*, B-412860.4, B-412860.5, Dec. 9, 2016, 2016 CPD ¶ 360 at 4-5.

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. See *DRS ICAS, LLC*, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 21-22. Where the record establishes no reasonable possibility of prejudice, we will not sustain a protest even if a defect in the procurement is found. See *Procentrix, Inc.*, B-414629, B-414629.2, Aug. 4, 2017, 2017 CPD ¶ 255 at 11-12.

Cost Realism Evaluation

First, OBXtek argues that the Army unreasonably evaluated the realism of BMA's proposed costs. Comments at 5-6. Specifically, the protester contends that the agency improperly failed to adjust any of the awardee's proposed costs, despite the fact that they were lower than the protester's proposed costs and certain of the agency's estimates. *Id.* For the reasons discussed below, we find no basis to sustain the protest.

When an agency evaluates a proposal for the award of a cost-reimbursement contract or task order, the offeror's or vendor's proposed costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. FAR 15.404-1(d), 16.505(b)(3); *AECOM Mgmt. Servs., Inc.*, B-418467 *et al.*, May 15, 2020, 2020 CPD ¶ 172 at 4. Consequently, the agency must perform a cost realism analysis to determine the extent to which the offeror's or vendor's proposed costs are realistic for the work to be performed. FAR 15.404-1(d)(1); see *Noridian Admin. Servs., LLC*, B-401068.13, Jan. 16, 2013, 2013 CPD ¶ 52 at 5. Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonable; a protester's disagreement with the agency's judgment, without more, does not provide a basis to sustain the protest. *AECOM Mgmt. Servs., Inc., supra.*

Here, the Army evaluated OBXtek's and BMA's proposed costs for realism and found that all were realistic. AR, Tab 7, BMA Cost Evaluation at 9; Tab 8, OBXtek Cost

Evaluation at 10. For BMA, the agency reviewed the proposed direct labor rates and escalation and found them realistic based on the supporting data provided in the awardee's proposal. AR, Tab 7, BMA Cost Evaluation at 5. For indirect rates, the agency reviewed the awardee's historical rates and performed a linear regression analysis.⁴ *Id.* at 6. The agency found that the awardee's proposed general and administrative (G&A) and overhead rates were higher than the agency's evaluated estimate, and therefore realistic. Of note, the agency also found that the awardee's proposed fringe rate of [DELETED] percent was slightly lower than the agency's evaluated 80 percent confidence range estimate of [DELETED] to [DELETED] percent. *Id.* The agency found, however, that the linear regression analysis produced a sufficiently high statistical confidence rating to conclude that the proposed rate was realistic as proposed. *Id.* In this regard, the agency notes that the awardee's proposed rate was only [DELETED] percentage points below the bottom of the 80 percent confidence range, and was also within the range of the historical rates provided by the awardee.⁵ Supp. COS/MOL at 10.

OBXtek contends that while the agency "did a very thorough job of analyzing the proposed G&A, Fringe and overhead rates," the agency improperly failed to adjust BMA's proposed costs based on the analysis. Comments at 5. The protester states that "[i]n some instances, the proposed rates fell outside of the confidence band of the regression analysis." *Id.* at 6. While the protester does not identify which of the rates should have been adjusted, we note that only the awardee's fringe rate was outside of the confidence band.

Although agencies are required to evaluate the realism of proposed costs, nothing precludes an agency from finding that costs are realistic as proposed. As our Office has explained, an agency's cost realism analysis need not achieve scientific certainty; rather, the methodology employed must be reasonably adequate and provide some measure of confidence that the rates proposed are reasonable and realistic in view of other cost information reasonably available to the agency as of the time of its evaluation. *ATA Aerospace, LLC*, B-417427.2, Mar. 6, 2020, 2020 CPD ¶ 96 at 5. Here, OBXtek does not explain why the Army's regression analysis and confidence assessments were flawed, or why the agency was required to adjust BMA's proposed indirect rates.⁶ On this record, we find no basis to sustain the protest.

⁴ Regression analysis generates a prediction of statistically likely outcomes based on a set of known data. See Supp. COS/MOL at 9 n.2.

⁵ Similarly, the protester's proposed fringe rate of [DELETED] percent was below the low end of the agency's evaluated confidence range of [DELETED] percent--a difference of [DELETED] percentage points. AR, Tab 8, OBXtek Cost Evaluation at 8. The agency nonetheless found this proposed rate realistic based on the high confidence rating from the regression analysis. *Id.*

⁶ In any event, the protester does not attempt to calculate the effect of any potential adjustments on the awardee's evaluated costs, or why they would have resulted in

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Transition-in Plan and Staffing Approach Evaluations

Next, OBXtek argues that the Army unreasonably and unequally evaluated proposals under the transition-in and staffing approach elements of the technical factor. Comments at 2-5. For the reasons discussed below, we find no basis to sustain the protest.

Transition-In

The transition-in element of the technical factor required offerors to propose a transition plan for a not-to-exceed 30-day period. RFP at 24. As relevant here, an offeror's plan was required to "provide its rationale on how it plans to accomplish the transition-in in a way that promotes a low risk transition from the incumbent contractors to the new contractor," and to "identify risks with its proposed transition in plan and address how it plans to mitigate the identified risks." *Id.*

The Army assigned both offerors' proposals a rating of high confidence for the transition-in element. AR, Tab 1, TODD at 8. The agency identified three strengths in OBXtek's proposal, as follows: (1) the protester identified an incumbent capture rate of [DELETED] percent, reflecting an "aggressive recruiting [that] will increase the probability that talented incumbent employees remain with the contract and provide high quality training while minimizing service disruption"; (2) the protester "received [DELETED]% written/verbal commitment of incumbent workforce to remain on contract . . . which reduces risk to the Government during the transition-in phase [and] . . . goes beyond the requirement of providing a rationale for a low-risk transition"; and (3) the protester "will supply a [DELETED] . . .," which is a "capability [that] exceeds the weekly [contract data requirement list] report and offers the [contracting officer's representative] situational awareness during the transition." *Id.* at 16-17.

The agency also identified three strengths in BMA's proposal, as follows: (1) the awardee identified an incumbent capture rate "exceeding [DELETED]%, " which "offers a high likelihood that incumbent personnel will . . . continue to offer specialized, high quality training minimizing the risk of a disruption in service"; (2) the awardee proposed "a robust, well thought out transition-in plan [that] . . . clearly illustrates the contractor's understanding of the actions that they are required to complete, as well as the coordination required internally, with the incumbent contractor, and with the Government"; and (3) the awardee proposed "[DELETED] coordinate the transition-in . . .," and "[DELETED] to develop and track a pool of qualified candidates," which

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prejudice to the protester. As noted above, the difference between the awardee's proposed fringe rate and the low end of the agency's evaluated confidence range was [DELETED] percentage points; in comparison, OBXtek's evaluated cost was 13 percent higher than BMA's evaluated cost. AR, Tab 7, BMA Cost Evaluation at 6; Tab 1, TODD at 8.

“demonstrates that the offeror has a well-defined plan to recruit for positions that are not filled by incumbent employees.” *Id.* at 12-13.

OBXtek first argues that the Army improperly failed to evaluate whether BMA’s transition-in plan posed a risk based on what the protester contends were the awardee’s low salaries. Comments at 2-3. In this regard, the protester notes that the awardee’s proposal identifies an “[i]nability to retain incumbent workforce,” as a potential risk. *Id.* at 2 (*quoting* AR, Tab 29, BMA Technical Proposal at 3).

In response, the Army notes that the solicitation did not provide for the evaluation of salaries as part of the transition-in element. See RFP at 24. For this reason, the agency states that it did not evaluate salaries as part of the evaluation for this element. COS/MOL at 31.

We agree with the agency. Here, because the solicitation did not provide for the evaluation of salaries as part of the transition-in element, we find no basis to conclude that the agency was required to consider this matter.⁷ As a result, the protester has failed to establish that the agency’s evaluation was inconsistent with the evaluation criteria, or otherwise violated procurement law or regulation.

Next, OBXtek argues that the Army evaluated the offerors’ proposals for the transition-in element unequally. In this regard, the protester identifies two primary areas where it contends that its proposal was superior to the awardee’s proposal, based on the agency’s evaluation of the following strengths: (1) OBXtek’s historical incumbent capture rate of [DELETED] percent, as compared to a [DELETED] percent rate for BMA; and (2) OBXtek had commitments⁸ from [DELETED] percent of the incumbent staff, while the awardee did not identify any commitment from incumbent staff. Comments at 3 (*citing* AR, Tab 9, OBXtek Technical Evaluation at 2-3; Tab 10, BMA Technical Evaluation at 2). Based on these differences, the protester contends that the agency should have assigned its proposal a higher rating than BMA’s proposal. *Id.*

We find no merit to the protester’s contention that its higher incumbency capture rate or its commitments from incumbent personnel obligated the agency to assign its proposal a higher rating as compared to BMA’s proposal, or otherwise precluded the agency from

⁷ Additionally, as relevant to the protester’s challenge to the transition-in element and to the staffing approach element, the agency found that the awardee’s proposed costs were realistic and did not require adjustment. AR, Tab 1, TODD at 8. As discussed above, we find no basis to sustain the protester’s challenge to the cost realism evaluation.

⁸ Although OBXtek contends that it “had commitment letters from over [DELETED]% of the incumbent workforce,” its proposal and the evaluated strength stated that the protester had “verbal/written” commitments from incumbent staff. Comments at 3; AR, Tab 1, TODD at 16; Tab 41, OBXtek Technical Proposal at 6.

assigning the offerors' proposals the same rating, as nothing in the RFP required this result. As discussed above, the agency assigned each offeror's proposal three strengths. While the protester's proposal reflected a higher incumbency capture rate and identified commitments from incumbent personnel, the record demonstrates that the agency cited strengths for the awardee's proposal that were not reflected in the protester's proposal, namely "a robust, well thought out transition-in plan," and [DELETED] and a [DELETED]. AR, Tab 1, TODD at 12-13, 16. Thus, to the extent the protester contends that the strengths assigned to its proposal should have outweighed the strengths assigned to the awardee's proposal, the protester's disagreement with the agency's judgment, without more, does not provide a basis to sustain the protest. See *Imagine One Tech. & Mgmt., Ltd., supra*.

Staffing Approach

The staffing approach element of the technical factor required offerors to propose a "labor mix and hours sufficient to perform the work as detailed in the [performance work statement (PWS)]," and to "provide sufficient information to substantiate the labor categories, hours, and mix presented in the proposal, indicating a realistic and feasible approach and complete understanding of the requirements of the PWS." RFP at 25. As relevant here, the solicitation required offerors to provide details concerning how it will "recruit/hire the required professionals" to perform the PWS requirements. *Id.* at 26.

The Army's evaluation of OBXtek's and BMA's proposals for the staffing approach element did not identify any strengths, weaknesses, or deficiencies, and assigned both proposals a rating of some confidence. AR, Tab 1, TODD at 13-14, 17. In the best-value tradeoff, the agency stated as follows: "The Technical Evaluation Team rated BMA and OBXtek equally and did not identify any facts/findings for either offeror." *Id.* at 22.

OBXtek argues that the Army should have assigned its proposal a higher rating than the awardee's proposal. Comments at 4-5. First, the protester contends that the agency failed to reasonably evaluate whether BMA proposed "suitable compensation" as part of its staffing approach. *Id.* at 4. As with the protester's challenge to the evaluation of proposals for the transition-in element, we agree with the agency that the RFP did not provide for the evaluation of compensation as part of the staffing approach element. See COS/MOL at 32; RFP at 25-26.

Next, OBXtek argues that the agency should have found that its proposal offered advantages as compared to BMA. Comments at 5. The protester states that its proposal identified more labor categories and more overall hours as compared to the awardee's proposal. *Id.* The protester further states that its proposed team includes [DELETED] incumbent subcontractors, and that the awardee's proposal "necessarily has more uncertainty" because it did not team with incumbent firms. Comments at 5; see *also* Protest at 6.

Apart from its general contention that more labor categories and more labor hours necessarily represents a more advantageous staffing approach, the protester does not explain why the agency unreasonably failed to assign strengths to its proposal, or why its proposal should have been rated more highly than the awardee's proposal. To the extent the protester argues that its proposed approach was necessarily superior to the awardee's, because OBXtek's team includes two incumbent subcontractors, the protester does not identify any specific aspects of its proposal that should have merited higher ratings under the RFP's evaluation criteria. Additionally, an offeror or vendor is not entitled to a specific evaluation rating based on its incumbent status or the role of incumbent team members, alone; instead, proposals and quotations must be evaluated based on their merit in accordance with the terms of the solicitation. See *AKAL Sec., Inc.*, B-417840.4, Apr. 27, 2020, 2020 CPD ¶ 160 at 6. *SSI*, B-413486, B-413486.2, Nov. 3, 2016, 2016 CPD ¶ 322 at 5. In sum, the protester's disagreement with the agency's judgment, without more, does not provide a basis to sustain the protest.⁹ See *Imagine One Tech. & Mgmt., Ltd.*, *supra*.

Corporate Experience Evaluation

Finally, OBXtek argues that the Army's evaluation of BMA's proposal under the corporate experience element of the technical factor unreasonably considered the experience of BMA's proposed subcontractor, [DELETED]. Comments at 6-7. The protester contends that the awardee's proposal shows that the subcontractor's proposed role did not meet the RFP's requirements for consideration. For the reasons discussed below, we find no basis to sustain the protest.

The solicitation required offerors to demonstrate experience performing "DoD contracts or task orders of similar scope to include at least 5 years of experience within the past 10 years." RFP at 26-27. Offerors were permitted to include the experience of major subcontractors, which were defined as an entity "performing more than 20% of the required services." *Id.* at 27.

The Army did not identify in OBXtek's proposal any strengths, weaknesses, or deficiencies. AR, Tab 9, OBXtek Evaluation at 7; see Tab 1, TODD at 16. The agency assigned the protester's proposal a rating of some confidence for the corporate experience element based on the following assessment: "The proposal was evaluated

⁹ OBXtek also argues that the Army's evaluation failed to compare proposals when assigning adjectival ratings under the transition plan and staffing plan elements. Comments at 3-5. As the agency notes, however, the RFP did not require the agency to compare proposals when assigning adjectival ratings. COS/MOL at 31; Supp. COS/MOL at 5, 8; see RFP at 24-26. Instead, the record shows that the agency compared the strengths assigned to each proposal in the tradeoff decision. AR, Tab 1, TODD at 20-22. On this record, we find no basis to conclude that the evaluation was defective because the agency assigned the adjectival ratings without first comparing offerors' proposals.

and found to have included all requirements of the RFP therefore, the Government has some confidence that the Offeror understands the requirement, proposes a sound approach, and will be successful in performing the contract with some Government intervention.” AR, Tab 9, OBXtek Evaluation at 7.

The Army identified a strength in BMA’s proposal based on [DELETED]s “experience in providing Security Force Assistance Training Support Services,” which provides “a significant benefit to the RSTS program as there is a need to provide training to these types of unique units.” AR, Tab 1, TODD at 14. Based on this strength, the agency assigned BMA’s proposal a rating of high confidence. *Id.*

OBXtek argues that the Army improperly considered the corporate experience of [DELETED] because that firm did not qualify as a major subcontractor under the terms of the solicitation. Comments at 6-7; Supp. Comments at 2. In this regard, the protester contends that the agency’s evaluation of the proposed labor hours for BMA and its proposed subcontractors shows that [DELETED] will perform only [DELETED] percent of the total labor hours identified in the awardee’s proposal, rather than the 20 percent required by the RFP. Comments at 6 (*citing* AR, Tab 7, BMA Cost Evaluation at 4).

The Army does not dispute that BMA’s proposal stated that [DELETED] will perform fewer than 20 percent of the proposed labor hours. See Supp. COS/MOL at 11-14. The agency contends, however, that the RFP did not specifically require offerors to validate or demonstrate whether a subcontractor will perform 20 percent of required services. *Id.* at 13. The agency argues that proposed labor hours is not necessarily the only measure of services to be provided, as the solicitation also included plug numbers for travel and material handling that were “impossible to forecast.” *Id.* Instead, the agency states that it “received validation” that [DELETED] was a major subcontractor because the narrative portion of the awardee’s proposal stated that [DELETED] would perform 20 percent of the “planned workshare.” *Id.* (*citing* AR, Tab 22, BMA Cost Proposal Narrative at 29).

We find that, even if the protester’s argument had merit, there is no possibility that it could have been competitively prejudiced by the agency’s evaluation. As discussed above, BMA’s proposal was assigned a strength under the corporate experience element based on the specialized experience of [DELETED]. AR, Tab 1, TODD at 14. In contrast, the agency did not assign OBXtek’s proposal any strengths under the corporate experience element. AR, Tab 9, OBXtek Evaluation at 7; see Tab 1, TODD at 16. In the award decision, the agency found BMA’s technical proposal to be more advantageous as compared to OBXtek’s under the management approach element and the corporate experience element. AR, Tab 1, TODD at 21-22.

As discussed above, our decision finds no merit to any of the protester’s other challenges to the evaluation of technical or cost proposals. Thus, even if the protester’s argument concerning the corporate experience element had merit, removal of the additional strength regarding [DELETED]’s experience would not alter the fact that the

agency found the awardee's proposal higher rated under the management approach element. BMA's advantage under the management approach element, along with its lower evaluated cost, shows that OBXtek could not have been prejudiced by the assignment of the strength to BMA's proposal based on [DELETED]'s experience. On this record, we find no basis to sustain the protest. See *DRS ICAS, LLC, supra*; *Procentrix, Inc., supra*.

The protest is denied.

Thomas H. Armstrong
General Counsel