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## Decision

**Matter of:** BAE Systems Norfolk Ship Repair, Inc.

**File:** B-420065

**Date:** November 19, 2021

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### DIGEST

1. Protest alleging that solicitation fails to provide sufficient information for offerors to compete intelligently and on a common basis is denied where the solicitation provides sufficient information for offerors to price the risks inherent in the agency's uncertain growth work requirements.
  2. Protest alleging that solicitation improperly deviates from mandatory contract clauses is denied where the challenged term does not contravene the clauses.
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### DECISION

BAE Systems Norfolk Ship Repair, Inc., of Norfolk, Virginia, protests the terms of request for proposals (RFP) No. N00024-21-R-4490, issued by the Department of the Navy for ship repair services for the USS IWO JIMA and the USS MITSCHER. The protester argues that the solicitation does not provide sufficient information regarding what the Navy terms "growth work" requirements, *i.e.*, additional repair work that will be identified and defined during the course of contract performance. BAE argues that this information is needed to enable offerors to intelligently price the work, and also asserts that the growth work terms improperly deviate from mandatory contract clauses.

We deny the protest.

## BACKGROUND

On June 8, 2021, the Department of the Navy issued the RFP, seeking proposals for the maintenance, repair and modernization of the USS MITSCHER (DDG 57) and the USS IWO JIMA (LHD 7) on a fixed-price basis.<sup>1</sup> The solicitation will result in two contracts, one for each ship, and no offeror will be awarded both ship contracts. Agency Report (AR), Tab 1, Conformed RFP at 245.

The solicitation includes two base contract line item numbers (CLINs), one for availability preparation and one for advanced material procurement. In addition, the RFP includes several option CLINs with detailed work item specifications included in a defined work package. The RFP also includes multiple level-of-effort-to-completion (LOETC) CLINs, representing growth in the workload that is expected but has not yet been fully defined. Each LOETC CLIN relates expressly to one of the defined option CLINs, and consists of a certain number of pre-priced labor hours and material dollars.<sup>2</sup> Contracting Officer's Statement/Memorandum of Law (COS/MOL) at 3. The solicitation directs offerors to propose a fully burdened labor rate and a material burden rate to be applied to the LOETC labor hours and material dollars, respectively. The number of labor hours and the material dollars for the LOETC CLINs are based on detailed historical data collected from past ship repair efforts. *Id.*

The solicitation provides that during the performance of the contract, when growth work is identified, the contractor will provide an estimate of labor hours and material dollars to accomplish the effort. RFP at 139-140. If the contractor's estimate is in line with the agency's estimate, the agency will sign a growth management record authorizing the work with the hours and materials costs to be subtracted from the pool of pre-priced LOETC hours and materials agreed upon in the contract. COS/MOL at 3. If the contractor's estimate differs from the agency's estimate, the parties will negotiate an agreement. *Id.* If the parties cannot reach agreement, the government may unilaterally direct the contractor to perform using the contractor's proposed contract labor and material rates, with any dispute regarding the hours and materials costs to be resolved via the Federal Acquisition Regulation (FAR) disputes clause, FAR 52.233-1 (Alt. 1). *Id.* The RFP provided that LOETC labor hours and material are considered to be within the scope and pricing of the contract, will be incurred at the discretion of the contracting

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<sup>1</sup> The acronyms LHD and DDG used by the Navy refer to "landing helicopter dock" and "guided missile destroyer," respectively. See [https://www.mynavyhr.navy.mil/Portals/55/Reference/NOOCS/Vol2/Manual\\_II\\_77\\_PTB\\_Oct2021.pdf?ver=Mobd-F7TuvCmMsIFp8eJ9Q%3D%3D](https://www.mynavyhr.navy.mil/Portals/55/Reference/NOOCS/Vol2/Manual_II_77_PTB_Oct2021.pdf?ver=Mobd-F7TuvCmMsIFp8eJ9Q%3D%3D) (last visited Nov. 19, 2021).

<sup>2</sup> The solicitation provided that subcontractor costs under the LOETC CLINs would be deducted from the materials allocated, *i.e.*, treated as material costs. RFP at 120.

officer, and “are not subject to an equitable adjustment under FAR 52.243-1 ‘Changes-Fixed Price’.”<sup>3</sup> RFP at 120.

The LOETC effort will be subject to a phasing schedule set forth in the solicitation. Under the phasing schedule, the government must order the pre-priced growth work during contract performance such that no more than 50 percent of the hours or material will be ordered by the midpoint (“50 percent schedule point”) of the ship’s scheduled “availability,” and no more than 25 percent of the hours or material will be ordered following three quarters (“75 percent schedule point”) of the ship’s scheduled availability.<sup>4</sup> RFP at 126.

In addition to the LOETC growth work, the successful offerors’ proposed fully burdened labor rates and material burden rates will be used to negotiate the price for any additional growth work beyond the LOETC CLINs under Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.217-7028, Over and Above Work. MOL/COS at 4. Any new work that arises during contract performance will be handled pursuant to FAR clause 52.243-1, Changes-Fixed Price. *Id.*

The work anticipated for the USS IWO JIMA (LHD 7) is significantly larger than the work anticipated for the USS MITSCHER (DDG 57). COS/MOL at 4. To attract potential offerors for both ships, the solicitation required offerors to submit proposals for both ships.<sup>5</sup> RFP at 130. The solicitation provides that the successful offeror for the USS IWO JIMA requirement will be the responsible, technically acceptable offeror with the lowest evaluated price for both ships combined. *Id.* at 245. The successful offeror for the USS MITSCHER contract will be the responsible, technically acceptable offeror with the second lowest evaluated price for both ships combined. *Id.*

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<sup>3</sup> During the course of this protest, the agency took the position that it would consider any requests for equitable adjustment submitted by the contractor during performance of the LOETC work. See Navy Post-Hearing Brief at 14. Because the solicitation does not entitle the contractor to an equitable adjustment under the changes clause for LOETC work, our decision does not take this representation into account in assessing the challenged solicitation terms.

<sup>4</sup> An “availability” is a scheduled assignment of a ship to an industrial activity for the purpose of accomplishing repairs or performing maintenance and/or modernization.

<sup>5</sup> The RFP includes an exception to this requirement in the case of an offeror with facilities that could accommodate one of the ships but not the other. COS/MOL at 4 n.3. While the protester asserts that this provision is ambiguous, BAE has not demonstrated that it will suffer competitive prejudice as a result of this alleged ambiguity. Competitive prejudice is an essential element of a viable protest; where, as here, 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. *Engility Corp.*, B-413120.3 et al., Feb. 14, 2017, 2017 CPD ¶ 70 at 17.

The solicitation states that the USS IWO JIMA would be available to offerors for a “ship check” in Norfolk, Virginia from June 8, 2021 to June 22, 2021.<sup>6</sup> *Id.* at 230. The USS MITSCHER and the USS IWO JIMA also were made available for ship checks in a previous solicitation that was cancelled just prior to the issuance of the current solicitation. Agency Post-Hearing Brief at 5 & 5 n.2. [DELETED].<sup>7</sup>

The solicitation requires proposals to be submitted by August 16, 2021. [DELETED].

On August 12, BAE filed this protest.

## DISCUSSION

The protester argues that the solicitation does not provide sufficient information on the work required under the LOETC and new work CLINs to enable offerors to compete intelligently and on a common basis. The protester also asserts that the solicitation’s growth work provisions improperly deviate from mandatory FAR and DFARS clauses (the Changes clause and the Over and Above Work clause) by permitting the agency to unilaterally direct the completion of work under pre-set LOETC labor and material rates., once such work is identified. The protester asks our Office to sustain the protest and recommend that the agency amend the solicitation to use cost-reimbursement CLINs for the growth and new work, or, at a minimum, to provide that the FAR Changes clause applies to this work.

As discussed below, we deny the protest.<sup>8</sup>

### Pricing the LOETC and New Work CLINs.

The protester argues that the solicitation’s LOETC CLINs render it impossible for an offeror--even an experienced shipyard like BAE--to intelligently prepare its proposal. In this respect, the LOETC CLINs are growth work CLINs that prescribe a certain number

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<sup>6</sup> At a hearing GAO conducted to resolve this protest, the agency explained that a ship check is “an opportunity for an offeror to visit either the subject ship of the solicitation or a sister ship, a ship that is considered identical or closely similar to the subject ship of the solicitation.” Hearing Tr. 16:7-11. The agency further explained that the opportunity to visit the ship will permit a potential offeror to tour the ship and “gain a perspective on things such as the condition of the subject ship.” Hearing Tr. 16:11-14.

<sup>7</sup> Citing public reports of the ship’s deployment, the protester contends that the opportunity for a ship check was illusory because the IWO JIMA was not within a thousand miles of Norfolk, Virginia during any of the ship check dates. Protester Post-Hearing Brief at 17. Since [DELETED], these reports do not address the question of whether the IWO JIMA could have been made available to BAE.

<sup>8</sup> While we do not address every argument raised by the protester, we have considered each argument and find no basis to sustain the protest.

of hours and material costs that can be ordered by the agency at a set labor and material rate for work to be identified during contract performance. The LOETC CLINs contain no description of the growth work to be accomplished, but each LOETC CLIN is tied to a defined CLIN for ship repair services, reflecting that as the defined ship repair services are performed, the agency will inevitably identify additional work to be accomplished. For example, as a contractor paints a space within a ship, the contractor might identify additional blasting or painting that needs to be performed; this additional blasting or painting could be the subject of additional work assigned to a contractor pursuant to a LOETC CLIN. See Hearing Tr. 23:4-15.

BAE argues that because the defined CLINs are so broad, comprising hundreds of separate work items, it is impossible for a contractor to predict what the growth work might entail. For example, CLIN 0003 alone, which relates to repair work on the USS IWO JIMA, encompasses 449 separate work items. In this regard, the protester contends that the Navy retains “absolute discretion” over how and when to use these very large pools of growth work labor hours and material dollars, making the likely volume, mix, and scheduling of the growth work impossible to predict. Comments at 11.

As an example, the protester notes that the USS IWO JIMA growth work labor hour pool includes 423,657 direct labor hours and \$15,740,815 in materials, which could be assigned to anything from highly specialized work, such as specialty welding, to less specialized work, such as bilge cleaning. Because of this discretion, and the lack of detail provided in the solicitation, BAE argues that offerors are unable to meaningfully determine a blended labor rate. Indeed, during the hearing, the protester’s vice president for business development likened such an effort to “pricing air.” Hearing Tr. 242:17. The protester contends that since each offeror will essentially have to guess at what the growth work will entail, and when it will be ordered, the offerors are not competing on a common basis.

There is no legal requirement that a solicitation be drafted so as to eliminate all performance uncertainties; the mere presence of risk does not render a solicitation improper. *Northrup Grumman Tech. Servs., Inc.*, B-406523, June 22, 2012, 2012 CPD ¶ 197 at 12. Instead, offerors have the responsibility, in submitting a proposal on a fixed-price contract, to project costs and to include in their proposed fixed prices a factor covering any projected increase in costs; risk is inherent in most types of contracts and offerors are expected to allow for that risk in computing their offers. *Id.* Indeed, it is within the administrative discretion of an agency to offer for competition a proposed contract that imposes maximum risks on the contractor and minimum burdens on the agency. *Fluor Fed. Sols., LLC*, B-414223, Mar. 29, 2017, 2017 CPD ¶ 109 at 5. A contracting agency, however, must provide sufficient detail in the solicitation to enable offerors to compete intelligently and on a relatively equal basis. *CWTSatoTravel*, B-404479.2, Apr. 22, 2011, 2011 CPD ¶ 87 at 12.

Here, we find that the agency has provided offerors with sufficient detail to price the requirements. As an initial matter, the Navy provided offerors with hours and material dollar ceilings for the LOETC growth work that were derived from historical performance

information from contractors working on similar ships. See Agency Post-Hearing Brief at 13.

In addition, the agency provided detailed work-item specifications for the defined work CLINs. During the hearing, the Navy's project manager testified that an experienced shipyard, such as BAE, would be able to use these work item specifications to estimate the composition of (and a blended price for) the LOETC growth work. In this respect, each LOETC growth work CLIN relates to a particular, defined-work CLIN. For example LOETC CLINs 0046-0054, which comprise 213,709 hours, are growth work CLINs aligned with CLIN 0003, which relates to fiscal year 2022 ship repairs onboard the USS IWO JIMA. AR, Tab 1, attach. J-4A, "Labor & Material Rates" Tab at Rows 8-16. CLIN 0003, in turn, is well-defined via 449 detailed, work-item specifications included as attachments to the solicitation. At the hearing, the Navy's project manager went through several of the work items discussing how a shipyard with experience repairing similar classes of Navy vessels would be able to predict the type and amount of growth work most likely to arise from each work item:

So I've been working ship repair on LHDs since 2011. That work has almost exclusively been LHDs. And there some items--the 99 percent of items can--absolutely you know where the growth is going to be. And that's based on your experience in doing ship repair. Not just for the LHD class, but for all classes of ships. You could take a fan room, for example. It sucks in salt air. . . from where you're out at sea in the ocean and they degrade at a rapid rate. And there are other items out there. For instance, the main propulsion boilers where we tear them down every five years. So when we tear them down and we go looking, during the inspection we would absolutely--you would absolutely expect to see growth there. Experience and history would show you that. The same with the underwater hull. We have not seen the hull of the vessel for 12 years. That's not news to anyone.

Hearing Tr. 136:1-20.

In addition to the detailed work item specifications, the agency's project manager noted that each offeror was provided an opportunity to conduct ship checks of the two ships, wherein the offeror would be able to observe certain areas of the ship and how the equipment in those areas was functioning, as well as talk to knowledgeable ship personnel. Hearing Tr. 173:1-15; 176:10-15. The ship check would thus allow offerors to gain valuable insight that could aid in forecasting the level and type of growth work that might be needed during contract performance.<sup>9</sup> *Id.*

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<sup>9</sup> The protester's vice president of business development disputed the importance of a ship check, asserting that it provides no useful information for predicting the growth work, particularly since much of the growth work arises during open-and-inspect type processes. Hearing Tr. 249:5-10. Despite the protester's assertion, we find to be

In response to questions regarding these points, the protester's vice president of business development asserted that BAE could not intelligently predict the growth work that would arise because "[t]here's so many variables you just don't know." Hearing Tr. 256:11-12. The vice president further asserted that because of these variables, and the agency's discretion in ordering the LOETC work, the level of LOETC work that has arisen on BAE's other ship repair contracts has been "all different." *Id.* at 263:17.

Based on our review of the record, we find reasonable the agency's conclusion that the information provided is sufficient to enable an experienced offeror to create a blended labor rate. In this regard, in addition to providing detailed work item specifications for the defined work items, providing an opportunity for offerors to conduct a ship check, and providing hours, based on historical performance information, for the LOETC CLINs, the solicitation also provided a phased schedule requiring the agency to order no more than 50 percent of the hours or material after the 50 percent schedule point of the ship's availability, and no more than 25 percent of the hours or material after the 75 percent schedule point of the ship's availability. RFP at 127.

While the protester asserts that the schedule still contains numerous uncertainties, which could lead to large disruptions and the need to accelerate work at great cost, the agency credibly explains that the schedule will follow a broadly predictable process. In this respect, much of the growth work will be identified through the "open-and-inspect" process, which the solicitation requires to be completed when 20 percent of the schedule has been completed.<sup>10</sup> See Hearing Tr. 178:11-21; 273:14-17.

Once such work is identified, the process continues with the contractor providing an estimate of labor hours and material dollars to accomplish the effort. RFP at 139. If the contractor's estimate is in line with the agency's estimate, the agency signs a growth management record authorizing the work; if not, the parties negotiate in an attempt to reach agreement. COS/MOL at 3. If the parties cannot reach agreement, the government may unilaterally direct the contractor to perform the work at the contract labor and material rates. *Id.* Thus, the schedule for the work, while by no means certain or definite, follows a pattern and is subject to meaningful limitations. To the extent there exist uncertainties, even uncertainties that could greatly increase the cost of performance, we see no reason that such risks could not be factored into the offerors' proposed fully burdened labor rates and material rates. We also note that the

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credible the agency's explanation that observing the equipment in action and discussing its maintenance with knowledgeable ship personnel would be useful in predicting what growth work might be necessary.

<sup>10</sup> An open and inspect process is a process of inspecting ship equipment and portions of the ship, during its scheduled availability, to identify additional maintenance and repair work. For example, opening a boiler system and inspecting the inside might result in the identification of valves that need to be repaired or replaced. See Hearing Tr. 159:2-161:21.

solicitation does not prohibit offerors from including the risk of delay and disruption in these rates.

In addition to the schedule information and work item specifications, the solicitation provided potential offerors with labor function categories (both for skilled labor at the journeyman level and support labor functions) for calculating their fully burdened ship repair labor rate. See RFP at 120-121.

In sum, the solicitation provided offerors with (1) growth work hours and material dollars that were based on historical data from prior ship repair contracts for similar ships, (2) direct work CLINs associated with each growth work CLIN, along with detailed work item specifications for the direct work, (3) an opportunity to observe some of the ship's equipment and talk with knowledgeable ship personnel; (4) the process the agency would use to schedule the LOETC work and meaningful scheduling limitations applicable to that process, and (5) the labor function categories that would be used in performing the LOETC work. We find this information was sufficiently detailed to permit potential offerors to prepare their prices.

In this manner, the solicitation is analogous to the ship repair solicitation challenged in *Braswell Services Group, Inc.*, B-276694, July 15, 1997, 97-2 CPD ¶ 18, which included certain reserve work challenged as insufficiently detailed. Our Office denied that protest, noting that:

Because of the variable nature of shipboard conditions, we do not believe the agency could reasonably be expected to do more than it did in specifying its requirements. In fact, we think the agency could reasonably expect offerors, like the protester, to use their business judgment, including their experience with prior ship repair contracts, in preparing their proposals to reflect the risk of being asked to perform reserve work which might be required after the performance of basic work to address unforeseen additional and necessary repairs.

*Id.* at 3.

While the protester argues that the agency should have provided the underlying historical performance data that was used to calculate the LOETC hours, the agency explained that it could not provide such information without providing proprietary information from third party contractors. See Hearing Tr. 94:10-14. At any rate, when asked whether such historical performance information from its competitors would have assisted BAE's ability to estimate the LOETC work, BAE's vice president testified that the information would be of little value because each shipyard is different in how it approaches ship repair tasks. *Id.* at 283:1-14.

In sum, we are not persuaded that the information provided to offerors was insufficient



to enable experienced shipyard offerors to intelligently price their proposals.<sup>11</sup> While the protester is correct that the growth work remains subject to considerable uncertainty, we find that offerors could nonetheless have compiled a burdened labor rate that factored in this uncertainty in forecasting the scope of the growth work.<sup>12</sup>

### Deviation from Mandatory Clauses

The protester also asserts that the solicitation improperly deviates from the FAR and the DFARS by authorizing the agency to unilaterally direct growth work, without permitting the contractor to request an equitable adjustment. In this respect, the FAR contains a mandatory changes clause, found at FAR 52.243-1, which permits the agency to order within scope changes to the contract work and prescribes a mechanism for a contractor to receive an equitable adjustment where appropriate. The DFARS includes a mandatory contract clause, found at DFARS 252.217-7028, specifically addressing “over and above work” that is necessary to complete maintenance and repair efforts but is not covered by the work specified in the contract. The protester argues that, while both of these clauses are included in the solicitation, the solicitation is structured to deliberately neutralize both provisions by permitting the agency to direct substantial extra, unspecified work (*i.e.*, growth work to be issued under the LOETC CLINs) without having to use either of these clauses. See RFP at 120 (“LOE to Completion labor hours and material are within scope and pricing of this contract and are not subject to an equitable adjustment under FAR 52.243-1 Changes-Fixed Price”); *Id.* at 140 (making clause C-217-H005 referencing the “over and above work” provisions inapplicable to the LOETC CLINs).

The FAR defines a deviation requiring additional approval as “[t]he issuance or use of a policy, procedure, solicitation provision..., contract clause..., method, or practice of conducting acquisition actions of any kind at any stage of the acquisition process that is inconsistent with the FAR.” FAR 1.401(a).<sup>13</sup> In essence, BAE contends that the agency deviated from the FAR and DFARS because the solicitation authorizes the government

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<sup>11</sup> We note that offerors were only required to price their proposals and not to propose a technical approach or labor mix sufficient to accomplish the growth work. In our view, the latter requirements would have given rise to a far greater obligation on the part of the Navy to provide detailed information on the scope of the expected growth work.

<sup>12</sup> The protester also challenges certain “new work,” which was outside-the-scope work included in the solicitation for evaluation purposes. COS/MOL at 1-2 n.1. The protester asserts that the lack of description and definition of such work will lead offerors to make uninformed decisions on the skill set necessary, and actual labor needed, to perform such work. We find, however, that the inclusion of the requirement to price the new work is unobjectionable since such work is subject to the FAR Changes clause and would be the subject of further negotiation after the contract is awarded. This would enable the contractor to receive an equitable adjustment once the work is identified.

<sup>13</sup> The protester asserts that the growth work provisions amount to a deviation from the DFARS over and above work clause for the same reason.

to order unspecified growth work under the LOETC CLINs without permitting the contractor to request an equitable adjustment for the work in the manner anticipated by the above-referenced FAR and DFARS clauses. The protester further contends that the agency has not secured the necessary justification and approval from an agency head to deviate from these FAR clauses. See FAR 1.401(a); see also DFARS 201.402-404 (detailing the requirements for deviations).

In support of this argument, the protester cites *Southwest Marine, Inc.*, ASBCA Nos. 34058 *et al.*, Sept. 14, 1990, 91-1 BCA ¶ 23,323, where the Armed Services Board of Contract Appeals (ASBCA) found a contract's additional government requirements (AGR) clause to be legally unenforceable. The AGR clause in that contract permitted the agency to order up to eight additional work specifications but prohibited the contractor from including the costs of delay or disruption in its fixed price. The ASBCA found this provision to be unenforceable because it deprived the contractor of its right to request an equitable adjustment for delay and disruption, thereby constituting an unauthorized deviation from the mandatory FAR Changes clause.

Where a solicitation is inconsistent with FAR requirements, our Office has recommended that agencies follow the requisite procedures to secure permission to deviate from the FAR, or amend the solicitation to achieve compliance with the procurement regulation. See *Ann Riley & Associates, Ltd.*, B-245149, Dec. 16, 1991, 91-2 CPD ¶ 544.

The Navy has not disputed that it did not receive approval to deviate from the FAR and DFARS. Instead, the agency contends that the growth work provisions do not amount to deviations because they are neither inconsistent with the mandatory clauses, nor do they alter them. The agency asserts that the solicitation simply allows the parties to agree "at the time of contracting . . . to a price in anticipation of the LOETC work." Agency Post-Hearing Brief at 15. We agree.

In this regard, we find the LOETC provisions to be more analogous to the contract provisions addressed in *Northwest Marine, Inc.*, ASBCA No. 43097, Feb. 25, 1992, 92-2 BCA ¶ 24861, than to the provisions challenged in the *Southwest Marine* decision. In *Northwest Marine*, the ASBCA rejected a protester's argument that a contract AGR clause contravened the mandatory FAR Changes clause. The ASBCA distinguished its decision in *Southwest Marine*, and noted that, unlike in that decision, the AGR clause in *Northwest Marine* worked in conjunction with the FAR clause. In particular, the ASBCA noted that (1) the contractor was permitted to include delay and disruption costs within its rates, (2) the rates were used as the basis to evaluate the contractor during the procurement, and (3) the effect of the clause was such that it only set the rate for the AGR work without permitting the agency to unilaterally direct the contractor to perform the work.

Here, similar to *Northwest Marine*, the solicitation permitted offerors to include delay and disruption costs within their proposed fully burdened labor rates, and these rates were used to calculate the proposal price that was the agency's basis for evaluating

competing proposals. Thus, in our view, the LOETC provision here works in conjunction with the FAR Changes clause and the DFARS Over and Above clause by permitting contractors to pre-set the rates for the growth work.

Here also, unlike in *Southwest Marine*, the contractor can recover its delay and disruption costs by including them in its fully burdened labor rate. See also *A & E Indus., Inc., et al.*, B-226997 *et al.*, June 19, 1987, 87-1 CPD ¶ 616 at 6 (additional work clauses were not inconsistent with the standard Changes clause where compensation for delay and disruption costs was permitted to be included as a cost element of the fixed labor rate). Although the agency in *Northwest Marine, Inc.* did not have the ability to unilaterally direct that the work be performed (as it does here), we note that the hours to accomplish each LOETC growth work task are nonetheless subject to negotiation as well as the use of the procedures established in the FAR's Disputes clause incorporated into the solicitation.

Ultimately, we conclude that the provision at issue does not constitute an unauthorized deviation from the FAR Changes clause and the DFARS Over and Above clause.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel