



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: American Systems Corporation

File: B-413952.3; B-413952.4

Date: June 23, 2017

Joseph G. Billings, Esq., Katherine B. Burrows, Esq., Nathanael D. Hartland, Esq., and Sarah C. Miller, Esq., Miles & Stockbridge PC, for the protester.
Michael A. Hordell, Esq., Gary J. Campbell, Esq., Jeffrey Pedersen, Esq., and Erin F. Masini, Esq., Pepper Hamilton LLP, for CDI Marine Company, an intervenor.
Kevin Lyster, Esq., Department of the Navy, for the agency.
Young H. Cho, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of proposals and source selection decision is denied where the record shows that the agency's evaluation and selection decision were reasonable and consistent with the terms of the solicitation.

DECISION

American Systems Corporation (ASC), of Chantilly, Virginia, challenges the issuance of a task order to CDI Marine Company, of Washington, DC, by the Department of the Navy under solicitation No. N00024-16-R-3130, for readiness assistance team support services. The protester challenges the evaluation of the proposals and the selection decision.

We deny the protest.

BACKGROUND

The solicitation¹ was issued on June 17, 2016, to holders of the Navy's Seaport-e multiple award indefinite-delivery, indefinite-quantity (IDIQ) contracts that have zone 6

¹ The solicitation was amended three times. All citations are to the final version as amended on July 15, 2016. All citations to the record are to the pagination provided by the agency.

(southwest) identified in their contracts. Solicitation at 4, 48, 69. The solicitation sought readiness assistance team² support services for Commander Naval Surface Force, U.S. Pacific Fleet (CNSP). Id. at 9. The solicitation contemplated the award of a cost-plus-fixed-fee (CPFF) task order with a 1-year base period and four 1-year options. Id. The solicitation anticipated that the task order would be issued to the offeror whose proposal was found to be technically acceptable under four technical requirements and represented the best value to the government considering four evaluation factors, listed in descending order of importance: staffing and resumes, sample tasks,³ past performance, and cost. Id. at 69. The non-cost factors, when combined, were significantly more important than cost. Id. The solicitation stated, however, that while cost was the least important factor, it should not be ignored. Id.

As relevant here, the solicitation instructed offerors to provide “a detailed staffing plan clearly identifying by each position the skills and experience the [offeror] intends to propose that will meet or exceed the government’s requirements.” Id. at 51. The solicitation further stated that “[i]deally, the offeror will provide a sampling of resumes for these critical, but non-key positions to indicate they fully understand the importance of credible personnel⁴ . . . in the success of this effort.” Id. The solicitation also required that offerors provide a list of six “clearly identified” key personnel (one program manager and five team leads) “whom the [o]fferor proposes to assign to the contract” and their resumes. Id. Offerors were also instructed to identify which personnel were on the offeror’s payroll and which had been offered and had accepted employment contingent on award of the task order. Id.

The solicitation advised that for the staffing and resumes factor the agency would review the staffing plan to evaluate the skills and experience the offeror proposed for each non-key position against the government’s requirements and review the resumes of the key personnel. Id. at 70. In this regard, the solicitation included detailed position descriptions for the key and non-key personnel, including minimum qualifications. Id. at 52-61. The solicitation emphasized that, “[d]ue to the nature of this solicitation, special attention shall be paid to the education, experience, knowledge and skill levels of the personnel that will be employed. The Navy will evaluate the resumes of [k]ey [p]ersonnel to assess the strength of the individual” Id.

² A readiness assistance team provides timely direct support tailored to the ship’s needs and requirements. Solicitation at 9. The team also provides a resource of naval engineering and combat systems experience through subject matter experts (each with over 20 years of naval experience) to conduct sailor centric deck-plate training, material review, program auditing, and naval readiness support to enhance overall proficiency and material readiness. Id.

³ The solicitation provided three sample tasks, each of equal importance. Solicitation at 63.

⁴ While the term “credible personnel” is not specifically defined in the record, we understand this term to be synonymous to the term current employee.

Of particular relevance here, the solicitation also included a clause, NAVSUP 5252.237-9400, Substitution or Addition of Personnel (Jan 1992), under which “[t]he [c]ontractor agrees to assign to the contract those persons whose resumes . . . were submitted as required by [s]ection L to fill the requirements of the contract” and agrees that **“during the entire contract performance period no personnel substitutions will be permitted unless such substitutions are necessitated by an individual’s sudden illness, death or termination of employment.”** Id. at 34 (bold in original).

The agency received three proposals, including those from ASC and CDI Marine. On September 30, 2016, the agency issued a task order to CDI Marine, which ASC protested to our Office on October 7. Id. After filing a report and supplemental report in response to ASC’s initial and supplemental protests, the agency advised our Office that it intended to take corrective action by reevaluating ASC and CDI Marine’s proposals. See American Systems Corp., B-413952, B-413952.2, Jan. 6, 2017 (unpublished decision). Accordingly, we dismissed the protest as academic. Id. The technical evaluation board (TEB) reevaluated the offerors as follows:

	ASC	CDI Marine
Staffing and Resumes	Good	Good
Sample Tasks	Good	Acceptable
Sample Task 1	Good	Good
Sample Task 2	Outstanding	Good
Sample Task 3	Good	Marginal
Past Performance	Substantial Confidence	Satisfactory Confidence
Proposed CPFF	\$43,977,717	\$37,566,775
Evaluated CPFF	\$43,977,717	\$39,603,902

Agency Report (AR), Tab 10, Business Clearance Memorandum (BCM) at 22.

As relevant here, the TEB assessed three strengths under the staffing and resumes factor for the protester’s proposed project manager, the overall experience of its key personnel, and its staffing plan.⁵ Id. at 35. The TEB, however, also assessed a weakness⁶ under this factor. Id. In this regard, ASC stated in its cost proposal that it had a “strong history of promoting within,” and a “small number” of individuals identified in its proposal who “potentially may move on to increased positions of responsibility

⁵ The TEB found that the protester’s staffing plan exceeded the solicitation’s requirement; “[gave] the TEB confidence that [ASC] will be at full staffing on day one with the utilization of 100 [percent] current employees”; and demonstrated its understanding of the importance of credible personnel in the success of the task order through its submission of resumes for non-key personnel. AR, Tab 10, BCM at 35.

⁶ The solicitation defined a weakness as a flaw in the proposal that increases the risk of unsuccessful performance. See Solicitation at 75.

within [ASC],”⁷ and that its pricing accounted for this. AR, Tab 7, ASC Cost Proposal at 99.⁸ The proposal also stated that “service will remain at the highest of levels”; it did not anticipate any greening until option year two; and that it would “closely coordinate this with the [contracting officer’s representative (COR)].” Id. The proposal also asserted that “[t]he ‘influx’ of new individuals . . . allows for the highest levels of currency with Naval Systems, since replacement personnel will meet the requirements described in the [solicitation] as well as be more recent active duty personnel. This aligns with what we have experienced on the existing contract with personnel turn-over.” Id. at 99-100.

In assessing this weakness, the TEB expressed concerns that the proposed key personnel, the majority of whom would be greened out starting in option year 2,⁹ were not proposed for the entire duration of the task order.¹⁰ AR, Tab 10, BCM at 36. The TEB also concluded that the proposed greening offset the benefits of ASC proposing to fully staff the task order with current employees, because 39 percent of ASC’s proposed personnel would experience greening during the performance of the task order.¹¹ Id. The CO, who was the source selection authority (SSA), reviewed the TEB’s evaluation, as well as the results of the cost evaluation, and performed a comparative assessment between ASC and CDI Marine for each factor.¹² Id. at 124-128.

⁷ ASC’s proposal, as well as the agency’s evaluation and selection decision refer to this approach as “greening.”

⁸ The contracting officer (CO) provided the TEB relevant excerpts of the protester’s cost proposal discussing or reflecting its proposed “greening” approach. See AR, Tab 10, BCM at 35.

⁹ ASC’s cost proposal showed that its proposed program manager would perform during the base year and option year 1 and would be replaced by an unnamed “Functional Spec 7/8” labor category as of option year 2; and three of its team leads would perform during the base year and through option year 2 but would be replaced by unnamed “Functional Spec 5/6” labor categories as of option year 3. See AR, Tab 7, ASC Cost Proposal at 101, 117-119.

¹⁰ The TEB observed that four of the six proposed key personnel, including ASC’s proposed program manager, would experience greening during the performance of the task order, which increased the risk of key personnel turnover and could potentially impact the “management of key personnel,” an area that would be evaluated in the contractor’s past performance assessment. See AR, Tab 10, BCM at 36.

¹¹ In this regard, the TEB found that “[t]he withdrawal of these proposed personnel during performance, which increases the risk of unsuccessful future performance, [offsets] any benefit of proposing 100 [percent] staffing with current hires.” AR, Tab 10, BCM at 36.

¹² The third offeror’s proposal was found to be unawardable and was not considered in the tradeoff analysis. AR, Tab 10, BCM at 125.

For the staffing and resumes factor, the CO observed that the two proposals were assigned the same rating of good and did not find either one to be technically superior to the other. Id. at 125, 128. As relevant here, the CO observed after comparing the strengths of the two offers¹³ in the CO's comparative assessment that the "key driver to [ASC]'s rating of [g]ood is in part due to its experienced key personnel, their level of seniority[,] and staffing plan." Id. at 125-126. The CO also acknowledged that ASC was assessed a strength that reflected the TEB's confidence that ASC "would be at full staffing on day one with the utilization of 100 [percent] current employees," and the TEB's view that non-key personnel resumes included in the staffing plan also demonstrated ASC's understanding of the importance of credible personnel in the success of the task order by providing resumes for non-key positions.¹⁴ Id. at 127. The CO found however that this strength was significantly offset by ASC's proposed greening of 39 percent of its workforce with replacement personnel that "have no names, merely job titles," resulting in only 61 percent of its workforce being "credible." Id. The CO found that "[a] gap of nearly one third of its workforce starting in [o]ption [y]ear 2 increases the risk of ASC's experiencing degradation of performance." Id.

The CO also observed that ASC's "express intent to substitute key personnel," was directly in conflict with NAVSUP clause 5252.237-9400, Substitution or Addition of Personnel (Jan. 1992), as ASC's statement that it anticipated moving key personnel to increased positions of responsibility within its organization was not a valid justification for substitution under that clause. Id. The CO also found that even if substitution of personnel based on promotions within ASC were permissible, it nonetheless would increase the risk of unsuccessful performance. Id.

For the sample tasks factor, the CO found ASC's proposal, which was assigned an overall good rating, to be technically superior to CDI Marine's proposal, which was assigned an overall acceptable rating.¹⁵ Id. at 128. The CO compared the offerors' ratings, strengths, and weaknesses under each sample task, to ascertain whether there were technical advantages that would justify a price premium. Id. at 127-128. As a result, the CO found that while ASC's proposal was superior to CDI Marine's proposal under sample tasks 2 and 3, ASC's technical superiority as reflected in its strengths and

¹³ CDI Marine was assessed a strength for its proposed gas turbine team leads and another strength for its staffing plan. AR, Tab 10, BCM at 25.

¹⁴ By contrast, the CO observed that CDI Marine was not assessed a strength for its proportion of credible personnel because 27 percent were current employees of CDI Marine or its subcontractors, 40 percent were contingent employees, and 33 percent were new hires. See AR, Tab 10, BCM at 127.

¹⁵ ASC was assessed four strengths and two weaknesses for sample task 1, six strengths for sample task 2, and two strengths for sample task 3. See AR, Tab 10, BCM at 36-37. CDI Marine was assessed four strengths and one weakness for sample task 1, four strengths and two weaknesses for sample task 2, and one strength and four weaknesses for sample task 3. Id. at 26-27.

fewer weaknesses was not worth a \$4.37 million premium based on the offerors' proposed costs or \$6.410 million based on the offerors' evaluated costs. See AR, Tab 10, BCM at 123, 129. In this regard, the CO noted that the weaknesses in CDI Marine's proposal were due to omissions rather than "glaring technical areas," and that these would likely be mitigated during the performance of the task order. Id. at 128-129. The CO concluded that the repetitive nature of the services to be provided allowed the contractor to refine and improve its visits, especially with follow-up feedback and stringent oversight from the COR, as well as direct customer feedback in accordance with the quality surveillance plan, which reduced any performance risk. Id. at 128-129.

Similarly, under the past performance factor while the CO found ASC's proposal to be superior to CDI Marine's proposal, the CO did not find that ASC's superiority to be worth paying the large associated premium given that each offeror's past performance record reflected at a minimum a reasonable expectation of successful performance. Id.

The CO also found, analyzing the overall merits of ASC's technical proposal, that these technical advantages in the less important sample task and past performance factors were offset by the uncertainty and technical risk created by ASC's proposed plan to substitute personnel of unknown ability during the performance of the task order, as reflected in the evaluation of the most important staffing and resumes factor. Id. at 128. As such, the CO found that payment of a 10 percent premium to take advantage of the benefits, strengths, and fewer weaknesses in ASC's proposal in the sample task and past performance factors--the second and third highest rated factors--was not warranted. Id. at 129. As a result, the agency found that CDI Marine's proposal represented the best value to the government. Id.

On March 10, 2017, the agency cancelled the stop work order issued to CDI Marine and debriefed the protester on March 14. See Protest at 2. This protest followed.¹⁶

DISCUSSION

ASC raises a number of arguments challenging the agency's evaluation of its own and CDI Marine's proposals and the selection decision. We have fully considered all of the protester's assertions, which include arguments that are in addition to, or variations of, those discussed below. Although we do not specifically address all of ASC's arguments, we have considered all of them and conclude, based on the record, that none furnishes a basis on which to sustain the protest.

In reviewing protests of an agency's evaluation and source selection decision, even in a task or delivery order competition as here, we do not reevaluate proposals; rather, we review the record to determine whether the evaluation and source selection decision are

¹⁶ The awarded value of the task order at issue exceeds \$25 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award IDIQ contracts. 10 U.S.C. § 2304c(e)(1)(B).

reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. See Ball Aerospace & Techs. Corp., B-411359, B-411359.2, July 16, 2015, 2015 CPD ¶ 219 at 7. A protester's disagreement with the agency's judgment, without more, is not sufficient to establish that an agency acted unreasonably. Id.

ASC first challenges the weakness assigned to its proposal under the staffing and resumes factor. Protest at 24-25; Comments at 4-6. In this regard, ASC argues that the agency should not have found the greening a weakness, based on the proposal's assurances that "service will remain at the highest of levels," the greening would be closely coordinated with the COR, and because this approach "aligns with what [the protester has] experienced on the existing contract with personnel turn-over." Protest at 24. The protester further asserts that when it promoted and replaced personnel on the incumbent contract in coordination with the agency, the protester "always successfully provided highly qualified replacement personnel, which the Navy agreed to accept," and that this practice was not considered to be a weakness. Id. As a result, the protester argues that "[j]ust as greening was not a weakness in the past, greening should not be a weakness in [the protester's] proposal." Id. at 25.

In response, the agency explains that the agency reasonably assigned a weakness under this factor because the protester proposed to use personnel that would not be used for the entirety of the task order, and that would be replaced with as-yet unknown individuals. In this regard, neither the agency nor the protester knows who the substitute personnel will be, whether they will satisfy the agency's requirements, or whether they will be provided in a timely manner. AR, Tab 1, Memorandum of Law at 4-5. The agency further explains that the protester's proposed greening was also inconsistent with the solicitation's substitution of personnel clause, which expressly prohibits substitution of key personnel unless it is beyond the control of the company (i.e., due to sudden illness, death, or termination of employment). Id. at 4. The agency also explains that the quality of performance by substitute personnel on the incumbent contract and the acceptance thereof, has no bearing on the current procurement. Id. at 5.

In its response to the agency report, the protester contends that the agency misstated ASC's position regarding substitution of personnel. See Comments at 5. In this regard, the protester contends that its proposal stated that it "potentially may move" (not that it actually would move) personnel and when it did, it would "closely coordinate this with the COR," claiming that this was consistent with, and not in violation of the substitution of personnel clause. Id. The protester also argues that the agency's concern that the proposed greening increases the risk of unsuccessful contract performance is contradicted by the fact that the agency has accepted replacement personnel in the past, as well as the fact that its past performance in the "quality, schedule, and management" area was assessed as exceptional. Id. Finally, the protester contends

that the weakness does not account for the fact that for the first three years of the task order, the protester proposed almost 93 percent credible personnel.¹⁷ Id. at 6.

On this record, we find the agency's assessment of a weakness reasonable. Here, the solicitation required that an offeror identify and provide resumes for its key personnel team, to permit an assessment of their qualifications and also required the contractor to agree to assign these individuals to the task order for the entire duration of the task order. Despite this, ASC essentially proposed to replace its entire key personnel team, including its program manager, during the performance of the task order. Moreover, the replacement personnel were represented by unnamed labor categories. The proposal also provided no description or explanation of what the various labor categories were or what the minimum qualifications for those labor categories were. Further, while ASC also identified by name and provided resumes detailing the qualifications of its all proposed personnel (including non-key personnel), the majority of which were current employees, ASC proposed to replace more than one third of those personnel during the performance of the task order, again by unnamed labor categories.

The protester next raises a number of additional challenges to the agency's evaluation of the proposals, and alleges unequal treatment in the TEB's evaluation and the CO's comparative assessment. See Protest at 27-29; Comments at 11-26, 38-48; Supplemental (Supp.) Protest at 16-24. For example, the protester argues that it should have been assessed additional or separate strengths for (1) the use of its own employees or having 100 percent credible personnel and (2) its ability to begin performance on day one of the task order. See Supp. Protest at 15-21. The protester also argues that, by contrast, CDI Marine should have been assessed weaknesses for (1) relying on many contingent and new hires and (2) requiring a 45-day transition period. Id. Similarly, the protester contends that the agency unreasonably failed to assess weaknesses where CDI Marine proposed only 27 percent credible personnel as well as only two credible key personnel, while assessing ASC a weakness for only having 61 percent credible personnel. Comments at 38-40; Supp. Protest at 21-24.

In response, the agency explains that the agency assessed strengths based on what each offeror proposed in its respective proposals. See Supp. AR at 3, 5. The agency further explains that the benefits of ASC's utilization of current employees and its ability to perform without any transition period were recognized as part of a strength assessed for its staffing plan. See id. at 5-6. The agency also explains that the solicitation did not provide for assessing the weaknesses that the protester contends should have been assessed and that assessment of such weaknesses would have been inconsistent with the solicitation's requirements. See Supp. CO Declaration at 5, 8.

Specifically, the agency explains that the solicitation stated that for non-key personnel, "[i]deally, the offeror will provide a sampling of resumes . . . to indicate they fully

¹⁷ In its comments, the protester clarified that it did not propose 100 percent credible personnel. See Comments at 6 n.1.

understand the importance of credible personnel . . . in the success of this effort.” Id. at 5; Solicitation at 51. Because ASC provided credible personnel, it was evaluated favorably; however, the solicitation did not explicitly state that a lack of credible personnel would be considered a weakness, and so no weakness was assessed in CDI Marine’s proposal. Supp. CO Declaration at 5.

Similarly, the agency explains that the solicitation did not require the contractor to be at full staffing immediately upon award, nor did it preclude an offeror from proposing a transition period. Id. at 8. The agency again explains that ASC indicated in its proposal that it was fully prepared to perform on day one, which was acknowledged as a strength by the agency. Id. at 7. The agency also explains that by contrast, CDI Marine’s proposal included a transition plan that explained that it intended to complete its transition plan in 45 days and to be fully ready to execute the readiness assistance team ship visits with the new teams in accordance with the solicitation’s requirements. Id. at 7-10.

Finally, the Navy asserts that the agency did not treat the protester’s proposal and CDI Marine’s proposal unequally. In this regard, the Navy argues that it assessed ASC’s proposal a weakness for its proposed greening, but did not assess CDI Marine’s proposal a weakness for the lower proportion of credible personnel and credible key personnel on day one. See id. at 10-12. The agency explains that this was because CDI Marine did not propose to replace its employees during the performance of the task order with unidentified personnel, including a majority of its key personnel, while ASC did.

Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from actual differences between the offerors’ proposals. See Beretta USA Corp., B-406376.2, B-406376.3, July 12, 2013, 2013 CPD ¶ 186 at 6; Northrop Grumman Sys. Corp., B-406411, B-406411.2, May 25, 2012, 2012 CPD ¶ 164 at 8. Here, ASC has not shown that only CDI Marine received credit or that the protester was penalized for something that both offerors proposed--i.e., it has not made the requisite showing that the agency treated the two proposals unequally. See Alphaport, Inc., B-414086, B-414086.2, Feb. 10, 2017, 2017 CPD ¶ 69 at 7.

Rather, as described above, the agency evaluated each proposal based on the specific attributes of the approach it proposed. The fact that a particular attribute was recognized as a strength in one proposal does not necessarily mean that another proposal should be assessed a weakness if it does not include the same attribute.

Finally, the protester raises a number of arguments challenging the agency’s tradeoff. See Protest at 50-54; Comments at 37-48; Supp. Protest at 27. In this regard, the protester primarily argues that the CO improperly found that there were no meaningful differences between the two proposals. See Comments at 37-48.

In a best-value tradeoff procurement, it is the function of the source selection official to perform a cost-technical tradeoff, that is, to determine whether one proposal’s technical

superiority is worth the higher cost. CACI Enter. Solutions, Inc., B-412648, B-412648.2, Apr. 25, 2016, 2016 CPD ¶ 111 at 10; ERC, Inc., B-407297, B-407297.2, Nov. 19, 2012, 2012 CPD ¶ 321 at 6. Source selection officials have broad discretion to determine the manner and extent to which they will make use of evaluation results, and must use their own judgment to determine what the underlying differences between proposals might mean to successful performance of the contract. Applied Physical Sci. Corp., B-406167, Feb. 23, 2012, 2012 CPD ¶ 102 at 6; Information Network Sys., Inc., B-284854, B-284854.2, June 12, 2000, 2000 CPD ¶ 104 at 12. Even where, as here, technical merit is significantly more important than price, an agency may properly select a lower-priced, lower-rated proposal if it reasonably decides that the price premium involved in selecting a higher-rated, higher-priced proposal is not justified. Halfaker and Assocs., LLC, B-407919, B-407919.2, Apr. 10, 2013, 2013 CPD ¶ 98 at 12.

As described above, the CO's tradeoff decision found that the two proposals were not substantially or meaningfully different in terms of quality and performance risk. See AR, Tab 10, BCM at 129. Here, the record shows that the CO took into account the qualitative differences between the proposals under each factor and found ASC's proposal was superior to CDI Marine's proposal under the sample task and past performance factors. However, the CO did not find that the particular strengths and fewer weaknesses in ASC's proposal under those factors were worth paying a premium that was over 10 percent. The CO's analysis, appropriately, went beyond considering the adjectival ratings assigned. In this regard, the CO analyzed the strengths and weaknesses in the proposals and concluded, in assessing the overall technical merits of ASC's proposal, that the uncertainty and technical risk identified under the more heavily-weighted staffing and resumes factor offset the advantages identified in ASC's proposal under the sample tasks and past performance factors. In sum, the CO analyzed the overall differences between the two proposals and determined that the benefits of ASC's proposal offered were, on balance, not worth paying a premium that was in excess of 10 percent. We find this tradeoff decision reasonable and consistent with the solicitation.

The protester's additional objections to the source selection decision, such as the protester's arguments that the CO improperly attempted to "equalize" the two proposals, reflect its disagreement with the agency's assessments but do not demonstrate an unreasonable or otherwise improper award determination. On this record, the protester's arguments provide no basis to sustain the protest.

The protest is denied.

Susan A. Poling
General Counsel