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Decision

Matter of: ExecuTech Strategic Consulting, LLC; TRI-COR Industries, Inc.

File: B-410893; B-410893.2; B-410893.3

Date: March 9, 2015

John E. Jensen, Esq., Alexander B. Ginsberg, Esq., Meghan D. Doherty, Esq., and Travis L. Mullaney, Esq., Pillsbury Winthrop Shaw Pittman LLP, for ExecuTech Strategic Consulting, LLC; and John E. McCarthy, Jr., Esq., James G. Peyster, Esq., and Robert J. Sneckenberg, Esq., Crowell & Moring LLP, for TRI-COR Industries, Inc., the protesters.

Pamela J. Mazza, Esq., Kathryn V. Flood, Esq., Peter B. Ford, Esq., Julia Di Vito, Esq., and Patrick T. Rothwell, Esq., PiliroMazza PLLC, for Enhanced Veterans Solutions, Inc., the intervenor.

Marvin K. Gibbs, Esq., Department of the Air Force, for the agency.

Noah B. Bleicher, Esq., and Nora K. Adkins, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency miscalculated awardee's staffing levels is denied where the evaluation was reasonable and in accordance with the evaluation criteria outlined in the solicitation; protesters' disagreement with agency's determination that the awardee's staffing levels were realistic due to proposed efficiencies does not provide a basis to question the assessment.
2. Protest of agency's past performance evaluation is denied where the evaluation was reasonable and consistent with the solicitation criteria, which included the consideration of prime and subcontractor past performance in the aggregate.
3. Protest that awardee's proposal failed to comply with the solicitation's terms is denied where the awardee's omissions were related to matters of responsibility or were waived by the agency without prejudice to the protester.
4. Protest that the agency conducted improper discussions with the protester is denied where the record reflects that the agency's concerns regarding the level of experience of some of the protester's proposed personnel did not constitute a significant weakness or deficiency such that the agency was required to address the

issue during discussions, and the record does not support the protester's assertion that the firm was misled into increasing its price.

DECISION

ExecuTech Strategic Consulting, LLC, of Woodbridge, Virginia, and TRI-COR Industries, Inc., of Alexandria, Virginia, protest the award of a contract to Enhanced Veterans Solutions, Inc. (eVETS), of Springfield, Virginia, under request for proposals (RFP) No. FA4452-14-R-0001, issued by the Department of the Air Force for communication, operation, and maintenance functions (COM-F II) at Scott Air Force Base in Illinois. The protesters challenge various aspects of the agency's technical, past performance, and price evaluations, as well as the best-value determination. ExecuTech also asserts that eVETS's proposal is ineligible for award because it failed to comply with certain aspects of the RFP. TRI-COR alleges that the agency conducted non-meaningful and misleading discussions.

We deny the protests.

BACKGROUND

The RFP, issued on October 22, 2013, as a service-disabled, veteran-owned small business set-aside, contemplated the award of a fixed-price contract with a 3-month phase-in period, followed by a 7-month base period, four 1-year option periods, and one 2-month option period (as well as an additional 6-month option to extend services). RFP at 1, 67; amend. 2 at 3-10; amend. 3 at 2-3. The RFP sought proposals for program management and operation and maintenance support services for the Air Force's Air Mobility Command. Performance Work Statement (PWS) at 6-7. Program management tasks the contractor will be required to provide include contract administration and management oversight; examples of operation and maintenance tasks to be provided include help desk, network administration, and configuration management. PWS at 7.

The solicitation advised offerors that award would be made on a best-value basis following an integrated assessment of technical/risk, past performance, and price. RFP at 79. The RFP identified two equally-weighted technical subfactors: technical approach and staffing approach. Id. The RFP stated that the technical/risk and past performance factors were of equal importance, and, when combined, were significantly more important than price. Id.

With respect to the staffing approach subfactor, the RFP provided that the agency would evaluate whether each offeror proposed an "effective and detailed plan describing their approach to overall staffing of and transition to COM-F II." Id. at 81. The agency planned to evaluate each offeror's staffing plan, focusing on five requirements, including, for example, the offeror's process to recruit, retain, and replace personnel, as well as the identification of key personnel, and a narrative of

salaries and benefits proposed for professional employees. Id. The agency also planned to evaluate the offeror's phase-in plan for transitioning services. Id.

The RFP specified that the evaluation of proposals under the technical subfactors would be comprised of "two distinct but related assessments," the technical rating and the technical risk rating, which were of equal importance. Id. at 79. According to the RFP, the technical rating considered "the quality of the offeror's technical solution for meeting the minimum performance or capability requirements through an assessment of the strengths and deficiencies of the proposal." Id. at 79-80. For this aspect of the evaluation, the Air Force planned to assign proposals a color and adjectival rating.¹ Id. Conversely, the technical risk rating assessed the "potential for disruption of schedule, increased costs, or degradation of performance, the need for increased Government oversight, or the likelihood of unsuccessful contract performance," and would be "manifested by the identification of weakness(es)." Id. at 82. Pursuant to the RFP, the Air Force planned to assign proposals a risk rating of either low, moderate, or high. Id.

With respect to past performance, the RFP instructed offerors to provide past performance information on a maximum of six projects performed by the offeror or its subcontractors. Id. at 75. In evaluating past performance, the RFP stated that the agency would conduct a recency and relevancy assessment of each project and ultimately assign proposals a performance confidence rating.² Id. at 83. With respect to relevancy, the RFP stated that the agency would focus on performance that was relevant to the technical subfactors and price "taking into consideration their relative order of importance." Id. More specifically, the RFP identified eight technical complexities that the agency would look for in assessing whether past performance was very relevant, relevant, somewhat relevant, or not relevant. Id. at 84-85. In addition, "[t]o facilitate this relevancy determination," the RFP also instructed offerors to submit a "roadmap" or pamphlet describing changes in the organization of the company. Id. at 75. The RFP also required the submission of past performance questionnaires and advised that the agency would consider data from other sources, such as the Past Performance Information Retrieval System. Id. at 74, 85. In assigning proposals an overall confidence assessment rating, the RFP provided that "[e]ach offeror's total past performance will be evaluated in the aggregate with prime offeror's past performance being of equal weight to team member's past performance." Id. at 83.

¹ The RFP identified and defined the following technical ratings: blue/outstanding, purple/good, green/acceptable, yellow/marginal, and red/unacceptable. RFP at 80.

² The RFP identified and defined the following performance confidence ratings: substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence (neutral). RFP at 82-83.

For purposes of the price evaluation, offerors were to propose unit and extended prices for the staffing, oversight, and program management proposed to provide the operations and management support. Id. at 76. The RFP advised that an offeror's total evaluated price would be the sum of the offeror's proposed prices for the basic requirement and the option periods, as well as the "6-month option to extend services."³ Id. at 85; see id. at 39-40 (providing for a 6-month extension of performance in addition to the five option periods). The RFP stated that "proposed pricing for the 6-month extension will be based on option period 5 pricing." Id. at 86. In addition to providing for an evaluation of the completeness and reasonableness of proposed prices, the RFP warned that unrealistically high or low prices (when compared to the government estimate) may "reflect an inherent lack of competence or failure to comprehend the complexity and risks of the program," and could result in proposal rejection, i.e., a price realism analysis. Id. at 78, 86.

The agency received proposals from ExecuTech, TRI-COR, eVETS, and eight other firms prior to the RFP's closing date. Contracting Officer's (CO) Statement, Protest of ExecuTech, at 4. Following its initial evaluation of proposals, the Air Force established a competitive range consisting of the offers submitted by ExecuTech, TRI-COR, and eVETS.⁴ Agency Report (AR), Protest of ExecuTech, Tab 19, Competitive Range Determination, at 1; AR, Protest of TRI-COR, Tab 20, Competitive Range Determination, at 1. The agency conducted evaluation notice (EN) discussions with these firms during which the agency identified proposal deficiencies and an "uncertainty" involving staff certifications.⁵ CO Statement, Protest of ExecuTech, at 4; AR, Protest of ExecuTech, Tab 17.4, ExecuTech Resolution ENs, at 5; CO Statement, Protest of TRI-COR, at 4; AR, Protest of TRI-COR, Tab 18.4, TRI-COR's Resolution ENs, at 8; Tab 13.4, eVETS's Resolution ENs, at 7. At the conclusion of discussions, each offeror submitted a final proposal revision (FPR) by the October 27, 2014 due date. CO Statement, Protest of ExecuTech, at 4; CO Statement, Protest of TRI-COR, at 4.

³ The total evaluated price would also include costs associated with travel and other direct costs provided by the government. RFP at 86.

⁴ After the submission of proposals and prior to award, the awardee changed its name from CPS VETS, Inc. to Enhanced Veterans Solutions, Inc., or eVETS.

⁵ The Air Force conducted two rounds of evaluation notice discussions with eVETS and TRI-COR and one round with ExecuTech. CO Statement, Protest of ExecuTech, at 4; CO Statement, Protest of TRI-COR, at 4.

After reviewing the FPRs, agency technical and price evaluators rated the proposals as follows:

	Technical/Risk		Past Performance	Evaluated Price
	Technical Approach	Staffing Approach		
eVETS	Purple/Good	Green/Acceptable	Substantial Confidence	\$37,198,246
	Low Risk	Moderate Risk		
ExecuTech	Purple/Good	Green/Acceptable	Substantial Confidence	\$38,940,466
	Low Risk	Low Risk		
TRI-COR	Purple/Good	Green/Acceptable	Substantial Confidence	\$45,363,391
	Low Risk	Moderate Risk		

AR, Protest of ExecuTech, Tab 25, Final Proposal Analysis Report (PAR), at 18; AR, Protest of TRI-COR, Tab 26, Final PAR, at 18.

Of relevance here, the evaluators assigned TRI-COR's and eVETS's proposals a similar weakness under the staffing approach subfactor. AR, Protest of TRI-COR, Tab 26, Final PAR, at 36, 89. With respect to TRI-COR's proposal, the evaluators noted that TRI-COR proposed to staff three tasks from the PWS that, according to the evaluators, "require high degree of technical skill . . . with personnel with minimal experience." Id. at 36. Because the evaluators concluded that the level of experience of some of TRI-COR's staff could "potentially cause disruption of schedule and/or degradation of performance," the evaluators rated the proposal as moderate risk. Id.

The source selection authority (SSA) considered the evaluators' findings and documented his assessment in a source selection decision document (SSDD). The SSA discussed the strengths and various features of the proposals under each of the subfactors and factors. AR, Protest of ExecuTech, Tab 26, SSDD, at 13-21; AR, Protest of TRI-COR, Tab 27, SSDD, at 12-21. The SSA also acknowledged the weakness assigned to TRI-COR's and eVETS's proposals, which resulted in the proposals' moderate risk ratings under the staffing approach subfactor. AR, Protest of TRI-COR, Tab 27, SSDD, at 15-16. In making his selection decision, the SSA explained that ExecuTech's low risk rating under the staffing approach subfactor was "not significant enough to impact any tradeoff decision." AR, Protest of ExecuTech, Tab 26, SSDD at 22; AR, Protest of TRI-COR, Tab 27, SSDD, at 22. Ultimately, the SSA concluded that neither ExecuTech's nor TRI-COR's proposal reflected "technical superiority" that warranted paying a price premium. Id. On

November 20, the SSA directed that award be made to eVETS as the best value to the agency.

After being advised of the agency's selection decision and requesting and receiving debriefings, ExecuTech and TRI-COR filed these protests.

DISCUSSION

The protesters raise numerous challenges to the agency's evaluation of proposals and subsequent award to eVETS. Our Office has considered each of the allegations, and find that none provides a basis on which to sustain the protests.⁶ This decision discusses some of the protesters' principle arguments. First, we address the protesters' complaints that eVETS's proposal should have been rejected as unrealistic due to the firm's proposed staffing levels. Then we consider the protesters' challenge to the evaluation of eVETS's past performance. Next, we discuss ExecuTech's assertion that eVETS's proposal should have been deemed ineligible for award because it did not comply with the RFP. Lastly, we respond to TRI-COR's assertion that the agency conducted improper discussions with the firm.

Challenge to the Evaluation of eVETS's Staffing

The protesters contend that the agency's evaluation of eVETS's proposed staffing was unreasonable. We conclude otherwise.

In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13; Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3.

⁶ For example, TRI-COR complains that the evaluators should have assigned a strength to its proposal because, according to the protester, the firm proposed to complete contract phase-in within [deleted], which was [deleted] than the 90 days contemplated by the RFP. TRI-COR Protest at 24. However, the record shows that the firm did not actually commit itself to completing the phase-in in [deleted], but rather speculated that it might be possible to [deleted]. See AR, Protest of TRI-COR, Tab 17, TRI-COR FPR, at 56. Indeed, the firm proposed [deleted] span the full 90 days. Id. at 34-36; see also id., Tab 18.1.4, TRI-COR Final Technical Evaluation, at 19. In any event, the agency acknowledged the firm's "rapid" and "detailed" transition plan, but did not consider it indicative of an approach that warranted the assignment of a strength. See id., Tab 26, Final PAR, at 28. The protesters' disagreements with evaluation findings, as illustrated by this example, do not provide a basis to sustain the protest.

A protester's disagreement with an agency's judgment in evaluating proposals is insufficient to establish that the agency acted unreasonably. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4.

As discussed above, under the staffing approach subfactor, the agency was to evaluate several aspects of the offerors' staffing and phase-in plans. RFP at 81. The record shows that the evaluators initially rated eVETS's proposal red/unacceptable and high risk under the subfactor due, in part, to deficiencies identified with respect to eVETS's proposed staffing levels for certain labor categories. AR, Protest of ExecuTech, Tab 25, Final PAR, at 16, 82. In assigning these ratings, the evaluators noted that it would be "difficult [for eVETS] to execute the technical approach with the proposed manning." Id. at 82. The deficiencies generated two ENs, and, after the second round of discussions, eVETS increased its staffing to a level that the evaluators concluded was sufficient to resolve the staffing-related deficiencies. Id. at 87-89; see id., Tab 13.4, eVETS's Resolution ENs, at 3-6, 9-12. In assigning the final ratings of green/acceptable and moderate risk,⁷ the evaluators documented various beneficial aspects of eVETS's proposed staffing, such as that the firm "identified a pool of [subject matter experts] that can be leveraged to provide on-demand expertise, insights, knowledge and recommendations," and that at least [deleted] percent of the firm's personnel at the [deleted] level for certain labor categories would possess relevant certifications. Id., Tab 25, Final PAR, at 88.

Here, we have no basis to object to the agency's evaluation of eVETS's proposal under the staffing approach subfactor. The record demonstrates that the agency identified various concerns with the awardee's initial proposed staffing, discussed those concerns with the firm, and reasonably determined that the issues were subsequently resolved. The evaluators adequately documented their findings with respect to the different elements being evaluated under the subfactor, which encompassed more than a mere headcount. Because eVETS's staffing plan and phase-in plan met the requirements (without any strengths or deficiencies), it was rated green/acceptable, in accordance with the criteria established in the RFP. The protesters have provided no basis to question the agency's conclusions.

We also find no merit to ExecuTech's argument that its proposal merited a higher rating due to the fact that it proposed [deleted] more full-time employees (FTEs) than eVETS.⁸ See ExecuTech Supplemental (Supp.) Protest at 18. (Specifically,

⁷ The moderate risk rating was assigned due to the identification of a weakness related to the experience level of some of eVETS's proposed personnel. AR, Protest of ExecuTech, Tab 25, Final PAR, at 89.

⁸ As an illustrative example, ExecuTech explains that both it and eVETS initially proposed [deleted] FTEs for network administration functions, a level that the evaluators considered too few and resulted in assessed deficiencies for both

(continued...)

the record reflects that eVETS proposed [deleted] FTEs and ExecuTech proposed [deleted] FTEs. See AR, Protest of ExecuTech, Tab 11, eVETS Interim Proposal (Round 2), at 9; Tab 15, ExecuTech Interim Proposal, at 15.) In this regard, the RFP here did not require specific ratings based solely on the number of FTEs proposed. Rather, as explained above, under the staffing approach subfactor the agency was to consider several aspects of the offerors' staffing and phase-in plans, including, for example, the process to recruit, retain, and replace personnel, as well as the salary and benefits proposed for professional employees. RFP at 81. Our review of the record confirms that the agency's evaluation properly focused on the RFP's evaluation criteria and not, as ExecuTech may have preferred, on which offeror proposed more FTEs. In this respect, we agree with the agency that more FTEs does not automatically translate into a stronger proposal. See Supp. CO Statement, Protest of ExecuTech, at 7.

Further, ExecuTech's argument that its proposal was more advantageous than the awardee's solely because it proposed what amounts to less than [deleted] percent more FTEs fails to consider the unique technical approaches proposed by the offerors, something that the evaluators took into consideration. Indeed, besides the variation in the raw number of FTEs, ExecuTech has not pointed to any aspect of eVETS's proposal to demonstrate that the firm's staffing level would render eVETS unable to perform the requirements here. On this record, we have no basis to sustain the protest.⁹

(...continued)

proposals after the initial evaluation. AR, Protest of ExecuTech, Tab 25, Final PAR, at 56, 86. In response to ENs, ExecuTech increased its staffing for this PWS area to [deleted] FTEs, while eVETS increased its staffing to [deleted] FTEs. See id., Tab 11, ExecuTech Interim Proposal (Round 2), at 9; Tab 15, ExecuTech Interim Proposal, at 15. ExecuTech makes the strained argument that it was unreasonable for the agency to assign the two proposals the same rating because it proposed [deleted] FTE for this PWS area than the awardee. See ExecuTech Supp. Protest at 19-20. We have considered this argument, and find it wholly unpersuasive for the reasons outlined herein.

⁹ To the extent that ExecuTech is arguing that the SSA did not consider the variations in proposed staffing levels in his cost/technical tradeoff, this assertion is not supported by the record. In this respect, the SSA clearly acknowledged the different staffing levels proposed by the offerors in the competitive range. See AR, Protest of ExecuTech, Tab 26, SSDD, at 19-20. Moreover, the SSA also recognized that ExecuTech submitted the only proposal rated as low risk under the staffing approach subfactor, and he highlighted that the Air Force would need fewer resources to monitor ExecuTech for contract quality assurance due to the level of experience of the firm's staff. Id. at 22. Thus, ExecuTech's complaints that the agency failed to credit ExecuTech's higher-rated proposal also is not supported by the record.

In a separate but related argument, the protesters take exception to the agency's conclusion that eVETS's proposed staffing--and the firm's proposed price--was realistic. As explained above, the agency was to consider whether each proposal was realistic in terms of program commitments and whether proposed prices were unrealistically low when compared to the government estimate. RFP at 78. With respect to eVETS's staffing and price, the evaluators ultimately concluded that the firm's proposal was realistic and that the firm was able to propose [deleted] fewer FTEs than the government estimate by "identifying some realistic efficiencies during discussions," a conclusion the protesters challenge. See AR, Protest of ExecuTech, Tab 25, Final PAR, at 96.

Notwithstanding the protesters' disagreement with the agency's assessment, the record includes numerous examples of efficiencies identified in eVETS's proposal. For instance, as noted above, the evaluators highlighted that the firm proposed to leverage experts to provide "[deleted]," including experts in "[deleted]." Id. at 88. In addition, the evaluators noted that the firm's retention rate exceeded [deleted] percent and that the firm promotes professional development, training, and achievements. Id. The firm also proposed efficiencies in the use of a "[deleted]" to allow for "[deleted]" of various [deleted]. Id. at 73. Indeed, the evaluation documents are replete with examples of unique features of eVETS's proposal, many of which the agency reasonably considered as "efficiencies," or at a minimum, demonstrate that the firm "comprehend[ed] the complexity and risks of the program" such that the agency reasonably found the offer to be realistic. See id. at 68-96; Supp. CO Statement, Protest of ExecuTech, at 5-7; RFP at 78. In sum, the protesters have not demonstrated that the agency's evaluation of eVETS's staffing was unreasonable.

Past Performance

Next, the protesters object to the agency's evaluation of eVETS's past performance. Specifically, the protesters argue that the awardee did not have any relevant experience (and, thus, should have been assigned an unknown confidence rating), despite the agency's conclusions otherwise. We have reviewed the record and find unobjectionable the agency's past performance evaluation.

The evaluation of an offeror's past performance is within the discretion of the contracting agency, and we will not substitute our judgment for reasonably based past performance ratings. MFM Lamey Group, LLC, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10. Where a solicitation calls for the evaluation of past performance, we will examine the record to ensure that the evaluation was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations. All Points Logistics, Inc., B-407273.53, June 10, 2014, 2014 CPD ¶ 174 at 10-11.

The record shows that the agency considered six contracts submitted by eVETS, four of which were performed by its proposed subcontractor. AR, Protest of TRI-COR, Tab 13.2, eVETS's Past Performance Evaluation, at 79. The evaluators reviewed each project and, in assessing the relevancy of the projects, considered how many of the technical complexities identified in the RFP were performed. Id.; see RFP at 84-85. With respect to one of eVETS's projects, the evaluators concluded that it only covered one technical complexity and had a value of \$4.3 million; it was rated as not relevant. AR, Protest of TRI-COR, Tab 13.2, eVETS's Past Performance Evaluation, at 79; Tab 26, Final PAR, at 90, 92. With respect to the other project, though, the evaluators determined that it covered four of the technical complexities and was valued at \$4.4 million; it was deemed relevant. Id. The record also shows that two of eVETS's subcontractor's past performance projects were deemed very relevant, one was considered relevant, and the fourth was not relevant. Id., Tab 26, Final PAR, at 90. Ultimately, the agency considered the performance under the two very relevant and two relevant projects in assigning eVETS's proposal the substantial confidence rating. Id. at 91.

On this record, we have no basis to question the agency's past performance evaluation. Contrary to the protesters' assumption, the record demonstrates that the awardee did have relevant past performance. In fact, pursuant to the solicitation, a project that covered four of the technical complexities identified in the RFP, such as eVETS's project, qualified under the RFP's definition of a relevant project. See RFP at 84. Likewise, even though the project's low price was found to be not relevant to the COM-F II effort, the RFP provided that the agency was to assess overall relevancy consistent with the fact that technical was more important than price under this solicitation. Id. at 83. Thus, we have no basis to question the agency's conclusion that one of eVETS's past performance projects was relevant, despite its low price.

Moreover, the solicitation here contemplated that the agency would consider past performance of the prime and subcontractor in the aggregate, with the prime offeror's past performance being of equal weight to the proposed subcontractor's past performance. Id. Accordingly, the agency's consideration of eVETS's subcontractor's performance as part of the integrated performance confidence assessment was entirely consistent with the evaluation criteria. While the protesters may disagree with the agency's ultimate assessment, their disagreement does not provide a basis to sustain the protest.

Alleged Material Noncompliance

ExecuTech also protests that the Air Force should have rejected eVETS's proposal because it did not comply with the terms of the solicitation in three respects.

First, the protester contends that eVETS omitted comprehensive responsibility information that was contemplated in the RFP's instructions. ExecuTech Supp. Protest at 15; see RFP at 77. In this respect, the RFP provided that offerors were to address in their proposals whether they met the general standards of responsibility outlined in Federal Acquisition Regulation (FAR) § 9.104, as well as submit other related information. RFP at 77. As the protester points out, in the relevant section of eVETS's proposal, the firm does not expressly discuss each of the seven elements of FAR § 9.104. See AR, Protest of ExecuTech, Tab 9, eVETS's Initial Proposal, at 156. On this basis, ExecuTech asserts that the proposal should have been rejected as technically unacceptable.

ExecuTech's argument is without merit. First, the responsibility information to be submitted was not part of a technical requirement; it concerned an offeror's ability to perform the contract rather than the acceptability of its offer. See 3DAV Dev., Inc.; San Sebastian Shopping Ctr., S.E., B-274933.2 et al., Jan. 16, 1997, 97-1 CPD ¶ 24 at 2. Requirements which relate to responsibility may be satisfied any time prior to award, regardless of the terms of the RFP. Pond Security Group Italia, JV, B-400149.3, Dec. 22, 2008, 2008 CPD ¶ 233 at 4; see also Acquest Dev. LLC, B-287439, June 6, 2001, 2001 CPD ¶ 101 at 5-6 (a solicitation cannot convert a matter of responsibility into one of acceptability by providing for rejection of an offer if information is not furnished by an earlier date). In most cases, responsibility is determined on the basis of general standards set forth in FAR § 9.104-1, and involves subjective business judgments that are within the broad discretion of the contracting activities. Pond Security Group Italia, JV, supra, at 3.

Here, the record reflects that, despite eVETS not including comprehensive responsibility information in one section of its initial proposal, the contracting officer nonetheless was able to conduct a responsibility determination prior to award.¹⁰ See AR, Protest of ExecuTech, Tab 40.1, Determination of Contractor Responsibility, at 1-2. The contracting officer explains that in making her determination her review was not limited to only the information identified in the responsibility section of eVETS's proposal, but rather she considered pertinent

¹⁰ The protester does not argue that the Air Force's responsibility determination was flawed. In any event, our Office will not review such affirmative determinations of responsibility absent a showing that definitive responsibility criteria in the solicitation were not met or a contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation, neither of which is alleged here. See Bid Protest Regulations, 4 C.F.R. § 21.5(c) (2014).

information included in other sections of the awardee's proposal.¹¹ Supp. CO Statement, Protest of ExecuTech, at 4. In addition, the record reflects that the agency requested and eVETS provided updated responsibility information after the submission of initial proposals and prior to award. See AR, Protest of ExecuTech, Tab 40.4, Responsibility Data Email, at 1-2. Specifically, eVETS supplemented its proposal information with the firm's most recent balance sheet, most recent profit and loss statement, and with a statement regarding an [deleted]. Id., Tab 40.2, eVETS's Balance Sheet, at 1-2; Tab 40.3, eVETS's Profit and Loss Statement, at 1-3; Tab 40.4, Responsibility Data Email, at 1. On this record, we disagree with ExecuTech's contention that the awardee should have been found unacceptable because it failed to include comprehensive responsibility information in its initial proposal.

Next, ExecuTech complains that the awardee failed to comply with the RFP's pricing terms for the 6-month option to extend services, and that eVETS did not include in its past performance volume an organizational roadmap, as contemplated by the RFP "to facilitate [the agency's] relevancy determination." ExecuTech Supp. Protest at 12, 17; see RFP at 75. With respect to the 6-month extension, as explained above, the RFP provided that pricing for the option to extend services would be "based on option period 5 pricing." RFP at 86. The protester observes that in one labor category (out of [deleted] identified in eVETS's price summary spreadsheet) the awardee's proposal reflects a reduction of [deleted] labor hours in the 6-month option to extend services as compared to the option period 5 labor hours proposed. See AR, Protest of ExecuTech, Tab 12, eVETS FPR, at 11. In another category, the protester notes that the labor rate for the option to extend services is [deleted] the rate stated in option period 5. See id. Thus, the record reflects that the agency, in effect, waived the requirement that pricing for the option to extend services be based on option period 5 pricing.

An agency may waive compliance with a material solicitation requirement in awarding a contract only if the award will meet the agency's actual needs without prejudice to other offerors. Safety-Kleen (TS), Inc., B-284125, Feb. 23, 2000, 2000 CPD ¶ 30 at 2-3. Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest. See, e.g., SunGard Data Systems, Inc., B-410025, Oct. 10, 2014, 2014 CPD ¶ 304 at 6-7; see Statistica, Inc. v. Christopher, 102 F.3d 1577 (Fed. Cir. 1996). Unfair competitive prejudice from a waiver or relaxation of the terms and conditions of the RFP for one offeror exists where the protester would have altered its proposal to its competitive

¹¹ The solicitation instructions for the responsibility section provided that "[i]nformation already in you[r] Past Performance Volume does not need to be repeated." RFP at 77.

advantage had it been given the opportunity to respond to the altered requirements. Vocus Inc., B-402391, Mar. 25, 2010, 2010 CPD ¶ 80 at 6.

Here, we have no basis to conclude that ExecuTech was prejudiced by the agency's waiver of the RFP's pricing terms for the 6-month option to extend services. First, the record reflects that the agency's evaluation did not rely on the awardee's proposed pricing for the 6-month extension. Instead, the agency performed its own calculation, which was consistent with the RFP provision that the evaluation of the 6-month option to extend services be based on option period 5 pricing. See AR, Protest of ExecuTech, Tab 13.3, eVETS Price Evaluation, at 3. Moreover, the agency's calculation resulted in an increase in the protester's evaluated price.¹² In addition, the protester has not argued, and the record does not support, that ExecuTech --which submitted pricing consistent with the solicitation terms--would have changed its proposal or could have improved its competitive standing if given the opportunity to respond based on the relaxed terms. See LASEOD Group, LLC, B-405888, Jan. 10, 2012, 2012 CPD ¶ 45 at 5 (finding no prejudice following waiver of solicitation requirement where protester could not improve its competitive standing even if it had proposed based on the waived requirement). Consequently, because the protester was not prejudiced by eVETS's failure to fully comply with the RFP's pricing terms for the 6-month extension, this argument fails to provide a basis to sustain the protest.

Likewise, we also conclude that the agency, in essence, waived for eVETS the instruction to submit an organization roadmap, but that the protester was not prejudiced by the waiver. In this regard, as detailed above, the record reflects that the evaluators were able to determine the relevancy of eVETS's past performance projects notwithstanding the omission of a roadmap. AR, Protest of ExecuTech, Tab 13.2, eVETS's Past Performance Evaluation, at 79; Tab 25, Final PAR, at 90. Additionally, consistent with the discussion above, ExecuTech has not demonstrated that it could have improved its competitive standing had it been permitted to omit an organization roadmap in its proposal.¹³ Thus, the protester

¹² In any event, the record is clear that eVETS did not expressly state an intent not to comply with the solicitation's pricing terms or take exception to them; the two data fields identified by the protester appear to be inadvertent errors in eVETS's proposal. See Intervenor's Supp. Comments at 5. Accordingly, given the fixed-price nature of the contract (and because the 6-month extension was not a priced line item), the contractor here would be required to perform the 6-month option to extend services in accordance with the terms outlined in the solicitation, notwithstanding any errors in the proposal submission.

¹³ Further, we note that the RFP expressly provided that "[f]ailure to comply with the terms and conditions of the solicitation may result in the offeror being ineligible for award." RFP at 86 (underline added); see also id. at 68 ("**Non-conformance with the instructions provided in this [RFP] may result in an unfavorable proposal**

(continued...)

was not competitively prejudiced by the waiver of the solicitation provisions discussed above.

Alleged Improper Discussions

Lastly, TRI-COR contends that the agency failed to conduct meaningful discussions with the firm. The protester complains that the Air Force never informed the firm of the evaluators' concern related to the experience level of certain proposed personnel. TRI-COR Protest at 12. TRI-COR also argues that the agency misled the firm into raising its price. Id. at 15. The record here does not support the protester's complaints.

Discussions, when conducted, must be meaningful; that is, discussions must identify deficiencies and significant weaknesses in an offeror's proposal that could reasonably be addressed so as to materially enhance the offeror's potential for receiving award. PAI Corp., B-298349, Aug. 18, 2006, 2006 CPD ¶ 124 at 8. An agency is not required to conduct all-encompassing discussions or to discuss every element of a proposal receiving less than the maximum rating. Am. Ordnance, LLC, B-292847 et al., Dec. 5, 2003, 2004 CPD ¶ 3 at 4-5. The scope and extent of discussions with offerors are matters of a contracting officer's judgment. FAR § 15.306(d)(3); Am. States Utilities Servs., Inc., B-291307.3, June 30, 2004, 2004 CPD ¶ 150 at 5.

As discussed above, the evaluators rated TRI-COR's proposal as moderate risk under the staffing approach subfactor due to a weakness related to the experience levels of some of TRI-COR's personnel.¹⁴ AR, Protest of TRI-COR, Tab 26, Final PAR, at 36. The record shows that while the evaluators conducted two rounds of discussions with the firm, and provided a final opportunity for additional revisions in the offeror's FPR, the agency did not expressly apprise TRI-COR of its concern relating to the experience levels of some of the proposed personnel.

However, we find unobjectionable the agency's decision not to raise the issue with the protester because it was not considered a significant weakness or deficiency; instead, the record confirms that the concern regarding the experience levels of some of TRI-COR's personnel was treated as a weakness, and, thus, the agency was not required to raise the issue during discussions. See Am. Ordnance, LLC,

(...continued)

evaluation") (bold in original). Thus, the RFP here did not mandate that the Air Force reject a proposal that did not entirely conform with the solicitation terms.

¹⁴ Specifically, the evaluators noted that [deleted] percent of TRI-COR's [deleted] were from the most junior labor category that required only 1 year of experience or less in their technical area. AR, Protest of TRI-COR, Tab 26, Final PAR, at 36.

supra. Although the agency addressed other staffing issues with TRI-COR during discussions, these issues were documented in the record as deficiencies and identified in the ENs to TRI-COR as deficiencies. See, e.g., AR, Protest of TRI-COR, Tab 18.4, TRI-COR's Resolution ENs, at 1-11; Tab 26, Final PAR, at 19-28. Of significance, the Air Force simply did not raise proposal weaknesses with any of the offerors during discussions.

We also disagree with TRI-COR's assertion that the "uncertainty" raised during discussions expanded the scope of the agency's discussions such that it was required to raise the weakness at issue. In this regard, the record confirms that the uncertainty, which was posed to all offerors, was merely the agency's attempt to seek clarification from the offerors with respect to whether proposed personnel possessed relevant certifications. See id., Tab 26, Final PAR, at 27, 81; Tab 18.4, TRI-COR's Resolution ENs, at 8. In our view, raising the uncertainty with the offerors did not rise to the level that the agency was thus required to discuss all identified weaknesses with the offerors.

Similarly, that the weakness directly influenced TRI-COR's risk rating did not require the agency to discuss the issue with the protester. In this regard, the RFP expressly advised that evaluated weaknesses would manifest under the technical risk rating (and strengths and deficiencies were part of the technical rating). RFP at 79-80, 82. Accordingly, it was entirely consistent with the RFP that the weakness would influence TRI-COR's risk rating.¹⁵

Next, TRI-COR complains that it was misled into increasing its price. We disagree. The record shows that the agency identified as a deficiency under the staffing approach subfactor that TRI-COR proposed [deleted] FTEs to perform [deleted] tasks; the agency estimated [deleted] FTEs to perform these "relatively labor intensive" PWS tasks. AR, Protest of TRI-COR, Tab 26, Final PAR, at 27; Tab 18.4, TRI-COR's Resolution ENs, at 6, 10. During discussions, the agency provided TRI-COR with an EN explaining that the firm's staffing for these tasks "appears to be disproportionately low" and requesting that TRI-COR "explain how the offeror will adequately meet the PWS requirements and their proposed approach with the staff proposed." Id., Tab 18.4, TRI-COR's Resolution ENs, at 6.

¹⁵ In any event, the record reflects that TRI-COR's moderate risk rating did not form the basis for the protester's proposal not being selected for award. As discussed above, the awardee was assigned the same risk rating on the same basis, and, regardless, the SSA found that the low risk rating assigned to ExecuTech's proposal was not a discriminator. AR, Protest of TRI-COR, Tab 27, SSDD, at 22. Thus, we disagree with TRI-COR's contention that discussions on the issue could have materially enhanced the firm's potential for receiving award, especially in light of the fact that ExecuTech proposed a lower price than TRI-COR.

In response to the EN, the protester increased its staffing by [deleted] FTEs, which resulted in a corresponding price increase in TRI-COR's proposal. Id. at 7. Notwithstanding the protester's staffing increase, the agency still considered TRI-COR's staffing for the [deleted] tasks to be low. Id., Tab 26, Final PAR, at 33. Consequently, during a second round of discussions, the agency reiterated its staffing concerns with the firm and, once again, requested that TRI-COR "explain" how the firm would perform the PWS requirements. Id., Tab 18.4, TRI-COR's Resolution ENs, at 10. Once again, though, instead of explaining how TRI-COR would perform the requirements at the staffing levels proposed, the protester added [deleted] additional FTEs, bringing the total number of FTEs to perform the PWS [deleted] tasks up to [deleted], and causing TRI-COR to increase its price as a result. Id. at 11. The protester also explained why it increased its FTEs, noting that in its "previous analysis" the firm incorrectly assumed that certain COM-F II functions would not be performed by the contractor. Id. The record further shows that, without any additional ENs, the protester nonetheless increased its staffing for these tasks to [deleted] FTEs in its FPR. Id., Tab 17, TRI-COR FPR, at 52.

Here, the record does not support the protester's contention that the agency misled it into increasing its price. First, contrary to the protester's assertion, the record confirms that the Air Force did, in fact, have concerns with respect to the staffing levels TRI-COR proposed to perform the [deleted] tasks. The record further confirms that in its ENs, the agency did not request or advise TRI-COR to change its prices in any way. Indeed, the agency did not even require TRI-COR to increase its staffing levels. Rather, the Air Force simply expressed its concerns with TRI-COR's ability to perform the requirements at the proposed staffing level, and the agency requested further explanation from the protester to understand how the firm intended to perform the requirements. See id., Tab 18.4, TRI-COR's Resolution ENs, at 6, 10. TRI-COR could have responded to the EN by providing the explanation requested or a justification for its staffing levels, but the firm made the business decision to increase its staffing, which resulted in commensurate price increases.

Moreover, the record shows that the firm increased its staffing for reasons other than the agency's ENs; the firm realized that it proposed its initial staffing based on a flawed understanding of whether certain functions were required under the contract. Thus, the record is clear that the staffing increases--and corresponding price increases--were not at the agency's direction. Consequently, we have no basis to find that the agency's discussions were misleading or otherwise improper.

In sum, the protesters have not demonstrated that the agency's evaluation of eVETS's staffing or past performance was unreasonable. We also disagree that the agency was required to reject the awardee's proposal for failing to fully comply with the RFP's instructions. Moreover, the agency's discussions with TRI-COR were reasonable. Lastly, because we find no merit to any of the protesters' challenges to

the agency's evaluation of proposals or the conduct of discussions, we find no basis to sustain the protesters' challenge to the agency's award decision.

The protests are denied.

Susan A. Poling
General Counsel