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Decision

Matter of: Pulau Electronics Corporation

File: B-280048.4; B-280048.5; B-280048.6; B-280048.7

Date: May 19, 1999

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Donald J. Walsh, Esq., Scaldara & Potler, for AAI/Engineering Support, Inc., an intervenor.

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DIGEST

1. Agency unreasonably determined that awardee corrected during discussions a significant staffing shortfall in support of a major solicitation requirement, where the agency, both in its award selection and in defense of this protest, relied upon proposal revisions that, in fact, addressed an unrelated staffing area in the awardee's proposal and did not consider whether the uncorrected staffing shortfall—which alone accounted for the awardee's decisive price advantage—would adversely affect the awardee's ability to meet its requirements.

2. In a solicitation for a fixed-price-award-fee contract with some unevaluated time and materials (T&M) contract line items (CLIN), a solicitation requirement that offerors use common labor rates in developing their prices for the evaluated fixed-price CLINs and the unevaluated T&M CLINs did not prohibit offerors from proposing discounts to the fixed-price CLINs.

DECISION

Pulau Electronics Corporation protests the award of a contract to AAI/Engineering Support, Inc. under request for proposals (RFP) No. N61339-97-R-0011, issued by the Department of the Navy on behalf of the Department of the Army for life cycle

contractor support of command, control, communications, computers and intelligence (C⁴I) devices located at designated Army installations worldwide.

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

The RFP, issued May 9, 1997, sought comprehensive support for a variety of C⁴I devices, including hardware and software maintenance and operational support services. The RFP required support for three general categories of C⁴I devices: intelligence devices, the simulation network devices, and Family of Simulation (FAMSIM) devices. FAMSIM devices train Army leadership in the command and control of troops through the use of computer-generated battle scenarios. The battle scenarios are generated by contractor personnel, known as “operators,” who run computer workstations housed at several Army simulation centers. RFP amend. 3, statement of work (SOW) § 3.9.

The RFP contemplated the award of a fixed-price-award-fee, indefinite-quantity contract with some time-and-materials (T&M) contract line items (CLIN) for a base period with 5 option periods. RFP amend. 3, §§ B, L.2. The RFP requested monthly unit prices for the fixed-price CLINs, but did not request prices for the T&M CLINs. RFP amend. 3, § B. As a result, the T&M CLINs played no part in determining a proposal's total evaluated price. The RFP, in a provision entitled “Labor Pricing Summary,” also asked offerors to propose labor rates, which were to apply to work performed under the T&M CLINs (and under any contract modifications, whether negotiated on a fixed price or T&M basis, RFP amend. 3, § C.7). The Labor Pricing Summary provision requested these labor rates as follows:

Offerors shall complete the blanks below with all labor categories and corresponding labor rates utilized in developing their proposal. These fully burdened fixed hourly labor rates and overtime rates (include the base wage, all applicable indirect burden rates and profit) and labor categories shall constitute the sole ones used in the proposal, award, and billing of any delivery orders issued under the contract whether the delivery order is issued on a Firm Fixed-Price or Time & Material Basis.

RFP amend. 3, §§ B.1(a), B.2(a), B.3(a), B.4(a), B.5(a).¹

¹The contract specialist, who drafted the Labor Pricing Summary provision, explained in an affidavit to our Office that the provision was intended to induce competitive pricing among offerors for the unevaluated work under the contract. Affidavit of Contract Specialist, Apr. 13, 1999, ¶¶ 5-8. In particular, because the RFP did not provide for an evaluation of the T&M CLINs or the associated labor rates, the contract specialist feared an offeror might seek a buy-in on the evaluated fixed-price work, while intending to recoup its losses by proposing very high labor rates for the T&M work and any future contract modifications. The Labor Pricing Summary

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The solicitation provided for award based on a price/technical tradeoff considering three evaluation factors: (1) price/administrative, (2) technical/management, and (3) past performance. RFP amend. 3, § M.1. The technical/management factor was most important, and the past performance and price/administrative factors were comparatively equal to each other. RFP amend. 3, § M.3. The price/administrative factor provided for a price realism evaluation; the agency advised offerors that it would multiply offeror's proposed labor hours by the rates proposed for the T&M efforts in its price realism evaluation. RFP amend. 3, § M.3(a)(1), (3); RFP amend. 1, Question 116.

The technical/management factor included a technical and a management subfactor, each of which had several sub-subfactors. RFP amend. 3, §§ M.3, M.3(b). The technical/management evaluation was to gauge the offeror's understanding of the requirements, technical approach, and ability to execute its technical approach. RFP amend. 3, § M.3(b)(1), (2). The technical/management factor provided for an evaluation of the offeror's proposed staffing under a staffing sub-subfactor. RFP amend. 3, § M.3(b)(1)(i). The RFP did not disclose any staffing estimates, but provided detailed workload information, from which the offeror was to determine the labor hours and mix necessary to implement its technical approach. The offeror was required to justify its staffing levels under the staffing sub-subfactor. Id.

Five firms, including AAI and Pulau, submitted initial proposals. Following the initial evaluation, the contracting officer established a competitive range, which included the proposals submitted by Pulau and Hughes Technical Services Company, and excluded the proposals submitted by AAI, Nations, Inc., and Lockheed Martin Services, Inc., as technically unacceptable.

The technical evaluation team (TET) rated AAI's proposal "unsatisfactory/high risk" under three technical/management sub-subfactors, including staffing.² Among other staffing concerns, the TET expressed doubt that AAI had proposed enough staff to meet the solicitation's FAMSIM requirements, which resulted in the following significant weakness:

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provision was intended to prevent such a pricing strategy, by requiring offerors to use common labor rates in developing the prices proposed for the evaluated and unevaluated work under the contract. Id.

²The source selection plan established adjectival ratings ("outstanding," "highly satisfactory," "satisfactory," "marginal," and "unsatisfactory") and risk assessment ratings ("high," "medium," and "low") for the technical/management evaluation.

Offeror's staffing level for FAMSIM support varies significantly from the Government estimate with little rationale provided to support the reductions. The offeror identifies a comprehensive PMCS [Preventive Maintenance Checks and Services] program that, when coupled with the required corrective maintenance responsibilities, cannot be accomplished with the proposed staffing levels.

Agency Report, Tab 46, Initial Proposal Evaluation Report, at 18.

The internal government estimate used by the TET as a basis for comparison represented current levels of support for the C⁴I devices. *Id.* attach. A. The government estimate was for 268.5 employees overall, whereas AAI proposed 194.5 employees overall. In terms of FAMSIM support, AAI's staffing levels were below the government estimate in two of the three FAMSIM categories represented in the estimate. First, AAI proposed [deleted] operators to support the FAMSIM simulation centers, whereas the government estimate was 97 operators. Second, AAI proposed [deleted] employees to perform FAMSIM post deployment software support (PDSS),³ whereas the government estimate was 31 employees. AAI's proposed staff exceeded the government estimate for FAMSIM maintenance, the third category of FAMSIM support ([deleted] employees compared to 41 employees). However, as noted above, the TET expressed doubt that AAI could accomplish its proposed preventive maintenance ("PMCS") program unless it increased its proposed number of maintenance personnel. *Id.* at 18, attach. A.

After the contracting officer notified offerors of the competitive range determination, Nations protested its proposal's rejection to our Office. We sustained Nations' protest and recommended that the Navy establish a new competitive range and conduct discussions as appropriate. *Nations, Inc.*, B-280048, Aug. 24, 1998, 99-1 CPD ¶ ___ at 10.

Following our decision, the contracting officer decided to include all five proposals in the competitive range. The contracting officer appointed a new TET to evaluate revised proposals. The new TET included the original TET leader and the lead project director for the procurement, but none of the individual evaluators from the original TET. Agency Report at 31.

The reconstituted TET prepared discussion questions for the five offerors, and the agency conducted two rounds of written discussions during October 1998. Agency Report at 32. During discussions with AAI, the agency questioned the firm about its proposed staffing levels for FAMSIM maintenance (including its PMCS program) and FAMSIM PDSS, but not about its staffing levels for FAMSIM simulation center

³In general, PDSS requires software engineering and computer programming support. See RFP amend. 3, SOW § 3.10.1.

operators. Agency Report, Tab 20, Discussion Letter from the Contracting Officer to AAI 3, Question 49 (Oct. 7, 1998).

AAI changed its staffing approach to the RFP maintenance requirements in response to discussions. In particular, AAI increased its proposed number of electronic technicians, who perform maintenance on the various C⁴I devices, including FAMSIM devices. AAI proposed to [deleted]. Agency Report, Tab 20, AAI's Second Revised Technical/Management Proposal, Oct. 26, 1998, at II-75, II-77.

AAI's "[deleted] approach" did not apply to its proposed staffing for FAMSIM PDSS or simulation center operators, [deleted]. Agency Report, Tab 18, AAI's Initial Technical/Management Proposal, at IIB-29 to IIB-33; Agency Report, Tab 20, AAI's First Revised Technical/Management Proposal, Oct. 14, 1998, at II-65, II-80 to II-83; Agency Report, Tab 20, AAI's Second Revised Technical/Management Proposal, at II-67 to II-70. With regard to FAMSIM PDSS staffing, AAI increased its staffing level from [deleted] to [deleted] employees in response to discussions, which was still well below the government estimate of 31 employees. Compare Agency Report, Tab 18, AAI's Initial Technical/Management Proposal, at II-72 with Agency Report, Tab 20, AAI's Second Revised Technical/Management Proposal, at II-69. AAI, which did not receive discussions with regard to operator staffing at the FAMSIM simulation centers, maintained the same staffing levels and approach as initially proposed. Compare Agency Report, Tab 18, AAI's Initial Technical/Management Proposal, at II-88 to II-90 with Agency Report, Tab 20, AAI's First Revised Technical/Management Proposal, at II-80 to II-82.

The reconstituted TET rated AAI's revised proposal "satisfactory/medium risk" under the staffing sub-subfactor and "satisfactory/medium risk" overall; the "medium risk" rating reflected the fact that AAI based its overall staffing level upon historic data, rather than the SOW workload data. Agency Report, Tab 53, Final Proposal Evaluation Report, at 21. The reconstituted TET also concluded that AAI's [deleted] approach resolved the concerns raised by the original TET regarding AAI's staffing level for FAMSIM support. Id. at 20. In arriving at this conclusion, the reconstituted TET briefly described AAI's revised maintenance approach and the benefits of [deleted]. However, the reconstituted TET did not discuss AAI's staffing levels for FAMSIM PDSS or FAMSIM operators at the simulation centers.

The agency requested that best and final offers (BAFO) be submitted by November 2, 1998. In its BAFO request letter, the agency reiterated that offerors must develop their evaluated fixed-prices based on the labor rates proposed for the contract's T&M efforts, and stated, "Any offeror who fails to comply with this requirement of the solicitation cannot receive the award." Agency Report, Tabs 14, 21, 27, 34, 41, Letters from Contracting Officer to Offerors (Oct. 27, 1998).

In its BAFO, Nations burdened its proposed T&M labor rates with [deleted] profit factor, but stated that it had subtracted this profit factor from its rates in developing

its fixed prices in view of the anticipated award fee. Agency Report, Tab 14, Nations' BAFO, Volume I, attach. 2, at 2-17. In its BAFO, AAI affirmed that its fixed prices were based upon its proposed T&M labor rates, but noted that it had "made a decision to reduce our [fixed prices] for various items in our proposal." Agency Report, Tab 21, Awardee's BAFO Cover Letter (Oct. 30, 1998). AAI reduced its BAFO price by [deleted] overall, and reduced its price for certain sub contract line items (SLINs) to [deleted] in the option years ([deleted]). Compare Agency Report, Tab 20, AAI's Second Revised Price/Administrative Proposal, §§ B.6, B.8 with Agency Report, Tab 21, AAI's Price/Administrative BAFO, §§ B.6, B.8.

The source selection authority (SSA) rejected Nations' proposal because it did not use its proposed T&M rates (which included profit) as the basis for its evaluated fixed prices, which the agency determined was a violation of the above-quoted RFP Labor Pricing Summary requirement.⁴ Agency Report, Tab 55, Source Selection Decision Document, at 5. The SSA found that the remaining proposals, including AAI's, complied with the requirement, and that the fixed prices proposed by these offerors were realistic. Id.

The SSA performed a price/technical tradeoff, considering the results of the final price, technical/management and past performance evaluations. The SSA noted that AAI submitted the lowest-priced BAFO at [deleted] million; Lockheed submitted the third lowest-priced BAFO at [deleted] million; Pulau submitted the fourth lowest-priced BAFO at [deleted] million, and Hughes submitted the highest-priced BAFO at [deleted] million.⁵ Id. at 2. AAI's overall technical/management rating ("satisfactory/medium risk") was the same as Lockheed's and was lower than Pulau's ("satisfactory/low risk") and Hughes's ("highly satisfactory/low risk").⁶ Id. The SSA found that the principal distinction between AAI's proposal and the higher-rated proposals lay in the fact that AAI proposed a considerably smaller total staff. However, the SSA found that the risks associated with AAI's smaller staff could be

⁴Nations protested the award to AAI, but did not protest the Navy's determination that its own proposal violated the Labor Pricing Summary requirement and was unacceptable. In the absence of a timely protest challenging the rejection of its own proposal, we found that Nations was not an interested party to protest the award. Nations, Inc., B-280048.3, Mar. 11, 1999.

⁵AAI's and Pulau's prices for [deleted] accounted for the overall [deleted] price difference between the proposals and reflected the fact that AAI's proposed operator staff was [deleted] than Pulau's. Compare Agency Report, Tab 21, AAI's Price/Administrative BAFO, § B.12 with Agency Report, Tab 27, Pulau's Price/Administrative BAFO, § B.12.

⁶Each offeror's past performance was rated "good/low risk." Agency Report, Tab 53, Performance Risk Analysis Group Report, at 2.

mitigated through the Integrated Product Team process, partnering and close government monitoring, which minimized the significance of AAI's "medium risk" rating. *Id.* at 3-4, 6. In weighing the importance of AAI's "medium risk" rating, the SSA compared offerors' proposed staffing level for the total requirement, not their staffing distribution in support of distinct RFP requirements (such as operator staffing at the FAMSIM simulation centers); in this regard, the SSA credited AAI's ability to perform with less staff based upon its [deleted] approach, which he described as an "innovative" approach that "takes into account efficiencies . . . while reducing the staffing level." *Id.* at 3. The SSA decided to make award based on AAI's lowest-priced proposal, which, apart from its overall lower staffing level, was viewed by the SSA as essentially equal from a technical standpoint to the higher-rated proposals. *Id.* at 6. This protest followed.

Technical Evaluation Issues

Pulau protests that the TET misevaluated AAI's proposal under the staffing sub-subfactor and overall. Pulau argues that the TET should have downgraded AAI's proposal because it did not offer enough staff to support the operation of the FAMSIM simulation centers or the FAMSIM PDSS requirements.

The evaluation of proposals is a matter within the discretion of the contracting agency. Our Office will question the agency's evaluation only where it lacks a reasonable basis or conflicts with the stated evaluation criteria for award. SC&A, Inc., B-270160.2, Apr. 10, 1996, 96-1 CPD ¶ 197 at 7. The record must reasonably support the evaluation of proposals, and it is fundamental that the agency must evaluate offers evenhandedly against common requirements and evaluation criteria. U.S. Property Management Serv. Corp., B-278727, Mar. 6, 1998, 98-1 CPD ¶ 88 at 6.

We find that the agency unreasonably evaluated AAI's staffing level for FAMSIM simulation center support. As noted above, AAI proposed [deleted] operators in support of the FAMSIM simulation centers, a number that was [deleted] below the government estimate of 97 operators. The record reflects that this disparity was an area of significant concern to the initial TET, which contributed to the significant weakness and "unsatisfactory/high risk" rating ascribed to AAI's initial staffing proposal.

The agency and the intervenor argue that the significant weakness noted by the initial TET regarding AAI's FAMSIM staffing did not concern AAI's operator staffing level, as evidenced by the fact that the reconstituted TET did not conduct discussions regarding AAI's operator staffing level. Supplemental Agency Report at 36; Intervenor's Supplemental Comments at 17 n.15. The record contradicts this assertion. The initial TET questioned AAI's proposed staffing level for all areas of FAMSIM support based, in part, on a comparison with the government estimate. See Agency Report, Tab 46, Initial Proposal Evaluation Report, at 18 (quoted above). This comparison revealed that AAI's FAMSIM staffing levels fell far short of the

government estimate in only two respects—operator support for the simulation centers and PDSS support.⁷ Furthermore, the significant weakness in the Initial Proposal Evaluation Report “consolidated” the weaknesses designated by the individual TET evaluators, a number of whom questioned the adequacy of AAI’s operator staffing level. See Agency Report, Tab 46, Initial Proposal Evaluation Report, at 18; Agency Report, Tab 44, Evaluation Information Worksheets, Staffing Sub-subfactor, [deleted].

In any case, even if the initial TET did not regard AAI’s operator staffing level as a deficiency or significant weakness that would adversely affect AAI’s ability to perform the contract work, the record contains no evidence to support the reasonableness of such a conclusion, nor any explanation as to why AAI’s operator staffing level, which was significantly lower than the government estimate and that proposed by other offerors, was acceptable.⁸ While the Navy, in response to this protest, asserts that AAI will be able to support the FAMSIM simulation centers with the number of operators proposed, it has never explained why this is the case, either in its initial or supplemental agency report responding to this issue. See Agency Report at 25; Supplemental Agency Report at 35.

The agency’s post-protest assertion that AAI proposed sufficient FAMSIM operators is also undermined by its evaluation of Nations’ proposal, which proposed [deleted] operators, [deleted] AAI’s proposed staffing. Agency Report, Tab 13, Nations’ First Revised Proposal (Oct. 14, 1998), Response to Discussion Question 52. The reconstituted TET found that Nations proposed so few operators as to eliminate “the flexibility needed to support normal, surge and overtime requirements”; that the proposed staffing level did “not allow for any absences”; and that it amounted to a “high risk staffing approach.” Agency Report, Tab 53, Final Proposal Evaluation Report, at 34. Nations’ staffing level for FAMSIM simulation center support contributed to a “satisfactory/high risk” rating under the staffing sub-subfactor, which the SSA cited as an alternate basis for not awarding the contract based on Nations’ second low-priced proposal (which was [deleted] higher than AAI’s

⁷As indicated previously, AAI’s staffing level for FAMSIM maintenance [deleted] the government estimate, although the initial TET was concerned that AAI’s proposed FAMSIM maintenance staffing level might not support its proposed maintenance approach.

⁸The record also appears to support the protester’s assertion that AAI’s proposed FAMSIM operator staffing level was actually much lower than [deleted] employees because two labor categories proposed by AAI to perform operator duties were not dedicated operators, but were to perform numerous other duties, as well. Protester’s Supplemental Comments at 35 n.14; Second Declaration of [deleted] ¶ 12; Agency Report, Tab 18, AAI’s Initial Technical/Management Proposal, at IIB-19; Agency Report, Tab 20, AAI’s Second Revised Technical/Management Proposal, at IIB-18.

proposal).⁹ Id. at 33; Agency Report, Tab 55, Source Selection Decision Document, at 2, 6.

The agency argues that AAI's [deleted] approach compensated for the low number of operators proposed at the FAMSIM simulation centers. Agency Report at 25. Indeed, this factor is mentioned by the SSA in the Source Selection Decision Document as a reason that AAI was able to reduce its overall staffing. Agency Report, Tab 55, Source Selection Decision Document, at 3. However, as indicated above, our review clearly indicates that AAI's [deleted] approach did not apply to operator staffing at the FAMSIM simulation centers, but was limited to the use of electronic technicians for maintenance support. Agency Report, Tab 18, AAI's Initial Technical/Management Proposal, at IIB-29 to IIB-33; Agency Report, Tab 20, AAI's First Revised Technical/Management Proposal, at II-65, II-80 to II-83; Agency Report, Tab 20, AAI's Second Revised Technical/Management Proposal, at II-67 to II-70. Neither the agency nor the intervenor has disputed this interpretation of AAI's proposal, which was raised in Pulau's protest.¹⁰ Protester's Comments, Mar. 29, 1999, at 33-34, 37. Accordingly, the fact that AAI proposed a large number of electronic technicians in support of its [deleted] simply has no bearing on the low number of FAMSIM operators proposed.¹¹

⁹As noted above, Nations' proposal was rejected because it did not comply with the RFP Labor Pricing Summary requirement.

¹⁰Indeed, AAI essentially concedes that the [deleted] approach applied only to maintenance functions performed by electronic technicians, although it suggests that the [deleted] concept could evolve over time and need not be limited to electronic technicians. Intervenor's Supplemental Comments at 14-15. The intervenor has not identified any provision in AAI's proposal to support such a proposition.

¹¹The agency also argues that the [deleted] approach resolved another weakness in AAI's initial proposal, AAI's failure to describe an adequate approach to augmenting its staff with part-time personnel. Supplemental Agency Report at 40-41. The reconstituted TET determined that the [deleted] approach resolved the weakness by negating the need for part-time personnel. Agency Report, Tab 53, Final Proposal Evaluation Report, at 23. However, AAI's revised proposal did not limit its proposed use of part-time personnel to augment its staff of electronic technicians, but also stated that it might use such personnel to support any RFP requirement, including simulation center support. Agency Report, Tab 20, AAI's Second Revised Technical/Management Proposal, at II-76. Given AAI's low staffing level for simulation center support, we fail to see how the agency could reasonably determine that AAI might not resort to part-time personnel for such support, nor could the agency reasonably excuse the proposal's lack of detail in those areas of concern to the initial TET.

Given the agency's failure to discuss AAI's FAMSIM operator shortfall and its reliance on AAI's [deleted] approach as compensating for all staffing shortfalls, it appears that the SSA may not have known that the staffing shortfall in AAI's proposal primarily involved FAMSIM operators, to which the [deleted] concept did not apply. Because the agency did not resolve or account for AAI's operator staffing shortfall in its award decision, and because this shortfall alone accounted for the price difference between AAI's and Pulau's proposals, we cannot conclude that the record reasonably supports award to AAI. See Dyncorp, B-245289, B-245289.2, Dec. 23, 1991, 91-2 CPD ¶ 575 at 9-10.

We also find that the record does not reasonably support the evaluation of AAI's FAMSIM PDSS staffing. As discussed above, AAI increased its FAMSIM PDSS staff from [deleted] to [deleted] employees during discussions, although this revised staffing level still remained well below the government estimate of 31 employees. In its agency report, the Navy argues that the government estimate is overstated because amendment 04 to the RFP significantly reduced the FAMSIM PDSS requirements. Supplemental Agency Report at 39-40. The protester claims that the government estimate is accurate and that amendment 04 had little, if any, impact on the FAMSIM PDSS requirements. Protester's Comments, Apr. 21, 1999, at 47. We need not resolve this dispute because we find that the agency did not properly document its evaluation of AAI's FAMSIM PDSS staffing.

The TET, which evaluated initial proposals after amendment 04 was issued, relied upon the 31-person government estimate as a basis for downgrading AAI's proposal. See Agency Report, Tab 46, Initial Proposal Evaluation Report, at 10, 18, attach. A; Agency Report, Tab 44, Staffing Deficiency Report, [deleted] at 1. Assuming that this estimate was indeed overstated, the record does not disclose whether the Navy developed a new estimate, what that estimate was, or whether the reconstituted TET considered such an estimate in its final proposal evaluation. See Agency Report, Tab 53, Final Proposal Evaluation Report, at 20-21. Because the final TET report is silent regarding the evaluation of the awardee's FAMSIM PDSS staffing, even though it was significantly less than the government estimate, we cannot determine that the agency had a reasonable basis to conclude that AAI's staffing was satisfactory in this area. See U.S. Defense Sys., Inc., B-245563, Jan. 17, 1992, 92-1 CPD ¶ 89 at 5.

Price Evaluation Issues

Pulau protests that the agency did not perform a reasonable price realism analysis of AAI's proposal. In particular, the protester argues that the agency unreasonably failed to analyze how AAI achieved its substantial BAFO price reduction and the significance of pricing certain fixed-price SLINs for [deleted]. Had the agency performed a reasonable price realism analysis, argues Pulau, it would have realized that AAI achieved its BAFO price reduction by using discounted labor rates to develop its evaluated fixed prices, without proposing these discounted labor rates for the T&M portion of the contract. Pulau claims that AAI's pricing strategy was no

different from Nations', which burdened its T&M rates, but not its fixed price rates, with profit. Pulau argues that the agency should have determined that AAI's pricing strategy, like Nations', violated the RFP Labor Pricing Summary requirement and rendered its proposal ineligible for award.

We do not agree that the RFP prohibited the pricing strategy adopted by AAI or that it compelled the agency to investigate how AAI had discounted its prices. The RFP required offerors to develop their prices for the evaluated fixed-price CLINs using the labor rates proposed for the T&M efforts. Contrary to Pulau's assertion, the record does not support that AAI, in developing its fixed prices, recomputed its proposed T&M labor rates in the same manner as did Nations. AAI's proposal stated that the firm had used the proposed T&M labor rates as the basis for developing its fixed prices, but that it had "made a decision to reduce [AAI's fixed prices] for various items in [AAI's proposal]." Agency Report, Tab 21, AAI's BAFO Cover Letter (Oct. 30, 1998).¹²

In our view, the fact that AAI proposed certain optional fixed-price SLINs for [deleted] evidences that the awardee did not recompute its proposed labor rates, but that it discounted its prices after applying the proposed rates, as AAI attested in its proposal. Such price discounts are consistent with the nature of fixed-price contracts, which do not prohibit below-cost offers. See Triple P Servs., Inc., B-271629.3, July 22, 1996, 96-2 CPD ¶ 30 at 2-3.

Furthermore, we do not read the RFP as requiring AAI to recompute its proposed T&M labor rates to reflect the discounts taken to its fixed-price CLINs, as Pulau alleges. The RFP only required the offeror to use the T&M rates in developing its fixed prices; it did not demand that common discounts apply to the fixed-price portion and the T&M portion of the contract work.

In sum, because there was no evidence that AAI applied other than the T&M rates in developing its fixed prices, we find that the agency reasonably determined, based on an adequate price realism analysis, that the awardee's proposal complied with the RFP requirements.

The protest is sustained in part and denied in part.¹³

¹²This position was supported by an affidavit of AAI's proposal team manager submitted to our Office during this protest.

¹³Pulau has raised several other protest issues, which we have reviewed and have determined either to concern insignificant evaluation flaws or to be without merit. For example, Pulau argues that the solicitation provided that the Navy would evaluate proposals "using the source selection procedures set forth in the Source Selection Plan (SSP)" and that the SSP, in turn, forbade the Navy from changing the membership of the TET, as occurred in this case. RFP amend. 3 § M.1. While we do
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We recommend that the agency conduct discussions with the competitive range offerors, request another round of BAFOs, and reevaluate proposals consistent with this decision.¹⁴ If AAI is not the successful offeror following the reevaluation, its contract should be terminated. We also recommend that Pulau be reimbursed its costs of filing and pursuing its protests, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1). Pulau should submit its certified claim for costs, detailing the time spent and costs incurred, to the contracting agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained in part and denied in part.

Comptroller General
of the United States

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not read the SSP as restricting the membership of the TET to the original roster of evaluators, the SSP was an internal document not disclosed in the RFP or relied upon by offerors, and therefore did not confer any rights upon offerors. See Mandex, Inc; Tero Tek Int'l, Inc., B-241759 et al., Mar. 5, 1991, 91-1 CPD ¶ 244 at 7.

¹⁴We recommend that discussions be conducted because the awardee did not receive discussions regarding its low FAMSIM operator staffing level.