



**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.

# Decision

**Matter of:** The Electronic On-Ramp, Inc.

**File:** B-421229.4

**Date:** February 22, 2023

---

Orest J. Jowyk, Esq., Lewis P. Rhodes, Esq., and William T. Welch, Esq., McMahon, Welch and Learned, PLLC, for the protester.

Barbara B. Ayala, Esq., and Carmody G. Daman, Esq., General Services Administration, for the agency.

Kyle E. Gilbertson, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

## DIGEST

1. Protest challenging the solicitation's evaluation criteria as unduly restrictive of competition is denied where the provisions are reasonably related to the agency's needs.
  2. Protest challenging the solicitation's terms as ambiguous is denied where the solicitation provides sufficient information to allow offerors to intelligently prepare their proposals on a common basis.
- 

## DECISION

The Electronic On-Ramp, Inc. (EOR), a historically underutilized business zone (HUBZone) small business concern of Rockville, Maryland, protests the terms and conditions of the General Services Administration's (GSA) request for proposals (RFP) No. 47QTCB22R0006. The solicitation is for the HUBZone pool of the governmentwide acquisition contract (GWAC) called Polaris, to provide customized information technology (IT) services and services-based solutions. The protester argues that the solicitation contains unduly restrictive provisions and several patent ambiguities.

We deny the protest.

## BACKGROUND

On September 15, 2022, GSA issued the RFP for the Polaris HUBZone pool pursuant to the procedures of Federal Acquisition Regulation (FAR) part 15 and subpart 19.5.

Contracting Officer's Statement (COS) at 2. The Polaris GWAC seeks to provide participating government agencies with access to highly qualified IT contractors, while also helping to fulfill the agencies' small business contracting goals.<sup>1</sup> Agency Report (AR), Tab 11, Acquisition Plan at 4.

The RFP contemplates a multiple-award, indefinite-delivery, indefinite-quantity (IDIQ) set-aside contract for HUBZone contractors to provide customized IT services and services-based solutions. AR, Tab 2, RFP at 3.<sup>2</sup> These IT solutions can be tailored to meet an agency's particular mission needs, including those of new and emerging technologies. *Id.* at 7. Under individual task orders, contractors will be required to provide all management, supervision, labor, facilities, and materials necessary to furnish the requested IT services. *Id.* at 3. The RFP anticipates a 10-year IDIQ contract ordering period, consisting of a 5-year base period and a single 5-year option period. *Id.* at 18.

The solicitation advises that GSA intends to make award to the 60 highest technically rated qualifying (HTRQ) offerors, with any offerors tied at the 60th position receiving an award. *Id.* at 92. The agency's source selection will be based on the offerors' self-scoring, using an agency-provided scoring table. *Id.* at 96-98. This scoring table allows offerors to claim points based on specified categories related to relevant experience; past performance; systems, certifications, and clearances; and organizational risk. The table provides for a total maximum 95,000 possible points for all categories. *Id.* at 98.

After receiving proposals, GSA will begin its evaluation by initially ranking the proposals by highest total claimed self-score, in order to identify the 60 highest scoring proposals. *Id.* at 93. The agency refers to these highest self-scoring proposals as preliminary qualifying proposals, or PQPs. *Id.* Then, the agency will screen each PQP to confirm that the offeror has submitted supporting documentation for all applicable evaluation elements, as well as conduct an initial acceptability review of certain required corporate forms. *Id.* Following this acceptability review, the agency will validate the offeror's supporting documentation and claimed points under each evaluation element. *Id.* The agency will continue this process until it identifies the 60 HTRQ offerors based on validated point scores and an overall responsibility determination. *Id.* at 94.

The RFP established November 18, 2022 as the proposal due date. *Id.* at 65. Over [DELETED] offerors submitted proposals in response to the RFP. COS at 12. On

---

<sup>1</sup> The Polaris GWAC is divided amongst the following four solicitation set-aside types, or pools: small businesses; woman-owned small businesses (WOSB); service-disabled veteran-owned small businesses (SDVOSB); and HUBZone. Memorandum of Law (MOL) at 1.

<sup>2</sup> Citations to page numbers for documents in the agency report are to the Adobe PDF page numbers. The agency amended the RFP three times. References to the RFP are to the conformed version found at AR, Tab 2.

November 18, prior to the deadline for proposal submission, EOR filed this protest with our Office.

## DISCUSSION

The protester alleges the terms of the RFP are defective. First, EOR argues that the agency's allocation of self-scoring points under five evaluation categories is unduly restrictive of competition. Protest at 4-7. Second, EOR contends that the RFP contains patent ambiguities related to an offeror's possible point score under the agency's organizational risk assessment, and with regards to which entities can submit projects under the past performance evaluation. *Id.* at 7-8.

### Unduly Restrictive Terms

First, EOR argues that several RFP provisions are unduly restrictive of competition. Specifically, the protester challenges the agency's allocation of self-scoring points for (1) project size, (2) unique federal government customers, (3) work outside the contiguous United States (OCONUS), (4) breadth of relevant experience, and (5) organizational risk. Protest at 4-7. According to the protester, these unduly restrictive terms frustrate the intended HUBZone set-aside because the highest point scores can only be achieved by 8(a)<sup>3</sup> mentor-protégé joint ventures with a large business mentor, or "Super 8(a)s" such as Alaska Native Corporations (ANCs).<sup>4</sup> Protest at 1. The agency responds that the RFP's self-scoring provisions are structured to award points for "different attributes that GSA has determined valuable to its customer agencies," explaining that it is "seeking the most experienced and competent HUBZone offerors possible who are ready to provide sophisticated IT services to agency customers as soon as possible." MOL at 2.

In general, agency acquisition officials have broad discretion in the selection of evaluation criteria that will be used in an acquisition. *AAR Mfg. Inc., d/b/a AAR Mobility Sys.*, B-418339, Mar. 17, 2020, 2020 CPD ¶ 106 at 13. The fact that an evaluation criterion may be burdensome, or otherwise makes a firm's offer less competitive, is not objectionable, provided the agency's criteria have a reasonable basis and are not otherwise contrary to law or regulation. *Id.* Although we address only two representative examples below of EOR's claims regarding unduly restrictive terms, we

---

<sup>3</sup> Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes the Small Business Administration (SBA) to enter into contracts with government agencies and to arrange for performance through subcontracts with socially and economically disadvantaged small business concerns. FAR 19.800. This program is commonly referred to as the 8(a) Business Development program (or simply "8(a) program").

<sup>4</sup> The protester explains that "Super 8(a)s" refers to HUBZone companies that are part of a larger ANC, Native American corporation, or Hawaiian-owned corporation, which are each allowed to have a corporate parent and multiple 8(a) business development program participants as sister corporations and affiliates. Comments at 4.

have fully considered all of the protester's arguments and conclude that the agency's allocation of self-scoring points under the challenged categories is reasonably necessary to meet the agency's needs, and not unduly restrictive.

### Project Size

The protester argues that the RFP's allocation of points under the project size category is unduly restrictive. Protest at 4. For this category, the RFP requires offerors to submit a minimum of three, and a maximum of five, primary relevant experience projects. RFP at 74, 77. Under the RFP's scoring table, the agency will award an offeror points based on each project's monetary size, with increased points for projects of a larger dollar value. *Id.* at 96. Specifically, an offeror can self-score 500 points for each project greater than or equal to \$1 million, but less than \$5 million; 1,500 points for any project greater than or equal to \$5 million, but less than \$10 million; and 3,000 points for each project greater than or equal to \$10 million. *Id.* Offerors can earn up to a maximum of 15,000 points under this category. *Id.*

Here, EOR does not object to the agency's evaluation of project size, or the fact that a "greater number of contracts yields the greater number of points," rather, the protester takes issue with "the greater weight given to the larger contracts." Comments at 4. EOR argues that the agency's allocation of points is unduly restrictive because an offeror cannot receive the maximum 15,000 points without any experience in projects of at least \$10 million, since an offeror will only receive maximum points where it submits five projects valued at \$10 million or more. Protest at 4. The protester claims that while "[m]ost if not all small businesses would have a difficult if not impossible task to cite five projects with a value equal to or greater than \$10 million," nearly every single mentor-protégé joint venture will be able to achieve maximum points by leveraging the experience of its large business mentor. *Id.* at 4-5. The agency responds that its evaluation of project size is not unduly restrictive because an offeror "that has less than five projects valued at less than \$10 million" can still receive an award, adding that the protester is challenging the criterion simply because EOR cannot receive maximum points. MOL at 4; COS at 13.

A contracting agency has the discretion to determine its needs and the best methods to accommodate them. *Simplex Aerospace*, B-414566.2, Aug. 8, 2017, 2017 CPD ¶ 256 at 3. An agency is not required to construct its procurements in a manner that neutralizes the competitive advantages of some potential offerors. *Staveley Instruments, Inc.*, B-259548.3, May 24, 1995, 95-1 CPD ¶ 256 at 3-4. We will not object to the presence or absence of a particular evaluation criterion, as long as the method chosen reasonably relates to the agency's needs and is not otherwise contrary to law or regulation. *AAR Mfg. Inc., d/b/a AAR Mobility Sys.*, *supra* at 13.

As a preliminary matter, it is worth noting that EOR is not ineligible for award if it is unable to achieve the maximum 15,000 points for this evaluation category. Under project size, an offeror is not required to submit five projects of at least \$10 million, or even a single \$10 million project. RFP at 74, 77. The RFP only requires a minimum of

three projects of at least \$250,000. *Id.* While an offeror, such as EOR, may not receive the maximum 15,000 points, the firm's lack of experience with projects worth \$10 million or more does not bar the protester from submitting a proposal and potentially receiving an award. *ADVENTureOne LLC; Apogee Eng'g, LLC*, B-408685.23, B-408685.26, Sept. 20, 2019, 2019 CPD ¶ 329 at 4-5 (denying protest of solicitation terms allowing offerors to earn points for approved purchasing and estimating systems where the disputed terms were not minimum requirements).

Moreover, the record supports the agency's rationale for assigning increased points to offerors with experience in higher-value projects, based on the agency's needs. During acquisition planning, the agency determined that Polaris contractors will "need to possess the ability to perform larger dollar value task orders," and that "the Polaris evaluation strategy must target small businesses with the capability to perform these larger value task orders." AR, Tab 10, Contracting Officer (CO) Memorandum at 3. According to GSA, the agency reasonably addressed its articulated need by "awarding additional points to offerors who demonstrate the ability to handle contracts valued at \$10 [million] or greater because such offerors have expertise in large award contracts--and GSA anticipates that some of its customers will likely have contract awards in this category."<sup>5</sup> COS at 13.

While the protester contends that the agency should evaluate experience using a "more direct comparison of total experience and skilled workforces"--ostensibly because EOR does not possess the experience in high-value projects--the protester's arguments do not render unreasonable the agency's evaluation criterion that awards more points to offerors with experience in handling high dollar value task orders. Comments at 5-6. We conclude that the agency has articulated a reasonable basis for using a \$10 million threshold in its scoring, as well as for awarding increased points to higher-value efforts.

#### Breadth of Relevant Experience

The protester also argues that the RFP's allocation of points under the breadth of relevant experience category is unduly restrictive. Protest at 6. For this category, the RFP awards an offeror with additional points if its submitted relevant experience projects demonstrate performance in more than one of five identified North American Industry Classification System (NAICS) areas (or "codes").<sup>6</sup> RFP at 80. GSA selected

---

<sup>5</sup> Contrary to the protester's claim that the predecessor contract awarded "very few" \$10 million task orders, the agency provided statistics revealing that 31 percent of awarded task orders under the legacy effort exceeded \$10 million. Protest at 5; COS at 7 n.4; AR, Tab 10, CO Memorandum at 3. The agency added that it anticipates future task orders will similarly exceed \$10 million. COS at 7, 13; AR, Tab 10, CO Memorandum at 3.

<sup>6</sup> NAICS is the standard used by federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the business economy of the United States. RFP at 74. NAICS areas are designated by a unique number, or code.

these five NAICS areas based on the anticipated work to be acquired under future Polaris task orders. COS at 10. The RFP requires that an offeror's submitted projects include performance in at least one of these NAICS areas, and awards additional points for demonstrated experience in multiple areas. RFP at 74, 80. Under the RFP's scoring table, an offeror can self-score 2,000 points for project experience in two NAICS areas; 3,000 points for experience in three areas; 6,000 points for experience in four areas; and a maximum 9,000 points for experience in five areas. *Id.* at 97.

The protester argues that this evaluation criterion is unduly restrictive of competition because successful offerors, presumably, "must have experience in all five NAICS codes" in order to "achieve the maximum or near maximum total point score." Protest at 6. While EOR asserts that it is "not objecting to awarding points for greater breadth of relevant experience," the protester does object to the RFP awarding a "disproportionately larger number of points to larger HUBZone companies that can show a greater breadth of coverage far more readily than individual small and medium-sized HUBZone companies." Comments at 8. The agency responds that the RFP does not require that offerors demonstrate experience in all five NAICS areas, or even experience in multiple areas. MOL at 7-8; COS at 15-16. Rather, the RFP allows an offeror to submit a proposal with three projects in a single NAICS area. *Id.*

We do not find it unreasonable for the agency to award a larger proportion of points for each additional NAICS area covered, as opposed to the "equal point spread" advocated by the protester. Comments at 6. During acquisition planning, GSA observed that future Polaris task orders "are anticipated to cover the wide array of IT services required by government agencies to meet their missions." AR, Tab 10, CO Memorandum at 2. In light of this recognized need, GSA concluded that it is "critical that the evaluation criteria focus on award to the most technically capable small businesses possessing experience across multiple IT performance areas."<sup>7</sup> *Id.* at 3. As the agency explains, an offeror that has previously worked in multiple NAICS areas, "provides greater value to the [g]overnment through greater ability to compete for and [to] perform [on] a greater breadth of work on Polaris task orders." COS at 16.

Accordingly, we find nothing objectionable with the agency's decision to award more points for higher levels of experience. The agency has provided a rational explanation for its evaluation criterion and demonstrated that it reasonably relates to the agency's actual needs. Thus, this allegation is denied.<sup>8</sup> *Evolver Inc.; Armed Forces Servs.*

---

<sup>7</sup> The agency's market research confirms that interested HUBZone firms possess this desired experience. In response to an agency survey, [DELETED] of [DELETED] HUBZone entity responses noted experience in five or more performance areas. AR, Tab 10, CO Memorandum at 5.

<sup>8</sup> In its comments, EOR argues that "the record is devoid of any analysis or market research to support the Agency's random and subjective requirements." Comments at 2. We find this argument to be untimely. Protests generally must be filed no later than 10 days after the protester knew, or should have known, of the basis for protest,

*Corp.*, B-413559.2, B-413559.8, Dec. 21, 2016, 2016 CPD ¶ 373 (denying protest challenging how points will be awarded under the agency's point scoring scheme where the solicitation provisions are reasonably related to meeting the agency's needs).

### Ambiguities

Next, EOR alleges that the RFP contains two patent ambiguities. The protester contends that the solicitation's terms concerning an offeror's possible point score under the agency's organizational risk assessment and the terms concerning which entities can submit projects under the past performance evaluation, are patently ambiguous. Protest at 7-8. The agency responds that neither provision is ambiguous, and contends that the protester is unreasonably interpreting the solicitation. MOL at 9-11; COS at 17-19. We agree.

As a general rule, an agency must provide offerors with a sufficiently detailed solicitation that enables them to compete intelligently and on a relatively equal basis. *DocMagic, Inc.*, B-415702, B-415702.2, Feb. 16, 2018, 2018 CPD ¶ 96 at 3. There is no requirement, however, that a competition be based on specifications drafted in such detail as to completely eliminate all risk or remove every uncertainty from the mind of every prospective offeror. *Seventh Dimension, LLC*, B-417630.2, B-417630.3, Dec. 26, 2019, 2020 CPD ¶ 12 at 5-6.

### Organizational Risk Assessment

The protester argues that the agency's organizational risk assessment is ambiguous as to whether an offeror can achieve a maximum of 5,000 points, or whether some amount

---

whichever is earlier. 4 C.F.R. § 21.2(a)(2). Where a protester initially files a timely protest, and later supplements it with additional grounds, any later-raised allegations must independently satisfy our timeliness requirements. *Synergy Solutions, Inc.*, B-413974.3, June 15, 2017, 2017 CPD ¶ 332 at 6-7.

Here, the protester learned of the basis for its allegation that "the record is devoid of any analysis or market research" from the alleged lack of such documentation in the agency's December 19 report. Comments at 2. EOR was thus required to file this protest ground within 10 days of December 19, or by December 29. While we granted EOR's request for a one-day extension to file its comments, this extension did not, and cannot, waive our timeliness requirements. *ATA Def. Indus., Inc.*, B-282511.8, May 18, 2000, 2000 CPD ¶ 81 at 4. Because EOR filed this allegation as part of its comments on December 30, 11 days after receiving the agency report, this allegation is untimely. 4 C.F.R. § 21.2(a)(2). Moreover, we reject the protester's claim that this challenge is part of its initial protest that the RFP's terms are unduly restrictive. Resp. to Req. for Dismissal at 2-4. EOR's initial protest argues that the *protester's* own research demonstrated that the RFP's evaluation criteria are unduly restrictive. Protest at 4-5. EOR's new argument--that the *agency* failed to conduct any analysis or research--is necessarily based on EOR's review of the agency report. Comments at 2.

of “additional points” above 5,000 “could be achieved based on an unspecified evaluation factor or factors.” Protest at 7. The agency responds that the only reasonable interpretation of the RFP’s language is that an offeror can achieve a maximum of 5,000 points under this evaluation element. MOL at 9; COS at 17-18.

Where a protester and agency disagree over the meaning of the solicitation’s 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. *Advanced Commc’n Cabling, Inc.*, B-410898.2, Mar. 25, 2015, 2015 CPD ¶ 113 at 7. An ambiguity exists where two or more reasonable interpretations of the solicitation’s terms or specifications are possible. *Al Baz 2000 Trading & Contracting Co.*, B-416622.2, Dec. 12, 2018, 2018 CPD ¶ 422 at 3. If the solicitation language is unambiguous, our inquiry ceases. *WingGate Travel, Inc.*, B-412921, July 1, 2016, 2016 CPD ¶ 179 at 7.

We find the RFP’s language to be unambiguous, and the protester’s interpretation of that language unreasonable. The RFP’s evaluation criteria, under section M.5.4.1, organizational risk assessment, states that an offeror will receive “additional points” for demonstrating that it has previously performed in the same business arrangement as is being proposed, and instructs offerors to “[s]ee Section M.6, Polaris Scoring Table.” RFP at 96. That scoring table, in turn, plainly lists a “Max Point Value” of “5,000” for the organizational risk assessment element. *Id.* at 96, 98. The scoring table further lists the overall “Total Possible Points” as “95,000,” a number that directly correlates to the sum of the “Max Point Value[s]” for all of the individual evaluation elements, including the maximum 5,000 points for the organizational risk assessment element. *Id.* at 98. Furthermore, the agency reiterated that 5,000 was the maximum number of points allowed for this element in a questions and responses (Q&R) document posted with the solicitation. When a firm asked if the agency would award partial points under the organizational risk assessment element, the agency responded that “*the 5,000 points* for Organizational Risk Assessment will be provided on an *all-or-none basis*.” AR, Tab 6, Q&R at 31 (emphasis added). The RFP and associated Q&R make clear that an offeror can achieve a maximum 5,000 points under this evaluation element.

While the protester fixates on the RFP’s reference to “additional points,” that language simply refers to the 5,000 potential “additional points” the agency will award to an offeror that can demonstrate it has previously performed in the same business arrangement. RFP at 96. These 5,000 points are in “addition” to any other points an offeror may otherwise qualify for under separate evaluation elements. Moreover, this “additional points” language is consistently used elsewhere in the RFP’s instructions and evaluation criteria to denote opportunities for an offeror to self-score for “additional points” above which it may otherwise qualify. *Id.* at 77-80, 83 (“The Offeror will receive additional points for each additional Emerging Technology with demonstrated relevant experience.”), 96 (“Offerors who have Systems, Certifications, and Clearances will receive additional points in accordance with Section M.6, Polaris Scoring Table.”). We do not find reasonable the protester’s interpretation of the phrase “additional points” to mean points beyond the scoring table’s maximum 95,000 total possible points.



We conclude that the only reasonable interpretation of this RFP provision is that an offeror can achieve a maximum of 5,000 points if that offeror can demonstrate that it has previously performed in the same business arrangement as is being proposed. RFP at 96, 98. Accordingly, this allegation is denied. *WingGate Travel, Inc., supra* at 7-8 (denying allegation that the RFP was ambiguous where the terms were not susceptible to two or more reasonable interpretations).

### Past Performance

Finally, the protester argues that the RFP's past performance evaluation criteria is ambiguous as to whether "a prime and a subcontractor can submit their separate past performance under the same prime contract." Protest at 7. The agency responds that it informed offerors through the Q&R process that both a prime and a subcontractor could submit their respective prior work as separate projects for purposes of the agency's evaluation. MOL at 10-11; COS at 18-19. We find that the RFP, and associated Q&R, sufficiently explained that the agency considers a prime and subcontractor's work under the same prime contract to be separate past performance "projects."

The RFP provides that the agency will evaluate past performance using an offeror's submitted relevant experience projects. RFP at 83. The RFP defines a relevant experience project to include a contract *or* subcontract. *Id.* at 73. In addition, the RFP differentiates between the project experience of a prime contractor, and the separate project experience of a subcontractor under the same effort, stating that "[w]hile a project performed as a subcontractor will likely be part of a larger project, only the work identified in the specific subcontract may be utilized for scoring as a Relevant Experience Project." *Id.* (emphasis omitted).

The agency resolved any alleged ambiguity regarding whether a prime and a subcontractor could submit their separate past performance projects under the same prime contract during the solicitation's question and response period. As part of the Q&R, a firm asked "[i]f a subcontractor performed work for a prime contractor that may also compete for Polaris, will the project be removed if the prime also submits it as a project?" AR, Tab 6, Q&R at 31. In response, the agency plainly advised that "[t]he prime contractor would be able to submit its prime contract as a Relevant Experience Project, AND the subcontractor would be able to submit its subcontract as its own Relevant Experience Project. The subcontract performance would be considered a commercial project."<sup>9</sup> *Id.* In light of the RFP's language and this additional Q&R clarification, there is no reasonable basis for EOR's interpretation. *Barbaricum, LLC,*

---

<sup>9</sup> Although the RFP elsewhere provides that no relevant experience project "may be used in more than one proposal," we find that the agency has sufficiently clarified that it considers a prime and subcontractor's respective work under the same effort to constitute two separate "projects." RFP at 63.

B-418427.7, Dec. 11, 2020, 2021 CPD ¶ 41 at 6 (concluding protester's interpretation was not reasonable where it failed to acknowledge the agency's response to questions and answers).

The protest is denied.

Edda Emmanuelli Perez  
General Counsel