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Decision

Matter of: Vectrus-J&J Facilities Support, LLC

File: B-420539.7

Date: March 20, 2024

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Arun Limani, Esq., Department of the Navy, for the agency.
Christopher Alwood, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's cost realism evaluation is denied where the agency's cost realism methodology was reasonable and consistent with the solicitation's evaluation criteria.
 2. Protest challenging the sufficiency and documentation of the agency's cost realism evaluation is dismissed as untimely where the protester could have and should have raised the protest ground during a prior protest.
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DECISION

Vectrus-J&J Facilities Support LLC (VJFS), of Colorado Springs, Colorado, protests the award of a contract to Amentum Services Inc., of Chantilly, Virginia, under request for proposals (RFP) No. N62742-21-R-3507, issued by the Department of the Navy, Naval Facilities Engineering Command, for multi-function operations support services at various locations in the Philippines and other locations in Asia and Oceania.¹ The protester contends that the agency's cost realism evaluation was unreasonable and undocumented.

We deny the protest in part and dismiss it in part.

¹ VJFS is a joint venture between Vectrus Systems Corporation and J&J Worldwide Services. Protest at 1.

BACKGROUND

On May 3, 2021, the Navy issued the solicitation in accordance with the procedures of Federal Acquisition Regulation (FAR) part 15, seeking proposals to provide for multi-function operations support services at various locations in the Philippines and other locations in Asia and Oceania. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 1; Agency Report (AR), Exh. 1, RFP at 1-3.² The solicitation contemplated the award, on a best-value tradeoff basis, of a cost-plus-incentive-fee contract for a 3-month mobilization period, a 9-month base period, four 12-month option periods, and one 3-month demobilization period. RFP at 2, 4-8, 93.

The solicitation advised offerors that the agency would evaluate proposals considering cost and four non-cost factors: past performance, corporate experience, technical approach, and safety. *Id.* at 93-98. The solicitation provided that the corporate experience, technical approach, and safety factors were of equal importance and, when combined, were of equal importance to the past performance factor. *Id.* at 93. The non-cost factors, when combined, were significantly more important than cost. *Id.*

The performance work statement (PWS) organized the provided services into 17 annexes.³ AR, Exh. 15, PWS at 2. As relevant here, the RFP required offerors to propose a staffing level, basis of estimate, and methodology, to accomplish the requirements for each annex. RFP at 92. Additionally, cost proposals were to contain "a complete detailed cost breakdown" for each contract period, by both cost element and annex. *Id.* at 85.

For the evaluation of cost realism, the solicitation stated:

Cost [r]ealism will be evaluated based on the cost information provided in support of the proposed costs to determine whether the estimated proposed cost elements are realistic for the work to be performed; reflect a clear understanding of the requirements; are consistent with the various elements of the Offerors Non-Cost (Technical) proposal; and are neither excessive nor insufficient for the effort to be accomplished.

² The agency amended the solicitation twelve times. Unless otherwise noted, citations to the RFP in this decision are to the initial RFP issued by the Navy.

³ The PWS specified the following annexes: (1) management and administration, (2) telecom services, (3) security operations, (4) airfield facilities, (5) passenger term and cargo, (6) ordnance handling and transportation management, (7) material management, (8) supply services, (9) morale, welfare, and recreation support, (10) galley, (11) billeting management, (12) facility management, (13) facility investment, (14) facility services, (15) utilities, (16) base support vehicles and equipment, and (17) environmental. RFP at 2-3; AR, Exh. 15, PWS at 2.

Id. at 93-94.

The agency received initial proposals from three offerors, including Amentum and VJFS. COS/MOL, B-420539, *et al.*, March 18, 2022, at 7. Following the evaluation of initial proposals, the agency established a competitive range and conducted discussions with all three offerors. *Id.* at 7-8. All three offerors submitted timely final proposal revisions (FPR) by November 18, 2021. *Id.* at 8. On January 27, 2022, the Navy awarded the contract to Amentum. COS/MOL at 4.

On February 16, 2022, VJFS filed a protest with our Office alleging that the agency unreasonably evaluated offerors under the technical, past performance, and corporate experience factors, and failed to conduct meaningful discussions. *Id.*; *Vectrus-J&J Facilities Support, LLC*, B-420539 *et al.*, Apr. 4, 2022 (unpublished decision). On March 30, 2022, the Navy notified our Office that it intended to take corrective action in response to the protest by reevaluating proposals and conducting a new source selection decision. *Id.* Based on the agency's pending corrective action, we dismissed that protest as academic. *Id.*

The agency again conducted discussions with VJFS and Amentum and allowed the offerors to submit revised non-cost proposals. See Request for RFP, B-420539.4, B-420539.5, AR, Exh. 39, July 14, 2022. Both VJFS and Amentum submitted timely revised proposals. COS/MOL at 4. On July 26, 2022, after evaluating the revised proposals, the agency again issued the contract to Amentum. *Id.* On August 23, 2022, VJFS filed another protest with our Office challenging the Navy's evaluation of proposals under the past performance and corporate experience factors, the agency's cost realism analysis, and the source selection decision. *Vectrus-J&J Facilities Support LLC*, B-420539.4, B-420539.5, Nov. 23, 2022 (unpublished decision).

On November 17, 2022, the GAO attorney assigned to the protest conducted a conference call with the parties to provide outcome prediction alternative dispute resolution (ADR).⁴ During the call, the GAO attorney informed the parties of the attorney's view that the agency had unreasonably failed to conduct an updated cost realism analysis despite having received revised proposals. COS/MOL at 5. Thereafter, the agency notified our Office that it intended to take corrective action by conducting a new cost realism analysis and making a new award decision. *Vectrus-J&J Facilities Support LLC*, B-420539.4, B-420539.5, *supra*. We subsequently dismissed that protest as academic based on the agency's pending corrective action. *Id.*

⁴ In an outcome prediction ADR conference, the GAO attorney informs the parties what the GAO attorney believes will be the likely outcome of the protest and the reasons for that belief. A GAO attorney will engage in this form of ADR only if she or he has a high degree of confidence regarding the outcome. The outcome prediction reflects the view of the GAO attorney, but it is not an opinion of our Office and does not bind our Office should issuance of a written decision remain appropriate. *Africa Automotive Distribution Servs., Ltd.*, B-418246.6, Aug. 24, 2021, 2021 CPD ¶ 308 at 5 n.7. See also 4 C.F.R. § 21.10(e).

The agency conducted a new evaluation of cost realism and made an upward most probable cost adjustment of \$1,600,000 to Amentum's evaluated cost. COS/MOL at 8. Despite this upward cost adjustment, the Navy again determined that Amentum's proposal represented the best value to the government. This protest followed.

DISCUSSION

VJFS challenges the agency's evaluation of cost realism, generally arguing that the agency failed to properly consider whether Amentum's proposed staffing levels were realistic to meet the requirements of the RFP.⁵ Protest at 10-14. VJFS alleges that the agency unreasonably failed to compare Amentum's proposed staffing to either VJFS's proposed staffing or the independent government estimate (IGE). Comments at 4-17. In this regard, the protester notes that Amentum proposed [DELETED] percent fewer full-time equivalent (FTE) positions than VJFS and [DELETED] percent fewer than estimated by the agency in the IGE. Protest at 11-12. VJFS argues that a proper cost realism evaluation would have resulted in upward adjustments to Amentum's proposed cost, thereby increasing the evaluated cost difference between the two offerors' proposals.

When an agency evaluates a proposal for the award of a cost-reimbursement contract, the offeror'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); *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 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 4-5. An agency is not required to conduct an in-depth cost analysis, or to verify each and every item in assessing cost realism; rather, the evaluation requires the exercise of informed judgment by the contracting agency. *See KOAM Eng'g Sys.*, B-420157.2, July 6, 2022, 2022 CPD ¶ 163 at 11; *see FAR 15.404-1(c)*. Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonably based and not arbitrary. *Honeywell Tech. Sols., Inc.*, B-400771, B-400771.2, Jan. 27, 2009, 2009 CPD ¶ 49 at 18.

Here, the record shows that Amentum's proposal clearly described the staffing levels Amentum proposed to accomplish the RFP requirements. For each annex, Amentum's technical proposal detailed the proposed number of FTEs and labor hours by labor category, described Amentum's methodology used to develop its basis of estimate for that annex, detailed its approach to accomplish the requirements of that annex, and

⁵ VJFS's protest also alleged that other aspects of the agency's cost realism analysis were unreasonable, that the agency unreasonably failed to consider the impact of a planned corporate transaction on Amentum's technical approach, and that the agency failed to perform an adequate best-value tradeoff. Protest at 14-26. VJFS later withdrew these allegations. Comments at 1.

explained potential risks and its approach to mitigate them. See AR, Exh. 21, Amentum Technical Proposal at 75-312. Amentum separately provided a detailed breakdown of its proposed staffing levels by annex in a resources worksheet and provided a calculation of its labor costs based on those staffing levels in its cost proposal. AR, Exh. 22, Amentum Resources Worksheet; see also AR, Exh. 23, Amentum Cost Proposal at 198-214.

The agency's technical evaluation team (TET) evaluated Amentum's proposed staffing for realism by considering whether the staffing levels reflected a clear understanding of the RFP requirements, were consistent with Amentum's technical proposal, and were either excessive or insufficient to meet the requirements.⁶ AR, Exh. 26, SSEB Report at 74-75. The record demonstrates that, where the agency identified a concern with the adequacy of Amentum's proposed staffing, it addressed its concern through discussions.⁷ *Id.* at 74. In its evaluation of Amentum's FPR, the Navy found that Amentum's proposed staffing levels were realistic to perform the RFQ's requirements. *Id.* at 74.

The protester's argument here--that the agency should have upwardly adjusted Amentum's staffing levels based on a comparison to VJFS's proposed staffing or to the IGE--is based on an incorrect understanding of what is required as part of a cost realism evaluation. In this regard, there is no general requirement for an agency's cost realism evaluation to "normalize" the staffing levels that each offeror proposes to those proposed by other offerors or to government estimates. *Honeywell Tech. Sols., supra* at 18-19. The fact that one offeror proposes higher staffing levels than another offeror does not by itself indicate that the costs as proposed are not realistic. Rather, the aim of a cost realism evaluation is to ensure that each offeror's proposed costs, including staffing levels, are realistic for the work to be performed, consistent with the methods of performance described in the offeror's technical proposal. See *Integrated Mgmt. Res. Group, Inc.*, B-400550, Dec. 12, 2008, 2008 CPD ¶ 227 at 7, n.6.

⁶ The agency's cost evaluation team also evaluated the realism of other elements of offerors' proposed costs, including labor rates, fringe benefits, material and equipment costs, other direct costs, indirect costs, and escalation rates. AR, Exh. 26, Source Selection Evaluation Board (SSEB) Report at 75-82. VJFS does not challenge these aspects of the agency's cost realism evaluation.

⁷ The agency conducted discussions with Amentum regarding the adequacy of the offeror's staffing level for the telecommunications services sub-annex 0303050. Intervenor's Comments, exh. 2, Amentum Discussions at 5. Specifically, the agency found that Amentum had not clearly explained how it would accomplish the RFP requirements under this sub-annex with only a single proposed general supply specialist FTE. *Id.* In its FPR, Amentum increased its staffing from one general supply specialist FTE to three information technology/camera maintenance specialist FTEs, which addressed the agency's concern. *Id.*; see also AR, Exh. 21, Amentum Technical Proposal at 128.

Further, as noted above, the RFP required the agency to evaluate cost realism considering whether a proposal's elements reflected a clear understanding of the requirements and were sufficient for the effort to be accomplished but did not require the agency to consider the proposed relative staffing levels in its analysis. RFP at 93-94. Given the RFP requirements and the contemporaneous evaluation record, documenting the agency's analysis of the realism of Amentum's proposed staffing, we conclude that the agency was not required to conduct a further realism analysis comparing Amentum's proposed staffing to VJFS's or to the IGE. On this record, VJFS's assertion that the agency should have used additional types of realism analyses constitutes, at best, disagreement with the agency's judgement.⁸ We deny this ground of protest.

The protester alternatively challenges the staffing analysis undertaken by the agency's technical evaluators, contending that the TET's evaluation of the realism of Amentum's proposed staffing was inadequate and insufficiently documented. Comments at 20-24. In this regard, the protester argues that the evaluation record does not demonstrate whether the TET meaningfully considered if offerors' proposed staffing (either generally or within each annex) was sufficient to perform the RFP requirements. *Id.* We find that VJFS's arguments in this regard are untimely.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. Under these rules, protests generally must be filed no later than 10 calendar days after the protester knew, or should have known, the basis of its protest, whichever is earlier.

⁸ VJFS separately avers that the agency's decision not to adopt these additional cost realism methods was unreasonable because it was based on flawed or unsupported assumptions. Comments at 5-7. The protester contends that the agency's explanation--that such a comparative analysis would not be sufficient to determine realism because of differences in offerors' technical approaches and because the IGE was not based on incumbent staffing--are not supported by the record and lack a rational basis. *Id.* (citing AR, Exh. 26, SSEB Report at 57).

We note that as a general matter, when assessing cost realism, there is no *per se* requirement that an agency compare offerors' proposed costs with the government estimate. *CGI Fed. Inc.*, B-403570 *et al.*, Nov. 5, 2010, 2011 CPD ¶ 32 at 7. Further, our Office has explained that a mechanical comparison of offerors' proposals, by itself, is insufficient to determine realism and a proper cost realism analysis requires consideration of each offeror's technical approach. *See, generally, GiaCare & MedTrust JV, LLC*, B-407966.4, Nov. 2, 2016, 2016 CPD ¶ 321 at 7 (citing *Solers Inc.*, B-409079, B-409079.2, Jan. 27, 2014, 2014 CPD ¶ 74 at 7).

The protester asks that we sustain the protest based on the agency's explanation for not performing an analysis that VJFS has not demonstrated the agency was required to undertake. We decline to do so because the relevant question before us is not whether the agency had a rational basis for rejecting optional cost analysis techniques it chose not to use, but rather, whether the actual methodologies used by the agency to evaluate offerors' costs were reasonable.

4 C.F.R. § 21.2(a)(2). Protest arguments raised after corrective action and re-award of a contract are untimely when the information underpinning such arguments was available to the protester as part of its earlier protest, and the protester failed to raise these arguments in a timely manner. *Verizon Bus. Network Servs., Inc.*, B-419271.5 *et al.*, Apr. 26, 2021, 2021 CPD ¶ 191 at 14; *see also Synergy Sols., Inc.*, B-413974.3, June 15, 2017, 2017 CPD ¶ 332 at 6-7.

Here, VJFS received all the materials necessary to raise this allegation during its first protest challenging this procurement. In that protest, the agency's March 18, 2022, report included Amentum's November 18, 2021 technical proposal, which proposed the same staffing levels as Amentum's current FPR. *Compare* Amentum Nov. 2021 FPR, B-420539.1 *et al.*, AR, Exhs. 15b and 15c, at 57-312, *with* AR, Exh. 21, Amentum Technical Proposal at 75-312. The contracting officer explained at the time that the TET had evaluated staffing for realism by determining whether the proposed staffing levels "reflected a clear understanding of the requirements and were neither excessive nor insufficient for the effort to be accomplished" and that these "[f]indings were documented in the SSEB Report." B-420539 *et al.*, COS/MOL at 7. The agency report also included redacted copies of the initial SSEB and Source Selection Decision (SSD), which contained statements that the agency had found Amentum's staffing to be realistic.⁹ B-420539 *et al.*, AR, Exh. 17, Initial SSEB at 13; B-420539 *et al.*, AR, Exh. 20, Initial SSD at 4-5.

In a supplemental protest filed after the initial agency report, VJFS did not protest the sufficiency of the TET's realism analysis. *See* Comments & Second Supp. Protest, B-420539 *et al.*, Mar. 28, 2022. Instead, VJFS waited until October 3, more than 6 months after the agency filed its initial report, to raise this issue in a supplemental protest of a new award decision. Comments & Supp. Protest, B-420539.5, Oct. 3, 2022, at 39-46.

VJFS argues that its current challenge to the TET's staffing evaluation is timely because the protester timely raised the issue in its October 3, 2022, supplemental protest, which resulted in the agency taking corrective action, and then timely re-raised the issue in the instant protest after the agency made a new award decision. *See* Protester's Supp. Briefing at 6-9. The protester explains that its October 3, 2022, protest relied on the agency's cost realism analysis, which the protester did not receive until September 23, 2022. *Id.* VJFS states that its arguments in the October 3 protest were, generally, "a challenge to the [a]gency's failure to use methodologies of *any kind* to determine whether Amentum's staffing was realistic." *Id.* at 8. However, the protester never

⁹ The initial SSEB stated that Amentum's proposed "labor quantities were not deemed to be unrealistic, excessive, or insufficient to perform the required work based upon [Amentum's] proposed methodology" and indicated a clear understanding of the requirements. Initial SSEB, B-420539 *et al.*, AR, Exh. 17 at 13. The initial SSD stated that Amentum's proposed "labor quantities and equipment were deemed realistic and sufficient to perform the required work," and more generally found that Amentum's proposed cost was realistic. Initial SSD, B-420539 *et al.*, AR, Exh. 20 at 4-5.

explains what meaningful information it learned in the revised cost realism analysis that was not present in the March 2022 agency report.¹⁰

To the contrary, the March 2022 agency report demonstrated that Amentum had proposed relatively low staffing, that the TET had evaluated the realism of offerors' staffing, and that, despite the contracting officer's statement that the TET's findings were documented in the SSEB report, no substantive explanation of the TET's cost realism analysis was produced as part of the record. While the protester argues that it did not know the full extent of the agency's allegedly insufficient analysis and documentation, our decisions have repeatedly concluded that a protester need not await perfect knowledge before filing a protest. See, e.g., *Peraton Inc.*, B-416916.11, Feb. 8, 2021, 2021 CPD ¶ 88 at 6. In this case, the protester should have known the factual basis for its allegation that the agency failed to reasonably analyze Amentum's relatively low proposed staffing no later than March 18, 2022. Accordingly, we dismiss this protest ground as untimely because it was not filed within 10 days of when the protester knew or should have known its basis for protest.¹¹

The protest is denied in part and dismissed in part.

Edda Emmanuelli Perez
General Counsel

¹⁰ The protester does identify a single new fact it learned in the revised cost realism analysis compared to the initial agency report, namely, that the agency conducted discussions with Amentum regarding its proposed staffing levels for a single annex. See Protester's Supp. Briefing at 8. However, we do not see how such information was needed to challenge the agency's alleged failure to reasonably conduct, or document, its cost realism analysis.

¹¹ VJFS separately argues that its protest is timely because the agency conducted a new cost realism evaluation as part of its corrective action and the basis for the agency's evaluation of proposed staffing "meaningfully differed from its previous evaluation." Protester's Supp. Briefing at 9. We note that the protester's arguments in this regard mainly focus on its allegations that the agency unreasonably failed to compare Amentum's proposed staffing level's to VJFS's or the IGE. See *id.* at 10-16. We agree with the protester that these specific allegations are based on information from the agency's updated cost realism evaluation and accordingly address them on the merits above. See, e.g., AR, Exh. 26, SSEB Report at 56-57, 74-75. However, we do not find that the agency's updated realism evaluation provides a basis to revive VJFS's otherwise untimely protest ground challenging the reasonableness and documentation of the TET's evaluation of staffing levels where, as here, the basis of the otherwise untimely protest allegation concerns aspects of the evaluation that were not affected by the agency's corrective action. See *Synergy Sols., Inc.*, *supra* at 7.