



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

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

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: BAE Technical Services, Inc.

File: B-296699

Date: October 5, 2005

Kenneth M. Bruntel, Esq., Elizabeth W. Newsom, Esq., Amy E. Laderberg, Esq., J. Catherine Kunz, Esq., Edward R. Murray, Esq., and Jenny Kim, Esq., Crowell & Moring, for the protester.

Douglas L. Patin, Esq., Robert J. Symon, Esq., and Christyne K. Brennan, Esq., Bradley, Arant, Rose & White, for InDyne, Inc., an intervenor.

Michael O'Farrell, Esq., and Isaac Nehus, Esq., Department of the Air Force, for the agency.

David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is sustained where, under solicitation requiring that offerors substantiate proposed initiatives to reduce staffing, agency applied a more exacting standard in evaluating adequacy of substantiation for protester's proposed initiatives than it did in evaluating awardee's substantiation.

DECISION

BAE Technical Services, Inc. protests the Department of the Air Force's award of a contract to InDyne, Inc., under request for proposals (RFP) No. FA9200-05-R-0001, for operation and maintenance of the Eglin Test and Training Complex (ETTC) at Eglin Air Force Base, Florida. BAE challenges the evaluation of proposals.

We sustain the protest.

BACKGROUND

The RFP contemplated the award of a cost-plus-award-fee contract for a base period of 4 years, with three 2-year option periods, to provide: engineering and technical services in support of research and development, test and evaluation, and training missions, including planning, provisioning, execution, analysis, and reporting; operation and maintenance of the ETTC test and training areas and technical facilities, including radars, range data systems, telemetry systems, frequency control

and analysis equipment, an electro-optical evaluation complex, a video facility, photo-optical instrumentation and tracking equipment, facilities to stimulate smart weapons or instrumentation so as to collect data, a climatic laboratory, a simulated test environment for munitions, and explosive test facilities; engineering support for range system design, modification, and configuration; and certain specialized technical support services, including managing and conducting range unexploded ordnance and residue removal and support of munitions operations.

Award was to be made on a “best value” basis to the offeror whose proposal was determined to be most advantageous to the government based on consideration of four evaluation factors: (1) mission capability, including subfactors for program management, capability to provide sufficient agility and efficient range resource scheduling to respond to the full range of potential workload, technical excellence, financial management, ability to seamlessly transition resources and personnel onto the contract and ensure full continuity of test and mission support, and potential to create and ameliorate organizational conflicts of interest; (2) past performance; (3) proposal risk evaluated at the mission capability subfactor level; and (4) cost/price. Mission capability and past performance were of equal importance and each was more important than proposal risk; mission capability, past performance and proposal risk, when combined, were significantly more important than cost/price.

Of particular importance to the evaluation, the solicitation provided for evaluation—under the program management subfactor of the mission capability evaluation factor—of whether the proposal identified “innovation and efficiency initiatives to be implemented during the life of the contract that would produce reasonable qualitative improvements, cost reductions, or cost avoidance, particularly during the first three years of the contract performance, resulting in benefit to the Government.” RFP § M.2.2.1.2. The solicitation provided that the evaluation in this regard would include consideration of whether the initiatives “are well defined and include fully substantiated justifications, trade-offs, investment requirements, expected returns, risk management, and time-phased implementation plans.” RFP § M.2.2.1.2(a).

Three proposals were received in response to the solicitation, including those of BAE (the incumbent contractor), InDyne, and a third offeror; BAE’s and InDyne’s proposals were included in the competitive range. After conducting several rounds of discussions with the two offerors, the Air Force requested final proposal revisions (FPR). The agency evaluated the FPRs as follows:

	BAE	InDyne
Mission Capability		
Program Management	Marginal/Moderate Risk ¹	Exceptional/Low Risk
Agility	Acceptable/Moderate Risk	Acceptable/Low Risk
Technical Excellence	Acceptable/Low Risk	Acceptable/Low Risk
Financial Management	Acceptable/Low Risk	Acceptable/Low Risk
Transition	Acceptable/Low Risk	Acceptable/Low Risk
OCI	Acceptable/Moderate Risk	Exceptional/Low Risk
Past Performance	High Confidence	High Confidence
Probable Cost	#[DELETED] million	#[DELETED] million

The source selection authority (SSA) then determined that InDyne’s proposal represented the best value to the government. Although the evaluated most probable cost of InDyne’s proposal was somewhat lower than that of BAE’s, the SSA stated in her source selection decision (SSD) that cost was not a discriminator because “the cost difference between the offerors is insignificant given the uncertainties in estimating the cost of a 10-year effort.” SSD at 8. Likewise, the SSA stated that neither past performance nor the technical excellence, financial management and transition subfactors under the mission capability evaluation factor were discriminators.

The SSA based her source selection on InDyne’s evaluated advantages under the program management, agility and OCI subfactors under the mission capability factor. As indicated above, BAE’s proposal was rated marginal/moderate risk under the program management subfactor, while InDyne’s was rated exceptional/low risk. In this regard, although both offerors proposed initiatives to reduce the number of full time equivalent (FTE) personnel, the SSD noted that BAE had proposed a moderately higher number of reductions, and that the substantiation for BAE’s proposed reductions was based on “an immature and unvalidated Activity Based Cost (ABC) model,” and on a pilot efficiency effort with respect to ETTC’s Multi Spectral Test and Training Environment (MSTTE)--which includes threat simulating radar systems, threat simulators and signal sources, and threat hybrid systems--that also was “unvalidated.” SSD at 3. In contrast, according to the SSD, while InDyne’s proposed FTE reductions were only moderately lower than BAE’s, InDyne’s reductions were “primarily substantiated based on InDyne’s previous experience,”

¹ The agency used color ratings in which blue equaled exceptional, green acceptable, yellow marginal and red unacceptable. Air Force Federal Acquisition Supplement Mandatory Procedures MP5315.305 ¶ 5.5.1 Table 1.

and “[w]here the reductions are based on industry figures, InDyne makes very modest assumptions on the anticipated effectiveness of the processes.” Id. In addition, InDyne’s proposal was assessed a strength with respect to its quality assurance program on the basis that it proposed ISO 9001 compliance, while BAE’s proposal was evaluated as offering only a selective incorporation of ISO 9001 standards, with the specific standards to be incorporated yet to be specified by BAE. Further, the SSD indicated that, while both InDyne and BAE had proposed management information systems, InDyne’s proposed Program Information Management System (PIMS) warranted a strength on the basis that [DELETED]. The SSA concluded that, given the above evaluated strengths in InDyne’s proposal and the fact that BAE’s proposal was rated marginal/moderate risk on the basis of its unsubstantiated FTE reductions, InDyne had a “significantly stronger proposal” with respect to the program management subfactor, and this subfactor “contributed significantly to my decision.” Id. at 4.

Both BAE’s and InDyne’s proposals were rated acceptable under the agility subfactor. Both were evaluated as offering “very good approaches to maintaining the agility and flexibility of the workforce as well as very good organizations to respond to the full range of potential workload,” and both “clearly demonstrated sound methodologies to effectively and efficiently coordinate and schedule all resources and airspace in order to produce daily mission schedules that optimize range resources utilization.” Id. However, BAE’s proposal was rated moderate risk for agility on the basis that its proposed cumulative FTE reductions “can potentially adversely impact the agility and flexibility of the workforce causing disruption of schedule, degradation of performance, or increased cost.” Id. In contrast, InDyne’s proposal was rated low risk for agility on the basis that its proposed FTE reductions “are clearly substantiated, they occur at a slightly slower pace, and they propose fewer reductions in areas likely to affect agility.” Id. at 4-5.

Finally, while BAE’s proposal was rated acceptable/moderate risk under the OCI subfactor, InDyne’s proposal was rated exceptional/low risk. BAE’s moderate risk rating resulted from the agency’s concern that there was a potential for an OCI to occur as a result of BAE employees at ETTC being required to test the products of other BAE divisions or of BAE competitors. In contrast, InDyne’s proposal was assessed strengths on the bases that (1) InDyne does not have current manufacturing activities and does not provide services support to any products that may be tested at ETTC, and (2) InDyne proposed that [DELETED]. The SSA stated that InDyne’s proposal was significantly stronger under the OCI subfactor and that its advantage in this regard contributed significantly to her overall determination that InDyne’s proposal represented the best value. Id. at 7. Upon learning of the resulting award to InDyne, BAE filed this protest with our Office.

FTE REDUCTIONS

BAE asserts that the Air Force applied a more exacting standard in evaluating the substantiation for BAE's proposed FTE reductions than it did in evaluating the substantiation for InDyne's proposed reductions. According to the protester, the Air Force uncritically accepted InDyne's general references to experience, without requiring any showing as to the nature of the claimed experience and why the experience was relevant in light of the proposed initiatives and circumstances at ETTC, and without requiring any showing as to the extent to which InDyne's prior efforts had in fact produced FTE reductions or other quantifiable efficiencies. In contrast, asserts BAE, the agency rejected BAE's proposed reductions even though they were supported by a detailed, methodical approach to improving efficiency; according to the protester, the agency failed to evaluate the specific details of each initiative, and evaluated as unsubstantiated initiatives that were similar to InDyne's and at least as well substantiated.

In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the RFP criteria and applicable procurement statutes and regulations. See Rolf Jensen & Assocs., Inc., B-289475.2, B-289475.3, July 1, 2002, 2002 CPD ¶ 110 at 5. Further, it is fundamental that the contracting agency must treat all offerors equally, which includes providing a common basis for the preparation and the submission of proposals and not disparately evaluating offerors with respect to the same requirements. See Lockheed Martin Info. Sys., B-292836 et al., Dec. 18, 2003, 2003 CPD ¶ 230 at 11-12; Rockwell Electronic Commerce Corp., B-286201 et al., Dec. 14, 2000, 2001 CPD ¶ 65 at 5. We agree with the protester that the evaluation was unreasonable.

The solicitation generally provided for evaluation of whether an offeror's proposed innovation and efficiency initiatives would produce qualitative improvements, cost reductions, or cost avoidance, resulting in benefits to the government, and specifically stated that the evaluation would include consideration of whether the initiatives "are well defined and include fully substantiated justifications, trade-offs, investment requirements, expected returns, risk management, and time-phased implementation plans." RFP § M.2.2.1.2. In this regard, offerors were required to

[p]rovide substantiation that the proposed approach(s) will yield the desired results. The substantiation may be based on relevant past experience implementing the same or similar initiatives being proposed or an analysis with sufficient detail to assess the credibility of the proposed approach(s).

RFP § L.1.2.3.1.2.

InDyne proposed five initiatives that it indicated would result in a total reduction of [DELETED] FTEs (from day one staffing of 737 FTEs) over the life of the contract, and generally cited experience as the substantiation for these initiatives. However, InDyne's proposal did not cite to any specific level of staffing reductions or quantifiable efficiencies it had obtained from the prior efforts or otherwise clearly explain the specific circumstances of the prior efforts and how they supported its specific projected level of staffing reductions.

InDyne proposed to reduce staffing by [DELETED] FTEs (out of the total [DELETED] FTE reduction) by [DELETED]. When the agency asked how the FTE reductions were calculated, InDyne responded that the reductions were

based on our experience designing the [DELETED] solution for similar contracts and industry data. For example, data compiled by [DELETED] from a broad range of industry studies indicates that implementation of [DELETED] typically result in a 15-20 percent increase in [DELETED] productivity and a 30-40 percent reduction in [DELETED]. Our experience is consistent with the [DELETED] data.

Air Force Evaluation Notice (EN) IND-MC-S1-011 and InDyne Response. When the agency then noted during discussions that "it is not clear that your proposal is actually based on your relevant past experience," InDyne responded by citing five contracts under which it claimed to have successfully implemented "[DELETED]" so as to reduce data input time and improve efficiencies and performance. EN IND-MC-S1-AMD1-011A and InDyne Response. However, InDyne did not cite to any specific level of staffing reductions or quantifiable efficiencies it had obtained using [DELETED] on these five contracts, and did not otherwise clearly explain the specific circumstances of the prior efforts and how they supported its specific projected level of staffing reductions.

InDyne proposed to reduce staffing by [DELETED] FTEs with its Performance Optimization Program, under which it would use the [DELETED] continuous process improvement methodology to eliminate unproductive activities and streamline systems. When asked by the Air Force how the FTE reductions were determined, InDyne responded that "[o]ur projected FTE reductions are based on industry best practice data and the typical savings realized by organizations implementing these methodologies." EN IND-MC-S1-012 and InDyne Response; see InDyne Initial Mission Capability Proposal at mcv-24. When the agency then asked "[i]s your substantiation based on your relevant past experience," InDyne responded that "InDyne has carried the pursuit of continuous improvement as a core tenet from our original founding," and "we have always successfully employed continuous improvement on our contracts." EN IND-MC-S1-AMD-012A and InDyne Response. However, while InDyne claimed to have "studied" [DELETED], it did not assert that it had previously implemented that methodology. Nor did InDyne describe and quantify any reductions or efficiencies it had obtained under specific prior contracts

when employing continuous improvement. Finally, InDyne did not describe any specific projects it would undertake using [DELETED] in order to obtain reductions or efficiencies at ETTC, and did not explain how any results it previously achieved substantiated the predicted level of FTE reductions at ETTC.

InDyne proposed to reduce staffing by [DELETED] FTEs through use of [DELETED]. InDyne's substantiation for its claimed FTE reductions indicated that it had "developed [DELETED] for [the National Aeronautics and Space Administration's (NASA)] Glenn Research Center" and "[DELETED]" in use at Randolph Air Force Base. InDyne Initial Mission Capability Proposal at mcv-28. InDyne did not, however, describe and quantify any specific reductions or efficiencies it had obtained under these prior contracts, nor did it clearly explain why this prior experience was relevant to the circumstances at ETTC or why the results previously achieved substantiated the predicted level of FTE reductions at ETTC.² Likewise, while InDyne proposed to reduce staffing by [DELETED], InDyne cited as substantiation for this claimed reduction a NASA contract under which the "[p]rojected cost savings/avoidance of [DELETED] costs" from implementing [DELETED] were "projected to be \$[DELETED] over a 5-year period." In other words, InDyne did not claim to have already realized any reductions or savings from the NASA effort, nor is it clear that its experience involved a reduction in the number of [DELETED]. InDyne Initial Mission Capability Proposal at mcv-27. Finally, while InDyne proposed to reduce staffing by [DELETED] FTEs through use of its [DELETED], and claimed to have successfully implemented the system at Vandenberg Air Force Base, Kennedy Space Center, and Johnson Space Center, it did not cite to any specific level of staffing reductions it had achieved under the other contracts from the prior implementations of the system. *Id.* at mcv-21; EN IND-MC-S1-010 and InDyne Response.

Notwithstanding the absence of any citation to actual staffing reductions (or even quantifiable efficiencies leading to cost savings), the Air Force found all of InDyne's proposed initiatives to be substantiated. As the chairman of the source selection evaluation team testified at the hearing our Office conducted in this matter, while InDyne had to satisfy the evaluators that its experience was relevant, "we didn't get hung up on the numbers"; according to the chairman, the evaluators "were not requiring that [the offeror] start with that past experience and then do an analysis to show us how he came up with this [reduced FTE] number." Tr. at 524-25, 465. Instead, in finding InDyne's proposed initiatives to be substantiated, even though there was no explanation in InDyne's proposal as to how it calculated the assumed reductions or how any results previously achieved substantiated the predicted level of FTE reductions at ETTC, the evaluators focused on such general considerations

² Moreover, InDyne stated that its proposed initiative was based on the absence of an existing [DELETED] program at ETTC. BAE asserts, however, and the agency has not disputed, that there already is a [DELETED] program in operation at ETTC.

as the fact that the claimed FTE reductions were a “very conservative comparison to industry data” (for InDyne’s [DELETED] initiative), “modest” relative to industry standards (for InDyne’s [DELETED] continuous improvement initiative), “a pretty small number” (for InDyne’s Program Information Management System), or otherwise were realistic for such an initiative. Tr. at 542, 556-60; see Proposal Analysis Report (PAR) at 108.

Turning to BAE’s proposal, BAE used a business process reengineering program, the Activity Based Costing (ABC) modeling methodology, in developing its proposed FTE reduction and efficiency initiatives, and this methodology thus served as the primary substantiation for the proposed initiatives. In this regard, the initiatives that remained in BAE’s FPR included a continuous improvement initiative, accounting for [DELETED] of the proposed [DELETED] FTE reductions (from first day staffing of 747.5 FTEs) over the life of the contract; an initiative to [DELETED] to achieve a reduction of [DELETED] FTEs; an initiative to [DELETED], for a projected reduction of [DELETED] FTEs; and a [DELETED] initiative using [DELETED], to achieve a [DELETED] FTE reduction.

BAE explained in its proposal that it used the ABC model to estimate the effectiveness of the efficiencies associated with those of its initiatives having the potential for FTE reductions. Specifically, explained BAE, the major activities performed by BAE at each ETTC site or location by each BAE labor category were defined through meetings with BAE experts, and the percentage of the time spent by each labor category on each activity at each site was estimated. BAE then developed a list of the major inefficiencies under the contract, and determined the percentage of the time spent by each labor category on each activity at each site which was wasted as a result of such inefficiencies. BAE next developed a list of innovations or initiatives having the potential for reducing the inefficiencies. According to its proposal, BAE then developed FTE reduction schedules by year, taking into account initiative learning curves by gradually introducing the reductions, and spreading the reductions by year so as to minimize risk and adverse impact on mission performance, schedule, cost and workforce agility and flexibility. BAE also undertook a pilot project to demonstrate its site-based, continuous improvement initiative at a representative ETTC site (the MSTTE site).

When the agency questioned the extent of the proposed FTE reductions, which initially amounted to [DELETED] FTEs, BAE responded by eliminating or reducing some of its initiatives, and claiming fewer than the potential number of FTE reductions indicated by its modeling. BAE explained that it had applied an agility factor and eliminated potential FTE reductions to ensure sufficient staffing in mission-critical labor categories, taken less than 50 percent of the calculated idle time for particular labor categories, and had fenced off mission critical positions from the model to reduce the number of FTEs available for reduction. As a result of the changes, BAE lowered the number of proposed FTE reductions for which it was seeking credit from [DELETED] to [DELETED]. BAE Final Mission Capability

Proposal at 17-18b, 46-46e; BAE Cost Proposal App. D; EN BAE-MC-S1-001 and BAE Response; EN BAE-MC-S1-004 and BAE Response; EN BAE-MC-S1-0014 and BAE Response; EN BAE-PR-S2-AMD-001A and BAE Response; EN BAE-PR-S3-AMD-006 and BAE Response.

The contemporaneous evaluation record indicates that the Air Force, focusing in particular on the MSTTE pilot project, had a number of concerns as to the ABC modeling methodology that led it to find BAE's proposed initiatives to be unsubstantiated. For example, the record indicates that agency evaluators expressed concern as to the reliability of estimates by supervisors concerning small amounts of time spent by a labor category performing particular activities at a specific site; this led them to question the resulting calculated potential incremental time savings. PAR at 74-75. While the agency's concerns in this regard appear reasonable, at least in part, other concerns appear unsupported or overstated.³ However, whatever the merit of the agency's concerns, we think the record shows that, overall, the agency's concerns reflect the application of a significantly more stringent standard of review to BAE's initiatives.

For example, the greatest predicted reduction in FTEs for both offerors was based on proposed continuous improvement initiatives in which future, not yet specified, efficiency projects were expected to yield the FTE reductions. In this regard, the agency questioned BAE's references to "Solution TBD," which apparently referred to solutions to be determined in the future. BAE explained during discussions that

³ For example, the agency was concerned that BAE's lowering the number of FTE reductions it was proposing demonstrated the immaturity of the ABC model on which BAE's reduction projections were based. PAR at 74. However, this concern failed to account for the fact that BAE lowered the number of FTE reductions in response to strong agency expressions of concern during discussions, such as the agency's warning that "[t]hese proposed reductions are extremely optimistic and increase the risk that agility and flexibility will not be maintained." EN BAE-PR-S2-AMD-001A. Given the agency's expressions of concern, it is not apparent why the fact that BAE lowered the number of FTE reductions, by itself, provided a reasonable basis for the agency to conclude that the final reduction of [DELETED] FTEs was not reasonably obtainable. Indeed, we think the nature of BAE's response--applying an agility factor and lowering the number of potential FTE reductions to ensure sufficient staffing in mission-critical labor categories, taking less than 50 percent of the calculated idle time for any particular labor categories, and fencing off mission critical positions from the model to lower the number of FTEs available for reduction, as well as its overall determination to take fewer than all of the potential FTE reductions--indicates not only a reasonable response to the agency's concerns with respect to the impact of FTE reductions on agility, but also reasonably could be viewed as increasing the likelihood that BAE would be able to achieve the lowered level of FTE reductions it ultimately proposed to take.

these entries simply indicated BAE's intent to implement in the future as part of its continuous improvement initiative unspecified solutions to inefficiencies at ETTC. Tr. at 418-20; BAE Response to EN BAE-MC-S1-AMD1-014A. BAE's approach of determining in the future the specific efficiency efforts to be undertaken as part of BAE's continuous improvement initiative appears to be no different than InDyne's approach of determining in the future the specific efficiency efforts to be undertaken as part of its proposed [DELETED] continuous improvement initiative.

Likewise, both offerors proposed [DELETED] initiatives. However, while InDyne proposed an [DELETED] FTE reduction in staffing based on [DELETED], BAE, the incumbent contractor and familiar with the experience with and inherent limitations with respect to [DELETED] at ETTC, proposed only a [DELETED] FTE reduction based on [DELETED]. See BAE Mission Capability Proposal at 41-41; Tr. at 984-86. Notwithstanding the fact that BAE proposed a much more modest FTE reduction based upon a more comprehensive initiative, the agency found BAE's [DELETED] initiative to be unsubstantiated and InDyne's to be substantiated.

The agency's rejection of BAE's proposed initiatives resulted from its overarching concern that the ABC model did not constitute reliable substantiation, that is, apparently, that the ABC model did not adequately support the conclusion that the projected FTE reductions from the proposed initiatives would actually be achieved.⁴ On its face, there is nothing unreasonable in this conclusion. However, it simply is not possible to reconcile this conclusion with regard to BAE's proposal, which at least attempted to present a detailed analytical underpinning for the projected FTE reductions, with the agency's acceptance of the substantiation for InDyne's proposed initiatives, which, as outlined above, relied upon general references to prior implementation of the initiatives—including references such as “we have always successfully employed continuous improvement on our contracts,” InDyne Response to EN IND-MC-S1-AMD-012A, see PAR at 108—and references to apparently not yet implemented prior initiatives (InDyne's [DELETED]), with no showing as to any specific level of staffing reductions or quantifiable efficiencies it had obtained from the prior efforts. It appears to us that, while the agency viewed BAE's proposal with reasonable skepticism, it abandoned this skepticism in evaluating InDyne's proposal. This constituted application of different evaluation standards—one stricter than the other—to the two proposals, and was unreasonable. See Lockheed Martin Info. Sys.,

⁴ The chairman of the source selection evaluation team testified in this regard that, once the agency determined that the ABC process was not mature, it did not consider whether each of the proposed FTE reductions was reasonable. For example, when asked whether the agency ever determined whether BAE's proposed [DELETED] FTE reduction on account of its mobile computing initiative was reasonable, the chairman testified that “I don't know that we ever got to that point to make a conclusion about that one way or the other after the initial evaluation because, again, the ABC encompassed everything” Tr. at 566-69.

supra, at 11-12 (improper for agency to apply a more exacting standard in reviewing one proposal than it does in reviewing other proposals).

AGILITY

BAE also challenges the evaluation under the agility subfactor. As noted above, BAE's proposal was rated moderate risk for agility on the basis that its proposed cumulative FTE reductions could potentially adversely impact the agility and flexibility of the workforce, causing disruption of schedule and degradation of performance, or increased cost. SSD at 4. In contrast, InDyne's proposal was rated low risk for agility on the basis that its proposed FTE reductions "are clearly substantiated, they occur at a slightly slower pace, and they propose fewer reductions in areas likely to affect agility." Id. at 4-5. BAE asserts that there was no basis for rating InDyne's proposal more favorably under the agility factor. We agree.

First, as discussed above, the agency's determination that InDyne's FTE reductions were substantiated but BAE's were not was unreasonable. Further, the record does not support the agency's determination that BAE's staffing profile presented a greater risk to agility, that is, the ability to respond to changes in workload, than did InDyne's. The chairman of the source selection evaluation team testified that "fewer of the [FTE] reductions that InDyne was taking were in areas that would be critical to a surge type requirement." Tr. at 485-86. The chairman subsequently explained as follows:

I don't know that we identified any categories as specific concerns but there are--you know, when you look at what I would call the technical workforce, field engineers, electronic technicians, those people you'll need to go out and execute a quick mission or additional workload.

There are more of that type reductions being taken in BAE's proposal than in InDyne's. Not a substantial amount more, but more.

Tr. at 490. When BAE then noted in its hearing comments that it in fact had proposed fewer total reductions in the identified categories ([DELETED] field engineers and [DELETED] electronics technicians) than InDyne ([DELETED] electronic technicians), and that InDyne, unlike BAE, also had proposed a reduction of [DELETED] engineering technicians, the Air Force filed a response setting forth a new calculation. Specifically, the agency now identified 11 labor categories as having a high impact on agility and 4 categories (including maintenance trades helper) as having a medium impact on agility. By the agency's calculation, [DELETED] of BAE's FTE reductions ([DELETED] high impact and [DELETED] medium impact) fell in these categories, while only [DELETED] of InDyne's ([DELETED] high impact) were in these categories. Not only is the credibility of the agency's analysis diminished by the late date on which it was first presented but, as noted by BAE, the analysis fails to take into account the fact that, even if BAE proposed greater reductions in FTEs affecting agility, BAE's staff, as

proposed, still would include more FTEs affecting agility than would InDyne's at both the outset and the conclusion of the contract. Specifically, it appears that BAE's proposed staff includes approximately [DELETED] high impact and [DELETED] medium impact FTEs at the beginning of the contract (versus [DELETED] high impact and [DELETED] medium impact FTEs for InDyne), and approximately [DELETED] high impact and [DELETED] medium impact FTEs (versus [DELETED] high impact and [DELETED] medium impact FTEs) at the end of the contract. BAE Final Cost Proposal, attach. L5, schedule 22; InDyne Final Cost Proposal, attach. L5.⁵

PREJUDICE

Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility of prejudice, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. Parmatic Filter Corp., B-285288.3, B-285288.4, Mar. 30, 2001, 2001 CPD ¶ 71 at 11; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996). Here, as discussed, we conclude that the agency's evaluation of proposals under the program management and agility subfactors of the mission capability evaluation factor was unreasonable. Since different evaluation conclusions in these areas could affect the offerors' relative technical ratings and, in turn, bring into question the basis for the source selection decision, the evaluation errors resulted in competitive prejudice to BAE. We sustain the protest on this basis.

RECOMMENDATION

We recommend that the Air Force reopen discussions with offerors and request revised proposals. If the evaluation of revised proposals results in a determination that an offer other than InDyne's represents the best value to the government, the agency should terminate InDyne's contract for convenience. We also recommend that BAE be reimbursed its cost of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(2)(1) (2005). In accordance with 4 C.F.R. § 21.8(f)(1), the protester's certified claim for such costs, detailing the time

⁵We also note that, while the agency has cited as a relative advantage InDyne's proposal to [DELETED], InDyne Mission Capability Proposal at mcv-52, BAE offered an existing on-call backup labor pool, with very extensive experience, which had previously been utilized by BAE for the ETTC contract. BAE Mission Capability Proposal at 73-73a.

expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision.

The protest is sustained.

Anthony H. Gamboa
General Counsel