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Decision

Matter of: Kellogg Brown & Root Services, Inc.

File: B-298694.7

Date: June 22, 2007

James J. McCullough, Esq., Steven A. Alerding, Esq., and Deneen J. Melander, Esq., Fried, Frank, Harris, Shriver & Jacobson LLP, for the protester.
Richard L. Moorhouse, Esq., David T. Hickey, Esq., Dorn C. McGrath III, Esq., L. James D'Agostino, Esq., and Emily C. Parker, Esq., Greenberg Traurig LLP, for Atlantic Contingency Constructors, LLC; William A. Roberts III, Esq., and Richard B. O'Keefe Jr., Esq., Wiley Rein LLP, for Fluor International, Inc.; and J. Alex Ward, Esq., Edward Jackson, Esq., Richard W. Arnholt, Esq., and Bradley A. Areheart, Esq., Jenner & Block LLP, for URS-IAP, LLC, the intervenors.
Richard Welsh, Esq., Theodore H. Hoffmann, Esq., Sandra C. Simmons, Esq., and Keleigh L. Biggins, Esq., Naval Facilities Engineering Command, for the agency.
Sharon L. Larkin, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency conducted an unreasonable technical evaluation of the protester's proposal is denied, where the agency provided a comprehensive, detailed record that fully supports the agency's assessment of strengths and weaknesses in the protester's proposal and demonstrates that the agency conducted the evaluation consistent with the solicitation's evaluation criteria.

DECISION

Kellogg Brown & Root Services, Inc. (KBR) protests the award by the Department of the Navy of three global contingency construction contracts under request for proposals (RFP) No. N62470-06-R-6002 to Fluor International, Inc. (Fluor), URS-IAP, LLC (URS), and Atlantic Contingency Constructors, LLC (ACC). KBR contends that the agency misevaluated proposals under the technical factors and thus made an unreasonable source selection decision.

We deny the protest.

BACKGROUND

This acquisition is for construction and related engineering services in response to global natural disasters, humanitarian assistance, conflict, or projects with similar characteristics. The RFP contemplated award of up to three cost-plus-award-fee, indefinite-delivery/indefinite-quantity contracts for a base year with four 1-year options, with a not to exceed aggregate amount of \$1 billion for all contracts during the 5-year span. RFP at 3, 56. Award was to be made without discussions unless discussions were otherwise determined to be necessary. RFP at 68.

The solicitation provided for award on a “best value” basis, considering corporate experience, past performance, contingency plan, management approach, small business utilization, and cost. The non-cost factors were of equal importance and together were more important than the cost factor. The past performance factor consisted of two subfactors listed in descending order of importance—past performance and safety. The management approach factor consisted of two equally rated subfactors—organization, home office support, and key personnel; and accounting and management systems and procedures. The small business utilization factor consisted of two equally rated subfactors—past performance in small business utilization, and participation of small business concerns for this program. RFP at 68.

Eight offerors submitted proposals and, after evaluating these proposals, the agency selected Fluor, URS, and ACC for award. KBR protested the evaluation of proposals under each of the evaluation factors and our Office sustained the protest, identifying flaws in the evaluation of the cost and contingency response plan factors. In addition, we identified four protest grounds where the agency had not adequately responded, such that it was unclear from the record whether the agency’s evaluation was reasonable.¹ We recommended that the agency reevaluate proposals under the technical and cost factors, conduct discussions if determined necessary, and make a new source selection decision. Kellogg Brown & Root Servs., Inc., B-298694, et al., Nov. 16, 2006, 2006 CPD ¶ 160 at 11-12.

The agency reconvened the technical evaluation board (TEB) to reevaluate technical proposals, the cost evaluation board (CEB) to reevaluate cost proposals, and the source selection board (SSB) to review the findings of the TEB and CEB and conduct a cost-technical tradeoff. The TEB, CEB, and SSB issued revised evaluation reports documenting each board’s conclusions under each of the evaluation factors. The source selection authority (SSA) adopted the findings of the boards and once

¹ These protest grounds involved the evaluation of (1) KBR’s past performance, (2) KBR’s proposal under the organization, home office support, and key personnel subfactor of the management approach factor, (3) KBR’s proposal under the small business utilization factor, and (4) URS’s proposal under the corporate experience factor.

again recommended award to Fluor, URS, and ACC. KBR again protested, but the agency took corrective action before an agency report was submitted to address a new concern that KBR raised with regard to the evaluation of the small business utilization factor.

The TEB reconvened to consider the small business utilization issue raised by KBR in the previous protest, and the TEB, CEB, and SSB issued their final reports. With the concurrence of the TEB and CEB, the SSB revised the overall technical rating of URS (increasing it from good to excellent) and adjusted upwards the total evaluated price of ACC, but otherwise did not change the technical ratings or adjust the price for any of the offerors from this initial evaluation. The revised ratings for the relevant proposals were as follows:

		KBR	ACC	URS	Fluor
Technical		Good	Good	Excellent	Excellent
	Corporate Experience	Excellent	Good	Good	Excellent
	Past Performance	Good	Excellent	Excellent	Good
	Past Performance	Good	Excellent	Excellent	Good
	Safety	Excellent	Excellent	Excellent	Good
	Contingency Response Plan	Satisfactory	Good	Excellent	Excellent
	Management Approach	Satisfactory	Good	Good	Excellent
	Organization, Home Office Support, and Key Personnel	Good	Good	Good	Excellent
	Accounting and Management Systems and Procedures	Marginal	Satisfactory	Satisfactory	Excellent
	Small Business Utilization	Good	Good	Excellent	Good
	Past Performance in Small Business Utilization	Satisfactory	Excellent	Excellent	Good
	Participation of Small Business Concerns for this Program	Good	Satisfactory	Good	Good
Evaluated Cost		\$1,040,477,795	\$1,052,767,620	\$1,060,231,026	\$1,045,099,517

Contracting Officer's Statement at 6, app. A.

The SSB compared Fluor's, URS's, and ACC's proposals to KBR's and the other offerors' under each of the evaluation factors and assessed overall technical rankings as follows: Fluor--first, URS--second, ACC--third, and KBR--fifth. Agency Report (AR), encl. 47, SSB Report, at 11.

Under the corporate experience factor, the SSB noted that KBR's proposal had a "slight advantage" over Fluor's, even though both firms had "comparable experience." KBR also was found to have "more relevant recent experience" than both URS and ACC, and thus KBR's proposal was rated superior to those two firms under this evaluation factor. Id. at 30, 49, 63.

Under the past performance factor, the SSB recognized that all four firms “demonstrated positive past performance trends,” but noted that KBR’s proposal had a “significant weakness” for work on two recent hurricane response projects, where the firm received one “marginal” and one “unsatisfactory” reference rating. URS and ACC were found to have better performance records than KBR, but KBR’s proposal was found to be more advantageous than Fluor’s under this factor due to KBR’s “better safety record.” Id. at 30-31, 49-50, 63-64.

Under the contingency response plan factor, the SSB found KBR’s plans to be less detailed than the awardees’ plans, noting that KBR provided “only the basic elements” of a plan, with “few supporting details regarding its capabilities and how it would achieve the proposed solutions.” For example, the agency found that KBR’s proposal provided only “limited detail on [REDACTED].” According to the SSB, this “lack of detail in KBR’s proposal precluded a better understanding of the plan and introduced an element of risk in meeting the Government’s requirements” that was not found in the awardees’ more detailed and comprehensive plans. Id. at 31-32, 50-51, 65.

Under the management approach factor, KBR’s proposal was found to be less advantageous than the awardees’ proposals, due primarily to KBR’s “marginal” rating under the accounting and management systems and procedures subfactor. This marginal rating was given because of findings of the Defense Contract Audit Agency that KBR’s systems were “Inadequate in Part” and that KBR was non-compliant with cost accounting standards 401 and 418. Id. at 33, 52, 66.

Under the small business utilization factor, the SSB found Fluor, URS, and ACC to have a “stronger positive trend of past small business utilization” than KBR. Although all firms had some involvement in the Small Business Administration’s mentor-protégée program and had received small business awards, the record of meeting projected subcontracting goals differed among the firms. In this regard, ACC was found to have exceeded approximately 62 percent of its subcontracting percentage goals on past contracts, and both URS and Fluor were found to have exceeded approximately 39 percent of their subcontracting percentage goals, although many of these goals were “significantly exceeded.” In contrast, the SSB noted that KBR achieved only 31 percent of its subcontracting goals, and the majority of these were “well below” the stated percentage goals. Id. at 33-34, 52-53, 66-67.

The SSA reviewed and adopted the findings of the SSB and found that the technical advantages of the Fluor, URS, and ACC proposals were worth the additional cost. AR, encl. 38, SSA Decision, at 5-9. Awards were made to Fluor, URS, and ACC, and KBR protested, complaining that the agency misevaluated its proposal under the non-cost factors, and that the agency misevaluated URS’s proposal under the corporate experience factor.

DISCUSSION

In reviewing protests of an agency's evaluation, our Office does not reevaluate proposals, but instead examines the record to determine whether the agency's judgment was reasonable and in accord with the RFP criteria. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. A protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. UNICCO Gov't Servs., Inc., B-277658, Nov. 7, 1997, 97-2 CPD ¶ 134 at 7.

KBR complains that the agency failed to raise KBR's proposal ratings after the agency found additional strengths and fewer weaknesses in KBR's proposal during the reevaluation. KBR challenges nearly every assessed weakness in its proposal and contends that proposals were evaluated unequally.²

It is well established that ratings, be they numerical, adjectival, or color, are merely guides for intelligent decision-making in the procurement process. Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 11. Where the evaluators and the source selection decision reasonably consider the underlying bases for the ratings, including advantages and disadvantages associated with the specific content of competing proposals, in a manner that is fair and equitable and consistent with the terms of the solicitation, the protesters' disagreement over the actual adjectival or color ratings is essentially inconsequential in that it does not affect the reasonableness of the judgments made in the source selection decision. See id.; National Steel and Shipbuilding Co., B-281142, B-281142.2, Jan. 4, 1999, 99-2 CPD ¶ 95 at 15. Thus, the evaluation of proposals and the assignment of adjectival ratings should generally not be based upon a simple count of strengths and weaknesses, but upon a qualitative assessment of the proposals consistent with the evaluation scheme. See Smiths Detection, Inc., B-298838, B-298838.2, Dec. 22, 2006, 2007 CPD ¶ 5 at 5-6; Systems Research and Applications Corp., B-298107, B-298107.2, June 26, 2006, 2006 CPD ¶ 103 at 6.

In response to the protest, the Navy provided a detailed record documenting its reevaluation and source selection decision. This extensive analysis shows that the agency evaluated the relative merits of the offerors' proposals, including essentially all of the areas cited by the protester, and assessed ratings in a fair and equitable manner consistent with the RFP. The record demonstrates that the SSB and SSA considered all of the information available and took into account both GAO's earlier decision as well as the protester's arguments in the previous protests. In so doing, the agency expanded upon the description of strengths and weaknesses found in

² KBR initially also protested that the agency ignored asserted proposal strengths, but since other offerors similarly did not receive strengths for these same or similar proposal features, KBR agreed that it was not prejudiced as a result of this aspect of the evaluation. See Protester's Comments at 10 n.1, 30 n.4.

each offeror's proposal, in some instances adding to, or eliminating, strengths and weaknesses identified in the original evaluation. The record shows that the agency did not merely count the number of strengths or weaknesses in each proposal in assigning adjectival ratings, but rather considered the relative merits associated with the assessed strengths and weaknesses, and issued a well-reasoned and rational SSB report and source selection decision that highlighted the key discriminators among the offerors' proposals. Based on this reasonable assessment of the relative advantages and disadvantages associated with the specific content of proposals, we find that KBR's disagreements with the actual adjectival ratings to be inconsequential, given that they do not affect the reasonableness of the judgments made in the source selection decision. See Citywide Managing Servs. of Port Washington, Inc., supra, at 11.

For example, under the contingency response plan factor, where KBR received a satisfactory rating, KBR argues that its proposal deserved a higher adjectival rating because the TEB identified four additional strengths and one less weaknesses than during the original evaluation. However, as discussed above, KBR was not entitled to an increased rating based solely on the number of strengths and weaknesses; the agency did not "tally" the number of strengths and weaknesses, but instead relied on its detailed narrative assessment of the strengths and weaknesses in evaluating the relative advantages and disadvantages of each proposal. Contracting Officer's Statement at 12. The agency notes that the other offerors were treated similarly and states, for example, that ACC's proposal received six additional strengths and no additional weaknesses, and yet received the same rating under this factor as in the earlier evaluation. Id. at 11. The agency's comprehensive evaluation simply reflects the agency's view that KBR's contingency response plan was less detailed than the awardees' in a number of areas and that the agency considered this to pose a risk to performance that outweighed the additional strengths identified in the proposal. E.g., AR, encl. 47, SSB Report, at 32. Although KBR disagrees with this assessment, and argues that its proposal strengths outweigh any weaknesses, our review of the record indicates that the agency reasonably concluded that KBR's proposal was not as advantageous as the other offerors, who provided more comprehensive and detailed contingency response plans.³

KBR also argues that the agency evaluated undisclosed evaluation criteria in considering the level of detail in various components of KBR's contingency response

³ KBR asserts that the Navy's criticism that KBR's contingency response plan is less detailed is unreasonable, given that GAO found, in its earlier decision, that the plans were not dissimilar. In our decision, we found only that dissimilarities were not evident from the record or otherwise explained by the agency. Kellogg Brown & Root Servs., Inc., supra, at 10. Here, the agency has provided a more detailed and comprehensive explanation of the proposal differences, which we find to be reasonable and supported by the record.

plan. In this regard, the agency cited numerous examples of plan features that lacked detail, including KBR's [REDACTED]. AR, encl. 46, TEB Report, at 110; see Protest at 17; Protester's Comments at 12-19. KBR complains that the RFP did not require detailed descriptions of each of these plan features and, in any event, KBR provided sufficient information in its proposal to warrant a higher adjectival rating under the contingency response plan factor.

An agency may properly take into account specific, albeit not expressly identified, matters that are logically encompassed by, or related to, the stated evaluation criteria. Independence Constr., Inc., B-292052, May 19, 2003, 2003 CPD ¶ 105 at 4. The RFP here generally advised offerors that their contingency response plan would be evaluated for the "effectiveness of the offeror's contingency response plan to perform work for this contract" and for their "approaches that maximize quality, result in optimal use of resources, are cost effective, and are highly responsive to the interests of the Navy and its customers." In addition, offerors were specifically required to address a plan to minimize response time (including coordination of subcontractors); a plan to obtain materials, equipment, and workforce globally; a plan to provide design and engineering services; and a plan to control and monitor prime and subcontractor costs. RFP at 61. Thus, contrary to KBR's arguments, the RFP reasonably contemplated consideration of all the areas of KBR's proposal for which the agency found detail lacking.⁴

Next, KBR challenges the evaluation of its proposal under the past performance subfactor of the past performance factor, under which KBR received a "good" rating. KBR asserts that the agency gave too much weight to two past performance references, who gave KBR "marginal" and "unsatisfactory" ratings for its work in response to Hurricane Katrina. KBR contends that the agency ignored the unusual circumstances regarding performance of those projects and discounted KBR's overall record of "stellar" performance in a contingency environment. Protester's Comments at 27. KBR also complains that its proposal was evaluated disparately to URS's and ACC's proposals, which both received "excellent" ratings under this subfactor, even though URS and ACC received unfavorable performance ratings from some references.

In evaluating past performance, the agency conducted an extensive review of responses from past performance references, Construction Contractor Appraisal Support Systems ratings, information presented by the offerors in their proposals, and information regarding awards, letters of commendation, and other forms of

⁴ To the extent that KBR asserts that its plan provided sufficient details to meet the RFP requirements, we find that this is reflected in the "satisfactory" rating that KBR's proposal received under this evaluation factor. Further, based on our review of the record, the agency reasonably concluded that the awardees' proposals were more detailed and deserved higher ratings.

performance recognition. As the agency explains, it gave “significant weight” to KBR’s Hurricane Katrina response projects because this contingency relief work was “very recent and highly relevant to the RFP.” Contracting Officer’s Statement at 31. In contrast, the projects for which URS and ACC received unfavorable performance ratings were reasonably found to be less recent and less relevant, and the agency found that the two firms had a better overall record of performance than did KBR.⁵ Contracting Officer’s Statement at 31-32; AR, encl. 47, SSB Report, at 49, 63-64. Given that the RFP indicated that the agency would place greater weight on more recent performance and projects of similar size, scope, and contract type to that required by the solicitation, RFP at 60, and the discretion afforded an agency in evaluating past performance, we cannot find unreasonable the agency’s evaluation of the past performance factor.⁶

KBR contends that the agency misevaluated its proposal under the organization, home office support, and key personnel subfactor of the management approach factor, under which KBR’s proposal received a good rating. KBR again asserts that its proposal deserved a higher rating under this subfactor because of additional strengths found during the reevaluation, that the agency evaluated unstated criteria, and that the firm adequately addressed in its proposal the areas where the agency assessed weaknesses.

The record confirms that the agency identified a number of strengths regarding KBR’s proposal that were not found in initial evaluation, but as with KBR’s contingency response plan, the agency found KBR’s proposal to lack detail in a number of areas that outweighed the additional strengths found. Specifically, the agency found that, while KBR “outlined” its organizational structure and provided position descriptions and other information required by the RFP, the firm provided only “limited insight into its overarching corporate structure or its resources, subcontractors, or capabilities.” Furthermore, KBR’s field staffing plan, although

⁵ The contracts for URS involved the design and installation of a dam failure warning system and engineering services, and the contract for ACC involved base operating services. Contracting Officer’s Statement at 31.

⁶ KBR asserts that the agency should have more favorably considered its overall record of performance and that its proposal should not have received the same rating as in the initial evaluation, given that on reevaluation the agency considered additional favorable performance and eliminated consideration of unfavorable performance. As noted above, the agency conducted a comprehensive evaluation and, on balance, found that the risk to contract performance based on KBR’s unfavorable performance in connection with Hurricane Katrina outweighed its proposal strengths under this evaluation factor. KBR’s disagreement does not render the agency’s judgment unreasonable. See UNICCO Gov’t Servs., Inc., B-277658, Nov. 7, 1997, 97-2 CPD ¶ 134 at 7.

found to be “sufficiently detailed,” did not supply the “numbers or details of resources available to staff contingency construction work.” AR, encl. 47, SSB Report, at 32; see also encl. 46, TEB Report, at 160. In both areas, the agency found that KBR relied on “generalized assertions” and a “general outline” that did not provide the desired level of detail to show how KBR’s organizational structure and staffing plan would contribute to task order performance. Contracting Officer’s Statement at 39, 41.

We find the agency’s consideration of these weaknesses to be reasonably based and consistent with the RFP. The RFP advised that the agency would evaluate “the effectiveness of the offeror’s organization to perform work for this contract” and required offerors to address in their proposals, among other things, the “organizational structure and positions . . . as it relates to the management approach for this contract and performance of task orders,” and “a field-staffing plan that supports three concurrent task orders.” RFP at 61-62. Here too, we consider the agency’s evaluation of the detail offerors provided about specific features of their organizational structure and field staffing plan that relate to the performance of the task orders, even if not expressly identified in the solicitation, to be encompassed within the RFP’s evaluation scheme. While we agree with KBR that it addressed in some form these areas in its proposal, we find also that the agency reasonably assessed weaknesses to KBR’s proposal for not providing as comprehensive a response as expected by the agency in the evaluated areas.

KBR next argues that the agency misevaluated its proposal under the past performance in small business utilization subfactor of the small business utilization factor, under which KBR’s proposal received a “good” rating. KBR complains that the agency miscalculated that KBR met only 31 percent of its small business subcontracting goals under prior contracts, when KBR in fact met at least 52.9 percent of its goals. KBR complains that the agency’s math is incorrect and that it inappropriately considered an overseas contract.⁷

⁷ KBR also asserts that the agency erred in identifying a “minor weakness” in KBR’s proposal under the participation of small business concerns subfactor of the small business utilization factor. This weakness was due to an error in KBR’s proposal—the first two pages of KBR’s subcontracting plan identified only 1-year contract value and subcontract amounts, instead of 5-year values. KBR asserts this error was “minor” because the last page contained the 5-year values. The agency explains that other offerors were treated similarly for making the same or similar errors, and, in any event, the record does not show that this weakness had an impact on, or was a key discriminator in, the award decision. Consequently, KBR has not been prejudiced as a result. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1681 (Fed. Cir. 1996).

The RFP required all offerors to provide the Standard Form (SF) 294s, "Subcontracting Reports for Individual Contractors," for all contracts referenced under the corporate experience factor and documentation showing compliance with utilization goals for Historically Underutilized Business Zones, small businesses, small disadvantaged businesses, women owned small businesses, veteran owned small businesses, small disadvantaged veteran owned small businesses, and, if applicable, historically black colleges and universities and minority institutions. RFP at 64. For each of the applicable small business types, the SF-294 for a particular contract identified both the "current goal" and the "actual cumulative" achievement in terms of dollar amounts and percentages; the "current goal" entries identified a percentage that was to be achieved and an estimated dollar amount of the subcontracts to be awarded based on an overall estimated contract value, while the "actual cumulative" achievement reflected the dollar amounts and percentages of subcontracting awards actually made based on the overall actual dollars incurred under the contract. Contracting Officer's Statement at 45; exhs. 3-8. In addition, offerors were to provide information on any awards received for providing outstanding support to various small business programs, and information regarding the offeror's participation with mentor-protégé agreements and use of the Community Rehabilitation Programs certified under the Javits Wagner O'Day (JWOD) program. RFP at 64.

Using the same evaluation method for each proposal, the agency reviewed the firm's SF-294s and determined how many percentage goals were achieved, how many were missed, and the areas where the goals were exceeded or missed by significant amounts. The agency calculated small business compliance based on the "actual cumulative" percentages identified in the SF-294, excluding from calculations any contracts that were identified as being performed overseas.⁸ The agency considered, also, whether an offeror received awards and commendations for meeting small business goals, and the offeror's participation in the mentor-protégé and JWOD programs. As detailed above, the agency concluded that all of the awardees had a stronger record of performance than did KBR, and that all of the awardees exceeded their small business subcontracting goals to a greater degree than did KBR. AR, encl. 47, SSB Report, at 33, 52, 66-67. We find this evaluation to be reasonable. KBR contends that the agency's calculations should not have been based on the percentage "actual cumulative" achievements identified on the SF-294s, arguing that in some instances the firm was not given credit for awarding more subcontract dollars than it committed to. Protest at 32-33. For example, with regard to one of KBR's contracts (CONCAP III), KBR committed to a "small business concerns" goal of 74 percent, or \$74,000,000, which was based on an estimated overall contract value of \$100,000,000. However, KBR was in fact awarded \$446,689,816 in contract

⁸ Federal Acquisition Regulation (FAR) § 19.702(b) provides that small business subcontracting plans are not required for contracts "performed entirely outside the United States and its outlying areas."

dollars, which is more than four times the estimated contract value. Of this, KBR awarded \$199,947,441 in subcontracts to small business concerns. While this dollar value exceeded the \$74,000,000 identified as a goal, it constituted only 44.7 percent of the overall contract dollars actually awarded. Contracting Officer's Statement at 45; exh. 4. Although KBR asserts that it should be credited for exceeding its small business goal because it awarded subcontract dollars exceeding \$74,000,000, we find reasonable the agency's consideration that the overall percentage goal had not been met.

KBR also complains that the agency improperly considered an SF-294 for KBR's LOGCAP III contract, "since the pertinent work" of one of the task orders performed under the contract was performed overseas in Iraq. KBR asserts that, other than this one task order, the contract was "not relevant to this procurement and, accordingly, was not referenced in KBR's proposal." Protester's Comments at 37. However, contrary to KBR contention, it in fact identified the contract, along with three others, in the small business utilization portion of its proposal and provided the SF-294 for that work. See Contracting Officer's Statement, exh. 4. KBR noted in this section of its proposal that one of the other contracts was for work that was performed "OCONUS" [outside the continental United States], but KBR did not provide any notation that would identify for the agency that the LOGCAP III contract was performed overseas, or that the SF-294 subcontracting report that KBR provided for this contract should not be considered under this evaluation factor. KBR Technical Proposal (Small Business Utilization) at 204. Although KBR noted in another section of its proposal (the corporate experience section) that one task order under the LOGCAP III contract was performed in Iraq, KBR Technical Proposal (Corporate Experience) at 10, 59, it is not evident from KBR's proposal that the remainder of the contract, which KBR does not allege was performed overseas and which does contain subcontracting goals, should not be considered for evaluation under the small business utilization factor. Furthermore, we note that during the course of the previous protests, counsel for the protester included the LOGCAP III contract in its own calculations in determining KBR's small business goal utilization percentages. Agency Submission (May 17, 2007) at 3; attach. A. Given that KBR's proposal included the LOGCAP III subcontracting report and did not make clear that the report should not be considered, we find the agency's consideration of it here to be reasonable.

KBR next complains that URS's proposal was misevaluated under the corporate experience factor because the agency improperly credited URS with the experience of its subcontractors. KBR argues that the evaluation of subcontractor experience under the corporate experience factor is inconsistent with the RFP.⁹

⁹ KBR also asserts that URS's subcontractors are unlikely to perform "given the contingent nature and global scope of the solicited work," and that additional oversight of the subcontractors will be necessary and will increase the cost of

(continued...)

An agency may base the evaluation of corporate experience on the experience of subcontractors when the subcontractors are to do the work to which the experience is applicable, so long as the solicitation allows for the use of subcontractors and does not prohibit the consideration of a subcontractor's experience in the evaluation. Loral Sys. Co., B-270755, Apr. 17, 1996, 96-1 CPD ¶ 241 at 5; Seair Transport Servs., Inc., B-252266, June 14, 1993, 93-1 CPD ¶ 458 at 5.

The RFP here required that each "offeror shall provide up to 25 specific project examples in the \$1 million and greater range that demonstrate experience with new construction, renovations, and repairs." RFP at 59. KBR identified 25 projects where it was the prime contractor. URS identified only 16 projects where either URS or IAP (URS's joint venture partner) was the prime contractor, and identified 9 others that were performed by the major subcontractors.¹⁰ Protest at 38. The RFP did not prohibit the consideration of subcontractor projects, and required only that the offeror list 25 projects to be considered. Since the RFP otherwise encouraged team members and subcontractor participation, *see, e.g.*, RFP at 58, 59, 60, 67, we find the agency's decision to consider subcontractor experience under this evaluation factor to be reasonable.¹¹

Finally, KBR contends that the source selection decision was unreasonable, based on a flawed evaluation of the factors and subfactors discussed above. As noted, however, we find the evaluation to be well-documented and reasonable. The record shows that the agency fairly considered and evaluated the many strengths and weaknesses of each offeror's proposal in a manner that was consistent with the RFP, and reasonably determined that the technical advantages of the awardees' proposals

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contract performance. Protester's Comments at 41. However, the first issue is a matter of contract administration that our Office will not review, Bid Protest Regulations, 4 C.F.R. § 21.5(a) (2007); Riverwood of Miss., Inc., B-280448, Sept. 30, 1998, 98-2 CPD ¶ 81 at 2 n.2, and, as to the second issue, KBR has provided no evidence beyond mere speculation that URS's proposed costs of performance are not accurate or reasonable.

¹⁰ The record shows that the agency rated KBR's proposal higher than URS's under this factor, due in part to the fact that URS and IAP had less experience than KBR. AR, encl. 47, SSB Report, at 49.

¹¹ KBR relies our decision in Technology and Mgmt Servs., Inc., B-240351, B-240351.2, Nov. 7, 1990, 90-2 CPD ¶ 375, for the proposition that a subcontractor's experience may not be considered under the corporate experience factor here. However, in that case, unlike here, the RFP expressly limited the evaluation of corporate experience to the offeror and "its" experience. Here, there is no such limiting language on the projects to be submitted.

were worth the additional cost over KBR's less advantageous and lower priced proposal.

The protest is denied.

Gary L. Kepplinger
General Counsel