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Decision

Matter of: L-3 National Security Solutions, Inc.

File: B-411045; B-411045.2

Date: April 30, 2015

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Lt Col Mark E. Allen and Maj Carlos M. De Dios, Department of the Air Force, for the agency.
Louis A. Chiarella, Esq., and Nora K. Adkins, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's evaluation of awardee's professional compensation plan is sustained where the record does not demonstrate that the agency conducted a reasonable evaluation in accordance with the requirements of Federal Acquisition Regulation § 52.222-46.
 2. Protest challenging agency's evaluation of awardee's key personnel is sustained where the record fails to reflect how the agency reasonably determined that awardee's key personnel met the solicitation's experience and residency requirements.
 3. Protest challenging agency's evaluation of past performance is denied where agency considered the relevance and the quality of offerors' past performance references, and reasonably found the offerors to be equivalent.
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DECISION

L-3 National Security Solutions, Inc., of Reston, Virginia, protests the award of a contract to CACI-Athena, Inc., of Arlington, Virginia, under request for proposals (RFP) No. H92222-14-R-0013, issued by the U.S. Special Operations Command

(USSOCOM) for joint geospatial analytical support services (JGASS).¹ L-3, the incumbent contractor for this effort, argues that the agency's evaluation of offerors' proposals and the resulting award decision were improper.

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

BACKGROUND

The JGASS program provides analytical support to USSOCOM from locations both within the continental United States (CONUS) and outside the continental United States (OCONUS). Contracting Officer (CO) Statement, Feb. 19, 2015, at 1. The JGASS effort directly contributes to the Department of Defense's actionable intelligence capability through the use of personnel within the functional spectrum of imagery intelligence and geospatial intelligence. Statement of Work (SOW) at 65-66. USSOCOM utilizes its actionable intelligence capabilities to meet known and emergent mission requirements and operations. Id. at 66.

The RFP, issued on June 12, 2014,² contemplated the award of a labor-hour and cost-reimbursement contract for a base year with four 1-year options.³ RFP at 2-10, 57. In general terms, offerors were to provide 276 CONUS-based full time equivalents (FTE) and 35 OCONUS-based FTEs to provide imagery and geospatial intelligence support services. SOW at 67-68. The solicitation stated that contract award would be made on a best-value basis, based on three evaluation factors: management/technical capability; past and present performance (hereinafter past performance); and price/cost.⁴ RFP at 60. The management/technical capability factor consisted of two subfactors in descending order of importance: management and personnel processes, and transition plan. Id. The management/technical capability and past performance factors were of equal importance and, when combined, significantly more important than price/cost. Id.

¹ USSOCOM is a joint military command comprised of all military services. The Department of the Air Force represented USSOCOM in the protest here.

² The RFP was subsequently amended five times. Unless specified otherwise, all references are to the final, conformed version of the solicitation.

³ The RFP included four contract line items (CLIN) for each performance period: 1) CONUS-based labor hours; 2) OCONUS-based labor hours; 3) travel; and 4) other direct costs (ODCs). The RFP provided the specific labor categories and amounts for the first two CLINs, as well as the travel and ODC amounts to which offerors were to apply indirect-rate markups.

⁴ The RFP also established a list of mandatory qualifying criteria (e.g., top secret facility clearance) to be evaluated on a pass/fail basis. RFP at 52, 60.

Five offerors, including L-3 and CACI, submitted proposals by the June 28 closing date. CO Statement at 3. An agency source selection evaluation board (SSEB) evaluated offerors' proposals using adjectival ratings, which were set forth in the solicitation as follows: outstanding, good, acceptable, marginal, and unacceptable for the management/technical capability factor and subfactors; and substantial confidence, satisfactory confidence, limited confidence, no confidence, and neutral/unknown confidence for the past performance factor. Agency Report (AR), Tab 27, SSEB Report, at 4, 7.

After the initial evaluation of proposals, the agency established a competitive range consisting of three offerors, including L-3 and CACI. CO Statement at 3. The agency held two rounds of discussions with offerors both in writing and face-to-face. Id. at 6. Offerors then submitted their final proposal revisions (FPR) by the November 10 closing date. Id. The SSEB evaluated the L-3 and CACI FPRs as follows:

	L-3	CACI
Qualifying Criteria	Pass	Pass
Management/Technical Capability		
Management and Personnel Processes	Outstanding	Good
Transition Plan	Good	Good
Overall	Outstanding	Good
Past Performance	Substantial Confidence	Substantial Confidence
Price/Cost	\$195,848,608	\$179,859,272

AR, Tab 27, SSEB Report, at 11, 16.

The agency evaluators also made various findings in support of the ratings assigned to offerors' proposals. Specifically, the SSEB identified six strengths and no weaknesses in L-3's management/technical capability proposal, and four strengths and no weaknesses in CACI's management/technical capability proposal. Id., Tab 25, SSEB Report (L-3 Appendix), at 2-4; Tab 26, SSEB Report (CACI Appendix), at 2-3. The agency evaluators also made determinations regarding both the relevance and quality of the offerors' past performance references on which the performance confidence ratings were based. Id., Tab 25, SSEB Report (L-3 Appendix), at 4-7; Tab 26, SSEB Report (CACI Appendix), at 3-6.

An agency source selection advisory council (SSAC) thereafter reviewed the SSEB's evaluation findings and conducted a comparative assessment of offerors' proposals. Id., Tab 29, SSAC Report, at 1-5. The SSAC found that L-3's technical advantages, while providing tangible benefits to the agency, did not outweigh

CACI's price advantage (\$15.9 million, or 8%), and recommended that contract award be made to CACI. Id. at 3-5.

The agency source selection authority (SSA) subsequently reviewed the evaluation findings and award recommendations.⁵ The SSA concluded that L-3's technical advantages did not outweigh CACI's price advantage, and that CACI's proposal represented the best value to the government all factors considered. Id., Tab 30, Source Selection Decision, at 1-4. After providing L-3 with notice of contract award and a debriefing, this protest followed.

DISCUSSION

L-3's protest raises numerous issues regarding the agency's evaluation and resulting award decision. In this regard, the protester alleges that the agency failed to conduct a proper professional compensation analysis of CACI's proposed salary rates and unreasonably evaluated CACI's proposed key personnel. L-3 also challenges the agency's evaluation of the offerors' past performance and contends that the agency's best value tradeoff decision was flawed and deviated from the solicitation's relative weighting of price and nonprice factors.⁶ As detailed below we find that USSOCOM's evaluation of CACI's professional compensation plan and key personnel was improper. Although we do not specifically address all of L-3's remaining issues and arguments, we have fully considered all of them and find that they do not provide a basis on which to sustain the protest.⁷

Evaluation of CACI's Professional Compensation Plan

L-3 protests the agency's evaluation of CACI's professional compensation plan. The protester principally argues that the evaluation was unreasonable because the agency conducted a disparate comparison of the offerors' salary rates, which improperly considered only CACI's proposed incumbent salaries, did not consider CACI's salary reductions each year of the contract, and ignored CACI's drastically lower compensation rates for low-density, harder to fill, positions.

⁵ The SSA also received a briefing from the SSEB and SSAC regarding their evaluation findings and recommendations. Id., Tab 28, Source Selection Recommendation Briefing, at 1-51.

⁶ L-3 also argues that the agency's discussions regarding the competitiveness of L-3's prices were misleading. L-3 subsequently withdrew this basis of protest. Protest, Mar. 2, 2015, at 1 n.1.

⁷ For example, we find that the agency reasonably evaluated L-3's proposal under the transition plan subfactor and reasonably concluded that CACI met the facility clearance requirements set forth in the solicitation.

The RFP established that offerors were to submit, and the agency evaluate, total compensation plans in accordance with Federal Acquisition Regulation (FAR) § 52.222-46, Evaluation of Compensation for Professional Employees. See RFP at 58, 62-63. This FAR provision calls for an evaluation of each offeror's compensation plan to ensure that it reflects a sound management approach and understanding of the contract requirements. FAR § 52.222-46(a). The provision also warns that low compensation rates could indicate a lack of sound management judgment and lack of understanding of the requirement. See FAR § 52.222-46(b).

CACI submitted its professional compensation plan as part of its cost proposal. AR, Tab 24, CACI FPR, Vol. 4, Price/Cost Proposal, Appendix A (Professional Compensation Plan). For each specified labor category, CACI proposed one rate of pay for incumbent hires, and a different (lower) rate for new hires. For example, for the Geospatial Systems Specialist labor category, CACI proposed a total base year compensation of \$[DELETED] for incumbent hires (\$[DELETED] base salary plus \$[DELETED] transition allowance/performance bonus⁸) and \$[DELETED] for new hires (\$[DELETED] base salary plus \$[DELETED] bonus). Id., Tab 24, CACI FPR, Vol. 4, Cost Proposal, Appendix F, Additional Cost Detail, at 1. CACI estimated that of the 311 FTEs required, 162 FTEs would be incumbent hires and 149 FTEs would be new hires. Id. at 1-7.

The SSEB, in its evaluation report of CACI, stated that “[a] total compensation plan was included in the proposal [in accordance with] FAR provision 52.222-46 and as of FPR the plan is in compliance with FAR provision 52.222-46,” and “CACI has proposed transition allowances to attract incumbents and bonuses for new hires to retain and attract personnel.” AR, Tab 27, SSEB Report, at 11; Tab 26, SSEB Report (CACI Appendix), at 7. The SSEB evaluation report provided no further details regarding the agency's evaluation of CACI's professional compensation plan. However, as part of its source selection briefing, the SSEB prepared the following two charts:

⁸ CACI's proposal refers to the compensation beyond base salary as a transition allowance in some instances, and as a performance bonus in other instances. AR, Tab 24, CACI FPR, Vol. 4, Cost Proposal, at 2, 5. We hereinafter refer to this amount simply as “bonus” (as did the agency in its evaluation).

CONUS Expected Incumbent Salaries
Base Year (Includes Bonuses)⁹

RFP Labor Category	FTE Counts	CACI	L-3	Offeror C
Geospatial Intelligence Analyst Average	14	\$[DELETED]	\$[DELETED]	\$[DELETED]
Geospatial Systems Specialist Average	6	\$[DELETED]	\$[DELETED]	\$[DELETED]
Imagery Analyst Average	171	\$[DELETED]	\$[DELETED]	\$[DELETED]

AR, Tab 28, Source Selection Briefing, Nov. 24, 2014, at 46.

Average Salary Comparison CONUS

RFP Labor Category	FTE Counts	Average Salary	CACI¹⁰	L-3	Offeror C
Geospatial Intelligence Analyst Average	14	\$[DELETED]	7%	3%	-10%
Geospatial Systems Specialist Average	6	\$[DELETED]	-11%	24%	-13%
Imagery Analyst Average	171	\$[DELETED]	11%	-3%	-8%

Id. at 47.

In the first chart, the “incumbent salary” for L-3 and Offeror C reflected the proposed salary for the total number of FTEs required for each labor category (i.e. 14 of 14 Geospatial Intelligence Analyst FTEs).¹¹ AR, Tab 23, L-3 FPR, Vol. 4, Price/Cost Proposal, at 8a; CO Statement, Mar. 10, 2015, at 9. By contrast, CACI’s incumbent salary did not actually correspond to the total FTE counts set-forth in the chart because CACI proposed different salaries for new-hires and therefore only a portion of each labor categories’ FTEs were proposed at the incumbent rate. For example, regarding geospatial intelligence analysts, 10 of 14 positions were to be paid at the

⁹ By example, we include herein only three of the 276 CONUS labor categories listed in the SSEB’s chart.

¹⁰ The chart contained a note by the contracting officer that stated “CACI’s proposed incumbent rates were used in this average comparison.” AR, Tab 28, Source Selection Briefing, at 47.

¹¹ The agency states that neither L-3 nor Offeror C proposed differentiated salary rates for new hires and incumbent employees. AR, Mar. 10, 2015, at 6.

incumbent rate, and with regard to imagery analysts, only 72 of 171 positions were proposed to receive the incumbent salary. AR, Tab 24, CACI FPR, Vol. 4, Cost Proposal, Appendix F, Additional Cost Detail, at 1, 16, 21.

As to the second chart, the SSEB calculated an average salary rate based on the salary rates of the three offerors, and used this average rate as a basis to evaluate each offeror's proposed salaries for each position. In calculating the average rate, however, the agency again considered only CACI's incumbent salary information. The agency's evaluation record contains no chart, or analysis otherwise reflecting the agency's consideration of CACI's proposed new hire salaries, which constituted nearly half of CACI's proposed workforce (CACI proposed 149 new-hire FTEs).

On this record, we find the agency's evaluation of CACI's professional compensation was unreasonable. The purpose of a review of compensation for professional employees is to evaluate each offeror's ability to provide uninterrupted, high-quality work, considering the realism of the proposed professional compensation and its impact upon recruiting and retention. FAR § 52.222-46(a); see Innovative Mgmt., Inc., B-292818, B-292818.2, Nov. 7, 2003, 2003 CPD ¶ 209 at 4; ELS Inc., B-283236, B-283236.2, Oct. 25, 1999, 99-2 CPD ¶ 92 at 10-11. In the context of a fixed-price labor hour contract, our Office has held that this FAR clause anticipates an evaluation of whether an awardee understands the contract requirements, and has proposed a compensation plan appropriate for those requirements, in effect, a price realism evaluation regarding an offeror's proposed compensation. See Apptis Inc., B-403249, B-403249.3, Sept. 30, 2010, 2010 CPD ¶ 237 at 9. Our review of a price realism analysis is limited to determining whether it was reasonable and consistent with the terms of the solicitation. Smiths Detection, Inc.; Am. Sci. & Eng'g, Inc., B-402168.4 et al., Feb. 9, 2011, 2011 CPD ¶ 39 at 17. Where a solicitation requires an agency to conduct a price realism analysis, and the evaluation record does not demonstrate whether the agency reasonably conducted such an analysis, we will sustain the protest. Logistics 2020, Inc., B-408543, B-408543.3, Nov. 6, 2013, 2013 CPD ¶ 258 at 7-8.

Although the evaluators concluded that CACI's total compensation plan was adequate, as noted above, the record reflects that the agency did not in fact evaluate CACI's proposed compensation for nearly half of its workforce. To the extent the agency sought to compare the offerors' proposed salaries to an average salary rate for each position, the comparison did not reasonably account for the fact that CACI, unlike the other offerors, had proposed different rates for incumbent and non-incumbent hires. As noted above, the agency only used CACI's salary information for incumbent hires. The agency's failure to consider the non-incumbent salary information was significant because the rates CACI proposed to attract more-experienced incumbents were higher than those for new hires. Thus, by using only CACI's incumbent-hire salaries as a basis for comparison, CACI's salaries appear relatively higher than if the agency had accounted for CACI's non-incumbent salary information. Consequently, the agency's average

salary comparison did not provide a reasonable basis to assess whether CACI's salary rates were realistic.

Moreover, as CACI proposed very different salary rates for incumbent hires and new hires, the agency should have reasonably assessed whether CACI's salaries were adequate for both salary tiers. The record, however, reflects that the agency only assessed CACI's ability to attract incumbent hires; there is no evidence in the record to indicate that the agency evaluated the adequacy of CACI's salaries for new hire capture or retention. This error is exemplified by the contracting officer's unsupported conclusion that CACI's two-tiered salary structure approach "allowed CACI to maximize incumbent salaries, while paying new hires (non-incumbents) the going market rate." CO Statement, Feb. 19, 2015, at 20. Again, the record simply does not reflect how the contracting officer or the evaluators determined that CACI was paying its new hires the going market rate, or again, even if the agency analyzed CACI's new hire salary information.

Finally, L-3 also argues that the agency failed to reasonably evaluate CACI's ability to retain qualified personnel because the agency did not consider CACI's proposed reductions to its salaries for all labor categories in each successive year of contract performance. In this regard, CACI's compensation plan proposed salary reductions in Years 2 - 5 of the contract for all labor categories. Specifically, while CACI's base salaries remained level over all years, the bonus was reduced in each year. AR, Tab 24, CACI FPR, Vol. 4, Cost Proposal, at 5. For example, for the geospatial systems specialist labor category, CACI proposed a bonus of \$[DELETED] for incumbent hires (and \$[DELETED] for new hires) in the base year, but the bonus was to be reduced in successive years such that it was \$[DELETED] (for all employees) by Year 5.¹² *Id.*, Tab 42, Compensation Analysis, at 1. By contrast, L-3 had level pricing over the 5-year contract period, and the agency's independent government cost estimate (IGCE) showed labor rate increases in Years 2 - 5.¹³ AR, Tab 41, JGASS IGCE; see Tab 23, L-3 FPR, Vol. 4, Cost Proposal, Labor Rate Buildup, at 1.

While the agency evaluators concluded that CACI's total compensation plan was adequate, the comparative analysis of CACI's salaries was limited to only the base

¹² Consequently, CACI's salary for an incumbent geospatial systems specialist would be \$[DELETED] in Year 1, and \$[DELETED] in Year 5. AR, Tab 42, USSOCOM Compensation Analysis, at 1.

¹³ The agency states that it did not use its IGCE during the evaluation of offerors' compensation plans because the IGCE labor rates were much higher than those which all offerors proposed. AR, Apr. 9, 2015, at 3; Contracting Officer's Statement, Mar. 10, 2015, at 4. This fails to explain, however, why the agency also considered its out-year escalation of employee salaries was no longer a valid one.

year (and only for incumbent hires). Thus, we fail to see, and the record fails to adequately document, how the agency determined that CACI would be able to retain its incumbent hires when their total compensation would be reduced each year. The record does not indicate that the agency evaluators reasonably considered this aspect of CACI's compensation plan or how they reasonably concluded that CACI's ability to retain qualified personnel was adequate in light of continuous salary reductions.¹⁴

In sum, the record does not demonstrate that the agency reasonably considered CACI's proposed compensation plan. Specifically, the agency did not reasonably compare CACI's salaries to that of the other offerors, failed to conduct any analysis of CACI's new hire salaries, and did not consider CACI's proposed salary reductions. Accordingly, we cannot conclude that the agency conducted a reasonable evaluation. See Logistics 2020, Inc., supra; J&J Maint., Inc. B-284708.2, B-284708.3, June 5, 2000, 2000 CPD ¶ 106 at 3; see also Computer Scis. Corp., et al., B-408694.7 et al., Nov. 3, 2014, 2014 CPD ¶ 331 at 11. We therefore sustain this aspect of L-3's protest.

Evaluation of CACI's Key Personnel

L-3 protests the agency's evaluation of CACI's key personnel. In this regard, the protester argues that CACI failed to comply with the requirement that its project manager have 5 years of experience managing projects of similar size and scope to the contract here. L-3 also contends that CACI failed to demonstrate compliance with the requirement that both its project manager (PM) and deputy project manager (DPM) reside within 1-hour of Ft. Bragg, North Carolina. As detailed below, the record fails to adequately demonstrate the reasonableness of the agency's evaluation in these areas.

Regarding the protester's first allegation, the RFP instructed offerors to provide, as part of the management/technical capability proposal, information concerning their proposed key personnel, RFP at 53-54, and stated the agency would evaluate management/technical capability proposals to determine whether they met SOW and solicitation requirements. Id. at 61. The SOW, which described generally the

¹⁴ L-3 also argues the agency unreasonably gave CACI credit for bonuses as part of base year compensation, because the bonuses would not be paid out until the first year was complete. We disagree. CACI's compensation plan indicated that the bonus was earned in the base year (after working the year). We find it reasonable for the agency to consider the bonus to be part of the base year compensation even if not disbursed until after the base year ended. Also, as we find the agency's evaluation of CACI's compensation plan to be unreasonable and inadequately documented generally, we need not examine the reasonableness of the agency's evaluation for specific, "low density" labor categories.

JGASS performance requirements, established specific requirements for the PM and DPM key personnel positions. As relevant here, the SOW required the PM's experience to include "at least five years managing projects of similar size and scope."¹⁵ SOW at 77.

CACI's FPR stated that its proposed PM had managed, during the last 5 years: a \$48 million information technology engineering contract for approximately 8 months (staffing level unstated); a \$30 million intelligence contract involving 63 FTEs; and another \$30 million intelligence contract involving 63 FTEs. AR, Tab 24, CACI FPR, Vol. II, Technical Proposal, Appendix A (Key Personnel Resumes), at A-1 to A-2. By contrast, the contract here was approximately \$180 million with 311 FTEs.

The SSEB evaluation report does not discuss how the agency determined that CACI's PM possessed 5-years of experience managing projects of similar size and scope. AR, Tab 27 SSEB Report, passim; Tab 26, SSEB Report (CACI Appendix), passim. In fact, the evaluation record does not include any indication that the agency evaluators considered whether CACI's proposed PM met the RFP's experience requirement. Because the record is devoid of any evaluation of this requirement, we cannot conclude that the agency's evaluation here was reasonable.

The Air Force nevertheless contends that CACI's PM has a long and distinguished career of military and civilian assignments, and possesses thorough understanding of JGASS mission requirements. While this may generally be true, this assertion fails to address the specific solicitation requirement for 5-years of experience managing projects of similar size and scope to the project solicited. In sum, while agencies have broad discretion in establishing solicitation requirements, the subsequent evaluation of proposals must be consistent with what agencies stated they would do.¹⁶ Electrosoft Services, Inc., B-409065, Jan. 27, 2014, 2014 CPD

¹⁵ The RFP established both "required" and "desired" education and experience requirements for the PM and DPM positions. The PM experience requirement at issue here was a required one. Another mandatory requirement was that the PM "be knowledgeable in geospatial applications and intelligence related automation to support analytical efforts and product development." SOW at 77.

¹⁶ The Air Force also argues that the evaluation of CACI's key personnel was reasonable because it was consistent with the agency's source selection plan. AR, Mar. 10, 2015, at 14. We have consistently held that an agency's source selection plan is merely an internal guide, and it is the RFP's evaluation scheme, not internal agency documents such as source selection plans, to which an agency is required to adhere in evaluating proposals. All Points Logistics, Inc., B-407273.53, June 10, 2014, 2014 CPD ¶ 174 at 10 n.10; J5 Sys., Inc., B-406800, Aug. 31, 2012, 2012 CPD ¶ 252 at 13 n.14. Quite simply, an agency cannot avoid its responsibility to

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¶ 252 at 4 (agency unreasonably evaluated the experience of the awardee's proposed program manager where the program manager's resume did not meet the SOW requirement to have at least eight years of experience in the duties and responsibilities identified for the position, and the evaluation record does not demonstrate that the agency considered the qualification requirement.)

Next, L-3 protests that CACI's key personnel do not meet the solicitation's residency requirements. Specifically, the RFP stated that "[t]he PM and DPM shall reside within a one (1) hour recall time of Fort Bragg, [North Carolina]. SOW at 76. CACI's proposal did not address whether its PM (who currently works in Reston, Virginia) and DPM (who currently works in Ann Arbor, Michigan) would comply with the requirement that they reside within 1-hour recall time of Ft. Bragg. AR, Tab 24, CACI FPR, Vol. 2, Management/Technical Capability Proposal, Appendix A, Key Personnel, at A-1 to A-4. Further, the record does not demonstrate how the agency reasonably determined that CACI would comply with this requirement. See AR, Tab 27, SSEB Report, Nov. 10, 2014, passim. In fact, the record does not indicate that the agency evaluators even considered whether CACI complied with this key personnel requirement.

The agency first argues that there was no requirement for offerors to demonstrate residence within 1-hour recall time prior to contract award. The agency contends that although the recall aspect of the SOW was an important aspect that both the PM and DPM must meet, "there is no requirement for any offeror's proposed key personnel to meet this requirement prior to contract award." CO Statement, Mar. 10, 2015, at 15. Although there was no requirement that the PM and DPM reside within 1-hour of Ft. Bragg prior to contract award, we find that the RFP required offerors to demonstrate or indicate compliance with all key personnel requirements, and for the agency to reasonably evaluate whether proposals met the established requirements. As explained above, CACI's proposal failed to acknowledge or otherwise address the requirement.

To the extent that the agency argues that CACI's key personnel, in fact, meet the recall requirement, the agency is mistaken. The agency points to aspects of CACI's proposal indicating that both the PM and DPM are available on-site during normal duty hours, and via phone/text/email at all other times. There is no dispute that CACI's proposal indicated that its PM and DPM would work on-site at or near Ft. Bragg, and be available by phone/text/email after duty hours. However, the solicitation required that offerors' key personnel reside within 1-hour of Ft. Bragg. In sum, CACI's proposal does not indicate that it will comply with this specific requirement, and the record does not demonstrate how the agency determined that

(...continued)

evaluate proposals in accordance with solicitation by arguing that it was instead done in accordance with a source selection plan.

CACI met this requirement. Thus, we cannot find that the agency's evaluation was reasonable.

Past Performance Evaluation

L-3 also challenges the agency's past performance evaluation. The protester contends that the agency improperly evaluated L-3's very relevant, incumbent past performance as equal to CACI's less relevant past performance.

Our Office will examine an agency's evaluation of an offeror's past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit or relative relevance of an offeror's past performance is primarily a matter within the agency's discretion. Richen Mgmt., LLC, B-409697, July 11, 2014, 2014 CPD ¶ 211 at 4. A protester's disagreement with the agency's judgment does not establish that an evaluation was improper. AT&T Corp., B-299542.3, B-299542.4, Nov. 16, 2007, 2008 CPD ¶ 65 at 19. Our review of the record leads us to conclude that the agency's past performance evaluation was unobjectionable, as described in further detail below.

The RFP established that the agency would evaluate both the relevance and quality of an offeror's past performance when assigning overall confidence assessment ratings. RFP at 62. The solicitation also included an adjectival rating scheme for evaluating the relevance of offerors' past performance references as follows: very relevant, relevant, somewhat relevant and not relevant. Id. at 56. "Some of the factors in determining relevancy include: magnitude, project complexity, security classification requirements, contract type, number of employees required, special operations support, other Federal Government agency support, scope required in the SOW" ¹⁷ Id. at 55.

The agency evaluators found, with regard to CACI, that the offeror had two very relevant references, two relevant references, one somewhat relevant reference, and one very relevant subcontractor reference. AR, Tab 26, SSEB Report (CACI Appendix), at 3-6. Based on the overall assessment of the relevance and quality of CACI's references, the SSEB found there was a high expectation that the offer would successfully perform the required effort and assigned CACI a substantial confidence past performance rating. Id., Tab 27, SSEB Report, at 10-11. With regard to L-3 the SSEB found the offeror had four very relevant references, one somewhat relevant reference, and three very relevant subcontractor references.

¹⁷ The SSEB, consistent with the solicitation, then assessed the relevance of offerors' past performance references using seven metrics: size (FTEs and dollar value), security clearances, capability (scope), in support of (customer), location, and subcontracting.

Id., Tab 25, SSEB Report (L-3 Appendix), at 4-7. Based on the overall assessment of the relevance and quality of L-3's references, the agency found there was also a high expectation the offer would successfully perform the required effort and assigned L-3 a substantial confidence past performance rating. Id., Tab 27, SSEB Report, at 14-15.

We find that the agency's evaluation of the offerors' past performance was reasonable and consistent with the solicitation and adequately documented. The agency reasonably assessed the relevance of each of an offeror's references, so as to then determine the amount of weight (if any) to give to the quality of the offeror's prior performance. The evaluators then reasonably determined that, taken as a whole, both offerors possessed past performance of high relevance and quality such that substantial confidence ratings were warranted.

L-3 does not dispute the performance quality determinations or the substantial confidence ratings assigned to either offeror's past performance. Rather, L-3 argues that it possessed more relevant past performance (i.e., its incumbent contract was more similar than any of CACI's references) such that the agency should have viewed L-3's past performance as superior to CACI's notwithstanding the equivalent ratings.

L-3's contention that its performance as the incumbent contractor should have resulted in special consideration or additional evaluation credit is without merit.¹⁸ Here, the solicitation stated that the contracting agency would evaluate "how well the Contractor performed or is performing the same or similar type of work under other Government contracts." RFP at 62. The RFP did not specify that an offeror had to have identical experience in order to receive either a "very relevant" or a "substantial confidence" rating, nor did the RFP provide that the past performance of the incumbent contractor would be given special recognition or consideration. Accordingly, the agency properly declined to afford L-3 an evaluation preference or additional credit for its performance as the incumbent contractor on the preceding contract.¹⁹ See Weber Cafeteria Servs., Inc., B-290085.2, June 17, 2002, 2002 CPD ¶ 99 at 5. In short, the record shows the agency evaluators reasonably considered the relative merits of offerors' past performance, consistent with the

¹⁸ To the extent that L-3 is objecting to the RFP's past performance rating scheme as not having enough categories to recognize the "particular, unique evaluative relevance" of the incumbent contract, Protest, Jan. 20, 2015, at 21, we find such challenge to be untimely. 4 C.F.R. § 21.2(a)(1).

¹⁹ L-3 also challenges the agency's best value tradeoff determination. In light of our determination that certain aspects of the evaluation of CACI's proposal were not reasonable or adequately documented, and our corresponding recommendations, we need not address this aspect of L-3's protest.

solicitation's evaluation scheme, and found the past performance to be essentially equal overall, even if the relevance of the offerors' individual references varied. See CPS Prof. Servs., LLC, B-409811, B-409811.2, Aug. 13, 2014, 2014 CPD ¶ 260 at 7.

Prejudice

Competitive prejudice is an essential element of a viable protest. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions; that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. Supreme Foodservice GmbH, B-405400.3 et al., Oct. 11, 2012, 2012 CPD ¶ 292 at 14.

Although L-3's technical advantages were found not to outweigh CACI's price advantage, the record does not demonstrate that the agency's evaluation of CACI's proposal with regard to personnel compensation plan and key personnel was reasonable. In light of the deficiencies in the agency's record, we cannot say what CACI's ratings should have been; nor can we guess how the agency would have viewed the relative technical merits of offerors' proposals or how this would have affected the agency's price/technical tradeoff determination. As set forth above, the nonprice factors, when combined, were significantly more important than price. For these reasons, we find that L-3 was prejudiced by the evaluation errors identified. Supreme Foodservice GmbH, supra.

RECOMMENDATION

We recommend that the agency reevaluate CACI's professional compensation plan and key personnel and, based on that reevaluation, make a new source selection determination. If, upon reevaluation of proposals, L-3 is determined to offer the best value to the government, USSOCOM should terminate CACI's contract for the convenience of the government and make award to L-3. We also recommend that L-3 be reimbursed the costs of filing and pursuing the protest, including reasonable attorneys' fees, 4 C.F.R. § 21.8(d)(1). L-3 should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained in part and denied in part.

Susan A. Poling
General Counsel