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Decision

Matter of: AT&T Government Solutions, Inc.

File: B-406926; B-406926.2; B-406926.3; B-406926.4; B-406926.5; B-406926.6

Date: October 2, 2012

Alison L. Doyle, Esq., John W. Sorrenti, Esq., Dana B. Pashkoff, Esq., and Andrea C. Fontana, Esq., McKenna Long & Aldridge LLP, for the protester.

Kevin C. Dwyer, Esq., James C. Cox, Esq., and Damien C. Specht, Esq., Jenner & Block LLP, for Booz Allen Hamilton, Inc, an intervenor.

Janet N. Repka, Esq., Andrew Bramnick, Esq., and Marina M. Kozmycz, Esq., Department of Defense, for the agency.

Cherie J. Owen, Esq., and Glenn G. Wolcott, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. In evaluating protester's proposal to provide services that included the proper handling of classified information, the agency reasonably downgraded the protester's proposal where the proposal itself improperly disclosed classified information.
2. Protest that agency applied unstated evaluation criterion by assigning a weakness due to the proposal's disclosure of classified information is denied where the proper handling of classified information is intrinsic to the stated evaluation factors.
3. Protest challenging agency's evaluation of technical proposals is denied where the record establishes that the evaluation was reasonable and consistent with the evaluation criteria.
4. Protester's assertions challenging the agency's past performance evaluation reflect mere disagreement with the agency's judgments where the record establishes that the agency reasonably considered relevant past performance information, recognized positive and negative aspects of the protester's past performance, and reasonably determined that two recent incidents involving the mishandling of classified information on a prior contract of comparable dollar value outweighed the protester's positive past performance.

5. Protest that agency failed to conduct meaningful discussions is denied where protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award.

6. Agency's determination that the awardees' proposals represented the best value to the government is unobjectionable where the agency's determination and selection decision were reasonable and consistent with the terms of the solicitation.

DECISION

AT&T Government Solutions, Inc., of Vienna, Virginia, protests the Department of Defense, Washington Headquarters Services Acquisition Directorate's (WHS) placement of a "call" or task order for analytical support (call order 1) to Booz Allen Hamilton, Inc., of McLean, Virginia, and the placement of a call order for modeling support (call order 2) to Leonie Industries, LLC, of Pacific Palisades, California, pursuant to multiple blanket purchase agreements (BPA) also established under request for proposals (RFP) No. HQ0034-12-R-3016.¹ AT&T challenges the agency's evaluation of proposals, alleges that the agency failed to conduct meaningful discussions, and contends that the agency made a flawed source selection decision.

We deny the protest.

BACKGROUND

The purpose of the BPAs, under which the protested call orders were issued, is to provide a broad range of services to the Director of the Cost Assessment and Program Evaluation (CAPE) office. In this regard, the Director of CAPE is the principal advisor to the Secretary of Defense and other senior Department of Defense officials and provides "independent analysis and advice on cost estimation, cost analysis, and the planning and programming phases of the planning, programming, budgeting, and execution system (PPBS)." RFP at 000012.² The Simulation and Analysis Center (SAC) within CAPE is responsible for performing capability, weapons system, force structure, and readiness analyses and assessments of joint, mission and theater-level military operations. *Id.* This support requires a wide range of warfighting analytic capabilities, ranging from mathematics and statistics to specific warfighting model or war gaming expertise, to the evaluation of

¹ The RFP at issue in this procurement was used to establish the BPAs here, and place the first two call orders under the BPAs. Although AT&T received a BPA under this solicitation, it did not receive either of the first two call orders. This protest concerns only the placement of the first two call orders under the BPA.

² Our citation to page numbers in this decision refers to the BATES numbers in the agency report.

military operations across the spectrum of conflict. Id. The successful vendors here will provide analytical, modeling, and operational support services to the CAPE mission in support of focused reviews of defense capabilities and requirements. Id. at 00012-13.

The RFP, issued on April 5, 2012, provided a statement of work for the BPA's general requirements, and also contained specific performance work statements for the two initial call orders that would be awarded concurrently with creation of the BPAs.³ RFP at 000013, 000043-59, 000060-76. Under call order 1, the awardee is to provide analytical support to the simulation analysis center consisting of the following core tasks: analytical support (including land analysis, air/space analysis, intelligence surveillance and reconnaissance [ISR] analysis, maritime analysis, and war gaming analysis) and subject matter expertise in the areas of intel, maritime, war gaming, and ISR. RFP at 000044-46.

Under call order 2, the awardee will provide modeling support for the simulation analysis center with the core task of campaign and mission level modeling, including joint integrated contingency modeling, synthetic theater operations research model (STORM) modeling, extended air defense simulation modeling, and naval simulation system modeling. RFP at 000061-62.

The RFP informed offerors that the agency would select three or more vendors for receipt of the BPAs, as well as selecting a vendor or vendors for call orders 1 and 2, on a best value basis, considering the following factors: (1) BPA management approach; (2) demonstrated understanding of technical requirements⁴; (3) BPA corporate and personnel specialized experience in similar requirements; (4) BPA past performance; and (5) price. RFP at 000031. Factors 1 and 2 were equal in importance, and each of those factors individually was more important than factor 3. Factor 3 was more important than factor 4. Factor 5 was the least important factor. Id.

With regard to factor 1, BPA management approach, the RFP stated that the evaluation would be based on the offeror's demonstrated ability to provide corporate management and technical support for successful contract performance. RFP at 000027. As relevant here, the evaluation of this factor was to consider offerors' formal quality control measures used to assure satisfactory performance of services provided by the contractor staff. Id. The evaluation of factor 1 was also to consider whether offerors successfully demonstrated their ability to meet the personnel

³ Although the solicitation anticipated establishing BPAs under vendors' GSA FSS contracts, the solicitation stated that it sought "proposals" from "offerors," and these terms were used repeatedly throughout the solicitation. See, e.g., RFP at 000027-31.

⁴ The RFP stated that this factor would be evaluated separately for each call order. RFP at 000031.

security requirements of the BPA by meeting the security requirements specified at the call order level. RFP at 000027. In this regard, call orders 1 and 2 required that high-level experts and senior level modelers hold and maintain TS/SCI (top secret/sensitive compartmented information) security clearances. RFP at 000044, 000061. Mid-level and entry-level personnel were required to hold and maintain TS clearances. Id.

As relevant here, the RFP stated that the evaluation would assess the quality and capability of the personnel proposed for each call order. Offerors were instructed to provide resumes for all proposed personnel. Under this evaluation factor, the RFP also required that each offeror “shall describe its phase-in/transition plan that describes how the Contractor will transition, with minimum disruption to SAC operations.” RFP at 000028.

With regard to factor 4, past performance, the RFP stated that the agency would evaluate offerors’ past performance in the management of projects similar to the call orders that would be issued under the BPA. Among other things, the agency’s evaluation was to consider offerors’ history of reasonable and cooperative behavior, commitment to customer satisfaction, and quality of workmanship. RFP at 000029. The RFP noted that the agency’s sources of information for evaluating past performance could include retrieval of information from the past performance informational retrieval system (PPIRS), which included information in the contractor performance assessment reporting system (CPARS). Id.

On or before the May 14, 2012, closing date, four offerors, including AT&T, BAH, and Leonie, submitted proposals for the BPA, and for one or both of the call orders.⁵ CO Statement, Call Order 1, at 2.

On May 21, during the initial evaluation of proposals, the technical team noted that one of the key personnel resumes submitted as part of AT&T’s proposal contained classified information. Specifically the resume connected several pieces of information (for instance, a country name and a specific defense task) that, in combination, was classified information. CO Statement, Call Order 1, at 6; CO Statement, Call Order 2, at 6. On May 22, the agency contacted AT&T’s program manager regarding the matter and, thereafter, directed AT&T to collect and secure all copies of the proposal and to make a full report to the Defense Security Service (DSS). Id. On May 24, AT&T’s director of security contacted DSS regarding this matter.

On May 31, the agency advised the offerors that it was opening discussions, and provided questions regarding various aspects of each offeror’s proposal that needed

⁵ The fourth offerors’ proposal, and the agency’s evaluation thereof, is not relevant to this protest and is not further discussed.

to be addressed. Thereafter, final revised proposals were requested, received and evaluated. As a result of the technical panel's evaluations, the following adjectival ratings were assigned with regard to call order 1:⁶

⁶ The RFP provided the following definitions for the adjectival ratings:

Outstanding--Proposal exceeds requirements and indicates an exceptional approach and understanding of the requirements. Strengths **far** outweigh any weaknesses. Risk of unsuccessful performance is **very low**.

Good--Proposal **exceeds** requirements and indicates a thorough approach and understanding of the requirements. Proposal contains strengths which outweigh any weaknesses. Risk of unsuccessful performance is **low**.

Acceptable--Proposal **meets** requirements and indicates an adequate approach and understanding of the requirements. Strengths and weaknesses are offsetting or will have little or no impact on contract performance. Risk of unsuccessful performance is **no worse than moderate**.

Marginal--Proposal does **not** clearly meet requirements or has **not** demonstrated an adequate approach and understanding of the requirements. The proposal has one or more weaknesses which are not offset by strengths. Risk of unsuccessful performance is **high**.

Unacceptable--Proposal does not meet requirements and contains one or more deficiencies. Proposal is unawardable.

RFP at 000032 (emphasis in original).

Call Order 1				
	Factor 1: BPA Management Approach	Factor 2: Demonstrated Understanding of the Technical Requirement	Factor 3: BPA Corporate & Personnel Specialized Experience	Factor 4: BPA Past Performance Questionnaires
BAH	Acceptable	Acceptable	Acceptable	Relevant/ Satisfactory Confidence
AT&T	Marginal	Outstanding	Acceptable	Very Relevant/Limited Confidence

AR, Tab 15, Source Selection Decision at 000571.

Under call order 2, the agency evaluated AT&T and Leonie as follows:

Call Order 2				
	Factor 1: BPA Management Approach	Factor 2: Demonstrated Understanding of the Technical Requirement	Factor 3: BPA Corporate & Personnel Specialized Experience	Factor 4: BPA Past Performance Questionnaires
Leonie	Acceptable	Marginal	Acceptable	Somewhat Relevant/ Limited Confidence
AT&T	Marginal	Good	Acceptable	Very Relevant/Limited Confidence

AR, Tab 15, Source Selection Decision at 000571.

In its consensus report, the technical panel discussed the basis for its evaluation ratings, identifying strengths and weaknesses in each offeror's proposal under each evaluation factor. With regard to the first factor, BPA management approach, the agency noted several positive features associated with AT&T's proposal, but also concluded that:

alarmingly, the contractor provided classified information in the [r]esumes Call Order 2 [s]ection of the proposal . . . requiring Government evaluators to alert security officials and take preventive and cautionary measures to secure the classified material. While this

part of the proposal addresses Call Order 2, specifically, it draws attention to short comings [sic] in the quality control plan. Quality Control plans ostensibly address technical performance and deliverable issues. However, inherent in any quality control plan is a requirement to be sensitive to all the Government's performance, deliverable requirements and concerns, including protection of privileged and classified material. Consequently, this exposure of classified material, however inadvertent, undermines the Government's confidence in AT&T's quality control approach. . . . This breach of security is a significant weakness that is not offset by AT&T's strengths.

AR, Tab 12, Consensus Report for AT&T, at 000542-43. Accordingly, AT&T's proposal was rated marginal under the first evaluation factor for both call orders.

Under the second evaluation factor, demonstrated understanding of the technical requirement, proposals were evaluated separately under call orders 1 and 2. With regard to call order 1, the agency found that AT&T's proposal indicated an exceptional approach and understanding of the requirements by proposing flexible personnel that could handle a wide range of responsibilities, rating the proposal outstanding under the second evaluation factor. Id. at 000544.

With regard to call order 2, the evaluators assigned two weaknesses to AT&T's proposal under the second evaluation factor. One weakness was assigned for AT&T's failure to provide a transition plan. Although the firm was the incumbent contractor, the agency stated that AT&T had proposed staff who were not currently working on the incumbent contract. AT&T's proposal was silent as to how the new personnel would be transitioned into the project and brought up to speed. Id. at 000545-46. The evaluators found that AT&T's proposal simply stated that since it was the incumbent, no transition plan was needed, and rated the proposal as merely good under the second evaluation factor.⁷ Id. at 000546.

Under the third evaluation factor, BPA corporate and personnel specialized experience, the agency concluded that AT&T's proposal did not contain any significant strengths or weaknesses, and assigned the proposal a rating of good.

With regard to the fourth evaluation factor, past performance, the evaluators found that AT&T had very relevant past performance, based on the fact that the firm had provided mission level analysis, theater level analysis, and modeling support in a collaborative environment. AR, Tab 12, Consensus Report for AT&T, at 000549. The agency stated that the responses to past performance questionnaires were positive, showing quality performance that was delivered on schedule. Id. The agency also accessed AT&T's past performance reports in the past performance information

⁷ The second weakness related to AT&T's use of subcontractors.

retrieval system (PPIRS). Although the PPIRS evidenced positive past performance ratings, the agency also found that:

[AT&T] had serious problems with 2 confirmed security violations for which AT&T received [an] unsatisfactory rating. In the first incident, a contractor sent out classified information over an unclassified system resulting in destruction of 32 computers and 14 blackberries to allow for the classified information to be purged. In the second incident, the contractor personnel self-reported a security breach where 5 more computers had to be confiscated to allow for hard drive cleaning, which caused a 5 day interruption in work.

Id. at 000549.

Accordingly, with regard to the past performance evaluation factor, the agency concluded that, “[o]verall, considering the security breaches the Government has Limited Confidence AT&T can currently perform the required tasks successfully.” Id.

In her source selection decision and pricing memorandum, the source selection authority (SSA) accepted the technical panel’s evaluations of the offerors. With regard to AT&T’s disclosure of classified information in its unclassified proposal, the SSA noted that such disclosure “draws attention to shortcomings in the quality control plan at the BPA level,” and that “the breach of security is a significant weakness that is not offset by AT&T’s strength.” Source Selection Decision Document (SSDD) at 000573. Further, with regard to AT&T’s past performance, the SSA noted that the two additional security breaches by AT&T had occurred “within recent years.” Accordingly, the SSA concurred with the technical panel’s assignment of a limited confidence rating. Id. at 000577.

With regard to price, the SSA found that, for call order 1, BAH’s price of \$16,103,161.03 was lower than AT&T’s price of \$17,825,115.00. Id. at 000577. Under call order 2, Leonie’s price of \$7,259,911.40 was lower than AT&T’s price of \$10,512,705.00.⁸ Id. at 000577. In awarding call order 1 to BAH, the SSA stated that “AT&T offered the highest price of all the offerors and received a rating of marginal for factor 1, one of the most important factors.” Id. at 000580. Accordingly, the SSA

⁸ The limit on GAO’s bid protest jurisdiction at 41 U.S.C. § 253j(e) to review protests of orders under task or delivery order contracts only where the order is valued in excess of \$10 million, does not apply to a protest challenging the issuance of a task order valued under \$10 million where the task order is issued under a BPA, since a BPA is not a task or delivery order contract. C&B Construction, Inc., B-401988.2, Jan. 6, 2010, 2010 CPD ¶ 1 at 3-4.

concluded that “the combination of those shortcomings precludes an award to . . . AT&T. Id.

In awarding call order 2 to Leonie, the SSA noted that AT&T’s price was \$3,252,793.60 higher than Leonie’s price. Id. Further, while recognizing that AT&T’s and Leonie’s non-price evaluation ratings were “comparable,” the SSA further stated that the same “absence of control of certified material is evidenced in factor 1 and factor 4 of the evaluation as in Call Order 0001, substantially weakening AT&T’s offer.” Id. Accordingly, the SSA determined that Leonie’s proposal offered the best value for call order 2. AT&T’s protests challenging the award of the two call orders followed.

DISCUSSION

AT&T challenges the agency’s evaluation of proposals with regard to the offerors’ management approach, technical understanding of the requirements, and past performance. AT&T further contends that the agency failed to conduct meaningful discussions. Finally, AT&T asserts that the agency’s best value tradeoff was unreasonable. As discussed below, we find no merit in any of AT&T’s assertions.

BPA Management Approach

AT&T protests the evaluation of its proposal under the first evaluation factor, BPA management approach. Specifically, AT&T contends that the consideration of the firm’s disclosure of classified information constituted using an unstated evaluation criterion. Protester’s Comments, Call Order 1, at 27; Protester’s Comments, Call Order 2, at 27-28.⁹ The protester acknowledges that evaluation factor 1 advised offerors that the agency would assess, among other things, the contractor’s ability to assure satisfactory performance of services provided by contractor staff; nonetheless, AT&T asserts that its disclosure of classified information in its unclassified proposal “has nothing to do with the Factor 1 evaluation criteria.” Protester’s Comments, Call Order 1, at 27; Protester’s Comments, Call Order 2, at 27. In short, AT&T takes the remarkable position that its mishandling of classified information is irrelevant to its ability to perform services that require the proper handling of classified information.

⁹ AT&T initially argued that the information contained in its proposal was not classified. Shortly after the protest was filed, our Office conducted a conference call with counsel for the parties, advising them that we would not review the substance of the Department of Defense’s determination that AT&T’s proposal contained classified information. Thereafter, AT&T acknowledged its understanding in this regard, stating: “[i]t is not AT&T’s intent to seek GAO adjudication of the merits of the security issue.” Protester’s Comments, Call Order 1, at 19.

While procuring agencies are required to identify significant evaluation factors and subfactors in a solicitation, they need not identify every aspect of each factor that might be taken into account; rather, agencies may take into account considerations that are reasonably related to, or encompassed by, the stated evaluation criteria. Client Network Servs., Inc., B-297994, Apr. 28, 2006, 2006 CPD ¶ 79 at 6. That is, an element considered in an evaluation need not be specifically stated in a solicitation where it is intrinsic to the stated criteria. Millennium Space Sys., Inc., B-406771, Aug. 17, 2012, 2012 CPD ¶ 237 at 7; see Sturm, Ruger & Co., Inc., B-250193, Jan. 14, 1993, 93-1 CPD ¶ 42 at 5-6 n.7.

Here, as set forth above, the RFP provided that the agency's evaluation under the BPA management approach factor would include, among other things, consideration of offerors' formal quality control measures used to assure satisfactory performance of services provided by the contractor staff. RFP at 00027. More specifically, as discussed above, the RFP clearly required that contractor personnel, from high level experts to administrative support staff, hold and maintain Top Secret security clearances. RFP at 000044, 000060-61. Further, the RFP contained extensive discussion of the types of sensitive information that would be involved in the performance of the contract. See e.g., RFP at 000050 (stating that under call order 1, the contractor would be required to access critical nuclear weapon design information, formerly restricted data, intelligence information including sensitive compartmented information, special access information, NATO information, for official use information, and information classified as Secret and Top Secret); id. at 000067 (stating the same for call order 2); id. at 000052, 000069 (stating that the contractor is not authorized to release classified information to any activity or person without the contracting monitor's written approval); id. at 000054-56, 000071-73 (providing rules for the handling of non-SCI intelligence information); id. at 000057-59, 000074-76 (providing rules for the handling of SCI intelligence information).

In light of these clear RFP requirements, we find no basis to question the agency's consideration of AT&T's disclosure of classified information in evaluating AT&T's ability to satisfactorily perform a contract that contemplates the proper handling of classified information. That is, due to the RFP's focus on the proper handling of classified information in the performance of the contract, it is clear that an offeror's ability to properly handle classified information is intrinsic to the agency's evaluation of a firm's ability to perform the contract. See SOS Interpreting, Ltd., B-287505, June 12, 2001, 2001 CPD ¶ 104 at 8-10 (holding that the agency reasonably downgraded protester's proposal in its evaluation of the firm's quality control plan, where the agency found that the firm had not adequately documented a plan to improve its information handling process after the firm had improperly disseminated sensitive information in a proposal two years earlier). AT&T's assertion to the contrary is without merit.

Next, AT&T argues that, even if the disclosure of classified information was appropriately considered under the first evaluation factor, the agency assigned this

matter undue weight, ignoring all of the proposal's other strengths under this factor. Protester's Comments, Call Order 1, at 29; Protester's Comments, Call Order 2, at 29. In this regard, the protester notes that the agency evaluated several strengths in its proposal under the first evaluation factor, but complains that "somehow a single resume . . . overwhelmed all the other elements of this factor without explanation." Id. Accordingly, the protester contends that the agency placed undue weight on a "single negative finding," and unreasonably allowed that weakness to "overwhelm" the proposal's strengths. Id. at 29-30.

The evaluation of proposals and assignment of adjectival ratings should not be based upon a simple count of strengths and weaknesses, but on a qualitative assessment of the proposals consistent with the evaluation scheme. Command Mgmt. Servs., Inc., B-310261, B-310261.2, Dec. 14, 2007, 2008 CPD ¶ 29 at 4.

Here, the record shows that is precisely what the agency did. That is, the agency recognized several strengths associated with AT&T's proposal, but also considered the qualitative impact of the disclosure of classified information. AR, Tab 12, Consensus Report for AT&T, at 000542. As a result of its qualitative consideration of the strengths and weaknesses, the agency determined that AT&T's disclosure of classified information was a "significant weakness that is not offset by AT&T's strengths," assigning a rating of marginal for this factor. Id. at 000543. Based on the record here, we find no basis to question the reasonableness of the agency's evaluation in this regard.

The protester next asserts that the disclosure of classified information contained within AT&T's proposal was, somehow, not AT&T's responsibility, and that the agency improperly held AT&T responsible in its evaluation, when the information had actually been disclosed by one of AT&T's subcontractors. Protester's Comments, Call Order 1, at 19; Protester's Comments, Call Order 2, at 19. AT&T emphasizes that the employee whose resume contained classified information "was going to be hired by an AT&T teammate and not directly by AT&T." Id. at 20. Accordingly, AT&T claims that it "was merely an innocent intermediary" and that AT&T was "no more responsible than the agency for this [disclosure of classified information]." Id. at 20. On this rationale, AT&T asserts that the agency's attribution of the disclosure to AT&T "lacks a rational basis." Id. at 21.

In general, a prime contractor under a government contract is responsible for the performance of its subcontractors. Neal R. Gross & Co., Inc., B-275066, Jan. 17, 1997, 97-1 CPD ¶ 30 at 4. With regard to the employee whose resume contained the classified information, AT&T's proposal contemplated that employee serving as a senior modeler performing Joint Integrated Contingency Model (JICM) modeling, which would require him to access classified information. AR, Tab 2, AT&T's Proposal, at 000150. Further, the protester's own proposal stated that "AT&T assumes total responsibility for all aspects of subcontractor performance . . . including the flowdown to our subcontractors of all prime contract terms and conditions governing quality." Id. at 000107. In short, whether the employee was

hired by AT&T or by one of AT&T's teammates, the fact remains that AT&T proposed to provide an employee who mishandled classified information, and that AT&T's proposal disclosed that classified information. On this record, there is no basis to question the agency's attribution of the disclosure to AT&T for purposes of the evaluation.

Demonstrated Understanding of the Technical Requirement

AT&T also protests the agency's evaluation of proposals under the second evaluation factor, demonstrated understanding of the technical requirement. In this regard, AT&T first contends that the tasks involved in the two call orders could only be performed by AT&T, as the incumbent, and that any evaluation finding other offerors to be qualified to perform the contract requirements is unreasonable. Throughout its protest submissions, AT&T repeats variations of this view asserting, for example, that "Call Order 0001 [r]equired [i]ncumbent [p]ersonnel," Protester's Comments, Call Order 1, at 34; maintaining "[it is] clear that only the existing SAC [Simulation and Analysis Center] contractor staff had a realistic possibility of being able to perform the Call Order," *id.* at 40; proclaiming that "only the incumbent personnel . . . could possibly be able to continue to support SAC," *id.* at 41; and representing that "[c]ompeting offerors . . . could not possibly provide the necessary support." *Id.* at 42. See also, Protester's Comments, Call Order 2, at 34, 35, 37-39. AT&T summarizes its arguments stating that "the Call Order itself" made clear "that contractor turnover was not wanted," *id.* at 42, and complains that the agency ignored this alleged fact, improperly giving competing offerors credit for the personnel they proposed.¹⁰ Protester's Comments, Call Order 1, at 43; Protester's Comments, Call Order 2, at 40.

We will not read solicitation provisions in a manner that restricts competition, unless it is clear from the solicitation that such a restrictive interpretation was intended. MAR Inc., B-242465, May 6, 1991, 91-1 CPD ¶ 437 at 4. In reviewing a protest against an agency's evaluation of proposals, our Office will not substitute our (or the protester's) judgment for that of the agency but, rather, we will examine the record to determine whether the agency's judgments were reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. In this regard, the evaluation of an offeror's proposal is a matter within the agency's broad discretion, since the agency is responsible for defining its needs and the best method for accommodating them. U.S. Textiles, Inc., B-289685.3, Dec. 19, 2002, 2002 CPD ¶ 218 at 2. A protester's mere disagreement with the agency's judgment does not establish that the evaluation was unreasonable. C. Lawrence Constr. Co., Inc., B-287066, Mar. 30, 2001, 2001 CPD ¶ 70 at 4.

¹⁰ To the extent AT&T is protesting that the call orders should have, of necessity, been awarded to AT&T on a sole-source basis, its protest challenges the terms of the solicitation and is not timely filed. 4 C.F.R. § 21.2(a)(1) (2012).

Here, we see nothing in the solicitation that indicates that only incumbent personnel would be eligible to perform the contract. Rather, we note that the RFP was issued as a competitive procurement and stated that the agency will use commercial off the shelf (COTS) and government off the shelf (GOTS) models and tools. RFP at 000014. Further, the agency maintains, and we agree, that the RFP did not require the proposed personnel to have experience identical to that of the incumbent personnel. Rather, personnel were to have direct, prior experience that would demonstrate the capability to perform specified types of work under the contracts.¹¹

Further, we find that the agency's evaluation of the proposals under the demonstrated understanding of the technical requirements factor did, in fact, recognize the higher level of experience and qualifications of AT&T's proposed personnel. Under call order 1, AT&T's proposal was rated as outstanding, while BAH's proposal was rated as acceptable. In assigning AT&T's proposal a rating of outstanding under this factor, the agency evaluators stated that AT&T's proposal presented an experienced and versatile team that met and often exceeded the RFP's personnel requirements for call order 1. AR, Consensus Report for AT&T, at 000544. The evaluators also stated that the resumes in AT&T's proposal indicated that its proposed personnel offered a broad range of experience spanning the spectrum of defense mission areas, which the agency considered beneficial because it provided greater flexibility and responsiveness. *Id.* In contrast, the agency assigned BAH a rating of acceptable under this evaluation factor, finding that numerous BAH personnel exceeded the RFP's required experience levels, but noting that a portion of the proposed personnel presented a weakness due to their lack of scientific, technical, engineering, or mathematics backgrounds. AR, Tab 13, Consensus Report for BAH, at 000553. We find that the agency's analysis in this regard was reasonable.

Similarly, with regard to the agency's evaluation of proposals under call order 2, the record shows that AT&T was given credit in the agency's evaluation for the high

¹¹ For example, call order 1 required that high-level analysts demonstrate:

[A]nalytic capability, [and be] technically proficient at the Master of Science in Operations Research (MSOR) or higher level of education (similar scientific, technical, engineering or mathematics (STEM) degrees may be acceptable based on Task Monitor review), with at least 10 years of experience in military analyses. This capability is required for the development of methodology and data for non-standard problems, or the ability to conduct model runs and develop operational insights without detailed direction on the use of models/existing methodology. This capability would be able to draft proposed solution methodology and study reports for Government review.

RFP at 000043-44.

qualifications and direct experience of its proposed personnel. Specifically, the agency assigned a rating of good to AT&T's proposal under the demonstrated understanding of the technical requirement, noting a strength for the firm's "versatile and experienced personnel" and stating that, in many instances, the proposed personnel exceed requirements in length of experience. AR, Tab 12, Consensus Report for AT&T, at 000545. Despite its two weaknesses under this factor, the protester's proposal received a rating of good. In contrast, Leonie's proposal received a rating of marginal under this evaluation factor due, in part, to the agency's determination that the firm's proposed personnel did not all have the desired level of expertise or experience. AR, Tab 14, Consensus Report for Leonie, at 000563. On this record, we find that the agency properly recognized and considered the varying levels of experience and qualifications of all three offerors' proposed personnel and performed a reasonable evaluation of their relative merits.¹²

Finally, AT&T challenges the agency's proposal evaluations under this factor, arguing that both of the awardees engaged in an improper "bait and switch" of their proposed personnel. In this regard, AT&T complains that, in performing call order 1, BAH is providing only 10 of the 12 key personnel it proposed, and is replacing the other 2 with incumbent personnel. Protester's Comments, Call Order 1, at 47. Similarly, AT&T asserts that, in performing call order 2, Leonie is providing only 5 of the 8 key personnel it proposed and is replacing the other 3 with incumbent personnel. Protester's Comments, Call Order 2, at 45.

To establish an impermissible "bait and switch," a protester must show that a firm either knowingly or negligently represented that it would rely on specific personnel that it did not expect to furnish during contract performance, and that the misrepresentation was relied on by the agency and had a material effect on the evaluation results. Data Mgmt. Servs. Joint Venture, B-299702, B-299702.2 July 24, 2007, 2007 CPD ¶ 139 at 10-11; Advanced Tech. Sys., Inc., B-298854, B-298854.2, Dec. 29, 2006, 2007 CPD ¶ 22 at 10.

¹² AT&T also challenges the agency's assignment of a weakness under this evaluation factor for the firm's failure to comply with the RFP requirement that offerors submit a transition plan. AT&T contends that the agency improperly assigned a weakness to the firm's proposal because as the incumbent, AT&T was not required to provide a transition plan. Agency evaluators noted that, although AT&T was the incumbent contractor, for call order 2 it proposed to bring on new personnel who were not currently working on SAC projects. AR, Tab 12, Consensus Report for AT&T, at 545. The evaluators concluded that, because AT&T had failed to address how these new employees would be transitioned in and brought up to speed, this aspect of AT&T's proposal constituted a weakness. We find the agency reasonably evaluated the absence of a transition plan as a weakness in AT&T's proposal.

Here, as discussed above, each of the awardees' proposed key personnel were rated lower than the personnel proposed by AT&T. In this regard, AT&T has not asserted that either awardee intends to replace the proposed individuals with less qualified personnel. Rather, its allegation is that each awardee is, effectively upgrading the quality of its proposal by offering to replace its proposed personnel with the incumbent personnel that are equally or better qualified. Accordingly, even assuming for the sake of argument that there is evidence of an intent to switch, AT&T's argument that an impermissible "bait and switch" occurred must fail because there is no evidence of baiting. Data Mgmt. Servs. Joint Venture, *supra*. That is, because the substitution of personnel that are equally or better qualified than the ones designated in a quotation could not have had a material effect on the evaluation results, such substitution does not constitute an impermissible "bait and switch." *Id.* Moreover, the mere fact that the awardees requested to substitute some of their initially proposed personnel with more qualified incumbent personnel, does not establish that the proposed personnel were, or are, unavailable to perform the contract work. In this context, this Office has noted that it is neither unusual nor inherently improper for an awardee to recruit and hire personnel previously employed by an incumbent contractor. Lifecare Mgmt. Partners, B-297078, B-297078.2, Nov. 21, 2005, 2006 CPD ¶ 8 at 6 n.11. AT&T's assertions regarding the awardee's alleged bait and switch provide no basis to sustain the protest.

Past Performance

AT&T also challenges the agency's evaluation of the firm's past performance. As set forth above, AT&T's proposal received a rating of limited confidence under the past performance factor based on the agency's discovery of a recent contract on which the protester had committed two disclosures of classified information. The protester contends that its positive ratings for performance of very relevant contracts should have earned the firm a past performance rating of substantial confidence. First Supp. Protest, Call Order 1, at 16; First Supp. Protest, Call Order 2, at 19-20. AT&T further asserts that the negative past performance reference was not relevant to the RFP here, and therefore the past performance reference should not have been considered. Protester's Comments, Call Order 1 at 54-57; Protester's Comments, Call Order 1 at 60-63. In this regard, AT&T maintains that, other than the dollar value, the contract that served as the negative past performance reference was not similar to the work to be performed here--the Air Force contract involved classified information relating to space programs, while the RFP here calls for classified work on defense department programs. Protester's Comments, Call Order 1, at 57; Protester's Comments, Call Order 2, at 63. Alternatively, AT&T argues that, even if the contract was properly considered, the agency accorded this single past performance reference undue weight by allowing it to overshadow several positive references on more relevant contracts. *Id.*

An agency's evaluation of past performance, which includes its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of agency discretion which we will not disturb unless the agency's assessments are

unreasonable, inconsistent with the solicitation criteria, or undocumented. See, e.g., SIMMEC Training Solutions, B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 4; Yang Enters., Inc.; Santa Barbara Applied Research, Inc., B-294605.4 et al., Apr. 1, 2005, 2005 CPD ¶ 65 at 5; Acepex Mgmt. Corp., B-283080 et al., Oct. 4, 1999, 99-2 CPD ¶ 77 at 3, 5. Since the agency is responsible for defining its needs and the best method for accommodating them, we will not substitute our judgment for reasonably based past performance ratings. SIMMEC Training Solutions, supra.

Here, the agency's search of the PPIRS system revealed that AT&T had two recent confirmed security violations in performing a contract for the Air Force. AR, Tab 12, Consensus Report for AT&T, at 000549. In one incident, an AT&T contractor sent out classified information over an unclassified system that led to the destruction of 32 computers and 14 blackberries to allow for the classified information to be purged. In the second incident, AT&T personnel self-reported a security breach where 5 more computers had to be confiscated to allow for hard drive cleaning, which caused a 5-day interruption in work. Id.

Given this solicitation's focus on the requirement to safeguard classified information, and our conclusion that the proper handling of classified information is an intrinsic aspect of the solicitation, we find that the agency's review of past performance reasonably included evaluation of a contract of comparable dollar value that involved the handling of classified information. Based on the fact that AT&T committed two separate security breaches less than a year prior to the submission of its proposal here—which contained its own security breach—we find no basis to question the agency's determination that AT&T's past performance merited a rating of limited confidence. We similarly find no basis to question the agency's determination that these security breaches were sufficiently serious to overshadow AT&T's more numerous positive past performance ratings. This protest ground is denied.

Discussions

AT&T next challenges the agency's conduct of discussions. In this regard, AT&T complains that the discussion questions the agency provided to AT&T did not address AT&T's disclosure of classified information.¹³ AT&T asserts that, with regard to the classified information in its proposal, AT&T "could have helped resolve [the] issue, at least as to how it should affect the evaluation."¹⁴ Protester's Comments, Call Order 1, at 21; Protester's Comments, Call Order 2, at 21.

¹³ As discussed above, proposals were submitted on May 14. On May 22, the agency contacted AT&T, advising AT&T that its unclassified proposal contained classified information. On May 31, the agency opened discussions with all offerors.

¹⁴ AT&T also argues that during discussions, the firm could have explained that the information was not classified. Protester's Supp. Comments, Call Order 1, at 10;

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The fundamental purpose of discussions is to afford offerors the opportunity to improve their proposals to maximize the Government's ability to obtain the best value, based on the requirement and the evaluation factors set forth in the solicitation. EMR, Inc., B-406625, July 17, 2012, 2012 CPD ¶ 209 at 5. Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest. Joint Mgmt. & Tech. Servs., B-294229, B-294229.2, Sept. 22, 2004, 2004 CPD ¶ 208 at 7.

Here, we conclude that the protester has not established that it was prejudiced by the fact that the agency did not include a discussion question regarding the classified information in AT&T's proposal. First, as discussed above, the matter was explicitly brought to AT&T's attention just days before the agency opened discussions with the offerors. Further, as the agency notes, the inclusion of classified information in AT&T's proposal was not something that could be "fixed or mitigated through discussions or corrected in a revised proposal." AR at 2. That is, there were no changes to AT&T's proposal that "could un-ring that bell." Id. Finally, as discussed above, there is no merit to AT&T's assertion that the agency's consideration of this matter constituted consideration of an improper evaluation factor. On the record here, we find no basis to sustain the protest based on AT&T's assertion that the classified information in its proposal was required to be discussed with AT&T again after discussions were opened.

AT&T also protests that the agency was required to discuss AT&T's two prior disclosures of classified information, contained in AT&T's past performance reference, and complains that it should have had an opportunity to comment, explain, or otherwise address these matters. Protester's Comments, Call Order 1, at 59; Protester's Comments, Call Order 2, at 65. In this regard, AT&T asserts that the agency violated Federal Acquisition Regulation (FAR) § 15.306(d)(3), which requires an agency to discuss adverse past performance information that an offeror has not previously had an opportunity to address.

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Protester's Supp. Comments, Call Order 2, at 12. However, the agency notes that the government is the sole classification authority. AR at 7 (citing Exec. Order No. 13,526, 75 Fed. Reg. 707 (Dec. 29, 2009)). As discussed above, counsel for the parties were advised shortly after the protest was filed that our Office would not review the substance of the Department of Defense's determination that AT&T's proposal contained classified information.

The agency maintains--and the record confirms--that AT&T had, in fact, been given an opportunity to address the CPARS reference relied upon by the agency in evaluating AT&T's past performance; indeed, the CPARS contained AT&T's responses regarding that adverse information. AR, Tab 8, AT&T CPARS Report, at 000378. Specifically, in a contemporaneous response to the Air Force's finding that the firm had twice disclosed classified information, AT&T stated:

AT&T concurs with the government finding of fault regarding the Classified Message Incidents (CMI). AT&T has taken full responsibility for these incidents, and AT&T management was immediately proactive in responding to these incidents. In addition, upon learning of the destroyed Blackberries, AT&T immediately, voluntarily, and of its own volition offered to replace all 14 Blackberries free of charge; [sic] and did so once the government PCO approved the offer. We appreciate the government's acknowledgement of our decisive and thorough response to the CMI.

Id. at 000378.

Accordingly, we find no merit to AT&T's assertion that the agency was required to discuss this past performance information with AT&T yet again. In sum, we find no basis to sustain AT&T's protest on the basis that the agency failed to discuss with AT&T its various disclosures of classified information.¹⁵

¹⁵ In its protest submissions, AT&T has raised arguments that are in addition to, or variations of, those specifically discussed above. For example, AT&T challenges the agency's evaluation of BAH and Leonie under the BPA Management Approach evaluation factor because, AT&T contends, the personnel proposed by the other offerors are merely SCI eligible, and do not have SCI clearance to access the information related to performance of this contract. Second Supp. Protest, Call Order 1, at 3-8; Second Supp. Protest, Call Order 2, at 3-9. Access to classified defense information is based on an appropriate level of security clearance and a need-to-know. Information that requires a formal determination that an individual has a need-to-know exists within the SCI program. SCI encompasses several categories of compartmentalized information. Once an individual is adjudicated as "SCI eligible," he or she may be given access to SCI information once the individual has a need-to-know. Supp. AR at 2; Intervenor's Comments on Supp. AR at 2; AR, Tab 11, Leonie's Revised Proposal, at 000468. Given that the relevant personnel proposed by BAH and Leonie had been adjudicated as SCI eligible, we reject the protester's argument that only incumbent personnel could meet the solicitation's requirement for SCI clearances because only incumbent personnel currently have access to the information involved in the performance of these contracts. Given the SCI eligibility adjudications of the relevant personnel, once the awardees begin performance of the contracts, and their personnel have the requisite need-to-know,

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Trade Off Decision

Finally, AT&T asserts that the agency's award decisions were flawed and that the best value decision should have adhered to a more mechanical or "regimented" process. Protester's Comments, Call Order 1, at 64; Protester's Comments, Call Order 2, at 69. With regard to call order 1, the protester argues that for the two most important evaluation factors, the protester was one level below BAH on the first evaluation factor, but the firm was two levels above BAH on the second factor. Protester's Comments, Call Order 1, at 1. With regard to the less important evaluation factors, AT&T and BAH received the same adjectival rating on the third evaluation factor, BAH was one level higher than the protester on the fourth evaluation factor, and BAH had a lower price.¹⁶ *Id.* at 63. The protester contends that, considering the weighting of factors set forth in the RFP and the number of adjectival rating levels between the awardee's proposal and the protester's proposal, AT&T's proposal was clearly superior. Specifically, the protester contends that, "when averaged together, those two AT&T scores [for the first two evaluation factors] are superior to BAH's Acceptable for both factors." *Id.* at 64. After identifying these alleged flaws, the protester argues that the SSA's "freeform approach" caused the agency to make a selection decision that deviated from its stated evaluation scheme. *Id.* at 64-65.

The protester raises similar arguments with regard to call order 2. Specifically, AT&T notes that, under the two most important evaluation factors, both offerors received one rating of marginal, and AT&T received a rating of good, while Leonie received a rating of acceptable. Protester's Comments, Call Order 2, at 68. On the third and fourth evaluation factors, the offerors received the same adjectival ratings. Therefore, the protester concludes that Leonie's proposal was, on its face, inferior to AT&T's proposal because the protester's proposal received a rating that was one level above Leonie on one of the most important evaluation factors, and the two firms received equal ratings on the remainder of the factors. *Id.* at 67, 69. Further, the protester contends that the "modest price difference" between the two proposals should not have outweighed the fact that AT&T received a higher adjectival rating in one of the most important evaluation factors.¹⁷ *Id.* Thus, the protester contends that

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one can reasonably assume they will be granted SCI access. We have considered all of AT&T's various arguments and allegations and find no basis to sustain the protest.

¹⁶ BAH's price of approximately \$16.1 million was approximately \$1.7 million lower than AT&T's price of \$17.8 million. AR, Tab 15, SSDD, at 000577.

¹⁷ The "modest price difference" to which AT&T refers was approximately 30 percent of AT&T's price. See AR, Tab 15, SSDD, at 000571 (comparing Leonie's price of approximately \$7.2 million to AT&T's proposed price of approximately \$10.5 million).

“the RFP prescribed a tradeoff that is more regimented,” and the protester provides suggestions for a “more appropriate approach” in making the best value decision. Protester’s Comments, Call Order 2, at 69, 70.

We have long held that adjectival scores are merely guides for intelligent decision making; they do not mandate automatic selection of a particular proposal. KBM Group, Inc., B-281919, B-281919.2, May 3, 1999, 99-1 CPD ¶ 118 at 11; Calspan Corp., B-255268, Feb. 22, 1994, 94-1 CPD ¶ 136 at 10. The more important consideration is whether the evaluation record and source selection decision show that the agency reasonably assessed the relative merits of the proposals in accordance with the stated evaluation criteria. Command Mgmt. Servs., Inc., B-310261, B-310261.2, Dec. 14, 2007, 2008 CPD ¶ 29 at 4. Further, even where cost is the least important evaluation criterion, an agency may properly award to a lower-rated, lower-cost offeror if the agency reasonably determines that the cost premium involved in awarding to a higher-rated, higher-cost offeror is not justified. Tracor Applied Sciences, Inc., B-253732, Oct. 19, 1993, 93-2 CPD ¶ 238.

Here, the record shows that the agency made qualitative judgments regarding the significance of the strengths, weaknesses, and adjectival ratings assigned to the proposals. Rather than merely counting and/or arithmetically averaging the ratings, the agency assessed the relative merits of the proposals in accordance with the solicitation’s requirements and evaluation criteria. For example, with regard to the first evaluation factor, the SSA acknowledged that AT&T’s proposal evidenced an adequate corporate strategy, clear lines of authority between the contractor and the government, and an ability to manage multiple call orders with quick responses to changing requirements. AR, Tab 15, SSDD, at 000573. However, the SSA concluded that the firm’s breach of security was a significant weakness that was not offset by the positive aspects of AT&T’s proposal. Id. In summarizing the source selection decisions, the SSA stated that the “absence of control of certified material is evidenced in factor 1 and factor 4 [for both call orders] substantially weakening AT&T’s offer. Such a weakness cannot be overcome by other strengths in the proposal, though the AT&T proposal is otherwise sound.” Id. at 000580. We find that the SSA’s tradeoff decisions properly represented a qualitative weighing of the strengths and weaknesses in the offerors’ proposals and reflected a reasonable

assessment of the relative merits of the competing proposals. Therefore, this protest ground is denied.

We deny the protest.

Lynn H. Gibson
General Counsel