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Decision

Matter of: Cherry Road Technologies; Electronic Data Systems Corporation

File: B-296915; B-296915.2; B-296915.3; B-296915.4; B-296915.5

Date: October 24, 2005

Devon E. Hewitt, Esq., John E. Jensen, Esq., Walter F. Zenner, Esq., Daniel S. Herzfeld, Esq., Jack Y. Chue, Esq., and Orest J. Jowyk, Esq., Pillsbury Winthrop Shaw Pittman LLP, for Cherry Road Technologies; Scott M. McCaleb, Esq., Rand L. Allen, Esq., Charles C. Lemley, Esq., and William J. Grimaldi, Esq., Wiley Rein & Fielding LLP, for Electronic Data Systems Corporation, the protesters. David A. Churchill, Esq., Kevin C. Dwyer, Esq., Kristen G. Schulz, Esq., Darren Lubetzky, Esq., and Heather M. Trew, Esq., Jenner & Block LLP, for Lockheed Martin Integrated Systems & Solutions, an intervenor. Capt. Peter G. Hartman and Raymond M. Saunders, Esq., Department of the Army, for the agency. Sharon L. Larkin, Esq., Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging awardee's use of leased government facilities is denied, where solicitation did not preclude the use of leased government facilities but stated only that agency would not be providing facilities as "government furnished property" under this contract.
2. Protest contending that agency failed to eliminate the awardee's competitive advantage from using leased government facilities as assertedly required by Federal Acquisition Regulation (FAR) Part 45 is denied because FAR Part 45 does not apply to leases that are executed pursuant to statutory leasing authority, and unfair advantage does not otherwise exist because leases were executed at fair market value.
3. Protest challenging source selection decision and evaluation ratings under each evaluation factor is denied, where the record demonstrates a reasoned and rational evaluation, and protesters' arguments amount to mere disagreement with the agency's conclusions.

DECISION

Cherry Road Technologies (CRT) and Electronic Data Systems Corporation (EDS) protest the award of a contract to Lockheed Martin Integrated Systems and Solutions (LM) under the Department of the Army's request for proposals (RFP) No. W91QUZ-05-R-0001 for the operation and maintenance of the Army Knowledge Online (AKO) enterprise information portal.

We deny the protests.

BACKGROUND

The AKO was started as a pilot program in 1997 as the first step in building the Army intranet to provide Army personnel with web-based access to job-related, mission-oriented knowledge in real time. The program has been so successful that the Secretary of the Army has mandated that all data, information, and systems be moved to this portal. The ultimate goal of the AKO is to become the single point of entry into a robust and scalable knowledge management system "providing global secure access to accurate, relevant, and authoritative information at anytime, from anywhere to ensure mission success." RFP, Statement of Objectives (SOO), § 1.0.

The RFP sought a contractor to provide Information Technology (IT) solutions throughout all operating levels of the AKO. RFP § B.1. These services included systems operation and maintenance, network and systems engineering support, hardware and software integration, identification of future capabilities, software development and maintenance, application development and maintenance, Army-wide help desk support, and senior-level technology and program management support services. The RFP required that the services be provided on a continuous 24 hours, 7 days a week, 365 days a year basis to the Active Army, Army National Guard, and Army Reserve soldiers and their families; Army civilians; and applicable contractors. RFP, SOO, § 2.0

The RFP contemplated that the services would be provided in two "blocks." "Block A" identified required services for "support and administration," and included program management and responsibility for future system design work. "Block B" identified optional services for "operations and maintenance," and included operating primary and secondary data centers. The performance of Block A (the required services) was scheduled to commence on October 1, 2005, with the performance of Block B (the optional services) to begin no earlier than October 1, 2006. RFP § B.1.e. The Army explains that the lag in time was due to the fact that Block B services are currently being performed by CRT under an existing contract that is not set to expire until October 1, 2006.

Under its existing contract, CRT provides AKO services from two sites--a primary site on Fort Belvoir, Virginia and a secondary site in [REDACTED]. Hearing Transcript (Tr.) at 73-74.¹ The Fort Belvoir site is being provided to CRT as government furnished property (GFP) under that contract. Army Hearing exh. 4, IT Services Statement of Work, § F. In discussing these sites, the RFP provided:

Offerors must keep in mind, while considering their solution for the Block B option, that when the CRT contract expires or is otherwise terminated, that 100% of the Secondary Site (including the facility) and 80% of the Primary Site is owned or leased by Cherry Road and will no longer be available for use. It is imperative that the solution offered take this into consideration. It is also extremely important that the proposed transition period for the option (Block B) be realistic and accurate. There cannot be a break in service.

RFP § B.1.e.

The solicitation further required the selected contractor to provide “all personnel, products, material, facilities, travel, services and other items needed to satisfy the mission and functions of the AKO and the [RFP’s SOO].” RFP § B.1.a. In this regard, the RFP provided that “[t]he Government presently does not intend to make any Government Property to include real property/facilities available to the successful offeror, except as noted in subparagraph L.2.g” (which dealt with Defense Information System Network (DISN) connectivity). RFP amend. 1, § L.2.f. When asked in written pre-proposal “requests for clarification” (RFC) whether this provision required offerors to propose non-government facilities, the Army responded, “There is no constraint on whether the facility is a Government facility or non-Government facility; it is, however, not being provided under this contract.” RFP amend. 1, attach. 10, RFC No. 18.c. Offerors were also informed that the Fort Belvoir site (that is, the site provided to CRT as GFP under its incumbent contract) “is currently encumbered by another contract” and “is not available” and “cannot be provided as [government furnished equipment (GFE)] at the present time.”² *Id.*, RFC Nos. 12.b and c.

The RFP provided for award on a “best value” basis, considering technical, management, performance risk, and price/cost factors. The technical factor was said to be more important than the management factor, and the two were each more important than the performance risk and price/cost factors. The performance risk factor was approximately equal in weight to the price/cost factor. All non-price/cost

¹ This Office conducted a hearing in this matter on September 16, 2005.

² The RFCs and the Army’s responses were attached as an amendment to the solicitation.

evaluation factors, when combined, were said to be “significantly more important than” the price/cost factor. RFP § M.3.

With regard to price/cost, the RFP contemplated that proposals would include a mix of fixed-price and time-and-materials (T&M) elements, as determined by the offerors. In their proposals, offerors were to identify each contract line item number (CLIN) and special line item number (SLIN) by contract type (i.e., fixed-price or T&M) and provide the pricing structure chosen for each. Section M of the RFP provided, under the price/cost factor, that proposals would be evaluated under two subfactors: cost and risk assessment. With regard to the cost subfactor, the agency was to evaluate the “Total Contract Life Price/Cost (TCLP/C), that is, the total price/cost for all options added to the total price/cost of the basic requirements” and “the total price/cost per year to consider affordability.” Id. In addition, for the T&M portion of the price proposals, the RFP required, as part of the cost subfactor evaluation, that “[r]ealism will be assessed for any proposed T&M line items” and stated that the offeror’s “failure to completely account for all such costs or proposing unrealistically low estimated costs may pose an unacceptable risk to the Government and may result in rejection of the proposal.” Id. Under the risk assessment subfactor, the agency was to “evaluate the extent to which the offeror selects a contract type (or combination of types) that reduces Government risk and will appropriately tie profit to contractor performance. Furthermore, the Government will assess the proposed contract type(s) as they relate to the understanding of the requirement and feasibility.” Id.

CRT, EDS, and LM submitted proposals in response to the RFP.³ As part of its fixed-price efforts, LM proposed to use two government facilities as its primary and secondary data centers, while CRT and EDS proposed to use non-government facility data centers obtained through commercial leases. The government facilities proposed by LM were leased from the government by one of its subcontractors, who paid fair market value for the leases. The fixed-price portion of LM’s proposal accounted for [REDACTED] percent of the proposed work, while the fixed-price portion of CRT’s and EDS’s proposals each provided for [REDACTED] percent of the proposed work.

The Army held multiple rounds of discussions with the offerors during the evaluation. After each evaluation round, the source selection evaluation board (SSEB) evaluated proposals, identifying “advantages” and “disadvantages” in each proposal and assigning a color rating to proposals for each evaluation factor. The SSEB also briefed the source selection authority (SSA) after each evaluation round. During the final round of discussions, which were conducted telephonically, the agency informed CRT that “the Government did not deem telephonic discussions to

³ One other offeror submitted a proposal, but was eliminated from the competitive range after the initial evaluation.

be necessary,” and CRT was not requested to submit additional proposal revisions. Contracting Officer’s Statement (Aug. 17, 2005) at 3. After the final evaluation round, the SSEB rated proposals as follows:

		LM	CRT	EDS
Technical		blue/outstanding	green/good	green/good
	Operations	blue	green	green
	Architecture (Block B)	blue	green	green
	Engineering	blue	green	green
Management		blue/outstanding	green/good	green/good
	Performance-Based Approach/Program Management (PBA/PM)	blue	yellow	green
	Transition Methodology	blue	blue	green
	Business Processes	blue	green	green
	Customer Relationship Management (CRM)	blue	green	green
	Small Business Participation (future)	green	green	green
	Follow-on Transition	green	yellow	green
Performance Risk		blue/outstanding	green/good	blue/outstanding
	Past Performance	blue	green	blue
	Small Business Participation	green	yellow	blue
	Corporate Experience	blue	blue	blue
Price/Cost		\$180,828,717	\$368,308,685	\$413,448,009
	Cost (TCLP/C ⁴)	\$180,828,717	\$368,308,685	\$413,448,009
	Risk Assessment	low	low	low

The SSA accepted the SSEB’s judgments and determined that LM’s proposal was superior to the other offers under both the technical and management factors. For example, the SSA determined that the two data centers proposed by LM offered “significant advantages” because the facilities already had DISN connectivity, were “DITSCAP” accredited,⁵ and had approved physical security procedures in place that met Army standards. Agency Report (AR), Tab 124, Source Selection Decision, at 5, 10. EDS’s proposal was found to be superior to the others under the lesser

⁴ The independent government estimate was \$555,381,406.

⁵ DITSCAP refers to the Department of Defense Information Technology Security Certification and Accreditation Process.

important performance risk factor (although both LM and EDS received the highest ratings), based on EDS's superiority under the small business participation subfactor. However, the SSA found that this "superiority is slight" in view of LM's "very low risk" ratings under the past performance and corporate experience subfactors. Id. at 15.

In evaluating LM's "substantially lower" price, the SSA determined that the firm's T&M prices were realistic for the required efforts and that the overall proposal was low risk because LM "has chosen appropriate contract types with the appropriate distribution of risk between it and the Government." Id. at 16. The SSA selected LM for award based on its technical superiority and lower price, and these protests followed.

DISCUSSION

The protesters raise numerous objections to the Army's evaluation of proposals and source selection decision. They contend that LM's proposed use of leased government facilities violates the terms of the RFP and poses substantial risk to performance that was overlooked by the Army. They challenge the ratings assigned under each of the evaluation factors and the adequacy of the price evaluation. They contend that offerors were treated disparately, that discussions were inadequate, and that the best-value evaluation was flawed.

Our Office reviews challenges to an agency's evaluation of proposals only to determine whether the agency acted reasonably and in accord with the solicitation's evaluation criteria and applicable procurement statutes and regulations. Manassas Travel, Inc., B-294867.3, May 3, 2005, 2005 CPD ¶ 113 at 2-3. A protester's mere disagreement with the agency's judgment is not sufficient to establish that an agency acted unreasonably. Entz Aerodyne, Inc., B-293531, Mar. 9, 2004, 2004 CPD ¶ 70 at 3.

We have reviewed all of the numerous evaluation challenges protested here and find them to be without merit.

Government Facilities

The protesters first contend that LM's proposed use of government facilities as data centers is prohibited by the RFP and that the agency should have rejected LM's proposal as a result. They base this argument on Section L.2.f. of the RFP, which states, in pertinent part, that the "Government presently does not intend to make any Government Property . . . available," and on the Army's response to RFC No. 18, which, in relevant part, provides as follows:

18.a. Please clarify the Section L.2.f statement regarding non-availability of Government Property (is this all inclusive, restricted to facilities, prevent the use of Ft. Belvoir, etc.) . . .

REVISED RESPONSE: The Government does not presently intend to provide Government Furnished Property [GFP], Equipment [GFE], or Facilities [GFF], except as provided in L.2.g, under the contract resulting from this acquisition. However, pursuant to clause H.22, during performance of the contract the Government may, at its discretion, provide GFE.

18.b. Will reuse of government owned or even contractor owned materials be taken into consideration for purposes of award evaluation or must all bidders propose new equipment and software licenses?

REVISED RESPONSE: All offerors must propose their solution without relying on any GFP/GFE/facilities, except as provided for in L.2.g.

18.c. Will all vendors be required to propose two non-government facilities.

REVISED RESPONSE: All vendors are required to propose a solution that meets the Government's objectives without considering the use of GFE/GFP/facilities, except as provided for in L.2.g. There is no constraint on whether the facility is a Government facility or non-Government facility; it is, however, not being provided for under this contract.

RFP amend. 1, attach. 10, RFC No. 18.

The protesters rely specifically on RFC No. 18.b, which they argue instructed them to exclude all government facilities from their proposals. However, the Army contends, and we agree, that RFC No. 18.b., along with RFC No. 18.a, states only that the Army would not be providing GFF under this contract and does not speak to whether offerors were permitted to propose government facilities acquired by other means. RFC No. 18.c addresses that issue, stating unambiguously that there was "no constraint" on whether the proposed facility was government-owned or commercially-owned. Although the protesters contend that RFC No. 18.c. is "nonbinding" under the "order of precedence" clause of the solicitation, which gives precedence to the solicitation provisions over inconsistent statements in the RFC responses attached to the solicitation, we find that the Army's responses to RFC No. 18 are consistent with the RFP and where there are no inconsistencies, we need

not refer to the “order of precedence clause” to resolve the RFP’s meaning.⁶ SRI Int’l, Inc., B-250327.4, Apr. 27, 1993, 93-1 CPD ¶ 344 at 5.

CRT complains that even if RFC No. 18 permitted the use of government facilities, the firm was treated unfairly because it was not permitted to propose the use of Fort Belvoir, the government facility that it was currently using in performing its incumbent contract. CRT asserts that the purpose of this prohibition was to “level the playing field,” which is unfair since LM was not similarly prohibited from using government facilities. CRT states it was instructed not to use Fort Belvoir by Section B of the RFP and RFC No. 12, which stated that the site “cannot be provided as GFE” and “is not available at this time.”⁷

However, as discussed above, amendment 001 to the solicitation (which included the RFCs) informed offerors in RFC No. 18 that they could propose government facilities, although the facilities would not be furnished by the government under this contract. Any alleged unfairness in treatment between Fort Belvoir and other government facilities was thus apparent on the face of the solicitation and should have been protested as a solicitation defect before the date set for receipt of proposals. Because it was not, this protest ground is dismissed as untimely.⁸ 4 C.F.R. § 21.2(a)(1)(2005). In any event, LM and CRT are not similarly situated in this regard. LM’s subcontractor leased the government facilities that LM relied upon in its proposal at a fair market price, unlike CRT whose “assumption was that after the contract award [the Army] would modify the contract so that [CRT] would be able to have access to the facility” as GFP. Tr. at 111.

⁶ Where the parties dispute the meaning of solicitation terms, we will resolve the matter by reading the solicitation as a whole in a manner that gives effect to all of its provisions. Sea-Land Serv., Inc., B-278404.2, Feb. 9, 1998, 98-1 CPD ¶ 47 at 18. Reading all of the solicitation terms together, including the RFC responses, there is no inconsistency. We disagree with the protesters’ assertion that the RFC responses are not part of the solicitation, particularly since they were included in amendment 001. See Linguistic Sys., Inc., B-296221, June 1, 2005, 2005 CPD ¶ 104 at 2.

⁷ CRT cites also to an “Item for Negotiation” (IFN) received during discussions. That IFN questioned the firm’s proposed inclusion of two buildings from Fort Belvoir as “Government Furnished Property/Facilit[ies],” stating that the “RFP specifically states that no Government Property is being made available.” AR, Tab 75, CRT IFN No. KDKC001 (quoting RFP § L.2.f). The language of this IFN is consistent with the language of the RFP and RFCs.

⁸ EDS also generally contends that it was treated unfairly, but this stems from its belief that it was not permitted to lease government facilities under the RFP. Since we find that such leases were permitted and that this was evident from the RFP, we find no basis to conclude that EDS was treated unfairly in the evaluation.

The protesters also allege that even if LM was permitted to use government facilities, the agency is required under Federal Acquisition Regulation (FAR) Part 45 to eliminate LM's competitive advantage, for example, by amending the solicitation to include a rental equivalent factor.⁹ However, FAR Part 45 is inapplicable to this solicitation. FAR § 45.000 provides:

This part prescribes policies and procedures for providing Government property to contractors, contractors' use and management of Government property, and reporting, redistributing, and disposing of contractor inventory. It does not apply to providing property under any statutory leasing authority

Here, the LM leases were executed by the firm's subcontractor under statutory leasing authority,¹⁰ and thus FAR Part 45 is inapplicable.¹¹ In any event, the record shows that the LM leases were executed by the subcontractor for fair market value, and thus no rental equivalent would be necessary.¹²

The protesters also assert that the agency inflated LM's proposal ratings under the technical and management factors, and failed to properly consider the risk under these factors for LM's proposed use of government facilities.¹³ Specifically, the

⁹ In support of their arguments, the protesters cite our decision in 46 Comp. Gen. 578 (1966). However, that case is distinguishable because that awardee, unlike here, proposed to use government property that it had acquired on a rent-free basis.

¹⁰ One lease was executed pursuant to 10 U.S.C. § 2667 (2000) and the other was executed pursuant to 16 U.S.C. § 470H-3 (2000).

¹¹ EDS parses the language of FAR § 45.000, contending that the statutory leasing authority exception for "providing property" applies only to the first clause in the preceding sentence since only that clause similarly refers to "providing property." We find this interpretation unreasonable. Rather, we find that the "it" ("It does not apply") in the second sentence refers to "this part" (Part 45) in the first sentence, not just one of the clauses in the first sentence, as EDS argues.

¹² Although the protesters suggest that LM was provided the use of the facilities "rent free," the record shows that LM's subcontractor is paying fair market value for the facilities and indeed is charging LM for the use of the facilities. AR, Tabs 144 and 168, LM Subcontractor Leases; Declaration of LM's Subcontractor Director of Finance and Administration (Sept. 21, 2005) ¶¶ 4-5.

¹³ Although the RFP did not identify that "risk" would be assessed under the technical and management factors, the RFP did state that the agency would assess "feasibility of approach," which included an assessment of the "extent to which the proposed approach is workable and the end results achievable" and "whether the Offeror's
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protesters complain that the agency did not evaluate the leases or the program contracts under which the leases were executed.¹⁴ They speculate that these contracts could constrain the use of the facilities, or that other government action could interfere with the use of these facilities, thus creating a risk that performance would be interrupted and the government's objectives would not be met.

The agency explains, however, that the RFP did not require the evaluation of leases or the underlying programs under which the leases were executed, and thus the agency did not evaluate the leases for any of the offerors, including the protesters. Moreover, the LM leases—which, although not evaluated, were included as part of the record—do not contain any constraints on performance.

The agency further asserts, and the record confirms, that the assessment of LM's proposed facilities under the technical and management factors was reasonable and consistent with the RFP. In this regard, the evaluation record documents a number of "significant advantages" associated with LM's proposed use of existing data centers, including:

- existing DISN connectivity and accreditation and existing support infrastructure that enables the government to "leverage existing operational policies and procedures, rather than creating and implementing new ones from scratch," which the Army reasonably concluded "reduces operational risks" (AR, Tab 88, LM Final SSEB Report (Technical Factor), at 2);

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methods and approach in meeting the objectives provide the Government with a high level of confidence to ensure successful performance." RFP § M.3.

¹⁴ EDS also complains that the LM leases had expired before contract award, which "raise[s] more questions" about these facilities. EDS Comments (Aug. 29, 2005) at 3 n.2. However, the record shows that the leases have been, or are in the process of being, renewed at fair market value. LM Comments (Aug. 29, 2005) at 6-7; Declaration of Legal Counsel to LM's Subcontractor (Aug. 26, 2005) ¶¶ 11-15. Furthermore, valid leases were not required by the RFP and the record indicates that the protesters also did not have signed contracts for their data facilities at the time of evaluation. See AR, Tab 40, CRT Management Proposal, § 2.2.6 (stating that "[c]ontracts and engineering plans will be finalized with facility providers"); Tab 53, EDS Management Proposal, § 2.3.2 (stating that "[d]ata center contracts for the data center space will be finalized with the subcontractor companies"). Thus, in any event, it appears that all offerors were treated similarly in that none were downgraded for lacking facility contracts.

- “approved physical security procedures [already] in place that meet Army standards,” which the agency reasonably found resulted in a “high degree of confidence that [LM] can successfully implement the appropriate level of physical security required to meet the AKO objectives” (AR, Tab 89, LM Final SSEB Report (Management Factor), at 3-4);
- existing “cleared personnel, accredited Data Centers, Help Desks and Network Operations Centers” with “established applications monitoring processes and tools,” which the agency reasonably determined resulted in a “high degree of confidence that the offeror can successfully implement the proposed transition plan and meet the transition objectives with minimal disruption to the user” (Id. at 5); and
- existing DITSCAP accreditation, which the Army reasonably concluded “poses low risk to the Government in implementing the help desk and precludes the long and uncertain DITSCAP accreditation process” (Id. at 9).

Although the protesters disagree with the Army’s assessment of advantages and ratings based on features of the proposed data centers, the protesters have not demonstrated that these recognized advantages are unreasonable or that LM’s proposal presents “substantial risk” as alleged. For example, EDS asserts that there is no advantage to LM’s facilities being DITSCAP accredited, since the firm will still have to go through a “re-accreditation” process. However, the agency reasonably explains that the re-accreditation process is much less time consuming and “significantly less risky” than the “long, arduous, and uncertain” initial accreditation process, and thus LM’s existing accreditation was reasonably found to be an advantage to the government. Contracting Officer’s Statement (Aug. 29, 2005) at 19. In another example, EDS asserts that sharing space in the government facilities poses a risk to system reliability and the facilities’ physical security; however, the agency reasonably determined that LM had adequately addressed issues of reliability, and that the physical security procedures already in place in the government facilities met the Army’s standards and were an advantage, not a risk. Id. at 20. EDS mounts a similar challenge to LM’s proposed personnel, contending that sharing personnel with other contracts also presents a risk to performance; however, the record does not evidence that LM’s proposed staffing cannot adequately support the AKO function.¹⁵ Based on our review of the record, we find that the agency’s

¹⁵ EDS also complains that the agency failed to assess whether the existing facilities had sufficient cooling and power, but the RFP did not require that cooling and power capacity be evaluated and none of the offerors submitted information such that these features could be evaluated. In any event, LM’s proposal identifies that its proposed
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assessment of the government facility data centers was reasonable and consistent with the RFP.

Rating Scheme

CRT and EDS challenge the specific color ratings assigned by the agency to various factors and subfactors. They contend that the rating scheme “lacked coherent standards,” and that the color ratings assigned were inconsistent with the advantages and disadvantages of the offerors’ proposals.

Ratings, be they numerical, adjectival, or color, are merely guides for intelligent decision-making in the procurement process. Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 11. Where the evaluators and the source selection decision reasonably consider the underlying bases for the ratings, including advantages and disadvantages associated with the specific content of competing proposals, in a manner that is fair and equitable and consistent with the terms of the solicitation, the protesters’ disagreement over the actual adjectival or color ratings is essentially inconsequential, in that it does not affect the reasonableness of the judgments made in the source selection decision. See id.; National Steel and Shipbuilding Co., B-281142, B-281142.2, Jan. 4, 1999, 99-2 CPD ¶ 95 at 15.

In response to the protest, the Army provided a detailed record of its evaluation and source selection decision.¹⁶ This analysis shows that the agency evaluated the relative merits of the proposals and assessed ratings in a fair and impartial manner, consistent with both the RFP and rating definitions. Although not every advantageous feature of each proposal was formally labeled as such and the source selection decision may not have discussed each and every asserted strength and weakness, as the protesters would have liked, the record demonstrates that

(...continued)

data centers have “redundant cooling systems and sources of conditioned power,” that its proposed hardware and network architectures also have “built-in internal redundancy such as power supplies, fans, and network connections,” and that its proposed network circuits have “redundant routes between data centers and the DISA network.” AR, Tab 23, LM Technical Proposal, § 1.3. Nothing in the record suggests that the Army should have questioned these statements during the evaluation, and EDS has not shown the statements to be untrue.

¹⁶ The protesters contend that the final SSEB evaluation documents do not reflect a consensus judgment because several are not marked “consensus.” However, the agency explains that this was an administrative oversight and that the documents do, indeed, reflect the consensus evaluation of the SSEB. Contracting Officer’s Statement (Aug. 29, 2005) at 7.

the SSEB and SSA considered all of the information available, and issued a well-reasoned and rational SSEB report and source selection decision that highlighted the key discriminators among the offerors' proposals. Based on this reasonable discussion and assessment of relative advantages and disadvantages associated with the specific content of proposals, we find that the protesters' disagreements with the actual color ratings are inconsequential, given that they do not affect the reasonableness of the judgments made in the source selection decision. See Citywide Managing Servs. of Port Washington, Inc., *supra*, at 11.

Technical and Management Factors

CRT complains that the agency failed to upwardly adjust its ratings under the technical and management factors, even though the agency deleted disadvantages from its evaluation document (presumably because CRT adequately addressed those concerns during discussions) and identified one or more advantages under these factors.¹⁷ For example, it complains that the agency did not raise the proposal's ratings from green to blue under the business processes, CRM, or small business participation subfactors of the management factor, even though, in some cases, all disadvantages had been removed after discussions. However, as the agency explains, and the record confirms, the elimination or absence of the noted disadvantages did not establish CRT's superiority over the other proposals and the remaining proposal features considered under these factors did not warrant higher color ratings.

CRT also asserts that the color ratings were "inconsistently applied" to its proposal, based on a mathematical count of advantages and disadvantages identified by the SSEB for each evaluation subfactor. That is, CRT complains that it received lower ratings under some subfactors, as compared to other subfactors, even though the Army may have noted more advantages (or fewer disadvantages) under the lower-rated subfactor. However, the record shows that the agency considered the relative significance of CRT's proposal advantages and disadvantages under each evaluation subfactor and factor and reasonably assessed color ratings as a result. Given the discretion accorded an agency in evaluating proposals, we find the Army's consideration of the merits of the proposal features, as opposed to the mathematical count of advantages and disadvantages, to be unobjectionable.

CRT also complains that the ratings assigned to CRT's and LM's proposals were "inconsistent." For example, it challenges the assertedly "equal" ratings (blue) assigned to both firms under the transition methodology subfactor of the management factor, arguing that this is unreasonable because CRT was the incumbent contractor and therefore presented lower risk. The record shows,

¹⁷ CRT mounts a similar challenge to the evaluation of performance risk and, there too, we find the agency's evaluation reasonable.

however, that the Army recognized that CRT's incumbency resulted in reduced transition risk, but found also that LM's proposal offered a number of "significant advantages" that similarly reduced transition risk and justified a blue rating. For example, the Army noted that LM's proposed management process "implements a standardized, repeatable transition methodology that includes clear exit criteria at key decision points during all phases of the transition," "utiliz[es] existing cleared personnel, accredited Data Centers, Help Desks and Network Operations Centers to implement the transition," and "utilize[s] established applications monitoring processes and tools." AR, Tab 124, Source Selection Decision, at 10. These features, in addition to a number of less important advantages, led the agency to reasonably conclude that LM's proposal was deserving of the highest rating under this subfactor.

EDS complains that the Army did not recognize the "proper significance" of the strengths in its proposal. For example, under the technical factor, it complains that the agency either failed to recognize, or recognized only as a "minor advantage," its proposed use of [REDACTED]. However, as noted above, an agency is not required to address in the evaluation documents each and every feature asserted to be advantageous, and the record shows that the Army did in fact address the important proposal features of EDS's solution that it found to be advantageous, including many of the features cited by EDS.¹⁸ EDS's arguments amount only to mere disagreement with the agency, which does not establish that the evaluation was unreasonable. Entz Aerodyne, Inc., supra, at 3.

EDS also complains that LM's proposal should not have been rated blue under the operations and architecture subfactors under the technical factor because LM failed to comply with a solicitation requirement that the primary and secondary sites "operate in an 'active-active' environment at all times." RFP, SOO, § 5.1. As the agency explains, the term "active-active" "generally refers to a situation in which multiple servers run their own applications, but reserve resources to allow the servers to perform failover duty for each other. If one server fails, the working server takes on the identity of the failed server while maintaining its own identity." Army Legal Memo (Aug. 19, 2005), at 48. Because the Army determined it was not feasible for all applications to be "active-active" at all times and that this term did not properly express the agency's requirements, the Army deleted the "active-active" requirement from the solicitation by amendment, replacing the requirement with another less stringent one that required only that the "AKO shall run simultaneously

¹⁸ In some instances, such as with EDS's offer to [REDACTED], the Army found that the solution, [REDACTED] actually increased the risk to the government that the solution will not provide users with a "seamless experience." AR, Tab 112, EDS Final SSEB Report (Technical Factor), at 4. The Army raised this concern with EDS during discussions, but EDS did not, in the agency's view, adequately respond to the Army's concerns.

in at least two separate geographically dispersed locations” and that, in the event of failure, “the other installation(s) will pick up the traffic and users will notice nothing more than a momentary interruption” and “minimal loss of data.” RFP amend. 1, SOO, § 5.1. We find nothing in the record that suggests that LM did not meet the revised requirement.

EDS nevertheless asserts that the distances between LM’s proposed data centers—which are greater than the distances between EDS’s proposed data centers—will make synchronization between the sites “problematic,” and will result in less connectivity, less capacity, higher latency,¹⁹ and greater risk. However, the agency found, and our review of the record supports the reasonableness of the agency’s finding, that LM’s proposal adequately addressed synchronization and sufficiently explained how LM’s solution eliminated distance limitations so as to ensure continuous availability and reliability. For example, LM’s proposal described how [REDACTED]. The proposal also explained how [REDACTED]. From these and other elements in the proposal, the agency reasonably concluded that LM’s proposal “presents a complete and feasible approach to ensuring continuous availability and reliability of [the] AKO that includes geographically distributed sites and yearly disaster recovery testing. This reduces the risk that a catastrophic failure will result in a loss of service, which in turn reduces overall risk associated with Operations.” Tab 88, LM Final SSEB Report (Technical Factor), at 2-3. Although EDS disagrees with this assessment, it has not shown it to be unreasonable.

EDS challenges a number of other “advantages” assessed to LM’s proposal under the technical and management factors and alleges it was treated disparately. For example, it complains that the agency assigned LM’s proposal a “significant advantage” and EDS’s proposal only a “minor advantage” under the architecture subfactor of the technical factor, even though the SSEB used the identical language to describe each proposal in its final report. However, as the agency explains, LM’s proposal was rated more favorably because it was “both more detailed and more complete than EDS’s approach, and clearly indicated that [LM] had a better understanding of the problem.” Declaration of SSEB Technical Team Leader (Aug. 29, 2005) ¶ 3.

In other examples, EDS asserts that LM’s proposal contains errors regarding its hardware solution ([REDACTED]), which assertedly calls into question whether LM’s server has the capacity to perform, and that LM failed to include [REDACTED] in its proposal to ensure connectivity. EDS also contends that its proposal is more favorable in terms of the number of server-class machines, connectivity to the

¹⁹ Latency is the measure of how long information takes to travel in a network. Higher latency indicates increased transmission times. Declaration of EDS Consultant (Sept. 6, 2005) ¶ 13.

“NIPRnet” or “SIPRnet,”²⁰ greater bandwidth, and generally “represents a reduced risk in terms of performance, growth capacity, and failure redundancy.” Declaration of EDS Consultant (Aug. 18, 2005) ¶ 28; see also Declaration of EDS Consultant (Sept. 6, 2005). Based on our review of the record, however, EDS’s arguments reflect either a misreading of LM’s proposal or its mere disagreement with the agency’s judgment. We have reviewed these, and all of the other technical challenges asserted by EDS and CRT, and find them to be without merit.

Performance Risk Factor

CRT complains that it deserved higher than a yellow rating for the small business participation subfactor under the performance risk factor. It contends that it was unfairly criticized for failing to meet its small business goals, given that it had only recently been classified as a large business and had a “short history” of setting and achieving small business goals. It asserts that the Army unreasonably ignored the recommendation of the Associate Director of the Army’s Small and Disadvantaged Business Utilization Office to not assess a weakness based on this short history, and that the Army further ignored the fact that CRT had exceeded several of its small business goals. It also complains that LM received a green rating, arguing that LM should have received a lower rating since it, too, had not achieved its small business goals.

Our review of the record, however, confirms the reasonableness of the CRT and LM proposal ratings. In this regard, the record shows that the agency considered the Associate Director’s recommendation, along with CRT’s responses to discussion questions, and recognized that while CRT exceeded some of its goals, it did not meet many of its goals and that this presented a moderate proposal risk, warranting a yellow rating. While it is true that LM also missed some of its small business goals, the agency recognized that LM “only slightly” missed the goals and to a lesser degree and frequency than did CRT, thus presenting lesser risk proposal and warranting a green rating. Contracting Officer’s Statement (Aug. 29, 2005) at 6. Although CRT disagrees with this assessment, it has not shown it to be unreasonable.

EDS complains that the Army unreasonably evaluated LM’s past performance and treated the offerors unequally in the evaluation of this subfactor. Specifically, it complains that the Army ignored negative past performance relating to LM’s performance of an Air Force Integrated Space Command and Control (ISC2) contract, unfairly rating LM blue under the past performance factor, while criticizing EDS for performance issues that arose under its Navy Marine Corps Intranet (NMCI) contract.

²⁰ “NIPRnet” is the Department of Defense Non-Secure Internet Protocol Router Network, and “SIPRnet” is the Department of Defense Secret Internet Protocol Router Network.

The record, however, demonstrates that the agency's past performance analysis was reasonable and not unfair. In this regard, both LM's and EDS's proposals were rated blue (the highest rating) under this subfactor, although both offerors' past performance contained a few negative comments. Contrary to EDS's assertion, the record shows that the Army considered LM's performance for the ISC2 contract, including comments contained in a Contractor Performance Assessment Report (CPAR) and from the ISC2 program manager, and found that while the CPAR contained some negative comments, there were "numerous highly favorable comments" that suggested LM deserved the high past performance rating. Contracting Officer's Statement (Aug. 29, 2005) at 15. In addition to this contract, the Army also considered 11 other contracts identified by LM, as well as its Dun & Bradstreet report and other relevant past performance information, all of which suggested to the Army that LM's proposal should receive the highest blue rating under this subfactor. Our review of this information confirms that the Army's evaluation of past performance was reasonable.

Price Factor

The protesters also challenge the agency's price evaluation, contending that the Army failed to perform an adequate price analysis (which the protesters argue must include a price realism and reasonableness analysis) and failed to consider the risk to the government associated with LM's low price.²¹

We find from our review of the record that the agency did perform an adequate price analysis consistent with the solicitation requirements. In this regard, the price evaluators confirmed that each offeror fully priced its solution²² and held discussions with the offerors on areas that required further information. The evaluators performed a cost realism analysis for the T&M elements, evaluated the TCLP/C for each proposal, and performed a risk assessment in accordance with the solicitation's

²¹ EDS also asserts that this risk should have resulted in LM's proposal receiving lower technical and management factor ratings. Because the protesters assert that LM's cost savings appears to be associated with its use of government facilities, the use of which we found was permitted by the RFP, we find no basis to conclude that LM's technical and management ratings should be downgraded based on the firm's proposed low price.

²² To the extent that EDS asserts that some evaluation worksheets state that LM's proposal was not fully priced, the agency explains that these worksheets were abandoned "part way through the evaluation" and that all concerns with LM's proposal were resolved during discussions. Contracting Officer's Statement (Aug. 29, 2005) at 2.

requirements. The SSEB documented its analysis of each offeror's proposal under the price factor and briefed the SSA on this analysis at each step of the evaluation.

Based on our review of the record, we find no defect regarding the agency's determination that LM's proposed fixed price was reasonable. In this regard, it is well settled that price reasonableness refers to price not being unreasonably high, as opposed to unreasonably low. Portfolio Disposition Mgmt. Group, LLC, B-293105.7, Nov. 12, 2004, 2004 CPD ¶ 232 at 3. Since the protesters do not contend that LM's price is too high, no concern about its reasonableness arises. Rodgers Travel, Inc., *supra*, at 3 n.1.

With regard to the protesters' specific allegation that the Army failed to perform a price realism analysis for the fixed-price elements of the contract, we note that the RFP required only that a realism analysis be performed for the T&M elements of the work, not the fixed-price elements as the protesters' allege.²³ As noted above, [REDACTED] percent of LM's proposed effort was fixed-price, including the data center work that the protesters assert forms the basis for LM's significant cost savings. Where, as here, an RFP contemplates award based on fixed-price elements, an agency is not required to conduct a realism analysis for these fixed-price elements of the contract. Rodgers Travel, Inc., B-291785, Mar. 12, 2003, 2003 CPD ¶ 60 at 2.

We also find no basis to question the agency's risk assessment under the price/cost factor. In this regard, as noted above, the RFP stated that the agency would "evaluate the extent to which the offeror selects a contract type (or combination of types) that reduces Government risk and will appropriately tie profit to contractor performance. Furthermore, the Government will assess the proposed contract type(s) as they relate to the understanding of the requirement and feasibility." RFP § M.3. The record documents the Army's assessment of each offeror's proposal risk as it relates to the proposed contract types and its conclusion that each offeror (all of which proposed a primarily fixed-price contract structure) "has chosen the appropriate contract types with an appropriate distribution of risks between the offeror and the Government reflecting a clear understanding of the requirement." AR, Tabs 91, 103, and 115, LM, CRT, and EDS Final SSEB Reports (Price/Cost Factor); Tab 124, Source Selection Decision, at 16. Specifically with regard to LM, the record documents the agency's finding that LM's proposed solution presented a low risk based on its [REDACTED] fixed-price structure and demonstrated understanding of the RFP's requirements. AR, Tab 91, LM Final SSEB Report (Price/Cost Factor) at 4. Although the protesters assume that LM's low price increases the risk to the government, they have not shown that LM, a large

²³ The protesters do not contest the realism analysis of the T&M components of LM's proposal.

established contractor, cannot successfully perform under the terms proposed with an acceptable price risk.²⁴

Discussions

Both protesters contend that the Army failed to conduct meaningful discussions. Contracting agencies have wide discretion in determining the nature and scope of discussions, which our Office will not question unless it is clearly shown to be without a rational basis. PRB Assocs., Inc., B-277994, B-277994.2, Dec. 18, 1997, 98-1 CPD ¶ 13 at 6. Although discussions must be “meaningful,” that is, sufficiently detailed so as to lead an offeror into areas of its proposal requiring amplification or revision, an agency is not required to “spoon feed” an offeror as to each and every item that must be revised to improve their proposal or to achieve the maximum score, or advise the offeror of weaknesses that are not significant even if those weaknesses become the determinative factor in the award. Uniband, Inc., B-289305, Feb. 8, 2002, 2002 CPD ¶ 51 at 11. An agency is also not required to hold successive rounds of discussions until all proposal defects have been corrected. Metro Mach. Corp., B-295744, B-295744.2, Apr. 21, 2005, 2005 CPD ¶ 112 at 19.

CRT complains that the discussions it received were inadequate on issues that led to yellow ratings. For example, it argues that it was not advised of a “significant disadvantage” noted by the SSEB under the PBA/PM subfactor of the management factor. However, the record shows that the agency did in fact twice raise with CRT during discussions the very issue that led to the assessment of a disadvantage—that is, CRT’s lack of performance-based measures and metrics—and that its proposal rating improved from red to yellow as a result. The fact that CRT did not fully alleviate the agency’s concern in this respect, and therefore did not receive a higher rating, does not obligate the agency to hold successive rounds of discussions. See Metro Mach. Corp., supra, at 19.

CRT also argues that it was not informed of weaknesses assessed under the follow-on transition subfactor of the management factor and the small business participation subfactor of the performance risk factor. In both instances, however, the agency did not assess any “disadvantages” to CRT’s proposal and although it noted areas that presented “moderate risk” in CRT’s proposal (which led to the yellow rating), it otherwise found the proposal to be acceptable and without significant weaknesses under these subfactors. In any event, even if discussions should have been conducted, CRT has not shown that it was prejudiced because, even if CRT’s proposal had received the highest (blue) rating under the challenged

²⁴ To the extent the protesters also assert that LM’s low price poses a risk to performance under the technical and management factors, we find no basis in the record to question the Army’s ratings. As discussed above, we find the Army’s analysis of LM’s proposal under those factors to be reasonable.

subfactors, CRT has not shown that it would have received higher ratings under the overall factors or been found to be technically superior to LM, in order to overcome the significant differential in price. Since CRT has not demonstrated a reasonable possibility that it was prejudiced by the agency's actions, that is, but for the agency's actions, it would have had a substantial chance of receiving the award, we cannot sustain the protest on this ground.²⁵ 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).

EDS asserts that the discussions it received were inadequate, and in fact misleading, concerning its higher price. In this regard, it asserts that the Army's failure to raise concerns about the proposal's high price and the agency's focus on technical deficiencies encouraged EDS to increase its technical capability, which in turn resulted in increased cost. However, we find nothing in the discussions that were misleading. There is no requirement that an agency inform an offeror during discussions that its price is too high, where the offeror's price is not considered excessive or unreasonable. Uniband, Inc., *supra*, at 12. As discussed previously, the agency conducted a price analysis of proposed prices and determined that EDS's price was fair and reasonable and, for the T&M effort, realistic for its approach. Given this determination, the agency was not required to advise EDS during discussions that its price was high in comparison to LM. *Id.*

Best-Value Analysis

The protesters also challenge the Army's best-value analysis, which they contend is based on a flawed technical and price evaluation. However, as discussed above, we find the agency's evaluation under each of the evaluation factors to be well documented, reasonable, and consistent with the RFP. Based on our review of the record, as discussed above, we find no error in the Army's selection of LM, the offeror with the highest technically rated and lowest priced proposal.

The protests are denied.

Anthony H. Gamboa
General Counsel

²⁵ CRT also complains that discussions were "unfair" in that CRT was excluded from the final round of discussions, but LM and EDS were given an additional chance to revise their proposals. CRT points only to the issues discussed above as areas for which discussion should have been held and, as we have found, discussions were not required on these issues, and, in any event, CRT was not prejudiced by the agency's failure to hold further discussions with CRT on these issues.