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**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Raytheon Technical Services Company LLC

File: B-404655.4; B-404655.5; B-404655.6

Date: October 11, 2011

Joseph P. Hornyak, Esq., David S. Black, Esq., Alexander B. Ginsberg, Esq., Megan Mocho Jeschke, Esq., and Oliya S. Zamaray, Esq., Holland & Knight LLP, for the protester.

James J. McCullough, Esq., Michael J. Anstett, Esq., and Brian M. Stanford, Esq., Fried, Frank, Harris, Shriver & Jacobson LLP, for Science Applications International Corporation, and Mark R. Gleeman, Esq., Winthrop & Weinstine, PA, for DECO, Inc., intervenors.

Kathleen D. Martin, Esq., Department of State, for the agency.

Paul E. Jordan, Esq., Scott H. Riback, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that awardee had “unequal access to information” type of organizational conflict of interest is denied where allegations were based upon suspicion and not “hard facts,” agency’s investigation was meaningful, and agency reasonably concluded that awardee did not have access to nonpublic information that would provide firm a competitive advantage in procurement.
2. Protest is sustained where solicitation required proposal of loaded labor rates to be used as ceiling rates in future task order competitions and awardee failed to propose rates for 20 labor categories; omission in awardee’s proposal constitutes material omission rendering proposal unacceptable.
3. Protest is sustained where agency’s failure to provide common cutoff date for revised proposals may have prejudiced protester (one of original competitive range offerors).
4. Protest is sustained where agency treated offerors unequally by assigning strength to awardee’s proposal for management feature while failing to credit protester’s proposal with a strength for a comparable feature, and failed properly to apply evaluation criteria by giving another awardee’s proposal credit for key personnel under wrong evaluation factor.

DECISION

Raytheon Technical Services Company LLC, of Dulles, Virginia, protests the Department of State's (DOS) award of contracts to Science Applications International Corporation (SAIC), of McLean, Virginia, and DECO, Inc., of Champlin, Minnesota, under request for proposals (RFP) No. SAQMMA09R0356, for global antiterrorism training assistance (GATA) for foreign law enforcement agencies and foreign nationals.

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

BACKGROUND

The RFP contemplated the award on a "best value" basis of two indefinite-delivery, indefinite-quantity contracts, with a base year and 4 option years, to provide all management, supervision, labor, facilities, and materials necessary to deliver foreign law enforcement training for foreign agencies and nationals. Offerors were required to submit a technical proposal and a price proposal based on completion of a contract line item number (CLIN) rate table (RFP § B.5, attach. 8; hereinafter, contract rate table) with offerors' loaded hourly labor rates for approximately 225 labor categories. Work is to be accomplished through cost-reimbursement, time and materials (T&M), or fixed-price task orders.

Proposals were to be evaluated under six factors: program management/quality control solution (PM/QC factor); ability to recruit, train, and retain high quality personnel/resumes of key personnel (personnel factor); facilities plan; past performance; subcontracting/teaming and socio-economic participation; and cost/price. Non-cost factors were evaluated on an adjectival basis. Cost/price was evaluated on the basis of whether the proposal was fair, reasonable, realistic for the work to be performed, reflective of a clear understanding of the requirements, and consistent with the overall technical requirements. RFP § M.11.6. Offerors were warned that the agency could reject any proposal evaluated as unrealistic in terms of price such that the proposal reflected an inherent lack of competence or failure to comprehend the RFP requirements. *Id.* § M.4. The PM/QC, personnel, and facilities factors were significantly more important than the past performance and subcontracting/teaming and socio-economic participation factors. The non-cost factors combined were significantly more important than cost/price.

Ten offerors, including Raytheon, SAIC, and DECO, submitted proposals by the closing date. Based on an initial review by the technical evaluation panel (TEP), Raytheon, SAIC, and five other offerors were included in the competitive range; DECO and two other offerors were excluded. The agency conducted discussions with the competitive range offerors in December 2010 and obtained final proposal revisions (FPR) by January 4, 2011. In February, these offerors were instructed to propose a total price for "evaluation purposes only" using their previously proposed

contract rate table rates in an evaluation pricing template which included estimated hours by CLIN and encompassed many, but not all, of the contract labor categories. RFP, amend. at 1. The agency then evaluated the submitted FPRs and evaluation pricing templates.

In the meantime, DECO and one other eliminated offeror protested exclusion of their proposals from the competitive range. Based on the agency's subsequent decision to take corrective action and include their proposals in the competitive range, we dismissed the protests as academic (B-404655, B-404655.2, Mar. 7, 2011; B-404655.3, Mar. 18, 2011). In March and April, the agency conducted discussions with DECO and the other offeror, and then evaluated their subsequently submitted FPRs and evaluation pricing templates.

Based on its combined reviews of the revised competitive range offers' proposals, the TEP reached the following consensus ratings for the protester and awardees:

Offeror	PM/QC	Personnel	Facilities	Past Performance	Subcontract Management	Price (millions)
SAIC	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	\$14.7
DECO	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	\$13.4
Raytheon	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]

In making the award determination, the source selection authority (SSA) reviewed the TEP's report, price evaluation report, and the contracting officer's award recommendation. Based upon specifically identified technical strengths in SAIC's and DECO's proposals, their superior technical ratings, and their [deleted] prices, the SSA concluded that SAIC's and DECO's proposals represented the best value. After a debriefing, Raytheon filed this protest.

DISCUSSION

Raytheon asserts the existence of an organizational conflict of interest (OCI) concerning SAIC. In addition, Raytheon challenges the technical and price evaluations, and the best value determination. The agency defends its evaluation and selection decision, and, in addition, argues that Raytheon is not an interested party to pursue this protest. As set forth below, we disagree with the agency's argument that Raytheon is not an interested party to pursue the protest. We also disagree with Raytheon's assertion that SAIC had an improper and unmitigated OCI. That said, we agree with several of Raytheon's substantive challenges to the agency's evaluation here, and for this reason we sustain the protest. While we have considered all of Raytheon's arguments, we discuss only the most significant of those issues below.

Interested Party Status

As a threshold matter, the agency asserts that Raytheon is not interested or otherwise not prejudiced because other offerors with higher technical ratings and [deleted] prices would be in line for award ahead of the protester. We disagree.

Under our Bid Protest Regulations, a protester must be an interested party, that is, an actual or prospective offeror whose direct economic interest would be affected by the award or failure to award a contract. 4 C.F.R. §§ 21.0(a)(1), 21.1(a) (2011); Cattlemen's Meat Co., B-296616, Aug. 30, 2005, 2005 CPD ¶ 167 at 2 n.1. A protester is an interested party to challenge the agency's evaluation of proposals where there is a reasonable possibility that the protester's proposal would be in line for award if its protest were sustained. Ridoc Enter., Inc., B-292962.4, July 6, 2004, 2004 CPD ¶ 169 at 9.

Raytheon's protest argues--and ultimately we agree--that there were errors in the evaluation of its proposal, as well as in the conduct of discussions. Since resolution of these issues raises the possibility that the assessment of Raytheon's proposal could change, we think Raytheon is an interested party.

Alleged OCI

Raytheon asserts that SAIC has an improper and unmitigated OCI based on SAIC's unequal access to nonpublic information allegedly obtained from its contacts with two employees of Kaseman, LLC--Messrs. B and H. According to the protester, Kaseman provided systems engineering and technical assistance (SETA) as a subcontractor to Alutiiq International Solutions LLC under its SETA contract with DOS's antiterrorism assistance (ATA) program. Declaration (Decl.) 1 of Mr. M, ¶¶ 5-6. Mr. H was Kaseman's vice president for DOS training programs from early 2009 to the present, while Mr. B served as Kaseman's program manager on the SETA contract from September 2007 until June 2008. Id.; Decl. 2 of Mr. M, ¶ 8. Raytheon asserts that, from their work on the ATA contract, Messrs. B and H obtained information on the administration and management of the GATA program (the subject of this procurement) in nine areas including, for example, information regarding ATA forecasts of upcoming course demands; ATA budgets; and identities of current instructors. Decl. 1 of Mr. M, ¶¶ 5-6. Raytheon bases its assertions on information from other (unidentified) contractors that hold GATA blanket purchase agreements (BPA) and from the president of one of the protester's proposed GATA subcontractors. Id., ¶ 5; Decl. 2 of Mr. M, ¶¶ 4-6.

An unequal access to information OCI exists where a firm has access to nonpublic information as part of its performance of a government contract and where that information may provide the firm a competitive advantage in a later competition. Federal Acquisition Regulation (FAR) §§ 9.505(b), 9.505-4; Maden Techs., B-298543.2, Oct. 30, 2006, 2006 CPD ¶ 167 at 8.

In reviewing bid protests challenging agency OCI determinations, the Court of Appeals for the Federal Circuit has mandated application of the arbitrary and capricious standard established pursuant to the Administrative Procedures Act. See Axiom Res. Mgmt, Inc. v. United States, 564 F.3d 1374, 1381 (Fed. Cir. 2009). To demonstrate that an agency's OCI determination is arbitrary or capricious, a protester must identify "hard facts" that indicate the existence or potential existence of a conflict; mere inference or suspicion of an actual or potential conflict is not enough. Turner Constr. Co., Inc. v. United States, No. 2010-5146, slip. op. at 17-18 (Fed. Cir. July 14, 2011); PAI Corp. v. United States, 614 F.3d 1347, 1352 (Fed. Cir. 2010). In Axiom, the Court of Appeals noted that the FAR recognizes that the identification of OCIs, and the evaluation of mitigation proposals are fact-specific inquiries that require the exercise of considerable discretion. Axiom Res. Mgmt., Inc., 564 F.3d at 1382. We will review the reasonableness of a contracting officer's OCI investigation and determination; where an agency has given meaningful consideration to whether an OCI exists, we will not substitute our judgment for the agency's, absent clear evidence that the agency's conclusion is unreasonable. See CACI, Inc.-Fed., B-403064.2, Jan. 28, 2011, 2011 CPD ¶ 31 at 9.

In response to Raytheon's OCI allegations, the contracting officer conducted a detailed investigation including a review of the work performed by Kaseman and Alutiiq; how and when the GATA RFP was developed; the information to which Messrs. B and H may have had access; and whether that information could have provided an unfair competitive advantage. Contracting Officer's (CO) Decl. 2, ¶¶ 4-6, 9. The contracting officer concluded that the nature of Kaseman's services did not provide it, or Messrs. B and H, with access to competitively useful information relative to GATA. Based on his investigation, the contracting officer determined that there was no OCI present and that, accordingly, there was no reason to exclude SAIC from the competition. Id., ¶ 2.

While Raytheon disputes the contracting officer's determination that there was no basis to conclude that Mr. B or Mr. H possessed any nonpublic, competitively useful information obtained while working for Kaseman, the protester has furnished no evidence to the contrary. For example, the contracting officer considered that Mr. B worked at Kaseman from 2005 until 2008, supporting the ATA program by preparing and submitting responses to solicitations for ATA training courses and transitioning staff to work on Alutiiq's contract. Id., ¶¶ 19, 21. However, the contracting officer specifically found that none of Kaseman's employees on the GATA program had access to nonpublic information (unavailable to other ATA program support contractors) or to the proprietary information of other contractors. Id., ¶ 14. Further, when Mr. B left Kaseman in 2008, it was long before the current GATA solicitation was drafted (in 2010) or issued (in 2011). Id., ¶ 23. The same analysis applied equally to Raytheon's allegations regarding Mr. H's alleged access to competitively useful information. In this regard, the contracting office found that when Mr. H worked for Kaseman (up to July 2010), he did not work directly in connection with

the ATA program; did not have access to competitively useful information relating to the GATA procurement, that was not available to other competitors; and did not have access to source selection information or nonpublic, competitively useful information.¹ Id., ¶ 32.

In addition to the broad analysis described above, the contracting officer considered the nine specific areas that Raytheon asserts represented nonpublic information to which Messrs. B and H allegedly had access. The contracting officer concluded either that neither individual had access to that information or, to the extent they may have had such access, he determined that the information would be out-of-date and largely within the public domain, and thus, would not be competitively useful. Id., ¶¶ 24-26, 32. For example, Raytheon asserts that Messrs. B and H had access to ATA program forecasts for upcoming course demands. However, the contracting officer found that the ATA program is “dynamic and in constant motion” and that the program does not make any formal forecasts. Id., ¶ 26. Thus, he concluded that neither Mr. B nor Mr. H would have had access to any forecasts. Further, since the RFP provided offerors with information for projecting the course load, and any prior information would have changed multiple times since either Mr. B or Mr. H worked for Kaseman, neither individual would have had access to competitively useful information. Id.

In sum, while Raytheon asserts that SAIC had access to nonpublic, competitively useful information, on this record, its assertions represent the firm’s suspicions and are not based on the requisite “hard facts.” We therefore find no basis upon which to question the contracting officer’s determination that SAIC lacked an OCI. Accordingly, this aspect of the protest is denied.

¹ Moreover, the contracting officer found that, even if Mr. H. had access to nonpublic, competitively useful information, it was unreasonable to conclude that he provided it to SAIC. CO Decl. 2, ¶ 31. According to Raytheon, its subcontractor’s president (who declined to provide a declaration) saw Mr. H and obtained his business card at a January 2009 SAIC “capture” meeting regarding the GATA procurement. Decl. 2 of Mr. M, ¶¶ 5-6. SAIC denies any knowledge of this meeting or obtaining any GATA-related information from Mr. H, and notes that Mr. H is not, and has never been, employed by SAIC. SAIC Letter, Aug. 1, 2011. Since, apart from claiming that SAIC’s statements are “misinformation,” Raytheon has provided nothing to rebut SAIC’s statements, we find the contracting officer reasonably concluded that Mr. H did not provide any nonpublic, competitively useful information to SAIC.

Common Cutoff

Raytheon asserts that the agency engaged in unequal treatment of the offerors by failing to provide a common cutoff date for FPRs. The record shows that, after conducting discussions with the offerors in the original competitive range, the agency requested FPRs and the completion of an evaluation pricing template to evaluate the offerors' prices. After taking corrective action in response to DECO's and the other offeror's protests against their competitive range exclusion, the agency then conducted discussions with these two offerors, and obtained FPRs and evaluation pricing templates from them, but did not provide the original competitive range offerors an opportunity to again revise their proposals.

We find that the agency improperly failed to provide for a common cutoff date for the submission of FPRs. It is axiomatic that, at the conclusion of discussions, each offeror remaining in the competitive range must be given an opportunity to submit an FPR and the contracting officer is required to establish a common cutoff date for receipt of FPRs. FAR § 15.307(b). The underlying purpose of this requirement is to ensure that all offerors are being treated fairly and on an equal basis. Telos Field Eng'g, B-253492.2, Nov. 16, 1993, 93-2 CPD ¶ 275 at 5. Moreover, the agency is required to provide for a common deadline for submission of proposals, even when the conduct of discussions is due to corrective action in response to a bid protest. Rockwell Elec. Commerce Corp., B-286201.6, Aug. 30, 2001, 2001 CPD ¶ 162 at 4-5 (protest sustained where agency conducted discussions with only one offeror and did not provide other competitive range offerors opportunity to submit FPRs). The agency failed to meet the common cutoff requirement here.

The agency concedes that it did not establish a final common cutoff date for receipt of FPRs. Supplemental Agency Report (SAR) at 14. However, it asserts that it essentially met the requirement by providing comparable amounts of time for the offerors to respond--18 days for proposal revisions for the original competitive range offerors and 14 days for DECO, plus 7 days each for completion of their evaluation pricing templates. Id. at 13-14.

Notwithstanding the agency's assertion, the record demonstrates that the agency treated the offerors unequally to the disadvantage of Raytheon. While the original competitive range offerors superficially appear to have received somewhat more time to submit proposal revisions, in point of fact, DECO had additional time to prepare any proposal revisions because it learned of its proposal deficiencies at the time of its debriefing, some 3 weeks prior to the commencement of its 14-day response time. Further, DECO's FPR was not submitted until April, more than 3 months after the other offerors submitted their FPRs and approximately 2 months after submission of their evaluation pricing templates. This delay would have allowed DECO to take into account any changes in the labor market regarding availability of, and potentially lower rates for, personnel.

Raytheon also argues that it was prejudiced by the unequal treatment of the offerors. Specifically, the protester contends that if it had received more time to respond and had DECO's later deadline, it could have revised its proposal including its pricing (which was then some 10 to 11 months old); could have offered more competitive [deleted] given the continuing slow economy; and could have improved its technical proposal through [deleted]. Decl. 3 of Mr. M, ¶¶ 4-5. We conclude that the additional time provided to DECO to submit its proposal conferred a competitive advantage upon it, and thus prejudiced Raytheon. Accordingly, we sustain the protest on this basis.²

SAIC's Price Proposal

The record shows that, in its proposal, SAIC failed to provide labor rates for 20 CLINs (nos. [deleted]) for the base and option years, representing a total of 100 individual labor rates. SAIC Proposal, contract rate table. Raytheon asserts that SAIC's price proposal was unacceptable because the offeror omitted these 20 contract line items. The agency explains that while its price analysis did not detect SAIC's error and omission of the 20 labor categories, it does not consider SAIC's proposal materially non-compliant. SAR at 11. The agency notes that the award determination was not impacted by the omission, because it was based on the evaluation pricing template which did not contain all the labor rates set forth in the contract rate table.³ Id.

² In addition, DECO's debriefing provided it with its initial adjectival ratings, while Raytheon did not receive this information in its discussions. Raytheon Comments to SAR at 15. Raytheon asserts that this information provided DECO an advantage in its proposal revisions, allowing it to improve by one adjectival level in each of the first three factors. Id. While it is not clear how advantageous this information was, all offerors are entitled to the same type of information in discussions. See SYMVIONICS, Inc., B-293824.2, Oct. 8, 2004, 2004 CPD ¶ 204 at 5 (protest sustained where agency reopens competition, but fails to ensure that all offerors have information that other offeror obtained through prior debriefing).

³ The agency also asserts that Raytheon's protest on this ground is untimely because it concerns an alleged impropriety in the RFP. SAR at 11. The agency's assertion is without merit. Raytheon is not asserting that SAIC's failure to address 20 labor categories is due to their absence from the template used in the pricing evaluation. Instead its protest concerns the fundamental issue of whether SAIC's proposal met the RFP requirement to submit pricing for each labor category in the RFP. Since Raytheon raised this issue within 10 days of discovering SAIC's omission in the agency's report, it is timely. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2).

The agency's assertion ignores the fundamental distinction between the evaluation pricing template and the offerors' proposed contract rate tables. The evaluation pricing template, which included estimated hours for selected labor categories, was--by its terms--solely to be used as a tool for evaluating prices. RFP, amend. at 1. Offerors also were required to complete the contract rate table with fully-loaded labor rates which would be used as ceiling labor rates for all T&M and fixed-price task orders under any resulting contract. RFP §§ B.4, B.5; see also RFP § L.9.1.b (offerors instructed to "insert hourly labor rates for the Government labor categories across all functional categories . . . using the [RFP] labor category titles").

Here, SAIC's proposal omitted 20 of the required labor rates (and their corresponding option year rates). Since offerors were required to provide rates for all labor categories, and since those rates would form the basis for the issuance of future task orders, the missing rates represented a failure to meet a material solicitation requirement. Manthos Eng'g, LLC, B-401751, Oct. 16, 2009, 2009 CPD ¶ 216 at 2. In a negotiated procurement, a proposal that fails to conform to the material terms and conditions of the solicitation is unacceptable and may not form the basis for award. Id.; see Joint Venture Penauillie Italia S.p.A; Cofathec S.p.A; SEB.CO S.a.s.; CO.PEL.S.a.s., B-298865, B-298865.2, Jan. 3, 2007, 2007 CPD ¶ 7 at 6. Since SAIC did not provide all required prices, its proposal did not conform to the material terms of the RFP, and therefore could not be accepted for award.⁴ Thus, we sustain the protest on this basis.

Other Price Issues

Raytheon raises a number of other price evaluation issues. For example, the evaluation pricing template called for offerors to submit pricing for some 157 labor categories. Firms were instructed to multiply their proposed hourly rates by the estimated quantities of instructors, course days, preparation days, and travel days. RFP, Evaluation Pricing Template. For the offerors' proposed key personnel (program and operations managers) the RFP erroneously listed estimates of 1,920 course days at 8 hours per day while all other labor categories were listed with estimates ranging from 3 to 35 days at 8 to 10 hours per day. Id. Raytheon asserts that both SAIC and DECO improperly completed the evaluation pricing template by calculating key personnel labor categories in terms of 1,920 total hours instead of 1,920 days specified in the RFP (representing 15,360 total hours).

⁴ SAIC asserts that its evaluation pricing template included the missing 20 CLIN rates. SAIC SAR Comments at 3. However, these evaluation rates were not included as part of the contract rate table on which future task orders would be based. In any case, SAIC's evaluation pricing template only accounts for 10 of the missing 20 rates. Thus, its proposal remains unacceptable due to a lack of material information.

The agency asserts that the identification of 1,920 days--as opposed to 1,920 hours--for key personnel was an "obvious" error and represented a patent ambiguity. Agency Report (AR) at 6. However, the record shows that not all offerors recognized the agency's intended interpretation, and as a consequence, the agency failed to treat all offerors equally.

In particular, the record shows that all offerors except Raytheon and one other offeror recognized the apparent error in the RFP and proposed their pricing in terms of hours instead of days. Because the prices for all offerors were not calculated on a uniform basis, the agency recalculated both Raytheon's and the other offeror's pricing in terms of hours which resulted in a significant reduction in their respective prices (\$[deleted] million for Raytheon and \$[deleted] million for the other offeror). AR at 7, 10. However, despite this recalculation the contracting officer did not apprise the SSA of Raytheon's lower calculated price and his award recommendation reported Raytheon's price unchanged. Award Recommendation at 10. Since the SSA was unaware of the protester's corrected price--and instead believed it was the [deleted] proposed--his tradeoffs and award determinations lacked a reasonable basis. See Northrop Grumman Info. Tech., Inc. et al., B-295526 et al., Mar. 16, 2005, 2005 CPD ¶ 45 at 15. We therefore sustain this aspect of Raytheon's protest.

Raytheon asserts that SAIC's and DECO's evaluation pricing templates improperly included several labor rates that deviated from the rates included in their contract rate tables. We agree that this was improper. In this regard, the RFP amendment requested offerors to use their prior proposed rates. Allowing offerors to propose different rates for purposes of the price evaluation than for contract performance could result in an award determination that does not reflect the actual, likely cost to the government of performing under the contract.⁵ See Northrop Grumman Info. Tech., Inc. et al., supra at 16. We therefore sustain this aspect of Raytheon's protest.

⁵ Raytheon also argues that the agency failed to evaluate realism of the awardees' labor rates. The contracting officer states that he did not believe there was a risk that either SAIC or DECO proposed unrealistically low rates and thus, he found no need to conduct a further performance risk assessment. AR at 24. However, the record does not document this finding or any specific review of price realism. Since the RFP clearly provided for evaluating whether prices were realistic for the work to be performed and reflect a clear understanding of the requirements (RFP §§ M.4, M.11.6), the agency should ensure that its future price evaluation specifically addresses the realism of the proposed prices.

Technical Evaluation

Raytheon asserts that the agency misevaluated the proposals under the PM/QC, personnel, and facilities factors. Specifically, Raytheon identifies various aspects of the technical evaluation where it alleges the agency either did not treat the offerors equally or did not follow the evaluation criteria.

In reviewing protests against allegedly improper evaluations, our Office examines the record to determine whether the agency's judgments are reasonable and consistent with the solicitation's evaluation factors and applicable statutes and regulations, as well as whether the agency has treated offerors equally in its evaluation. See, e.g., *Brican Inc.*, B-402602, June 17, 2010, 2010 CPD ¶ 141 at 4. We have reviewed Raytheon's assertions and conclude that the agency's technical evaluation of proposals was unreasonable.

The record shows that, under the PM/QC factor, the consensus evaluation for SAIC and Raytheon reads almost identically regarding SAIC's and Raytheon's demonstrated detailed knowledge of project management disciplines; detailed, well reasoned plans to manage the effort; and inclusion of proven management tools and methodologies. See TEP Consensus Reports (SAIC at 26, Raytheon at 23). However, while the agency evaluated Raytheon's proposal as [deleted], it evaluated SAIC's proposal as [deleted] based primarily on a strength assigned to its proposal for a [deleted] the RFP's requirements as to [deleted]. Id.

Notwithstanding the agency's evaluation conclusion, the record shows that Raytheon proposed features comparable to those in SAIC's proposal, including [deleted] which, according to Raytheon's proposal, provides for [deleted]. Raytheon Proposal, e.g., at I-2-16, I-2-20, I-2-28--31. While Raytheon's [deleted] appears to offer comparable features to SAIC's [deleted], the TEP did not mention this aspect of Raytheon's proposal or assign it a strength. Further, despite the protester's identification of the specific comparable aspects of its proposal, the agency has not explained why Raytheon's proposed [deleted] was inferior to SAIC's. Since the only apparent difference in the offerors' ratings is based on this single strength, and since the agency has not explained why the two apparently comparable proposals are not, in fact, comparable, we conclude that the agency failed to treat the offerors equally in its evaluation.

We also find that the agency misevaluated DECO's proposal under the PM/QC factor by increasing its rating from acceptable to excellent based solely on the qualifications of DECO's new proposed program manager. However, under the PM/QC factor, the agency's evaluation was to include offerors' proposed management approach and methodologies, whereas key personnel (including the program manager) resumes were to be evaluated under the personnel factor. RFP §§ M.11.1, M.11.2.

The agency provides no explanation for why it was reasonable to assign DECO credit for its substituted program manager under the PM/QC factor instead of under the personnel factor. Since the qualifications of the program manager represented a matter for evaluation under the personnel factor, it was unreasonable for the agency to assign credit to DECO's proposal and raise its overall rating under the PM/QC factor. Further, since the PM/QC factor was the most important, it appears that Raytheon may have been prejudiced by the unreasonable increase in DECO's rating under that factor. See Appalachian Council, Inc., B-256179, May 20, 1994, 94-1 CPD ¶ 319 at 9.⁶

Accordingly, we also sustain the protest based on the flaws in the technical evaluation.

RECOMMENDATION

We recommend that the agency reopen the competition and amend the RFP as necessary to ensure that proposals are prepared on a common basis. We further recommend that the agency conduct another round of discussions, obtain and evaluate revised proposals and make a new source selection decision. If the agency concludes that the award of contracts to offerors other than SAIC and DECO is appropriate, it should terminate their existing contracts. Finally, we recommend that the protester be reimbursed its costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester should submit its certified claim, detailing the time expended and costs incurred, directly to the contracting agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Lynn H. Gibson
General Counsel

⁶ Additionally, it is not clear that the new program manager's resume provided sufficient information to support the TEP's finding that he exceeded the RFP's experience requirements. The RFP required a minimum of 10 years experience managing major programs or projects and supervisory experience responsible for "up to 100 subordinate staff." RFP § C.4.1.1. It is not clear from the candidate's resume that his 10 years of experience involved the requisite major programs.