



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: EBA Engineering, Inc.

File: B-275818

Date: March 31, 1997

Robert G. Fryling, Esq., and Edward J. Hoffman, Esq., Blank, Rome, Comisky & McCauley, for the protester.

J. Patrick McMahon, Esq., and Kenneth D. Brody, Esq., McMahon, David & Brody, for Soil and Land Use Technology, Inc., an intervenor.

Beverly M. Russell, Esq., Federal Highway Administration, Department of Transportation, for the agency.

Paul E. Jordan, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Composition of technical evaluation panel is within the discretion of the agency, and where protester has not shown actual bias on the part of particular evaluators there is no basis to question the composition of the panel.
 2. Allegation of "bait and switch" of proposed key personnel is denied where there is no evidence of misrepresentation by awardee, solicitation provided for substitution of key personnel, and of ten proposed key personnel, all but two are available or performing.
 3. Contracting officer's determination that offeror's firm, fixed-price proposal is reasonable is unobjectionable where it is based on a price analysis that includes comparison of direct and indirect rates with other offerors and other agency contracts for similar services, which reasonably supports contracting officer's conclusion.
 4. Source selection official's (SSO) decision to raise offeror's technical standing is unobjectionable since SSO is not bound by the recommendations and conclusions of working level evaluators and SSO's decision is reasonable.
-

DECISION

EBA Engineering, Inc. protests the award of a contract to Soil and Land Use Technology, Inc. (SaLUT) under request for proposals (RFP) No. DTFH61-96-R-00050, issued by the Federal Highway Administration (FHWA), Department of Transportation, for laboratory support services. EBA contends that the evaluation

was flawed and the award improper for a number of reasons including SaLUT's alleged use of bait and switch tactics and the failure of the source selection official (SSO) to follow the recommendations of the technical evaluation panel.

We deny the protest.

The RFP, issued as a competitive 8(a) set-aside, contemplated award of a firm, fixed-price, time and materials contract for a base period of 3 years with two 1-year options. The successful offeror supplies non-personal services for several laboratories and testing facilities at the FHWA's Turner-Fairbank Highway Research Center in McLean, Virginia (hereinafter Research Center).

The RFP identified 10 key personnel positions and 16 non-key categories. Offerors were required to identify and provide resumes for the key personnel, but were not required to identify non-key personnel. If an offeror intended to use subcontractors or consultants, it was required to submit a letter or other statement indicating that the consultant/subcontractor was willing to work on the contract. Offerors were not required to provide assurances or commitment statements for any other proposed personnel.

Proposals were to be evaluated on the basis of three factors of equal importance: technical, past performance, and price reasonableness/realism. Evaluation under the technical factor was based on three subfactors: relative experience (weight 40), relative qualifications of key personnel (weight 40), and relative understanding of the requirements and nature of the work (weight 20). Proposals were scored on a scale of 0 (unacceptable) to 5 (outstanding). The raw score on each subfactor was multiplied by the applicable weight resulting in a potential maximum score of 500 points. The RFP also required offerors to make an oral presentation to the agency which was not to be "evaluated per se, but [would be] used to evaluate the offerors knowledge of the work as an indication of capability." The evaluation of past performance was based on reference contacts and included an assessment of the offerors' reputation for quality, timeliness, cost control, and business relationships. Price was evaluated for reasonableness and realism through a price analysis.

Award was to be made to the offeror whose proposal was considered to represent the best value. While the three evaluation factors were of equal importance, the RFP advised that if competing offers were essentially equivalent in any of the three areas, the remaining areas would become more important.

EBA, the incumbent contractor, and SaLUT were the only offerors to submit proposals by the August 2, 1996, closing date. The agency's technical evaluation panel, comprised of a chairman and three evaluators, reviewed the proposals and arrived at initial scores. The chairman also selected three contracts for each offeror for use in the past performance evaluation. After the offerors made their oral

presentations on August 22 and 23, the agency conducted discussions and requested best and final offers (BAFO).

With its BAFO, SaLUT included (for the purpose of criticizing as improper and inappropriate) a copy of a July 31, 1996, letter from a number of EBA employees addressed to the contracting officer's technical representative (COTR). The COTR was the chairman of the evaluation panel and the members of his panel were among those included in a list of additional letter recipients.¹ In the letter, the employees expressed concerns about the potential for a new contractor to be selected instead of EBA. Although the COTR had not responded to the letter, in reviewing the matter the agency determined that contact of this type was inappropriate. In order to avoid any appearance of impropriety, the agency appointed a replacement chairman and had the COTR step down. At the same time, the agency removed one panel member and replaced him with two new evaluators. The reconstituted panel was briefed on the procurement and they conducted the evaluation of the BAFOs.

While both proposals were evaluated as "above average" under the past performance factor, there was a substantial difference in their technical scores. Out of a possible 500 points, EBA's proposal received a score of 456 points while SaLUT's received a score of 248 points. With regard to price realism, the evaluators found the offerors' direct rates to be comparable, but questioned SaLUT's decision to lower its overhead rate in its BAFO. Even though EBA's price was more than \$1 million higher than SaLUT's, the panel recommended award to EBA on the basis that it offered the best value.

The contracting officer, as SSO, reviewed the evaluations and their bases and concluded that the scores significantly overstated the actual difference in the offerors' proposals. In his view, since both offerors proposed comparable personnel, the two proposals were essentially equal technically and since the two offeror's past performance records were also substantially equal, price became the determining factor. After satisfying himself that SaLUT's direct and indirect rates

¹While the letter appeared to be an attempt to encourage the agency's retention of EBA as contractor, there is no evidence that the employees knew that the addressees of their letter were evaluators for this procurement. The addressees were agency officials with whom the contract employees regularly worked. Likewise, there is no evidence to support the protester's speculation that SaLUT must have possessed inside knowledge that the letter recipients were contract evaluators. To the contrary, it appears that SaLUT logically deduced that the recipients comprised the evaluation team since four of the named recipients, including the COTR, were present at the oral presentation held days before the submission of the BAFO.

were realistic and reasonable, he awarded the contract to SaLUT. After receiving notice of the award and a debriefing, EBA filed this protest challenging the evaluation, including the composition of the evaluation panel and the contracting officer's failure to follow the panel's recommendation.²

COMPOSITION OF THE PANEL

EBA argues that the agency's staffing of the evaluation panels was illogical and arbitrary. EBA disagrees that there was any impropriety associated with EBA's employee's sending the letter and contends that it was arbitrary to remove some of the letter recipients from the panel, but not others. The agency explains that it removed the COTR as chairman and replaced him to avoid the appearance of any impropriety. At the same time, the agency determined that the panel should be adjusted to reflect a wider cross-section of technical offices to provide a variety of technical expertise and perspective; the initial panel was comprised solely of personnel from a single section. Consequently, one of the three evaluators was removed and two replacements were added to the panel.

The composition of a technical evaluation panel is within the discretion of the contracting agency. In the absence of evidence of bad faith or actual bias, we have no reason to question the composition of the panel. Delta Ventures, B-238655, June 25, 1990, 90-1 CPD ¶ 588; Johns Hopkins Univ., B-233384, Mar. 6, 1989, 89-1 CPD ¶ 240. Here, a number of employees of the incumbent contractor, many of whom SaLUT identified in its own proposal, submitted a letter to the chairman of the evaluation panel, expressing their loyalty to the Research Center, their great satisfaction with the incumbent, and their concerns about salaries, benefits, and transition issues if a new contractor received the award. The employees went on to advise that the Research Center's mission would be benefited by a group of employees who felt that they already were working for a company that gave them a "feeling of job stability." While there is no evidence that the employees knew that they were communicating with the actual evaluation panel, we believe that receipt of such a letter by the panel chairman provided a basis for the agency to be concerned about the appearance of an impropriety. With regard to replacement of the other panel members, it is not clear that they actually received the letter, notwithstanding the inclusion of their names among the courtesy copy recipients. However, the agency reconfigured the balance of the panel for another rational reason: to ensure a broader technical representation. Thus, we see no

²The protester submitted a number of arguments in support of these and other protest grounds; the agency responded to each argument, justifying its actions. We have reviewed the entire record, considered all of the arguments, and find no basis for sustaining the protest. However, we will discuss only the more significant arguments in this decision.

inconsistency in FHWA's decision to remove only one of the remaining three evaluators. Further, it is plain that EBA was not prejudiced by the panel's reconfiguration and the retention of two possible letter recipients. EBA received virtually identical scores from both panels and the two retained original panel members continued to give SaLUT the lowest scores of all. While SaLUT's average score increased over the preliminary evaluation, it remained significantly lower than EBA's average score and the new panel recommended award to EBA.

THE EVALUATION

EBA next challenges the conduct of the evaluation of SaLUT's proposal including past performance, personnel, and price realism. In reviewing the evaluation, it is not the function of our Office to evaluate the proposals de novo. Rather, we will examine an agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since the relative merit of competing proposals is primarily a matter of administrative discretion. Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203; Advanced Tech. and Research Corp., B-257451.2, Dec. 9, 1994, 94-2 CPD ¶ 230. From our review of the record, we see no basis to object to the agency's evaluation.

Past Performance

EBA contends that the past performance evaluation was flawed because the agency did not consider the size and complexity of the contracts submitted as references by the offerors and because it considered an "unrelated" contract in its evaluation of SaLUT. The RFP required offerors to submit information on "all contracts" up to a maximum of 15, involving similar or related services over the past 3 years.³ EBA notes that the RFP also advised that the agency would "focus on information that demonstrates quality of performance relative to the size and complexity of the procurement under consideration."

³In a related argument, EBA contends that the agency improperly failed to consider all 15 of the contract references submitted by the offerors. However, nothing in the evaluation scheme required the agency to consider all of the references. Here, the agency selected what it perceived to be the three most relevant contracts for consideration. EBA does not contend that the agency's choice of its contracts led to an undeserved low score, only that it would have had a higher score than SaLUT, if the agency had considered all contracts. Since EBA received an "outstanding" on its predecessor FHWA contract and an overall score of "above average," we find no reason to object to the evaluation on this basis.

While size and complexity were a matter of "focus" in the evaluation, the RFP called for consideration of the relative merits of an offeror's past performance on the basis of its reputation with its former customers and others for quality of product/service, timeliness of performance, cost control, and business relationship. Contrary to EBA's understanding, the agency did consider size and complexity in identifying the contracts to review. The record reflects that the original evaluation panel chairman used size and complexity as the criteria for selecting the contracts for evaluation; he chose them on the basis of those which either most closely resembled the subject requirement or were of comparable size. The evaluation narrative itself acknowledges that SaLUT's references concerned projects that were significantly smaller than the subject requirement. Notwithstanding this determination, the evaluators concluded that the contracts were sufficiently relevant to this requirement to form the basis of the past performance evaluation. In this regard, while contract size may be relevant to contract complexity, the fact that the contract to be awarded is larger in size does not necessarily mean that the contract is more complex. See PMT Servs., Inc., B-270538.2, Apr. 1, 1996, 96-2 CPD ¶ 98.

Here, while one of SaLUT's contracts was identified by the evaluation as "not related," the RFP did not limit the evaluation solely to "related" contracts. Instead, it provided for evaluation of contracts that were related or "similar." Accordingly, in assessing SaLUT's proposal, the evaluators recognized that even though one contract was in an "unrelated technical field," all three SaLUT contracts were for the provision of technical non-personal support services and reflected the offeror's management capability to meet the needs of a customer in a service situation. Further, the evaluation narrative correctly notes that this evaluation was not intended to encompass the relevancy of the technical experience; rather, that was a matter to be considered under the technical evaluation factor.

In short, we find nothing objectionable in the past performance evaluation.

Key Personnel Qualifications

Offerors were required to identify ten employees as key personnel. There was no requirement for the submission of letters of intent or commitment. SaLUT proposed eight incumbent employees and two new hires for these key positions. Offerors were not required to identify non-key personnel, but SaLUT proposed incumbent employees to fill 15 of the 22 non-key positions. In discussions, the agency expressed concern over SaLUT's ability to obtain the services of the incumbent personnel and requested it to provide letters of commitment or other indications that the proposed key personnel were willing to work for SaLUT. In response, SaLUT provided letters of commitment, signed by seven of its proposed key personnel including five incumbent personnel. For the remaining three

personnel, SaLUT submitted "letters of conversation."⁴ These letters, signed by SaLUT's president, were to "record and confirm" SaLUT's understanding that the individual had verbally agreed to work for SaLUT, but was unwilling to sign any acceptance letter. The letter requested the recipient to respond in writing if there were questions or disagreement with the letter. There is nothing in the record to indicate that prior to award, any recipients of these letters advised SaLUT of their disagreement with the letters.

The evaluation of SaLUT's BAFO under the key personnel subfactor ranged from 0 to 160 points out of a possible 200 points. The discrepancy in scores is attributable to some evaluators' belief that the letters of conversation were insufficient.⁵ EBA states that even though SaLUT orally represented that all incumbent employees would work for it, some key and non-key personnel continue to work for EBA.⁶ Since not all of the personnel proposed by SaLUT are working

⁴Based on one evaluator's expressed opinion that only letters of commitment would suffice, EBA argues that the contracting officer improperly accepted the letters of conversation as substitutes. However, notwithstanding the one evaluator's view, the record states that the agency did not require letters of commitment only. Rather, it allowed SaLUT to provide "other indications" that the personnel were available. Since the RFP did not require letters of commitment, we find nothing improper in the agency's acceptance of something less.

⁵EBA agrees with these evaluators and has submitted statements from two of its employees disputing the contents of the letters of conversation. However, the record established that one of those employees is currently working for SaLUT and the other has submitted a letter of commitment to work for SaLUT as soon as an immigration procedure is completed.

⁶In a related argument, EBA contends that some of its employees continue to perform the same work they performed under the incumbent contract, even though SaLUT is supposed to be performing the contract. The agency explains that these employees are working under a different FHWA contract with EBA which overlaps with the statement of work for SaLUT's current (EBA's former) contract. In this regard, the current EBA contract is for heavy vehicle and pavement research and the current SaLUT contract statement of work includes pavement research and heavy vehicle road testing. Further, two of the key employees identified by EBA as continuing to work for EBA, but performing SaLUT's work, are identified in EBA's proposal for the current EBA contract. The other employee, having signed a letter of commitment to work for SaLUT, has decided to accept another position outside the United States. On balance, the record does not indicate that FHWA is improperly having EBA perform work which should be performed by SaLUT.

on the contract, EBA contends that SaLUT deliberately misled the agency by engaging in bait and switch tactics.

Offeror "bait and switch" practices, whereby an offeror's proposal is favorably evaluated on the basis of personnel that it does not expect to use during contract performance, have an adverse effect on the integrity of the competitive procurement system and provide a basis for rejection of that offeror's proposal. Meridian Management Corp., Inc.; NAA Servs. Corp., B-254797; B-254797.2, Jan. 21, 1994, 94-1 CPD ¶ 167. This does not mean that substitution of employees after award is prohibited; such substitution is unobjectionable where the offeror acted reasonably and in good faith. Unisys Corp., B-242897, June 18, 1991, 91-1 CPD ¶ 577.

Here, there is no evidence that SaLUT engaged in bait and switch practices. Rather, the record shows that virtually all of the personnel, key and non-key, proposed by SaLUT are available and working on the contract. Of SaLUT's ten proposed key personnel, seven are currently working on the contract. Of the three who are not, only two were former EBA personnel. One of the two has signed a letter of commitment to work for SaLUT as soon as an immigration procedure is completed and the other, after signing a letter of commitment, accepted another position outside the United States. In accordance with the contract, substitute personnel have been proposed for the two vacant positions. With regard to non-key personnel, SaLUT proposed 15 EBA personnel and has 13 former EBA personnel working on the contract. Of the EBA employees proposed, but not currently working on SaLUT's contract, one moved away, one died, one decided to stay with EBA, and another is in India, but is expected to work for SaLUT. In addition, two non-key positions for which no personnel were identified are to be filled by two former EBA consultants. Thus, the record makes plain that, contrary to the belief of some evaluators and EBA, SaLUT was successful in hiring virtually all of the incumbent personnel it proposed.⁷ The planned substitution, after contract award, of two key employees out of ten proposed, provides no basis to conclude that SaLUT intentionally misled the agency.

⁷This conclusion is not changed by the fact that SaLUT indicated, at its oral presentation, that it would furnish all incumbent employees. Subsequent to the presentation, SaLUT's BAFO did not make the same representation. Rather, SaLUT stated that it was confident it could hire all of the incumbent's staff, but that if it could not, it would provide equally qualified personnel for the agency's approval. The proposal also identified the key and non-key personnel for whom SaLUT had obtained written or oral commitments, the majority of whom are working on the contract.

Price Realism

With regard to the price evaluation, the RFP advised that the submission of cost or pricing data was unnecessary, but requested that offerors submit budget summary information. In addition, offerors were required to indicate whether the proposed indirect cost rate (overhead) had been audited and accepted by any federal audit agency. Evaluation of price included an analysis of the relative reasonableness and realism of proposed prices.

In evaluating SaLUT's price proposal, the evaluators noted that the direct costs proposed were reasonable and similar to those proposed by EBA. The agency attributed SaLUT's more than \$1 million price advantage to SaLUT's lower overhead rate, which was some 18 percent less than SaLUT initially proposed. The evaluation panel chairman questioned SaLUT's lowering of its overhead rate and expressed concern that it could adversely impact salaries and benefits and could result in high employee turnover. The contracting officer disagreed and found that SaLUT's price proposal was realistic and reasonable. EBA contends that the contracting officer erred in his evaluation.

Generally, cost realism (a measurement of the likely cost of performance in a cost reimbursement contract) is not a factor in the evaluation of proposals when a fixed-price contract is to be awarded, since the government's liability is fixed, and the risk of cost escalation is borne by the contractor. PHP Healthcare Corp.; Sisters of Charity of the Incarnate Word, B-251799 et al., May 4, 1993, 93-1 CPD ¶ 366. However, since the risk of poor performance when a contractor is forced to provide services at little or no profit is a legitimate concern in evaluating proposals, an agency in its discretion may, as it did here, provide for a price realism analysis in the solicitation of fixed-priced proposals. Id. The depth of an agency's price realism analysis is a matter within the sound exercise of the agency's discretion. Family Realty, B-247772, July 6, 1992, 92-2 CPD ¶ 6.

Here, the contracting officer, who is responsible for determining whether the proposed price is fair and reasonable (Federal Acquisition Regulation § 15.805-2), was satisfied that SaLUT's price proposal, including its overhead rate, was realistic and reasonable. The evaluation included a comparison of the proposed direct labor rates and the total indirect loading factor offered by SaLUT. With regard to direct rates, the analysis consisted of comparing proposed rates with regional wage surveys and other agency contracts for similar requirements. The evaluation verified that SaLUT's wage rates were nearly identical with EBA's in most labor categories. With regard to indirect rates, a comparison was made to other FHWA contracts providing non-personal support services at the Research Center and Department of Transportation headquarters. Many of the firms were similarly situated 8(a) firms. The comparative analysis revealed that both offerors' proposed rates were well within the range currently being paid for other non-personal

services contracts at FHWA (49.5 percent to 138 percent). While SaLUT's rate was at the lower end of the range and EBA's at the higher end, SaLUT's overhead rate was just slightly below the modified average rate paid on other FHWA support service contracts. It also was higher than that on a contract recently awarded to EBA for similar services. The contracting officer noted that the risk lay with SaLUT, not the government, but that SaLUT's financial condition reflected a positive financial standing with little risk of future financial problems. He also found that it was not unexpected that SaLUT would use a lower loading factor given the size of this contract compared to other efforts and the presence of price competition. Our own review of this information discloses nothing objectionable or unreasonable. While the protester disagrees with the agency's conclusion, there is nothing in the record to indicate that the contracting officer's analysis or conclusions about SaLUT's price proposal were erroneous.

THE AWARD DETERMINATION

EBA challenges the SSO's determination to award the contract to SaLUT notwithstanding the recommendation of the evaluators. EBA argues that the evaluation panel was better qualified to make its recommendation for the award and the SSO failed to justify his award decision.

Source selection officials in negotiated procurements are not bound by the recommendations or evaluation judgments of lower-level evaluators, even though the working level evaluators may normally be expected to have the technical expertise required for such evaluations. Grey Advertising, Inc., 55 Comp. Gen. 1111, 1120 (1976), 76-1 CPD ¶ 325 at p. 11; Calspan Corp., B-258441, Jan. 19, 1995, 95-1 CPD ¶ 28; Benchmark Sec., Inc., B-247655.2, Feb. 4, 1993, 93-1 CPD ¶ 133. Thus, SSOs have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results, and their technical judgments are governed only by the tests of rationality and consistency with the stated evaluation criteria. Grey Advertising, Inc., *supra*; Calspan Corp., *supra*.

Based upon our review of the record, including the evaluation panel's report and the SSO's detailed source selection statement, we find the SSO's determinations regarding SaLUT's technical score to be reasonable and rational. The SSO was faced with an award recommendation from a panel which was "severely divided" over SaLUT's score and could not come to a consensus. For example, the two original members of the panel gave SaLUT's proposal very low scores, averaging 70 total points, while the remaining members scored SaLUT's proposal at an average of 366 total points. Some panel members expressed concern in all three evaluation areas. In this regard, they noted that SaLUT lacked certain experience in the areas of corrosion, paint, and chemistry, had only performed smaller efforts before, and had not managed as many scientists as would be required for this effort. Some evaluators were concerned about salary and benefit levels and the

commitment of the proposed personnel. In his source selection statement, the SSO addressed these concerns, relying primarily on his finding that SaLUT's proposed personnel and its experience were significant considerations under all the evaluation subfactors.

In the area of relative experience, the SSO acknowledged that SaLUT, as a corporate entity, did not possess relevant experience in some of the technical subject areas. However, he noted that SaLUT had adequate corporate experience in many of the technical subject areas and that the evaluation panel had overlooked the experience of SaLUT's program manager and the key personnel, most of whom were currently performing for the incumbent and were responsible for the day to day operation of the various laboratories for several years. The program manager, who would be responsible for overall management of the project, had nearly 40 years of experience in engineering, laboratory research, construction management, transportation engineering, technology transfer, planning, and logistics. His experience included the command of a U.S. Army Corps of Engineers research laboratory of comparable if not larger size than the Research Center. In addition, SaLUT's subcontractor, Advanced Asphalt Technologies, had experience with asphalt and superpave research and had performed on FHWA contracts. While the SSO recognized that SaLUT had not performed contracts as large as this, he concluded that the experience of the proposed incumbent key personnel and the experience of the program manager, coupled with SaLUT's and its subcontractor's experience, should all be included in the evaluation of SaLUT's experience. Given the depth of this experience, we believe the SSO was warranted in concluding that the actual difference in proposal scores (EBA 176 points, SaLUT 100 points) under this subfactor was significantly overstated.

With regard to the key personnel subfactor, the SSO relied on SaLUT's proposal of many of the incumbent key and non-key personnel. He specifically noted that SaLUT had proposed eight incumbents and two new hires for the key personnel positions. Seven of the ten submitted letters of commitment and the other three were covered by "letters of conversation." As to the 19 non-key personnel named in the proposal, 15 were incumbent personnel, seven of whom signed letters of commitment and eight of whom were represented as orally agreeing to work for SaLUT. The SSO also considered SaLUT's proposal representations of its intent to retain incumbent employees in accordance with its transition plan; its assurances and retention strategy presented in the oral presentation; its price proposal which supported an intent to retain them; and the past performance review which indicated no problem with bait and switch tactics. The SSO found that the low scores given by two evaluators (0 points) were based on the evaluators' imposing of additional standards in excess of those required under the RFP. The SSO concluded that SaLUT had provided a sufficient level of assurance that it would be able to provide the proposed personnel. This conclusion was reasonable since there was no requirement in the RFP for commitment letters and the agency

requested in discussions such letters or other indications of the personnel's willingness to work for SaLUT. Under these circumstances, we find the SSO has adequately supported his conclusion that there was very little difference in the substance of the two offerors' key personnel proposals. It thus was reasonable for him to conclude that some of the SaLUT scores were unreasonably low and that the average scores (EBA 192 points, SaLUT 92 points) significantly overstated the difference in the proposals. His conclusion is validated by the fact that virtually all of the key and non-key personnel proposed have been hired by SaLUT and are working on the contract.⁸

Concerning understanding the requirement, the SSO noted that some of the evaluators based their low scores on their finding that SaLUT had not provided any specific discussion of ongoing research projects in individual laboratories or specifics about laboratory operations. The SSO, however, agreed with most of the panel members that such an in-depth discussion was not required by the RFP and that SaLUT had demonstrated an adequate understanding of the nature of the work to be performed. The SSO based his assessment on SaLUT's discussions and acknowledgment of the specific issues and potential problems associated with the research laboratory environment, along with its discussion of the importance of retaining key and non-key personnel from the incumbent contract. While he recognized that EBA had current hands-on experience, he found little difference in the substance of the two offerors' understanding of the government's requirements and nature of the work to be performed. Again, he concluded that the scores (EBA 88 points, SaLUT 56 points) significantly overstated the actual difference in the two offerors' understanding. In light of the RFP requirements and the findings of the majority of the evaluators, the SSO's conclusions are reasonably supported by the record.

EBA argues that it was improper for the SSO to use SaLUT's personnel strengths to effectively raise its score under the other technical subfactors. Where an RFP lists a number of evaluation factors of stated importance, a single one cannot be

⁸EBA notes that the evaluation panel chair found SaLUT's proposal acceptable contingent on the obtaining of the proposed key personnel. While three of the proposed key personnel are not working on the contract, the agency explains that the SSO's award decision is unaffected by this situation. Specifically, the agency notes that the SSO had concluded that SaLUT made reasonable efforts to obtain qualified people to staff the contract including the key positions. The SSO also noted that SaLUT had the capability to locate and obtain qualified staff for any positions not filled right away. In this regard, one of the proposed key personnel, an incumbent employee, is committed to work for and will join SaLUT as soon as an immigration procedure is completed. The other two signed letters of commitment and the agency is currently considering substitutes for both.

accorded more than the weight prescribed in the RFP's evaluation methodology by the repeated consideration of the same factor in conjunction with the other major factors, *i.e.*, it is improper to double or triple count the importance of a single listed factor. J.A. Jones Management Servs., Inc., B-254941.2, Mar. 16, 1994, 94-1 CPD ¶ 244; accord United Ammunition Container, Inc., B-275213, Jan. 30, 1997, 97-1 CPD ¶ 58.

Here, however, the fact that the offeror's proposed personnel was considered in the SSO's evaluation of the other technical subfactors does not mean there was an improper, multiple counting of that matter; the experience of the proposed staff was a legitimate consideration under each of the other subfactors. Teledyne Brown Eng'g, B-258078; B-258078.2, Dec. 6, 1994, 94-2 CPD ¶ 223. In this regard, the RFP contemplated that offerors lacking relevant experience would use the qualifications of individual personnel or team members. This is a contract for non-personal services. Thus, the experience of the offeror's proposed personnel who will be performing those services is reasonably related to the evaluation of the offeror's experience. ASR Management & Technical Servs, B-252611, July 15, 1993, 93-2 CPD ¶ 22. Here, the majority of the key and non-key proposed personnel were incumbents who had direct, relevant experience in performing the subject contract, and the proposed program manager had relevant experience in managing a large laboratory like the Research Center. Likewise, their experience and expertise in performing the contract was a legitimate consideration in evaluating SaLUT's understanding of the government's requirements. Teledyne Brown Eng'g, *supra*. Accordingly, we find nothing objectionable in the SSO's consideration of the proposed personnel's experience under all three evaluation subfactors.

Since both offerors received the same past performance score, and since the SSO reasonably concluded that the technical proposals were essentially equal, under the terms of the RFP, price properly became the deciding factor. As we noted above, the SSO reasonably concluded that SaLUT's prices, including overhead rates, were realistic and reasonable. Thus, we find it was reasonable for the SSO to determine that SaLUT's proposal, at a price approximately 10 percent less than proposed by EBA, represented the best value to the government.

The protest is denied.

Comptroller General
of the United States

f:\projects\pl\275818.wp5