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## Decision

**Matter of:** Serco Inc.

**File:** B-406061.1; B-406061.2

**Date:** February 1, 2012

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Marcia G. Madsen, Esq., David F. Dowd, Esq., and Polly A. Myers, Esq., Mayer Brown LLP, for the protester.  
Paul E. Pompeo, Esq., Kara L. Daniels, Esq., and Steffen G. Jacobson, Esq., Arnold & Porter LLP, for Strategic Resources, Inc., the intervenor.  
Capt. Michael E. Murray, Department of the Army, for the agency.  
Matthew T. Crosby, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. For purpose of determining GAO jurisdiction over challenge to award of task order, value of option to extend services under clause at Federal Acquisition Regulation § 52.217-8 is included in task order value where value of option was included in total price that agency considered in its task order award determination and where value that offeror may be compensated if option is exercised is evident from task order.
2. Protest that deficiency assigned to protester's proposal for lack of defined support for program support requirements was unreasonable because protester's proposal identified personnel responsible for program support requirements is denied where solicitation instructed offerors to provide level of effort needed to meet solicitation requirements and record reflects that protester's proposal did not specify level of effort for program support requirements.
3. Protest that agency unequally treated protester and awardee by seeking clarification from awardee but not protester is denied because agencies may seek clarification from one offeror and not another and because record reflects that agency concern regarding protester's proposal could not have been addressed without material revision to proposal.

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## DECISION

Serco Inc., of Reston, Virginia, protests the rejection of its task order proposal and the issuance of a task order to Strategic Resources, Inc. (SRI), of McLean, Virginia, under task order request (TOR) No. PSS-11-0025 issued by the Department of the Army for services to support the agency's exceptional family member program (EFMP). Serco argues that the agency unreasonably evaluated its lower-priced proposal and that the agency treated Serco and SRI unequally.

We deny the protest.

## BACKGROUND

Since 2004, the Army's HRsolutions program office (HRS) has awarded numerous indefinite-delivery/indefinite-quantity (ID/IQ) contracts for human resource services in four mission areas, including personnel services and support (PSS). The solicitation connected with this protest was issued on August 17, 2011 and contemplated the award of a fixed price task order to one of the firms holding an HRS PSS ID/IQ contract. The contemplated task order included a 1-year base period and two 1-year options. Performance Work Statement (PWS) § 1.6.<sup>1</sup> Additionally, the solicitation incorporated the clause at Federal Acquisition Regulation (FAR) § 52.217-8, Option to Extend Services, which in relevant part provides as follows:

The Government may require continued performance of any services within the limits and at the rates specified in the contract. . . . The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months.

TOR at 37. Offerors were advised that "[t]he government may choose to exercise the Extension of Services at the end of any performance period (base or option periods), utilizing the rates of that performance period" and that the "[e]valuation of options shall not obligate the Government to exercise the options(s)." *Id.* at 53.

The solicitation called for services in support of the agency's EFMP, which provides community support, housing, educational, medical, and personnel services to military family members with special needs.<sup>2</sup> PWS §§ 1, 1.3. Under the contemplated

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<sup>1</sup> Solicitation amendment No. 0001 included a complete, revised version of the solicitation, with a complete and revised PWS. All citations herein to the solicitation and PWS refer to those documents as they appear in amendment No. 0001.

<sup>2</sup> Special needs are physical, emotional, developmental, or intellectual disorders requiring specialized services. PWS § 1.3.

task order, the successful offeror would perform EFMP systems navigation functions and provide EFMP systems navigators. PWS §§ 1.1, 1.2. EFMP systems navigation is a community support component of EFMP. Id. § 1.3. EFMP systems navigators connect special needs families with care systems. Id. § 1.2. EFMP systems navigator functions include intake, assessment, referral, follow-up, advocacy, outcome monitoring, and community resource collaboration. Id. The solicitation included EFMP data “for [offerors’] reference only” showing that currently there are 47 systems navigator positions under the agency’s EFMP. TOR at 28-29. In addition to the systems navigator functions, the solicitation also included requirements for EFMP program administrative management, training, and reporting. PWS §§ 5.5, 5.9, 5.10.

The task order was to be awarded to the offeror submitting the lowest-priced, technically acceptable proposal. TOR at 52. The solicitation defined an acceptable proposal as one that “clearly meets the minimum requirements of the solicitation” and an unacceptable proposal as one that “does not clearly meet the minimum requirements of the solicitation.” Id. at 53. The solicitation stated that an unacceptable proposal would not be considered for award. Id. at 52.

The solicitation established one technical evaluation factor: technical capability. Id. at 52. The solicitation stated that evaluation under the technical capability factor would involve consideration of three elements: management approach, experience, and staffing approach. Id. For each element, offerors’ technical proposals were to provide a “convincing rationale to address how the offeror intends to meet [the government’s] requirements.” See id. at 48.

Separate proposal preparation instructions were provided for each of three technical capability factor elements. Id. at 48-49. The solicitation stated that “[f]ailure to follow the . . . proposal preparation instructions may cause a proposal to be deemed unacceptable.” Id. The instructions for staffing approach were as follows:

Offeror shall provide a clearly defined management organization structure that demonstrate offeror’s ability [sic] to manage a requirement of this scope and/or complexity. . . . Submit resource information without any reference to price. Offerors shall submit information in Table 1 below for both the prime contractor and any proposed subcontractors. The offeror shall identify in detail any equipment, materials, or supplies proposed differing from those covered in the PWS. This information must correlate with the price data submitted under the Price factor (with no reference to price).

Id. at 48-49. Table 1, as referenced in the above-quoted instruction, appeared in the solicitation as follows:

Labor Category	Prime/ Subcontractor	On site/ Off site	Location	Labor hours	Full Time Equivalent
TOTAL					

Id. at 50.

The solicitation also included instructions for price proposals. A fixed price contract line item number (CLIN) was designated for yearly EFMP support services. Id. at 3-5. Two other CLINs were designated for a contractor manpower reporting (CMR) requirement and other direct costs (ODC). Id. The price proposal instructions stated, among other things, that price proposals were to “include a complete identification of all resources required to accomplish the work required by the PWS, to include labor and other direct costs proposed.” Id. at 50. Price proposals also were to include in a table the HR PSS ID/IQ contract labor categories that offerors proposed to perform the PWS requirements, and the corresponding burdened labor rates, productive hours, and total pricing (i.e., a price build-up for the EFMP support services CLIN). Id. With regard to ODCs, the instructions stated that “[price] proposal[s] shall clearly depict any proposed handling fee” for ODCs. Id. at 51. With regard to the evaluation of pricing, the solicitation stated that “[t]he Government will evaluate its option to extend services (FAR Clause 52.217-8) by adding 6 months of the offeror’s final option period price to the offeror’s total price.” Id. at 53.

The agency received three proposals in response to the solicitation, including proposals from Serco and SRI. Agency Report (AR), Tab 10, Task Order Decision Document (TODD), at 2. The staffing approach section of Serco’s proposal stated that Serco’s proposed staffing level was lower than the current staffing level because [DELETED]. AR, Tab 5, Serco Proposal, at 7. The staffing approach section of Serco’s proposal also included the following statement: “For purposes of *costing* this PWS, Serco proposes an operational staff level of [DELETED] full-time equivalents EFMP Systems Navigators and one full time Project Manager.” Id. (emphasis in original). Below this statement appeared a table that corresponded to Table 1 in the solicitation. Id. The table listed one full time equivalent (FTE) project manager (PM), [DELETED] FTE systems navigators, and their proposed labor hours. Id.

The staffing approach section of Serco’s proposal also described the qualifications and responsibilities of Serco’s proposed EFMP PM. Id. at 3. Following this description, the proposal stated that Ms. P, a part-time Serco employee, would assist the EFMP PM “[DELETED]” and would “[DELETED].” Id. at 4. This section of the proposal also stated that another Serco employee, Ms. W, would “[DELETED]” and that she would “[DELETED].” AR, Tab 5, Serco Proposal, at 4; see also id. at 19. Neither the narrative nor Table 1 in Serco’s technical proposal referenced the level

of effort--i.e., the number of hours or FTE--that Ms. P or Ms. W would perform under the task order. Serco's price proposal did not reference Ms. P, Ms. W, their labor categories, or the level of effort that they would perform under the task order. Id. at 30-36.

A source selection evaluation board (SSEB) evaluated the proposals. AR, Tab 10, TODD, at 3. The SSEB determined SRI's proposal to be technically acceptable. Id. at 13. It was also determined, however, that SRI's price proposal [DELETED]. Id. at 12. Therefore, the agency sent a request for clarification to SRI asking whether SRI was proposing [DELETED]. Id. SRI responded by confirming that the firm was proposing [DELETED]. Id. SRI's total evaluated price was \$11,377,859.44, which was determined to be fair and reasonable. Id. at 13.

Serco's total evaluated price was \$8,333,489.55. Id. at 11. However, the SSEB determined that Serco's proposal was technically unacceptable based on the view that Serco's proposed approach of [DELETED] posed a "significant risk of degrading the quality of services."<sup>3</sup> AR, Tab 6, Technical Evaluation of Serco Proposal, at 1-3. The SSEB also determined that the proposal of the third offeror was technically unacceptable. See AR, Tab 10, TODD, at 13.

The SSA, who was also the contracting officer, reviewed the proposals and the SSEB's findings. Contracting Officer's Statement at 4; AR, Tab 10, TODD, at 8. The SSA agreed with the SSEB that the proposals of Serco and the third offeror were technically unacceptable. AR, Tab 10, TODD, at 14. However, the SSA concluded that Serco's proposal contained a deficiency that the SSEB had not noted.<sup>4</sup> The SSA documented the deficiency as follows:

It cannot be clearly determined that Serco provided personnel to support requirements such as creating training materials (PWS 5.9.12), developing reports and analyzing data to determine effectiveness of program [sic] (PWS 5.5.8). The Government estimated one Senior Analyst and one Senior Instructor to support these tasks. Serco states in its narrative that [Ms. W] will provide administrative assistance to the PM . . . . However it does not appear that she is included in the proposed staffing. Serco clearly proposes [DELETED] system

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<sup>3</sup> Notwithstanding the finding of technical unacceptability, the approach of [DELETED] systems navigators was evaluated as "feasible." AR, Tab 6, Technical Evaluation of Serco Proposal, at 3; AR, Tab 10, TODD, at 9.

<sup>4</sup> The agency's internal source selection plan (SSP) defined a proposal deficiency as a "material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level." AR, Tab 14, SSP, at 19.

navigators and one PM so it can only be concluded that [Ms. W] will not be full time dedicated to the task order. This is also true for the stated support of [Ms. P]. By this proposal it appears that only the PM . . . will be fully committed to the task order and will be required to carry out a supervisory, training, conference planning and data analysis functions [sic]. Therefore the lack of defined support for these areas of the PWS is considered a deficiency.

AR, Tab 10, TODD, at 9. The SSA also summarized the deficiency as follows: “Serco’s staffing approach of only having Systems Navigators and one PM without any dedicated analysts or training personnel to meet the requirements of the PWS is considered a deficiency.” Id. at 13. Additionally, the SSA determined that Serco’s total evaluated price was “unreasonably low.” Id. at 11.

Because only SRI’s proposal was found to be technically acceptable, and because SRI’s price was found to be fair and reasonable, the SSA selected SRI for award. Id. at 13-14. This protest followed.

## DISCUSSION

Serco contends that the agency unreasonably evaluated the firm’s proposal and treated Serco and SRI unequally. We have considered all of Serco’s arguments and conclude that none has merit. Below we discuss Serco’s most significant arguments.

### Jurisdiction

As a preliminary matter, the agency argues that we should dismiss Serco’s protest for lack of jurisdiction because our jurisdiction to review task order protests is limited to task orders valued in excess of \$10 million. According to the agency, the value of the task order issued to SRI is [DELETED], a sum that the agency derives by adding SRI’s base year pricing to SRI’s pricing for the two 1-year options. Request for Dismissal at 3-4. Serco disagrees, arguing that our Office has jurisdiction because SRI’s total evaluated price was \$11,377,859.44, which exceeds the \$10 million jurisdictional threshold. See Response to Agency Request for Dismissal at 1. The value cited by Serco includes the pricing for SRI’s base year, the two 1-year options, and the value of the option to extend services for up to 6 months.

Our Office has jurisdiction to consider protests in connection with the issuance of a task or delivery order only if the order is “valued” in excess of \$10 million, or where it is alleged that the order exceeds the scope, term, or maximum value of the underlying task or delivery order contract.<sup>5</sup> 10 U.S.C. § 2304c(e)(1) (West 2012);

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<sup>5</sup> Serco has not argued that the order here exceeds the scope, term, or maximum value of the underlying contract.

ESCO Marine, Inc., B-401438, Sept. 4, 2009, 2009 CPD ¶ 234 at 4. Neither the statute that confers this jurisdiction nor the corresponding legislative history defines the term “valued.” ESCO Marine, Inc., *supra*, at 5. Our Office has determined that the value of a task order may include the total anticipated funds to be recovered by a contractor. See *id.* at 6 (considering estimated value of payment-in-kind in determining task order value); U.S. Bank, B-404169.3, Feb. 15, 2011, 2011 CPD ¶ 43 at 3-4 (considering vendor’s total anticipated fees in measuring task order value). Our Office also has determined that the value of options is appropriately included in the calculation of task order value. See U.S. Bank, *supra* (measuring task order value based on anticipated fees to be earned over term of contract, including options); see also Kiewit Tex. Constr. L.P., B-402090, B-402090.2, Jan. 12, 2010, 2010 CPD ¶ 27 at 2-3 (considering task order protest where total evaluated price of task order exceeded \$10,000,000, including option items, and where solicitation advised offerors that evaluation of option pricing would not obligate government to exercise options).

As discussed above, the solicitation here provided for the evaluation of the value of the option to extend services for up to 6 months under the clause at FAR § 52.217-8. TOR at 53. The record reflects that the agency evaluated pricing in this manner, that the agency calculated SRI’s total evaluated price to be \$11,377,859.44, and that the agency used this evaluated price for the purpose of making its competitive award determination. AR, Tab 10, TODD, at 10, 12. The record also reflects that both the clause at FAR § 52.217-8 and SRI’s final option year pricing are incorporated into the task order, meaning that the value of the option to extend services—if it is exercised—is evident within the task order itself. AR, Tab 7, SRI Task Order, at 6-7, 39-41. We conclude that here, the total evaluated price is the appropriate measure of the task order’s value because it is the value that the agency considered for the purpose of making its task order award determination and because the task order reflects that SRI may be compensated this value in performing the task order.

We recognize that at the conclusion of performance, the task order’s value may be less than \$10 million if the agency does not exercise the option to extend services. However, the value of the task order at the conclusion of performance also may be less than \$10 million if the agency does not exercise either or both of the 1-year options. Notably, the agency takes the position that pricing for the two 1-year options appropriately is included in the task order’s value. Request for Dismissal at 3-4; Memorandum of Law at 9. We find that notwithstanding its various arguments, see Memorandum of Law at 8-28, the agency has not offered a reasonable or persuasive explanation as to why pricing for one type of evaluated option—the two 1-year options—should be included in the task order’s value, but pricing for another type of evaluated option—the 6-month extension of services option—should not be included.

In sum, we conclude that if the price considered by an agency for the purpose of its award determination includes an option—such as here—and if a certain value that the offeror may be compensated if the option is exercised is evident from the task order,

then the option pricing appropriately is included in the measure of the task order's value for the purpose of determining whether GAO has jurisdiction to consider a protest of the task order. See U.S. Bank, supra, at 2-3; Kiewit Tex. Constr. L.P., supra, at 2-3. Accordingly, we conclude that we have jurisdiction to review Serco's protest of the task order issued to SRI.

### Evaluation of Serco's Proposal

Serco asserts that the agency unreasonably assigned a deficiency to the firm's proposal. Protest at 8-11. As discussed above, Serco's proposal received a deficiency because the agency found the firm's staffing approach to lack defined support for various PWS task areas.<sup>6</sup> Serco points out that although Table 1 in its proposal showed [DELETED] FTE systems navigators and one FTE PM, the proposal stated that this staffing information was provided for the purpose of "costing" the effort. Id. at 10 (quoting AR, Tab 5, Serco Proposal, at 7). Serco further points out that its proposal addressed the program support requirements at issue by identifying specific staff--Ms. P and Ms. W--who would perform the requirements. Id. at 9-10 (referencing AR, Tab 5, Serco Proposal, at 4, 19). Serco explains that "[r]ather than charge the costs for all program support to the Government, Serco elected to bear the costs within its firm-fixed-price proposal." Protest at 10. The deficiency therefore was improper, according to Serco, because the agency "relied unduly and mechanistically on [Serco's] estimate of the number of staff required for the work and deemed Serco's proposal unacceptable simply because it did not charge the Government the costs for such staff as full-time equivalents." Id. at 11.

In response, the agency states that it estimated that a full-time senior analyst and a full-time senior instructor would be needed to meet the program support

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<sup>6</sup> Serco argues that the agency, in its response to the protest, expanded the number of PWS task areas related to the deficiency because the TODD "focuses only on two PWS provisions" (i.e., PWS sections 5.5.8 and 5.9.12). Comments at 14 n.4. We disagree. As recounted above, the TODD states:

[The PM] will be fully committed to the task order and will be required to carry out a supervisory, training, conference planning and data analysis functions [sic]. Therefore the lack of defined support for these areas of the PWS is considered a deficiency.

AR, Tab 10, TODD at 9. We read the phrase "these areas of the PWS" in the second sentence to plainly refer to the "supervisory, training, conference planning, and data analysis functions" that are listed in the preceding sentence. See also id. at 13 (referencing Serco's lack of dedicated analysts and training personnel needed to meet PWS requirements). Accordingly, we view all of the listed PWS task areas as relating to the deficiency. Throughout this decision, we refer to these PWS task areas collectively as "program support requirements."

requirements at issue. Memorandum of Law at 34 (referencing AR, Tab 12, Independent Government Cost Estimate). The agency acknowledges that Serco's proposal described Ms. P's and Ms. W's responsibilities. Contracting Officer's Statement at 5. The agency, however, notes that the instruction in the solicitation for Table 1 was preceded by the statement that offerors were to "[s]ubmit resource information without any reference to price." Memorandum of Law at 30 (quoting TOR at 48). The agency maintains that Serco deviated from this instruction because its proposal stated that the information in Table 1 was provided for "costing" purposes; *i.e.*, the agency maintains that Serco prepared Table 1 with--rather than without--reference to price. *Id.*

The agency further responds by asserting that because Table 1 in Serco's proposal omitted information regarding the level of effort (*i.e.*, labor hours or FTE) to be devoted to the program support requirements (as required by the solicitation), and because the narrative portion of Serco's technical proposal also did not provide this information, the agency was unable to determine that Serco would meet the program support requirements. Contracting Officer's Statement at 5. Accordingly, the agency assigned a deficiency to the proposal. *Id.* at 6-7.

The evaluation of an offeror's proposal is a matter within the agency's discretion. Kellogg Brown & Root Servs., Inc., B-400614.3, Feb. 10, 2009, 2009 CPD ¶ 50 at 4. A protester's mere disagreement with the evaluation does not show that it lacked a reasonable basis. *Id.* In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals, but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Triple Canopy, Inc., B-310566.4, Oct. 30, 2008, 2008 CPD ¶ 207 at 7.

We conclude that the solicitation here is fairly construed to require offerors' proposals to include the level of effort to be expended by the personnel that would perform the task order. In this regard, the solicitation's technical proposal preparation instructions directed offerors to "[s]ubmit resource information" (without reference to price) and to provide information--including the number of labor hours for each labor category--for contractor and subcontractor personnel. TOR at 50. Here, although Serco's proposal represented that specific individuals would perform the requirements that were the subject of the deficiency, Serco's proposal did not provide the level of effort that these individuals would perform, either in terms of labor hours or FTE.

Because an agency's evaluation is dependent on the information furnished in a proposal, it is the offeror's responsibility to submit an adequately written proposal for the agency to evaluate. See Moura's Cleaning Servs., Inc., B-402741.4, Sept. 7, 2010, 2010 CPD ¶ 210 at 3; Hardiman Remediation Servs., Inc., B-402838, Aug. 16, 2010, 2010 CPD ¶ 195 at 3. Agencies are not required to adapt their evaluation to comply with an offeror's submission, or otherwise go in search of information that an offeror has omitted or failed adequately to present. See LS3 Inc., B-401948.11,

July 21, 2010, 2010 CPD ¶ 168 at 3 n.1; Hi-Tec Sys., Inc., B-402590, B-402590.2, June 7, 2010, 2010 CPD ¶ 156 at 3. In the absence of information in Serco's proposal regarding the level of effort to be performed by Ms. P or Ms. W, we find that the agency reasonably determined that Serco's proposal contained a deficiency for a failure to propose, as characterized in the TODD, "defined support" or "dedicated" personnel for the program support requirements.

In its comments on the agency report, Serco argues that the solicitation required the information in Table 1 to correlate with the price proposal pricing tables, and, therefore, "an offeror could list information in Table 1 *only* if the offeror also priced the effort, *i.e.*, planned to charge the Army for the cost as part of the fixed-price." Comments at 15 (emphasis in original). Serco reasons that because the firm offered not to "charge" the agency for the labor connected with the program support requirements at issue, a deficiency for "not including labor hours for such effort" was improper. Id. at 16.

As an initial matter, the repeated references in Serco's protest and comments to "charging" the government for the labor in question, Protest at 10; Comments at 15-16, reflect a misconception about the solicitation on the part of Serco. The solicitation here contemplated a fixed price task order. TOR at 50. Offerors were to propose a fixed price for the yearly performance of the EFMP support services set forth in the PWS.<sup>7</sup> Id. at 3-5, 50. Accordingly, the labor hours of any particular contractor personnel specifically performing the task order would not be "charged" to the government. Rather, a yearly fixed price (to be invoiced on a monthly basis) representing the collective effort of the personnel specifically performing the task order is to be charged to the government. For these reasons, Serco's reference to an offeror's approach of "charging" (or "not charging") the government for the hours of particular personnel (such as personnel specifically performing program support requirements) is properly characterized as an approach of including (or not including) a price for labor of the personnel in the fixed price build-up. Thus, Serco's position amounts to this: If an offeror chose not to include a price for certain labor in its price build-up, the offeror need not have included in either its technical or price proposal the labor hours or FTE that correspond to that labor. For the reasons discussed below, we disagree.

As stated above, the solicitation included a table in which offerors were to provide the HR PSS ID/IQ contract labor categories that the offerors proposed to perform the PWS requirements, and the corresponding burdened labor rates, productive hours, and total pricing; *i.e.*, the solicitation required offerors' to provide a fixed price

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<sup>7</sup> This fixed price arrangement is in contrast to a time-and-materials or labor-hour contract or task order, under which a contractor charges the government for each labor hour performed under the contract or task order. See FAR §§ 16.601(b), 16.602.

build-up. TOR at 50. To the extent that an offeror elected not to include in its price build-up a price for the labor of any given personnel that would specifically perform the task order, the offeror could have, for example, entered “no separate price” or “\$0.00” in the price column of its price build-up.<sup>8</sup> Alternatively, the offeror could have included an explanation (or an “assumption”) in its proposal stating that the price build-up did not include a specified number of labor hours (or FTE) to be performed by personnel conforming to identified labor categories.<sup>9</sup> Regardless of the method by which an offeror might communicate that it was taking this approach, nothing in the solicitation suggested that an offeror simply could ignore--as did Serco--the solicitation’s instruction to provide--both in the technical and price proposals--the hours that the offerors’ resources (i.e., personnel) would perform in order to meet the PWS requirements.

Serco points out that the solicitation stated that offerors proposing to provide the CMR CLIN at no cost to the government should indicate “\$0.00” or “Not Separately Priced” on the CMR CLIN. Comments at 16 (quoting TOR at 51). Based on this instruction, Serco argues that it “complied” with the solicitation by “not including hours for [program support requirements] effort rather than calling out the effort on Table 1 and stating that it was not charged.” Id. Again, we disagree. The price proposal instructions for the CMR CLIN--which pertained to a stand-alone PWS requirement--did not require offerors to include a price build-up for that CLIN. TOR at 51. Conversely, the price proposal instructions for the EFMP support services CLIN required offerors to provide a price build-up for the labor required to meet the overall PWS requirement. TOR at 50. Further, offerors were instructed to include “a complete identification of all resources required to accomplish the work by the PWS, to include labor and other direct costs proposed.” Id. Serco’s interpretation of the solicitation would read out this proposal instruction, and we decline to adopt it. In sum, Serco’s arguments with regard to the deficiency assigned to its proposal are not supported by the record or by the language of the solicitation, and they provide no basis on which to sustain the protest.

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<sup>8</sup> Rather than indicating that there was no separate price for personnel that would perform program support requirements, Serco’s price proposal simply omitted any reference to such personnel, their labor categories, their labor hours, and their FTE. See AR, Tab 5, Serco Proposal, at 30-32.

<sup>9</sup> Serco’s proposal included a 2-page “assumptions and clarifications” section. AR, Tab 5, Serco Proposal, Assumptions and Clarifications. None of the assumptions or clarifications addressed Serco’s approach of excluding from its price build-up the price for the labor of personnel that would perform program support requirements. Id. Additionally, none of the assumptions or clarifications addressed the level of effort to be performed by such personnel. Id.

Serco also asserts that the agency unreasonably assigned a significant risk to the firm's proposal in connection with its proposed approach of [DELETED].<sup>10</sup> Protest at 11-12; Comments at 17-19. Additionally, Serco asserts that the agency improperly determined the firm's price to be unreasonably low. Protest at 13; Comments at 19-20.

The agency's internal SSP defined a proposal deficiency to include a "material failure of the proposal to meet a Government requirement." AR, Tab 14, SSP, at 19. The solicitation defined an unacceptable proposal as one that "does not clearly meet the requirements of the solicitation." TOR at 53. The solicitation provided that an unacceptable proposal would not be considered for award. *Id.* at 52. As discussed above, we find that the agency reasonably assigned a deficiency to Serco's proposal for failing to propose defined support to meet program support requirements. Because the solicitation's definition of an unacceptable proposal is fairly read to encompass a proposal with a deficiency, Serco cannot show that competitive prejudice arose from the significant weakness assigned to its proposal or the determination regarding the reasonableness of its pricing; *i.e.*, the deficiency alone reasonably rendered Serco's proposal unacceptable. Prejudice is an essential element of every viable protest; we will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions. Armorworks Enters., LLC, B-400394.3, Mar. 31, 2009, 2009 CPD ¶ 79 at 3. Accordingly, we need not consider Serco's arguments as to the significant weakness or the determination regarding the reasonableness of Serco's pricing.

#### Unequal Treatment

Serco asserts that the agency treated Serco unequally in relation to SRI in several respects. First, Serco points out that the agency posed a clarification question to SRI regarding whether SRI was proposing [DELETED]. Comments at 21 (referencing AR, Tab 10, TODD, at 12). Serco then argues that the agency unfairly failed to pose a clarification question to Serco regarding whether, under Serco's proposal, "the Army would not be charged for the administrative support to be provided by [Ms. P and Ms. W]." Comments at 21; see also Supp. Comments at 11-12.

The agency responds by noting that the solicitation instructed that price proposals "shall clearly depict any proposed [ODC] handling fee." Supp. Memorandum of Law at 11 (quoting TOR at 51). Because SRI's proposal [DELETED], the agency explains, a clarification request was sent that asked SRI to confirm that [DELETED]. *Id.* The agency asserts that its concern that Serco's proposal lacked defined support for

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<sup>10</sup> In particular, Serco asserts that because the agency viewed this approach as "feasible," the agency deviated from the solicitation's evaluation scheme, which provided for consideration of whether or not a technical proposal was acceptable. Protest at 11-12; Comments at 17-19.

program support requirements was not appropriately the subject of clarifications because in order to address that concern, material proposal revisions would be needed. Id. at 11-12.

Clarifications are “limited exchanges” that agencies may use to allow offerors to clarify certain aspects of their proposals or to resolve minor or clerical mistakes.<sup>11</sup> FAR § 15.306(a)(2). Requesting clarification from one offeror does not trigger a requirement that the agency seek clarification from other offerors. See Gulf Copper Ship Repair, Inc., B-293706.5, Sept. 10, 2004, 2005 CPD ¶ 108 at 6; Priority One Servs., Inc., B-288836, B-288836.2, Dec. 17, 2001, 2002 CPD ¶ 79 at 5. Discussions occur when an agency communicates with an offeror for the purpose of obtaining information essential to determine the acceptability of a proposal, or provides the offeror with an opportunity to revise or modify its proposal in some material respect. Gulf Copper Ship Repair, Inc., supra, at 6; see also FAR § 15.306(d).

The solicitation here required the depiction of an ODC handling fee only if an offeror proposed such a fee. TOR at 51. SRI’s proposal [DELETED]. See AR, Tab 10, TODD, at 12. We therefore view the agency’s request to SRI for confirmation that [DELETED] was being proposed to constitute a clarification, and not discussions. However, we fail to see—and Serco has not demonstrated—how an exchange fitting within the rubric of clarifications could have addressed the agency’s concern that Serco’s proposal omitted defined support for program support requirements. In our view, to address this concern in a manner consistent with the solicitation’s instructions, Serco would have had to provide the level of effort—e.g., labor hours or FTE—that the personnel responsible for these requirements would perform, which, in turn, would have constituted a material revision to the firm’s proposal. Such an exchange thus would have amounted to discussions, not clarifications.<sup>12</sup> Accordingly, we see no merit to Serco’s claim that the agency treated Serco and SRI unequally by engaging in clarifications with SRI, but not with Serco.

Finally, Serco argues that the agency treated Serco and SRI unequally because both firms proposed fewer systems navigators than the number currently performing, yet

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<sup>11</sup> As a general rule, FAR part 15 procedures do not govern task and delivery order competitions conducted under FAR part 16. See FAR § 16.505(b)(1)(ii). However, where, as here, the evaluation record reflects that the agency engaged in clarifications with an offeror as contemplated under FAR part 15, we will look to those regulations as guidance in evaluating this aspect of the evaluation. See Imagine One Tech. & Mgmt., Ltd., B-401503.4, Aug. 13, 2010, 2010 CPD ¶ 227 at 7; Kellogg Brown & Root Servs., Inc., supra, at 7.

<sup>12</sup> The solicitation expressly provided that the agency intended to make award without discussions. TOR at 47.

SRI's proposal, unlike Serco's proposal, was not assigned a weakness relating to a reduced number of systems navigators. Comments at 21; Supp. Comments at 4-11.

As stated above, the solicitation included EFMP data showing that currently there are 47 systems navigator positions within the agency's EFMP. TOR at 29. As also stated above, Serco proposed [DELETED] FTE systems navigators. AR, Tab 5, Serco Proposal, at 7. SRI proposed [DELETED] FTE systems navigators. AR, Tab 15, SRI Proposal at 26-27. Thus, SRI proposed [DELETED] FTE systems navigators than did Serco. While the [DELETED] FTE systems navigators proposed by SRI may reasonably justify the agency's decision not to assign a significant weakness to SRI's proposal, we need not resolve this issue because even if the agency evaluated proposals disparately in this area, Serco has not shown that the alleged disparate treatment resulted in competitive prejudice. As discussed above, the deficiency assigned to Serco's proposal reasonably rendered Serco's proposal unacceptable. Serco's arguments with regard to this protest claim fail because Serco has not shown that it was prejudiced by the alleged disparate treatment.<sup>13</sup> Cornerstone Constr. Co., Inc., B-402747, July 23, 2010, 2011 CPD ¶ 54 at 9; Academy Facilities Mgmt.--Advisory Opinion, B-401094.3, May 21, 2009, 2009 CPD ¶ 139 at 11-12.

The protest is denied.

Lynn H. Gibson  
General Counsel

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<sup>13</sup> In its protest Serco also asserted that the agency treated Serco unequally because the agency allegedly did not require SRI to identify and discreetly price individual personnel that would support the task order. Protest at 11. Serco later withdrew this protest claim. E-mail from Serco to GAO (Nov. 15, 2011).