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Decision

Matter of: ASRC Federal Data Network Technologies, LLC; Ekagra Partners, LLC

File: B-418085.4; B-418085.5; B-418085.7

Date: May 5, 2020

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DIGEST

1. Protester is an interested party to challenge the terms of a solicitation, where, although the protester failed to submit a complete proposal in response to the solicitation, the remedy sought by the protest was an opportunity to compete under a revised solicitation.
 2. Protest that solicitation’s requirement for fixed-price services above the current operations level is insufficiently detailed is sustained where the solicitation failed to adequately detail the scope and boundaries of such services.
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DECISION

ASRC Federal Data Network Technologies, LLC, a small business located in McLean, Virginia, and Ekagra Partners, LLC, a small business located in Leesburg, Virginia, protest the terms of fair opportunity proposal request (FOPR) No. W31P4Q-19-R-0055, issued by the Department of the Army for information technology support services for the Army’s Combat Capabilities Development Command Aviation and Missile Center (CCDC AvMC). ASRC argues that the solicitation fails to reflect the agency’s actual needs, provides insufficient information for offerors to bid intelligently, and is silent regarding how the agency will utilize its estimates to evaluate proposals. Ekagra argues that the solicitation does not include sufficient information for offerors to respond intelligently, and that the agency’s discussions seek unnecessary information and are based on mechanical evaluations against an undisclosed government estimate. Ekagra

also challenges the Army's subsequent elimination of its proposal from consideration, which resulted from the purported corruption of two Ekagra proposal files uploaded to the agency's portal.

BACKGROUND

On April 29, 2019, the agency released the solicitation to holders of the National Institute of Health Information Technology Acquisition and Assessment Center (NITAAC) Chief Information Officer-Solutions and Partners 3 (CIO-SP3) small business governmentwide acquisition contract. The solicitation sought the provision of on-site technical, computer, network and information systems support for the CCDC AvMC in Huntsville, Alabama, and its customers.

The FOPR anticipated the award of a hybrid task order with both fixed-price and time-and-material (T&M) elements. Hearing Record (HR), Tab 1, FOPR at 2.¹ In this regard, the solicitation incorporated a performance work statement (PWS) that set forth the tasks and subtasks included within the requirement. Of note, numerous tasks and subtasks within the PWS were designated as both fixed-price and T&M. See, e.g., HR, Tab 3, PWS ¶ 5.2.2 (Task 2, Subtask 2-Area Managers). The solicitation explained that the fixed-price portion of such work "is comprised of functional areas, [information technology] support requirements, identified throughout the PWS, as applied to the operating environment contained within Appendix A [to the PWS]; the support of this operating environment is considered 'baseline support.'" FOPR at 2. By contrast, the T&M portion of the task order was reserved for "above baseline support." *Id.* For this T&M portion, the Army would utilize technical direction letters to provide instruction to the contractor as these requirements were defined. *Id.* Thus, support for the agency's baseline operations would be a fixed-price requirement, whereas "above-baseline" support would be a T&M requirement. *Id.*

PWS Appendix A provided offerors with information about the current operational structure and information technology assets of the CCDC AvMC. The appendix included information on the center's 66 buildings, 17 months' worth of tracking information for the center's help desk tickets, and information on the center's information technology environments, software platforms, software applications, and hardware equipment.

Under the FOPR's evaluation scheme, the agency anticipated conducting a best-value tradeoff considering three factors: technical expertise, management approach, and cost/price. FOPR at 22-23. The technical expertise factor was significantly more important than the management approach factor, and both factors, when combined,

¹ During the course of this protest, our Office convened a telephonic hearing to better understand the positions of the parties. Unless otherwise noted, HR citations refer to exhibits included as part of the record for this hearing. Citations to the hearing transcript itself will be noted as "Tr. at ___." References to the FOPR refer to the seventh amended version of the FOPR.

were significantly more important than cost/price. *Id.* at 23. For the technical expertise factor, the agency would evaluate how well each proposal “demonstrates the [o]fferor’s knowledge, understanding, and capabilities to satisfy the [g]overnment’s requirement without causing disruption in schedule, increase[ed] costs, degradation of performance, the need for increased [g]overnment oversight, or [an increased] likelihood of unsuccessful contract performance.” *Id.* at 23.

For the management approach factor, the agency committed to evaluating each offeror’s organizational and management approach for the performance of the contract. *Id.* at 26. The factor consisted of three subfactors: (1) overall management and organizational plan, (2) transition plan, and (3) strategic organizational transformation plan. *Id.* The overall management and organizational plan subfactor was more important than the other two subfactors, which were of equal importance to each other. *Id.* For the overall management and organizational plan subfactor, the solicitation contemplated the evaluation of the feasibility and benefit of the offeror’s management methodology, its staffing approach, its plan for managing both the fixed-price and T&M portions of the effort, and the appropriateness of the offeror’s labor-hour skill mix, among other elements. *Id.* at 27-28.

Four offerors, including ASRC and Ekagra, submitted proposals in response to the solicitation. On September 26, the Army issued a task order to SNAP, Inc. Both ASRC and Ekagra filed protests of the award, which our Office docketed as B-418085.1 and B-418085.2. Among other arguments, Ekagra and ASRC challenged the Army’s evaluation of proposals and asserted that the agency conducted improper discussions with SNAP. On October 24, the Army announced it would take corrective action in response to these protests by entering into discussions with all offerors, soliciting revised proposals, and making a new selection decision. On October 29, our Office dismissed the protests as academic in light of the planned corrective action.

On December 4, the Army notified offerors it would provide interchange notices (INs) containing their technical and cost/price evaluations, and would allow offerors to submit written questions to the agency based on these INs. Both Ekagra and ASRC submitted questions to the agency, which the agency answered on January 9, 2020.

The agency’s December 4 notification also attached amendment four to the solicitation, which provided offerors with a “notional labor mix,” containing the agency’s estimate of the overall fixed-price and T&M portions of the effort broken down by labor category. HR, Tab 5, Notional Labor Mix. The notional labor mix included the hours and full-time equivalents (FTEs) estimated for each labor category but did not map labor categories to specific PWS tasks or subtasks.

Following subsequent amendments, the solicitation requested revised proposals by 12 p.m. Central Standard Time, January 29, 2020. Prior to this deadline, both ASRC and Ekagra filed protests of the solicitation terms, which our Office docketed as B-418085.4 and B-418085.5 respectively.

On March 2, while these protests were pending, the Army notified Ekagra that two files submitted by Ekagra, as part of its January 29 revised proposal submission, “were corrupted due to improper uploading” to the government portal designated for the submission of proposals.² B-418085.5 Supp. Agency Report, Tab D, March 2 Disqualification Letter at 1. Due to these files being inaccessible, the agency concluded that Ekagra had not submitted a complete proposal as required by the FOPR. *Id.* Accordingly, the Army notified Ekagra that the agency would not evaluate the proposal. *Id.*

On March 9, Ekagra filed a supplemental protest (B-418085.7) challenging the agency’s decision to eliminate its proposal from consideration for award.³

DISCUSSION

Both ASRC and Ekagra challenge the sufficiency of the information in the solicitation. In this respect, both protesters argue that the solicitation, the PWS (including Appendix A), and the notional labor mix do not provide enough information for offerors to adequately understand the required level of effort, and the apportionment of that effort between fixed-price and T&M areas. In addition, ASRC argues that the agency failed to explain how it will use its cost estimates, including the notional labor mix, in its evaluation of proposed staffing.

Ekagra raises other challenges to the agency’s actions. It argues that the agency’s discussion items reflect a mechanical evaluation of offerors’ proposed staffing against an undisclosed independent government cost estimate (IGCE). Ekagra also challenges, as unreasonable, the Army’s requests for information about Ekagra’s joint venture structure and costs. Finally, Ekagra argues that the agency improperly disqualified its proposal from further consideration despite Ekagra’s compliance with the agency’s instructions for submitting proposals.

² These files were two solicitation-required versions of volume II of Ekagra’s proposal: a “tracked-changes version” and a “clean version [that] clearly identif[ies] changes from the initial technical and cost proposal by highlighting new information in yellow.” FOPR at 5.

³ Our Office joined these three protests to resolve overlapping factual and legal arguments more efficiently. Because the expected value of the task order at issue is above \$10 million, these protests are within our jurisdiction to hear protests of task orders placed under civilian agency indefinite-delivery, indefinite-quantity (IDIQ) contracts. 41 U.S.C. § 4106(f)(1)(B); see also *Wyle Labs., Inc.*, B-413989, Dec. 5, 2016, 2016 CPD ¶ 345 at 3 (the authority under which we exercise our task order jurisdiction is determined by the agency that awarded the underlying IDIQ task order contract, rather than the agency that issues or funds the task order).

We sustain the protests.⁴

Interested Party

As a preliminary matter, the agency contends that Ekagra's protest should be dismissed because Ekagra does not meet the definition of an "interested party" under the Competition in Contracting Act (CICA) and GAO's Bid Protest Regulations. Under CICA and our Bid Protest Regulations, an interested party means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 31 U.S.C. § 3551(2)(A); 4 C.F.R. § 21.0(a)(1). The agency argues that Ekagra does not meet this standard because it failed to submit a complete proposal in response to the Army's most recent request for proposals and is therefore ineligible for award. We disagree.

In this regard, we note that Ekagra timely filed its protest prior to the January 29 deadline for the receipt of revised proposals.⁵ We also note that the remedy sought by the protester is for the agency to revise the solicitation and permit offerors to compete against revised requirements. In such a scenario, Ekagra would be eligible to submit a proposal. Accordingly, Ekagra remains an interested party because its direct economic interest continues to be affected by the challenged solicitation terms "without regard to later actions by the parties outside of the context of [the] protest." *BHB Ltd. P'ship & Indiana Assocs. Ltd. P'ship*, B-417760 *et al.*, Oct. 9, 2019, 2019 CPD ¶ 356 at 3 n.3 (protester was interested party to challenge solicitation terms, despite subsequently

⁴ While we do not address in detail every argument raised by the protesters, we have reviewed each issue and, with the exception of those arguments discussed herein, do not find any basis to sustain the protest. For example, Ekagra argues that the agency is mechanically evaluating offerors' proposed staffing against an undisclosed IGCE. In this respect, the protester asserts that the agency's discussion items demonstrate that the agency "has already mechanically evaluated proposals against [an] undisclosed solution, and plans to do so again." Ekagra Protest at 25. We find this argument to be premature, however, since it essentially challenges the Army's evaluation judgments before the evaluation is completed. Our Office has consistently stated that such pre-award evaluation challenges are premature. See, e.g., *Sikorsky Aircraft Corp.*, B-416027, B-416027.2, May 22, 2018, 2018 CPD ¶ 177 at 16 (dismissing pre-award challenge to agency's alleged unequal evaluation treatment as premature, where the argument was raised during discussions).

In addition, because we are sustaining the protests and recommending that the agency allow offerors to compete for revised solicitation requirements, we need not decide Ekagra's challenge to the agency's subsequent elimination of its proposal since our recommendation renders this challenge academic.

⁵ As noted above, this conclusion does not apply to Ekagra's pre-award challenge to the agency's ongoing evaluation, which is premature.

submitting a late proposal, where the remedy sought was an opportunity to compete under a revised solicitation).

Allocation of Staffing

ASRC and Ekagra contend that the solicitation did not provide enough information for offerors to understand adequately the allocation of staffing between the PWS's fixed-price and T&M tasks and subtasks. In proposing staffing, the FOPR required offerors to trace labor category and hour information to PWS tasks and subtasks within their management plans. FOPR at 9. The PWS, however, included numerous tasks and subtasks designated as both fixed-price and T&M. The descriptions for these tasks/subtasks did not indicate which part of the PWS task/subtask would be fixed-price and which part would be T&M. Instead, the PWS included a general explanation that stated:

All requirements identified as [fixed price] are in support of the operating environment outlined within Appendix A. These requirements, will be applied to the CCDC AvMC operating environment of Appendix A, or replacement systems, including additive or supplemental devices and systems to support the CCDC AvMC mission and customer base, and are considered baseline support. Above-baseline support is outlined as T&M requirements; Technical Direction Letters (TDLs) will be utilized to provide instruction to the contractor as T&M requirements are defined.

HR, Tab 3, PWS at 4. Accordingly, requirements applying to the CCDC AvMC operating environment, as set forth in Appendix A, are part of the fixed-price baseline support, whereas any requirement beyond that operating environment is to be proposed on a T&M basis. Appendix A included information on the CCDC AvMC operating environment, such as information on: help desk staffing locations, facilities, personnel, help desk ticket information, server and operating system environments, configuration management and update environments, database environments, web hosting environments, and, software and hardware environments.

ASRC and Ekagra argue the solicitation did not provide enough information for offerors to propose staffing for the fixed-price portion of the PWS, because the solicitation and PWS documents did not adequately delineate or define the fixed-price efforts relative to the T&M efforts. In this respect, both ASRC and Ekagra challenge an explanation of the fixed-price efforts provided by the Army during discussions. During discussions, the Army told both offerors that their labor approaches were deficient, "both regarding overall total labor required to meet the [fixed-price] requirements and in multiple specific labor categories." HR, Tab 6, ASRC INs at 20; HR, Tab 9, Ekagra INs at 17.

The agency explained this conclusion as follows:

Based on its own technical judgment, and applying the specific [fixed-price] tasks to the operating environment described in Appendix A, the

Government projects that an appropriate labor mix for the [fixed-price] effort would utilize approximately 163 FTE personnel for a full year of performance. At a summary level, the IGCE (163 FTEs) is based upon the level of effort required to maintain current operations (~122 FTEs), plus the level of effort expected to resolve current performance gaps due to changes in the [information technology] regulatory environment, technical landscapes, and emerging/evolving mission requirements, as well as to support the organizational transformation objectives (~41 FTEs). The level of effort estimated to address these areas are disbursed across all performance areas and requirements. Each area is expected to meet mission requirements, respond to emerging changes, and support transformation (*i.e.*, the IGCE was not based upon a separate “transformation” group or team). This estimate also considered the delineation between [fixed-price] and T&M support.

Id.

The protesters argue that this explanation reflects an expectation that offerors will propose fixed-price staffing beyond the current level of operations, based on amorphous concepts such as changes in the technical landscape, or changes to emerging/evolving mission requirements. The protesters assert that the agency has refused to define these terms, and has not provided any meaningful indication of the level of effort associated with these requirements.

The agency argues, as an initial matter, that this protest challenge is premature because it challenges the agency’s discussion items prior to the agency reaching an award determination.

We find, however, that this protest ground challenges the agency’s interpretation of the solicitation, as revealed during discussions, specifically the agency’s vague interpretation of the scope of the fixed-price portion of the requirement. Where, as here, an agency expresses an interpretation of the solicitation during discussions that creates an ambiguity, or otherwise reveals a defect in the terms of the solicitation, we have concluded that the protester must challenge that interpretation prior to the deadline for the receipt of proposals. See *AAR Airlift Grp., Inc.*, B-414690 *et al.*, Aug. 22, 2017, 2017 CPD ¶ 273 at 7. Accordingly, we conclude that this protest ground is not premature.

The agency contends further that it provided “ample information for experienced [information technology] offerors to intelligently propose both [fixed-price] and T&M level of efforts in a regulatory environment with standard changes in technical landscapes with emerging/evolving mission requirements and organizational transformation objectives.” Agency Post-Hearing Brief at 16. In this respect, the agency notes that Appendix A sufficiently set out the technical landscapes for the baseline level of operations. The agency contends that this information would enable an experienced information technology offeror to estimate the level of effort needed to meet the

agency's emerging/evolving requirements, organizational transformation objectives, and other expected changes. In the agency's view, this information was sufficient because an agency is not obligated to eliminate all performance uncertainties.

Our Office has concluded that there is no legal requirement that a solicitation be drafted so as to eliminate all performance uncertainties; the mere presence of risk does not render a solicitation improper. *Northrup Grumman Tech. Servs., Inc.*, B-406523, June 22, 2012, 2012 CPD ¶ 197 at 12. Instead, offerors have the responsibility, in submitting a proposal on a fixed-price contract, to project costs and to include in their proposed fixed prices a factor covering any projected increase in costs; risk is inherent in most types of contracts and offerors are expected to allow for that risk in computing their offers. *Id.* However, a contracting agency must provide offerors with sufficient detail in a solicitation to enable them to compete intelligently and on a relatively equal basis. *CWTSatoTravel*, B-404479.2, Apr. 22, 2011, 2011 CPD ¶ 87 at 12. That is, the agency's description of its needs must be free from ambiguity and describe the agency's minimum needs accurately. *Global Tech. Sys.*, B-411230.2, Sept. 9, 2015, 2015 CPD ¶ 335 at 19.

Here, we find that the agency has not provided enough information for offerors to understand adequately the scope of the fixed-price portion of the instant requirement relative to the T&M portion. As noted above, the agency's view of this work involves elements beyond maintaining the current level of operations, for example, addressing "emerging/evolving mission requirements." HR, Tab 6, ASRC INs at 20; HR, Tab 9, Ekagra INs at 17. While the agency has provided the total combined staffing associated with these elements (41 FTEs), it has not defined or provided enough detail about them to enable offerors to account for these elements in their proposed staffing. This is particularly a problem here because the solicitation required offerors to identify their staffing for distinct tasks and subtasks. See FOPR at 9.

For example, during the hearing conducted by our Office to develop the record further, the agency was unable to provide a concrete delineation of the scope of those emerging/evolving mission requirements included within the fixed-price portion of the requirement. Instead, the agency's technical evaluation board member provided only a very broad explanation, testifying that an emerging or evolving requirement would fall under the fixed-price portion of the task order if, in the agency's assessment, the change was the type of change that could be accounted for within the agency's existing capabilities. Tr. at 174-175. In contrast, an emerging and evolving requirement would fall under the T&M portion of the task order if, in the agency's estimation, it was "different than all the other services that we're currently supporting so it's not just something where we can shift and adjust and adapt." *Id.* at 177.

The agency was also unable to provide a clear breakdown of what constitutes an emerging/evolving mission requirement and how such requirements would affect particular PWS tasks and subtasks. Instead, the agency's board member testified that these mission requirements were not limited to specific PWS tasks or subtasks and would fall across all of the performance areas. *Id.* at 177. The agency further noted

that changes in mission requirements could include unanticipated changes to the current landscape or other changes to the mission requirements of the CCDC AvMC, and that offerors would have to account for all of these changes within the fixed-price portion of the requirement. *Id.* at 181-182.

Given the seemingly unbounded and amorphous scope of what constitutes a fixed-price change to the agency's mission requirements relative to a T&M change, we agree with the protesters that the agency has not provided enough information for offerors to propose staffing intelligently. As the agency noted, these requirements fall across all of the PWS's performance areas, so they impact staffing at every PWS task or subtask level. Yet, an offeror trying to propose task- or subtask-specific staffing would not know, with any level of meaningful detail, which types of mission requirement changes the agency was anticipating, what those changes might entail, and whether they would qualify as "baseline" changes (and therefore have to be staffed under the fixed-price portion of the requirement). These changes could potentially include any changes to the agency's mission requirements that the Army deemed to be within its existing capabilities.

This information was also not included within Appendix A, which, while listing the components of the "baseline" operations environment, did not discuss what changes to the agency's mission requirements would fall under the rubric of the baseline services. We note that both Ekagra and ASRC asked, during discussions, for further explanation of what the agency meant by a change in mission requirements that would be attributable to the fixed-price portion of the effort. The agency answered these requests, however, by stating that it had already provided sufficient information for offerors to gauge the "reasonable levels" of such requirements and therefore offerors had to use their professional judgment and expertise to estimate the required level of support. HR, Tab 7, ASRC Questions and Answers at 16; HR, Tab 10, Ekagra Questions and Answers at 5.

These same problems exist for the other fixed-price elements detailed above. For example, for changes to the technical landscape, one of the evaluation board members testified that a change that fell within the day-to-day operations of the CCDC AvMC would be included within the fixed-price portion of the effort, whereas a significant change would fall under the T&M portion of the effort. Tr. at 164. However, this distinction is largely not explained within either the solicitation or the PWS documents, nor is any definition or example provided of what a "significant" change might entail.

The agency contends that an experienced information technology offeror would simply know this information, based on its own expertise and the information provided by the agency about the baseline operations environment. We are not persuaded however that, even armed with this knowledge and expertise, an offeror would have a sufficient understanding of the requirements at issue. As noted above, the agency has failed to

meaningfully explain these terms or define their boundaries. Without this information, the offerors are left to speculate at the possible scope of these requirements.⁶

In response to this concern, the evaluation board member suggested in his testimony that offerors could address any uncertainty by simply setting forth their own bases of estimate within their proposals, and the evaluation process could resolve any inconsistencies. Tr. at 167-168. We find this solution to be unreasonable, however, because it would not permit the offerors to compete on a common basis. Instead, in such a scenario, each offeror would be using its own assumptions to fill in critical scope details missing from the PWS and the FOPR, with the offeror whose guess was closest to the agency's estimates receiving the task order.

In sum, we find that the solicitation did not adequately detail the scope of the fixed-price effort envisioned by the agency for supporting the agency's transformation objectives and responding to changes beyond the current operations level. Without more detail regarding the scope of this effort, and distinguishing it from the T&M portion of the requirement, offerors were not provided with a common basis to compete. As such, we sustain the protests on this basis.

Other PWS Areas

Both ASRC and Ekagra challenge numerous other fixed-price areas within the PWS and Appendix A as insufficiently detailed. With the exception of those areas discussed above, we conclude that the information provided by the agency in the PWS and Appendix A is sufficient for offerors to propose to the fixed price portion of the requirements. While the information provided does not eliminate all uncertainty or performance risk, such risk is inherent in most fixed-price contracts and offerors are expected to allow for that risk in developing their offers. *Northrop Grumman Tech. Servs., Inc., supra.*

For example, the agency provided 17-months' worth of help desk ticket information in Appendix A to assist offerors in proposing staffing for the PWS's service management task. HR, Tab 2, PWS Appendix A at 3-5. This information included the number of help desk tickets, as well as the general service categories applicable to each ticket. Both Ekagra and ASRC argue that this information was insufficient, however, because several ticket categories were undefined or very broad, e.g., an "other" category, which was a catchall category designated for tickets that did not fit within other categories. *Id.* The protesters also contend that this information did not provide sufficient detail regarding the complexity of the ticket request or the time taken to resolve each ticket.

We conclude that the agency provided offerors with sufficient information to propose staffing for the PWS's service management task. In this respect, we note that the help

⁶ We note that during the prior evaluation, at least three of the four offerors were found to have proposed inadequate levels of staffing for the fixed-price portion of the requirement.

desk ticket information provided was the same information the agency possessed and used in developing its estimates. See Tr. at 82, 87, 95. In addition, the Army provided offerors with the agency's estimate of the number of help desk specialist hours needed (84,175) for the overall fixed-price portion of the requirement. See HR, Tab 5, Notional Labor Mix. Although this information certainly does not provide granular-level detail or eliminate all uncertainty, there is no requirement for the agency to do so. See *Northrop Grumman Tech. Servs., Inc., supra*. Nor was the agency obligated to explain precisely how it calculated its estimates; such information is generally not disclosed in solicitations. *QualMed, Inc., B-257184 et al.*, July 20, 1994, 94-2 CPD ¶ 33 at 10-11.

Undisclosed Staffing Evaluation Methodology

ASRC argues that the Army failed to provide any information on how it will use the notional labor mix or the IGCE in its evaluation. ASRC asserts that the solicitation's failure to provide this information renders the notional labor mix information useless because offerors will not be able to understand how the agency intends to evaluate them. In ASRC's view, this was particularly unreasonable because the available record belies the agency's contention that it will not use these estimates to conduct a mechanical evaluation of staffing.⁷

Solicitations must contain sufficient information to allow offerors to compete intelligently and on equal terms. *Global Tech. Sys., supra*, at 19. Our decisions have further recognized that intelligent competition assumes the disclosure of the evaluation factors to be used by the procuring agency in evaluating offers submitted and the relative importance of those factors. *Richard S. Cohen, B-256017.4, B-256017.5*, June 27, 1994, 94-1 CPD ¶ 382 at 6. Agencies are not required to inform offerors of their specific evaluation or rating methodology, however. *ABB Power Generation, Inc., B-272681, B-272681.2*, Oct. 25, 1996, 96-2 CPD ¶ 183 at 4.

Here, we find that the solicitation provided offerors with sufficient evaluation information to allow offerors to prepare their proposals intelligently. In this respect, the solicitation set forth the evaluation factors, their relative weights, and the evaluation considerations under each factor and subfactor. See *generally* FOPR at 22-28. While ASRC essentially argues that the agency must specify the precise methodology it will use to evaluate staffing against its estimates, we do not find this level of detail to be necessary for an offeror to propose a suitable staffing approach.⁸

⁷ To the extent this protest ground seeks to challenge the agency's pre-award evaluation conclusions, as disclosed during discussions, it is premature as discussed above.

⁸ We note, at any rate, that the agency provided ASRC with general guidance, during discussions, on how it intended to use the notional labor mix. Specifically, the agency advised that "[t]he evaluation will not be a rigid, line-by-line comparison with the

(continued...)

RECOMMENDATION

We recommend that, consistent with this decision, the agency revise the solicitation to provide an adequate description of its expectations regarding the staffing to be proposed under the fixed-price portion of the requirement for changes above those needed to maintain the current operations level. We also recommend that the protesters be reimbursed the reasonable costs of filing and pursuing their protests, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1). The protesters' certified claims for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protests are sustained.

Thomas H. Armstrong
General Counsel

[n]otional [l]abor [m]ix or the IGCE, but the offeror's submission should enable evaluators to understand the rationale for the proposed labor and how it correlates to the proposed approach." HR, Tab 7, ASRC Questions & Answers at 3. This guidance is consistent with the agency's representation that it is seeking "novel and forward-thinking solutions, which will likely result in variance in the number and type of personnel proposed for the defined [fixed-price] effort." *Id.* at 7.