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Decision

Matter of: Serco Inc.

File: B-405280

Date: October 12, 2011

Marcia G. Madsen, Esq., Andrew A. Nicely, Esq., David F. Dowd, Esq., Polly A. Myers, Esq., and Cameron Hamrick, Esq., Mayer Brown LLP, for the protester.
Ronald S. Perlman, Esq., William M. Pannier, Esq., and Oliya S. Zamaray, Esq., Holland & Knight LLP, for Capstone Corporation, the intervenor.
Capt. Joon K. Hong, and Allen E. Sebastian, Esq. Department of the Army, for the agency.

Jonathan L. Kang, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's evaluation of awardee's proposed staffing levels is denied where the agency's estimate for the required staffing was reasonable, and the awardee's staffing was consistent with agency's estimate.
 2. Protest alleging unequal treatment by the agency with regard to the offerors' proposed staffing is denied where the record shows that the protester could not have been prejudiced by the alleged unequal evaluations and discussions.
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DECISION

Serco Inc., of Reston, Virginia, protests the award of a contract to Capstone Corporation, of Alexandria, Virginia, by the Department of the Army, under request for proposals (RFP) No. W9124D-11-R-0009, for personal effects (PE) processing services for the Army Human Resource Command. Serco argues that the Army unreasonably evaluated Capstone's proposed staffing levels, misled the protester during discussions, and treated the offerors unequally during discussions and proposal evaluations.

We deny the protest.

BACKGROUND

The RFP was issued on March 2, 2011, and was amended once. The solicitation sought proposals to provide support for the Joint Personal Effects Depot (JPED) at Dover Air Force Base, Delaware. JPED's mission is to "receive, safeguard, inventory, store, process and make final disposition of personal effects . . . of all killed, injured, medically-evacuated or missing Department of Defense (DOD) personnel resulting from overseas contingency operations." RFP, Performance Work Statement (PWS), ¶ 1.1. In addition to processing PE, the contractor will also be required to process "forensic" cases, which involve digital media items, and to photograph each processed item.

The RFP anticipated award of a fixed-price contract with a 1-month phase-in period, an 11-month base period, and four 1-year options. Offerors were advised that they would be evaluated on the basis of price, and the following non-price factors: (1) mission capability, (2) past performance, and (3) small business participation. The mission capability factor had three equally-weighted subfactors: (1) staffing plan, (2) management plan, and (3) experience. For purposes of award, the solicitation stated that the mission capability and past performance factors were of "approximately equal" weight, were "significantly more important" than the small business participation factor, and that the non-price factors, when combined, were "significantly more important" than price. RFP at 46.

The RFP stated that offerors' proposals were required to identify each Service Contract Act (SCA) labor category for the labor positions under which staff would perform, and provide information concerning the wage rates, and the burdened and unburdened labor rates, that apply to the positions. RFP at 28. The RFP included SCA wage rates, that would apply to the contract. *Id.* at 51-57. The RFP also provided historical workload data from January 2008 until January 2011. RFP, Technical Exhibit (TE) No. 2.

Serco has been the incumbent contractor for the PE contract at the JPED since 2004. Protest at 7. The protester was awarded the most recent contract, which is a labor-hour contract, on July 29, 2008. Under the incumbent contract, Serco was initially authorized to provide up to 98 full-time equivalent (FTE) personnel to perform the work. Protester's Comments at 6 n.2; Agency Report (AR), Tab 21, Initial SSEB Report, at 6. As discussed in more detail below, the agency issued a "reach-back order" in September 2010, which required Serco to provide additional staffing to address a backlog in uncompleted work and an anticipated increase in the workload.¹ Supp. AR, Tab 5, Reach-Back Order, at 5.

¹ The incumbent contract expired on July 31, 2011; the contract is currently being performed by Serco under a sole-source order to provide continued performance during this protest. Contracting Officer (CO) Statement at 1.

The Army received five proposals in response to the RFP by the closing date of April 7, 2011. As relevant here, Serco proposed performing the work with [deleted] FTEs, and Capstone initially proposed performing the work with [deleted] FTEs. AR, Tab 5, Capstone Initial Proposal, vol. III, at 9; Tab 7, Serco Initial Proposal, vol. III, at 2. The agency source selection evaluation board (SSEB) evaluated each offeror's proposal, and assigned ratings for the proposals. As relevant here, the agency evaluated the offerors' staffing plans in part by comparing the proposed FTE levels to the independent government estimate (IGE) prepared for this procurement. The ratings for the protester and intervenor were as follows:

	SERCO	CAPSTONE
MISSION CAPABILITY	ACCEPTABLE	GOOD
Staffing Plan	Good	Good
Management Plan	Acceptable	Good
Experience	Marginal	Excellent
PAST PERFORMANCE	ADEQUATE	EXCELLENT
SMALL BUSINESS PARTICIPATION	GOOD	GOOD
PRICE	[\$[deleted]]	[\$[deleted]]

AR, Tab 8, Prenegotiation Objective Memorandum (POM), at 6.

Following the initial evaluations, the Army conducted several rounds of discussions with the offerors as further detailed below. After receiving offerors' proposal revisions, the agency SSEB revised its evaluation. The final ratings for the protester and intervenor were as follows:

	SERCO	CAPSTONE
MISSION CAPABILITY	EXCELLENT	EXCELLENT
Staffing Plan	Excellent	Excellent
Management Plan	Good	Good
Experience	Excellent	Excellent
PAST PERFORMANCE	EXCELLENT	EXCELLENT
SMALL BUSINESS PARTICIPATION	GOOD	GOOD
PRICE	[\$[deleted]]	\$27,814,014

AR, Tab 17, Source Selection Decision (SSD), at 3.

The CO for the procurement also served as the source selection authority. The CO concluded that Serco and Capstone were the most highly-rated offerors. In comparing the proposals, the CO noted that the SSEB found that “[w]hile [Serco] proposes . . . [deleted] FTE’s [more] than [Capstone], the . . . proposed staffing for both Offerors was Excellent and demonstrated a strong understanding of the requirement and ability to meet the projected workloads in a timely manner.” *Id.* at 3-4. The CO also noted that the SSEB “found that both [Serco and Capstone] proposed strong key personnel exhibiting knowledge of PE processes and procedures as well as offering knowledgeable and experienced individuals.” *Id.* at 4. The CO concluded that, because the offerors’ proposals received “equivalent technical ratings,” Capstone’s lower price was the deciding factor that merited award to that offeror. *Id.* at 4-5. The Army notified Serco of the award on June 27, and this protest followed.

DISCUSSION

Serco argues that the Army’s evaluation of Capstone’s proposal was flawed under the staffing plan subfactor based on the agency’s use of an unreasonable estimate for the number of FTEs required to perform the work. The protester also argues that the agency misled it during discussions concerning its proposed staffing, and evaluated the offerors unequally under the staffing plan subfactor. For the reasons discussed below, we find no basis to sustain the protest.²

Evaluation of Capstone’s Proposed Staffing

First, Serco contends that the IGE prepared by the agency and used in the evaluation of offerors’ proposals was unreasonable because it failed to accurately reflect the level of effort that will be required to process PE cases under the contract. Specifically, the protester argues that the agency’s IGE unreasonably disregarded the staffing levels required by the reach-back order under the incumbent contract.

The evaluation of an offeror’s proposal is a matter within the agency’s discretion. *IPlus, Inc.*, B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. A protester’s mere disagreement with the agency’s judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was

² Serco raises other collateral issues. For example, the protester contends that the agency failed to evaluate the reasonableness of Capstone’s proposed price. Capstone, however, proposed a lower price than Serco; thus the protester could not have been prejudiced by the agency’s price reasonableness evaluation, as such an evaluation examines whether an offeror’s proposed price is too high, as opposed to too low. *DB Consulting Group, Inc.*, B-401543.2, B-401543.3, Apr. 28, 2010, 2010 CPD ¶ 109 at 8. We have reviewed all of the arguments raised by Serco, and conclude that none provides a basis to sustain the protest.

unreasonable. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4. In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals, but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3.

To resolve this issue, we will first review the staffing-level history under the predecessor contract, the IGE, and the proposals submitted.

As discussed above, Serco was the incumbent contractor for the JPED contract. The protester began performing the requirement in July 2008, under a labor-hour contract with a maximum authorized FTE level of 98 FTEs.

In August 2010, an Army contracting officer's representative (COR) prepared a memorandum for the CO concerning a backlog in work at the JPED. The COR noted that Serco had not been providing the full level of 98 FTEs authorized for the JPED contract. The COR further stated that "[t]he shortage of personnel is causing a backlog of work at the JPED . . . [and] is leading SERCO to unjustified overtime so they can compensate their personnel who have worked extended hours to attempt to cover the backlog." Supp. AR, Tab 4, at 1. The COR recommended that the agency exercise the "reach-back" provisions of the contract, which requires the contractor to provide additional staffing on short notice, in order to address the backlog. Id. On September 30, the Army issued a 10-month reach-back order directing Serco to provide up to 47 additional FTEs to address the backlog of work; this order raised the authorized staffing limit from 98 to 145 FTEs. Supp. AR, Tab 5, Reach-Back Task Order.

On November 10, the Army prepared its initial IGE for this RFP, which addressed the estimated costs and staffing levels required to perform the contract. The initial IGE assumed that the work would require 99 FTEs, as well as 47 additional FTEs to perform reach-back work. Supp. AR, attach. 1, Initial IGE, Nov. 10, 2010. On January 25, 2011, the agency prepared a revised IGE, which deleted the reach-back order staffing levels, and reduced the non-reach-back staffing levels to 98 FTEs. Supp. AR, attach. 3, Revised IGE, Jan. 25, 2011. This IGE was finalized on February 3, with the same 98 FTE assumption. Id.

The Army states that the reach-back staffing was deleted from the IGE because the enhanced levels of performance were not anticipated to be required under the new contract. In this regard, the CO states that part of the increased workload was the result of the backlog created during Serco's performance, the agency assumed that the reach-back order represented a temporary staffing level that would not be required for the new contract. In this regard, the CO states as follows:

The Agency included workload data for 2008, 2009, and 2010 in the current Solicitation to enable offerors reviewing the workload data to

determine potential risk of surges along with information related to a potential drawdown of U.S. troops. Therefore inclusion of temporary reach-back costs in the current government estimate was not appropriate, especially in light of the fact that the surge was temporary. These types of contingency costs would be factored in by the offerors when pricing their fixed-price proposals.

CO Supp. Statement, Aug. 30, 2011, at 1-2.

The RFP, issued on March 2, 2011, provided data concerning the PE cases received from January 2008 through January 2011. The chart below provides the data available in the RFP, as well as data provided by the agency, which was not available in the RFP and was provided during the development of this protest:

Date ³	PE Cases ⁴	Backlog ⁵	FTEs ⁶	Date	PE Cases	Backlog	FTEs
Jan-08	272			Oct-09	264		97
Feb-08	289			Nov-09	272		96
Mar-08	189			Dec-09	209		96
Apr-08	320			Jan-10	211		97
May-08	221			Feb-10	157		96
Jun-08	245			Mar-10	219		96
Jul-08	291			Apr-10	218		95
Aug-08	204			May-10	148		94
Sep-08	216			Jun-10	244		91
Oct-08	171		94	Jul-10	284	68	87
Nov-08	127		95	Aug-10	348	83	86
Dec-08	124		92	Sep-10	324	142	92
Jan-09	175		89	Oct-10	341	157	107
Feb-09	196		85	Nov-10	322	242	132

³ The RFP provided data through January 2011; the later data were provided by the agency in its report on the protest.

⁴ “PE Cases” represents cases received.

⁵ The backlog data was not provided in the RFP; this data was provided by the agency during the course of the protest. As noted above, the backlog order data commenced in July 2010.

⁶ “FTEs” represents the average number of FTEs present during the month. The FTE data were not provided in the RFP; these data were provided by the agency during the protest. The agency did not provide data for the months prior to October 2008; however, Serco was authorized to use no more than 98 FTEs during this time.

Mar-09	173		83	Dec-10	365	209	139
Apr-09	160		83	Jan-11	414	149	142
May-09	125		81	Feb-11	304	80	145
Jun-09	177		80	Mar-11	291	41	141
Jul-09	171		79	Apr-11	281	24	127
Aug-09	172		91	May-11	268		129
Sep-09	307		95	Jun-11	285		127

RFP at TE 2; Supp. AR, Tab 2, Staffing Headcounts, at 1-9; Agency Response to GAO Question, Sept. 23, 2011, at 1-2.⁷

Serco's proposal assumed that the JPED contractor would be required to process an average of 234 PE cases per month.⁸ Serco's proposal stated that it would provide [deleted] FTEs to perform the work.⁹ AR, Tab 7, Serco Initial Proposal, vol. III, at 3.

Capstone's proposal assumed that the JPED contractor would be required to process an average of 282 PE cases per month. AR, Tab 5, Capstone Initial Proposal, vol. III, at 7. Capstone based its assumption by averaging the PE case data for the most recent 12 months identified by the RFP, *i.e.*, February 2010 through January 2011. *Id.* Capstone's initial proposal stated that it would provide [deleted] FTEs to perform the work. *Id.* Following discussions with the agency, during which the agency expressed the concern that Capstone had not proposed a sufficient number of processing lines (*i.e.*, groups to perform PE review), the awardee stated that it would increase the number of lines from [deleted] to [deleted], thereby adding [deleted] FTEs and increasing its overall staffing level to 105 FTEs. AR, Tab 10, Capstone Discussions Response, at 3. The agency concluded that the awardee's response addressed the concern. AR, Tab 16, PNM, at 6.

⁷ Although the solicitation did not explicitly state that offerors were required to base their proposals on the workload data provided in the RFP, the agency states that it expected offerors to do so, and the offerors' proposals each based its assumption on part or all of the workload data. CO Supp. Statement, Aug. 30, 2011, at 1-2.

⁸ Based upon review of the record, it appears that the protester based its assumptions by averaging the PE case data for all of the months identified in the RFP, *i.e.*, January 2008 through January 2011, given that this average is 234 FTEs.

⁹ As addressed in more detail below, Serco also reclassified certain of its personnel positions during discussions to address the Army's concern that the protester had placed SCA-covered staff in inappropriately-low SCA wage categories. AR, Tab 14, Serco Discussions Response, June 6, 2011, at 1-2.

Serco protests that Capstone's proposed staffing of 105 FTEs was unacceptable and that an IGE reflecting a staffing level of 98 FTEs was not a reasonable measure to judge the adequacy of Capstone's proposed staffing. Serco contends that the agency's issuance of the reach-back order should be viewed as an acknowledgement that the PE workload had increased to levels that required a higher level of FTEs than the 98 FTEs reflected in the IGE and initially authorized under the incumbent contract. In effect, the protester argues that the reach-back order represented a change to the anticipated level of performance for the JPED contract that should have been reflected in the IGE. Specifically, the protester argues that the workload reflected in the RFP requires offerors to address how they will process "400 or more PE cases" per month and that the IGE of 98 FTEs and Capstone's proposal of 105 FTE's were both unacceptably low.¹⁰ Protester's Comments at 7-8; Protester's Supp. Comments at 8-9.

These contentions are not consistent with the assumptions stated in Serco's proposal, however. Rather, as discussed above, Serco assumed that it would be required to perform 234 PE cases per month--apparently based on the staffing assumptions on the full 37-month period reflected in the RFP workload data, including the 10-month reach-back period from October 2010 through July 2011. This assumption is considerably lower than the workload data in the RFP for reach-back order period (October 2010 to January 2011), which indicate that an average of 360 PE cases was received each month. See RFP at TE 2.

Moreover, as discussed above, the Army assumed that the backlog experienced during Serco's performance of the incumbent contract would be resolved. See CO Supp. Statement, Aug. 30, 2011, at 1-2. In fact, the backlog was eliminated by Serco by the completion date for the contract. Response to GAO Question, Sept. 23, 2011, at 1-2. The Army also assumed that the higher levels of PE cases received during the reach-back period would not continue. See CO Supp. Statement, Aug. 30, 2011, at 1-2. In fact, the record shows that the number of PE cases declined over the final 3 months of the contract to 281, 268, and 285 cases per month. These numbers are closer to the range of the performance levels assumed by Serco (234) and Capstone (282) for the JPED contract, than to the average of 360 cases experienced under the reach-back order from October 2010 through January 2001, or the "400 or more PE cases" per month alleged in the protest. Protester's Comments at 7-8; RFP at TE 2; Agency Response to GAO Question, Sept. 23, 2011, at 1-2.

Serco's proposal assumption that the JPED contract will be required to process only 234 PE cases per month also undercuts its challenge to the reasonableness of the

¹⁰ Our decision addresses the protester's argument concerning the overall number of FTEs in the context of the PE case workload. The protester does not argue that the forensic workload has changed as a result of the reach-back order, or has otherwise changed in a way that renders the IGE unreasonable.

IGE, particularly in light of the protester's performance on the incumbent contract. The data show that for 9 of the 30 months before Serco began to experience a backlog and was authorized to increase its FTE levels (January 2008 – June 2010), the company was able to address more PE cases than what its proposal assumes would be required under the current award.¹¹ Specifically, during the period that Serco was limited to no more than 98 FTEs, the protester met the following levels of performance for processing of PE cases: 272 cases (Jan-08), 289 cases (Feb-08), 320 cases (Apr-08), 245 cases (Jun-08), 291 cases (Jul-08), 307 cases (Sep-09), 264 cases (Oct-09), and 272 cases (Nov-09). See RFP at TE 2; Supp. AR, Tab 2, Staffing Headcounts, at 1-9.

In sum, we do not think the record supports the protester's argument that the requirements for the JPED contract, as identified by the workload data set forth in the RFP, could not be performed with the 98 FTEs identified in the IGE or the 105 FTEs proposed by Capstone.

Serco also argues that the Army's evaluation of Capstone's proposed staffing was unreasonable with regard to the awardee's approach to meet surges in requirements for supporting the JPED, as required by the PWS. See RFP, PWS, ¶¶ 1. Capstone's proposal discussed its understanding of the possibility of "surges" and "spikes" in the workload, and stated that its proposed approach of cross-training staff would provide the ability to address such increased requirements. AR, Tab 5, Capstone Initial Proposal, vol. III, at 7. During discussions, the agency asked Capstone to address the following weakness: "[Y]ou state [deleted] processing lines would be sufficient to handle the workload. Concern is made as to whether this is a sufficient number to support a fluctuation." AR, Tab 9, Capstone Discussions, May 26, 2011, at 1. In response to discussions, Capstone stated that it would [deleted], increasing the number of processing lines from [deleted] to [deleted], and thereby increasing Capstone's overall FTE level from [deleted] to 105. AR, Tab 10, Capstone's Discussions Response, June 2, 2011, at 2. The awardee stated that this change would enable it to handle "fluctuations" in the increased requirements of up to 440 PE cases per month. Id. at 3.

The Army's rating for Capstone under the staffing plan subfactor did not rely on the awardee's overall FTE level alone. Instead, the agency concluded that Capstone's proposal merited significant strengths under the staffing plan subfactor based on the number of PE inspection lines proposed, and the number of staff trained to use the agency's Defense Casualty Information Processing System (DCIPS), which is used to

¹¹ We also note that Serco began to experience a backlog in cases at a time when it was staffing the effort with 10 fewer FTEs than authorized under its contract. Supp. AR, attach. 2, Staffing Headcounts, at 1-9.

log data for the JPED. AR, Tab 16, PNM, at 5-6. These strengths gave the agency confidence that Capstone could successfully perform the contract at its proposed staffing level. Id.

Although the protester argues that the agency should have pressed for more details from Capstone concerning its technical approach, or should not have relied on the level of details provided in the awardee's proposal and response to discussions, this disagreement with the agency's judgment does not provide a basis to sustain the protest.

Discussions and Unequal Treatment

Serco argues that the Army's evaluation of its proposal under the staffing plan factor was unreasonable because the agency conducted misleading discussions, and also treated the protester and intervenor unequally during evaluations. For the reasons discussed below, we conclude that these arguments provide no basis to sustain the protest.

Misleading discussions

Serco argues that the Army misled it during discussions concerning its staffing by requesting that the protester adjust its labor mix, which resulted in the protester increasing its proposed price. This argument is based on the agency's initial evaluation conclusion that Serco's proposal had the following weakness:

Weakness: Seems to have a limited labor mix. [Deleted] people and [deleted] are listed as [deleted], but [deleted] pay is more than [deleted] pay. [Deleted] makes less than a [deleted] as well. Some supervisory position[s] appear to be cross-trained for the [deleted] position.

AR, Tab 8, POM, at 10. During discussions, the Army advised Serco that its proposal's response to the staffing plan subfactor had the following weakness: "The proposed labor mix appears very limited; the most notable are [deleted] and [deleted], who are categorized as [deleted]." AR, Tab 13, Serco Discussions, May 26, 2011, at 1.

In response to the discussions question, the protester stated that "Serco Inc. has elected to alter its staffing plan in order to strengthen the labor mixture." AR, Tab 14, Serco Discussions Response, June 6, 2011, at 1. Specifically, the protester explained that it reduced [deleted] FTEs for [deleted] to [deleted] FTEs, reducing a [deleted] position from [deleted] to [deleted] FTEs, and increased the [deleted] position [deleted]. The protester further explained that because "the pay rates of the [deleted] positions are higher than that of the [deleted] position in the Wage Determination, employees performing this mission will also be able to [deleted]." Id.

Finally, Serco stated that “[a]s a result, the price will increase by approximately \$[deleted].” Id.

The agency’s evaluation of Serco’s response to the discussion question concluded that the weakness had been addressed. The agency noted that “[t]he Offeror appeared to have a limited labor mix [because] [deleted] were all classified as [deleted].” AR, Tab 16, PNM, at 8. The agency found that Serco’s response to the discussions question “addressed the limited labor mix used in their staffing plan and adjusted for appropriate pay” by “[deleted]” and stating that “[deleted] will be cross-trained as [deleted].” Id. Based on these changes, the agency concluded that the protester has addressed “discrepancy in pay,” and further concluded that “[t]hese changes and significant strengths identified in the initial evaluation justify a change to ‘Excellent’” under the staffing plan subfactor. Id.

The protester contends that the agency’s discussions were misleading because they caused it to raise its price, despite the fact that its price was already higher than Capstone’s proposed price.

The Federal Acquisition Regulation (FAR) requires agencies to conduct discussions with offerors in the competitive range concerning, “at a minimum . . . deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond.” FAR § 15.306(d)(3). Discussions, when conducted, must be meaningful; that is, they may not mislead offerors and must identify proposal deficiencies and significant weaknesses that could reasonably be addressed in a manner to materially enhance the offeror’s potential for receiving award. Lockheed Martin Corp., B-293679 et al., May 27, 2004, 2004 CPD ¶ 115 at 7.

We think that the agency’s discussions were not misleading, as they meaningfully advised the protester of the agency’s concern regarding its proposed staffing, and permitted the protester to revise its proposal in a way that improved its prospect for award. In this regard, the protester’s response to the discussions question resulted in the agency’s elimination of the weakness for the protester’s proposal, and an increase in Serco’s score for staffing plan subfactor from good to excellent.

In any event, even if the agency had improperly led the protester into increasing its price, there is no possibility that Serco could have been prejudiced by the agency’s actions. In this regard, the protester stated in its discussions response that the changes to its staffing increased its costs by only \$[deleted]. AR, Tab 14, Serco Discussions Response, June 6, 2011, at 1. Where, as here, an agency’s discussions are alleged to be misleading as to price or cost, our Office will not sustain the protest where the protester’s and awardee’s proposal were rated equal and the protester’s price or cost would have still remained lower than the awardee’s in the absence of

the disputed discussions.¹² See L-3 Sys. Co., B-404671.2, B-404671.4, Apr. 8, 2011, 2011 CPD ¶ 93 at 16. Here, any adjustment to this relatively minor element of cost could not effect the result of the competition, in light of the more than \$[deleted] difference between the offerors' proposed prices.

Unequal evaluations

Next, Serco argues that the Army treated offerors unequally by finding that its labor mix was limited, but not finding that Capstone's labor mix was also limited. Serco notes that its proposal designated [deleted] discrete labor positions, and contends that its proposal provided detailed descriptions of each position and how it related to the relevant SCA labor category. In contrast, the protester notes that Capstone proposed only [deleted] discrete labor positions, and contends that the awardee provided fewer details concerning those positions than Serco. For this reason, the protester contends that, to the extent that the agency viewed Serco's labor mix as "very limited," the awardee's labor mix should have been considered even more limited and Capstone should have been assessed a significant weakness.

The Army responds that the concern raised in discussions with Serco did not relate to the number of labor categories or the details regarding those categories, as alleged by the protester. Instead, the agency states that the concern related to the designation of personnel, most notably [deleted] and [deleted], as [deleted], which were lower-paid categories under the SCA wage determination. CO Statement at 15-16; see also AR, Tab 21, Initial SSEB Report, Apr. 21, 2011, at 6 ("Weakness: Some positions seem to be mislabeled.")

The protester argues that the agency's argument is not supported by the record, because the discussion question related to a "limited labor mix," rather than the designation of personnel under the SCA wage determination. As discussed above, however, the protester clearly understood that agency's question related to the classification of [deleted] and [deleted] under different SCA categories; indeed, Serco's response directly addressed the reclassification of personnel performing these positions. AR, Tab 14, Serco Discussions Response, June 6, 2011, at 1. The Army accepted the protester's response as addressing the concern, removed the weakness from the evaluation, and increased Serco's rating for the staffing approach subfactor to the highest rating of excellent. AR, Tab 16, PNM, at 8.

¹² Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

On this record, we find no basis to conclude that the agency assessed a weakness based on the number or diversity of labor categories proposed by Serco or that the agency treated the offerors unequally by not assessing a weakness for Capstone based on its proposal of fewer labor categories than Serco.

Serco further argues that the agency unreasonably identified a strength for Capstone's approach of using [deleted] percent of its proposed FTEs for PE inspection. AR, Tab 8, POM, at 6. The protester argues that it was unreasonable to give credit to the awardee for placing a high number of personnel into a limited number of labor categories, in light of the agency's concern that Serco's use of a higher number of labor categories represented a "very limited labor mix." Again, we think that the record shows that the agency did not assess a weakness for Serco based on the number of labor categories proposed--as evidenced by the protester's discussions response and the agency's revised evaluation--and there is, accordingly, no evidence of unequal treatment by the agency concerning this matter.

Finally, the protester argues that since Serco was required to address the classification of [deleted] and [deleted] during discussions, the agency should have had the same concerns regarding Capstone's classification of these positions. In this regard, the protester contends that because the awardee did not separately designate these positions in its proposal, they would have to be performed under one of the broader "personal effects specialist" categories, which correspond to the "general clerk I, II, and III" SCA wage rate categories, and which have lower SCA wage rates than [deleted] or [deleted].¹³ See AR, Tab 5, Capstone Initial Proposal, vol. III, at 8-9.

While it appears that the agency's evaluation did not consider that the awardee had proposed broad labor categories that did not have the same rate of pay as [deleted] and [deleted], here too Serco was not prejudiced by the Army's evaluation. As indicated above, Serco's correction of the weakness identified by the agency concerning its designation of [deleted] and [deleted] required the protester to increase its proposed price by \$[deleted]. The protester has provided

¹³ Serco's initial protest and comments on the agency report focused on [deleted] and [deleted]. In its comments on the supplemental agency report, Serco argued that a broader range of positions should have been questioned. See Protester's Supp. Comments at 33-37. Because these additional arguments were not raised within 10 days of when Serco knew or should have known of the basis for the arguments, we dismiss them as untimely. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2). In any event, the protester does not demonstrate that revising the rates associated with the other positions could have possibly affected the \$[deleted] difference between the offerors' proposed prices.

no basis to conclude that a similar correction in the awardee's proposal would result in a price increase that could offset Capstone's \$[deleted] price advantage.

The protest is denied.

Lynn H. Gibson
General Counsel