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Decision

Matter of: Oak Grove Technologies, LLC

File: B-415772; B-415772.2

Date: March 15, 2018

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Jonathan L. Kang, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency unreasonably evaluated the realism of the offerors' proposed costs is denied where the agency evaluated the cost proposals on an equal basis and reasonably made upward adjustments to the protester's proposed costs.
 2. Protest that the agency failed to conduct meaningful discussions with the protester concerning its cost proposal is denied where the agency reasonably advised the protester of the weaknesses that existed in its proposal at the time of discussions, and provided an opportunity to submit a revised proposal.
 3. Protest challenging the evaluation of the offerors' technical proposals is denied where the agency evaluated the proposals on an equal basis and in a manner consistent with the solicitation.
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DECISION

Oak Grove Technologies, LLC, of Raleigh, North Carolina, protests the award of a contract to Cubic Global Defense, Inc., of San Diego, California, under request for proposals (RFP) No. W91247-13-R-0018, which was issued by the Department of the Army for training support services at Fort Polk, Louisiana. The protester argues that the agency unreasonably and unequally evaluated the realism of the offerors' proposed

costs, failed to conduct meaningful discussions with the protester regarding its cost proposal, and unreasonably and unequally evaluated the offerors' technical proposals.

We deny the protest.

BACKGROUND

The Army issued the RFP on April 1, 2016, seeking proposals to provide mission support services for the Army Forces Command Joint Readiness Training Center (JRTC) at Fort Polk, Louisiana. The JRTC provides an advanced training environment for Army, Navy, Air Force, Marine Corps, and National Guard units. Agency Report (AR), Tab 72, Performance Work Statement (PWS) ¶ C.1.4.1. The solicitation sought proposals to provide personnel, equipment, supplies, facilities, transportation, tools, materials, supervision and other items and services necessary to perform JRTC mission support. Id. ¶ C.1.2.

The RFP anticipated the award of a contract with fixed-price and cost-plus-fixed-fee line items, with a 3-month phase-in period, a 9-month base period, and four 1-year options. AR, Tab 77, RFP, at 2-15, 18.¹ The RFP advised offerors that proposals would be evaluated on the basis of five factors: (1) management approach, (2) technical approach, (3) past performance, (4) small business participation, and (5) cost. Id. at 71. For purposes of award, the management approach and technical approach factors were of equal weight, and were each more important than the past performance factor; the small business participation factor was the least important of the non-cost factors. Id. The non-cost factors, when combined, were "approximately equal to cost." Id.

The Army received proposals from four offerors, including Oak Grove and Cubic. AR, Tab 145, Source Selection Decision Document (SSDD), at 3.² Cubic is the incumbent contractor for the JRTC support requirements. Following the evaluation of the initial proposals, the contracting officer established a competitive range consisting of three offerors, including the protester and awardee. Id. The agency conducted discussions with each offeror in the competitive range and requested and received revised proposals. Id. The final evaluation ratings and evaluated costs for the protester and awardee were as follows:³

¹ References to the RFP are to the conformed copy provided by the agency; page citations are to the pages in the PDF document.

² Citations to the offerors' proposals and the agency's evaluation documents are to the page numbers added by the agency.

³ For the management approach, technical approach, and small business participation factors, the agency assigned one of the following ratings: outstanding, good, acceptable, marginal, or unacceptable. RFP at 75, 77. For the past performance factor, the agency assigned one of the following ratings: substantial confidence,
(continued...)

	OAK GROVE	CUBIC
Management Approach	Good	Outstanding
Technical Approach	Marginal	Outstanding
Past Performance	Satisfactory Confidence	Substantial Confidence
Small Business Participation	Good	Outstanding
Proposed Cost	\$324,719,390	\$355,152,087
Evaluated Cost	\$364,027,166	\$362,282,182

Id. at 4-5.

The source selection authority (SSA) reviewed and concurred with the evaluation reports prepared by the source selection evaluation board and cost analyst. Id. at 5. As relevant here, the SSA compared Oak Grove’s and Cubic’s proposals under the management approach factor and concluded that the awardee’s proposal was “somewhat superior” to the protester’s. Id. at 29. For the technical approach factor, the SSA found that the awardee’s proposal was “significantly superior” to the protester’s. Id. at 30. The SSA concluded that a tradeoff was not required between Cubic’s proposal and the proposals of the other two offerors because Cubic’s proposal had the highest overall technical ratings and the lowest evaluated cost. Id. at 5. In making this judgment, the SSA explained that “I have considered the underlying strengths and weaknesses of each offeror, and not merely the relative number of strengths and weaknesses nor simply the assigned ratings.” Id. at 6. With regard to Oak Grove’s proposal, the SSA noted that “[e]ven if Cubic’s evaluated cost was significantly higher than Oak Grove’s, the benefits in Cubic’s non-cost factor proposals would warrant additional Government expense.” Id. at 31.

The Army advised Oak Grove of the award to Cubic on November 17, and provided a written debriefing on November 30. This protest followed.

DISCUSSION

Oak Grove raises three primary challenges to the Army’s award to Cubic: (1) the agency unreasonably and unequally evaluated the realism of the offerors’ proposed costs and failed to conduct meaningful discussions regarding the agency’s concerns; (2) the agency unreasonably evaluated the protester’s proposal under the management approach evaluation factor; and (3) the agency unreasonably evaluated the protester’s

(...continued)

satisfactory confidence, limited confidence, no confidence, or unknown (neutral) confidence. Id. at 77.

proposal under the technical approach evaluation factor.⁴ For the reasons discussed below, we find no basis to sustain the protest.

The evaluation of an offeror's proposal is a matter within the agency's discretion. National Gov't Servs., Inc., B-401063.2 et al., Jan. 30, 2012, 2012 CPD ¶ 59 at 5. While we will not substitute our judgment for that of the agency, we will question the agency's conclusions where they are inconsistent with the solicitation criteria and applicable procurement statutes and regulations, undocumented, or not reasonably based. Public Commc'ns Servs., Inc., B-400058, B-400058.3, July 18, 2008, 2009 CPD ¶ 154 at 17. A protester's disagreement with the agency's judgment in its determination of the relative merit of competing proposals, without more, does not establish that the evaluation was unreasonable. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4. Competitive prejudice is an essential element of a viable protest, and we will sustain a protest only where the protester demonstrates that, but for the agency's improper actions, it would have had a substantial chance of receiving the award. DRS ICAS, LLC, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 21.

With regard to the cost realism evaluation, we conclude that the agency reasonably adjusted the protester's proposed costs by an amount that made its evaluated cost higher than the awardee's evaluated cost; we therefore do not address any challenges to adjustments above this amount as resolution of these arguments in the protester's favor would not give the protester a substantial chance for award. With regard to the technical evaluation, we conclude that the agency reasonably assigned weaknesses to the protester's proposal under the management approach factor, and reasonably did not assign strengths to the protester's proposal under the technical approach factor; we do not address the protester's remaining challenges regarding weaknesses assessed under this factor because resolution of these arguments in the protester's favor would not give the protester a substantial chance for award.

Cost Realism Evaluation

Oak Grove argues that the Army conducted an unreasonable cost realism evaluation, which resulted in improper upward adjustments to the protester's indirect fringe rate and

⁴ Oak Grove also raises other collateral arguments. Although we do not address every argument, we have reviewed them all and find that none provides a basis to sustain the protest. In addition, the protester's arguments suggest that the agency's cost realism adjustments were made in bad faith in an attempt to avoid the need for a cost-technical tradeoff in the award decision. See Protester's Comments, Jan. 16, 2018, at 3-4 ("The Army applied this enormous 'plus up' to Oak Grove's proposal in order to avoid having to make a best value tradeoff decision. . . ."). Government officials are presumed to act in good faith and we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Marinette Marine Corp., B-400697 et al., Jan. 12, 2009, 2009 CPD ¶ 16 at 29.

direct labor costs. The protester also argues that the agency failed to provide meaningful discussions regarding the protester's indirect fringe rate and its labor escalation rate. For the reasons discussed below, we find no basis to sustain the protest.

When an agency evaluates a proposal for the award of a cost-reimbursement contract, 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. Federal Acquisition Regulation (FAR) §§ 15.305(a)(1), 15.404-1(d); CSI, Inc.; Visual Awareness Techs. & Consulting, Inc., B-407332.5 et al., Jan. 12, 2015, 2015 CPD ¶ 35 at 5-6. Consequently, the 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. FAR § 15.404-1(d)(1); Noridian Admin. Servs., LLC, B-401068.13, Jan. 16, 2013, 2013 CPD ¶ 52 at 4. An agency is not required to conduct an in-depth cost analysis, or to verify each and every item in assessing cost realism; rather, the evaluation requires the exercise of informed judgment by the contracting agency. Cascade Gen., Inc., B-283872, Jan. 18, 2000, 2000 CPD ¶ 14 at 8; see FAR § 15.404-1(c). Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonable; a protester's disagreement with the agency's judgment, without more, does not provide a basis to sustain the protest. Imagine One Tech. & Mgmt., Ltd., B-412860.4, B-412860.5, Dec. 9, 2016, 2016 CPD ¶ 360 at 14-15.

The Army evaluated the realism of offerors' proposed costs and adjusted Oak Grove's proposed costs from \$324,719,390 to \$364,027,166, and Cubic's proposed costs from \$355,152,087, to \$362,282,182. AR, Tab 145, SSDD, at 5. The protester challenges \$18,807,949 of the \$39,307,776 adjustments made to its proposed costs, in the following areas: (1) indirect fringe rate in the amount of \$5,064,316, and (2) direct labor in the amount of \$13,743,633. Protester's Supp. Comments, Feb. 5, 2018, at 22.⁵

Fringe Rate for Exempt Employees

Oak Grove argues that the Army unreasonably evaluated its proposed indirect cost fringe rate and that this error resulted in an upward cost realism adjustment of \$5,064,316. Protester's Supp. Comments, Feb. 5, 2018, at 22. The agency's

⁵ Our discussion of Oak Grove's cost realism arguments uses the protester's calculations of the impact of the cost realism adjustments. The protester revised certain of its calculations in its comments on the supplemental agency report; we use these revised figures for our discussion of the protester's arguments. See Protester's Supp. Comments, Feb. 5, 2018, at 22. The Army disputes the protester's calculation of certain of these adjustments. Because we conclude that the protester's arguments, including its own calculations, do not provide a basis to sustain the protest, we need not resolve the disagreement between the protester and the agency.

adjustments concerned the protester's proposed approaches to its 401(k) retirement plan and bonuses for exempt employees.⁶

Oak Grove's initial proposal advised that its proposed fringe rate for exempt personnel was based on the "actual Oak Grove companywide fringe costs and actual expense base." AR, Tab 84, Oak Grove Initial Cost Proposal, at 48. The protester also stated, however, that its proposed fringe rate for the JRTC program [DELETED] the "employee bonus and 401K [employer] match" that the company provides to its current personnel. Id. The protester's cost worksheet showed that the estimated fringe rate was based on a 2015 rate of [DELETED] percent, and that [DELETED] of the 401(k) employer match and bonuses would reduce this rate to [DELETED] percent for the JRTC contract. AR, Tab 85, Oak Grove Initial Cost Worksheet, Fringe Tab.

During discussions, the Army advised Oak Grove that its proposal contained inconsistencies between (1) the offeror's proposed compensation plan, which identified merit-based compensation and bonuses, and further stated that employees would be immediately vested in the 401(k) employer match, and (2) the offeror's cost proposal, which stated that the protester would [DELETED] employee bonuses and the 401(k) employer match. AR, Tab 117, Oak Grove Discussions, at 74. The agency directed the protester to "address the inconsistencies . . . involving the payment of employee bonuses and 401K matching and their impact to the exempt labor fringe rate proposed." Id.

Oak Grove's revised proposal stated that the firm will [DELETED] a 401(k) plan for exempt employees [DELETED] employer match, which the protester described as "industry standard practice for DoD training programs." AR, Tab 127, Oak Grove Revised Cost Proposal, at 23. The protester also stated that the "Oak Grove bonus plan for JRTC is for key employees on[ly] and is intended to be [DELETED]." Id. The protester revised its cost worksheet to show a 2015 fringe rate of [DELETED] percent, which would be reduced to [DELETED] percent by [DELETED] of the 401(k) employer match and bonuses. AR, Tab 128, Oak Grove Revised Cost Worksheet, Fringe Tab.

The Army concluded that the protester's proposed approach to the 401(k) employer match and bonuses was unrealistic because "[i]t would be unlikely for Oak Grove to obtain and retain qualified personnel if [DELETED] 401K match and/or incentivized bonuses." AR, Tab 134, Revised Cost Analysis Report, at 32. In support of this conclusion, the agency states that it considered historical data, such as the compensation levels and benefits under Cubic's incumbent contract, which [DELETED] 401(k) employer match and bonuses. See Contracting Officer's Statement (COS) at 32. Based on this concern, the agency adjusted the protester's proposed fringe rate to the

⁶ Oak Grove developed its labor rates by employee class: Service Contract Act (SCA) non-exempt, SCA collective bargaining agreement non-exempt, and exempt salaried employees. AR, Tab 84, Oak Grove Initial Cost Proposal, at 48.

company's projected rate with [DELETED] of the 401(k) employer match and bonus pool costs [DELETED]. AR, Tab 134, Revised Cost Analysis Report, at 32.

Oak Grove argues that the Army unreasonably rejected its rationale for its proposed [DELETED] of its 401(k) employer match and bonuses for non-key personnel. In addition to the language in its proposal quoted above, the protester also argues that "Oak Grove's experience in this micro-market dictates that employees do not prioritize 401K match and bonuses." Protester's Comments, Jan. 16, 2018, at 5; see also Protest at 16. As discussed above, however, the agency considered the compensation provided under the incumbent JRTC contract and concluded that it would not be realistic for a contractor to recruit and retain employees with a compensation plan that [DELETED] these benefits. Supp. COS at 31-32; see AR, Tab 134, Revised Cost Analysis Report, at 32. To the extent the protester relies on its general, unsupported representations about its understanding of the local labor market, we find no basis to conclude that the protester's disagreement with the agency's judgment demonstrates that the agency unreasonably found the protester's proposed fringe rate to be unrealistic.

Next, Oak Grove argues that the Army's adjustment of its fringe rate for exempt personnel failed to recognize the protester's understanding that most of Oak Grove's proposed employees are retired military personnel who have healthcare through the Department of Defense's TRICARE program, and thus would not require healthcare from Oak Grove.⁷ Protest at 17. As the Army notes, however, the protester did not specifically address this issue in its proposal. In this regard, neither the protester's proposal nor its protest identifies how many of its proposed employees have healthcare benefits through TRICARE. Additionally, Oak Grove does not address what the supposed impact of considering TRICARE benefits should have been for the evaluation of the protester's fringe rate. On this record, we find no basis to conclude that the agency erred by failing to independently factor potential savings associated with TRICARE into its evaluation of the awardee's fringe rate.

Next, Oak Grove argues that the Army's evaluation of its proposed fringe rate for exempt personnel ignored the protester's demonstrated ability to hire its proposed key personnel. In this regard, the protester's proposal stated that it had "successfully signed" all of its proposed key personnel, and that this commitment demonstrates that its proposed compensation plan and fringe benefit rate were realistic. AR, Tab 79, Oak Grove Initial Technical Proposal, at 56.

The agency argues that the protester's commitment from its proposed key personnel does not demonstrate the overall realism of its proposed fringe rate for exempt personnel because those individuals represent only approximately 2 percent of the overall exempt personnel proposed. In this regard, the agency states that Oak Grove

⁷ TRICARE is the health care program for uniformed service members and their families. See TRICARE About Us, <https://tricare.mil/About> (last visited March 12, 2018).

proposed over [DELETED] exempt full-time equivalent personnel (FTEs), and that the protester's key personnel comprise only [DELETED] FTEs. See AR, Tab 127, Oak Grove Revised Cost Proposal, at 96-97; Tab 138, Revised Cost Analysis Report--Oak Grove Analysis, at Cost Buildup Worksheet.⁸ Additionally, the protester's proposed compensation plan [DELETED] bonuses only for the key personnel; thus a commitment from proposed key personnel does not address the agency's concern regarding the [DELETED] bonuses for exempt personnel. AR, Tab 127, Oak Grove Revised Cost Proposal, at 23. On this record, we find no basis to conclude that the agency unreasonably failed to find that the protester's signed agreements with its proposed key personnel demonstrated the realism of its proposed fringe rate.

Next, Oak Grove argues that the Army failed to acknowledge its proposed cap on bonuses for key personnel. The protester notes that its revised proposal stated that bonuses would be provided to key personnel, and that the bonuses are "[DELETED]." AR, Tab 127, Oak Grove Revised Cost Proposal, at 23. For this reason, the protester contends that it capped the government's liability for the cost of bonuses, and the agency had no reasonable basis to adjust these costs.

The Army states that it did not view the protester's proposal regarding an intent to fund bonuses [DELETED] as committing to cap the government's liability for all costs of the proposed bonuses. See Supp. COS at 8. The agency explains that in instances where the offeror proposed language in other parts of its proposal which specifically stated that the government's liability would be capped, the agency accepted these caps. See, e.g., AR, Tab 134, Revised Cost Analysis Report, at 33 (discussing the protester's realistic cap for the government site overhead pool). On this record, we conclude that the agency reasonably viewed the protester's proposal as not unambiguously capping the government's liability for potential costs arising from the need to pay bonuses for exempt personnel. Moreover, the agency found that the protester's proposal to provide bonuses only for key personnel would not allow for recruiting and retention of all exempt personnel. Id. at 32. As discussed above, the awardee's proposed key personnel represent only approximately 2 percent of the overall exempt personnel proposed. In light of this concern, and the absence of a specific cap on bonuses, the agency had a reasonable basis to adjust these costs.

Next, Oak Grove argues that the Army's evaluation of its fringe rate for exempt employees was unreasonable because Cubic proposed a lower fringe rate ([DELETED] percent) than the rate proposed by the protester and rejected by the agency as unrealistic ([DELETED] percent). AR, Tab 134, Revised Cost Analysis Report, at 32, 46; Tab 131-11, Cubic Revised Indirect Cost Rates. As discussed above, however, a cost realism analysis must examine whether an offeror's proposed costs are realistic for its proposed approach. See Noridian Admin. Servs., LLC, supra. Here, the protester does not specifically allege that any elements of the awardee's proposed

⁸ Oak Grove does not dispute the Army's FTE calculations for the protester's proposed key personnel or exempt staffing.

indirect fringe rate are unrealistic; rather, the protester simply contends that its own proposed indirect rate must be inherently realistic because it is higher than the rate the agency found realistic for the awardee. In the absence of a specific challenge demonstrating that the awardee's proposed fringe rate was unrealistic, we find no basis to conclude that the agency's evaluation of the protester's proposed rate was unreasonable or unequal.

Direct Labor Adjustments

Oak Grove challenges the Army's cost realism evaluation regarding its proposed direct labor costs in six areas: (1) logistics technicians and logistics assistants staffing, (2) labor escalation, (3) role player group I staffing, (4) field camera videographer staffing, (5) training analysis and feedback facility labor rates, and (6) the labor cap associated with PWS ¶ 5.11. For the reasons discussed below, we conclude that the Army reasonably evaluated Oak Grove's proposed costs regarding the first three direct labor items. Because eliminating the second three direct labor adjustments would not make the protester's evaluated price lower than the awardee's evaluated price, and because we conclude, as discussed below, that the protester does not demonstrate that the agency erred in finding the awardee's proposal superior to the protester's proposal under the non-cost factors, we need not address the second three cost realism arguments.⁹ See DRS ICAS, LLC, *supra*.

Oak Grove argues that the Army unreasonably adjusted its proposed costs by increasing the number of hours for proposed logistics technicians and logistics assistants, and that this error resulted in an upward cost realism adjustment of \$1,238,082. Protester's Supp. Comments, Feb. 5, 2018, at 22. During discussions, the agency identified a concern regarding the offeror's proposal for these positions in connection with the technical approach factor evaluation, and directed the protester to "address how hours proposed for the Logistics Assistant and the Logistics Technician are sufficient to cover rotation, training, preparation, turn-in, and warehousing functions as it is expected that there will be two separate warehouses that will require support." AR, Tab 117, Oak Grove Discussions, at 53. The protester's response to discussions explained that it had increased staffing for these requirements, including a warehouse

⁹ The protester's evaluated cost was \$364,027,166, and the awardee's evaluated cost was \$362,282,182--which was \$1,744,984 lower. AR, Tab 145, SSDD, at 4-5. The agency adjusted the protester's proposed costs upward by \$39,307,776, and the protester challenges \$18,807,949 of these adjustments. Protester's Supp. Comments, Feb. 5, 2018, at 22. Based on our review of the protester's challenges to the cost realism adjustments, we conclude that at least \$17,715,410 (fringe rate adjustment and first three of six direct labor adjustments) of the \$18,807,949 agency's adjustments challenged by the protester were reasonable. Thus, the remaining challenges (second three of six direct labor adjustments), which total \$1,092,539 in adjustments, would not overcome the \$1,744,984 difference between the protester's and awardee's evaluated costs.

team lead, [DELETED] full-time technicians, and [DELETED] part-time technicians. AR, Tab 120, Oak Grove Revised Technical Proposal, at 26. Based on this response, the agency concluded that the concern was resolved with regard to the technical approach. AR, Tab 132, Revised Technical Evaluation Report, at 85. Despite the resolution of the concern regarding the protester's technical proposal, the agency concluded that the protester had not adjusted its proposed costs to account for the increased number of proposed staff. AR, Tab 139, Oak Grove Technical Evaluation Cost Adjustments, Tech Eval Adjusted Tab, Lines 104-105.

Oak Grove does not specifically challenge the amount of the agency's cost realism adjustment, but instead argues that the elimination of the technical weakness should have precluded any cost realism adjustment. See Protester's Comments at 13-14; Supp. Comments at 12-13. Additionally, the protester argues that the contemporaneous record does not explain the basis for the agency's cost realism adjustment, and therefore constitutes an improper post hoc justification for the evaluation. See Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15 (GAO generally gives little or no weight to reevaluations and judgments prepared in the heat of the adversarial process).

The contemporaneous record, however, clearly demonstrates that the agency identified a new concern based on the protester's response to discussions. The summary chart prepared by the agency documenting the cost impacts to the post-discussions revisions to the protester's technical proposal specifically noted two adjustments: (1) logistics assistant hours were "[a]djusted to match Offeror's response to [evaluation notice (EN)] 21 to provide support using [DELETED] full time personnel," and (2) logistics technician hours were "[a]djusted to match Offeror's response to EN 21 to provide support using [DELETED] part time personnel." AR, Tab 139, Oak Grove Technical Evaluation Cost Adjustments, Tech Eval Adjusted Tab, Lines 104-105. We conclude that the contemporaneous record shows that the agency identified a concern with the costs proposed for the protester's revised technical approach, and made a corresponding adjustment. On this record, we find no basis to sustain the protest.

Next, Oak Grove argues that the Army improperly adjusted its proposed labor escalation rate, and that this error resulted in an upward cost realism adjustment of \$9,998,761. Protester's Supp. Comments, Feb. 5, 2018, at 22. Oak Grove initially proposed a labor escalation rate of [DELETED] percent from the date of the proposal to the date of contract performance, or during performance. During discussions, the Army advised the protester that "[t]he average employment cost escalation rate for [all] civilian [] workers for 2011 – 2016 was calculated by the evaluation team at 2.05%." AR, Tab 117, Oak Grove Discussions, at 73. The agency directed the protester to explain "how the cost of employment escalation is covered in the cost volume," and to "provide [a] rationale to support any escalation rate proposed." Id.

Oak Grove's revised proposal stated that a [DELETED] percent escalation rate was justified because market forces had created an "employer's market" in the Fort Polk area based on the recompetition of the JRTC contract, during which the protester

contends employees usually do not receive raises, and “the drawdown of two wars and the large number of military exits from active duty after several difficult deployments.” AR, Tab 127, Oak Grove Revised Cost Proposal, at 21-22. The protester nonetheless stated that, despite its confidence in its initial assumption of [DELETED] percent escalation, it had revised its proposed costs to include a “[DELETED]% escalation from bid submission to contract award for all exempt positions, prime and subcontractor,” and a “[DELETED]% escalation per year for all labor categories for each year of the program.” Id. at 22. The protester further stated that its proposed escalation rate was “not an economic forecast but rather part of Oak Grove’s management solution that our Program Manager is responsible to execute.” Id.

The agency concluded that the protester’s proposed escalation rate was not realistic, and that “actual escalation is more likely to be driven by market forces” than the protester’s assumptions regarding its management approach. AR, Tab 134, Revised Cost Analysis Report, at 30-31. For these reasons, the agency applied the 2.05 percent escalation which was identified during discussions. Id. at 31. The agency explained that the “escalation factor used throughout the cost realism analysis is the calculated average escalation for years 2011 – 2016 from the [Bureau of Labor Statistics (BLS)] Employment Cost Index for total compensation, for civilian workers of 2.05%.” Id. at 7.

Oak Grove contends that the agency ignored its rationale for a [DELETED] percent escalation rate, based on what the protester contends is a “unique micro-market” for labor at Fort Polk. Protester’s Comments, Jan. 16, 2018, at 17. As discussed above, however, the record shows that the agency’s evaluation specifically cited, but rejected the protester’s rationale set forth in its response to discussions. Id. at 30-31. The agency explains that it did not view the protester’s rationale concerning recompetition or the effects of military exits to substantiate that the Fort Polk area was a unique micro-market. For this reason, the agency contends it was reasonable to rely on the BLS cost index for total compensation. Supp. COS at 14-15. To the extent the protester disagrees with the agency’s judgment regarding the escalation rate, we find no basis to sustain the protest.

Next, Oak Grove argues that the Army unreasonably adjusted its proposed costs for role player group I personnel and that this error resulted in an upward cost realism adjustment of \$1,369,251. Protester’s Supp. Comments, Feb. 5, 2018, at 22. The protester contends that its proposal encompassed all required PWS tasks within a 12-hour day, but that the agency unreasonably added two additional hours to its labor estimate to account for additional required tasks.

During discussions regarding the technical evaluation factor, the agency directed the protester to “address how hours proposed for the Special Operations Training Division [SOTD] Role Play (all labor categories) are sufficient to cover training, preparation, equipment issue/turn-in, and travel time to and from the training area.” AR, Tab 117, Oak Grove Discussions, at 55. The protester’s revised proposal included a chart which outlined a 12-hour shift schedule for performance of these requirements. AR, Tab 120, Oak Grove Revised Technical Proposal, at 33-34. The protester’s proposal also stated

the following: “Furthermore, we include additional surge hours for training, preparation, equipment issue/turn-in, and travel time to and from the training area for all Role Players [to ensure they] are available when required.” Id. at 33.

The agency’s evaluation of the protester’s revised proposal concluded that the “[t]he Offeror’s proposed hours under SOTD Role Play to support training, preparation, equipment issue/turn-in and travel time to and from the training area remains a weakness” because the written narrative concerning this requirement did not match the staffing chart. AR, Tab 132, Revised Technical Evaluation Report, at 117. For the cost evaluation, the agency noted that the protester’s proposal indicated that 12 hours were required to perform the SOTD activities, but also stated that additional time was required “for preparation and travel to the box (rotational location),” and for “travel from the rotation location and turn-in for direct rotation support.” AR, Tab 140, Oak Grove Cost Breakout, at 3. The agency therefore added 2 hours to the protester’s proposed 12-hour shifts to account for the additional tasks. Id.

Oak Grove argues that the Army’s adjustment to its proposed cost was unreasonable because its revised proposal stated that it had included “additional surge hours” to address the additional tasks identified by the agency during discussions. The protester contends that its proposal stated that all SOTD tasks would be accomplished within the 12-hour period set forth in its proposal. Protester’s Comments, Jan. 16, 2018, at 18.

The Army argues that the adjustment to Oak Grove’s proposed hours was required based on the protester’s discussions response. The agency states that it understood the protester’s proposal to set forth two different sets of activities, and that the table showing the 12-hour shift did not include the additional training required preparation, turn-in, and travel time. See Supp. COS at 18. On this record, we conclude that the agency reasonably found that the reference to “surge” hours meant that there was an additional amount of work that was not explained or addressed within the 12-hour shift set forth in the protester’s revised proposal. We therefore find no basis to conclude that the agency unreasonably adjusted the protester’s proposed hours for this requirement.

Discussions

Finally, Oak Grove argues that the Army failed to provide meaningful discussions regarding two areas: (1) [DELETED] 401(k) employer match and bonuses for exempt employees, and (2) labor escalation. In each case, the protester argues that the agency did not advise it of the nature of concerns which formed the basis of the agency’s final evaluation.

Discussions, when conducted, must identify proposal deficiencies and significant weaknesses that reasonably could be addressed in order to materially enhance the offeror’s potential for receiving award. FAR § 15.306(d)(3); Serco Inc., B-405280, Oct. 12, 2011, 2011 CPD ¶ 237 at 11. When an agency engages in discussions with an offeror, the discussions must be “meaningful,” that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision. See FAR

§ 15.306(d)(3); Southeastern Kidney Council, B-412538, Mar. 17, 2016, 2016 CPD ¶ 90 at 4. Agencies, however, are not required to “spoon-feed” an offeror during discussions by identifying every possible area where a proposal might be improved or suggesting alternative approaches; agencies need only lead offerors into the areas of their proposals that require amplification or revision consistent with the requirements of the FAR. Vizada Inc., B-405251 et al., Oct. 5, 2011, 2011 CPD ¶ 235 at 11; Senior Comm’cns Servs., B-233173, Jan. 13, 1989, 89-1 CPD ¶ 37 at 6.

The Army advised Oak Grove during discussions that its proposal contained conflicting provisions regarding its compensation plan, which stated that employees would be provided bonuses and were immediately vested in their 401(k) employer matches, and its proposal to [DELETED] the 401(k) employer match and bonuses from its current exempt fringe rate. AR, Tab 117, Oak Grove Discussions, at 74. The agency directed the protester to “address the inconsistencies . . . involving the payment of employee bonuses and 401K matching and their impact to the exempt labor fringe rate proposed.” Id. Oak Grove’s revised proposal resolved the conflict, stating that the firm [DELETED] 401(k) plan for exempt employees [DELETED] company match and that key personnel, but not other exempt personnel, [DELETED] provided bonuses. AR, Tab 127, Oak Grove Revised Cost Proposal, at 23. The Army’s evaluation of the revised proposal concluded that [DELETED] the 401(k) employer match and bonuses was not a realistic approach to compensation. AR, Tab 134, Revised Cost Analysis Report, at 32.

Oak Grove argues that the agency’s discussions were misleading because the agency was not concerned with a “supposed inconsistency” in the protester’s proposal, and was instead concerned only with the realism of [DELETED] 401(k) employer match and bonuses. Protester’s Supp. Comments, Feb. 5, 2018, at 12-13. In essence, the protester contends that the agency should have advised the protester to resolve the contradiction in favor of [DELETED] 401(k) employer match and bonuses. We conclude that the agency identified a contradiction in the protester’s proposal and directed the protester to resolve the contradiction and to address the impact to the proposed fringe rate. The agency’s discussions met its obligations under the FAR because they clearly directed the protester to the agency’s area of concern, and provided the protester an opportunity to resolve the matter and to further explain the protester’s justification. Additionally, because the protester’s justification regarding the realism of its proposed [DELETED] the 401(k) employer match and bonuses to non-key personnel was provided for the first time in its revised proposal, the agency was not obligated to reopen discussions to address the agency’s concerns regarding this new information. See Cube-All Star Servs. Joint Venture, B-291903, Apr. 30, 2003, 2003 CPD ¶ 145 at 10-11.

With regard to labor escalation, Oak Grove contends that the Army accepted other offerors’ proposals to cap their escalation rates. The protester argues that if the agency was willing to accept labor rate caps from other offerors, the agency should have advised the protester that the agency preferred or would have accepted this approach. As discussed above, however, the agency specifically advised the protester during discussions as to the rate the agency had calculated, and directed the protester to explain how its proposal accounted for escalation. AR, Tab 117, Oak Grove

Discussions, at 73. To the extent other offerors proposed an approach to escalation which incorporated a cap that justified a lower escalation rate than the uncapped rate proposed by the protester, the agency was not required to spoon feed or coach the protester during discussions to also propose this solution. See Vizada Inc., supra; Senior Comm'cns Servs., supra. In sum, we find no basis to sustain the protest with regard to the agency's cost realism evaluation.

Management Approach Factor

Next, Oak Grove argues that the Army unreasonably evaluated its proposal under the management approach factor. Specifically, the protester contends that the agency unreasonably assigned weaknesses to its proposal in the following areas: (1) a lack of clarity regarding the chain of command, (2) a failure to demonstrate an understanding of recruitment challenges, and (3) a failure to address communications and control methods in detail. Protest at 59-64; see AR, Tab 145, SSDD, at 15. We find that none of the protester's arguments provide a basis to sustain the protest. We address one of the three weaknesses as a representative example.

The Army assigned eight strengths and three weaknesses to the protester's proposal, and eight strengths and one weakness to the awardee's proposal. AR, Tab 145, SSDD, at 28. With regard to the weakness regarding the lack of clarity concerning communications and control, the Army identified a weakness in Oak Grove's initial proposal because "maintaining effective lines of communication and control over geographically dispersed personnel was incomplete." AR, Tab 132, Revised Technical Evaluation Report, at 73. The agency also stated that "[t]he Offeror failed to discuss support for the [special operations forces (SOF)] Operational Detachments – Alphas (ODAs), which will account for a majority of the dispersed personnel, per PWS C.5.12" as well as "support for [joint operations center (JOC)], [after action review (AAR)], and Rotational Video Support for SOF at (the national training center (NTC)) per PWS C.5.6.4.10 and C.5.8.2.2." Id. The agency concluded the failure to address this matter "would negatively impact command and control, safety, and training exercise instructions thus, not allowing the Government to conduct rotational requirements causing mission failure." Id.

During discussions, the agency advised that the protester's "approach for maintaining effective lines of communication and control over geographically dispersed personnel was incomplete." AR, Tab 117, Oak Grove Discussions, at 43. The agency directed the protester to "address the required support for the SOF ODAs, JOC, and AAR and Rotational Video Support at NTC." Id.

The Army concluded that Oak Grove's revised proposal did not address the concern identified during discussions because it "superficially discussed supervisor and control links between leads and subordinates for the SOF, video and [training analysis and feedback facility (TAFF)] sections," and "did not provide any details concerning how the communications and controls would be executed." AR, Tab 132, Revised Technical Evaluation Report, at 74. Although the agency acknowledged the protester's proposed

use of its [DELETED], the agency found that the proposal “did not adequately discuss communication and control over geographically off-site areas.” Id.

Oak Grove argues that the Army evaluated the offerors’ proposals unequally because, the protester contends, both the protester’s and awardee’s proposals provided similar levels of detail regarding their approaches to command and control. The agency states that although both offerors addressed their general approaches to communications, the awardee’s proposal provided more details regarding specific individuals who would be responsible for communications tasks, and also specifically addressed communications over geographically-dispersed employees. COS at 74-75; Supp. COS at 42-43. Based on our review of the record, we find no basis to conclude that the agency treated the offerors unequally. Compare AR, Tab 100-6, Cubic Initial Technical Proposal, at 011-015, with Tab 79, Oak Grove Initial Technical Proposal, at 48-50; Tab 120, Oak Grove Revised Technical Proposal, at 7-8. We also think the agency reasonably found that the protester’s revised proposal provided only a general response to the concern identified during discussions. Specifically, the protester addressed its “awareness” of the requirements and included a chart that did not provide details about the offerors’ approach to communications and controls. See AR, Tab 120, Oak Grove Revised Proposal, at 7-8. On this record, we find no basis to sustain the protest.

Technical Approach Factor

Oak Grove argues that the Army unreasonably evaluated its proposal under the technical approach factor. The agency assigned one strength and 18 weaknesses to the protester’s proposal; in contrast, the agency assigned eight strengths and one weakness to the awardee’s proposal. AR, Tab 145, SSDD, at 29-30. The protester contends that the agency failed to recognize a number of strengths in its proposal and challenges 14 of the weaknesses assigned to its proposal.¹⁰ For the reasons discussed below, we find no basis to sustain the protest.

Failure to Assign Strengths

Oak Grove argues that the Army unreasonably failed to assign its proposal strengths in two areas: (1) support of the battlefield effects branch, and (2) the protester’s proposed Army Warfighting Functions. These two areas of the protester’s proposal were each the subject of three evaluation notices during discussions; for each evaluation notice, the agency identified a concern, and the protester’s response resolved the concern. AR, Tab 132, Revised Technical Evaluation Report, at 79-80, 85-87, 96. The protester argues, however, that its initial proposal, as augmented by its discussions response, reflected strengths that the agency unreasonably failed to recognize. We find no merit to these arguments, and discuss one representative example below.

¹⁰ Oak Grove initially challenged the assessment of all 18 weaknesses, but subsequently withdrew its challenge to four of those weaknesses. Protester’s Comments, Jan. 16, 2018, at 20 n.5.

With regard to support for the battlefield effects branch, the Army asked Oak Grove to address how its proposal met the requirement to provide sufficient hours for the Battlefield Effects Branch Manager. AR, Tab 117, Oak Grove Discussions, at 53. The agency concluded that the protester's response to the issue addressed the agency's concern. AR, Tab 132, Revised Technical Evaluation Report, at 85-87.

Oak Grove argues that the Army's evaluation was unreasonable because it failed to recognize what the protester contends are the benefits associated with the qualifications for the proposed manager position and the ability of that manager to adjust work hours to be present during critical times. See AR, Tab 120, Oak Grove Revised Technical Proposal, at 26. The agency explains, however, that although the protester "proposed a workable plan," the evaluators "did not note anything that stood out as technically superior." COS at 69; see Supp. COS at 40. Moreover, as the protester acknowledges, the agency's evaluation of its revised proposal expressly cites and discusses the aspects of Oak Grove's approach that the protester contends should have been viewed as a strength. AR, Tab 132, Revised Technical Evaluation Report, at 85-86; see Protester's Comments, Jan. 16, 2018, at 50.

Where the record shows that the agency considered the protester's proposed approach, but does not conclude that the approach merited strengths, the protester's disagreement with the agency's judgment does not provide a basis to sustain the protest. See BNL, Inc., B-409450, B-409450.3, May 1, 2014, 2014 CPD ¶ 138 at 5. On the record here, we find no basis to conclude that the agency's evaluation was unreasonable.

Unreasonable Assignment of Weaknesses

Next, Oak Grove argues that the Army unreasonably assigned weaknesses to its proposal for the technical approach factor. We conclude that there is no need to address the protester's challenges to these weaknesses because the protester cannot demonstrate any potential prejudice arising from this aspect of the agency's evaluation. As our Office has explained, comparisons of the relative merit of offerors' proposals should not be based on a mere comparison of the number of strengths and weaknesses. General Dynamics, American Overseas Marine, B-401874.14, B-401874.15, Nov. 1, 2011, 2012 CPD ¶ 85 at 10. Here, however, the source selection decision document shows that the agency clearly believed that the eight strengths offered by the awardee's proposal outweighed the single strength offered by the protester's proposal; the record does not show any reasonable possibility that elimination of 14 of the 18 the weaknesses would change that assessment. See AR, Tab 145, SSDD, at 29-30.

Additionally, our review of the record finds that the agency reasonably concluded that Cubic's evaluated cost was lower than Oak Grove's evaluated cost, and that the agency reasonably found that Cubic's proposal was superior to Oak Grove's under the management approach factor. Further, the protester does not challenge the agency's

assessment that the awardee's proposal was superior to the protester's under the past performance and small business participation evaluation factors. See id. at 30-31. Given these overall advantages for Cubic's proposal, we find no reasonable prospect that elimination of the weaknesses challenged by Oak Grove under the technical approach factor would give the protester a substantial chance of receiving the award. See DRS ICAS, LLC, supra. On this record, therefore we find no basis to sustain the protest.

The protest is denied.

Thomas H. Armstrong
General Counsel