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Decision

Matter of: DKW Communications, Inc.

File: B-414476; B-414476.2

Date: June 23, 2017

Joseph P. Hornyak, Esq., Gregory R. Hallmark, Esq., and Elizabeth N. Jochum, Esq., Holland & Knight LLP, for the protester.
Megan C. Connor, Esq., Julia Di Vito, Esq., Jacqueline K. Unger, Esq., and Timothy F. Valley, Esq., PilieroMazza PLLC, for IntePros Federal, Inc., an intervenor.
Matthew Butsick, Esq., Department of Energy, for the agency.
Louis A. Chiarella, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging that agency's evaluation of protester's technical quotation was unreasonable is denied where the evaluation is shown to be reasonable and consistent with the stated evaluation criteria.
2. Protest alleging that awardee engaged in a material misrepresentation regarding the availability of key personnel is denied where the record shows that the named individual remains available.

DECISION

DKW Communications, Inc., of Washington, D.C., protests the issuance of a task order to TAULUN,¹ of Washington, D.C., by the Department of Energy (DOE), National Nuclear Security Agency (NNSA), under request for quotations (RFQ) No. DE-SOL-0010157 for information technology (IT) support services for NNSA's office of information management (OCIO). DKW argues that the agency's evaluation of vendors' quotations was improper.

We deny the protest.

¹ TAULUN is the contractor team arrangement (CTA) in which IntePros Federal, Inc., is the lead CTA member.

BACKGROUND

The NNSA is responsible for the management and security of the nation's nuclear weapons, nuclear non-proliferation, and naval reactor programs. It also responds to nuclear and radiological emergencies in the United States and abroad. Performance Work Statement (PWS) at 33. The NNSA OCIO is responsible for, among other things; setting the strategic direction for information management within NNSA; exploring and advancing new technologies within NNSA; developing a NNSA enterprise-wide information infrastructure for the future; and protecting and defending NNSA information and information systems. Id. To accomplish its responsibilities, OCIO developed the support services PWS, which defined the agency's requirements for professional and technical IT services in eight specific task areas. Id. at 34.

The RFQ² was issued on September 6, 2016, using the procedures set forth in Federal Acquisition Regulation (FAR) subpart 8.4, to blanket purchase agreement (BPA) holders under multiple General Services Administration Federal Supply Schedules (FSS) contracts, including IT Schedule No. 70.³ COS/MOL at 1. The RFQ contemplated the issuance of a fixed-price task order for a base year with four 1-year options, with the possibility of an additional 6 months of performance under an option to extend services clause. RFQ at 85-86. In general terms, the contractor was to provide the personnel and supplies necessary to successfully accomplish the stated PWS tasks. Id. at 87. The RFQ established that task order award would be made on a best-value basis, based on two evaluation factors in descending order of importance: technical ability/risk, and price.⁴ Id. at 107-108. The RFQ also informed vendors that the technical ability/risk factor was significantly more important than the price factor. Id. at 107.

Three vendors, including TAULUN and DKW, submitted quotations to NNSA by the September 21 closing date. An agency technical evaluation panel (TEP) evaluated vendors' quotations using the following adjectival ratings as set forth in the RFQ:

² The RFQ was subsequently amended one time. All references are to the final, conformed version of the solicitation.

³ The NNSA had previously established information technology infrastructure and cyber security support services BPAs with multiple vendors, including DKW and IntePros, TAULUN's lead CTA member. Contracting Officer's Statement/Memorandum of Law (COS/MOL) at 1. For additional information regarding this procurement, see our prior decision in DKW Commc'ns, Inc., B-412652.3, B-412652.6, May 2, 2016, 2016 CPD ¶ 143.

⁴ The solicitation included contract line items for the contractor's travel expenses and other direct costs for each performance period, and the RFQ provided vendors with "plug" numbers (totaling \$27.5 million) to be used for these items in their quotations.

exceptional, satisfactory, marginal, and unsatisfactory.⁵ The TEP completed its evaluation on February 2, 2017, with the final evaluation ratings and prices of TAULUN and DKW as follows:⁶

	TAULUN	DKW
Technical Ability/Risk	Satisfactory	Satisfactory
Price	\$81,670,254	\$82,750,306

AR, Tab 7, TEP Report, at 6, 8-10.

The agency evaluators also identified strengths and weaknesses in vendors’ quotations in support of the ratings assigned. For example, the TEP identified no strengths or weaknesses in TAULUN’s technical quotation, and no strengths and one weakness in DKW’s technical submission. Id.

The contracting officer as source selection authority (SSA) subsequently determined that the quotations of all three vendors were technically equal to each other and, in light thereof, that TAULUN’s quotation represented the overall best value because it was lowest priced. AR, Tab 12, Source Selection Decision, at 7-8. After receiving notice of award, and an explanation of the agency’s award decision, DKW filed its protest with our Office.

DISCUSSION

DKW’s protest raises several issues regarding the evaluation of vendors’ quotations. First, DKW argues that the agency’s evaluation of its technical quotation was unreasonable. DKW also contends that the agency performed a flawed evaluation of TAULUN’s program manager, and allegedly ignored the fact that the individual initially proposed was not personnel that TAULUN intended to use, or was no longer available, or both.⁷ We have considered all of the protest issues and arguments raised by DKW and find they provide no basis on which to sustain the protest.

⁵ The solicitation included corresponding definitions for each possible adjectival rating. Id. at 108-109.

⁶ The third vendor, who was also rated as “satisfactory” for technical ability/risk, was higher priced than DKW. Agency Report (AR), Tab 7, TEP Report, at 6; Tab 12, Source Selection Decision, at 5-6.

⁷ DKW also protested that the one weakness assessed to its technical quotation was unreasonable and disparate. Supp. Protest at 2, 6-7. DKW subsequently elected to withdraw this protest ground. DKW Email to GAO, June 6, 2017. DKW also protested that the agency’s best-value decision was flawed, because the determination of technical equivalence allegedly relied excessively on the vendors’ identical adjectival ratings. Protest at 7-8. As the agency addressed this assertion in its report to our

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Evaluation of DKW's Technical Quotation

DKW protests the agency's evaluation of its technical quotation. The protester alleges that the agency failed to properly recognize various strengths or advantages in DKW's quotation that made it technically superior to TAULUN. Had NNSA performed a proper evaluation here, the protester argues, its quotation would have been viewed as the overall best value to the government.

Where, as here, an agency issues an RFQ to FSS vendors under FAR subpart 8.4 and conducts a competition for the issuance of an order or establishment of a BPA, we will review the record to ensure that the agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. HP Enter. Servs., LLC, B-411205; B-411205.2, June 16, 2015, 2015 CPD ¶ 202 at 5; Digital Solutions, Inc., B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4. In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate the quotations; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. OPTIMUS Corp., B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4. A protester's disagreement with the agency's judgment, without more, does not establish that an evaluation was unreasonable. Electrosoft Servs., Inc., B-413661, B-413661.2, Dec. 8, 2016, 2017 CPD ¶ 7 at 5.

The technical ability/risk factor consisted of three components--technical narrative, key personnel resumes, and task/labor mix. RFQ at 108. For the technical narrative, the RFQ set forth six "prompts" that vendors' quotations were to address (e.g., "[d]escribe [your] approach to conducting operations in a geographically-disbursed environment in relation to all the tasks within the PWS . . ."). Id. at 105. The TEP evaluated the DKW quotation and found no strengths and one weakness in the technical narrative (i.e., "DKW's response . . . lacks an understanding of the [geographically-disbursed] operating environment and the placement of resources"); no strengths or weaknesses in the key personnel resumes; and no strengths or weaknesses in the task/labor mix. AR, Tab 7, TEP Report, at 8-9. Overall, the agency evaluators found that DKW's quotation demonstrated an adequate understanding of, and an ability to perform, the PWS requirements, and assigned it a satisfactory rating under the technical ability/risk factor. Id. at 8.

DKW argues that the agency's technical evaluation failed to recognize various strengths in its quotation in comparison to TAULUN's, and details specific aspects of its quotation

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Office, COS/MOL at 9-10, 13-14, and DKW did not respond in its comments, see DKW Comments, passim, we consider this issue to have been abandoned and will not consider it further. See Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 4 n.4.

in support thereof.⁸ Protest at 5-7; DKW Comments at 11. In response to DKW's assertions, the agency submitted a declaration from the TEB chairman explaining why the evaluators determined that the specific features offered by DKW were not in fact strengths or technical advantages.⁹ We have considered all of the protester's alleged technical strengths or advantages, and find they are without merit.

For example, DKW argues that the experience of its proposed key personnel should have been considered a strength or a relative advantage in comparison to TAULUN. Protest at 6. In support thereof, DKW alleges that its key personnel all have "unrivaled insight into the OCIO's IT environments and resources," as well as [DELETED]. Id. The record, however, reflects that the TEP considered the resumes of DKW's key personnel and found that each resume "demonstrated that [the individual] has an understanding of, and ability to perform the [assigned] role," and that nothing in the "resume merited the assessment of a strength, weakness, or deficiency." AR, Tab 7, TEP Report, at 8. Also, the TEP chairman stated that "[w]hile it is true that DKW and its key personnel have experience working with the NNSA OCIO, this was not unique to DKW; all vendors and their proposed key personnel have experience with the NNSA OCIO."¹⁰ AR, Tab 18, TEP Chairman Declaration, at 2. The protester offers no substantive rebuttal. See DKW Supp. Comments at 5. Accordingly, we find reasonable the agency's determination that "[t]here was nothing unique to DKW's experience that equated to additional benefits for the NNSA." AR, Tab 18, TEP Chairman Declaration, at 2.

⁸ The protester also states that "[t]hese advantages are just several examples of those not considered by the Agency." DKW Comments at 11. However, our Bid Protest Regulations do not contemplate being able to plead or preserve protest issues by means of examples. See Jacobs Tech., Inc., B-413389, B-413389.2, Oct. 18, 2016, 2016 CPD ¶ 312 at 6; Beechcraft Def. Co., LLC, B-406170.2 et al., June 13, 2013, 2013 CPD ¶ 147 at 24 n.9 (citing Planning and Dev. Collaborative Int'l, B-299041, Jan. 24, 2007, 2007 CPD ¶ 28 at 11). To the extent that DKW is aware of other, yet-to-be-mentioned examples of technical advantages allegedly possessed by the protester, we find this aspect of DKW's protest untimely.

⁹ We note that DKW raises no concern regarding the timing of the agency's declaration here. See DKW Supp. Comments, at 5. Moreover, as we do not expect an agency's evaluation report to "prove a negative," and document why features in a proposal or quotation were not considered to be strengths (or weaknesses), we consider the TEP chairman's declaration to be a post-protest explanation that provides a detailed rationale for contemporaneous conclusions, and not a post-hoc rationalization. Compare NWT, Inc.; PharmChem Labs., Inc., B-280988, B-280988.2, Dec. 17, 1998, 98-2 CPD ¶ 158, with Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91.

¹⁰ The agency also points to the fact that, contrary to DKW's assertion, all of TAULUN's proposed key personnel also [DELETED]. COS/MOL at 12, citing AR, Tab 4, TAULUN Quotation, Vol. II, Technical Quotation, at 79-84.

Additionally, for example, DKW contends that its plan “to incorporate the departmental expectations ‘detailed in the DOE 200 and [NNSA Policy] 14 series of policies’ into its continuity of operations and disaster recovery approach” should have been considered a strength or non-price advantage over TAULUN’s quotation. Supp. Protest at 11. In response thereto, the TEP Chairman notes that the policies being identified by DKW were included within the appendix to the PWS, and were referenced as the “Standards/ Performance Expectations” for the specified PWS tasks. AR, Tab 18, TEP Chairman Declaration, at 2. The TEP Chairman also states that “[p]roposing to incorporate the expectations of these policies was nothing more than an acknowledgment that DKW would comply with the PWS. This approach was acceptable, but nothing more.” Id. The protester offers no substantive rebuttal to the agency’s position. See DKW Supp. Comments at 5. We therefore find the evaluation here to be reasonable and consistent with the stated evaluation criteria.

DKW also asserts that another technical advantage possessed by the protester was that “[t]eam DKW [DELETED] has [DELETED].” Supp. Protest at 11. The agency responds that DKW’s statement that it has [DELETED], does not, by itself, provide any information that would be considered of benefit to NNSA. Specifically, the TEP Chairman states:

DKW’s response did not indicate that using [DELETED] was a part of its solution, instead, it claimed that it would work to “identify the best possible [DELETED].” Given that DKW then cited its past use of two other [DELETED], it was not clear what benefit [DELETED] would provide to NNSA. DKW’s one-off mention that its [DELETED] is nothing more than an acknowledgement of a potentially irrelevant corporate capability.

AR, Tab 18, TEP Chairman Declaration, at 2.

Again, DKW offers no substantive rebuttal in response to why the NNSA evaluators did not find this aspect of the vendor’s quotation to be a strength or technical advantage.¹¹ See id. In sum, we find the agency’s evaluation of DKW’s quotation under the technical ability/risk factor to be reasonable.

Evaluation of TAULUN’s Program Manager

DKW also challenges the agency’s evaluation of TAULUN’s program manager--a key personnel position--under the technical ability/risk factor. The protester alleges that the agency’s evaluation was rendered unreasonable by TAULUN’s material misrepresentations regarding the named individual’s availability. The protester also contends that when performing its evaluation, NNSA ignored information that TAULUN’s originally-proposed individual no longer reflected the vendor’s intended personnel. As

¹¹ In fact, the protester does not dispute any aspect of the TEP Chairman’s declaration, notwithstanding having had the opportunity to do so. See DKW Supp. Comments at 5.

detailed below, we have reviewed the protester's assertions regarding TAULUN's program manager and find that they are wholly without merit.

The RFQ identified three key personnel positions, including program manager/task order manager (hereinafter program manager), which were to be evaluated as part of the technical ability/risk factor.¹² RFQ at 106, 108. TAULUN proposed Mr. J.I. as its program manager, and provided a resume demonstrating the individual's ability to perform the key personnel position.¹³ AR, Tab 4, TAULUN Quotation, Vol. II, Technical Quotation, at 79-80. Additionally, Mr. J.I.'s resume reflected that from 2011 to present, he was the program manager for InfoReliance (a TAULUN-proposed subcontractor), working on its NNSA IT and cyber security services contract. Id. at 79.

Following the submission of quotations, TAULUN emailed the contracting officer and "respectfully submit[ed] a key personnel substitution of Dr. [C.B.] for Mr. [J.I.]" for the program manager position.¹⁴ Id. at 2. TAULUN also stated, as part of its substitution request, that Mr. J.I. would remain active in his current position as InfoReliance's program manager until contract award and through transition to TAULUN. Id. at 3. The contracting officer, however, informed TAULUN that the agency had not opened discussions with vendors and was not accepting revised quotations at that time.¹⁵ Id. The contracting officer also asked TAULUN to "clarify whether your proposed substitution was a result of the unavailability of Mr. [J.I.] to perform as a key personnel, should Team TAULUN receive award." Id. TAULUN responded as follows:

Our proposed substitution was not a result of the unavailability of Mr. [J.I.] to perform as a key personnel. We believed that we had an opportunity for "discussions" and only desired to make a proactive change from our proposed Program Manager, Mr. [J.I.], to our proposed replacement Program Manager, Dr. [C.B.]. . . . In alignment with DEAR 952.215-70, we

¹² The solicitation also included Department of Energy Acquisition Regulation (DEAR) clause 952.215-70 (Key Personnel), which set forth the procedures by which the contractor could request, and the agency approve, the replacement of key personnel during task order performance. RFQ at 99.

¹³ Throughout this decision, we identify individuals by their initials rather than their full names.

¹⁴ According to TAULUN, while Mr. J.I. had over 15 years of management experience, Dr. C. B. "offers over 30 years of Civilian, [Department of Defense], and Intelligence Community management experience," as well as a Scrum Master certification not possessed by Mr. J.I. Compare AR, Tab 4, TAULUN Quotation, Vol. II, Technical Quotation, at 79, with AR, Tab 6, TAULUN Email to NNSA, Nov. 4, 2016, at 3.

¹⁵ The contracting officer also stated that "[a]ny key personnel changes will be handled post-award in accordance with [RFQ] Section 8.19 DEAR 952.215-70 Key Personnel." Id., NNSA Email to TAULUN, Nov. 16, 2016, at 2.

will submit a formal Key Personnel change request after award, should TAULUN receive an award.

AR, Tab 6, TAULUN Email to NNSA, Nov. 17, 2016, at 1.

The TEP thereafter evaluated TAULUN's quotation and found the resume of Mr. J.I. demonstrated the individual's ability to successfully perform the program manager position. AR, Tab 7, TEP Report, at 10. In February 2017--while the agency's evaluation was occurring and prior to the award decision being made known--Mr. J.I. left his position at TAULUN's subcontractor, InfoReliance, and took a new position with an unrelated company, Metrica.¹⁶ Supp. Protest, exh. A, LinkedIn Profile of J.I., at 1-3. The record reflects that NNSA was unaware that Mr. J.I. had changed his employment prior to making its award decision. See AR, Tab 16, NNSA Email to TAULUN, Apr. 28, 2017, at 1.

After DKW's protest raised the issue of Mr. J.I.'s availability to perform as TAULUN's program manager (and the agency's evaluation thereof), the contracting officer requested that TAULUN address the matter. AR, Tab 16, NNSA Email to TAULUN, Apr. 28, 2017, at 1. TAULUN then provided a signed statement from Mr. J.I. stating as follows:

- IntePros approached him in August 2016 regarding the proposal that TAULUN subsequently submitted in response to the RFQ
- it has been, and continues to be, his intention to serve as the program manager for TAULUN (as an employee of IntePros), if TAULUN is awarded the task order under the RFQ.
- His signature confirms that he is available to be the program manager for TAULUN (as an employee of IntePros) if/when TAULUN is directed to proceed with performance.

AR, Tab 17, TAULUN Email to NNSA, May 1, 2017, Attach. 2, Declaration of Mr. J.I.

TAULUN also provided a declaration from its contracts manager stating that while he became aware on February 3 that Mr. J.I. had left his employment with InfoReliance, and taken a position with Metrica, the contracts manager was also aware that Mr. J.I. continued to be available to serve as TAULUN's program manager. Id. at 1, Attach 1, Declaration of TAULUN Contracts Manager, at 1.

The issue of whether personnel identified in a vendor's quotation do, in fact, perform under the subsequently-awarded task order is generally a matter of contract administration that our Office does not review. See Bid Protest Regulations, 4 C.F.R. § 21.5(a); Future-Tec Mgmt. Sys., Inc.; Computer & Hi-Tech Mgmt., Inc., B-283793.5,

¹⁶ The record reflects that the agency's award determination took place on February 27, and notice of task order award was provided to DKW on March 8.

B-283793.6, Mar. 20, 2000, 2000 CPD ¶ 59 at 14-15. Nonetheless, our Office will consider allegations that a vendor proposed personnel that it did not have a reasonable basis to expect to provide during task order performance in order to obtain a more favorable evaluation, as such a material misrepresentation has an adverse effect on the integrity of the competitive procurement system. See Ryan Assocs., Inc., B-274194 et al., Nov. 26, 1996, 97-1 CPD ¶ 2 at 6. Our decisions frequently refer to such circumstances as a “bait and switch.” Id. In order to establish an impermissible “bait and switch,” a protester must show that: (1) the awardee either knowingly or negligently represented that it would rely on specific personnel that it did not have a reasonable basis to expect to furnish during performance; (2) the misrepresentation was relied on by the agency; and (3) the agency’s reliance on the misrepresentation had a material effect on the evaluation results.¹⁷ Patricio Enters. Inc., B-412738, B-412738.2, May 26, 2016, 2016 CPD ¶ 145 at 4; ACS Gov’t Servs., Inc., B-293014, Jan. 20, 2004, 2004 CPD ¶ 18 at 3, 10.

Additionally, where a vendor’s quotation represents that it will perform the task order in a manner materially different from the vendor’s actual intent, an award based on such a quotation cannot stand, since both the vendor’s representations, and the agency’s reliance on such, have an adverse impact on the integrity of the procurement process. See FCi Fed., Inc., B-408558.7, B-408558.8, Aug. 5, 2015, 2015 CPD ¶ 245 at 7, citing Greenleaf Constr. Co., B-293105.18, Jan. 17, 2006, 2006 CPD ¶ 19 at 8-10 (sustaining a protest where offeror was aware after proposal submission that proposed key personnel would not participate in contract performance).

Here, there is no basis to find that TAULUN engaged in a material misrepresentation, as there is no basis to find that the awardee either knowingly or negligently represented that it would rely on specific personnel that it did not have a reasonable basis to expect to furnish during performance. In fact, the record reflects just the opposite. As set forth above, after the submission of quotations, TAULUN attempted to substitute Mr. J.I. with Dr. C.B. as its program manager. AR, Tab 6, TAULUN Email to NNSA, Nov. 4, 2016, at 2. When the agency informed TAULUN that it had not opened discussions--such that a quotation revision would be permissible--TAULUN confirmed the continued availability of Mr. J.I. as its program manager. Id., TAULUN Email to NNSA, Nov. 17, 2016, at 1. TAULUN’s belief regarding Mr. J.I.’s continued availability was a well-founded one, as it was based on information provided by Mr. J.I. himself. Specifically, Mr. J.I. declares that it has been, and continues to be, his intention to serve as TAULUN’s program manager since he was proposed, and that he likewise continues to be available to be

¹⁷ This procurement was conducted as a task order competition among FSS BPA holders and, as such, was subject to the provisions of FAR subpart 8.4. We have explained that the principles discussed herein regarding “bait and switch” allegations and material misrepresentations apply equally to FAR subpart 8.4 procurements. See PricewaterhouseCoopers LLP; IBM U.S. Fed., B-409885 et al., Sept. 5, 2014, 2014 CPD ¶ 289 at 11 n.9 (addressing “bait and switch” allegations in a FAR subpart 8.4 task order competition).

TAULUN's program manager if or when TAULUN is directed to proceed with performance. AR, Tab 17, TAULUN Email to NNSA, May 1, 2017, Attach. 2, Declaration of Mr. J.I. Further, TAULUN's contracts manager states that even when Mr. J.I. changed employment while the agency's evaluation was pending, the contracts manager was aware of Mr. J.I.'s continued availability to serve as TAULUN's program manager. Id. at 1, Attach 1, Declaration of TAULUN Contracts Manager, at 1. We have no reason to question the veracity of these representations. In light thereof, we find no merit in DKW's allegation that TAULUN misrepresented the availability of its proposed program manager.¹⁸

We also find no merit in DKW's related assertion that it was unreasonable for the agency to evaluate Mr. J.I. as TAULUN's program manager while allegedly knowing that TAULUN did not intend to use Mr. J.I. in that role during performance of the task order. In support of its argument here, DKW myopically focuses on TAULUN's initial email regarding what Mr. J.I.'s role would be if the program manager substitution request had been approved--that Mr. J.I. would remain in his incumbent position as InfoReliance's program manager through the contract transition period. In doing so, the protester fails to acknowledge the full sequence of events that subsequently occurred. Specifically, the record reflects that after the agency informed TAULUN that the proposed quotation revision could not be accepted, TAULUN confirmed that Mr. J.I. remained available to perform as TAULUN's program manager. AR, Tab 6, TAULUN Email to NNSA, Nov. 17, 2016, at 1. Based on TAULUN's final representation regarding Mr. J.I.'s availability, there is simply no basis for the protester's assertion that NNSA knew, at the time the evaluation was conducted, that TAULUN did not intend to use Mr. J.I. as program manager during task order performance. Similarly, we find that it was reasonable for the agency to consider the resume of Mr. J.I. when evaluating TAULUN's proposed program manager.

DKW also argues that the declaration provided by Mr. J.I. regarding his continued availability to perform as TAULUN program manager should be discounted in light of the awardee's prior attempt to substitute Mr. J.I., as well as his leaving TAULUN's subcontractor, InfoReliance, for a new position at a different company. DKW Supp. Comments at 2-3. The protester essentially argues that it is evident that TAULUN plans to replace Mr. J.I. immediately after task order performance begins.

As stated above, to establish an impermissible bait and switch, a protester must show that the misrepresentation was either knowing or negligent, was relied on by the agency, and had a material effect on the evaluation results. Patricio Enters. Inc., supra.

¹⁸ Likewise, while we have also explained that an offeror is obligated to advise an agency of changes in its proposed staffing even after proposal submission (e.g., a proposed individual's unavailability), see Pioneering Evolution, LLC, B-412016, B-412016.2, Dec. 8, 2015, 2015 CPD ¶ 385 at 9; Greenleaf Constr. Co., supra, at 10, there is no obligation that an offeror advise an agency of a proposed individual's continued availability.

Even where there is evidence of a planned switch in key personnel, our Office will not find an impermissible bait and switch where there is no evidence of baiting, *i.e.*, replacing proposed key personnel with less qualified personnel. Target Media Mid Atlantic, Inc., B-412468.6, Dec. 6, 2016, 2016 CPD ¶ 358 at 8; Data Mgmt. Servs. JV, B-299702, B-299702.2, July 24, 2007, 2007 CPD ¶ 139 at 10. We have explained that because the substitution of personnel that are equally or better qualified than those designated in a proposal could not have had a material effect on the evaluation results, such substitution does not constitute an impermissible bait and switch. STG, Inc., B-411415, B-411415.2, July 22, 2015, 2015 CPD ¶ 240 at 16; AT&T Gov't Solutions, Inc., B-406926 et al., Oct. 2, 2012, 2013 CPD ¶ 88 at 15.

Here, the record reflects that the qualifications of Dr. C.B. were equal to or better than those of Mr. J.I. Among other things, Dr. C.B. had over 30 years of management experience while Mr. J.I. had over 15 years of management experience. Compare AR, Tab 4, TAULUN Quotation, Vol. II, Technical Quotation, at 79, with AR, Tab 6, TAULUN Email to NNSA, Nov. 4, 2016, at 3. Accordingly, even assuming for the sake of argument that there is evidence of an intent by TAULUN to switch Dr. C.B. for Mr. J.I., DKW's argument that an impermissible bait and switch occurred fails because there is no evidence of baiting. See STG, Inc., supra.

The protest is denied.

Susan A. Poling
General Counsel