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Comptroller General  
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United States Government Accountability Office  
Washington, DC 20548

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## Decision

**Matter of:** TransAtlantic Lines, LLC

**File:** B-411242; B-411242.2

**Date:** June 23, 2015

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Noah B. Bleicher, Esq., and Nora K. Adkins, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest challenging the technical acceptability of the awardee's proposed vessel is denied where the vessel's characteristics met the solicitation requirements, and the protester's attempt to impose additional requirements is contrary to the solicitation terms.
  2. Protest challenging the technical acceptability of awardee's proposed liner service schedule is denied where the awardee's proposed schedule complied with the requirements of the solicitation.
  3. Protest challenging the agency's conduct of discussions is denied where the record reflects that discussions were neither misleading nor unequal; discussions regarding unbalanced pricing did not mislead the protester into increasing its price, and the agency tailored the discussions to concerns specific to each offeror's price proposal.
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### DECISION

TransAtlantic Lines, LLC, a small business of Greenwich, Connecticut, protests the award of a contract to Schuyler Line Navigation Company, LLC, a small business of Annapolis, Maryland, under request for proposals (RFP) No. HTC711-14-R-W001, which was issued by the Department of Defense, United States Transportation Command (TRANSCOM), for cargo transportation services. TransAtlantic

challenges the technical acceptability of Schuyler's proposal and protests that the agency conducted misleading and unequal discussions.

We deny the protest.

## BACKGROUND

The RFP, issued by TRANSCOM on September 10, 2014, as a small business set-aside for commercial services, sought proposals for dedicated liner service for containerized and breakbulk cargo between Jacksonville/Blount Island, Florida and the U.S. Naval Station Guantanamo Bay, Cuba (GTMO). RFP at 1; Performance Work Statement (PWS) § 1.A. The RFP contemplated the award of a fixed-price requirements contract for a base year and two option years. RFP at 3-4, 35. Pursuant to the RFP, award would be made to the lowest-priced, technically-acceptable (LPTA) offeror. Id. at 11. The RFP identified the following non-price evaluation factors, under which proposals would be rated as acceptable or unacceptable: technical capability, past performance, and information assurance and cyber security.<sup>1</sup> Id. at 12.

With respect to technical capability, the RFP instructed offerors to submit written narratives demonstrating the offeror's understanding of the PWS requirements and explaining how the offeror would meet the solicitation requirements. Id. at 10-11. In addition, the RFP identified three technical capability subfactors: equipment, management of operations, and schedule. Id. at 10. With respect to equipment, the RFP first instructed offerors to "identify the vessel(s) . . . to be utilized for this contract" and to "[d]escribe the quantity and type of equipment proposed to perform the requirements." Id. at 10. The RFP advised that offerors' descriptions of the proposed vessel(s) and equipment had to be "sufficient to ascertain compliance" with several specific PWS sections, including those related to vessel cargo space, equipment, and GTMO's port characteristics. Id. With respect to the management of operations subfactor, the RFP required, among other things, that offerors describe their planned approach to meeting and managing several PWS requirements, such as port operations and transportation of hazardous cargo. Id. With respect to the schedule subfactor, the RFP required that offerors propose a liner schedule that met the PWS's departure, arrival, and transit requirements. Id.

Pursuant to the RFP, TRANSCOM would evaluate the offeror's technical capability to "determine the degree to which the information provided by the offeror in its proposal demonstrates the offeror's ability to provide the equipment and resources needed to successfully accomplish the objectives of the Performance Work Statement (PWS), as well as manage, supervise, and perform the required services

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<sup>1</sup> The RFP also established a preference for Voluntary Intermodal Sealift Agreement (VISA) program participants. RFP at 12.

in accordance with the PWS.” Id. at 13. If the proposal clearly met the minimum requirements of the solicitation, an acceptable rating would be assigned. Id. If a proposal was rated unacceptable under any subfactor, the proposal’s overall technical rating would be unacceptable. Id.

With respect to price, the RFP instructed offerors to complete a pricing schedule--provided to offerors as an attachment to the RFP--listing proposed individual rates for 105 line items under four categories: accessorial, ocean, single factor, and fuel.<sup>2</sup> Id. at 9; see id., attach. 2, at 116-23. The RFP advised that TRANSCOM would evaluate individual rates, the proposed price for each period of performance, and the total proposed price to ensure fair and reasonable prices. Id. at 12. The RFP further provided, “Unreasonably high prices may result in elimination of an offeror from further consideration.” Id.

### Proposal Submission

Two offerors, TransAtlantic and Schuyler, submitted proposals prior to the submission deadline.<sup>3</sup> Contracting Officer’s (CO) Statement at 5. A four-person technical evaluation team (TET) evaluated the two proposals under each of the technical capability subfactors and ultimately assigned both proposals acceptable ratings. Agency Report (AR), exh. 26, Technical Evaluation Narrative, at 2-7. The proposals also were rated acceptable under the past performance and information assurance and cyber security factors. Id., exh. 32, Schuyler Past Performance Evaluation, at 2; exh. 33, TransAtlantic Past Performance Evaluation, at 4; exh. 34, Competitive Range Determination, at 2. However, with respect to price, the agency’s source selection evaluation board (SSEB) initially concluded that TransAtlantic’s total proposed price of \$17,782,987.50 and Schuyler’s total proposed price of \$19,692,588.50 were not fair and reasonable due to high rates for

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<sup>2</sup> Accessorial line items included such tasks as cargo handling and the leasing of tank containers of different sizes and types. RFP, attach. 2, at 117. A single factor line item included all transport charges except for any bunker adjustment factor and accessorial ordered in the booking. PWS app. 3, at 45. The single factor line items here identified different origins, destinations, container sizes, and container types. RFP, attach. 2, at 119.

<sup>3</sup> TransAtlantic previously had provided similar liner service for TRANSCOM under a predecessor contract. CO Statement at 2. Thereafter, TRANSCOM awarded Schuyler a contract for this liner service in October 2013. Id. TransAtlantic protested that award, and the agency ultimately terminated the contract and cancelled the underlying solicitation in response to the protest. Id.; see TransAtlantic Lines, LLC, B-409045, Nov. 4, 2013. Since April 2013, sealift transportation services for GTMO have been provided by TransAtlantic via government bills of lading issued by TRANSCOM. CO Statement at 2.

certain line items.<sup>4</sup> Id., exh. 34, Competitive Range Determination, at 2; exh. 61, Price Analysis Report, at 7, 12.

More specifically, the price analysis concluded that six of TransAtlantic's individual rates were "significantly overstated." Id., exh. 34, Competitive Range Determination, at 2. In addition, the SSEB also noted "the presence of significantly overstated and significantly understated line items rates," which raised the concern of unbalanced pricing. Id. (As an illustrative example, the price evaluation team highlighted that TransAtlantic's "extremely high container rates are being offset by the low container rates in an attempt to maintain a specific Total Evaluated Price.") AR, exh. 61, Price Analysis Report, at 7. With respect to Schuyler's proposed rates, the evaluators found that 12 line items in the accessorial and single factor categories were "unreasonably high," and concluded that two individual mileage rates in the base year, as well as the firm's [deleted] percent escalation in the option years, were also unreasonable. Id., exh. 34, Competitive Range Determination, at 3.

Consequently, TRANSCOM entered into discussions with the two offerors in an effort to remedy the pricing concerns. See id.; see also id., exh. 61, Price Analysis Report, at 14. The agency conducted multiple rounds of discussions with both offerors. Ultimately, the firms reduced their rates for the line items at issue and provided sufficient substantiation for their prices such that the price evaluators were able to deem the proposed prices fair and reasonable. Id., exh. 61, Price Analysis Report, at 24-25. Notably, in addition to reducing its rates for certain line items, TransAtlantic also increased rates for other line items. Id. at 29. In its final proposal revision (FPR), TransAtlantic's total proposed price increased to \$20,841,427.50, whereas Schuyler's total proposed price decreased to \$16,812,960.50. Id. at 31.

As the lowest-priced, technically acceptable offeror, contract award was made to Schuyler on March 9, 2015. Id., exh. 63, Source Selection Decision Document, at 3; exh. 65, Contract No. HTC711-14-R-W001, at 1-106. TransAtlantic's protest followed.

## DISCUSSION

TransAtlantic raises several objections to the technical evaluation of Schuyler's proposal. TransAtlantic also protests various aspects of the discussions the agency

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<sup>4</sup> In its evaluation, the SSEB price evaluation team first compared proposed prices received; compared proposed prices to historical prices paid; and compared proposed prices with an independent government cost estimate. AR, exh. 61, Price Analysis Report, at 1. The price evaluation team supplemented its original analysis with two additional methodologies based on statistical calculations. Id. at 12-13.

conducted with the offerors. Our review of the protest allegations finds no basis on which to sustain the protest. We discuss TransAtlantic's primary complaints below.

### Technical Evaluation

TransAtlantic objects to the technical acceptability of Schuyler's proposed primary vessel, the Motor Vessel EOT Spar, on several bases.<sup>5</sup> Specifically, the protester asserts that the EOT Spar failed to comply with the PWS's space requirements, heavy lift requirements, hazardous waste requirements, schedule requirements, and others. Protest at 12-16; Comments/Supp. Protest at 1-21.

In a negotiated procurement, any proposal that fails to conform to material terms and conditions of the solicitation is unacceptable and may not form the basis for award. Sealift, Inc., B-409001, Jan. 6, 2014, 2014 CPD ¶ 22 at 6. The procuring agency has primary responsibility for evaluating the technical information supplied by an offeror and determining the acceptability of the offeror's proposed item or service; we will not disturb such a determination unless it is shown to be unreasonable. Alpha Marine Servs., LLC, B-292511.4, B-292511.5, Mar. 22, 2004, 2004 CPD ¶ 88 at 4.

#### Space Requirement

TransAtlantic's argument that the EOT Spar fails to comply with the solicitation's space requirements is premised on the protester's assertion that the applicable PWS specifications were based on cargo containers being loaded to their maximum weight. With respect to space commitments, the PWS provided as follows:

The minimum space available to the Government for each southbound sailing shall be seventy (70) [Forty-Foot Equivalent Units] FEUs, including twenty (20) refrigerated containers, and 2000 square feet of breakbulk cargo. The minimum space available to the Government for each northbound sailing shall be thirty (30) FEUs, including two (2) refrigerated containers, and 1000 square feet of breakbulk cargo. Each of the 40-foot spaces offered must be able to accommodate two 20-foot containers, or the vessel must have additional space to accommodate the 20 [foot] container shortfall.

PWS § 3.A. Separately, the PWS included a provision discussing the process for dealing with overweight shipping containers, which provided as follows:

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<sup>5</sup> Schuyler proposed a two-vessel solution using the EOT Spar as its primary vessel and the barge Columbia Houston with tug Atlantic Coast as its alternative vessel. AR, exh. 8, Schuyler Initial Proposal, at 82.

If the Government stuffs a container with cargo weighing in excess of the container's standard maximum weight carrying capacity or in excess of any lesser weight of which it has been given notice under this Section, it shall remove, or pay the expenses of the Contractor in removing or handling the excess weight of cargo. All consequences or liabilities that may result from excessive weight of containers stuffed by the Contractor shall be the responsibility of the Contractor. All fees or other costs incident to weighing containers shall be the responsibility of the Contractor.

PWS § 3.H.11. The PWS otherwise did not discuss cargo weight or expressly define a container's standard maximum weight.<sup>6</sup>

TransAtlantic asserts that these two PWS provisions, coupled with the fact that the PWS required the contractor to "accept bookings[] up to a vessel's space commitment," PWS § 3.B.1.2, translate into a requirement that proposed vessels be able to accommodate a minimum of 70 FEUs of fully-loaded cargo. Further, the protester represents that the standard maximum weight-carrying capacity of a 40-foot container is 112,000 pounds. Thus, the protester challenges the technical acceptability of the EOT Spar on the basis that the vessel is not large enough to accommodate the minimum cargo volumes (i.e., 70 FEUs) when the containers are loaded to their maximum capacity.<sup>7</sup>

In response, the agency maintains that the PWS did not dictate any minimum weight-carrying capabilities, nor was such information identified in the solicitation as an area to be evaluated. According to TRANSCOM, the weight of the cargo that proposed vessels could carry simply was not part of the requirements or evaluation criteria, and TransAtlantic's assertions otherwise are a distortion of the PWS requirements. Moreover, because the EOT Spar is capable of carrying over 126 FEUs plus sixty-two 20-foot containers (TEUs)--a fact not in dispute--the agency asserts that it plainly exceeded the PWS's minimum space requirements and was properly rated acceptable.<sup>8</sup> See AR, exh. 8, Schuyler Initial Proposal, at 82.

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<sup>6</sup> The PWS does, however, define heavy lift cargo as pieces and packages having a gross weight in excess of 112,000 pounds excluding wheeled or tracked vehicles. PWS app. 3, at 41.

<sup>7</sup> According to the protester's consultant, the EOT Spar can accommodate 63 FEUs of fully-loaded containers. Comments/Supp. Protest, exh. 2, Declaration of Consultant, at 5.

<sup>8</sup> Schuyler's alternate tug and barge solution offered an even larger space capacity. AR, exh. 8, Schuyler Initial Proposal, at 82.

Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Alliance Technical Servs., Inc., B-410307, B-410307.3, Dec. 1, 2014, 2014 CPD ¶ 345 at 3.

Here, we agree with the agency that the PWS did not include a weight requirement with respect to a vessel's cargo-carrying capacity. In this regard, the PWS provision regarding overweight cargo cited by the protester merely provided a process to be followed in the event that the government loaded a container with cargo that exceeded the container's weight-carrying capacity. See PWS § 3.H.11. It did not, as the protester unreasonably interprets it, impose an overall weight-carrying capacity requirement on vessels. Moreover, despite the protester's argument otherwise, we find nothing ambiguous about these PWS requirements and the related evaluation criteria. Thus, because the agency's interpretation of the relevant PWS provisions is supported by the plain language of the PWS and not otherwise unreasonable, TransAtlantic's protest allegation based on its flawed reading of the PWS fails.<sup>9</sup>

#### Hazardous Cargo

TransAtlantic also contends that the EOT Spar should have been deemed technically unacceptable because the vessel is unable to accommodate 70 FEUs of hazardous cargo. Again, we disagree with the protester's interpretation of the PWS requirements. The PWS did not include any stipulation that vessels be capable of transporting a minimum of 70 FEUs of hazardous cargo. In this regard, the PWS provided a list of hazardous materials and discussed the transportation and storage of such cargo, but it did not impose a requirement that a vessel's design be able to accommodate the storage of a specific number of containers of hazardous material. See PWS § 3.G.3; id. app. V, at 49-66. In fact, with respect to hazardous cargo, the RFP only required offerors to describe their planned approach to meeting the relevant PWS requirements. RFP at 10. The record reflects that Schuyler did just that--a point not in dispute--and the TET reasonably found Schuyler's proposal acceptable in this regard. See AR, exh. 8, Schuyler's Initial Proposal, at 103-05;

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<sup>9</sup> TransAtlantic's challenge to the EOT Spar's crane capacity is also premised on the protester's strained assertion that the PWS imposed a minimum weight specification for cargo containers. Because, in our view, the PWS did not include any requirement that proposed vessels be capable of lifting fully-loaded cargo containers, and the RFP did not contemplate the evaluation of a vessel's heavy-lift capability, see RFP at 10, this complaint also provides no basis to sustain the protest.

exh. 26, Technical Evaluation Narrative, at 4. Therefore, TransAtlantic's complaint on this basis is denied.

### Schedule

Next, TransAtlantic argues that Schuyler proposed an unacceptable schedule. As discussed above, the RFP required offerors to propose a liner schedule that met the departure, arrival, and transit requirements of the PWS. RFP at 10. For southbound service (Jacksonville to GTMO), the PWS provided as follows:

Frequency of such service must be, at a minimum, every 14 calendar days. Sailings shall be on a fixed-day-of-the-week basis, on a fixed day selected by the Contractor. Transit time from Jacksonville/Blount Island to GTMO is a maximum of 7 calendar days.

Id. § 3.B.4.1.1. For northbound service (GTMO to Jacksonville), the PWS provided as follows:

Frequency of such service must be, at a minimum, every 14 calendar days. Sailings shall be on a fixed-day-of-the-week basis, on a fixed day selected by Contractor. Transit time from GTMO to Jacksonville/Blount Island is a maximum of 18 calendar days.

Id. § 3.B.4.1.2. The PWS also stipulated timeframes for the receipt of cargo at Jacksonville, and it advised that arrivals to and departures from GTMO could only occur on weekdays and during normal business hours. Id. §§ 3.B.4.1.2, 3.B.4.1.3. In addition, the PWS required the contractor to maintain vessel schedules in an integrated booking system at least 45 calendar days in advance of the vessel sail date. Id. § 3.B.4.2.2. The PWS also provided procedures for schedule changes and slippage. Id.

In its proposal, Schuyler discussed its schedule as follows:

[Schuyler's] proposed schedule is based on the required sailing schedule and using the EOT Spar, with vessel departing Jacksonville, Florida every other Friday, arriving GTMO the following Tuesday, sailing Wednesday, calling Port Au Prince, Norfolk, and then arriving [in] Jacksonville Thursday for the next loading (i.e., within 14 days).

AR, exh. 8, Schuyler Initial Proposal, at 107-08. Schuyler also submitted two "sample" sailing schedules, one for the EOT Spar and another for its alternate vessel, the Columbia Houston. Id. at 108-09. The sample schedule for the EOT Spar indicated that the vessel would depart Jacksonville on a Friday; arrive at GTMO "about 3 days after departing Jacksonville," (on Monday "PM" or Tuesday); depart GTMO that same Tuesday; make port calls in Haiti and Virginia; and return

to Jacksonville on “Day 13-14.” Id. The firm’s sample schedule for the Columbia Houston also provided for departure from Jacksonville on a Friday; arrival at GTMO on Wednesday; departure from GTMO on Thursday; and return to Jacksonville on “Day 13.” Id. at 109. In addition to the sample schedules, the firm also included in its proposal maps charting the roundtrip voyages taking into account speed, distance, and a 10-percent “weather factor.” Id. at 110.

The TET reviewed Schuyler’s proposed schedules and assigned the proposal an acceptable rating under the subfactor.<sup>10</sup> AR, exh. 26, Technical Evaluation Narrative, at 5. TransAtlantic first objects to the acceptability of Schuyler’s proposed schedule on the basis that the schedule did not include firm, contractual dates/days. The protester also complains that offerors were only permitted to submit a single proposed liner schedule and Schuyler’s multiple schedules did not comply with the PWS.

An agency’s evaluation of technical proposals is primarily the responsibility of the contracting agency, since the agency is responsible for defining its needs and identifying the best method of accommodating them. Wyle Labs., Inc., B-311123, Apr. 29, 2008, 2008 CPD ¶ 96 at 5-6. In reviewing protests of an agency’s evaluation, our Office does not reevaluate proposals; rather, we review the record to determine if the evaluation was reasonable, consistent with the solicitation’s evaluation scheme, as well as procurement statutes and regulations, and adequately documented. See Wackenhut Servs., Inc., B-400240, B-400240.2, Sept. 10, 2008, 2009 CPD ¶ 184 at 6.

Here, we find reasonable the agency’s evaluation of Schuyler’s proposal under the schedule subfactor. First, we note that Schuyler did not take exception to any of the PWS’s schedule requirements. In addition, we see nothing objectionable with the evaluators’ determination that Schuyler’s proposed schedules complied with the PWS requirements. In this regard, Schuyler’s southbound schedules provided for departure from Jacksonville every other Friday, i.e., a fixed-day-of-the-week basis as required by the PWS, and both schedules complied with the PWS requirement to arrive at GTMO within 7 days. Likewise, Schuyler’s sailings northbound from GTMO departed on a fixed day every other week and arrived at Jacksonville within 18 days, also in accordance with the PWS. Although TransAtlantic complains that the slight flexibilities built into Schuyler’s sample schedules--e.g., arrival in GTMO in “about” 3 days--is contrary to expectations under liner service generally, the

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<sup>10</sup> With respect to the firm’s schedules, evaluators noted that Schuyler’s “[f]ixed day schedule meets the requirement and does not exceed 14 days between sailings;” that “[t]ransit time to GTMO is approximately 3 days” and “[s]outh and [n]orthbound routes are acceptable;” and that Schuyler’s “robust sailing schedule provides for very limited time in port as identified in [Schuyler’s] proposal but makes [Schuyler] acceptable.” AR, exh. 26, Technical Evaluation Narrative, at 10, 14, 18.

protester has not established that Schuyler's schedules were inconsistent with the express terms of the PWS.<sup>11</sup> In this respect, the PWS did not dictate that arrival in GTMO or Jacksonville be on a specific day; rather the PWS required the contractor to arrive within a maximum number of days, a requirement that Schuyler's schedules met. See PWS §§ 3.B.4.1.1, 3.B.4.1.2; AR, exh. 8, Schuyler Initial Proposal, at 107-09.

Equally unpersuasive is the protester's objection to Schuyler's use of two slightly different schedules for its two vessels. As an initial point, we highlight that the RFP expressly allowed for multiple vessels to fulfill the agency's requirements. See, e.g., RFP at 10 ("The offeror must identify the vessel(s) . . . to be utilized"). In fact, the PWS schedule requirements also contemplated the use of multiple vessels as evidenced by the provision that northbound service arrive in Jacksonville within 18 days, yet southbound service had to be every 14 days; that is, the same vessel need not perform both routes. See PWS at 7.

We disagree with TransAtlantic's narrow interpretation of the PWS that a single liner schedule was mandated or that multiple schedules rendered a proposal unacceptable; the PWS included neither stipulation. Indeed, in light of the fact that multiple vessels could be utilized during performance, and consistent with the PWS provision that the contractor maintain "vessel schedules" in the integrated booking system, we find TRANSCOM's consideration of Schuyler's two, slightly-different schedules--both of which comply with the PWS--to be completely reasonable. That TransAtlantic argues for a more restrictive interpretation of the PWS schedule requirements does not demonstrate that the agency's evaluation was flawed.

In sum, the protester has proffered no basis to question the technical acceptability of Schuyler's proposal.<sup>12</sup>

#### Conduct of Discussions

Next, TransAtlantic complains that TRANSCOM engaged in unequal and misleading discussions with the offerors. Notwithstanding TransAtlantic's multitude

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<sup>11</sup> The protester maintains that in the shipping industry liner service is a "regular route on a fixed schedule." Comments/Supp. Protest at 4.

<sup>12</sup> We also have considered TransAtlantic's complaint that Schuyler's proposal failed to comply with the solicitation's port operations requirements, including stevedoring services. Our review of the record confirms that Schuyler sufficiently explained in its proposal how it intended to comply with the requirements, and TRANSCOM had no reason to assume otherwise. See AR, exh. 8, Schuyler Initial Proposal, at 91, 93, 101-02. Consequently, this protest ground is denied.

of complaints, our review of the record confirms that the agency's discussions were unobjectionable.

By way of additional background, the SSEB initially deemed both offerors' prices as not fair or reasonable due to high rates for certain line items, and TRANSCOM entered into discussions with the firms. In an evaluation notice (EN) to TransAtlantic, the contracting officer identified six individual rates that were deemed "unreasonably high." AR, exh. 36, TransAtlantic Discussion Notification, at 3. The EN required TransAtlantic to "substantiate the rates" or submit a revised pricing schedule for evaluation. Id. In addition, the EN identified 21 other rates that, in conjunction with the unreasonably high prices, suggested unbalanced pricing. Id. (For instance, TransAtlantic had proposed a rate of \$0 for several of the line items identified in the EN.) Id.

In response to the EN, TransAtlantic reduced its proposed rates for the six line items identified as unreasonably high, as well as for another line item already deemed fair and reasonable (and not singled out in the EN). Id., exh. 41, TransAtlantic Proposal Revision No. 1, at 5-6. The firm also raised its rates for five other line items, including three of the 21 line items called out in the EN. Id. at 9-14. In response to the agency's concerns of unbalanced pricing, TransAtlantic explained that it already owns some of the equipment and other equipment is being provided by subcontractors [deleted]. Id. at 6-7. The firm also submitted a more general discussion to explain its low-priced items, referring to historical prices and changes in the PWS (as compared with previous contracts for similar liner service) as justification. Id.

The price evaluation team reviewed TransAtlantic's response and determined that only one of the six unreasonably high rates was reduced enough to be deemed reasonable and that TransAtlantic's written explanation "did very little to substantiate" the high rates. Id., exh. 61, Price Analysis Report, at 15-16. In addition, the price evaluators found that one of the other rates that TransAtlantic increased resulted in that rate no longer being reasonable. Id. at 15. Finally, the price evaluators noted that the firm's "atypical prices still suggest unbalanced pricing." Id. at 17. For instance, the evaluators expressed concern that TransAtlantic had priced certain line items into others, e.g., the firm included [deleted] rates in its [deleted] rates even though [deleted] may or may not be required and was a separate line item on the pricing schedule. Id. at 16-17. (The price evaluation team also found that Schuyler had not reduced all of its prices enough or sufficiently substantiated its rates to deem them fair and reasonable.) Id. at 19.

As a result, the contracting officer conducted a round of oral discussions with each offeror during which he provided each firm TRANSCOM "target rates" for the

offerors' line items still priced unreasonably high.<sup>13</sup> Id., exh. 54, Record of Discussions with TransAtlantic, at 2; exh. 55, Record of Discussions with Schuyler, at 2. Specifically, the contracting officer provided TransAtlantic target rates for six line items and provided Schuyler target rates for four other line items. Id., exh. 54, Record of Discussions with TransAtlantic, at 2-3; exh. 55, Record of Discussions with Schuyler, at 2. The contracting officer requested from both offerors further substantiation to support the high prices or reductions in the high rates. Id., exh. 54, Record of Discussions with TransAtlantic, at 4; exh. 55, Record of Discussions with Schuyler, at 3.

In response to oral discussions, TransAtlantic reduced its rates for five of the six line items the agency had identified as unreasonably high; the firm's total proposed price decreased by \$10,450. Id., exh. 43, TransAtlantic Proposal Revision No. 2, at 4-6; exh. 61, Price Analysis Report, at 20. The firm also provided additional explanation justifying its rates, including with respect to the one line item price that it did not adjust. Id., exh. 43, TransAtlantic Proposal Revision No. 2, at 4-6. The price evaluators considered TransAtlantic's revisions and concluded that the firm still had not substantiated sufficiently its rates for the line items at issue, nor reduced them to a level to be deemed fair and reasonable. Id., exh. 61, Price Analysis Report, at 20. A seventh line item was also increased to a rate such that it was no longer considered reasonable. Id. The price evaluators noted that many of TransAtlantic's rates appeared "illogical and inconsistent with customary commercial practice," and that the firm's pricing strategy--trying to stay within a certain total price--still suggested unbalanced pricing.<sup>14</sup> Id. at 23. (Schuyler, on the other hand, provided additional price substantiation such that the price evaluation team was able to determine that all of its proposed rates were fair and reasonable.) See id. at 24.

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<sup>13</sup> The contracting officer also explained the agency's methodology used to determine rate reasonableness, advising that each target rate was made up of "several data points and statistical calculations," including historical rates, competition, the government estimate, and pricing models and was a data point falling within a range in which proposed rates could be expected. AR, exh. 54, Record of Discussions with TransAtlantic, at 2; exh. 55, Record of Discussions with Schuyler, at 2.

<sup>14</sup> As an illustrative example, the price evaluators noted an unexplained disparity in TransAtlantic's refrigerated container rates. For instance, for one line item, TransAtlantic proposed a rate of [deleted] for a refrigerated container from Jacksonville "door" to GTMO door. See AR, exh. 61, Price Analysis Report, at 23. In a related item, without sufficient explanation, TransAtlantic proposed a rate of [deleted] for the same size refrigerated container from Jacksonville's "pier" to GTMO door. Id.

By letter of January 28, 2015, the agency provided TransAtlantic with a last opportunity to “further explain and support the rates in question.” Id., exh. 44, Response to TransAtlantic Proposal Revision No. 2, at 6. The letter explained that TransAtlantic “risks removal from further award consideration” if its prices could not be deemed fair and reasonable or were unbalanced.<sup>15</sup> Id. In response, TransAtlantic further reduced its rates for the line items at issue. Id., exh. 49, TransAtlantic Proposal Revision No. 3, at 3; exh. 52, TransAtlantic Proposal Revision No. 3, Updated Pricing Schedule, at 5-13. The firm also increased rates for four line items that the price evaluators previously deemed reasonable, including one of the 21 rates identified in the original EN. Id., exh. 61, Price Analysis Report, at 29; see exh. 52, TransAtlantic Proposal Revision No. 3, Updated Pricing Schedule, at 5-13. Notably, an increase in the rate for one line item in particular that had not been questioned by the agency had a \$900,000 impact in the base year and option year 1. Id., exh. 61, Price Analysis Report, at 29. In addition, TransAtlantic provided more substantiation for its rates, including the submission of its commercial tariff rate sheet demonstrating that the firm had invoiced commercial customers at comparable rates. See AR, exh. 49, TransAtlantic Proposal Revision No. 3, at 15-122.

Based on the firm’s rate decreases and additional rate substantiation, the price evaluation team deemed TransAtlantic’s proposed prices fair and reasonable. Id., exh. 61, Price Analysis Report, at 25. The price evaluators also assessed the risks associated with any unbalanced pricing and determined that because line item rates were no longer overstated, TransAtlantic’s pricing no longer suggested unbalanced pricing. Id. at 30. Ultimately, TransAtlantic’s rate decreases, coupled with the firm’s rate increases for several line items, resulted in a net increase of \$4,176,360 in the firm’s total proposed price. Id. at 24. Consequently, after the third round of discussions, Schuyler’s proposal was now the lowest-priced. Id. TransAtlantic reduced its prices in its FPR, as did Schuyler, but Schuyler remained the lowest-priced, technically-acceptable offeror by more than \$4 million. Id. at 31.

In its challenge to the conduct of discussions, TransAtlantic first complains that it was misled into increasing its price during discussions because the agency’s concerns regarding unbalanced pricing were erroneous. The protester also argues that the agency engaged in unequal discussions when it disclosed to the offerors target prices for different line items. The protester raises a similar challenge based on the level of scrutiny applied to the evaluation of responses to discussions. We have considered each of the protester’s arguments, including all related objections,

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<sup>15</sup> After receipt of the January 28 letter, TransAtlantic officials contacted the contracting officer to seek clarity on some of the points raised in the discussions letter. See AR, exh. 48, Email Record of Offerors Phone Calls, at 1. During the call, the contracting officer provided TransAtlantic a target rate for the line item that the firm had previously adjusted outside of the level deemed reasonable. Id.

and find that none offers a basis to sustain the protest. Several of the protester's challenges are discussed below.

### Misleading Discussions

In negotiated procurements, whenever discussions are conducted by an agency, they are required to be meaningful, equitable, and not misleading. Metro Mach. Corp., B-295744, B-295744.2, Apr. 21, 2005, 2005 CPD ¶ 112 at 19. In conducting discussions with offerors, an agency may not consciously mislead or coerce an offeror into raising its price. Serco Inc., B-407797.3, B-407797.4, Nov. 8, 2013, 2013 CPD ¶ 264 at 5. However, we will not find discussions to be improper where the agency in good faith provides accurate information to an offeror, even where the offeror uses that information to its ultimate competitive detriment. Serco Inc., supra. Agencies have broad discretion to determine the content and extent of discussions, and we limit our review of the agency's judgments in this area to a determination of whether they are reasonable. InfoPro, Inc., B-408642.2, B-408642.3, Dec. 23, 2014, 2015 CPD ¶ 59 at 9.

Here, the record reflects that the price evaluators had legitimate concerns regarding unbalanced pricing and properly raised those concerns during discussions. The record further demonstrates that TransAtlantic ultimately increased several rates--resulting in an increase in its total proposed price by more than \$4 million--based on the firm's business judgment and not misleading discussions.

First, although TransAtlantic's total proposed price was fair and reasonable, the price evaluators noted that TransAtlantic priced several line items unreasonably high while others were "significantly understated." AR, exh. 61, Price Analysis Report, at 3-7. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated, while others are understated. FAR § 15.404-1(g)(1); Serco, Inc., B-406683, B-406683.2, Aug. 3, 2012, 2012 CPD ¶ 216 at 10. As a general matter, unbalanced pricing may increase risk to the government and can result in payment of unreasonably high prices. FAR § 15.404-1(g)(1); see Semont Travel, Inc., B-291179, Nov. 20, 2002, 2002 CPD ¶ 200 at 3.

The record here supports the price evaluators' concerns regarding unbalanced pricing. For example, the record shows that TransAtlantic priced several line items as low as [deleted] and others as much as 1,000 percent higher than Schuyler's rates and TransAtlantic's own rates under its predecessor contract. AR, exh. 61, Price Analysis Report, at 5. Similarly, under the accessorial price category, TransAtlantic proposed [deleted] per metric ton for cargo handling services on the export side, but proposed a rate of [deleted] per metric ton for cargo handling on the import side. Id. at 6. Moreover, as noted above, the firm deliberately built the price for certain line items into the price for others, even though the agency may not require both line items at the same time, thereby exposing the agency to paying for

services not performed. Id. at 16-17, 22-23. The record also confirms as valid the evaluators' concerns that TransAtlantic's "extremely high" container rates were being offset by low container rates in an effort to maintain a specific total price. Id. at 7. On this record, we disagree with the protester that the agency's concerns regarding unbalanced pricing were erroneous.<sup>16</sup> Because the evaluators' concerns regarding unbalanced pricing were reasonable, we find nothing misleading about the agency raising the issue with TransAtlantic during discussions.

In any event, notwithstanding the reasonableness of the discussion inquiry, the record reflects that TransAtlantic's rate increases were not connected entirely to the agency's unbalanced pricing concerns. In this regard, of the 21 line items identified in the initial EN as suggestive of unbalanced pricing (when coupled with the unreasonably high rates), the record shows that TransAtlantic ultimately increased its rates for only four of those line items. See id., exh. 36, TransAtlantic Discussion Notification, at 3; exh. 41, TransAtlantic Proposal Revision No. 1, at 9-11; exh. 43, TransAtlantic Proposal Revision No. 2, at 8-10; exh. 52, TransAtlantic Proposal Revision No. 3, Updated Pricing Schedule, at 6-8; exh. 60, FPR at 5-7. In fact, in its FPR TransAtlantic maintained a \$0 rate for six line items.<sup>17</sup> Id., exh. 60, FPR, at 5.

Accordingly, the record does not support TransAtlantic's assertion that TRANSCOM misled it into increasing its price due to an unreasonable discussion of unbalanced pricing. Ultimately, TransAtlantic's decision to revise certain prices upward reflected the exercise of the firm's own business judgment and not improper conduct by the agency. See First Preston Housing Initiatives, LP, B-293105.2, Oct. 15, 2004, 2004 CPD ¶ 221 at 3. The protester's complaints on this issue are denied.

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<sup>16</sup> The protester makes the strained argument that the agency improperly failed to assess risks associated with the understated line items as part of its unbalanced pricing assessment. We find this argument wholly unpersuasive because the record reflects that the agency performed a comprehensive unbalanced pricing risk analysis that was in accord with the relevant FAR requirements. FAR § 15.404-1(g)(2); see AR, exh. 61, Price Analysis Report, at 29-30. We also find no merit to the protester's argument that the contracting officer conducted what amounted to an improper price realism analysis. Despite the protester's assertion otherwise, nothing in the record suggests that the evaluators ever considered whether low prices were indicative of a lack of understanding of the technical requirements, i.e., a primary concern in a price realism analysis. See WW Contractors, Inc., B-410825, 2015 CPD ¶ 84 at 5.

<sup>17</sup> In addition, the record reflects that TransAtlantic increased its rate for one line item in particular that was never discussed by the agency, which resulted in a gross increase of more than \$3.8 million in its total proposed price. Compare AR, exh. 12, TransAtlantic Pricing Schedule, at 4 (rates for line item [deleted]) with exh. 60, FPR, at 7.

## Unequal Discussions

Next, TransAtlantic contends that discussions were unequal because the agency provided target prices for different line items to the offerors. The protester raises similar objections about the level of scrutiny applied by the evaluators in their review of responses during discussions.

In connection with the requirement that discussions be meaningful, offerors may not be treated unequally; that is, offerors must be afforded equal opportunities to address the portions of their proposals that require revision, explanation, or amplification. Unisys Corp., B-406326 et al., Apr. 18, 2012, 2012 CPD ¶ 153 at 7. However, the requirement for equal treatment does not mean that discussions with offerors must, or should, be identical. To the contrary, discussions must be tailored to each offeror's own proposal. FAR §§15.306(d)(1), (e)(1); Metro. Interpreters & Translators, Inc., B-403912.4 et al., May 31, 2011, 2012 CPD ¶ 130 at 7.

We find nothing improper about the conduct of discussions here. As discussed above, after the submission of responses to the ENs, TransAtlantic's proposal still included six rates deemed unreasonable and Schuyler proposed four rates (for different line items) that the evaluators considered unreasonable. See AR, exh. 61, Price Analysis Report, at 15, 18. As a result, the contracting officer provided TransAtlantic with government target prices for the six line items at issue in its proposal and provided Schuyler target prices for four different line items. Id., exh. 54, Record of Discussions with TransAtlantic, at 2-3; exh. 55, Record of Discussions with Schuyler, at 2.

Here, because the rates deemed unreasonable were different for the two offerors, we find nothing improper with the agency only having disclosed target prices to the offerors for the rates at issue in their respective proposals. In this regard, the record reflects that the price discussions, including the provision of target prices, were properly tailored to address the concerns associated with each firm's proposal. TransAtlantic had already proposed reasonable rates for the four line items that Schuyler was provided target prices for, so the agency was under no obligation to provide this information to TransAtlantic. See Metro. Interpreters & Translators, Inc., supra; See also Peridot Solutions, LLC, B-408638, Nov. 6, 2013, 2013 CPD ¶ 260 at 4 (concluding that agency had no obligation to raise during discussions the issue of pricing with the protester where the protester's pricing was not unreasonable); Metcalf Constr. Co., Inc., B-289100, Jan. 14, 2002, 2002 CPD ¶ 31 at 5 (finding discussions unobjectionable where agency advised one offeror that two line item prices exceeded a government budget ceiling but did not provide protester with same information where protester's prices did not exceed budget ceilings).

In any event, the record confirms that TransAtlantic was not prejudiced by the agency's selective disclosure of target prices. In this respect, 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. Supreme Foodservice GmbH, B-405400.3 et al., Oct. 11, 2012, 2012 CPD ¶ 292 at 14. Here, the four target prices that TRANSCOM provided to Schuyler amounted to \$10,500 (based on the estimated volume) over the course of the contract's entire period of performance. AR at 15. Moreover, the record reflects that TransAtlantic already had proposed rates that were equal to or below the government's targets for the four line items at issue. See id. In fact, TransAtlantic proposed \$0 for one of the line items where the target price was \$30. Id. Thus, given the LPTA nature of this procurement and the fact that the awardee was lower-priced by more than \$4 million, we fail to see how TransAtlantic was prejudiced by the agency's decision not to provide TransAtlantic with the target prices for the four line items that TRANSCOM discussed with Schuyler.

Lastly, TransAtlantic similarly argues that the discussions were unequal because, according to the protester, the agency applied different levels of scrutiny in its evaluation of responses during discussions. As an example, TransAtlantic complains that both offerors raised increased risk as a justification for perceived higher pricing, and the agency accepted Schuyler's explanation but not TransAtlantic's. In this case, because the two offerors' discussions of risk were entirely dissimilar--both in terms of context and with regard to whether the justification influenced the price evaluation--we find no merit in the protester's objection to discussions on this basis.<sup>18</sup> In sum, TransAtlantic has furnished no basis to question the reasonableness of TRANSCOM's discussions.

The protest is denied.

Susan A. Poling  
General Counsel

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<sup>18</sup> The protester similarly complains that the agency raised unbalanced pricing concerns with TransAtlantic but not with Schuyler. We have considered this allegation and find it unpersuasive. The record simply does not reflect that it was unreasonable for the agency not to have discussed unbalanced pricing with Schuyler.