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Decision

Matter of: Kiewit Infrastructure West Co.

File: B-415421; B-415421.2

Date: December 28, 2017

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DIGEST

Protest challenging the evaluation of proposals under various non-price and price factors, as well as the best-value tradeoff decision, is denied where the record shows that the evaluation was reasonable and in accordance with the terms of the solicitation.

DECISION

Kiewit Infrastructure West Co., of Vancouver, Washington, protests the award of a contract to Flatiron/Dragados/Sukut Joint Venture (FDS) by the Department of the Army, U.S. Army Corps of Engineers (Corps), under request for proposals (RFP) No. W91238-17-R-0006 for construction services. Kiewit challenges various aspects of the evaluation of proposals and the best-value tradeoff decision.

We deny the protest.

BACKGROUND

The RFP, issued on March 30, 2017, sought proposals for the construction of the Isabella Lake Dam Safety Modification Project, as well as dams and spillway under phase II of the project at Lake Isabella, California. RFP at 72. Proposals were to be evaluated on a best-value tradeoff basis, considering price, and the following non-price factors listed in descending order of importance: technical plan for excavation and earthwork; management approach; experience and capability; technical plan for

concrete production and placement; past performance; and small business participation commitment. Id. at 85. When combined, the non-price factors were to be significantly more important than price. Id.

As relevant here, past performance was to be rated in terms of how likely there is a performance risk to the government. Id. at 82. The solicitation notified offerors of the following: more relevant projects were to be given more weight in the overall confidence assessment; federal government work could be evaluated more favorably than work outside the federal government; and work for the agency could be rated more favorably than work for other federal government agencies. Id. at 82. Relevancy was defined as “the extent of similarity between the projects, complexity, dollar value, contract type and subcontract/teaming or other comparable attributes of past performance examples and the source selection requirements.” Id. The more similar a project was, the more relevant it was to be considered. Id.

Under the past performance factor, offerors were required to submit the same projects that were to be considered under the experience and capability factor to demonstrate their performance on recent and relevant zoned embankment dams and spillways. Id. at 79. In addition to the information submitted by the offeror, the agency instructed that it may review any other sources of information for evaluating past performance, which may include “past performance information retrieved through the Past Performance Information Retrieval System (PPIRS), including Contractor Performance Assessment Reporting System (CPARS) . . . inquiries of owner representative(s), Federal Awardee Performance and Integrity Information System (FAPIIS), Electronic Subcontract Reporting System (eSRS), and any other known sources not provided by the Offeror.” Id. at 80.

Price was to be evaluated using price analysis to determine if the proposed price was fair and reasonable “without evaluating its separate cost elements and proposed profit/fee.” Id. at 82. Proposals were also to be reviewed for unbalanced pricing where proposals could be rejected if it was determined that “lack of balance poses an unacceptable risk to the Government.” Id.

Six proposals were received, including those from Kiewit and FDS. Agency Report (AR), Tab 21, Source Selection Decision (SSD), at 2. After an evaluation by the source selection evaluation board (SSEB) and review by the source selection evaluation committee (SSAC), the source selection authority (SSA) decided to enter into discussions with four of the six offerors, including Kiewit and FDS. Id. at 3-4. After receiving final revised proposals, the relevant evaluation results were as follows:¹

¹ Each non-price factor, except past performance, was to receive a rating of blue/outstanding, purple/good, green/acceptable, yellow/marginal, or red/unacceptable. RFP at 84. Past performance was to be assigned one of the following overall confidence ratings: substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence. Id. at 83-84.

	Kiewit	FDS
Technical plan for excavation and earthwork	Good	Outstanding
Management approach	Outstanding	Outstanding
Experience and capability	Good	Outstanding
Technical plan for concrete production and placement	Outstanding	Outstanding
Past performance	Substantial Confidence	Satisfactory Confidence ²
Small business participation commitment	Good	Acceptable
Price	\$231,567,079	\$241,751,065

Id. at 15.

The SSEB evaluated the proposals, assigning significant strengths, strengths, weaknesses, significant weaknesses, deficiencies and uncertainties to each proposal. The SSAC reviewed the results of the SSEB’s evaluation, conducted an independent analysis of proposals, and found the proposals of Kiewit and FDS, to be both technically superior and lower in price to the other two offerors within the competitive range. Id. at 6. Ultimately, the SSAC found that FDS’s proposal represented the best value to the government, and as such recommended the SSA select FDS for award. AR, Tab 20, Final Revised SSAC Comparative Analysis Report, at 15. The SSA then conducted a detailed tradeoff analysis between the two proposals, ultimately concurring with the SSAC that FDS’s proposal offered the best value to the government. The SSA concluded:

[FDS’s] technical proposal rating was far superior to that of [Kiewit] and may be higher in part because of their better understanding of the requirements and site conditions. This understanding which included an excellent dewatering plan and full-time on-site Geologist may have provided a more realistic cost to successfully perform this project. Their overall exceptional understanding of the requirements may result in fewer and less costly contract modifications and delays, and ultimately may reflect smaller project time and cost growth at the end of the project. As a

² The SSEB and SSAC disagreed with the overall merit of FDS’s proposal under the past performance factor, with the SSEB assigning a satisfactory confidence rating to the firm’s proposal, and the SSAC upgrading the proposal’s adjectival rating to substantial confidence. After reviewing FDS’s past performance and comparing it to that of Kiewit, the SSA ultimately decided that a satisfactory confidence rating was warranted. AR, Tab 21, Source Selection Decision, at 12.

result of the preceding review and tradeoff analysis, [FDS] represents the overall best value to the Government for this solicitation.

AR, Tab 21, Source Selection Decision, at 15. After award of the contract, this protest followed.

DISCUSSION

Kiewit challenges various aspects of the evaluation of its proposal and that of FDS's proposal under the non-price factors. For example, the protester alleges no less than six instances of disparate treatment in the evaluation of its own proposal and that of FDS, several instances of evaluation errors under the experience and capability factor, and at least four instances where the agency unreasonably relied on discriminators between proposals. With respect to past performance, Kiewit argues that the agency unreasonably failed to consider certain adverse information in its evaluation of FDS's proposal, and relatedly, failed to consider the same adverse information in making its affirmative responsibility determination before awarding to FDS. The protester also challenges the evaluation of proposals under the price factor, arguing that the agency's price analysis of proposals was improper and that the agency conducted an improper price realism analysis. While we do not address all of the numerous arguments raised by the protester, we have considered each and find no basis to sustain the protest.

Technical Evaluation

Kiewit contends that the agency engaged in at least six instances of disparate treatment in evaluating its proposal compared to the evaluation of FDS's proposal. For example, Kiewit argues that the agency assigned a strength to FDS's proposal under the first evaluation factor (technical plan for excavation and earthwork) for including a comprehensive plan to protect aggregate stockpiles, but the agency unreasonably failed to assign Kiewit's proposal a commensurate strength. Supp. Protest at 18. In this regard, the protester points to two sections of its proposal entitled "Protection and Management of Stockpiles" and "Good Source of Clean Properly Stored Aggregates" as evidence of the firm's equally comprehensive plan. Id. at 18-19.

The agency responds that its "assessment of a strength for [FDS's] superior stockpile protection plan is consistent and substantiated by the record." Supp. Memorandum of Law (MOL) at 5. In discussing its evaluation of FDS's proposal, the agency argues that "FDS'[s] proposal for stockpile protection is demonstrably superior to Kiewit's" and acknowledges that while "Kiewit did submit a plan for stockpile protection, it did not include the same level of detail and specificity as FDS'[s] proposal." Id. at 6-7. The protester, for its part, cites to six areas of its own proposal that it argues supports the firm's allegation of disparate treatment (without providing context for any of the quoted sections) and responds, "there is clear support in the record that [the Corps] disparately evaluated Kiewit's and FDS'[s] proposals." Protester's Supp. Comments at 27-28.

In reviewing a protest challenging an agency's evaluation of proposals, our Office will not reevaluate proposals or substitute our judgment for that of the agency, as the evaluation of proposals is generally a matter within the agency's discretion. Del-Jen Educ. & Training Group/Fluor Fed. Solutions LLC, B-406897.3, May 28, 2014, 2014 CPD ¶ 166 at 8. Rather, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the evaluation factors set forth in the RFP, and whether the agency treated offerors equally in its evaluation and did not disparately evaluate proposals with respect to the same requirements. Marinette Marine Corp., B-400697 *et al.*, Jan. 12, 2009, 2009 CPD ¶ 16 at 11; Hanford Envntl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 4. A protester's disagreement with the agency's judgment does not render the evaluation unreasonable. STG, Inc., B-405101.3 *et al.*, Jan. 12, 2012, 2012 CPD ¶ 48 at 7.

Our review of the record does not provide any basis to question the agency's evaluation in this regard. Here, the protester's assertions of equivalency, buttressed only by direct quotations to its own proposal without explanation or context, do not provide our Office with a sufficient basis to conclude that the agency's evaluation was unreasonable. The sections of each offeror's proposal cited by the parties in support of their respective positions shows that they are, not surprisingly, different. The extent to which those differences translate qualitatively in the evaluation of proposals is primarily a matter of technical judgment within the agency's broad discretion. See Aerospace Control Products, Inc., B-274868, Jan. 9, 1997, 97-1 CPD ¶ 149 at 4. Kiewit has simply not met its burden of showing the agency's judgment was unreasonable.

For example, Kiewit challenges the assignment of a strength and significant strength assigned to FDS's proposal for a thorough plan and map explaining haul routes and use of an upstream berm to increase dam safety, respectively. Supp. Protest at 23. Kiewit argues that while it received a significant strength for its proposed haul roads, the significant strength was "lumped in" with its proposed "cofferdam," which the protester asserts was equivalent to FDS's upstream berm. *Id.* at 23-24. The protester concludes that this is evidence of disparate treatment, because its proposal should have received two separate strengths for each of the elements of its proposal as reflected in the agency's evaluation of FDS's proposal, instead of receiving only one significant strength. *Id.* at 24.

The agency responds that there was no disparate treatment. In this regard, the agency asserts that Kiewit proposed a cofferdam that would also act as a haul road, and assigned a significant strength "for improving dam safety during construction and efficiently planning their haul roads." Supp. MOL at 8. Thus, it appears that the significant strength was due to the multiple proposed uses of the cofferdam, itself. Contrasted with FDS's proposal, which not only received a strength for its proposed dam, but also received a strength for its proposed haul roads, which the agency asserts far exceeded the detail provided by Kiewit. *Id.*

As with Kiewit's complaint about aggregate stockpiles, our review of the record does not provide us with a basis to find the agency's evaluation unreasonable. In this regard, the

relevant portion of FDS's proposal does support the strength assigned, and a review of Kiewit's proposal does reveal differences between the information conveyed, particularly with respect to the map of the haul routes, which appears to be the focus of the strength. See Supp. Comments at 32-34 (citing to portions of Kiewit's proposal related to its proposed haul routes). We conclude that Kiewit's argument amounts simply to disagreement with the agency's reasonable technical judgment. Likewise, with respect to the various other arguments of disparate treatment raised by the protester, none of the instances raised has shown to be anything more than disagreement with the agency's reasonable evaluation. See Aerospace Control Products, Inc., supra.

Kiewit also challenges the evaluation of FDS's proposal under the experience and capability factor. The protester's principal argument in this regard is that the agency's evaluation of FDS's proposal under the experience and capability factor was unreasonable because it was inconsistent with the evaluation of FDS's proposal under the past performance factor.³ Protest at 13-14. In this regard, Kiewit essentially argues that because the agency did not find all of the projects relevant under the past performance factor, FDS could not have received an outstanding rating under the experience and capability factor. Id.

The agency responds first by defending the specific evaluation of FDS's proposal under the experience and capability factor. The Corps asserts that the factor permitted the evaluators, in essence, to more heavily weight projects demonstrating experience with a zoned embankment dam combined with a concrete spillway--projects which both Kiewit and FDS received strengths for submitting. Supp. MOL at 13. In this regard, the agency maintains that it examined the similarity of example projects under this factor, "specifically with an eye toward the advantageous treatment for projects with both a zoned embankment dam and concrete spillway," among other considerations. Id. at 14. The agency notes that while Kiewit received credit for the one project it submitted with such experience, FDS submitted at least three projects with similar experience, and was thus evaluated more favorably. Id. at 13-14.

³ Kiewit also argues that the agency improperly evaluated one of FDS's projects submitted under the experience and capability factor because the project was not also submitted under the past performance factor. Supp. Protest at 27-28. According to the protester, since the project was not submitted for evaluation under the past performance factor, by the terms of the solicitation it should not have been evaluated under the experience and capability factor. Id. at 28. This is a plain misreading of the solicitation. The RFP required offerors to submit under the past performance factor the same projects as submitted under the experience and capability factor. RFP at 79. There is, however, no commensurate requirement that projects submitted under the experience and capability factor be the same as those submitted under the past performance factor. See generally id. Therefore, we will not consider this allegation further.

With respect to the experience and capability factor, the RFP states that, “[t]he more similar the projects to this current project, the more favorable the rating. Example projects that demonstrate experience with a zoned embankment dam combined with a concrete spillway may receive a more favorable rating.” RFP at 81. Thus, consistent with the agency’s evaluation, the experience and capability factor explicitly permitted the evaluators to draw the distinctions the Corps did between Kiewit’s and FDS’s proposals with respect to combined embankment dam and concrete spillway experience. In response, Kiewit presses, arguing “[t]he point is that USACE [U.S. Army Corps of Engineers] has presented no basis to support its evaluation that FDS’s proposal under [the experience and capability factor] merited the highest rating when USACE determined under [the past performance factor] that several of the projects submitted by FDS were not that relevant to the present procurement.” Protester’s Supp. Comments at 44.

Contrary to Kiewit’s characterization of the record, however, the evaluators concluded that of the five projects submitted by FDS, one was a very relevant project, two were relevant and two were somewhat relevant projects. AR, Tab 21, Source Selection Decision, at 12. Thus, Kiewit’s allegation that several of the projects submitted by FDS were not that relevant to the present procurement is not supported by the record. Moreover, Kiewit seems to simply ignore the fact that the experience and capability factor and past performance factor were evaluated under different criteria, as discussed above. Our review of the record confirms the reasonableness of the agency’s evaluation in this regard.

Past Performance and Responsibility Determination

Kiewit challenges the evaluation of FDS’s past performance, arguing that the agency failed to consider relevant adverse information in evaluating the awardee’s past performance. Protest at 14. Specifically, the protester points to Dun & Bradstreet financial reports and alleged performance issues with two of the joint venture partners’ performance of contracts in the States of Florida and Utah. Id. at 14-15. Kiewit asserts that had the agency considered this information, FDS would have received a limited or no confidence rating. Id. at 15-16. Kiewit further argues that the agency erred in failing to consider the same information in making an affirmative determination that FDS is responsible. Id. at 16-17.

The agency responds that the determination of the relative merit and relevance of past performance, as well as sources of information considered are matters within the agency’s discretion. MOL at 13. Moreover, the agency asserts that Kiewit has not met the burden of showing that the information proffered was required to be considered by the agency’s evaluators. Id. With respect to responsibility, the agency argues that the contracting officer considered appropriate information, and made reasonable determinations with respect to the various aspects of FDS’s responsibility in accordance with Federal Acquisition Regulation (FAR) sections 9.103(b) and 9.104-1. Id. at 1-2. We agree.

Our Office examines an agency's evaluation of past performance to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations; however, the necessary determinations regarding the relative merits of offerors' proposals are primarily matters within the contracting agency's discretion. Advanced Envtl. Solutions, Inc., B-401654, Oct. 27, 2009, 2010 CPD ¶ 7 at 5. In this regard, our Office will not question an agency's determinations absent evidence that those determinations are unreasonable or contrary to the stated evaluation criteria. Id.

Here, the RFP required the agency to evaluate past performance references submitted by the offerors, and, additionally, gave the agency the discretion to consider information not provided by the offeror, such as PPIRS, FAPIIS and CPARS. RFP at 79-80. Moreover, aside from information submitted by the offeror in its proposal, the RFP did not require the agency to consider any specific source of information, including the Dun & Bradstreet reports proffered by the protester.⁴ The record shows that the agency considered the six projects submitted by FDS in its proposal under the past performance factor. AR, Tab 18, Final Revised SSEB Report at 69. The evaluators also considered information about FDS and the individual companies in the joint venture contained in PPIRS and CPARS. Id. The record also appears to confirm that the agency did not consider the information contained in the Dun & Bradstreet financial reports or the "readily-accessible" news clippings the protester contends should have been considered by the agency. Protest at 15.

We addressed similar arguments as those made by Kiewit in a recent decision by our Office, BillSmart Solutions, LLC, B-413272.4, B-413272.5, Oct. 23, 2017, 2017 CPD ¶ 325. In BillSmart, the protester alleged that the agency should have conducted "an independent review" of the awardee's performance of a prior contract, including considering news stories that were "easily accessible," "publicly-available," and "too close at hand" to ignore. Id. at 6. In that instance, we declined to find the agency's past performance evaluation unreasonable where, under similar solicitation language as here, the agency limited its review to information submitted in the awardee's proposal and other official government sources such as PPIRS. In Billsmart, we specifically found that the agency's evaluation was reasonable where it did not consider outside sources of information, such as news reports that were not known to the evaluators or involving the same services with the same contracting activity that awarded the contract. Id.

Here, as in BillSmart, we find the agency's evaluation unobjectionable. In this regard, the agency reasonably considered the information included in FDS's proposal, the

⁴ While the protester argues that Dun & Bradstreet reports "are one of the primary sources consulted by contracting agencies" and that "many contracting agencies now require" contracting officers to consider these reports in making their responsibility determinations, the protester does not cite to, nor could we locate, any regulatory requirements for the agency to consider these reports in assessing an offeror's past performance. Protester's Comments at 51-52.

evaluation of which the protester does not challenge. Moreover, the agency also considered other government sources specifically delineated in the RFP, such as PPIRS and CPARS, in its evaluation of FDS's past performance. AR, Tab 21, Source Selection Decision, at 11-12. Given that the agency was not required in its evaluation to consider the information proffered by Kiewit, we see no basis to question the agency's evaluation in this regard.

With respect to the protester's allegation that the agency conducted an unreasonable affirmative responsibility determination, we decline to consider the allegation further as the determination of a prospective contractor's responsibility rests within the broad discretion of the contracting officer, who, in making that decision, must necessarily rely on his or her business judgment. Rotech Healthcare, Inc., B-409020, B-409020.2, Jan. 10, 2014, 2014 CPD ¶ 28 at 4. While we may review allegations that identify evidence raising serious concerns that, in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation, such circumstances are not present here. 4 C.F.R. § 21.5(c); Active Deployment Sys., Inc., B-404875, May 25, 2011, 2011 CPD ¶ 113 at 2.

Price Evaluation

Kiewit alleges that the agency's price evaluation was flawed for two reasons. The protester argues that the agency's evaluation used unstated, hypothetical quantity overruns as part of its price analysis, which Kiewit asserts violated the terms of the solicitation. Supp. Protest at 6-7. Kiewit also argues that the agency conducted an improper price realism analysis. *Id.* at 7-11. The agency responds that it did not commit any errors in its price analysis and did not adjust any offeror's price or cost items in order to conduct a price realism analysis. The Corps maintains that it conducted its tradeoff based on the prices proposed by each offeror and not on any adjusted price. Supp. MOL at 16-17.

The manner and depth of an agency's price analysis is a matter within the sound exercise of the agency's discretion, and we will not disturb such an analysis unless it lacks a reasonable basis. Gentex Corp.--Western Operations, B-291793 *et al.*, Mar 25, 2003, 2003 CPD ¶ 66 at 27-28. It is up to the agency to decide upon the appropriate method for evaluation of cost or price in a given procurement, although the agency must use an evaluation method that provides a basis for a reasonable assessment of the cost of performance under the competing proposals. S. J. Thomas Co., Inc., B-283192, Oct. 20, 1999, 99-2 CPD ¶ 73 at 3. In reviewing a protest against the propriety of an evaluation, we will review an evaluation to ensure that it was reasonable and consistent with the evaluation criteria in the solicitation and applicable procurement statutes and regulations. Decisive Analytics Corp., B-410950.2, B-410950.3, June 22, 2015, 2015 CPD ¶ 187 at 11.

The record shows that the specific aspect of the price analysis of which Kiewit complains was directed by the SSAC to "determine the relative cost risk between

[Kiewit] and [FDS] based on the likelihood of quantity overruns for excavation of the Emergency Spillway” portion of the scope of work. AR, Tab 20, Final Revised SSAC Comparative Analysis Report, at 13. The impetus for this aspect of the evaluation was concern over cost increases related to Kiewit’s proposed prices “on certain high risk unit price CLINs [contract line item numbers] where estimated quantities are likely to increase.”⁵ Id. The evaluators’ analysis indicated that Kiewit’s proposal would increase in price depending on the actual quantities ordered under the emergency spillway CLIN.⁶ Id. The record also shows that the SSAC used this analysis solely as a component of its price analysis to determine whether FDS’s proposed price, which was the highest of all offerors, was fair and reasonable, and not as a component of its tradeoff decision between the proposals of Kiewit and FDS. Id. at 14.

We find the agency’s evaluation unobjectionable. The RFP states that proposed prices will be evaluated using price analysis, and that such analysis will be conducted in accordance with FAR part 15. RFP at 82. The FAR permits the use of various price analysis techniques and procedures to ensure fair and reasonable pricing, including the comparison of proposed prices to each other, to prices found reasonable on previous purchases, or to an independent government estimate. FAR § 15.404-1(b)(2); Comprehensive Health Servs., Inc., B-310553, Dec. 27, 2007, 2008 CPD ¶ 9 at 8. Contrary to Kiewit’s assertions, we see no reason why the use of “unstated, hypothetical quantity overruns as part of its price analysis,” even if true, would be contrary to the terms of the solicitation or the FAR. Supp. Protest at 6. Kiewit has simply not shown why the agency’s price analysis was improper when used as a technique solely to evaluate the reasonableness of FDS’s higher proposed price.

The record also does not support Kiewit’s contention that the agency conducted a price realism analysis. In this regard, where a solicitation contemplates the award of a fixed-price contract, an agency may provide in the solicitation for the use of a price realism analysis for the purpose of measuring an offeror’s understanding of the requirements or to assess price risk in its proposal. IBM Corp., B-299504, B-299504.2, June 4, 2007, 2008 CPD ¶ 64 at 10-11. Price risk in the context of a price realism analysis is an assessment of whether an offeror’s fixed price is so low that it creates a risk that the

⁵ In this regard, the solicitation included USACE Acquisition Instruction 5152.211-9001 Variations in Estimated Quantities, Subdivided Items (MAR 1995), which permitted variation from estimated quantities stated in the price schedule, including for the emergency spillway scope of work. RFP at 137-138.

⁶ Specifically, the “analysis concluded that a hypothetical 15% estimated quantity overrun on just the Emergency Spillway rock excavation would result in an increase of [Kiewit]’s price by approximately \$5 [million] more than [FDS]’s price due to [Kiewit] having a significantly higher unit price. The SSAC, using a more likely and smaller quantity overrun for the Emergency Spillway Rock Excavation, determined that [Kiewit]’s higher unit cost could result in a higher cost of \$2 [million]-\$3 [million] for this work.” Id.

firm cannot perform its proposed technical solution at the price offered. See NJVC, LLC, B-410035, B-410035.2, Oct. 15, 2014, 2014 CPD ¶ 307 at 8-9.

Here, the agency did not use the disputed price analysis as part of its evaluation of Kiewit's proposal to assess either the firm's understanding of the requirements or to determine whether there was any performance risk inherent in Kiewit's proposed price. Instead, the agency conducted its analysis only in the context of assessing the reasonableness of FDS's proposed price. AR, Tab 20, Final Revised SSAC Comparative Analysis Report, at 14. Once it had established the reasonableness of FDS's proposed price, the SSAC then proceeded to conduct a best-value tradeoff between Kiewit and FDS's proposals.

As part of this tradeoff, the record shows that the SSAC found that the "superior end product" offered by FDS "will provide significant cost savings to the government" that would exceed the 4.4 percent price premium in the firm's proposal. Id. at 15. Likewise, the SSA noted the SSAC's analysis and utilized it in determining FDS's proposed price to be fair and reasonable. AR, Tab 21, Source Selection Decision, at 14. The SSA similarly observed that FDS's risk identification and risk mitigation strategies were expected to provide significant cost savings, which would exceed the 4.4 percent price proposal difference "by minimizing change orders, rework, delays, and associated Government oversight costs." Id. at 15. In sum, the record does not support that the agency conducted an improper price realism analysis, as alleged by Kiewit.

Tradeoff Analysis

Finally, Kiewit challenges the agency's best-value tradeoff analysis, specifically arguing that the agency recognized three "irrational and baseless" discriminators in comparing its and FDS's proposals under the most important technical factor. Supp. Protest at 29-37. Specifically, the protester challenges the following discriminators recognized by the evaluators in FDS's proposal: FDS's proposed geologist as being more beneficial than Kiewit's proposed geotechnical engineer; FDS providing "superior understanding of the geologic and hydrogeologic site conditions at the Auxiliary Dam in their technical plan;" and the agency's "assessment of a discriminator in favor of FDS's dewatering plan." Id. at 34.

Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of technical and price evaluation results; price/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the evaluation criteria. Atteloir, Inc., B-290601, B-290602, Aug. 12, 2002, 2002 CPD ¶ 160 at 5.

First, for context, it should be noted that Kiewit only challenges three discriminators recognized by the SSA under one of the factors evaluated in the agency's tradeoff analysis. Also, as noted above, the SSA found FDS's technical proposal to be "far superior" to the proposal offered by Kiewit. AR, Tab 21, Source Selection Decision,

at 15. The record bears out this assessment in the sheer number of discriminators between the firms' proposals, not just under the technical plan for excavation and earthwork factor, but other factors as well. For instance, under the management approach factor, the SSA recognized that while both offerors provided exceptional approaches, FDS's proposed early finish date added significant value to the government. Id. at 9.

Under the experience and capability factor, as discussed, the evaluators recognized that FDS's proposal demonstrated more experience and capability than Kiewit on projects similar to this procurement. Id. at 10. The evaluators also recognized that FDS's "experience in earth and rockfill embankment dam and spillway construction, seismic dam remediation, and dewatering with a partial pool reservoir are a significant added value to the Government and are expected to greatly reduce risk for timely project completion." Id. With respect to the technical plan for concrete production and placement factor, the SSA recognized that while both offerors demonstrated an exceptional approach and understanding of the requirements, FDS's proposal contained two added benefits associated with the design of their concrete mixture and formwork added value and reduced performance risk. Id. at 11. Kiewit does not challenge any of these aspects of the evaluation.

With respect to the technical plan for excavation and earthwork factor, the agency recognized that FDS demonstrated a better understanding of the existing site conditions and the project requirements, offered an exceptional approach, and the many strengths in the firm's proposal resulted in a lower risk of unsuccessful performance to the government compared to the approach offered by Kiewit. Id. at 7. Yet Kiewit challenges only certain limited aspects of the evaluation, while the record shows that the agency's assessment of FDS's technical superiority was based on a broader assessment of the numerous strengths of each proposal under this factor.

Finally, with respect to the specific challenges to three of the various discriminators recognized by the evaluators, we find each to be without merit. While Kiewit devotes substantial argument to the relative merits of a geologist versus that of a geotechnical engineer, even going as far as to argue that "a geotechnical engineer is better suited to perform the work," such arguments address matters that are firmly within the technical expertise and discretion of the agency. Supp. Protest at 17-19; see also Aerospace Control Products, Inc., supra. Likewise with respect to the other two discriminators challenged by the protester--for the agency's recognition of FDS's superior understanding of the geologic and hydrogeologic site conditions and its dewatering plan--such arguments again address aspects of the technical evaluation that are within the agency's broad discretion and technical judgment, and miss the broader notion that the agency found FDS's proposal to be "far superior" than Kiewit's as a matter of technical merit. Based on our review, such a determination finds substantial support in the entirety of the record.

Here, the record shows that the source selection decision set forth a reasonable basis for a tradeoff that justified making award to a higher-rated, higher-priced offeror. In this

respect, where a solicitation emphasizes the greater importance of non-price factors over price, such as here, an agency has considerable discretion to award to a higher-rated offeror for a higher price. See WPI, B-288998.4, B-288998.5, Mar. 22, 2002, 2002 CPD ¶ 70 at 9-10. In sum, the record adequately supports the SSA's decision to award the Isabella Lake Dam Safety Modification Project contract to FDS.

The protest is denied.

Thomas H. Armstrong
General Counsel