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Decision

Matter of: Tantus Technologies, Inc.

File: B-411608; B-411608.3

Date: September 14, 2015

David S. Cohen, Esq., John J. O'Brien, Esq., Gabriel E. Kennon, Esq., Daniel Strouse, Esq., and Amy J. Spencer, Esq., Cohen Mohr LLP, for the protester.
Jeffery M. Chiow, Esq., Neil H. O'Donnell, Esq., and Lucas T. Hanback, Esq., Rogers Joseph O'Donnell, for the intervenor, Edaptive Systems LLC.
Douglas Kornreich, Esq., and Tony Ross, Esq., Department of Health and Human Services, for the agency.
Brent Burris, Esq., and Jennifer Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest is sustained where the agency unreasonably failed to consider, under the personnel and management evaluation factor, the awardee's proposed relocation of a substantial number of employees after the first year of performance.

2. Protest is sustained where the agency did not evaluate corporate experience and past performance evaluation factor in a manner consistent with the solicitation.

3. Protest challenging the agency's evaluation of the protester's proposal under the technical approach and understanding factor is denied where the protester fails to demonstrate that the agency's interpretation of the protester's proposal was unreasonable.

4. Agency's cost realism evaluation is improper where agency failed to recognize that awardee proposed to significantly reduce the labor rates of personnel during the option years of the task order; however, agency was not required to downwardly adjust protester's proposed travel costs that were consistent with the protester's technical approach.

DECISION

Tantus Technologies, Inc., of Arlington, Virginia, protests the issuance of a task order to Edaptive Systems LLC, of Owings Mills, Maryland, under request for

proposals (RFP) No. HHSM-500-2015-XXXXX, issued by the Department of Health and Human Services (HHS), Centers for Medicare and Medicaid Services (CMS). The RFP sought comprehensive testing strategy and testing support services for information technology (IT) systems. The protester argues that CMS improperly evaluated its proposal as well as that of the awardee.

We sustain the protest in part and deny it in part.

BACKGROUND

CMS issued the RFP on January 9, 2015, under the National Institutes of Health Information Technology Acquisition and Assessment Center (NITAAC),[1] Chief Information Officer-Solutions and Partners 3 (CIO-SP3) government-wide acquisition contract (GWAC) for IT solutions and services.[2] Contracting Officer's (CO's) July 8 Statement at 1. The RFP, which was set aside for small businesses, contemplated the issuance of a cost-plus-award-fee task order with a 1-year base period and four 1-year options. Id.; RFP at 1-2. The RFP sought contractor assistance with the testing of various IT systems that comprise the health insurance marketplace operated by HHS pursuant to the Affordable Care Act. CO's July 8 Statement at 1. According to the agency, operation of the marketplace involves numerous IT systems, applications, and data exchanges that are connected via multiple, complex integration points. Agency Report (AR), Tab 11, Declaration of CMS Subject Matter Expert (SME), at 1-2.

The RFP provided that award would be made in accordance with section 16.505 of the Federal Acquisition Regulation (FAR), using a best-value trade-off between cost and four non-cost evaluation factors, with a fifth evaluation factor--Section 508 compliance--rated on a pass/fail basis.[3] AR, Tab 2.A.6, Evaluation Factors, at 1-2.

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[1] NITAAC is a federal Executive Agent housed within HHS that is authorized by the Office of Management and Budget to administer three GWACs for IT procurement, including CIO-SP3. See https://nitaac.nih.gov/nitaac/ (last visited August 31, 2015). The GWACs administered by NITAAC can be used by any federal civilian or Department of Defense agency to acquire IT products, services, and solutions. Id.

[2] The estimated value of the task order at issue exceeds $10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award indefinite-delivery, indefinite-quantity contracts. 41 U.S.C. § 4106(f)(1).

[3] Section 508 refers to the Rehabilitation Act of 1973, as amended, which generally requires that agencies' electronic and information technology (EIT) be accessible to people with disabilities. See 29 U.S.C. § 794d. Under the RFP, offerors were directed to submit documentation demonstrating their ability to comply with established EIT accessibility standards. AR, Tab 2.A.6, Evaluation Factors, at 5.

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The non-cost evaluation factors considered in the tradeoff were, in descending order of importance: (1) technical approach and understanding; (2) personnel and management; (3) project organization and management plan; and (4) corporate experience and past performance.[4] Id. The RFP further provided that the non-cost evaluation factors, when combined, were more important than cost, but that cost would become more important as proposals became more equal in merit under the non-cost factors. Id. at 5.

As relevant to the protest allegations at issue here, the RFP directed offerors to submit as part of their proposals a staffing plan identifying the individuals who would be performing work under the task order. AR, Tab 2.D.2, Instructions to Offerors, at 2. The RFP further provided that with respect to the personnel and management factor, CMS would evaluate the "extent to which the [offeror's] proposed staffing plan ensures that appropriately qualified staff are available to meet the requirements of this contract on an ongoing basis." AR, Tab 2.A.6, Evaluation Factors, at 2.

With regard to the corporate experience and past performance factor, the RFP directed offerors to submit three to four examples of relevant past performance, and also advised offerors of the possibility that CMS would consider additional contracts contained in the Past Performance Information Retrieval System (PPIRS). AR, Tab 2.D.2, Instructions to Offerors, at 5-6. As to the evaluation of corporate experience and past performance, the RFP provided as follows:

> CMS will evaluate the depth, breadth, and relevance of the Offeror's corporate experience, with particular emphasis on recent experience (i.e., within the past 5 years), in overseeing and testing multifaceted, complex, large scale, multi-agency system integration program [sic] that are of a similar size, scope, and complexity as the solicitation's requirements.

AR, Tab 2.A.6, Evaluation Factors, at 3. The RFP further provided that in assessing corporate experience, CMS would look for offerors' experience in eight specific areas related to the solicitation's requirements, including, for example, experience

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(...continued)
CMS assigned all offerors a rating of pass under this evaluation factor. AR, Tab 8, Source Selection Decision (SSD), at 4.

[4] The RFP provided that the agency would evaluate offerors' technical proposals for strengths, weaknesses, deficiencies, and risks. The possible adjectival ratings for the non-cost evaluation factors (other than 508 compliance) were excellent, highly acceptable, acceptable, or not acceptable.

"[p]romoting data quality and management to facilitate the efficient and effective exchanges of data between systems." Id. at 3-4. The RFP also advised offerors that if a past performance reference was deemed not relevant or recent, that contract would not be considered in the agency's evaluation. Id. at 4.

Finally, with respect to the evaluation of cost, the RFP provided that CMS would conduct a cost realism analysis of offerors' business proposals in accordance with section 15.404-1(d) of the FAR. Id. at 5.

CMS received timely proposals from six offerors, including those from Tantus and Edaptive. CO's July 8 Statement at 2. The agency's evaluation results for the protester and awardee were as follows:

	Technical Approach/ Understanding	Personnel/ Management	Project Organization/ Management Plan	Corporate Experience/ Past Performance	Total Proposed/ Evaluated Cost
Tantus	Acceptable	Acceptable	Acceptable	Acceptable	$68,933,984
Edaptive	Acceptable	Highly Acceptable	Acceptable	Acceptable	$69,952,991

With respect to Tantus's proposal, the technical evaluation panel (TEP) rated it as acceptable under all of the non-cost evaluation factors and found that it offered two strengths under the technical approach and understanding factor and one strength under the personnel and management factor. Tab, 5.A.2, Tantus Technical Evaluation, at 1. The agency determined, however, that Tantus's proposal also contained a significant weakness under the technical approach and understanding factor. Id. Specifically, the TEP, after consultation with an agency SME, found that the protester proposed to build a new test environment for each round of testing, which was contrary to the RFP's requirement that the contractor utilize the testing environment provided by CMS. Id. In this regard, the agency explains that due to the complexity of the marketplace IT systems, CMS has built a dedicated test environment to conduct testing. AR, Tab 11, Declaration of CMS SME, at 2. CMS also notes that prior efforts to test the marketplace IT systems using a separate, independent computer system have been unsuccessful in accurately replicating the actual marketplace systems. Id. Under its cost realism evaluation, CMS made no adjustments to Tantus's proposed costs, resulting in a proposed and evaluated total cost of $68,933,984. AR, Tab 6.B.1, Tantus Cost Evaluation, at 7.

With regard to Edaptive's proposal, CMS rated it as highly acceptable under the personnel and management factor and acceptable under the other non-cost evaluation factors. AR, Tab 5.A.3, Edaptive Technical Evaluation, at 1. The TEP evaluated Edaptive's proposal as having two strengths under the technical approach and understanding factor and one significant strength under the personnel

and management factor. Id. at 1-2. As to the latter, the agency found that Edaptive's staffing plan proposed to employ [deleted] individuals who are currently providing marketplace testing services to the agency, and that utilizing such a large number of incumbent staff would provide several benefits to the agency, including a low-risk transition and continuity of services.[5] Id. at 2. In conducting its cost realism evaluation, CMS did not adjust Edaptive's proposed costs, resulting in a proposed and total evaluated total cost of $69,952,991. AR, Tab 6.C.1, Edaptive Cost Evaluation, at 11.

In conducting the best-value tradeoff analysis, the CO considered Edaptive's proposal, which the TEP ranked first overall under the non-cost evaluation factors, and the three proposals evaluated as lower in cost than Edaptive's proposal. AR, Tab 8, SSD, at 4-6. Although the agency viewed Tantus's proposal as the highest ranked in technical merit of the three lower-cost proposals, the CO found that the cost savings offered by Tantus's proposal were not significant, and as such did not outweigh the benefits of Edaptive's technically superior proposal. Id. at 7.

CMS provided Tantus with a written debriefing on June 2, 2015, and Tantus timely filed the instant protest with this Office on June 5. Protest at 2.

DISCUSSION

Tantus challenges CMS's evaluation of proposals on several grounds. First, the protester contends that the agency unreasonably failed to consider, under the personnel and management factor, whether Edaptive's proposal to relocate a significant number of employees after the first year of the task order posed a risk to Edaptive's ability to retain qualified staff. Comments and Supp. Protest at 24-26. Second, the protester contends that the agency did not evaluate corporate experience and past performance in a manner consistent with the RFP. Id. at 34-36. Third, Tantus argues that Edaptive proposed unrealistically low labor rates that CMS should have adjusted upward in conducting its cost evaluation. Id. at 17-22. For the reasons discussed below, we sustain the protest with respect to these three bases for protest. Tantus also argues that CMS erred when it assessed a significant weakness in the protester's technical proposal and that the agency should have adjusted the protester's proposed travel costs downward. Id. at 1-10, 24. We deny these bases for protest.

[5] The record reflects that for the base year of the task order, Edaptive proposed to employ approximately [deleted] individuals under the contract, although not all are proposed to work full-time. AR, Tab 4.A.2.1, Edaptive Cost Proposal, at Staffing Matrix Summary Tab, lines 4-141.

Evaluation of Non-Cost Factors

It is a fundamental principle that an agency must evaluate proposals consistent with the terms of the solicitation and, while the evaluation of offerors' proposals generally is a matter within the procuring agency's discretion, our Office will question an agency's evaluation where it is unreasonable, inconsistent with the solicitation's stated evaluation criteria, or undocumented. Exelis Sys. Corp., B-407111 et al., Nov. 13, 2012, 2012 CPD ¶ 340 at 5; Public Commc'ns Servs., Inc., B-400058, B-400058.3, July 18, 2008, 2009 CPD ¶ 154 at 17. Further, where an agency fails to document its evaluation or retain evaluation materials, it bears the risk that there may not be adequate supporting rationale in the record for GAO to conclude that the agency had a reasonable basis for the source selection decision. Sys. Research & Applications Corp.; Booz Allen Hamilton, Inc., B-299818 et al., Sept. 6, 2007, 2008 CPD ¶ 28 at 12.

Tantus contends that in evaluating CMS's proposal under the personnel and management factor, the agency improperly failed to consider the staffing risk inherent in Edaptive's plan to change the work location of [deleted] specifically-named employees from the Baltimore, Maryland area to [deleted] after the base year of the task order.[6] Comments and Supp. Protest at 25. In this regard, the record reflects that Edaptive proposed to reduce labor costs by moving a portion of its workforce to [deleted] in the option years of the task order to take advantage of the relatively lower wages of that area. AR, Tab 4.A.2, Edaptive Business Proposal, at 28; AR, Tab 4.A.2.1, Edaptive Cost Proposal, at Staffing Matrix Summary Tab, lines 18-19, 21-22, 42-58. As noted by the protester, Edaptive's proposal does not address its ability to retain the employees it plans to relocate and the record does not reflect that the agency considered this aspect of the proposal. AR, Tab 4.A.2, Edaptive Business Proposal, at 28. Tantus argues that the awardee's relocation strategy should have been evaluated as a significant weakness under the personnel and management factor, and undermines the agency's assessment of a significant strength in Edaptive's proposal based on the awardee's proposed use of [deleted] incumbent personnel. Supp. Comments at 15-17.

The agency did not respond to the merits of the protester's argument on this issue, which we regard as tantamount to a concession that it erred in failing to evaluate Edaptive's relocation strategy. See Tricenturion, Inc.; Safeguard Servs., LLC, B-406032 et al., Jan. 25, 2012, 2012 CPD ¶ 52 at 17. We agree with the protester

[6] Based on our review of the record, it appears that Edaptive in fact proposed to relocate [deleted] employees. See AR, Tab 4.A.2.1, Edaptive Cost Proposal, at Staffing Matrix Summary Tab, [deleted]. Notwithstanding the discrepancy, neither the agency nor the intervenor disputes the protester's contention that Edaptive proposed to move a portion of its workforce to [deleted].

that the agency's failure to consider Edaptive's proposed relocation of staff to [deleted] was unreasonable. As noted above, the RFP provided that under the personnel and management factor, the agency would evaluate "[t]he extent to which the proposed staffing plan ensures that appropriately qualified staff are available to meet the requirements of this contract on an ongoing basis." AR, Tab 2.A.6, Evaluation Factors, at 2 (emphasis added). We find that Edaptive's proposed relocation strategy, which would require a significant geographic change for a substantial portion of its workforce, is relevant to the awardee's ability to provide qualified staff following the base year of the task order. The agency's failure to consider this aspect of Edaptive's proposal was thus unreasonable and inconsistent with the evaluation criteria of the RFP, and on this basis we sustain the protest.[7] See Wisconsin Physicians Servs. Ins. Corp., B-401063, May 4, 2009, 2012 CPD ¶ 35 at 12-14 (sustaining protest where record did not demonstrate that the agency considered offerors' understanding of an accounting system that was clearly relevant to the evaluation of a technical subfactor).

Next, the protester contends that the agency's evaluation was inconsistent with the terms of the RFP because the agency failed to evaluate the relevance of offerors' past performance or consider offerors' corporate experience. Comments and Supp. Protest at 34-36. It is well-established that contracting agencies do not have the discretion to announce in the solicitation that they will use one evaluation plan, and then follow another. Emergence Group, B-404844.7, Feb. 29, 2012, 2012 CPD ¶ 133 at 7. Once offerors are informed of the criteria against which proposals will be evaluated, the agency must adhere to those criteria in evaluating proposals and making its award decision, or inform all offerors of any significant changes made in the evaluation scheme. Id.

Here, the RFP directed offerors to submit three to four past performance references and provided that CMS would evaluate both corporate experience and past performance under the same evaluation factor. AR, Tab 2.D.2, Instructions to Offerors, at 5; AR, Tab 2.A.6, Evaluation Factors, at 3-5. With respect to corporate experience, the solicitation provided that the agency would assess the depth and breadth of offerors' experience in performing relevant contracts. AR, Tab 2.A.6, Evaluation Factors, at 3. Specifically, the RFP noted that CMS would evaluate the extent to which offerors had experience overseeing and testing multifaceted, complex, large scale, multi-agency system integration programs. Id. The RFP also identified eight specific areas of relevant work experience that the agency would

[7] Although Tantus contends that Edaptive's relocation strategy warranted a significant weakness and undercuts the significant strength the agency assigned Edaptive's proposal under the personnel and management factor, our decision is more limited. As discussed above, we find that the agency's failure to evaluate the awardee's relocation strategy was unreasonable and recommend that the agency consider this aspect of the proposal in a reevaluation.

look for in assessing offerors' corporate experience. Id. at 3-4. Likewise, for past performance, the solicitation advised that the agency would only evaluate contracts that it viewed as recent and relevant; relevant contracts were defined as those that involved work of substantially the same magnitude, type, and complexity as required under the RFP. Id. at 4. As discussed below, the record does not demonstrate that CMS assessed the relevancy of any of the contracts it considered in its evaluation or that the agency evaluated offerors' corporate experience.

In evaluating past performance, the record reflects that the CO and a contract specialist prepared a report, based on contracts identified in PPIRS, which generally discusses offerors' performance on those contracts. AR, Tab 7, Past Performance Report; CO's July 30 Statement at 1. The agency's past performance report, however, does not include any assessment as to the relevancy of the PPIRS contracts. AR, Tab 7, Past Performance Report. Moreover, the agency's report does not discuss whether the offerors' PPIRS contracts demonstrated their experience in performing the types of work identified in the RFP's evaluation criteria. Id. While CMS contends that the TEP assessed corporate experience when it reviewed offerors' past performance references, as discussed below, the contemporaneous record does not demonstrate that the TEP's evaluation was consistent with the solicitation.

The record reflects that in conducting its evaluation, the TEP prepared evaluation reports for Edaptive and Tantus that contained sections entitled "Corporate Experience and Past Performance." The TEP's reports for both offerors, however, state that under the corporate experience and past performance factor, the TEP identified no strengths, weaknesses, or deficiencies, and that it reviewed the PPIRS report and "ascertained no adverse Past Performance findings." AR, Tab 5.A.2, Tantus Evaluation Report, at 2; AR, Tab 5.A.3, Edaptive Evaluation Report, at 2. Thus, the TEP's evaluation reports do not mention the past performance references submitted by the offerors or any of the specific types of experience that the RFP indicated the agency would consider in assessing corporate experience. AR, Tab 5.A.2, Tantus Evaluation Report, at 2; AR, Tab 5.A.3, Edaptive Evaluation Report, at 2. Simply put, the record does not demonstrate that CMS considered the relevance of the contracts it reviewed in assessing past performance or that the agency evaluated corporate experience in a manner consistent with the detailed evaluation criteria of the RFP. While we recognize that this procurement was conducted pursuant to the streamlined procedures of FAR subpart 16.5, we nonetheless apply the requirements as set forth in the solicitation. See, e.g., Mission Essential Pers., LLC, B-407474; B-407493, Jan. 7, 2013, 2013 CPD ¶ 22 at 6-7 (sustaining protest in task order competition where agency's past performance evaluation was inconsistent with the solicitation); Ross Group Constr. Corp., B-405180.2, Nov. 28, 2011, 2011 CPD ¶ 270 at 3-5 (same). Because the record evidences that the agency did not adhere to the announced evaluation scheme in

evaluating corporate experience and past performance, we conclude that the agency's evaluation of this factor was unreasonable and improper.[8] See Emergence Group, supra (sustaining protest where agency's evaluation of past performance was inconsistent with the RFP).

Next, Tantus argues that the agency erred in assigning its proposal a significant weakness under the technical approach and understanding factor. Protest at 13-17. In this regard, the record reflects that the protester's technical proposal, in setting forth Tantus's testing strategy, included the phrase "build test environment" as one of the steps it would take for each round of testing. AR, Tab 3.A.1, Tantus Technical Proposal, at 10. CMS, in turn, interpreted the language "build test environment" to mean that the protester was proposing to build a test environment that was separate from the the agency's dedicated test environment, which the RFP required offerors to use. AR, Tab 5.A.2, Tantus Evaluation Report, at 1. Tantus contends that the agency's interpretation of the phrase "build test environment" is unreasonable, and that when read as a whole, its proposal clearly provided that Tantus would use CMS's existing test environment. Protest at 13-17. As discussed below, we find that the protester has failed to demonstrate that the agency's interpretation of its proposal was unreasonable.

Tantus argues that a paragraph in its proposal entitled "Utilization of CMS Validation Environments" made clear that the protester was not, as the agency claims, proposing to create a separate test environment to conduct testing. Protest at 15-16. The text of that paragraph, however, does not actually address how the protester would use the test environment provided by CMS. Rather, the paragraph discusses matters such as scheduling testing and Tantus's ability to recreate defects using a replicated testing environment. AR, Tab 3.A.1, Tantus Technical Proposal, at 6. Moreover, the protester has not identified any language elsewhere in its proposal which plainly demonstrates that the agency's interpretation was unreasonable. Although the protester claims that the language "build test environment" simply referred to the necessary step of selecting the test tools and test data to be used in each round of testing, Tantus's proposal does not define the phrase as such or otherwise make clear the meaning that Tantus claims it intended. Given that the protester's proposal did not directly address the requirement that it

[8] Tantus also challenges CMS's evaluation of past performance on the bases that the agency failed to consider negative past performance information concerning one of Edaptive's subcontractors, about which it should have been aware, and that CMS improperly discounted a marginal past performance rating Edaptive received for one of its PPIRS contracts. We do not address these issues because we are sustaining Tantus's protest on the grounds noted above and because the record regarding these additional bases of protest is less clear. In performing its reevaluation under the factor, the agency may wish to review the reasonableness of its treatment of the past performance information in question.

would use CMS's validation environment, or clearly explain what it meant by the phrase "build test environment," we are unable to conclude that the agency's interpretation of the protester's proposal was unreasonable. It was Tantus's responsibility to submit an adequately written proposal that clearly conveyed its intent to comply with the solicitation requirement to use the agency's test environment, and the protester risked the downgrading of its proposal where it failed to do so. See Teleport Commc'ns. Group, B-277926.2, Sept. 17, 1998, 98-2 CPD ¶ 72 at 5.

Cost Evaluation

Tantus also challenges CMS's evaluation of Edaptive's cost proposal, arguing that the awardee proposed unrealistic labor rates for [deleted] key personnel that the agency should have adjusted upward. Comments and Supp. Protest at 17-22. When an agency evaluates a proposal for the award of a cost-reimbursement contract, an offeror's proposed estimated costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. FAR §§ 15.305(a)(1); 15.404-1(d); Palmetto GBA, LLC, B-298962, B-298962.2, Jan. 16, 2007, 2007 CPD ¶ 25 at 7. Consequently, an agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR § 15.404-1(d)(1). An agency is not required to conduct an in-depth cost analysis, see FAR § 15.404-1(c), 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. While an agency's cost realism analysis need not achieve scientific certainty, the methodology employed must be reasonably adequate and provide some measure of confidence that the rates proposed are reasonable and realistic in view of other cost information reasonably available to the agency at the time of its evaluation. See SGT, Inc., B-294722.4, July 28, 2005, 2005 CPD ¶ 151 at 7.

Here, the record reflects that Edaptive proposed, during the option years of the task order, to hire [deleted] key personnel previously employed by its subcontractors, and to pay these individuals substantially lower hourly rates than their prior employers. For example, in option year 3, Edaptive proposed to hire its lead project manager from its subcontractor [deleted], and to reduce the direct labor rate of the employee by more than [deleted] per hour as compared to the rate paid by [deleted] under option year 2. AR, Tab 4.A.2.1, Edaptive Cost Proposal, at Detail Cost Tab, line 7; AR, Tab, 4.A.3.3, QSSI Cost Proposal, at Budget Tab, line 396. Similarly, Edaptive proposed to hire and reduce the direct labor rate for its senior testing strategist by more than [deleted] per hour in option year 2. AR, Tab 4.A.2.1, Edaptive Cost Proposal, at Detail Cost Tab, line 29; AR, Tab 4.A.3.1, Mathematica Cost Proposal, at Rate Build-Up Tab, line 11.

Tantus argues that it was unrealistic to expect these key personnel to accept such substantial pay cuts, and that the agency should have adjusted Edaptive's proposed hourly rates upward to be consistent with the rates these individuals were being paid by the subcontractors.[9] Comments and Supp. Protest at 19. CMS contends that its cost realism analysis was proper because in evaluating Edaptive's hourly rates, the agency found that they were consistent with the rates for comparable labor categories published on Salary.com. Supp. Memorandum of Law, at 16. The agency also argues that Edaptive's rates for the lead project manager and senior testing specialist were realistic as Edaptive based those rates on the hourly rates of its current employees who have skills and experience similar to that required for these positions. Supp. Legal Memorandum at 16; AR, Tab 4.A.2.1, Edaptive Cost Proposal, at Tab Edaptive Base Rate, column C.

We agree with the protester that the agency's cost evaluation was not reasonable to the extent that it relied on labor rate data inconsistent with the actual hourly rates of the proposed employees. An agency's cost evaluation must consider whether the proposed costs are realistic in light of an offeror's actual technical approach. See TriCenturion, Inc.; SafeGuard Servs., LLC, supra, at 6. Thus, while Edaptive's proposed labor rates for the option years of the task order may have been realistic had it proposed to hire new employees or to use its own employees, Edaptive proposed to utilize primarily incumbent staff, specifically identified by name, throughout the life of the task order. AR, Tab 4.A.2.1, Edaptive Cost Proposal, at Edaptive Base Rate Tab. Further, we think Edaptive's proposal to dramatically reduce the hourly rates of the three key personnel at issue and continue to retain these individuals should have raised concerns.[10] As such, we find that the agency's

[9] Tantus also challenges Edaptive's proposal to hire an automation test specialist from its subcontractor [deleted] and reduce the fully burdened labor rate for the employee by more than [deleted] per hour as compared to its subcontractor's rate in option year 2. Comments and Supp. Protest at 18. Because Edaptive's proposal does not identify the subcontractor's direct labor rate for this individual, it is not clear by what amount the employee's hourly rate would be reduced when hired by Edaptive. However, given the magnitude of the reduction in the fully burdened labor rate, we agree with the protester that CMS erred in finding Edaptive's labor rates for this individual realistic for option years 3 and 4.

[10] Tantus also contends that Edaptive proposed an unrealistic rate for a specifically-named testing specialist who would be employed by QSSI throughout the task order. Comments and Supp. Protest at 19-21. In this regard, Tantus notes that the fully burdened rate Edaptive provided for the testing specialist in its detailed cost spreadsheet is less than what QSSI proposed to charge Edaptive for this individual's work. Id. However, the record reflects that Edaptive's total proposed cost attributable to QSSI is equal to the total cost that QSSI calculated in its own cost proposal. AR, Tab 4.A.2.1, Edaptive Cost Proposal, at Summary Cost Tab, line 12; AR, Tab 4.A.3.3, QSSI Cost Proposal, at Budget Summary Tab, line 28.

(continued...)

cost realism evaluation was flawed where it failed to consider whether Edaptive's proposed labor rates, for each year of the task order, were consistent with the actual rates paid to the employees in the prior year of the contract.[11] See Wisconsin Physicians Servs. Ins. Corp., supra, at 8-11 (sustaining challenge to awardee's proposed labor rates that were based on market survey data and lower than the rates then being paid to the proposed incumbent employees); Magellan Health Servs., B-298912, Jan. 5, 2007, 2007 CPD ¶ 81 at 15 (finding labor rates of awardee's current employees irrelevant to probable cost analysis where awardee was proposing to employ higher-paid incumbent employees).

Tantus also argues that CMS's cost evaluation was flawed because while the agency found that the protester had proposed an excessive amount of travel, the agency did not adjust the protester's proposed travel costs downward. Comments and Supp. Protest at 24. We disagree. While our Office has held that an agency should downwardly adjust an offeror's costs where its proposal shows a misunderstanding of the requirements which would cause the government to incur a lower cost than the offeror proposed, an agency need not do so where the offeror's proposed costs reflect its technical approach. See Bart & Assocs., Inc., B-407996.5 et al., Jan. 5, 2015, 2015 CPD ¶ 61 at 14-16. Here, Tantus's proposal provided that one of its key personnel would make [deleted] trips per year to CMS's facilities because the protester considered the employee's regular presence to be "essential" to performance of the task order. AR, Tab 3.A.2, Tantus Business Proposal, at 6-7. Although the TEP found that [deleted] trips was excessive, Tantus's travel costs

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Further, QSSI's total cost figure includes the actual amount QSSI would charge Edaptive for the testing specialist. AR, Tab 4.A.3.3, QSSI Cost Proposal, at Budget Tab. As such, regardless of any inconsistency in Edaptive's cost spreadsheet, the record demonstrates that Edaptive's proposal accurately captured the costs of the QSSI testing specialist.

[11] The protester also asserts that the agency should have considered Edaptive's unrealistic labor rates as a risk under the personnel and management factor because the awardee would not be able to retain these employees at the rates it proposed. Comments and Supp. Protest at 25. Although, we recommend that CMS consider whether Edaptive's labor rates are unrealistically low, we do not agree that the agency must also consider these rates under the personnel and management factor. In this regard, the protester does not challenge the qualifications of the proposed employees, but rather, Edaptive's ability to retain them at its proposed labor rates, a concern that CMS may choose to address by increasing Edaptive's rates as part of its reevaluation. Cf. Serco, Inc., B-298266, Aug. 9, 2006, 2006 CPD ¶ 120 at 6-9, (finding that awardee's insufficient number of proposed labor hours should have been considered in agency's cost realism evaluation as well as under relevant technical evaluation criteria).

were based on its proposed technical approach, not a misunderstanding of the agency's requirements. As such, the agency was under no obligation to reduce the protester's proposed travel costs. See Bart & Assocs., Inc., supra (denying protest where agency downwardly adjusted awardee's costs that were based on out-of-scope work, but did not adjust protester's proposed labor hours, which agency found excessive but consistent with the protester's technical approach).

Prejudice

The record reflects that in conducting the tradeoff analysis, the CO found Edaptive's significant strength under the personnel and management factor to be a distinguishing feature of its proposal, and also noted that unlike Tantus's proposal, Edaptive's proposal received no weaknesses. AR, Tab 8, SSD, at 6-10. As discussed above, however, we find that CMS erred when it failed to consider Edaptive's relocation strategy under the personnel and management factor. Given that CMS's evaluation of Edaptive's proposal under the personnel and management factor may change upon reevaluation, it is possible that the agency's source selection decision may also differ. Likewise, a reevaluation may result in a higher evaluated cost for Edaptive's proposal and different ratings for both Tantus and Edaptive under the corporate experience and past performance factor.[12] In such circumstances, we resolve any doubts regarding prejudice in favor of a protester since a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. See Kellogg, Brown & Root Servs.,Inc.--Recon., B-309752.8, Dec. 20, 2007, 2008 CPD ¶ 84 at 5.

RECOMMENDATION

We recommend that the agency reevaluate proposals in a manner consistent with the discussion above and make a new source selection decision based on that reevaluation. Should the agency conclude that an offeror other than Edaptive is in line for award, we recommend that the agency terminate the task order issued to Edaptive, and issue the task order to that offeror, if otherwise proper. We also recommend that the agency reimburse Tantus its reasonable costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester's certified claim for costs, detailing the time spent and the cost

[12] Moreover, to the extent that CMS decides to address Edaptive's proposed relocation strategy through discussions, Tantus will have the opportunity to respond to the significant weakness identified by the agency in its proposal.

incurred, must be submitted to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is sustained in part and denied in part.

Susan A. Poling
General Counsel