

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

Decision

Matter of: Celeris Systems, Inc.

File: B-404651

Date: March 24, 2011

Rex Wiig for the protester.

Jonathan D. Zischkau, Esq., and Kerry Hotopp, Esq., Department of the Navy, for the agency.

Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest of the contracting agency's evaluation of the protester's proposal is denied where the record reasonably supports the agency's evaluation of the protester's proposal.
 2. Protest against the contracting agency's cost realism analysis of the awardee's proposal is denied where the record shows that the agency reasonably evaluated the awardee's proposed costs, taking into account the awardee's technical approach and individual cost elements.
 3. Protest that the contracting agency provided source selection sensitive information and was otherwise biased in favor of the awardee is denied where each of the allegations was investigated by the agency, which found no evidence of improper government action, and the protester has not pointed to any concrete evidence of specific information that the awardee may have learned that provided it with an unfair competitive advantage or that demonstrated that government officials acted in bad faith or were biased.
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DECISION

Celeris Systems, Inc., of Anaheim, California, protests the award of a contract to The Hana Group, of Honolulu, Hawaii, under request for proposals (RFP) No. N00024-10-R-3071, issued by the Department of the Navy, Naval Sea Systems Command, for missile range and business/financial support services.

We deny the protest.

BACKGROUND

The RFP, issued on June 18, 2010, as a small business set aside, sought proposals for award of a cost-plus-fixed-fee contract for a base year with 4 option years for missile range and business/financial support services at the Pacific Missile Range Facility (PMRF) on the island of Kauai, Hawaii.¹ The services include program management, range operations, system engineering, range surveillance, information assurance, financial services, and business information systems. RFP, Statement of Work (SOW), at 3. The RFP designated a specific level of labor hours for each of the contract items for which estimated costs and fees were requested.

The RFP provided for award on a best-value basis considering four evaluation factors: technical capability, management approach, past performance, and cost. The technical capability and management approach factors were of equal weight and were significantly more important than past performance; when combined, the non-cost factors were significantly more important than cost. RFP at 51. Under the technical capability factor, the RFP advised that “technical capability is a measure of the degree to which an Offeror is able to . . . meet technical requirements.” The RFP advised that under the factor the agency would

evaluate the Offeror’s technical capability to perform the requirements . . . depicted in [the SOW] . . . considering the Offeror’s:
A) Qualification and retention of key personnel, B) Staffing plan,
C) Program Management Approach, D) Range Operations Approach,
E) Systems Support Approach, F) Surveillance Approach, G) Financial Services Approach, and H) Business Information Support Approach.

RFP at 53. Under the management approach factor, the RFP advised that the agency would measure the degree to which an offeror assigns and utilizes human resources, and would evaluate the offeror’s technical capability and experience to meet the requirements, including those described in the SOW, considering the offeror’s overall management approach, including the integration of subcontractors and consultants. Id. Under the past performance factor, the RFP advised that the agency would evaluate the degree to which an offeror satisfied its customers in the past, and complied with federal, state and local laws and regulations. Id. at 54. The cost evaluation was to be based on an analysis of the cost realism and completeness of the cost data, the traceability of the cost to the offeror’s capability data and the proposed allocation of man-hours and labor mix. Id.

¹ The PMRF provides integrated missile range services in a modern environment, which includes fleet training, research, development, test and evaluation, and science and technology. In addition, the PMRF provides oversight and control of operational areas, and installs and maintains data collection and safety instrumentation systems. Contracting Officer’s Statement at 5.

Four offerors, including Celeris and Hana, submitted proposals in response to the RFP by the closing date of July 15. The technical proposals were evaluated by a source selection evaluation board (SSEB) utilizing an adjectival rating scale.² A cost team evaluated costs. The evaluation results pertinent here were as follows:

	CELERIS	HANA
OVERALL NON-COST	MARGINAL	VERY GOOD
Technical Capability	Marginal	Very Good
Management Approach	Satisfactory	Very Good
Past Performance	Satisfactory	Very Good
PROPOSED HOURS	679,798	679,798
PROPOSED COSTS	\$47,795,694	\$36,330,023
EVALUATED COSTS	\$47,796,940	\$36,780,901

AR, Tab 11, Source Selection Memorandum, at 10, 68.

After reviewing the evaluation results as well as each offerors' strengths and weaknesses, the source selection authority concurred with the evaluators and found that Hana's proposal represented the best value, given that it was more highly rated than the other proposals and had the lowest cost. *Id.* at 108. On December 2, award was made, without discussions, to Hana. This protest followed.

DISCUSSION

Celeris protests the evaluation of its proposal. The evaluation of an offeror's proposal is a matter within the agency's discretion. *IPlus, Inc.*, B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with applicable procurement statutes and regulations. *Shumaker Trucking & Excavating Contractors, Inc.*, B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. A protester's mere disagreement with the agency's judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. *VT Griffin Servs., Inc.*, B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4.

² The possible adjectival ratings for the technical and management factors were outstanding, very good, satisfactory, marginal, and unsatisfactory. The possible past performance ratings were the same but included a neutral rating if the offeror lacked a relevant past performance record, or if past performance information was not available or could not be determined.

Evaluation of Technical Capability and Management Approach Factors

Celeris challenges the reasonableness of each assessment by the SSEB of a significant weakness or a weakness under the technical capability and management approach factors. We have considered all of these arguments, and, as illustrated by the following examples find the evaluation to be reasonable and consistent with the RFP's evaluation scheme. We also find that the record is well documented and reasonably supports the SSEB ratings.

As noted above, Celeris' proposal was rated marginal under the technical capability factor. In this regard, the SSEB found, among other things, four major weaknesses in Celeris' proposal under the technical capability factor as follows: (1) an inexperienced task lead for range support; (2) a task lead for business and financial support with limited experience; (3) a staffing plan based on a high number of unidentified new hires; and (4) a failure to adequately address the database hardware and software maintenance SOW requirements.³ The SSEB also found three major weaknesses in Celeris' proposal under the management approach factor, which was rated satisfactory. These major weaknesses were: (1) proposing incumbent personnel without adequately addressing technical requirements that were added by the RFP, and using lower level incumbent personnel in key areas; (2) proposing only a single employee located to meet the information assurance lead requirements in San Diego, California; and (3) proposing to recruit and hire various new employees from Kauai, which the SSEB considered a difficult place to find qualified personnel.⁴

For example, with regard to the major weakness regarding the lack of experience of the task lead for range support, the protester concedes this lack of experience, but essentially argues that its proposed project manager would compensate for this lack of experience. In our view, this does not show the agency's assessment of this major weakness was unreasonable.

As to the major weakness regarding the protester's failure to specifically address database hardware and software maintenance requirements, the protester asserts that the RFP's proposal preparation instructions did not reference the SOW requirements for hardware and software maintenance. However, the RFP's technical capability evaluation factor expressly stated that the agency would evaluate offerors' technical capability to perform the requirements "depicted in" the SOW would be evaluated. See RFP at 53.

³ The SSEB also found 17 minor weaknesses under this factor.

⁴ The SSEB also found two minor weaknesses under this factor.

With regard to the major weakness under the management approach factor of proposing incumbent personnel without adequately addressing the newly added technical requirements and proposing lower level incumbent personnel in key areas, Celeris stated that it was not clear that this section of the proposal instructions of the RFP was “asking about staffing.” Protester’s Comments at 29. We disagree. This section required offerors to describe their “management approach to provide a high performance team with an optimal balance between breadth and quality for PMRF.” RFP at 45. Moreover, the management approach factor expressly stated that this factor “is a measure of the degree to which an Offeror assigns and utilizes human resources.” RFP at 53. Because Celeris does not refute the agency’s judgment that it simply proposed incumbent personnel without adequately addressing technical requirements that were added to the prior contract by the RFP, and proposed to use lower level incumbent personnel in key areas, we think the agency reasonably assessed a major weakness against the proposal under the management approach subfactor.

In contrast, the record shows that Hana’s proposal was rated very good under the technical capability and management approach factors because the SSEB found several major strengths and minor strengths and no major weaknesses under these factors.⁵ For example, unlike Celeris, the record shows that Hana’s proposed task leads for range support and business/financial support possessed significant relevant experience, and its staffing plan identified all personnel by name and was not based on recruiting and hiring unidentified personnel. See AR, Tab 4, Hana Proposal, at I-I-9-11, I-A-4-9; Tab 10, SSEB Memorandum at 27-44.

Past Performance Evaluation

Celeris also challenges its satisfactory past performance rating, arguing that the agency did not adequately consider Celeris’ own past contracts and the past performance relating to the incumbent personnel that it proposed. The record evidences that the Navy specifically considered the past performance under Celeris’ past contracts, the contracts of its proposed three subcontractors, as well as the past performance under the incumbent contract.⁶ See AR, Tab 10, SSEB Memorandum, at 20-21. The proposal was rated satisfactory, despite the excellent ratings for Celeris’ own past performance, because Celeris had not served as a prime contractor

⁵ Celeris’ speculations about the content of Hana’s proposal do not show that the agency’s evaluation was unreasonable.

⁶ Under Federal Acquisition Regulation (FAR) § 15.305(a)(2) (iii), an agency may take into account past performance information regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the instant acquisition.

to the government on any contract. In addition, none of Celeris' prior contracts had a value over \$500,000, and these contracts were for tasks not similar to the RFP requirements. Moreover, the past performance of the incumbent, which the agency found was the most relevant past performance reference because Celeris was primarily proposing personnel from the incumbent contract, was rated only good or satisfactory. Id. Under the circumstances, we cannot conclude that the agency's rating of Celeris' as satisfactory was unreasonable. See Joint Mgt. & Tech. Servs., B-294229, B-294229.2, Sept. 22, 2004, 2004 CPD ¶ 208 at 5-6.

Cost Realism Evaluation

Next, Celeris contends that the Navy failed to perform a proper cost realism evaluation. Specifically, Celeris claims that Hana did not take into account the level of effort required by the solicitation and understated its labor costs and hours, as evidenced by the fact that its proposed costs were 33 percent lower than the costs for the incumbent contract. Celeris argues that this reflects a lack of understanding on Hana's part and creates a significant risk to the government.

When an agency intends to award a cost-reimbursement contract, a cost realism analysis must be performed to determine the extent to which the offeror's proposed costs represent what the costs are likely to be, given the offeror's unique technical approach. This analysis includes independently reviewing and evaluating specific elements of each offeror's cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the unique technical approach described in the offeror's proposal. FAR § 15.404-1(d)(1); Advanced Commc'n Sys., Inc., B-283650 et al., Dec. 16, 1999, 2000 CPD ¶ 3 at 5. An offeror's proposed costs should be adjusted when appropriate based on the results of the cost realism analysis. FAR § 15.404-1(d)(2)(ii). Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonably based and not arbitrary, and adequately documented. Metro Mach. Corp., B-402567, B-402567.2, June 3, 2010, 2010 CPD ¶ 132 at 6.

The agency's cost evaluation of Hana's proposed costs considered that firm's unique technical approach, and the individual cost elements in the proposal pertaining to direct labor, indirect rates, and escalation rates to determine whether the proposed costs were reasonable and realistic.⁷ The record indicates that the agency only made a minor upward adjustment to Hana's proposed costs with regard to escalation, and that all other costs were determined to be reasonable and realistic as proposed by Hana.

⁷ In performing the cost analysis, the agency received the assistance of the Defense Contract Audit Agency.

Moreover, Celeris' contentions are not factually accurate. As indicated above, the record reflects that all proposals, including Hana's, proposed the same level of effort in labor hours in accordance with the RFP. See AR, Tab 11, Source Selection Memorandum, at 68. The record further reflects that Hana's approach to staffing was to propose a cadre of specifically identified personnel, which included only a handful of incumbent personnel. The agency considered this approach to be a technical strength that did not find create any significant risk or reflect a lack of understanding--unlike the Celeris proposal, which was based on hiring a large number of unidentified incumbent personnel. In short, we find no basis to question the agency's cost realism analysis.

Improper Contacts

Finally, Celeris claims that the award here was tainted by improper contacts and bias. Celeris asserts (1) that the Navy's contracting officer's representative, a program manager, and an SSEB member may have assisted Hana in the preparation of its proposal; (2) that this SSEB member was seen on several occasions meeting with a principal of one of Hana's proposed subcontractors following release of the RFP and prior to submittal of proposals; (3) that this SSEB member requested from one of the incumbent employees all of the incumbent contractor's direct labor rates; and (4) that another SSEB member had a bias in favor Hana, as evidenced by his alleged statement that Hana should be selected for award.

Contracting agencies are to avoid even the appearance of impropriety in government procurements. FAR § 3.101-1; Guardian Techs. Int'l, B-270213 et al., Feb. 20, 1996, 96-1 CPD ¶ 104 at 5. Whether an impropriety or the appearance of impropriety that may adversely affect the integrity of a procurement exists depends on the circumstances in each case, and, ultimately, the responsibility for determining whether to continue to allow an offeror to compete in the face of such an alleged impropriety is a matter for the contracting agency, which will not be disturbed unless it is shown to be unreasonable. See Health Net Fed. Servs., LLC, B-401652.3, B-401652.5, Nov. 4, 2009, 2009 CPD ¶ 220 at 29. Moreover, government officials are presumed to act in good faith, and a protester's claim that contracting officials were motivated by bias or bad faith must be supported by convincing proof; our Office will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Operational Support & Servs., B-299660.2, Sept. 24, 2007, 2007 CPD ¶ 182 at 3.

The contracting officer conducted an investigation of each of the protester's allegations, and drafted a detailed memorandum concluding that there was no evidence of improper contacts, no bias on the part of any government official, no improper disclosure of proposal or source selection information, and no

Procurement Integrity Act violation.⁸ Contracting Officer's Statement at 49-55; Tab 15, Contracting Officer's Investigation (Jan. 14, 2011). In addition, the agency submitted several detailed declarations of affected government employees, which deny the charges advanced by the protester, as well as other evidence that support its conclusions.

Specifically, the first allegation was found by the contracting officer to be without merit because the individual whom Celeris identified as a Navy contracting officer's representative was not a government employee, but a contractor employee with no access to source selection material. Regarding the second allegation, the Navy found that this SSEB member did not discuss any source selection information with individuals outside of the source selection team, and that his conversations with Hana's subcontractor, which currently is a support contractor, related to an unrelated contract matter.⁹ Regarding the third allegation, the Navy found that the SSEB member had not requested any labor rates from the incumbent contractor during the course of the procurement, but, prior to the solicitation, had requested a breakout of the percentage of funding requirement for each incumbent employee related to funding the incumbent's current support of programs with the agency. The fourth allegation, which involved an overt expression of bias, has been denied and a detailed explanation provided.

Based on our review of the record, we cannot find unreasonable the agency's determination that there was no evidence of improper contacts, no bias on the part of any government official, no improper disclosure of proposal or source selection information, and no Procurement Integrity Act violation. While Celeris continues to allege that there were conflicts of interest, unequal access to information, and bias, it has not pointed to any concrete evidence of specific information that Hana may have learned that provided it with an unfair competitive advantage. In addition, Celeris has not shown that government officials here acted in bad faith or were biased against Celeris.

⁸ The Procurement Integrity Act, 41 U.S.C. § 423(a) (2006), prohibits any present or former official of the United States, with respect to a federal agency procurement, from "knowingly" disclosing contractor bid or proposal information or source selection information before the award of a federal agency procurement contract to which the information relates.

⁹ The record indicates that the agency initially investigated this allegation in July 2010 when a rumor surfaced as is alleged here by the protester, but the allegation at that time after an investigation was determined to be without merit.

In sum, we find that the record reasonably supports the agency's evaluation of the proposals, and source selection decision.¹⁰

The protest is denied.

Lynn H. Gibson
General Counsel

¹⁰ In its protest and comments on the agency report, the protester has made numerous related allegations concerning the propriety of the award. We have reviewed all of these allegations and find none provide a basis to find the award improper.