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# Decision

**Matter of:** SNAP, Inc.

**File:** B-418525; B-418525.2

**Date:** June 5, 2020

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## DIGEST

1. Protest that agency conducted misleading discussions because it did not inform the protester that its labor rates were considered unreasonable is denied where record shows that prior to discussions, the agency concluded in its price evaluation only that protester's initial quoted rates were high.

2. Protest that agency engaged in disparate treatment with regard to the price evaluation is denied where record shows the difference in evaluations was a result of a difference in quotations.

3. Protester is not an interested party to challenge the evaluation of its technical quotation where protester would not be in line for award because agency reasonably determined that the protester's final price quotation was not fair and reasonable.

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## DECISION

SNAP, Inc., of Chantilly, Virginia, protests the decision of the United States Department of Agriculture (USDA), Forest Service, not to establish a blanket purchase agreement (BPA) with the company under request for quotations (RFQ) No. 127604-19-Q-0010, seeking a range of information technology (IT) support services. SNAP alleges that the

agency unreasonably evaluated SNAP's technical quotation and engaged in misleading discussions and disparate treatment regarding SNAP's price quotation.

We deny the protest.

## BACKGROUND

The agency issued the RFQ pursuant to Federal Acquisition Regulation (FAR) part 8, seeking quotations from vendors holding General Services Administration (GSA) federal supply schedule (FSS) 70 IT contracts. Agency Report (AR), Tab 4, RFQ at 2. The RFQ sought to establish multiple BPAs to provide a broad range of IT support services for all agencies and offices within the Department of Agriculture. *Id.* at 5. The Forest Service is the lead agency in establishing and administering the BPAs, but any agency or office within Agriculture would be able to issue an order against the BPAs. *Id.* The BPAs were to be established from two pools: one restricted to small businesses and the other unrestricted (businesses of any size were allowed to compete). *Id.* This protest involves the unrestricted pool.<sup>1</sup>

The RFQ stated that the basis for establishing a BPA would be determined by the highest technically rated vendors with fair and reasonable prices. *Id.* at 41. The agency intended to establish up to three BPAs in the unrestricted pool, though it reserved the right to award more or fewer BPAs, at its discretion. *Id.* The RFQ identified the following three technical evaluation factors listed in descending order of importance: past performance, corporate capabilities, and management capacity. *Id.*

As relevant here, for the price quotation, the RFQ included a spreadsheet that listed various core labor categories for both government sites and contractor sites.<sup>2</sup> RFQ at 40. Vendors had to propose hourly rates for each labor category, and could also propose additional labor categories that were on their respective GSA schedule contracts.<sup>3</sup> *Id.* The RFQ stated that the agency would evaluate price as follows:

The [g]overnment will evaluate the competitiveness of the labor categories and hourly rates, including any discounts offered and the escalation of hourly rates. The competitiveness of the [c]ore [l]abor [c]ategories, in

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<sup>1</sup> The RFQ explained that a vendor could quote as part of a GSA schedule contractor team arrangement (CTA). RFQ at 32. Here, SNAP was the team leader of a CTA that also included T-Rex Solutions, LLC, OBXtek, Inc., Critigen, Inc., and Cask Technologies, LLC. Protest at 14.

<sup>2</sup> Government sites were located in Washington, D.C. and Albuquerque, New Mexico. Contractor site rates had to "reflect an employee working virtually or at the [o]fferor's location." RFQ at 40.

<sup>3</sup> Vendors had to propose for each labor category an hourly rate by year for a total of ten years. RFQ, attach. 4, Price Template.

addition to labor categories proposed by the [vendor], will be assessed. The comparison of the competitiveness of these hourly rates among [vendors] will be the primary tool for determining the fairness and reasonableness of the hourly rates.

*Id.* at 43.

The agency received quotations from 15 vendors, including SNAP, by the August 10, 2019 submission deadline. On November 25, the agency sent price quotation discussions letters to all 15 vendors. Contracting Officer's Statement at 1; *see also* AR Tab, 11, SNAP Price Discussion Letter. As relevant to this protest, the agency's discussions letter to SNAP listed a number of labor categories for which the initial proposed hourly rates were "considered to be high." AR Tab, 11, SNAP Price Discussion Letter. On November 29, SNAP responded to the discussions letter by submitting a revised price quotation in which it states that it lowered the rates for "virtually every single core labor category." Protest at 15.

The agency evaluated SNAP's final price quotation and determined that SNAP was one of three vendors that were "not considered to have competitive pricing" and therefore "were not considered to present fair and reasonable pricing."<sup>4</sup> AR, Tab 13, Evaluation Decision Document (EDD) at 10, 11. The agency also assigned SNAP's technical quotation ratings of limited confidence under the past performance and corporate capabilities factors, and significant confidence under the management capacity factor.<sup>5</sup> *Id.* at 5. Given the finding that SNAP's final price quotation was not considered to be fair and reasonable, the agency did not establish a BPA with SNAP.<sup>6</sup> *See* AR, Tab 13, EDD at 5-6, 9-13. From the unrestricted pool, the agency ultimately established BPAs with three companies, Accenture Federal Services (Accenture), Science Applications International Corporation, and Ace Info Solutions, Inc. AR, Tab 14, EDD amend. 001, at 3. Each of these companies received ratings of significant confidence for all three of the technical factors and were determined to have fair and reasonable final price quotations. AR, Tab 13, EDD at 5, 9-13.

After receiving a debriefing, SNAP timely filed its protest with GAO.

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<sup>4</sup> The solicitation required that vendors propose only labor rates, but the evaluation documents referred to these proposed rates as the vendor's "pricing."

<sup>5</sup> The RFQ provided that adjectival ratings would be assigned to the three technical factors; the evaluation plan identified those ratings as: significant confidence, moderate confidence, limited confidence, or unacceptable. RFQ at 41; AR Tab 6, Unrestricted Evaluation Plan at 18.

<sup>6</sup> The record also shows that a number of other vendors that did not receive a BPA received higher technical ratings than SNAP on the past performance and corporate capabilities factors, and were found to have fair and reasonable pricing. *See* AR, Tab 13, EDD at 5.

## DISCUSSION

SNAP alleges that the agency conducted misleading discussions and engaged in disparate treatment with respect to SNAP's price volume. SNAP also contends that the agency unreasonably evaluated its quotation under the past performance and corporate capability factors. As explained below, we find that the agency did not conduct misleading discussions or engage in disparate treatment. We also find reasonable both the agency's determination that SNAP's final proposed prices were not fair and reasonable, and the resulting decision not to establish a BPA with SNAP.

SNAP asserts that it was misled during discussions when the agency informed SNAP only that certain of its initial quoted hourly rates were "considered to be high." Comments & Supp. Protest at 5. SNAP argues that the agency had actually determined that SNAP's quoted rates were unreasonably high, and was required to inform SNAP of this determination, but that "nothing in [the agency's] discussion letter put SNAP on notice that its pricing was not fair and reasonable." *Id.* SNAP maintains that had it "received notice that its prices were so high that they were not competitive or reasonable, SNAP could have applied additional discounts to its pricing." *Id.* at 6.

Based on our review of the record, we conclude that the agency did not conduct misleading discussions. The agency's contemporaneous price analysis shows that the agency's evaluation of SNAP's initial rates--on which discussions were based--determined that SNAP's rates were high, but not unreasonable; therefore the agency had no reason to inform SNAP that its rates were unreasonable.

Where, as here, a competition is conducted among FSS vendors pursuant to FAR part 8, there is no requirement for agencies to conduct discussions in accordance with FAR 15.306. See FAR 8.404(a). However, exchanges that do occur with vendors in FAR part 8 procurements, like all other aspects of such procurements, must be fair and equitable. *USGC Inc.*, B-400184.2 *et al.*, Dec. 24, 2008, 2009 CPD ¶ 9 at 7-8. For discussions to be meaningful, they must lead a vendor to areas of the agency's concern. See *Lockheed Martin Corp.*, B-293679 *et al.*, May 27, 2004, 2004 CPD ¶ 115 at 7. If a vendor's price is not so high as to be unreasonable and unacceptable for award, the agency may reasonably conduct meaningful discussions without advising the higher-priced vendor that its prices are not competitive. See *DeTekion Sec. Sys., Inc.*, B-298235, B-298235.2, July 31, 2006, 2006 CPD ¶ 130 at 15.

The contemporaneous price analysis explains that the agency evaluated vendors' initial quoted rates using "a standard deviation calculation for each labor category level to establish the range of competitiveness of the government-site and contractor-site hourly rates for [y]ear 1." AR, Tab 12, Price Analysis at 1. The agency calculated the average rate for each proposed labor category, then determined the standard deviation from that average and added or subtracted it to the average. *Id.* Hourly rates that were above one standard deviation from the average were considered high, while those below were considered low. *Id.* Based on this analysis, the agency compiled a list for each vendor "documenting high core labor categories" and conveyed this information to the vendors

during discussions. *Id.* at 2. As noted above, the agency's discussions letter to SNAP identified a number of labor categories for which SNAP's proposed initial hourly rates were "considered to be high." AR Tab, 11, SNAP Price Discussion Letter.

For the final revised price quotations, the price analysis indicates that the agency "used a two-standard deviation calculation for each labor category level to establish the range of competitiveness of the government-site and contractor-site hourly rates for [y]ear 1." AR, Tab 12, Price Analysis at 2. As with the initial quoted rates, the agency calculated the average rate, multiplied the standard deviation from that average by two, then added or subtracted the result from the average. *Id.* Any rates that were within two standard deviations of the average rate were determined to be fair and reasonable. *Id.* Rates that were higher than two standard deviations from the average were considered to be high. See *id.* at 3.

The agency determined that across all vendors, 98.8 percent of the hourly rates were within two standard deviations from the average, while 43 quoted labor categories were identified as high and outside this range. *Id.* The majority of these rates were submitted by SNAP and two other vendors. *Id.* Specifically for SNAP, the agency determined that 5 percent of SNAP's government site rates and 14 percent of its contractor site rates were higher than two standard deviations above the average rates. *Id.* The agency concluded that "[a]s a result, these [o]fferors are not considered to have competitive pricing." *Id.*

SNAP has not challenged the agency's price evaluation method or its ultimate conclusion that many of SNAP's rates were considered to be noncompetitive. Rather, as explained above, SNAP argues that the agency found SNAP's rates to be unreasonable, and therefore was required to inform SNAP of this finding during discussions. In support of this argument, SNAP contends that "the cost evaluation documentation shows that in connection with initial pricing [the agency] did, in fact, consider whether a price was high (one standard deviation from the mean) or so high as to be unreasonable (two standard deviations from the mean)." Comments and Supp. Protest at 7. SNAP further asserts that in evaluating SNAP's initial rates, the agency found that 70 and 74 percent of the rates SNAP quoted for the government and contractor sites, respectively, "not only were 'high' they were also unreasonably high." *Id.* SNAP also points to the statement in the evaluation decision document that SNAP's quotation was "not considered to present fair and reasonable pricing" as evidence that the agency did, in fact, find SNAP's rates to be unreasonable. *Id.* at 6 (quoting AR, Tab 13, EDD at 11).

SNAP's arguments are not supported by the record. Contrary to SNAP's claim, the agency's price analysis makes clear that for the initial rates, the agency used a one standard deviation calculation to identify rates considered high, and utilized a two standard deviation only after receiving vendors' revised prices in response to

discussions.<sup>7</sup> AR, Tab 12, Price Analysis at 1-2. While the record confirms that the agency found 70 and 74 percent of SNAP's initial government and contractor site rates, respectively, to be high, nothing in the record states that the initial rates were found to be unreasonably high. Finally, the EDD discussed the agency's analysis of vendors' final revised price quotations; thus the conclusion that SNAP's quotation was not considered to present fair and reasonable pricing was based on SNAP's final revised rates, not its initial rates. See AR, Tab 13, EDD at 9-11. In sum, the contemporaneous record confirms that the agency did not determine that SNAP's initial proposed rates were unreasonable and therefore had no reason to inform SNAP in discussions that some of its initial rates were unreasonable. Accordingly, we find that the agency did not engage in misleading discussions, and deny this protest ground.

SNAP also asserts that the agency engaged in disparate treatment where the agency determined that SNAP's rates were non-competitive, but then established a BPA with Accenture even though at least one percent of Accenture's rates were higher than two standard deviations from the average. Comments and Supp. Protest at 23-24. SNAP argues that "[b]ased on USDA's evaluation methodology, those rates were not reasonable and Accenture's [quotation] should have been deemed non-competitive and not eligible for an award." *Id.* at 24.

Where a protester alleges unequal treatment in an evaluation, it must show that the differences in ratings did not stem from differences between the quotations. *22nd Century Techs., Inc.*, B-417336, B-417336.2, May 24, 2019, 2019 CPD ¶ 198 at 6; *Camber Corp.*, B-413505, Nov. 10, 2016, 2016 CPD ¶ 350 at 8. Here, SNAP has not made the requisite showing that the agency treated the vendors' quotations unequally. See *22nd Century Techs., Inc.*, *supra*.

As noted above, the agency determined that SNAP's rates were not competitive because 19 percent of all of SNAP's rates were higher than two standard deviations from the average rates. AR, Tab 12, Price Analysis at 2. In contrast, the agency determined that only one percent of Accenture's proposed rates were two standard deviations above the average. See *id.*, attach. A. The agency states that this "amounts to only one . . . labor category." Supp. Memorandum of Law at 13. On this record, we find unobjectionable the agency's conclusion that SNAP--with 19 percent of its proposed rates considered to be high--had noncompetitive rates, while Accenture--with only 1 percent of its proposed rates considered to be high--did not. The record confirms that the difference in the evaluation was because of the difference in quotations, and not disparate treatment.

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<sup>7</sup> In its comments on the supplemental agency report, SNAP admits that "the agency first evaluated pricing using a more restrictive one standard deviation methodology to encourage better pricing in discussions, expanding the range of competitive rates to two standard deviations for the purposes of determining whether a price was fair and reasonable." Supp. Comments at 9 n.4.

Because we find that the agency neither conducted misleading discussions nor engaged in disparate treatment, we also find reasonable its conclusion that SNAP's final price quotation was not fair and reasonable, and its subsequent decision not to establish a BPA with SNAP. As a result, even if we were to sustain SNAP's challenges to the evaluation of its quotation under the past performance and corporate capabilities factors, SNAP still would not be in line for award because its final price was found to be not fair and reasonable. Thus, SNAP is not an interested party to pursue its remaining challenges to the agency's technical evaluation.<sup>8</sup> See *ACTA, LLC*, B-418352, B-418352.2, Mar. 17, 2020, 2020 CPD ¶ 107 at 8. Accordingly, these bases of protest are dismissed.

This protest is denied.

Thomas H. Armstrong  
General Counsel

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<sup>8</sup> SNAP also asserted in a supplemental protest that the agency conducted misleading discussions with respect to the evaluation of the corporate capabilities factor. Comments and Supp. Protest at 20-23. For the same reason stated above, SNAP is not an interested party to pursue this protest ground.