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Decision

Matter of: PacArctic, LLC

File: B-413914.3; B-413914.4

Date: May 30, 2017

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DIGEST

1. Protest that agency improperly decided not to consider one of protester's past performance questionnaires is denied where agency reasonably determined that questionnaire lacked credibility because it was completed by the president of protester's sister company, with which protester shares common ownership and control, and which was proposed as one of protester's subcontractors under the solicitation.
2. Protest that agency improperly evaluated the relevance of one of protester's references is denied where the record reflects that the agency reasonably assessed the relevance of the past performance as required by the solicitation.
3. Protest challenging agency's price evaluation is denied where the agency's evaluation and award were reasonable and consistent with the terms of the solicitation and protester's objection to the agency's calculation of total evaluated price reflects only the protester's untimely disagreement with the plain, unambiguous language of the solicitation.

DECISION

PacArctic, LLC, an 8(a) small business located in Chantilly, Virginia, protests the award of a contract, and issuance of a task order, to Na Ali'i Consulting and Sales, LLC, of Arlington, Virginia, under request for proposals (RFP) No. HQ0034-16-R-0210, issued by the Department of Defense (DOD), Washington Headquarters Services (WHS), for

advisory and assistance services. PacArctic challenges the agency's evaluation of past performance and price.

We deny the protest.

BACKGROUND

On August 25, 2016, WHS issued the RFP as a set-aside competition for participants in the Small Business Administration's (SBA) section 8(a) program. RFP at 39.¹ The solicitation sought advisory and assistance services to support the Office of the Deputy Chief Management Officer² (ODCMO) in managing and improving business analytic operations. Id. at 3. The RFP explained that the objective of this support was to acquire agency subject matter expertise within core business mission areas, such as human resource management,³ and that overall, ODCMO was seeking to optimize business operations in support of the DoD mission. Id. at 7.

The solicitation anticipated a fixed-price, single-award, indefinite-delivery, indefinite-quantity contract (IDIQ), for a base year and four 12-month options. The RFP also contemplated the award of an initial, fixed-price task order, referred to as the "demonstration task order" (DTO). Id. at 57, 59. The DTO sought support for financial improvement and audit readiness project execution. Id. at 62.

The solicitation provided for award on a best-value basis, considering three factors, in descending order of importance: technical capability, past performance, and price. Id. at 60. The RFP also identified three subfactors under the technical capability factor: management approach, staffing approach, and DTO. For purposes of evaluation, all non-price factors, combined, were more important than price.

With regard to past performance, the solicitation provided that WHS would evaluate an offeror's recent and relevant past performance information to determine "the Offeror's ability to meet project quality, performance, schedule, [and] customer satisfaction." Id. at 59. For purposes of evaluation, offerors included prime contractors,

¹ References in this decision to page numbers are to WHS' Bates numbering in the agency report (AR).

² The Deputy Chief Management Officer is the principal DOD official responsible to the Secretary and Deputy Secretary of Defense for leading and enabling the DOD's business environment. Id., Performance Work Statement (PWS) § 1.1.

³ Specifically, the core business mission areas included the following: human resource management, financial management and audit compliance, acquisition and procurement, logistics and supply chain to perform portfolio analyses, inform business process reengineering across functional portfolios, and enable process improvement and contribute to the execution of efficiency project initiatives within the department. RFP at 7.

subcontractors and/or teammates. RFP at 60. “Recent” efforts were defined as contracts that were “on-going or were completed within three (3) years from the closing date of the RFP.” Id. “Relevant” was defined as efforts of the “same or similar scope, size, and complexity as the services described in the RFP.” Id.

With regard to price, the solicitation required that offerors submit a pricing schedule “in accordance with RFP Section B, Pricing Table paragraph and format specified in Section B, Table B-1,” which was attached to the RFP as a pricing template. Id. at 55. The RFP explained that “the table is provided as the template/format for submission,” and cautioned that “the burden of providing mathematically accurate and complete pricing proposals (and total overall evaluated price) using the format provided in Section B, Table B-1 rests with each offeror.” Id. at 55. The RFP provided that the agency would evaluate price for fairness, reasonableness, and completeness. Id. at 62.

WHS received proposals from six offerors, including PacArctic and Na Ali’i, by the September 9, 2016, closing date. Contracting Officer Statement (COS) at 1. After evaluating proposals, the agency concluded that PacArctic’s proposal represented the best value to the government, and awarded the contract to PacArctic. Id. at 2.

On October 4, 2016, one of the unsuccessful offerors filed a protest with our Office. In response to the protest, the agency advised that it intended to take corrective action by reevaluating the proposals and making a new source selection decision. Agency Notice of Corrective Action (Oct. 20, 2016). In light of this information, our Office dismissed the protest as academic on October 24, 2016.

During the agency’s reevaluation of proposals, the contracting officer decided to conduct discussions. The agency provided offerors with evaluation notices (ENs), which described the weaknesses and/or deficiencies identified by the agency in their proposals. The agency also held in-person discussions with each offeror on January 26, 2017. COS at 3. The agency requested final proposals revisions (FPRs) by January 31. The agency received timely FPRs from both PacArctic and Na Ali’i by this date. The agency’s evaluation of PacArctic’s and Na Ali’i’s FPRs was as follows:

	PacArctic	Na Ali’i
Technical Capability	Outstanding	Good
Past Performance	Moderate Confidence	High Confidence
DTO Price	\$1,064,117	\$950,209
Total Evaluated Price	\$17,153,753	\$12,949,103

AR, Tab 10, Best Value Decision Memo (BVDM), at 3, 37.

With respect to PacArctic, the agency assigned various strengths and no weaknesses under the technical capability factor, rating the offeror “outstanding.” AR, Tab 9, Revised Report, at 487-92. The agency found that PacArctic’s proposal “exceed[ed] requirements by thoroughly documenting its strategy and proven results in both the

project execution and portfolio management factors,” as well as “articulat[ing] [an] accurate understanding of the Government’s needs in its Management Approach by demonstrating [its] ability to fulfill the requirements as described in the IDIQ PWS and Demonstration Task Order.” Id. at 493. The agency noted that PacArctic’s most compelling strength was its proposed staffing mix for the Demonstration Task Order, which the agency explained was based on the resumes of individuals who “are currently executing highly complex project and portfolio management support, to include detailed analytics and critical subject matter expertise.” The agency found that PacArctic’s risk of unsuccessful performance was “very low.” Id.

Na Ali’i’s proposal received a rating of good under the technical capability factor based on various strengths assessed. The source selection authority (SSA) noted that Na Ali’i presented “a highly skilled, diverse labor mix consistent with the Government’s requirement.” AR, Tab 10, BVDM, at 40.

With respect to past performance, the agency considered three of PacArctic’s contract references, finding that one was “very relevant,” and two were “somewhat relevant.” Id. at 40. With respect to Na Ali’i, the agency considered four of its contract references, and found that one was “very relevant,” two were “relevant,” and one was “somewhat relevant.” Id. In comparing the offerors, the SSA found that, although both offerors demonstrated “high quality performance on their past projects,” Na Ali’i’s past performance data “provides the government with [a] higher level of confidence of successful contract performance” because PacArctic has “fewer relevant, reviewable projects” than Na Ali’i, and because, “overall the relevancy of [PacArctic’s] projects was slightly lower than those of Na Ali’i.” Id.

After evaluating the FPRs, the agency made a new source selection decision to award to Na Ali’i on September 29, and notified the unsuccessful offerors. This protest followed.

DISCUSSION

PacArctic challenges WHS’s evaluation of its past performance as warranting only a “moderate confidence” assessment. The protester also argues that the agency failed to engage in meaningful discussions with PacArctic regarding its past performance. In addition, PacArctic contends that the agency failed to evaluate price in accordance with the RFP’s pricing template. Based on these alleged flaws, PacArctic asserts that WHS’s award decision was unreasonable.⁴ For the reasons that follow, we find that none of PacArctic’s challenges provides a basis to sustain the protest.

⁴ The protester raises other collateral arguments that are not discussed in this decision. We have reviewed all of the protester’s allegations and conclude that they are without merit.

Past Performance

PacArctic challenges the agency's evaluation of its past performance. Specifically, the protester asserts that the agency improperly failed to consider one of PacArctic's past performance questionnaires (PPQ), and unreasonably determined that one of PacArctic's past performance references was not relevant to the solicitation's requirements. As discussed below, we find that the agency's evaluation of past performance was reasonable.

An agency's evaluation of past performance, including its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of agency discretion which we will not disturb unless the agency's assessments are unreasonable or inconsistent with the solicitation criteria. SIMMEC Training Sols., B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 4. Where a protester challenges an agency's past performance evaluation, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations, and to ensure that the agency's rationale is adequately documented. DynCorp Int'l LLC, B-406523.2, B-406523.3, Dec. 16, 2013, 2014 CPD ¶ 7 at 6.

As relevant here, the solicitation required the submission of PPQs, and provided that "[o]fferors are responsible for having each of their customer [point of contacts] POCs complete a Past Performance Questionnaire" to be submitted directly to WHS. RFP at 689. Further, as noted above, the solicitation provided that the agency would consider "the Offeror's ability to meet project quality, performance, schedule, [and] customer satisfaction." RFP at 59.

PacArctic's proposal identified three projects pertaining to PacArctic's past performance. One of the projects identified by PacArctic's proposal involved a task order under the incumbent contract for which PacArctic worked as a subcontractor to its sister company (with which PacArctic shares common ownership and control). As required by the solicitation, a PPQ relating to this task order was provided to the agency. As relevant here, the PPQ was completed by the president of PacArctic's sister company, who rated PacArctic's performance as "exceptional." AR, Tab 22, Initial TEB Report, at 1002. In evaluating PacArctic's past performance, the agency made the determination not to consider the PPQ because it came from the prime contractor, and the "[prime contractor] and PacArctic are sister companies sharing common ownership." AR, Tab 9, Revised TEB Report, at 503. In addition, because "[t]he only information regarding PacArctic's performance on the contract [came] from the PPQ," the TEB decided not to consider PacArctic's performance on this contract as part of the past performance evaluation.

The protester argues that it was unreasonable for the agency to discount the PPQ based solely on the relationship between the two companies. In this regard, PacArctic notes that nothing in the RFP, or elsewhere, precluded a sister company from serving as a past performance reference. The agency responds that, in light of the relationship between the companies, it reasonably determined that the information in the PPQ

regarding PacArctic's performance lacked credibility, and therefore, that it was reasonable for the agency to decide not to consider the information as part of its evaluation.

The Federal Acquisition Regulation (FAR) § 15.305(a)(2)(i) requires that agencies consider the source of past performance information as part of their past performance evaluations. One evaluation method agencies use to consider the source of past performance information is to assess its credibility. For example, in J. Womack Enters., Inc., B-299344, Apr. 4, 2007, 2007 CPD ¶ 69 at 8, our Office found reasonable the agency's decision to discount the qualitative reviews of a firm's past performance because the reviews were provided by a subcontractor and the subcontractor had a clear stake in the outcome of the competition. Similarly, in Alaska Mech., Inc., B-404191, Dec. 15, 2010, 2010 CPD ¶ 296 at 5, we found reasonable the agency's conclusion that a questionnaire lacked credibility because it had been submitted by the offeror itself, instead of directly from the third-party reference as required by the solicitation, and the agency was unable to verify the validity of the questionnaire.

Here, the record reflects that the technical evaluation board (TEB) decided not to consider the PPQ because it was "completed by the prime contractor," and the prime contractor and PacArctic "are sister companies sharing common ownership." AR, Tab 9, Revised TEB Report, at 503. The record also reflects that PacArctic's proposal included this sister company as one of its proposed subcontractors for the instant procurement. As the contracting officer explains in response to the protest, "[a] PPQ filled out by a representative of a sister company, which shares the same ownership as the offeror, is inherently biased and does not enable the Agency to assess 'customer satisfaction,'" as required by the RFP's past performance evaluation factor. COS at 8. Although the protester maintains that the RFP did not preclude a sister company from completing the PPQ, as referenced above, the agency was required to consider the source of the PPQ as part of its evaluation. FAR § 15.305(a)(2)(i); Alaska Mech., Inc., supra. Here, where the source of the PPQ was PacArctic's sister company, which was proposed as a subcontractor in PacArctic's proposal, we find that the agency reasonably concluded that the PPQ lacked sufficient credibility, given the sister company's obvious stake in the evaluation. Accordingly, we find nothing unreasonable regarding the agency's decision to disregard the PPQ.

With regard to the protester's argument that the agency should have otherwise sought to confirm PacArctic's performance as a subcontractor on this contract, the record reflects that the agency attempted to verify information regarding PacArctic's performance on the incumbent contract, but was unable to do so. Indeed, the agency was unable to confirm PacArctic's performance as a subcontractor on the incumbent contract. Specifically, the contracting officer's representative (COR) for the incumbent contract advised that she could not provide a PPQ for PacArctic's performance on the incumbent contract "due to [her] lack of personal knowledge of [PacArctic] being a subcontractor." AR, Tab 11, Decl. of COR, Mar. 27, 2017, at 545. The record also shows that documentation submitted by the incumbent prime contractor did not include any references to PacArctic as a subcontractor, or to PacArctic employees, and that PacArctic's proposal did not identify any PacArctic employees who worked on the

incumbent contract.⁵ COS at 8-9. Given that the agency was otherwise unable to verify PacArctic's performance as a subcontractor under this contract, we find nothing unreasonable regarding the agency's decision not to consider PacArctic's performance on this contract as part of the past performance evaluation. This protest ground is denied.

The protester next argues that the agency improperly assessed one of PacArctic's performance references as "not relevant." For the reasons discussed below, we find no merit to this argument.

As noted above, the RFP required that offerors provide past performance information on recent and relevant contracts. RFP at 59. The solicitation defined "not relevant" to mean: "[P]resent/past performance effort involved little or none of the scope and magnitude of effort and complexities of the instant procurement." Id. at 53.

Another of the protester's projects involved a task order for which PacArctic served as the prime contractor. In evaluating PacArctic's past performance, the agency concluded that the task order was "not relevant" to the instant solicitation. In assessing relevance, the agency compared the requirements of the referenced project to the requirements of the instant solicitation. For example, the agency found that PacArctic's performance under the task order involved staff augmentation providing procurement support to the agency program office, rather than business analytic services, as required by the RFP. In addition, the agency noted that the task order was valued at \$1.2 million, with an 18-month period of performance.

PacArctic challenges the agency's assessment of the task order as "not relevant," arguing that this conclusion is inconsistent with the agency's evaluation of PacArctic's proposal under the technical capability factor. Specifically, the protester asserts that the agency relied on PacArctic's performance for the task order in finding that PacArctic's proposal met the requirements under the management approach subfactor. The protester therefore contends that it was unreasonable for the agency to find that the same task order was "not relevant" to the RFP under the past performance factor. The agency responds that its evaluation was reasonable because the past performance evaluation criteria was distinct from the management approach evaluation criteria.

Based on our review of the record, we find that the agency's evaluation was reasonable. The record reflects that the TEB concluded that PacArctic's task order was

⁵ The only potential indication of participation by PacArctic on the incumbent contract was found in a non-disclosure agreement for one of the consultants employed on the incumbent contract, in which the individual listed her employer as "PacArctic, LLC; Koniag, Inc." AR, Tab 7, Supp. Past Performance Eval., at 463. Even there, however, the non-disclosure agreement otherwise states that the individual is an "employee of . . . [the] contractor," rather than subcontractor. None of the documentation provided by PacArctic identified a single PacArctic employee who worked on the incumbent contract.

“not relevant” because it did not involve the same complexity of work as the instant solicitation. Id. As relevant here, the agency’s BVDM provided that the scope of work “requires expert services across a range of capabilities.”⁶ AR, Tab 10, BVDM, 504. The TEB concluded that PacArctic’s task order involved “neither portfolio management or project execution related tasks,” but rather “staff augmentation providing procurement support to the [agency] Program Offices.” AR, Tab 9, Revised TEB Report, at 500. The agency explains that the determination of relevancy was based on information provided in PacArctic’s proposal, as well as an interview conducted with the point of contact (POC) for the task order as part of the evaluation. COS at 2; id., Tab 11, Decl. of Past Performance Team Member (Mar. 27, 2017) ¶ 9.

In this regard, the agency explains that the task order POC contradicted statements in PacArctic’s proposal that performance under the task order included “business analytic support services.” Id.; Tab 6, PacArctic’s Proposal, at 260-61. Instead, the task order POC described PacArctic’s work under the task order as providing “support to one of the Program Offices to develop acquisition program packages.” AR, Tab 11, Decl. of Past Performance Team Member (Mar. 27, 2017) ¶ 9. Based on the representations of the task order POC, the TEB concluded that the requirement performed under the task order was not similar to the instant solicitation. In addition, the TEB noted that the task order was valued at \$1.2 million, with a performance period of 18 months, whereas the instant procurement has a ceiling value of approximately \$36 million, with a potential performance period of 60 months. We find nothing unreasonable regarding the agency’s evaluation.

As noted above, the protester disagrees with the agency’s conclusion that the work under the task order was “not relevant” to the requirements of the solicitation, and argues that this conclusion was inconsistent with the agency’s reliance on the task order in finding that PacArctic’s proposed management approach met the requirements of the management approach subfactor. While the record reflects that the agency considered the task order in its evaluation of PacArctic’s proposal under the management approach subfactor, the fundamental nature of the two evaluation factors was separate and distinct under the provisions of the RFP. The management approach subfactor generally concerned the soundness and flexibility of an offeror’s proposed management

⁶ These included, for example, the following: analysis of efficiency opportunities to improve the effectiveness of management support functions; analysis of data across subject matter and functional areas to identify anomalies and gaps; the performance of functional portfolio analysis of DoD portfolio investments to determine actual business cost and opportunities for savings; analysis of outcomes, performance measures, and activities across lines of business; the performance configuration control support of the Business Enterprise Architecture (BEA) information environment requirements identified and validated; contribution to the execution of DoD enterprise initiative across the core business processes of the Department; and recommendations of improvements on leading industry and government subject matter expertise across corporate business functions. AR, Tab 10, BVDM, at 504.

approach, and as relevant here, provided for the evaluation of an offeror's "experience managing IDIQ and [blanket purchase agreement] BPA vehicles." RFP at 59. As such, this subfactor provided for consideration of the offeror's experience for the purpose of assessing how the offeror proposed to address the requirements of the RFP. Id. In contrast, the past performance factor provided for an assessment of the offeror's performance on prior contracts to determine "the [o]fferor's ability to meet project quality, performance, schedule, [and] customer satisfaction," and thus assessed confidence for successful contract performance. Id. at 62. Given the different scope of the two factors, PacArctic's reliance on its technical rating to challenge its past performance rating is misplaced and its protest in this regard is without merit.

Discussions

PacArctic argues that WHS should have raised the above concerns regarding PacArctic's past performance during discussions because the agency effectively treated the concerns as "significant weaknesses." The protester also asserts that the agency's discussions improperly misled PacArctic into believing that there was nothing wrong with its past performance submission. As discussed below, we find that these arguments provide no basis to sustain the protest.

When an agency engages in discussions with an offeror, the discussions must be "meaningful." Hanford Env't'l Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 8. For discussions to be meaningful, they must identify significant weaknesses, deficiencies, and adverse past performance to which the offeror has not yet had an opportunity to respond. FAR § 15.306(d)(3). A significant weakness is a flaw that appreciably increases the risk of unsuccessful contract performance. FAR § 15.001. A deficiency is a material failure to meet a government requirement or a combination of significant weaknesses that increases the risk of unsuccessful contract performance to an unacceptable level. Id. In contrast to the requirement to discuss significant weaknesses and deficiencies, an agency need not discuss areas in which a proposal may merely be improved. Nuclear Prod. Partners LLC, B-407948.10, B-407948.11, Feb. 27, 2014, 2014 CPD ¶ 86 at 11.

The record reflects that, based on the consideration of "very high" performance on one "very relevant" reference and two "somewhat relevant" references, the agency assigned PacArctic an overall past performance confidence rating of "moderate." There is no indication in the record, of any adverse past performance for PacArctic, nor is there any indication that the agency identified any deficiencies or any significant weaknesses regarding PacArctic's past performance. AR, Tab, 9, Revised TEB Report, at 500-03.

Although the protester asserts that the agency's decision to disregard the PPQ effectively constituted a significant weakness, which the agency should have raised with PacArctic during discussions, when an agency conducts discussions, as it did here, the agency is not required to raise with each offeror every discriminator for award. See, e.g., PWC Logistics Servs., Inc., B-299820, Aug. 14, 2007, 2007 CPD ¶ 162 at 6. Rather, discussions need only be meaningful, that is, discussions must identify deficiencies, significant weaknesses, and adverse past performance to which the offeror

has not yet had an opportunity to respond. FAR § 15.306(d)(3); Bank of Am., B-287608, B-287608.2, July 26, 2001, 2001 CPD ¶ 137 at 10-11. Here we conclude that none of the agency's evaluation conclusions about the PPQ rise to the level of a deficiency or significant weakness, or constitute adverse past performance information that must be raised during discussions.⁷

Price Evaluation

Finally, the protester challenges the agency's price evaluation, arguing that the agency failed to properly calculate the total evaluated price (TEP) based solely on the DTO pricing. In addition, the protester asserts that the agency used the incorrect number of labor hours to calculate PacArctic's proposed IDIQ pricing for one labor category. For the reasons discussed below, we conclude that the first allegation is untimely. With regard to the second argument, we find no basis upon which to sustain the protest.⁸

PacArctic first contends that the agency's price evaluation was flawed because the solicitation indicated that the TEP was to be calculated based solely on the DTO pricing, rather than on both the DTO pricing and the IDIQ pricing. The solicitation here instructed offerors to complete a pricing template, which was attached to the RFP. RFP at 55. The pricing template contained two tables. In the first table, referred to as the "DTO Table," vendors were to provide their proposed labor mix, including hours and hourly rates, for accomplishing the DTO. AR, Tab 19, Revised Pricing Template, at 951-52. The DTO table also included a column for the "Extended Price" for each labor category, as well as a box where the vendor would input its "Total Proposed Price For [The] Demonstration Task Order." RFP, Amended Pricing Template, at 71.

⁷ To the extent the protester asserts that the agency was also required to raise the agency's concerns regarding PacArctic's Federal Emergency Management Agency (FEMA) task order during discussions, we note that none of the agency's evaluation conclusions about the relevance of PacArctic's past performance references rise to the level of a deficiency or significant weakness, nor are they adverse past performance information that must be raised during discussions. ProLog, Inc., B-405051, Aug. 3, 2011, 2012 CPD ¶ 84 at 7.

⁸ PacArctic also challenges several clerical errors which the agency admittedly made in the price evaluation. For example, the agency calculated PacArctic's total evaluated price as \$17,153,753, instead of \$17,134,313. AR at 26. As another example, the agency calculated the awardee's total evaluated price as \$12,949,103, instead of as \$13,004,345. In the evaluation, the SSA indicated a 24.51 percent price difference between PacArctic's proposal and the awardee's proposal. AR at 27. After correcting for the pricing mistakes, the price difference between the proposals remains 24.10 percent. In light of the slight reduction in the price differential, we conclude that any harm to PacArctic was minor, and therefore, PacArctic has not been prejudiced by the agency's actions here. See Ball Aerospace & Tech. Corp., B-402148, Jan. 25, 2010, 2010 CPD ¶ 3 at 6 (finding no competitive prejudice where agency's computational error is minor). Id.

The second table in the pricing template, referred to as the “IDIQ Table,” listed all 13 of the labor categories defined in the performance work statement, along with an estimated number of hours that the agency would order for each labor category. RFP, Id. at 73. The IDIQ table required that vendors provide a proposed hourly rate for each labor category, and advised that the proposed rates would serve as the “maximum allowable rates for all Task Orders.” Id. at 2. In addition, the IDIQ Table required that offerors propose extended prices for the base year and all option years as follows:

Labor Category	Gov’t Estimated Labor Hours	Proposed Labor Rate	Extended Price
Business Sys. Analyst Sr.	1880		
Program Mgmt Analyst Sr.	1240		
Program Mgmt Analyst Mid	1240		
Budget Analyst – Mid	1240		
Subject Matter Expert (SME) 2 (Human Res.)	1880		
Business Process Improvement Expert Sr.	940		
Business Process Improvement Expert Mid	940		
SME 2 (Acquisition)	940		
SME 2 (Supply Chain)	940		
SME 2 (Logistics)	940		
IDIQ Program Manager	940		
SME 2 Financial Management/Audit	5640		
Business Sys. Analyst Mid	1880		

RFP, Amended Pricing Template, at 71.

In calculating the TEP, the agency used the following two components: (1) the total proposed pricing from the DTO table; and (2) the proposed extended prices from the IDIQ Table for all 13 labor categories, for the base year and all option years.

PacArctic contends that it was improper for the agency to include the IDIQ pricing in its calculation of the TEP. Instead, the protester asserts that the agency was required to calculate the TEP based solely on the offerors’ proposed DTO pricing. The disagreement between the agency and the protester arises from an ambiguity in the RFP’s pricing instructions.

Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Alluviam LLC, B-297280, Dec. 15, 2005, 2005 CPD ¶ 223 at 2; Fox Dev. Corp., B-287118.2, Aug. 3, 2001, 2001 CPD ¶ 140 at 2. An ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. DynCorp Int’l LLC, B-289863, B-289863.2, May 13, 2002, 2002 CPD ¶ 83.

In support of its position, the protester points to the RFP's instructions, which included the statement, as relevant here, that "[t]he pricing schedule is for the demonstration task order." Protester's Comments at 18 (citing RFP at 55). The protester asserts that its interpretation of this statement in the RFP to mean that the total evaluated price would be calculated based solely on the DTO pricing is consistent with the fact that only the DTO Table in the pricing template included a box for the total price. Protester's Comments at 18-19.

The agency disagrees with the protester's interpretation of the solicitation, and contends that the RFP did not provide an explicit statement as to how the TEP would be calculated. Rather, the agency argues that the format of the Pricing Template indicated that both the DTO pricing and IDIQ pricing would be factored into the TEP. AR at 15; RFP, Pricing Template, at 71.

We conclude that the protester's allegation is untimely because the ambiguity was patent. The solicitation contemplated the award of both an IDIQ contract and a task order, with the award of the task order based on the DTO. Although the RFP's evaluation criteria were silent with regard to how the agency would calculate the total evaluated prices, the solicitation instructed offerors to submit both DTO pricing and IDIQ pricing using an attached pricing template. The pricing template specified "extended prices"--i.e., the proposed labor rate multiplied by the number of hours associated with the labor category--for all labor categories proposed in both the DTO Table and the IDIQ Table. The only logical reason the agency would request extended prices in the pricing template would be to derive a total evaluated price. The fact that the agency requested extended prices for each labor category listed in the IDIQ Table (for the base and option years), in addition to requesting this information for the DTO Table, reasonably indicated that the agency intended to derive a total evaluated price based on the pricing information from both tables.

To the extent PacArctic believed, based on its reading of the solicitation, that only its DTO pricing would be used to calculate the TEP, such an interpretation clearly conflicted with the pricing template's inclusion of "extended prices" for both IDIQ pricing and DTO pricing. Accordingly, any ambiguity regarding these provisions was patent, i.e., clear or obvious on the face of the RFP, rather than latent. Since any alleged ambiguity regarding these provisions was apparent on the face of the RFP itself, a protest on this ground was required to be filed prior to the submission of proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1); U.S. Facilities, Inc., B-293029, B-293029.2, Jan. 16, 2004, 2004 CPD ¶ 17 at 10. Accordingly, PacArctic cannot now timely challenge this matter.

The protester next asserts that the agency improperly used the government-provided labor hours in calculating PacArctic's proposed IDIQ pricing for the labor category of "Subject Matter Expert/Financial Management/Audit" (SME2-FM/A). For the reasons discussed below, we find no merit to this argument.

The IDIQ Table in the pricing template included a government estimate of hours for each labor category. COS at 10; RFP at 71. The estimated number of hours for the

SME2-FM/A in the IDIQ Table was 5,640. Id. In PacArctic's proposal, PacArctic changed the hours listed in the IDIQ Table of its pricing template for SME2-FM/A from 5,640, to [DELETED]. In evaluating PacArctic's proposal, the contracting officer explains that, because the RFP did not permit vendors to alter the estimate hours contained in the IDIQ Table, the agency calculated the labor category for PacArctic using the government-estimated number of 5,640. COS at 14.

The protester asserts that language in the revised pricing template permitted offerors to propose different hours for different labor categories in the IDIQ Table. Specifically, the protester points to the following sentence in the revised pricing template: "Vendors can change the format of the seed task order section of the pricing template if they want to propose different hours or additional labor categories." RFP, Revised Pricing Template, at 71. The agency responds that this sentence was referring to the DTO Table because vendors were permitted to alter the number of hours estimated for the DTO, and notes that the RFP consistently referred to the demonstration task order as the "seed task order."

As referenced above, where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Alluviam LLC, supra. We conclude that the agency's interpretation is reasonable, and that the protester's differing interpretation is unreasonable.

As noted above, the protester relies upon the statement in the pricing template--that "[v]endors can change the format of the seed task order section of the pricing template if they want to propose different hours or additional labor categories"--to assert that offerors were allowed to alter the labor hours in the IDIQ Table. The record, however, supports the agency's assertion that "seed task order" meant demonstration task order. For example, the initial version of the solicitation reflects that the terms "seed project" and "seed task order," and "demonstration task order," were used interchangeably. Initial RFP at 593, 603, 606. In addition, the RFP's questions and answers (Q&A) notified offerors that the agency considered "seed task order," and "demonstration task order" to be the same. RFP, Q&A, at 727-28. With regard to the statement in the pricing template, the agency explains that the reason the instruction is even included in the final version of the pricing template "dates back to the previous version . . . that listed the Government's estimated DTO labor mix in the DTO Table." AR at 22, n.12; Initial RFP at 951. The contracting officer explains that the "instruction was included to let vendors know that they could change the DTO labor mix in the DTO Table." Id. The contracting officer further explains that, although the estimated labor mix was removed from the revised DTO Table to further emphasize that vendors could propose their own

labor mix for the DTO, the old instruction still appeared in the new template. AR at 22; COS at 11. Based on this record, we find nothing unreasonable regarding the agency's evaluation.

The protest is denied.

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