

# Decision

**Matter of:** Dust Busters Plus, LLC

**File:** B-420096

**Date:** November 23, 2021

**DOCUMENT FOR PUBLIC RELEASE**

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

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**DIGEST**

Protest challenging the agency's evaluation of proposals is denied where evaluation was reasonable and in accordance with the terms of the solicitation.

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**DECISION**

Dust Busters Plus, LLC, a small business of Eugene, Oregon, protests the decision of the Department of the Interior, Bureau of Land Management not to award it a contract under request for proposals (RFP) No. 140L0621R0005, which the agency issued for firefighter crew services. The protester contends that the agency unreasonably evaluated its proposal. In particular, the protester contends that the agency unreasonably determined that the protester failed to adequately address a deficiency in its proposal.

We deny the protest.

**BACKGROUND**

The agency issued the RFP on March 25, 2021, in accordance with Federal Acquisition Regulation (FAR) parts 12 and 15. Agency Report (AR), Tab 3, RFP at 1; AR, Tab 1, Contracting Officer's Statement (COS) at 3. The solicitation sought firefighter crew services, such as fire suppression and management, "mop-up" activities, and "all-hazard incidents," in six regions in Alaska.<sup>1</sup> RFP at 4-7. Offerors could propose on one or more regions.

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<sup>1</sup> Work was not limited to the six regions listed in the RFP; crews could be assigned to the other regions in Alaska or the lower 48 states of the continental United States. RFP at 7.

The RFP contemplated the award of multiple indefinite-delivery, indefinite-quantity contracts (one per region) with task orders to be issued on a fixed-price or time-and-materials basis. *Id.* at 5. The period of performance is from the date of award through March 31, 2022, with three 12-month option periods. *Id.* at 32. The RFP provided that proposals were to include a technical proposal; past performance information; and a price proposal. *Id.* at 108. The RFP anticipated award for each region on a best-value tradeoff basis using three evaluation factors: technical proposal, past performance, and price. The technical proposal factor was the most important; the past performance was the second most important; and when combined, the technical proposal and past performance factors were significantly more important than price. *Id.* at 116. The due date for proposals was April 26. *Id.* at 3.

The RFP provided for the evaluation under the technical proposal factor to consider three criteria: technical capabilities, safety plan, and quality control plan. *Id.* at 116. For technical capabilities, the agency would evaluate how the offeror intended to meet the requirements in the statement of work (SOW). *Id.* at 110. Additionally, the RFP instructed offerors that the agency would evaluate their plan for hiring, issuing gear, assembling and transporting crew members to the incident, preparing food and water for transportation, and managing poor performance. *Id.* For the safety plan, the agency would evaluate the offeror's understanding of the safety issues that would arise under the contract. *Id.* For the quality control plan, offerors were required to identify specific quality control procedures, describe their recordkeeping for self-inspection and preventative actions, discuss their plan to ensure crew members follow the quality control plan, and describe their plan for maintenance and replacement of various tools. *Id.* at 111. Proposals would receive an overall rating of "outstanding," "good," "acceptable," "marginal," or "unacceptable" under the technical evaluation factor.<sup>2</sup> *Id.* at 116-117.

Under the past performance factor, the agency would evaluate the recency and relevancy of the references submitted by the offeror. *Id.* at 118. The RFP defined "recent" past performance as efforts performed within the last five years; it also provided that the relevancy of past performance would be determined by comparing how closely related the submitted effort was to the services in the statement of work. *Id.* at 118-119. The agency would then conduct a performance confidence assessment wherein it would consider the quality of recent, relevant past performance.<sup>3</sup> *Id.* at 119.

For price, the RFP required offerors to complete a pricing schedule, proposing hourly rates for a sample crew, as well as the daily unit price for a variety of equipment, for the

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<sup>2</sup> As relevant here, a proposal would be considered unacceptable if it failed to meet the solicitation's requirements and contained one or more deficiencies. *Id.* at 117.

<sup>3</sup> The agency would assign an overall performance confidence rating of "substantial confidence," "satisfactory confidence," "limited confidence," "no confidence," or if there was no available record, a rating of "unknown." *Id.* at 119.

base and option years.<sup>4</sup> *Id.* at 7-10. The agency would evaluate each offeror’s pricing to determine if it was fair and reasonable. *Id.* at 120.

The agency received six proposals by the due date, including one from Dust Busters.<sup>5</sup> COS at 5. As relevant here, the initial ratings and total evaluated prices for Dust Busters and the other five offerors were as follows:

	Dust Busters	Offeror Two	Offeror Three	Offeror Four	Offeror Five	Offeror Six
Technical Proposal	Unacceptable	Unacceptable	Good	Good	Good	Good
Past Performance	Satisfactory	Unknown	Substantial	Satisfactory	Satisfactory	Satisfactory
Total Evaluated Price	\$176,390	\$68,040	\$70,287	\$68,601	\$73,500	\$72,800

*Id.* at 6.

The technical evaluators assigned Dust Busters’s proposal a weakness for equipment maintenance because the proposal lacked detail about the maintenance and replacement plans for chainsaws, hand tools, and other equipment. AR, Tab 9, Technical Proposal Evaluation Report at 4. The agency also assigned Dust Busters’s proposal a weakness for its crew assembly plan because the proposal failed to provide an adequate plan for mobilizing its crew, and providing food and water, within 24 hours; the agency also found the proposal did not address hiring of crew members or performance of “fit-for-duty” checks. *Id.* at 2. Finally, the agency assigned Dust Busters’s proposal a deficiency for its failure to address self-mobilization. *Id.* at 3.

On June 4, the agency informed all six offerors that they were included in the competitive range and opened discussions with them. COS at 7. As relevant here, the discussion items for the protester addressed the three technical issues described above, as well as Dust Busters’s “extremely high” labor rates. *Id.*; AR, Tab 14, Source Selection Decision Document (SSDD) at 15. Specifically, the agency informed Dust Busters of a weakness regarding its equipment maintenance, a weakness regarding crew assembly and hiring, and a deficiency regarding self-mobilization. COS at 7. With

<sup>4</sup> The RFP required offerors to submit separate price schedules for each region on which they were proposing. *Id.* at 7.

<sup>5</sup> Dust Busters was the only offeror to submit a proposal for [DELETED]; each of the remaining offerors submitted a proposal for [DELETED]. COS at 5-6. Dust Busters’s proposed pricing for [DELETED].

respect to price, the agency informed Dust Busters that it could not determine whether Dust Busters's labor rates were fair and reasonable, and asked Dust Busters to either revise its labor rates or explain how it calculated them. AR, Tab 11, Discussion Response at 7.

Upon receipt of Dust Busters's response to the discussion items, the agency determined Dust Busters adequately addressed the equipment maintenance weakness, but failed to adequately address the weakness regarding crew assembly and the deficiency regarding self-mobilization. *Id.* Dust Busters also declined to lower its labor rates. AR, Tab 12, Dust Busters Discussion at 7-8. Because Dust Busters's proposal contained a deficiency, the agency determined that the proposal was unawardable per the terms of the solicitation. RFP at 117; COS at 7.

Following discussions, the agency awarded contracts for regions one, two, and six to Dena' Nena' Henash d/b/a Tanana Chiefs Conference, Nulato Hills Enterprises, LLC, and Rural/Metro Fire Dept., Inc., respectively; the agency did not make award for the remaining three regions because only Dust Busters submitted a proposal for those regions, and the agency had concluded that Dust Busters's proposal was unawardable due to the identified deficiency. COS at 8; AR, Tab 14, SSDD at 18-19. The agency sent an unsuccessful offeror notice to Dust Busters on August 12. AR, Tab 15, Unsuccessful Offeror Notice. This protest followed.

## DISCUSSION

Dust Busters contends the agency unreasonably assigned its proposal a deficiency for its self-mobilization plan.<sup>6</sup> Protest at 5-6. For the reasons discussed below, we deny the protest.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. *See SDS Int'l, Inc.*, B-291183.4, B-291183.5, Apr. 28, 2003, 2003 CPD ¶ 127 at 5-6. We review the record to determine only whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria as well as applicable procurement statutes and regulations. *MVM, Inc.*, B-407779, B-407779.2, Feb. 21, 2013, 2013 CPD ¶ 76 at 6. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was unreasonable. *Id.* at 5-6.

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<sup>6</sup> Dust Busters also argues the agency unreasonably assigned its proposal a weakness for its crew assembly plan and unreasonably determined that its price was too high. Protest at 4-5; Comments at 4-5. We do not address these arguments as we find the agency reasonably assigned the proposal a deficiency for the protester's self-mobilization plan, which per the terms of the solicitation, rendered the proposal unawardable. RFP at 117. Thus, even if we were to sustain this protest on the remaining protest grounds, Dust Busters still would not be eligible for award.

Here, the RFP required offerors to “provide a detailed explanation of how the crew will be transported from the assembly point(s) to the incident.” RFP at 110. The agency advised Dust Busters during discussions that its proposal “[did] not address self-mobilization as required by the RFP.” AR, Tab 12, Dust Busters Discussion at 3. In response, Dust Busters stated that “transportation is difficult to anticipate,” but it has “years of experience mobilizing firefighting crews in Alaska on a moment’s notice” and would use the “best commercially available services.” *Id.* Specifically, Dust Busters stated that it would use “a fully licensed and insured commercial air carrier” for air transportation, the “primary vendor in the region” for water transportation, and for land transportation, it would either rent trucks or provide “company owned 4x4 pickup trucks.” *Id.*

In reviewing its response, the agency found, that while Dust Busters responded to the agency’s concerns, it failed to alleviate them. The agency determined that some of the details for self-mobilization, such as water transportation and the use of 4x4 vehicles, “seem[ed] impractical and somewhat impossible.” AR, Tab 14, SSDD at 11. The agency further stated that Dust Busters’ statement that “transportation is difficult to anticipate” was confusing as there would always be a need to transport crew. *Id.* The agency also found that Dust Busters’s claim that it has “years of experience mobilizing firefighting crews in Alaska on a moment’s notice” was not supported by the rest of its proposal. *Id.* Based on this record, we have no basis to find the agency’s assignment of a deficiency unreasonable.

The protest is denied.

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General Counsel