



**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:** Delaware Resource Group of Oklahoma, LLC

**File:** B-412617; B-412617.2

**Date:** April 14, 2016

---

Julie Buthman, Esq., for the protester.  
David Devol, for BGI, LLC, the intervenor.  
Wade L. Brown, Esq., and Kristina S. Wiercinski, Esq., Department of the Army, for the agency.  
Kenneth Kilgour, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### DIGEST

Protest that agency unreasonably determined that the protester's revised proposal did not meet the solicitation's staffing requirement is denied where any ambiguity in the solicitation as issued was resolved by the agency's answers to offerors' questions, clarified by incorporation into the solicitation, and the protester's question as to which staffing number to use in preparing its proposal was further addressed in discussions with the agency.

---

### DECISION

Delaware Resource Group of Oklahoma, LLC (DRG), of Oklahoma City, Oklahoma, protests the Department of the Army's award of a contract to BGI, LLC, of Akron, Ohio, under request for proposals (RFP) No. W52P1J-15-R-0128, for F-16 Weapons Systems Simulator Training and Support Services. The protester challenges the agency's evaluation of proposals and asserts that discussions were not meaningful.

We deny the protest.

### BACKGROUND

The solicitation contemplated the award of a fixed-price contract, with a 1-year base period and four 1-year options, for F-16 Weapons Systems Simulator Training and Support Services (WSST) for the Air National Guard (ANG). The contractor will provide the Air National Guard with all equipment, personnel, supplies, and services

necessary to train domestic and international combat capable aircrews, including F-16 academic and aircrew training device instruction/console operations, comprehensive courseware development (CWD), and training support at two locations, Lackland Air Force Base/Kelly ANG Annex (Lackland/Kelly) in Texas, and Tucson International Airport in Arizona.

Award was to be made to the offeror whose proposal offered the best value to the government, considering the following four evaluation factors, listed in descending order of importance: (1) technical/mission capability, with subfactors of equal importance for security management, quality plan, program management, manpower capability, and transition plan; (2) past performance; (3) small business participation; and (4) price. RFP at 2, 35-41. The evaluation factors other than price, when combined, were more important than price. RFP at 36.

Of relevance to this protest, the agency advised offerors that, when evaluating proposals under the manpower capability subfactor, the government would determine whether:

- b. The Offeror explained proposed staffing by classification/duty, other support and dual/multi-qualifications, aircraft type, area of expertise (F-15/16/117, flight, Electronic Warfare, (EW), etc.) with sufficient details to support manpower requirements. Plans for personnel utilization/cross utilization (full-time, part-time, temporaries) contained substantiation and rationale for proposed manpower levels IAW [in accordance with] PWS [Performance Work Statement] 6.8.2.

RFP at 37.

The required staffing hours were addressed in the PWS. For Lackland/Kelly, PWS Table 7.1, Academic and Simulator Instruction Workload Estimates, set forth the hours required for instruction, excluding the hours required for courseware development; the table indicated that the “Total Estimated Contractor Instructor Hours” were 9,873.4. PWS, Table 7.1 (emphasis added). For Tucson, the PWS included the following line in Table 8.1, Estimated CI/SME (Contractor Instructor/Subject Matter Expert) Workload: “Estimated Ops support to Training (Incl[uding] CWD) 7055” hours, with the final line on Table 8.1 reading: “Total Hours 24800.” PWS, Table 8.1 (emphasis added). Id. Thus, while Table 8.1 included both instructor and courseware development hours in the CI/SME staffing hours for Tucson, Table 7.1 excluded the courseware development hours staffing requirement from the estimate of CI/SME staffing hours for Lackland/Kelly.

The solicitation pricing matrix, as relevant to this protest, requested that offerors provide the following prices:

CLIN <sup>1</sup>	NON-PERSONAL SERVICES OR SUPPLIES			QNTY	UNIT	UNIT PRICE	TOTAL AMT
<b>0004'</b>	<b>COURSEWARE DEVELOPMENT (CWD)</b>						
0004'	AA	Lecture ([Best Estimated Quantity] BEQ 10)		1	EA	\$	\$
0004'	AB	Tests (BEQ 2)		1	EA	\$	\$
0004'	AC	Syllabus (BEQ 1)		1	EA	\$	\$
0004'	AD	Grade Sheets (BEQ 3)		1	EA	\$	\$
0004'	AE	Mission Guides (Simulator) (BEQ 3)		1	EA	\$	\$
0004'	AF	Sharepoint/Student Web page (BEQ 1)		1	EA	\$	\$
SUB TOTAL							\$

**F-16 Instructor/Subject Matter Expert (SME) – MISSION LOAD – KELLY ANNEX,  
0005' LACKLAND AFB, TX Courseware Development, Academic/Simulator Instruction and  
Operations to support flying training IAW PWS Para 2.2**

0005'	AA	F-16 Instructor/Subject Matter Expert (I/SME) (BEQ 11,850) Pricing for 1 to 11,850 hours.		1	HR		\$
0005'	AB	I/SME SUPPORT in excess of 11,850 hours		1	HR		\$
SUB TOTAL							\$

RFP, Attch. 0003, Pricing Matrix.

Upon review of the solicitation, offerors questioned what they considered to be a possible inconsistency between the number of hours indicated in the pricing matrix for F-16 I/SME support (11,850 hours) at Lackland/Kelly, and the number of total instructor hours indicated in PWS Table 7.1 (9,873.4 hours) for that location. The agency addressed that inconsistency in the following responses to offerors' questions, which were incorporated into the solicitation:

24. CLINs XX05 for F-16 I/SME support at Kelly include a BEQ of 11,850 hours, and Column H reflects this by multiplying the price of a single hour of I/SME support by 11,850 to determine the total price. However, PWS 7.1.9 and Table 7.1 indicate that Kelly total I/SME workload BEQ is 9873.4 hours. Can the government address this discrepancy?

[Answer] The reported discrepancies are recognized. The pricing matrix reflects 11,850 hours. Table 7.1 reflects a specific breakdown of estimated hours and does not include CWD or any other requirements. 11,850 hours is enough to cover operations and ensure there are enough instructors to cover all activities. The Government will evaluate based upon 11,850 hours.

\* \* \* \* \*

<sup>1</sup> Contract Line Item Number.

59. The BEQ indicated of 11,850 does not match up to the PWS estimate of 9,873.4. Which is correct?

[Answer] The reported discrepancies are recognized. The pricing matrix reflects 11,850 hours. Table 7.1 reflects a specific breakdown of estimated hours and does not include CWD or any other requirements. 11,850 hours is enough to cover operations and ensure there are enough instructors to cover all activities. The Government will evaluate based upon 11,850 hours.

RFP, Amend. 0001, Attach. 0007 (emphasis added).

The agency received seven proposals, including BGI's and DRG's, and evaluated four of those as technically unacceptable. The three remaining proposals, including BGI's and DRG's, were included in the competitive range. DRG's proposal was based on an estimated 9,873.4 hours of staffing for the Contractor Instructor/Subject Matter Expert (CI/SME) requirement at Lackland/Kelly and using 1,880 man-year hours calculated staffing of 5.25 persons. DRG proposed 5 persons for that requirement. Agency Report (AR), Tab 4-3a, DRG Initial Proposal, at 43.

The agency's initial evaluation assigned DRG's proposal a deficiency under the staffing subfactor of the technical/mission capability factor, resulting in an adjectival rating of unacceptable. The agency evaluation concluded that the:

Offeror did not estimate the manpower for Kelly correctly in the [Course Instructor (CI)] or CWD personnel. While the Offeror is utilizing current personnel IAW executive order, offeror is utilizing incorrect calculation for a man year. Offeror must also utilize worst case man year IAW CBA [Collective Bargaining Agreement].<sup>2</sup> Additionally, Offeror is using incorrect numbers to calculate the number of SMEs required for Lackland. (Page 43)

Offeror has no plans for a graphic artist at Lackland, nor does the Offeror delineate who would accomplish graphic artist duties. [PWS] Section 2.2.4.4.

AR, Tab 6-1, DRG Initial Evaluation, at 10. For the remaining technical/mission capability subfactors--security management, quality plan, program management, and transition plan--the agency evaluated DRG's proposal as good, acceptable,

---

<sup>2</sup> A "worst case" man year assumes a workforce comprised of employees all of whom are entitled to the greatest number of nonproductive hours per year. See Agency Email to GAO, Mar. 23, 2016.

acceptable, and acceptable. The unacceptable rating under the manpower capability subfactor, however, resulted in an overall technical/mission capability evaluation rating of marginal.

The agency then held discussions with the offerors whose proposals were included in the competitive range. DRG's discussion letter included the following deficiency under the manpower capability subfactor:

The proposal submitted by DRG does not estimate the manpower for Kelly correctly in the CI or CWD personnel. While DRG is utilizing current personnel IAW executive order, DRG appears to utilize an incorrect calculation for a man year. DRG must also utilize worst case man year IAW CBA. Additionally, DRG appears to use incorrect numbers to calculate the number of SMEs required for Lackland. (Page 43)

AR, Tab 8-1, Letter from Army to DRG, Sept. 22, 2015 (emphasis added).

Subsequently, after receipt of the agency discussion letter, DRG asked the agency several questions seeking clarifications of the solicitation requirements, including the following:

when comparing Table 7.1 (Lackland) and the Mission Load CLIN of the pricing volume, the numbers are different (9873.4 versus 11,850 respectively). Should the workload estimate for staffing Lackland include a Mission Rehearsal component to bring the total workload in the PWS up to the 11,850 hours included in the Mission Load CLIN for Lackland found in the pricing matrix? We ask this because our EN [evaluation notice] deficiency indicated we did not calculate the CI staffing correctly for Lackland. While our response will include a staffing adjustment due to our correction of the productive man-year calculation, we want to make sure the PWS workload of 9873.4 is the correct workload total since it doesn't include any Mission Rehearsal hours like we find in the workload for Tucson.

AR, Tab 8-4, Email Agency Response to DRG Questions, Sept. 28, 2015 (emphasis added). The agency responded that "9873.4 does not include courseware development. 11,850 does include it. Tucson chose to add them in to their estimate while Kelly did not." Id. (emphasis added).

Offerors in the competitive range, including DRG, subsequently submitted revised proposals. In its revised proposal, DRG estimated the requirement for Lackland/Kelly as 9,873.4 "CI/SME" hours, resulting in staffing of 5.61 persons utilizing a worst case number of man-years of 1,760 productive hours. AR, Tab 4-3b, DRG Revised Proposal, at 42. DRG's proposal provided for a "Proposed

Staffing including Site Manager” of only 6 persons, an increase of one from its initial proposal. Id.; AR, Tab 4-3a, DRG Initial Proposal, at 43.

In its “interim” evaluation of the revised proposals, the agency determined that DRG “still did not properly calculate hours,” and “did not consider the CBA and the fact that the Site Manager should not be a fulltime instructor.” According to the agency, “[c]onsidering the man-year hours suggested by the Offeror [1,760] and the request of the Government to use 11850 as the workload, the CI personnel should [have] been closer to 7 + Site Manager.” AR, Tab 6-3, DRG Interim Consensus Report, at 14. The agency did not conduct a second round of discussions, and the interim evaluations subsequently became the final evaluations.

The final evaluation of proposals (which did not differ from the ratings in the evaluation of initial proposals) was as follows:

<b>Offeror</b>	<b>Technical/Mission Capability</b>	<b>Past Performance</b>	<b>Small Business</b>	<b>Price</b>
BGI	Good	Acceptable	Good	\$30,268,624
Offeror C	Acceptable	Acceptable	Good	\$30,036,773
DRG	Marginal	Acceptable	Good	\$24,798,680

Source Selection Decision Document (SSDD), at 13.

In her best-value analysis, the source selection authority (SSA) found that “[t]he major contrast between the proposals is the Manpower Capability subfactor” of the technical/mission capability factor. SSDD at 11. Focusing on DRG, the SSA noted that DRG

received a MARGINAL technical rating, the lowest of the three Offerors remaining in [the] competitive range. [DRG] received an UNACCEPTABLE rating for the Manpower Capability sub factor. Evaluators identified a deficiency within this sub factor in that [DRG] did not properly calculate the manpower for Kelly. During discussions this incorrect calculation was identified to [DRG], and the concern was not addressed. Additionally, the Offeror did not adequately address the weakness presented under the Transition Plan Subfactor. The Offeror did not explain the process for how staffing would work, how classified information would be handled and how critical updates, as a result of safety board results etc., will be handled considering the need to change courseware quickly IAW the PWS.

Id.

The SSA found that, in contrast, BGI’s proposal “meets the U.S. Government’s requirements and indicates a thorough approach and understanding of the

requirements,” with the result that it had no deficiencies or weaknesses, and was rated “good” under each technical/mission capability subfactor and under the overall technical/mission capability factor. SSDD at 11-12. The SSA concluded that BGI’s proposal was “technically superior to the other proposals in regards to its Technical Capability,” and, notwithstanding its higher price, was “the best overall value to the Government.” *Id.* at 11-13. Upon learning of the resulting award to BGI, and after receiving a debriefing, DRG filed this protest with our Office.

## DISCUSSION

DRG challenges the evaluation of its proposal and asserts that the agency failed to conduct meaningful discussions. We have considered all of the protester’s arguments and find none that warrant sustaining the protest.<sup>3</sup> We discuss several of the arguments below.

### Staffing

DRG asserts that the agency unreasonably evaluated its proposal as unacceptable under the manpower capability subfactor, and therefore marginal under the overall technical/mission capability factor. Protest at 5-6. The agency maintains that it properly evaluated DRG’s proposal as unacceptable under the manpower capability subfactor of the technical/mission capability factor based on the protester’s failure to propose the required staffing. AR at 22-23.

In reviewing protests challenging an 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. Sols. 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. Further, where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a

---

<sup>3</sup> For example, DRG protested that the delay in providing the debriefing and the delay in the award of the contract prejudiced the protester. However, the adequacy and conduct of a debriefing, or even the failure to provide a debriefing, are procedural matters that do not involve the validity of an award, and they are therefore not for our consideration. Barnesville Dev. Corp., B-400049, June 30, 2008, 2008 CPD ¶ 132 at 5. As for the delay in the award of the contract, the protester fails to identify a procurement law or regulation that the agency violated in this regard. In addition, this allegation also fails to state a valid basis of protest. See 4 C.F.R. § 21.54(f).

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. Assist Consultants Inc., B-408365.2, Aug. 2, 2013, 2013 CPD ¶ 181 at 5; Alluvium LLC, B-297280, Dec. 15, 2005, 2005 CPD ¶ 223 at 2.

Here, the dispute between the protester and the agency with respect to staffing largely focuses on what offerors were advised with respect to the number of staff hours (and thus the number of staff) offerors were required to propose, in particular, the number of CI/SME hours required for Lackland/Kelly. In this regard, the protester primarily relies on PWS Table 7.1, Academic and Simulator Instruction Workload Estimates, which indicated that the “Total Estimated Contract Instructor Hours” for Lackland/Kelly were 9,873.4. In addition, a separate section of the PWS, Section 7.2, CDW, addressed the courseware development of training and training-related materials scheduled for production, and included estimates for the number of lectures, tests, syllabi, grade sheets, mission guides, briefing room programs, web pages, and reports that would be required during performance. See PWS Tables 7.2, 7.3, 7.4.

After being advised during discussions that it had used “incorrect numbers to calculate the number of SMEs required for Lackland,” and did “not estimate the manpower for Kelly correctly in the CI or CWD personnel,” AR, Tab 8-1, Letter from Army to DRG, Sept. 22, 2015, DRG increased its “Lackland (Kelly ANG) CAT [Contract Academic Training] Staffing” from its initial 5 person “Proposed Staffing including Site Manager,” to 6 persons “Proposed Staffing including Site Manager.” AR, Tab 4-3a, DRG Initial Technical-Mission Capability Proposal, at 42-46; Tab 4-3b, DRG Final Technical-Mission Capability Proposal, at 42-46. DRG estimated CI/SME staffing for the CDW function as 0.87 staff in the initial and 0.93 staff in its revised proposal. DRG also indicated that the CI/SME staff for CDW were “Included in CAT,” that is, Contract Academic Training, and thus in the proposed CI/SME staffing instructor hours. The agency, however, maintains that the solicitation required a minimum of 11,850 CI/SME hours for Lackland/Kelly, and thus a minimum of 6.73 CI/SME man-years utilizing a productive man year of 1,760 hours. Supp. AR at 5.

We find the protester’s reliance on PWS Table 7.1 as establishing the number of CI/SME hours required for Lackland/Kelly under the solicitation, to be unreasonable. While that table did indicate “Total Estimated Contract Instructor Hours” of 9,873.4, the solicitation as buttressed by the agency’s subsequent communications with DRG during discussions made clear that this was only part of the CI/SME requirement. Specifically, when asked about a possible discrepancy between the reference in PWS Table 7.1 to “Total Estimated Contract Instructor Hours” of 9873.4, and the reference in the solicitation’s pricing matrix to an “F-16 I/SME BEQ 11,850,” the agency twice responded in answers incorporated into the solicitation by amendment that “Table 7.1 reflects a specific breakdown of estimated hours and



does not include CWD or any other requirements. 11,850 hours is enough to cover operations and ensure there are enough instructors to cover all activities. The Government will evaluate based upon 11,850 hours.” RFP, Amend. 0001, Attach. 0007, Questions 24, 59.

In addition, when DRG asked the agency during discussions “[s]hould the workload estimate for staffing Lackland include a Mission Rehearsal component to bring the total workload in the PWS up to the 11,850 hours included in the Mission Load CLIN for Lackland found in the pricing matrix,” the agency responded that “9873.4 does not include courseware development. 11,850 does include it.” AR, Tab 8-4, Email Agency Response to DRG Questions, Sept. 28, 2015. DRG thus was clearly on notice that the Table 7.1 reference to 9,873.4 instructor hours for Lackland/Kelly did not include the required courseware development workload, and that instead a total of 11,850 CI/SME hours would be required to account for both requirements and would be the basis of the evaluation.

We note that in response to offeror question 32, requesting the agency to release “copies of existing syllabi,” the agency advised offerors that “[t]he required data for determination of workload for I/SMEs is present in the PWS.” RFP, Amend. 0001, Attach. 0007, Question 32. However, to the extent that this could be viewed as a reference to Table 7.1, which indicated that the “Total Estimated Contract Instruction Hours” was 9,873.4, again, the PWS distinguished the instruction hours from the courseware development workload, addressing the latter in section 7.2 of the PWS. Given the agency’s repeated indication that the total CI/SME hours required for instruction and courseware development for Lackland/Kelly was 11,850, and that 11,850 hours would be the basis for the evaluation, we find that the agency reasonably evaluated DRG’s proposal of only 6 CI/SMEs based on an assumed workload of 9873.4 CI/SME hours for Lackland/Kelly as a deficiency which at a minimum rendered it unacceptable under the manpower capability subfactor, and reasonably resulted in an evaluated overall technical/mission capability evaluation rating of marginal.<sup>4</sup>

---

<sup>4</sup> In any case, even if we were to view the reference in PWS Table 7.1 to 9,873.4 instructor hours for Lackland/Kelly as supporting DRG’s proposal of only 6 CI/SMEs based on a requirement for 9,873.4 CI/SME hours for that location, at best, given the repeated indications from the agency that 9,873.4 hours only accounted for part of the CI/SME requirement at Lackland/Kelly, this would create a discrepancy apparent on the face of the solicitation. Such a patent ambiguity, however, must be protested prior to the next closing time for the submission of proposals in order to be considered timely. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1); Ashe Facility Servs., Inc., B-292218.3, B-292218.4, Mar. 31, 2004, 2004 CPD ¶ 80 at 11. Where, as here, a patent ambiguity is not challenged prior to submission of solicitation responses, we will not consider subsequent untimely arguments asserting the protester’s own interpretation of the ambiguous provisions.

(continued...)

## Discussions

DRG also asserts that the agency's conduct of discussions was flawed because it failed to identify evaluated weaknesses in the protester's proposal. Comments at 2-3. The agency maintains that its discussions with DRG were meaningful. Supp. AR at 1-6.

Where an agency conducts discussions, the Federal Acquisition Regulation (FAR) requires the agency to discuss, "[a]t a minimum . . . deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond." FAR § 15.306(d)(3). Although the precise content of discussions is largely a matter of the contracting officer's judgment, Am. States Utils. Servs., Inc., B-291307.3, June 30, 2004, 2004 CPD ¶ 150 at 5, the discussions must be "meaningful," that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror's potential for receiving the award. FAR § 15.306(d); Hanford Env'tl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 8. Bank of Am., B-287608, B-287608.2, July 26, 2001, 2001 CPD ¶ 137 at 10-11.

Here, DRG asserts that the Army failed to conduct meaningful discussions when it failed to specifically advise DRG of the agency's view that DRG was improperly proposing to utilize a site manager as a full-time instructor, which the agency considered to be inconsistent with the prohibition in the existing collective bargaining agreement on using supervisory employees as instructors. Comments on AR at 3; see AR, Tab 6-3, Interim Consensus Report Offeror D; Tab 7, SSDD. We need not, however, consider whether the agency's failure during discussions to specifically advise DRG of this concern amounted to a failure to conduct meaningful discussions since it is clear from the record that DRG was not thereby prejudiced by the agency's actions. In this regard, competitive prejudice is an essential element of every 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, even if deficiencies in the procurement are found. HP Enter. Servs., LLC, B-411205, B-411205.2, June 16, 2015, 2015 CPD ¶ 202 at 6. Here, as discussed, even with DRG's proposal of the site manager as one of the instruction staff for Lackland/Kelly, DRG's proposed total staffing in this regard amounted to only

---

(...continued)

Marine Grp. Boat Works, LLC, B-404277, B-404277.2, Jan. 19, 2011, 2011 CPD ¶ 23 at 4; Kellogg Brown & Root, Inc., B-291769, B-291769.2, Mar. 24, 2003, 2003 CPD ¶ 96 at 8.

6 persons, based on an estimated requirement for only 9,873.4 CI/SME hours. As discussed above, this was less than the required 11,850 CI/SME hours and thus minimum staffing of 6.73 full time equivalents utilizing a man year of 1,760 productive hours. Thus, even if the site manger were properly included as part of the CI/SME staffing for Lackland/Kelly, the agency could reasonably determine DRG's proposed CI/SME staffing to be unacceptable. In these circumstances, we see no prejudice to the protester from the failure of the agency to specifically highlight, in discussions, the prohibition in the existing CBA on using supervisory employees as instructors.

The protest is denied.

Susan A. Poling  
General Counsel