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Decision

Matter of: Patronus Systems, Inc.

File: B-418784; B-418784.2

Date: September 3, 2020

Katherine S. Nucci, Esq., Scott F. Lane, Esq., and Jayna M. Rust, Esq., Thompson Coburn LLP, for the protester.

Jeffrey Weinstein, Esq., The Weinsten Law Group PLLC, for W&W Protection, LLC, the intervenor.

Susan E. Sharp, Esq., Department of the Navy, for the agency.

Heather Weiner, Esq., Heather Self, Esq., and Jennifer Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest arguing the agency failed to conduct a price realism analysis is denied because the solicitation did not obligate the agency to perform a price realism evaluation.
 2. Protest challenging the agency's evaluation of the awardee's technical proposal is sustained because the agency unreasonably concluded that the awardee's proposal revisions resolved one of the deficiencies identified in its initial proposal.
 3. Protest challenging the agency's evaluation of inconsistencies between the labor hours proposed in the awardee's technical and price proposals is sustained because the evaluation is unreasonable and inadequately documented.
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DECISION

Patronus Systems, Inc., a service-disabled veteran-owned small business (SDVOSB) of Melbourne, Florida, protests the award of a contract to W&W Protection, LLC (WWP), an SDVOSB of Sunrise, Florida, under request for proposals (RFP)

No. N69450-19-R-1830, issued by the Department of the Navy, Naval Facilities Engineering Command for guard services. The protester argues that the agency failed to conduct a price realism analysis, unreasonably concluded that the awardee's final proposal resolved one of the deficiencies identified in its initial proposal, and unreasonably ignored inconsistencies between the labor hours proposed in the awardee's technical and price proposals.

We sustain the protest.

BACKGROUND

On July 11, 2019, the agency issued the solicitation as an SDVOSB set-aside utilizing the procedures of Federal Acquisition Regulation (FAR) part 15. Agency Report (AR), exh. B, RFP at 1, 6. The solicitation sought proposals for the provision of guard services at the agency's Fleet Logistics Center located at the Jacksonville Heckscher Fuel Terminal in Jacksonville, Florida, and at the Defense Logistics Agency Distribution Naval Air Station, also located in Jacksonville, Florida. *Id.* at 6. The solicitation contemplated award of a single fixed-price contract with a 1-year base period and four 1-year option periods. *Id.* Each 1-year performance period consisted of two contract line items numbers (CLINs)--one definite-quantity CLIN for the required recurring guard services and one indefinite-quantity, indefinite-delivery CLIN for other non-recurring work requirements. *Id.* at 6-7.

The solicitation provided that award would be made to the lowest-priced technically acceptable offeror. RFP at 54. The solicitation established four technical evaluation factors: (1) corporate experience; (2) management and technical approach; (3) safety; and (4) past performance. *Id.* The solicitation further provided that a proposal assessed as unacceptable under any individual technical evaluation factor would be considered technically unacceptable overall. *Id.* With respect to the evaluation of price, the solicitation provided that the agency would evaluate offerors' prices for reasonableness and balance. *Id.* at 55. The solicitation further provided that the agency's price evaluation

may consider whether prices are realistic in relation to the work to be performed, reflect a clear understanding of the requirements, and are consistent with other portions of the proposal. A price that is found either unreasonably high or unrealistically low in relation to the proposed work may be indicative of an inherent lack of understanding of the solicitation requirements and may result in the overall proposal not being considered for award.

Id. at 56.

The agency received nine timely proposals by the solicitation's September 10 closing date. Combined Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 5. Following evaluations, the agency made award without discussions to Patronus on November 27. *Id.* at 8. One of the unsuccessful offerors submitted a timely agency-level bid protest challenging the November 27 award, in response to which the agency took corrective action. *Id.* As part of its corrective action, the agency reevaluated initial proposals and established a competitive range that included four of the nine offerors. *Id.* The agency's reevaluation of initial proposals was completed by the same evaluation team involved in the protested November award. AR, exh. M, Technical

Evaluation Report (Tech. Rpt.) for Reevaluation of Initial Proposals at 1; exh. N, Tech. Rpt. for Nov. 2019 Award at 1. In both the initial evaluation and the post-corrective action reevaluation, the agency assessed Patronus's proposal as technically acceptable with one weakness and WWP's proposal as technically unacceptable with two deficiencies. AR, exh. M, Tech. Rpt. for Reevaluation of Initial Proposals at 9-12, 17-20; exh. N, Tech. Rpt. for Nov. 2019 Award at 12-15, 36-39.

Following reevaluation of initial proposals, the agency conducted discussions with the offerors in the competitive range and requested final revised proposals (FRPs). AR, exh. B1, RFP amend. No. 8 at 1-2; exh. B2, RFP amend. No. 9 at 1-2; COS/MOL at 8. Two of the four offerors in the competitive range chose to withdraw their proposals in lieu of submitting FRPs. *Id.* Both Patronus and WWP submitted timely FRPs. *Id.*

A technical evaluation team comprised of two of the three evaluators from the previous evaluation team evaluated the FRPs. AR, exh. L, Tech. Rpt. for Evaluation of FRPs at 1; exh. M, Tech Rpt. for Reevaluation of Initial Proposals at 1. The technical evaluators found that Patronus's FRP addressed the single weakness found in its initial proposal, and that it was technically acceptable. AR, exh. L, Tech. Rpt. for Evaluation of FRPs at 4-7. The technical evaluators found that WWP's FRP addressed the two deficiencies found in its initial proposal, and that it was technically acceptable. *Id.* at 8-12. The agency also found both Patronus's final proposed price of \$8,633,455 and WWP's final proposed price of \$7,132,548 to be reasonable and balanced. AR, exh. E1, Price Evaluation Rpt. for FRPs at 4-7.

After the technical and price evaluations were completed, the source selection evaluation board (SSEB) convened to review the evaluation results and make an award recommendation. AR, exh. K, SSEB Rpt. at 3. The SSEB consisted of the two technical evaluators who assessed FRPs, the price evaluator, and a chairperson. *Id.* The SSEB concurred in the technical and price evaluation results. *Id.* at 3-4. Based on the evaluation record and in accordance with the solicitation, the SSEB recommended award to WWP, the lowest-priced technically acceptable offeror. *Id.* at 8. After conducting an independent review of the FRPs and evaluation documents, the source selection authority (SSA) concurred in the technical and price evaluation findings and the SSEB's recommendation. AR, exh. G1, Source Selection Decision at 1-2. The SSA selected WWP for award, and recommended terminating for convenience the contract awarded to Patronus in November 2019. *Id.*

The agency notified offerors of the apparent successful offeror on March 26, 2020. COS/MOL at 12. Following this notification, Patronus filed two size status protests with the Small Business Administration (SBA) challenging both WWP's SDVOSB status and its small business status. *Id.* The SBA denied both protests, after which the agency made award to WWP on May 19. *Id.* Following a debriefing, Patronus submitted its timely protest to our Office.

DISCUSSION

Patronus raises three primary protest arguments. First, Patronus argues that the agency failed to conduct a price realism analysis. As discussed below, we deny this protest ground because the solicitation did not obligate the agency to perform a price realism evaluation. Second, Patronus argues that the agency unreasonably evaluated the awardee's proposal as technically acceptable, and contends that a deficiency found in the awardee's initial proposal for a lack of sufficient managerial and administrative time remained unresolved by WWP's FRP. As discussed below, we sustain this protest ground because the awardee's FRP included additional guard hours but did not include additional managerial and administrative time. Third, Patronus argues that the agency unreasonably evaluated inconsistencies between the number of labor hours proposed in the awardee's technical and price proposals. As discussed below, we sustain this protest ground because the evaluation was unreasonable and inadequately documented.

Price Realism

As a general matter, when awarding a fixed-price contract, as here, an agency is only required to determine whether offered prices are fair and reasonable. FAR 15.402(a). Price realism--whether or not an offeror's proposed price is too low--need not necessarily be considered in evaluating proposals for the award of a fixed-price contract, because such contracts place the risk of loss on the contractor rather than the government. *B & B Med. Servs., Inc.; Ed Med., Inc.*, B-409705.4, B-409705.5, June 29, 2015, 2015 CPD ¶ 198 at 8. An agency may, however, include in a solicitation a provision that provides for a price realism evaluation for the purpose of assessing whether an offeror's low price reflects a lack of understanding of the contract requirements or the risk inherent in a proposal. *Id.*

Patronus contends that the solicitation here contemplated a price realism analysis, but the agency failed to conduct such an assessment. Protest at 7, 10; Comments & Supp. Protest at 3-4; Supp. Comments at 1-2. In support of this assertion, Patronus notes that the solicitation advised offerors that any price found to be "unrealistically low in relation to the proposed work may be indicative of an inherent lack of understanding of the solicitation requirements and may result in the overall proposal not being considered for award." Comments & Supp. Protest at 3, *citing* RFP at 56. Patronus points to decisions of our Office in which we concluded that a solicitation's express statement that unrealistically low prices may serve as a basis for rejection of a proposal included an implicit requirement for an agency to consider whether offerors' prices were in fact unrealistic. *Id.* at 3-5, *citing e.g., Esegur-Empresa de Seguranca, SA*, B-407947, B-407947.2, Apr. 26, 2013, 2013 CPD ¶ 109 at 3-4; *Halfaker and Assocs., LLC*, B-407919, B-407919.2, Apr. 10, 2013, 2013 CPD ¶ 98 at 9 n.5. Patronus argues that, here, the solicitation's express statement regarding rejection of proposals with unrealistically low prices similarly obligated the agency to perform a price realism analysis. Comments & Supp. Protest at 3-4.

The agency contends that the solicitation language at issue here is distinguishable from the language discussed in decisions of our Office such as *Esegur-Empresa* because the language advising offerors that unrealistically low prices may result in rejection of a proposal was preceded by an additional sentence that the protester ignores. Supp. COS/MOL at 1-2. Specifically, the agency argues that Patronus's interpretation of the solicitation ignores the solicitation's provision that the agency "may consider whether prices are realistic in relation to the work to be performed, reflect a clear understanding of the requirements, and are consistent with other portions of the Offeror's proposal." *Id.* at 2, *citing* RFP at 56. The agency interprets this sentence as establishing that the agency might, but was not obligated to, conduct a price realism analysis as part of its price evaluation. *Id.* at 2.

When a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions. *Planned Systems International, Inc.*, B-413028.5, Feb. 21, 2018, 2018 CPD ¶ 126 at 6. To be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. *Id.* Here, the interpretation of the solicitation advanced by Patronus is unreasonable because it fails to take into account all solicitation language. Specifically, Patronus's interpretation that the agency was obligated to perform a price realism analysis ignores the first sentence of the paragraph providing that the agency "may consider whether prices are realistic," and reads only the second sentence regarding potential rejection of proposals with unrealistically low prices. Read together, the two sentences clearly provide that the agency reserved its right to conduct a price realism analysis, and if, and only if, the agency chose to conduct such an analysis could unrealistically low pricing form the basis for rejection of a proposal. Where a solicitation merely reserves the agency's right to conduct a price realism analysis, the agency is not obligated to conduct such an analysis. *Steel Point Solutions, LLC*, B-418224, B-418224.2, Jan. 31, 2020, 2020 CPD ¶ 45 at 7 Accordingly, we deny this protest allegation.

Evaluation of WWP's Proposal

Patronus challenges the agency's evaluation of WWP's technical proposal. Specifically, Patronus argues that the agency unreasonably concluded that WWP's FRP resolved a deficiency found in its initial proposal for failing to include sufficient managerial and administrative time. Supp. Comments at 7.

In reviewing protests challenging an agency's evaluation of proposals, our Office will not reevaluate proposals; rather, we review the record to determine whether the agency's evaluation was reasonable, consistent with the solicitation's evaluation criteria, adequately documented, and in accordance with applicable procurement statutes and regulations. *National Gov't Servs., Inc.*, B-401063.2 *et al.*, Jan. 30, 2012, 2012 CPD ¶ 59 at 5. While we will not substitute our judgment for that of the agency, we will sustain a protest where the agency's conclusions are inconsistent with the solicitation's evaluation criteria, undocumented, or not reasonably based. *Deloitte Consulting, LLP*,

B-412125.2, B-412125.3, Apr. 15, 2016, 2016 CPD ¶ 119 at 12. Here, as discussed below, we find that the agency lacked a reasonable basis for concluding that WWP's proposal revisions resolved the deficiency assessed for provision of insufficient managerial and administrative time.

The solicitation's performance work statement (PWS) set out the agency's requirements in a series of "Spec Items." See AR, exh. Q, PWS. As relevant here, tasks related to management and administration of the contract--e.g., required training, scheduling the work, qualifications for the required project manager position--were set forth in Spec Item 2. *Id.* at 6. Tasks related to performance of the required work under the contract--i.e., provision of guard services--were set forth in Spec Item 3. *Id.* at 36-39.

The record reflects that the agency prepared an independent government estimate (IGE). See AR, exh. C, IGE. The IGE included [DELETED] labor hours identified as Spec 3 hours for the provision of guard services. AR, exh. C, IGE at Base Period [Firm Fixed Price] FFP Worksheet. The IGE does not include any labor hours specifically identified as Spec 2 hours for the performance of managerial and administrative tasks. See *id.* In responding to the protest, the agency explained that it considered the [DELETED] "Training Hours" identified in the IGE to be Spec 2 hours. AR, exh. P, Decl. of Tech. Evaluation Team Lead at 1. The agency further explained that the \$[DELETED] of overhead costs included in the IGE were for [DELETED] hours of project management time, which the agency also considered to be Spec 2 hours. *Id.* The agency used the total of these two types of Spec 2 work--which, due to rounding, it calculated as [DELETED] hours--as the benchmark against which it assessed the sufficiency of Spec 2 hours proposed in offerors' technical proposals. *Id.*; see e.g., AR, exh. M, Tech. Rpt. for Reevaluation of Initial Proposals at 10, 18. Similarly, the record reflects that the agency utilized the [DELETED] Spec 3 hours included in the IGE as the benchmark against which it assessed the sufficiency of Spec 3 hours in the technical proposals. *Id.*

As part of their management and technical approaches, the solicitation required offerors to include in their technical proposals an organizational chart identifying "the direct and indirect labor hours and associated trade classification required to meet all requirements of the RFP[.]" RFP at 57. The solicitation also required offerors to include in their technical proposals "a plan to organize, train, schedule, manage and supervise workforce personnel to accomplish the requirements of this contract." *Id.* The solicitation established that this plan must include an explanation of the offeror's "scheduling procedures to address non-productive time, e.g., comfort and meal breaks, and shift changes; and periods of non-availability, e.g., training, sick leave, annual leave, or family emergencies." *Id.* The solicitation provided that the management and technical approach evaluation factor would be "considered unacceptable if the scheduling procedures do not adequately address productive and non-productive time; or staffing levels for each trade classification are 5% lower than what the Government anticipates." *Id.*

WWP included a “Staffing Plan” table in its initial technical proposal that listed “the posts and numbers of personnel in each position to achieve the goals” of the solicitation. AR, exh. S, WWP Initial Tech. Proposal at 5. In its staffing plan, WWP initially proposed [DELETED] hours for guard services (*i.e.*, Spec 3 hours). *Id.* The record reflects that the technical evaluators did not express any concerns with the number of Spec 3 hours proposed by WWP, as its proposal of [DELETED] guard hours exceeded the IGE’s Spec 3 benchmark of [DELETED] guard hours. AR, exh. M, Tech. Rpt. for Reevaluation of Initial Proposals at 18.

WWP initially proposed [DELETED] hours for a project manager (*i.e.*, Spec 2 hours). AR, exh. S, WWP Initial Tech. Proposal at 5. WWP’s initial technical proposal provided a discussion of its training program and how it planned to comply with the training requirements set forth in the PWS, but WWP’s staffing plan did not identify any labor hours for training. *Id.* at 5, 11-12. The technical evaluators expressed concern with the number of Spec 2 hours proposed by WWP. AR, exh. M, Tech. Rpt. for Reevaluation of Initial Proposals at 18. Specifically, the technical evaluators assessed a deficiency in WWP’s initial proposal because the [DELETED] hours proposed for a project manager were insufficient to meet IGE’s estimate of [DELETED] Spec 2 hours. *Id.* The evaluators found that WWP’s failure to provide adequate staffing for Spec 2 increased “the risk of unsuccessful contract performance to an unacceptable level.” *Id.*

The evaluators assessed a second deficiency in WWP’s initial proposal because it “did not adequately explain how scheduling procedures address non-productive time, *e.g.*, comfort and meal breaks, and shift changes; and periods of non-availability, *e.g.*, training, sick leave, annual leave, or family emergencies.” AR, exh. M, Tech. Rpt. for Reevaluation of Initial Proposals at 18. The evaluators considered this deficiency “a material failure” of WWP’s initial proposal to meet the solicitation’s requirements. *Id.* Based on the two assessed deficiencies, the technical evaluators found WWP’s initial proposal unacceptable under the management and technical approach factor. *Id.* Under each of the other three evaluation factors, the evaluators assessed WWP’s initial proposal as acceptable with no weaknesses or deficiencies. *Id.* at 17, 19-20. In accordance with the solicitation, however, the assessment of WWP’s proposal as unacceptable under one of the four technical evaluator factors rendered its proposal technically unacceptable overall. RFP at 54.

Following reevaluation of initial proposals, the agency conducted discussions, during which it advised WWP of the two deficiencies assessed in its initial technical proposal. AR, exh. J, WWP Evaluation Notice at 1, 4. In response to discussions, WWP revised its proposed staffing plan. AR, exh. R, WWP Final Tech. Proposal at 5. In its revised plan, WWP proposed a total of [DELETED] hours. *Id.* WWP reduced to [DELETED] its proposed hours for a project manager, which it indicated were non-billable hours, and again included zero labor hours for training.¹ *Id.* The record reflects that WWP also

¹ Like its initial technical proposal, WWP’s final revised technical proposal included a section discussing its training program and how it would comply with the training

reduced the number of guard hours it proposed. *Id.* In its revised technical proposal, WWP proposed a total of [DELETED] billable hours--[DELETED] of which were for specific guard hours (*e.g.*, guard hours at a particular guard post) and [DELETED] of which were for "Relief Staff." *Id.* WWP explained that the proposed relief staff hours were for the purpose of ensuring that guards would receive "on-duty breaks" and "meal breaks," and that the relief staff providing these hours would be "fully trained and certified to stand post" the same as the rest of the guard force. *Id.* at 6.

The record reflects that in conducting their evaluation, the technical evaluators considered WWP to have proposed [DELETED] Spec 3 hours and [DELETED] Spec 2 hours. AR, exh. L, Tech. Rpt. for FRPs at 9. The evaluators explained that, in addition to WWP's proposed [DELETED] non-billable hours for a project manager, they considered WWP's proposed [DELETED] billable hours for relief staff to be Spec 2 hours "[f]or purposes of evaluation against the IGE[.]" *Id.* Based on these calculations, the technical evaluators considered WWP's [DELETED] proposed Spec 3 hours and [DELETED] Spec 2 hours to be sufficient because they met or exceeded the IGE's benchmarks for both Spec 2 and Spec 3 hours.² *Id.* Additionally, the technical evaluators concluded that both deficiencies assessed in WWP's initial proposal "were resolved in the FRP" and the "FRP meets the minimum requirements of the solicitation." *Id.* The record does not reflect any further explanation in support of the technical evaluators' conclusion that WWP's proposal revisions resolved the two deficiencies assessed in its initial proposal.

Based on this record, we cannot conclude that the agency's evaluation was reasonable. As discussed above, the PWS included in Spec 2 tasks related to management and administration of the contract--*e.g.*, required training, scheduling the work, qualifications for the required project manager position--and included in Spec 3 tasks related to performance of the work required under the contract--*i.e.*, provision of guard services. PWS at 6, 36-39. Consistent with the PWS's breakdown of Spec 2 and Spec 3 work, the IGE included [DELETED] Spec 2 hours for project management, [DELETED] Spec 2 hours for training, and [DELETED] Spec 3 hours for guard services. AR, exh. C, IGE at Base Period FFP Worksheet; exh. P, Decl. of Tech. Evaluation Team Lead at 1.

WWP's revised proposal explained that the [DELETED] hours for relief staff it proposed accounted for the provision of [DELETED] full-time equivalent (FTE) employees to be trained as guards and to stand post as guards while other guards were on break. AR,

requirements set forth in the PWS, but did not include any labor hours it specified as being related to training in its staffing plan. AR, exh. R, WWP Final Tech. Proposal at 5, 13-14.

² While the evaluators added [DELETED] hours to WWP's Spec 2 hours, they subtracted only [DELETED] hours from its Spec 3 hours. This resulted in a discrepancy of [DELETED] hours between the total number of hours cited by the technical evaluators ([DELETED]) and the total number of hours proposed by WWP ([DELETED]).

exh. R, WWP Final Tech. Proposal at 6. WWP's description of the work to be provided by these [DELETED] FTEs does not include any reference to project management, time spent providing or attending training, or the performance of any other managerial or administrative tasks included in Spec 2 of the PWS. *Id.* Not only does the technical evaluation record fail to provide a reasonable explanation for why the evaluators considered these [DELETED] labor hours to be Spec 2 hours, it fails to provide any explanation at all. See AR, exh. L, Tech. Rpt. for FRPs at 9. Without such an explanation, and taking into consideration WWP's clear indication in its proposal that the [DELETED] FTEs providing these [DELETED] hours would be performing guard services, we find unreasonable the agency's evaluation of these hours as Spec 2 hours.

Because we find unreasonable the agency's evaluation of these [DELETED] labor hours as Spec 2 hours, we also find unreasonable the technical evaluators' conclusion that WWP's proposal revision—which decreased the number of proposed project management hours from [DELETED] to [DELETED]—resolved the deficiency assessed in its initial proposal for including insufficient Spec 2 hours.³ Accordingly, we sustain Patronus's protest challenging the agency's technical evaluation of WWP's proposal.

In addition to challenging the agency's conclusion that WWP's final proposal was technically acceptable, Patronus argues that the agency unreasonably ignored inconsistencies between the number of labor hours proposed in the awardee's technical and price proposals. Comments & Supp. Protest at 5-6. With respect to the evaluation of price, the solicitation provided:

Any inconsistency, whether real or apparent, between proposed performance and price must be clearly explained in the price proposal. For example, if unique and innovative approaches are the basis for an apparently unbalanced/inconsistently priced proposal, the nature of these approaches and their impact on price must be completely documented. It is the responsibility of the offeror to provide all required documentation.

³ We note that WWP's final proposal of [DELETED] project management hours appears sufficient when compared against the IGE's benchmark of [DELETED] project management Spec 2 hours, while WWP's proposal of [DELETED] labor hours specified for training appears insufficient when compared against the IGE's benchmark of [DELETED] training Spec 2 hours. The record does not reflect, however, that the technical evaluators broke out the IGE's [DELETED] Spec 2 hours for project management and [DELETED] Spec 2 hours for training in conducting their evaluations. See *e.g.*, AR, exh. L, Tech. Rpt. for FRPs at 9. Rather, the record reflects that the technical evaluators assessed the sufficiency of offerors' proposed Spec 2 hours against the total [DELETED] Spec 2 hours included in the IGE without regard to what types of managerial and administrative tasks were included in the proposed hours. See *id.*

RFP at 55. Patronus asserts that this provision required offerors to explain any inconsistencies between their proposed performance and price, and that WWP's failure to do so rendered its proposal unacceptable. Comments & Supp. Protest at 5-6.

The record reflects that the SSEB found the number of labor hours proposed by WWP in the technical portion of its FRP to be inconsistent with the number of labor hours proposed in the price portion of its FRP. AR, exh. K, SSEB Rpt. at 7. For Spec 3, the SSEB found that WWP proposed [DELETED] labor hours in the technical portion of its FRP and [DELETED] labor hours in the price portion of its FRP. *Id.* Similarly, for Spec 2, the SSEB found that WWP proposed [DELETED] labor hours in the technical portion of its FRP and [DELETED] labor hours in the price portion of its FRP. *Id.* Neither the SSEB Report nor the underlying technical and price evaluations explain how the agency calculated these figures.

The SSEB did not find that WWP's proposal adequately explained any inconsistencies. Rather, the SSEB concluded that "[a]lthough staffing levels between the price proposal and non-price proposal are conflicting, either demonstrates adequate staffing and it does not result in a change to the results of the evaluation." *Id.* In its report responding to the protest, the agency maintains that the inconsistencies the SSEB found did not need to be resolved because the SSEB did not have any concerns about the noted inconsistencies as they were not considered an "indication of [WWP's] failure to meet the minimum contract requirements." Supp. COS/MOL at 3-4, *citing* AR, exh. K, SSEB Rpt. at 7.

We find unpersuasive the agency's argument that any inconsistencies between the price and non-price portions of WWP's FRP did not need to be resolved because the labor hours in each exceeded the minimum solicitation requirement. As discussed above, we find unreasonable the technical evaluators' assessment of the [DELETED] relief staff hours proposed by WWP in its FRP as Spec 2, rather than Spec 3 hours. Accordingly, we also find unreasonable the SSEB's reliance on the technical evaluators' conclusion that WWP proposed [DELETED], rather than [DELETED], Spec 2 hours in the technical portion of its FRP. *See e.g., Dynaxys, LLC*, B-414459.4, Apr. 18, 2018, 2018 CPD ¶ 152 at 8 ("Furthermore, a source selection decision based on inconsistent or inaccurate information concerning the technical evaluation or the relative merits and contents of the offerors' technical proposals, is not reasonable."). Therefore, the record does not support the SSEB's conclusion that either amount of Spec 2 hours proposed by WWP was sufficient to meet the minimum contract requirements.

With respect to WWP's proposed Spec 3 hours, it is not clear from the record here that there was, in fact, any inconsistency between the price and non-price portions of WWP's FRP. As discussed above, we find unreasonable the technical evaluators' assessment of the [DELETED] relief staff hours proposed by WWP in the technical portion of its FRP as Spec 2, rather than Spec 3 hours. Accordingly, we also find unreasonable the SSEB's reliance on the technical evaluators' conclusion that WWP

proposed [DELETED],⁴ rather than [DELETED], Spec 3 hours in the technical portion of its FRP. See e.g., *Dynaxys, supra* at 8.

Further, the record appears to reflect that WWP also proposed [DELETED] Spec 3 hours in the price portion of its FRP. AR, exh. D1, WWP's Final Price Proposal at 5. The record fails to provide any explanation for how the SSEB concluded that WWP proposed [DELETED], rather than [DELETED], Spec 3 hours in the price portion of its FRP.⁵ Accordingly, based on this record, we cannot conclude that the agency reasonably found an inconsistency in the number of Spec 3 hours proposed by WWP in the price and non-price portions of its FRP.

The agency further argues that Patronus did not suffer any competitive harm from the agency's treatment of the alleged discrepancies in WWP's FRP because the SSEB also found that Patronus proposed different amounts of Spec 2 and Spec 3 labor hours in the price and non-price portions of its FRP, and similarly concluded that these

⁴ As noted above, while the technical evaluators added WWP's proposed [DELETED] relief staff hours to its proposed Spec 2 hours, they subtracted only [DELETED] hours from WWP's proposed Spec 3 hours. This resulted in a discrepancy of [DELETED] hours between the total number of hours cited by the technical evaluators ([DELETED]) and the total number of hours proposed by WWP ([DELETED]).

⁵ There is a delta of [DELETED] hours between the [DELETED] Spec 3 hours the record appears to reflect WWP proposed in the price portion of its FRP, and the [DELETED] hours the SSEB concluded WWP proposed. We note that this delta is the same as the number of Spec 2 project management hours the agency included in its IGE. AR, exh. P, Decl. of Tech. Evaluation Team Lead at 1. If, as it appears, the agency deducted [DELETED] hours for project management from WWP's proposed total of [DELETED] Spec 3 labor hours, this deduction was inconsistent with the agency's method of calculating the IGE benchmarks against which it evaluated proposals. The record reflects that in calculating its IGE benchmarks the agency considered the [DELETED] project management hours built into the IGE's overhead costs to be in addition to, not a deduction from, the [DELETED] Spec 3 labor hours included in the IGE. See e.g., AR, exh. L, Tech. Rpt. for FRPs at 9 (assessing the sufficiency of WWP's proposed Spec 3 labor hours against an IGE benchmark of [DELETED], rather than against the delta between [DELETED] and [DELETED]). To the extent the agency used two different methods to calculate the labor hours in its IGE and the labor hours proposed by offerors, the resulting comparative evaluation of the proposals to the IGE was unreasonable because it did not result in an apples-to-apples comparison. See e.g., *MicroTechnologies, LLC*, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 14 (sustaining protest where agency's evaluation of fully burdened labor rates was not adequately documented, was based on an unreasonable comparison of offerors' burdened labor rates, and relied upon other erroneous comparisons).

inconsistencies did not raise any concerns.⁶ Supp. COS/MOL at 4, *citing* AR, exh. K, SSEB Rpt. at 6. While the record does reflect that the agency treated both offerors similarly, we cannot conclude that this rendered the agency's evaluation reasonable. The solicitation established a method for resolving discrepancies within an offeror's price proposal--between its schedule B and schedule J pricing sheets--but was silent as to how any inconsistencies between an offeror's price and technical proposals would be resolved, other than to require offerors to clearly explain such inconsistencies. RFP at 54-55. Without resolution of the alleged discrepancies between the offerors' technical and price proposals it is unclear how the agency and either offeror, if successful, could reach a meeting of the minds regarding the terms of any resulting contract.

RECOMMENDATION

We sustain Patronus's protest challenging the agency's evaluation of WWP's technical proposal and potential inconsistencies between the price and non-price portions of WWP's FRP. We recommend that the Navy reevaluate proposals in a manner consistent with this decision, and make a new source selection decision based on that reevaluation. In the event the reevaluation results in the selection of an awardee other than WWP, we recommend that the agency terminate the award to WWP. In addition, we recommend that the agency reimburse Patronus the costs associated with filing, and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d). Patronus's certified claim for costs, detailing the time expended and costs 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.

Thomas H. Armstrong
General Counsel

⁶ The record reflects that the SSEB concluded that Patronus proposed [DELETED] Spec 3 hours in the price portion of its FRP but only [DELETED] Spec 3 hours in the technical portion of its FRP. AR, exh. K, SSEB Rpt. at 6. Similarly, the SSEB found that Patronus proposed [DELETED] Spec 2 hours in the price portion of its FRP but proposed [DELETED] Spec 2 hours in the technical portion of its FRP. *Id.* The record before us in this protest did not include Patronus's proposal. Accordingly, we did not assess the reasonableness of the agency's assessment of these alleged discrepancies in Patronus's proposal.