



**DOCUMENT FOR PUBLIC RELEASE**

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

# Decision

**Matter of:** Raytheon Blackbird Technologies, Inc.

**File:** B-417522; B-417522.2

**Date:** July 11, 2019

---

Robert M. Moore, Esq., Richard O. Wolf, Esq., and John A. Bertino, Esq., Moore & Lee, LLP, and Gregory Moffatt, Esq., Raytheon Company, for the protester.

Jamie F. Tabb, Esq., Elizabeth Krabill McIntyre, Esq., and John M. Satira, Esq., Vinson & Elkins LLP, and Catherine K. Ronis, Esq., BAE Systems, Inc., for BAE Systems Technology Solutions & Services, Inc., the intervenor.

Scott McGuigan, Esq., and David D. Perrone, Esq., Department of the Navy, for the agency.

Todd C. Culliton, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

## DIGEST

1. Protest that the agency unreasonably evaluated the protester's technical proposal is denied where the record shows that the agency's evaluation was consistent with the proposal and the solicitation's evaluation criteria.
  2. Protest that the agency unreasonably conducted its cost realism evaluation is denied where the record shows that the agency exercised informed judgment in making upward adjustments to the protester's proposed costs.
- 

## DECISION

Raytheon Blackbird Technologies, Inc. (RBT), of Herndon, Virginia, protests the issuance of a task order to BAE Systems Technology Solutions & Services, Inc. (BAE), of Rockville, Maryland, under request for proposals (RFP) No. N65236-18-R-3119, issued by the Department of the Navy, Naval Information Warfare Center, Atlantic, for tagging, tracking, and locating (TTL) services. RBT alleges that the agency unreasonably evaluated the proposals.

We deny the protest.

## BACKGROUND

On December 10, 2018, the agency issued the RFP for training and technical support for various TTL systems. Agency Report (AR), Tab 1, RFP at 1, 11. The selected contractor would be required to install position location devices on ground vehicles and aircraft belonging to American and host nation forces. Id. at 11. Ultimately, the tracking systems would monitor and de-conflict friendly-fire situations. Id.

The RFP contemplated the issuance of a task order with fixed-price and cost-plus-fixed-fee elements with a base period of 1-year and four 1-year option periods. AR, Tab 1, RFP at 2-9, 51. Award would be made on a best-value tradeoff basis considering technical capability, operating plan, and cost factors. Id. at 62-67. When combined, the technical capability and operating plan factors were more important than the cost factor. Id. at 62.

Six offerors submitted proposals prior to the August 28, 2018, closing date.<sup>1</sup> Combined Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 6. The agency's evaluation produced the following relevant results:

|                             | <b>RBT</b>   | <b>BAE</b>   |
|-----------------------------|--------------|--------------|
| <b>Technical Capability</b> | Outstanding  | Outstanding  |
| <b>Operating Plan</b>       | Acceptable   | Acceptable   |
| <b>Total Evaluated Cost</b> | \$67,000,740 | \$56,817,668 |

AR, Tab 2, BCM at 43. When comparing the RBT and BAE proposals, the source selection authority (SSA) noted that, even though RBT's proposal was technically superior to BAE's proposal under the technical capability factor, both proposals were nevertheless similar because they both demonstrated a low risk of unsuccessful performance and extensive highly relevant experience. Id. at 48. Further, the SSA concluded that RBT's technical advantage did not warrant the 17.92 percent price premium, and therefore, the SSA identified BAE's proposal as offering the better value. Id. at 48-49. After RBT learned that its proposal was unsuccessful, it filed the instant protest with our Office.<sup>2</sup>

---

<sup>1</sup> After receipt of proposals, the agency issued two amendments in order to update portions of the performance work statement (PWS). AR, BCM at 11. Offerors were permitted to submit proposal changes that stemmed directly from the PWS updates and to submit modified pricing information. Id. at 11. Neither RBT nor BAE submitted modified pricing information. Id. at 12.

<sup>2</sup> The task order was issued against the agency's TTL equipment and support services multiple award contract. AR, Tab 2, Business Clearance Memorandum (BCM) at 5. This protest is within our jurisdiction to hear protests related to the issuance of orders  
(continued...)

## DISCUSSION

RBT raises multiple allegations regarding the agency's conduct of the acquisition. We have reviewed all of RBT's allegations, and find no basis to sustain the protest. We discuss the principal allegations below but note at the outset that, in reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria, as well as applicable statutes and regulations. AT&T Corp., B-414886 et al., Oct. 5, 2017, 2017 CPD ¶ 330 at 4.

### BAE's Operating Plan

In its protest, RBT alleged that the agency unreasonably evaluated BAE's proposal as acceptable under the operating plan factor because BAE relied on independent contractors or subcontractors as opposed to current employees. Protest at 12. Prior to submission of its report, the agency requested dismissal of this allegation, arguing that the allegation was speculative because it was not supported by any evidence. Agency's Request for Dismissal at 2. In response, RBT argued that the allegation was supported by the fact that BAE's subcontractor had recently offered many of RBT's employees a position on this contract. Protester's Response to Agency's Request for Dismissal at 2-4. RBT supported its allegation with a declaration from one of its employees stating that "[t]he day BAE was announced as the task order awardee, I was contacted by [a BAE subcontractor employee]. She offered to hire all thirty-two (32) RBT employees who are currently providing the [host nation] services[.]" Id., Decl. of RBT Employee at 6. The declaration further provided that the BAE subcontractor repeatedly contacted RBT employees and offered employment on the awarded task order contract. Id.

Based on the record, we dismiss the allegation because it does not provide a valid basis of protest. Our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. 4 C.F.R. § 21.1(c)(4), (f). A protest allegation which relies on speculation is legally insufficient because our Office will not find improper agency action based on conjecture or inference. Electra-Motion, Inc., B-229671, Dec. 10, 1987, 87-2 CPD ¶ 581 at 1; see also Mark Dunning Indus., Inc., B-413321.2, B-413321.3, Mar. 2, 2017, 2017 CPD ¶ 84 at 1 (a protest allegation which is speculative fails to state a valid basis of protest). Here, the allegation, as filed in the initial protest, is speculative because it is not supported by any evidence showing that BAE relied on independent

---

(...continued)

under multiple award indefinite-delivery, indefinite-quantity contracts established within the Department of Defense, since the awarded value of the task order at issue exceeds \$25 million. 10 U.S.C. § 2304c(e)(1)(B).

contractors or subcontractors. Protest at 12. Thus, the allegation amounts to little more than conjecture and does not provide a valid basis of protest.

The allegation is not cured by the subsequent presentation of the employee's declaration. Our decisions explain the piecemeal presentation of evidence, information, or analysis supporting allegations previously made is prohibited. Western Office Sys., Inc., B-225988, Feb. 26, 1987, 87-1 CPD ¶ 227 at 2. Indeed, our Regulations obligate a protester to set forth all of the known legal and factual grounds supporting its allegations because piecemeal presentation of evidence unnecessarily delays the procurement process and our ability to resolve protests within the requisite 100-day period. Honeywell Federal Sys., Inc.--Recon., et al., B-233742.5 et al., May 14, 1990, 90-1 CPD ¶ 469 at 3; see also Adrian Supply Co.--Recon., B-242819.3, July 17, 1991, 91-2 CPD ¶ 64 at 3 (a protester is obligated to set forth all of the known evidence showing that its protest allegations are procedurally sufficient in the initial protest filing). According to the declaration, RBT was aware of the evidentiary basis for its allegation when it filed its initial protest, see Protester's Response to Agency's Request for Dismissal, Decl. of RBT Employee at 1-2, but the firm failed to provide it at that time. We will not consider the employee's declaration because RBT should have included the declaration with its initial protest filing as opposed to introducing the evidence only after receiving the agency's request for dismissal. Accordingly, we dismiss the allegation.

#### RBT's Operating Plan

RBT argues that the agency miscalculated its own proposal under the operating plan factor. The firm argues that the agency improperly applied a "holistic" evaluation, and therefore deviated from the solicitation's express evaluation terms. Protester's Comments at 2. RBT also argues that its proposal should have been assigned a higher adjectival rating because its evaluation was consistent with the solicitation's definitions for either of the outstanding or good ratings. Id. at 2-3. Finally, RBT argues that the agency should have evaluated its staffing and transition plans more favorably. Id. at 6-15.

By way of background, the operating plan factor was comprised of the following three elements: operational plan, staffing plan, and transition plan. AR, Tab 1, RFP at 65. For the operational plan, the solicitation instructed offerors to provide their plan for organizing, communicating, directing, and coordinating the resources needed to provide qualified personnel. Id. at 58. Each plan was required to include lines of authority and communication, as well as describe each offeror's process for managing work requirements and contract costs. Id. When evaluating each offeror's operational plan, the agency was to examine whether the proposed plan demonstrated a sound and effective approach for providing qualified personnel, and managing and performing the contract. Id. at 65.

For the staffing plan, offerors were required to list all proposed personnel, including identification of current employees, known contingent new-hire employees, and to-be-determined employees. AR, Tab 1, RFP at 58. When evaluating staffing plans, the

agency was to examine the extent to which the plan demonstrates the ability to meet the requirements of the task order with qualified personnel at the time of performance. The RFP also stated the agency would evaluate proposals with higher numbers of current or known contingent employees more favorably than proposals with higher numbers of to-be-determined employees. Id. at 65.

With regard to the transition plan, offerors were instructed to describe their approaches to implementing the staffing plan within the 30-day transition-in period. AR, Tab 1, RFP at 58. The transition plan was to describe each offeror's plan to coordinate with the incumbent, and identify the percentage of qualified personnel ready to perform at award, and within 30 days following award. Id. Each transition plan was to be evaluated based on whether it demonstrated the ability to begin successful performance at time of award and at 30 days after award, as well as support uninterrupted workflow during the transition period. Id. at 65.

The solicitation further advised that the objective of the overall operating plan evaluation was to make a source selection decision based on any strengths, weaknesses, significant weaknesses, and deficiencies identified in each offeror's proposal. AR, Tab 1, RFP at 65. The solicitation also provided combined technical/risk ratings which would be assigned to each proposal. Id. at 63. The agency used adjectival ratings of outstanding, good, acceptable, marginal, and unacceptable. Id.

As noted above, the agency assigned an acceptable rating to RBT's operational plan. AR, Tab 3, Selection Evaluation Board (SEB) Report at 56. Under this factor, RBT's proposal was assigned one strength because its staffing plan had a higher portion of current or known contingent employees rather than to-be-determined employees. Id. at 57. Despite that strength, the SEB noted that RBT's proposal merely demonstrated an adequate approach and understanding of the solicitation's requirements, as well as had no worse than a moderate risk of unsuccessful performance and therefore RBT's proposal merited an acceptable rating. Id. at 56-58.

We do not find that the agency unreasonably evaluated the firm's proposal under the operating plan factor in any of the ways specified by the protester. First, the agency did not apply unstated evaluation criteria when it used a "holistic" evaluation approach; rather, the record shows that the agency used a "holistic" approach in the sense that it took into account each of the operating plan elements when determining which rating to assign. AR, Tab 3, SEB Report at 56. In our view, that action was consistent with the evaluation criteria because the RFP provided that the operating plan factor rating would be determined based on the three elements (operational plan, staffing plan, and transition plan). See AR, Tab 1, RFP at 65.

Second, we do not find that RBT's assigned rating was inconsistent with the solicitation's definition for an acceptable rating. The adjectival ratings were functions of the offeror's evaluated technical competency and identified risk of unsuccessful performance. AR, Tab 1, RFP at 63. An outstanding rating was to be assigned when the proposal indicated both an exceptional technical approach and a very low risk of

unsuccessful performance. Id. Similarly, a good rating was to be assigned when the proposal indicated a thorough technical approach and a low risk of unsuccessful performance, and an acceptable rating was to be assigned when the proposal indicated an adequate technical approach and a no worse than moderate risk of unsuccessful performance. Id. Thus, the adjectival ratings were based on both the technical competency and the identified risk of unsuccessful performance because an offeror had to receive high enough evaluations in both categories in order to qualify for any particular rating.

Under this reading, the agency's assignment of an acceptable rating was reasonable. As noted above, although the agency determined that the firm's operating plan presented a very low risk of unsuccessful performance, the agency also determined that the firm's operating plan only demonstrated an adequate technical approach. Thus, RBT was only eligible for an acceptable rating, even though its risk of unsuccessful performance was very low.<sup>3</sup> To the extent RBT argues that the agency unreasonably equated its very low risk assessment with the no worse than moderate risk assessment by assigning an acceptable rating, we note that the protester ignores the technical component of its assigned rating, and, furthermore, ignores the fact that the ratings are set up as an increasing range to account for any offeror who scores higher in one area than the other. See Protester's Supp. Comments at 7. Accordingly, we do not find that the agency unreasonably evaluated the firm's proposal because the assignment of an adjectival rating was consistent with the agency's evaluation of both the firm's technical competency and its risk of unsuccessful performance.

Finally, we do not find that the agency unreasonably evaluated the firm by failing to consider the fact that RBT proposed to use current employees. As noted above, the solicitation specified that any firm proposing to use current or contingent-known employees would be evaluated more favorably. Here, the record shows that the agency did, in fact, assign one strength to the firm on this basis. AR, Tab 3, SEB Report at 57. Nevertheless, the agency determined that RBT's assigned strength under the staffing plan element was mitigated by its average assessment under the other two elements. Id. at 56. In our view, that determination was reasonable because, as the agency points out, a single strength under one element does not mean that it should have received a high technical evaluation for the factor at-large; particularly, where, as here, the solicitation did not contain evaluation criteria dictating that outcome. See COS/MOL at 19.

---

<sup>3</sup> Despite the protester's focus on the assigned adjectival ratings, we note that our decisions provide adjectival ratings are merely guides for intelligent decision-making in the procurement process, and information regarding strengths and weaknesses of proposals is the type of information that source selection officials should consider, in addition to ratings, to enable them to determine whether and to what extent meaningful differences exist between the proposals. Automation Precision Tech., LLC, B-416078, June 5, 2018, 2018 CPD ¶ 203 at 3.

Moreover, while RBT may argue that the agency improperly distinguished between strengths and significant strengths contrary to the terms of the solicitation, we do not find that the record supports that argument. Instead, the record shows that the agency did not consider RBT's single assigned strength as a basis from which it could evaluate RBT's entire operating plan as demonstrating more than an adequate technical approach. AR, Tab 3, SEB at 56. Additionally, to the extent RBT argues that its proposed use of current employees warranted a higher technical rating for the transition plan element and the operating plan factor at-large, we note that argument, without more, constitutes disagreement with the agency's judgment and does not provide us with a basis to sustain the protest. See Merrill Aviation & Defense, B-416837, B-416837.2, Dec. 11, 2018, 2018 CPD ¶ 421 at 4. Accordingly, we deny this protest allegation because the record does not show that the agency unreasonably evaluated the firm's proposal under the operating plan factor.

### Cost Realism Analysis

RBT raises two challenges to the agency's evaluation of the firm's proposed costs. First, RBT argues that the agency unreasonably increased its proposed amounts for "other direct costs" (ODC). Protest at 13. Second, RBT argues that the agency wrongly rejected its proposed labor escalation rate.<sup>4</sup> Id.

As part of their cost/price proposals, offerors were instructed to include a completed pricing model worksheet, a supporting narrative, and sufficient information establishing the accuracy of the estimated costs. AR, Tab 1, RFP at 48, 58-59. Relevant to the instant protest, the pricing model worksheet required offerors to enter estimates for Defense Base Act (DBA) Insurance and Medical Preparation (I&M) costs as ODCs, as well as enter their proposed professional labor escalation rates. AR, Tab 1, RFP,

---

<sup>4</sup> RBT also argues that the agency should have conducted discussions prior to making award in order to address its Defense Base Act Insurance and Medical Preparation costs and proposed escalation rate. Protester's Comments at 20-21. Our decisions provide that a contracting officer's discretion to hold discussions is quite broad. Coastal Defense, Inc., B-413980, Dec. 19, 2016, 2016 CPD ¶ 371 at 7. Further, an agency's decision not to initiate discussions is a matter we generally will not review. Id. Here, because the solicitation specified that the agency intended to award a contract without discussions, see AR, Tab 1, RFP at 53, we decline to review the agency's decision not to conduct discussions in this particular protest.

To the extent the protester argues that the agency should have conducted clarifications regarding its estimated costs, we dismiss that allegation as legally insufficient. Our decisions provide that an agency is permitted, but not required, to engage in clarifications. See, e.g., CJW-Desbuild JV, LLC, B-414219, Mar. 17, 2017, 2017 CPD ¶ 94 at 3. Thus, the agency was not required to engage in clarifications and the agency's decision not to do so does not demonstrate unreasonable agency action. Accordingly, we dismiss the protest allegation.

attach. 3a, Prime Contractor Pricing Model Worksheet at 2-3. The RFP advised that the agency would consider all information submitted as well as information available from appropriate sources, such as the Defense Contract Audit Agency (DCAA). AR, Tab 1, RFP at 66. The RFP further advised that the agency would conduct a cost realism evaluation to determine whether the proposed cost estimates were realistic for the work to be performed, and that cost estimates could be adjusted. Id.

When submitting its proposal, RBT elected not to include the estimated DBA I&M costs as an ODC because it determined that [DELETED]. AR, Tab 5, RBT Proposal at 80-81, 105. RBT's proposal also included a proposed professional labor escalation rate of [DELETED] percent. Id. at 77. The agency determined that both of these proposed estimates were unrealistically low and adjusted RBT's estimated costs upward. AR, Tab 2, BCM at 41-42.

When an agency evaluates proposals 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. Sotera Defense Solutions, Inc., B-414056 et al., Jan. 31, 2017, 2017 CPD ¶ 46 at 2; see also Exelis Sys. Corp., B-407673 et al., Jan. 22, 2013, 2013 CPD ¶ 54 at 7 (considering Federal Acquisition Regulation (FAR) part 15 cost realism standards in a FAR part 16 task order procurement). Consequently, a cost realism analysis must be performed by the agency to determine the extent to which an offeror's proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. See Booz Allen Hamilton, Inc.; Altamira Techs. Corp., B-415218 et al., Dec. 11, 2017, 2018 CPD ¶ 84 at 9; see also Summit Research Corp., B-287523, B-287523.3, July 12, 2001, 2001 CPD ¶ 176 at 13. Our review of any agency's exercise of judgment in this area is limited to determining whether the agency's cost evaluation was reasonably based and not arbitrary. Sotera Defense Solutions, Inc., supra.

With regard to the DBA I&M costs, we do not find that the record supports the protester's position. The agency considered DBA I&M costs to constitute ODCs because these costs are specific to contractor employees performing work outside of the contiguous United States. AR, Tab 4, Decl. of Contractor Specialist at ¶ 6. Thus, after recognizing that RBT did not include DBA I&M costs as an ODC, the agency reviewed RBT's forward pricing rates and determined that the rates did not support RBT's assertion that these costs were captured as part of RBT's fringe benefit rates. Id. at ¶ 7. The agency also examined RBT's proposal and noted that RBT did not describe DBA I&M costs as part of its fringe benefits when specifically discussing those benefits. Id. (citing AR, Tab 5, RBT Proposal at 78-79). Following its examination of RBT's rates and proposal, the agency contacted DCAA for verification. AR, Tab 6, Email Correspondence Between Agency and DCAA at 2. After DCAA examined RBT's rates, it determined that RBT must have mistakenly included DBA I&M costs as part of the fringe benefit rates. Id. at 1. DCAA also provided the agency with RBT's 2018 Cost Accounting System (CAS) Disclosure Statement, which identified DBA Insurance as an ODC. AR, Tab 7, RBT CAS Disclosure Statement at 43.



Based on the agency's analysis and the information gathered, we find that the agency reasonably conducted its cost realism evaluation because it exercised informed judgment based on its review of RBT's rates, DCAA's analysis, and RBT's CAS disclosure statement. See Palmetto GBA, LLC, B-298962, B-298962.2, Jan. 16, 2007, 2007 CPD ¶ 25 at 7 ("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 rates proposed are reasonable and realistic in view of other cost information reasonably available to the agency as of the time of its evaluation"). Further, although RBT's rates indicate that worker's compensation is charged as an indirect cost, the agency points out that the rates nevertheless do not demonstrate that DBA I&M costs are actually a component of [DELETED]. See Supp. COS/MOL at 12.

In any event, we also note that the solicitation required offerors to "provide a detailed explanation/justification to substantiate" a reduction to the ODC estimates and RBT has not identified any portion of its proposal which actually explains why RBT is able to deviate from the agency's view that DBA I&M costs should be charged directly. See AR, Tab 1, RFP at 59. That omission is critical because it demonstrates that RBT failed to submit a well-written proposal and therefore bore the risk that the agency would evaluate its proposal negatively. See Serka Taahhut Insaat, A.S., B-416391.2, B-416391.3, Aug. 13, 2018, 2018 CPD ¶ 284 at 3 (an offeror bears the responsibility of submitting a proposal demonstrating compliance with all of the solicitation's terms or runs the risk that its proposal will be evaluated negatively). Accordingly, we deny the protest allegation.

As for the professional labor escalation rate, we likewise do not find that the record supports the protester's position. The record shows that the agency considered RBT's professional labor escalation rate to be unrealistically low because the agency determined, based on major escalation indexes, that the average escalation rate exceeds 2 percent.<sup>5</sup> See AR, Tab 5, RBT's Proposal at 77. Furthermore, we note that RBT did not provide any justification explaining why its escalation rate was realistic notwithstanding the fact that the proposed rate was much lower than the major escalation indexes. Compare AR, Tab 1, RFP at 48 (proposed cost estimates must be supported by explanation and sufficient rationale) with AR, Tab 5, RBT's Proposal at 77 (explaining that it uses a [DELETED] percent escalation rate which is based on a number of internal factors). Thus, we find that the agency reasonably adjusted RBT's

---

<sup>5</sup> To the extent the protester alleges that the agency unreasonably selected a 2 percent labor escalation rate, we do not consider that allegation persuasive. The record shows that the agency generated its labor escalation rate by reviewing several escalation indexes, including the Global Insight Professional, Scientific, and Technical Index; the U.S. Employment Cost Index, and the U.S. Consumer Price Index. AR, Tab 13, BCM (Supp. AR) at 1. Thus, we deny this protest allegation because the agency's use of a 2 percent professional labor escalation rate was based on reasonable and reliable sources of information.

escalation rate because the proposed rate was inconsistent with major indexes and RBT did not provide any explanation justifying its low rate. Accordingly, we deny the protest allegation.

The protest is dismissed.

Thomas H. Armstrong  
General Counsel