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United States Government Accountability Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Raymond Express International

File: B-409872.2

Date: November 6, 2014

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Helen J.S. White, Esq., Defense Commissary Agency, for the agency.
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DIGEST

1. Protest against solicitation's price evaluation methodology is sustained where record shows that challenged terms may produce misleading evaluation results in analysis of whether one proposal is more competitive than another.

2. Protest alleging that solicitation provision requiring offerors to bear cost of transporting produce to overseas commissaries violates statutory requirement for use of appropriated funds to pay "second destination transportation" costs is denied where solicitation's delivery terms eliminate second destination transportation as defined in Department of Defense Financial Management Regulation.

DECISION

Raymond Express International, of Los Angeles, California, protests the terms of request for proposals (RFP) No. HDEC09-14-R-0002, issued by the Defense Commissary Agency (DeCA) for fresh fruit and vegetables (FF&V) for commissary stores in South Korea, Japan (to include Okinawa), and Guam. Raymond asserts that the solicitation includes flawed pricing and delivery terms and is ambiguous in several respects.

We sustain the protest in part and deny it in part.

BACKGROUND

DeCA operates commissary stores throughout the world for the resale of groceries and household items to members of the military and other authorized patrons.

Contracting Officer's Statement at 1. Raymond is the incumbent contractor for the agency's current produce requirement in South Korea, Japan, and Guam (known as the "Pacific Area" FF&V requirement). Id. at 2.

The solicitation here, which the agency issued on February 3, 2014, and amended five times, contemplated the award of one or more requirements-type indefinite-delivery contracts with a base period of two years and three one-year option periods. RFP at 1, 21, 26, 62. The agency estimated the value of award to be approximately $198 million. See Contracting Officer's Statement at 3. Award was to be made based on a best-value tradeoff considering the following factors: technical capability/risk; past performance; and price.[1] RFP at 21. The technical capability/risk factor was stated to be significantly more important than the past performance factor, and the technical capability/risk and past performance factors, when combined, were stated to be significantly more important than price. Id.

Regarding pricing, the solicitation required offerors to propose a "patron savings" discount percentage for "high volume core items" (HVCI).[2] RFP at 5-10; RFP, amend. No. 0005, at 3. The solicitation defined patron savings as "a price savings to the commissary patron when compared to the prices of like items from comparable private sector retail stores in the local commuting area." RFP, amend. No. 0004, at 5. The solicitation provided that during performance, the contractor would update its FF&V pricing on a weekly basis, but that the patron savings discount always would apply. Id. The solicitation further provided that during performance, the agency would monitor the contractor's prices for reasonableness using monthly "market basket surveys" based on FF&V pricing in local retail stores. Id. Hence, although the FF&V prices paid by commissary patrons would fluctuate with the market during performance, the discount they would receive relative to prices in local stores would remain constant.

In addition to the patron savings discount, the solicitation required offerors to provide HVCI unit prices valid for the week of July 14, 2014. RFP, amend. No. 0005, at 3. The unit prices were to reflect the application of the offeror's proposed patron savings discount. Id. The solicitation stated that the agency would evaluate the proposed unit prices--as adjusted to include the patron savings discount--for price reasonableness and realism. Id. For this aspect of the evaluation, the solicitation stated that the agency would compare offerors' pricing to the results of

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[1] The technical capability/risk and past performance factors included a number of subfactors, none of which is material to this decision. RFP at 21.

[2] The minimum patron savings discount permitted by the solicitation was 15 percent. RFP, amend. No. 0005, at 3. The HVCI were items such as apples, bananas, oranges, broccoli, carrots, celery, lettuce, onions, green peppers, potatoes, and tomatoes. RFP, attach. 4, HVCI Pricing Spreadsheet.

an “independent government market basket” survey based on FF&V pricing in local retail stores. RFP, amend. No. 0005, at 3-4.

The solicitation also stated that the agency would “evaluate an offeror’s understanding of the patron savings application.” RFP, amend. No. 0005, at 4. The solicitation explained this part of the evaluation as follows:

> [T]he offeror’s overall adjusted price (DeCA’s selling price) of the HVCI will be compared to the overall retail price (Independent Market Basket Equivalents) of the HVCI for each group.[3] The percentage difference resulting from this comparison will be compared to the Minimum Percentage of Patron Savings offered in the proposal. If the Minimum Percentage of Patron Savings offered in the offeror’s proposal is not within 10% of the comparison results for each group, the offeror’s proposal may not receive further consideration for contract award.

Id.

The solicitation did not plainly state what component of pricing would be considered for purposes of comparing whether one offer was more competitive than another. However, following the heading “Evaluation of Options,” the solicitation stated that “[t]he Government will calculate and evaluate as basis of contract award the total evaluated price for all HVCI for the base period and all option years.” RFP, amend. No. 0005, at 4.

With regard to the terms of delivery, the solicitation stated that the successful offeror would bear the cost of shipping the FF&V to the commissaries. In particular, the solicitation stated:

> This requirement is for F.O.B. destination[4] deliveries to the DeCA commissaries in the Pacific Area. . . . Any costs associated with the

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[3] The HVCI unit prices were to be provided in three groups: one for South Korea; one for Japan; and one for Guam. RFP, attach. 4, HVCI Pricing Spreadsheet.

[4] As set forth in Federal Acquisition Regulation (FAR) § 2.101, “F.O.B. destination” means:

> [F]ree on board at destination; i.e., the seller or consignor delivers the goods on seller’s or consignor’s conveyance at destination. Unless the contract provides otherwise, the seller or consignor is responsible for the cost of shipping and risk of loss.

> transportation and customs clearance of imported products must be included in the F.O.B. destination price.

RFP, amend. No. 0004, at 3. The solicitation also provided that "[t]itle [to] the product is transferred from the contractor to the Government when [it is] received and accepted at destination." Id. at 8. This arrangement differs from the arrangement under Raymond's incumbent contract. Under the incumbent contract, title to the FF&V transfers upon its delivery to warehouses in the United States. Contracting Officer's Statement at 2. After the agency accepts title from Raymond, the agency transports the FF&V to the Pacific Area commissaries through the Defense Transportation System. See id.; Protest at 5. The agency itself pays these transportation costs. Contracting Officer's Statement at 2.

With respect to the required FF&V quality level, the solicitation provided that the successful offeror must provide FF&V "better than or equal to U.S. Standards for Produce Grade # 1." RFP, amend. No. 0004, at 3.

Prior to the solicitation's closing date, the agency received a number of proposals in response to the solicitation, including one from Raymond. Contracting Officer's Statement at 12. Also prior to the solicitation's closing date, Raymond filed a protest with our Office.

DISCUSSION

Raymond contends that the terms of the solicitation are flawed in a number of respects. As discussed below, we agree with Raymond's contentions regarding two aspects of the solicitation's price evaluation scheme, and we sustain those grounds of protest. We deny Raymond's other contentions. Below we discuss Raymond's allegations in turn.

Ambiguities in the Solicitation

Raymond asserts that the solicitation's price evaluation scheme is flawed because it may produce misleading results with regard to whether one proposal is more or less competitive than another. Protest at 15-18; Comments at 13-17; Supp. Comments at 7-10. In this regard, Raymond asserts that the solicitation establishes the offerors' unit pricing for the week of July 14-20, 2014, as the basis for comparing offers and determining which proposal offers the most competitive pricing. Protest at 16; Comments at 14; Supp. Comments at 9. Raymond points out that the unit pricing for the week of July 14 is not the "basis of the bargain" that the agency will receive during performance; rather, the basis of the bargain is the level of the patron savings discount.[5] Protest at 16-17.

Raymond argues that using the nonbinding July 14 unit pricing as the basis of the agency's competitive comparison--rather than using the binding patron savings discount percentage--permits offerors to "game" the solicitation by proposing artificially low unit prices for the week of July 14, coupled with lower patron savings discount percentages.[6] Protest at 17-18; Comments at 15-16. Raymond argues that under this scenario, the agency may erroneously evaluate a proposal offering a lower proposed patron savings discount (e.g., 25 percent) as being a better value than a proposal offering a higher patron savings discount (e.g., 30 percent). Protest at 17-18; Comments at 15-16.

To illustrate the issue, Raymond offers the following:

> Offeror A may start with a [unit] price of $100.00 and apply its proposed Patron Savings discount percentage (assume 25%), equaling a price of $75.00 for evaluation purposes. Offeror B might start with a price of $105.00 and apply its proposed Patron Savings discount percentage (assume 25%), equaling a price of $78.75 for evaluation purposes. Offeror C might start with a price of $110.00 and apply its proposed Patron Savings discount percentage (assume 25%), equaling a price of $82.50 for evaluation purposes. Comparing these prices--$75.00 for Offeror A, $78.75 for Offeror B, and $82.50 for Offeror C--is [misleading]. Each of these companies would provide a 25% discount off the market prices during contract performance, yet during source selection [the agency] would evaluate Offeror A as offering the most advantageous price proposal . . . .
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> As a variation of this example, assume Offeror C starts with the same price of $110.00 but instead offers a 30% Patron Savings discount percentage, equaling a price of $77.00 for evaluation purposes. Even though Offeror C, with its 30% discount, plainly would be offering the lowest prices during contract performance, [the agency] would still

[5] As stated above, the solicitation provides that during performance, the contractor may adjust unit prices on a weekly basis, but that the patron savings discount established in the offer must consistently apply throughout the duration of the contract. RFP, amend. No. 0004, at 5. As also stated above, during performance, the agency monitors the unit prices for reasonableness using monthly market basket surveys. Id.

[6] Raymond asserts that the possibility of its competitors "underbidding" the solicitation in this manner prejudiced the firm. Protest at 18; Comments at 16.

> evaluate Offeror A, with its calculated price of $75.00, as offering the more advantageous price proposal.

Protest at 16-17 (footnotes omitted).

Agencies must consider cost or price to the government in evaluating proposals. 10 U.S.C. § 2305(a)(3)(A)(ii) (2012). While it is up to an agency to decide on some appropriate and reasonable method for evaluating offerors' prices, an agency may not use an evaluation method that produces a misleading result. See Bristol-Myers Squibb Co., B-294944.2, Jan. 18, 2005, 2005 CPD ¶ 16 at 4; AirTrakTravel et al., B-292101 et al., June 30, 2003, 2003 CPD ¶ 117 at 22. The method chosen must include some reasonable basis for evaluating or comparing the relative costs of proposals, so as to establish whether one offeror's proposal would be more or less costly than another's. See Bristol-Myers Squibb Co., supra; AirTrakTravel et al., supra.

In response to Raymond's claim, the agency states that the unit prices for the week of July 14 are being used for a "snapshot-in-time" evaluation of price reasonableness and realism and to "assess the offeror's understanding of the application of the proposed savings percentage." Contracting Officer's Statement at 11; Memorandum of Law at 7. The agency further states that "the evaluation of price is to be based on the proposed minimum percentage of patron savings." Memorandum of Law at 7; see also Contracting Officer's Statement at 11 (stating, without citation to the record, that "[t]he Patron Savings percentage offered in response to the solicitation is the basis of the price evaluation"); Supp. Contracting Officer's Statement at 5 (stating, without citation to the record, that "the percentage of Patron Savings . . . is the stated price evaluation criteri[on] in the solicitation").

We view the evaluation method described by the agency in response to the protest--i.e., using the proposed patron savings discount percentage to evaluate the competitiveness of proposals and using the July 14 "snapshot-in-time" pricing to evaluating price reasonableness and realism--as reasonable. However, it is different from the evaluation methodology in the solicitation in two key respects. First, nowhere does the solicitation state that the evaluation of price is to be based on an offeror's proposed patron savings discount percentage. Second, the solicitation includes a provision that is reasonably interpreted as establishing the July 14 "snapshot-in-time" pricing--rather than the proposed patron savings discount percentage--as the basis of the agency's award decision. Specifically, the solicitation states that "[t]he Government will calculate and evaluate as basis of contract award the total evaluated price for all HVCI for the base period and all option years." RFP, amend. No. 0005, at 4. As illustrated by Raymond, evaluating the competitiveness of proposals based on the offerors' unit pricing for the week of July 14 could lead to misleading results because a proposal offering a lower patron savings discount percentage could be evaluated more favorably than a proposal offering a higher patron savings discount percentage.

The agency raises various arguments purporting to show why the solicitation's price evaluation scheme is not flawed. We find none of them persuasive. For example, the contracting officer provides two sample calculations of how the agency would evaluate two sets of hypothetical pricing. Supp. Contracting Officer's Statement at 4-5. These samples, the contracting officer argues, show that Raymond has "misinterpreted" the solicitation's evaluation methodology. Id.

We have analyzed the contracting officer's computations. While the computations reflect that a proposal with significantly below-market pricing for the week of July 14 could be eliminated from the competition as unrealistic, the computations do not resolve the issue identified in Raymond's protest--namely, that the solicitation's provision for the use of an offeror's July 14 unit pricing as the basis for award could lead to a proposal offering a lower patron savings discount to be evaluated more favorably than a proposal offering a higher patron savings discount.

The agency also argues that the solicitation is not flawed because in decisions resolving prior protests of prior FF&V procurements, our Office "endorsed" this evaluation scheme. Memorandum of Law at 6-7 (citing Phila. Produce Mkt. Wholesalers, LLC, B-298751.5, May 1, 2007, 2007 CPD ¶ 87; OK Produce; Coast Citrus Distribs., B-299058, B-299058.2, Feb. 7, 2007, 2007 CPD ¶ 31; Phila. Produce Mkt. Wholesalers, LLC, B-298751, Dec. 8, 2006, 2006 CPD ¶ 193; SCS Refrigerated Servs., LLC, B-298790 et al., Nov. 29, 2006, 2006 CPD ¶ 186); Supp. Memorandum of Law at 13 (same). The agency is mistaken.

As an initial matter, it is not evident that the solicitations in the decisions cited by the agency included the flaw at issue here; i.e., a solicitation term that would lead offerors to believe that the "snapshot-in-time" unit pricing, rather than the proposed patron savings discount percentage, would be the basis of the agency's award decision. In any event, none of the decisions cited by the agency address the specific issue raised here by Raymond. Accordingly, the decisions cited by the agency have no bearing on this protest.

In sum, we sustain Raymond's protest claim that the solicitation's price evaluation scheme is flawed. We recommend that the agency revise the solicitation to include a price evaluation scheme that provides for an accurate comparison of proposals to determine whether one proposal has offered the best prices for commissary shoppers, rather than a comparison that could produce misleading results. For example, if it is the agency's intent to evaluate competitiveness on the basis of an offeror's proposed patron savings discount percentage--as the agency has argued in response to this protest--then the agency should amend the solicitation to clearly state its intent and delete or revise the solicitation provision describing the offerors'

HVCI unit pricing as the basis of award.[7] After the solicitation is revised, the agency should permit the offerors to submit revised proposals.

As another challenge against the solicitation's price evaluation scheme, Raymond asserts that the solicitation is ambiguous with respect to how the agency will evaluate an offeror's understanding of the how the patron savings discount is applied. Protest at 26-27; Comments at 29-30. Again, we agree.

As stated above, the solicitation states that the agency will evaluate an offeror's understanding of the application of the patron savings discount as follows:

> [T]he offeror's overall adjusted price (DeCA's selling price) of the HVCI will be compared to the overall retail price (Independent Market Basket Equivalents) of the HVCI for each group. The percentage difference resulting from this comparison will be compared to the Minimum Percentage of Patron Savings offered in the proposal. If the Minimum Percentage of Patron Savings offered in the offeror's proposal is not within 10% of the comparison results for each group, the offeror's proposal may not receive further consideration for contract award.

RFP, amend. No. 0005, at 4. The final sentence of this provision is unclear. More particularly, it is not clear from this sentence how the agency will determine "[i]f the Minimum Percentage of Patron Savings offered in the offeror's proposal is not within 10% of the comparison results for each group." This is a concern because through this determination, the agency may eliminate a proposal from the competition.

Based on the sample price evaluation computations mentioned above, it appears that the agency intends to carry out this evaluation as follows. First, the agency will calculate the percentage difference between the market basket survey price and the offeror's July 14 unit price (as adjusted by the proposed patron savings discount). Supp. Contracting Officers' Statement at 5. The agency then will subtract from this percentage the offeror's proposed patron savings discount percentage. Id. If the

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[7] Under this scenario, the solicitation terms regarding the evaluation of price reasonableness and price realism using "snapshot-in-time" unit pricing could remain; the solicitation simply would be amended to clearly communicate that the agency's comparative evaluation of the proposals' pricing terms (i.e., the basis for award) will be based on the level of an offeror's proposed patron savings discount.

difference is more than 10 or less than -10, then the offeror's proposal would be subject to elimination.[8]

Using the sample calculation provided by the agency in response to the protest, we are able to discern what appears to be the agency's intended methodology. The solicitation provision standing alone, however, does not unambiguously communicate the approach the agency has set forth in its report; as a result, we conclude that the provision is ambiguous. As a general rule, a solicitation must be drafted in a fashion that enables offerors to intelligently prepare their proposals and must be sufficiently free from ambiguity so that offerors may compete on a common basis. See Herman Miller, Inc., B-407028, Oct. 19, 2012, 2012 CPD ¶ 296 at 3; Sea-Land Serv., Inc., B-246784.2, Aug. 24, 1992, 92-2 CPD ¶ 122 at 10-11. Since the solicitation is ambiguous regarding the approach that the agency will use to eliminate proposals from the competition when evaluating an offeror's understanding of the application of the patron savings discount, we sustain this ground of protest. In addition to the recommendations made above, we also recommend the agency amend the solicitation to clarify the provision regarding the evaluation of offerors' understanding of the application of the patron savings discount.

Raymond raises numerous arguments as to why various other terms of the solicitation are flawed. We have considered all of Raymond's arguments, and we conclude, based on the record, that none of them should be sustained. Below we discuss Raymond's principal contentions.

Second Destination Transportation Costs

Raymond asserts that the solicitation violates 10 U.S.C. § 2483(b) by requiring the successful offeror to pay "second destination transportation" costs. Protest at 9-13; Comments at 3-12; Supp. Comments at 3-6. As discussed above, the solicitation requires that "[a]ny costs associated with the transportation . . . of imported products must be included in the F.O.B. destination price." RFP, amend. No. 0004, at 3. As also discussed above, under the incumbent contract, the agency currently subsidizes the importation of FF&V from the United States to the Pacific Area by paying the cost of transporting FF&V to the Pacific Area commissaries after accepting title to it in warehouses in the United States. See Contracting Officer's Statement at 2.

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[8] To illustrate using the sample provided by the agency, if the market basket survey price is $45 and the offeror's July 14 unit price, after application of a proposed 49 percent patron saving discount, is $28, then the percentage difference is 37.77 percent (($45 - $28)/45 = 37.77%). Supp. Contracting Officers' Statement at 5. The 49 percent discount is then subtracted from 37.77 percent, equaling -11.23 percent, which is outside of the threshold. Id.

10 U.S.C. § 2483(b) provides, in relevant part, as follows:

> Operating expenses of commissary stores.--Appropriated funds shall be used to cover the expenses of operating commissary stores and central product processing facilities of the defense commissary system. For purposes of this subsection, operating expenses include the following:
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> * * * * *
>
> (5) Second destination transportation costs within or outside the United States.

Raymond asserts that while "Congress did not define 'second destination costs,'" such costs include "costs associated with shipping merchandise from the United States or any overseas ports to commissary stores overseas." Protest at 10-11. In support of this position, Raymond relies on the following provision of Department of Defense (DOD) Instruction 1330.17:

> Operating Expenses of Commissary Stores. Appropriated funds shall be used to cover the following expenses of operating the commissary system . . . :
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> * * * * *
>
> (2) Transportation. Second destination transportation costs of commissary merchandise, supplies, and equipment within or outside the United States to include transoceanic movement of goods to and from overseas and U.S. sea and aerial ports of embarkation to first destination overseas; movement of U.S. and foreign goods within foreign areas; and movement of U.S. goods between DoD installations.

DOD Instruction 1330.17, Armed Services Commissary Operations (Oct. 8, 2008), encl. 7, Operations and Funding, § 2(a). According to Raymond, because the list of second destination transportation costs quoted in subsection (2) above refers to "transoceanic movement of goods to and from overseas and U.S. sea and aerial ports of embarkation to first destination overseas," the cost of transporting FF&V to the Pacific Area commissaries must be paid for by the agency pursuant to the requirement in 10 U.S.C. § 2483(b) that appropriated funds be used to pay second destination transportation costs. Protest at 11; Comments at 8-10.

The agency responds first by offering background to the change between the delivery terms of the incumbent contract and the delivery terms in the solicitation. In this regard, the contracting officer explains that the agency has had to reduce its transportation budget, and, therefore, the agency decided to emulate "commercial industry and practices, where commercial grocers, on a whole, favor the acquisition of locally sourced and grown products that tend to be fresher and at a cost savings than those procured and shipped from distant locations." Contracting Officer's Statement at 2-3. The contracting officer states that in Europe, the agency has successfully implemented an FF&V supply model that emphasizes locally grown items, supplemented by items imported from worldwide sources directly to Europe, rather than from the United States, as is done under Raymond's incumbent contract. Id. at 4.

Turning to Raymond's argument that the solicitation violates 10 U.S.C. § 2483(b), the agency explains that second destination transportation is in essence transportation that occurs after the government takes title to an item. See Memorandum of Law at 3-4. Thus, under Raymond's incumbent contract, the agency pays the second destination costs of transporting FF&V to the Pacific Area commissaries after the agency takes title to it at warehouses in the United States where Raymond delivers it. The agency asserts that because the solicitation here provides for F.O.B. destination delivery, whereby title to the FF&V passes from the contractor to the agency at the point of delivery at the Pacific Area commissaries, no second destination transportation will occur. See id. Since the solicitation eliminates second destination transportation, the agency asserts, the requirement of 10 U.S.C. § 2483(b) to use appropriated funds for second destination transportation costs is inapplicable. Id. For the reasons discussed below, we agree.

Title 10 U.S.C. does not define second destination transportation. However, the DOD Financial Management Regulation (FMR) expressly defines the term as "any transportation other than FDT [first destination transportation]." DOD FMR 7000.14-R, vol. 2A, ¶ 010205 (Oct., 2008). The DOD FMR defines first destination transportation as follows:

> First Destination Transportation (FDT) is that transportation required to deliver new . . . items from the manufacturer's plant or source of procurement to the first point of delivery where the Military Service or Defense Agency takes possession and/or ownership of that item. . . . The procurement source or the first point of delivery may be in the Continental United States (CONUS) or overseas.

Id. Thus, under the DOD FMR, first destination transportation is transportation that occurs up to the point that the agency takes possession or title to an item, and second destination transportation is, in essence, transportation that takes place after first destination transportation.

DOD Instruction 1330.17--i.e., the DOD Instruction on which Raymond's argument is based--expressly adopts the DOD FMR definition of second destination transportation that is quoted above.[9] Since the solicitation here provides that the agency takes possession and title of the FF&V at the commissaries in the Pacific Area, we conclude that the solicitation does not contemplate second destination transportation. Since the solicitation does not contemplate second destination transportation, we agree with the agency that the provision of 10 U.S.C. § 2483(b) regarding the use of appropriated funds for second destination transportation costs is inapplicable.

Adequacy of Market Research

As a separate challenge related to the solicitation's F.O.B. destination provision, Raymond alleges that the agency conducted inadequate market research. Protest at 19-22; Comments at 17-25; Supp. Comments at 11-13. In support of this claim, Raymond cites FAR § 10.001(a)(3)(i), which provides than an agency must use the results of market research to "[d]etermine if sources capable of satisfying the agency's requirements exist." Protest at 19; Comments at 17. Raymond argues that adequate market research would have shown that the F.O.B. destination delivery term "will result in much higher prices than those paid in the United States because quality produce imported into the Pacific region is, on average, considerably more expensive." Comments at 24. Raymond further argues that the alleged increase in FF&V prices violates the intent and policy of 10 U.S.C. § 2483(b), which, in Raymond's words, is to prevent "military families stationed abroad [from paying] prices for FF&V that are higher than prices they would pay if they were stationed in the United States." Protest at 9.

As discussed above, the delivery terms in this solicitation reflect the agency's budget-based decision to stop subsidizing the cost of shipping FF&V from the United States to the Pacific Area. Contracting Officer's Statement at 2-3. As also discussed above, the agency's new model for the Pacific Area FF&V requirement emphasizes locally grown items, supplemented by items imported directly to the Pacific Area, rather than from the United States. Contracting Officer's Statement at 4. The contracting officer states that before adopting this model, she conducted

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[9] In its protest, Raymond cites DOD Instruction 1330.17, Armed Services Commissary Operations (Oct. 8, 2008). On June 18, 2014, DOD cancelled this instruction and reissued it as DOD Instruction 1330.17, DOD Commissary Program (June 18, 2014). The reissued DOD Instruction includes the same provision cited in Raymond's protest. See DOD Instruction 1330.17, DOD Commissary Program (June 18, 2014), encl. 5, Commissary Program Funding, § 1.a(2)(b). However, the reissued DOD Instruction also includes a new glossary of definitions in which "second destination transportation" specifically is defined using the DOD FMR definition quoted above. Id., Glossary, pt. II, Definitions, at 58.

market research through the Internet and through communications with the Department of Agriculture and United States embassy personnel in the Pacific Area. Contracting Officer's Statement at 3-4, 12. She also states that through her research, she identified numerous (sixteen) "interested vendors" in the Pacific Area that could supply FF&V that is "better than or equal to US Standard for Produce Grade #1 quality." Id. at 12.

Raymond challenges the agency's market research on the basis that it is not as thorough as market research that Raymond commissioned from a consultant for purposes of pursuing this protest. Comments at 19-21; Supp. Comments at 11-13. While the record reflects that the agency's market research may not have been as expansive as the market research commissioned by Raymond, we view it as adequate under the circumstances of this procurement. In this regard, it is evident that the agency conducted market research to identify sources capable of satisfying the agency's requirement, as described in FAR § 10.001(a)(3)(i). See Contracting Officer's Statement at 12; Supp. Contacting Officer's Statement at 7-8; Agency Report, Tab 4, Market Research, at 302-05, 320, 324, 326, 397, 399-400, 408, 411, 425, 433.

At base, Raymond is arguing that the protest should be sustained because Raymond believes that the agency's procurement strategy will result in increases to FF&V prices in the Pacific Area commissaries. However, Raymond has not shown how this violates a procurement statute or regulation. Further, while such increases may occur,[10] the solicitation reflects that the agency intends to evaluate proposals and prices during performance to ensure that the prices paid by commissary patrons are reasonable. RFP, amend. No. 0004 at 5, amend. No. 0005, at 3. Additionally, the structure of the solicitation ensures that FF&V pricing in the commissaries will be at least 15 percent lower than FF&V pricing in local stores.[11] Id. For all of the reasons discussed above, Raymond's challenge against the agency's market research is denied.

CONCLUSION AND RECOMMENDATION

In sum, we sustain Raymond's protest on the basis the price evaluation scheme set forth in the solicitation contains flaws. As discussed in greater detail above, we recommend that the agency revise the solicitation to include a price evaluation

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[10] With regard to this issue, the contracting officer states: "It is understood that the percentage of overall savings *may* decrease slightly from the current business model. However, this cannot be determined until offers are received and evaluated." Supp. Contracting Officer's Statement at 9 (emphasis in original).

[11] The contracting officer reports that a number of responsive proposals have been evaluated [DELETED]. Contracting Officer's Statement at 12.

scheme that provides for an accurate comparison of proposals to determine whether one proposal has offered the best prices for commissary shoppers, rather than a comparison that could produce misleading results. We also recommend that the agency amend the solicitation to clarify the provision regarding the evaluation of offerors' understanding of the application of the patron savings discount. After the solicitation is revised, we recommend that the agency permit offerors to submit revised proposals. We also recommend that Raymond be reimbursed its costs of filing and pursuing the protest. 4 C.F.R. § 21.8(d)(1) (2014). Raymond's certified claims for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision. Id. § 21.8(f)(1).

The protest is sustained in part and denied in part.

Susan A. Poling
General Counsel