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Decision

Matter of: Preferred Systems Solutions, Inc.

File: B-292322; B-292322.2; B-292322.3

Date: August 25, 2003

William L. Walsh, Jr., Esq., J. Scott Hommer III, Esq., and Benjamin A. Winter, Esq., Venable, Baetjer & Howard, for the protester.

J. Michael Slocum, Esq., Slocum & Boddie, for Aaron B. Floyd Enterprises, Inc., an intervenor.

Patricia A. Papas, Esq., Defense Information Systems Agency, for the agency.

Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Under procurement that gave technical factors more importance than cost, source selection decision selecting the low-priced, technically-inferior proposal as the best value, instead of the protester's higher-priced, higher-rated proposal, was not reasonably based, where the agency did not reasonably explain why the benefits associated with the evaluated technical superiority of the protester's proposal were not worth the price premium and where the source selection authority was not aware of the actual differences in costs that would be incurred under the competing proposals.

2. Protest that agency misevaluated proposals under a subfactor which contemplated a qualitative evaluation is sustained where the proposals received the same ratings, even though the supporting narrative indicated that there should be differences in the ratings.

DECISION

Preferred Systems Solutions, Inc. (PSS) protests the award of a contract to Aaron B. Floyd Enterprises, Inc. (ABF) under request for proposals (RFP) No. DCA100-03-R-4019, a small business set-aside issued by the Defense Information Systems Agency (DISA), for technical support services.

We sustain the protest.

The RFP, issued December 23, 2002, sought technical support services on behalf of the Joint Staff Support Center (JSSC) to support its Integrated Information Management System in the areas of operating systems software support, application support, security analysis and risk assessment, data communications installation and management, database management/administration, network monitoring/administration, visual information systems support, development and use of training materials for designated computer systems, and management of the training process within JSSC.¹ The defined work efforts under this contract were included in eight separate task orders: (1) installation and management of data communications networks, (2) systems administration support, (3) Global Command and Control System (GCCS) enterprise management services implementation, (4) Automated Information Systems security support, (5) visual information systems support, (6) Joint Operations Support Center GCCS Helpdesk Support, (7) GCCS and National Military Command Center user training support, and (8) Global Status of Resources and Training System applications user and operation support. Most of the tasks had a number of sub-tasks.

The RFP contemplated the award of an indefinite-delivery/indefinite quantity contract, under which either fixed-price, cost-reimbursement, or time-and-material task orders could be issued. The total amount of all task orders issued cannot exceed \$70 million over the base period plus six 1-year options.

The RFP provided for award to the offeror whose proposal “contain[ed] the combination of factors offering the best overall value to the Government” and that “[i]n making this evaluation, the Government is more concerned with obtaining superior technical skills than with making an award to the Offeror with the lowest proposed price.” RFP § M.3.c. The following factors and subfactors were listed in the RFP for proposal evaluation purposes:

Factor 1: Task Order Competence (Technical Solutions)

Sub-factor A: Corporate Experience

Sub-factor B: Key Personnel Experience

Sub-factor C: Labor Mix Analysis

Factor 2: Corporate Past Performance²

¹ JSSC provides operation, systems maintenance, deployment and direct customer support of information systems to support the Joint Staff, the Unified and Specified Commands and the Office of the Secretary of Defense.

² Under the corporate past performance factor, the elements to be evaluated were personnel/staffing, cost control, schedule, quality, and business relations.

Factor 3: Cost and Price

RFP § M.4.1.a. Task order competence was the most important evaluation factor,³ which was followed by corporate past performance, which was followed by cost/price. The task order competence and corporate past performance factors were also assessed for risk (high, moderate, or low), considering the “potential for disruption of service, degradation of performance, the need for increased Government oversight, as well as the likelihood of unsuccessful contract performance.” RFP § M.4.1.e.

The RFP explained that the evaluation of the task order competence factor would be based on the offeror’s response to the eight task orders, including each sub-task. Each offeror was required to provide a technical solution to each task and sub-task by proposing the appropriate operational, engineering, and associated direct support. For the corporate past performance factor, offerors were to identify no more than three relevant contracts performed during the past 3 years.

Cost and price proposals were requested in two forms. First, in section B of the RFP, offerors were to submit fixed rates for 16 labor categories for the base and each option period. The agency specified the total hours and labor mix for these labor categories, which represented the government’s estimated total contract effort for all eight tasks. In addition, each offeror had to submit a separate cost proposal for each task, under which each offeror was to propose its own labor mix and level of effort for each task. The RFP explained that “[s]ection B and the task order spreadsheets shall enable the Government to establish a yearly total amount for each Offeror covering all initial task orders as well as for all contract types (enabling the Government to decide which contract type to select for each task order) . . .” RFP § L.13.c. To determine the evaluated cost, “[t]he total price of each Task Order is . . . added to the Section B cost to compute the total price.” RFP § M.4.2. “Offerors will be evaluated based on cost reasonableness, cost realism, affordability, and overall total of the base/option periods to the Government based on prices in Section B and for the task orders for the specified task order performance period.” Id.

Five offerors, including PSS and ABF, submitted proposals in response to the RFP by the January 30, 2003 closing date. A source selection evaluation board (SSEB) evaluated the proposals under the task order competence factor, a past performance evaluation board (PPEB) evaluated proposals under the corporate past performance factor, and a cost team evaluated the proposed prices and costs. After the initial evaluation, the agency established a competitive range composed of PSS’s and ABF’s proposals. DISA conducted written discussions tailored to the weaknesses and

³ Within the task order competence factor, the corporate experience and key personnel experience subfactors were “comparatively equal” in value, and the labor mix analysis subfactor was of less importance.

strengths identified in each offeror's proposal. ABF's discussions related to six items involving corporate experience, security, labor mix, direct labor categories, proposed labor categories, and cost. PSS received discussions related to three items: security, direct labor categories, and direct labor rates.⁴ See Agency Report, Tab 8, Discussion Questions.

Final proposal revisions were submitted by each offeror, which were rated as follows:⁵

	Factor 1 – Task Order Competence	Factor 2 – Past Performance	Cost/Price
PSS	Blue	Blue	<u>Section B Price Total</u> [DELETED] <u>Task Order Total Cost</u> [DELETED] <u>Total Cost/Price</u> [DELETED]
ABF	Green	Blue	<u>Section B Price Total</u> [DELETED] <u>Task Order Total Cost</u> [DELETED] <u>Total Cost/Price</u> [DELETED]

Agency Report, Tab 13, SSAC Report at 3-5.

To arrive at its ratings, the SSEB rated each task and sub-task response of the offerors. It supported its ratings in detailed "official consensus reports" and "evaluator summary reports," which documented the basis for each rating, including

⁴ We find no merit to the protester's contention that it did not receive meaningful discussions because it did not receive any questions related to cost/price, as did ABF. The record shows that DISA conducted discussions pertaining to the weaknesses found in PSS's proposal, which did not include any related to cost/price, whereas ABF's proposal raised questions in the cost/price area.

⁵ The non-cost factors and subfactors were evaluated under a color-coded rating scheme with possible ratings of blue (proposal exceeds requirements and clearly demonstrates the offeror's capability to deliver exceptional performance), green (proposal is satisfactory and the offeror is capable of meeting performance requirements), yellow (minimally adequate proposal), orange (inadequate proposal), and red (highly inadequate proposal).

a detailed discussion of the strengths and weaknesses under each task and sub-task.⁶ PSS's proposal received blue/low risk ratings for [DELETED] of the 8 tasks and [DELETED] of the 24 sub-tasks and green/low risk ratings for [DELETED] of the tasks and [DELETED] of the subtasks; the SSEB found that its proposal exceeded most statement of work requirements. ABF's proposal received blue/low risk ratings for [DELETED] of the tasks and [DELETED] of the sub-tasks and green/low risk ratings for [DELETED] of the tasks and [DELETED] of the subtasks.

The source selection advisory council (SSAC) reviewed the SSEB's and PPEB's evaluation results, as well as the evaluated cost/price, and recommended award to ABF. None of the specific strengths identified by the SSEB in distinguishing the proposals was mentioned in the SSAC report. Although the SSAC recognized PSS's higher rating and summarized the proposal ratings under each task, it concluded that "[c]learly, either offeror can successfully provide [the] services." Agency Report, Tab 13, SSAC Report, at 3. The SSAC's "best value" analysis stated:

As the evaluated ratings of the technical factors and the past performance factors for the two Offerors become closer, the cost proposal takes on greater weight. Although the technical proposal of [PSS] was more highly rated (receiving a score of Blue) than that [of ABF] (receiving a score of Green), the technical advantages noted in the [PSS] proposal did not merit the difference in price. Therefore, the cost/price proposed became the discriminating factor in the source selection decision recommendation.

Id. at 6. No further elaboration was contained in the SSAC Report as to the nature of PSS's technical advantages or why they did not merit the payment of the associated cost/price premium.

After being briefed by the SSAC Chair, the source selection authority (SSA) selected ABF's proposal for award. In doing so, the SSA highlighted ABF's proposal's total evaluated price of "[DELETED] . . . derived by using the Section B and Task Order pricing" and PSS's total evaluated price of [DELETED], derived in the same manner. See Agency Report, Tab 14, Source Selection Decision Memorandum, at 2-3. The SSA also concluded that both proposals "met" the requirements, with ABF's proposal receiving a green rating and PSS's proposal a blue rating for the task order competence factor. Both proposals were found to contain "numerous strengths" under this factor: ABF--"most notably addressing the [DELETED]" and PSS--"[DELETED]." The SSA then stated that both proposals were "highly rated" with "low risk," and that "[d]ue to the nearly equivalent ratings in the non-cost areas, the

⁶ Similarly, the PPEB prepared a detailed report supporting the blue ratings of the two competitive range offerors.

cost proposed took on greater weight in the best-value analysis.” Id. at 3. Based on this analysis, the SSA selected ABF as the best value.

Award was made to ABF on May 6 and this protest followed.⁷ PSS’s protest challenges the agency’s cost/technical tradeoff decision, arguing that it was undocumented, did not consider PSS’s evaluated technical advantages and superiority, and gave too much weight to cost/price in contravention of the RFP’s evaluation scheme, which indicated that the government was more concerned with obtaining superior technical skills than selecting the lowest-priced proposal. PSS also contends that, in making the cost/technical tradeoff determination, the SSA improperly considered only the total costs of the aggregate of the offerors’ section B and task order pricing, which inflated the actual cost difference between the two proposals; PSS argues that the actual cost/price difference between the proposals was not [DELETED] as stated in the source selection document, but was actually only approximately [DELETED].

In a negotiated procurement, contracting officials have broad discretion in determining the manner and extent to which they will make use of technical and cost results. PharmChem Labs., Inc., B-244385, Oct. 8, 1991, 91-2 CPD ¶ 317 at 4. Federal Acquisition Regulation (FAR) § 15.308 states:

The [SSA’s] decision shall be based on a comparative assessment of proposals against all source selection criteria in the solicitation. While the SSA may use reports and analyses prepared by others, the source selection decision shall represent the SSA’s independent judgment. The source selection decision shall be documented, and the documentation shall include the rationale for any business judgments and tradeoffs made or relied on by the SSA, including benefits associated with additional costs. Although the rationale for the selection decision must be documented, that documentation need not quantify the tradeoffs that led to the decision.

An agency which fails to adequately document its source selection decision bears the risk that our Office may be unable to determine whether the decision was proper. While source selection officials may reasonably disagree with evaluation ratings and results of lower-level evaluators, they are nonetheless bound by the fundamental requirement that their own independent judgments be reasonable, consistent with the stated evaluation factor and adequately documented. Johnson Controls World Servs., Inc., B-289942, B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6.

⁷ On May 22, DISA determined that urgent and compelling circumstances justified continuing with performance under the contract, notwithstanding this protest.

Moreover, the propriety of a cost/technical tradeoff turns not on the difference in technical score, per se, but on whether the contracting agency's judgment concerning the significance of that difference was reasonable in light of the solicitation's evaluation scheme. Where cost is secondary to technical considerations under a solicitation's evaluation scheme, as here, the selection of a lower-priced proposal over a proposal with a higher technical rating requires an adequate justification, i.e., one showing the agency reasonably concluded that notwithstanding the point or adjectival differential between the two proposals, they were essentially equal in technical merit, or that the differential in the evaluation ratings between the proposals was not worth the cost premium associated with selection of the higher technically rated proposal. Where there is inadequate supporting rationale in the record for a decision to select a lower-priced proposal with a lower technical ranking notwithstanding a solicitation's emphasis on technical factors, we cannot conclude that the agency had a reasonable basis for its decision. MCR Fed., Inc., B-280969, Dec. 14, 1998, 99-1 CPD ¶ 8 at 5.

Here, as noted above, the SSA's and SSAC's source selection documents reflecting the agency's best-value analysis did not include any meaningful analysis of the differentiating features of the two proposals upon which the SSA based the cost/technical tradeoff. Although the SSA and SSAC acknowledged PSS's proposal's technical superiority under the task order competence factor, there was no analysis as to why the well-documented technical superiority of PSS's proposal with its attendant advantages was not worth the associated cost/price premium. Instead, the source selection document simply concluded that the proposals had "nearly equivalent ratings in non-cost areas," with no analysis discussing the SSEB report justifying PSS's proposal's superior technical rating. The general statements in the SSAC's and SSA's source selection documents as to why PSS's technical superiority did not offset the price/cost premium fall far short of the requirement to justify cost/technical tradeoff decisions. See Johnson Controls World Servs., Inc., supra, at 7.

To address the protester's specific arguments challenging the cost/technical tradeoff, DISA, in its second supplemental report, filed over 2 months after the protests were filed, provided a declaration prepared by the Chairman of the SSAC purporting to describe, for the first time, the SSAC's contemporaneous deliberations in this matter. This declaration discussed three examples of tasks where PSS's proposal received a blue rating, explaining why, in the SSAC's view, the innovations proposed by PSS to do more than specifically required by the statement of work were not of great value or did not warrant any increased expenditure, and asserting that the SSAC did a similar analysis in determining that the advantages offered by PSS did not offset ABF's cost/price advantage. Second Agency Supplemental Report, Tab 35, Declaration of SSAC Chairman. While we consider the entire record, including the statements and arguments made in response to a protest, in determining whether an agency's selection decision is supportable, we accord greater weight to contemporaneous source selection materials rather than documents, such as the

SSAC's Chairman's declaration, prepared in response to the protest. Johnson Controls World Servs., Inc., *supra*. Because of this late-breaking evidence, we convened a hearing to take testimony from the SSEB Chairman, SSAC Chairman and SSA regarding the source selection decision.

The record, including the hearing testimony, established that, even assuming that the reasons advanced in the SSAC Chairman's declaration for finding the specific strengths/advantages in PSS's technical approach were not of great value or did not warrant additional expenditures were well founded—an analysis not evident in the contemporaneous SSAC evaluation documentation—the SSA responsible for the decision was not cognizant of this analysis.⁸ The record established that the SSA relied exclusively on the SSAC's Chairman's briefing, which included the SSAC's report and attached briefing charts, and did not independently review any of the underlying documentation to make her best-value analysis and source selection decision. *See* Hearing Transcript (Tr.) at 277-79. As indicated above, this documentation did not reasonably support the cost/technical tradeoff.

There was an oral briefing of the SSA by the SSAC as well. However, neither the SSA's nor the SSAC's Chairman's testimony established that the SSA was provided with any detailed discussion as to why the identified strengths and superiority in PSS's proposal were not worth the cost/price premium. For example, the SSA testified that she did not receive any detailed information concerning the technical merits of the proposals at this briefing and that regarding the cost/technical tradeoff analysis what she recalled was "[o]ne offeror was technically rated higher than another offeror, but because they were both acceptable and because there was a significant difference in cost, the recommendation was made to go with the lower technical lower cost [proposal]." *See* Tr. at 277-78, 282, 285-86. The SSAC Chairman confirmed that in discussing the matter with the SSA, he did not attempt to differentiate in detail the underlying basis for the cost/technical tradeoff as reflected in his subsequent declaration, but only discussed the process and the basis for the decision in general terms.⁹ *See* Tr. at 58-62, 66. Thus, the record shows that the SSA did not have a reasonable basis for the cost/technical tradeoff.

⁸ To the extent that the agency has offered the SSAC's Chairman's declaration and testimony as support for the reasonableness of the source selection decision, we note that this information is only evidence of the SSAC's Chairman's considerations, not the SSA's, but it is the SSA who is the agency official that should have engaged in some consideration of the relative merits and costs of the competing proposals and arrived at a reasonable conclusion regarding which of the competing proposals represented the best value to the government. Thus, the declaration may not properly support the otherwise undocumented decision. *See Beacon Auto Parts*, B-287483, June 13, 2001, 2001 CPD ¶ 116 at 8.

⁹ The SSAC Chairman testified that he attempted to objectively quantify the advantages flowing from PSS's higher ratings, but abandoned this effort because it
(continued...)

The record provides a basis for concern about the cost/technical tradeoff analysis here beyond the lack of documentation. Specifically, the record raises concern about how the agency took cost into account in that analysis, how the agency considered the evaluated technical superiority of PSS's proposal in its analysis, and whether the source selection decision was consistent with the RFP's weighting of technical and cost factors.

Agencies have considerable discretion in determining the particular method used in evaluating cost or price; however, the method used should, to the extent possible, accurately measure the cost to be incurred under competing proposals. Eurest Support Servs., B-285813.3 et al., July 3, 2001, 2003 CPD ¶ __ at 7. Where the SSA bases his source selection decision on figures that do not reasonably represent the differences in costs to be incurred under competing proposals, this source selection is not reasonably based. See Gemmo Impianti SpA, B-290427, Aug. 9, 2002, 2002 CPD ¶ 146 at 5-6.

The RFP's cost/price evaluation scheme essentially provided for adding two different costs/prices (by Section B rates and by task orders) for performing the same eight tasks in order to determine the total evaluated cost/price, essentially doubling the actual contemplated costs under the contract. This resulted in an evaluated cost/price well in excess of the contractual cost ceiling of \$70 million. In fact, the record shows that the actual cost difference between the competing proposals was only approximately [DELETED], rather than the [DELETED] reflected in the source selection document.

While this evaluation scheme cannot be timely challenged because it was expressly disclosed in the RFP and was not protested prior to the closing date for receipt of initial proposals, Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2003), we do not believe that the agency could rationally treat the essentially doubled costs as the actual expected cost of performance—or, of greater relevance here, that it could treat the double-counted difference between the cost of the two proposals as the actual expected cost of obtaining the evaluated technical superiority of PSS's proposal. The record shows that the SSA apparently was not cognizant that utilizing the evaluation scheme does not reasonably represent the differences in cost to be incurred under competing proposals when she made her source selection decision. Although the SSAC Chairman testified that in considering costs the SSAC did focus on the approximate [DELETED] differential (that is, with the double counting

(...continued)

was “difficult if not impossible” to quantify these advantages; that this was an “agonizing” process which took approximately 10 days. See Tr. at 55-56, 64, 67-68. However, the SSA testified that she had no recollection of being made aware of the difficulties of making a cost/technical tradeoff. See Tr. at 275-76.

eliminated), and this factor was made known to the SSA, Tr. at 30-31, 33, 60-61, the record does not indicate that the SSA was aware of this fact. The only cost/price figures mentioned in the source selection document were the aggregate Section B and Task Order pricing totals ([DELETED] and [DELETED]) (that is, reflecting double counting). Moreover, the SSA testified that she considered that the delta between the two proposals was [DELETED] in making her cost/technical tradeoff.¹⁰ Tr. at 241, 244, 279-80. Since the record shows that the SSA apparently was not cognizant of the double-counting nature of the cost evaluation scheme, which exaggerated the actual cost difference between the competing proposals, we cannot find the cost/technical tradeoff was reasonably based.

Moreover, the source selection documents, and testimony of the SSA and SSAC Chairman suggest that the agency may have improperly converted the source selection to one based upon technical acceptability and low price, instead of one emphasizing technical superiority and skills as announced in the RFP evaluation scheme. An agency does not have the discretion to announce in the solicitation that it will use one evaluation plan, and then follow another; once offerors are informed of the criteria against which their proposals will be evaluated, the agency must adhere to those criteria in evaluating proposals and making its award decision, or inform all offerors of any significant changes made in the evaluation scheme. Dewberry & Davis, B-247116, May 5, 1992, 92-1 CPD ¶ 421 at 5.

The SSA's source selection document contains the statement "[d]ue to the nearly equivalent ratings in the non-cost areas, the cost[s] proposed and evaluated took on greater weight in the best value analysis," even though the record contradicts that the ratings were nearly equivalent.¹¹ This evidences that cost has become the predominant basis for award. This is consistent with the SSA's testimony that she understood that PSS's proposal was superior, but the selection was made based on

¹⁰ As indicated above, in her testimony, the SSA stated that the cost difference was "significant" and indicated that this became the determining basis for award. Tr. at 285-86.

¹¹ As indicated above, ABF's and PSS's proposals were not rated "nearly equivalent" in the non-cost areas. PSS's proposal received the highest rating under the most important technical factor, while ABF was rated only green under this factor. The agency does not argue that these ratings were not justified. As noted previously, the SSEB found that this rating was justified because PSS's proposal exceeded the requirements, and possessed superior experience. Indeed, the SSAC Chairman's declaration and testimony confirmed that PSS's blue rating was not unfounded or illusory, but was based on offering "innovative approaches to improving the JSSC processes and operations." Second Supplemental Agency Report, Tab 35, Declaration of SSAC Chairman. Tr. at 42, 45-48.

low cost because both offers were “acceptable” and because she believed that there was a “significant difference in cost.” Tr. at 285-86.

The SSAC Chairman, while acknowledging the technical superiority of PSS’s proposal, testified that the case could not be made for paying the additional cost because objectively quantifying the advantages in dollar terms was “nearly difficult and next to impossible.”¹² See Tr. at 55-56, 68. This is not a reason for failing to perform a cost/technical tradeoff. First, FAR § 15.308 expressly states that a cost/technical tradeoff need not be quantified.¹³ More fundamentally, however, a cost/technical tradeoff requires a comparative assessment of the proposals considering all of the stated selection criteria, even where the value of a technically superior proposal cannot be quantified. Beacon Auto Parts, *supra*, at 7; see Clean Venture, Inc., B-284176, Mar. 6, 2000, 2000 CPD ¶ 47 at 7 (agency reasonably found that awardee’s more desirable past performance was worth price premium). An agency cannot avoid making a cost/technical tradeoff analysis because of its difficulty, especially where it has encouraged offerors to compete on the basis of technical superiority. See Sturm, Ruger & Co., Inc., B-250193, Jan. 14, 1993, 93-1 CPD ¶ 42 at 4-5.

¹² The SSAC Chairman’s requested the SSEB Chairman for support justifying the award to the technically superior PSS proposal prior to briefing the SSA with regard to the source selection, stating “I do not possess the understanding/knowledge of what is required upon which a survivable ‘best value’ argument can be based.” In response, the SSEB Chairman provided several concrete examples of what he believed were cost savings under the task orders that could be associated with the technical superiority of PSS’s proposal. See Agency Report, Tab 33, SSAC Chairman’s Request for and SSEB Chairman’s Analysis of Strengths in PSS’s Proposal. While at the hearing, the SSAC Chairman testified that he discounted the SSEB Chairman’s advice because he did not believe that the assumptions that the new creative and innovative processes that were being proposed by PSS would result in cost savings were credible (“My experience has been you don’t realize cost savings by instituting new and creative processes.”), see Tr. at 42-44, there was no contemporaneous evidence of the SSAC’s discounting the SSEB’s analysis, nor is there any indication that the SSA was apprised that the SSEB Chairman believed that the strengths in PSS’s proposal would result in cost savings, which the SSAC discounted. See Tr. at 275-76, 279-82.

¹³ As indicated above, the record shows that the SSAC Chairman acknowledged that he lacked the understanding/knowledge of what is required for a survivable cost/technical tradeoff, which was apparently why he believed that an objective quantification of the benefits of PSS’s technical superiority was required. See Agency Report, Tab 33, SSAC Chairman’s Request for and SSEB Chairman’s Analysis of Strengths in PSS’s Proposal.

Furthermore, the SSAC Chairman testified that various budgetary considerations made it difficult to justify spending more money for the additional capabilities reflected in PSS's proposal, when ABF's lower-priced proposal was acceptable. See Tr. at 89-90. Based on the foregoing, it appears on this record that the agency may have improperly converted the procurement from one which gave greatest weight to technical factors, to one based upon technical acceptability and low cost.

In sum, we find that the record does not reasonably support the cost/technical tradeoff and sustain the protest on this basis.

We also find meritorious PSS's challenge to the reasonableness of the agency's evaluation under the labor mix subfactor of the task order competence factor, under which PSS's and ABF's proposals both received green ratings for each of the eight tasks. This challenge primarily stems from the Declaration of the SSEB Chairman in response to the protest in which he states:

[T]he Labor Mix subfactor did not receive more than a green rating [on] any offeror[']s proposals during this evaluation. This is due to a number of inherent attributes to this subfactor. First, the specific nature of the work being solicited presents a limited number of possible staffing solutions. In addition, the labor categories specified in the RFP further limited possible responses. This subfactor was being used to assess the offeror[']s understanding of the work activities and the application of resources to accomplish this work. Since the understanding of the work is not inherently something that can be "exceeded", a green rating was given if the offeror showed sufficient understanding to perform the requirement.

Agency Report, Tab 23, SSEB Chairman's Declaration, at 2. PSS maintains that if the agency had not "capped" possible ratings under this subfactor at the "green" level, as the declaration indicated was done, and if the offerors' various labor mixes had been comparatively evaluated, PSS's proposal would have received a blue rating under this subfactor.

At the hearing, the SSEB Chairman explained that this statement, which was meant to offer an explanation as to why the proposals both received a green rating under this subfactor, was simply inartfully drafted, and that this subfactor was reasonably evaluated by the SSEB. See Tr. at 307-09.

However, our review of the contemporaneous SSEB evaluation, where both proposals uniformly received a green rating for this subfactor under each of the eight tasks, does not support the reasonableness of the SSEB's evaluation under this subfactor. For example, despite rating PSS's proposal green (acceptable) under this subfactor for each task, the SSEB stated in its Official Consensus Report for PSS's Proposal with regard to certain tasks: "Exceptional Labor mix" and "Offeror's Labor

Mix exceeds our requirements as outlined in the [statement of work]”—statements that suggest a blue rating should have been awarded for this subfactor under these tasks. Agency Report, Tab 9, SSEB Official Consensus Report for PSS’s Proposal, at 11, 15. The record thus evidences that the evaluation of this subfactor may have essentially been done on a “go/no go” basis in derogation of the evaluation scheme, which contemplated a comparative evaluation under this subfactor. While procuring agencies have broad discretion in determining the evaluation plan they use, they do not have the discretion to announce in the solicitation that a factor will be evaluated for technical merit on a comparative basis and then evaluate the factor on a go/no go basis. See Trijicon, Inc., B-244546, Oct. 25, 1991, 91-2 CPD ¶ 375 at 5-7. We therefore sustain the protest on this basis as well.

PSS raises numerous other protest issues concerning the propriety of the evaluation of the proposals. While not all of these issues are herein discussed, we have reviewed them and find them meritless.

For instance, PSS maintains that the agency should have downgraded ABF’s proposal in the risk assessment based upon the risk associated with transitioning to another contractor from the incumbent, particularly since the RFP at section H.32 identified transition as a concern. The agency, however, advises that the risks associated with the ABF non-incumbent proposal were considered, but assessed as being low risk because the “Offeror demonstrated a good understanding of all task areas and provided an all-around solid proposal with no significant weaknesses.” Agency Report at 30; Tab 9, Official Consensus Report for ABF’s Proposal, at 1. We see nothing unreasonable with the agency’s determination in this regard, given the quality otherwise associated with ABF’s proposal.¹⁴

PSS also challenges the agency’s evaluation of the corporate past performance factor, where the agency gave the prime contractor references equal weight to that given to the totality of the subcontractor references. The evaluation of past performance is a matter within the discretion of the contracting agency. In reviewing an agency’s evaluation of past performance, we will not reevaluate proposals, but instead will examine the agency’s evaluation to ensure that it was reasonable and consistent with the solicitation. Sterling Servs., Inc., B-286326, Dec. 11, 2000, 2000 CPD ¶ 208, at 2-3. Here, the RFP specifically advised that the government would assess the offeror’s capability by evaluating the offeror’s past performance as a prime contractor. See RFP § M.4.2.a. Thus, we believe the agency’s method of evaluating past performance, which attached more weight to the offerors’ prime contract past performance record than that of each of the individual

¹⁴ We find no merit to the protester’s contention that ABF engaged in a “bait and switch” tactic by allegedly proposing personnel it did not intend to utilize, inasmuch as ABF proposed that it planned to hire incumbent personnel where appropriate. See Agency Report, Tab 5, ABF’s Final Proposal Revision at 18.

subcontractors, was reasonable and consistent with the evaluation scheme. We have also considered PSS's other allegations challenging the evaluation of this factor, and find the agency's evaluation to be reasonable.¹⁵

PSS also challenges the reasonableness of the agency's cost evaluation. For example, PSS asserts that the RFP required offerors' labor rates to be fully burdened, but ABF submitted labor rates based on the "Economic Research Institute Salary Assessor" (ERISA),¹⁶ which assertedly did not include fringe benefits, yet the agency did not consider this in the cost evaluation. We find no merit to this contention. ABF's proposal specifically states that its direct labor rates include a fringe benefit rate of [DELETED] percent. See Agency Report, Tab 5, ABF Proposal, vol. III, at 1. Moreover, DCAA examined these proposed labor rates and found them acceptable. Based on our review, we find the agency's cost evaluation to be reasonable.

The protest is sustained.

In view of its budgetary concerns, we recommend that DISA consider whether or not the solicitation emphasizing technical skills over low price adequately described the agency's needs. If the terms in the solicitation do not, then the agency should amend the solicitation, reopen discussions if appropriate, obtain revised proposals, and make a new source selection. If the solicitation's terms are appropriate, we recommend that the agency reevaluate proposals under the labor mix analysis subfactor of the task order competence factor, and make and document a reasoned source selection determination in accordance with the stated evaluation factors for award. If a firm other than ABF is selected for award, we recommend that the agency either terminate ABF's contract, or, if more appropriate in light of the state of contract performance at the time, not exercise the remaining options under ABF's contract, and make an award for the remaining period of performance to the

¹⁵ For example, PSS argues that the agency's evaluation was unreasonable because it did not consider a Department of Defense (DoD) Inspector General (IG) report that assertedly evidenced that a principal contract relied upon by ABF reflected poor performance. Our review does not confirm the validity of this assertion or that the agency was required to lower ABF's past performance score on the basis of this report. As noted by the agency, the DoD IG report audited the overall GCCS system, not ABF's contract specifically, and the report does not conclude that ABF performed poorly on this contract. On the other hand, the agency has produced information indicating that ABF's performance under this particular contract was highly successful.

¹⁶ The ERISA is a database, which contains mean wage and salary information on various job categories, that can be utilized as guidance for developing labor rates.

successful offeror.¹⁷ We also recommend that the agency reimburse PSS the reasonable costs of filing and pursuing the protest, including attorneys' fees. 4 C.F.R. § 21.8(d)(1). PSS's certified claim for costs, detailing the time spent and the costs incurred, must be submitted to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Anthony H. Gamboa
General Counsel

¹⁷ Because the agency overrode the automatic stay on the basis of urgent and compelling circumstances, we take the ongoing performance into account in our recommendation.