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Decision

Matter of: ABSG Consulting, Inc.

File: B-407956; B-407956.2

Date: April 18, 2013

William J. Spriggs, Esq., Spriggs Law Group, for the protester.
Marcia G. Madsen, Esq., David F. Dowd, Esq., Cameron S. Hamrick, Esq.,
Luke Levasseur, Esq., and Polly A. Myers, Esq., Mayer Brown LLP, for Booz Allen
Hamilton, Inc., an intervenor.
William H. Butterfield, Esq., Department of Homeland Security, United States
Coast Guard, for the agency.
Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging past performance evaluation is denied where the agency rated protester and awardee the same because both firms had consistently highly-rated past performance, and the agency was not required to give protester additional credit based on its status as the incumbent contractor.
 2. Protest that cost realism analysis was unreasonable is denied where the agency reasonably adjusted protester's costs upward using the higher of two overhead rates identified by a subcontractor because the proposal did not adequately explain why the lower overhead rate would apply.
 3. Protest that source selection decision was unreasonable is denied where the contracting officer reasonably determined that awardee's lower evaluated cost outweighed protester's advantage in experience as incumbent.
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DECISION

ABSG Consulting, Inc. (ABSG), of Arlington, Virginia, a small business, protests the award of a contract to Booz Allen Hamilton, Inc. (BAH), of McLean, Virginia, by the Department of Homeland Security, United States Coast Guard, under request for proposals (RFP) No. HSCG32-12-R-R00004 for systems engineering and technical assistance services at the Coast Guard Research and Development Center (RDC) in New London, Connecticut. ABSG argues that the Coast Guard miscalculated the

proposals, failed to conduct a proper cost realism analysis, and made an unreasonable best value determination. Protest at 3-4.

We deny the protest.

BACKGROUND

The Coast Guard issued the RFP on April 20, 2012, seeking proposals to provide services for a 6-year period under a single-award indefinite-delivery/indefinite-quantity cost-plus-fixed-fee contract. RFP at 1, 5, 7-8, 55, 69. The RFP provided that the Coast Guard would award a contract to the firm whose proposal provided the best value based on the evaluation of four equally-weighted non-price factors: technical understanding and management approach, staffing, corporate experience, and past performance. Id. at 69-70. The RFP identified two equally-weighted subfactors (or “subcriteria”) under the technical understanding and management approach factor: technical understanding of the requirement, and management approach to providing conflict-free advice to RDC. Id. at 69. The staffing factor also had two equally-weighted subfactors: program manager, and principal investigators. Id. The four non-price factors, when combined, were significantly more important than price. Id. at 69.

The RFP directed each offeror to provide specific information about its (and any major subcontractor’s) corporate experience, and to show how that experience related to the requirements of the RFP. Id. at 60. For the past performance evaluation, the RFP directed offerors to submit completed performance evaluations, preferably on the agency’s performance questionnaire form. RFP attach. 8, Past Performance Questionnaire, at 1. Where a completed evaluation was unavailable, the RFP directed the offeror to use its best efforts to persuade the reference to submit an evaluation directly to the Coast Guard contract specialist. RFP at 61. The RFP stated that the past performance evaluation would consider the offeror’s ability to perform the contract successfully based on its past performance using the same references submitted for the corporate experience evaluation. RFP at 70.

With respect to the business/cost portion of each offeror’s proposal, the RFP specified an estimate of labor hours in each of six labor categories, to be used in preparing the proposal.¹ Id. at 62-63. The RFP also directed offerors to provide a detailed breakdown of all costs and furnish supporting documentation for each element of its costs, including the calculation of labor costs, overhead, and distribution of non-incidentals other direct costs and travel costs, for each subcontractor. Id. at 63-65. The Coast Guard was to assess each offeror’s proposal for cost realism. RFP at 61, 65, 70.

¹ The RFP allowed offerors to propose fewer hours in a seventh labor category, but it has no bearing on the protest issues.

The Coast Guard received proposals from five offerors, including ABSG and BAH. Contract Officer’s Statement at 1. The source selection plan provided that each factor was to be rated adjectivally as superior, excellent, satisfactory, marginal, or unacceptable.² Agency Report (AR), Tab D, SETA Source Selection Plan, attach. D, Ratings Definition Table, at 1-3. The description of each rating also associated the rating with a level of performance risk; thus, a superior rating related to performance risk that was “very low;” an excellent rating signified “low” performance risk; a satisfactory rating signified “moderate” risk, and so on. Id. at 1-2.

A technical evaluation team prepared a technical evaluation report. The evaluators concluded that ABSG’s proposal merited a superior rating under the technical understanding/management approach, and corporate experience factors, and excellent ratings under the staffing and past performance factors, based on the firm’s demonstrated ability to respond to complex requirements, and strategies to achieve future improvements, among other things. AR, Tab E, Final Technical Evaluation Report, at 6. With respect to BAH, the evaluators concluded that the firm and its proposed personnel had comprehensively justified their capabilities, had shown a thorough understanding of the task requirements, and that, overall, “strong contract performance and execution could be expected.” Id. at 6-7.

The evaluation ratings of the remaining offerors were as follows³:

	Technical Understanding/ Mgmt. Approach	Staffing	Corporate Experience	Past Performance
Offeror A	Unacceptable	Marginal	Marginal	Satisfactory
Offeror B	Unacceptable	Unacceptable	Satisfactory	Excellent
ABSG	Superior	Excellent	Superior	Excellent
BAH	Superior	Excellent	Excellent	Excellent

AR, Tab F, Pre-Negotiation Memorandum, at 8.

A cost evaluation team evaluated both offerors’ proposed costs. The evaluation compared the individual labor rates submitted by each offeror (including each of its subcontractors), to the corresponding rate in the government estimate. The agency then analyzed the basis for the overhead, general and administrative (G&A) and other direct costs amounts, and determined whether those, and the proposed fixed fee, had been correctly calculated. That analysis identified a number of individual

² The plan also identified an additional adjectival rating of “neutral” for a firm that lacked relevant past performance. Id. at 3.

³ The evaluators concluded that the fifth offeror’s proposal was unacceptable.

labor rates that were above or below the government estimate. Nevertheless, the evaluators determined that overall both firms' costs were realistic and did not require adjustment to any of the labor rates. The analysis did, however, make adjustments to both firms' proposed costs based on discrepancies in the distribution of non-incidentals, other direct costs and travel costs, and in the application of overhead and G&A rates. The net effect of those adjustments increased ABSG's proposed cost by \$0.5 million, and increased BAH's proposed cost by \$0.2 million. See generally, AR, Tab F, Pre-Negotiation Memorandum, at 38-108 (cost realism analysis of ABSG and BAH).

The agency made two findings that are significant to the protest issues: First, even though some individual labor rates differed from the corresponding government estimate, the cost realism analysis concluded that, overall, BAH's labor rates were 1.18 percent lower than the government estimate, while ABSG's were 7.92 percent higher overall. Id. at 44, 88. Second, one of ABSG's subcontractors, [~~deleted~~], listed two overhead rates--71.6 percent and 21.1 percent--which the firm applied to its direct labor cost (each rate was applied to approximately half the labor hours in each labor category), in developing its proposed costs. The subcontractor's cost proposal did not include an explanation for why each rate applied. In analyzing that subcontractor's costs, the evaluators concluded that the lower overhead rate applied to work at a government site. Since the RFP's statement of work (SOW) did not provide for government-site work, the evaluators found the application of that lower rate improper, and recalculated that subcontractor's costs using the higher overhead rate. Along with two other (much smaller) adjustments, the subcontractor's evaluated cost increased by \$418,000. Id. at 43, 50-51.

The results of the cost realism adjustments were as follows:

	Proposed Cost	Evaluated Cost	Adjustment
Offeror A	\$37.4 million	\$37.5 million	\$0.1 million
Offeror B	\$29.3 million	\$31.6 million	\$2.4 million
ABSG	\$41.7 million	\$42.2 million	\$0.5 million
BAH	\$39.8 million	\$40.0 million	\$0.2 million

Id. at 9.

The contracting officer considered the results of the final technical evaluation and cost realism analysis. She reviewed the reasons for the unacceptable ratings for Offerors A and B, and concluded that neither firm should be considered for award despite their lower costs. With respect to BAH and ABSG, the contracting officer observed that both firms were rated identically except for corporate experience and cost. She noted that ABSG's advantage reflected the firm's "directly relevant experience" as the incumbent. She also noted that, although the evaluators had identified two minor weaknesses for BAH under the technical understanding/management approach factor, those weaknesses did not justify a lower factor rating

and did not pose performance risk for BAH. The contracting officer expressed her view that the two firms' technical evaluations were "comparable," and that the cost difference therefore justified award to BAH. Id. at 112.

After the Coast Guard awarded the contract to BAH, ABSG filed its post-debriefing protest, followed by a timely supplemental protest.

ANALYSIS

ABSG raises a variety of issues in its initial and supplemental protest. Principally, the firm argues that the Coast Guard failed to give sufficient weight to ABSG's evaluated advantage in corporate experience, unreasonably evaluated past performance, improperly evaluated performance risk, relied on an unreasonable cost realism analysis, and made an unreasonable source selection decision. We consider ABSG's challenges in each of these areas. As explained below, we find that none of ABSG's arguments has merit.⁴

Past Performance Evaluation

ABSG challenges the Coast Guard's assessment of ABSG's claimed advantage based on its status as the incumbent contractor.⁵ In particular, ABSG argues that the Coast Guard improperly minimized ABSG's advantages as the incumbent

⁴ We have considered a number of other arguments raised by ABSG, but do not discuss each of them in depth since we find that none have merit. For example, ABSG argues that it "does not make sense" that the agency gave ABSG a rating of superior under the technical understanding and management approach factor, but a rating of excellent under the staffing factor. ABSG notes that both factors had two equally-weighted subfactors, and that for each factor ABSG was rated superior under one subfactor, and excellent under the other subfactor. Protest at 6. However, adjectival ratings are merely a guide to intelligent decisionmaking, Endeavor Enter. Solutions, LLC, B-407760 et al., Jan. 31, 2013, 2013 CPD ¶ 60 at 3, and ABSG's insistence that the ratings are "nonsensical" is not a basis to sustain the protest. Further, to the extent that ABSG also argues that one of the staffing subfactors ought to be considered more important, and thus should have been weighted more heavily than the other, see Protest at 6, that complaint is untimely. The equal weighting of the subfactors was stated in the RFP, so any challenge to that aspect of the solicitation had to be filed before the proposal due date, in order to be timely. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2013). For the same reason, we also regard the protester's claim that the costs of transition to a new contractor should have been included as an element of the evaluation, Protest at 9, as untimely.

⁵ We also consider other aspects of the incumbency advantage arguments below, in addressing ABSG's challenges to the best value trade-off.

contractor. ABSG specifically argues that since the past performance evaluation was to consider the same references that were submitted for the corporate experience evaluation, its proposal should have received a superior rating under the past performance factor, as it had under the corporate experience factor. Protest at 4-5; Protester's Comments at 2.

The evaluation of past performance, including the agency's determination of the relevance and scope of a firm's performance history to be considered, is a matter of agency discretion, which we will not find improper unless unreasonable, inconsistent with the solicitation criteria, or undocumented. A protester's mere disagreement with the agency's judgment is insufficient to establish that an evaluation was improper. Harris IT Servs. Corp., B-406067, Jan. 27, 2012, 2012 CPD ¶ 57 at 10. While an agency may provide for evaluation of relevance, the agency is not required to evaluate the past performance of the incumbent contractor as superior to its competitors simply because the incumbent has the most relevant past performance. See, e.g., Oceaneering, Int'l, Inc., B-287325, June 5, 2001, 2001 CPD ¶ 95 at 8-9 (protest denied where protester did not receive additional credit as incumbent since solicitation did not require assessment of degree of relevance in past performance evaluation).

Our review of the record shows that the Coast Guard evaluators assessed both ABSG's and BAH's past performance reports, and found that both firms had been rated very similarly ("consistently high" ratings for ABSG, and "exceptional or very good in all areas" for BAH). See AR, Tab E, Technical Evaluation Report, at 11, 14. The Coast Guard identified no weaknesses or deficiencies for either firm. Id. Contrary to ABSG's position, the record does not show that ABSG's performance was materially superior to BAH's performance, or that the evaluation was otherwise arbitrary. Instead, the record shows that the evaluators found references for both first gave each firm high marks without exception, and identified no performance problems. Since both firms received uniformly high ratings, and since the Coast Guard was not required to give ABSG a higher rating based only on its status as incumbent, we have no basis to question the assignment of the same past performance rating to both firms.⁶

Evaluation of Performance Risk

ABSG raises a number of complaints about the consideration of performance risk in the evaluation: that it was not disclosed as an evaluation factor, that it was "inextricably tied together" with the factor ratings (but should have been

⁶ To the extent that ABSG also suggests that the Coast Guard should have required more past performance information, see Protest at 4, it has not shown that the Coast Guard lacked adequate information upon which to assess past performance, or that Federal Acquisition Regulation (FAR) § 15.305 was violated here.

independent), and ultimately, that the evaluation of performance risk was “meaningless” and “became a nullity.” Protest at 5; Protester’s Comments at 2-3; Supplemental Protest at 4-5; Protester’s Supplemental Comments at 3-4.

We have long held that an agency may consider risk in conjunction with the specific evaluation factors listed in an RFP, where the risk is intrinsic to the evaluation factor. See, e.g., Information Spectrum, Inc., B-256609.3, B-256609.5, Sept. 1, 1994, 94-2 CPD ¶ 251 at 6; see also Sigmattech, Inc., B-406288.2, July 20, 2012, 2012 CPD ¶ 222 at 9-10. Thus, the fact that the Coast Guard expressed the evaluation factor ratings in terms of a corresponding level of risk of performance problems does not provide a basis to sustain the protest.⁷

Cost Realism Analysis

ABSG raises two challenges to the cost realism analysis. First, ABSG challenges a significant upward adjustment of the firm’s evaluated cost, based on the agency’s application of a higher overhead rate to one of the firm’s subcontractors. Second, ABSG argues that the Coast Guard identified unrealistic labor rates, but made no cost realism adjustments.

Where an agency will subsequently issue task orders for services to be performed by contractor personnel within various labor categories, the purpose of a cost realism analysis is to determine, among other things, the extent to which the offeror’s proposed labor rates are reasonable and realistic. In doing so, the agency is not required to verify each and every conceivable variable in performing its cost realism assessments; rather the evaluation requires the exercise of informed judgment by the agency. Wyle Labs., Inc., B-311123, Apr. 29, 2008, 2009 CPD ¶ 96 at 7. Because the agency is in the best position to make the cost realism determination, our review is limited to determining whether its cost evaluation was reasonably based and not arbitrary. Kalman & Co., B-287442.2, Mar. 21, 2002, 2002 CPD ¶ 63 at 9.

As to the first issue, ABSG argues that the Coast Guard improperly increased ABSG’s proposed costs by applying a higher overhead rate for one of the firm’s subcontractors (~~deleted~~) than the subcontractor had proposed. As noted above, ~~deleted~~’s cost proposal listed two overhead rates, 71.6 and 21.1 percent. The firm

⁷ Additionally, ABSG argues that this is one of several aspects of the Coast Guard’s source selection plan that were not followed. Supplemental Protest at 2-3. Such complaints concerning whether an agency followed internal guidelines do not state a valid ground of protest. Johnson Controls World Servs., Inc., B-289942, B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6 n.6; see also Walsh Investors, LLC, B-407717, B-407717.2, Jan. 28, 2013, 2013 CPD ¶ 39 at 8 n.6 (source selection plan is an internal guide that does not give rights to parties).

divided its labor line items roughly in half, and applied each rate to one half of the labor. However, the proposal does not explain the basis for these rates, or their application, and instead leaves blank the area under the heading “Basis To Which Rate Is Applied.” AR, Tab B, ABSG Proposal, Subcontractor Cost Proposal for [deleted], Direct & Indirect Rate Statement Spreadsheet, at 1-5.⁸

In evaluating this subcontractor’s costs, the Coast Guard determined that the subcontractor’s lower overhead rate applied to services performed at the government site (or “off-site”). AR, Tab F, Final Price Negotiation Memorandum, at 51. However, since the RFP’s SOW did not provide for performance of services at the government site, the evaluators determined that the higher rate would apply to all of the subcontractor’s labor costs. Id. Accordingly, the Coast Guard recalculated the subcontractor’s costs using the higher “on-site” rate, which then resulted in an upward adjustment to the subcontractor’s costs by \$418,000. Id.

In our view, the Coast Guard’s cost realism adjustment for ABSG’s subcontractor was reasonable. The subcontractor’s cost submission did not provide an explanation why the lower overhead rate was applicable to any of its labor. Since the RFP did not provide for the contractor to perform the required services at the Coast Guard’s RDC, the evaluators reasonably determined that the contractor would be entitled to charge its higher overhead rate on all services under the contract. Therefore, the Coast Guard reasonably evaluated ABSG’s costs using its subcontractor’s higher overhead rate; the record provides no basis to question this cost realism adjustment to ABSG’s proposed costs. See Titan Corp., B-260557.2, July 18, 1995, 95-2 CPD ¶ 89 at 5-6 (agency properly used higher overhead rate in cost realism analysis where protester did not adequately justify use of lower rate to calculate proposed cost).

ABSG’s second challenge to the Coast Guard’s cost realism analysis argues that the agency should have found BAH’s proposed costs to be unrealistic, should have adjusted BAH’s evaluated cost upward, and should have downgraded BAH’s technical evaluation.

As part of its cost realism analysis, for each contractor and subcontractor, the agency prepared loaded labor rates based on proposed rates and compared them with the rates in the government estimate. In reviewing the rates of over 40 firms (that is, both the offerors and their subcontractors), the Coast Guard identified a significant number of the rates that were higher than the government estimate, while

⁸ The summary spreadsheet provided no better response, and merely stated thus: “Over head is applied to Direct Labor plus Fringe Benefits.” Id. at 6. While ABSG now argues that the lower overhead rate applies because the subcontractor allows its employees “to work from home and other locations,” Protest at 8, this explanation was not included in the proposal.

others were lower. With respect to BAH, the analysis showed that the costs proposed by BAH and its subcontractors were 1.18 percent lower overall than the government estimate. The agency concluded that none of the labor rate issues it identified were ultimately significant for BAH or ABSG.

Under the terms of our Office's protective order, ABSG's counsel received access to BAH's proposal, which explained BAH's technical and staffing approaches, as well as the derivation of and justification for its labor rates. Nevertheless, the protester's only support for its claim that the cost realism analysis was improper was that the agency's analysis showed that some of BAH's (and its subcontractors') labor rates were higher than the government estimate, while some were lower than the estimate. Additionally, BAH's labor rates were lower overall by an average of 1.18 percent compared to the government estimate. However, the mere fact that an offeror's labor rates do not mirror those in a government estimate does not mean that the rates are unrealistic, or mandate their adjustment to government estimate levels. Other than pointing out that the Coast Guard analysis showed differences from the government estimate for some of BAH's rates, resulting in a difference from the government estimate of 1.18 percent overall, ABSG has not shown that the Coast Guard's determination not to adjust BAH's costs upward was unreasonable.

Further, although not mentioned by ABSG, the record also shows the Coast Guard found that 16 of ABSG's 19 subcontractors (which were to collectively perform nearly 50 percent of the work) also had overall labor rates significantly lower than the government estimate--in one case by more than 35 percent. In other words, the cost realism adjustments advocated by the protester may well have resulted in a larger increase to ABSG's evaluated price, and thus a greater price difference between the two proposals.

Trade-Off Decision

Finally, ABSG challenges the contracting officer's decision to award the contract to BAH on the basis of its lower-rated, lower-cost proposal. ABSG argues that the trade-off ignored ABSG's advantages as the incumbent contractor, and instead arbitrarily found ABSG and BAH to be equal under the non-price evaluation factors.

The record provides no support for ABSG's challenge to the best value trade-off. To the contrary, the source selection decision considered the differences between the offerors' proposals. The contracting officer recognized that both offerors had received the same ratings under most factors, and concluded two weaknesses identified for BAH under the technical understanding/management approach factor were not significant to the rating, and would not affect her source selection judgment. She also recognized that ABSG had an advantage due to its incumbency, particularly as reflected in its superior rating under the corporate experience factor. AR, Tab F, Final Pre-Negotiation Memorandum, at 111-12. Contrary to ABSG's argument, we see no basis to conclude that the contracting

officer used the term “comparable” to mean that she erroneously considered the firms to be technically equal.

In a “best value” procurement, it is the function of the source selection authority to perform a tradeoff between price and non-price factors; that is, to determine whether one proposal’s superiority under the non-price factor is worth a higher price. Even where, as here, price is stated to be of less importance than the non-price factors, an agency must meaningfully consider cost or price to the government in making its source selection decision. J.R. Conkey & Assocs., Inc., B-406024.4, Aug. 22, 2012, 2012 CPD ¶ 241 at 9.

In our view, it was neither unreasonable nor inconsistent with the RFP for the contracting officer to make a trade-off determination that ABSG’s advantage as the incumbent was insufficient to justify its higher evaluated cost. Since the record reflects that the contracting officer understood the evaluation results, and the basis for the evaluation ratings, and she reasonably explained that the advantage conveyed by ABSG’s incumbency did not merit the higher evaluated cost, we have no basis to question the source selection decision.

The protest is denied.

Susan A. Poling
General Counsel