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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: Sotera Defense Solutions, Inc.

File: B-414056; B-414056.2; B-414056.3

Date: January 31, 2017

Paul A. Debolt, Esq., James Y. Boland, Esq., Melanie J. Totman, Esq., Michael T. Francel, Esq., and Miranda S. Riemer, Esq., Venable LLP, for the protester. Kenneth B. Weckstein, Esq., Pamela A. Reynolds, Esq., Shlomo Katz, Esq., and Andrew C. Crawford, Esq., Brown Rudnick LLP, for the intervenor. Wade L. Brown, Esq., and Brittany N. Hampton, Esq., Department of the Army, for the agency. Mary G. Curcio, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging evaluation of the cost realism analysis of awardee's proposal is denied where agency used awardee's forward pricing rate agreement and Bureau of Labor Statistics data to conduct analysis.

DECISION

Sotera Defense Solutions, Inc., of Herndon, Virginia, protests the issuance of a task order to ManTech Advanced Systems International, of Fairfax, Virginia, under request for task order proposals (RFTOP) No. SSESNG-16-R-2055, issued by the Department of the Army, Army Contracting Command, Aberdeen Proving Ground, for software and engineering support. Sotera asserts that the Army did not properly evaluate cost or technical proposals, and improperly converted the basis of award from a best-value tradeoff, as provided for in the solicitation, to a lowest-cost technically acceptable basis.

We deny the protest.

BACKGROUND

The solicitation, conducted under Federal Acquisition Regulation (FAR) part 16, was issued to all contractors holding a contract under the Software and Systems Engineering Services Next Generation Multiple Award Indefinite-Delivery/Indefinite-

Quantity contract vehicle. The task order will be performed at 73 locations within the continental United States and outside the continental United States (OCONUS). RFTOP, Performance Work Statement (PWS), at 6. The solicitation provided for award on a best-value basis considering cost and technical factors. RFTOP at 3. With respect to the technical factors, offerors were required to provide a management plan, a quality control plan, and a technical approach. Id. at 6-7. In the management plan, offerors were required to include a description of their staffing approach for recruiting, hiring and retaining sufficient personnel to perform the PWS using the labor categories and skill levels provided; a feasible approach for staffing personnel within the timelines specified in the PWS; and a proposed level of effort. Id. In this regard, an appendix to the solicitation provided specified labor categories and the level of effort required for each category. Id.

With respect to cost, offerors were instructed to propose labor rates for the specified labor categories using the level of effort identified by the RFTOP for each labor category and location. RFTOP at 10-13. Offerors were also required to propose indirect rates and other direct costs including for the OCONUS sites any cost of living allowance; hardship differential; allowance for living quarters; and education allowance. Id. at 14. The solicitation included a plug number (\$13,887,453) for travel costs. Id. Offerors were further instructed to provide their pricing methodology and supporting documentation. Id. at 15. In this regard, the solicitation instructed offerors that for proposed direct and indirect rates they should provide the supporting documentation employed in developing the rates. The documentation could include, but was not limited to, copies of existing forward pricing rate agreements, and recent actual direct labor rates supported by payroll records or salary survey data. Id. Offerors were not required to provide certified cost and pricing data. Id. at 16.

The solicitation provided that the proposed cost would be evaluated for price reasonableness and cost realism. RFTOP at 18. With respect to cost realism, the solicitation stated that the techniques and procedures described in FAR § 15.404-1 would be the primary means of assessing realism. Id. Further, the RFTOP stated that the agency would perform its analysis by independently reviewing and evaluating specific elements of the offeror's cost/price volume to determine whether the proposed cost is realistic to meet the PWS requirements and accurately reflects the technical approach. Id. The result of the analysis will be a determination of the probable cost of performance by the offeror. Id.

The solicitation explained that in making the trade-off between the cost and non-cost factors, the government would pay a premium when considering the extent to which the proposed solution to fulfilling requirements expressly exceeded the acceptable quality levels (AQL) set forth in the PWS for the following tasks: developing a process to maintain a data transfer; maintaining web applications or web adaptors needed by intelligence domains; providing special requirements

support for Blue Force Tracker-Aviation (BFT-AVN); and providing billet and labor category management. Id. at 19-20.

Five offerors responded to the solicitation. Following the evaluation of initial offers, questions to offerors, and the evaluation of revised proposals, the offerors were rated as follows:

OFFEROR	TECHNICAL/ RISK	PROPOSED PRICE	EVALUATED PRICE	COST ADJUSTMENT
Offeror A	Outstanding	\$162,759,560	\$162,759,560	\$0
Offeror B	Outstanding	\$190,680,650	\$190,680,650	\$0
Offeror C	Outstanding	\$168,440,158	\$168,440,158	\$0
ManTech	Outstanding	\$151,887,868	\$157,868,729	\$5,980,861
Sotera	Outstanding	\$207,703,811	\$207,703,811	\$0

Agency Report (AR), Tab P, Source Selection Decision Document (SSDD), at 1. The agency performed a best-value tradeoff and selected ManTech’s proposal for award of the task order. Id. at 3, 26. The agency determined that neither Offeror B nor Offeror C provided the best value to the government because the proposals of both ManTech and Offeror A had similar strengths for **[DELETED]**, but offered lower costs. Id. at 25.

With respect to Offeror A, ManTech, and Sotera, the agency recognized that Sotera was evaluated with six strengths for exceeding the AQLs, while Offeror A was evaluated with four strengths, and ManTech was evaluated with three strengths. Id. The agency considered that each offeror had three similar strengths for exceeding **[DELETED]**. Id. Sotera’s remaining three strengths were for **[DELETED]**. Id. The agency noted that Offeror A also had a strength for exceeding the AQL for **[DELETED]**. Id. Nonetheless, the agency determined that the additional strengths in Sotera’s proposal were not worth the \$44 and \$49 million cost premium over the proposals of Offeror A and ManTech, respectively. Id. at 26. The agency then selected ManTech for award of the task order after concluding that the strengths assigned for exceeding the **[DELETED]** AQLs were similar, and concluding that the one additional strength in Offeror A’s proposal for exceeding the AQL for **[DELETED]** was not worth a cost premium of \$4,890,831. Id. This protest followed.¹

¹ The awarded value of the task order at issue is approximately \$151 million. Accordingly, at the time this protest was filed on October 24, 2016, this procurement was within our jurisdiction to hear protests related to the issuance of orders under multiple-award ID/IQ contracts that were awarded under the authority of Title 10 of the U.S. Code, and valued at more than \$10 million. 10 U.S.C. § 2304(e)(1)(B); see National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000, § 835 (amending jurisdictional threshold to \$25 million for protests of

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DISCUSSION

Cost Realism

Sotera protests that the agency failed to perform an adequate cost realism analysis of ManTech's cost proposal. Sotera primarily complains that the agency failed to recognize that the rates ManTech proposed for its proposed labor categories were too low.²

When an agency evaluates a proposal for the award of a cost-reimbursement contract or order, an offeror's proposed costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. Exelis Sys. Corp., B-407673 et al., Jan. 22, 2013, 2013 CPD ¶ 54 at 7 (discussing FAR part 15 cost realism standards in a FAR part 16 task order procurement). Consequently, an agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work to be performed. See FAR § 15.404-1(d)(1); DynCorp Int'l LLC, B-411465, B-411465.2, Aug. 5, 2015 CPD ¶ 228 at 8. In assessing cost realism, an agency is not required to conduct an in-depth cost analysis, see FAR § 15.404-1(d)(1), or to verify each item; rather, the evaluation requires the exercise of informed judgment by the contracting agency. AdvanceMed Corp.; TrustSolutions, LLC, B-404910.4 et al., Jan. 17, 2012, 2012 CPD ¶ 25 at 13. Further, an agency's cost realism analysis need not achieve scientific certainty; rather, the methodology employed must be reasonably adequate and provide some measure of confidence that the rates proposed are reasonable and realistic in view of other cost information reasonably available to the agency as of the time of its evaluation. Id. Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonably based and not arbitrary. Imagine One Technology & Management, Ltd., B-412860.4, B-412860.5, Dec. 9, 2016, 2016 CPD ¶ 360.

Here, in evaluating ManTech's labor rates, the cost evaluator first accepted ManTech's proposed level of effort and labor categories. Specifically, the cost evaluation explained that the agency "performed a technical evaluation of the offeror's proposal and reviewed the proposed labor categories (LCAT), the number

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orders placed under ID/IQ contracts awarded under authority of Title 10, effective December 23, 2016).

² In its initial protest, Sotera also complained that the Army held unequal and misleading discussions with Sotera regarding Sotera's other direct costs and did not consider that Sotera's proposal provided \$42.5 million in unpriced added value. In the comments on the agency report, Sotera did not address the agency's response to these issues. Accordingly, we consider them abandoned. See 22nd Century Techs., Inc., B-412547 et al., Mar. 18, 2016, 2016 CPD ¶ 93 at 10.

of labor hours for each LCAT and the mixture of LCATs; the [cost evaluation] take[s] no exception to the labor hours, LCATs and technical approach proposed by ManTech.” AR, Tab O, Cost Evaluation Report, at 5.

Next, the agency used three separate and distinct data points to evaluate the cost realism of ManTech’s proposal. First, the agency reviewed the prime and subcontractor’s proposed labor rates and underlying methodologies to establish the rates. AR, Tab O, Cost Evaluation Report (COR), at 6. In this regard, the agency accepted **[DELETED]** labor rates from ManTech’s current workforce, for employees performing in critical labor categories, because the rates were validated with payroll vouchers. Id. at 5. ManTech’s remaining critical and non-critical labor category rates were validated using the company’s Direct Labor Forward Pricing Rate Agreement (DL FPRA), dated March 11, 2015. The agency determined that the rates derived from the DL FPRA could be viewed as realistic because they had been validated using a Defense Contract Management Agency audit. Id. at 6; Supp. Contracting Officer Statement of Facts/Memorandum of Law (COSF/MOL) at 20. Nevertheless, the agency decided that because the rates from the DL FPRA were somewhat outdated, it would further consider rates that appeared low.³ Id.

Next, the agency compared ManTech’s proposed labor rates to Bureau of Labor Statistics (BLS) data. Specifically, the evaluator took the national average wage rate for each labor category and compared ManTech’s proposed wage rates to the BLS data. Id. If a proposed labor category covered an entry level/skilled or intermediate level/skilled employee, the agency considered the proposed rate realistic if it was greater than or equal to the BLS rate at the 10th percentile.⁴ Id. at 7. For higher level/skilled labor categories, the agency considered the rate realistic if it was greater than or equal to the BLS rate at the 25th percentile. Id.

Finally, the agency created a statistical model using the labor rates proposed by all offerors and proposed subcontractors and compared ManTech’s rates to the

³ The government prepared an independent government cost estimate which totaled \$249,200,309, and was used for the limited purpose of determining whether costs should be further scrutinized. AR, Tab O, Cost Evaluation Report, at 3. Sotera asserts that the agency should have used the government estimate to find that proposed costs that were lower than the estimate were unrealistic. Procuring agencies, however, have discretion in how they utilize a government estimate in a cost realism evaluation; they are not required to find that proposed costs below the estimate are unreasonable. See QMX Support Services, Inc., B-408959, Jan. 6, 2014, 2014 CPD ¶ 21 at 6; Advanced Communication Systems, Inc., B-283650 et al., Dec. 16, 1999, 2000 CPD ¶ 3 at 9.

⁴ BLS wage rate data is available at various percentile thresholds, as follows: 10th, 25th, 50th, 75th, and 90th percentiles. See BLS National Compensation Survey, <https://www.bls.gov/oes/tables.htm> (last visited January 26, 2017).

statistical model. Id. at 6. The agency calculated the mean average and standard deviation for each labor category, and then subtracted one standard deviation from the mean average rate to create a floor against which offerors proposed rates would be compared. Id. at 6; COSF/MOL at 22-23.

If a proposed rate could not be verified using the BLS data or the statistical model, the rate was adjusted to the appropriate BLS rate. AR, Tab O, COR, at 6. Using this analysis, the agency adjusted the rates of ManTech's proposed **[DELETED]**, and the **[DELETED]** and **[DELETED]**. Id. at 8. The agency also adjusted the direct rates for one of ManTech's proposed subcontractors in **[DELETED]** labor categories. Id. at 13-14. The adjustments to ManTech's cost proposal resulted in a total increase of \$5,980,861. Id. at 4.

Sotera raises several objections to the cost realism analysis conducted by the Army. According to Sotera, the cost realism analysis was inadequate because the use of BLS data for the 10th and 25th percentiles was too low. In Sotera's view, using the 25th and 50th percentiles would be more realistic. Sotera also argues that the agency did not use BLS data that was industry specific, did not use the most recent BLS data, and failed to account for the use of **[DELETED]** in ManTech's proposal. According to Sotera, a proper application of these principles would result in adjustments to the proposals of ManTech and Sotera as follows:

	ManTech	Sotera	Difference
Proposed Price	\$151,887,868	\$207,703,811	\$55,815,942
Unrealistic BLS Percentiles	\$41,565,832	\$6,494,066	(\$35,071,766)
Outdated BLS Data	\$8,634,260	\$5,268,001	(\$3,366,258)
Industry Specific BLS Data	\$10,430,546	\$8,059,048	(\$2,371,499)
Turnover Cost Increase	\$6,587,304		(\$6,587,304)
[DELETED]	\$3,753,903		(\$3,753,903)
Level of Effort Delta	\$7,074,601		(\$7,074,601)
Most Probable Cost	\$229,934,314	\$227,524,926	(\$2,409,388)

Comments at 27, citing to Declaration of Certified Public Accountant at 5. Sotera concludes that it would then have the technically superior proposal, at a lower cost than ManTech, and be the proper awardee.

Based on the record before us we find no basis to disturb the award to ManTech. The Army explains that it chose BLS data at the 10th and 25th percentiles in an attempt to "balance between the objective of getting a good deal for the taxpayer,

and the objective of ensuring that offerors are not underbidding” on a cost contract. Email from Agency, Jan. 18, 2017, at 1. The agency explains that it was open to labor rates that were lower in some instances depending on the circumstances and support provided by the offeror. Id.

While Sotera disagrees with this determination, Sotera’s disagreement does not demonstrate that the agency acted unreasonably. More importantly, however, ManTech justified its proposed rates (other than those for which it had actual salary data) with its FPRA, as instructed by the solicitation. Accordingly, we do not accept Sotera’s cost adjustments based on the Army using unrealistic BLS percentiles. We also do not accept Sotera’s adjustments to ManTech’s proposed cost for turnover, **[DELETED]**, or level of effort. With respect to the level of effort, the technical evaluators determined that ManTech’s proposal was acceptable, and therefore, there is no basis to adjust the cost proposal on this basis. With respect to the turnover and **[DELETED]** adjustments, Sotera has offered nothing more than its unsubstantiated speculation that the agency may incur these costs; we find no basis on the record before us to accept Sotera’s calculations.

Finally, given our conclusions above, even if we accept Sotera’s arguments related to the use of outdated 2014 BLS data, and non-industry-wide data, we find no prejudice to the protester.⁵ Accepting these two adjustments increases ManTech’s cost to \$170,952,674 (\$151,887,868 + \$8,634,260 + \$10,430,546), and Sotera’s to \$221,030,860 (\$207,703,811 + \$5,268,001 + \$8,059,048).⁶ As the difference (\$50,078,186) is similar to, and in fact slightly higher than the difference on which the award decision to ManTech was based, we find that Sotera is not prejudiced by any alleged errors in the cost realism analysis that resulted from using the 2014 BLS data and the BLS industry data. See DynCorp Int’l LLC, supra at 13.

⁵ With respect to the use of 2014 BLS data, Sotera has provided documentation, which the agency has not disputed, that shows more recent data was available. Sotera Supplemental Comments, Exh. 2. In its defense, however, the agency asserts that the newer data was not available at the time it initially conducted its analysis, and that when the data became available, the agency had already undertaken its analysis. In addition, the agency stated that it used the national average BLS rates for similar LCATs because the RFTOP required over 80 regional locations. In the agency’s view it was not practical to use multiple comparative regions, and, even if it were, the sample size would not be adequate. Supp. COSF/MOL at 20.

⁶ We recognize that these figures may not represent the exact amounts by which the proposals of ManTech and Sotera would change because they are based on Sotera’s starting point at the BLS rates for the 25th and 50th percentiles, rather than the 10th and 25th percentiles used by the agency. For purposes of this decision, we need not determine the exact change to the cost proposals of ManTech and Sotera.

Interested Party

Sotera raises a number of additional issues. Sotera asserts that the agency: (1) misevaluated ManTech's proposal under the technical factor; (2) misevaluated the proposal of Offeror C for cost realism, (3) misevaluated the proposal of Offeror B under the technical factor, (4) failed to perform a performance risk assessment as required by the solicitation, and (5) converted the basis of award from best-value to the government to lowest-priced, technically acceptable.⁷

Under our Bid Protest Regulations, a protester must be an interested party to pursue a protest before our Office. 4 C.F.R. § 21.1. An interested party is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. *Id.* § 21.0(8). A protester is not an interested party if it would not be next in line for award if its protest were sustained. Systems Dynamics, Inc., B-245666.2, Mar. 11, 1992, 92-1 CPD ¶ 276.

As discussed above, the record shows that the source selection authority (SSA) considered that the proposal of Sotera was evaluated with two strengths more for exceeding AQL's than the proposal of Offeror A.⁸ The agency, however, concluded

⁷ Sotera also complains that the agency did not establish a common cut-off date for revised proposals because it allowed Offeror B to submit its revised proposal three and one half months after the other offerors did so. The agency originally eliminated Offeror B from the competition, but following a protest, Offeror B was allowed back into the competition. Since the agency had already held communications with the other offerors, and allowed those offerors to submit proposal revisions, it provided Offeror B the same opportunity. This agency action did not violate the requirement to establish a common cut-off date for the receipt of revised proposals since there is no requirement to do so when conducting FAR part 16 procurements. See SSI, B-413486, B-413486.2, Nov. 3, 2016, 2016 CPD ¶ 322. In any case, Sotera has not demonstrated that it was prejudiced. Offeror B was not permitted to submit an entirely new proposal, but, like the other offerors, was only permitted to address the questions that it had been sent, and Offeror B, in fact, raised its cost. Supp. COSF/MOL at 15. Further, Sotera does not indicate what it might have changed if it had been given a further opportunity to later revise its proposal.

⁸ Sotera asserts that in the agency's tradeoff between Sotera and Offeror A, the SSA did not consider that with respect to the strengths awarded for **[DELETED]**, Offeror A exceeded the AQL by **[DELETED]** percent while Sotera exceeded it by **[DELETED]** percent. Sotera Comments at 41. While the agency did not specifically discuss the percentages by which Offeror A and Sotera exceeded the AQL requirements for **[DELETED]**, it is clear from the source selection decision that the SSA was aware of this difference. AR, Tab P, SSDD, at 24. Since the agency
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that the benefit of Sotera's technical proposal was not worth an additional \$44 million. Accordingly, Offeror A, and not Sotera would be next in line for award if we sustained the protest on any of these bases. Accordingly, Sotera is not an interested party to protest these issues. See Steinhoff & Sadler, Inc. d/b/a SSI, B-246604, B-246604.3, Mar. 20, 1992, 92-1 CPD ¶ 299.

The protest is denied.

Susan A. Poling
General Counsel

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did not find that when Offeror A exceeded the AQL for **[DELETED]** by **[DELETED]** percent more than ManTech (**[DELETED]** percent vs **[DELETED]** percent) it was worth an additional \$62,000, we fail to see that the agency would find that Sotera exceeding the AQL requirements for **[DELETED]** by **[DELETED]** percent more than Offeror A would be worth an additional \$44 million.