



**G A O**

Accountability \* Integrity \* Reliability

**Comptroller General  
of the United States**

**United States Government Accountability Office  
Washington, DC 20548**

**DOCUMENT FOR PUBLIC RELEASE**

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

## Decision

**Matter of:** Advanced Technologies and Laboratories International, Inc.

**File:** B-411658; B-411658.2; B-411658.3

**Date:** September 21, 2015

---

Albert B. Krachman, Esq., and Harrison H. Kang, Esq., Blank Rome LLP, for the protester.

Kenneth B. Weckstein, Esq., Pamela A. Reynolds, Esq., and Tammy Hopkins, Esq., Brown Rudnick LLP, for Wastren Advantage, Inc., the intervenor.

H. Jack Shearer, Esq., Timothy B. O’Keefe, Esq., Kevin R. Hilferty, Esq., Paul L. Whalen, Esq., and Paul R. Davis, Esq., Department of Energy, for the agency.

Heather Weiner, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### DIGEST

1. Protest that agency applied an unstated evaluation criterion is denied where the agency’s evaluation was reasonable and consistent with the terms of the solicitation.
  2. Protest challenging the agency’s evaluation of the awardee’s past performance is denied where the evaluation was reasonable and consistent with the stated evaluation criteria.
  3. Protest that the awardee’s proposal took exception to the solicitation’s requirement to submit proposals on a fixed-price basis is denied where the agency reasonably concluded that the awardee’s proposal was not contingent on particular circumstances.
- 

### DECISION

Advanced Technologies and Laboratories International, Inc. (ATL), of Gaithersburg, Maryland, a small business, protests the award of a contract to Wastren Advantage, Inc. (WAI), of Piketon, Ohio, under request for proposals (RFP) No. DE-SOL-0005750, which was issued by the Department of Energy (DOE), for laboratory analysis and testing services at the Hanford Site, along the Columbia River near

Richland, Washington. ATL challenges DOE's evaluation of its technical proposal, and WAI's past performance.

We deny the protest.

## BACKGROUND

The Hanford Site is a decommissioned nuclear production complex located along the Columbia River near Richland, Washington, the current mission of which is the remediation of nuclear waste and the protection of the Columbia River. Agency Report (AR) at 1. The Hanford Site was established during World War II to produce weapons grade plutonium, and after 50 years of plutonium production, has become the country's largest environmental cleanup project. AR at 1. In 1989, DOE, the Environmental Protection Agency, and the Washington State Department of Ecology entered into an agreement (known as the Tri-Party Agreement) for the cleanup and remediation of nuclear waste and protection of the Columbia River. Id.

DOE issued the RFP on June 4, 2014, as a small business set-aside. The solicitation anticipated the award of a fixed-price contract with additional award fee, labor hour, and cost-reimbursement contract line item numbers (CLINs) for a base period of two years with three 1-year options. RFP at B-2.<sup>1</sup>

The solicitation provided for award on a best value basis, considering the following factors: (1) technical and management approach, (2) past performance, (3) key personnel and organizational structure, (4) relevant experience, and (5) price. Id. at M-3. The non-price factors were significantly more important than price. Id. Within the non-price factors, the first two technical factors--technical and management approach, and past performance--were equal in importance, and when combined, were significantly more important than the third and fourth technical factors. Id.

DOE received proposals from four offerors, including ATL and WAI. AR at 4. ATL is the incumbent contractor for the requirement. After an initial review of proposals, the contracting officer established a competitive range of three offerors, including ATL and WAI. Id. The agency then conducted discussions with the offerors and requested final proposal revisions (FPRs) by February 19. AR at 7.

After an evaluation of FPRs, the results were as follows:

---

<sup>1</sup> Citations to the RFP are to the conformed copy provided by the agency.

	<b>ATL</b>	<b>WAI</b>
Technical & Mgmt. Approach	Good	Outstanding
Past Performance	Substantial Confidence	High Confidence
Key Personnel & Org. Structure	Outstanding	Outstanding
Relevant Experience	Outstanding	Good
<b>Price</b>	<b>\$52,055,496</b>	<b>\$44,562,457</b>

AR, Tab G, Source Selection Decision Document (SSDD), at 6.<sup>2</sup>

With regard to the technical approach and management factor, the source evaluation board (SEB) assessed two significant strengths to ATL’s FPR for its proposed approach to “safety and safety programs and its proposed innovations, investments, and improvements.” AR, Tab E1, Final SEB Report, at 55. The evaluators also assessed two strengths to ATL’s proposal under this factor for ATL’s approach to the following: [DELETED]. Id. The SEB also assessed two weaknesses to ATL’s proposal for ATL’s proposed approach to [DELETED], and proposed approach to [DELETED]. Id. The SEB found that, “[w]hile the strengths and significant strengths show good understanding of the contract requirements, the weaknesses also demonstrate some risk.” Id. The SEB further stated: “Considering the nature and quality of the strengths and weaknesses in the context of the overall Technical and Management Approach, the SEB determined there is a high probability of successful contract performance.” Id. Overall, the SEB assigned ATL’s proposal a good rating for the technical and management factor. Id. at 56.

WAI’s proposal was assessed an outstanding rating under the technical approach and management factor, based on three significant strengths, eight strengths, no weaknesses and no deficiencies. Id. at 67-68. The evaluators stated that “WAI’s significant strengths . . . demonstrate a highly effective approach from the beginning of the contract that will be maintained throughout contract performance,” and that “WAI received eight strengths across the [performance work statement] PWS that further demonstrate its comprehensive understanding of the requirements and highly effective approaches to performing the work . . . .” Id. at 67.

Based on the evaluation, the source selection official (SSO) concluded that WAI’s FPR provided the best value under the terms of the solicitation. AR, Tab G, SSDD, at 12. Specifically, the SSO stated: “I find WAI’s proposal to be far superior

---

<sup>2</sup> The SEB assessed the technical and personnel factors as either outstanding, good, satisfactory, marginal, or unsatisfactory. AR, Tab E1, Final SEB Report, at 151-152. The evaluators assessed past performance as either substantial confidence, high confidence, satisfactory confidence, limited confidence, no confidence, or unknown (neutral) confidence. Id. at 153.

to ATL . . . in one of the two most important criteria, Criterion 1, Technical Approach . . . .” Id. The SSO explained that WAI’s proposal “provides a Technical and Management Approach that provides for an extremely effective, flexible and responsive capability to meet the Government’s mission needs, and is an enduring capability across the life of the contract,” and that “[t]he specific features described in [WAI’s] proposal provide a complete capability set with a [DELETED] that is substantially better than those proposed by ATL.” Id. In addition, the SSO stated: “WAI had the lowest total evaluated price . . . . Based on my review of all available information, I believe that the combined benefits of WAI’s technically superior proposal and lowest total proposed price to be the best value to the Government.” Id. Accordingly, DOE concluded that WAI’s proposal offered the best value to the government, and awarded the contract to that firm. Id. at 13. On June 11, ATL received a debriefing. This protest followed.

## DISCUSSION

ATL challenges the evaluation of its and WAI’s technical and price proposals. With regard to its own proposal, ATL challenges a weakness assessed under the technical approach and management factor. In addition, the protester asserts that the agency should have assessed an additional strength under this factor for ATL’s proposed transition plan. With regard to WAI’s proposal, the protester contends that the agency’s assignment of a high confidence past performance rating was unreasonable, given WAI’s alleged negative performance violations on other DOE projects. Finally, the protester argues that WAI’s price proposal took exception to the terms of the solicitation, and therefore, the agency should have found WAI’s proposal technically unacceptable.<sup>3</sup> For the reasons discussed below, we find no basis to sustain the protest.

### Evaluation of ATL’s Technical Proposal

ATL challenges DOE’s evaluation of its proposal under the technical approach and management factor, which found that the proposal failed to understand the complexities of managing and administering a complicated benefits plan.<sup>4</sup>

---

<sup>3</sup> ATL’s protest also raised various other issues. Because DOE addressed these issues in its agency report, and ATL did not pursue these issues in its comments responding to the agency report, we deem them abandoned. See Enterprise Solutions Realized, Inc.; Unissant, Inc., B-409642, B-409642.2, June 23, 2014, 2014 CPD ¶ 201 at 9 n.6. Accordingly, we will not address these issues.

<sup>4</sup> ATL also challenged another weakness assessed against its proposal under this factor related to ATL’s proposed [DELETED]. ATL argues that the evaluators misinterpreted its proposed approach and failed to understand the chain of command of ATL’s proposed [DELETED]. Protest at 20-25. Although the agency  
(continued...)

Specifically, ATL contends that the agency applied an unstated evaluation criterion when it assessed as a weakness ATL's failure to describe its approach to [DELETED]. In addition, ATL contends that DOE should have assessed an additional strength in its proposal for its proposed transition plan.

In reviewing a protest challenging the agency's evaluation of proposals, our Office will not reevaluate proposals nor substitute our judgment for that of the agency, as the evaluation of proposals is generally a matter within the agency's discretion. Del-Jen Educ. & Training Grp./Fluor Fed. Solutions LLC, B-406897.3, May 28, 2014, 2014 CPD ¶ 166 at 8. Rather, we will review the record to determine whether the agency's evaluation was reasonable; consistent with the stated evaluation criteria, applicable procurement statutes, and regulations; and adequately documented. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. An offeror's disagreement with an agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5. Additionally, although agencies are required to identify in a solicitation all major evaluation factors, they are not required to identify all areas of each factor which might be taken into account in an evaluation, provided that the unidentified areas are reasonably related to or encompassed by the stated factors. AT&T Corp., B-299542.3, B-299542.4, Nov. 16, 2007, 2008 CPD ¶ 65 at 18; Chenega Tech. Prods., LLC, B-295451.5, June 22, 2005, 2005 CPD ¶ 123 at 5.

As relevant here, the agency defined a "weakness" as "[a] flaw in the proposal that increases the risk of unsuccessful contract performance." AR, Tab E1, Final SEB Report, at 150. The solicitation stated that an offeror's technical and management

---

(...continued)

responded to these arguments, ATL failed to rebut or otherwise substantively address the agency's response in its comments; as a result, we view these contentions as abandoned as well. Enterprise Solutions Realized, Inc.; Unissant, Inc., *supra*. In its comments to the agency report, however, the protester asserts that "the RFP did not require offerors to address [this issue] in their proposals," and that DOE's evaluation of ATL's technical proposal was therefore based on unstated evaluation factors. Protester's Comments (Aug. 7, 2015), at 26. The protester's new argument regarding the unstated evaluation criteria, however, could have been made in its initial protest filing. Because the protester failed to raise this issue in its initial filing, it is untimely. 4 C.F.R. § 21.2(a)(2) (requiring protest issues be filed within 10 days after the basis is known or should have been known); *see also* Lanmark Tech., Inc., B-410214.3, March 20, 2015, 2015 CPD ¶ 139 at 5 n.2 (piecemeal presentation of protest grounds, raised for the first time in comments, are untimely).

approach shall demonstrate the offeror's expertise to manage and administer complicated benefit plans. RFP at L-17.

DOE assessed a weakness to ATL's proposal under the technical approach and management factor based on ATL's approach to [DELETED], which the evaluators found reflected ATL's failure to understand the complexities of managing and administering a complicated benefits plan. AR, Tab E1, Final SEB Report, at 55. ATL's proposal explained its staffing approach as follows:

[O]ur restructured staffing model will optimize [DELETED].

AR, Tab C1, ATL FPR, at A-3.

The SEB found that ATL's proposal contained inconsistencies concerning whether ATL's proposed approach allowed [DELETED]. AR, Tab E1, Final SEB Report, at 53; compare Tab C1, ATL FPR, at A-8 (stating [DELETED]), with A-8, A-35 (stating [DELETED]). The evaluators noted that, although ATL's proposal stated that "[DELETED], [it] provides no details on how this will be accomplished." AR, Tab E1, Final SEB Report, at 55. The SEB concluded that ATL's approach to [DELETED] reflected a "failure to understand the complexities of managing and administering a complicated benefits plan," and therefore was "a flaw in [ATL's] proposal that increases the probability of unsuccessful contract performance." Id.

The protester contends that it was not required to provide in its proposal "the details of its proposed approach, including the details as to how its approach [DELETED] would work," arguing that, by assessing a weakness for ATL's failure to include this information, the agency improperly applied an unstated evaluation criterion. Protester's Comments (Aug. 7, 2015) at 27-28. The agency responds that the weakness was properly assessed because it is encompassed within the technical approach and management evaluation factor. We agree with the agency, and, for the reasons discussed below, conclude that the agency's assessment of the weakness was consistent with the terms of the solicitation.

As set forth above, the RFP specified that an offeror's technical and management approach would be evaluated based on its demonstration of the offeror's "understanding of and ability to perform the requirements of the Performance Work Statement," including, as relevant here, the offeror's "management approach that demonstrates their understanding of and approach to . . . pensions and other benefits [and] demonstrates that they have or how they will obtain the expertise to manage and administer complicated benefit plans." RFP at C.2.1.9. As the agency explains, offerors were not required to submit a particular management approach, but "[r]elated to the demonstration of the offeror's ability to perform the requirements of the performance work statement is providing an understandable management approach that addresses most if not all reasonably foreseeable issues to meet the performance work statement." Supp. AR (Aug. 13, 2015), at 6. In this regard, "[i]f

an offeror submitted a management approach that raised concerns regarding the approach's effectiveness in managing risk and did not address those concerns in its proposal then a weakness would be found." Id.

The record reflects that the evaluators identified inconsistencies in ATL's proposal regarding its approach to [DELETED], and concluded that the protester's proposal lacked detail with regard to its proposed plan for [DELETED]. AR, Tab E1, Final SEB Report, at 54-55. These issues were viewed as a risk by the agency, which DOE assessed as a weakness. Id. In short, while the solicitation did not specifically require offerors to explain their approaches to [DELETED], the solicitation required offerors to address their ability to perform the performance work statement; thus, to the extent the protester stated that its technical approach relied on [DELETED], the agency's evaluation of that approach was reasonably related to the solicitation's stated evaluation criteria. Based on this record, we find that the agency's concerns regarding ATL's proposed plan to [DELETED] were reasonably related to the solicitation's stated evaluation criteria regarding managing pensions and benefits plans, such that the agency reasonably determined that ATL's failure to describe its approach in more detail warranted a weakness. To the extent ATL disagrees with the agency's evaluation in this regard, the protester's disagreement fails to render the agency's evaluation unreasonable or provide a basis to sustain the protest. See Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

Next, the protester argues that DOE failed to credit its proposal with a strength for proposing to complete the transition period in a shorter timeframe than contemplated by the RFP. The agency responds that the solicitation did not include speed of transition as a performance criterion to be evaluated. As relevant here, the solicitation stated that, "[u]pon Contracting Officer (CO) issuance of the Notice to proceed, the Contractor shall begin transition from the incumbent provider of laboratory services for a period of two (2) months." RFP at 32. Based on our review of the record, we conclude that the agency's evaluation of the protester's transition plan was reasonable. ATL's contention that its self-identified strength merited a higher rating is unpersuasive, and represents nothing more than disagreement with the agency's well-documented judgment. See Ben-Mar Enters., Inc., supra. Accordingly, we find no basis to sustain the protest.

#### Evaluation of WAI's Past Performance

Next, ATL contends that the agency's "high confidence" past performance rating for WAI was unreasonable in light of WAI's documented history of numerous safety violations on other DOE contracts. In support of this allegation, the protester points to examples of alleged "poor past performance" by WAI and WAI's subcontractors. Protester's Supp. Comments (Aug. 18, 2015), at 8-10. For the reasons discussed below, we find that the agency's past performance evaluation was reasonable.

An agency's evaluation of past performance, including 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 or inconsistent with the solicitation criteria. SIMMEC Training Solutions, B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 4. Where a protester challenges an agency's past performance evaluation and source selection, we will review the evaluation and award decision to determine if they were reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations, and to ensure that the agency's rationale is adequately documented. DynCorp Int'l LLC, B-406523.2, B-406523.3, Dec. 16, 2013, 2014 CPD ¶ 7 at 6; Falcon Env'tl. Servs., Inc., B-402670, B-402670.2, July 6, 2010, 2010 CPD ¶ 160 at 7.

As discussed above, the RFP stated that the agency would evaluate the past performance of an offeror and its major subcontractors by reviewing on-going projects or projects completed within the last 5 years that encompass work similar in size and scope to the performance work statement. RFP at M-4. The agency reviewed six contracts in evaluating WAI's past performance. AR, Tab E1, Final SEB Report, at 89-98. WAI's proposal included three contract references for itself and two contract references for WAI's subcontractor; in addition, DOE found one contract through the Past Performance Information Retrieval System (PPIRS)<sup>5</sup> for WAI. Id. The SEB found that four of these contracts were relevant, and two were somewhat relevant. Id. In addition, the evaluators concluded that, of the six references, two were highly favorable, and four were favorable. Id. Overall, considering the totality of WAI's past performance, the SEB, assessed a high level confidence rating to WAI's proposal. Id. at 96.

ATL does not challenge the relevancy or recency of any of the references reviewed for WAI. Rather, the protester argues that it was unreasonable for DOE to rate WAI high confidence "[i]n light of the . . . documented infractions." Protester's Supp. Comments (Aug. 18, 2015), at 10.

In response, the agency explains that its past performance evaluation included review of all available PPIRS data for the prior 3 years, which included contractor performance assessment reports (CPARs) that covered the time period for the incidents referenced by the protester. For example, a CPAR covering WAI's period of performance from January 17, 2013, through January 16, 2014, and rating WAI's performance as "satisfactory," stated the following:

---

<sup>5</sup> PPIRS is a web-enabled, government-wide application that collects quantifiable delivery and quality past performance information. See Federal Acquisition Regulation (FAR) § 42.1503.

Although the contractor has performed very well in the aforementioned metrics there have been many abnormal/near miss events this past year such as a repeated near miss involving cutting off breathing air to a worker; 5 contamination events; and a respiratory protection violation. Due to the significance of the breathing air occurrence, WAI was issued an enforcement letter. The field office expressed their concerns about these events in a letter directing the contractor to perform a causal analysis and a plan that details how operations and safety would be improved. The Contractor has been actively managing and tracking the corrective actions and has completed 90% of the actions.

\* \* \* \* \*

Although there were issues and challenges during the period, the contractor did a good job addressing them and making adjustments in the spirit of continuous improvement.

AR, Tab E.3, WAI Past Performance Information, at 30-31.

In fact, as the agency notes, the SEB, in evaluating the safety incidents, found that, “WAI’s proposal lists the corrective actions taken in response to this event.” AR, Tab E1, Final SEB Report, at 92. In this regard, the SEB stated: “They brought in an independent assist team to perform causal analysis, and former DOE senior staff to evaluate communication skills and overall effectiveness of the WAI management team,” and “also reviewed organizational safety culture and project management and decision-making processes.” Id. The evaluators concluded that “[t]he breadth and aggressiveness of WAI’s response decreases the probability that such events will recur,” and “[c]onsidering WAI’s robust response to the event described in the [preliminary notice of violation] in the context of the CO’s overall satisfactory-to-very good ratings and the challenges posed by events outside WAI’s control, the SEB determined that the information contained in the PPIRS demonstrates overall favorable past performance information.” Id.

As stated above, the agency rated WAI’s past performance as high level confidence based on four relevant contracts (with two highly favorable and two favorable ratings) and two somewhat relevant contracts (with favorable ratings). AR, Tab E1, Final SEB Report, at 90-97. In addition, in evaluating WAI’s past performance, the agency specifically considered the safety incidents cited by the protester. Based on the record, the protester has failed to demonstrate how the high level confidence rating assessed by the agency was unreasonable. We therefore find no basis to sustain the protest.

## Evaluation of WAI's Price

Finally, ATL argues that WAI's price proposal took exception to the terms of the solicitation, and therefore, should have been found technically unacceptable. Specifically, the protester contends that the awardee's proposal took exception to the solicitation's requirement to propose a fixed price because it stated that any price adjustments for employees covered by the collective bargaining agreement (CBA) submitted during performance would comply with FAR clause 52.222-43. For the reasons discussed below, we find no basis to sustain the protest. The requirement to propose fixed prices is a material term or condition of a solicitation requiring such pricing. Marine Pollution Control Corp., B-270172, Feb. 13, 1996, 96-1 CPD ¶ 73 at 2-3. Where a solicitation requests offers on a fixed-price basis, an offer that is conditional and not firm cannot be considered for award. SunEdison, LLC, B-298583, B-298583.2, Oct. 30, 2006, 2006 CPD ¶ 168 at 5; Solers, Inc., B-404032.3, B-404032.4, Apr. 6, 2011, 2011 CPD ¶ 83 at 7.

Here, the RFP required offerors to submit proposals on a fixed-price basis. RFP at B-2. In addition, the RFP incorporated by reference FAR clause 52.222-43 (Fair Labor Standards Act and Service Contract Act – Price Adjustment), which applies to contracts subject to prevailing wage determinations and collective bargaining agreements. RFP at I-5. In pertinent part, this FAR clause provides for equitable adjustments to the contract price to account for increased or decreased wage determinations otherwise applied to the contract by operation of law, but requires the contractor to warrant that the contract prices do not include any allowance for any contingency to cover increased costs for which adjustment is provided under the clause. See FAR § 52.222-43.

The solicitation, however, also included a Q&A concerning the issue of equitable adjustments for employees covered by the CBA, which stated:

[Q.] For the future years, the Bargain Union employee's wage will be re-negotiated and determined in a [collective bargaining agreement] CBA. If BU employee's wage escalation is more than the current rate, in the FFP CLINs, will contractor get equitable adjustment on the firm-fixed price?

[A.] There will be no equitable adjustment for wage rates on the firm-fixed price or the firm-fixed unit rates. It is up to the Offeror to estimate wage rates to be paid to employees as part of the fixed-price/fixed unit rate proposal.

RFP, Q&A, at 12.

WAI's initial proposal included an assumption that "an equitable adjustment will be made to the fixed price Routine Work, up or down, if the new collective bargaining

agreement has significant differences in regards to wages, benefits and/or wage escalation.” AR, Tab H4, WAI Initial Proposal, at 12. During discussions, the agency advised WAI that it considered this provision to be “an exception or deviation from the terms and conditions included in the RFP,” which was “not acceptable and must be removed.” AR, Tab F3, WAI Discussion Letter, at 4.

In submitting its FPR, WAI removed the assumption, and instead, included a provision that stated that “[a]ny requested price adjustment regarding wages will be in compliance with and as allowed by [FAR clause 52.222-43, Fair Labor Standards Act and Service Contract Act].” AR, Tab D2, WAI FPR, at 11. In evaluating WAI’s FPR, the SEB concluded that, as revised, WAI’s FPR, complied with the solicitation’s terms. See AR, Tab E1, Final SEB Report, at 21, 26-32, 162. The agency explains that “[WAI’s FPR] does not qualify its pricing or state it will not perform if it does not receive a price adjustment under FAR 52.222-43.” AR at 39. Rather, WAI’s proposal states that “[a]ny requested price adjustment regarding wages will be in compliance with and as allowed by [FAR 52.222-43].” AR, Tab D2, WAI FPR, at 11. Accordingly, the agency contends that WAI’s FPR did not take exception to the terms of the solicitation.

Based on our review of the record, we find nothing unreasonable regarding the agency’s evaluation and conclusion that WAI’s proposal complied with the terms of the solicitation. Specifically, we think the agency reasonably concluded that WAI’s FPR, as revised, no longer contained a statement that its performance was contingent on particular circumstances, such as the payment of an equitable adjustment. Cf. Solers, Inc., supra at 6-7 (sustaining protest where proposal took exception to the requirement to propose a fixed price by conditioning its price on the agency’s provision of additional government resources). For this reason, we find no basis to conclude that DOE was required to reject WAI’s proposal as unacceptable.

To the extent ATL also contends that the terms of the RFP prohibited WAI from reserving the right to seek adjustments under FAR clause 52.222-43, we find this aspect of the protest untimely. In this regard, the language in the Q&A--which stated that “[t]here will be no equitable adjustment for wage rates on the firm-fixed price or the firm-fixed unit rates,” and that [i]t is up to the Offeror to estimate wage rates to be paid to employees as part of the fixed-price/fixed unit rate proposal”--clearly conflicted with the FAR clause, which was incorporated by reference into the RFP, and was not removed from the RFP. RFP, Q&A, at 12. As relevant here, the FAR clause provides for equitable adjustments applied to the contract by operation of law, provided the contractor warrants that the contract prices do not include any allowance for any contingency to cover increased costs for which adjustment is provided under the clause. See FAR clause 52.222-43. Accordingly, any ambiguity regarding these provisions was patent, i.e., clear or obvious on the face of the RFP, rather than latent. Since any alleged ambiguity regarding these provisions was apparent on the face of the RFP itself, a protest on this ground was required to be filed prior to the submission of proposals. Bid Protest Regulations, 4 C.F.R.

§ 21.2(a)(1); U.S. Facilities, Inc., B-293029, B-293029.2, Jan. 16, 2004, 2004 CPD ¶ 17 at 10. Accordingly, ATL cannot now timely challenge this matter.

The protest is denied.

Susan A. Poling  
General Counsel