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Decision

Matter of: Herren Associates, Inc.

File: B-422336; B-422336.2

Date: May 8, 2024

Eden Brown Gaines, Esq., Brown Gaines, LLC, for the protester.
Gregory R. Hallmark, Esq., and Ronald S. Perlman, Esq., Holland & Knight LLP, for Naval Systems, Inc., the intervenor.
Michael T. Patterson, Esq., and Candie L. Rodgers, Esq., Department of the Navy, for the agency.
Kasia Dourney, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging cost realism evaluation of protester's proposal is denied where the agency reasonably upwardly adjusted protester's direct rates and other costs, and where the protester fails to demonstrate competitive prejudice.
 2. Protest challenging agency's technical evaluation and source selection decision is denied where the record shows that the evaluation and source selection decision were reasonable and consistent with the terms of the solicitation.
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DECISION

Herren Associates, Inc., a small business of Washington, D.C., protests the issuance of a task order to Naval Systems, Inc. (NSI), of Lexington Park, Maryland, under request for proposals (RFP) No. N0042123R3001, issued by the Department of the Navy for cost estimating and cost analysis support services. The protester challenges the agency's evaluation of its cost and technical proposals.

We deny the protest.

BACKGROUND

The agency issued the solicitation on August 4, 2023, as a small business set-aside, under the procedures of Federal Acquisition Regulation (FAR) subpart 16.5, to holders

of the agency's Seaport Next Generation indefinite-delivery, indefinite-quantity (IDIQ) multiple award contract. Agency Report (AR), Exh. 1, RFP¹ at 2, 3, 61. The Navy sought proposals for cost estimating and cost analysis services including acquisition and logistics estimating, independent evaluations, case studies, and recommendations for aircraft, aircraft components and subsystems, missiles, unmanned aerial vehicles, and other related items, in support of the Naval Air Warfare Center Aircraft Division. *Id.* at 9; COS/MOL at 4.

The solicitation contemplated the issuance of a single cost-plus-fixed-fee task order, with some cost-reimbursable contract line item numbers, for one base year and four 1-year option periods. RFP at 2. Award was to be made on a best-value tradeoff basis, considering the following three evaluation factors, in descending order of importance: (1) technical; (2) past performance; and (3) cost/price. *Id.* at 62. The technical factor was more important than past performance, and the two non-price factors combined were significantly more important than price. *Id.* at 62. The RFP explained that the technical factor would be evaluated and assigned an adjectival rating of "outstanding," "good," "acceptable," "marginal," or "unacceptable." *Id.* at 63.

The technical factor consisted of three subfactors: (1) key personnel resumes; (2) understanding of the work; and (3) management approach. *Id.* at 62-63. Relevant to this protest, for the management approach subfactor, the solicitation instructed offerors to "[d]escribe how and why subcontractors/consultants were chosen, what knowledge and skills the [o]fferor will be acquiring through each and how each will be integrated and managed to ensure cohesiveness." *Id.* at 57, § 1.2.1.7.

To assist the agency's evaluation under the cost/price factor, the RFP provided that offerors should provide payroll verification for currently employed personnel being proposed for the effort. *Id.* at 59. Specifically, the solicitation stated:

Payroll verification shall consist of a form containing the proposed labor category, direct labor rate, current clearance, certification status (per labor category as required), description of current position, and a signed certification by an authorized representative of the company that the information contained in the form is correct.

Id., § 3.1.7. As important here, the cost portion of the proposal was to be evaluated for realism, to determine the most probable cost for each offeror. *Id.* at 65. The RFP advised that:

The evaluation will be based on an analysis of the realism and completeness of the cost data, the traceability of the cost to the [o]fferor's capability data and the required allocation of Level-of-Effort . . . hours by

¹ The RFP was amended twice. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 11. Citations to the RFP are to the final conformed version of the solicitation. All citations to the record are to the documents' Adobe PDF pagination.

labor category for all periods of performance. Pertinent cost information, including but not limited to [Defense Contract Audit Agency] recommended rates for such costs as direct labor, [o]verhead, [general and administrative], *etc.*, as necessary and appropriate, will be used to arrive at the [g]overnment determination of the [most probable cost] to be incurred in the performance of this [t]ask [o]rder.

Id. at 66. The solicitation further instructed that if “submitted costs are considered to be unrealistic, including unrealistic labor and indirect rates, the [o]fferor’s submitted costs may be adjusted upward to reflect more realistic costs.” *Id.*

The Navy received three proposals by the September 13 deadline. COS/MOL at 11. After excluding one of the proposals as ineligible for award, the agency evaluated NSI’s and Herren’s proposals.² With respect to the latter, the agency evaluators concluded that Herren’s proposed cost was not realistic, and upwardly adjusted its most probable cost. As a result, the relevant evaluation ratings were as follows:

	Herren	NSI
Technical	Good	Outstanding
Past performance	Substantial Confidence	Substantial Confidence
Proposed Cost/Price	\$31,302,302	\$29,599,200
Total Evaluated Cost/Price	\$33,587,146	\$29,772,245

AR, Exh. 13, Source Selection Decision at 3; COS/MOL at 12. The source selection authority (SSA) concluded that NSI’s proposal provided the best value based on an integrated assessment under the non-cost factors and the firm’s lower cost/price. *Id.* After Herren requested and received a debriefing, this protest followed.³

DISCUSSION

The protester challenges the agency’s evaluation of Herren’s cost/price and technical proposals, and the best-value tradeoff decision. Specifically, the protester alleges that the Navy incorrectly calculated the firm’s most probable cost and made unreasonable upward adjustments. Protest at 2, 5, 6; Comments & Supp. Protest at 5-6. Herren also contends that the agency improperly assigned a weakness to its management approach

² Herren proposed two subcontractors: [DELETED] and [DELETED]. Protest at 2.

³ The task order at issue is valued in excess of \$25 million and was placed under an IDIQ multiple award contract established by the Navy. Accordingly, our Office has jurisdiction to consider Herren’s protest. 10 U.S.C. § 3406(f)(1)(B).

under the technical factor. We have considered all of the protester's arguments and, as discussed below, find no basis to sustain any of them.

Cost Realism Adjustment

The protester first contends that, in calculating the firm's most probable cost, the agency "erroneously and arbitrarily adjusted Herren's final [cost] upward by approximately \$2,284,843.00." Protest at 2. Specifically, the protester challenges the agency's justification for that adjustment, stating that contrary to the agency's explanation, both Herren and its subcontractor, [DELETED], provided the required certified payroll verification. *Id.* The agency maintains that it reasonably adjusted Herren's costs and, to the extent its adjustments were erroneous, Herren was not prejudiced by the errors. COS/MOL at 14-18; 29-30. For the reasons explained below, we agree with the agency.

When an agency evaluates proposals for the award of a cost-reimbursement contract or task order, 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. FAR 16.505(b)(3); 15.305(a)(1); *Engility Corp.*, B-413120.3 *et al.*, Feb. 14, 2017, 2017 CPD ¶ 70 at 18; *Innovative Test Asset Sols., LLC*, B-411687, B-411687.2, Oct. 2, 2015, 2016 CPD ¶ 68 at 14. Consequently, an 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. FAR 15.404-1(d)(1), 16.505(b)(3); *Solers Inc.*, B-409079, B-409079.2, Jan. 27, 2014, 2014 CPD ¶ 74 at 4. The end product of a cost realism analysis is the total estimated cost (commonly referred to as "most probable cost") that the agency realistically expects to pay for the offeror's proposed effort, and it is the estimated cost, and not the offeror's proposed cost, that must be the basis of the agency's source selection determination. *Innovative Test Asset Sols., LLC, supra*, at 14 n.19.

As set forth above, the solicitation required offerors to submit certified payroll verification for currently employed submitted personnel. RFP at 59, § 3.1.7. The RFP instructed that the

[p]ayroll verification shall consist of a form containing the proposed labor category, direct labor rate, current clearance, certification status (per labor category as required), description of current position, and a signed certification by an authorized representative of the company that the information contained in the form is correct.

Id. The solicitation further provided that to evaluate the cost realism of all proposed personnel, the Navy would use the Bureau of Labor Statistics (BLS) direct labor rates for the California-Lexington Park, Maryland area. *Id.* at 66.

Herren proposed [DELETED] employees for the effort, all of them current Herren employees. AR, Exh. 4, Herren Cost Proposal. Herren also proposed [DELETED]

current employees of its subcontractor, [DELETED]. AR, Exh. 5, [DELETED] Cost Proposal. The record reveals that while the protester submitted screenshots with payroll information for all of the current employees, the screenshots did not include the “signed certification by an authorized representative of the company [certifying] that the information contained [within] is correct.” AR, Exh. 2, Herren Cost Proposal, Payroll Screenshots; AR, Exh. 3, [DELETED] Cost Proposal at 6-7; RFP at 59, § 3.1.7.

The agency explains that because Herren’s proposal did not include the required certification, the cost evaluation team examined the proposed direct labor rates and compared them to the appropriate BLS rates for the California-Lexington Park, Maryland area. COS/MOL at 19. Specifically, for evaluation purposes, the agency created its own market rate ranges for direct labor, using BLS data for each labor category. *Id.* at 19-20; AR, Exh. 6, Herren Cost Evaluation at 2-3. As the BLS rates for each labor category do not distinguish between the various labor category levels, *i.e.*, junior, journeymen, and senior level employees, the Navy assigned the following ranges to the BLS rates, according to seniority level: the 10th to 25th percentiles for all junior labor categories, the 50th to 75th percentiles for all journeyman labor categories, and the 75th to 90th percentiles for all senior labor categories. AR, Exh. 6, Herren Cost Evaluation at 2-3.

Using this methodology, the agency reviewed and analyzed Herren’s proposed direct labor rates. The Navy found the rates for [DELETED] of Herren’s employees lower than the established rate ranges discussed above, and hence, concluded they were unrealistic. *Id.* at 5-6. Similarly, [DELETED] for an employee proposed by [DELETED] was also below the BLS rate range, and also found to be unrealistic. *Id.* Subsequently, the agency upwardly adjusted the unrealistic rates to the lowest rate in the respective assigned range, *i.e.*, the 10th percentile for junior labor categories, the 50th percentile for journeyman labor categories, and the 75th percentile for senior labor categories. COS/MOL at 20. As a result of the upward adjustments to each of these [DELETED] indirect labor rates, and minor other adjustments, Herren’s total proposed cost/price increased by approximately \$2,284,843.⁴

We find the Navy’s upward adjustment of Herren’s proposed cost unobjectionable. While the protester argues that it provided all the necessary data to support its cost proposal, the record shows that the protester failed to provide the required certified

⁴ The other adjustments made by the agency concerned fringe benefits and subcontractor material and handling rates. AR, Exh. 6, Herren Cost Evaluation at 7. In its supplemental protest, Herren contends these other upward adjustments, unrelated to labor costs, were also unreasonable. See Comments & Supp. Protest at 5-6.

However, as correctly pointed out by the intervenor, the protester raised this protest ground 52 days after its debriefing, despite learning in that debriefing of the basis of the agency’s other cost adjustments. Intervenor’s Supp. Comments at 1; Protest, exh. 2, Herren’s Debriefing at 24. Accordingly, this protest ground is now untimely, and we dismiss it. See 4 C.F.R. § 21.2(a)(2).

payroll verification for currently employed submitted personnel. Consistent with the evaluation criteria set forth in the solicitation, the agency then evaluated the cost realism of Herren's proposed personnel, by comparing the protester's direct labor rates with the rate ranges based on BLS's direct labor rates for the California-Lexington Park, Maryland area. The methodology used by the agency to analyze Herren's rates was consistent with the cost realism evaluation approach set forth in the RFP, which anticipated that the realism analysis would be conducted by comparison to the BLS rates, and hence, we have no basis to question the Navy's conclusion that some of the protester's rates were unrealistic. Similarly, Herren has not shown that the agency's upward adjustment was unreasonable or flawed in any way.

Regardless, we note further that Herren has not shown it was competitively prejudiced by the alleged cost evaluation error. Competitive prejudice is an element of a viable protest, and our Office will not sustain a protest unless the record contains evidence reflecting a reasonable possibility that, but for the agency's actions, the protester would have had a substantial chance of receiving the award. *CIGNA Gov't Servs., LLC*, B-401062.2, B-401062.3, May 6, 2009, 2010 CPD ¶ 283 at 7-8. Here, the evaluators upwardly adjusted Herren's proposed rates to those of the BLS rate range, resulting in an increase of Herren's most probable cost by \$2,284,843. The protested adjustment, however, was still smaller than NSI's total cost advantage. In other words, the awardee's proposal would have remained less expensive than Herren's even without the protested cost adjustment. Based on the awardee's higher technical rating,⁵ and its lower cost, we fail to see how Herren would have had a substantial chance of award even if the Navy had foregone the upward adjustment of Herren's cost. Accordingly, we find that Herren cannot demonstrate a reasonable possibility of competitive prejudice.

Technical Evaluation

The protester contends that the agency improperly evaluated Herren's technical proposal by assigning it a weakness under the management approach subfactor, and an overall rating of "very good" instead of "outstanding." Protest at 6-7. Herren argues that the agency unreasonably concluded that its proposed subcontractor, [DELETED], did not sufficiently demonstrate cost analysis experience. *Id.* According to the protester, not only did [DELETED] possess the requisite experience, its experience warranted assigning Herren's proposal a strength and a rating of outstanding under the technical factor. *Id.* at 2-3. The agency responds that its evaluation was reasonable and consistent with the solicitation, and that Herren's proposal failed to adequately substantiate that [DELETED] could provide the cost analysis support that the protester claimed it would be acquiring from the subcontractor. COS/MOL at 21-28.

As noted above, this task order competition was conducted pursuant to FAR part 16. Under these provisions, the evaluation of proposals, including the determination of the relative merits of proposals, is primarily a matter within the contracting agency's

⁵ While Herren challenged the technical evaluation, as discussed below, we find this challenge to be without merit.

discretion, because the agency is responsible for defining its needs and the best method of accommodating them. *CSRA LLC*, B-417635 *et al.*, Sept. 11, 2019, 2019 CPD ¶ 341 at 9. In reviewing protests challenging the evaluation of an offeror's proposal, it is not our role to reevaluate proposals; rather, our Office examines the record to determine whether the agency's judgment was reasonable and in accordance with the solicitation's evaluation criteria and applicable procurement statutes and regulations. *Mission Essential, LLC*, B-418767, Aug. 31, 2020, 2020 CPD ¶ 281 at 5; *Distributed Sols., Inc.*, B-416394, Aug. 13, 2018, 2018 CPD ¶ 279 at 4. A protester's disagreement with the agency's judgment, without more, is not sufficient to establish an agency acted unreasonably. *CSRA LLC*, *supra*.

Based on our review of the record, we find no merit to the protester's argument. The solicitation required that offerors "address in sufficient detail . . . how and why subcontractors/consultants were chosen, what knowledge and skills the [o]fferor will be acquiring through each and how each will be integrated and managed to ensure cohesiveness." RFP at 57. Instead of describing, with specificity, what knowledge and skills Herren would acquire through [DELETED], the protester only generally explained that the subcontractor had a "history providing professional and technical support to US Navy customers" and "[s]upported cost estimating." AR, Exh. 8, Herren Technical Proposal at 36. Herren failed to elaborate, however, what exactly such a support of cost estimating entailed. *Id.* For example, in the proposal section designated to address this RFP requirement, the proposal largely limited its narrative to describing how well "Team Herren" worked together in the past with both of its two subcontractors, including [DELETED]. *Id.* at 43-44.

That notwithstanding, Herren asserts that it discussed [DELETED]'s cost analysis experience within its past performance annex, which detailed a contract performed by [DELETED] providing foreign military sales support. Protest at 5, 7; Comments & Supp. Protest at 4. As the agency notes, however, and we agree, it was unclear, in both the annex and the contractor performance assessment reports for that particular contract (which involved the creation and completion of foreign military sales forms), what level of cost estimating or analysis was involved. COS/MOL at 28; AR, Exh. 10, Herren Past Performance Proposal at 40.

Further, while Herren generally argues that the Navy should have reviewed other parts of its proposal, including the past performance section, to find pertinent information, see Comments & Supp. Protest at 3-4, or should have interpreted the broad statements in a more favorable way for Herren, the agency was under no obligation to do so. An agency is not required to search other sections of an offeror's proposal for information to meet requirements related to a different section. See *Dewberry Crawford Grp.; Partner 4 Recovery*, B-415940.10 *et al.*, July 2, 2018, 2018 CPD ¶ 297 at 13. Moreover, it is well-settled that it is the offeror's duty to include sufficiently detailed information to establish that its proposal meets the solicitation requirements, and that blanket statements of compliance are insufficient to fulfill this duty. *Id.* Ultimately, it is an offeror's responsibility to submit a well-written proposal, with adequately detailed information, which clearly demonstrates compliance with the solicitation requirements

and allows for a meaningful review by the procuring agency. See, e.g., *OBXtek, Inc.*, B-422057, B-422057.2, Jan. 2, 2024, 2024 CPD ¶ 18 at 4. Where, as here, “an offeror fails to do so, it runs the risk that a procuring agency will evaluate its proposal unfavorably.” *Id.*

Accordingly, because Herren failed to substantiate its rationale for selecting [DELETED] as its subcontractor, we see no basis to question the agency’s unfavorable evaluation under this factor. This protest ground is denied.

Best-Value Tradeoff

Finally, Herren challenges the agency’s source selection decision. The protester argues that its technical proposal included “multiple strengths” which would have “tipped the scale in Herren’s favor,” if not for the agency’s unreasonable assessment of a weakness, and the flawed upward adjustment of cost. Protest at 2-3, 7. The protester also complains that the heavily redacted evaluation record did not provide “the full rationale for the [agency’s] upward adjustment of Herren’s costs,” and hence, the “tradeoff analysis cannot be determined as reasonable.” Comments & Supp. Protest at 5-6.

In its supplemental agency report, the Navy produced a version of its cost evaluation record with fewer redactions, clearly delineating the justification for the upward adjustment to various elements in Herren’s cost proposal. Compare AR, Exh. 6, Herren Cost Evaluation *with* AR, Exh. 6, Herren Cost Evaluation (updated).

In reviewing protests of an agency’s source selection decision, we examine the record to determine whether the evaluation and source selection decision were reasonable and consistent with the solicitation’s evaluation criteria and applicable procurement laws and regulations. *Intelligent Waves LLC*, B-416169, B-416169.2, June 12, 2018, 2018 CPD ¶ 211 at 12. Source selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results; cost and technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the solicitation’s evaluation criteria. *Booz Allen Hamilton Inc.*, B-414283, B-414283.2, Apr. 27, 2017, 2017 CPD ¶ 159 at 13-14.

At the outset, we note that while the agency performed a tradeoff analysis here, it was not actually required to do so, as NSI's proposal was both technically superior and lower priced than Herren's proposal. See, e.g., *Brooks Range Contract Servs., Inc.*, B-401231, June 23, 2009, 2009 CPD ¶ 129 at 2. Nevertheless, based on our review of the record, we find unobjectionable the SSA's tradeoff and source selection decision. As described above, we find no merit to the protester's challenges to the technical and cost evaluations; thus, there is no basis to question the SSA's reliance upon those judgments in making her source selection decision. Accordingly, we dismiss this allegation because derivative allegations do not establish independent bases of protest. *DirectViz Sols., LLC*, B-417565.3, B-417565.4, Oct. 25, 2019, 2019 CPD ¶ 372 at 9.

The protest is denied.

Edda Emmanuelli Perez
General Counsel