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Decision

Matter of: CH2M Hill Antarctic Support, Inc.
File: B-406325; B-406325.2; B-406325.3
Date: April 18, 2012

Timothy E. Heffernan, Esq., Nicholas A. Merrell, Esq., and Steven L. Lunsford, Esq., Watt, Tieder, Hoffar & Fitzgerald, LLP, for the protester.
Marcia G. Madsen, Esq., David F. Dowd, Esq., Polly A. Myers, Esq., Cameron S. Hamrick, Esq., Luke Levasseur, Esq., and Phillip R. Dupré, Esq., Mayer Brown LLP, for Lockheed Martin Information Systems & Global Solutions, the intervenor.
Benjamin I. Klein, Esq., National Science Foundation, for the agency.
Jonathan L. Kang, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the assignment of an evaluation rating for the protester's technical proposal is denied where the rating was reasonable and consistent with the terms of the solicitation.
2. Exchanges with the awardee were clarifications, and not discussions, where the agency requested that the awardee confirm a mistake that was apparent from the face of the proposal.
3. Protest challenging the agency's conclusion that the advantages in the awardee's technical proposal merited selection of its higher-cost proposal is denied where the award decision was reasonable and consistent with the terms of the solicitation.

DECISION

CH2M Hill Antarctic Support, Inc., of Englewood, Colorado, protests the award of a contract to Lockheed Martin Information Systems & Global Solutions, of Gaithersburg, Maryland, under request for proposals (RFP) No. DACS08P2215, issued by the National Science Foundation (NSF), for support of the United States Antarctic Program (USAP). The protester argues that the agency's evaluation of its technical proposal was unreasonable, that the agency conducted unequal discussions with the awardee, and that the selection decision was flawed.

We deny the protest.

BACKGROUND

The RFP was issued on October 10, 2008, and sought proposals to provide integrated operations and science support services for the USAP. The contractor will provide support in five functional areas: (1) technical management and administration; (2) science and technical project services; (3) information technology and communications; (4) infrastructure, operations and professional services; and (5) transportation and logistics. RFP at 31.¹

The RFP anticipated award of a contract with fixed-price, cost-reimbursement, and cost-plus-fixed-fee line items, with a maximum term of 13 1/2 years, consisting of a transition period of 6 months, a base period of 4 1/2 years, and four option periods totaling 8 1/2 years. The RFP advised offerors that proposals would be evaluated on the basis the following factors, listed in descending order of importance: (1) technical, (2) past performance, (3) cost/price, and (4) extent of participation of small disadvantaged business concerns. RFP § M.2.1. The technical factor had three subfactors, listed in descending order of importance: (1) management approach, (2) technical approach, and (3) transition. RFP § M.6.1. For purposes of award, the RFP stated that the technical factor was “significantly more important than the Past Performance, Cost/Price and Extent of Participation of Small Disadvantaged Business Concerns Factors,” and that the non-cost evaluation factors, when combined, were “significantly more important” than cost/price. RFP § M.2.2.

NSF received proposals from seven offerors, including CH2M Hill and Lockheed, by the initial closing date of February 23, 2009. Following the evaluation of the offerors’ initial proposals, the agency established a competitive range consisting of the proposals of CH2M Hill, Lockheed, and a third offeror. Agency Report (AR), Tab 19-05, Source Selection Decision (SSD), at 3. The agency conducted three rounds of discussions with the offerors. The agency received final revised proposals from offerors on October 25, 2011. As discussed in detail below, NSF asked Lockheed on December 2 to clarify what the agency characterized as a mistake in its cost proposal. Id. at 7. Lockheed responded to the request on December 5, confirming that the agency’s understanding of its proposed cost was correct. Id.

¹ The agency report included a “conformed copy” of the RFP, which incorporated the 18 amendments to the solicitation. All citations to the RFP in this decision are to the conformed version, unless noted otherwise.

The technical evaluation team (TET) evaluated the final proposals of each offeror in the competitive range, and prepared consensus evaluations. The agency source selection authority (SSA) reviewed the consensus evaluations, and prepared a selection decision. The SSA concurred with the TET’s overall evaluation ratings for CH2M Hill and Lockheed, which were as follows:²

	CH2M Hill	LOCKHEED
TECHNICAL		
Management Approach	Very Good/ Low Risk	Excellent/ Low Risk
Technical Approach	Excellent/ Low Risk	Excellent/ Low Risk
Transition	Very Good/ Medium Risk	Very Good/ Low Risk
PAST PERFORMANCE	OUTSTANDING	VERY GOOD
SMALL DISADVANTAGED BUSINESS PARTICIPATION	MEETS REQUIREMENTS	MEETS REQUIREMENTS
PROPOSED COST	\$1,822,910,364	\$1,876,750,676
EVALUATED COST	\$1,839,999,609	\$1,923,565,135

AR, Tab 19-05, SSD, at 20-22. The SSA concluded that CH2M Hill’s and Lockheed’s proposals were the two most highly-rated under the non-cost factors, and also proposed the lowest evaluated costs. *Id.* at 8. The SSA then compared these two proposals for purposes of award.

Although CH2M Hill’s and Lockheed’s proposals received equal ratings under the technical approach subfactor of the technical evaluation factor, the SSA found that Lockheed's proposal was nonetheless superior to CH2M Hill's proposal under each of the subfactors of the technical factor based on the individual strengths assigned to its proposal. *Id.* at 13, 18-19. With regard to the other evaluation factors, the SSA noted that CH2M Hill's past performance was superior to Lockheed's, CH2M Hill had proposed a lower cost, and that the evaluation under the small disadvantaged business participation factor did not favor either offeror. *Id.* at 8. The SSA selected Lockheed’s proposal for award, based on the “significant

² The RFP stated that the offerors’ proposals would be assigned a rating under the technical factor of excellent, very good, good, fair, and poor, and a risk rating of high, medium or low risk. RFP § M.3. The RFP stated that offerors’ past performance would be assigned a rating of outstanding, very good, satisfactory, unacceptable, or unknown. RFP § M.4. For the small business factor, the RFP stated that offerors’ proposals would be rated as “meets” or “fails to meet” the requirements. RFP § M.5.

technical advantages accruing to [its] proposal under the Technical evaluation factor, which included advantages under all three technical sub-factors.” Id. at 50. The SSA noted that the technical evaluation factor was the most important factor, and concluded that the “superior technical capabilities” provided by Lockheed’s proposal merited selection at a cost premium of \$83,565,526. Id.

On December 22, NSF notified CH2M Hill that Lockheed’s proposal had been selected for award. The agency provided CH2M Hill a debriefing on January 5, 2012, and this protest followed.

DISCUSSION

CH2M Hill argues that NSF’s evaluation of its proposal was unreasonable under the management approach and transition subfactors of the technical factor. The protester also argues that the agency conducted exchanges with Lockheed after the submission of final proposal revisions that constituted an unequal reopening of discussions. Finally, the protester argues that the agency’s selection decision was unreasonable because it did not adequately explain the basis for selecting Lockheed’s higher-cost proposal, and because it departed from the stated evaluation criteria. For the reasons discussed below, we find no basis to sustain the protest.

The evaluation of an offeror’s proposal is a matter within the agency’s discretion. National Gov’t Servs., Inc., B-401063.2 et al., Jan. 30, 2012, 2012 CPD ¶ 59 at 5. In reviewing a protest against an agency’s evaluation of proposals, our Office will not reevaluate offerors’ proposals but instead will examine the record to determine whether the agency’s judgment was 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. A protester’s mere disagreement with the agency’s judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4.

Management Approach Subfactor Evaluation

CH2M Hill argues that NSF unreasonably assigned its proposal a rating of very good for the management approach subfactor, and should have instead rated its proposal excellent. We find no merit to this argument.

First, the protester argues that the RFP’s definitions for the evaluation ratings required NSF to rate its proposal under the management approach subfactor as excellent. The relevant definitions for the ratings were set forth in the RFP as follows:

Excellent	A proposal of exceptional merit which exceeds the RFP requirements in a way beneficial to the Government. One or more significant strengths must have been found. No deficiency or significant weakness exists.
Very Good	A proposal which demonstrates overall competence in meeting the RFP requirements. One or more significant strengths must have been found and strengths outweigh any significant weaknesses or weaknesses that exist. No deficiency exists.

RFP § M.3.1. CH2M Hill notes that the agency’s evaluation of its proposal for this subfactor identified three strengths and two significant strengths, and did not identify any weaknesses or deficiencies. AR, Tab 19-05, SSD at 9-11, 22-23. CH2M Hill contends that because its proposal did not have any weaknesses, significant weaknesses, or deficiencies, and had at least one significant strength, the agency was required to rate its proposal as excellent, rather than very good.

We think that the protester’s argument is not supported by the plain language of the solicitation. Although the definition of an excellent rating requires “one or more significant strengths,” and the absence of any deficiencies or significant weakness, the protester ignores the first sentences in the definitions for both the excellent and very good ratings. As indicated, an excellent rating is warranted where a proposal demonstrates “exceptional merit which exceeds the RFP requirements in a way beneficial to the Government.” RFP § M.3.1. The RFP plainly did not contemplate, as the protester suggests, that the evaluation ratings would be based on a mechanical tallying of the strengths and weaknesses assigned to a proposal.

Instead, as contemplated by the solicitation, the agency exercised its judgment in assessing the overall merit of CH2M Hill’s proposal, based on the evaluated strengths and weaknesses. Specifically, the SSA’s evaluation of CH2M Hill’s proposal under the management subfactor concluded that the identified strengths and significant strengths did not merit an excellent rating: “While the performance and quality management aspects of this offer were sufficient, they do not include any features that lead me to conclude that this proposal is an exceptionally meritorious one.” AR, Tab 19-05, SSD, at 24. The protester does not demonstrate that the agency’s judgment in assessing a very good rating was unreasonable. See VT Griffin Servs., Inc., supra.

CH2M Hill also argues that the very good rating assigned to its proposal for the management approach subfactor was unreasonable in light of the protester’s past performance rating of outstanding. In particular, CH2M Hill notes that NSF found that it had received “significant industry recognition for the quality of work performed.” AR, Tab 19-05, SSD, at 27. The RFP, however, did not provide for the consideration of offerors’ past performance under the technical evaluation factor or

subfactors. See RFP §§ M.6.1, M.6.2. For this reason, we find no merit to the protester's argument that the protester's positive past performance required the agency to assign it a higher rating under the management subfactor. Cf. GlassLock, Inc., B-299931, B-299931.2, Oct. 10, 2007, 2007 CPD ¶ 216 at 6 (protest sustained where agency improperly assigned strengths related to offeror's experience and past performance under an evaluation factor which did not encompass experience or past performance).

Based on our review, CH2M Hill has not shown that its evaluation under the management approach subfactor was unreasonable.

Transition Subfactor Risk Evaluation

Next, CH2M Hill argues that NSF unreasonably assigned its proposal a medium risk rating under the transition subfactor. The protester argues that the agency's evaluation of risks arising from its approach to migrating the USAP data center to a new location was not reasonable because the agency did not consider the protester's responses to the agency's discussion questions.

During discussions, the agency noted that CH2M Hill had proposed to migrate the USAP data center from the incumbent contractor's current location in Centennial, Colorado, to a new facility. AR, Tab 022-03C-03, CH2M Hill Discussions Questions (Sept. 15, 2011), at 1-2. The agency expressed concerns regarding the proposed migration, as follows:

Although the migration plans detail mitigating measures to shift operations over the period of a weekend to decrease impact to USAP operations, NSF is concerned that this approach understates the risk and complexity of moving the data center from the current location.

Id. at 1. The agency further explained that its independent analysis of the transition requirements indicated that there would not be sufficient time to accomplish a "low-risk, seamless migration" of the data center from its current location prior to the scheduled expiration of the incumbent contractor's lease on April 30, 2012. Id. at 2. The agency asked CH2M Hill to provide information concerning "contingencies CH2M Hill is proposing to assure a successful migration" of the data center, including plans to extend the existing lease if needed. Id.

In its response to the discussion question, CH2M Hill stated among other things that it had contacted the landlord of the current data center facility to begin negotiating a lease extension. AR, Tab 022-21D, CH2M Hill Technical Proposal (Sept. 30, 2011), vol. II, at 275, 292a. The protester also provided additional information concerning a five-point plan for mitigating risk, which included utilizing employees who had performed similar duties in the past, undertaking a "full backup of the systems," and

“regularly update[ing] the CH2M Hill employees . . . and the NSF on the plan and what to expect so that there are no surprises.” Id. at 292a-292g.

The TET ultimately found that CH2M Hill’s revised proposal for the transition factor merited an overall rating of very good. With regard to CH2M Hill’s proposal to relocate the data center, however, the agency concluded that “[t]he proposal does not demonstrate that the schedule and risks associated with this relocation have been appropriately mitigated or that sufficient contingency was allowed to minimize disruptions and inefficiencies while maintaining uninterrupted services to the USAP during contract performance.” AR, Tab 022-04C-03, CH2M Hill Consensus Evaluation, at 6. Based on these concerns, the TET assigned CH2M Hill’s proposal a medium risk rating for the transition factor.

In the selection decision, the SSA concurred with the medium risk rating. AR, Tab 19-05, SSD, at 18. In this regard, the SSA found that CH2M Hill’s proposed approach involved a “compressed time-frame,” and that the approach posed risks that had “not been appropriately mitigated,” and did not provide “sufficient contingency . . . to minimize disruption and inefficiencies while maintaining uninterrupted center availability.” Id. Additionally, the SSA explained the risks of the protester’s transition plans as follows:

Relocation of the USAP data center is not a trivial matter, the program relies upon the capabilities of this center to support the computing and communications system needed to work in Antarctica. It is a complex undertaking that NSF has been studying independently of this solicitation. The concern about risk mitigation is sufficient to support the MEDIUM proposal risk assigned to this proposal under the sub-factor.

AR, Tab 19-05, SSD, at 27. The SSA concluded that the key difference between CH2M Hill’s and Lockheed’s proposed transition approach was that the protester proposed to relocate the data center, while Lockheed proposed to lease the existing facility and operate the data center from its current location. Id. at 18-19.

CH2M Hill primarily argues that the record does not demonstrate whether the agency considered its responses to the discussions questions. In particular, the protester argues that the agency’s statement that “a short-term extension of the aforementioned facility lease will be needed to facilitate accomplishing the work,” AR, Tab 19-05, SSD, at 18, demonstrates that the agency did not understand that the protester intended to negotiate a lease extension with the owner of the facility that houses the data center.

We do not think that this statement in the selection decision demonstrates that the agency was unaware of the protester’s efforts to negotiate a lease. The selection decision does not state, for example, that CH2M Hill failed to address the need for a

lease extension, or that CH2M Hill was unaware that a lease extension was required. Instead, the selection decision merely notes, as a factual matter, that a lease extension would be required to accommodate the proposed relocation.

Moreover, as indicated above, the record shows that the TET consensus evaluation was based on a review of CH2M Hill's revised proposal, which discussed the migration plan as follows:

[CH2M Hill] proposes to perform the relocation by June 30, 2012. The proposal does not demonstrate that the schedule and risks associated with this relocation have been appropriately mitigated or that sufficient contingency was allowed to minimize disruptions and inefficiencies while maintaining uninterrupted services to the USAP during contract performance. (Section 3.7, p. 292).

AR, Tab 022-04C-03, CH2M Hill Final Consensus Report, at 6. This evaluation cites "Section 3.7, p. 292," which is the section of CH2M Hill's revised proposal titled "3.7 Additional Proposal Information." AR, Tab 022-21D, CH2M Hill Technical Proposal (Sept. 30, 2011), vol. II, at 292. This section of CH2M Hill's proposal addressed its five-point plan to mitigate risks in the data center migration, as well the protester's outreach to the landlord of the current data center facility. Id. at 292a. Section 3.7 was not present in the version of CH2M Hill's proposal that was submitted prior to agency's September 15, 2011, discussions regarding this matter. On this record, we find no merit to the protester's argument that the agency failed to consider CH2M Hill's response to the discussion questions regarding the data center.

Additionally, to the extent that the protester argues that the agency should have given more weight to the protester's proposed mitigation approach for the risk posed by relocating the data center, the protester does not demonstrate that the agency's evaluation was unreasonable but only disagrees with the agency's judgment. See VT Griffin Servs., Inc., supra.

Based on our review, CH2M Hill has not shown that its evaluation under the transition approach subfactor was unreasonable.³

³ Additionally, CH2M Hill argues that NSF's evaluation of the transition subfactor failed to consider the agency's positive assessment of the protester's past performance, which included successful migrations/relocations of data centers. As discussed above, however, the protester incorrectly assumes that past performance was to be considered in the evaluation of the technical evaluation subfactors. See RFP §§ M.6.1, M.6.2.

Post-Final Proposal Exchanges with Lockheed

Next, CH2M Hill argues that NSF improperly reopened discussions with Lockheed concerning its cost proposal after the submission of the final round of proposal revisions. Supp. Protest (Feb. 17, 2012). Specifically, the protester contends that an exchange between NSF and Lockheed on December 5, 2011, constituted discussions because it permitted the awardee to revise its cost proposal. Id. NSF responds that the exchanges with Lockheed constituted clarifications, rather than discussions. We agree with the agency.

If an agency holds or reopens discussions with one offeror, it must hold discussions with all offerors whose proposals are in the competitive range. Federal Acquisition Regulation (FAR) § 15.306(d)(1); Environmental Quality Mgmt., Inc., B-402247.2, Mar. 9, 2010, 2010 CPD ¶ 75 at 6. Clarifications, however, are limited exchanges that agencies may conduct to allow offerors to clarify certain aspects of their proposals or to resolve minor or clerical mistakes. FAR §15.306(a)(2); Booz Allen Hamilton, Inc., B-405993, B-405993.2, Jan. 19, 2012, 2012 CPD ¶ 30 at 12. An agency may allow an offeror to correct a mistake or clerical error in a cost proposal through clarifications (as opposed to discussions); both the existence of the mistake or clerical error and the amount intended by the offeror must be apparent from the face of the offer. Joint Venture Penauillie Italia S.p.A; Cofathec S.p.A; SEB.CO S.a.s; CO.PEL.S.a.s., B-298865, B-298865.2, Jan. 3, 2007, 2007 CPD ¶ 7 at 8. Requesting clarification from one offeror does not trigger a requirement that the agency seek clarification from other offerors. Serco Inc., B-406061, B-406061.2, Feb. 1, 2012, 2012 CPD ¶ 61.

During discussions, NSF noted that Lockheed's June 11, 2011, cost proposal appeared to have a discrepancy between the hours proposed in attachment L-9, which was to address the labor costs for the prime contractor, and attachment L-10, which was to address the combined labor costs for the prime contractor and its proposed subcontractors. AR, Tab 028-05, Lockheed Discussion Question (Sept. 14, 2011). In particular, the agency stated that "[t]he L-9 staffing hours seem to be quite high and do not match the direct labor dollars proposed." Id. The agency further noted that the labor hours listed in attachment L-10 for the base year appeared to have a mathematical error, and should have been [deleted], instead of [deleted] hours. Id. In contrast, attachment L-9, which should have contained only the prime contractor hours, totaled [deleted] hours--which appeared to be overstated. Id. NSF requested that Lockheed explain the discrepancy.

In response, Lockheed confirmed that the agency's calculation for attachment L-10 was correct, and should have reflected [deleted] hours for the prime and subcontractor hours. AR, Tab 028-05, Lockheed Discussion Response, (Sept. 30, 2011). The awardee stated that the error within attachment L-10 was due to the omission of certain hours for a subcontractor. Id. With regard to the discrepancy between attachments L-9 and L-10, the awardee explained that attachment L-9 had

double-counted the hours for Lockheed Martin Systems Integration (LMSI), resulting in the overstated amount. Id.

Despite these discussions regarding Lockheed's double-counting error, the agency subsequently noted an error in the awardee's October 25 revised proposal, which was the final proposal requested from offerors. The agency sent a letter to Lockheed on December 2 "seeking clarification to confirm what appears to be a clear mistake in the total staffing hours assigned to Attachment L-9 in your Final Proposal Revision." AR, Tab 028-02, Letter from Agency to Lockheed (Dec. 2, 2011), at 1.

The agency's clarification request noted that the September 2011 discussions, cited above, had confirmed that Lockheed had erroneously double-counted hours for LMSI, resulting in an overstated labor hour amount for attachment L-9, and therefore a discrepancy between attachments L-9 and L-10. Id. The agency stated that its review of Lockheed's October 25 proposal identified what the agency believed was "the same inconsistency between the completed Attachment L-9 and Attachment L-10." Id. The agency provided two tables summarizing what the agency believed was the same double-counting error, resulting in a discrepancy between what appeared to be the correct number of hours in attachment L-10, and a higher amount for attachment L-9. Id. at 2-3. NSF requested that Lockheed confirm that the proposed amount for attachment L-10 of [deleted] for the base and option periods was correct. Id. at 3.

On December 5, Lockheed advised the agency that it "confirms the result of the [NSF's] analysis and concurs with the results stated in the letter. There is no change to our proposed price." AR, Tab 028-03, Letter from Lockheed to Agency (Dec. 5, 2011), at 1.

In the selection decision, the SSA noted that the exchanges with Lockheed had taken place, and described them as follows:

NSF sought clarification from Lockheed concerning a clear mistake in recording in the total staffing hours proposed by the offeror as set forth in its completed Attachment L-9 as described in the Contract Officer's letter dated December 2, 2011. Lockheed confirmed NSF's analysis of the mistake by letter dated December 5, 2011.

AR, Tab 19-05, SSD, at 7.

CH2M Hill argues that NSF's December 2 request to Lockheed constituted discussions, rather than clarifications, because the agency had no basis to conclude that Lockheed had made a mistake, nor any basis to know what the awardee had intended to propose as its costs. The protester, in essence, argues that the

exchanges between the agency and awardee permitted Lockheed to revise its proposal by resolving a discrepancy in its proposal that was not obvious on its face.

As shown above, however, NSF was made aware as a result of discussions with Lockheed in September 2011 that the awardee had made an error in its June 11 proposal by double-counting the proposed hours for LMSI in attachment L-9 of its cost proposal. The agency subsequently noted what appeared to be the same error in Lockheed's October 25 proposal, that is, a double-counting of LMSI's hours in attachment L-9, which again resulted in an apparent discrepancy between attachments L-9 and L-10. AR, Tab 028-02, Letter from Agency to Lockheed (Dec. 2, 2011), at 1. The agency therefore asked Lockheed to confirm the agency's understanding that the double-counting error resulted in an overstated amount for attachment L-9, and that attachment L-10 showed the correct number of labor hours for the base and option years; the agency did not, however, provide the awardee an opportunity to submit a revised cost. On this record, we conclude that NSF's exchanges with Lockheed on December 5 constituted a clarification of a mistake, and not discussions.

Additionally, CH2M Hill contends in its February 17 supplemental protest that there is a discrepancy between the proposed labor hours for the base year in attachment L-10 of Lockheed's October 25 proposal and, and what the protester assumes was a different value in attachment L-10 of Lockheed's September 30 proposal--a discrepancy that the protester argues indicates that the agency improperly permitted the awardee to revise its proposed cost. In this regard, the protester notes that offerors were not permitted to revise their labor hours in the October 25 proposals, as RFP amendments 17 and 18 limited proposal revisions to non-labor costs. RFP amend. 17 at 3; amend. 18 at 2.

As discussed above, NSF's September 14 discussions notice asked Lockheed to confirm whether the labor for the base period reflected in attachment L-10 should have been [deleted] hours; Lockheed confirmed that this was correct. AR, Tab 028-02, Letter from Agency to Lockheed (Dec. 2, 2011), at 3; Tab 028-03, Letter from Lockheed to Agency (Dec. 5, 2011), at 1. NSF's December 2 letter advised Lockheed that the agency had again identified a variance between the labor hour totals for attachments L-9 and L-10; a table in this letter stated that Lockheed's October 25 proposal included [deleted] labor hours for the base period in attachment L-10. AR, Tab 028-02, Letter from Agency to Lockheed (Dec. 2, 2011), at 2.

The protester argues that because Lockheed confirmed to NSF on September 30 that its June 11 proposal should have reflected [deleted] hours in the attachment L-10 summary, the awardee's September 30 proposal likely included the same number of labor hours. Based on this assumption, and the fact that Lockheed's October 25 proposal set forth [deleted] hours for option year one, CH2M Hill argues

that NSF must have permitted Lockheed to revise its proposed labor costs for option year one to [deleted] labor hours at some point after September 30.

The record shows, however, that CH2M Hill's assumption is incorrect. Although Lockheed's September 30 response to the discussion question confirmed that its June 11 proposal should have reflected a total of [deleted] hours for attachment L-10, Lockheed also revised those proposed costs in its September 30 proposal to [deleted] hours--as it was permitted to do. Supp. AR (Feb. 23, 2012), attach. 1, Lockheed Cost Proposal (Sept. 30, 2011). Thus, the revised amount was reflected in Lockheed's September 30 proposal, as well as its October 25 cost proposal--which was the subject of the agency's December 2 request for clarification. For these reasons, we find no basis to sustain the protest concerning NSF's clarifications of Lockheed's cost proposal after final proposal revisions were submitted.

Untimely Protest Issues

In addition to the issues discussed above, CH2M Hill also raises several untimely protest arguments, which we dismiss.

First, as discussed above, CH2M Hill argues that NSF unreasonably assigned its proposal a medium risk rating under the transition subfactor because the agency had not adequately considered the protester's response to discussions questions regarding this issue. In addition to this argument, CH2M Hill also argued for the first time in its February 21 comments on the agency report that NSF's assessment of a medium risk rating for its proposal under the transition subfactor was unreasonable because risks arising from the data center should not have been evaluated under this subfactor. Protester's Comments (Feb. 21, 2012) at 11. The protester was advised during its debriefing, however, that the agency had assessed a weakness for its proposal concerning the data center, and that the weakness had resulted in the medium risk rating for the transition subfactor. Protest at 15. CH2M Hill could have, but did not, raise the argument that the data center should not have been considered part of the transition subfactor evaluation in its initial protest. We therefore dismiss this argument as untimely because it was not filed within 10 days of when CH2M Hill knew or should have known of the basis for its protest. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2011).

CH2M Hill also raised a number of other protest arguments in its February 21 comments that were not raised in its initial protest: (1) the consensus evaluations for CH2M Hill's and Lockheed's technical proposals did not adequately explain why strengths and weaknesses identified by individual evaluator notes for each offeror's proposal were not adopted in the consensus reports; (2) the agency unreasonably identified a strength for Lockheed's proposed location of its offices; and (3) the agency drew unreasonable conclusions regarding the offerors' award fees in comparing Lockheed's and CH2M Hill's proposed costs. Protester's Comments

(Feb. 21, 2012) at 6-10, 14, 17-21. These arguments were all based on documents that were provided to CH2M Hill by NSF on January 27, several days before the agency provided its report on the protest. This early document production included the selection decision, the TET consensus evaluations for the protester and awardee, and the individual TET evaluator notes. These arguments are therefore dismissed as untimely because they were raised more than 10 days after receiving the documents. Bid Protest Regulations, 4 C.F.R. §21.2(a)(2); see also FR Countermeasures, Inc., B-295375, Feb. 10, 2005, 2005 CPD ¶ 52 at 9-10 (the fact that a protester receives documents as part of an early production of documents does not suspend the application of our timeliness rules).

CH2M Hill also raises, in a February 29 filing, untimely arguments, regarding the agency's evaluation of the awardee's cost proposal. Some background needs to be provided to understand why these arguments are untimely.

As indicated above, CH2M Hill received documents on January 27, including the selection decision, which stated that the agency had sought clarification of an apparent error in Lockheed's cost proposal, AR, Tab 19-05, SSD, at 7. On February 6, CH2M Hill filed a supplemental protest, arguing that the agency conducted unequal discussions. Supp. Protest (Feb. 6, 2012), at 3-4. On February 9, the agency provided as part of the agency report a response to the February 6 supplemental protest. The agency report provided NSF's December 2, 2011, letter seeking clarifications, Lockheed's December 5 response to the request for clarifications, and several spreadsheets detailing the agency's analysis of Lockheed's cost proposal.

On February 17, CH2M Hill filed a supplemental protest arguing that there was a discrepancy between the number of labor hours proposed by Lockheed for the base year of attachment L-10 in its September 30 and October 25 proposals. On February 21, CH2M Hill filed its comments on the agency report; these comments addressed the arguments raised in its February 6 supplemental protest, and the agency's February 9 report. As discussed above, the protester argued: (1) the agency's exchanges with Lockheed were not merely clarifications because the agency could not have known what the awardee had intended to propose, and (2) the alleged discrepancies between the awardee's September and October 2011 proposals in attachment L-10 implies that the agency improperly permitted Lockheed to revise its proposed labor hours after the submission of its September proposal.

On February 23, NSF filed a supplemental report addressing the protester's February 17 protest. In this report, the agency provided an excerpt of Lockheed's September 30, 2011, proposal, showing that it had proposed [deleted] labor hours for the base year in attachment L-10.

Also, on February 23, 2012, our Office asked the agency to confirm that part of the record relied upon by the agency in support of its argument that it had engaged in clarifications, rather than discussions, with Lockheed, was based on summaries of Lockheed's proposal that were prepared by the agency during the proposal evaluation. Email from GAO to Agency (Feb. 23, 2012). On February 29, the agency confirmed that certain of the documents had been prepared by the agency as part of its evaluation of Lockheed's proposal. Agency Supp. Response (Feb. 29, 2012) at 9.

On February 29, CH2M Hill filed its comments on NSF's February 23 response. In these comments, CH2M Hill raised new arguments relating to different alleged inconsistencies within and between the total number of labor hours (for the base and all option years) proposed in attachments L-9 and L-10 of Lockheed's October 25 proposal. CH2M Hill argued that these discrepancies show that the agency could not have known what Lockheed had intended to propose. Protester's Comments (Feb. 29, 2012) at 6-7.

These arguments are untimely because they are based on documents that were provided to the protester on February 9, but were not raised until February 29. In this regard, the protester's February 17 supplemental protest argued that there was a discrepancy between the base year labor hours in attachment L-10 of Lockheed's September 30 and October 25 proposals. In contrast, the protester's February 29 comments argued that there was a different discrepancy between the total number of labor hours for the base and option years in attachments L-9 and L-10 of Lockheed's October 25 proposal. Because the protester was provided the relevant documents on February 9, but did not raise its new arguments until 20 days later, these arguments are also untimely.⁴ 4 C.F.R. § 21.2(a)(2).

⁴ CH2M Hill contends that its argument, which was filed on the afternoon of February 29, is timely because it did not know until NSF confirmed, on the morning of February 29, that certain of the documents provided by the agency had been prepared by the agency evaluators. Protester's Comments (Mar. 6, 2012) at 7. The protester does not explain, however, how this information affected the timeliness of this protest argument, nor does the protester explain why it could not have filed its additional protest arguments until it knew this information. In any event, CH2M Hill demonstrates in its February 21 comments that it knew that the documents in question were "NSF-prepared charts." Protester's Comments (Feb. 21, 2011) at 22. Moreover, neither the questions from our Office on Feb. 23, 2012, nor the agency's response on February 29, 2012, raised new information that was unavailable to the protester when it filed its February 21, 2012 comments.

Source Selection Decision

Finally, CH2M Hill argues that NSF's selection decision was unreasonable, and was not adequately documented. We find no merit to this argument.

Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of technical and cost evaluation results; cost/technical trade-offs may be made, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the evaluation criteria. World Airways, Inc., B-402674, June 25, 2010, 2010 CPD ¶ 284 at 12. Where a cost/technical tradeoff is made, the source selection decision must be documented, and the documentation must include the rationale for any tradeoffs made, including the benefits associated with additional costs. FAR § 15.308; The MIL Corp., B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 13.

As discussed above, the SSA made a detailed assessment of CH2M Hill's and Lockheed's proposals, including point-by-point comparisons of the relative strengths and weaknesses of each offeror's proposal under the individual evaluation factors and subfactors. See AR, Tab 19-05, SSD, at 9-27. The SSA concluded that Lockheed's proposal merited award, based on the following findings:

The selection is based on the significant technical advantages accruing to this proposal under the Technical evaluation factor, which included advantages under all three technical sub-factors, Management Approach, Technical Approach and Transition. Payment of an additional \$83,565,526 (or 4.54%) over the contract's maximum term is clearly warranted considering the superior technical capabilities Lockheed brings to this award.

AR, Tab 19-05, SSD, at 50.

CH2M Hill first argues that the selection decision did not explain why Lockheed's higher-cost proposal merited award. Although CH2M Hill acknowledges that the SSA's analysis provided a point-by-point comparison of the relative strengths and weaknesses of the offerors' proposals, the protester contends that this analysis was merely for the purpose of establishing the ratings under the evaluation factors and subfactors. The protester contends that such analysis was insufficient to support the award decision.

To the extent that the protester argues that the SSA's summary of the award decision was required to restate or reiterate each of the strengths identified for Lockheed's proposal, we disagree. Instead, we think that the record shows that the SSA reasonably relied on the collective effect of the individual strengths that were the basis for the conclusion that Lockheed's technical proposal was superior to

CH2M Hill's. See AR, Tab 19-05, SSD, at 50. Based on this conclusion, the tradeoff decision reasonably concluded that the technical advantage, as set forth in the detailed analysis, merited the cost premium for Lockheed's proposal.⁵

CH2M Hill also argues that, by emphasizing the strengths under Lockheed's technical proposal, the SSA abandoned the evaluation scheme set forth in the RFP "because NSF's flawed standard necessarily rendered all other factors meaningless." Protester's Comments (Feb. 21, 2012) at 16. We find no merit to this argument. The RFP stated that the technical evaluation factor was "significantly more important" than any of the other evaluation factors, and that the non-cost factors were "significantly more important" than the cost factor. RFP § M.2.2. Under this evaluation scheme, the SSA was within his discretion to conclude that Lockheed's strengths under the technical factor, which was the most important evaluation factor, outweighed CH2M Hill's advantages under the second and third most important factors, past performance and cost. Nothing in the selection decision demonstrates that the SSA abandoned the evaluation criteria. On this record, we find no basis to sustain the protest.

The protest is denied.

Lynn H. Gibson
General Counsel

⁵ CH2M Hill similarly argues that the agency did not adequately explain how the agency concluded that the strengths of Lockheed's proposal translated into benefits that offset the \$83 million cost premium as compared to the protester's proposal. The record shows, however, that the SSA identified numerous strengths in Lockheed's proposal, and that these strengths, collectively, merited award. Although FAR § 15.308 requires agencies to identify and document the factors supporting an award, "that documentation need not quantify the tradeoffs that led to the decision." See General Dynamics-Ordinance & Tactical Sys., B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 8; Advanced Fed. Servs. Corp., B-298662, Nov. 15, 2006, 2006 CPD ¶ 174 at 5.