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Decision

Matter of: Conley & Associates, Inc.

File: B-415458.3; B-415458.4

Date: April 26, 2018

Scott F. Lane, Esq., and Katherine S. Nucci, Esq., Thompson Coburn LLP, for the protester.

J. Bradley Reaves, Esq., and Beth V. McMahon, Esq., ReavesColey, PLLC, for Valkyrie Enterprises, LLC, the intervenor.

Wade L. Brown, Esq., Peter S. Kozlowski, Esq., and Kimberly Maltby, Esq., Department of the Army, for the agency.

Eric M. Ransom, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency misevaluated proposals is sustained where the agency departed from the stated evaluation criteria and unequally evaluated the proposals.
 2. Protest that the agency failed to conduct a reasonable or adequate cost realism analysis is sustained where the agency failed to analyze the sufficiency of the offerors' proposed labor categories and labor hours to complete the work.
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DECISION

Conley & Associates, Inc., of Newport News, Virginia, protests the award of a contract to Valkyrie Enterprises, LLC, of Virginia Beach, Virginia, under request for proposals (RFP) No. W56JSR-17-R-0021, issued by the Department of the Army, Army Material Command (AMC), for equipment support services for command, control, communications, computers, intelligence, surveillance and reconnaissance (C4ISR) systems on Army watercraft at locations worldwide. Conley, the incumbent contractor, alleges that AMC departed from the RFP's evaluation criteria, unreasonably and unequally evaluated the technical proposals, and failed to conduct an adequate cost realism evaluation.

We sustain the protest.

BACKGROUND

AMC issued the RFP on May 5, 2017, to procure program management, technical, repair, and sustainment support services for C4ISR assets and suites of equipment installed on Army watercraft systems worldwide. The RFP identified 135 Army vessels of various types and at various locations that are presently supported under the requirement. The agency explains it is not cost effective to train soldiers to repair C4ISR equipment due to the ever-changing nature of the equipment and the fact that much of the equipment is coupled with commercial off-the-shelf systems. Instead, the agency relies on contractor personnel known as “contractor field services representatives” (CFSR) to support, maintain, and repair Army watercraft C4ISR systems. Agency Report (AR), Tab 17a, RFP, at 28.

The RFP contemplated the award of a single indefinite-delivery, indefinite-quantity contract with a mix of fixed-price, cost-plus-fixed-fee (CPFF), and cost-reimbursable (no fee) contract line item numbers (CLINs), and an ordering period of 5 years from award. Specifically, the RFP established five CLINs for each year of the ordering period. As relevant, for each year of the ordering period, CLIN x001 was a fixed-price CLIN for full-year program management services. CLIN x002 was a fixed-price CLIN for full-year “core” CFSR technical support. As explained below, this support required offerors to propose sufficient full-time “core” CFSR personnel to respond to five simultaneous C4ISR equipment “incident reports” at locations worldwide. AR, Tab 17a, RFP, at 28. CLIN x003 was a CPFF CLIN for “non-core” CFSR support. This support involved the coordination of additional “non-core” CFSR personnel or subcontracted CFSR support when specific skills and certifications are required, or to support surge requirements beyond the capacity of “core” CFSR technical support. Id. CLINs x004 and x005 were cost-reimbursable CLINs for travel costs and incidental parts and materials, respectively.

The RFP provided for award using a best-value tradeoff based on the agency’s consideration of four evaluation factors, listed in descending order of importance: technical, program management, cost/price, and past performance. The technical factor included three equally-weighted subfactors, as follows: field support, key personnel, and materials management. Overall, the RFP provided that the non-price factors, when combined, were significantly more important than cost/price.

As a general matter, for all evaluation factors and subfactors the RFP advised that the agency would consider “the degree and extent to which the requirements set forth in the solicitation are satisfied,” the offeror’s “understanding of requirements,” and the “feasibility” of the offeror’s approach. AR, Tab 3b, RFP Amendment 001, at 11. As relevant, the RFP more specifically provided that under the technical factor, field support subfactor, the agency was to consider the offeror’s demonstrated ability to:

- [c.] Respond to a minimum of five Incident Reports (IRs) at the same time at multiple locations worldwide, utilizing core CFSR support, without reliance on service providers who are not part of this contract.
- [d.] Utilize and coordinate the use of non-Core CFSRs when justified by immediate requirements, and approved by the Government.

AR, Tab 3b, RFP Amendment 001, at 12.

As relevant, the key personnel subfactor, among other things, required offerors to provide resumes and other supporting documentation for proposed CFSRs, who were required to be employed upon contract award. Additionally, under the material management subfactor, the agency was to consider an offeror's demonstrated understanding of material management requirements and ability to provide a primary storage facility compliant with the performance work statement (PWS).

With respect to the cost/price factor, the RFP required offerors to complete a provided spreadsheet identifying proposed prices per CLIN, as well as hours and labor rates per CLIN, among other information. The RFP indicated that the agency would evaluate price reasonableness, and would evaluate cost realism of the cost-type CLINs. The RFP did not provide for a price realism analysis.

AMC received seven proposals in response to the RFP, including the proposals from Conley and Valkyrie. The agency conducted discussions with all offerors, and received final proposal revisions. After evaluation, the agency concluded that Valkyrie's proposal represented the best value to the government.

The agency advised the unsuccessful offerors of the pending award to Valkyrie on September 25, 2017, and made the award on September 27. Conley timely requested a debriefing, but withdrew the debriefing request on October 4, and filed a protest with our Office on that date. Conley then filed a supplemental protest on October 16. On October 23, the agency advised our Office that it would take corrective action in response to Conley's protests in order to reevaluate the offerors' final proposal revisions. Our Office then dismissed Conley's protests on October 27. Conley & Associates, Inc., B-415458, B-415458.2, Oct. 27, 2017 (unpublished decision).

The agency reevaluated the offeror's existing final proposal revisions, without further discussions or the opportunity to submit new final proposal revisions. After completing its reevaluation, the agency evaluated Conley's and Valkyrie's proposals as follows:

	Conley	Valkyrie
Technical Overall	Outstanding	Outstanding
Field Support	Outstanding	Outstanding
Key Personnel	Outstanding	Outstanding
Material Management	Good	Outstanding
Program Management	Good	Good
Past Performance	Acceptable	Acceptable
Total Cost/Price	\$18,998,593	\$16,600,711
Fixed-Price CLINs	\$(DELETED)	\$(DELETED)
CPFF & Cost CLINs	\$(DELETED)	\$(DELETED)

AR, Tab 17e, Source Selection Decision Document (SSDD), at 7-8; Tab 5a, Conley Price Summary, Cost Element Summary; Tab 6e, Valkyrie Price Summary, Cost Element Summary. With respect to the CPFF and cost-reimbursable CLINs, the agency concluded that cost realism adjustments were not required for any of the offerors' proposals.

In the final SSDD, the source selection authority (SSA) concluded that Conley and Valkyrie were essentially equal under the non-price factors, except for Conley's good rating versus Valkyrie's outstanding rating under the material management subfactor.¹ The SSA determined that the two offerors had the same number of strengths under the technical factor and program management factor, and that [DELETED]. In her final analysis, since Valkyrie's proposal was slightly stronger than Conley's proposal under the materials management factor and was lower-priced, the SSA concluded that there was no justification for accepting the 14-percent price premium associated with Conley's proposal.

On January 12, the agency advised the unsuccessful offerors that Valkyrie remained the successful offeror, and made the award to Valkyrie effective January 15. This protest followed on January 16.

DISCUSSION

Conley challenges the agency's evaluation of the proposals under the technical subfactors and under the program management factor. Conley also contends that the agency failed to conduct a reasonable cost realism analysis. Based on our review of the record here, we agree with the protester that the technical evaluation departed from the RFP's evaluation criteria and was unreasonable or unequal in multiple respects, and that the cost realism analysis was inadequate and unreasonable.²

¹ [DELETED]

² We discuss Conley's primary protest allegations in this decision. To the extent that specific allegations, or elements of allegations, are not discussed, we have reviewed the protest record and conclude that none provides a basis to sustain the protest. For

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Technical and Program Management Evaluation

Conley alleges that the agency departed from the RFP's evaluation criteria under the field support subfactor, and unreasonably and unequally evaluated the proposals under the materials management subfactor and the program management factor. With respect to the key personnel subfactor Conley also alleges that, prior to the corrective action reevaluation, the agency learned that Valkyrie's "core" CFSRs were no longer available. Conley argues that the agency failed to consider that information despite the fact that "core" CFSRs were key personnel and were required to be employed upon contract award. For the reasons discussed below, we sustain the protester's allegations with respect to the field support subfactor, materials management subfactor, and program management factor. However, we deny the allegations concerning the key personnel subfactor.

In reviewing protests of an agency's evaluation and source selection decision, our Office will not reevaluate proposals; rather, we review the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria, and applicable procurement laws and regulations. Velos, Inc., B-400500.8, B-400500.9, Dec. 14, 2009, 2010 CPD ¶ 13 at 11; Keeton Corrections, Inc., B-293348, Mar. 4, 2004, 2005 CPD ¶ 44 at 6. While we will not substitute our judgement for that of the agency, we will sustain a protest where the agency's conclusions are inconsistent with the solicitation's evaluation criteria, undocumented, or not reasonably based. DRS ICAS, LLC, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 4-5. In addition, contracting agencies are required to adequately document their evaluation results, and sufficiently support the findings on which award determinations are made. Savvee Consulting, Inc., B-408416, B-408416.2, Sept. 18, 2013, 2013 CPD ¶ 231 at 7.

Field Support Subfactor

Conley first alleges that the agency departed from the RFP's evaluation criteria under the field support subfactor, by considering Valkyrie's "non-core" CFSR personnel and field service network under evaluation criteria limited to "core" CFSR support. Conley asserts that the agency's error resulted in the improper assignment of a strength to Valkyrie for a [DELETED] CFSR that Valkyrie never proposed as a "core" CFSR. In the final SSDD, the SSA concluded that this "backbench" CFSR offset a strength of

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example, Conley alleges that the agency unequally evaluated proposals by awarding other offerors strengths for International Organization for Standardization (ISO) certifications, without awarding its proposal a similar strength. The record, however, indicates that while other offerors touted ISO "certification," Conley's proposal asserted only that its procedures were ISO "compliant." AR, Tab 5l, Conley Technical Proposal, at 5, 34, 35.

Conley's approach for providing [DELETED]. Conley also alleges that the agency's evaluation essentially double-counted strengths for Valkyrie's non-core CFSR support.

We agree with the protester that the agency's evaluation departed from the RFP's evaluation criteria under the field support subfactor. As described above, the RFP specified that the agency would evaluate an offeror's demonstrated ability to "[r]espond to a minimum of five Incident Reports (IRs) at the same time at multiple locations worldwide, utilizing core CFSR support, without reliance on service providers who are not part of this contract." AR, Tab 3b, RFP Amendment 001, at 12 (emphasis added). Despite the clear language of the evaluation criteria, the record shows that the agency evaluators considered elements of Valkyrie's "non-core" CFSR support approach in assigning Valkyrie a low risk rating and a strength for its "core" CFSR approach.

Specifically, the agency determined that Valkyrie's proposal demonstrated an acceptable understanding of the requirements and feasibility of approach under the criteria by proposing "[DELETED] geographically diverse, qualified, core CFSRs," that would be able to simultaneously respond to "five [incident reports] at geographically dispersed locations worldwide." AR, Tab 9d, Valkyrie Technical Evaluation, at 8 (emphasis added). Next, the agency concluded that the risk of Valkyrie's approach--utilizing [DELETED] "core" CFSRs to meet the five simultaneous incident requirement--was low, since "risk is reduced through use of backup/surge CFSRs and utilizing [Valkyrie's] existing worldwide maritime field service network." *Id.* The agency also assigned Valkyrie a strength for risk mitigation on the basis that Valkyrie had proposed a "[DELETED] CFSR specifically labeled as Backbench/Surge Support," which "significantly reduces risk in the Offeror's ability to respond to five (5) IRs at five locations simultaneously, and in surge conditions provides the option to respond to a [DELETED] IR at a [DELETED] location should the need arise." *Id.* The agency also concluded that this "[DELETED]" CFSR constituted a strength because, in the event that a CFSR "becomes ill; takes leaves; terminates; or has their employment terminated, the risk of the offeror not being able to respond to a minimum of five Incident Reports" would be reduced. *Id.*

Our review of Valkyrie's proposal, however, demonstrates that the Valkyrie's proposal of a "Backbench/Surge Support" CFSR--the basis for Valkyrie's low risk rating and strength in this area--was not a "core" CFSR dedicated to the contract under the fixed-price technical support CLIN, but was instead a "non-core" CFSR under the contract's CPFF CLIN. AR, Tab 6i, Valkyrie Technical Proposal, at 16 (segregating the backbench CFSR from the core CFSR staffing plan), 19 (confirming [DELETED] "core" CFSR personnel). Similarly, the awardee acknowledges that its proposal did not include its existing worldwide field support network as a part of its fixed-price "core" CFSR technical support approach, but provisioned for the additional hours under the "non-core" CFSR, CPFF CLIN. Intervenor Comments, March 23, 2018, at 9. Accordingly, we agree with the protester that the agency erred in concluding that Valkyrie's "Backbench/Surge Support" non-core CFSR and worldwide maritime field service network mitigated the risk of Valkyrie's ability to simultaneously respond to a

minimum of 5 incident reports “utilizing core CFSR support” under the field support evaluation criteria. AR, Tab 3b, RFP Amendment 001, at 12 (emphasis added).³

Although the agency insists that the evaluators and SSA never referred to Valkyrie’s backbench CFSR as a “core” CFSR, and understood that the “backbench” was a “non-core” CFSR, it was nonetheless inconsistent with the RFP evaluation criteria for the agency to essentially bolster Valkyrie’s proposed approach to the “core” CFSR requirements by incorporating Valkyrie’s “non-core” CFSRs and support network under this evaluation criteria. To the extent the agency argues that Valkyrie’s strength was warranted because its “non-core” CFSR approach of utilizing internal assets rather than subcontractors added additional flexibility, we agree with the protester that the agency essentially double counted a strength for Valkyrie’s internal non-core CFSRs and maritime support network. Valkyrie already received this strength under the evaluation criteria concerning the offeror’s approach to “utilize and coordinate the use of non-core CFSRs.”⁴ AR, Tab 3b, RFP, Amendment 001, at 12. Further, we conclude that the protester was prejudiced by the agency’s improper consideration of “non-core” support in concluding that Valkyrie proposed a low risk “core” CFSR approach. The improper assignment of a strength for Valkyrie’s “non-core” “[DELETED]” CFSR was expressly used in the tradeoff decision as a basis to offset the advantages of Conley’s [DELETED] “core” CFSRs in the SSDD.

³ Valkyrie argues that multiple other offerors received strengths under this evaluation criteria for various types of “backbench” support or CFSR trainee programs. However, our review of the record shows that in each case the other offerors’ “backbench” CFSRs were, in fact, proposed as “core” CFSRs under the fixed-price technical support portion of the contract. AR, Tab 17e, SSDD, at 12 (offeror 5), 14 (offeror 6).

⁴ We note that in the agency’s tradeoff analysis, the SSA summarized Valkyrie’s strength in this area as a “[g]lobal network for more efficient IR resolution, thus resulting in less use of Non-Core CFSRs.” AR, Tab 17e, SSDD, at 39. The record, however, shows that this strength was related to Valkyrie’s “contractual relationships with leaders in industry and [original equipment manufacturers]” to support requirements for “non-core” CFSRs. AR, Tab 9d, Valkyrie Technical Evaluation, at 8. The evaluators concluded that these relationships could provide the opportunity to utilize on-site subcontracted “non-core” CFSR support at lower cost than assigning “core” CFSRs (presumably through savings on a “core” CFSR’s reimbursable travel costs), and “minimize[d] risk related to the employment of non-core CFSRs when required.” *Id.* at 9. The evaluation does not support the conclusion that this strength was related to reducing the use of “non-core” CFSRs; in fact, the evaluation touted the opportunity to increase use of “non-core” CFSRs. To the extent the SSA independently reached her own conclusion, the basis for the conclusion is undocumented. Savvee Consulting, Inc., supra.

Material Management Subfactor and Program Management Factor

Conley next alleges that the agency unreasonably and unequally evaluated the proposals under the material management subfactor and the program management factor. Specifically, Conley asserts that the agency assigned Valkyrie strengths for low risk aspects of its transition plan, without assigning similar strengths to Conley's proposal despite the agency's conclusions that under Conley's approach, "transition risk is essentially eliminated." AR, Tab 8d, Conley Technical Evaluation, at 14.

It is a fundamental principle of federal procurement law that a contracting agency must treat all offerors equally and evaluate their proposals evenhandedly against the solicitation's requirements and evaluation criteria. Cubic Applications, Inc., B-411305, B-411305.2, July 9, 2015, 2015 CPD ¶ 218 at 10. Further, where an agency treats offerors unequally by, for example, reading some offerors' proposals in an expansive manner and resolving doubt in favor of one offeror, while reading other offerors' proposals narrowly and applying a more exacting standard to those proposals, we have found such evaluations to involve disparate treatment. Arctic Slope Mission Servs., LLC, B-410992.5, B-410992.6, Jan. 8, 2016, 2016 CPD ¶ 39 at 7-9; Lockheed Martin Info. Sys., B-292836 et al., Dec. 18, 2003, 2003 CPD ¶ 230 at 11-12.

Concerning the material management subfactor, the agency was to evaluate an offeror's "[d]emonstration of the ability to provide a primary storage facility" compliant with PWS requirements and available immediately upon contract award. AR, Tab 3b, RFP, Amendment 001, at 12. Under these criteria, the agency concluded that Valkyrie's proposal met the requirements by establishing that it possessed a lease agreement for an appropriate facility and that, as part of Valkyrie's transition plan, the lease agreement was a low risk approach. Additionally, the agency noted that Valkyrie proposed two contingency primary storage facilities--one of which was Conley's incumbent facility--"should a problem arise in retaining their proposed primary storage facility." AR, Tab 9d, Valkyrie Technical Evaluation, at 14. The agency "identifie[d] the proposed contingency plan as a strength, as this is a very low risk approach to providing the required storage facility." Id. (emphasis original).

Conley alleges that the strength was unreasonable because Valkyrie's proposal lacked details concerning compliance of the contingency facilities with the PWS requirements, and should have been evaluated as a risk that Valkyrie lacked commitment to its proposed primary facility. Alternatively, Conley argues that if the strength was justified, the evaluation was unequal because it did not receive a similar strength for proposing its existing, incumbent, fully-operational primary storage facility, which according to the agency's own evaluation meant that "transition risk is essentially eliminated should this offeror be awarded the contract." AR, Tab 8d, Conley Technical Evaluation, at 14 (emphasis original).

Similarly, under the program management factor, concerning evaluation criteria for "[a]bility to analyze ongoing requirements to recommend adjustments," the agency assigned Valkyrie a strength for its "comprehensive and detailed project transition plan,"

which provided confidence that “transition risk is low.” AR, Tab 9c, Valkyrie Program Management Evaluation, at 6. Conley alleges that despite its incumbent status and evaluated “highly beneficial” approach to program management, the agency neglected to evaluate Conley’s proposal for transition risk, denying Conley the opportunity to achieve a similar strength. AR, Tab 8c, Conley Program Management Evaluation, at 8.

There is no general requirement that incoming and incumbent offerors receive the same evaluation regarding the transition from one contract to another. SURVICE Eng’g Co., LLC, B-414519, July 5, 2017, 2017 CPD ¶ 237 at 10. The nature of the transition is necessarily different for incumbent and nonincumbent offerors. Id. However, where the agency recognizes the low risk of a non-incumbent offeror’s transition approach, the agency will often recognize a strength in the incumbent contractor’s ability to obtain the same result. See Id.; Exelis Sys. Corp., B-407111 et al., Nov. 13, 2012, 2012 CPD ¶ 340 at 20-21. Here, the agency evaluated Conley’s primary storage facility as presenting less transition risk than Valkyrie’s approach, but did not assign Conley’s proposal a strength similar to the strength assigned to Valkyrie’s proposal. In addition, the agency apparently failed to consider Conley’s presumably low transition risk under the program management factor. Despite failing to review Conley’s proposal for transition risk under this factor, the agency assigned Valkyrie a strength for its transition risk. Based on this record, we conclude that the evaluation was unequal and sustain the protest. Id.

Key Personnel Subfactor

With respect to the key personnel subfactor, Conley alleges that the agency failed to consider information learned prior to the corrective action reevaluation indicating that at least one of Valkyrie’s proposed “core” CFSTRs was no longer available. Conley asserts that this was the case because Valkyrie’s “start of work brief” (belatedly produced by the agency as described below) listed one “core” CFSTR as “Candidate Identified” and “TBD.”⁵ AR, Tab 23c, Start of Work Brief, at 3, 11, 12, 14.

When a solicitation (such as this one) requires resumes for key personnel, the resumes form a material requirement of the solicitation; in this context, our Office has explained that offerors are obligated to advise agencies of changes in proposed staffing and resources, even after submission of proposals. General Revenue Corp., et al., B-414220.2 et al., March 27, 2017, 2017 CPD ¶ 106 at 22; Pioneering Evolution, LLC, B-412016, B-412016.2, Dec. 8, 2015, 2015 CPD ¶ 385 at 8. When the agency learns of

⁵ Conley also asserts that the agency should have known Valkyrie’s “core” CFSTRs were unavailable (and therefore clarified the CFSTRs’ status during the reevaluation) based on job listings posted by Valkyrie’s subcontractor, and on communications between Conley and the agency concerning recommendations for retaining the incumbent CFSTR staff. However, we conclude that neither of these allegations presents a basis to indicate that Valkyrie’s proposed CFSTRs were unavailable and, as discussed, the intervenor has credibly explained that the proposed CFSTRs are available.

the withdrawal of a key person, it has two options: either evaluate the proposal as submitted, where the proposal would be rejected as technically unacceptable for failing to meet a material requirement, or open discussions to permit the offeror to amend its proposal. YWCA of Greater Los Angeles, B-414596 et al., July 24, 2017, 2017 CPD ¶ 245 at 4. With respect to information learned during corrective action, our Office will sustain a protest where the agency's reevaluation fails to consider information learned about an offeror following an initial award and during the pendency of corrective action. DRS ICAS, LLC, supra., at 17.

As discussed below, on our review of the record in this protest, the evidence indicates that the "core" CFSR at issue was, in fact, available at the time of the reevaluation and award decision, and remains available. This renders the protester's allegations factually incorrect, and without merit.

As a preliminary matter, however, we take note of the Army's multiple failures to promptly and fully respond to the protester's document requests and our Office's instructions concerning the development of the protest record in this area. Specifically, despite Conley's requests for "all documents . . . including post-award exchanges" (upheld by our Office following the agency's objection), the agency did not provide all responsive documents for nearly 60 days. Protest at 26. Rather, in response to our Office's instructions to reexamine its records on February 13 and February 20, the agency asserted that there were no additional responsive documents. Then, in response to our Office's third request that the agency review its records on March 7, the agency located 12 additional responsive documents, which the agency produced on March 15.

The March 15 documents specifically included Valkyrie's "start of work brief," which was submitted to the contracting officer on October 5, 2017--subsequent to the initial contract award and one day after Conley's initial protest was filed with our Office. This document, an email attachment, appears to show that one of the [DELETED] "core" CFSRs in Valkyrie's proposal was not a part of Valkyrie's plan for performance, and had been replaced by the entries "Candidate Identified," and "TBD." AR, Tab 23c, Start of Work Brief, at 3, 11, 12, 14.

In a conference call on March 20, our Office admonished the agency for its failure to diligently examine its records for responsive documents and requested that the agency provide a sworn affidavit from the contracting officer describing the agency's efforts to identify all responsive documents and certifying that document production was complete. The agency then provided a supplemental contracting officer's statement on March 22, and a sworn affidavit on March 23. In the affidavit, the contracting officer advised that the relevant contracting personnel "have conducted extensive searches of our computers, our physical and electronic files, and our emails, to comply with Conley's requests for documents," but had failed to locate any other documents in its possession. Contracting Officer's Affidavit, at 1.

Our Office remains concerned with the agency's failure to timely provide a complete record in response to the protester's document requests and our Office's multiple requests. Based on email correspondence revealed in the agency's March 15 document production, the contracting officer was aware of and had access to communications between the agency and Valkyrie--such as the start of work brief--that were not provided in the initial document production despite being within the scope of the document requests and our Office's instructions.

Nevertheless, based on multiple explanations and affidavits submitted by agency personnel and the intervenor, we conclude that the record in this protest is sufficiently complete to support the conclusion that this aspect of Conley's protest should be denied. Specifically, affidavits submitted by the intervenor credibly explain that Valkyrie's proposed "core" CFSTRs were available and remain available, and that contradictory information in the start of work brief was in error. First, Valkyrie's program manager submitted an affidavit asserting that the briefing slides omitting one "core" CFSTR were sourced from an older presentation that he had failed to appropriately update. Intervenor Comments, March 23, 2018, Exhibit A, at 1. He further explained that another slide that was produced for the purpose of the briefing did correctly identify all [DELETED] proposed "core" CFSTRs--an explanation that is confirmed in the record. Id., AR, Tab 23c, Start of Work Brief, at 10. Additionally, Valkyrie's chief operating officer and the vice president of Valkyrie's subcontractor ([DELETED]) each submitted declarations to the effect that all [DELETED] proposed "core" CFSTRs were available throughout the corrective action period, remain available, and that no changes to the proposed staffing plan are anticipated. Where we conclude that these affidavits are consistent and credible, we accept the intervenor's explanation that its proposed key personnel remain in place.⁶

Cost Realism Evaluation

Conley alleges that the agency's cost realism analysis was inadequate and unreasonable where it failed to assess the offerors' proposed CPFF labor hours and reimbursable materials costs, and instead limited its review to the realism of proposed labor rates.⁷ The agency concedes that its cost realism analysis was limited to

⁶ Additionally, the agency explains that it was not aware of the possible evidence that a "core" CFSTR was unavailable because Valkyrie's start of work brief was not reviewed. Since the start of work brief was received one day after Conley filed its initial protest, the contracting officer knew that the start of work meeting--scheduled for the next week--would not take place, and filed the email without opening the attached briefing slides. Accordingly, the contracting officer had no basis to question the status of Valkyrie's proposed CFSTRs during the reevaluation.

⁷ As a part of the cost/price factor evaluation, the agency also assessed compliance with the RFP's limitations on subcontracting clause. Subcontracting ratios provided in Valkyrie's cost/price proposal and the agency's own assessment indicated that Valkyrie intended to comply with the RFP's limitations on subcontracting. Nonetheless, Conley
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assessing the offerors' proposed labor rates using a standard deviation methodology, but contends that its analysis was reasonable since an agency is not required to "conduct an in-depth cost analysis," or to "verify each and every item in assessing cost realism," and since our Office has previously endorsed standard deviation analysis for analyzing the realism of labor rates. Agency Report at 26, citing ERC, Inc., B-404721, B-404721.2, April 19, 2011, 2011 CPD ¶ 94, at 4; L-3 Systems Company, B-404671.2, B-404671.4, April 8, 2011, 2011 CPD ¶ 93 at 7; USIS Worldwide, B-404671, B-404671.3, April 6, 2011, 2011 CPD ¶ 92 at 8. We conclude, however, that the agency's limited analysis of the offerors' proposed labor rates was inadequate to assess the realism of the offerors' cost proposals in this case, and was unreasonable.⁸

When an agency evaluates proposals for the award of a cost-reimbursement contract, an offeror's proposed estimated cost of contract performance is not considered controlling since, regardless of the costs proposed by the offeror, the government is bound to pay the contractor its actual and allowable costs. Magellan Health Servs., B-298912, Jan. 5, 2007, 2007 CPD ¶ 81 at 13; Metro Machine Corp., B-295744, B-295744.2, Apr. 21, 2005, 2005 CPD ¶ 112 at 9; Federal Acquisition Regulation (FAR) § 16.301. As a consequence, a cost realism analysis must be performed by the agency to determine the extent to which an offeror's proposed costs represent what the contract costs are likely to be under the offeror's unique technical approach, assuming reasonable economy and efficiency. FAR §§ 15.305(a)(1), 15.404-1(d)(1), (2); The Futures Group Int'l, B-281274.2, Mar. 3, 1999, 2000 CPD ¶ 147 at 3.

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asserts that Valkyrie will not comply, and that both Valkyrie's subcontracting ratios and the agency's analysis failed to examine the correct costs in accordance with the relevant limitations. As a general matter, an agency's judgment as to whether a small business offeror will comply with the subcontracting limitation clause is not a matter that our Office reviews, except where a proposal, on its face, should lead an agency to conclude that the offeror has not agreed to comply with the subcontracting limitation. Geiler/Schrudde & Zimmerman, B-412219 et al., Jan. 7, 2016, 2016 CPD ¶ 16 at 7-8; 4 C.F.R. § 21.5(a), (c). Here, we cannot conclude that Valkyrie's cost/price proposal, on its face, took exception to the RFP. We also note that, where a proposal does not take exception to the limitations on subcontracting, an agency's conclusion that an offeror will not comply is a matter of responsibility, required to be referred to the Small Business Administration under the Certificate of Competency process. See PHE/Maser, Inc., Aug. 28, 1991, B-238367.5, 91-2 CPD ¶ 210 at 6.

⁸ Conley also alleges that the agency would likely be unable to evaluate the realism of Valkyrie's cost/price proposal since Valkyrie failed to provide relevant cost information such as [DELETED]. We agree that Valkyrie's cost/price submission appears incomplete in this respect, and note that Valkyrie was the only offeror that declined to submit a [DELETED] in response to the RFP.

An agency is not required to conduct an in-depth cost analysis, see FAR § 15.404-1(d)(1), or to verify each and every item in assessing cost realism; rather, the evaluation requires the exercise of informed judgment by the contracting agency. ERC, Inc., supra. However, where a solicitation requires offerors to propose their own labor hours and labor mix in response to the agency's requirements or a sample task, the agency's failure to analyze whether the labor hours and labor mix are realistic to successfully perform the requirements renders the cost realism analysis unreasonable. See Computer Sciences Corp. et al., B-408694.7 et al., Nov. 3, 2014, 2014 CPD ¶ 331 at 10; FAR § 15.404-1(d)(1).

Here, the RFP's instructions for cost proposals required the offerors to review 38 selected C4ISR incident reports to be used as a basis to extrapolate costs for 1,000 incident reports for the "core" CFSRs and 71 incident reports for "non-core" CFSRs.⁹ The offerors were to identify the costs of responding to the incident reports based on their "technical, management and teaming support approach." AR, Tab 3b, RFP Amendment 001, at 8. With respect to "time on site," offerors were to estimate the necessary labor hours based on the selected incident reports and "the contractor's expertise of the associated C4ISR systems." Id. Where the RFP instructed offerors to propose their own unique labor hours, labor/skills mix, and materials costs in response to the selected incident reports, a cost realism analysis that failed to analyze these unique factors is inadequate "to determine whether the estimated proposed cost elements are realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the unique methods of performance and materials described in the offeror's technical proposal."¹⁰ FAR § 15.404-1(d)(1); see also, Computer Sciences Corp. et al., supra. An analysis limited to proposed labor rates, in this context, is not a reasonable approach to meeting the relevant FAR requirements. Id.

⁹ Although "core" CFSR services were fixed-price under CLIN x002, the travel and materials costs of "core" CFSR incident reports were reimbursable costs under contract CLINs x004 and x005.

¹⁰ The agency also contends that Conley was not prejudiced because [DELETED], and because Valkyrie's overall price advantage was due to its [DELETED]. However, where the agency failed to conduct any analysis of major elements of the offerors' cost proposals, we cannot speculate as to what cost adjustments an adequate cost realism analysis might require. In this regard, we note, for instance, that proposed materials costs ranged from \$[DELETED] to more than \$[DELETED], while the agency's own independent government cost estimate (IGCE) for materials was \$[DELETED]. With respect to all costs CLINs, combined, the agency's IGCE was \$[DELETED], while Conley's and Valkyrie's proposed costs were just \$[DELETED] and \$[DELETED] respectively, suggesting [DELETED].

CONCLUSION

On the basis of our review of the record, as discussed above, we sustain the protest. The agency departed from the stated evaluation criteria by considering “non-core” CFSR support in assigning Valkyrie a low risk rating and a strength for its “core” CFSR approach under the field support subfactor. The agency also unreasonably and unequally evaluated the proposals under the material management subfactor and program management factor with respect to transition risk. We also conclude that the agency failed to conduct a reasonable cost realism analysis where its analysis ignored major unique elements of the offerors’ cost proposals.

RECOMMENDATION

We recommend that the agency perform a new evaluation of proposals under the technical factor and program management factor by equally applying the stated evaluation criteria as set forth in the RFP. We also recommend that the agency conduct a cost realism analysis including consideration of whether the offerors’ proposed labor hours and materials costs are realistic to successfully complete the CFSR incident reports as specified in the RFP’s cost/price proposal instructions, based on each offeror’s unique technical approach. To the extent that the offerors’ cost/price proposals are inadequate to evaluate whether the costs are realistic to successfully perform the requirements, it may be appropriate for the agency to reopen discussions and solicit new final proposal revisions.

We also recommend that the protester be reimbursed the reasonable costs of filing and pursuing the protests, including attorneys’ fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1). The protester should submit its certified claim for costs, detailing the time expended and the costs incurred, directly to the contracting agency within 60 days after receipt of this decision.

The protest is sustained.

Thomas H. Armstrong
General Counsel