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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: Camber Corporation

File: B-401079

Date: April 29, 2009

Jerome S. Gabig, Esq., and Michael R. Pillsbury, Esq., Sirote & Permutt, for the protester.

Damon M. Semmens, Esq., and Emanuel Anton, Esq., Anton Law Group, for NEK Advanced Securities, Inc., the intervenor.

Blane Lewis, Esq., Defense Threat Reduction Agency, for the agency.

Kenneth Kilgour, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency improperly determined that the protester's cost proposal lacked realism is denied where the record shows that the protester was not prejudiced by the agency's determination, because the agency in fact considered the protester's proposal for award and reasonably determined that another proposal represented the best value to the government.
 2. Challenge to an agency's best value determination is denied where the agency reasonably determined that the awardee's proposal contained advantages that were worth the cost premium.
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DECISION

Camber Corporation, of Huntsville, Alabama, protests the award of a contract by the Defense Threat Reduction Agency (DTRA) to NEK Advanced Securities, Inc. (NEK), of Albuquerque, New Mexico, under request for proposals (RFP) No. HDTRA1-09-R-0001, for site survey support services. The protester asserts that the agency should have evaluated Camber's most probable cost using the amounts that the protester proposed; that the agency improperly determined that its cost proposal lacked realism; that the agency unreasonably determined that NEK's proposed cost was

reasonable; and that, in making the best value determination, the source selection authority did not follow the evaluation criteria and did not treat all offerors fairly.¹

We deny the protest.

BACKGROUND

DTRA's Site Survey Branch (SSB) is tasked with providing operational and analytic emergency response support for incidents involving nuclear radiation, as well as nuclear and other weapons of mass destruction. In support of this mission, the SSB deploys teams of select individuals to various locations around the world, before an incident has occurred. The indefinite-delivery/indefinite-quantity contract contemplated by the RFP here is for services in support of the SSB. The task orders under this contract will be issued on a cost-plus-fixed-fee basis, with separate line items for travel and training at cost. The RFP included the initial task order to be issued under the RFP (Task Order 1), with offerors instructed to use a set number of hours and the estimated reimbursable expenses to arrive at a total proposed cost.

Award was to be made to the offeror whose proposal represented the best value to the government, based on an integrated assessment of proposals under the four evaluation factors; in descending order of importance, they were: mission capability, past performance, socio-economic commitment, and cost. All non-cost evaluation factors, when combined, were significantly more important than cost. Mission capability contained two subfactors--key personnel, which was more important than the second subfactor, recruitment, retention and supplementation plan--that would be evaluated at the subfactor level only. The agency would rate the mission capability subfactors as blue (exceptional), green (acceptable), yellow (marginal), or red (unacceptable). Past performance would be evaluated on a performance confidence basis; the rating scale was high confidence, significant confidence, satisfactory confidence, neutral/unknown confidence, and little confidence. With respect to the socio-economic commitment factor, the RFP stated as follows:

Offerors' proposals will be assessed on their commitment to meeting the minimum goal of 10% subcontracted effort to [service-disabled, veteran-owned small business (SDVOSB)] under the contract/Task Order 1. . . . Evaluation of this factor will not result in a color rating, but rather will result in an acceptable rating for meeting the 10% goal, or may result in a one (1) star strength or weakness . . . for exceeding or not meeting the goal, respectively. Offerors' proposals shall provide supporting documentation/vendor identification to support their proposed SDVOSB goal.

¹ The protester raised, and then withdrew, several other protest grounds.

RFP at 59.

With respect to the cost evaluation, the RFP stated as follows:

The Government will evaluate Cost based on Offerors' submitted proposals in response to the Task Order 1 requirements.

The Government will not rate or score cost but will evaluate each Offeror's cost proposal for realism, reasonableness and completeness. . . .

For evaluation purposes, the Government will calculate a most probable cost (MPC) for Task Order 1. The MPC will be determined by adjusting each Offeror's proposed cost, and fee when appropriate, to reflect any additions or reductions in cost elements to realistic levels based on the results of the realism analysis. The Government will utilize the MPCs of Task Order 1 as the Offeror's cost proposal. The probable cost may differ from the proposed cost and will reflect the Government's best estimate of the cost of any contract that is most likely to result from the Offeror's proposal. The MPCs will be used to determine best value to the Government. Should the Government decide to award Task Order 1, the Task Order will be awarded at the proposed amount.

Id. at 59-60.

The RFP required that offerors submit detailed information for each of the five key employees proposed, which included two surveyors, two modelers, and a production analyst. Offerors were required to provide a Key Personnel Compliance Matrix for each candidate, and that information was to be summarized in the Personnel Resource Matrix. Id. at 52.

The agency received four proposals; the competitive range included proposals from Camber, NEK, and a third offeror, whose proposal was the lowest rated of the three and is not relevant to the resolution of this protest. Camber's technical proposal included the required information for each of the five key personnel, and Camber's cost proposal contained all of the labor rates for the five individuals offered for the key positions. Camber's cost proposal also included a labor rate for, and assigned contract hours to, another unidentified surveyor, a subcontracted employee intended to fulfill Camber's SDVOSB subcontracting goal under the RFP. Camber's technical proposal included no information regarding this individual's qualifications; instead, the proposal identified the firm that would supply the surveyor and the process through which Camber would seek the necessary approval from the agency for substituting the subcontracted surveyor for one of the surveyors initially proposed.

The following table summarizes the agency’s evaluation of the awardee’s and the protester’s proposals:

FACTOR	NEK	Camber
Factor 1, Subfactor 1 Key Personnel	Blue	Blue
Factor 1, Subfactor 2 Recruitment, Retention, & Supplementation Plan	Blue	Green
Factor 2 Past Performance	Significant	Satisfactory
Factor 3 Socio-Economic Comt.	Acceptable	Acceptable
Factor 4: Cost		
Completeness	Yes	Yes
Reasonableness	Yes	Yes
Realism	Yes	No
Proposed Cost	\$1,088,862	\$883,034
Most Probable Cost	\$1,088,862	\$UTD ²

Agency Report (AR), Tab 19, Source Selection Decision (SSD) at 2.

As noted above, Camber and NEK had proposed costs of \$883,034 and \$1,088,862, respectively. Because he was uncertain whether Camber could supply the subcontracted surveyor with the necessary qualifications for the hourly rate quoted, the contracting officer (CO) stated that he was unable to determine the cost proposal’s MPC and rated it “no realism” with respect to cost.

The source selection authority (SSA) identified various advantages in NEK’s proposal. Under subfactor 2 of the mission capability factor, the SSA stated that NEK’s proposal provided a plan “which surpasses any of the other offerors’ and clearly demonstrates an ability to respond quickly to any emerging surge requirement with properly trained personnel with the right skills and qualifications.” *Id.* at 3. The SSA also noted that NEK alone had an in-house training capability and a “robust” 450-person pool from which to recruit. *Id.* NEK’s proposal also was superior to the other offerors’ under the past performance factor; every past performance reference for NEK rated the firm’s performance as exceptional or outstanding, and the majority of those references were found to be highly relevant.

The SSA determined that, “[w]hile NEK’s Cost is higher than the other two offerors’, the significant merits identified in both Subfactors 1 and 2 of their Mission Capability

² “UTD” means “unable to determine.”

Factor as well as their Significant Past Performance rating warrant the higher estimated cost for these premium qualifications.” Id. at 3. The source selection decision trade-off between the Camber and NEK proposals stated that “[d]espite Camber’s lower [proposed] cost than NEK, Camber’s inconsistency between their cost proposal and technical approach,³ less favorable Recruitment, Retention, and Supplementation Plan, and Satisfactory Past Performance rating clearly identified NEK’s offer as distinct and of greater benefit to the Government than Camber’s proposal.” Id. at 5.

The agency awarded the contract to NEK, and Camber filed this protest.

ANALYSIS

The protester asserts that the agency should have evaluated Camber’s most probable cost using the amounts that the protester proposed; that the agency improperly determined that its cost proposal lacked realism; that the agency unreasonably determined that NEK’s proposed cost was reasonable; and that in making the best value determination, the SSA did not follow the evaluation criteria and did not treat all offerors fairly.

We consider first those allegations concerning the agency’s cost realism analysis. When an agency evaluates proposals for the award of a cost-reimbursement contract, an offeror’s proposed estimated costs are not considered controlling because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. Federal Acquisition Regulation (FAR) §§ 15.305(a)(1) and 15.404-1(d). Consequently, a cost realism analysis must be performed by the agency to determine the extent to which an offeror’s proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. FAR § 15.404-1(d)(2); TRW, Inc., B-282162, B-282162.2, June 9, 1999, 99-2 CPD ¶ 12 at 5. A cost realism analysis is the process of independently reviewing and evaluating specific elements of an offeror’s cost proposal to determine whether the proposed cost elements are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the unique methods of performance and materials described in the offeror’s proposal. FAR § 15.404-1(d)(1); Advanced Comm’n Sys., Inc., B-283650 et al., Dec. 16, 1999, 2000 CPD ¶ 3 at 5. We

³ The protester asserts that the “inconsistency” referred to by the SSA was the agency’s mistaken belief that Camber was proposing too many personnel. In fact, the record shows that the issue was that the agency could make no assessment of the qualifications of the subcontracted surveyor. Because the protester had met the requirement to provide five key personnel and furnish their qualifications, the failure to furnish the qualifications for the subcontracted surveyor was deemed only a minor weakness. AR, Tab 20, Site Survey Team Source Selection Authority Brief at 24.

review an agency's judgment in this area to see that the agency's cost realism evaluation was reasonably based and not arbitrary. TRW, Inc., *supra*, at 5-6. An agency's cost realism analysis must be reasonably adequate and provide some measure of confidence that the agency's conclusions about the most probable costs under an offeror's proposal are reasonable and realistic in view of other cost information reasonably available to the agency as of the time of its evaluation. See Metro Mach. Corp., B-295744, B-295744.2, Apr. 21, 2005, 2005 CPD ¶ 112 at 10-11.

The protester argues that the agency should have evaluated its MPC using the amounts that Camber proposed, including the labor rate for the subcontracted surveyor. We disagree. Task Order 1 called for a fixed number of hours and gave estimated expenses for travel and other costs; one of the few factors for consideration under the cost realism analysis was whether the offerors could produce qualified employees at the hourly rates proposed.⁴ Because the protester failed to provide, as required by the RFP, the detailed qualifications for its proposed subcontracted surveyor, we do not consider unreasonable the agency's refusal to accept on its face the proposed hourly rate for that surveyor.

Nor do we see any prejudice to the protester resulting from the agency's failure to conduct a cost evaluation using the prices proposed for the five key personnel. Prejudice is an essential element of any protest, and our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. Armorworks Enters., LLC, B-400394, B-400394.2, Sept. 23, 2008, 2008 CPD ¶ 176 at 8 n.7. The contemporaneous evaluation record substantiates the agency's claim that, notwithstanding its finding that it could not determine that the protester's cost proposal was realistic, the agency did not find the protester's proposal ineligible. Rather, as noted above, in making its source selection decision, the agency identified key strengths in NEK's proposal, compared that proposal to the protester's, and determined that the benefits offered by NEK's proposal were worth

⁴ We find no merit to the protester's claim that the agency's decision to review labor rates, in the course of its cost realism evaluation, was improper. See, e.g., Magellan Health Servs., B-298912, Jan. 5, 2007, 2007 CPD ¶ 81 at 13 (purpose of cost realism analysis is to determine whether proposed cost elements are realistic); United Int'l Eng'g, Inc., et al., B-245448.3 et al., Jan. 29, 1992, 92-1 CPD ¶ 122 at 10-11 (as part of proper cost realism analysis, agency must examine the realism of offeror's proposed costs, including labor rates). Moreover, the protester's assertion that, because the task order was to be awarded at the proposed cost it was improper for the agency not to simply accept that cost, is a challenge to the terms of the solicitation; it would be timely only if filed prior to the proposal submission deadline. See Bid Protest Regulations, 4 C.F.R § 21.2(a)(1) (2008).

the cost premium.⁵ AR, Tab 19, SSD at 3. There is simply nothing in the record to suggest that the agency failed to meaningfully consider the protester's proposal, or that the outcome of the best value determination would have changed if the agency had determined an MPC for the protester's proposal based on the five proposed personnel.⁶

Citing the following language from the SSD, the protester challenges the agency's determination that NEK's proposed price is reasonable:

These qualifications [of NEK] override their reasonably higher cost compared with the other two offerors. However, with regard to the higher cost of NEK compared to the other offerors, it is noteworthy that the current Site Survey program performed by the incumbent, Camber Corporation (a [firm fixed-price (FFP)] effort), is presently priced at \$861,058 for a 9 month effort. For comparative purposes, this effort equates to a 12 month extrapolated FFP of \$1,148,076. This additional

⁵ While it is not clear from the evaluation record the precise MPC imputed to the protester's proposal by the agency, there is only a minor difference in amount between the protester's MPC calculated using the subcontracted surveyor and the MPC calculated based on the higher hourly wage of the direct-hire surveyor. Given the sizeable difference between the protester's and the awardee's MPCs, there is no reason, on this record, to assign any significance to the slight possible difference in the protester's MPC.

⁶ Moreover, the agency notes that if it had ignored the inconsistency in the protester's cost and price proposals and evaluated Camber on the basis of the five key personnel whose qualifications were included in the technical proposal, Camber's proposal would have been downgraded from acceptable to a "one star" weakness under the socioeconomic factor, thus lending even greater weight to the selection of NEK's proposal; specifically, the subcontracted surveyor represented all of the labor hours in fulfillment of the socioeconomic requirement in the RFP, and that surveyor was not one of the initial five key personnel proposed. The protester argues that such a downgrading would entail the imposition of an unstated evaluation criterion, that is, a requirement that the subcontracted surveyor be ready to start contract performance on day one. We disagree. The RFP required offerors to provide "supporting documentation/vendor identification to support their proposed SDVOSB goal." RFP at 59. It is clear from the record that Camber's proposal failed to provide sufficient documentation to support the evaluation of the SDVOSB surveyor. We see no reason to question the agency's position that, if the agency had evaluated the protester's cost and technical proposals in a way that mitigated the inconsistency in the cost and technical proposals, the protester's proposal would have been assessed a weakness under the socioeconomic factor.

data point provides confidence that the estimate proposed by NEK is reasonable.

AR, Tab 19, SSD at 6.

The agency extrapolated from the 9-month, FFP contract being performed by Camber to calculate a reasonable estimate of what a 1-year contract would cost and compared that annualized cost to NEK's proposed cost. Camber argues that it built in considerable risk in the pricing of its 9-month contract—risk that is not present in the contract contemplated by this RFP—and that therefore the agency's determination that NEK's proposed cost is reasonable, through a comparison to this annualized figure, is not reasonable.⁷ As the SSD states, this figure was an additional check on NEK's costs; the SSD's summary of evaluations indicates that NEK's cost was found to be reasonable, independent of any consideration of the cost of the protester's current FFP contract. *Id.* at 2. Thus, even if we agreed with Camber's assertion that the pricing should not have been extrapolated and considered by the agency, we find no prejudice to the protester from the agency's use of this extrapolated figure in its evaluation.⁸

Camber also protests that the agency's best value determination was improper. As an initial matter, the protester argues that the statement in the RFP, "all evaluation factors other than cost, when combined, are significantly more important than price," RFP at 57, should be interpreted to mean that cost is more important than any other single evaluation factor. Contrary to Camber's assertion, the language of the RFP does not require that cost be given more weight than any other single evaluation factor. The RFP only provides that, when combined, all of the factors other than cost are significantly more important than price; in that circumstance, it is also possible that individual evaluation factors and subfactors are each more important than price. The protester's other challenges to the best value determination,

⁷ Camber also asserts that the agency used this extrapolated figure as the protester's proposed cost for Task Order 1. There is no support in the record for this allegation; in fact, the extrapolated figure is higher than NEK's proposed cost and MPC, and the evaluation record, as noted above, contains numerous references to NEK's higher MPC compared to Camber's lower cost proposal.

⁸ The protester challenges the agency's finding that NEK's proposed costs were reasonable, irrespective of the use that the agency made of this extrapolated figure, in its comments on the agency's supplemental AR. Comments, Mar. 30, 2009 at 3. This protest ground, based on information contained in the agency report, is untimely because it was not raised within 10 days of receipt of the agency report, which was filed on March 9. *See* Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2). In any event, we have no basis on this record to question the agency's evaluation of NEK's costs.

including the allegation that the agency did not treat the protester and the awardee equally, are predicated on the various alleged improprieties in the agency's cost evaluation, discussed above. Because we have found these allegations to be without merit, we find no basis to question the reasonableness of the agency's determination that the awardee's proposal contained advantages that were worth the cost premium.

The protest is denied.

Gary L. Kepplinger
General Counsel