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Decision

Matter of: Booz Allen Hamilton, Inc.

File: B-405993; B-405993.2

Date: January 19, 2012

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Richard J. Webber, Esq., Patrick R. Quigley, Esq., Kevin R. Pinkney, Esq., Craig S. King, Esq., and Judith B. Kassel, Esq., Arent Fox LLP, for VSE Corporation, an intervenor.

Michael B. Hedrick, Esq., Kerry G. Hotopp, Esq., Gwendolyn A. Iaci, Esq., and Andrew C. Saunders, Esq., Department of the Navy, for the agency.

Louis A. Chiarella, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's cost realism evaluation of awardee's proposal is denied where the record demonstrates that the agency's conclusions were reasonable.
2. Protest that awardee's cost proposal failed to comply with a material solicitation requirement (a mandated allocation of labor between stateside and overseas locations within a notional work package) is denied where the awardee's cost proposal was consistent with a reasonable interpretation of the solicitation requirement, and the agency's subsequent evaluation ensured a fair comparison on a common basis notwithstanding the offerors' different understandings of the requirement.
3. Exchanges between the awardee and the Defense Contract Audit Agency in a negotiated procurement after the contracting agency's receipt of proposals, intended to further explain the basis of indirect rates included within the awardee's cost proposal, did not constitute discussions, where the exchange clarified information already present in the awardee's proposal and the awardee was not presented with an opportunity to revise its proposal.

4. GAO will not review a protester's assertion that an agency abused its discretion by failing to hold discussions when the solicitation expressly advises that the agency intends to make award without discussions.

DECISION

Booz Allen Hamilton, Inc. (BAH), of McLean, Virginia, protests the award of a contract to VSE Corporation, of Alexandria, Virginia, under request for proposals (RFP) No. N00024-10-R-4204, issued by the Department of the Navy, Naval Sea Systems Command (NAVSEA), for follow-on technical support (FOTS) and ship transfer services in support of U.S. ships bought, leased, or transferred through the foreign military sales (FMS) program. BAH asserts that the agency's evaluation of offerors' proposals and subsequent source selection decision were unreasonable.

We deny the protest.

BACKGROUND

The Navy provides FOTS services to foreign navies and coast guards, especially with regard to decommissioned Navy ships used abroad as a result of FMS transactions. The Navy also manages the inactivation and disposal of its ships that have reached the end of their lifecycles, a significant portion of which result in sales and transfers to allied navies through the FMS program. The procurement here was to support both the Navy's FOTS and ship transfer requirements. Specifically, "[t]he purpose of this procurement is to provide eligible Foreign Navies access to a broad range of Life Cycle Support, systems upgrades, systems integration efforts and other related services associated with the transfer and acquisition, operation, and maintenance of naval vessels and systems within their inventory." RFP § C at 49; Agency Report (AR), Nov. 14, 2011, at 5-6.

The RFP, issued on June 8, 2010, contemplated the award without discussions of a cost-plus-award fee, indefinite-delivery, indefinite-quantity (ID/IQ) contract for a base year with four 1-year options for FOTS and ship transfer services. The solicitation identified four evaluation factors, in descending order of importance: technical capability; experience/past performance; management plan; and cost. The technical capability factor in turn consisted of seven subfactors: (1) sample task 1; (2) sample task 2; (3) sample task 3; (4) resumes; (5) facilities; (6) organizational approach; and (7) quality assurance plan (QAP)/procedures.¹ The noncost factors, when combined, were significantly more important than evaluated cost, and contract

¹ The sample task subfactors were of equal importance to each other; each was more important than the resumes, facilities, and organizational approach subfactors; and the latter three subfactors were of equal importance to each other, and each was in turn more important than the QAP/procedures subfactor.

award was to be made to the offeror whose proposal represented the “best value” to the government, all factors considered. RFP § M at 172-76.

BAH and VSE submitted proposals by the August 16 closing date. A technical evaluation review panel (TERP) evaluated offerors’ technical proposals using the following adjectival rating system: outstanding, good, satisfactory, marginal, unsatisfactory, and (with regard to past performance) neutral. Concurrent with the technical evaluation, a cost analysis panel (CAP) evaluated offerors’ cost proposals and calculated an overall evaluated cost to the government for each offeror. The TERP and CAP in turn provided the agency’s best value advisory council (BVAC) with detailed evaluation findings. AR, Tab 2, TERP Report, at 5-43; Id., Tab 3, CAP Report, at 1-54, Attachs. A-D; Tab 3B, CAP Report References.

The BVAC generally adopted the technical and cost evaluations of the BAH and VSE proposals, the final results of which were as follows:

Factor	BAH	VSE
Technical Capability	Good	Outstanding
Sample Task 1	Good	Outstanding
Sample Task 2	Satisfactory	Outstanding
Sample Task 3	Satisfactory	Outstanding
Resumes	Good	Good
Facilities	Satisfactory	Satisfactory
Organizational Approach	Good	Good
QAP/Procedures	Satisfactory	Satisfactory
Experience/Past Performance	Good	Good
Experience	Good	Outstanding
Past Performance	Outstanding	Good
Management Plan	Good	Good
Proposed Cost	\$2,299,014,500	\$1,503,446,271
Evaluated Cost	\$2,299,493,219	\$1,846,746,212

Id., Tab 5, BVAC Report, at 11-20.

Based upon these results, the BVAC concluded that VSE’s proposal had both a significant technical capability advantage and a lower evaluated cost than BAH’s proposal, and accordingly recommended that contract award be made to VSE. Id. The source selection authority (SSA) likewise subsequently determined that VSE’s higher technically-rated, lower evaluated-cost proposal represented the best value to the government. Id., Tab 6, Source Selection Decision, at 1-2. Upon learning of the resulting award to VSE, BAH filed this protest.

DISCUSSION

BAH's protest raises numerous challenges to the Navy's evaluation of offerors' cost and technical proposals. Although we do not specifically address all of BAH's issues and arguments about the evaluation of proposals, we have fully considered all of them and find that they afford no basis on which to sustain the protest. We discuss BAH's principal arguments below.

Cost Realism Evaluation of VSE's Proposal

BAH protests that the Navy failed to perform an adequate cost realism evaluation of VSE's proposal. In this regard, the protester argues the Navy failed to reasonably evaluate the realism of VSE's own (prime) labor rates and indirect rates. BAH also contends that VSE's cost proposal failed to comply with a material solicitation requirement, and that the Navy should have rejected VSE's materially noncompliant proposal rather than attempting to "fix" it as part of the cost realism evaluation.²

The RFP instructed offerors to base their cost proposals on a notional work package included with the solicitation. Specifically, with regard to the FOTS and ship transfer services (labor) contract line item numbers (CLIN), the RFP provided offerors with the specific labor categories and labor hours (approximately 32 million hours over 5 years) that they were required to use in their proposals.³ RFP Amend. 0002, Attach. L-1. Similarly, with regard to the material and travel CLINs, the solicitation provided offerors with specific amounts (approximately \$829 million over 5 years) for use in their proposals. RFP § L at 170. Accordingly, offerors' cost proposals were to be based on their direct labor rates, indirect rates, and fee to be applied as necessary to the RFP-provided labor hour and material/travel amounts. Id. at 168-71.

The RFP also instructed offerors as part of their cost proposals to assume a predetermined allocation of work to be performed within the continental United States (CONUS) and outside the continental United States (OCONUS) as follows:

² BAH also protested that the cost realism evaluation of VSE was inadequate insofar as the Navy did not reasonably evaluate VSE's allocation of the overseas work among U.S. and foreign contractors, the cost realism evaluation relied on an outdated independent government cost estimate, and the agency failed to reasonably evaluate the realism of VSE's subcontractor labor rates. Protest, Oct. 12, 2011, at 19-22. As the agency report provided detailed responses to the protester's assertions (AR, Nov. 14, 2011, at 20-38) and BAH did not respond to the agency's position (Comments, Nov. 25, 2011, at 3-31), we deem the arguments abandoned. See Citrus College; KEI Pearson, Inc., B-293543 et al., Apr. 9, 2004, 2004 CPD ¶ 104 at 8 n.4.

³ While offerors were also to propose estimated labor hours by category as part of the technical proposal's sample tasks, this was not part of the cost evaluation.

For proposal purposes, the following ratio of CONUS, OCONUS, and Long Term OCONUS (more than 180 days) is established for all labor categories. The cost proposal shall clearly reflect the utilization of these categories and the corresponding labor rates.

CONUS	60%
OCONUS	35%
Long Term OCONUS	5% ⁴

Id. at 170.

VSE utilized in its cost proposal the specific labor categories, labor hour amounts, and material/travel amounts as required by the solicitation. In general terms, VSE proposed to perform a majority of the work itself; based its direct labor rates for non-key personnel (largely new hires) on salary survey data of the various U.S. locations where the work was to be performed; and based its indirect rates on historic rates as adjusted to reflect the projected impact of the increased workload volume associated with the proposed contract. VSE's proposal included supporting cost data for its proposed direct and indirect rates as well as those of its subcontractors. AR, Tab 15, VSE Proposal, Vol. IV, Supporting Cost Data. Further, relevant to the protest here, VSE's cost proposal reflected a 60/35/5 percent allocation of CONUS, OCONUS, and Long Term (LTOCONUS) work based on the total costs for each labor category. Id. at 975-94. (In contrast, BAH's cost proposal based its distribution of CONUS, OCONUS, and LTOCONUS work on the labor hours, rather than the labor costs, for each labor category.)

The CAP performed a cost realism evaluation of VSE's proposal. Specifically, together with the assistance of DCAA, the CAP reviewed VSE's direct labor rates, subcontractor direct labor rates, VSE's indirect (i.e., fringe, overhead, and general and administrative expenses (G&A)) rates, fee, and material/travel amounts. In this regard, while finding VSE's use of salary survey data (rather than historic data) to be a reasonable approach to direct labor rates, based on the rationale that VSE did not currently employ most of the individuals that would be required by the contract, the evaluators considered VSE's use of the 25th percentile labor rate within each labor category in the survey to be "overly aggressive," especially when attempting to hire a significant number of employees very quickly. Accordingly, the evaluators adjusted

⁴ The ratio of CONUS, OCONUS, and Long Term OCONUS (LTOCONUS)-based work applied to each labor category overall, but not to each CLIN. Because some labor categories were common to more than one CLIN (e.g., the "Pipefitter" labor category was part of fifteen CLINs), the allocation between CONUS and OCONUS work could be higher in one CLIN and lower in another than the overall RFP-established ratios.

the proposed direct labor rates to the median salary survey rates.⁵ Similarly, while considering VSE's overall rationale and projections to be reasonable, the CAP made selective adjustments to VSE's indirect rates after concluding the projected indirect cost pool increases (e.g., recruitment and hiring costs) were understated and the corresponding cost pool bases (i.e., contract utilization level) overstated.⁶ AR, Tab 3, CAP Report, at 11-17.

In addition, as the Navy had intended for offerors to base their CONUS/OCONUS/LTOCONUS distribution on labor hours rather than labor costs, and BAH had based its distribution on labor hours, the CAP made additional adjustments to VSE's evaluated cost to account for the fact that VSE's distribution instead had been based on labor costs. Specifically, the Navy first determined VSE's total evaluated cost for work by location (i.e., CONUS, OCONUS, LTOCONUS) as well as the offeror's total proposed number of hours by location. The Navy then computed a weighted, average hourly rate for each location, which it then applied to the correct number of hours. This resulted in approximately 6 million hours being reallocated within VSE's proposal from OCONUS-based work to CONUS-based work, as well as an additional \$129,623,441 upward adjustment to VSE's evaluated cost.⁷ Id. at 17-18.

⁵ The CAP also made additional adjustments to VSE's labor rates based on the contract start date and the offeror's proposed escalation rates for the option years. Id. at 14.

⁶ While believing VSE's evaluated indirect rates to be more accurate projections than VSE's 2010 incurred cost submission (ICS) rates, the CAP performed a rate analysis of VSE's proposal utilizing the offeror's 2010 ICS rates to determine the overall cost impact if the current indirect rates were maintained in performance of the contract. The CAP found through this analysis that VSE's total evaluated cost would remain approximately 12% (or \$282 million) lower than BAH's total evaluated cost. AR, Tab 3, CAP Report, at 17; Tab 3c, CAP Report Reference, at 1 (Summary).

⁷ The record reflects that VSE--which was to self-perform a majority of the total effort--proposed identical CONUS, OCONUS, and LTOCONUS rates for all non-key personnel labor categories and, therefore, the change in location for VSE-performed work was without cost impact. Similarly, various VSE domestic subcontractors utilized the same labor rates for labor categories irrespective of work location. For example, for the Combat System Engineer labor category, VSE and all proposed subcontractors had CONUS labor rates that were identical to their OCONUS and LTOCONUS labor rates. AR, Tab 15, VSE Proposal, Vol. IV, Supporting Cost Data (1 of 3), at 54, 289, 313, 317, 509, 533, 537.

A summary of the CAP's cost realism evaluation of VSE's proposal is as follows:

	Proposed	Evaluated	Adjustment
VSE Labor	\$400,677,010	\$578,949,999	\$178,272,989
Subcontractor Labor	\$195,690,288	\$207,793,263	\$12,102,975
G&A on Subcontractor Labor	\$(DELETED)	\$(DELETED)	\$5,068,884
Fee	\$(DELETED)	\$(DELETED)	\$0
Material/Travel	\$828,711,451	\$828,711,451	\$0
G&A on Material/Travel	\$(DELETED)	\$(DELETED)	\$18,231,652
CONUS/OCONUS Adjustment	\$0	\$129,623,441	\$129,623,441
Total	\$1,503,446,271	\$1,846,746,212	\$343,299,941

Id. at 13. Importantly, even after a net total upward adjustment to VSE's cost of approximately \$343 million, VSE's evaluated cost for the solicitation's notional work package remained approximately \$453 million (or approximately 20%) less than BAH's evaluated cost. Id. at 1, 53-54.

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. Metro Machine Corp., B-402567, B-402567.2, June 3, 2010, 2010 CPD ¶ 132 at 6; Honeywell Tech. Solutions, Inc., B-400771, B-400771.2, Jan. 27, 2009, 2009 CPD ¶ 49 at 17; see Federal Acquisition Regulation (FAR) § 16.301. As a result, 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. In this regard, 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 agency's conclusions about the most probable costs under an offeror's proposal are reasonable and realistic in view of other cost information reasonably available to the agency as of the time of its evaluation. Metro Mach. Corp., supra, at 6. We review an agency's judgment in this area only to see that the agency's cost realism evaluation was reasonably based and not arbitrary, and adequately documented. Honeywell Tech. Solutions, Inc., supra, at 17; Jacobs COGEMA, LLC, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 26.

VSE's Direct Labor Rates

BAH challenges the adequacy of the Navy's cost realism evaluation of VSE's direct labor rates. In this regard, the protester asserts that the unsupported salary surveys VSE used instead of its own higher actual labor rate information or its domestic subcontractors' rates, were not a reliable indicator of VSE's most probable cost of

performance and thus were not a sufficient basis on which to base the cost realism analysis.

We find no basis to question the Navy's cost realism analysis of VSE's direct labor rates. The CAP considered and accepted VSE's rationale for using salary survey data rather than the awardee's historical rates as the basis of its proposed direct labor rates--i.e., that the historical rates were largely unhelpful because VSE does not currently employ most of the individuals that would be required to perform the contract. The CAP also found that VSE's salary survey data was based on the labor rates for the various US locations where work was to be performed. Although the CAP then determined that VSE's rationale for using the 25th percentile labor rate was too optimistic when attempting to hire a significant number of employees very quickly, the evaluators adjusted the proposed direct labor rates to the median salary survey rates to reflect the most probable labor rates. AR, Tab 3, CAP Report, at 15. While BAH claims that VSE's evaluated direct labor costs should have instead been based on other methodologies, the protester has not demonstrated that the CAP's evaluation result here was unreasonable.

Moreover, BAH has failed to demonstrate that it was prejudiced by the additional adjustments it contends the CAP "should" have made to VSE's direct labor rates. BAH's one offered comparison of VSE's evaluated direct labor rates to the offeror's average subcontractor rates indicates only a \$40.5 million fully burdened labor cost impact over 5 years. Comments, Nov. 25, 2011, at 25, exh. 2, Subcontractor Direct Rates. This would have had little impact on the \$453 million difference between the offerors' evaluated costs.

VSE's Indirect Rates

BAH also challenges the agency's evaluation of VSE's indirect rates. The protester argues that while the Navy adjusted the awardee's various indirect rates upward, it does not appear that the CAP's adjustments reflect the most probable cost of VSE's approach. We disagree.

As a preliminary matter, the record demonstrates the CAP was aware that VSE's proposed rates were based on the awardee's historic rates as adjusted, as well as the offeror's rationale for its calculations. The CAP then reviewed the pool and the base for each of VSE's indirect rates and made specific adjustments where it deemed necessary. For example, the CAP found that many of VSE's indirect costs were fixed, particularly in the areas of overhead and G&A, and that these costs would not increase proportionately with increased direct labor costs. The CAP also found VSE's projected costs for both recruitment and hiring were underestimated and made adjustments in these areas. In addition, the CAP determined VSE's estimated contract utilization level to be overstated, and made adjustments in this area. AR, Tab 3, CAP Report, at 16-17. In sum, the record reflects that the Navy carefully reviewed each element of VSE's indirect costs and made adjustments where

appropriate. BAH has not shown that the agency's conclusions in this regard were unreasonable, nor has it otherwise furnished a basis to conclude that the adjusted, evaluated indirect rates for VSE did not reasonably represent the awardee's most probable cost of performance.

Moreover, while BAH claims the adjustments made by the Navy to VSE's indirect rates were inadequate, the protester fails to show that it was materially prejudiced by the agency's evaluation of VSE's indirect rates. BAH offers no quantification of the adjustments that the Navy allegedly should have but failed to make. By contrast, as set forth above, the Navy did consider what the impact would be if VSE's higher, 2010 incurred cost rates were used in place of the evaluated indirect rates. The CAP found that VSE's total evaluated cost would still remain approximately 12%, or \$282 million, lower than BAH's evaluated cost.

Allocation of Labor between CONUS and OCONUS Locations

BAH protests that VSE's cost proposal failed to comply with a material requirement of the solicitation, specifically, the mandated distribution of CONUS, OCONUS, and LTOCONUS-based labor. BAH argues that VSE's noncompliance with a mandatory, material solicitation requirement should have resulted in the Navy's rejection of VSE's proposal.

It is well settled that a proposal that fails to conform to material terms of the RFP is unacceptable and may not form the basis for award. Trace Sys., Inc., B-404811.4, B-404811.7, June 2, 2011, 2011 CPD ¶ 116 at 3. Here, we find reasonable the agency's conclusion that the work allocation aspect of VSE's proposal did not represent an issue of material noncompliance.

As set forth above, the RFP stated that, "[f]or proposal purposes, the following ratio . . . is established for all labor categories. . . . CONUS--60%; OCONUS--35%; LTOCONUS--5%." RFP at § L at 170. The solicitation provision, however, was silent as to whether the work allocation ratio was to be based on labor hours or labor costs. VSE's proposal complied with the work allocation ratio as it interpreted it--based on its labor costs. Notwithstanding the fact that the Navy had intended for offerors to base the work allocation on labor hours, we find VSE's interpretation of the RFP requirement here was a reasonable one--the awardee's understanding does not contradict the stated terms of the solicitation. In sum, as VSE's proposal was consistent with a reasonable interpretation of the solicitation requirement, there is no basis for concluding that the proposal was noncompliant in this regard and should have been rejected as unacceptable.

BAH, however, also asserts that the Navy's reallocation of VSE's labor hours and related costs--from OCONUS-based work to CONUS-based work--to account for the differing interpretations of the distribution requirement was unrelated to any proper cost realism analysis and was not grounded in any aspect of VSE's proposal.

We find no merit to BAH's assertions. As the RFP's work allocation requirement affected offerors' proposed costs for purposes of the notional work package, it was proper for the Navy to make adjustments to VSE's evaluated cost so as to ensure consistency with both the agency's intent and BAH's proposal (see FAR § 15.404-1(d)(2) ("[c]ost realism analyses shall be performed on cost-reimbursement contracts to determine the probable cost of performance for each offeror"). Further, our review of the record indicates that the Navy's adjustment was a reasonable one insofar as it was directly related to VSE's cost proposal. In this regard, the CAP's methodology utilized VSE's (and its subcontractors') evaluated labor rates by labor category and location as the basis of the reallocation. Likewise, the CAP's methodology did not alter VSE's proposed distribution of work between itself and its subcontractors as part of the reallocation of hours from OCONUS to CONUS-based work. Although BAH challenges the validity of the Navy's assumption regarding the distribution of work between VSE and its subcontractors, we think the agency's assumption of no change is supported by the fact that both VSE and various domestic subcontractors had labor rates that were the same regardless of where the work occurred (CONUS or OCONUS). In fact, as VSE's domestic subcontractors generally had higher labor rates than did VSE, we find no reason to believe that VSE would have increased its utilization of domestic subcontractors as part of the OCONUS-to-CONUS labor hour reallocation as the protester suggests.

Again, an agency's cost realism analysis need not achieve scientific certainty, but need only be reasonably adequate and provide some measure of confidence that the agency's conclusions about the most probable costs under an offeror's proposal are reasonable and realistic. We find no basis here on which to conclude that the agency's cost evaluation failed to meet this standard.

Failure to Take Cost Adjustments into Account in Technical Evaluation

BAH argues that the Navy improperly failed to consider, as part of the technical evaluation, whether the cost realism adjustments to VSE's proposal reflected a lack of understanding of the technical requirements, inconsistencies, or a lack of credibility. In this regard, the RFP informed offerors that,

[a]ny inconsistency, whether real or apparent, between promised performance and cost should be explained in the supporting cost data volume. The burden of proof for cost credibility rests with the offeror. Offerors are cautioned that to the extent proposed costs appear unrealistic, the Government may infer either a lack of understanding of the requirements, increased risk of performance, or lack of credibility on the part of the offeror.

RFP § M at 175.

As detailed above, the Navy technical and cost evaluation teams each evaluated distinct aspects of the offerors' proposals. The TERP rated VSE's technical capability proposal as "outstanding" and found that it demonstrated an exceptionally thorough and comprehensive understanding of the requirements. AR, Tab 2, TERP Report, at 22-31, 44. By contrast, the CAP found VSE's proposal to be unrealistic in various regards such that the evaluated cost was approximately \$343 million higher than the offeror's proposed cost. *Id.*, Tab 3, CAP Report, at 13. The BVAC, however, considered VSE's entire proposal, and the evaluation results, and found the cost proposal to be consistent with the offeror's technical approach. *Id.*, Tab 5, BVAC Report, at 16. Specifically, the record indicates that the BVAC reviewed VSE's technical and cost proposals to ensure their consistency; reviewed the size and nature of the cost adjustments to VSE's proposal; and determined that the adjustments to VSE's direct and indirect rates did not indicate that the offeror failed to understand the technical requirements, or that an adjustment to VSE's technical rating was warranted. AR, Tab 20, Declaration of M.S., at 1-3.

Where the cost and technical evaluation of a proposal reach contradictory conclusions, the agency generally is required to reconcile the evaluations. See SelectTech Bering Straits Solutions JV; Croop-LaFrance, Inc., B-400964 *et al.*, Apr. 6, 2009, 2009 CPD ¶ 100 at 4; Serco, Inc., B-298266, Aug. 9, 2006, 2006 CPD ¶ 120 at 7; Information Ventures, Inc., B-297276.2 *et al.*, Mar. 1, 2006, 2006 CPD ¶ 45 at 6. For example, in Serco, we sustained the protest where the contracting agency concluded in the course of a cost realism analysis that the awardee's staffing levels were unrealistically low (which led the agency to more than double the hours proposed), but the record did not demonstrate that the agency, in light of its cost realism adjustment, reviewed the awardee's technical understanding of the contract requirements as required by the solicitation. Serco, Inc., *supra*, at 7-8.

Here, we find that the Navy reasonably considered the adjustments made to VSE's cost proposal as part of its technical evaluation of the awardee. As a preliminary matter, unlike our decision in Serco, there was no disparity here between the VSE technical and cost proposals as to staffing levels because the RFP's technical and cost evaluations were based on different requirements. While offerors were to provide staffing levels as part of the technical capability factor's sample tasks, the cost evaluation was based on a separate notional work package. Additionally, although the CAP found various aspects of VSE's cost proposal to be unrealistic, many of these--contract start date, the out-year inflation rate, and the CONUS/OCONUS labor reallocation--did not concern technical understanding.

Further, the record demonstrates that the Navy reasonably considered the extent to which, if any, VSE's technical evaluation ratings should be adjusted in light of the adjustments to VSE's direct labor and indirect (benefits) rates. The BVAC reviewed both the VSE technical and cost proposals for consistency. This included reviewing VSE's sample task proposals to ensure the offeror demonstrated a technical understanding of the labor categories consistent with the cost proposal. The BVAC

also considered the performance risks associated with VSE's reliance on part-time labor, but found that VSE's management plan and organizational approach adequately mitigated this risk. The BVAC then concluded that notwithstanding the CAP's adjustments to VSE's direct and indirect rates, this did not indicate that VSE failed to understand the technical requirements or that adjustments to VSE's technical or risk ratings were warranted. AR, Tab 20, Declaration of M.S., at 1-3. BAH has not shown this conclusion to be unreasonable. In sum, we find that the record indicates that the Navy fully considered the potential effect of VSE's lower proposed direct and indirect rates in its technical evaluation, and that the agency's conclusion that no technical adjustments were warranted is unobjectionable.

Unequal Discussions

BAH asserts that the Navy held discussions with VSE, allowing VSE to revise its cost proposal during exchanges with DCAA, without providing BAH a similar opportunity to revise its proposal.

VSE's cost proposal included its proposed indirect rates and an explanation for the downward adjustment to its rates from its historic ones. AR, Tab 15, VSE Proposal, Vol. IV, Supporting Cost Data, at 41-43. As part of its cost realism evaluation, the CAP requested that DCAA perform rate verifications of both offerors' proposals. In the course of its rate verification audit, DCAA received additional supporting cost data from VSE which provided a narrative explanation in support of VSE's proposed indirect rates, but did not alter the proposed rates. *Id.*, Tab 19, VSE Global Indirect Rates, at 1-11. The DCAA considered VSE's supplemental submission as part of its rate verification audit, and subsequently provided it to the CAP which took the information into account as part of its cost realism evaluation of VSE's indirect rates. *Id.*, Tab 3, CAP Report, at 16.

Contrary to BAH's position, we find that the agency's exchanges with VSE did not constitute discussions. In this regard, FAR § 15.306 describes a range of exchanges that may take place between an agency and an offeror during negotiated procurements. Clarifications are "limited exchanges" between an agency and an offeror for the purpose of clarifying certain aspects of a proposal, and do not give an offeror the opportunity to revise or modify its proposal. FAR § 15.306(a)(2); Lockheed Martin Simulation, Training & Support, B-292836.8 et al., Nov. 24, 2004, 2005 CPD ¶ 27 at 8. Discussions, on the other hand, occur when a contracting officer communicates with an offeror for the purpose of obtaining information essential to determine the acceptability of a proposal, or provides the offeror with an opportunity to revise or modify its proposal in some material respect. Highmark Medicare Servs., Inc. et al., B-401062.5 et al., Oct. 29, 2010, 2010 CPD ¶ 285 at 11; Gulf Copper Ship Repair, Inc., B-293706.5, Sept. 10, 2004, 2005 CPD ¶ 108 at 6; see FAR § 15.306(d). When an agency conducts discussions with one offeror, it must conduct discussions with all other offerors whose proposals are in the competitive range. Gulf Copper Ship Repair, Inc., *supra*.

In situations where there is a dispute regarding whether exchanges between an agency and an offeror constituted discussions, the acid test is whether an offeror has been afforded an opportunity to revise or modify its proposal. Id.; Priority One Servs., Inc., B-288836, B-288836.2, Dec. 17, 2001, 2002 CPD ¶ 79 at 5.

Communications that do not permit an offeror to revise or modify its proposal, but rather permit the offeror to explain or clarify what the offeror has already proposed to do, are clarifications and not discussions. Allied Tech. Group, Inc., B-402135, B-402135.2, Jan. 21, 2010, 2010 CPD ¶ 152 at 6; SRS Tech., B-291618.2, B-291618.3, Feb. 24, 2003, 2003 CPD ¶ 70 at 3 n.4.

We agree with the agency that the supplemental cost information provided by VSE to DCAA during the audit agency's rate verification audit constituted clarifications rather than discussions. First, the exchange was not undertaken with the intent of allowing the offeror to revise its proposal. See FAR § 15.306(d); Warden Assocs., Inc., B-291238, Dec. 9, 2002, 2002 CPD ¶ 215 at 3; MG Indus., B-283010.3, Jan. 24, 2000, 2000 CPD ¶ 17 at 9. In this regard, we note that the FAR provides for a contracting agency when conducting a cost proposal analysis to request audit assistance from DCAA. See FAR § 15.404-2(c)(1). It is clear from the record that the DCAA audit of VSE was intended as a means of gathering information for use in the Navy's cost evaluation and possible future discussions; it was not initiated for the purpose of holding discussions with VSE, which are to be conducted by the contracting officer. See FAR § 15.306(d)(1). Further, VSE did not revise its proposal so as to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, or otherwise revise the proposal to make it acceptable. See eMind, B-289902, May 8, 2002, 2002 CPD ¶ 82 at 5. The acceptability of VSE's proposal simply did not turn on the additional information furnished to DCAA. In sum, VSE's exchange with DCAA did not involve revising its proposed indirect cost rates, but rather, was limited to providing additional explanation for what it had previously proposed. See Northeast MEP Servs., Inc., B-285963.9, Mar. 8, 2001, 2001 CPD ¶ 66 at 4. In these circumstances, there is no basis to conclude that DCAA or the Navy improperly conducted discussions with only one offeror.

Failure to Conduct Discussions

BAH also protests that the Navy abused its discretion by failing to hold discussions with the offerors. The solicitation, however, expressly advised that the agency contemplated making award without discussions. RFP § M at 172. An agency's decision not to initiate discussions is a matter we generally will not review. See Trace Sys., Inc., B404811.4, B-404811.7, June 2, 2011, 2011 CPD ¶ 116 at 5; Kiewit Louisiana Co., B-403736, Oct. 14, 2010, 2010 CPD ¶ 243 at 3. To the extent our decision in The Jonathan Corp.; Metro Mach. Corp., B-251698.3, B-251698.4, May 17, 1993, 93-2 CPD ¶ 174 at 15, establishes a different rule, it will no longer be followed.

Technical Evaluation of BAH's Proposal

BAH challenges the Navy's evaluation of its proposal under the technical capability factor. Specifically, BAH argues that the minor weaknesses assigned under the sample task 2 and 3 subfactors were unreasonable. BAH asserts that if the Navy had evaluated its proposal in these areas, it would have received a higher technical rating.

The RFP required offerors to address various sample tasks as part of their technical capability proposals. Sample task 2 involved the integration planning for combat system anti-air warfare upgrades for ex-USN PERRY (FFG-7) class frigates. Sample task 3 involved the "hot" ship transfer of two USN FFG-7 class ships.⁸ RFP § L at 160-61. The TERP evaluated BAH's proposal as "satisfactory" under the sample task 2 subfactor based on the identification of no strengths and two minor weaknesses: (1) the proposal provided an incomplete detailed labor estimate for ship upgrades; and (2) the proposal did not provide adequate examples of specific platform interface impacts that would be associated with the proposed combat systems upgrades. The TERP also rated BAH's proposal as "satisfactory" under the sample task 3 subfactor based on the identification of one minor strength and two minor weaknesses: (1) the proposal failed to provide a plan of action and milestones (POA&M) with key events and factors required to develop a training plan for the FMS customer crews; and (2) the POA&M failed to provide schedule parameters for specific key events required to develop a ship transfer availability work package. AR, Tab 2, TERP Report, at 8-11.

Competitive prejudice is an essential element of a viable protest, and where the protester fails to demonstrate prejudice, our Office will not sustain a protest. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577 (Fed. Cir. 1996). Here, even if BAH prevailed on its challenge to the Navy's evaluation of the sample task 2 subfactor, leaving it with no strengths or weaknesses under that subfactor, there is no basis for concluding that the protester's "satisfactory" subfactor rating would have increased to a "good" rating.⁹ Likewise, even if BAH prevailed on its challenge to the evaluation of the

⁸ A "hot" ship transfer is a transfer that occurs in conjunction with the Navy's decommissioning of a ship and differs from a "cold" ship transfer involving the reactivation of a ship that the Navy had previously inactivated and stored at the Inactive Ship Maintenance Facility. RFP at 52.

⁹ In accordance with the established evaluation rating scheme, a rating of "satisfactory" was defined as one where the offeror's proposed approach indicates an adequate understanding of the requirements, there are few, if any, exceptional features to benefit the program, and weaknesses, if any, are generally offset by strengths. AR, Tab 8, Source Selection Plan, at 15. By contrast, a rating of "good" was defined as one where the offeror's proposed approach indicates a thorough understanding of the requirements, the proposal has strengths that indicate the

(continued...)

sample task 3 subfactor, leaving it with one minor strength and no weakness under that subfactor, there is no basis for concluding that BAH's overall technical capability factor rating of "good," based on 3 "good" and 4 "satisfactory" subfactor ratings, would have increased. In sum, the record shows that there was no prejudice to BAH arising from any alleged errors in this area, and that even if the protester prevailed on this protest ground as argued, VSE's proposal would remain both higher-technically rated and lower evaluated cost than the protester's.

The protest is denied.

Lynn H. Gibson
General Counsel

(...continued)

proposed approach will benefit the program, and weakness, if any, are more than offset by strengths. Id.