

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Dorado Services, Inc.

File: B-408075; B-408075.2

Date: June 14, 2013

Joseph M. Goldstein, Esq., and Andrew E. Schwartz, Esq., Shutts & Bowen LLP, for the protester.

Michael A. Gordon, Esq., Jason Edwards, Esq., and Fran Baskin, Esq., Michael A. Gordon PLLC, for CoSTAR Services, Inc., an intervenor.

Joe D. Baker II, Esq., Department of the Navy, Naval Facilities Engineering Command, for the agency.

Katherine I. Riback, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of the offerors' technical proposals is denied where the record establishes that the evaluation was reasonable and consistent with the solicitation's evaluation criteria.
 2. Protest alleging that the awardee engaged in an improper "bait and switch" scheme regarding its proposed key personnel is denied where the record shows that the protester's arguments relied on a document that had been altered from its original form, and where the document in any event did not support the protester's arguments.
 3. Protest alleging that the awardee's proposal violates the applicable limitation on subcontracting is denied where the awardee's proposal does not show, on its face, that the awardee will not comply with the limitation.
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DECISION

Dorado Services, Inc., of Sanford, Florida, protests the award of a contract by the Department of the Navy, Naval Facilities Engineering Command, to CoSTAR Services, Inc., of San Antonio, Texas, under request for proposals (RFP) No. N69450-12-R7577, for regional support services and base operating support services at various locations. Dorado asserts that the agency unreasonably

evaluated the offerors' technical proposals, and also argues that the awardee's proposal failed to comply with the applicable limitation on subcontracting.

We deny the protest.

BACKGROUND

The RFP was issued on October 7, 2011,¹ as a historically underutilized business zone (HUBZone) small business set-aside, and contemplated the award of a fixed-price, indefinite-delivery, indefinite-quantity contract for a six-month base period, two one-year option periods, and one six-month option period. RFP at 16.

The solicitation sought proposals to provide base operating support services at Naval Air Station Jacksonville, Florida; Naval Station Mayport, Florida; and nine Navy Operational Support Centers (NOSCs)/Reserve Centers in Florida, Georgia, Alabama, and South Carolina. RFP at 3. Along with the base operating support services, the solicitation also requires the contractor to provide heating, ventilation and air conditioning, boilers, and fire protection services at the nine NOSCs locations. Id.

The RFP provided for award on a "best value" basis and identified the following six evaluation factors: (1) corporate experience/capability of key personnel, (2) past performance, (3) management, (4) technical approach, (5) safety, and (6) price. RFP at 193-198. For purposes of award, the technical evaluation factors were of equal importance and, when combined, were approximately equal to price. RFP at 203.

The Navy received proposals from six offerors, including Dorado and CoSTAR, by the RFP closing date of December 20. Agency Report (AR) at 2. Dorado is a HUBZone certified small business, and submitted its proposal based on a strategic teaming agreement between itself and KIRA, Inc. (the incumbent contractor), with Dorado as the prime contractor and KIRA as a significant contractor. AR, Tab 6, SSEB Report at 32. CoSTAR is a HUBZone certified, 8(a) small disadvantaged business. CoSTAR proposed three significant subcontractors: [deleted]. Id. at 21.

The agency convened a source selection evaluation board (SSEB) to evaluate offerors' proposals. See id. Following the evaluation of offerors' initial proposals, the agency established a competitive range of the most highly-rated proposals, including those of the protester and awardee, and sent evaluation notices (ENs) to each offeror in the competitive range, identifying any proposal weaknesses,

¹ The RFP was amended fifteen times. Citations to the RFP herein are to the conformed copy of the RFP provided by the agency.

significant weaknesses, or deficiencies. Id. at 11. The agency then held telephone discussions with each offeror in the competitive range, and requested revised proposals. Id. Based on the revised proposals, the Navy selected Jones Diversified Services, A Joint Venture (JDS) for award and issued a preaward notice to the other offerors. Id.

The proposed award to JDS was challenged in a HUBZone status protest to the Small Business Administration (SBA). AR at 12. SBA issued a decision finding that JDS was not eligible for award, and JDS withdrew its proposal. Id. On August 24, 2012, the Navy sent a second round of ENs to the remaining offerors in the competitive range; the Navy also conducted discussions via telephone and requested revised proposals. Based on the evaluations of the revised proposals, the source selection authority selected Chenega Operations Services (COS) for award. After receiving a preaward notice concerning COS, Dorado filed a protest with SBA, challenging COS's HUBZone status. Id. On December 5, SBA ruled that COS was not a certified HUBZone small business concern for the relevant time period, and was therefore not eligible for award; based on this ruling COS withdrew its proposal.² Id.; Protest, exh. 4, SBA HUBZone Protest (Dec. 5, 2012) at 2.

The SSEB reviewed the remaining offerors in the competitive range and concluded that the next successful offeror in line for award was CoSTAR.³ The agency's evaluation of Dorado's and CoSTAR's proposals was as follows:⁴

² It appears that on August 4, 2012, the SBA decertified COS from the HUBZone program and issued a decertification letter. Therefore COS was decertified at the time of the award. Protest, exh. 4, SBA HUBZone Protest (Dec. 5, 2012) at 3.

³ The agency stated that it acted in accordance with Federal Acquisition Regulation (FAR) clause 52.219-3(g) which states: "If the apparently successful HUBZone offeror is not a HUBZone small business concern at the time of award of this contract, the Contracting Officer will proceed to award to the next otherwise successful HUBZone small business concern or other offeror."

⁴ For the corporate experience/capability of key personnel, management, and technical approach factors, the agency assigned adjectival ratings of outstanding, good, acceptable, marginal and unacceptable. AR, Tab 5, Source Selection Plan at 18. For the past performance factor, proposals were rated as substantial confidence, satisfactory confidence, limited confidence, no confidence, and unknown confidence. Id. at 19-20.

	DORADO	COSTAR
Corporate Experience/ Capability of Key Personnel	Good ⁵	Good
Past Performance	Relevant/Substantial Confidence	Relevant/Substantial Confidence
Management	Acceptable	Good
Technical Approach	Acceptable	Acceptable
Safety	Acceptable	Acceptable
OVERALL TECHNICAL RATING	ACCEPTABLE	GOOD
PRICE	\$30,060,665	\$29,098,246

AR, Tab 6, SSEB Report at 5-6.

Following the preaward notice concerning the selection of CoSTAR's proposal for award, Dorado filed a size status protest and a HUBZone status protest with the SBA challenging the CoSTAR's eligibility for award. AR at 13. On January 24, 2013, the SBA found that CoSTAR was an eligible HUBZone small business concern, and on January 25, found that CoSTAR was a small business for purposes of this procurement. Protest, exh. 5, SBA Decisions. On February 26, the agency made award to CoSTAR. This protest to our Office followed.

DISCUSSION

Dorado challenges the agency's evaluation of the offerors' proposals with regard to each of the evaluation factors. Dorado further contends that the awardee failed to comply with the applicable limitation on subcontracting, and should have been rejected as unacceptable.⁶ As discussed below we find no basis to sustain Dorado's protest, as all of the arguments raised are either without merit or untimely.

The evaluation of an offeror's proposal is a matter within the agency's discretion. National Gov't Servs., Inc., B-401063.2 et al., Jan. 30, 2012, 2012 CPD ¶ 59 at 5. A protester's mere disagreement with the agency's judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was

⁵ Dorado was incorrectly advised during its debriefing that it had received a rating of acceptable for the corporate experience/capability of key personnel factor when, in fact, the record shows that the agency rated its proposal as good for this factor. Protest at 12; AR at 13 n. 3; AR, Tab 7, Source Selection Decision (Oct. 25, 2012).

⁶ Dorado also argued that CoSTAR's prices were unbalanced, and challenged the agency's finding that CoSTAR was a responsible contractor; these allegations were withdrawn. Protester's Comments (Apr. 23, 2013) at 23.

unreasonable. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4. In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate the proposals, but will instead examine the record to determine whether the agency's judgments are reasonable and consistent with the solicitation's evaluation factors and applicable statutes and regulations, as well as whether the agency has treated offerors equally in its evaluation. Brican Inc., B-402602, June 17, 2010, 2010 CPD ¶ 141 at 4; Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3.

Corporate Experience/Capability of Key Personnel Evaluation

Dorado first challenges the agency's evaluation of CoSTAR's proposal under the corporate experience/capability factor. The protester raises two arguments: (1) the awardee does not have relevant corporate experience, and (2) the awardee engaged in an improper "bait and switch" scheme concerning its proposed key personnel.⁷

As stated above, both Dorado and CoSTAR received a rating of "good" for the corporate experience, capability of key personnel factor. CoSTAR identified two relevant projects as a prime contractor, and six relevant projects for its proposed subcontractors; the agency also found that all of the awardee's proposed key personnel met the requirements of the RFP. AR, Tab 6, SSEB Report at 21-23. Dorado identified two relevant projects as a prime contractor, and two relevant projects for its proposed subcontractors; the agency also found that all of the protester's proposed key personnel met the RFP requirements. Id. at 32-34.

Corporate Experience Evaluation

Dorado argued in its initial protest that the agency unreasonably evaluated the experience of CoSTAR and its proposed subcontractors. In this regard, the protester contends that CoSTAR has "won 5 [federal government] contracts worth a total of only \$437,160 and has not won any sub-awardee work," and that one of the awardee's proposed subcontractors, [redacted], "has no experience whatsoever in government contracts." Protest at 13. Based on these allegations, the protester argues that "[m]ore than half the CoSTAR team has no or next to no relevant

⁷ Dorado also argues that the Navy's evaluation of CoSTAR's past performance was unreasonable using the same arguments raised in Dorado's challenge to the evaluation of the awardee's corporate experience. See Protester's Comments (Apr. 23, 2013) at 16-17. Because, as discussed below, we deny the protester's arguments concerning the evaluation of CoSTAR's experience, we find no merit to the protester's arguments concerning the evaluation of the awardee's past performance.

corporate experience,” and that this lack of experience should have resulted in a lower evaluation rating. Id.

To the extent that the protester argues that CoSTAR’s subcontractor, [deleted], lacked experience with government contracts, the agency notes that the RFP did not limit corporate experience to government contracts. See RFP at 193. We agree with the agency, and conclude that the protester’s argument does not show that the agency’s evaluation of CoSTAR’s corporate experience was unreasonable.

In its comments on the agency report, Dorado raised additional challenges concerning the agency’s evaluation of the awardee’s corporate experience. First, Dorado argues that the agency unreasonably considered CoSTAR’s experience performing a 6-month bridge contract for base operations and maintenance at Fort Belvoir, Virginia. The protester contends that this contract should not have been considered relevant because the annual dollar value of the contract was \$1,900,000, which was below the minimum required amount of “approximately \$2,000,000.00 per year or greater.”⁸ Protester’s Comments (Apr. 23, 2013) at 12. Second, Dorado contends that the experience of one of CoSTAR’s subcontractors, [deleted], was based on its work at private facilities in developed, urban areas of San Francisco, California, and argues that this experience was not similar to the requirements of the RFP, which calls for providing services at nine separate government locations, throughout the southeastern United States. Protester’s Comments (Apr. 23, 2013) at 14. The protester further argues that because [deleted] is located in California, the agency should have questioned its ability to perform work on the East Coast. These arguments are untimely.

Dorado’s initial protest raised only a general allegation that the agency unfairly evaluated CoSTAR’s corporate experience. As discussed above, the protester specifically argued that the awardee’s prior federal contracts together were worth approximately \$400k--an amount much smaller than the effort here, and that “[m]ore than half the CoSTAR team has no or next to no relevant corporate experience.” Protest at 13. In its comments on the agency report, which were filed more than 10 calendar days after receipt of the agency report,⁹ Dorado identified new arguments,

⁸ The solicitation stated that relevant projects for the corporate experience factor must be “similar in size, scope, and complexity, current or completed, within the last five (5) years, with individual values of approximately \$2,000,000.00 per year or greater.” RFP at 193.

⁹ At the protester’s request, our Office granted an extension of time to file comments on the initial agency report. As explained to the protester by the GAO attorney assigned to the protest, when an extension to file comments is granted by our Office, the extension does not waive the timeliness requirements pertaining to the
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namely that the agency should not have considered CoSTAR's 6-month bridge contract or [deleted] development contract as relevant corporate experience. These challenges are untimely because they were raised more than 10 calendar days after Dorado knew the basis for these issues.¹⁰ 4 C.F.R. § 21.2(a)(2) (2013); see Planning & Dev. Collaborative Int'l, B-299041, Jan. 24, 2007, 2007 CPD ¶ 28 at 11.

Bait and Switch

Next, Dorado argues that the Navy unreasonably evaluated CoSTAR's proposal under the corporate experience/capability of key personnel factor because, the protester contends, the awardee engaged in an improper bait and switch scheme concerning the individual it proposed for the key personnel position of site safety and health officer (SSHO). The protester argues that a "classified ad" published by CoSTAR after award stated that the awardee intended to hire an SSHO for the contract, thereby indicating that the awardee would not provide the individual proposed for this position.

An offeror may not propose to use specific personnel that it does not expect to use during contract performance, as doing so would have an adverse effect on the integrity of the competitive procurement system and generally provides a basis for proposal rejection. AdapTech Gen. Scientific, LLC, B-293867, June 4, 2004, 2004 CPD ¶ 126 at 5. To establish an improper bait and switch scheme, a protester must show: (1) a firm either knowingly or negligently represented that it would rely on specific personnel that it did not expect to furnish during contract performance, (2) that the misrepresentation was relied on by the agency, and (3) the misrepresentation had a material effect on the evaluation results. Data Mgmt. Servs. Joint Venture, B-299702, B-299702.2, July 24, 2007, 2007 CPD ¶ 139 at 10. Regarding the capability of key personnel, Dorado states that CoSTAR could not have complied in good faith with the solicitation requirement that offerors provide detailed resumes of key personnel.

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filing of new grounds of protest. SDS Petroleum Prods., Inc., B-280430, Sept. 1, 1998, 98-2 CPD ¶ 59 at 3-4 n.3.

¹⁰ Where a protester raises a broad ground of protest in its initial submission but fails to provide details within its knowledge until later--so that a further response from the agency would be needed to adequately review the matter--these later, more specific arguments and issues cannot be considered unless they independently satisfy the timeliness requirements under our Bid Protest Regulations. Biospherics, Inc., B-285065, July 13, 2000, 2000 CPD ¶ 118 at 12-13.

In its initial protest, Dorado argued that CoSTAR had engaged in a bait and switch scheme concerning its proposed SSHO. The protester included as an attachment a document which it called a classified ad, and which the protester argued showed that the awardee did not intend to provide the individual identified in its proposal. The protester made the following statements concerning the document:

CoSTAR has engaged in an impermissible “bait-and-switch” in that it never intended to use the “management team” and “key personnel” that were included [in] its proposal, as demonstrated by the Classified Ad it published, attached hereto as Exhibit 8, which specifically states that multiple management positions are open.

* * * *

CoSTAR could not have included a proposed SSHO in its proposal, or complied in good faith with the RFP’s requirements that offerors provide detailed resumes of key personnel because CoSTAR’s Classified Ad expressly states that it is looking to hire an SSHO and many other management-level employees for the performance of this contract.

* * * *

The government specifically informed potential offerors that the SSHO was a “key position;” therefore to win the award CoSTAR must have had a proposed SSHO. Yet the CoSTAR Classified Ad specifically states that CoSTAR is looking to hire an SSHO.

Protest at 8, 12-13, 23; see also Protester’s Comments (Apr. 23, 2013) at 21-23.

Although Dorado represented in its protest that the document provided as an exhibit was a classified ad published by CoSTAR seeking to hire an SSHO, the intervenor states that the protester’s characterization of the document is not accurate. In this regard, the intervenor notes that the document was not a published classified ad, but was instead a document provided by CoSTAR to KIRA, Inc.--the incumbent contractor and a proposed subcontractor to Dorado--seeking to interview the incumbent staff for possible employment. See Protest, exh. 8, CoSTAR Document. Moreover, the intervenor notes that the document provided by the protester had been altered to delete the names of the points of contact at KIRA. Intervenor’s Comments (Apr. 23, 2013), at 3-4. In its comments on the agency report, CoSTAR provided a copy of the original document, which clearly shows that the document provided by Dorado in its protest had been altered to delete the following text: “*** Please sign up for an interview date and time with [KIRA employees] ***.” Id. attach. 2, Comparison of CoSTAR Document Versions.

Our Office requested that Dorado explain why the altered document had been submitted to our Office. The protester confirmed that the CoSTAR document was sent to an employee of KIRA after award, seeking to interview the incumbent employees for positions. Protester's Response to GAO Questions (May 23, 2013) at 1-2. The protester further confirmed that the document had been altered by the KIRA employee to remove his name and name of the other KIRA employee from the document, and that the altered document had been provided to the protester's counsel for submission as an attachment to the protest. Id.; Decl. of KIRA Project Manager ¶¶ 11-12. The KIRA employee states that he "whited-out the sentence that contained my name and [the other KIRA employee's] name . . . so that neither myself nor [the other KIRA employee] would be associated with CoSTAR's hiring process." Decl. of KIRA Project Manager ¶¶ 11-12. The KIRA employee also acknowledges that, despite the fact that Dorado's protest referred to the document as a "classified ad," the employee had no specific knowledge that the document had been published as a classified ad. Id. ¶¶ 16-19.

In sum, Dorado acknowledges that this document, submitted as an exhibit to its bid protest, was altered, and was not, as represented in its protest, a classified advertisement. Dorado states, however, that there was no intent to deceive our Office, and that "the underlying basis for presenting this document to the GAO still stands," *i.e.*, that CoSTAR was soliciting for multiple positions, including an SSHO. Protester's Response to GAO Questions (May 23, 2013) at 2. While the protester states that the errors were not intended to mislead our Office, we are troubled by the fact that the protester submitted an altered document to our Office, and that the protester's arguments were based on a representation that the document was a "classified ad," rather than a specific solicitation to the incumbent workforce.

In any event, we see no merit to the protester's arguments because the record does not show that CoSTAR submitted its proposed SSHO with the intent of substituting that individual. The document issued by CoSTAR stated that the awardee "will be interviewing the incumbent management and employees for the areas of grounds and custodial services," and further stated that "[t]hese positions include: . . . Site Safety Health Officer (SSHO)." Protest, exh. 8, CoSTAR Document. While the protester argues that the flyer should be interpreted as demonstrating that the awardee did not intend to provide the SSHO it identified in its proposal, the flyer does not support this conclusion. Instead, the flyer indicates that the awardee is hiring individuals for the newly-awarded contract, and seeks to interview the incumbent workforce; the document does not specifically state that the awardee was seeking to fill specific open positions, such as an SSHO.¹¹ Id. Because the

¹¹ In this context, this Office has noted that it is neither unusual nor inherently improper for an awardee to recruit and hire personnel previously employed by an incumbent contractor. Lifecare Mgmt. Partners, B-297078, B-297078.2, Nov. 21, 2005, 2006 CPD ¶ 8 at 6 n.11. Moreover, as the agency notes, the solicitation did (continued...)

record does not show that the awardee either knowingly or negligently represented in its proposal that it would rely on specific personnel that it did not expect to furnish during contract performance, we find no basis to sustain the protest.¹²

Management

Next, Dorado challenges the evaluation of the offerors' proposals under the management factor, under which Dorado received a rating of "acceptable," and CoSTAR received a rating of "good." The protester argues that it should have received a higher rating, and the awardee should have received a lower rating.

With regard to the evaluation of CoSTAR's proposal, Dorado argues that the awardee's proposed project manager was not a CoSTAR employee, but was instead an outside consultant who would not necessarily work on a full-time basis. According to Dorado, CoSTAR's proposed use of this individual did not clearly demonstrate a "feasible approach for controlling and managing the entire project," as required by the RFP. See RFP at 195-96. As the protester concedes, however, the solicitation did not require a full-time manager or that managers be employees of the prime contractor. See Protester's Comments (Apr. 23, 2013) at 19. The protester nonetheless argues that "[a]n objective and reasonable person would not be 'clearly convinced' [that] CoSTAR's Management approach" was acceptable. Id. We conclude that the protester's disagreement with the agency's judgment here does not provide a basis to sustain the protest.

With regard to the evaluation of Dorado's proposal, the protester argues that the agency failed to credit its proposal with a strength for proposing KIRA, Inc., the incumbent contractor, as a significant subcontractor. The protester notes that the agency cited KIRA's experience on the incumbent contract as a strength under the corporate experience factor. AR, Tab 6, SSEB Report at 34. While Dorado does not specifically argue that its proposed management approach, on its own, merited a strength, the protester argues that the Navy should have assigned a higher rating

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not prohibit the substitution of key personnel, and included a substitution of Key Personnel clause which protects the Government's interests, ensures any further key personnel changes will demonstrate comparable qualification, and thus mitigates any risks surrounding future substitutions. RFP at 63.

¹² In addition, Dorado argues that CoSTAR's alleged bait and switch scheme regarding the SSHO should have resulted in a lower rating for the awardee under the safety factor. Because we find no merit to the argument concerning the alleged bait and switch, we find no merit to the protester's related argument concerning the safety factor evaluation.

to its proposal under the management factor because the protester will receive the benefit of KIRA's experience.

We think the protester's argument improperly conflates the evaluation criteria for the management factor with the criteria for the corporate experience/capability of key personnel factor. The RFP stated that offerors would be evaluated on the basis of their proposed approach to the management requirements, as follows:

The offeror shall clearly demonstrate a feasible approach for controlling and managing the entire project, including the interface between the major functional areas and significant sub-annexes, and the offeror's general management and administration structure.

RFP at 196. The RFP did not state that the agency's evaluation of an offeror's approach for controlling and managing the solicitation requirements would consider the corporate experience of the offeror or its proposed subcontractor; instead, such experience was the subject of the corporate experience/capability of key personnel factor. *Id.* at 193. Because the protester's arguments are inconsistent with the plain language of the RFP's evaluation criteria, we find no merit to the protest.

Limitation on Subcontracting

Finally, Dorado argues that the Navy should have eliminated CoSTAR from award consideration because, the protester contends, the awardee's proposal did not demonstrate compliance with the limitation on subcontracting set forth in the solicitation. The protester raises two arguments: (1) the awardee's proposal did not demonstrate that it would comply with the solicitation's limitation on subcontracting, FAR clause 52.219-14; and (2) that the awardee failed to provide information concerning the cost of the work to be performed by its proposed subcontractors, as required by FAR clause 52.215-22, which was included in the RFP.

First, Dorado also argues that the agency should have concluded that CoSTAR's proposal, on its face, demonstrated that the awardee would not comply with the requirement that at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern. FAR clause 52.219-14(c)(1).

As a general matter, an agency's judgment as to whether a small business offeror will be able to comply with a subcontracting limitation presents a question of responsibility not subject to our review. Spectrum Sec. Servs., Inc., B-297320.2, B-297320.3, Dec. 29, 2005, 2005 CPD ¶ 227 at 6. However, where a proposal, on its face, should lead an agency to the conclusion that an offeror has not agreed to comply with the subcontracting limitation, the matter is one of the proposal's acceptability. TYBRIN Corp., B-298364.6, B-298364.7, Mar. 13, 2007, 2007 CPD ¶ 51 at 5.

Dorado raises several arguments concerning CoSTAR's proposal, which rely on assumptions or inferences concerning the awardee's proposed staffing, labor hours, and wage rates. Supp. Protest (Apr. 19, 2013) at 5-8; Protester's Comments (Apr. 23, 2013) at 3-9. The protester argues that, in light of uncertainties concerning the awardee's proposed price, its proposal did not demonstrate that it complied with the limitation on subcontracting requirement.

By submission of a proposal incorporating FAR clause 52.219-14(c)(1), CoSTAR agreed that at least 50 percent of the cost of contract performance incurred for personnel will be expended for its own employees. With regard to the protester's arguments regarding the awardee's proposal, the agency and intervenor each note that the protester's arguments rely on incorrect calculations regarding certain janitor labor hours--which the protester acknowledges. See Protester's Comments (May 7, 2013) at 6. The agency and intervenor also note that the protester made various assumptions in an attempt to calculate the awardee's direct labor costs, but did not make any attempt to calculate its indirect labor costs. See Supp. Protest (Apr. 19, 2013) at 5-8. In light of the errors and reliance on incomplete calculations and assumptions, the agency and intervenor contend that the protester's arguments lack merit.

We agree that the protester's arguments do not demonstrate that CoSTAR's proposal, on its face, should have led the agency to the conclusion that the awardee will not comply with the limitation on subcontracting requirement. In this regard, the protester confuses the applicable standard by attempting to shift to the awardee and agency the burden of affirmatively demonstrating that the awardee's proposal will comply with the limitation on subcontracting requirement. Thus, to the extent that the protester argues that the awardee's proposal does not contain sufficient information to demonstrate whether the awardee will comply with the subcontracting limitation, this argument does not show that the proposal should have led the Navy to the conclusion that CoSTAR did not agree to comply with the subcontracting limitation. See Spectrum Sec. Servs., Inc., supra; TYBRIN Corp., supra.

Second, Dorado argues that the awardee's proposal should have been rejected as unacceptable because it did not comply with the requirements of FAR clause 52.215-22(c)(1) (Limitations in Pass-Through Charges-Identification of Subcontract Effort), which requires an offeror to "identify in its proposal the total cost of the work to be performed by the offeror, and the total cost of the work to be performed by each subcontractor." The protester also argues that because the awardee did not provide the information required under this clause concerning its proposed subcontractors, the agency had no basis to conclude that the awardee would perform more than 50 percent of the work in compliance with FAR clause 52.219-14(c)(1).

The agency responds that it inadvertently included FAR clauses 52.215-22 and 52.215-23 (Limitations on Pass-Through Charges) in the solicitation, and that neither clause was required. Supp. CO Statement (May 1, 2013) at 1. In this regard, these clauses are required to be included in Defense agency contracts that exceed the simplified acquisition threshold, except where “[a] firm-fixed-price contract awarded on the basis of adequate price competition.” FAR § 15.408(n)(2)(i). The agency notes that the contract anticipated award of a fixed-price contract, and that adequate competition was obtained because that five proposals were received in response to the original solicitation.¹³ Supp. AR (May 1, 2013), Decl. of Cost/Price Analyst (May 1, 2013) at 1.

In any event, as the agency notes and the protester does not dispute, neither CoSTAR nor Dorado submitted the cost information required by FAR clause 52.215-22 concerning the total cost of work to be performed by itself and by its subcontractors. Rather, Dorado submitted its proposal as a fixed-price offer. AR, Tab 11a, Dorado Price Proposal at 13-17. On this record, we find no merit to the protester’s argument that CoSTAR’s proposal was unacceptable because it failed to provide the detailed cost data required by this clause. Similarly, we find no merit to the protester’s argument that the absence of this information demonstrated that the awardee would not comply with the limitation on subcontracting.

The protest is denied.¹⁴

Susan A. Poling
General Counsel

¹³ In addition, now that this error was brought to the agency’s attention the agency has issued a modification to the awarded contract deleting the provision. Supp. AR (May 1, 2013) at 2.

¹⁴ Dorado raises other collateral issues. We have reviewed all of the protester’s arguments and find that none provides a basis to sustain the protest.