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Decision

Matter of: AAR Integrated Technologies; VT Miltope

File: B-417092; B-417092.2; B-417092.3; B-417092.4

Date: February 13, 2019

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DIGEST

1. Protests that the agency failed to properly evaluate technical proposals are denied where the record shows the agency reasonably evaluated proposals in accordance with the terms of the solicitation.
2. Protest that agency should have found awardee’s proposal technically unacceptable is denied where, although the agency effectively waived a solicitation requirement, the protester does not demonstrate that it was prejudiced by the waiver.

DECISION

AAR Integrated Technologies, of Huntsville, Alabama, and VT Miltope, of Hope Hull, Alabama, protest the award of a contract to Leonardo DRS, of Arlington, Virginia, under request for proposals (RFP) No. W31P4Q-18-R-0093, issued by the Department of the Army, Army Materiel Command, for multi-purpose maintenance support devices. AAR and Miltope contend that the agency failed to test their samples in accordance with the solicitation. The protesters also challenge the agency’s evaluation of the offerors’ technical proposals.

We deny the protests.

BACKGROUND

On March 22, 2018, the Army issued the RFP for three maintenance support system devices: Maintenance Support Device Version 4 Rugged (MSD-V4R), MSD Version 4 Semi-Rugged (MSD-V4S), and Marine Configuration.¹ The solicitation anticipated the award of a fixed-price, indefinite-delivery, indefinite-quantity contract, for a base year, with four 12-month optional ordering periods. RFP at 4, 8. The RFP stated that the contract had an estimated value of \$375 million. Id. at 202. The maintenance devices (also referred to as systems or kits) are non-commercial items consisting of commercial off-the-shelf software and hardware components (*i.e.*, laptops) operating together with system specific software, standard accessories, interconnecting cables, and test adapter modules. Contracting Officer Statement/Memorandum of Law (COS/MOL) (Miltope) at 2. The devices will be used throughout all levels of maintenance as the Army's test system for a wide variety of complex systems. RFP at 106. The devices will also be used to host interactive electronic technical manuals and/or specific application software, and to upload/download mission data or software. Id. The devices are intended to support Army maintenance, including ground, armor, aviation, missile, wheeled vehicle, signal/radio, command and control, and other tactical system maintainers. Id.

Award was to be made to the offeror whose proposal offered the best value to the government utilizing a tradeoff source selection methodology. RFP at 210. The RFP stated that proposals would be evaluated under the following factors: technical, past performance, small business participation, and price. Id. The technical factor was significantly more important than the past performance factor and small business participation factor. When combined, the non-price factors were substantially more important than price. Id. at 211. To receive consideration for award, offerors were required to receive a rating of no less than acceptable for each factor. Id. at 210.

The RFP initially provided for the evaluation of proposals in two phases. The first phase provided for the evaluation of proposals and product samples on an acceptable/unacceptable basis, to determine if the proposed technical approach met the solicitation's threshold performance and capability requirements. Id. at 207. Any proposals rated unacceptable under this phase were to be eliminated from further evaluation. Id. Phase two would evaluate proposals and product samples under the technical factor, as well as under the past performance, small business participation and price factors. Id. at 207-12.

On July 9, 2018, the Army received proposals, including product samples, from six offerors, including AAR, Miltope, and DRS. COS/MOL at 7. After the initial evaluation, the agency concluded that none of the proposals was acceptable under phase one, which concerned the offerors' proposed MSD-V4S (semi-rugged kits). Id. The agency

¹ The RFP was amended seven times. References herein are to the conformed version of the RFP that is inclusive of all seven amendments.

amended the solicitation to remove phase one as an “entry gate requirement” and decided to proceed immediately to the phase two evaluation of the kits under the technical, past performance, small business, and price factors. RFP, amend. 0003.

During phase two of the evaluation, the agency found that all proposals were acceptable under the past performance and small business participation factors. The agency, however, determined that none of the proposals, or the product samples, was acceptable under the technical factor. Accordingly, the Army established a competitive range of all six offerors. COS/MOL at 9. The agency provided the offerors in the competitive range with evaluation notices (ENs), which described the weaknesses, significant weaknesses and deficiencies identified by the agency in their proposals. The agency also revised the solicitation to remove a requirement that offerors submit test data artifacts. RFP, amend. 0004. The revised solicitation provided that proposed systems would be tested by the government to the threshold requirements in the specification. Id.

The Army received final proposal revisions (FPRs) from all six offerors in the competitive range, including AAR, Miltope, and DRS. The agency’s evaluation of AAR’s, Miltope’s, and DRS’s FPRs was as follows:

	AAR	MILTOPE	DRS
Technical Overall	Unacceptable	Acceptable	Good
Factor 1, Phase I (semi-rugged)	Unacceptable	Acceptable	Acceptable
Factor 2, Phase II (rugged)	Unacceptable	Acceptable	Good
Small Business	Acceptable	Acceptable	Acceptable
Past Performance	Acceptable	Acceptable	Acceptable
Total Evaluated Price	\$142,733,517	\$197,262,944	\$161,675,525

Agency Report (AR), Tab 38 (Miltope), Tab 35 (AAR), Source Selection Evaluation Report (SSER), at 13, 18.

Evaluation of AAR

With regard to AAR, the agency found its FPR unacceptable under both the semi-rugged and rugged technical factors. Specifically, with regard to AAR’s proposed semi-rugged device, the agency stated that AAR’s FPR “demonstrated a Deficiency . . . by failing to meet the [DELETED] requirement as further described in the Government Test Plan which was incorporated into the RFP via Amendment 5.” AR, Tab 35, SSER (AAR), at 4. Under factor 2 (rugged), although the agency found that AAR demonstrated several strengths for [DELETED], the agency found AAR’s FPR demonstrated a deficiency because “[t]he proposed solution does not include a field removable hard drive.” Id. The agency stated that “[t]he absence of this design feature increases the risk of unsuccessful contract performance to an unacceptable level.” Id. at 5.

Evaluation of Miltope

Miltope's FPR was rated acceptable for both its semi-rugged and rugged kits. AR, Tab 38, SSER (Miltope), at 11. Miltope's rugged device was assessed one strength for meeting the objective value for the radiated emissions air worthiness requirement. AR, Tab 30, Miltope Final Tech. Eval., at 1. Miltope received an overall technical rating of acceptable. AR, Tab 38, SSER (Miltope), at 11.

Evaluation of DRS

DRS was rated acceptable for its semi-rugged kit and good for its rugged kit. Id. at 8. DRS was assessed four strengths for its rugged device, including: (1) exceeding and meeting the threshold requirements for crash hazard shock and air worthiness; (2) meeting the objective requirement (72 inch drop) for the drop tests, and (3-4) the thoroughness of its technology roadmap. Id. at 8-9. DRS also received two weaknesses for its product sample and product sample parts list for failing to provide two spare fuses for its European power adapter. The evaluators concluded that the "FPR of the offeror provided a thorough approach to the requirements of the RFP overall," and that the "combination of strengths assessed in multiple areas of the technical evaluation for the MSD V4R, including exceeding the threshold and meeting the objective criteria for Government drop testing and meeting the objective criteria for an Air Worthiness Environment Requirement together with a strong Technology Road Map, far outweighed the stated weaknesses supporting an overall technical rating of Good[.]" Id. at 9.

Award Decision

Based on its unacceptable ratings, AAR's proposal was not considered for award. Miltope's proposal had a total evaluated price (TEP) of \$197,262,944. Id. at 17, 18. DRS's TEP was \$161,675,525. Id. The agency concluded that DRS's proposal, which was evaluated as technically superior at a lower proposed price, represented the best value to the government, and awarded the contract to that firm. These protests followed.

DISCUSSION

AAR argues that the Army improperly found its proposal technically unacceptable and ineligible for award with regard to both its semi-rugged and rugged kits.² For the reasons discussed below, we conclude that the agency reasonably evaluated AAR's FPR as unacceptable for its proposed rugged kit, based on the agency's conclusion that AAR's proposed solution for the rugged laptop did not include a field removable hard drive as required by the RFP. Because offerors were required to receive an acceptable

² AAR also raises various challenges to the agency's drop testing, asserting that it was inaccurate or unreliable.

rating for each factor to be considered for award, we need not address the protester's other arguments, including its arguments regarding its semi-rugged laptop kit.

Miltope challenges the agency's drop testing with regard to its sample product. Specifically, Miltope argues that the drop testing was improper because it was conducted using a larger landing zone than specified in the solicitation, which the protester asserts, made it more likely for its sample to fail. Miltope also challenges the technical evaluation of the awardee, arguing that DRS's proposal should have been found technically unacceptable for failing to include "two spare fuses per active fuse" as required by the RFP. For the reasons discussed below, we find no basis to sustain Miltope's first argument. With regard to Miltope's second argument, although we conclude that Miltope identifies an apparent error in the evaluation of DRS's technical proposal, we find no basis to sustain the protest because the agency's relaxation or waiver of the spare fuse requirement could not have prejudiced Miltope.³

In reviewing protests challenging an agency's evaluation of proposals, our Office does not independently evaluate proposals; rather, we review the agency's evaluation to ensure that it is consistent with the terms of the solicitation and applicable statutes and regulations. SOS Int'l, Ltd., B-402558.3, B-402558.9, June 3, 2010, 2010 CPD ¶ 131 at 2. We have consistently held that the evaluation of proposals is a matter within the discretion of the procuring agency; we will question the agency's evaluation only where the record shows that the evaluation does not have a reasonable basis or is inconsistent with the RFP. Hardiman Remediation Servs., Inc., B-402838, Aug. 16, 2010, 2010 CPD ¶ 195 at 3. An offeror risks having its proposal evaluated unfavorably where it fails to submit an adequately written proposal. Recon Optical, Inc., B-310436, B-310436.2, Dec. 27, 2007, 2008 CPD ¶ 10 at 6.

Evaluation of AAR – Removable Hard Drive

AAR argues that the agency's evaluation of its proposed "removable hard drive" as unacceptable was improper because AAR modified its proposal after discussions to address the agency's concerns. The agency responds that it considered all the information proposed in AAR's FPR, but found that AAR's proposed solution did not provide a removable hard drive as required by the RFP. As discussed below, we find no basis to sustain the protest.

As relevant here, the solicitation required that an offeror's proposed rugged and semi-rugged laptop kits comply with the requirements of Specification MIS-DTL-61265, including sections 3.2.2, 3.5.5.1, and 3.5.5.2, concerning the requirement for a removable hard drive. RFP at 211. The specification indicated that both kits shall

³ Although we do not address in detail all of the arguments raised by AAR and Miltope, we have reviewed each, and conclude that none provides a basis to sustain the protest.

include either a standard or optional (upgrade) removable hard drive,⁴ and that the “hard drive shall be removable . . . with no special tools required.” RFP, attach. 10, Specification §§ 3.5.5.1, 3.5.5.2. To receive consideration for award, offerors were required to receive a rating of no less than acceptable for each factor. RFP at 207. The solicitation defined “unacceptable” to mean: “Proposal does not meet requirements of the solicitation and thus, contains one or more deficiencies, and/or risk of unsuccessful performance is unacceptable. Proposal is ineligible for award.” Id. at 217.

The Army assessed a deficiency to AAR’s initial proposal based on the agency’s conclusion that the “basic design of the Offeror’s proposed [rugged] solution does not include a field removable Hard Drive.” AR, Tab 25, AAR Initial Eval., at 1. Specifically, the evaluators explained that, although AAR’s proposal “pictured/represented a Removable Hard Drive on the Parts List,” the “Hard Drive was not ‘removable’, as it was not accessible without the use of tools.” Id. at 2. Accordingly, the Army raised this issue with AAR during discussions. AR, Tab 20b, AAR ENs, at 15, 18.

During discussions, AAR explained that its “proposed [rugged kit] hard drive is field removable with a Philips head screwdriver, which “is a widely available common tool” that “is not specialized, [and does not require] any substantial modification or alteration for use in this application to remove the 10 screws necessary to remove the hard drive.” AR, Tab 20, AAR EN Questions & Responses, at 3-4. AAR thus asked that the agency reconsider the assessment of the above deficiency. Id. In response to this inquiry, the Army stated: “The Government requires a removable hard drive which may be removed, swapped (i.e., standard and optional hard drive), and replaced repeatedly by Soldiers in the field as part of normal operations.” Id. at 4.

AAR also asked the agency: “Will the government allow a standard Phillips screwdriver to be included in the product sample for evaluation and Fat [first article testing] and following orders?” Id. at 4-5. The agency responded, “No.” Id. at 4. In addition, AAR asked: “If the government expects the hard drive to be removed without any tools will the government allow this modification after contract award?” Id. at 5. Again, the agency responded, “No.” Id.

Despite its receipt of an EN noting the agency’s concerns with AAR’s proposed solution for the removable hard drive, AAR’s FPR proposed the same computer for its rugged laptop solution. Unlike the initial proposal, however, AAR’s FPR explained that the particular laptop in fact includes a removable hard-drive because the hard-drive can be removed “using only a standard Philips head #0 screw driver[.]” AR, Tab 33, AAR Final Proposal, at 120. AAR’s FPR also proposed to include the Phillips head screw driver with its rugged design kit, as well as “include the item in the production kits[.]” Id.

⁴ With regard to hard drive capacity, the specification stated: “The MSD-V4R and MSD-V4S Kit shall include either a Standard Removable Solid State Drive that is no less than 512 GB [gigabyte] or an Optional (Upgrade) Removable Hard Drive that is no less than 2 Terabytes.” Specification § 3.5.5.1.

at 133. In addition, the FPR included step-by-step instructions (with images) demonstrating the hard drive removal and installation process.⁵ Id. at 122-124.

In evaluating AAR's FPR, the agency stated that AAR "was informed during discussions of this MSD-V4R deficiency, but elected not to submit a different sample computer which incorporated a removable hard drive as required by the RFP." AR, Tab 28, AAR Final Tech. Eval., at 2. The agency explained that AAR's FPR relied on the position that "the original MSD-V4R sample contained a removable hard drive," but explained that the evaluators concluded "[t]he narrative information provided [in AAR's FPR] fails to support this argument." Id. Specifically, the evaluators found that "the hard drive removal procedure provided by the Offeror's supplier via the FPR clearly shows that the hard drive is not removable as required by the RFP." Id. Instead, "the procedure indicates that the hard drive is removable only under laboratory conditions using special tools." Id.

The evaluators further found that the design of the proposed hard drive "limits the number of times that the hard drive could be successfully removed, even under laboratory conditions using special tools." Id. Specifically, the evaluators explained that "[i]n actual use during contract performance, removal of the MSD-V4R hard drive would be required on a routine basis," and that "[t]he proposed hard drive configuration is not appropriate for this type of application." Id. In this regard, the evaluators noted that the "proposed hard drive, a [DELETED], is packaged for internal use within a computer system only." Id. Accordingly, the agency again assessed a deficiency concluding that AAR's "[rugged kit] solution does not include a field removable Hard Drive." AR, Tab 28, AAR Final Tech. Eval., at 2.

The protester contends that the Army's evaluation was unreasonable because AAR amended its proposal to include a Phillips head screwdriver with its product sample and in the production kits, and that the evaluators failed to consider these changes in the final evaluation. AAR's Comments at 21.

Based on our review of the record, we find nothing unreasonable regarding the Army's evaluation. Contrary to AAR's assertion, the record reflects that the agency considered all of the information in AAR's FPR, including the proposal to include a Phillips head screwdriver with the product sample and in the kits, but nonetheless concluded that AAR's hard drive was not a "removable hard drive" as required by the RFP. Specifically, the agency expressed concerns that the proposed hard drive consisted of "a [DELETED]" only for internal computer use. AR, Tab 28, AAR Final Tech. Eval., at 2. The agency also expressed concerns regarding the configuration of the hard drive and procedure for removing the hard drive, which as detailed above, involves a multi-step process--including the removal of 10 tiny screws to remove the back cover of the laptop,

⁵ Specifically, the removal process shown included the following: (1) [DELETED]; (2) [DELETED]; (3) [DELETED]; (4) [DELETED]; (5) [DELETED]; (6) [DELETED]; (7) [DELETED]; and (8) [DELETED]. AR, Tab 33, AAR Final Proposal, at 122-124.

and then the removal of an additional retaining screw from inside the laptop just to release the hard drive. Id. AR, Tab 28, AAR Final Tech. Eval., at 2.

Although AAR maintains that the inclusion of the Phillips head screwdriver made its hard drive “removable,” the steps involved to remove the hard drive clearly describe a complex procedure, which the agency reasonably determined, would limit the number of times the hard drive could be successfully removed, even under laboratory conditions with special tools. Id. Further, while the protester asserts that the agency’s evaluation relied on an unreasonable interpretation of the term “special tools,” the record reflects that the agency’s concerns were broader than just the screwdriver. On this record, we find no basis to sustain the protest.

Evaluation of Miltope -- Drop Test Requirement

Miltope argues the evaluation was unreasonable because the agency tested Miltope’s sample rugged device using a plywood landing zone measuring four feet by eight feet, rather than four feet by four feet (the size indicated for the landing zone in the solicitation).⁶ In Miltope’s view, testing the sample with a larger landing zone unfairly caused one of Miltope’s samples, when dropped from 72 inches, to fail.

The solicitation required that offerors provide both semi-rugged and rugged product samples for testing, and explained how the agency would test the product samples by conducting drop tests. RFP, attach. 14, MSD-V4S and MSD-V4R Shock, Logistic Transit Drop Test Plan. As relevant here, the Drop Test Plan stated that the agency would test the semi-rugged and rugged laptops for drop survivability by dropping the computers from three heights (36 inches, 48 inches, and 72 inches), and that six drops would be made from each height. Id. § 4.0. It also stated that set-up for each test would include “[p]lac[ing] a 4 foot by 4 foot by 3/4 inch thick plywood drop surface on a

⁶ Miltope also argues that the Army unreasonably eliminated requirements from the RFP concerning certain ruggedization requirements, rather than conduct discussions with the offerors regarding those requirements. Miltope’s Comments (Dec. 17, 2018), at 4. In the protester’s view, the agency’s decision to eliminate the ruggedization requirements prevented Miltope’s proposal from being evaluated as superior to DRS’s. The agency contends that Miltope’s argument is untimely and should not be considered because Miltope failed to challenge the agency’s removal of the requirements from the solicitation prior to the submission of FPRs. We agree. Although Miltope asserts that its allegation is timely because it learned additional information during its debriefing regarding the agency’s rationale for deleting the ruggedization requirements, this point, even if true, does not change the fact that the agency clearly advised the offerors via amendment 0004 that the ruggedization requirements would be deleted and the agency would conduct drop testing instead. RFP, amend. 0004. Since the agency’s evaluation approach was apparent on the face of the amended solicitation, a protest challenging this approach was required to be submitted prior to the submission of FPRs. 4 C.F.R. § 21.2(a)(1); see Shivoy, Inc., B-412027; B-412027.2, Dec. 9, 2015, 2015 CPD ¶ 388 at 6.

concrete surface.” Id. § 5.0. Failure was defined as including: (1) computer not able to boot up; (2) computer’s benchmark score decreases more than 5 percent; (3) material failure as a result of increased or decreased friction between parts, or general interference between parts; (4) materiel electronic circuit card malfunction, electronic circuit card damage, or electronic connector failure; (5) permanent mechanical deformation of the materiel as a result of overstress of materiel structural and/or nonstructural members; (6) collapse of mechanical elements of the materiel as a result of the ultimate strength of the component being exceeded; or (7) materiel failure as a result of cracks or fracturing of epoxies. Id. § 3.0 .

One of the six tests the agency conducted on Miltope’s rugged device at a 72 inch drop resulted in a “fail.” The protester blames this failure on the use of the four foot by eight foot plywood sheet, which the protester asserts, could bow more in the middle than a four foot by four foot plywood sheet and thereby cause a “trampoline effect” resulting in more damage to the test article. Protest at 10, attach. at 1. In the protester’s view, the larger landing zone made it more likely that a test failure would occur, and this is what led to Miltope’s test failure.

In response, the agency first notes that the size of the landing zone was not mandated by the Detail Specification, but rather, was included by the agency in its drop test plan for the purpose of assuring that all product samples were tested under the same conditions. COS/MOL at 22. The agency therefore contends that it reasonably determined that the larger plywood sheet would serve to increase the landing zone and lessen the chance of secondary damage to the test samples after the initial landing.

We review testing requirements using the same standard applicable to any other challenge of a solicitation’s evaluation procedures; the establishment of testing or qualification procedures or standards is a matter within the technical expertise of the procuring activity, and we will not object to the imposition of certain terms, such as the requirement for drop testing or the implementation of such testing to uniform circumstances or procedures, unless they are shown to be without a reasonable basis. RSL Elec. Ltd., B-404117.3 et al., Mar. 28, 2011, 2011 CPD ¶ 90 at 5. A protester’s disagreement with the agency’s judgment concerning its needs and how to accommodate them, without more, does not show that the agency’s judgment is unreasonable or otherwise provide a basis to sustain the protest. Id.

Based on our review, we find nothing unreasonable about the agency’s decision to proceed with the drop test using the larger plywood sheet. The agency explains that, at the time the drop test was conducted, the plywood available at the test site, Warner Robins Air Force Base, in Georgia, was four feet by eight feet. COS/MOL at 22. In response to the protest, the project engineer who conducted the testing explains that, although a “full 4 x 8 foot sheet of plywood was used instead of cutting it,” the plywood would have been cut “[h]ad the dimension been critical to the test[.]” AR, Tab 47, Declaration of Project Engineer, Nov. 20, 2018, at 1. He further states that “[t]he drop test fixture setup was configured to facilitate consistent, accurate, and repeatable drops” despite the larger landing zone. Id. In this regard, he explains that, while “[n]o piece of plywood of any size is going to be completely flat,” a project engineer made “[e]fforts . . .

to ensure the area of initial impact was flat to the concrete surface under it” by “pushing on the impact area (center of the sheet) and checking for deflection.” Id.

Although Miltope disagrees with the agency, we find that the agency has reasonably explained its view for proceeding with the drop test with the larger plywood sheet. To the extent Miltope contends that the use of the larger plywood surface could cause a “trampoline effect” and make it more likely that a test failure would occur, the protester has provided no evidence that such a trampoline effect occurred during the testing here. In this regard, the record reflects that the remainder of Miltope’s samples passed all drop tests, at all heights, despite the use of the larger plywood landing zone. Further, as noted above, the agency represents that, during the testing, a project engineer tested the flatness of the plywood in the test article landing zone prior to the commencement of testing all test samples, and that all of the test samples came to rest within the plywood surface. COS/MOL at 22.

In any event, even assuming that Miltope’s sample had passed the 72 inch drop test under phase two of the solicitation--resulting in Miltope receiving a strength under phase two for exceeding this objective requirement--Miltope’s technical proposal would still not be rated as highly as DRS’s, which received multiple strengths across several of the seven areas of consideration under phase 2. AR, Tab 38, SSER (Miltope), at 8-9; COS/MOL at 24. Nor would it overcome the \$36 million total evaluated price advantage of DRS’s proposal over Miltope’s. Accordingly, the protester has failed to demonstrate how it would be prejudiced here. C2G Ltd. Co., B-406092, B-406093.3, Feb. 8, 2012, 2012 CPD ¶ 67 at 4 (“Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency’s actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found.”). On this record, we find no basis to sustain the protest.

Evaluation of DRS – Spare Fuse Requirement

Miltope asserts that the Army should have assessed a deficiency to DRS’s proposal for its failure to propose “two spare fuses per active fuse” for its European power adapter, as required by the solicitation. The protester asserts that this would have rendered the awardee’s proposal ineligible for award. The agency contends that it reasonably assessed a weakness, rather than a deficiency, to DRS’s proposal because DRS included one spare fuse, which partially met the requirement, and the agency reasonably determined that failure to include the second spare fuse was only a minor omission. We agree with the protester that DRS’s proposal failed to comply with the RFP requirement for two spare fuses. As discussed below, however, we conclude that the agency’s actions nonetheless resulted in no prejudice to Miltope. Accordingly, we find no basis to sustain the protest.

With regard to the technical evaluation of the MSD-V4R (rugged)/marine configuration and product sample, the solicitation provided that the proposal and product sample would be evaluated and assigned a combined technical/risk rating of: outstanding, good, acceptable, marginal and unacceptable. RFP at 213. With regard to the product

sample parts list, the solicitation provided that it would be reviewed to ensure that it contained an itemized and accurate list of all parts used to manufacture and/or construct the MSD-V4R/Marine Configuration. Id. The solicitation required that the product sample and product sample parts list comply with the requirements of the Detail Specification and statement of work. Id. at 214.

As relevant here, the Detail Specification identified a list of standard accessories, including “Two Spare Fuses Per Active Fuse” that were required for the MSD-V4R (rugged) and MSD-V4S (semi-rugged) kits. RFP, attach. 10, Detail Specification § 3.2.2. In evaluating DRS’s final proposal, the agency concluded that DRS’s approach demonstrated two weaknesses--one for its product sample and one for its product sample parts list--because the vendor included only one spare fuse instead of two. AR, Tab 57C, DRS Final Tech. Eval., at 12.

The parties do not dispute that DRS’s product sample did not provide two spare fuses per active fuse, for the European power adapter, as identified in the Detail Specification. Rather, they disagree regarding whether provision of the two spare fuses was a material requirement of the solicitation.

It is a fundamental principle of government procurement that competitions must be conducted on an equal basis, that is, offerors must be treated equally and be provided with a common basis for the preparation of their proposals. Continental RPVs, B-292768.2, B-292768.3, Dec. 11, 2003, 2004 CPD ¶ 56 at 8. Contracting officials may not announce in the solicitation that they will use one evaluation scheme and then follow another without informing offerors of the changed plan and providing them an opportunity to submit proposals on that basis. Fintrac, Inc., B-311462.2, B-311462.3, Oct. 14, 2008, 2008 CPD ¶ 191 at 6. An agency may waive compliance with a material solicitation requirement in awarding a contract only if the award will meet the agency’s actual needs without prejudice to other offerors. Lockheed Martin Corp., B-411365.2, Aug. 26, 2015, 2015 CPD ¶ 294 at 14; Safety-Kleen (TS), Inc., B-284125, Feb. 23, 2000, 2000 CPD ¶ 30 at 2-3. Our Office will sustain a protest that an agency improperly waived or relaxed its requirements for the awardee where the protester establishes a reasonable possibility that it was prejudiced by the agency’s actions. Datastream Sys., Inc., B-291653, Jan. 24, 2003, 2003 CPD ¶ 30 at 6.

Here, the solicitation required that an offeror’s MSD-V4R (rugged) product sample and product sample parts list provide “two spare fuses per active fuse” for the European power adapter and specified that the agency would evaluate such as part of its technical evaluation. The record shows, however, that DRS’s product sample and product sample parts list did not propose two spare fuses, and that the Army evaluated DRS’s product sample and parts list without consideration of two spare fuses. As such, the record shows that the Army did not evaluate DRS’s proposal in accordance with the terms of the solicitation. Nonetheless, we find no prejudice to Miltope.

As previously noted, where a protester fails to demonstrate that, but for the agency’s actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in

the agency's evaluation of proposals are found. Imagine One Tech. & Mgmt., Ltd., B-412860.4, B-412860.5, Dec. 9, 2016, 2016 CPD ¶ 360 at 12. Similarly, where there is no basis for finding competitive prejudice to the protester, we will not sustain a protest challenging the waiver of a solicitation requirement. Phoebe Putney Mem'l Hosp., B-311385, June 19, 2008, 2008 CPD ¶ 128 at 4. Thus, even where an agency essentially relaxes or waives a material solicitation requirement, our Office will not sustain the protest unless the protester can demonstrate that it was prejudiced by the waiver, i.e., that the protester would have submitted a different proposal or quotation or that it could have done something else to improve its chances for award had it known that the agency would waive the requirement. See Technology & Telecomms. Consultants, Inc., B-413301, B-413301.2, Sept. 28, 2016, 2016 CPD ¶ 276 at 14.

Here, rather than relying on what Miltope would have done differently had it known that the agency would waive the requirement for "two spare fuses per active fuse," the protester maintains that the failure of DRS to provide this information makes DRS's proposal ineligible for award. There is no indication in the record, however, that removal of the spare fuse requirement would have altered the agency's award decision. As noted above, DRS's proposal was lower priced (by \$36 million) than Miltope's proposal, and received a higher technical rating (even with two weaknesses assessed for failing to comply with the spare fuse requirement). In contrast, the price impact of removing the two spare fuses might be, at most, approximately \$68,000.⁷ On this record, we find no basis to sustain the protest.

The protests are denied.

Thomas H. Armstrong
General Counsel

⁷ As indicated by the intervenor and agency, each fuse cost approximately \$1. Supp. AR, Jan. 28, 2019, at 3-4; Intervenor's Comments, Jan. 29, 2019, at 3. Accordingly, \$1 per fuse x 2 fuses = \$2 x 34,000 possible kits over life of contract = \$68,000.