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Decision

Matter of: DPK Consulting

File: B-404042; B-404042.2

Date: December 29, 2010

Roy Goldberg, Esq., Jessica M. Madon, Esq., and Bethany L. Hengsbach, Esq., Sheppard Mullin Richter & Hampton LLP, for the protester.
Eric J. Marcotte, Esq., William Y. Durbin, Esq., and Bryant E. Gardner, Esq., Winston & Strawn LLP, for Chemonics International, Inc., the intervenor.
Sarah G. Rapawy, Esq., United States Agency for International Development, for the agency.
Jonathan L. Kang, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably did not evaluate portions of the protester's revised proposal that did not comply with the format and page limit instructions.
2. Challenge to agency's evaluation of key personnel is denied where the agency reasonably distinguished between the experience of the awardee's and protester's proposed candidates.

DECISION

DPK Consulting, of San Francisco, California, protests the issuance of a task order to Chemonics International, Inc., of Washington, D.C., under request for task order proposals (RFTOP) No. 294-2010-114, issued by the U.S. Agency for International Development (AID), for the Palestinian Justice Enhancement Program (PJEP). DPK argues that the agency failed to reasonably evaluate its revised proposal, failed to evaluate offerors' proposals for cost realism, and failed to make a reasonable selection decision.¹

¹ Although the solicitation anticipated award of a task order under an indefinite-delivery/indefinite-quantity contract, the solicitation stated that it sought "proposals" and that term is used repeatedly throughout the solicitation and the procurement record. The solicitation contemplated an evaluation and source selection scheme

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We deny the protest.

BACKGROUND

The solicitation was issued on April 23, 2010, to firms that hold contracts under AID's multiple award indefinite-delivery/indefinite-quantity contract for Regional Democracy Initiatives. The overall goal of the PJEP is as follows:

[T]o strengthen public confidence and respect for justice sector institutions and the rule of law in the West Bank and Gaza . . . through targeted assistance to justice sector institutions, legal professionals, civil society, and the public that strengthens the performance of justice sector institutions and actors, and increases public knowledge of the law and the justice sector.

TOPR § C.2.I at 9.

The RFTOP anticipated issuance of a cost-reimbursement task order with a 3-and-a-half-year term. The solicitation advised offerors that their proposals would be evaluated on the basis of cost, and four technical evaluation factors: technical approach (35 points), staffing and key personnel (30 points), management capability (20 points), and past performance (15 points). RFTOP § M.2 at 68-70. The RFTOP stated that offerors' proposed costs would be "evaluated on the basis of realism." *Id.* § M.1 at 67. For purposes of award, the solicitation stated that "technical merits are considered significantly more important than cost." *Id.*

AID received proposals from two offerors, DPK and Chemonics, by the closing date of June 8. The agency evaluated both offerors' proposals and assigned DPK's proposal an overall score of 65.67 points, and Chemonics' proposal an overall score of 74.33 points. Agency Report (AR), Tab 9, Initial Technical Evaluation, at 3.

The agency provided each offeror with discussion questions and requested final revised proposals (FPR). As discussed in greater detail below, offerors were instructed to provide an FPR that addressed the agency's discussion questions. The request for FPRs stated that the original 30-page limit for technical proposals had been increased to 35 pages. AR, Tab 10, Request for DPK FPR, at 4. Offerors were also required to provide a letter to "accompan[y]" the FPR that "outlines" the

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similar to those used in negotiated procurements; accordingly whether the vendors' submissions are referred to as proposals or quotations has no effect on the issues raised. See *MASAI Techs. Corp.*, B-298880.3, B-298880.4, Sept. 10, 2007, 2007 CPD ¶ 179 at 1 n.1. For the sake of consistency, we refer to the firms as "offerors" and their submissions as "proposals" throughout this decision.

offeror's response to the agency's discussion questions. AR, Tab 10, Agency Email Forwarding Request for DPK FPR, at 1 (July 16, 2010).

AID provided discussion questions for DPK that identified weaknesses under the technical approach, staffing and key personnel, and management approach factors, including, as relevant here, notice that three of its proposed key personnel did not meet the solicitation requirements. DPK submitted an FPR that consisted of a 49-page cover letter, a 35-page technical proposal, and several appendices; DPK's specific responses to the agency's discussion questions were contained in its cover letter, rather than in its revised technical proposal. Chemonics also submitted a cover letter, revised technical proposal, and appendices.

The agency did not evaluate the detailed responses to the discussion questions contained in DPK's 49-page cover letter. AR, Tab 19, Revised Technical Evaluation, at 2. In this regard, the agency concluded that the protester's approach of addressing the discussion questions outside of its 35-page technical proposal did not comply with the instructions in the request for FPRs, and that evaluation of this information would result in an "unfair competitive advantage" for DPK. *Id.* In contrast, the agency concluded that Chemonics' proposal complied with the request for FPR instructions, and evaluated the entirety of its FPR.

AID's final evaluation ratings for the offerors' FPRs were as follows:

	DPK	Chemonics
TECHNICAL SCORE	73.5 / 100	81 / 100
Technical Approach	29.67 / 35	27.67 / 35
Staffing and Key Personnel	16.33 / 30	24.33 / 30
Management Capability	13.33 / 20	16 / 20
Past Performance	14.17 / 15	13 / 15
PROPOSED COST	\$13,997,345	\$14,994,749

AR, Tab 20, Source Selection Decision, at 4.

In the source selection decision, the contracting officer (CO), who also served as the source selection authority (SSA) for the procurement, concluded that Chemonics' higher technically rated proposal represented the best value, notwithstanding DPK's lower proposed cost. *Id.* In particular, the CO found that Chemonics' "superior proposed key personnel are indicative of a better understanding of the government's requirements . . . [that] significantly increases the likelihood that Chemonics will be able to successfully complete the requirements of the order." *Id.* In contrast, the CO found that "the concerns associated with the proposed DPK personnel reflect a serious risk to the successful implementation of the award." *Id.* The agency notified DPK of the selection of Chemonics for the award on September 3, and provided the protester a debriefing on September 16. This protest followed.

DISCUSSION

DPK argues that AID unreasonably failed to consider its responses to discussion questions contained in the cover letter accompanying its FPR, and otherwise failed to evaluate alternative key personnel candidates submitted with its FPR. The protester also argues that the agency unreasonably evaluated the offerors' technical and cost proposals and that the selection decision was flawed.

The evaluation of an offeror's proposal is a matter within the agency's discretion. IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. 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. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. 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 unreasonable. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4.

Evaluation of DPK's Revised Proposal

The RFTOP required offerors to submit its technical proposal with a limit of 30 pages. Offerors were also permitted to submit appendices to their technical proposal that addressed certain RFTOP requirements, such as key personnel resumes and letters of commitment, and past performance information; these appendices were not subject to a page limitation. RFTOP § L.5 at 59. The request for FPRs instructed offerors to address the discussion questions by revising their technical proposals as follows:

Addressing these technical weaknesses and/or deficiencies will require a significant revision of the proposal. This revision may also directly result in major changes to the cost proposal.

The [FPR] should clarify and document DPK's understandings of both the technical proposal and the cost/business proposal. Please make sure that your responses to USAID's comments and clarifications are complete yet concise.

* * * * *

The FPR should not exceed thirty-five (35) pages, exclusive of annexes and other pages not subject to this page limitation as specified in Section L of the subject RFTOP.

AR, Tab 10, Request for DPK FPR, at 4. In addition to these instructions, the email transmitting the discussion questions and request for FPRs stated that the revised proposals “should be accompanied with a letter that outlines DPK’s response to USAID’s” discussion questions. AR, Tab 10, Agency Email Forwarding DPK FPR, at 1.

As discussed above, DPK’s FPR consisted of a 49-page cover letter, a 35-page revised technical proposal, and a number of additional appendices. Rather than specifically addressing the agency’s discussion questions in its revised technical proposal, DPK addressed these questions in the cover letter. Chemonics’ response included a 15-page cover letter, a 35-page revised technical proposal, and a number of appendices.

AID reviewed DPK’s revised technical proposal and noted that the protester had addressed some concerns regarding its technical approach. AR, Tab 19, Revised Technical Evaluation, at 2. The agency concluded, however, that the protester’s revised proposal did not address other concerns identified during discussions, including the experience of its proposed key personnel. With regard to DPK’s cover letter, the agency noted that it contained “additional information on key personnel, management capacity, sub-partner relationship, and other matters (including alternative candidates for three positions),” but stated that this information “was not evaluated as it would have constituted an unfair competitive advantage over the 35-page limit for the FPR.” *Id.* In this regard, the agency notes that the solicitation specifically instructed offerors that although offerors were allowed to use appendices for information, such as resumes and performance information, “[a]ll critical information from appendices must be summarized in the technical proposal.” See RFTOP § L.5.b at 59.

DPK argues that AID unreasonably failed to evaluate the responses to discussion questions contained in the cover letter to the protester’s revised proposal. Specifically, the protester argues that the instructions to the request for revised proposals instructed offerors to respond to the discussion questions, and that the cover letter did not have a page limit.

In our view, the request for revised proposals did not instruct offerors to “respond” to the discussion questions in the cover letter. Instead, the instructions explained that “[a]ddressing these technical weaknesses and/or deficiencies will require a significant revision of the proposal,” AR, Tab 10, Request for DPK Final Proposal Revisions, at 4, and that the revised proposals “should be accompanied with a letter that outlines DPK’s response to USAID’s” discussion questions. AR, Tab 10, Agency Email Forwarding DPK FPR, at 1. (emphasis added). Although the protester repeatedly argues that offerors were instructed to “respond” to the discussion questions in the letter, *see* Supp. Protest at 4, Protester’s Supp. Comments at 4-5, the instructions make clear that an offeror was required to revise its technical proposals to account for the agency’s discussions, and could only “outline[.]” its response to the discussion questions in the “accompany[ing]” letter. Because the protester chose to

include its detailed responses to the discussion questions in its 49-page cover letter, rather than in its 35-page revised proposal, we think that the agency reasonably excluded consideration of DPK's responses that were not otherwise contained in its revised proposal.

DPK also argues that the agency treated offerors unequally because it did not exclude Chemonics' 15-page cover letter from the evaluation. As the agency explains, however, Chemonics' cover letter only outlined the changes made to its technical proposal in response to the discussion questions, and therefore complied with the instructions in the request for FPRs. The protester does not dispute that the items discussed in Chemonics' cover letter only referenced areas discussed in its revised proposal. On this record, we conclude that the agency did not treat the offerors unequally with regard to consideration of information in their cover letters.

Staffing and Key Personnel Evaluation

DPK argues that AID's evaluation of its proposed key personnel was unreasonable because the agency did not evaluate the resumes of alternative key personnel identified in the protester's FPR.

The RFTOP required offerors' proposals to provide a staffing plan that included a chart that described the roles and responsibilities of staff. The staffing plan was also required to include a "project management plan" that ensured oversight and implementation of the solicitation requirements. Offerors were required to identify key personnel, including a chief of party (COP), a deputy chief of party (DCOP), an operations manager, and two component leaders; offerors were also required to provide resumes, references, and letters of commitment for the proposed key personnel. RFTOP § L.5 at 61-63.

In its initial evaluation, the agency identified numerous weaknesses regarding DPK's approach to staffing and the experience of its proposed key personnel. AR, Tab 9, Initial Technical Evaluation, at 12-13. In the discussion letter, with regard to key personnel and staffing, the agency stated among other things:

DPK is requested to clarify and discuss its plan to recruit qualified staff for the implementation for its proposed program. DPK is requested to provide alternative candidates that meet the requirements of the RFTOP, accompanied by appropriate [resumes] and a letter of commitment. Note in particular:

- The proposed [COP] does not have the requisite 20 years of professional experience. In addition the COP only has 11 years of rule of law experience, and less than the required 15 years of "progressively responsible experience in international donor development project management." His educational background in

commerce does not meet the educational requirements as specified in the RFTOP.

- The DCOP has only six years of [rule of law] experience; her background is primarily in the area of public information.
- The Component 1 Leader only has two years of [rule of law] experience, and his experience is primarily in the financial, administrative, and development fields, without actual experience working in a judicial institution. The reference received specifically noted that the contacted person did not know of his understanding, experience, or expertise in the rule of law sector. The proposed candidate has a [Bachelor of Science degree] rather than the requested [Bachelor of Arts degree], and the resume did not specify in what field of studies.

AR, Tab 10, Request for DPK FPR, at 3.

DPK's revised technical proposal included the same individuals whose qualifications were questioned by the agency in discussions and did not address the concerns identified by the agency during discussions. DPK's revised technical proposal did include two footnotes, which stated that it had provided "an alternative personnel scenario," including an alternative COP candidate, in the cover letter. AR, Tab 15, DPK Revised Proposal, at 2 n.1, 28 n.10. The revised proposal stated that the alternative COP's "qualifications and the qualifications of other alternative candidates are fully outlined in" the cover letter. Id. at 2 n.1.

DPK's cover letter specifically responded to the discussion questions, and provided five pages of additional details concerning the experience of its original COP, DCOP, and component 1 lead candidates. AR, Tab 15, DPK Cover Letter, at I-24-28. The cover letter also stated that a revised resume for its original COP candidate had been provided in an appendix. Id., at I-24; attach. 5. With regard to the alternative candidates, the cover letter explained that DPK was providing an "alternative scenario for the leadership" of the proposed contract that included a new candidate for the COP, a reassignment of the original COP to the position of DCOP, and a new candidate for the component 1 lead. Id. at I-28-29. The alternative scenario included a description of the experience and qualifications of the proposed key personnel for this scenario, provided a revised organizational chart describing the roles of the alternative candidates, and indicated that resumes and letters of commitment for the revised candidates were provided in appendix 6 to the revised proposal. Id. The cover letter also stated that the protester had provided an "alternative budget" to reflect the difference in costs for the alternative scenario. Id. at I-28.

The agency evaluated DPK's revised proposal, including the revised resume for its original COP candidate, but did not consider the alternative candidates because they

“are not discussed in the revised proposal.” AR, Tab 19, Revised Technical Evaluation, at 7.

DPK argues that the TOPR permitted offerors to provide resumes in an appendix to the technical proposal, and that the appendices had no page limit. The protester thus contends that, regardless of what the instructions for FPRs stated regarding the page limits for the revised technical proposal, offerors were permitted to submit additional resumes in the appendices to their FPR, and the agency was obligated to evaluate them.²

However, as discussed above, we think that, based on the guidance in the request for FPRs, the agency reasonably excluded from consideration any portion of the protester’s cover letter that provided substantive details that were not otherwise provided in its 35-page revised proposal. Thus, the protester’s approach of providing an “alternative scenario” with alternative key personnel candidates and an “alternative budget” in its cover letter to its FPR—as opposed to the revised proposal itself—was inconsistent with the agency’s instructions for submitting FPRs. Under the circumstances, we think that the agency acted properly in not considering DPK’s alternative key personnel.³

DPK also argues that AID failed to reasonably evaluate its original proposed key personnel for the COP position. The solicitation required the proposed COP to demonstrate a minimum of 15 years of “progressively responsible experience in international donor development project management, including rule of law development planning, with a demonstrated experience in leading justice and or judicial reform programs.” RFTOP § L at 62. While AID acknowledged that the protester’s FPR provided a revised resume for its original COP, it concluded that this candidate “still falls three years short of the required 15 years of ‘progressively responsible experience in international donor development project management

² DPK also contends that the word “alternative” means “additional,” and that the agency’s request that the protester provide alternative candidates meant that it was permitted to both respond to discussion questions regarding its original key personnel as well as provide additional candidates for evaluation. The agency contends that the word “alternative,” as used in its discussion questions to DPK, meant “different” in the sense of an alternative to the originally-proposed candidates. We need not resolve this dispute because, as discussed herein, the protester’s approach to submitting its additional key personnel candidates did not comply with the instructions in the request for FPRs.

³ The protester has challenged various other aspects of the technical evaluation that are also based upon the agency’s failure to consider the explanations provided in the 49-page cover letter to the FPR. For the reasons set out above, none of these arguments provides a basis to sustain its protest.

[including rule of law experience in leading justice and or judicial reform programs].” AR, Tab 19, Revised Technical Evaluation, at 7.

The protester argues that the agency unreasonably failed to credit its COP with experience in the following two positions: [deleted]. However, the agency states that these positions were not recognized as “international donor development” projects, and moreover, do not clearly reflect substantive rule of law work, but instead reflected administrative or operational work. Supp. AR at 13. Although the protester disagrees with the agency’s view that these positions were primarily administrative in nature, the protester does not dispute the agency’s view that the projects did not involve international donor development. On this record, we do not think that the protester demonstrates that the agency’s views are unreasonable.

The protester also argues that the agency treated its proposed COP candidate unequally as compared to Chemonics’ proposed candidate, to the extent that the awardee’s COP relied on experience with human rights organizations in Europe that were not clearly related to the rule of law mission of the PJEP. In this regard, the protester notes that AID’s initial technical evaluation cited a weakness for Chemonics’ proposed COP because the candidate “focuses more on human rights issues, rather than assistance to the judiciary.” See AR, Tab 9, Initial Technical Evaluation, at 7. The agency states, however, that Chemonics’ revised FPR addressed the agency’s initial concerns regarding its COP candidate, and clearly demonstrated the COP’s experience in rule of law activities. Supp. AR at 13. In this regard, the agency noted that Chemonics’ proposed COP was involved in activities, such as “leading major legal initiatives related to the independence of the judiciary and . . . [deleted].” *Id.*, quoting AR, Tab 12, Chemonics’s Revised Proposal, at 25. On this record, we think that the protester’s disagreement with this aspect of the agency’s evaluation provides no basis to sustain the protest.

Next, the protester argues that the agency unreasonably evaluated the offerors’ DCOP candidates. The solicitation required the proposed DCOP to demonstrate a minimum of 10 years of “progressive experience working and managing international donor rule of law and or judiciary reform projects.” RFTOP § L at 62. AID concluded that DPK’s proposed DCOP demonstrated “only six years of [rule of law] experience, four short of the required 10 years.” AR, Tab 9, Technical Evaluation, at 12. The protester argues that the agency failed to credit its DCOP candidate with experience in the positions of [deleted] for the AID Strengthen the Legislative Capacity of the Palestinian Legislative Council program. The agency states, however, that it viewed the DCOP candidate’s experience, which was described in her resume as involving “constituency relations and public information,” as not clearly relating to rule of law activities. Supp. AR at 14-15. Although the protester contends that these activities are related to certain of the objectives of the PJEP, we think the agency reasonably found that the experience of DPK’s proposed DCOP did not meet the requirements of the solicitation.

The protester also argues that the agency treated the offerors' proposed DCOP candidates unequally because the Chemonics' candidate did not have 10 years of rule of law experience. However, the agency was satisfied from its review of the detailed explanations in Chemonics' initial and revised proposals that Chemonics' proposed DCOP satisfied the solicitation's rule of law experience requirements, although it assessed a weakness here because the explanations "appear[] less clear from the candidate's [resume]." Supp. AR at 16; see AR, Tab 19, Revised Technical Evaluation, at 14. Based on our review, we find the agency's evaluation here to be reasonable.

Alleged Unstated Evaluation Criterion

Next, DPK argues that AID applied an unstated evaluation criterion in assessing a weakness under the technical approach factor concerning the protester's approach to disaggregating certain data, that is, reporting of data based on demographic categories.

The RFTOP required offerors to provide a draft performance monitoring and evaluation plan that demonstrated a solid understanding of the work requirements, a methodology for gathering and analyzing data and for gathering outcome data, and specific data that integrates gender considerations. RFTOP § M.2 at 68. During discussions, AID requested that the protester address the following concern: "DPK is requested to ensure consistency in its approach to disaggregation and explain how categories are chosen and what they seek to achieve." AR, Tab 10, DPK Discussion Questions, at 2. In its response, the protester stated that "indicators will be specifically defined and disaggregated, as appropriate, by gender, ethnicity, age, and religion." AR, Tab 15, DPK Revised Proposal, Annex 4, at 4-4. The agency concluded that the protester had not explained the basis for its proposed method of disaggregation, such as why ethnicity and religion were chosen as categories, or "what this disaggregation seeks to capture." AR, Tab 19, Revised Technical Evaluation, at 6.

The protester argues that the agency's assessment of a weakness here constituted an unstated evaluation criterion because the solicitation did not require offerors to explain their proposed approaches to disaggregation at the level questioned by the agency during discussions. We think that the protester's proposed data disaggregation approach clearly related to the solicitation requirement that the offeror address its methodology for gathering and analyzing data, and specific data relating gender considerations. See RFTOP § M.2, at 68. For this reason, we think the agency reasonably asked the protester to address why it proposed to disaggregate data based on race, age, and religion--particularly given that the protester's initial proposal did not explain why it did so. We also think that the agency reasonably downgraded DPK's proposal because its FPR did not respond to the agency's concern.

Cost Realism Evaluation

Next, DPK argues that the agency failed to evaluate the offerors' proposals for cost realism, as required by the solicitation. Specifically, the protester argues that the agency's conclusions that the offeror's proposed costs were realistic and did not require adjustment are not supported because the agency had not adequately analyzed the proposed costs in sufficient detail.

When an agency evaluates a proposal for the award of a cost-reimbursement contract, an offeror's proposed estimated costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. See Tidewater Constr. Corp., B-278360, Jan. 20, 1998, 98-1 CPD ¶ 103 at 4. Consequently, the agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work to be performed. An agency is not required to conduct an in-depth cost analysis, or to verify each and every item in assessing cost realism; rather, the evaluation requires the exercise of informed judgment by the contracting agency. See Cascade Gen., Inc., B-283872, Jan. 18, 2000, 2000 CPD ¶ 14 at 8. Further, an agency's cost realism analysis need not achieve scientific certainty; rather, the methodology employed must be reasonably adequate and provide some measure of confidence that the proposed costs are reasonable and realistic in view of other cost information reasonably available to the agency as of the time of its evaluation. See SGT, Inc., B-294722.4, July 28, 2005, 2005 CPD ¶ 151 at 7. We review an agency's judgment in this area only to see that the agency's cost realism evaluation was reasonably based and not arbitrary. Hanford Envtl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 8.

Here, the agency prepared a cost analysis memorandum that discussed elements of the offerors' proposed costs, such as proposed salaries, labor rates for key personnel, subcontractor costs, and training activities. The agency did not take exception to any of these proposed costs as unrealistically low. AR, Tab 18, Cost Analysis Memorandum, at 1-3. The CO's award negotiation memorandum also concluded that the awardee's proposed costs were "realistic, fair and reasonable." AR, Tab 25, Award Negotiation Memorandum, at 6. The negotiation memorandum examined Chemonics' proposed salaries and concluded that they were "supported with biographical data sheets," and were "within market range for similar positions and expertise." *Id.* at 7. The negotiation memorandum also examined cost elements, such as the awardee's benefits, direct and indirect costs, and its general and administrative rates; the agency found no basis to take exception to these costs. *Id.* at 7-11. Although the selection decision did not specifically address the issue of cost realism, the CO states that the award decision reflected his judgment that the

offerors' proposed costs were realistic, and did not merit adjustment.⁴ CO Statement at 27; see AR, Tab 20, Selection Decision, at 4.

The protester does not timely challenge the realism of any particular element of Chemonics' proposed costs.⁵ DPK instead argues that the analyses discussed above did not constitute a proper cost realism analysis because the agency should have addressed the cost elements in greater detail, and also failed to make any adjustments to the offeror's proposed costs. We think that the record shows that the agency evaluated specific elements of each offeror's proposed costs, and reasonably concluded that none was unrealistic. To the extent that the protester contends that the agency's analysis should have examined the offerors' proposed costs in more depth, this argument does not provide a basis to sustain the protest. See Cascade Gen., Inc., supra; SGT, Inc., supra. Based on this record, and in the absence of any timely specific arguments that particular costs proposed by Chemonics were unrealistic, we find no basis to question the agency's conclusion that the offerors' proposed prices were realistic.

Selection Decision

Finally, DPK argues that the agency failed to meaningfully consider cost in the selection decision, and that the selection decision departed from the stated evaluation criteria. As discussed below, we find no merit to these arguments.

Solicitations must advise offerors of the basis upon which their proposals will be evaluated. Lloyd H. Kessler, Inc., B-284693, May 24, 2000, 2000 CPD ¶ 96 at 3. An SSA has broad discretion in determining the manner and extent to which he or she will make use of the technical and price evaluation results; an SSA's judgments are

⁴ DPK notes that the selection decision was signed by the CO on September 3, whereas the award negotiation memorandum, which documented the CO's cost realism determination, was signed by the CO on September 13. The protester contends that the negotiation memorandum therefore reflects a post hoc judgment that does not demonstrate that the agency performed a proper cost realism analysis. We disagree. The CO stated that he reviewed the offerors' cost proposals and the agency's cost analysis memorandum prior to approving the selection decision. CO Statement at 27; Supp. AR at 22. Moreover, the award negotiation memorandum was signed by the CO on September 13, prior to the protester's September 16 debriefing, and prior to the filing of DPK's protest.

⁵ In its comments on the supplemental agency report, DPK argued for the first time that certain elements of Chemonics' proposed costs may have been unrealistic. These arguments are untimely and will not be considered, because they were raised more than 10 days from the protester's receipt of the awardee's proposal in the agency report. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2010).

governed only by the tests of rationality and consistency with the stated evaluation criteria. Chemical Demilitarization Assocs., B-277700, Nov. 13, 1997, 98-1 CPD ¶ 171 at 6.

Here, the CO concluded that Chemonics' higher technical score reflected that it offered the highest probability of success, and thus warranted selecting that offeror's higher-cost proposal. In particular, the CO stated that Chemonics' "superior proposed key personnel are indicative of a better understanding of the government[']s requirements," and that its proposal reflected, as compared to DPK, "a better understanding of the human resources necessary to successfully implement this task order." AR, Tab 20, Selection Decision, at 4. We think that the selection decision demonstrates that the agency appropriately considered cost in making the award decision.

DPK also argues that the agency accorded improper weight to the staffing and key personnel evaluation factor in making award. As indicated above, DPK's proposal had a 2-point advantage under the technical approach factor, which was worth 35 points, whereas Chemonics had an 8-point advantage under the staffing and key personnel factor, which was worth 30 points. The protester contends that it was improper for the agency to identify a lower-weighted evaluation factor as the key discriminator in the selection decision.

We think that the CO's tradeoff analysis did not indicate that the staffing and key personnel factor was of greater importance than the technical approach factor. Instead, the CO found that the larger difference between the merits of the offerors' proposals under the staffing and key personnel factor, as reflected in the 8-point difference in score, was more important than the smaller difference between the merits of the offerors' proposals under the technical approach factor, as reflected by the 2-point difference in score. An SSA, in making a tradeoff analysis, may ultimately focus on a particular discriminator, even if it not the most heavily weighted factor, where he or she has reasonable basis to do so, e.g., where the evaluations under other factors are equal or cancel each other out. Mechanical Equip. Co., Inc., et al.,

B-292789.2 et al., Dec. 15, 2003, 2004 CPD ¶ 192 at 19. On this record, we think that the selection decision was consistent with the evaluation criteria.⁶

The protest is denied.

Lynn H. Gibson
Acting General Counsel

⁶ The protester has made a number of other collateral arguments. For example, the protester contends that the agency failed to conduct meaningful discussions because it did not ask the protester to address concerns regarding its past performance that the protester had assertedly not had an opportunity to address. Despite the agency's failure to conduct discussions in this area, we do not think that the protester was prejudiced. See McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996) (competitive prejudice is a necessary element of any viable bid protest). In this regard, the protester received 14.17 out of a possible 15 points under the past performance factor. Thus, even if the agency had conducted discussions on this point, and even if DPK had received an additional 0.83 points under this factor, we do not think that this increase would have reasonably improved DPK's chance of receiving the award in light of the overall 7.5-point difference between the offerors, and the agency's reliance on Chemonics' significant advantage with regard to staffing and key personnel as the primary discriminator between the offerors' proposals. In any case, we have reviewed all of the protester's arguments, and find that none provides a basis to sustain the protest.