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**Comptroller General
of the United States**

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

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Decision

Matter of: IPlus, Inc.

File: B-298020; B-298020.2

Date: June 5, 2006

John S. Pachter, Esq., Jonathan D. Shaffer, Esq., Tamara F. Dunlap, Esq., and David S. Stern, Esq., Smith Pachter McWhorter PLC, for the protester.

Janice Davis, Esq., Davis & Steele, for Dynamic Systems Technology, Inc., an intervenor.

David H. Turner, Esq., Department of the Navy, for the agency.

Jonathan L. Kang, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's post-proposal submission exchanges with awardee regarding price proposal were clarifications rather than discussions where the errors corrected were obvious on the face of the awardee's proposal. Other exchanges with awardee that may have resulted in discussions were not prejudicial to protester.
 2. Agency reasonably considered experience and past performance of both prime and subcontractor who were participants in Small Business Administration 8(a) mentor-protégé program.
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DECISION

IPlus, Inc. protests the award of a contract to Dynamic Systems Technology, Inc. (DysTech) under request for proposals (RFP) N00140-05-R-1526, issued by the Department of the Navy for services in support of the Navy College Program (NCP). The protester contends that the agency conducted unequal discussions, improperly evaluated offerors' proposals, and made an improper source selection decision.

We deny the protest.

BACKGROUND

The agency sought proposals to provide support for the NCP, which is a “voluntary education program” that provides assistance for active duty and retired military and eligible civilian personnel to pursue personal and professional academic development. Offerors were required to propose all labor, management, and supervision to perform the support services required for the NCP. The RFP identified three categories of personnel required to perform the statement of work (SOW), education advisors, test examiners, and call center agents. RFP at 48. The RFP anticipated the award of a fixed-price contract, with a base performance period of 1 year, with four 1-year option periods. Id. at 94. The competition was restricted to participants in the Small Business Administration (SBA) 8(a) program for small, disadvantaged businesses. Id. at 80.

The RFP stated that proposals would be evaluated on the basis of four non-price factors, each of which was of equal importance: management plan, technical approach, corporate experience, and past performance. RFP at 94. For purposes of award, the RFP stated that award would be made to the “responsible offeror whose proposal represented the best value,” and that “[t]he evaluation of proposals will consider the offeror’s technical proposal more important than the offeror’s price proposal.” Id.

The agency received seven proposals in response to the RFP. Agency Report (AR), Tab 16, Contract Review Board Presentation, at 4. The agency evaluated DysTech’s and IPlus’s proposals as the two most highly rated, overall, and rated them as follows:

| | DysTech | IPlus |
|----------------------|-------------------|------------|
| Management Plan | Highly Acceptable | Acceptable |
| Technical Approach | Highly Acceptable | Acceptable |
| Corporate Experience | Acceptable | Acceptable |
| Past Performance | Acceptable | Acceptable |
| Overall Rating | Highly Acceptable | Acceptable |
| Proposed Price | \$42,870,717 | [deleted] |

AR, Tab 17, Source Selection Decision (SSD), at 1-2.

The agency determined that although IPlus had proposed a lower price, the technical advantages offered by DysTech’s proposal outweighed the price differential, and therefore DysTech’s proposal was selected for award. Id. at 8-9. Following its debriefing, IPlus filed this protest.

EXCHANGES WITH DYNAMIC REGARDING PRICE PROPOSAL

The protester argues that a series of exchanges between the agency and DysTech allowed DysTech to revise its price proposal, and that the exchanges constituted unequal discussions. The agency contends that it conducted clarifications with DysTech, rather than discussions.

Federal Acquisition Regulation (FAR) § 15.306 describes a spectrum of exchanges that may take place between an agency and an offeror during negotiated procurements. Clarifications are “limited exchanges” between the agency and offerors that may allow offerors to clarify certain aspects of proposals or to resolve minor or clerical errors. FAR § 15.306(a)(2). Discussions, on the other hand, occur when an agency indicates to an offeror significant weaknesses, deficiencies, and other aspects of its proposal that could be altered or explained to enhance materially the proposal’s potential for award. FAR § 15.306(d)(3). When an agency conducts discussions with one offeror, it must conduct discussions with all other offerors in the competitive range. FAR § 15.305(d)(1). The “acid test” for deciding whether discussions have been held is whether it can be said that an offeror was provided the opportunity to modify its proposal. National Beef Packing Co., B-296534, Sept. 1, 2005, 2005 CPD ¶ 168 at 11; Park Tower Mgmt. Ltd., B-295589, B-295589.2, Mar. 22, 2005, 2005 CPD ¶ 77 at 7.

Offerors were required to complete section B of the solicitation by submitting price information for each contract requirement line item number (CLIN) and sub-line item number (SubCLIN). RFP at 47. In evaluating DysTech’s price proposal, the contracting officer determined that additional information was required “in order to fully analyze DysTech’s pricing.” Contracting Officer’s Statement at 2. The contracting officer states that the agency “knew exactly what [DysTech’s] proposed firm-fixed price was for each line item of the contract,” but also “believed that it would be prudent to seek clarification of DysTech’s Price Proposal.” Id. The agency thus contacted DysTech to ask for clarifications regarding its price:

By telephone call to DysTech on or about 29 December 2005, I informed DysTech of our concerns and asked them to provide those clarifications. . . . I was quite explicit in stating that these were purely . . . matters of clarification, that we were not holding discussions, that we were not asking for final proposal revisions, and that we would not entertain any changes to DysTech’s proposal.

Id. at 3.

DysTech responded to the requests for clarification via email on December 29, 2005 and via email and hardcopy on January 19, 2006. See AR, Tabs 13 and 14, DysTech responses. IPlus contends that, notwithstanding the agency’s characterization of these exchanges as clarifications, DysTech was allowed to revise its proposal and that, therefore, the agency engaged in discussions with the awardee. Because the

protester was not given a similar opportunity for discussions, IPlus contends that the award to DysTech was improper. We review the three areas where exchanges took place below.¹

(1) SubCLIN totaling errors

The summary chart in DysTech's proposal identified a total price of \$42,276,769.50. AR, Tab 8, DysTech Proposal Vol. II, at summary appendix. CLIN prices were intended to be a summary of the SubCLIN prices; the agency's calculation of all CLIN prices in DysTech's proposal also yielded a total of \$42,276,769.50. Contracting Officer's Statement at 2. The agency's total of the SubCLIN prices, however, yielded a price of \$42,870,717.86.² Id.

The agency believed that the higher SubCLIN totals were DysTech's intended proposal price: "Because billing under the Contract would reflect SubCLIN pricing, we believed that the SubCLIN pricing accurately reflected DysTech's intended Contract pricing as, in fact, the SubCLIN pricing was the pricing that the Navy would be required to pay." Contracting Officer's Statement at 3.

The agency requested that DysTech clarify the apparent errors in adding the SubCLIN amounts. Contracting Officer's Statement at 2. DysTech addressed the error by providing a summary chart that recalculated the total contract price by adding all of the SubCLIN amounts. AR, Tab 14, Email from DysTech to Contracting Officer, Dec. 29, 2005. The agency viewed the submission by DysTech as verifying that the \$42,870,717.86 amount was correct.³

¹ IPlus contends that DysTech and the agency understood DysTech's responses to the requests for clarification to be, in fact, proposal revisions in response to discussion questions. In its email responding to the agency's request for information, DysTech stated: "Per your instruction, I've revised our price (see attached)." AR, Tab 14, Email from DysTech to Contracting Officer, Dec. 29, 2005. Our review of this matter, however, focuses on the substance of the exchanges, rather than the parties' characterizations. As discussed below, we believe that there is no basis to sustain the protest with regard to this issue.

² The protester does not challenge the agency's calculations of the CLIN and SubCLIN amounts; rather, its protest challenges only whether the agency improperly conducted discussions.

³ DysTech's response actually showed a total of \$42,870,711.90. AR, Tab 14, Email from DysTech to Contracting Officer, Dec. 29, 2005, at attach. 1. As noted above, the agency concluded that the sum of the SubCLIN amounts yielded a total of \$42,870,717.86; the agency viewed DysTech's response as confirming this amount and relied on it in the SSD. See AR, Tab 17, SSD, at 1. The agency notes that the

(continued...)

IPlus contends that the exchanges between the agency and DysTech allowed DysTech to revise its price proposal, and that, therefore, discussions took place. An agency may allow an offeror to correct a clerical error in a cost or price proposal through clarifications, as opposed to discussions, where the existence of the mistake and the amount intended by the offeror is clear from the face of the proposal. Joint Threat Servs., B-278168, B-278168.2, Jan. 5, 1998, 98-1 CPD ¶ 18 at 12-13. The record here shows that the agency believed that the \$42,870,717.86 amount reflected the addition of the SubCLIN amounts, and DysTech's response to the agency's question confirmed that figure. The record further shows that none of DysTech's SubCLIN prices changed as the result of the clarification of the CLIN totals. Furthermore, the exchange resulted in the agency confirming a higher price for DysTech under this fixed-price contract. Under these circumstances, we believe that this exchange did not constitute discussions, but rather was a clarification of an obvious error. See Joint Threat Servs., *supra*.

(2) CLIN No. 4

The agency requested that DysTech address what the agency believed was a mistakenly listed entry in its CLIN pricing. Offerors were instructed not to provide a price for CLIN No. 4, which was for data in support of CLINS 0001 and 0002: "This CLIN is Not-Separately-Priced (NSP)." RFP at 10. DysTech, however, listed in its proposal a price of \$[deleted] for CLIN No. 4. Although DysTech listed this price for CLIN No. 4, the accompanying narrative text repeated the RFP language that the CLIN was "Not-Separately-Priced." AR, Tab 8, DysTech Proposal Vol. II, at 15. The agency noted that the \$[deleted] value was the sum of the values for CLINs 0001 and 0002. See *id.* at 13-14. Based on these two indicia, the agency believed that the \$[deleted] price for CLIN No. 4 had been listed in error, and requested that DysTech clarify that this CLIN was not intended to be priced: "[W]e believed that that amount was mistakenly listed next to CLIN 0004. However, I wished to confirm that that amount was not intended to be part of DysTech's price." Contracting Officer's Statement at 3.

During the contracting officer's December 29, 2005 call, DysTech confirmed that the \$[deleted] amount for CLIN No. 4 had been listed in error. Contracting Officer's Statement at 3. IPlus contends that DysTech's response constituted discussions because it resulted in a \$[deleted] reduction to DysTech's proposed price.

Here, the record shows that DysTech's proposed overall price did not change. The approximately \$[deleted] value for CLIN No. 4 was not included in the bottom-line

(...continued)

\$5.96 difference resulted from "rounding variations." Agency Supp. Memorandum of Law, at 8. We view this discrepancy as immaterial.

price for DysTech's proposal; that is, the sum of all CLINs, excluding CLIN No. 4, yields a price of approximately \$42 million, and not \$[deleted]. Thus, DysTech's confirmation that CLIN No. 4 should have been unpriced did not change the overall price of approximately \$42 million. As noted above, the overall price was inaccurately totaled by DysTech in its proposal price summary; the corrected amount as calculated by the agency and confirmed by DysTech is consistent with the exclusion of the \$[deleted] price for CLIN No. 4. Thus both the existence of an error and the intended bid was apparent from the face of the proposal.⁴ See CIGNA Gov't Servs., LLC, May 04, 2006, B-297915.2, 2006 CPD ¶ __ at 9. Under these circumstances, we believe that this exchange did not constitute discussions, but rather was a clarification of an obvious error. See Joint Threat Servs., supra.

(3) Backup data

Finally, IPlus contends that the agency improperly allowed DysTech to revise its proposal by providing backup data regarding labor rates that were not included in DysTech's original proposal. The RFP stated that offerors were required to provide "[s]upporting data including labor rates and hours, burdened rates, material lists and costs, travel changes, and 'other direct' costs used in developing the price." RFP at 93. Although DysTech had provided backup data for its other labor categories, there were no similar data for the test examiner position. The contracting officer concluded that, "while the pricing for test examiners was clearly stated and did not appear out of line, I believed that it would be helpful to have DysTech clarify its pricing further by providing that additional back-up information." Contracting Officer's Statement at 3. DysTech provided the data in response to the agency's request via email and hard copy delivery. See AR, Tab 15, DysTech Supplemental Price Data. The agency concluded that "[t]he totals for that breakdown corresponded with the pricing totals that had already been provided in DysTech's price proposal and did not revise its proposed firm-fixed pricing." Contracting Officer's Statement at 4.

Unlike the other two exchanges between DysTech and the agency, this exchange appears to have constituted discussions. The exchange allowed DysTech to revise its proposal by submitting the required backup data that the agency believed was necessary to confirm DysTech's price. Nonetheless, because the discussions related to backup data for a fixed-price labor rate, as opposed to the rates themselves or any

⁴ Although the protester raises the argument regarding discussions only with regard to CLIN No. 4, DysTech in fact repeated this error in the corresponding CLINs for the option years, e.g., CLINs Nos. 9, 14, 19, and 24. The protester does not challenge the agency's evaluation with regard to these other CLINs. To the extent that DysTech's proposal contains additional examples of this error, we view them as further support for the agency's view that the mistake was apparent from the face of the proposal. See Agency Supp. Memorandum of Law, at 31 n.22.

other deficiency, we do not believe that, on this record, IPlus was prejudiced by the agency's actions. Even where an agency conducts discussions with an offeror that are required to make that awardee's proposal acceptable, we will not sustain a protest unless the agency's actions were prejudicial to the protester. USATREX Int'l, Inc., B-275592, B-275592.2, Mar. 6, 1997, 98-1 CPD ¶ 99. Here, DysTech did not change any of its labor rates, nor did its proposed fixed price change as the result of this submission of data. While the backup data submitted by DysTech may have been required by the solicitation, there is no basis in the record to believe that this information had any material impact on the evaluation of DysTech's proposal or its selection for award. In this regard, the agency evaluated DysTech's technical proposal, and, as noted above, calculated DysTech's proposed price prior to these exchanges. In sum, we find no basis on this record to sustain the protest based on any of the exchanges between the agency and DysTech regarding price.

CORPORATE EXPERIENCE AND PAST PERFORMANCE

The protester contends that the agency unreasonably evaluated the offerors' corporate experience and past performance records. Both offerors' proposals were evaluated as "acceptable" under these evaluation factors. AR, Tab 17, SSD, at 1-2. Our Office examines an agency's evaluation of offerors' experience and past performance records to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations; however, the necessary determinations regarding the relative merits of offerors' past performance records are primarily matters within the contracting agency's discretion. Prudent Techs., Inc., B-297425, Jan. 5, 2006, 2006 CPD ¶ 16 at 4. In this regard, our Office will not question an agency's determinations absent evidence that those determinations are unreasonable or contrary to the stated evaluation criteria. Id.

For the corporate experience factor, offerors were required to "demonstrate either similar or directly related work experience of similar size, scope, magnitude and complexity to the statement of work (SOW)" by addressing "history, organization, qualifications and work experience within the last 5 years as they related to the requirements of the SOW, and any other information the offeror considers relevant to the SOW." RFP at 92. For past performance, offerors were required to describe performance "on similar contracts it has held within the last five (5) years which are of similar scope, magnitude and complexity to that which is detailed in the RFP." Id.

IPlus's Corporate Experience and Past Performance

In its proposal, IPlus did not identify any corporate experience or past performance for itself; rather, it relied upon the experience and past performance records of its subcontractors, Manufacturing Engineering Systems, Inc. (MES) and NonPublic Educational Services, Inc. (NESI). AR, Tab 9, IPlus Proposal Vol. I, at 28-29. IPlus contends that the agency's evaluation failed to give it adequate credit for the information submitted regarding its subcontractors. In particular, IPlus argues that the agency should have given it a higher evaluation rating because one of the

subcontractors, MES, was IPlus's mentor under the SBA mentor-protégé program for 8(a) contractors.

As an initial matter, the agency notes that IPlus's proposal represented that a mentor-protégé relationship existed between IPlus and MES when, in fact, the SBA had not granted final approval of the mentor-protégé agreement (MPA).⁵ IPlus's proposal stated:

IPLUS is a certified 8(a) company and protégé firm of MES, as defined in our Mentor-Protégé Agreement (MPA) in accordance with U.S. Small Business Administration (SBA) guidelines. [deleted]

AR, Tab 9, IPlus Proposal Vol. I, at 2.

During its evaluation of proposals, the agency attempted to verify the status of the MPA. The SBA advised the agency that although "informal approval" had been granted to the MPA, there had been no formal, written approval at that time. AR, Tab 12, IPlus Technical Evaluation, at 2. The agency concluded that the inaccurate representation of the status of the MPA in IPlus's proposal was evidence of a performance risk:

Therefore, it is evident that the IPLUS MPA is pending, but has not been officially approved. The TEB [technical evaluation board] recognizes the offeror, IPLUS, submitted their proposal prior to receiving but with the expectation of official approval of their Mentor-Protégé status. However, as of the date of this evaluation, IPLUS does not officially hold the MPA status that they claim to hold, which is seen by the TEB as an increased risk to successful contract performance

⁵ The SBA mentor-protégé program is designed to encourage approved mentors to provide various forms of assistance (i.e., technical and contract management assistance, financial aid in the form of equity investments and/or loans, and subcontract support) to eligible protégé participants in order to enhance the capabilities of the protégés and to improve their ability to successfully compete for federal contracts. The amount of work performed by a protégé under this type of arrangement is governed by a written agreement between the protégé and mentor, which is approved by the SBA. For a detailed discussion of this program, see 8(a) Business Development Mentor-Protégé Program, available at: <http://www.sba.gov/8abd/indexmentorprogram.html>.

because this is another example of the offeror's performance of providing minimal effort to meet requirements.

Id.

IPlus acknowledges that, at the time its proposal was submitted, the SBA had not formally approved the relationship. Protester's Comments at 13. IPlus argues, however, that the SBA had "informally" approved the relationship and had "said that IPlus could use the MPA and mentor-protégé relationship in its federal government proposals." Id., Exh. A, Decl. of IPlus President, at 1. Regardless of what IPlus now argues it was advised on an informal basis by the SBA, IPlus did not explain the distinction between a formal and informal approval status in its proposal. Thus, when the agency investigated the status of the MPA with the SBA, it found that IPlus did not have an approved MPA.⁶ We believe that the agency was reasonably concerned that IPlus had not accurately explained the approval status of its MPA.

Contrary to the protester's assertion, the agency did credit IPlus with the past performance and experience of its subcontractors:

IPLUS was rated as Acceptable for the Corporate Experience (CE) factor Being a relatively newly established company, IPLUS's technical proposal did not address their history, organization, qualifications or work experience within the last five years as it relates to the SOW. . . . IPLUS's technical proposal also details its teaming relationship with the team of MES and NESI, the contractors currently supporting the NCP program. Based on the fact that both MES and NESI will share some of the program management responsibilities . . . their experience in supporting the NCP requirement under those

⁶ IPlus states that the SBA approved the MPA on September 21, 2006, nearly two months after its proposal was submitted and approximately three weeks after the agency inquired to the SBA regarding the status of the MPA. See Protester's Supp. Comments, Exh. A, Decl. of IPlus President, at 1. The protester argues that the agency could have made additional, subsequent inquiries to the SBA to determine whether the MPA had been approved. We do not believe that, under these circumstances, the agency was required, after first learning that there was not a formally approved mentor-protégé relationship, to inquire further. IPlus represented in its proposal that it had an MPA, but did not clarify that the MPA had only been informally, as opposed to formally, approved. Offerors are required to submit adequately written proposals, and an offeror who does not accurately represent facts or fails to submit complete information runs the risk that its proposal will be evaluated unfavorably. See Standard Communications, Inc., B-296972, Nov. 1, 2005, 2005 CPD ¶ 200 at n.2.

contracts is considered relevant experience of similar scope, magnitude and complexity to the current RFP requirements. . . .

IPLUS's technical proposal was rated as Acceptable for . . . Past Performance (PP). As a recently established company, IPLUS did not list any directly related PP. However, its team-members MES and NESI clearly demonstrated past-performance experience that was of similar scope, magnitude and complexity to the RFP requirements under such contracts as . . . the current NCP contracts.⁷

AR, Tab 17, SSD, at 4.

IPlus next argues that its subcontractor's past performance and corporate experience records should have been rated higher by the agency. IPlus contends that, as the incumbent contractors proposed to perform work under the contract, MES and NESI should have received "highly acceptable" scores for corporate experience and past performance, and that those scores should have been credited to IPlus's proposal because of the MPA between IPlus and MES.

As discussed above, the agency did credit IPlus with the experience and past performance of its subcontractors. There is no requirement, however, that an agency must directly "credit" or otherwise substitute a subcontractor/mentor's experience or past performance for a prime contractor/protégé that lacks past performance of its own.⁸ Instead, an agency may consider the prime contractor/protégé's lack of experience and past performance and balance that

⁷ IPlus also contends that the agency's characterization of the company as a "newly established company" was unreasonable. IPlus contends that "IPlus was incorporated in 1994," and that "[t]he company is approximately 12 years old." Protester's Comments at 11. As discussed above, however, IPlus did not identify any corporate experience or past performance within the relevant period of time identified in the solicitation. Thus, regardless of the characterization of the IPlus as "newly formed," IPlus did not identify any basis for the agency to credit the company with any corporate experience or past performance of its own.

⁸ Indeed, there are instances where it would be inappropriate for an agency to give a protégé prime contractor credit for its mentor subcontractor's past performance or experience. For example, under a past performance criterion regarding management of subcontractors, an agency cannot reasonably credit a small business protégé prime contractor with the past performance of its large business mentor subcontractor if the evaluation criterion is meant to measure the prime contractor's ability to supervise and control the subcontractor's performance. See Accurate Automation Corp., B-292403, B-292403.2, Sept. 10, 2003, 2003 CPD ¶ 186 at 8.

information against the subcontractor/mentor's experience and past performance.⁹ J.A. Farrington Janitorial Servs., B-296875, Oct. 18, 2005, 2005 CPD ¶ 187 at 5. In J.A. Farrington, our Office held that an agency may reasonably determine that a prime contractor who lacks past performance of its own warrants a "confidence" rating, as opposed to a higher rating, given that it would be the entity responsible for performing the contract, even where its mentor or subcontractor has "considerable positive past performance." Id.

As to the actual ratings, the agency evaluated IPlus's corporate experience as "acceptable." AR, Tab 17, SSD, at 4. The agency noted that MES and NESI had "relevant experience of similar scope, magnitude, and complexity to the current RFP requirements" based on their performance of the current contract for the NCP. AR, Tab 17, SSD, at 4. The agency also noted that IPlus's proposed personnel had relevant experience based on their prior work for the subcontractors under the current NCP contract. Id. at 5. Despite the relevant experience of its subcontractors, however, the agency believed that IPlus's lack of corporate experience was a concern that had to be considered in evaluating the proposal as a whole: "Even though IPLUS has proposed both incumbent contractors to perform portions of the solicitation's requirements the fact that IPLUS has no corporate experience of its own precludes a higher-than-acceptable rating in this factor." AR, Tab 17, SSD, at 4. The agency was not required to ignore IPlus's lack of corporate experience or substitute its subcontractors' experience. J.A. Farrington, supra, at 5. We therefore conclude that the agency's evaluation of IPlus corporate experience was reasonable.

The agency also evaluated IPlus's past performance record as "acceptable." AR, Tab 17, SSD, at 4. IPlus's proposal cited five contract references, two for MES and three for NESI. AR, Tab 9, IPlus Proposal Vol. I, at 28-29. Of these five references, both of MES's references were for performance of the current NCP contract requirements; two of NESI's references were for performance of the current contract requirements as a subcontractor to MES, and a third NESI reference was as a prime contractor under a Department of Education contract. Id. The agency concluded that MES was performing contract requirements "identical" to those in the RFP, but that, in addition to positive remarks, the past performance ratings also contained negative comments regarding the quality of MES's performance, with ratings ranging from "exceptional to unsatisfactory." AR, Tab 12, IPlus Technical Evaluation, at 4-5. For example, the past performance references for MES noted a lack of supervision of staff activities: "Only when the government notified them that there were problems such as time and attendance or work priorities did they become aware of

⁹ The protester also claims that the SBA regulations regarding MPA require agencies to substitute a mentor's experience and past performance for a protégé who lacks such references. The relevant SBA regulations, however, are silent as to the evaluation of proposals in the manner suggested by IPlus. See 13 C.F.R. § 124.520.

the problems.” Id. at 4. Additionally, a member of the evaluation team who was familiar with MES’s performance under the current contract noted “a history of high turnover/retention.” Id. For NESI, the agency concluded that its performance of certain requirements as a subcontractor to MES under the current NCP contract did not involve enough work for the entire reference to be considered relevant. For the Department of Education contract, the agency concluded that NESI’s performance was of “somewhat similar scope,” with “good to exceptional” ratings. Id.

The protester argues that the agency improperly focused on MES’s performance problems and did not give adequate credit to the quality of that company’s past performance. As with the corporate experience evaluation, the protester also objects to the agency’s determination that IPlus could not merit a “highly acceptable” rating based on the evaluations of its subcontractors, alone, in light of the fact that IPlus had no past performance of its own. Id. We believe that the agency’s evaluation of the proposed subcontractors’ past performance references, in conjunction with its concern regarding IPlus’s lack of past performance, was reasonable, and that the protester provides no basis to challenge the agency’s determination that its proposal warranted an “acceptable” rating, aside from disagreement as to the overall resulting score. A protester’s mere disagreement with the agency’s evaluation of past performance is not sufficient to establish that the agency acted unreasonably. Chenega Tech. Prods., LLC, B-295451.5, June 22, 2005, 2005 CPD ¶ 123 at 3-4.

DysTech’s Past Performance and Corporate Experience

IPlus next contends that the agency unreasonably evaluated DysTech’s past performance and experience as “acceptable.” As was the case with its evaluation of IPlus’s proposal, the agency evaluated both DysTech’s own corporate experience and past performance, as well as that of its subcontractor, ESI. AR, Tab 12, DysTech Technical Evaluation, at 5-8. Although the protester argues that the agency unreasonably considered the scope and size of the experience and past performance references as similar to the RFP requirements, the agency considered all of the objections that the protester raises in its protest. For example, the agency addressed the fact that although the past performance ratings for DysTech ranged “from very good to excellent,” certain of the past performance references were for contracts of smaller magnitude than that called for in the RFP. AR, Tab 12, DysTech Technical Evaluation, at 8. We believe that the agency reasonably evaluated DysTech’s proposal as acceptable under both the corporate experience and past performance evaluation factors. To the extent that IPlus argues that the awardee’s ratings should have been lower, the protester’s disagreement with the agency’s evaluation of DysTech’s experience and past performance provides no basis to challenge the evaluation. Chenega Tech. Prods., supra, at 3-4.

TECHNICAL EVALUATION

The protester next contends that the agency conducted an improper technical evaluation of both offerors' proposals. In reviewing a procuring agency's evaluation of an offeror's technical proposal, our role is limited to ensuring that the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. L-3 Communications Westwood Corp., B-295126, Jan. 19, 2005, 2005 CPD ¶ 30 at 5.

As a preliminary matter, IPlus alleges that the agency's evaluation was flawed because it placed a high value on proposal elements that exceeded the RFP's minimum requirements. IPlus argues that such an evaluation approach was improper because the RFP did not disclose that the agency would so heavily favor proposals that exceeded the RFP requirements, arguing that "[i]f offerors had known that the Navy's primary focus was on innovations and creative approaches versus addressing the Navy's Section M criteria, offerors, including IPlus, would have written their proposals differently to focus on those issues." Supplemental Protest at 10. This argument is without merit. Where, as here, a solicitation provides for award on a best-value basis, an agency may reasonably assess as a proposal advantage the manner in which a proposal exceeds the minimum requirements of the solicitation. See, e.g., American Material Handling, Inc., B-297536, Jan. 30, 2006, 2006 CPD ¶ 28 at 4. An agency's judgments regarding the degree to which offerors exceed a solicitation's minimum requirements are the essence of any price/technical tradeoff. F2W-WSCI, B-278281, Jan. 14, 1998, 98-1 CPD ¶ 16 at 7-8. In such procurements, evaluation strengths properly may be found where a proposal includes enhancements or features not expressly identified in the solicitation, provided the strength is consistent with the stated evaluation criteria. SGT, Inc., B-294722.4, July 28, 2005, 2005 CPD ¶ 151 at 12.

DysTech's Management Plan and Technical Approach

With regard to the agency's evaluation of DysTech's management plan and technical approach, IPlus contends that the agency improperly evaluated DysTech's proposal by awarding scores of "highly acceptable" under these factors for proposal strengths that IPlus contends were merely those "expected of a reasonable competent offeror." Supp. Protest at 14. The only example cited by the protester, however, is DysTech's proposal for a "recognition program" intended to provide incentives to employees. Although the protester contends that IPlus provided a similar benefit, the evaluation record demonstrates that the agency reasonably identified strengths in DysTech's detailed approach to employee incentives that the agency believed "caters specifically to the objectives of the Navy's Voluntary Education program and the services required in the RFP." AR, Tab 12, DysTech Technical Evaluation, at 2. In contrast, the agency concluded that IPlus's management plan adequately addressed recruitment of personnel, but did not adequately address retention or prevention of turnover. AR, Tab 17, SSD, at 4. In the agency's direct comparison of the offerors, the agency explained that DysTech's proposal's greater detail in addressing staff

retention and its management organization warranted higher evaluation scores as compared to IPlus's proposal. Id. at 6.

The protester also contends that DysTech intended to rely too heavily on hiring of the incumbent contractor staff. In its protest, IPlus contends that "[i]n an email dated February 22, 2006, Dynamic System's Program Manager/Vice President of Sales and Marketing [] stated that Dynamic Systems plans to 'extend an offer of employment to every incumbent contractor employee.'" Protest at 11. IPlus contends that this email indicated that DysTech intended to hire all incumbent staff "without regard to qualifications, interview or other review," and should have raised questions regarding DysTech's management plan and technical approach. Id. The protester, however, has never provided a copy of this email. Furthermore, the date of the alleged email was after award, and the protester fails to explain how the email could have been relevant to the agency's evaluation of the proposals. In any event, DysTech's proposal specifically stated "[deleted]," and explains that its proposed approach involves "[deleted]." AR, Tab 7, DysTech Proposal Vol. I, at 4.

On this record, we believe that the agency's evaluation of DysTech's proposal under these factors was reasonable, and IPlus provides no basis to challenge the agency's evaluation.

IPlus's Management Plan

IPlus argues that the agency improperly concluded that it had proposed too many individuals for its management team:

[W]ith the combination of three organizations [IPLUS and its subcontractors], the total number on the corporate management team is [deleted] individuals. [Deleted] of these will be utilized in day-to-day activities as they accomplish the required services. The TEB considers these high numbers of corporate management personnel to be excessive for effective management.

AR, Tab 12, IPlus Technical Evaluation, at 1.

IPlus argues that the agency should not have criticized this approach, because the additional management personnel should have been deemed a strength, rather than a liability. We believe that the agency's concern was reasonable, as it related to the effectiveness and efficiency of IPlus's management structure. The protester's disagreement provides no basis to challenge this assessment. Kay & Assocs., supra, at 4.

IPlus also alleges that the agency improperly considered the company's past performance in evaluating its management plan for retention of personnel. The agency concluded as follows:

Problems encountered under the current NCP contracts illustrate that maintaining adequate staff levels and avoiding excessive turnover are areas of great importance and risk in a requirement requiring worldwide staffing. High turnover causes loss of productivity, both for the contractor and the government. The TEB noted the offeror's proposal fails to provide an adequate plan indicating how they will prevent excessive staff turnover. Under Risk Mitigation, IPLUS addresses Filling Staff Vacancies, but it fails to provide any examples of previous successful risk mitigation methods it has used to prevent staff vacancies. The TEB realizes that IPLUS has been recently established and might not have examples to provide, however, many portions of the proposal do discuss the IPLUS team with references to MES and NESI activities under their current contracts. Therefore, the lack of examples describing previous successful avoidance techniques to prevent staff turnover demonstrates a weakness in their management plan. IPLUS lists the only risk to their management plan is filling staff vacancies and staff absences, however, they fail to address the need to maintain staff once they are hired.

AR, Tab 12, IPlus Technical Evaluation, at 1.

IPlus argues that because the current contract was performed by its subcontractors MES and NESI, the agency had improperly applied past performance information in the evaluation of the management plan. We disagree. An agency may reasonably take into account its own experience and knowledge with a particular proposal approach in assessing whether that approach will likely succeed in the performance of contract requirements. Arctic Slope World Servs., Inc., B-284481, B-284481.2, Apr. 27, 2000, 2000 CPD ¶ 75 at 7. Here, the agency could reasonably consider the degree to which IPlus's proposal addressed or failed to address retention issues in its plan. In any event, the agency's criticism did not state that the IPlus's proposal was weak based solely on prior failures by IPlus's subcontractors; rather, the agency stated that IPlus's proposal did not adequately describe prior successful risk mitigation methods. AR, Tab 12, IPlus Technical Evaluation, at 1; Tab 17, SSD, at 4. This protest ground is therefore without merit.¹⁰

SOURCE SELECTION DECISION

IPlus finally argues that the agency's best value tradeoff and source selection decision were flawed because of the alleged errors discussed above, and because the agency failed to give more weight to factors IPlus contends made its proposal

¹⁰ The protester has also raised other objections to the agency's evaluation of the offerors' proposals. We have reviewed all of the issues identified by the protester, and do not find any to have merit.

superior to DysTech's. As discussed above, we find that there is no basis to challenge the agency's evaluation of proposals. Furthermore, IPlus has not set forth any persuasive challenges to the source selection; at best, IPlus expresses disagreement with the agency's determination that features in DysTech's more highly-rated, higher-priced proposal merited selection for award over IPlus's lower technically-rated, lower-priced proposal.

The protest is denied.

Anthony H. Gamboa
General Counsel