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## Decision

**Matter of:** The Matthews Group, Inc. t/a TMG Construction Corporation

**File:** B-408003.3, B-408004.3

**Date:** March 21, 2014

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Reginald M. Jones, Esq., Nicholas T. Solosky, Esq., and Alexa A. Santora, Esq., Fox Rothschild LLP, for the protester.  
Robert M. Moore, Esq. and Casey J. McKinnon, Esq., Moore & Lee, LLP, for Atlantic NICC JV, LLC, the intervenor.  
Ann L. Giddings, Esq., Department of the Navy, for the agency.  
Glenn G. Wolcott, Esq., Pedro E. Briones, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Agency's price realism evaluation, which reflected a comparison of awardee's proposed line item prices to those of all other offerors, along with a comparison of the proposed prices to the government's internal cost estimate, was reasonable and consistent with the terms of the solicitation.

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### DECISION

The Matthews Group, Inc. t/a TMG Construction Corporation (TMG), of Purcellville, Virginia, protests the award of two contracts to Atlantic NICC JV, LLC (Atlantic), of Falls Church, Virginia, pursuant to request for proposals (RFP) Nos. N40080-13-R-0001 and N40080-13-R-0002, to perform construction, alteration, and/or repair of various Department of Defense facilities within Maryland, Virginia, and the District of Columbia.<sup>1</sup>

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<sup>1</sup> The two solicitations contemplated projects at differing locations but are, otherwise, essentially the same. For ease of reference, the agency refers to RFP No. N40080-13-R-0001 as the "Blue" procurement/solicitation and RFP N40080-13-R-0002 as the "Gold" procurement/solicitation. Our decision adopts those terms in referencing the two procurements/solicitations. Although TMG filed separate protests challenging the award under each solicitation, the issues presented in both protests are the same, and we consolidated the protests.

We deny the protests.

## BACKGROUND

In March 2012, the agency published the solicitations at issue, seeking proposals for fixed-price, indefinite-delivery, indefinite-quantity contracts under which task orders for construction, alteration, and/or repair will subsequently be issued.<sup>2</sup> See Agency Report (AR), Tab 1, RFP (Blue) at 1, 3; Tab 2, RFP (Gold) at 1, 3. The solicitations provided that awards would be made on a best-value basis taking into consideration the following evaluation factors: relevant experience, multiple project management/capabilities, safety, past performance, and price. RFP (Blue) at 96-100; RFP (Gold) at 92-96.

With regard to price, offerors were required to propose coefficients for various locations.<sup>3</sup> Additionally, both solicitations required offerors to propose multipliers for work performed during “other than regular working hours” (defined as after 6 p.m. and before 6 a.m.) and for work performed in “escort-required areas.” RFP (Blue) at 4; RFP (Gold) at 4. In subsequently-issued task orders, these coefficients and multipliers will be applied to data in the R.S. Means cost catalogs<sup>4</sup> to establish task order pricing.<sup>5</sup> RFP (Blue) at 3-4, 7-12; RFP (Gold) at 3-4, 7-12.

The solicitations advised offerors that the agency would calculate a total evaluated price for each offeror by applying the proposed coefficients and multipliers to the anticipated annual expenditures for each location. RFP (Blue) at 96; RFP (Gold) at 92. The solicitation further stated that proposed prices would be evaluated to

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<sup>2</sup> The procurements were restricted to firms participating in the Small Business Administration’s (SBA) 8(a) business development program.

<sup>3</sup> For the Blue solicitation, offerors proposed coefficients applicable to: Naval Air Station Patuxent River, Maryland; Naval Academy, Annapolis, Maryland; Naval Support Facility, Dahlgren Virginia; and Naval Support Facility Indian Head, Maryland. RFP (Blue) at 4. For the Gold solicitation, offerors proposed coefficients applicable to: Joint Base Anacostia-Bolling, Washington, DC; Naval Support Activity, Washington, DC; Naval Support Activity, Bethesda, Maryland; and ROICC [regional officer in charge of construction], Quantico, Virginia. RFP (Gold) at 4.

<sup>4</sup> The R.S. Means cost catalogs contain standard unit-priced costs for individual work items that are used by contractors, engineers, and others to forecast the costs of building construction, maintenance, renovation, and repair. RFP (Blue) at 10; RFP (Gold) at 10.

<sup>5</sup> The solicitations advised offerors that a majority of the work would be pre-priced items, that is, work listed in the R.S. Means cost catalogs. RFP (Blue) at 3; RFP (Gold) at 3.

determine reasonableness, realism, and completeness; and it specifically provided that the agency's price analysis would be performed using one or more of the following techniques: (1) comparison of proposed coefficients received in response to the RFPs; (2) comparison of proposed coefficients with the internal government estimate; (3) comparison of proposed coefficients with available historical information; and (4) comparison with market survey results.<sup>6</sup> RFP (Blue) at 96-97; RFP (Gold) at 92-93.

As initially published, the solicitations also contained provisions requiring pre-award approval by the U.S. Small Business Administration (SBA) for joint ventures and teaming arrangements.<sup>7</sup> See RFP (Blue), amend. 9, at 8; RFP (Gold), amend. 8, at 8. Although, as discussed below, the SBA subsequently described the solicitation's requirements regarding teaming agreements as "fatally flawed," neither TMG, nor any other offeror, protested those provisions prior to submitting their initial proposals.<sup>8</sup>

In May 2012, proposals were submitted by six offerors, including TMG and Atlantic. Thereafter, discussions were conducted and final proposal revisions were submitted. In January 2013, the agency selected TMG for award of both contracts based on that firm having proposed the lowest total price for each procurement.<sup>9</sup> In February 2013, Atlantic protested the awards to TMG, arguing that the agency had improperly evaluated proposals under the solicitations' non-price evaluation factors, including assertions that the agency had misevaluated the offerors' relative experience and past performance. Atlantic Protests, Feb. 11, 2013, at 8-13.

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<sup>6</sup> Given the nature of this construction contract, and the agency's reliance on the R.S. Means cost catalogs, the agency did not require offerors to provide data regarding labor rates, labor categories, or labor mix to support their proposed coefficients. Cf. Solers Inc., B-409079, Jan. 27, 2014, 2014 CPD ¶ \_\_\_\_ (in contract for development and maintenance of custom software, offerors were required to submit information regarding labor categories, labor rates, labor hours, indirect rates, other direct costs and subcontractor costs).

<sup>7</sup> Specifically, as initially issued, the solicitation provided that offerors intending to propose as either a joint venture or under a teaming agreement must submit their joint venture or teaming agreements to the SBA prior to the proposal due date, and must receive SBA approval prior to award. RFP (Blue) at 94; RFP (Blue), amend. 9, at 8; RFP (Gold) 89; RFP (Gold) amend. 8, at 8.

<sup>8</sup> TMG proposed to perform the contract requirements pursuant to a teaming agreement.

<sup>9</sup> The record indicates that the initial award under the Blue solicitation was based on TMG's total price of \$14,069,152, and that the initial award under the Gold solicitation was based on TMG's total price of \$13,708,961. Atlantic Protests, Feb, 11, 2013, at 7.

On March 18, the Navy advised our Office that it intended to take corrective action, to include reopening discussions with all offerors and reevaluating proposals. Letter from Navy to GAO, Mar. 18, 2013, at 1, 2; Letter from Navy to GAO, Mar. 20, 2013, at 1. The agency stated that its corrective action reflected concern regarding offerors' compliance with the solicitations' SBA-approval requirements, and that the agency also intended to consider the substance of Atlantic's protest allegations. Email from Navy to GAO, Mar. 21, 2013. Thereafter, we dismissed Atlantic's protests on the basis of the agency's pending corrective action. Atlantic NICC-JV, LLC, B-408003, B-408004, Mar. 22, 2013.

On April 9, the agency amended the solicitations, among other things, deleting the requirements for SBA pre-award approval of teaming arrangements. See AR, Tab 1, RFP (Blue), amend. 12, at 2; Tab 2, RFP (Gold), amend. 11, at 2. On April 13, TMG filed protests challenging the agency's corrective actions asserting, among other things, that "there is no defect in the . . . solicitations to correct." TMG Comments on Prior Agency Report, May 28, 2013, at 2. In this regard, TMG complained that it was "improper and contrary to the integrity of the procurement system to overturn an award decision and re-solicit new proposals where the winning offeror's price has already been disclosed." TMG Protests, Apr. 12, 2013, at 3.

In June 2013, we denied TMG's April 2013 protests. In considering TMG's protests, we sought input from the SBA regarding the solicitations' SBA-approval provisions and relied, in part, on SBA's assessment that the solicitation provisions regarding SBA approval for teaming arrangements were "fatally flawed." Specifically, the SBA advised our Office that it "has no process for, or practice of, reviewing [teaming] arrangements" and, accordingly, it "would have been impossible for [offerors proposing a teaming arrangement] to comply with this requirement as written." Letter from SBA to GAO, May 28, 2013, at 2. The SBA elaborated that, "[b]ecause SBA wants 8(a) BD [business development] program participants to have as broad an array of options at their disposal as possible, including the use of teaming arrangements, the Agency supports the Navy's decision to correct and reopen the solicitations." Id. Our June 2013 decision rejected TMG's assertion that disclosure of its price outweighed the value of reopening the procurement, noting that the solicitation flaws had limited the options available to offerors,<sup>10</sup> and further noting that the agency had stated its intent to consider Atlantic's various challenges to the substance of the agency's evaluation. Based on this record, we concluded that the agency's proposed corrective action was reasonable. The Matthews Group, Inc., t/a TMG Construction Corp., supra.

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<sup>10</sup> In challenging the agency's corrective action, TMG expressly acknowledged that application of the provisions, as written, "would effectively prevent TMG (and likely other offerors) from competing." TMG Response to Agency's Explanation of Corrective Action, Mar. 21, 2013, at 2.

Thereafter, the offerors provided responses to the agency's discussion questions and, on October 16, 2013, submitted final proposal revisions. With regard to the Blue solicitation, TMG's and Atlantic's proposals offered the lowest prices, and were evaluated as follows:

	<b>Experience</b>	<b>Project Mgmt/ Capabilities</b>	<b>Safety</b>	<b>Past Performance</b>	<b>Price<sup>11</sup></b>
<b>Atlantic</b>	Outstanding	Outstanding	Good	Substantial	\$15,406,005
<b>TMG</b>	Acceptable	Outstanding	Good	Substantial	\$16,859,700

AR, Tab 13, Source Selection Decision (SSD) (Blue), at 1.

With regard to the Gold solicitation, TMG's and Atlantic's proposals again offered the lowest prices and were evaluated as follows:

	<b>Experience</b>	<b>Project Mgmt/ Capabilites</b>	<b>Safety</b>	<b>Past Performance</b>	<b>Price<sup>12</sup></b>
<b>Atlantic</b>	Outstanding	Outstanding	Good	Substantial	\$14,754,935
<b>TMG</b>	Acceptable	Outstanding	Good	Substantial	\$16,549,000

AR, Tab 13, SSD (Gold), at 1.

In evaluating the offerors' proposed prices, the agency's evaluators compared each coefficient and multiplier proposed by each offeror for every line item to the government estimates, as well as to the prices proposed by each other. AR, Tab 11, Price Analysis Report, Addendum 04, Oct. 21, 2013; Tab 12, Source Selection Evaluation Board Minutes, Oct. 28, 2013. This comparison showed that a significant majority of all the proposed coefficients and multipliers were below the government estimates. The agency's analysis further showed that TMG and Atlantic proposed the lowest total prices and that Atlantic's proposed coefficients ranged from [redacted] to [redacted] lower than those proposed by TMG. Notwithstanding Atlantic's lower prices, the agency concluded that the performance risk associated with each of Atlantic's proposals "is very low." AR, Tab 12, Source Selection Evaluation Board Minutes, at 3.

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<sup>11</sup> The government estimate for this solicitation was \$19,997,750; three of the other four offerors' total prices were also below the government estimate. AR, Tab 13, SSD (Blue), at 1.

<sup>12</sup> The government estimate for this solicitation was \$19,997,750; all four of the other offerors' total prices were also below the government estimate. AR, Tab 13, SSD (Gold), at 1.

Thereafter, the source selection authority (SSA) performed a comparative assessment of the competing proposals, documenting his assessment in the SSD. With regard to the first evaluation factor, experience, the SSD noted that Atlantic was the only offeror to receive an outstanding rating and stated: “the significantly greater experience offered by Atlantic NICC JV clearly demonstrates that their risk of unsuccessful performance is very low compared with that of all other offerors.” AR, Tab 13, SSD (Blue), at 2; Tab 13, SSD (Gold), at 2.

Similarly, with regard to the second evaluation factor, multiple project management/ capabilities, the SSD described Atlantic’s proposal as “a stand-out,” elaborating that it included [redacted] with multiple benefits including [redacted]. AR, Tab 13, SSD (Blue) at 2; Tab 13, SSD (Gold), at 2. The SSD concluded that Atlantic’s proposal “provided an increased likelihood of performance quality through better understanding of project scope and reduction of change orders that the other offerors did not provide.” Id.

Finally with regard to price, the SSA noted that, for the Blue procurement, TMG’s price “is 9% higher than the lower priced technically superior proposal of Atlantic” and that, for the Gold procurement, TMG’s price “is 12% higher than the lower priced technically superior proposal of Atlantic.” AR, Tab 13, SSD (Blue), at 3; Tab 13, SSD (Gold), at 3. Under the heading “Trade-Off Analysis,” the SSD stated:

Atlantic NICC JV submitted the only Outstanding proposal, offered at the lowest price of all competitors, and their risk of unsuccessful performance is considered very low. The second ranked proposal, submitted by TMG while rated Good overall, offered projects whose experience was clearly inferior to that of Atlantic NICC JV, and in general, is absent any strengths that outweigh those proposed by Atlantic. . . .

AR, Tab 13, SSD (Blue), at 3; Tab 13, SSD (Gold), at 3.

On November 26, the agency awarded both contracts to Atlantic. TMG’s protests followed.

## DISCUSSION

TMG protests that the contract awards were improper because Atlantic’s proposal “relies on unreasonable and unrealistic price coefficients that were artificially manipulated in order to undercut TMG.”<sup>13</sup> Protests, Dec. 13, 2013, at 2. With

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<sup>13</sup> TMG also complains that the agency failed to provide what TMG views as an appropriate post-award debriefing, failed to mitigate the fact that Atlantic had TMG’s pricing prior to the final evaluation, and failed to limit the scope of the reopened

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regard to the agency's price evaluation, TMG complains that the agency's evaluation documentation refers only to price reasonableness, maintains that the agency failed to perform an appropriate price realism analysis, and asserts that the agency improperly relied on historical prices.<sup>14</sup> Protests, Dec. 13, 2013, at 7-11; Protester's Comments on Agency Report, Jan. 31, 2014, at 3-10.

The agency responds that the solicitation expressly advised offerors that, in performing the required price analysis, the agency would use "one or more" of four specific techniques, including comparison of the competing offerors' proposed prices to each other, comparison of proposed prices to a government estimate, and comparison of proposed prices to historical information. The agency maintains that its evaluation was wholly consistent with the express provisions of the solicitation. We agree.

Where a fixed-price contract is contemplated, a proposal's price realism is not ordinarily considered, since a fixed-price contract places the risk and responsibility for contract costs on the contractor. OMV Med., Inc.; Saratoga Med. Ctr., Inc., B-281387 et al., Feb. 3, 1999, 99-1 CPD ¶ 52 at 5. Nonetheless, a solicitation may provide for a price realism analysis for purposes of measuring an offeror's understanding of the solicitation requirements or assessing risk. See, e.g., The Cube Corp., B-277353, Oct. 2, 1997, 97-2 CPD ¶ 92 at 4; Ameriko, Inc., B-277068, Aug. 29, 1997, 97-2 CPD ¶ 76 at 3. The nature and extent of an agency's evaluation are matters within the agency's discretion, and our Office will not reevaluate proposals; rather, we will examine the agency's evaluation record to determine whether it was consistent with the solicitation's stated provisions and reasonable in the context of the goods or services being acquired. See, e.g., Metro Mach. Corp., B-402567, B-402567.2, June 3, 2010, 2010 CPD ¶ 132 at 13-15; Urban-Meridian Joint Venture, B-287168, B-287168.2, May 7, 2001, 2001 CPD ¶ 91 at 2-3.

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discussions. Protests, Dec. 13, 2013, at 12-17. In response to the intervenor's motion to dismiss, we advised TMG that these issues were not timely presented and would not be further considered. See 4 C.F.R. § 21.2(a)(1) (2013); Northrop Grumman Info. Tech, Inc., B-400134.10, Aug. 18, 2009, 2009 CPD ¶ 167 at 10; Domain Name Alliance Registry, B-310803.2, Aug. 18, 2008, 2008 CPD ¶ 168 at 7.

<sup>14</sup> TMG also asserts that Atlantic intends to "manipulate [its proposed] pricing in its favor during [contract] performance." Protests, Dec. 13, 2013, at 6. This allegation is based on TMG's speculation regarding the agency's subsequent administration of the contract and, as such, is not subject to GAO's bid protest jurisdiction. See 4 C.F.R. § 21.5(a) (2013); Colt Defense, LLC, B-406696.2, Nov. 16, 2012, 2012 CPD ¶ 319 at 5.

Here, we find the agency's evaluation to be reasonable and consistent with the specific terms of this solicitation. As discussed above, the agency required offerors to submit coefficients and multipliers applicable to various locations, but did not require submission of labor rate, labor category, and labor mix information. Further, the solicitation expressly stated that the agency "will evaluate price based on the total price," and that total prices would be calculated by applying each offeror's proposed coefficients and multipliers to anticipated annual expenditures for each location. Finally, the solicitation expressly advised offerors that, in performing its price realism analysis, it would employ "one or more" of four specifically identified techniques, including (1) comparison of the offerors' prices with each other and (2) comparison of the offeror's prices to a government estimate. The record shows that this is precisely what the agency did.

That is, the agency first compared each coefficient and multiplier proposed by each offeror for every line item to the government estimates for these items. This comparison showed that a significant majority of the proposed coefficients and multipliers were below the government estimates. Next, the agency compared each offeror's proposed multipliers, coefficients, and total prices to those proposed by the other offerors. This analysis showed that TMG and Atlantic proposed the lowest total prices, and that Atlantic's proposed coefficients ranged from [redacted] to [redacted] lower than TMG's. Finally, the SSA noted that Atlantic's total proposed prices were 9% and 12% lower than TMG's for the Blue and Gold procurements, respectively.

In selecting Atlantic for award, the agency noted that Atlantic has "significantly greater experience" and that its proposed approach provides "an increased likelihood of performance quality through better understanding of project scope and reduction of change orders," concluding that Atlantic's performance risk was "very low compared to that of all other offerors." AR, Tab 13, SSD (Blue) at 2; Tab 13 SSD (Gold) at 2.

On this record, we find the agency's price realism evaluation to have been both consistent with the express provisions in the solicitation and reasonable. That is, the agency did what it said it would do with regard to comparison of proposed prices. Further, while recognizing that Atlantic's proposed prices were somewhat lower than TMG's, the agency also recognized that Atlantic had greater experience, and had proposed an approach that was likely to reduce change orders, concluding that Atlantic's performance risk was very low. In our view nothing further was required.

TMG's complaint that the agency's evaluation record refers only to price reasonableness is misplaced. It is well-settled that price reasonableness is an assessment of whether a price is unreasonably high, while price realism is an assessment of whether a price is too low. See, e.g., Sterling Servs., Inc., B-291625, B-291626, Jan. 14, 2003, 2003 CPD ¶ 26 at 3; WorldTravelService,



B-284155.3, Mar. 26, 2001, 2001 CPD ¶ 68 at 4 n.2. Here, the contemporaneous evaluation record is clear that that agency's price analysis was focused on assessing whether the offerors' proposed prices were too low--not whether they were too high.<sup>15</sup> As discussed above, in performing its analysis, the agency calculated the extent to which the prices proposed were lower than the government estimates and, with regard to the awardee, the extent to which Atlantic's prices were lower than those proposed by the other offerors. On this record, TMG's complaint that the agency's evaluation record fails to use the word "realism" provides no basis to sustain the protests.

Finally, TMG's assertion that the agency improperly relied on historical information in performing its price analysis is without merit.<sup>16</sup> First, the agency states that it did not consider historical information in performing its price realism analysis. AR at 6. TMG has not offered any basis for challenging the agency's representation in that regard, and the contemporaneous evaluation record is consistent with the agency's representation. In any event, even if the record supported TMG's assertion regarding the agency's consideration of historical information, TMG's protest is not timely. 4 C.F.R. § 21.2(a)(1). As noted above, the solicitation expressly advised offerors that consideration of historical information was one of the price realism techniques the agency could employ. Since TMG did not challenge that solicitation provision prior to submitting its proposal, and raised this issue only after being notified of its nonselection, the issue is not for consideration. Id.

The protests are denied.

Susan A. Poling  
General Counsel

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<sup>15</sup> Indeed, TMG's assertion that the evaluation record reflects only consideration of whether Atlantic's proposed prices were too high is irrational in that all of Atlantic's proposed prices were lower than the government's estimates for the various line items.

<sup>16</sup> In pursuing this protest, TMG argued that it should be permitted to review invoices and task order documentation related to the predecessor contract; we rejected that request.